



KANGAROO ISLAND COUNCIL

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Ref. No: L2011/
Cross Ref No: L2011/
File No.: 9.4.16
Initials: JB

5 March 2012

Cr Rosalie Chirgwin
PO Box 55
KINGSCOTE SA 5223

Dear Rosalie

I have received the final reports from the LGA Governance Panel in relation to the two Code of Conduct complaints.

I enclose these two reports and seek your advice if you wish to make a submission to Council as per 4.7 of the Code of Conduct procedures:

- 4.7 Before the Council meeting, a copy of the final report will be provided to the Member who is the subject of the complaint. Notwithstanding his/her prescribed interest in the matter, the Member will be provided with an opportunity to make submissions to the Council (either verbally or orally) in relation to it. The Council will have regard to the Member's submissions (if any) in finalising the complaint.

These reports will be presented to Council at the 14 March 2012 meeting, where there will be an opportunity for you to make a verbal submission to Council prior to any decision, or if you prefer, a written submission can be forwarded to me prior to the meeting, for distribution to the Elected Members.

I would appreciate your advice on your wish to provide a submission prior the 14 March 2012 Council meeting.

Yours sincerely

Jayne Bates
Mayor

Enc.

LOCAL GOVERNMENT GOVERNANCE PANEL

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Our Reference: 78977 FS:MS:JK (73411)

28 February 2012

Mayor Jayne Bates
Kangaroo Island Council
PO Box 121
KINGSCOTE SA 5223

Dear Mayor Bates

Confidential Report on the investigation of a Code of Conduct Complaint

73411 – John Fernandez –v- Councillor Rosalie Chirgwin

"Without Prejudice - this report is for the use of Local Government Governance Panel, the Kangaroo Island Council and its legal advisers only"

We write to report on the investigation undertaken into a complaint involving an alleged breach of the Kangaroo Island Code of Conduct for Elected Members 2011 (the "complaint") following the referral of this matter to the Local Government Governance Panel (the "Panel").

The Complaint

The complaint referred to the Panel is that brought by John Fernandez (the "complainant") against Councillor Chirgwin (the "respondent") as outlined in the referral letter dated 7 October 2011.

In the letter of complaint Mr Fernandez wrote that Councillor Chirgwin had "indicated" that "favoured contractors" were given work by the Council. He considered her saying this to be "an attack on (his) professional integrity". He requested a written apology and a retraction of her remarks "in front of full Council".

The Investigation

The Chairperson of the Local Government Governance Panel undertook a preliminary assessment of the information supplied in relation to the alleged breach of Council Code of Conduct for Elected Members and determined that the complaint fell within the remit of the Panel.

On the basis of that preliminary assessment the Chairperson appointed Panel Member Ms Fiona Stevens to undertake the investigation of the alleged breach.

Ms Stevens traveled to Kangaroo Island on 29 November and conducted individual interviews with Mayor Bates, CEO Andrew Boardman and the complainant in order to determine the facts of the matters relevant to this complaint.

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The respondent, Cr Chirgwin, was first advised of this investigation in an email dated 3 November 2011. In that email she was asked when it would be convenient to meet. She did not respond to that email. She was also asked for her co-operation in a letter and then a phone call from the Mayor. When she was notified that the investigator was to travel to the Island on 29 November she asked to have the investigation delayed and so further delaying the investigation had its own consequences with respect to a timely response to this matter. It was reasonable to assume that there might not ever be a convenient time for Councillor Chirgwin given that she made no effort to make other arrangements. Councillor Chirgwin was offered times when she could be interviewed but she notified the investigator that she was not available for the times allocated.

Background/Context

The Complaint #73411 was forwarded to the Panel on 7 October 2011. The complaint itself was written on 22 September 2011. The complaint referred to a Council meeting held on 21 September 2011 at Penneshaw. At that meeting Councillor Chirgwin spoke regarding the way in which quotes were obtained for work done on the Kingscote Pavilion Floor and the American River Footpath and used the term "favoured" contractors. This is in conflict with the procedures used by the Council to avoid any chance of contractors gaining work from the Council for any other reason than that they are efficient and give best value for money.

The meeting was in Penneshaw as part of the Council's commitment to having meetings out of Kingscote as part of their yearly routine. When they are in a location such as Penneshaw those persons local to the area are able to attend the meeting thus bringing the Council closer to all its stakeholders. As part of the setting up for the meeting Mr Fernandez had arranged to put up displays of projects relevant to the local area. He also met with some of the local ratepayers to discuss projects relevant to them. Some of these people then stayed for the meeting. As a consequence of this Councillor Chirgwin's comments were heard directly by many of the people with whom Mr Fernandez works. He was also present.

