

ADELAIDE HILLS COUNCIL MEETING
Tuesday 22 January 2013
CONFIDENTIAL AGENDA BUSINESS ITEM

Item: 15.4

Originating Officer: Chief Executive Officer

Responsible Director: Chief Executive Officer

Subject: Formal Complaint under Code of Conduct

File No: 09.67.2

SMP Goal: Goal 5: Open, Effective & Efficient Governance

SMP Key Issue: 5.6: Management & Administration

1. Formal Complaint under Code of Conduct – Exclusion of the Public

Moved Cr
S/- Cr

Pursuant to Section 90(2) and (3)(a & g) of the Local Government Act 1999, an order be made that the public, with the exception of appropriate Council staff – CEO, Andrew Aitken, Director Engineering, Tim Hancock, Director Planning & Development Services, Marc Salver, Director Finance, Tim Piper and Minute Secretary, Pam Williams be excluded from attendance at the meeting in order to receive, discuss or consider in confidence any information or matter relating to 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);
- (g) 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, any duty of confidence, or other legal obligation or duty;

2. Formal Complaint under Code of Conduct – Confidential Item

2.1 SUMMARY

At its meeting of 11 December 2012, Council (in confidence) was advised ‘...that a formal complaint has been received against a member of Council. This will be acknowledged by the Deputy Mayor and investigated by the CEO.’

The purpose of this report is to present the details, findings and recommendations following an investigation of this complaint.

2.2 GOVERNANCE

➤ Strategic Management Plan

Goal 5: Open, Efficient and Effective Governance

➤ Legislation

Local Government Act Section 63 – Code of Conduct
Section 7 of Council’s Elected Members’ Code of Conduct – alleged breaches

➤ Sustainability

- Economic
- Social
- Environmental
- Governance

➤ Budget

An approximate cost of \$2,800 has been estimated for the work undertaken by the independent assessor in preparing their report.

➤ Consultation

Not applicable.

2.3 BACKGROUND

On 6 December, the Deputy Mayor and CEO received an email detailing a formal complaint from a representative of Parks for Paws regarding the Mayor’s conduct at the 27 November 2012 meeting of Council (Attachment 1).

The complaint was formally acknowledged by the CEO the same day and by the Deputy Mayor on 11 December 2012. Council was informed in confidence of the complaint at its meeting of 11 December 2012. At this meeting, Council was informed by the Deputy Mayor that the CEO would investigate the complaint.

The CEO prepared a report (Attachment 3) which comprised statements of facts and responses in relation to the complaints contained in the email from the complainant. This report was then forwarded to an independent assessor along with information which included:

- The formal complaint from a representative of Parks for Paws
- Written copies of relevant sections of the audio transcript from the meeting
- The formal response from the Mayor relating to the complaint (attachment 4)
- The formal acknowledgements of the complaint by the CEO and the Deputy Mayor

On two subsequent occasions (21 December 2012 and 11 January 2013), the CEO formally advised the complainant that the investigation was still to be finalised.

2.4 DISCUSSION

Council takes any complaint from a member of the public seriously. It is therefore important that where policy or legal breaches are alleged to have occurred, they are rigorously and, where appropriate, independently investigated.

The report by the independent assessor (Attachment 2) contained the following recommendations:

- (1) That the Complaint received from a representative of Parks for Paws against the Mayor Bill Spragg be dismissed as there is no evidence to show that Mayor Spragg's conduct at the Council Meeting held on 27th November, 2012 was biased, inappropriate, incorrect and outside of standing orders, nor did it contribute negatively to the standard and outcome of that meeting, or on the Council as a whole.
- (2) That in future if a complaint is received against the Mayor or an elected member, that Council follow precisely the Code of Conduct for Elected Members – Section 7 – Breaches of this Code of Conduct.'

It is therefore recommended in this report that Council dismisses this complaint against the Mayor.

The CEO acknowledges that not all processes associated with this complaint were followed precisely. While the independent assessor acknowledges that this did not change the outcome of the investigation, it does highlight the benefits of reviewing Council's processes for dealing with such breaches, or indeed any complaint received by Councils. It is therefore also recommended that Council reviews its arrangements for alleged Code of Conduct breaches following the introduction of the ICAC Bill, which is expected to require Councils to have a mandatory code. This draft mandatory code refers to a 'Behavioural Code' which is expected to still be managed by Councils.

2.5 RECOMMENDATION

- 1. That the report by the independent assessor be received by Council.**
- 2. That the formal complaint against the Mayor be dismissed.**
- 3. That the complainant be formally advised, consistent with the recommendation within the independent assessor's report, that:**

The complaint against Mayor Bill Spragg be dismissed as there is no evidence to show that Mayor Spragg's conduct at the Council Meeting held on 27th November, 2012 was biased, inappropriate, incorrect and outside of standing orders, nor did it contribute negatively to the standard and outcome of that meeting, or on the Council as a whole.

- 4. That the CEO initiate a review of Complaints Handling for the organisation including Section 7 of Council's Elected Members' Code of Conduct following the introduction of the new ICAC Bill.**

2.6 APPENDICES

- (1) Copy of the formal complaint by the complainant
- (2) Report from the independent assessor
- (3) Initial investigative report undertaken by the CEO
- (4) Formal response to the complaint from the Mayor

3. Formal Complaint under Code of Conduct – Period of Confidentiality

That having considered this matter in confidence under section 90(2) and 90 (3) (a & g) of the Local Government Act 1999, the Council, pursuant to section 91(7) of the Local Government Act 1999, orders that the documents, reports and minutes pertaining to this matter, including discussions and considerations, be retained in confidence until such time as the complainant is formally advised of Council's decision, but not longer than one week, pursuant to Section 91(9).

That, pursuant to section 91(9)(c) of the Local Government Act 1999, the Chief Executive Officer be authorised to release documents at the conclusion of the period of confidentiality.

