

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
71	17 June 2013	Review of Confidential Orders Associated with Code of Conduct Complaint (Council Member) Report 1 June 2009	<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, Minute Secretary, Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item 16.1 Confidential Report – Review of Confidential Orders associated with the Code of Conduct (Council Member) Report 1 June 2009.</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, in that details of staff performance and health status of the individuals will be discussed..</p> <p>The Council is satisfied that the principle of the meeting being conducted in a place open to the public</p>		Considered in confidence only – all released immediately after the meeting.	<p>2. Release the following documents:</p> <p>a) Attachment 1 –The Council report of 1 June 2009</p> <p>b) Attachment 2 – Complaint letter from R. Cambrell</p> <p>c) Attachment 3 – Complaint memo from P. McGinn</p> <p>d) Attachment 4– Complaint letter from D. Burt – released without prejudice</p> <p>e) Attachment 5 – Letter to Councillor Hamilton recommending mediation</p> <p>f) Attachment 6 – Letter from Ombudsman to Council</p> <p>g) Attachment 7 – Letter to R. Cambrell from Ombudsman</p> <p>h) Attachment 8 –</p>			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
			has been outweighed in the circumstances because the disclosure of details of the health status and/or performance of the Council Member or staff member may be discussed.			Letter from Ombudsman to Council i) Attachment 9 – Letter to P. McGinn from Ombudsman.			

100 CONFIDENTIAL REPORTS

**100.1 REPORT TITLE: CONFIDENTIAL REPORT – REVIEW OF
CONFIDENTIAL ORDERS ASSOCIATED
WITH CODE OF CONDUCT COMPLAINT
(COUNCIL MEMBER) REPORT 1 JUNE
2009
DATE OF MEETING: 17 JUNE 2013
FILE NUMBER: 13/046231**

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 Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Minute Secretary, Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item 16.1 Confidential Report – Review of Confidential Orders associated with the Code of Conduct (Council Member) Report 1 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 a staff member and Council member, in that details of staff performance and health status of the individuals 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 the disclosure of details of the health status and/or performance of the Council Member or staff member may be discussed.

Seconded Councillor Westwood and CARRIED

9.44pm Councillor Hamilton declared a conflict of interest as she is the subject of the complaint and left the chamber.

100.2 Moved Councillor Irvine that Council:

- 2) Release the following documents:
- a) Attachment 1 –The Council report of 1 June 2009
 - b) Attachment 2 – Complaint letter from R. Cambrell
 - c) Attachment 3 – Complaint memo from P. McGinn

- 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.

100.3	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

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.

16. **CONFIDENTIAL REPORTS**

16.1. **REPORT TITLE: CONFIDENTIAL REPORT – REVIEW OF
CONFIDENTIAL ORDERS ASSOCIATED
WITH CODE OF CONDUCT COMPLAINT
(COUNCIL MEMBER) REPORT 1 JUNE
2009**

DATE OF MEETING: 17 JUNE 2013

FILE NUMBER: 13/046231

Strategic Plan 2012-2017 Ref:

Governance and Leadership

Purpose:

To provide Council with the remaining confidential documents that were considered at the Council meeting on 1 June 2009 regarding a Code of Conduct complaint against a Council Member, to determine if any 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 than scheduled 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 Acting Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, Minute Secretary, Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item 16.1 Confidential Report – Review of Confidential Orders associated with the Code of Conduct (Council Member) Report 1 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 a staff member and Council member, in that details of staff performance and health status of the individuals 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 the disclosure of details of the health status and/or performance of the Council Member or staff member may be discussed.

2. Release the following documents:
 1. Attachment 1 -The Council report of 1 June 2009
 2. Attachment 2 – Complaint letter from R. Cambrell
 3. Attachment 3 – Complaint memo from P. McGinn
 4. Attachment 4– Complaint letter from D. Burt – released without prejudice
 5. Attachment 5– Letter to Councillor Hamilton recommending mediation
 6. Attachment 6 – Letter from Ombudsman to Council
 7. Attachment 7 – Letter to R. Cambrell from Ombudsman
 8. Attachment 8 – Letter from Ombudsman to Council
 9. Attachment 9 - Letter to P. McGinn from Ombudsman

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 item.
3. The Ombudsman's office agreed that it would be prudent for the Council to undertake a further review prior to beginning this investigation.