The complaint was received by the CEO on 22 September 2011. He advised the Mayor who attempted to resolve the matter informally. She wrote to Councillor Chirgwin on 28 September 2011 and then on 1 October 2011 when she noted that she had not received a response. Councillor Chirgwin responded on 3 October indicating that the Mayor needed to determine that the words had been uttered, that they were directed "accusatorily and specifically" at Mr Fernandez and "construct a case making a query over the exercising of Council Policy a councillor offence". Council then met and determined that the complaint was a Code of Conduct matter and referred it to the Local Government Governance Panel.

The CEO advised in correspondence dated 04 October 2011 that the sections of the Code of Conduct relevant to this matter are:

1. Statement of the general duties of Council Members

1.4 not make improper use of his/her position as Member of Council

2.1 A Member of Council must act in a fair, honest and proper manner according to law. In particular members will:

2.1.2 use reasonable, just and non-discriminatory behaviour in all aspects when carrying out their role

2.1.4 behave in a way that maintains and enhances the image of Council and does not reflect adversely on the Council

2.2 A Council Member must act with reasonable care and be diligent in the performance of his or her duties and responsibilities. In particular Members will:

2.2.1 appropriately and properly use information and balance the interest of the community against the rights of the individual

- 2.2.3 *ensure appropriate behaviour at meetings*
- 2.4 *Council Members and Employees will seek to achieve a team approach in an environment of mutual respect, trust and acceptance of their different roles in achieving Council's objective. In particular Members will:*
 - 2.4.2 *conduct relationships with courtesy and expertise*
 - 2.4.4 *acknowledge professional opinion and expertise and their role to Council with independent, impartial advice should be respected*
 - 2.4.6 *prevent the misuse of their position to influence employees to gain an advantage for themselves or others, or to cause detriment to Council*

The investigator, Ms Fiona Stevens, was asked to address the complaint.

The Panel investigator travelled to Kangaroo Island on 29 November and met with the Mayor, the CEO and the complainant.

The CEO outlined the current practices regarding procurement and noted that there were checks and balances written into Council policy regarding the way tenders are assessed and then work paid for by Council he had previously been the Manager of Asset Services and had no reason to question the procedures or how they have been implemented by his staff. He also noted that he had attempted to address the issue of Councillor Chirgwin's language directly whilst the meeting was progressing.

The complainant, Mr Fernandez, spoke of his experiences of that meeting. He said he had found the Councillor's words "are we using a system of favoured contractors" to be "offensive". He said he would have welcomed any enquiries Councillor Chirgwin might have had and would have done all he could to explain the procedures and policies used by Council. Instead he felt his integrity had been questioned. He was also affected by the way the matter was reported in The Islander on 29 September 2011.

Ms Stevens was not able to interview Councillor Chirgwin as she had elected not to make herself available on the day Ms Stevens was at Kangaroo Island. Ms Stevens also notes Councillor Chirgwin has not signed the Code of Conduct.

In January 2012 the Chair of the Local Governance Panel, Ms Marjorie Schulze, sent a Draft Copy of this report to Councillor Chirgwin for her response to the findings of the first part of the Investigation. This was done in the spirit of natural justice. Councillor Chirgwin responded:

"Dear Ms Stevens,

As an act of courtesy I write to you with regards to the complaint against my person by Mr Fernandez.

1. The Investigator has taken evidence from the Mayor, (who has admitted a perception of bias against Cr Chirgwin), the CEO and the complainant, and states that they are in agreement that Cr Chirgwin said, "Are we using a system of favoured contractors?" That being the case, what is the crime? After all, "favoured" and "preferred" are synonymous in English.

*2. The investigation failed to reveal that the CEO did not advise Mr Fernandez to sleep over his annoyance before hastily submitting a complaint, but instructed him **not** to speak to Cr Chirgwin, who was at that time trying to contact him. Had Cr Chirgwin been allowed to speak with Mr Fernandez the issue could well have resolved simply and naturally without it developing into an out-of-proportion case.*

3. Ms Stevens has misrepresented Cr Chirgwin by inferring that she wanted to apologise to Mr Fernandez by phone.

4. Ms Stevens has stated that Council met and determined that the complaint was a Code of Conduct matter and referred it to the Local Government Governance Panel. Contrary to what has been stated Council did not determine any such thing, but was told that it would occur.

5. Although Ms Stevens has not consulted with other witnesses, nor produced supporting evidence she has concluded that "The investigation found that there was evidence of breaches in the Code of Conduct 1.4, 2.1.2, 2.1.4, 2.2.1, 2.2.3, 2.4.2, 2.4.4 and 2.4.6 "

It is foundational to procedural fairness and natural justice that decisions must be based on evidence and that thorough enquiry must be made into matters of dispute.