Appendix 1
Copy of formal complaint

From: Tess O'Callaghan <tocallaghan2@bigpond.com>
Date: 6 December 2012 10:17:19 PM ACDT
To: 'Bill Gale' <bgale@ahc.sa.gov.au>, <aaitken@ahc.sa.gov.au>
Subject: Formal complaint

Thursday December 6th 2012

Dear CEO, Andrew Aitken and Deputy Mayor, Bill Gale,
I wish to lodge a formal complaint for investigation regarding Mayor Bill Spragg's conduct during the council meeting on 27th Nov. This occurred specifically when I and another member of Parks for Paws spoke, during the forum section which was on dog access issues. We believe his behaviour was biased, inappropriate, incorrect and outside of standing orders and contributed negatives to the standard and outcome of this meeting and Council on the whole.

Please investigate the following which we have tried to be as accurate as possible about and believe is worthy of investigation. We would like you to know we are also forwarding this email to the LGA and other councillors and that we did send an email to the Mayor requesting an explanation of his interruptions and received a response which was not helpful, but a copy will be included.

1 During "Deputations" a resident called Nita Clifton presented for 10mins. This same woman wished to have 'another say' after a forum speech and proceeded to do so rebutting points raised. She was given at least 3 mins of time before the mayor asked her to stop. According to correct procedure this is not allowed.

2 During my forum speech timed at 5mins maximum the Mayor interrupted twice.
a) The first interruption occurred when I stated that the SLPAG was not nor ever had been or even heard any representation from our group as dog walkers and users of the park. He stated (and this will clearly be heard on the audio tapes) "I will stop you there because you are incorrect, Council appointed this Committee and it had a dog expert representative on it and a community representative and the other representatives were experts in their fields to give Council the best advice on this park" I asked for my time to be stopped and said "SLPAG did not have a dog representative on it " I then said " no debate or argument will be entered into" because this is what the Mayor had prefaced his introduction of the forum section with. And yet here he was debating a point with me.
He is actually incorrect AMPAG had a dog expert on it but SLPAG did not nor ever has had and it has received no representation from Parks for Paws as an organised group of stakeholders.

b) The mayor's second interruption occurred at the end of my speech at approx 3mins 40sec.

I was stating that 'AMPAG had suggested both a timed and a fenced option for the Branch Road fire track and that if given an option we would prefer to try the timed option because it is a tad more reasonable'

The mayor interrupted and said quite aggressively "I suggest you read the updated agenda as that is no longer a recommendation" He continued "the agenda has been updated recently and you obviously haven't read it as this is not in it" Kathy Newman from the gallery stood then and said "excuse me mayor but it is here in your Council agenda documents" and she then proceeded to quote the reference and page. Mayor Spragg then referred to Council Officer, Chris Button, in charge of this agenda item, who clarified that yes it was there as an original AMPAG suggestion, a fence and a timed access. No apology was offered and I made my last final sentence statement.

3 When John Northwood spoke again during forum towards the end of his speech he also stated SLPAG had never been representative of one of the largest users of the parks the

dog walkers as such this group have their own bias. Hence SLPAG's arguments (in Council agenda docs) against the AMPAG's suggestions should be not be given weight. The mayor interrupted stating "I'm going to stop you there John because you are being inflammatory in your remarks. You can finish with a few final short statements." John finished with a couple of sentences. John is entitled to state his opinion of the SLPAG without being silenced as "inflammatory".

These interruptions served to

- A) Deliberately distract the speaker and audience, of voting Councillors, away from the focus of their points through the distraction of the interruption.
- B) Affected the flow of the speaker so the speaker had to instantly reconfigure their concentration, confidence and the point they were making with a very limited period of time left which is an extremely challenging task, for the most skilled speakers.
- C) Be incorrect in substance and yet no apology or correction was offered by the Mayor.

The point should be made that no interruptions were necessary, we were merely trying to put our beliefs across on the whole broad picture, not necessarily just the recommendations. Please note that there were no interruptions made on any speaker from the opposing parties.

We have presented at many forums and deputations prior to this evening and have always been respectful and polite, purely offering our point of view with full rationale statements.

The Mayor has been emailed to give him the opportunity to explain why he interrupted and what his points actually were but he was not prepared to elaborate as requested.

We feel the mayor clearly shows his bias toward the anti dog lobby groups rather than the impartiality required of his role, evidence of this at this meeting was when he stated prior to the discussion around the AMPAG's recommendations "Council needs to revoke the March 2010 decision to discuss the recommendations then if council does not vote for these recommendations you will end up with Ethel St and Branch Road tracks being off leash" This was clearly a warning or a leading argument influencing councillors away from discussion of the recommendations. The mayor did not discipline Cr Kemp in anyway when he continually got up to ask very similar questions etc which further enhanced the oppositions coverage of their points against our case.

We would appreciate your investigation which we feel is justified and which we have reported as accurately as we can and hope you communicate your results to us. Please acknowledge that you have received this complaint.

Included below is a copy of the email sent to the mayor giving him an opportunity to clarify his points and his response.

Hello Tess,

I have noted the contents of your email. I explained myself on the night and will not be providing any further response in relation to these matters.

Regards
Bill

From: Tess O'Callaghan [mailto:tocallaghan2@bigpond.com]
Sent: Friday, 30 November 2012 7:03 PM
To: Bill Spragg
Subject:

Dear Bill,

In our debrief of the meeting on Tuesday Night we noted that you interrupted me during forum on two points

1 SLPAG where you said they had a dog expert on this committee and I really didn't understand the rest of your point in this section so I continued.

And

2 when I said that there was both a timed and a fenced limitation placed and we would prefer the timed access I'm really not sure what your point was here either and this is when Kathy held up the agenda which stated as we had read it that AMPAG had made these suggestions

3 You then declared John was being "inflammatory" but again we are not sure on what basis you are claiming this.

Could you please respond with an explanation on each of these points please as soon as possible?

Yours sincerely,
Tess O'Callaghan on behalf of Parks for Paws committee

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Please investigate the following which we have tried to be as accurate as possible about and believe is worthy of investigation. We would like you to know we are also forwarding this email to the LGA and other councillors and that we did send an email to the Mayor requesting an explanation of his interruptions and received a response which was not helpful, but a copy will be included.

