

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
77	17 June 2013	Alleged Breach of Code of Conduct Council Members	<p>Section 90 (3) (a) Order</p> <p>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 Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 16.7 Alleged Breaches of the Code of Conduct – Council Members.</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 Council Members in that details of personal qualities or attributes will be discussed.</p> <p>The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of details of Council Member conduct will be discussed.</p>		Considered in confidence only – all released immediately after the meeting.	That Council note that the Chair of the LGA Governance Panel undertook an investigation on a complaint from Mr Brian Calvert into an alleged breach by Cr Corbell of the Council's Code of Conduct – Council Members and found that no breach had occurred			<p>Released 17/6/13</p> <p>On web 20/6/13</p>

**16.7 REPORT TITLE: CONFIDENTIAL REPORT: ALLEGED
BREACH OF CODE OF CONDUCT–
COUNCIL MEMBERS**

DATE OF MEETING: 17 JUNE 2013

FILE NUMBER: 13/053446

Strategic Plan 2012-2017 Ref:
Governance and Leadership

Purpose:

To provide the recommendation from the Chair of the LGA Governance Panel on the alleged breach of the Code of Conduct – Council Members.

Summary – Key Issues:

1. Mr Calvert complained to Council on the media statements provided by Cr Corbell as acting Mayor.
2. After investigation by the LGA Governance Panel no breach was found.

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 Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure and Projects, Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 16.7 Alleged Breaches of the Code of Conduct – Council Members – April-May 2013.

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 Council Members in that details of personal qualities or attributes 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 disclosure of details of Council Member conduct will be discussed.

2. Note that the Chair of the LGA Governance Panel undertook an investigation on a complaint from Mr Brian Calvert into an

alleged breach by Cr Corbell of the Council's Code of Conduct – Council Members and found that no breach had occurred.

Background:

1. A complaint was received by the Mayor from Mr Brian Calvert on 27 March 2013 alleging a breach of the Code of Conduct – Council Members by Cr Corbell when he was Acting Mayor and in particular during his media interviews on 18 March 2013 and 19 March 2013.
2. Mr Calvert has been provided with a copy of the LGA Governance Panel's report as per the Code's procedure.

Discussion:

3. As the Code of Conduct – Council Members Procedure at that time, the complaint was considered by Council at the meeting on 15 April 2013 to determine if it would be investigated by the LGA Governance Panel or an independent investigator. The Council resolved to forward the complaint to the LGA Governance Panel which was undertaken on 19 April 2013.
4. The investigation was undertaken by Panel Member Sue Vardon who individually interviewed Mr Calvert, Cr Corbell, the Chief Executive Officer Mr Andrew Stuart, and General Manager Infrastructure and Project Mr Brian Clancey.
5. The complaint had 3 parts.
 - "On 18 March 2013 and prior to the Council meeting Cr Corbell expressed opinions which were different to the proposed motions in the full knowledge of what the motions were. He did not say he was speaking personally and in any case, as Deputy Mayor on that day, he should not have been offering views the opposite of a series of motions still to be debated. This could be seen as trying to influence the debate."
 - "On the 19 March 2013 Cr Corbell misrepresented Council's position on the motions by giving answers which were the opposite of the motions. Council requested from the Minister and was quite prepared to work with a freeze on development but Cr Corbell said this was not appropriate".
 - "The reporter on 19 March gave Cr Corbell two chances at correcting himself but he did not take them and this leaves me with the impression his opposite view was deliberate."
6. The LGA Governance Panel has provided the attached response and has found there was no breach of the Code of Conduct on the above matters.
7. Mr Calvert also asserted that Mr Corbell may have breached S62 of the Local Government Act – General Duties – *A member of a*

Council must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties.

Although not within its terms of reference the investigator found no evidence to support such a claim.

8. Mr Calvert will be provided with a copy of the Council's resolution.

Community Engagement:

Informing only	Information will be provided when the item is no longer confidential
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Policy:

Code of Conduct – Council Members and associated procedure.