In creating a report without proper investigation Ms Stevens has failed to honour the principles of natural justice, and demonstrated a sloppy and prejudiced attitude towards Cr Chirgwin. Accordingly she has broken the Bias rule and other rules, thus disqualifying herself from dealing objectively with this matter.

Considering her unprofessional approach I will advise Council not to honour any account rendered.

*Yours faithfully,
Cr Rosalie Chirgwin,
Elected Member, Kangaroo Island Council."*

With respect to point 1, Councillor Chirgwin refers to the work "favoured" as a synonym to "preferred" which it is but the two words are not defined in the same way. The context of the use of the word "favoured" was what Mr Fernandez found distressing in that the context was about inappropriate use of Council funding.

With respect to point 2, the assumption Councillor Chirgwin makes is that the CEO was not acting in what he saw as the best interest of Mr Fernandez who he saw as significantly effected by these events. It is possible that Mr Fernandez was not capable of speaking to Councillor Chirgwin given the distress he was experiencing.

With respect to point 3, Councillor Chirgwin is correct, she did not offer to apologise to Mr Fernandez, rather she wrote

"The issue between Mr Fernandez and myself could be dealt with on another occasion if my friend, Mr Fernandez, so desires. This could well be done by phone".

The Investigator falsely assumed this was to resolve the matters between them but, of course, it could equally mean she was wanting to deny any intent to distress him and so the matter between them may not have been resolved at all.

With respect to point 4, this is a matter for the Council not this investigation.

With respect to point 5, the evidence was compelling that the breaches of the Code of Conduct had occurred. What was missing was evidence that there was an alternate explanation of how these matters transpired. The email from Councillor Chirgwin has not enabled an alternate view of these matters.

Findings

The investigator met with the Mayor, the CEO and the complainant and found that their recollections of the meeting of 21 September 2011 were consistent. Councillor Chirgwin has responded to these allegations in her email dated 3 October 2011. The investigator accepts that Councillor Chirgwin does not accept the Code of Conduct and so was arguing in that email for a more legal means of investigating and determining an outcome for this complaint.

She has not made herself available for any interviews regarding these matters. She was asked to respond to a Draft Copy of this report and has availed of that opportunity in an email dated 3 February 2012.

The investigation found evidence that the words as reported by the complainant were spoken in the meeting of 21 September 2011.

The investigation found that there was evidence of breaches of the Code of Conduct 1.4, 2.1.2, 2.1.4, 2.2.1, 2.2.3, 2.4.2 and 2.4.4 and 2.4.6.

General Observations

The investigator found Mr Fernandez to be a man who wanted to do his work for the Council in as expert a way possible. He has been actively involved with the governance principles adopted by Council and was prepared to share this information in interview.

His decision to make this complaint was not easy for him. He is proud of his work and does not want to generate difficulties in his workplace. It was the nature of the remarks and the fact that he had not been given any opportunity to discuss the concerns Councillor Chirgwin has had before she made the remarks she did in that meeting. He has been able to do this with other Councillors and sees this as part of his job. He does not see being publicly accused of being corrupt as part of his job.

Councillor Chirgwin has made an offer to talk to Mr Fernandez. She offered to speak to him in her email to the investigator dated 28 November 2011 when she wrote:

"The issue between Mr Fernandez and myself could be dealt with on another occasion if my friend, Mr Fernandez, so desires. This could well be done by phone".

She has not outlined what she would discuss with him and so this phone call has not occurred. He has said he was prepared to outline the procedures used by Council.

In the time after the complaint Mayor Bates asked Councillor Chirgwin to mediate this complaint, which could have then led to an informal resolution on the matter. Councillor Chirgwin was not prepared to make herself available for that process. In the interview conducted with Mr Fernandez on 29 November 2011 he was asked to comment on an option such as an apology by phone. He made it clear that he would not accept an apology in that way given the time that had been taken to get it to a formal investigation.

The investigator determined that the request by Councillor Chirgwin to resolve this matter by a phone call reflected her lack of understanding of the hurt Mr Fernandez had experienced and even a lack of attention to the complaint itself.

Recommendations

The complainant originally asked for a written apology and then a retraction of Cr Chirgwin's description "favoured contractors" in front of the Council.

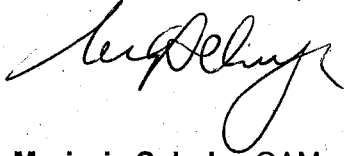
He is now keen to finalise this matter in as expeditious way as possible and so asked that Councillor Chirgwin meet him with the CEO to formally retract her remarks in that forum.

The finding of this investigation is that Councillor Chirgwin has breached the Code of Conduct and so warrants a Censure as per page 4 of 5 of the KI Council Code of Conduct June 2011-June 2012.

