

**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
72	17 June 2013	Review of Confidential Attachment – Code of Conduct (Council Member) 17 August 2009	<p>Section 90 (3) (a) Order 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 Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure &amp; Projects Minute Secretary, Risk &amp; Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.2 Review of Confidential Attachment – Code of Conduct 17 August 2009 Attachment</p> <p>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 a staff member and Council Member will be discussed.</p> <p>The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because there will be discussion of a staff member and</p>		Considered in confidence only – all released immediately after the meeting.	That Council release without prejudice the Attachment from Fiona Stevens, Central Psychology Services dated 3 August 2009.			Released by Council 17/6/13 – on web 20/6/13

- d) Attachment 4– Complaint letter from D. Burt – released without prejudice
- e) Attachment 5 – Letter to Councillor Hamilton recommending mediation
- f) Attachment 6 – Letter from Ombudsman to Council
- g) Attachment 7 – Letter to R. Cambrell from Ombudsman
- h) Attachment 8 – Letter from Ombudsman to Council
- i) Attachment 9 – Letter to P. McGinn from Ombudsman

Seconded Councillor Westwood and CARRIED

10.04pm Councillor Hamilton entered the chamber and took her chair.

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<b>100.3</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL REPORT - REVIEW OF CONFIDENTIAL ATTACHMENT – CODE OF CONDUCT – COUNCIL MEMBER - 17 AUGUST 2009</b>
	<b>DATE OF MEETING:</b>	<b>17 JUNE 2013</b>
	<b>FILE NUMBER:</b>	<b>13/046432</b>

10.05pm Councillor Hamilton declared a conflict of interest as she is the subject of the complaint and left the chamber.

Moved Councillor Irvine that:

**Section 90 (3) (a) Order**

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 Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects Minute Secretary, Risk & Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.2 Review of Confidential Attachment – Code of Conduct 17 August 2009 Attachment

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 a staff member and Council Member will be discussed.

The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because there will be discussion of a staff member and Council member's performance.

Seconded Councillor Campbell and CARRIED

- 100.4** Moved Councillor Irvine that Council release without prejudice the Attachment from Fiona Stevens, Central Psychology Services dated 3 August 2009.

Seconded Councillor Westwood and CARRIED

10.10pm Councillor Hamilton entered the chamber and took her chair.

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**100.5**      **REPORT TITLE:**      **CONFIDENTIAL REPORT – REVIEW OF  
CONFIDENTIAL ORDERS ASSOCIATED  
WITH THE OMBUDSMAN’S REPORT- 20  
OCTOBER 2008**  
**DATE OF MEETING: 17 JUNE 2013**  
**FILE NUMBER:    13/045423**

Moved Councillor Irvine that Council:

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

1. Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except, Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Minute Secretary, Risk & Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.3 Confidential Report – Review of Confidential Orders Associated with the Ombudsman’s Report - 20 October 2008.
2. Pursuant to Section 90(3)(g)  
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 as a confidentiality agreement exists

The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because detailed information about the confidentiality agreement cannot be released.

Pursuant to Section 90(3)(a)

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation

16.2            **REPORT TITLE:        CONFIDENTIAL REPORT - REVIEW OF  
CONFIDENTIAL ATTACHMENT – CODE OF  
CONDUCT – COUNCIL MEMBER - 17  
AUGUST 2009**

**DATE OF MEETING: 17 JUNE 2013**

**FILE NUMBER:        13/046432**

**Strategic Plan 2012-2017 Ref:**

Governance and Leadership

**Purpose:**

To provide Council with a confidential attachment related to a Code of Conduct investigation of a Council Member, dated 17 August 2009 to determine if the confidential order 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:**

**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 Acting Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, Minute Secretary, Risk & Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.2 Review of Confidential Attachment – Code of Conduct 17 August 2009 Attachment

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 a staff member and Council Member will be discussed.

The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because there will be discussion of a staff member and Council member's performance.

2. Release without prejudice the Attachment from Fiona Stevens, Central Psychology Services dated 3 August 2009.
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**Background:**

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

**Discussion:**

4. The relevant confidential document is attached:
  - Attachment – report from Fiona Stevens (Central Psychology Services) into 3 Code of Conduct complaints concerning a Councillor.
5. Fiona Stevens (report author) confirmed she could not recall concerns from members of the public interviewed, if the report was made public. It is her practice to confirm that any report can be made public via legal processes.
6. Peter McGinn, Dan Burt, Greg Sarre and Councillor Hamilton were contacted regarding this complaint and not all parties agreed that it should be released. Rebecca Cambrell could not be contacted.
7. The Ombudsman's report last year on Council's use of confidential clauses 'In the Public Eye' provides steps to following when considering public interest. The item is recommended for release as factors for disclosure outweigh those against disclosure.
8. The public complainants were part of a Courier article at the time and the complaint arose from a public meeting so the identities of the Councillor and staff member were known.
9. The document is recommended for release.

