

**DISTRICT COUNCIL OF GRANT**

**ORDINARY MEETING OF COUNCIL HELD – 20 MAY 2019**

**REFER ITEM NUMBER      19069.1                      FILE      9.33.3/23 & 9.33.3/11**

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**19069 – OTHER BUSINESS**

1. Ombudsman Matters – [9.33.3/23 & 9.33.3/11] Item 16.1.1  
Council was provided with notice of matters with Ombudsman SA.  
Moved Cr Clayfield that Council notes the report.  
Seconded Cr Reis

CARRIED

<b>16.1.1 Ombudsman Matters</b>		
<b>MEETING DATE:</b>	20 May 2019	
<b>AUTHOR:</b>	Jane Fetherstonhaugh, Acting Chief Executive Officer	
<b>RESPONSIBLE OFFICER:</b>	Jane Fetherstonhaugh, Acting Chief Executive Officer	
<b>PREVIOUS MEETING:</b>	Nil	
<b>REFERENCES:</b>	Nil	
<b>FILE NO:</b>	9.33.3/23; 9.33.3/11	
<b>ATTACHMENTS:</b>	<ul style="list-style-type: none"> <li>Letter from Ombudsman SA dated 6 March 2019</li> </ul>	
<b>IN CONFIDENCE:</b>	Yes	
<b>POLICY REFERENCE:</b>	There are no known policy requirements related to this item.	
<b>LEGISLATIVE REFERENCE:</b>	<ul style="list-style-type: none"> <li><i>Local Government Act 1999</i></li> </ul>	
<b>STRATEGIC MANAGEMENT PLAN REFERENCE:</b>	Goal:	
	Outcome:	
	Strategy:	
<b>FINANCIAL CONSIDERATIONS:</b>	Budget:	\$
	Actual (YTD):	\$
	Budget Variation Required:	No
<b>CONSULTATION UNDERTAKEN:</b>	Nil	

**PURPOSE OF REPORT:**

To provide Council with notice of various matters recently reported to the office of the Ombudsman SA regarding this Council.

**BACKGROUND:**

Recently, Council has been notified of various matters that have been reported to the Ombudsman SA for investigation.

**COMMENT:**

Whilst these matters are being investigated, Council staff are not at liberty to discuss or divulge details of any complaints made. It seems prudent, however, given the number of complaints made, to notify Council of their existence.

An outline of the matters is provided as follows:

**Ombudsman SA**

- Currently actively investigating one complaint (with an anticipated outcome expected in 1-2 months)

- Investigations of a further two matters has been completed with the following results:
  - 1 – no breach found, matter closed (letter attached)
  - 2 – has been referred back to Council to conduct the investigation (next steps are currently being considered)

**STAFF RECOMMENDATION:**

***That Council notes the report regarding Ombudsman SA matters.***



OmbudsmanSA

Enquiries: Mr Andrew Bickle  
Telephone: (08) 8226 8699  
Ombudsman reference: 2018/09791  
Agency reference:

**CONFIDENTIAL**

Mr David Singe  
Chief Executive Officer  
District Council of Grant  
By Email: David.Singe@dcgrant.sa.gov.au

Dear Mr Singe

**Your complaint about Mayor Richard Sage of the District Council of Grant (the council)**

I refer to my letter dated 14 September 2018 and your complaint about the council's Mayor Richard Sage under the *Ombudsman Act 1972*.

You have alleged that Mayor Sage breached the requirements of the *Local Government Act 1999* and the Code of Conduct for Council Members (**Code of Conduct**) by requesting that the council's Acting Chief Executive Officer, Mr Graeme Maxwell, amend a draft letter to the Remuneration Tribunal that had been approved by the council on 2 July 2018. You eventually signed the amended letter in your capacity as current Chief Executive Officer. You say that you were unaware of the amendments made.

Whenever my Office receives a complaint, the matter is assessed as to whether the complaint comes within my jurisdiction and, if so, whether I should exercise my discretion to commence an investigation. I have assessed your complaint and, although it is within jurisdiction, I have determined that an investigation is not necessary or justified in the circumstances. I explain how I arrived at this decision below.