Discussion:

4. The 9 relevant confidential documents are:
 1. The Council report of 1 June 2009
 2. Attachment – Complaint letter from Rebecca Cambrell
 3. Attachment – Complaint memo from Peter McGinn
 4. Attachment – Complaint letter from Dan Burt
 5. Attachment – Letter to the Councillor recommending mediation
 6. Attachment – Letter from Ombudsman informing Council that he will not continue with investigation
 7. Attachment – Letter to the complainant from Ombudsman informing that he will not continue with investigation

8. Attachment – letter from Ombudsman informing Council that he will not continue with investigation
9. Attachment - Letter to the complainant from Ombudsman informing that he will not continue with investigation
5. 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 items are recommended for release as factors for disclosure outweigh those against disclosure.
6. Matters that must be disregarded include:
 - Embarrassment or loss of confidence in the Council;
 - Controversy or public pressure;
 - Disclosure of confusing or misleading information
 - Information may be misused
 - High office of person involved
7. Councillor Hamilton, Peter McGinn and Dan Burt were consulted as part of this review. Not all parties were of the opinion it was in the public interest to release these items.
8. The identity of the complainants Rebecca Cambrell and Dan Burt were revealed in an article about this matter in The Courier in 2009. The name of the Councillor and staff member are already public with the release of a minute related to a subsequent report (17 August 2009). In addition the complaint arose from a public meeting so the identities of the Councillor and staff member were known by those who attended.

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 of confidential orders 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 what had already been publicly reported the risk is reduced.

Asset Management:

N/A

Conclusion:

This confidential item has been reviewed and the items are recommended for release.

Key Contact

Ros McDougall, Risk & Governance Officer, Corporate Services

Manager or Sponsor of Project

David Peters, General Manager Corporate Services

Attachments

1. The Council report of 1 June 2009
2. Attachment – Complaint letter from R. Cambrell
3. Attachment – Complaint memo from staff member
4. Attachment – Complaint letter from D. Burt
5. Attachment – Letter to Councillor recommending mediation
6. Attachment – Letter from Ombudsman informing Council that he will not continue with investigation from complainant
7. Attachment – Letter to complainant from Ombudsman informing that he will not continue with investigation from complainant
8. Attachment – Letter from Ombudsman informing Council that he will not continue with investigation from complainant
9. Attachment – Letter to complainant from Ombudsman informing that he will not continue with investigation from complainant

Attachment 1 to Item 16.1 17 June 2013**17. CONFIDENTIAL REPORTS**

17.1 REPORT TITLE: INVESTIGATION INTO ALLEGED BREACH OF CODE OF CONDUCT – ELECTED MEMBERS

DATE OF MEETING: 1 JUNE 2009

AUTHOR: ANDREW STUART

AUTHOR'S TITLE: CHIEF EXECUTIVE OFFICER

REPRESENTORS: N/A

FILE NUMBER:

ATTACHMENTS:

1. LETTER FROM MS R CAMBRELL
2. LETTER FROM MR P MCGINN
3. LETTER FROM MR D BURT
4. INVESTIGATION INTO AN ALLEGED BREACH OF CODE OF CONDUCT – ELECTED MEMBERS
5. CODE OF CONDUCT – ELECTED MEMBERS
6. FIONA STEVENS MEDIATION SERVICES
7. LETTER TO COUNCILLOR HAMILTON
8. OMBUDSMAN CORRESPONDENCE
9. OMBUDSMAN CORRESPONDENCE

PURPOSE

To advise Council of a formal investigation into an alleged breach of the Code of Conduct – Elected Members by Councillor Susan Hamilton.

RECOMMENDATION

That:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker 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, General Manager Corporate, and the Minute Secretary be permitted to remain in the room.
 3. Council notes the report
 4. Council notes Fiona Stevens has been requested to provide an independent report to Council.
 5. Due to the Occupational Health & Safety concerns the Chief Executive Officer has asked the General Manager, Strategy, Development & Communities to put in place work place instructions to manage potential future conflict between Councillor Hamilton and Mr McGinn.
 6. 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 1 June 2010.
 7. 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

Three letters of complaint have been received alleging various acts of inappropriate behaviour by Councillor Susan Hamilton in February 2009.