**Community Engagement:**

Informing only	Released information is provided on Council's website
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**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:**

By considering the relevant clauses available for confidential documents and the contents of the documents risks are reduced.

**Asset Management:**

N/A

**Conclusion:**

This confidential attachment has been reviewed and is recommended for release.

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**Key Contact**

Ros McDougall, Risk & Governance Officer, Corporate Services

**Manager or Sponsor of Project**

David Peters, General Manager Corporate Services

**Attachments**

1 – confidential report dated 3 August 2009 from Fiona Stevens into 3 code of conduct complaints

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Attachment 1 to Item 16.2 17 June 2013

**CENTRAL PSYCHOLOGY SERVICES**  
**CONFIDENTIAL**

Mayor Ferguson  
The District Council of Mount Barker  
PO Box 54  
6 Dutton Road  
MT BARKER SA 5251

As per your request I have conducted an investigation into three complaints regarding an elected member. This request was made at the Council Meeting on 01 June 2009.

**Overview of this Report**

I have read the Document 2.6.1 Investigation into Alleged Breach of Conduct-Elected Members which is the authorisation for this investigation. I have also received

- Copies of the complaints made by Ms Cambrell, Mr Burt and Mr McGinn.
- Copies of the correspondence between Council and the complainants.
- Letter from the CEO to Councillor Hamilton dated 15 April 2009.
- Letter from Councillor Hamilton to the Mayor and CEO dated 15 June 2009.
- Copies of the Courier article which appeared on 27 May 2009 regarding Councillor Hamilton and letters to the Courier in support of her which appeared in the following edition.
- Copies of letters and statements from Councillor Hamilton
- The summary report prepared by the CEO to present to Council on 01 June 2009.

I have determined that the purpose of this report is to address the matters raised by the complaints. I propose to discuss the complaints according to the letters of complaint, the interviews I conducted with the complainants, the respondent and the Council employee who was present at the meeting of the 25<sup>th</sup> of February 2009. I chose to limit my investigation in this way as I did not want to broaden the list of witnesses beyond what was necessary.

There were two meetings which occurred across two days, the 24<sup>th</sup> and the 25<sup>th</sup> of February 2009. I will also take note of the article which appeared in the Courier and the letters which then appeared in the Courier a week later plus a letter from a member of the public who was also at

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the meeting of the 25<sup>th</sup> February. These were provided by Councillor Hamilton at the time I met her on the 9<sup>th</sup> of July 2009. I consider the sequence of events leading up to the investigation to be relevant to this report so will also record them by way of understanding the sequence of events.

**Background**

There were two meetings. The first meeting was on the 24<sup>th</sup> of February 2009, it was a seminar run by the Australian Business and Finance (ABAF). The second was on the 25<sup>th</sup> of February, it was a Public Forum to discuss a draft of the Public Arts Policy for Mt Barker Council. Councillor Hamilton was at both meetings, and so was Ms Cambrell and Mr McGinn. The second meeting was on the evening of the 25<sup>th</sup> of February. Mr Burt was there as well as the others. Mr Greg Sarre, Mr McGinn's supervisor, was also present at that meeting.

**Sequence of Events**

On 03 April 2009 I was approached by Mr Andrew Stuart, Chief Executive Officer for the Council, to make myself available to conduct a mediation between one of the Mt Barker Councillors and a staff member. This matter has been discussed between the Mayor, Mr Stuart and Councillor Hamilton without success.

The request came after two ratepayers had also complained about Councillor Hamilton's conduct at the same time.

I agreed to conduct the mediation, provided the document "Mediation Services" to Mr Stuart and thus Council on the 6<sup>th</sup> April and then waited to hear from Councillor Hamilton. At that time Mr Stuart thought she was prepared to participate in a mediation process and so I wanted to meet with her prior to any discussions with the complainants.

In the time after that initial contact I maintained telephone contact with Mr Stuart which was to confirm that I was available but that nothing had been forthcoming from Councillor Hamilton.

