

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
29	17 Aug 09	Code of Conduct – Elected Members	<p>Reason: 2. 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 current staff members and a council member. 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 the disclosure of details of a current staff member and council member may affect their ability to undertake their duties.</p>	Report, Discussion & Attachments 2 & part of 3	<p>Matter relates to personal information</p> <p>Under delegated authority release part of attachment 3 – Code of Conduct Elected Members and Investigation Procedure & Central Psychology Services information brochure only; and attachments 4,5 as these are not confidential documents</p> <p>Under delegated authority – the Council report</p>	<p>Be retained in confidence until the staff members are no longer employed by Council and the Council Member is no longer a council member with the District Council of Mount Barker, and that this order be reviewed every 12 months.</p> <p>The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.</p>	17 Jun 13		<p>On web 29/8/12 Only parts of att 3, & att 4, 5</p> <p>Council Report 17/8/09 and Attachment 1 released 12/12/12</p> <p>Remaining item released by Council 17/6/13 – on web 20/6/13</p>
SUPERSEDED – Refer to Documents #72									

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
					and Attachment 1 only were released as they were provided to a member of the public as a result of an external FOI				

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2011

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
29	17 Aug 09	Code of Conduct – Elected Members	Reason: 2. Pursuant to Section 91(7) That having considered Agenda Item 16.3, in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7)(b) of the Act orders that the: - 1 June 2009 report, attachment and minutes; and - 17 August 2009 Attachment be retained in confidence until the staff members are no longer employed by Council and the Council Member is no longer a council member with the District Council of Mount Barker, and that this order be reviewed every 12 months.	Discussion & Attachments 1,2, and 3 (part only)	Matter relates to personal information Under delegated authority release part of attachment 3 – Code of Conduct Elected Members and Investigation Procedure and Central Psychology Services information brochure only; and attachments 4,5 as these are not confidential documents	Be retained in confidence until the staff members are no longer employed by Council and the Council Member is no longer a council member with the District Council of Mount Barker, and that this order be reviewed every 12 months. The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	<i>On work 29/8/12 Only levels of Att 3. Policy Docs</i>

*Public Policy Docs
which were part of
Att 3 on 17/8/09*

ITEM 17.1 ATTACHMENT 4

The District Council of Mount Barker Policy Manual
Page 6 of 6



**2.8.1 TITLE: INVESTIGATION INTO AN ALLEGED BREACH
OF CODE OF CONDUCT - ELECTED
MEMBERS**

RESPONSIBLE DEPARTMENT:	CHIEF EXECUTIVE OFFICER
ASSOCIATED POLICY(S):	2.8 CODE OF CONDUCT
ASSOCIATED DELEGATION(S):	
DATE OF LAST REVIEW BY COUNCIL	2007

In the event of an alleged breach of this Code:

- any alleged breach shall be provided in writing to the Mayor and CEO and if the allegation is regarding the Mayor, then to the Chief Executive Officer only;
- all allegations will be acknowledged in writing
- no anonymous allegations will be accepted
- the principles of fairness, equity and natural justice will be observed during the investigation
- the person to whom the allegations relates will be given full details and an opportunity to respond
- all investigations will be treated confidentially via a report to Council
- if the allegation is withdrawn no further action will be taken
- investigations will be conducted by an independent mediator/person, or a Council Committee appointed by the Mayor or CEO and will be concluded within 4 weeks
- when the investigation is complete the person making the allegation and the Council will be informed of the outcome in writing
- any rights of appeal will be determined by Council
- if the allegations occur near an election date all reasonable steps will be taken to conclude the investigation prior to the election
- the annual report will report on the number of alleged breaches and the outcomes.