The first letter received was dated 26 February 2009 from Ms Rebecca Cambrell (*Refer attachment 1*).

The second letter dated 2 March 2009 was from Council officer Mr Peter McGinn. (*Refer attachment 2*).

The third letter of complaint dated 4 March 2009 was from Mr Dan Burt. (*Refer attachment 3*).

(Council Members are requested to review these letters attached at this point).

DISCUSSION

Each letter of complaint raises allegations of the inappropriate behaviour of Councillor Hamilton at Council sponsored public forums on the 24th and 25th of February 2009.

Ms Cambrell followed up her written complaint with a requested meeting which was attended by the Mayor and myself.

The Mayor in consultation with myself initiated discussion with Councillor Hamilton to discuss the allegations and conveyed that at that early stage the complainants were seeking an apology from Councillor Hamilton to remedy their complaints.

No apology was forthcoming.

Each complainant supported a formal investigation into an Alleged Breach of Code of Conduct – Elected Members. (**Refer attachment 4**). Also refer Code of Conduct – Elected Members (**Refer attachment 5**).

After communication with all parties and in consultation with the Mayor a mediation process was formally initiated in accordance with the investigation procedure.

Various avenues were pursued to source a suitably qualified and capable mediator.

Ms Fiona Stevens was selected and acceptable to the parties concerned. Her services and capability are described in **attachment 6**.

I wrote to Councillor Hamilton on 15 April 2009 (**Refer attachment 7**). Councillor Hamilton had initially verbally agreed to the mediation process.

On 13 May 2009 I wrote to the three complainants to confirm the mediation process had stalled due to Councillor Hamilton's refusal to participate. I further advised that I was seeking additional advice.

On that same day 13 May 2009, I wrote to Michael Kelliedy, senior experienced Local Government lawyer;

"Good day to you Michael.

I have a difficult matter concerning a complaint about a Councillor in relation to an "alleged" incident earlier this year.

A complaint has been lodged by a staff member

And a further two complaints relating to the same incident by two members of the public.

Rather than recount the essential details I have attached by PDF the essential documents.

A mediation process was proposed and initially supported by all parties however the Elected Member now refuses to attend. You may

recall I enquired about your firms capability and in the end I selected Fiona Stevens (after recommendation – and considering that her expertise is psychology and that she is experienced in local government mediation)

Given council policy and procedures and having regard to the complaint can you advise –

- 1) what options are technically available ?*
 - 2) what would you recommend as a preferred path forward ?*
- Andrew”*

On Friday 15 May 2009 Mr Kelledy responded;

“Hi Andrew

I have now had the opportunity to consider your email in light of the documentation including the Council's Code of Conduct for Elected Members. My advice to you is as follows:

- it appears that only Ms Cambrell has been advised of the change of heart by Councillor Hamilton to participate in a mediation process. I suggest that Peter McGinn and Don Burt also be similarly advised [N.B. the CEO had in fact advised all parties]*
- given that this process is proceeding under the Code of Conduct it is necessary (given the stalled mediation process) to return to the procedures adopted by Council and set out at clause 2.8.1 of the Code.*
- This means that the appointment of Fiona Stevens must be reactivated and I expect that she, in turn, will ensure that Councillor Hamilton has received the full details of the complaint against her and be invited to respond to Ms Stevens. I also expect that Ms Stevens will invite Councillor Hamilton to respond and will offer to meet with her either before or after that response. Principles of procedural fairness also require that Ms Stevens meet with the three complainants before completing her report to the Council (within four weeks) in accordance with clause 2.8.1 of the Code.*

Given the clear mandatory requirements of the Code and the failure of the mediation process it is my view that you do not have any range of options available to you and cannot identify and pursue any preferred or other path but, instead, must adhere to the Code of Conduct process.

Happy to discuss further – if so please give me a call on my mobile.