On 15 April 2009 Mr Stuart wrote to Councillor Hamilton requesting her to make an appointment to discuss the mediation process. He summarised the complaints as "alleged behaviour which may generally be summarised as disparaging, offensive, abusive and directed at Mr McGinn, Ms Cambrell and Mr Burt and critical of Council".

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On 16 April 2009 Mr Stuart wrote to the complainants to the effect that there would be mediation.

On 28 May 2009 Mr Stuart advised me that he was putting a Confidential Report before Council in which he was recommending I be asked to provide a report for Council as the mediation process had broken down and yet the three complaints had not been addressed.

Council met on 01 June 2009 and determined to request an Independent Report from me to go to Council "In accordance with 2.8.1 Investigation Into Alleged Breach of Conduct-Elected Members".

On 02 June 2009 Mr Stuart wrote to the three complainants to advise them of the Council's decision that their complaints were to be addressed via an investigation rather than via mediation.

On 10 June 2009 I wrote an email to Councillor Hamilton asking her to discuss how we might meet. I did not receive a response to that email.

On 12 June 2009 I contacted Councillor Hamilton by phone and spoke about the situation as we had still not met. She spoke of the article which had appeared in the Courier on 27 May 2009 about her and the distress this had caused her. She said there had been letters from the community which had been very supportive of her as well. She said she was seeking legal advice as she said she "(felt) she (needed) to protect (herself)". She felt the situation was serious. She saw that an employee of Council had access to legal advice and considered there were parallels with the role of an elected member.

On 15 June 2009 Cr Hamilton provided a letter to the Mayor and the CEO in which she wrote that she was concerned about the "leaking of confidential matters". She wrote that she was concerned about attending mediation and once again requested legal representation. In this letter she noted that the accusations were "mischievous" and that there was a similarity between them that was of concern. She requested the Minutes of the meeting of the 25<sup>th</sup> of February 2009. She was critical of the delay in finalising the complaints within the four weeks of receipt.

I spoke to her again by phone on 18 June 2009 and once again looked at times to meet. She said in that conversation that she had been "going through hell since February", that she had needed to "stay strong". She saw herself as having a responsibility to represent her constituency and not to have to deal with complaints such as these.

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I spoke to Cr Hamilton again by telephone on 25 June 2009. She said she was not clear about the complaints themselves. She considered there was collusion between the complainants, that the complaints could not be substantiated. She spoke of how this matter was something of an "onion" in the sense that there were many layers. Her overall message as I understood it was that this matter was going to be difficult to adjudicate successfully. She denied she was a bully, she said her comments were "mild" compared to Federal Parliament. She also began to discuss the actual events in that she said that "an officer shouldn't be suggesting ... cant make policy".

**Interviews**

I was able to organise a series of interviews for the period 09-10 July 2009 when I spoke with each of the complainants and Councillor Hamilton. I will provide a summary of each of these interviews and then discuss the relevance of these interviews in relation to the terms of this investigation, that is Council's Policy 2.8.1. I also interviewed Mr Greg Sarre, Manager, Mt Barker Council. He was present at the meeting of the 25<sup>th</sup> of February and so observed the exchange between Cr Hamilton and the complainants.

I will not provide a transcript of the interviews as I consider my role is to interpret the information provided by the participants in this investigation. I am also concerned to keep this report as brief as possible so will include matters of relevance to the meetings of the 24<sup>th</sup> and 25<sup>th</sup> of February 2009 only.

**Ms Rebecca Cambrell**

In her letter of complaint Ms Cambrell refers to the two meetings both she and Cr Hamilton attended. She stated in her letter of complaint that, among other things, she found Cr Hamilton to be "aggressive, disruptive and indeed abusive in her interaction with me and others". She states that at the meeting of the 25<sup>th</sup> of February Cr Hamilton "accused Peter McGinn of gross ignorance". She said she felt "intimidated and bullied".

When I spoke to her on 09 July 2009 I asked her to talk about what was said and done to result in her feeling as she said she did in the letter of complaint. At the Australian Business and Finance (ABAF) seminar on the 24<sup>th</sup> of February she experienced Councillor Hamilton as being "very aggressive" and that she said to her when she was attempting to assist in a table discussion "who made you the boss". She says that she and others went to speak to Mr McGinn about Cr Hamilton's behaviour as they were distressed by her behaviour.