ITEM 17.1 ATTACHMENT 5

The District Council of Mount Barker Policy Manual
Page 1 of 6



2.8 TITLE: CODE OF CONDUCT – ELECTED MEMBERS

RESPONSIBLE DEPARTMENT:	CHIEF EXECUTIVE OFFICER
ASSOCIATED PROCEDURE(S):	2.8.1 INVESTIGATION INTO ALLEGED BREACH OF THE CODE OF CONDUCT – ELECTED MEMBERS
ASSOCIATED DELEGATION(S):	NIL
DATE OF LAST REVIEW BY COUNCIL	3 December 2007

Background

This Code of Conduct is a public declaration of the principles of good conduct and standards of behaviour that we the members of the District Council of Mount Barker, have decided our stakeholders could reasonably expect of us as Members of the Council.

Standards in this Code of Conduct are in addition to any statutory requirements of the Local Government Act 1999 or any other relevant Act or Regulation.

This Code will apply to the elected members of Council and external members of Section 41 Committees.

General duties of Council members

The general duties of Elected Members are set out in S62 Chapter 5 Part 4 Local Government Act 1999. The Act requires that Council Members:

- act honestly and with reasonable care and diligence in the performance and discharge of official functions and duties;
- must not make improper use of information acquired;
- must not make improper use of his or her position as a member of a Council.

Commitment

We the Members of the District Council of Mt Barker are committed to discharging our duties conscientiously and to the best of our ability.

In the performance of our community role we will:

- act with honesty and integrity
- 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.
- adopt the requirements of this code in the performance of our role.



Principles

We will act in a fair, honest and proper manner by:

- understanding and giving proper consideration to legal requirements;
- being reasonable;
- being non-discriminatory in all aspects;
- acting in good faith and not for improper or ulterior motives;
- behaving in a way that enhances the image of our Council;
- making decisions impartially and accepting the responsibilities associated with that decision

Decisions

We will act with reasonable care and diligence by:

- using information appropriately, balancing the interests of the whole community against the rights of the individual;
- regular attendance and participation in Council meetings, apologising or obtaining leave of absence in advance of non-attendance;
- thoroughly considering the business of the Council and being informed on the matters for decision;
- treating all matters for consideration in a fair and equitable manner;
- giving careful consideration to the allocation of resources and expenditure

Communication with the Community

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

- being courteous and sensitive and not discriminating against people;
- being aware and disclosing any situation that may create tension between public and private roles;
- respecting electors' opinions and property;
- preventing the misuse of our position to gain an advantage for ourselves or others;
- recognising that an individual Council member has no authority to make decisions, direct staff or commit resources.

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.



Relationship with Staff

We will enhance the relationship between Council members and employees by:

- mutual trust, courtesy and respect;
- encouraging two way communication
- respecting an employee's professional opinion and expertise;
- accepting that employees have a different but complementary role in achieving Council's objectives;
- not misusing our position to influence employees to gain an advantage for ourselves or others.

Relationship with Council Members

We will enhance the relationship between fellow members by:

- only addressing our comments to the Chair
- standing when addressing the Chair at Council meetings (except if a member is ill or incapacitated). Members can remain seated when addressing the Chair at Committee meetings.
- respecting diversity of opinion and listening to all points of view
- treating each other with courtesy and respect
- refraining from any bullying, harassment or other disrespectful behaviour
- behaving in a manner that is mature and strives to promote a healthy working relationship.

Use of Information

We will use Information in a careful and prudent manner by observing that:

- information obtained will only be used for Council business
- the Mayor and CEO (Deputy Mayor in the Mayor's absence) are the official spokesperson of Council (refer Policy 2.12 External Communications);
- any media comment made by individual Members is their personal view and not those of the Council unless specifically authorised by the Council to speak to the media;
- it is clearly identified when personal comments are being made
- confidentiality will be maintained and respected
- confidential documents will be treated with appropriate security and disposed of appropriately

Use of Council Resources

We will not use Council resources for private purposes and will avoid any situation where it may be perceived that Council property or facilities are being improperly used for our own or another person's gain.