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Yours sincerely,
Tess O'Callaghan on behalf of Parks for Paws committee

Appendix 2

Report from Independent Assessor

ADELAIDE HILLS COUNCIL

**CODE OF CONDUCT
FOR
ELECTED MEMBERS**

FORMAL COMPLAINT

INDEPENDENT REVIEW OF THE INVESTIGATION

AND

RECOMMENDATIONS

Judith Jones

16th January, 2013

INTRODUCTION

On 6th December, 2012 a Formal Complaint was received from Ms Tess O’Callaghan on behalf of the Parks for Paws Committee, in regard to Mayor Bill Spragg’s conduct during the 27th November, 2012 Council Meeting. The receipt of the Complaint was acknowledged by the Chief Executive Officer as required by Section 7 of the Code of Conduct for Elected Members. The Deputy Mayor reported the matter to Council at its meeting on 11th December, 2012 and advised that the Chief Executive Officer would investigate the Complaint.

The Investigation Report prepared by the Chief Executive Officer is very thorough and sets out the sequence of events, and together with the transcript of the proceedings of the relevant sections of the 27th November, 2012 meeting, the facts involved in the entire matter.

The following documents have been viewed to verify the actions taken and to form an opinion as to whether the Complaint received is justified:

- Email from Ms Tess O’Callaghan on behalf of Parks for Paws Committee detailing the Complaint against the Mayor Mr Bill Spragg (6th December, 2012) (Appendix 1)
- Email from Chief Executive Officer acknowledging receipt of Ms O’Callaghan’s email (6th December, 2012) (Appendix 2)
- Email from Deputy Mayor to Ms O’Callaghan acknowledging receipt of the Complaint (11th December, 2012) (Appendix 3)
- The transcript of the audio of the relevant proceedings of the meeting of 27th November, 2012 (Appendix 4)
- Response by the Mayor to the Complaint (Appendix 5)
- The Investigation Report prepared by the Chief Executive Officer (Appendix 6)
- Agenda for the Council Meeting on 27th November, 2012
- Council Minutes of 27th November, 2012
- Confidential Minutes of 11th December, 2012
- Code of Conduct for Elected Members
- Code of Practice for Meeting Procedures
- Local Government Act 1999
- Local Government (Procedures at Meetings) Regulations 2000

CODE OF CONDUCT FOR ELECTED MEMBERS

The Adelaide Hills Council Code of Conduct for Elected Members is very specific in regard to Breaches of the Code (Section 7 of the Code). “The complaint must identify the provision(s) of the Code which it alleges have been breached and provide all available evidence that supports the allegation(s) of the breach”

In this case this was not done by the Complainant and Council did not request this information from her prior to making a decision on whether to process this as a formal Code of Conduct Complaint. It had been assumed by the Deputy Mayor and the Chief Executive Officer that it was a formal Complaint. Council subsequently agreed to investigate this Complaint as a Code of Conduct Complaint and endeavoured to use the protocols of the Code.

This Complaint was against the Mayor of the Council, and using the notification protocols of the Code, the Mayor should have been notified in writing of the Complaint within 3 working days, whether or not he was overseas at the time. He was advised by the Chief Executive Officer on 24th December, 2012, when he returned from holiday.

The Chief Executive Officer acknowledged receipt of the Complaint on the same day that it was received (6th December, 2012).

The Code of Conduct for Elected Members states that (in this case) the acknowledgement should have come from the Deputy Mayor within 3 days of receipt of it. The acknowledgement of the Complaint by the Deputy Mayor occurred on 11th December, 2012.

The fact that these two matters were not carried out in accordance with Section 7 of the Code of Conduct for Elected Members is immaterial when looking at the Complaint itself.

THE COMPLAINT

The Complaint from Ms T O’Callaghan appears to be in two parts:

- (1) “...a formal complaint for investigation regarding Mayor Bill Spragg’s conduct during the council meeting on 27th Nov. This occurred specifically when I and another member of Parks for Paws spoke, during the forum which was on dog access issues. We believe his behaviour was biased, inappropriate, incorrect and outside of standing orders, and contributed negatives to the standard and outcome of this meeting and Council as a whole.”
- (2) “Please investigate the following which we have tried to be as accurate as possible about and believe is worthy of investigation.”

It is unclear whether the second part is also a formal Complaint or an investigation, however Council has included all matters in the Investigation as if it all formed part of the Complaint. If the Code of Conduct for Elected Members (Breaches of the Code) had been followed more precisely this would have been made more clear.

COUNCIL MEETING 27th NOVEMBER, 2012

Deputations

Council, in its Code of Practice for Meeting Procedures allows a total time of 30 minutes for Deputations. This would have allowed 6 minutes for each deputation to the meeting, however Council resolved each speaker be allowed up to 10 minutes each.

Public Forum

Council, in its Code of Practice for Meeting Procedures allows a total time of 10 minutes for the Public Forum. As there were a number of people who wished to speak the Council resolved that each speaker be allocated a maximum of 5 minutes.

These time limitations and the explanations given by the Mayor at the meeting set the ground rules for Deputations and Public Forum speakers.

Assertions and Allegations Made and Comments on these

(1) Ms Nita Clifton presentation:

It is alleged that Ms Nita Clifton presented during the Deputation section of the meeting for 10 minutes.

Based on the transcript of the meeting taken from the audio, she spoke for 4 minutes and 45 seconds. There were no questions asked of her.

It is also alleged that she was given at least 3 minutes of time before the Mayor stopped her during the Public Forum.

Ms Clifton spoke briefly during the Public Forum after Mr John Northwood spoke, with the comments made by her and the Mayor taking approximately 23 seconds as verified by the audio record of the meeting. According to the Code of Practice for Meeting Procedures the Mayor MAY answer questions during this part of the meeting.

As such there was no breach of procedure.

(2) Ms Tess O'Callaghan presentation – Public Forum Section

Ms O'Callaghan has alleged that the Mayor interrupted her twice during her presentation.

In her Complaint Ms O'Callaghan says "...when I stated that the SLPAG was not nor ever had been or even heard any representation from our group as dog walkers and users of the park".

In reading the transcript of the meeting this comment cannot be found, with the actual comment being "...Council have attempted no mediation yet created huge community divisions given power to an advisory group that is unrepresentative of our needs."

The Mayor interjected at that point to advise that the comments were inappropriate as the Group was set up to provide advice to the Council. Ms O'Callaghan is intimating that the Advisory Group had been given powers which were unrepresentative of the Parks for Paws Committee.

In the second part of this Complaint Ms O'Callaghan is saying that the recommendation included "both a timed and a fenced option".