Budget:

There is no budget for these items but Council will be charged at an hourly rate of \$250. No account has yet been received.

Statutory/Legal:

The Code is required under Section 63 of the Local Government Act.

Staff Resource Requirements:

The administration of these complaints is incorporated into the workloads of the Risk and Governance Officer.

Environmental:

N/A

Social:

Providing an avenue for complaints is important.

Risk Assessment:

There is a risk that matters may be referred to the LGA Governance Panel which are not appropriate for it to consider.

Asset Management:

N/A

Conclusion:

The LGA Governance Panel has conducted an investigation into a complaint by Mr Brian Calvert who alleged Cr Corbell breached Council's Code of Conduct – Council Members but no breach was found.

Key Contact

Ros McDougall, Risk and Governance Officer, Corporate Services

Manager or Sponsor of Project

David Peters, General Manager Corporate Services

Attachments

1. LGA Governance Panel Report – Brian Calvert and Cr Corbell – 13/053445

Attachment to Item 16.7

LOCAL GOVERNMENT GOVERNANCE PANEL

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ADELAIDE SA 5001

(please mark all correspondence as Private & Confidential)

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Our Reference: 100816 (99381) / MS : CB

CONFIDENTIAL

11 June 2013

Mr Andrew Stuart
Chief Executive Officer
District Council of Mount Barker
PO Box 54
MOUNT BARKER SA 5251

Dear Mr Stuart

**99381 - District Council of Mount Barker - Alleged Breach Code of Conduct -
Mr Brian Calvert -v- Cr Trevor Corbell**

The investigation of the alleged breach of the Council Code of Conduct for Council Members has been undertaken. The report on the investigation of the matter is attached.

This report concludes the investigation of the complaint by the Local Government Governance Panel. If you require further clarification in relation to this matter please contact me via email at governancepanel@lga.sa.gov.au.

Yours sincerely



Marjorie Schulze, OAM
Chairperson

Attach: Final Report (100822)



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Our Reference: 100822 (99381) / MS : CB

CONFIDENTIAL FINAL REPORT

"Without Prejudice - this report is for the use of Local Government Governance Panel, District Council of Mount Barker and its legal advisers only"

Report on the investigation of a Code of Conduct Complaint 99381 - District Council of Mount Barker - Mr Brian Calvert -v- Cr Trevor Corbell

We write to report on the investigation undertaken into a complaint involving alleged breaches of the District Council of Mount Barker Code of Conduct for Council Members endorsed by Council (4 October 2011) following the referral of this matter to the Local Government Governance Panel (the "Panel").

The Complaint

The complaint referred to the Panel is that brought by Chief Executive Officer, Mr Andrew Stuart via Ms Ros McDougall, Risk and Governance Officer, Corporate Services (insert name) Mr Brian Calvert (the "complainant") resident, had complained in a letter to the Mayor about certain comments made to the press by Cr Corbell (the "respondent") before a Council meeting and again following a meeting with the Deputy Premier and Minister for Planning, Mr John Rau. Mr Calvert made a complaint in three parts as outlined in the referral letter of 23 April 2013.

The Investigation

The Panel has investigated the Complaint by conducting individual interviews with the General Manager Infrastructure and Projects, Mr Brian Clancey, Cr Trevor Corbell, Mr Brian Calvert and with the CEO, Mr Andrew Stuart and by reading all the documents relating to the complaint and listening to an audio recording in order to satisfy itself regarding the facts of the matter.

Background / Context

In 2010, former Minister for Planning, the Hon Paul Holloway had authorised a Ministerial Development Plan Amendment for development of 10,000 allotments around the Mount Barker District using his legislative powers under the *Development Act 1993*. The Mount Barker District Council was placed in the position of having to accept the decision and then ensuring the development met appropriate development standards.