Gifts

We will carefully consider the acceptance of gifts (other than token gifts such as ties, coasters, flowers, single bottles of reasonably priced wine) as it may be perceived by the other party, or other persons that, there may be an implication of a service or benefit in return. If there is any doubt the gift will be politely refused.



Gifts that are not considered of token value include tickets to major sporting events, free or discounted travel and discounted products for personal use.

In circumstances where gifts are offered and to refuse would cause offence, we will accept the gift on behalf of Council and notify Council at the next meeting where it will be recorded in the minutes.

Hospitality

The provision of hospitality, in the form of infrequent free meals (modestly priced) that are connected with discussing official business, will also be carefully considered to ensure there is no implication of a service or benefit in return.

Conflict of Interest

We will refer to Sections 73-75 of the Local Government Act 1999 which stipulates the provisions of Conflict of Interest for clarification of Elected Member responsibilities in relation to any potential conflict of interest.

We understand a conflict of interest arises if the person or close associate will have a reasonable expectation of enjoying a benefit, or suffering a detriment if a matter was decided in a particular manner. The benefits or detriments can be pecuniary (monetary) or non-pecuniary, direct or indirect.

We agree that if there is a conflict of interest it will be disclosed to the Chair as early as possible, and we will not take part in any discussion or vote on the matter, and will leave the room and not remain in close proximity to the room.

Correct Attire

In recognition of the respect of our role as Elected Members we will be neatly and appropriately dressed when attending meetings in the capacity as Elected Members.



Compliance with the Code of Conduct

We support the Mayor and Chief Executive Officer investigating any alleged breach of this Code as stipulated in Procedure 2.8.1 Investigation of Alleged Breach of the Code of Conduct – Elected Members.

Availability/Access

Copies of this Code will be available for inspection at the Local Government Centre 23 Mann Street Mt Barker, or available for purchase, and on Council's website www.dcmtbarker.sa.gov.au.

Statement of adoption and review

This Code of Conduct was adopted by the District Council of Mt Barker on 3 December 2007. This Code will be reviewed in November 2011.

CONFIDENTIAL

ITEM 17.1 ATTACHMENT 6

CENTRAL PSYCHOLOGY SERVICES

Mediation Services

Central Psychology Services has two psychologists who are experienced at providing mediation services. They are **Fiona Stevens** and **Jo-Anne Hamilton**. We have provided mediation services to a range of organisations including the Department of Defence, SA Water, City of Campbelltown and more. We have also delivered a training package in the skills of mediation to staff at Emirates Airlines.

Fiona Stevens is a registered psychologist working in private practice. She has been working as a psychologist for over thirty years. She is a member of the Australian Psychological Society.

She provides both organisational and clinical services to employees of a number of organisations. Her work includes consultancy around resolving work place issues such as conflict, disputes about performance and other such matters. She is invited to provide training to teams and to staff about topics such as effective communication, conflict resolution, team building. As part of her work she provides mediation services and consultancy around harassment and bullying.

She is the principal psychologist at Central Psychology Services. This is a group practice which includes a number of experienced and qualified practitioners. They are available to provide clinical services as needed. In this way she is able to offer a comprehensive service to organisations in a timely and responsive manner. She welcomes feedback about her services.

Mediation is defined as "Any process for resolving disputes in which another person helps the parties negotiate a settlement". The guiding principals are to include respect and dignity to the situation and ensure both parties are able to actively participate. To do this well we recommend that the mediator meet the parties separately to establish an awareness of their experience and their goals for the process. We also recommend that there be a written document which is shared by both parties and other stakeholders. Who has access to this document needs to be resolved at the time all parties commit to the process.

Fiona Stevens BA, Dip.App. Psych., MAPS Registered Psychologist



10 Rathven Avenue, Adelaide, South Australia 5000 t (08) 9410 2342 f (08) 9221 7155
e fs@centralpsychserv.com.au w centralpsychserv.com.au
ABN 43 745 407 449

What is Mediation?

Does It Really Help?