The Mayor interjected to advise that there was no timed access in the recommendation to Council.

Ms O'Callaghan debated this matter with the Mayor, with the Mayor attempting to convince her of the recommendation which had appeared in the Agenda available to the public, and in the Agenda on the Council Website did not include timed access.

Ms Kath Newman, who was in the gallery and who was to speak later, was asked by the Mayor to help clarify the issue, but she also believed that timed access was included in the recommendation.

Council Officer Chris Button then offered an explanation stating that the original recommendation from AMPAG was for timed access, but in the Council Agenda for the meeting, the Officer's Report to the Council did not include timed access.

Ms O'Callaghan stated "No apology was offered and I made my last final sentence statement"

There was no need for the Mayor to make an apology as his statement regarding there being no timed access in the Agenda item was correct.

(3) Mr John Northwood presentation

Ms. O'Callaghan alleges that "the Mayor interrupted (this presentation) stating "I'm going to stop you there John because you are being inflammatory in your remarks. You can finish with a few final short statements"

Ms O'Callaghan believed that the remarks were not inflammatory. Her allegation "When John Northwood spoke.....he also stated SLPAG had never been representative of one of the largest users of the parks the dog walkers as such this group have their own bias. Hence SLPAG's arguments (in Council agenda docs) against the AMPAG's suggestions should not be given weight"

This comment is not quite correct.

The transcript from the meeting states:

"That Council appointed body (SLPAG) I believe has never been representative of the greater numbers of SLP including dog walkers. I see it as the institutionalised tool of the Friends of SLP."

The emphasis of this statement is somewhat different from Ms O’Callaghan’s recollection of the statement.

The Mayor’s interjection stating that the statement made was inflammatory related to “I see it as the institutionalised tool of Friends of SLP.”

The transcript from the meeting of the Mayor’s explanation states:

“yes, you were saying they were the tool of SLP Friends. That group was appointed by council as an advisory group with experts so that independent people who were on it were selected for their skills and their expertise, they’ve not come from our community and we have 4 councillors on it who represented the community’s opinion.”

The Mayor then went on to explain the composition of the Advisory Group and Mr Northwood appeared to accept that explanation and then stating “It doesn’t seem to filter then through to the public what you’ve just told us about.”

As all members of the SLPAG were experts in their field, together with an independent Chair the suggestion by Mr Northwood that the SLPAG were the “institutionalised tool of Friends of SLP” could be deemed to be inflammatory.

The last part of Ms O’Callaghan’s Complaint is general regarding, amongst other matters, the interruptions.

“These interruptions served to

A) Deliberately distract the speaker and audience, of voting Councillors, away from the focus of their points through the distraction of interruption.”

B) Affected the flow of the speaker so the speaker had to instantly reconfigure their concentration, confidence and the point they were making with a very limited period of time left which is an extremely challenging task, for the most skilled speakers

C) Be incorrect in substance and yet no apology or correction was offered by the Mayor.”

DUTIES OF THE PRESIDING OFFICER (MAYOR) AT MEETINGS

The Mayor, as Presiding Officer, has many duties at Council Meetings, amongst them being:

- Ensuring the meeting is run according to the provisions of the Local Government Act and Regulations and the Adelaide Hills Council Code of Practice for Meeting Procedures
- Controlling the conduct of the meeting
- Answering questions put to the Chair
- Correcting information given (by either Elected Members, Staff or the Public) if this is incorrect or misleading

As such his interjections were valid in correcting information given by Ms O’Callaghan on 2 occasions. It could not be interpreted that they were done to “deliberately distract the speaker and audience, of voting Councillors, away from the focus of their points through the

distraction of the interruption”. It would have been a derogation of his duty not to have corrected the statements.

From the Transcript of the meeting it would appear that Ms O’Callaghan has gone on with a pre-prepared speech after the interjection by the Mayor in the first instance, and the second interjection was at the end of Ms O’Callaghan’s presentation and so did not distract anyone.

In regard to the interjection when Mr Northwood was speaking, this was done because of the remark by Mr Northwood that could be construed as inflammatory, and further the Mayor gave an explanation as to the composition of SLPAG, and Mr Northwood thanked him (presumably for the explanation).

This interjection by the Mayor was near the end of Mr Northwood’s presentation, and the transcript shows that Mr Northwood went on immediately to make a further statement.

As none of the information given by the Mayor was incorrect there was no need for an apology.

Ms O’Callaghan also states:

“Please note that there were no interruptions made on any speaker from the opposing parties.”

As the Mayor only interjected in regard to incorrect statements and/or an explanation, presumably in the other presentations he found nothing to correct, or make an explanation about.

The other area where a Councillor wanted to ask a question of Janet Pedler but didn’t, occurred because the speaker had reached the end of her time limit. However this question was asked at the end of questions relating to David Doherty’s presentation.

Ms O’Callaghan stated: “The Mayor has been emailed to give him the opportunity to explain why he interrupted and what his points actually were but he was not prepared to elaborate as requested.”

The Mayor in his response stated “I have noted the contents of your email. I explained myself on the night and will not be providing any further response in relation to these matters.”

In hind sight the Mayor could have responded giving an explanation of what he said on the night. In reality, trying to recall exactly what was said at a meeting held 6 days previously, is difficult. Minutes of meetings only record the resolutions of the Council (plus other statutory matters) and not every word said. Transcripts of meetings are very rarely done, and only if something contentious arises, and the Mayor would not have had a transcript of the meeting to refer to, to answer Ms O’Callaghan’s questions precisely.

Ms O’Callaghan’s next statement is:

“We feel the mayor clearly shows his bias toward the anti dog lobby groups rather than the impartiality required of his role, evidence of this at this meeting was when he stated prior to the discussion around the AMPAG’s recommendations ‘Council needs to revoke the March 2010 decision to discuss the recommendations then if council does not vote for these recommendations you will end up with Ethel St and Branch Road tracks being off leash’ This was clearly a warning or a leading argument influencing councillors away from discussion of the recommendations.”

From the transcript the Mayor gave an explanation on some of the technicalities associated with revoking a previous motion. He also gave an explanation of what would occur if the motion was passed, or if it was defeated. This is usual procedure in a case like this to ensure that councillors are cognizant of what could occur by voting one way or the other.