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-2-

The decision caused concern to many local residents and to the Council. The results of the development would lead to a trebling of the population of Mount Barker. The Council's position is that it approves of orderly development but was concerned that such a large increase would place severe strains on infrastructure, services and resources. This was of grave concern and the Council made its position well known publicly and to the State Government. Council had already rezoned land with capacity of 2000 blocks for development in 2006.

Council and residents raised their concerns with the Government on many occasions. As a result of Council's concerns, the new Minister for Planning, Mr John Rau agreed to meet regularly with the Mayor and senior staff to address the concerns of the Council. These meetings occurred every four to six weeks. The fact that this Council had been offered regular meetings was a reflection of the concerns the Minister had received from the Council and his wish to work with them on the infrastructure, service and resource issues. The Minister had reinforced over time that there would be no reversal or freeze on the development.

On 6 March the Ombudsman released a report relating to the State Planning Department failing to identify a potential conflict of interest in relation to the development. Some people saw this as an opportunity to refer the development to the proposed Independent Commission Against Corruption (ICAC) body.

On 11 March Mayor Ann Ferguson went on leave and the Deputy Mayor Trevor Corbell became acting Mayor.

On 12 March Cr Grosser lodged a four part motion on notice in relation to the development (including one part which referred to ICAC), which was placed on the agenda for the Council meeting on 18th March.

Prior to the Council Meeting in the late afternoon, Cr Corbell took two calls from the ABC. This was reported on a newslink as:

"Mount Barker Deputy Mayor Trevor Corbell says referring the issue to the ICAC would be unlikely to stop the development."

"I don't think there's any turning back on it. We can express great concern about how it might have happened, but the reality is, it's landed" he said.

"I would describe it as a fairly large cuckoo that's landed in a small nest. It's here and now we have to deal with it."

This is an extract of longer interviews. We do not know what else was said but Cr Corbell confirms that this was his position at the time. Cr Grosser's motions had yet to be debated in the Council so the Deputy Mayor was not bound by them in advance.

The decision by the former Minister to apply a Ministerial Development Plan Amendment (MDPA) to the development area in 2010 was lawful and Cr Corbell was offering an opinion to which he is entitled, based on his best judgment of the circumstances. In his view the establishment of ICAC was many months away and the development issues had to continue to be dealt with by Council now.

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-3-

At the Council meeting on the 18 March, the motions put forward by Cr Grosser were considered. Cr Corbell who was acting Mayor and in control of the meeting, stated that a significant amount of time was allowed for the debates on the motions and there were some amendments but the spirit of the original motions passed.

The final resolutions were:

"That Council write to Office for Public Integrity requesting that given the findings of the Ombudsman in his report the process and events leading to the Ministerial Development Plan Amendment being authorised in late 2010 be referred to comprehensive independent scrutiny by the Independent Commission Against Corruption (ICAC) or by a Royal Commission."

"That Council write to the Planning Minister John Rau requesting that he use his powers under the Development Act 1993 to freeze development in the Ministerial Development Plan Amendment lands outside of the development applications already submitted until completion of the independent investigation and include an improved capacity commensurate with the scale of the Ministerial Development Plan Amendment (MDPA) and recognising the resources of District Council of Mount Barker to manage for the long term necessary infrastructure provision and service provision to this community."

"That Council write to the Planning Minister John Rau asking what infrastructure, resources and service commitments the government is prepared to make (and in what timeframe relative to growth) to provide for Mount Barker to service the growth in the event that Ministerial Development Plan Amendment (MDPA) sanctioned growth proceeds and to the leader of the state Liberal Party, Steven Marshall, asking what commitments the Liberal Party is prepared to make in the event of forming government after the next state election if the growth proceeds."

Additionally, the letters should request that staging of development be introduced to the Development Plan to manage the growth in an efficient and orderly manner with timely rollout of services and required infrastructure.

Coincidentally, the Council was having its regular meeting with the Deputy Premier and Minister for Planning, Mr John Rau the next day.