Regards

*Michael Kelledy
Partner”*

Acting on Mr Kelledy's advice I contacted Ms Stevens:

“On 18/05/2009, at 9.36 AM, Andrew Stuart wrote:

c:\documents and settings\richter\local settings\temp\@iwd@@smiller-ceopa@@richter@dpoddrop\confidential item 1-06-09 v2.doc

Attention Fiona Stevens

Dear Fiona

Please refer below. Further to our discussion Thursday evening I have sought legal advice.

All parties are aware of the mediation standoff....what Michael Kelledy (a lawyer) has suggested is that you prepare a report with input from the complainants and submit to me with any recommendations (seems to me not a bad suggestion except – this exercise is not a mediation per se. So it's a case of are you able/prepared to do this ???

Cheers Andrew 0419817799"

Ms Stevens contacted me on Friday 22 May 2009 indicating that she was considering the request but was seeking further information prior to committing to the request and it is my intention (as at the date of writing this report) to provide Ms Stevens with the information she requires to conclude a report for Council in accordance with Council procedure.

In the meantime Mr McGinn and Ms Cambrell have contacted the Ombudsman and as a consequence the Ombudsman has investigated a complaint about the management of the investigation.

I have attached the Ombudsman's correspondence in relation to the investigation. (**Refer attachments 8 and 9**). The Ombudsman concludes that after investigation he will not pursue further investigation.

CONCLUSION

Due to the difficulty and complexity associated with this matter including:

- 3 separate complaints, 2 Rate payer, 1 Staff
- Ombudsman enquiry
- Agreement then refusal to participate in a mediation process

this matter has taken much longer to conclude. It is appropriate to consider this report as an interim report. Another report is anticipated pending the completion of an independent investigation and the provision of a report to Council by the investigator.

Parties to this investigation i.e. Mr McGinn, Mr Burt, Ms Cambrell and Councillor Hamilton will be provided copies of this report.

POLICY IMPLICATIONS

1. Financial/budget

Direct costs associated with legal advice and independent investigation/mediation can be met within existing budget provisions.

2. Legal

Legal advice has been sought. Council's Code of Conduct – Elected Members and investigation into an Alleged Breach of Code of Conduct – Elected Members are statutory instruments as defined by the Acts Interpretation Act.

3. Staffing/Work Plans

Considerable time from a number of staff has been applied so far in this matter.

Mr Sarre and Mr Chandler have supported some management strategies to manage the interface between Mr McGinn and Councillor Hamilton. Mr McGinn has been provided support to access appropriate external employee support services if needed.

4. Environmental

N/A

5. Social

N/A

6. Strategic Plans

Goal 6 – Governance.

7. Risk Assessment

A number of risks have been identified including legal and occupational health and safety. Risk to reputation either personal or Council is another concern.

To manage these risks support services have been mobilised and the adherence to the Code of Conduct and Investigation to ensure appropriate compliance.

8. Asset Management

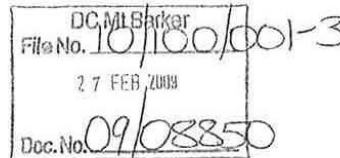
District Council of Mount Barker

Council Agenda 1 June 2009

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Attachment 2 to Item 16.1 17 June 2013

ITEM 17.1 ATTACHMENT 1



To Mayor Anne Ferguson & whom it may concern at her discretion,
District Council Of Mt Barker
26th February 2009-02-26

Dear Anne,

Unfortunately I am writing to you to lodge an official complaint about the conduct of an elected member of council.

In the last few days I have attended the ABaF workshop and the Public Arts Policy Draft meeting both of which Councillor Sue Hamilton was in attendance. I found Sue to be aggressive, disruptive and indeed abusive in her interaction with me and others. I have documented some of her words and am prepared to go into more detail if need be.

It was such a terrible shame that two fantastic opportunities for Mt Barker community members who work in the Arts industry were nearly ruined by an elected member. Luckily the Council Officers managed to contain and diffuse her sufficiently but unfortunately damage was already done.

In particular at the public Arts meeting on Wed 25th at 7:30pm, Sue accused Peter McGinn of gross ignorance in an entirely inappropriate manner on a topic she had failed to grasp. We were all shocked to see her trying to humiliate a colleague who is greatly respected in the field of community cultural development.