Ms O’Callaghan’s next statement is:

“The mayor did not discipline Cr Kemp in anyway when he continually got up to ask very similar questions etc which further enhanced the oppositions coverage of their points against our case.

The following are extracts from the transcript which relates to matters in Ms O’Callaghan’s complaint, in which Cr. Kemp had input:

P4 – “This is a point of clarification for Mr Button – bylaw 5 is our bylaw we could change that and now allow dogs off leash in cemeteries”

Cr Kemp is just clarifying a point.

P10 – a question to Mr David Doherty – “Just quickly, if the proposal goes ahead without fencing, what will Arbury Park do? Would you seek funding to fence it yourself to stop dogs entering?”

Answer by Mr Doherty.

“But its adjacent to land that’s under your care and control?”

Answer by Mr Doherty

Statement by Cr Kemp – “There’s the confusion”

The questions by Cr Kemp, on the face of it, appear to be reasonable.

P19/21 – Item 10.1 Guiding Principles – Question to Mr C Button by Cr Kemp

“Thank you Mayor. Under preamble to safe community not labelled as a particular page in the document but I’m sure you can find it, it talks about council is committed to at least one off leash area in each township but it only endeavours to provide sufficient dog free areas. My question is what is sufficient and given that over 50% of our community are non dog owners what would you deem to be sufficient?”

Individual Councillors can and must ask questions if they require further information, and this is what Cr Kemp is doing in asking this question.

Cr Kemp:

“Then moving on to biodiversity it talks about in the preamble to that particular section about the biodiversity studies that were done which were done to only those pieces of community land which are zoned or categorised Cat 1 conservation or community land (inaudible comment) and that should be made clear that they were the only parcels of land so studied and that concurs with what Ms Pedler said in that you were only looking at the high biodiversity areas in the first place and I would like to see somewhere in there where it says that we would endeavour to do a biodiversity study of all areas.”

The Mayor in reply advised that this was a separate issue. Cr Kemp then went on to ask one further question and make a statement, with the Mayor advising that “It’s the guidelines we are considering tonight.”

A motion was then moved and seconded with councillors indicating if they wished to speak or not. Cr Kemp who was opposed to the motion was given the opportunity to speak to the motion, which he did.

After other Councillors had been given an opportunity to speak Cr Kemp asked a question which was replied to by the officer Mr Button.

P22 Cr Kemp – “in attempting to clarify that I think you can simply (simplify) it by saying if the revocation motion is defeated we won’t be debating the Stirling Park issue tonight.”

The Mayor concurred.

P23/24 – Cr Kemp sought leave to show one slide of a power point presentation he had prepared. After some discussion between Cr Kemp, Cr Bailey and the Mayor it was agreed that the slide could be shown.

Cr Kemp then spoke on the revocation motion and the reasons why he was not supporting it, followed by Cr Bailey who was supporting it.

All of these questions were relevant to the revocation motion and the statements relevant to Cr Kemp opposing the revocation, which was his right.

There was no reason for the Mayor to intervene.

CONCLUSION

The processing of the administrative part of this “Formal Complaint” from Ms O’Callaghan did not fully comply with all the requirements of Section 7 of the Code of Conduct for Elected Members (Breaches of this Code of Conduct). This however, in no way, changes the outcome of this investigation and irrespective of this, the Council used the protocols of the Code to investigate the Complaint. Although it could be argued that that the Complaint should not have been accepted in its current form, the Council has acted in the best interests of the complainant by agreeing to process the Complaint.

After viewing all evidence and Legislation, including:

- Ms O’Callaghan’s Complaint against the Mayor Mr Bill Spragg
- The emails of acknowledgement of the Complaint by both the Chief Executive Officer and the Deputy Mayor
- The transcript of the audio of the relevant proceedings of the meeting of 27th November, 2012
- The response by the Mayor to the Complaint
- The Investigation Report prepared by the Chief Executive Officer
- Agenda for the Council Meeting on 27th November, 2012
- Council Minutes of 27th November, 2012
- Confidential Council Minutes of 11th December, 2012
- Code of Conduct for Elected Members (Adelaide Hills)
- Code of Practice for Meeting Procedures (Adelaide Hills)
- Local Government Act 1999 (as amended) – relevant sections
- Local Government (Procedures at Meetings) Regulations 2000

an assessment was made of the Complaint and the findings are as detailed in the Report.

RECOMMENDATIONS

(1) That the Complaint received from Ms T O’Callaghan against the Mayor Bill Spragg be dismissed as there is no evidence to show that Mayor Spragg’s conduct at the Council Meeting held on 27th November, 2012 was biased, inappropriate, incorrect and outside of standing orders, nor did it contribute negatively to the standard and outcome of that meeting, or on the Council as a whole.

(2) That in future if a complaint is received against the Mayor or an elected member, that Council follow precisely the Code of Conduct for Elected Members – Section 7 – Breaches of this Code of Conduct.

Appendix 3
Initial Investigative Report from CEO

Report

Formal Complaint – Investigation

Background (Complaint)

A complaint was received by the Adelaide Hills Council via email from Ms Tess O’Callaghan (the complainant) on Thursday 6 December 2012 ‘regarding Mayor Bill Spragg’s conduct during the council meeting on 27th Nov.’ The email was received by CEO, Andrew Aitken and Deputy Mayor, Bill Gale. The CEO acknowledged receipt via email to the complainant the same day. Subsequently, the Deputy Mayor acknowledged receipt of the complainant’s email (via email) on Tuesday 11 December 2012 which also informed the complainant that the CEO would investigate the complaint. (Council’s Code of Conduct states that such complaints must be acknowledged by either the Mayor or Deputy Mayor, should the complaint be regarding the Mayor, within 3 working days. In this instance, the Code of Conduct notification protocols were used as a guide should this formal complaint be subsequently deemed a Code of Conduct matter.) Full Council was informed by the Deputy Mayor in confidence at its meeting on 11 December that a formal complaint had been received and that the CEO would investigate the complaint.

Given that the Mayor had left for an overseas holiday on 5 December, the Mayor was not notified of the complaint within 3 working days (as per the Code of Conduct protocol), but was notified by the CEO on 24 December 2012 upon his return from holiday.

This report provides a statement of facts and responses in relation to this complaint with a view to it being reviewed by an independent party; and for that independent party to provide opinions and recommendations prior to being released.