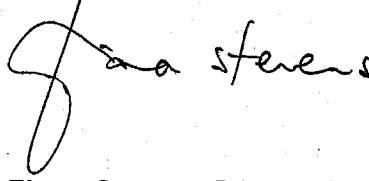
It is also recommended that Cr Chirgwin be asked to apologise to Mr Fernandez according to his revised request and that this be done in a formal way with the Mayor or the CEO of Council present.

This report concludes the investigation of the complaint by the Local Government Governance Panel. If you require further clarification in relation to this matter please contact Chris Umapathysivam, Director - Excellence & Reform on 8224 2033, email chris.u@lga.sa.gov.au.

Yours sincerely



**Marjorie Schulze OAM
Chairperson**



**Fiona Stevens BA, Dip App Psych M Psych
Investigating Panel Member**

LOCAL GOVERNMENT GOVERNANCE PANEL

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Our Reference: 79002 FS:MS:JK (73835)

28 February 2012

Mayor Jayne Bates
Kangaroo Island Council
PO Box 121
KINGSCOTE SA 5223

Dear Mayor Bates

Confidential Report on the investigation of a Code of Conduct Complaint

73835 –Councillor Bec Davis vs Councillor Rosalie Chirgwin

"Without Prejudice - this report is for the use of Local Government Governance Panel, the Kangaroo Island Council and its legal advisers only"

We write to report on the investigation undertaken into a complaint involving an alleged breach of the Kangaroo Island Code of Conduct for Elected Members 2010 (the "complaint") following the referral of this matter to the Local Government Governance Panel (the "Panel").

The Complaint

The complaint referred to the Local Government Governance Panel is that brought by Councillor Bec Davis (the "complainant") against Councillor Rosalie Chirgwin (the "respondent") as outlined in the referral letter dated 12 October 2011.

In the letter of complaint Councillor Davis wrote that Councillor Chirgwin was "continuously breaching multiple principles of the Code of Conduct for Elected Members (Code of Conduct). Councillor Davis wrote further that she was concerned that Councillor Chirgwin's "behaviour is bringing the Kangaroo Island Council into disrepute and is demoralizing for both Elected Members and Council Staff". She requested that Council "address these issues as soon as possible".

The Investigation

The Chairperson of the Local Government Governance Panel undertook a preliminary assessment of the information supplied in relation to the alleged breach of Council Code of Conduct for Elected Members and determined that the complaint fell within the remit of the Panel.

On the basis of that preliminary assessment the Chairperson appointed Panel Member Ms Fiona Stevens to undertake the investigation of the alleged breach.

Ms Stevens traveled to Kangaroo Island on 29 November and conducted individual interviews with Mayor Bates, CEO Andrew Boardman and the complainant in order to determine the facts of the matters relevant to this complaint.

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The respondent, Councillor Chirgwin was first advised of this investigation in an email dated 3 November 2011. In that email she was asked when it would be convenient to meet with Ms Stevens. She did not respond to that email. She was also asked for her co-operation in a letter and then a phone call from the Mayor. When she was notified that the investigator was to travel to the Island on the 29 November she asked to have the investigation delayed. It should be noted that Councillor Davis first put in her Code of Conduct complaint on 24 March 2011 and so further delaying the investigation had its own consequences with respect to a timely response to this matter. It was reasonable to assume that there might not ever be a convenient time for Councillor Chirgwin given that she made no effort to make other arrangements. She was offered times when she could be interviewed but she notified the investigator that she was not available for the times allocated.

Background/Context

The Complaint #73835 was forwarded to the Panel on 12 October 2011. The complaint itself was written on 24 March 2011. The complaint referred to a number of issues of concern to Councillor Davis. In the time following the complaint a Panel was convened under the Code of Conduct as it was written at that time.

This Panel consisted of Mayor Bates, Deputy Mayor Clements and Councillor Denholm. Councillor Chirgwin claimed there was bias and so a second Panel was convened. This Panel reported to the Council on 12 October 2011. A decision was then made to refer to the Local Government Governance Panel.

In her email regarding the complaint and this process, Councillor Chirgwin wrote in an email dated 3 February 2012 that the complaint was dealt with by the second panel convened to hear this matter and so writes that "it remains unclear to me why the LGA panel is now dealing with this matter as there was no provision in the relevant Code of Conduct to do so once the council had decided to effect the investigation with its own panel".

Councillor Chirgwin also questions the decision of the Investigator to meet with the Mayor and in her words to "apparently (take) unqualified input into both complaints by the Mayor". Any investigator would be hard put to find only unbiased witnesses, it is their job to evaluate what is said in light of all the evidence available to them.