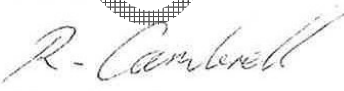
This angry, verbal attack was then targeted at me to the point where three of us artists got up and left. We felt intimidated and bullied. Sue followed us to the lift still verbally abusing us and got in. We got out of the lift and let her go with some measure of relief. We then returned to the meeting where Peter continued to conduct the proceedings with dignity and respect to the satisfaction of all.

I would also like to mention that another community member Dan (?) became very emotionally distressed at Sue's relentless interruptions while he was trying to get a point across. So much so that Greg Sarr had to take on a role as mediator. He was however also ignored by Sue.

I would hesitate to attend or recommend any further Council initiatives, workshops or meetings that involve Sue Hamilton.

I have every confidence in your handling of this situation.

Sincerely,


Rebecca Cambrell
Dir Gather Inc.

ITEM 17.1 ATTACHMENT 2

DISTRICT COUNCIL OF MOUNT BARKER
Strategy, Development and Communities Department**M E M O R A N D U M**

TO: Bill Chandler
FROM: Peter McGinn
SUBJECT: Formal complaint re Cr. Sue Hamilton's behaviour
DATE: 2nd March 2009

Bill

I am writing to you to express my concerns over a number of incidents involving Cr. Sue Hamilton's behaviour that have occurred from the 16th February 2009.

On Tuesday the 17th February I received a call from Michelle Martin from the Australian Business Arts Foundation regarding a phone call she had received from Cr Hamilton. It was reported that Cr Hamilton had become abusive to ABAAF staff and had made derogatory comments about myself upon hearing the session was full and that she was not to receive preferential treatment enabling her to attend. Michelle asked for a relevant Council contact to discuss this matter and I referred her to you. Cr Hamilton claimed she had not received the promotional material for this seminar – this is in conflict with evidence provided by Jenny Richter who recalls placing the information in the Elected Member's packages for the 2nd February meeting and received the "missing" flyer with Jenny's handwriting on it when Cr Hamilton finally applied for a place.

Upon consultation with yourself, in an attempt to resolve the issue, I contacted Michelle Martin and requested Cr. Hamilton be granted a place at the seminar at my request. Permission was received and a space made available begrudgingly by ABAAF.

At the seminar, (24th Feb 09), Cr. Hamilton became agitated and I received several comments by members of her small discussion group regarding the content and appropriateness of her contribution.

Cr Hamilton also attended the Draft Public Art Policy information session on the evening of the 25th February, where she referred to part of the policy within this public forum as "grossly ignorant" and was critical of the Council endorsed document for community consultation.

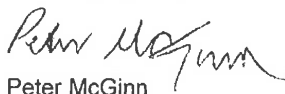
Cr Hamilton removed herself from the meeting prior to its conclusion and discounted community members in an inappropriate fashion – ie calling one of them "My Dear" in a patronising tone. Two of the participants, who had left the

meeting due to Cr Hamilton's outbursts, returned after Cr Hamilton's departure claiming they had left the lift that they were sharing with her as they felt unsafe.

I am disappointed with Cr Hamilton's remarks and behaviours that have been directed towards me, but am more concerned of the reputation of Council and the impact the behaviours have upon my ability to deliver outcomes within my role for Council.

This type of behaviour is not isolated but in this instance I see need to formally voice my objection to the Elected Member's conduct in a public forum. I have sought legal advice regarding this matter and reserve my right to pursue this course of action pending the outcome of your deliberations.

Without prejudice


Peter McGinn

CONFIDENTIAL

District Council of Mount Barker

Council Agenda 1 June 2009

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Ann Ferguson - Dan Burt-Public Arts Meeting - complaint

Attachment 4 to Item 16.1 17 June 2013

ITEM 17.1 ATTACHMENT 3

From: Dan Burt <<
To: <aferguson@dcmtbarker.sa.gov.au>
Date: 4/03/2009 6:42 pm
Subject: Dan Burt-Public Arts Meeting - complaint.

CONFIDENTIAL

Dear Mayor Anne Ferguson,

I am writing to you by way of complaint about the conduct of Councilor Susan Hamilton at the public 'Public Arts' meeting held by Peter McGinn in Council offices on the 25th of February at 7.30pm. Please forgive the rather formal nature of this letter, since it deals with important matters.