Background (Dog Access)

At its meeting of 8 February 2011, Council unanimously agreed to defer considering a motion on notice from Cr Kemp until the 22 March meeting of Council to enable public consultation to be undertaken. Cr Kemp’s motion proposed ‘That the dog exercise policy in Stirling Linear Park be amended to dogs on paths only and on leash under effective control at all times’.

At its meeting of 22 March 2011, A motion was considered, and subsequently supported, by Council, that dog access to Stirling Park, Madurta Reserve, Woorabinda and Hender Reserve be deemed on leash and remain on paths at all times. A total of 20 deputations and public forum speeches were heard at that meeting in relation to this item, either in favour or opposed to this proposal.

At its meeting of 24 May 2011 a rescission motion relating to the 22 March decision was subsequently considered by Council. The rescission motion was lost on the casting vote of the Mayor.

Deputations – 27 November 2012 Council Meeting

A total of 5 people requested a deputation at the meeting. All 5 were granted the opportunity to speak for up to 10 minutes each (including any questions from Councillors).

Public Forum – 27 November 2012 Council Meeting

Prior to the public forum speeches being made, the Mayor made the following comment:

'We now move to the public forum part of the evening and the public forum is an opportunity for members of the public present in the gallery to speak to council. You may make statements or ask questions, no debate will be entered into, any matter raised should be within the ambit of the council to influence and any matter outside the legal control of the council will not be heard. Questions must be of a general nature and not directed at any individual. Council may choose not to answer any question or may choose to take a question on notice and provide a written answer at a later time. Statements should not address personalities, be derogatory, insulting, inflammatory, offensive or provocative. Swearing is not permitted. Normally 10 minutes is set aside for public forum but this can be extended by a resolution of council and normally a maximum of 5 minutes is allowed per speaker however this may be reduced at my discretion. So at this point of time I know I have two people already who have indicated that they want to speak in the public forum so I'd like to get an indication of how many people might wish to speak in the public forum so we can determine or not we need to extend the time... So that looks like seven or eight people. We normally only allocate 10 minutes that would cut it back to a bit over one minute per person so would some Councillor like to move that 3 minutes be provided, we've got 8 people, I'd like to keep it to half an hour so if we could sort of allocate 3 minutes per person that would take 24 minutes.'

Following a suggestion from Councillor Bailey that a maximum time be allocated, a maximum of 5 minutes per speaker was unanimously agreed by Council.

Complaint

The complainant believed that the Mayor's *'...behaviour was biased, inappropriate, incorrect and outside of standing orders and contributed negatives to the standard and outcome of this meeting and Council as a whole.'* The behaviour in question *'...occurred specifically when I and another member of Parks for Paws spoke, during the forum section which was on dog access*

issues. By way of clarification, the public forum item of the meeting (as referred to above) was not available solely for speakers on dog access issues. However all public speakers at the meeting were wishing to speak only on that topic.

The complainant also stated that her email of complaint was also forwarded '*...to the LGA and other councillors...*' This has not been verified.

Prior to the complaint being lodged, the complainant sent an email to the Mayor on 30 November 2012 asking him to explain his actions. The Mayor responded on 4 December 2012 by indicating that 'I have noted the contents of your email. I explained myself on the night and will not be providing any further response in relation to these matters.'

Assertions and Allegations

- 1 *During "Deputations" a resident called Nita Clifton presented for 10mins. This same woman wished to have another say after a forum speech and proceeded to do so rebutting points raised. She was given at least 3 mins of time before the mayor asked her to stop. According to correct procedure this is not allowed.*

Response

Nita Clifton spoke for approximately 4 minutes and 45 seconds, but (along with each person providing a deputation that night) was entitled (following a resolution of Council earlier in the meeting) to take up to 10 minutes, including questions from Councillors. The 'another say' referred to by the complainant occurred after John Northwood spoke during the public forum. Ms Clifton spoke for less than 30 seconds in response to a comment Mr Northwood made regarding 'stalking' in Stirling Linear Park. These timings have been confirmed by replaying the official audio recording of the forum.

In terms of 'correct procedure', consistent with item 3.6 (Public Forum) under Council's Code of Practice for Meeting Procedures, 'The Presiding Member will determine if an answer is to be provided'. Given that Ms Clifford's comments were made as part of the public forum and allowed by the Mayor as the Presiding Member, this would not be considered a breach of correct procedure.

- 2 *During my forum speech timed at 5mins maximum the Mayor interrupted twice.*
 - a) *The first interruption occurred when I stated that the SLPAG was not nor ever had been or even heard any representation from our group as dog walkers and users of the park. He stated (and this will clearly be heard on the audio tapes) "I will stop you there because you are incorrect, Council appointed this Committee and it had a dog expert*

representative on it and a community representative and the other representatives were experts in their fields to give Council the best advice on this park” I asked for my time to be stopped and said “SLPAG did not have a dog representative on it “ I then said “ no debate or argument will be entered into” because this is what the Mayor had prefaced his introduction of the forum section with. And yet here he was debating a point with me. He is actually incorrect AMPAG had a dog expert on it but SLPAG did not nor ever has had and it has received no representation from Parks for Paws as an organised group of stakeholders.

Response

The first interjection by the Mayor during the complainant’s speech, was to correct an assertion made that Council had ‘given power to an advisory group that is unrepresentative of our needs’. Given that the complainant referred to the Animal Management Plan Advisory Group (AMPAG) earlier in her speech, the Mayor interjected to provide clarification. He stated that this ‘...group was set up by Council to provide advice to Council, it was not to represent community opinions ... the Advisory Group was never set up to have community representation... I am correcting something you said, I am correcting a statement you made because it is wrong’. The complainant responded with ‘thank you’ and continued her speech.

b) The mayor’s second interruption occurred at the end of my speech at approx 3mins 40sec.

I was stating that ‘AMPAG had suggested both a timed and a fenced option for the Branch Road fire track and that if given an option we would prefer to try the timed option because it is a tad more reasonable’ The mayor interrupted and said quite aggressively “I suggest you read the updated agenda as that is no longer a recommendation” He continued “the agenda has been updated recently and you obviously haven’t read it as this is not in it” Kathy Newman from the gallery stood then and said “excuse me mayor but it is here in your Council agenda documents” and she then proceeded to quote the reference and page. Mayor Spragg then referred to Council Officer, Chris Button, in charge of this agenda item, who clarified that yes it was there as an original AMPAG suggestion, a fence and a timed access. No apology was offered and I made my last final sentence statement.