- Intense conflict tends to generate misunderstanding and suspicion
- Mediation offers people the chance to air grievances
- Mediation is not bound by formal rules, therefore parties can discuss whatever is of concern
- Written agreement offers a way forward

Characteristics of the Mediation Process

- Voluntary participation
- Variety of Mediators
- No representatives – each speak for self
- Flexible process
- Informal tone
- Look at wider picture – not just immediate complaints
- Airing emotions – appropriate but not the focus
- The solutions are theirs
- Success is more than problem solving – improve future relations; gain confidence in handling conflicts
- Valuing reconciliation but “friendship” is not the aim

When Does Mediation Work?

Mediation is most likely to resolve a conflict when:

- The parties want resolution / change
- All the stakeholders are present
- Parties are able to express reasons for discomfort / distress
- Mediator is able to control and sustain the process
- The parties are capable of living up to their promises

When is Mediation Useful?

- The issues are complicated by a strong emotional element
- The parties know each other
- Maintaining a relationship is important
- A decision must be reached soon
- The parties doubt their own ability to work out the problem
- Many people are involved or indirectly affected

When is Mediation Inappropriate?

Mediation may be unsuccessful or even harmful. It is not recommended if any of the following are true:

- A serious incident has just occurred and people are still very upset
- You suspect one party intends to use the mediation to escalate the dispute
- One party is incapable of listening / disturbed
- The main problem is not mediatable
- There is a power imbalance
- The issue deserves public attention
- Key parties are unwilling to participate

We look forward to discussing your needs at this time. Our experience is that there are many stakeholders when mediation is required. They include the organisation as represented by the CEO, Human Resources as well as the Managers of those persons involved in the dispute, their colleagues and of course families and friends all of whom in our experience want the matter resolved as expeditiously as possible. Generally the matter has grown out of other events and so the advice that mediation serves to address previous issues and increase the likelihood of better workplace communication in the future makes the trouble and cost of mediation well worth it to the organization.

**2.8 TITLE: CODE OF CONDUCT – ELECTED MEMBERS**

RESPONSIBLE DEPARTMENT:	CHIEF EXECUTIVE OFFICER
ASSOCIATED PROCEDURE(S):	2.8.1 INVESTIGATION INTO ALLEGED BREACH OF THE CODE OF CONDUCT – ELECTED MEMBERS
ASSOCIATED DELEGATION(S):	NIL
DATE OF LAST REVIEW BY COUNCIL	3 December 2007

Background

This Code of Conduct is a public declaration of the principles of good conduct and standards of behaviour that we the members of the District Council of Mount Barker, have decided our stakeholders could reasonably expect of us as Members of the Council.

Standards in this Code of Conduct are in addition to any statutory requirements of the Local Government Act 1999 or any other relevant Act or Regulation.

This Code will apply to the elected members of Council and external members of Section 41 Committees.

General duties of Council members

The general duties of Elected Members are set out in S62 Chapter 5 Part 4 Local Government Act 1999. The Act requires that Council Members:

- act honestly and with reasonable care and diligence in the performance and discharge of official functions and duties;
- must not make improper use of information acquired;
- must not make improper use of his or her position as a member of a Council.

Commitment

We the Members of the District Council of Mt Barker are committed to discharging our duties conscientiously and to the best of our ability.

In the performance of our community role we will:

- act with honesty and integrity
- 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.
- adopt the requirements of this code in the performance of our role.