I did not know who she was until later. She was sitting behind me, and to my right. However, this participant started by abusing Peter McGinn about 'Councilors not being on a list'; that list was never suggested anyway. The purpose of the meeting was to feed back to Peter any ideas we may have had. I found this extraordinary. Peter was put in an unenviable position and carefully dealt with this matter despite his evident unease with the accusations and threats to complain about him.

Later, I then heard this same participant turn to Rebecca (of Big Lounge fame), and who had said nothing to provoke this: 'Why are you looking at me with such a snooty expression', and this clearly upset her. It shocked me too, to hear this from anyone. As I asked Peter and Greg a question later, the participant kept overtalking me, and confusing the issue. I raised my voice in the end, and firmly restated my question after a few interruptions, asking for an answer. Greg Sarre was able to answer this - it was about who should be on an Arts panel. He told me that this was not determined yet. I replied "Thank you - that is all I wanted to know". Greg and I later exchanged apologies for our behaviour. However, as I asked this question, the participant and Kim Afford (who I know and like) both stood up and walked out.

I later found out that this was Councilor Susan Hamilton. I left the meeting upset and somewhat dazed with the atmosphere which she had developed, as did others. I found Councilor Hamilton's attitude and remarks to be highly offensive, unprofessional and unbecoming of a Councilor in any meeting, let alone a public meeting of Artists and ratepayers. Her evident partisanship and leaving without apology was both unhelpful to Council or the meeting, and rude.

I can see no other solution to this than either her publicly apologising to those offended in the public meeting (especially Peter McGinn who was an unfair target for her abuse, being subservient as an employee of the Council) and removing herself from any future discussions and meetings on the Public Arts Policy - or her resignation. I know others have made complaints to you as well.

For your interest I am also attaching a letter of my feedback to Peter on the 'Draft Public Arts Policy'. I look forward to your response,

Yours Sincerely, Dan.

Dan Burt-Entertainer

ITEM 17.1 ATTACHMENT 7

15 April 2009

Councillor Susan Hamilton
Post Office
LITTLEHAMPTON SA 5250

Dear Councillor Hamilton

I refer to our recent discussions and recent discussions you have had with Mayor Ferguson.

As you are aware, allegations have been made about your conduct in a public forum, 25th February 2009. In fact three formal written complaints have been made.

The complainants are;

Peter McGinn

Dan Burt

Rebecca Cambrell

The three written complaints specify 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.

After earlier discussions failed to find acceptable solutions the mediation process has been engaged and it will follow relevant Council policies including;

2.8 Code of Conduct – Elected Members

2.8.1 Investigation into an Alleged Breach of Code of Conduct – Elected Members

These documents are attached for your reference.

Fiona Stevens has been recommended as a skilled and qualified person to undertake the independent mediation. She has experience in Local Government mediations.

I have also attached an outline of her information sheet which includes her contact details.

You are encouraged to contact her to make an appointment at a convenient time.

My understanding is the initial meeting will involve you and Ms Stevens. However you have requested an option to be accompanied by a support person. I have no objection to this request however I advise you to raise this request with Ms Stevens when you contact her office.

Please contact me if you have any queries.

Yours sincerely

Andrew Stuart
CHIEF EXECUTIVE OFFICER

Cc: Mayor Ferguson
Cc: Ms Fiona Stevens

CONFIDENTIAL

District Council of Mount Barker

Council Agenda 1 June 2009

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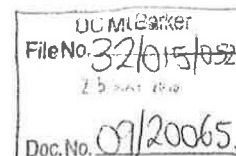
Attachment 6 to Item 16.1 17 June 2013

ombudsman
south australia

ITEM 17.1 ATTACHMENT 8

Enquiries: John Aquilina
Telephone: (08) 8226 8682
Ombudsman reference: 78656A01
Agency reference:

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



Dear Mr Stuart

I refer to my meeting with you and the Mayor on Tuesday, 19 May 2009 in relation to a complaint made to you about the conduct of Councillor Hamilton by Ms Cambrell.

