

11.1 Confidential matter - update

Report on the investigation of a Code of Conduct complaint referred to the Local Government Governance Panel.

This is an update on a previously reported project, concept or issue.

General Manager:

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File Reference:

Attachments: 1. Report of the Local Government Governance Panel
(10 pages).

1 Executive summary

1.1 Topic

Report on the investigation of a Code of Conduct complaint referred to the Local Government Governance Panel.

1.2 Context

A formal complaint involving an alleged breach of the City of Onkaparinga Code of Conduct for Elected Members 2008 (the Code) has been made by Cr Yvonne Wenham against Cr George Apap. This complaint has been investigated by the Local Government Governance Panel (the Panel) and the report of this investigation is presented to Council for its consideration.

1.3 Suggested outcome

That Council consider the report of the investigation and resolve to take any action it sees fit in response to its findings and recommendations.

It is suggested that Council consider this item in Confidence. Section (ii) 90(3)(a), of the Local Government Act 1999 as the most appropriate to use for this purpose.

This item is presented as a confidential item because it contains matters which may have a detrimental impact on Cr George Apap.

The possible implication of not considering this item in Confidence is causing a detrimental impact to Cr George Apap.

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 matter 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 Council endorse actions taken to date in regard to this matter.**
 1. **That Council notes the report of the Local Government Governance Panel and resolves to take action/s as it sees fit in response to its findings and recommendations.**
 2. **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 *to be determined at the meeting in accordance with the action/s (if any) which Council resolves to take in response to the recommendations of the report.***

Key Factors

3 Discussion

At its meeting on 3 November 2009 Mayor Rosenberg, in accordance with the City of Onkaparinga Code of Conduct for Elected Members 2008 (the Code), informed Council that a formal complaint involving an alleged breach of the Code had been made by Cr Yvonne Wenham against Cr George Apap. As required by the Code Mayor Rosenberg had advised Cr Apap of the complaint. This complaint was dated 26 October 2009.

It is noted in the confidential minutes of the meeting held on 3 November 2009 that Mayor Rosenberg informed Council that it was 'now required (under Clause 6.5 of the Code) to resolve to ask either the Local Government Association (LGA), State Local Government Association Relations Unit or another relevant body to appoint a person to investigate the complaint. As the LGA has announced the formation of an Independent Governance Panel it was suggested that it would be appropriate to ask it to appoint the investigator'.

It was subsequently resolved:

That Council ask the Local Government Association to appoint a person to investigate the complaint under Clause 6.7 of the Elected Member Code of Conduct.*

* NB The relevant clause of the Code (as noted by Mayor Rosenberg) is Clause 6.5, not Clause 6.7 as recorded in the minutes of the meeting.

Consistent with this resolution the complaint was referred to the Local Government Governance Panel (the Panel) on 12 November 2009 for investigation.

The investigation was subsequently conducted. The report of the Panel has been completed and the full report (including our correspondence and the complaint) is attached to this report (attachment 1).

Mayor Rosenberg provided Cr Apap with a copy of the Panel report prior to the distribution of this agenda. This followed legal advice (from Michael Kelledy of Wallmans Lawyers) and was undertaken due to the possible detrimental impact of the matter to Cr Apap. As such this action affords procedural fairness as per administrative law requirements. It should be noted that Cr Apap may wish to provide additional representations to Council for its consideration.

The report identifies a breach of the Code and (in accordance with the Code) Council is required to consider the findings of the report and make a decision regarding any action/s it sees fit to take in response to the recommendations of the Panel.

The Panel report contains three recommendations. The final of these is that Council consider an amendment to the Code to provide the Mayor with greater powers to 'deal with matters such as this before referring them to the Panel'. Our legal advice is that (should Council wish to explore this idea) it be dealt with as part of the next review of the Code, rather than 'clouding' the issue at hand ie the Complaint. The Code is scheduled for review following the 2010 Local Government elections. However, Council may request a review prior to this should it choose to do so.