The Code of Conduct complaints were

2.1 *A Member of Council must act in a fair, honest and proper manner according to the law.*

In particular a Member will:

2.1.1 *understand and give proper consideration to legal requirements*

2.2.6. *respect the decisions of Council*

2.3 *Council Members must be fair and honest in their dealings with individuals and organisations and behave in a manner which facilitates constructive communication with all members of the community.*

When representing the Council in the Community Members will:

2.3.8 *provide an accurate and fair representation of Council decisions*

2.3.9 *recognise that Council Members have a duty to respect Council decisions and policy directions*

2.3.10 *conduct themselves in a manner which will not reflect unfavourably on the Council*

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- 2.4 Council Members and Employees will seek to achieve a team approach in an environment of mutual trust and acceptance of their different roles in achieving Council's objectives.

In particular Members will:

- 2.4.1 promote and develop mature and constructive working relationships based on mutual trust and respect
- 2.4.2 conduct the relationship with respect
- 2.4.3 accept and respect their different but complimentary roles in achieving the Council's objectives
- 2.4.4 acknowledge that employees' professional opinion and expertise, and their role to provide Council with independent, impartial advice should be respected

- 2.5 Members will establish a working relationship with fellow Members that recognizes and respects the diversity of opinion and achieves the best possible outcomes for the community.

In particular Members will:

- 2.5.1 conduct relationships with courtesy, respect and mutual trust
- 2.5.2 seek to establish mature and constructive working relationships

- 2.6 Information obtained by a Member in the course of his or her duties is respected and used in a careful and prudent manner.

In particular Members will:

- 2.6.3 recognise that in their relationships with the media, unless otherwise empowered by Council, the Member is putting forward personal views and not those of Council
- 2.6.4 ensure that personal comments are clearly identified
- 2.6.6 respect and maintain confidentiality

In an email dated 24 March 2011, Councillor Davis provided examples of how she determined that Councillor Chirgwin had breached the Code of Conduct. Her examples were:

- 2.1 A Member of Council must act in a fair, honest and proper manner according to the law.
In particular a Member will:
- 2.1.1 understand and give proper consideration to legal requirements

"Councillor Chirgwin has failed to understand the legal requirements of her role as an Elected Member".

The Local Government Act (1999) requires councillors to observe the Code of Conduct (Section 63(1)). This is a legal requirement that Councillor Chirgwin has failed to meet as detailed on the following pages.

Councillor Chirgwin has been notably absent from several training sessions, which have largely been held to inform newly elected members of the legal requirements and responsibilities of the role.

When present, Councillor Chirgwin has continually questioned the validity of information given to her and consequently failed to give proper consideration to legal requirements.

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2.2.6. *respect the decisions of Council*

"As an elected member, Cr Chirgwin is required to respect the decisions of Council, whether or not she agrees with them personally. Councillor Chirgwin has failed to comply with this principle and has been very public in her criticism of Council decisions. For example in the letter to the Editor of the Islander on 17 March 2011 (Councillors 'thwarted' p8), Councillor Chirgwin claims, "during the March meeting, another \$11,000.00 survey was authorized, so in the hands of clever spin doctors we should soon be hearing glowing reports about ratepayer satisfaction (which) should help alleviate any misgivings about rate rises and road conditions". This shows a clear lack of respect for decisions of the Council".

2.3 *Council Members must be fair and honest in their dealings with individuals and organisations and behave in a manner which facilitates constructive communication with all members of the community.*

When representing the Council in the Community Members will:

2.3.8 *provide an accurate and fair representation of Council decisions*

"As a representative of Council in the community, Councillor Chirgwin has provided misleading and inaccurate representations of Council decisions. For example, the comments made by Councillor Chirgwin in her letter to the Editor of the Islander on 17 March 2011 as quoted under 2.2.6 do not provide a fair and accurate representation of the Council decision to participate in the Local Government Comparative Performance Measurement Survey".

2.3.9 *recognise that Council Members have a duty to respect Council decisions and policy directions*

"Councillor Chirgwin clearly does not recognize that as a Council Member, she has a duty to respect Council decisions and policy directions or she would not write letters to the paper misrepresenting Council decisions as outlined above in 2.6.6 and 2.3.8".

2.3.10 *conduct themselves in a manner which will not reflect unfavourably on the Council*

"In her letter to the Editor of the Islander on 17 March 2011, Councillor Chirgwin has also breached principle 2.3.10 of the Code of Conduct. In the letter, Councillor Chirgwin alleges that Councillors have 'been thwarted, threatened and silenced under confidentiality provisions'. Councillor Chirgwin then claims, 'during the March meeting, another \$11,000 survey was authorized, so in the hands of clever spin doctors we should be hearing glowing reports about ratepayer satisfaction (which) should help alleviate any misgivings about rate rises and road conditions'. These comments are inaccurate and misleading and reflect unfavourably on the Council".