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On the next day she said that she saw Councillor Hamilton had come with others to be critical of the work that had been done to prepare the draft copy of the Public Arts Policy. Ms Cambrell said that she thought Councillor Hamilton had not understood the process but was "not letting people talk". She says that Councillor Hamilton said that Peter McGinn was "grossly incompetent" and was "grossly ignorant". She said she found this to be an "awful moment". She said that when she spoke up with something like "oh, come on", Councillor Hamilton started to "harangue" her and so she responded with "I'm finding your manner to be very aggressive". She and a friend went to leave, were waiting by the lift when Councillor Hamilton appeared with her friend. When they saw she was leaving they went back to the meeting.

She said she felt Councillor Hamilton had not understood the purpose of the meeting, that it was to discuss options. She believes that Cr Hamilton did not understand that the point of it all was that they were not there to make "hard and fast decisions".

**Mr Dan Burt**

His complaint was exclusively for the meeting of the 25<sup>th</sup> of February 2009. Whereas Ms Cambrell is seen as an active member of the Arts community and so known to both Mr McGinn and Councillor Hamilton prior to the meetings, Mr Burt was not known to Councillor Hamilton until he decided to attend that evening as he wanted to ensure his area of interest in the Arts was properly covered when the Policy document is released. He describes himself as a "teacher and an entertainer".

In his complaint he described the sequence of events at that meeting including his perspective of Councillor Hamilton "abusing" Mr McGinn. He saw the meeting as a feedback session. He saw Mr McGinn as being prepared to try and calm things down. He felt Councillor Hamilton talked over Mr McGinn and found this to be distressing. He considered Councillor Hamilton's behaviour to be "highly offensive, unprofessional and unbecoming of a Councillor in any meeting".

I interviewed him on 10 July 2009. Once again I wanted to hear what words were spoken as well as how he experienced the events. He spoke there of having seen Councillor Hamilton as "going on like a two bob watch", as "shouting" at the others who left. He said "It made it worse once I knew she was a Councillor", it "made (him) angry" that she would "disrupt a meeting like that". He was very supportive of Mr McGinn, he thought he did a very good job. The trouble started over the issue of who was to be on a panel to determine matters relevant to the Arts Policy. He says

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Councillor Hamilton said "hang on, it must be Councillors" to which Mr McGinn replied with "this is open for discussion" at which point Mr Burt says Councillor Hamilton said "I'm going to get on to the Council about you". He says he also found it unacceptable that Councillor Hamilton spoke to Ms Cambrell in the way he says she did. His view was that it was not what was done it was the way it was done, that this was a forum for discussion but it became a time for anger and "cross talking". He felt he would not like to go to such meetings in the future as he felt so very upset about it then and having to discuss it again was distressing to him.

**Mr Peter McGinn**

Mr McGinn's complaint includes a number of matters. They are

- Councillor Hamilton's access to the ABAF seminar held on 24th February 2009.
- Her behaviour towards ABAF staff.
- Her behaviour at the seminar towards other participants.
- Her behaviour towards him at the meeting on 25th February 2009.

In the interview I conducted with him on 09 July 2009 he spoke of his core values to have "mutual respect" for others. He worries that he may have inadvertently triggered off Councillor Hamilton's behaviour and finds himself searching for ways to understand it all. He regrets that he cannot finish off the Public Arts Policy, that he is currently not having any contact with Councillor Hamilton.

He spoke of Councillor Hamilton's "passion for the Arts" as having been evident at the ABAF seminar. He is insistent that the flyers were sent out in the usual way but that Councillor Hamilton had gone to the CEO and his General Manager to say "Peter hasn't invited me". He then got a call from the ABAF whereby they said "one of your elected members had a piece of one of our staff members" at which point he was instructed to get her into the meeting and so arranged for this to happen.

He says he did not see the incidents which were recounted to him by Ms Cambrell. She and others had sought him out (he was in the kitchen area at this stage of the proceedings) and told him that Councillor Hamilton was acting in a certain way, at which point he says he went to where the group was convening and saw that Cr Hamilton "looked agitated", she "had her body turned away". He says he would not have complained of these matters had he not have had to deal with the events of the following evening.

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This was when he says he experienced the "major incident" for him. It was a small meeting, Councillor Hamilton sat at the back of the group. He raised the issue of the panel. She then said that she objected to the way this part of the Draft Policy was written. When he said this was a matter of discussion "she took exception". He says she called the policy as "grossly incompetent", that he was "disrespectful and irresponsible in bringing it forward".

