



Report

Full investigation - *Ombudsman Act 1972*

Council member	Kevin Knight
Council	City of Tea Tree Gully
Ombudsman reference	2022/00900
Council reference	22/591
Date received	31 May 2022
Issues	Whether Mayor Knight breached Clause 3.3 of the Code of Conduct for Council Members by disclosing confidential information during a Facebook Live interview on 3 February 2022

Jurisdiction

On 31 May 2022, my Office received a report about Mr Kevin Knight, then Mayor of the City of Tea Tree Gully (**the council**) (referred to in this report as 'Mayor Knight').

The report alleged a breach of Part 3 of the Code of Conduct for Council Members made pursuant to section 63 of the *Local Government Act 1999* (**the Code of Conduct**).¹ An act of a council member that may constitute grounds for complaint under the Local Government Act is taken to be an 'administrative act' for the purposes of the Ombudsman Act.²

It is alleged that on 3 February 2022, Mayor Knight participated in a Facebook Live interview during which he disclosed information subject to council confidentiality orders, and information that Mayor Knight 'should reasonably know is information that is confidential'. The report alleged a breach of Clause 3.3 of Part 3 of the Code of Conduct; failure to comply with Part 3 can constitute grounds for disciplinary action under the Local Government Act.

Given the nature of the issues raised, I have considered whether the allegations amounted to an 'intentional and serious' breach of a code of conduct for the purposes of the misconduct provisions under the *Ombudsman Act 1972*.³

I decided to commence a full investigation of the allegations under the Ombudsman Act⁴ and notified the relevant parties on 4 October 2022.

¹ The Code of Conduct was gazetted on 29 August 2013.

² *Local Government Act 1999* s 263A(4); *Ombudsman Act 1972* s 3.

³ *Ombudsman Act 1972* s 4(1).

⁴ *Ombudsman Act 1972* s 13(1).

The original report attracted the protections of the *Public Interest Disclosure Act 2018*.

After issuing my provisional report for this matter, the relevant provisions of the Local Government Act changed. I have considered whether Mayor Knight breached the legislative provisions in effect at the time of the alleged conduct, having regard to section 147(6) of the *Statutes Amendment (Local Government Review) Act 2021, Pt 2*, which provides the following:

The principal Act (as in force immediately before the commencement of this subsection) continues to apply to a contravention of, or failure to comply with, the principal Act constituting grounds for complaint against a member of a council under Chapter 13 Part 1 of the principal Act (as in force immediately before the commencement of this subsection) committed or alleged to have been committed before that commencement.

Since my provisional report, the council also underwent an election, and Mayor Knight was not re-elected as Mayor. I continue to have jurisdiction to investigate Mayor Knight's conduct, having regard to section 263A of the Local Government Act which provides that I may investigate matters alleged to constitute grounds for a complaint⁵ against a member of a council; that Mayor Knight is no longer a council member does not preclude me from forming an opinion about his conduct, given the conduct in question was committed while Mayor Knight was a council member. On this point, I disagree with the submissions of Mayor Knight's legal representative that continuing to investigate and issue a final report for this matter is beyond my jurisdiction.

In my provisional report, I foreshadowed making a recommendation under section 25(2) of the Ombudsman Act and section 263B of the Local Government Act that, in the event Mayor Knight was re-elected to the council following the local government election in November 2022, the council lodge a complaint through the South Australian Civil and Administrative Tribunal (SACAT) for Mayor Knight's breach of the Code of Conduct, seeking an order that he be suspended or disqualified from membership of the council and any committees of the council, whichever the Tribunal deems appropriate. Given that my proposed recommendation was in contemplation of Mayor Knight being re-elected, I have carefully considered whether to proceed with issuing the same recommendation now that Mayor Knight is no longer a council member. On balance, I have determined it is no longer necessary. I am also mindful that I only recently recommended the council lodge a complaint with SACAT in relation to Mayor Knight's conduct for a separate matter investigated by my Office.

I note that Mayor Knight's legal representative made submissions challenging my jurisdiction to make a recommendation under section 263B of the Local Government Act now that Mayor Knight is no longer a council member. I do not intend to address this submission for the purposes of this report in light of my decision to not issue a recommendation for the reasons set out above.

Investigation

My investigation has involved:

- assessing the information provided by the informant
- seeking further information from the council
- considering the Local Government Act, the Ombudsman Act, the Code of Conduct and the council's complaints procedure

⁵ A person has grounds for a complaint under section 263 of the Local Government Act if a member of a council has contravened or failed to comply with Chapter 5 Part 4 of the Act.

- viewing a recording of the relevant Facebook Live interview of 3 February 2022
- considering the agendas and minutes of various council meetings
- providing Mayor Knight, the informant and the council with my provisional report for comment, and considering their responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.⁶ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...⁷

Procedural fairness

On 4 October 2022, I provided a provisional report to Mayor Knight, the council and the informant.