2.4 *Council Members and Employees will seek to achieve a team approach in an environment of mutual trust and acceptance of their different roles in achieving Council's objectives.*
In particular Members will:

2.4.1 *promote and develop mature and constructive working relationships based on mutual trust and respect*

2.4.2 *conduct the relationship with respect*

"Councillor Chirgwin has repeatedly breached principles 2.4.1 and 2.4.2 of the Code of Conduct. I believe that the lack of courtesy and respect that Councillor Chirgwin shows to staff has contributed to a breakdown in trust between Elected Members and Council staff and is not conducive to the promotion and development of constructive working relationships. The disrespectful attitude that Councillor Chirgwin has towards staff is summed up in her sarcastic comment to elected members in her email of Friday 11 February: 'Of course staff are permitted in Confidential meetings because we trust them'."

2.4.3 *accept and respect their different but complimentary roles in achieving the Council's objectives*

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- 2.4.4 *acknowledge that employees' professional opinion and expertise, and their role to provide Council with independent, impartial advice should be respected*
Furthermore, Councillor Chirgwin has failed repeatedly to comply with principles 2.4.3 and 2.4.4 of the Code of Conduct. Councillor Chirgwin has failed to respect that an important role of Council staff is to provide Elected Members with independent, impartial advice and recommendations on matters for decision. For example, at the 16 March 2011 Strategic Planning workshop, Councillor Chirgwin questioned the right of staff to have input into the Strategic Plan.
- 2.5 *Members will establish a working relationship with fellow Members that recognizes and respects the diversity of opinion and achieves the best possible outcomes for the community. In particular Members will:*
- 2.5.1 *conduct relationships with courtesy, respect and mutual trust*
- 2.5.2 *seek to establish mature and constructive working relationships*
"Councillor Chirgwin has failed to establish a working relationship with fellow Members that recognizes and respects the diversity of opinion and achieves the best possible outcomes for the community. For example, in an email to the Mayor on Saturday 12 February 2011, Councillor Chirgwin stated that the 'more this sorry affair unravels I am thinking that there are persons among us who would be well fitted as operators in Hitler's Gestapo or Stalin's KGB. It is disappointing that such a person as yourself who has the confidence of Islanders, and bears the worthy name of my pioneering forebears should have become institutionalized into carrying out this shameful witchhunt'. Furthermore, at the informal gathering to discuss the By-Laws on Wednesday 16 March, Councillor Chirgwin accused some councillors of being too scared to say what they really thought, when they clearly did not share her view of the By Laws". In making such comments, Councillor Chirgwin shows a clear lack of courtesy and respect to her fellow Elected Members, which does not promote mutual trust nor encourage mature and constructive working relationships".
- 2.6 *Information obtained by a Member in the course of his or her duties is respected and used in a careful and prudent manner. In particular Members will:*
- 2.6.3 *recognise that in their relationships with the media, unless otherwise empowered by Council, the Member is putting forward personal views and not those of Council*
- 2.6.4 *ensure that personal comments are clearly identified*
"Councillor Chirgwin has written several letters to the Editor of the Islander since commencing her role as Elected Member, (see 2.2.6). In doing so, Councillor Chirgwin has breached principles 2.6.3 and 2.6.4 of the Code of Conduct, as she has not recognized that in her relationship with the media she is putting forward personal views and not those of the Council, neither has she ensured that personal comments are clearly identified as such".
- 2.6.6 *respect and maintain confidentiality*
"Councillor Chirgwin has clearly breached 2.6.6 of the Code of Conduct. At the Ordinary meeting of Council in January 2011, Councillor Chirgwin admitted to talking to Mr James Wandel about his illegal dam development, although this was clearly listed in the agenda as an item that was discussed in confidence. Furthermore in emails to the Mayor and Elected Members on Friday 11 February and Saturday 12 February, Councillor Chirgwin indicated that she had been discussing a confidential Council investigation with members of the public. On Friday 11 February, Councillor Chirgwin wrote that 'Someone at the very well attended clearing sale today told me that within one hour of the original meeting to engage Mr Warner all the staff knew about it'. On Saturday 12 February, Councillor Chirgwin wrote that 'This is according to information from a member of the public'. She goes on to say 'our ratepayers, who must bear the cost of this investigation, have a right to know their representatives were coerced into making an unformed decision to give unlimited access of their chequebooks'. Even if a member of the public raised the matter with Councillor Chirgwin initially, this does not justify further discussion by Councillor Chirgwin of a confidential matter of Council.



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In summary, I believe that Council needs to address these issues as soon as possible before Councillor Chirgwin further undermines the Kangaroo Island Council to the detriment of Elected Members, Council staff and the community. As outlined in the Code of Conduct, I request that Council establish a committee as soon as possible to investigate the alleged breaches of the Code of Conduct by Councillor Rosalie Chirgwin".

