

Report to Chairperson of the Governance Advisory Panel regarding an investigation of a Code of Conduct complaint – Adelaide Plains Council.

1. By letters of complaint all dated 5 May 2017, three Council employees have alleged that Cr. Melville Lawrence has breached the Behavioural Code of the **Code of Conduct for Council Members** as published by the Minister for the purposes of Section 63(1) of the Local Government Act 1999.
2. I have been asked by the Chairperson of the Governance Advisory Panel to undertake an independent investigation of the complaints in accord with the Complaints Handling Procedure.
3. The Council's Complaints Handling Procedure under the Council Members' Code of Conduct determines the process which has been followed by the CEO and the Chair of the Governance Advisory Panel.
4. The **Code of Conduct** which has been in operation since August 2013 commences by stating that:

This Code of Conduct is to be observed by all Council members. Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

5. The Code of Conduct provides the following overarching **Higher Principles** stated to be:

*Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times. **Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.***

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

6. There is a section of the Code of Conduct entitled **Behavioural Code** which provides:

In line with ‘Part 1—Higher Principles’ of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3—Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.

Council members must:

General behavior

2.1 Show commitment and discharge duties conscientiously.

2.2 Act in a way that generates community trust and confidence in the Council.

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

2.4 Show respect for others if making comments publicly.

2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

Responsibilities as a member of Council

2.6 Comply with all Council policies, codes and resolutions.

2.7 Deal with information received in their capacity as Council members in a responsible manner.

2.8 Endeavour to provide accurate information to the Council and to the public at all times.

Relationship with fellow Council Members

2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.

2.10 Not bully or harass other Council members.

Relationship with Council staff

2.11 Not bully or harass Council staff.

2.12 Direct all requests for information from the Council administration to the Council's Chief Executive Officer or nominated delegate/s.

2.13 Direct all requests for work or actions by Council staff to the Council's Chief Executive Officer or nominated delegate/s.

2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

Requirement to report breach of Part 3

2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)— has occurred, or is currently occurring, must report the breach to the Principal

Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.

2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part.

Complaints

2.17 Any person may make a complaint about a Council member under the Behavioural Code.

2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.

2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.

2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.

2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.

2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigation under Part 3.

2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.

2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

Findings

2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the

Council may, by resolution:

- 2.25.1 Take no action;*
- 2.25.2 Pass a censure motion in respect of the Council member;*
- 2.25.3 Request a public apology, whether written or verbal;*
- 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;*
- 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);*
- 2.25.6 Request the member to repay monies to the Council.*

7. I have detailed the above relevant provisions of the Code of Conduct because of their importance and the necessity to show the Regulated context for the complaints.
8. I have also **highlighted** those provisions of the Code of Conduct which have particular relevance to the complaints.
9. The allegations arise out of an alleged incident at a public CDAP Meeting held at the Council's Mallala Chamber on 2 May 2017.
10. I commenced my investigation on Monday 29 May by meeting and discussing the complaints with the three complainants and also with Cr. Lawrence Melville who was accompanied by Cr. Steve Jones as his "support person" which I accepted.
11. As I said there are three complaints from the three Council employees who were present at the CDAP meeting and the essence of the complaints and their wording is almost identical.
12. At the outset of my investigation a threshold question was raised by Cr. Melville Lawrence as to the veracity of the complaints given their similarity in wording. I have ascertained that on a day following the CDAP meeting, the three employees who were all concerned about the incident, consulted with each other and the Council's Governance Officer about the incident and all agreed that it was appropriate to each lodge a complaint.
13. In the circumstances of this matter I find nothing untoward in the fact that all three employees consulted with each other and also with the Governance Officer before submitting the written complaints. And given the simple nature of the incident

I also find nothing untoward in the similarity in wording in the complaints.

14. An extract from the complaint by Robert Veitch, General Manager, Development and Community, is an appropriate starting point, which states: *The incident occurred during discussions regarding a Trapeze application and possible issues around parking to Dawkins Road. Placement of No Parking signs were brought up by Mr Lawrence. Some discussion amongst the Panel took place and clarified that "There may only need to be No Parking on weekends and this may not be an issue, as staff do not work on weekends." I also made a comment in regards to additional resourcing, if covering weekends may be required in the future. Mr Lawrence responded to this with **"More staff? We're trying to sack staff, not hire more"**. Another Panel Member Mr Jones replied direct to Mr Lawrence, with words to the effect of "I'm glad you said that and not me". The Mr Jones referred to is in fact Cr. Jones.*

15. The complainant Robert Veitch expressed concern that the comment by Cr Melville Lawrence **"More staff? We're trying to sack staff, not hire more"** was audible to all in the room and was in itself not respectful of Council staff and not an appropriate comment from an Elected Member of Council. His concern is that such comment is not good for fostering positive and healthy relationships between staff and Council going forward. As a manager, the complainant is part of a team trying to foster a positive culture and image throughout Council administration and the community and that such a comment negates such endeavours.