By letter dated 12 October 2022, the council advised that it had no additional comment or submission to make, with the exception of my proposed recommendation being amended so that the council seek an order through SACAT that Mayor Knight be disqualified 'as a preference'.

Mayor Knight's legal representative provided an initial response to the provisional report on 11 October. Mayor Knight's legal representative took issue with my decision to issue a provisional report to Mayor Knight (in which I expressed a provisional view that he had breached the Local Government Act and engaged in misconduct under the Ombudsman Act), without first affording him an opportunity to respond. Mayor Knight's representative submitted that this demonstrated 'pre-judgement' and an inability for my Office to consider the matter 'objectively and impartially'.

I reject this assertion. The invitation to respond to a provisional report is by its nature a form of procedural fairness, in which an individual (or agency) is afforded an opportunity to respond to the allegations set out and provide any additional information relevant to the matter. At the time of providing my provisional report to Mayor Knight, I was clear that the views set out in the report were not final and may be subject to change, depending on the information provided by the relevant parties in response.

Mayor Knight's legal representative provided a further response to the provisional report on 18 November 2022 and made several jurisdictional arguments as well as submissions about Mayor Knight's conduct. I have considered this response and addressed each submission where necessary in the body of this report. Ultimately, Mayor Knight's response did not persuade me to alter my opinion.

⁶ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁷ *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

Background

1. Between 2019 and 2021, the council received a number of complaints about the conduct of Mayor Knight including allegations of sexual harassment. Several of the allegations were dealt with by the council as alleged breaches of Part 2 of the Code of Conduct and investigated in accordance with the council's relevant Code of Conduct policy and procedure. In addition, several allegations were referred to the council by the Independent Commission Against Corruption⁸ (the ICAC) for investigation. At the relevant time, the ICAC scheme captured breaches of the Code of Conduct within the definition of misconduct in public administration.
2. At a council meeting on 25 February 2020 under 'Confidential Items', the council considered the first of these ICAC referrals as agenda item 23.3 entitled 'Third Party Referral - 2020/002094 (D20/17864)'.
3. Minutes of the meeting reflect the following:
 1. That pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that the public (except Executive Leadership Team, Governance staff and Council's lawyer) be excluded from the meeting to enable discussion on the Third Party Referral - 2020/002094.
 2. That the Council is satisfied that pursuant to section 90(3) (a), (e), (f), (g), (j)(i) and (j)(ii) of the Local Government Act 1999, the information [to] be received, discussed or considered in relation to this item is:
 - information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); AND
 - matters relating to the personal affairs of a person
 - matters affecting the security of the council, members or employees of the council, or council property; or the safety of any person; AND
 - information contained within the report and attachments has the potential to identify individuals
 - information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial; AND 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; AND
 - A third party agency has referred [a] matter to council for consideration and that this information not publically [sic] be available.
 - information the disclosure of which would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); AND
 - information the disclosure of which would, on balance, be contrary to the public interest.
 - A third party agency has directed Council for this information to not be publicly released.
 3. In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in the public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it

⁸ At the time, the Independent Commissioner Against Corruption.

of disclosure of the information. The Council is satisfied that the principle [sic] that the meeting be conducted in a place open to the public has been outweighed in the circumstances on the basis that members of the public are not to be included to [sic] matters involving third party agencies where this information has been requested to remain in confidence.

Carried Unanimously (350)

4. Following discussion of the matter, the council ordered that the report, attachments and minutes relevant to agenda item 23.3 be retained in confidence pursuant to section 91(7) of the Local Government Act, until resolved otherwise by the council.
5. The council also considered agenda item 23.4 entitled 'Third Party Referral - 2020/002486 (D20/17990)'. Minutes of the meeting reflect:
 1. That pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that the public (except Executive Leadership Team, Governance staff and Council's lawyer) be excluded from the meeting to enable discussion on [sic] the Third Party Referral - 2020/002486.
 2. That the Council is satisfied that pursuant to section 90(3) (j)(i) and (j)(ii) of Act, the information [to] be received, discussed or considered in relation to this item is:
 - information the disclosure of which would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); AND
 - information the disclosure of which would, on balance, be contrary to the public interest.
 - A third party agency has directed Council for this information to not be publicly released.
 3. In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in the public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle [sic] that the meeting be conducted in a place open to the public has been outweighed in the circumstances on the basis that members of the public are not to be included to [sic] matters involving third party agencies where this information has been requested to remain in confidence.