**The District Council of Mount Barker Policy Manual****Page 2 of 6****Principles**

We will act in a fair, honest and proper manner by:

- understanding and giving proper consideration to legal requirements;
- being reasonable;
- being non-discriminatory in all aspects;
- acting in good faith and not for improper or ulterior motives;
- behaving in a way that enhances the image of our Council;
- making decisions impartially and accepting the responsibilities associated with that decision

Decisions

We will act with reasonable care and diligence by:

- using information appropriately, balancing the interests of the whole community against the rights of the individual;
- regular attendance and participation in Council meetings, apologising or obtaining leave of absence in advance of non-attendance;
- thoroughly considering the business of the Council and being informed on the matters for decision;
- treating all matters for consideration in a fair and equitable manner;
- giving careful consideration to the allocation of resources and expenditure

Communication with the Community

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

- being courteous and sensitive and not discriminating against people;
- being aware and disclosing any situation that may create tension between public and private roles;
- respecting electors' opinions and property;
- preventing the misuse of our position to gain an advantage for ourselves or others;
- recognising that an individual Council member has no authority to make decisions, direct staff or commit resources.

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.



Relationship with Staff

We will enhance the relationship between Council members and employees by:

- mutual trust, courtesy and respect;
- encouraging two way communication
- respecting an employee's professional opinion and expertise;
- accepting that employees have a different but complementary role in achieving Council's objectives;
- not misusing our position to influence employees to gain an advantage for ourselves or others.

Relationship with Council Members

We will enhance the relationship between fellow members by:

- only addressing our comments to the Chair
- standing when addressing the Chair at Council meetings (except if a member is ill or incapacitated). Members can remain seated when addressing the Chair at Committee meetings.
- respecting diversity of opinion and listening to all points of view
- treating each other with courtesy and respect
- refraining from any bullying, harassment or other disrespectful behaviour
- behaving in a manner that is mature and strives to promote a healthy working relationship.

Use of Information

We will use Information in a careful and prudent manner by observing that:

- information obtained will only be used for Council business
- the Mayor and CEO (Deputy Mayor in the Mayor's absence) are the official spokesperson of Council (refer Policy 2.12 External Communications);
- any media comment made by individual Members is their personal view and not those of the Council unless specifically authorised by the Council to speak to the media;
- it is clearly identified when personal comments are being made
- confidentiality will be maintained and respected
- confidential documents will be treated with appropriate security and disposed of appropriately

Use of Council Resources

We will not use Council resources for private purposes and will avoid any situation where it may be perceived that Council property or facilities are being improperly used for our own or another person's gain.

Gifts

We will carefully consider the acceptance of gifts (other than token gifts such as ties, coasters, flowers, single bottles of reasonably priced wine) as it may be perceived by the other party, or other persons that, there may be an implication of a service or benefit in return. If there is any doubt the gift will be politely refused.



Gifts that are not considered of token value include tickets to major sporting events, free or discounted travel and discounted products for personal use.

In circumstances where gifts are offered and to refuse would cause offence, we will accept the gift on behalf of Council and notify Council at the next meeting where it will be recorded in the minutes.

Hospitality

The provision of hospitality, in the form of infrequent free meals (modestly priced) that are connected with discussing official business, will also be carefully considered to ensure there is no implication of a service or benefit in return.

Conflict of Interest

We will refer to Sections 73-75 of the Local Government Act 1999 which stipulates the provisions of Conflict of Interest for clarification of Elected Member responsibilities in relation to any potential conflict of interest.

We understand a conflict of interest arises if the person or close associate will have a reasonable expectation of enjoying a benefit, or suffering a detriment if a matter was decided in a particular manner. The benefits or detriments can be pecuniary (monetary) or non-pecuniary, direct or indirect.

We agree that if there is a conflict of interest it will be disclosed to the Chair as early as possible, and we will not take part in any discussion or vote on the matter, and will leave the room and not remain in close proximity to the room.

Correct Attire

In recognition of the respect of our role as Elected Members we will be neatly and appropriately dressed when attending meetings in the capacity as Elected Members.



Compliance with the Code of Conduct

We support the Mayor and Chief Executive Officer investigating any alleged breach of this Code as stipulated in Procedure 2.8.1 Investigation of Alleged Breach of the Code of Conduct – Elected Members.

Availability/Access

Copies of this Code will be available for inspection at the Local Government Centre 23 Mann Street Mt Barker, or available for purchase, and on Council's website www.dcmtbarker.sa.gov.au.