On the information provided at that meeting, that council was still in the process of having an investigation report prepared, and that it would be following the process as set out in Code of Conduct, I advised Ms Cambrell that I was finalising my investigation.

I enclose for your information a copy of the letter I sent to Ms Cambrell.

Please contact Mr Aquilina on the above direct telephone number should you require any clarification in this matter.

Yours sincerely

KI MacPherson
ACTING OMBUDSMAN

22 May 2009
End copy of letter to Ms Cambrell

District Council of Mount Barker

Council Agenda 1 June 2009

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Attachment 7 to Item 16.1 17 June 2013

ombudsman
south australia

Enquiries:	John Aquilina
Telephone:	(08) 8226 8682
Ombudsman reference:	78656C02
Agency reference:	

Ms R Cambrell

Dear Ms Cambrell

I refer to your complaint in relation to the management of a complaint you lodged with the District Council of Mount Barker in relation to the conduct of Councillor Hamilton.

I note from the council's Code of Conduct - Elected Members that it sets out the process for the investigation of a complaint.

In part it provides that:

- an investigation report will be provided by an independent mediator/person appointed by the Mayor or CEO.
- the person making the allegation and the council will be informed of the outcome in writing.
- Any rights of appeal will be determined by the council

I was advised by the Mayor and CEO that council was still in the process of having an investigation report prepared and that it would be following the process as set out in Code of Conduct.

On the information provided, I consider that further investigation of this matter is neither necessary nor justifiable within the meaning of section 17(2)(d) of the *Ombudsman Act 1972* and I will finalise my investigation.

Please contact Mr. Aquilina on the above direct telephone number should you require any clarification in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'KI MacPherson'.

KI MacPherson
ACTING OMBUDSMAN

22 May 2009

District Council of Mount Barker

Council Agenda 1 June 2009

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Attachment 8 to Item 16.1 17 June 2013

ombudsman
south australia

ITEM 17.1 ATTACHMENT 9

Enquiries: John Aquilina
Telephone: (08) 8226 8682
Ombudsman reference: 78612A01
Agency reference:

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

DC Mt Barker
File No. 32/015/052-5
25 MAY 2009
Doc. No. 09/20066

Dear Mr Stuart

I refer to my meeting with you and the Mayor on Tuesday, 19 May 2009 in relation to a complaint made to you about the conduct of Councillor Hamilton by Mr McGinn.

On the information provided at that meeting, that council was still in the process of having an investigation report prepared, and that it would be following the process as set out in Code of Conduct, I advised Mr McGinn that I was finalising my investigation.

I enclose for your information a copy of the letter I sent Mr McGinn.

Please contact Mr Aquilina on the above direct telephone number should you require any clarification in this matter.

Yours sincerely

KI MacPherson
ACTING OMBUDSMAN

22 May 2009
Encl copy of letter to Mr McGinn

District Council of Mount Barker

Council Agenda 1 June 2009

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Attachment 9 to Item 16.1 17 June 2013

ombudsman
south australia

Enquiries: John Aquilina
Telephone: (08) 8226 8682
Ombudsman reference: 78612C03
Agency reference:

Mr P McGinn

Dear Mr McGinn

I refer to your enquiry in relation to the management of a complaint you lodged with the District Council of Mount Barker in relation to the conduct of Councillor Hamilton.

I note from the council's Code of Conduct - Elected Members that it sets out the process for the investigation of a complaint.

In part it provides that:

- an investigation report will be provided by an independent mediator/person appointed by the Mayor or CEO.
- the person making the allegation and the council will be informed of the outcome in writing.
- Any rights of appeal will be determined by the council

I was advised by the Mayor and CEO that council was still in the process of having an investigation report prepared and that it would be following the process as set out in Code of Conduct.

On the information provided, I consider that further investigation of this matter is neither necessary nor justifiable within the meaning of section 17(2)(d) of the *Ombudsman Act 1972* and I will finalise my investigation.

Please contact Mr Aquilina on the above direct telephone number should you require any clarification in this matter.

In relation to your concerns about the impact to your professional reputation following Councillor Hamilton's conduct, I advise that it is not a matter within my jurisdiction and recommend that you seek independent legal advice.

Yours sincerely

KI MacPherson
ACTING OMBUDSMAN

22 May 2009