Carried Unanimously (357)

6. Following discussion of agenda item 23.4, the council ordered that the report, attachments and minutes relevant to agenda item 23.4 be retained in confidence pursuant to section 91(7) of the Local Government Act, until resolved otherwise by the council.
 7. The minutes concerning the meeting reflect that Mayor Knight left the meeting room prior to discussion of the above agenda items and resolutions due to a material conflict of interest in the matters. He did not re-enter the meeting room for the remainder of the meeting.
 8. After its meeting on 25 February 2020, the council engaged a law firm to investigate the referred allegations. The investigations were addressed in four separate reports and finalised, by way of council resolution, on 27 October 2020 and 17 March 2021. The investigations substantiated several of the allegations; Mayor Knight denies the incidents alleged and has publicly shared these views.
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9. In an email to elected members, including Mayor Knight, on 19 April 2021 the council's Manager Governance & Policy confirmed part revocation of confidentiality orders for documentation relevant to matters regarding Mayor Knight's conduct as referred by the ICAC, stating (emphasis added):

Dear Members,

At the special meeting of Council on 23 March 2021, Council authorised the Deputy Mayor to issue a public statement on Council's behalf regarding third party referral matters as well as delegating the power to my position (as Manager Governance & Policy) to revoke confidential retention orders (in whole or in part) from 27 October 2020 and 17 March 2021.

In consultation with Council's lawyers, I reviewed all relevant documents under existing confidential retention orders (in relation to these matters) and made the decision to **revoke the retention orders from minutes and the external investigator reports only where findings for misconduct had been determined.**

This means that the documents being released are heavily redacted and only include findings where there is a breach of the Code of Conduct for Council members and associated determinations of Council. **All other information is still retained under confidential order.**

We presented the proposed public statement and requested release of information to the Commissioner for approval pursuant to sections 54 and 56 of the Independent Commissioner Against Corruption Act 2012 to disclose and publish this specific information. The Commissioner has now provided authorisation, noting that this is restricted to the information released **(no publishing or making statements about information outside of this has been approved).**

While I am aware that you are notified of released confidential items as part of the CEO monthly information report, given the nature of these matters, I thought it prudent to advise you directly of the exercise of these delegations.

The revocation of part of the confidentiality orders and the release of the redacted documents, will be accompanied by a public statement to be issued today

10. The council subsequently released four reports to the public regarding Mayor Knight's conduct. The reports are heavily redacted and only release findings of misconduct by Mayor Knight. Specifically, that Mayor Knight:
- 'deliberately hit the Employee on her bottom with a rolled up paper, documents or the like and that the contact was not a glancing flick'
 - 'blamed management for the way the Employee dresses'
 - 'referred to the Employee as dressing like a \$2 tramp'
 - 'stuck his middle fingers up in an obscene gesture and stated 'well you can all get''
 - 'did disclose confidential information concerning the Complaint to the [elected members] at the conclusion of the Council workshop'
 - 'did disclose confidential information in relation to the Complaint to the media and [elected members]'
 - 'raised the Complaint with an elected member of the Council at the Australia Day Citizenship ceremony in front of members of the public'
 - 'did discuss the Complaint with two Council employees'
 - 'stated to some Elected Members and Council staff words to the effect the CEO 'has to go because he has thrown me under the bus with the complaint'

- 'sought that the employment of certain Council employees be discontinued'
 - 'engaged in inappropriate conduct towards Councillor B by making inappropriate comments after an event on 22 February 2019 in which he stated that he has been told not to take 'rides from pretty ladies anymore' and suggested that she had been for 'plenty of rides with boys''
 - 'at an Elected Member workshop on 5 March 2019 in the Banksia Room in the area behind the bar, Mayor Knight pulled Councillor B's skirt away from her waist, which was slightly too big for her after recently losing weight, and said, 'plenty of room in there, can I jump in''
 - 'made comments to Councillor B at a Council function on 13 November 2018 about her being 'his type' and how he would have 'gone for [her] if he was her age''.
11. The council did not release witness or interview evidence contained within the report in support of the investigator's findings, or the details of other allegations raised against Mayor Knight which were not substantiated (but which formed part of the investigation/s).
12. My Office clarified with the council the extent to which information relevant to the allegations about Mayor Knight's conduct (as alleged and investigated between 2019 and 2021) remained confidential, given the council's revocation issued on 19 April 2021.
13. The council clarified that:
- revocation of confidentiality orders detailed in the email of 19 April 2021 related only to the minutes and external investigator reports for referred matters considered by the council on 27 October 2020⁹ and 17 March 2021¹⁰
 - this is distinct from the *initial* referrals from the ICAC considered by the council at its meeting on 25 February 2020, including the following documents:
 - report (D20/17864)
 - attachment 1 (D10/17962) [REDACTED]
 - attachment 2 (D19/80833) [REDACTED]
 - attachment 3 (D19/80835) [REDACTED]
 - these attachments, along with the covering report and minutes remain confidential in full.
14. Review of the council's Confidential Documents Register¹¹ reflects the following matters remain in confidence, including the relevant report, attachments, and minutes:
- Third Party Referral - 2020/002094 Report D20/17864 Minutes D20/19842
 - Third Party Referral - 2020/002486 Report D20/17990 Minutes D20/19842
 - Third Party Referral - 2020/003687 Report D21/9665 Minutes D21/12531.
15. The Register reflects that the council has 'not resolved otherwise' to lift confidentiality.