In his role as acting Mayor, Cr Corbell attended that meeting with the Chief Executive Officer and General Manager Infrastructure and Projects, Mr Brian Clancey. It is confirmed by the latter two people that Cr Corbell faithfully referred to the Council resolutions and handed them to the Minister. In addition and to reinforce Council's concerns, Mr Brian Clancey presented the Minister with a copy of the most recent Courier Newspaper article which raised concerns about the development.

As well as handing over the resolutions of Council from the evening before, Cr Corbell referred to the community feeling against the development.

During the meeting the Minister repeated his position that there would be no freeze or staging on development but that he was working with the Council to ensure that the infrastructure issues would be continually raised with Government Departments and that he was keen to work with the Council to ensure an orderly roll out of the development.

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-4-

There was conversation about the referral to ICAC. There was discussion that this body would not be established for sometime (probably September) and that it was unlikely that Council's referral would be dealt with for some time. The Minister confirmed that it was appropriate that the referral should be made directly to the Office of Public Integrity as resolved by Council.

The Council staff understood that this referral would not halt the development at this stage and the Council was not in a legal position to halt the development alone. Council could only object to developments as they were presented if they failed to satisfy Development Plan requirements.

At the conclusion of the meeting, advice was received that there was a large press contingent outside the Minister's door. There were between 15 and 20 media people who addressed many questions to the Minister and after to the acting Mayor, Cr Corbell.

Cr Corbell having received information that there would be no freeze and that the ICAC body would take some time, concentrated on ensuring that Council's pressure for improved infrastructure would stay on the agenda of future discussions with the State Government. This had been reflected in two of the Council resolutions.

There were many questions from the press canvassing all the issues. The press was advised by Minister Rau that there would be no freeze but he was working with the Council to consider infrastructure and other issues.

There was no preparing for the interview. Cr Corbell spoke in relation to his understanding about the state of affairs as they stood following the meeting - the Council could not act alone and stop the development; they had to get on with the development applications on hand and it was better to work cooperatively with the Government to keep the pressure on for infrastructure, services and resources.

Mr Calvert referred in his complaint to a short extract of that media session which in total lasted about 10 minutes. He had an audio recording of that section and it was transcribed for the complaint:

Unknown male reporter asked: "Are you disappointed that the Government won't look at this idea that the motion put last night to put development on hold until the ICAC has worked through some of these issues?"

Cr Corbell replied: "Look the timing of any referral via OPI to ICAC is something that can't happen within a couple of months we cannot sit on our hands with the situation we have in Mount Barker now and wait for that which may come to nothing in any event. We need to have if you like the fall back position which is really the front position if you like continuing the way we are trying to get things happening now if something comes out through some sort of OPI reference to ICAC we will deal with that then but that is hypothesis at this stage."

Unknown reporter: "Are you disappointed at all though that the Government is not supporting the motion that was put at Council last night to put these developments on hold?"

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-5-

Cr Corbell: "Look I don't believe that it is appropriate to do that now I just made the comment that is something that might come out via that process"

Unknown reporter: "But the Council put the motion, why put the motion is you are not prepared to back it up to the Minister?"

Cr Corbell: "The motion reflects very much the very strong feeling there is in the community in this whole issue I described it to the Minister if you like as a pressure cooker situation a valve popped off last night. OK the Ombudsman's report might have been a catalyst for that but people are reacting to the circumstances they find themselves in now they are looking for some sort of resolution some sort of movement in the problems we are already dealing with it. I know the Minister is addressing that."

The reporter was not in the meeting with the Minister and did not hear Cr Corbell and the Minister in conversation. Two Senior Council officers report that Cr Corbell passed on a hard copy of the Council resolutions to the Minister in person and the Council subsequently followed up with a letter to the Minister enclosing the resolutions dated 22 March 2013 and Council received confirmation of receipt of this letter.

