

## 11.2 Complaint to Ombudsman

*The Ombudsman has provided us with his final report on a complaint lodged with him by Cr Apap.*

General Manager:

Report Author: Jeff Tate, Chief Executive Officer

Contact Number: 8384 0670

File Reference:

Attachments:

1. Letter from Cr Apap dated 21 December 2009 (5 pages)
2. Letter from Mayor Rosenberg to Cr Apap dated 27 January 2010 (2 pages)
3. Letter from Ombudsman dated 16 February 2010 (2 pages)
4. Letter from Jeff Tate, CEO dated 15 March 2010 (2 pages)
5. Provisional views from Ombudsman dated 29 March 2010 (7 pages)
6. Letter from Jeff Tate, CEO dated 6 April 2010 (1 page)
7. Letter from Cr Apap to Mayor Rosenberg dated 7 May 2010 (2 pages)
8. Ombudsman's final report dated 14 May 2010 (8 pages)
9. Letter from Ombudsman dated 20 May 2010 (1 page)

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## 1 Executive summary

### 1.1 Topic

The Ombudsman has provided us with his final report on a complaint lodged with him by Cr Apap.

### 1.2 Context

Cr Apap has lodged a complaint with the Ombudsman. The Ombudsman has provided a final report in relation to the complaint which is provided to Council for its information.

### 1.3 Suggested outcome

That Council consider the Ombudsman's final report and the other documents attached.

It is suggested that this report is considered by Council in confidence as it involves the personal affairs of several people. Section 90 (3)(a) (personal affairs) is recommended as the most appropriate section of the Local Government Act 1999 to use for this purpose. Other matters of a similar nature (in particular complaints under the Elected Member Code of Conduct) have been dealt with in this way. The

Ombudsman's final report and letter both reference possible action under that code of conduct.

It has been difficult to frame recommendation 3 given that there is currently no complaint or request for mediation under the Elected Member Code of Conduct. However, the Ombudsman has indicated this is likely, so the recommendation has been framed to be consistent with the Council's previous approach to Code of Conduct complaints.

## **2 Recommendation(s)**

### **1. That:**

- a. under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the information at the meeting on the following grounds:**
  - Section 90(3)(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);**
- c. accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

### **2. That the report be noted.**

- 3. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(a) until any potential action under the Elected Member Code of Conduct has concluded.**

## **Key Factors**

### **3 Discussion**

Cr Apap made a complaint against Mayor Rosenberg, Crs Ferguson and Nash and Jeff Tate, Chief Executive Officer in relation to different matters relating to public disclosure of the remuneration decision of council as part of the Chief Executive Officer's review for the year ended 30 June 2008.

The Ombudsman has provided his final report on this matter noting that it should be included on a council agenda and that it is for the Council to determine whether

the matter should be dealt with under the confidentiality provisions of the Local Government Act.

Copies of the following documents are attached to provide a full chronology of correspondence:

1. Letter from Cr Apap to Mayor Rosenberg, Crs Ferguson and Nash, and Jeff Tate, Chief Executive Officer dated 21 December 2009 seeking public apologies in relation to different matters relating to the public disclosure of the remuneration decision of council as part of the Chief Executive Officer review for the year ended 30 June 2008.
2. Letter from Mayor Rosenberg to Cr Apap dated 27 January 2010.
3. Letter from the Ombudsman dated 16 February 2010 advising of the complaint by Cr Apap.
4. Letter to the Ombudsman from Jeff Tate, Chief Executive Officer dated 15 March 2010 in response.
5. Letter from the Ombudsman dated 29 March 2010 providing his provisional views on the matter and inviting further comments.
6. Letter from Jeff Tate, Chief Executive Officer dated 6 April 2010 in response.
7. Letter from Cr Apap to Mayor Rosenberg dated 7 May 2010.
8. Letter from the Ombudsman dated 14 May 2010 providing his final report on the matter.
9. Letter from the Ombudsman dated 20 May 2010 in response to an email from Jeff Tate, Chief Executive Officer clarifying a point mentioned in the final report and also noting a copy of a letter from Cr Apap to Mayor Rosenberg dated 7 May 2010.

The matter is largely self explanatory from the various documents attached to the report.