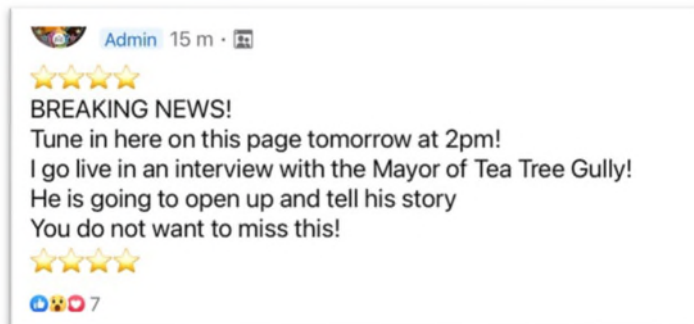
⁹ Including ICAC matters 2020/002094, 2020/002486, 2020/003501, 2020/003535, 2020/003646

¹⁰ Including ICAC matter 2020/005321 as two separate reports.

¹¹ City of Tea Tree Gully, Confidential Documents Register, accessed online.

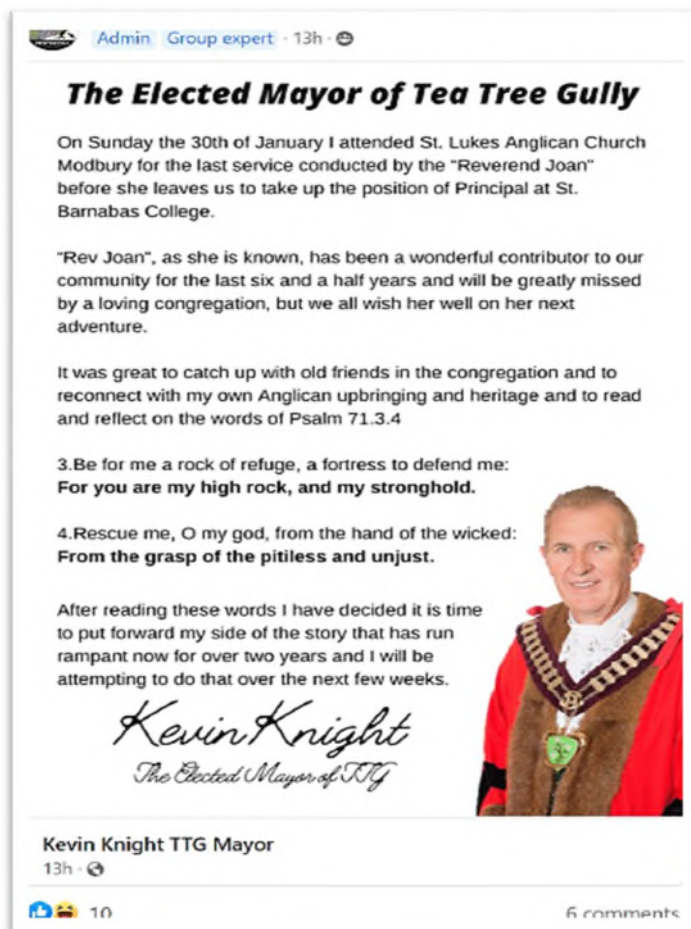
Facebook Live interview

16. On 3 February 2022, Mayor Knight participated in a Facebook Live interview on the private Facebook group 'Tea Tree Gully Area "Whats up"'. At the relevant time, the Facebook group had approximately 21,300 members.
17. Promotion of the interview by the Facebook group's Administrator reflected the following:



(Image 1: Facebook post by Administrator of 'Tea Tree Gully Area "Whats up"', 2 February 2022)