Statement of adoption and review

This Code of Conduct was adopted by the District Council of Mt Barker on 3 December 2007. This Code will be reviewed in November 2011.

CONFIDENTIAL



**2.8.1 TITLE: INVESTIGATION INTO AN ALLEGED BREACH
OF CODE OF CONDUCT – ELECTED
MEMBERS**

RESPONSIBLE DEPARTMENT:	CHIEF EXECUTIVE OFFICER
ASSOCIATED POLICY(S):	2.8 CODE OF CONDUCT
ASSOCIATED DELEGATION(S):	
DATE OF LAST REVIEW BY COUNCIL	2007

In the event of an alleged breach of this Code:

- any alleged breach shall be provided in writing to the Mayor and CEO and if the allegation is regarding the Mayor, then to the Chief Executive Officer only;
- all allegations will be acknowledged in writing
- no anonymous allegations will be accepted
- the principles of fairness, equity and natural justice will be observed during the investigation
- the person to whom the allegations relates will be given full details and an opportunity to respond
- all investigations will be treated confidentially via a report to Council
- if the allegation is withdrawn no further action will be taken
- investigations will be conducted by an independent mediator/person, or a Council Committee appointed by the Mayor or CEO and will be concluded within 4 weeks
- when the investigation is complete the person making the allegation and the Council will be informed of the outcome in writing
- any rights of appeal will be determined by Council
- if the allegations occur near an election date all reasonable steps will be taken to conclude the investigation prior to the election
- the annual report will report on the number of alleged breaches and the outcomes.

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2012

#	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
29	17 Aug 09	Code of Conduct – Elected Members	<p>Reason: 2. 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 current staff members and a council member.</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 the disclosure of details of a current staff member and council member may affect their ability to undertake their duties.</p>	Report, Discussion & Attachments 2 & part of 3	<p>Matter relates to personal information</p> <p>Under delegated authority release part of attachment 3 – Code of Conduct Elected Members and Investigation Procedure & Central Psychology Services information brochure only; and attachments 4,5 as these are not confidential documents</p> <p>Under delegated authority – the Council report</p>	<p>Be retained in confidence until the staff members are no longer employed by Council and the Council Member is no longer a council member with the District Council of Mount Barker, and that this order be reviewed every 12 months.</p> <p>The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.</p>	3 Sept 12	2 Sept 13	<p>On web 29/8/12 Only parts of att 3, & att 4, 5 Council Report 17/8/09 and Attachment 1 released 12/12/12</p>

CONFIDENTIAL ITEMS 2003 -- SEPTEMBER 2012

#	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
					and Attachment 1 only were released as they were provided to a member of the public as a result of an external FOI				

17. CONFIDENTIAL REPORTS

17.1 REPORT TITLE: CONFIDENTIAL ITEM - CODE OF CONDUCT REPORT – ELECTED MEMBERS

DATE OF MEETING: 17 AUGUST 2009

AUTHOR: ANDREW STUART

AUTHOR'S TITLE: CHIEF EXECUTIVE OFFICER

FILE NUMBER:

- ATTACHMENTS:**
- 1. MS FIONA STEVENS' LETTER OF 10 AUGUST 2009 – HANDED OUT SEPARATELY TO AGENDA**
 - 2. MS FIONA STEVENS' REPORT DATED 3 AUGUST 2009 - HANDED OUT SEPARATELY TO AGENDA**
 - 3. CONFIDENTIAL COUNCIL REPORT 1 JUNE 2009 AND MINUTE**
 - 4. COUNCIL'S CODE OF CONDUCT – ELECTED MEMBERS**
 - 5. INVESTIGATION INTO AN ALLEGED BREACH OF CODE OF CONDUCT – ELECTED MEMBERS**

PURPOSE

To advise Council that a report has been received in relation to an Elected Member Code of Conduct Investigation.