***My enquiries***

In my enquiries, my Office:

- assessed the information provided by you
- obtained further details from you about your complaint
- considered the Local Government Act and the Code of Conduct
- sought and considered a response and further material from Mayor Sage, including a photocopy of the requested changes on the marked draft.
- sought and considered the views of Mr Maxwell
- prepared this letter to you.

***My assessment of your complaint***

Based on the information provide to my Office, I have summarised my understanding of the timeframes of what occurred.

Mayor Sage submitted to my Office that in late June 2018 he became aware that the council was to make its submissions to the Remuneration Tribunal by 6 July 2018. This was then

brought to the attention of then Acting Chief Executive Officer, Mr Maxwell, who drafted a letter to the Remuneration Tribunal (**the original letter**). Mayor Sage says that on 6:30pm on 29 June 2018, Mr Maxwell provided a draft copy of the original letter to council members to consider over the weekend. On 2 July 2018, the “draft” copy of the letter was approved by the elected members at a council meeting. This was the same day that you began as Chief Executive Officer, and I note that the minutes of the meeting also indicate your presence with Mr Maxwell at the meeting. Subsequently, Mayor Sage provided a copy of the draft letter with his handwritten notes to Mr Maxwell. I note that he referred to these handwritten notes as ‘suggestions’ in his letter to me, and in that regard I note that Mr Maxwell did not make all of Mayor Sage’s proposed amendments. On 6 July 2018, on your fourth day as CEO, you signed the letter. You informed my Office that you were unaware that the letter had been changed until after you signed the letter.

Mayor Sage responded to my Office:

- the original letter was written in haste by Mr Maxwell due to the delay in identifying the deadline
- the original letter was approved by the council in draft form (and not final form) as indicated in the minutes and your final letter to the Remuneration Tribunal
- he had knowledge from his experience so that he considered his submissions would enhance and not detract from the submissions
- that his notes on the letter were only ‘suggestions’
- that he made his suggestions in good faith.

The circumstances in which the allegations of this complaint arose are somewhat complex and unique.

The Mayor’s suggested changes to the original letter were:

1. to add ‘some 90 kms’ after ‘The council takes in a considerable coastline...’
2. the final paragraph on the third page of the original letter stated:

All of the above factors equate to much engagement, commitment of time and travel for elected members to service the various communities of interest and the enquiries and expectations of constituents.

Mayor Sage proposed adding to that paragraph:

As well as meetings is the requirement that takes in the 7 Councils. Joint meetings in various locations takes the Mayor staff and Councillors Some [illegible] 1 hour to 2 Hours to Bordertown etc.

3. the second paragraph of the last page of the original letter stated:

These are not insignificant considerations for someone considering nominating for office as an elected member of council and may impact significantly upon personal and/or work time.

Mayor Sage proposed amending that paragraph to:

These are not insignificant considerations for someone considering nominating for office as an elected member of council and impacts significantly upon personal and/or work time, or trying to run your own business.

The first paragraph of the conclusion stated:

A return to the allowance levels of November 2009 (adjusted annually for CPI) should be the starting point for consideration in the context of this submission.

Mayor Sage included the comment 'Increase to next bracket starting point' and proposed the following sentence instead:

But in reality Council should be considered for the [illegible] submission to go to the next Bracket as other Regional Councils across SA have in the past including Naracoorte Lucindale (one of our Northern Neighbours Same Size) Tatiara and Bordertown also in our region Smaller Role Base and Population with considerably less issues to face. Others but Not limited to the mid Murray Council etc same population less.

It appears that the proposed amendment to the conclusion is the only one which could be taken to change the substance of the letter in a significant way, rather than simply clarify it. The sentence the Mayor wanted replaced sought a 'return in allowance levels to November 2009 (adjusted annually for CPI)'. The gist of the original sentence and the suggested sentence is that the remuneration of council members should increase – in the first case, by returning remuneration to a previous level within the remuneration grouping, and in the second case by clearly submitting that that the council should be classed under Group 3, rather than Group 4.

The final draft of the letter contained the first of Mayor Sage's suggested changes. The second and third changes sought were not made. The last change sought, was made in part. Instead of replacing the final sentence, Mr Maxwell added a sentence with similar substance as Mayor Sage's requested sentence, but in his own words:

A return to the allowance levels of November 2009 (adjusted annually for CPI) should be the starting point for consideration in the context of this submission. However, Council would argue that an elevation from Group 4 to Group 3 for the determination of the allowances would more appropriately recognise our relative size and strong synergies with other south-east regional councils including Naracoorte Lucindale, Tatiara and Wattle Range.