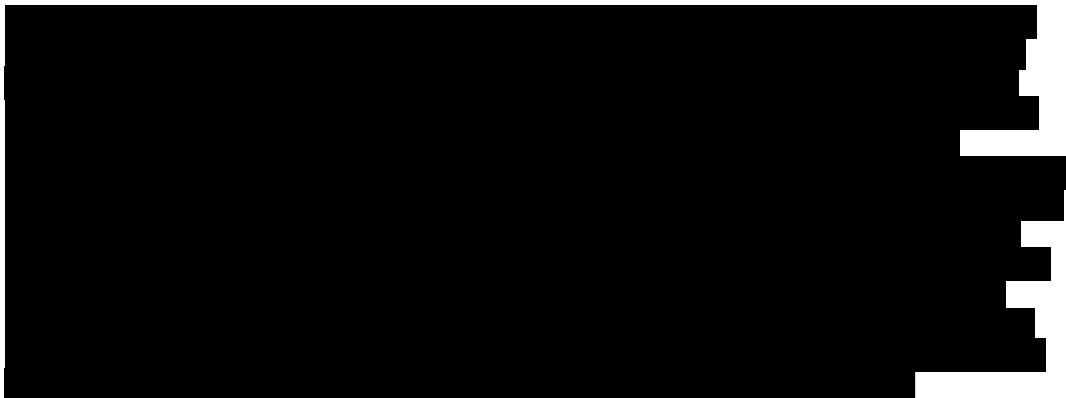

18. The Administrator also shared a post previously made by Mayor Knight:

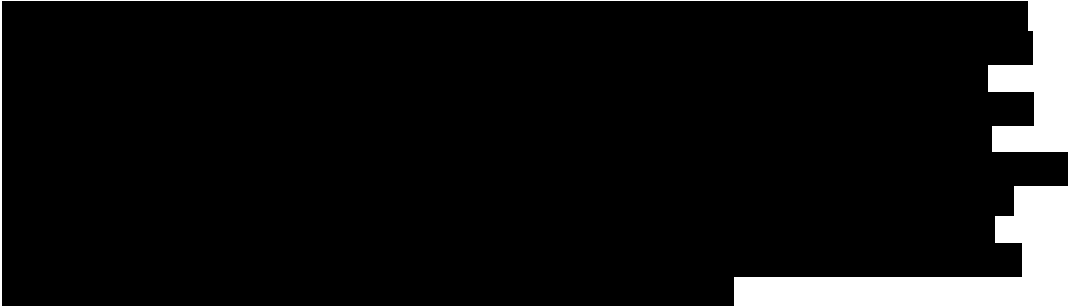

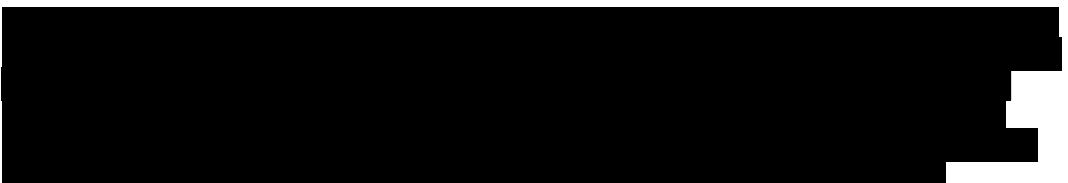


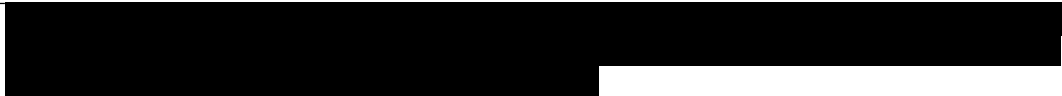
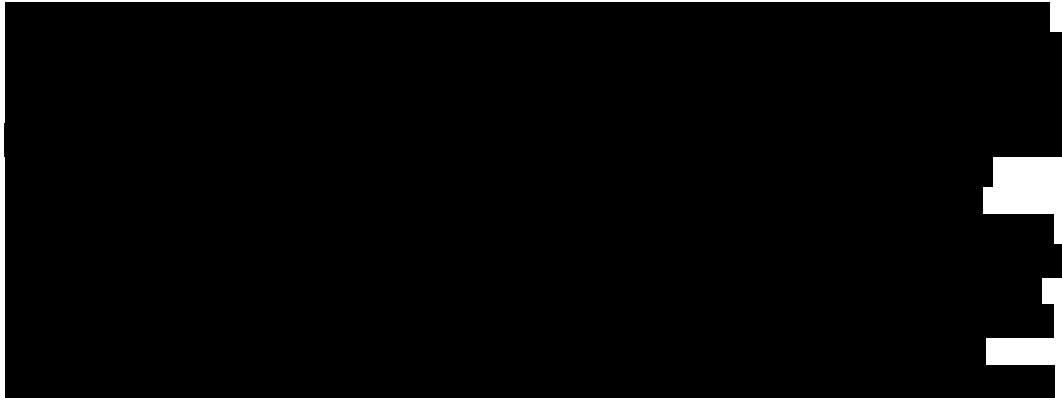

(Image 2: Facebook post by Administrator of 'Tea Tree Gully Area "Whats up"', sharing post by Mayor Knight)

19. During the interview, which spanned approximately 1 hour and 7 minutes, Mayor Knight referred to various allegations made against him in 'the last 2 years'. Throughout the interview, Mayor Knight referred to and read from redacted documents. On occasion, Mayor Knight held the redacted documents to the camera.
20. It is alleged that throughout the interview, Mayor Knight disclosed information contrary to Clause 3.3 of the Code of Conduct, specifically:
 - information subject to a council confidentiality order, pursuant to section 91 of the Local Government Act, on 9 occasions
 - information which Mayor Knight 'should reasonably know is information that is confidential' on 3 occasions.
21. Of additional concern was that Mayor Knight disclosed information that was not released publicly, referred to staff of the council as having 'mental health issues', and disclosed details about [REDACTED] including where they sit at the council (which was not previously public knowledge).
22. Comments made by Mayor Knight, alleged to be a breach of clause 3.3 of the Code of Conduct, are set out verbatim in Table 1¹²:

¹² Adapted from information provided in support of report to the Ombudsman's office dated 31 May 2022 and 9 June 2022.