Councillor Chirgwin responded to these allegations in writing in an email dated 9 September 2011. In this report her responses to the complaint will be identified according to the item within the Code of Conduct.

Councillor Chirgwin wrote with respect to the statements made by Councillor Davis this way:

2.1.1 "How does Cr Davis know what Cr Chirgwin understands?"

With regard to the number of regarding the number of training sessions she had or had not attended she wrote: "Which ones"

2.3.8 "This is a serious allegation as here Cr Chirgwin is being accused of bearing false witness. The media commonly refer to such surveys as spin, and spin doctors produce glowing reports-sometimes on sinking ships"

2.3.10 "Cr Chirgwin is aware that ratepayers like to know what their representatives are doing and was merely doing what she had been elected to do"

2.4.2 "Cr Chirgwin is sorry that Cr Davis feels that way, her appraisal may indicate Cr Davis's knack of trust and respect towards Cr Chirgwin"

and with respect to the email date 11 February

"Once again we are forced with an out of context statement, Cr Chirgwin has been accused of breaking confidence by the Mayor and some councillors, and defending her reputation with the observation that the leak seemed to have had a staff origin"

2.4.4 "It could be argued that staff do have a conflict of interest. Certainly they are not elected members and therefore not ratepayer representatives. These considerations aside Cr Davis's assessment of Cr Chirgwin seems very judgemental here".

2.5.2 "Perhaps Cr Chirgwin may have been wrong in her assessment of some of the councillors with relation to the by-laws although some, including Cr Davis, had privately expressed concerns over some to Cr Chirgwin".

"The exchange between Cr Chirgwin and the Mayor needs to be taken into context as mentioned in 2.1.1. Cr Chirgwin had suffered considerable hostility from the Mayor and some councillors including Crs Davis, Willson, Connell and Clements".

2.6.4 "Quite the reverse! Cr Chirgwin was simply continuing with an established practice. It is notable that she did not sign her letters "Cr Chirgwin", but merely as Rosalie Chirgwin, it would be obvious to the reader that she was not speaking on behalf of KT Council but expressing her own opinions".

2.6.6 "Cr Chirgwin takes seriously her clear responsibility to be adequately informed to make responsible decisions. She is also aware that as an elected representative she has a duty to act as an advocate for her electors".

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"Precisely what did Cr Chirgwin reveal to the member of the public? The background context of Cr Davis's allegation is very relevant here as Cr Chirgwin was defending herself against the accusations of some councillors that she was responsible for information about the Warner investigation being leaked to the public. The reality is that some staff knew about the impending investigation before Cr Chirgwin had even been elected".

"SUMMARY: Cr Chirgwin has been accused of undermining the Kangaroo Island Council and bringing it into disrepute in this document where Cr Davis, supported by the Mayor, has made numerous provocative allegations against her.

While Cr Chirgwin has been a 'vocal local' according to her election promise, and has at times been reactive in speech, she has been the victim of multiple breaches of the Code of Conduct by the very people who signed it.

Cr Chirgwin has suffered numerous threats and has been demoralized by the vindictive behaviour of the Mayor and some councillors.

In order to promote a mature harmonious working relationship in Council it might be very constructive to treat Cr Chirgwin with trust and respect".

I interviewed Councillor Davis on 29 November 2011 and she added these remarks to her original complaints.

With respect to

- 2.1.1 Her added example was the way she said Councillor Chirgwin had questioned the validity of experts who had come to talk to Council. She had also questioned their credentials to speak with respect to ratepayers as well as the procedures relevant to the Council and how it operates.
- 2.3.8 Her concern with this complaint was to highlight how Councillors are required to balance their representation of the ratepayers with an understanding and support for Council itself.
- 2.3.10 Her concern was that she did not see that Councillor Chirgwin understood that ratepayers expect elected members to not only represent their specific issues but also actively assist in the running of the Council and to do that she needed to understand the relevant processes.
- 2.4.4 Her concern was that Councillor Chirgwin did not seem to appreciate that Council is also a Board where their role is to run Council and so part of this was to elicit opinions from staff in the process of developing a Strategic Plan.
- 2.5.2 Councillor Davis had seen herself and other elected members as trying to develop a respectful relationship which included consideration of Councillor Chirgwin's opinions but that she sees Councillor Chirgwin as not trusting anyone.
- 2.6.6 Councillor Davis is asking Councillor Chirgwin to accept decisions which are made in Council not "bagging" them, this is the issue of concern to her, not the differences of opinion within Council.

SUMMARY Overall she wants it to be a "two way street" and to this end has been making a greater effort herself to be more formal and polite in Council meetings to try to develop better communication with Council.