I also note that Mr Maxwell added a section entitled 'Advocacy', which was not sought in the Mayor's handwritten notes nor in the draft provided to council members on 29 June 2018. I note some further minor editing of the letter is apparent in the final draft, which you signed.

Mayor Sage submitted to my Office that he made his suggestions in good faith. The motion of the council was:

1. ...  
Moved Cr Collins that Council endorse the (draft) letter for submission to the Remuneration Tribunal for consideration in determining the allowance payable to Elected Members of the District Council of Grant from November 2018.  
Seconded Cr Reis CARRIED

It is significant that the council members specifically endorsed the '(draft) letter for submission to the Remuneration Tribunal' as distinct from a final form of the letter. The draft provided to the council was not signed. In those circumstances, I am willing to accept that Mayor Sage may have genuinely considered that further changes could be made. I do not comment on the correctness of the Mayor's view, but consider that it is, on the information before me, open for me to conclude that Mayor Sage did not act with deliberate dishonesty. It appears that Mayor Sage considered that he, as an experienced principal member of the council ought to make use of the opportunity, he thought existed, to ensure that the letter provided the most useful and relevant submissions. It appears that had the council approved the letter in its unsigned final form, there would have been significantly more clarity about whether changes could be made to the letter.

On the information and evidence you have provided me, I do not consider that there is sufficient evidence to establish that dishonesty has occurred. I therefore do not consider on the face of it a potential breach of clause 3.1 of the Code of Conduct for Council Members arises on the facts.

As indicated above, Mayor Sage submitted that his handwritten notes were really suggestions, and this appears to be corroborated by the fact that Mr Maxwell did not make all the changes sought. Mayor Sage submits that this matter was considered in relative haste. There is no evidence to suggest that Mayor Sage improperly directed Mr Maxwell to make the changes.

On the information and evidence you have provided me, I do not consider that there is sufficient evidence to establish that Mayor Sage improperly exercised his power or directed Mr Maxwell to make the amendments. I therefore do not consider on the face of it that potential breaches of clauses 3.4 or 3.5 of the Code of Conduct for Council Members arise on the facts.

As the author and signatory, the onus fell on the Chief Executive Officer to ensure that the letter correctly reflected the council's position as it purported to. I note however that you were in your fourth day in the role as Chief Executive Officer, and it appears that you were not aware of the amendments made to the letter.

In my view, it would have been preferable for the letter to be brought back before the council for its further consideration in a special meeting. In my view, Mr Maxwell should have facilitated that process or at least brought the amendments to your attention so that you could make an informed decision as to the correct process.

On the information and evidence you have provided me I do not consider that there is sufficient evidence to establish a failure of diligence on the part of Mayor Sage, however, in failing to ensure that the matter was brought back before the council. I therefore do not consider on the face of it that a potential breach of clause 3.2 of the Code of Conduct for Council Members arises on the facts.

#### ***Outcome of my enquiries***

I intend to end my consideration of your complaint, unless you are able to identify an error in my assessment of the matter. If you think you are able to identify such an error, I ask you to contact my Office by 18 March 2019 with your reasoning. If you do not contact my Office within that time, I will close the file.

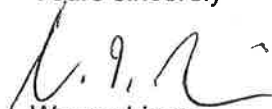
The Ombudsman Act imposes certain obligations<sup>1</sup> on my Office and others, including complainants and officers in a council, to keep information about my enquiries confidential.

However, if I consider that disclosure of that information is in the public interest, then I may authorise or require its disclosure.

In my opinion, there is a public interest in disclosure of my decisions under the Ombudsman Act. Therefore, once I have closed the file, I authorise disclosure of this letter by the parties as they see fit.

I have provided a copy of this letter to the Mayor.

Yours sincerely



Wayne Lines  
**SA OMBUDSMAN**

6 March 2019

Cc. Mayor Richard Sage, District Council of Grant

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<sup>1</sup> *Ombudsman Act 1972*, section 26.