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);

- (e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
2. 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 Confidential Fiona Stevens Report 3 August 2009 (refer attachment 2 – provided separately) and the Fiona Stevens letter 10 August 2009 (refer attachment 1 – provided separately);
 4. Council authorises the CEO to write to the parties directly involved in this matter to advise the outcome of Council's resolution in relation to this report;
 5. Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the report dated 3 August 2009 from Fiona Stevens (refer attachment 2 – provided separately) be kept confidential until 17 August 2011;
 6. Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the Fiona Stevens letter dated 10 August 2009 (refer attachment 1 – provided separately) and this report and the minutes relating to this item be kept confidential until 17 August 2011;
 7. Subject to Section 90 of the Local Government Act 1999 the public be readmitted to the meeting at the conclusion of the item.
-

BACKGROUND

By way of background, Council is referred to a confidential report dated 1 June 2009 "Investigation into an Alleged Breach of Code of Conduct – Elected Members."

That confidential report and related minutes have been attached – refer confidential attachment 3.

Also included as attachments for background reference are Council's Code of Conduct – Elected Members and its associated procedure, Investigation into an alleged Breach of Code of Conduct – Elected Members - refer attachments 4 & 5. These are the key Council documents that set out Council's conduct standards and guide the procedure to be followed for alleged breaches and the actions open to Council for breaches.

DISCUSSION

Ms Stevens has provided her report addressed to the Mayor and forwarded to me for the purpose of preparation of this agenda item - refer confidential attachment 2 provided separately. The Mayor, Deputy Mayor and myself have jointly consulted Ms Stevens on her report.

Council is strongly encouraged to carefully review this report.

Council will note the report includes details of names and places including that of staff members, elected members and members of the public.

It is considered and strongly recommended that the status of the confidential report be retained.

Council is also referred to Ms Stevens' letter dated 10 August 2009 (also addressed to the Mayor and again provided to me for the purpose of preparing this agenda item) - refer attachment 1 provided separately. Please note this letter provides Ms Stevens' findings and conclusions. Furthermore, it does not include details i.e. names of staff or members of the public. This was done to allow Council the option of not imposing a confidentiality order on the letter dated 10 August 2009.

It is a matter for Council to determine:

- a) what documents, discussion, reports and decisions remain confidential; and
- b) what further action(s) if any are appropriate in relation to this matter.

The documents included with this report and in particular Ms Stevens' letter and report and the code of conduct and associated procedure are considered to provide as much guidance as is possible to enable Councillors to exercise a fair and balanced determination.

POLICY IMPLICATIONS

1. Financial/budget

The direct costs of the investigation will be met from existing budget allocations.

2. Legal

To be assessed.

3. Staffing/Work Plans

This matter has involved considerable work from Senior staff.

4. Environmental

N/A.

5. Social

N/A.

6. Strategic Plans

N/A.

7. Risk Assessment

To be assessed. Please note the Local Government Association is currently reviewing a range of governance matters including the current operational and effectiveness of Code of Conduct across local government jurisdictions. Information has been requested from the Local Government Association to determine if this review can assist Council in any subsequent review of its own governance and Code of Conduct policies and procedures.

8. Asset Management

N/A.

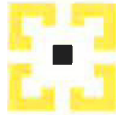
COMMUNITY CONSULTATION

1. Customer Needs Analysis

NIL.

2. Promotion/Communications

NIL.



CENTRAL PSYCHOLOGY SERVICES

**Report
#29
Attachment 2**

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

I have completed the investigation regarding the conduct of Councillor Hamilton which was requested by Council on 01 June 2009. There were three complaints made by two members of the public and one staff member regarding Councillor Hamilton's behaviour at two events which were held in February this year. These events were a seminar conducted by the Australian Business Arts Foundation on the 24th of February of this year and a Public Forum to discuss the Council's Arts Policy held on the evening of the 25th of February of this year.