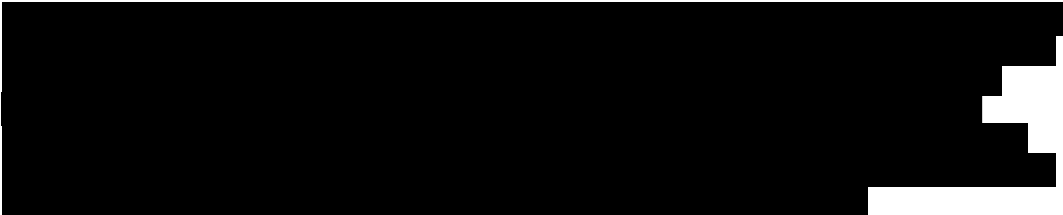

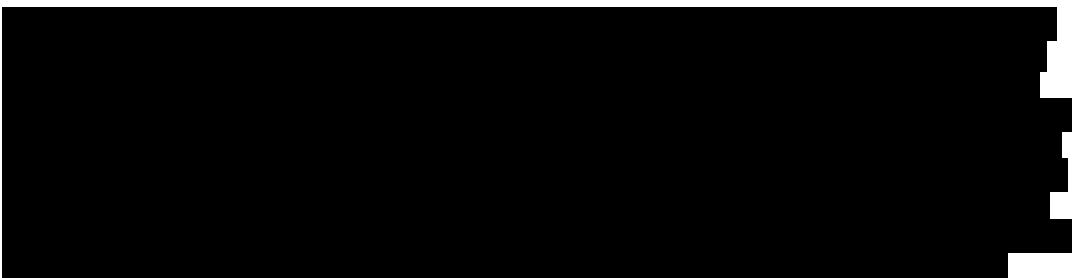
Table 1: Particulars of alleged breaches of Clause 3.3 of the Code of Conduct by Mayor Knight on 3 February 2022		
Breach no	Comment	Document and relevant council order
1(a)		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 26-27.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>
1(b)		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 26-27.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>



2		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 3-35.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>
3		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 23-24.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>
4		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 23-24.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until</p>

		further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.
5		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 23-24.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>
6		<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 23.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>

	<div>[REDACTED]</div> <div>[REDACTED]</div>	
7	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>	<p>Information contained within Attachment 2 (D19/80833) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094', Pg 7, 10,13, 15, 20, 21, 26, 31.</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>

	<div>[REDACTED]</div> <div>[REDACTED]</div>	
8	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>	Not subject to confidential order pursuant to section 91(7) of Local Government Act 1999.

		
9		Not subject to confidential order pursuant to section 91(7) of Local Government Act.
10		<p>Information contained in Attachment 1 (pg 2) (D20/17962) and Attachment 3 (pg 4) (D19/80835) which forms part of Report D20/17864 for 'Third Party Referral - 2020/002094'.</p> <p>These remain under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council, on the grounds of section 90(3)(a),(e),(f),(g) and (j) as ordered on 25 February 2020.</p>
11		Not subject to confidential order pursuant to section 91(7) of Local Government Act.

		
12		<p>Information contained in Third Party Referral - Final Report - 2021/003687, Report D21/9665</p> <p>Under confidential retention order pursuant to section 91 of the Local Government Act until further order of the Council as ordered on 23 February 2021.</p>

Relevant law/policies

23. Section 90 of the Local Government Act provides:

90—Meetings to be held in public except in special circumstances

- (1) Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.
- (2) A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).
- (3) The following information and matters are listed for the purposes of subsection (2):
 - (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
[...]
 - (e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
 - (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
 - (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;
[...]
 - (j) information the disclosure of which—
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;
[...]
- (7) If an order is made under subsection (2), a note must be made in the minutes of the making of the order and specifying—
 - (a) the grounds on which the order was made; and
 - (b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
 - (c) if relevant, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest.

24. Section 91 of the Local Government Act provides:

91—Minutes and release of documents

...

(7) Section 132(1) does not apply to a document or part of a document if— (a) the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and (b) the council or council committee orders that the document or part be kept confidential.

(9) If an order is made under subsection (7)—

(a) the council or council committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed, and, in any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year; and (ab) in the case of an order of specified duration—

(i) the duration of the order cannot be extended after the order has ceased to apply (as a result of the expiry of the period for which the order was specified to apply); and

(ii) an order extending the duration of such an order cannot be delegated by the relevant council or council committee; and

(b) the council or council committee must ensure that a note is made in the minutes recording the making of the order, the grounds on which it was made, and the decision of the council or council committee under paragraph (a); and

(c) the council or council committee may delegate to an employee of the council the power to revoke the order.