Response

The second comment by the Mayor occurred at the end of the complainant’s speech in response to an implication that Council was recommending timed dog off-leash access in Stirling Linear Park (SLP). The complainant stated ‘This is a community park, a resource

for everyone but the proposal tonight gives us a teeny tiny fragment with a fence and a timed limit but it's a starting point, we'll still be positive, it's a starting point. We'd prefer to just try the timed access but we will start with you on this base line, we're happy to. But please can we just have part of our park back again? Thank you.' The Mayor then posed the question: 'Tess, you have an assertion that there's timed access, have you looked at the recommendation?' As the Mayor correctly stated, timed access was not part of the recommendations contained within the report before Council that night. (This actually formed part of the AMPAG recommendation within Appendix 3 of the report, not the Council officers' recommendation contained within the officer's report.) At one point during this lengthy clarification process, the Mayor invited Kathy Newman (another Parks for Paws proponent) to speak to assist the complainant in identifying where in the report was there a reference to timed access. Kathy confirmed it was in Appendix 3 of the report. Kathy Newman was subsequently able to speak in the forum and did so uninterrupted for approximately 4 minutes and 30 seconds.

- 3 *When John Northwood spoke again during forum towards the end of his speech he also stated SLPAG had never been representative of one of the largest users of the parks the dog walkers as such this group have their own bias. Hence SLPAG's arguments (in Council agenda docs) against the AMPAG's suggestions should be not be given weight. The mayor interrupted stating "I'm going to stop you there John because you are being inflammatory in your remarks. You can finish with a few final short statements." John finished with a couple of sentences. John is entitled to state his opinion of the SLPAG without being silenced as "inflammatory".*

Response

The only interruption to John Northwood's speech during the public forum was at the end of the speech (when John had approximately 4 seconds on the time clock remaining). The Mayor responded to a comment made by John who referred to the Stirling Linear Park Advisory Group as '... the institutionalised tool of the Friends of Stirling Linear Park.' The Mayor then said 'John, your time has just about expired but I'm going to stop you because you're being inflammatory with those statements.' When John questioned why his comment was inflammatory the Mayor explained why he thought it was inflammatory and why the group was established by Council. John responded that 'It doesn't seem to filter then through to the public what you've just told us about'. The Mayor then responded 'That's the way it goes and that's the way we set up all our advisory groups based on expertise we need in the advisory group plus the elected members to represent public opinion'. John then responded with 'Thank you'. The Mayor then enabled John to complete his speech with a couple of statements which took approximately 30 seconds.

As Presiding Member the Mayor could arguably have interjected, but did not, on two previous occasions during John's speech where references to 'apartheid' and 'war' were used to describe the divided opinion related to dog access in the community. Both of these instances may also have been deemed inflammatory.

The complainant then alleged that:

These interruptions served to

A) Deliberately distract the speaker and audience, of voting Councillors, away from the focus of their points through the distraction of the interruption.

Response

Of the three interruptions referred to by the complainant, two occurred at the end of speeches. It would be difficult to reasonably assess any of these interruptions as being deliberate or a distraction.

B) Affected the flow of the speaker so the speaker had to instantly reconfigure their concentration, confidence and the point they were making with a very limited period of time left which is an extremely challenging task, for the most skilled speakers.

Response

While the two speakers may have been affected by the interruptions, these interruptions did not appear to prevent either speaker from completing their (apparently pre-prepared) speeches.

C) Be incorrect in substance and yet no apology or correction was offered by the Mayor.

Response

The clarifications made by the Mayor cannot reasonably be considered incorrect in substance.

Further Allegations

There were no interruptions made on any speaker from the opposing parties.

Response

There were no interruptions to speakers other than those referred to above. However, at the end of the first deputation from a member of the public (who was an advocate for dogs being on leash), the Mayor prevented a Councillor from asking a question of the speaker as her time limit (of 10 minutes) had expired. The speaker appeared willing to receive and respond to questions.

The mayor clearly shows his bias toward the anti dog lobby groups rather than the impartiality required of his role, evidence of this at this meeting was when he stated prior to the discussion around the AMPAG's recommendations "Council needs to revoke the March 2010 decision to discuss the recommendations then if council does not vote for these recommendations you will end up with Ethel St and Branch Road tracks being off leash" This was clearly a warning or a leading argument influencing councillors away from discussion of the recommendations.

Response

The exact location of these comments relating to Ethel Street and Branch Road is yet to be located in the transcript. It could relate to comments made by the Mayor when referring to the Motion on Notice from Cr Green, whose motion sought to amend the March 2011 decision of Council to enable an alternative dog access recommendation for 'Stirling Park' within Stirling Linear Park to be considered as part of a separate report from officers that evening. Here the Mayor indicated that should this Motion on Notice be lost, then the recommendation for alternative dog access in the officer's report would not be considered as the decision would have already been to retain the existing dog access provisions (ie dogs on leash and on paths).

The mayor did not discipline Cr Kemp in anyway when he continually got up to ask very similar questions etc which further enhanced the opposition's coverage of their points against our case.

Response

There are examples where Cr Kemp asked questions in the meeting that the Mayor disagreed with. These included questions relating to the application of the Animal Management Plan Guiding Principles as well as a reference to information that Cr Kemp questioned / asserted should have been included in the report.

Conclusion

That this report be provided to an independent party; and for that independent party to provide formal opinions, findings and recommendations prior to a final report being released.

That the independent party be provided:

- **A copy of this report**
- **A copy of the transcript from relevant sections of the meeting**
- **A copy of the response by the Mayor to the complaints made against him by the complainant.**

Andrew Aitken
Chief Executive Officer

Appendix 4
Formal Response to Complaint from Mayor

I have reviewed the accusations made by Ms Tess O'Callaghan about my conduct at the Council meeting of the 27th November 2012 and provide the following responses.