16. Complainant Ralph Semrau, Planning Officer, Development and Community, supports the essence of the first complaint, and in particular Ralph Semrau states that he was offended by the comment and also stated about Cr. Lawrence that *"His conduct cannot be good for fostering positive and healthy relationships between staff and Council in going forward. This now makes me think that some Councillors may be secretly discussing how they are going to sack Council staff. I understand management is trying to foster a positive image throughout Council and the community. Comments like this do*

not help anyone.” Ralph Semrau goes on to say in his complaint that “Councillor Mel Lawrence should behave, and especially to staff members who are trying to carry out their work role without being hindered by provocative, vexatious, undermining and ill intended and stupid comments.”

17. Complainant Carol Wildbore, Administrative Support Officer, Development and Community, also supports the essence of the first complaint, and in particular states that *“Council staff have been addressed several times and received correspondence from our CEO about code of conduct and making sure a positive attitude and respect towards fellow staff and Elected Members is portrayed at all times. I believe Cr Mel Lawrence has breached this code of conduct. It has been made quite clear to all staff that negativity and unprofessional conduct will not be tolerated by staff (and rightly so).”* Carol Wildbore also states that *“I am not only concerned by what Cr Lawrence said that night but what else is he saying regarding APC staff? And what other Councillors feel the same way? This behaviour and conduct is not acceptable. It is not good for relationships between staff and Council, it is certainly not good for staff moral.”*
18. Carol Wildbore was also very helpful in putting the incident into the context of the organisation’s desired cultural values which the CEO and management are endeavouring to foster. I have been made privy to the many positive actions of the CEO and management to improve the culture of the organisation and to achieve respect by all for all including Elected Members. The Council has adopted an Administrative Protocol for Internal Procedure to guide all staff and Elected Members which has at its core values reflected in the Principles of the Ministerial Code of Conduct.
19. This incident is seen by the three complainants as being an affront to the core values of the organisation and a breach of the Behavioural Code by Cr. Lawrence.
20. Cr. Lawrence admits the facts about the incident as alleged by the complainants, namely, that he said **“More staff? We’re trying to sack staff, not hire more”** but strongly disagrees with the interpretation given by the three

complainants about those words.

21. Cr. Steve Jones also admits the facts alleged in the complaints including his comment of *"I'm glad you said that and not me"* and he also disagrees with the interpretation given by the three complainants about Cr Lawrence's words.
22. In particular Cr. Lawrence maintains that he was, and is, entitled to make such a comment and he maintains that such a comment is not a breach of the Behavioural Code in any way.
23. In fact Cr. Lawrence stated to me that he often made remarks of the same character, for example, when going into the Council office he has said *"I have come here to sack half of you"* and he remarked to me that *"I say it all the time"*. He also added *"we simply employ staff and do nothing"* meaning, I understand, that Council is unable to undertake works because too many staff are employed and funds are not available for works.
24. I understood from Cr. Lawrence at our meeting that there may be more examples of such endeavor by Cr Lawrence to "make his point" about staffing and other resources which I invited Cr. Lawrence to document for this investigation. Cr Lawrence has declined the opportunity.
25. Cr. Steve Jones also maintains that Cr. Lawrence was and is entitled to make such a comment and he maintains that such a comment is not a breach of the Behavioural Code in any way.
26. Cr Jones also supports the contention that Council employs too many staff, advising me that his platform for election to Council was *"staff rationalisation"* for similar reasons as given by Cr. Lawrence.
27. I referred the above material to Cr. Lawrence in a draft report to enable him to comment upon the accuracy or otherwise – from his perspective – of the material in the draft report and to provide me with whatever other material he believes is relevant to this investigation by way of his response.
28. I invited Cr. Lawrence – with whatever assistance he required from Cr Jones as his "support person" – to advise me more fully and in writing about his response to the allegations of breach of the Behavioural Code.
29. On 5 June Cr. Lawrence responded by email stating that ***"I am not changing my story it is as it is"*** and I have taken that response as Cr Lawrence accepting what I have

documented above. I have also provided Cr. Lawrence with a copy of my proposed conclusions (and findings) set out in the next paragraph and I have offered Cr. Lawrence the opportunity to respond to or to comment upon the then such tentative conclusions (and findings) but he has failed to do so within the time frame offered to him.

30. Accordingly, I now conclude my investigation by finalising my Report with the following conclusions (and findings):
- (a) I find that the essence of the complaints, namely that Cr. Lawrence said ***“More staff? We’re trying to sack staff, not hire more”*** is an accurate allegation and a valid complaint.
 - (b) I find that such a statement is primarily a breach of clause 2.4 of the Code of Conduct because it is clearly disrespectful of staff, notwithstanding the personal views and stated public positioning by Cr. Lawrence and others who may hold such views about staffing numbers at the Council.
 - (c) I also find that such a statement is a breach of clause 2.11 of the Code of Conduct because it is clearly an endeavour to “bully or harass staff” consistent with other behaviours and conduct admitted by Cr. Lawrence.
 - (d) I also find that the statement and related behaviour at the CDAP meeting is also likely a breach of clause 2.6 of the Code of Conduct but the fundamental breaches of clauses 2.4 and 2.11 are the fundamental breaches.
 - (e) I conclude that the appropriate outcome for such findings about such a statement and behavior is for the Council to request Cr. Lawrence to provide a written public apology (as approved by Council) to all staff of the Council.

Ted Byrt.
6 June 2017.