25. Section 63 of the Local Government Act provides:

63—Code of conduct for members

(1) The Governor may, by regulation, prescribe a code of conduct to be observed by the members of all councils.

(2) Council members must observe the code of conduct.

26. Part 3 of the Code of Code of Conduct relevantly provides:

Member duties

Council members must:

...

3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;

Whether Mayor Knight breached Clause 3.3 of the Code of Conduct for Council Members by disclosing confidential information during a Facebook Live interview on 3 February 2022

27. Clause 3.3 of the Code of Conduct provides that council members must not release information that the council has ordered to be kept confidential or that council members should reasonably know is confidential, including information that is considered by council in confidence. There is an obvious need for elected members to comply with these requirements, to ensure among other things, community confidence and trust in Local Government to handle personal and sensitive information, and information of which disclosure is not considered in the public interest.
28. As an elected member, Mayor Knight is responsible for exercising sound judgement in determining whether information before him is, was, or ought to be, confidential. It is also important that as an elected member, Mayor Knight upholds the lawful decisions of the council's governing body, notwithstanding any personal views he may hold in relation to those decisions.
29. On 3 February 2022, Mayor Knight participated in an interview to speak about allegations raised concerning his conduct between 2019 and 2021. Those allegations have formed part of complaints dealt with by the council, including several complaints referred to the council by the ICAC, subsequently investigated by an external investigator. It is worth noting that the allegations have also formed part of complaints referred to my Office for assessment and investigation.
30. I do not consider it necessary to detail the nature of those matters for the purposes of this report except to note that in each case, the allegations raised were of a serious and sensitive nature, including allegations of sexual harassment by Mayor Knight. I also do not intend to comment on the accuracy of the statements made by Mayor Knight during the interview, although I note that the council has raised concern with my Office about several of Mayor Knight's statements being misleading and inaccurate.
31. It is alleged that during the interview, Mayor Knight shared information that was ordered to be kept confidential pursuant to sections 90 and 91 of the Local Government Act, as well as information he 'should reasonably know is confidential' in accordance with the Code of Conduct.
32. I have considered a total of 12 statements specific to this issue.

Information subject to confidentiality orders

33. As outlined in Table 1, there are nine occasions in which Mayor Knight is alleged to have disclosed information subject to a council confidentiality order under section 91(7) of the Local Government Act.
34. Relevantly, the minutes of the council's meeting on 25 February 2020 reflect that the council ordered a report, attachments and minutes relevant to council's consideration of the ICAC referrals (2020/002094 and 2020/002486) was to remain confidential, until such time that the council resolved otherwise.
35. It is alleged that the information Mayor Knight disclosed on these occasions is information contained within Attachments 1, 2 and 3 to a document titled 'Third Party Referral - 2020/002094 Report D20/17864', all of which remain under a confidentiality order made by the council on 25 February 2020, on the grounds of sections 90(3)(a), (e), (f), (g) and (j) of the Local Government Act.

36. It is also alleged that Mayor Knight disclosed information contained in the document titled 'Third Party Referral - 2020/003687 Report D21/9665', which remains under a confidentiality order made by the council on 23 February 2021, on the grounds of section 90(3)(a) of the Local Government Act.
37. I have considered the specific statements made by Mayor Knight set out as alleged breaches 1(a), 1(b), 2, 3, 4, 5, 6, 7, and 10 in Table 1, alongside information contained within the documents listed at paragraphs 10-13. I have also considered publicly available information relating to allegations against Mayor Knight, to determine whether the information disclosed by Mayor Knight was already public knowledge. This included reports released by the council on 27 October 2020 and 17 March 2021, all three of which are heavily redacted and only contain the council's findings that Mayor Knight engaged in misconduct.
38. On review of this information, I am satisfied that Mayor Knight disclosed information which was (and remains) under a confidentiality order imposed by the council, including:
- [REDACTED]
39. The statements, set out as breaches 1(a), 1(b), 2, 3, 4, 5, 6, 7, and 10 in Table 1 made by Mayor Knight was information contained within a document determined by the council to remain confidential and subject to a confidentiality order. Yet Mayor Knight disclosed that information in a forum open to at least 21,300 people.
40. Regarding Mayor Knight's statement (breach 2) [REDACTED] I note that this statement does not in itself disclose the contents of the [information] obtained by the council as part of its investigation into his conduct (unlike breaches 1(a), 1(b), and 3-7). However, [details about the investigative process] is disclosing information only contained in documents that remain under confidential order. In my view, any disclosure of information from a confidential document, however minor in detail, is a breach under the Local Government Act. The fact was not known publicly and was not intended by the council to be made public, until Mayor Knight disclosed it without authorisation on 3 February 2022.
41. Regarding breach 12, Mayor Knight referred to [REDACTED] that was investigated by the council [REDACTED] While Mayor Knight disclosed limited information in his statement, it is referring to a matter that was investigated by the council, [REDACTED] and which remains an unsubstantiated allegation currently subject to a section 91(7) confidentiality order, made by the council on 23 February 2021. In its entirety, the matter remains confidential and therefore, it was not appropriate for Mayor Knight to disclose any