I have completed the investigation. I have found that there was a consistency between the reports given by all those interviewed about the way Councillor Hamilton behaved. I consider these reports support the finding that she did breach that part of the Code of Conduct-Elected Members which states that:

"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 an employee's professional opinion and expertise.

I have come to this conclusion after interviewing Councillor Hamilton and the three complainants. I have also interviewed a staff member who was present on the 25th February. Each of the



complainants stated that they felt that Councillor Hamilton behaved in a way that they saw as not appropriate for an elected member. They saw her as exhibiting a lack of respect for the staff member conducting the session. They also said that they expected a different kind of behaviour towards the members of the community who were there at that meeting, saying that they saw her as aggressive in her manner. They also said that they have lost confidence in elected members to hear what they have to say in a respectful manner.

I do not consider Councillor Hamilton to have intended her behaviour to be interpreted this way; rather I am convinced she wanted to ensure that the Arts community was properly represented at the two meetings she attended. She also felt that she needed to speak up for what she saw as disrespect for the Council.

I consider that Councillor Hamilton is committed to her work as an elected member but sees herself as someone who is not always understood when she speaks about the matters relevant to her portfolio. I also observed her to be very distressed at having these complaints made about her. I would therefore recommend that she have access to advice relevant to the matters here. I see her as needing opportunities to learn about how best to express her concerns when in the community. This could be in the form of training in conflict resolution or one to one coaching. This would be designed to equip her to achieve her goals without having the effect she has had on the people I interviewed as part of this investigation.

I also wish to emphasise how much I found that the complainants were upset beyond the realm of simply being in dispute with another adult. They felt to a greater or less extent, reluctant to go into any process of mediation or in fact have any more contact with Councillor Hamilton. This in itself highlights the extent to which they have been effected by these events. As a consequence of these experiences I found that they had formed the view that she is someone who displayed a lack of concern for their opinions and for the effect of her behaviour on them. Each of them felt a great deal of dismay that a representative of their Council would behave this way and so saw an apology from her as only going part way to resolving the distress they felt about these events.

10 August 2009



Ms FV Stevens

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 & 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</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.

**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.

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.

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.
-

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
----------------	---

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.

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

Confidential Items Review

22 August 2011
Council Meeting 17 August 2009

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 25th 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 24th and the 25th 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

Confidential Items Review

22 August 2011

2

CONFIDENTIAL

the meeting of the 25th February. These were provided by Councillor Hamilton at the time I met her on the 9th 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 24th of February 2009, it was a seminar run by the Australian Business and Finance (ABAF). The second was on the 25th 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 25th 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 6th 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".

Confidential Items Review 22 August 2011
District Council of Mount Barker Council Meeting 17 August 2009

3

CONFIDENTIAL

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 25th 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.

Confidential Items Review

22 August 2011
Council Meeting 22 August 2009

4

CONFIDENTIAL

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 25th 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 24th and 25th 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 25th 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 24th 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.

CONFIDENTIAL

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 25th 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

Confidential Items Review 22 August 2011

District Council of Mount Barker

Council Meeting 17 August 2009

6

CONFIDENTIAL

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.

Confidential Items Review 22 August 2011

7

CONFIDENTIAL

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 25th 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

Confidential Items Review

22 August 2011
Council Meeting 17 August 2009

8.

CONFIDENTIAL

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 noisier 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.

Confidential Items Review

22 August 2011
Council Meeting 17 August 2009

19

CONFIDENTIAL

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 24th and 25th 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 25th 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

Confidential Items Review 22 August 2011

District Council of Mount Barker

Council Meeting 22 August 2009

10.

CONFIDENTIAL

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 25th 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:

Confidential Items Review

22 August 2011
Council Meeting 17 August 2009

113

CONFIDENTIAL

"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

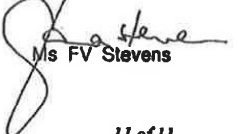
Respecting and employee's professional opinion and expertise

These are very difficult precepts to operationalise entirely and I can understand that others present at the meetings of the 24th and 25th 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