He also observed Councillor Hamilton to be "cutting (Dan Burt) off" when he was trying to make a point. Eventually his Manager, Greg Sarre, who was present, intervened to assist. When Ms Cambrell made a remark he said Councillor Hamilton called her "my dear". He saw that Ms Cambrell was leaving as she had become distressed by the way things were being discussed.

He felt the way Councillor Hamilton spoke to him was a "professional attack". He felt "ambushed", "set up", that she was "disrespectful". He said it was a "horrible experience". He says he had expected there to be differences of opinions but this was worse than that. He considers Councillor Hamilton sees him as not qualified to do his job. He says he has to consider his behaviour in the workplace to ensure he follows his own Code of Conduct, he felt she showed little concern for any duty of care for him in that situation. He wants to see a finish to all of this and wanted an apology or mediation.

**Councillor Sue Hamilton**

Councillor Hamilton came to the meeting I had with her with her friend Ms Sue Jeanes.

She made the point that no other Councillor attended the two meetings. She also spoke of her commitment to the Arts and the challenges associated with getting Council to place the same priority over funding for the Arts as it does for other aspects of its budget.

She said that she had been very concerned that there were no elected members on the panel which was discussed in the meeting of the 25<sup>th</sup> of February. She had read the draft copy before attending the meeting and so when this matter was raised she says she "addressed Peter, 'how could you say this?' 'Councillors make policy, it would be ignorant of you (to go down this track)...Councillors have the money...budget'".

She was adamant that he had made a mistake, she was not able to understand that he could suggest this as an option, "What does he think?". She had noted that "he refers to the Council

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staff as professionals" yet for her this was an unacceptable option. She explained that she has twelve years of study in this area and saw Mr McGinn's draft policy as her "being excluded" from a key role in managing the Arts program in Mt Barker. She had been instrumental in getting the Sculptural Trail started, she is someone who is qualified to assess arts, so how could Mr McGinn exclude her from this role?

She saw it as a "very informal meeting", where there was "robust discussion". There were "only twelve people" with "no structure to the meeting". It started with a "slide show" and then went into open discussion. She felt Peter "goaded" her, that he had said "no councillors on the panel" meaning this was his preference. She says this "made (her) feel quite offended, it was insulting, a sacred thing, trivialising it". She says she "tried to explain it to him".

In our interview Councillor Hamilton said that she sees herself as having an "abrasive voice" but that she "didn't shout" but does understand that she "(doesn't) mince (her) words".

She felt she could not sit there and just accept what Mr McGinn had to say. She was still unable to understand "why he said something that was incorrect".

She believes Mr Sarre agreed with her. She saw Mr Burt as "interrupting", wanting to talk about "other matters". She considers that "everyone else is louder than me".

Her great concern was that "there was to be public consultation and then write a report" that it would then receive "endorsement and it would be rubber stamped" and so she "thought it was very, very important" to have her say at that forum. She also considered that the Policy document had been "plagiarised", that it was not entirely relevant to Mt Barker.

She reiterated her view that there was a degree of collusion between the complainants. She also questioned Mr McGinn's capacity to work in his current role.

She said that she "wouldn't hurt anyone in my life". She had made an apology to Mr McGinn about not wanting her comments at the meeting to offend him but did not believe her behaviour warranted an apology.

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**Mr Greg Sarre**

I spoke with Mr Sarre as I wanted to determine whether or not there had been the words said that had been reported by the complainants and which Councillor Hamilton had denied had occurred in the way the complainants had described.

Mr Sarre is Mr McGinn's supervisor and was present at the meeting. He said that he had had concerns about Councillor Hamilton's conduct and had written an email expressing these concerns in the days after that meeting. He said that he was "not happy with the way Peter was treated" in that he understands and respects Councillor Hamilton's passion for the Arts but he saw her as having used words which indicated that she saw Mr McGinn as incompetent. He said she could have said words such as "I have concerns" or other ways to address the issues but rather he saw her as having been disrespectful and personalised her criticisms.

**Findings**

I consider that there was too much discrepancy between the various accounts about what was said for there to have been collusion between the complainants about how Councillor Hamilton conducted herself on the 24<sup>th</sup> and 25<sup>th</sup> February.

I consider that Councillor Hamilton has a passionate commitment to the Arts and believes she has an uphill battle getting her point across with Council and so needs more support for her to do her work in this area adequately.