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The investigator met with the complainant and found that there were many allegations which required responses from Councillor Chirgwin. She responded to these allegations in an email dated 09 September 2011 but has yet to respond to the evidence given by Councillor Davis in the interview conducted on 29 November 2011. The investigator is aware that Councillor Chirgwin has not signed the current Code of Conduct and so may not accept its value in determining the way a Councillor behaves in their role as an elected member of the community.

In January 2012 The Chair of the Local Governance Panel sent a Draft Copy of this report to Councillor Chirgwin as part of the Natural Justice process. She was asked to respond to the findings outlined and sent this email in response to that request:

Dear Ms Fiona Stevens

As an act of courtesy I write to you with regards to the complaint against my person by Cr Bec Davis.

1. When Council delegated a Section 41 Committee to investigate the alleged breaches of the Code of Conduct by Cr Chirgwin they restructured the original Panel to eliminate a possible bias of the Mayor and dealt with this complaint without her.

Despite this acknowledged bias the investigator, Ms Stevens, apparently took unqualified input into both complaints by the Mayor.

2. At no point in the investigator's report is it acknowledged that the officially appointed panel of councillors followed due process, made findings and subsequently advised both Cr Chirgwin and council of those findings along with the evidence that supported them.

3. Ms Stevens accuses Cr Chirgwin of lack of co-operation, and ignores the fact that Cr Chirgwin co-operated fully with the original panel and spent a significant amount of time and effort in responding to the allegations against her.

4. It remains unclear to me why the LGA panel is now dealing with this matter as there was no provision in the relevant Code of Conduct to do so once the council had decided to effect the investigation with its own panel.

4. Although Ms Stevens has not consulted with the former panel, with other witnesses, nor with me she has seen fit to conclude that "The investigation found that there was evidence of breaches in the Code of Conduct 2.1.1, 2.2.6, 2.3.8, 2.3.9, 2.3.10, 2.4.2, 2.5.2 and 2.6.6"

In creating a report without proper investigation Ms Stevens has failed to honour the principles of natural justice, and demonstrated a sloppy and prejudiced attitude towards Cr Chirgwin. Accordingly she has disqualified herself from dealing objectively with this matter.

Considering her unprofessional approach I will advise Council not to honour any account rendered.

*Yours faithfully,
Cr Rosalie Chirgwin,
Elected Member, Kangaroo Island Council.*

With respect to point 1, this is not relevant to this investigation as the findings were not based on what the Mayor contributed to the process.

With respect to point 2, this investigation was a consequence of a Council decision and was intended to be independent of the previous panel's findings. The investigator did not have access to the previous investigation.

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With respect to point 3, once again this was a new investigation.

With respect to point 4, there was evidence does not mean that there was not a need to gain Councillor Chirgwin's input. This was difficult to arrange and needed to include information relevant to the investigation itself.

Findings

In the light of no further evidence from Councillor Chirgwin the findings remain, that is that this investigation found that there was evidence of breaches of the Code of Conduct 2.1.1, 2.2.6, 2.3.8; 2.3.9, 2.3.10, 2.4.2, 2.5.2 and 2.6.6.

General Observations

The investigation was limited by Councillor Chirgwin's reluctance to provide relevant information and advice. The findings must be viewed as reflecting Councillor Chirgwin's lack of co-operation with the Code of Conduct itself.

All Codes of Conduct have many prescriptions that require interpretation by all the stakeholders. Unlike the Law where ideas are tested in court and a body of "common law" is established, the nature of Codes of Conduct are that they change with each cycle of Council life and so there are no guidelines of previous interpretation to guide elected members as to what is required.

Recommendations

The complainant originally asked for an investigation to be conducted regarding her complaints. This requires an equal commitment to the process from Councillor Chirgwin which has not been evident at this time.

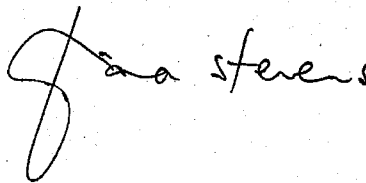
I would recommend that Councillor Chirgwin be advised of the findings of this report and that she be offered further training as to the purpose of the Kangaroo Island Code of Conduct for Elected Members. I note in this respect the value of the findings made by the State Administrative Tribunal of Western Australia Treby and Local Government Standards Panel 11 June 2010 in which the issue is of inappropriate behaviours for members within the Local Government sector.

This report concludes the investigation of the complaint by the Local Government Governance Panel. If you require further clarification in relation to this matter please contact Chris Umaphysivam, Director - Excellence & Reform on 8224 2033, email chris.u@lga.sa.gov.au.

Yours sincerely



Marjorie Schulze OAM
Chairperson



Fiona Stevens BA, Dip App Psych M Psych
Investigating Panel Member



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