1. Nita Clifton had formally requested an opportunity to make a deputation to Council and the Council resolved to permit each speaker a maximum of 10 minutes. Ms Clifton spoke for approximately 5 minutes. Ms O'Callaghan is wrong when she states meeting procedures preclude a person who has made a deputation from also speaking in the public forum although for reasons of fairness, given the large number of people present on the night; I would have discouraged any attempt to use both opportunities to address Council as I actually did when Ms Clifton attempted to refute an accusation made by John Northwood about a culture of stalking. I did not permit Ms Clifton to speak although she did manage to make an interjection before the next person spoke. The whole affair would have taken less than 30 seconds.
 2. I interrupted Ms O'Callaghan on only one occasion. The second alleged interruption occurred after she had finish speaking which clearly indicates I had allowed her to finish her speech before I attempted to clarify a reference she had made to a recommendation.
- 2a) Ms O'Callaghan mentioned the AMPAG during her speech and a little later had talked about an advisory group as being unrepresentative of the community. She did not at any time mention the SLPAG by name. At this point I interrupted to explain to Ms O'Callaghan and the gallery that the AMPAG was never meant to have community representation. Ms O'Callaghan has on a number of occasions made similar incorrect statements about advisory groups not representing community opinion and I have previously explained that advisory groups are composed of subject experts and Councillors and that they do not have representation from community interest groups because Council wants impartial advice not influenced by any self-interest. I did not see my correction as debating with Ms O'Callaghan but more as correcting a statement which if let go would have given a listener an incorrect view of the purpose of an advisory group established by council. I believe I did not talk about the actual composition of the AMPAG during Ms O'Callaghan's address to council but recall detailing the composition when Mr Northwood's address.

Ms O'Callaghan did not ask for her time to be stopped and would not have needed to as I am in the habit of extending the time to compensate for any interruption.

- 2b) I did not interrupt as Ms O'Callaghan had finished her speech and I don't believe I was aggressive in my behaviour. I had heard Ms O'Callaghan asking Council to support a proposal for timed off-leash access as though it was in the recommendation being considered that night. This proposal had been in the report from the AMPAG but was not in the Council Officer's recommendation to Council. I was concerned that Ms O'Callaghan had not understood the motion council was likely to debate and hence attempted to clarify this with her. It became apparent during the interchange that she had been referring to the report from the AMPAG which was included in the agenda as an appendix to the Council Officer's report. There seemed to be a lack of understanding that the starting place for the debate was the Officer's recommendation. There seemed to be an expectation that the council would debate the AMPAG recommendations and I attempted to clarify how the agenda worked.

I did not feel a need to apologise for any of my behaviour on the night. I believe I acted civilly at all times and I was somewhat surprised at the apparent lack of understanding of council procedures given the frequency of attendance at meetings and the stewardship of this lobby group by both a current councillor and an ex-councillor.

3. I believe that the language used by Mr Northwood was deliberately chosen to be inflammatory when he referred to the SLPAG as an "institutionalised tool of the Friends of Stirling Linear Park" after having previously introduced the word apartheid and suggested that a "culture of stalking" existed in the park and as such decided I should ask him to tone down his speech. He had also spoken for almost 5 minutes so I was advising him his time was almost up. It is for council to determine what weight it gives to any advice from an advisory group and it is not appropriate for anyone to engage in character assassination in an attempt to influence council's perception of the value of the advice. I did not realise at the time that this was Mr Northwood's intentions but Ms O'Callaghan has made this clear with her statement "Hence SPLAG's arguments against AMPAG's suggestions should not be given weight"

I did note Ms O'Callaghan's discomfort when I interrupted her but it was not done with the intention of distracting the speaker or any other person present. A set of rules had been read to all present in the gallery before the public forum commence and speakers should have considered what they said in light of these rules. It is not appropriate to allow a speaker to continue if they breach the rules. I have previously been criticised for allowing a speaker to continue uninterrupted after they made a disparaging remark about an individual. Having had this experience I am more inclined to stop a speaker before they transgress too far. Other speakers on the night did not make statements or comments which in my opinion needed me to stop them. This included Ms Kathy Newman who also spoke for the off-leash proponents.

As the confusion about the recommendation which would form the starting point for the debate lay with Ms O'Callaghan I did not have any sense of needing to apologise. The accusation that I am biased towards an anti-dog lobby group is ludicrous. I and several of the Councillors who support the requirement to have dogs restrained by means of a physical leash whilst in Stirling Linear Park currently own and have for numerous years owned dogs. As it is my role as Mayor to preside over council meetings and ensure that they are conducted in an orderly and constructive way I do not believe it is inappropriate for me to interrupt proceedings if, in my judgement, the behaviour or contribution of an individual is at variance to this requirement. I believe I provided sufficient explanation on the night of why I had interrupted each speaker and did not feel it constructive to repeat myself. My previous experience of this group suggests they would pick over any response looking for further issues to complain about.

The criticism that council did not debate the issue completely ignores the history which goes back to a URPS report in 2006 which recommended on-leash throughout the SLP and a recommendation from the SLPAG in 2009 which also favoured a blanket on-leash requirement. This is not a new battle. Simply the battle lines have been redrawn in a way which no longer favours the off-leash proponents because the composition of the council changed at the last election.

It is my role to ensure that the council understands the implications of decisions it might make and in explaining the sequence of events in relation to Cr Greens motion on notice to amend the

Mayor Spragg

Response to complaint by Tess O'Callaghan
Re-conduct of council meeting 27th November 2012

resolution of March 2010 I thought it was important that councillors understood that a potential outcome from passing the motion on notice and opposing the recommendation was to leave Stirling Park with a particular set of dog access controls. It was correctly pointed out by Cr Herrmann that an alternative motion might be successful if the officer's recommendation was not supported. Providing this guidance about potential issues I believe is part of my role as Mayor. The councillors are expected to hear the arguments, assess the information available and make up their own minds about whether to support a motion or not. My comments form part of this information.

I don't recall Cr Kemp's behaviour on the night but I understand that he has a tendency to ask questions of speakers when other Councillors don't. Although this may at times be an irritation to some people it is his prerogative to interact with people engaging with council through the avenue of deputations or public forums and unless his questions are inappropriate I have no reason to curtail him. The code of conduct outlines the behaviour expected of Councillors and unless Cr Kemp breaches these I have no cause to discipline him.

Mayor Spragg