I consider Councillor Hamilton believed if she did not speak up at the forum on the 25<sup>th</sup> of February the Policy would include a flawed recommendation. She saw this as the forum to present her views. This is hard to understand given her role on Council and the fact that Council would be the place to finally decide on the Policy. Nevertheless she saw that she needed to defend her position there and then otherwise there would be a travesty of justice. In this way she saw herself at that meeting as a member of the public committed to the Arts. Unfortunately she was also seen by others present as an Elected Member of Council. She knew this and was also wanting to defend her constituents in the Arts community and ensure that Council was able to do its job properly. For her there was a lot at stake.

Councillor Hamilton saw herself as under attack by Mr McGinn, she saw him as not respecting her or Council and so her response was to become strident in her opposition to what she saw as

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his recommendation to exclude elected members from that Panel. In this way she further indicated a sense of powerlessness to defend her position in any other way.

I consider she misunderstood what the meeting was designed to do. I consider it was organised for Mr McGinn to collect the community's opinions about his draft policy and so he meant no disrespect to Councillor Hamilton.

I consider Councillor Hamilton was upset at the way the meeting was being run and the matters being discussed and went into a robust exposition of her opinions.

I consider others at the meeting found her manner towards Mr McGinn to be excessively critical and so reacted to her behaviour accordingly. They considered she was not acting as they believe a Councillor should act in public especially to a Council employee.

I consider the way Councillor Hamilton behaved was a consequence of her opinion that Mr McGinn has not respected her position on Council. I consider this needed to be addressed in a different forum than at that meeting. The core issue here is about the proprieties of providing relevant feedback to employees of Council. This needs to be in a way that allows all parties to consider the issues. This needs to be done without exposing the employee to what Mr McGinn and others present at the forum conducted on the 25<sup>th</sup> of February experienced as public humiliation. He was at work when he was at that meeting and was following the instructions from his managers. In this case it was to conduct a public forum where he and any other employee is entitled to feel able to find the best outcomes for all those living in the Council area.

I consider the complaints from both Ms Cambrell and Mr Burt were a consequence of their experience of Councillor Hamilton's behaviour towards them but were also the result of their distress at her behaviour towards Mr McGinn. I do not think they would have been so determined to complain had this not happened. They might have reviewed their voting preferences but not gone through what has turned out to be a prolonged process in the time since that meeting. I consider they were both genuinely distressed by these events.

Taking into account all versions of these events I would conclude that there is reason to see Councillor Hamilton's behaviour as a breach of the Code of Conduct. I accept that it was not her intention to act in a way that upset others rather she saw herself as defending the rights of the Arts community to have the representation she provides. The Code of Conduct is there to provide guidelines about behaviour. It states that:

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"In the performance of our community role we will:

- conduct ourselves in a way that both generates community trust and confidence in us as individuals and enhances the role and image of Council and local government generally.

Communication with the Community

We will be fair and honest in dealings with individuals and organisations and ensure constructive criticism between Council and the community

And

Relationship with Staff

Mutual trust, courtesy and respect

Encouraging two way communication

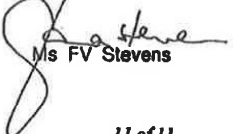
Respecting and employee's professional opinion and expertise

These are very difficult precepts to operationalise entirely and I can understand that others present at the meetings of the 24<sup>th</sup> and 25<sup>th</sup> of February may not have viewed Councillor Hamilton's behaviour as breaching these guidelines. Notwithstanding this I consider the four people I interviewed certainly did consider she contravened these guidelines and consider their stories to be different enough to preclude collusion but yet similar enough to indicate that Councillor Hamilton appeared to them to be acting in a way that was outside these guidelines.

Conclusions and Recommendations

I see the role of an elected member of Council as placing high demands on the individual. This is because the role of an elected member requires a range of skills including negotiation, conflict resolution, advocacy, policy evaluation and consultation with the electorate and with all rate payers. In this way there can be tensions and these can have an effect on the individual over time. I recommend that Councillor Hamilton have access to support to ensure she has the opportunity to address the issues raised in this report. She has a sincere commitment to her role as an advocate for the Arts and to the community of Mt Barker and would not have intended to cause the distress that I found in each of the complainants when I spoke to them. I would be prepared to discuss this report with her but can understand that she may not agree with the findings of this investigation and so reject any further contact with me. If this is the case I would recommend she be offered the alternative of meeting with someone who could discuss with her the points raised in this report and provide her with ways of being able to address the matters noted here.

03 August 2009

  
Ms FV Stevens