Mr Calvert heard and saw excerpts from that media interview and was concerned that in his view, Cr Corbell has not been strong enough in voicing his opposition to the development and in reflecting the Council decisions. He lodged his concerns about the comments made by Cr Corbell to the Mayor and which he believed breached the Council Code of Conduct at Section 9:

"REPRESENTING COUNCIL

When representing the Council in the community we shall:

- provide an accurate and fair representation of Council decisions;*
- recognise that Council members have a duty to respect Council decisions and policy directions;*
- conduct ourselves in a manner that will reflect favourably on the Council."*

Findings

His complaint was in three parts

- (a) "On the 18 March 2013 and prior to the Council meeting Cr Corbell expressed opinions which were different to the proposed motions in the full knowledge of what the motions were. He did not say he was speaking personally and in any case, as Deputy Mayor on that day, he should not have been offering views the opposite of a series of motions still to be debated. This could be seen as trying to influence the debate."

Finding: We find that there is no breach of the Council Code of Conduct on this section of the complaint. Cr Corbell was not bound by motions on notice before the Council. He made a judgment call based on his understanding of the present state of affairs. His even handed conduct of the Council meeting during the debate allowed all issues to be canvassed. In our view the extract of his statements to the ABC could not be seen as inappropriate or an attempt to influence the debate.

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-6-

(b) "On the 19 March 2013, Cr Corbell misrepresented Council's position on the motions by giving answers which were the opposite of the motions. Council requested from the Minister and was quite prepared to work with a freeze on development but Cr Corbell said this was not appropriate."

Finding: The panel finds that there is no breach of the Council Code of Conduct on this section of the complaint. The motions to which Mr Calvert refers passed as resolutions and required that letters be written to the Minister Rau and the Office of Public Integrity. These letters were written on 22 March 2013. Unusually, an opportunity existed for Cr Corbell to speak to the Minister less than 24 hours after the Council meeting. Eyewitnesses attest that Cr Corbell passed the resolutions to the Minister and spoke strongly to them. This was a clear reinforcement of the Council resolutions.

In the face of a clear decision of the Government that Council's resolutions would not influence the development, Cr Corbell and the senior officers decided to focus on pressuring for infrastructure, resources and service commitments from the State Government that was the substance of one of the resolutions.

Facing the unexpected press contingent at the end of the meeting at which Minister Rau reaffirmed there would be no freeze, Cr Corbell commented on the state of affairs that in his judgment reflected a way ahead.

Whilst Mr Calvert and others may have wished stronger comments of protest from the Deputy Mayor, Cr Corbell having privately protested to the Minister, made a judgment to take a more conciliatory approach in front of the press.

(c) "The reporter on 19 March gave Cr Corbell two chances at correcting himself but he did not take them and this leaves me with the impression his opposite view was deliberate."

Finding: The Panel finds there is no breach of the Council Code of Conduct on this section of the complaint.

The reporter assumes that Cr Corbell did not "back up" the Council motion. There is no evidence to suggest that is so. On the contrary, there is evidence that the letters were sent and Cr Corbell reinforced the resolutions with the Minister. Nothing the Council said or would say would change the Minister's mind. The Minister made that clear privately and in public.

General Observations

In addition to these complaints, Mr Calvert wrote "it is possible that Mr Corbell may have breached s62 of the Local Government Act, which might be actionable in the District Court:

62 General duties.

(2) *A member of a council must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties.*

Whilst this is outside our terms of reference, we found no evidence that would support such a claim.

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-7-

Recommendations

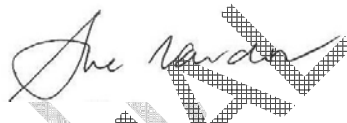
We recommended that Council note that we have considered a Code of Conduct complaint in three parts against Deputy Mayor Trevor Corbell and have found no breaches of the Mount Barker Code of Conduct – Council Members.

This report concludes the investigation of the complaint by the Local Government Governance Panel.

Yours sincerely



Marjorie Schulze OAM
Chairperson



Ms Sue Vardon AO
Investigating Panel Member

11 June 2013



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