¹³ Information contained within Attachment 1 (D20/17962), Attachment 2 (D19/80833), Attachment 3 (D19/80835) which forms part of the 'Third Party Referral - 2020/002094' Report D20/17864; 'Third Party Referral - Final Report - 2020/003687' Report D21/9665.

information about it to members of the public. Mayor Knight acknowledged the limitation in him talking about it, stating 'I'm not allowed to talk about it' but then proceeded to disclose the nature of the council's handling of the matter stating [REDACTED]

42. I am satisfied that Mayor Knight had been made aware of the confidentiality orders attached to the information he subsequently disclosed, by way of council's minutes of meeting dated 25 February 2020 and 23 February 2021, and the council's Confidential Documents Register, available on the council's website.
43. In my provisional report I stated that, should Mayor Knight submit that he did not believe the information he was disclosing was confidential in nature, I did not consider it reasonable for him to have formed this belief, particularly having regard to the fact that the information disclosed by Mayor Knight was also subject to confidentiality provisions under the *Independent Commission Against Corruption Act 2012* (the ICAC Act)¹⁴. At the relevant time, the ICAC Act provided that a person connected to an ICAC matter 'must not, directly or indirectly, disclose information in relation to or connected with a matter that forms that subject of a complaint, report, assessment, investigation, referral or evaluation'. Failure to comply with these confidentiality provisions attaches a criminal penalty.
44. I also stated in my provisional report that if Mayor Knight was unaware of the council's confidentiality orders attached to the information he disclosed (noting that I did not consider there to be any reasonable justification, should he argue that he was not), Mayor Knight *was* aware that the matters were confidential under the ICAC Act. In my view, this is a relevant factor that Mayor Knight ought to have considered prior to participating in the interview on 3 February 2022. I consider that any reasonable person taking this into consideration would be dissuaded from making any comment in relation to the matters, no matter the level of detail. Furthermore, given the sensitive nature of the matters, I consider that had Mayor Knight had any doubt about confidentiality, he should have clarified with the council before proceeding to the interview.
45. In response to my provisional report, Mayor Knight's legal representative submitted:

As you are aware, Mr Knight has been the subject of a number of allegations (both substantiated and unsubstantiated) since October 2019 (now over three years ago). Those matters have been the subject of highly publicised media reporting and, as you note, a number of public resolutions of Council.

Indeed, various of the Investigations Reports (including your Final Report dated 24 October 2022) relating to these issues have been publicly released online.

Suffice to say that the general public are well aware of the allegations that have been made against Mr Knight, the various investigations which have occurred in relation to those allegations (including ICAC's and your, involvement) and the findings made following those investigations.

As you have noted, Council have, for reasons best known to them, chosen not to publicly release information about the numerous allegations against Mr Knight which were not substantiated. One surmises that these decisions reflect Council's desire to publicly damage Mr Knight's reputation and convey the false and misleading impression that Mr Knight had been found guilty of all of the allegations against him.

It beggars belief that Mr Knight should be subject to repeated public attacks, both in the media and by members of Council, without having an opportunity to comment on those

¹⁴ Formerly *Independent Commissioner Against Corruption Act 2012*.

matters, provide his version of events and raise his concerns about the process that was followed. This is precisely the injustice he sought to correct when he participated in the Facebook Live interview [REDACTED] on the Tea Tree Gully "What's Up" Facebook page.

It was never Mr Knight's intention to breach confidentiality and he denies having done so.

...

You seemingly rely upon two screenshots - one of a Facebook post by [REDACTED] and the other post of Mr Knight - as evidence of Mr Knight's intention to reveal information which he knew to be confidential. With respect, that suggestion is simply not open. The relevant screenshots simply state that Mr Knight is going to tell "his story". In our submission, the screenshots provide no evidence of Mr Knight's intention to knowingly breach confidentiality.¹⁵

46. I am not persuaded by these arguments. I note in particular:

- The council's reasons and/or decision to not release certain information from confidence is irrelevant to Mayor Knight's decision to divulge that confidential information publicly; the council had resolved to maintain confidentiality over the information and this must be upheld by members of a council, regardless of how they personally feel about it.
- The public's general knowledge of investigations into Mayor Knight's conduct is irrelevant to Mayor Knight's disclosure of specific information subject to a confidentiality order or other confidentiality requirements. While Mayor Knight may have thought that he could share this information given much of it related to himself, this was not his decision to make; only the council or an employee of the council with delegated authority may revoke a confidentiality order.¹⁶
- Mayor Knight's submission that he was 'correcting an injustice' only supports the view expressed in my provisional report that he was driven by self-interest in pursuit of some form of vindication. My inclusion of the Facebook promotional posts goes to this point, which is that Mayor Knight was driven by self-interest in disclosing the information to 'tell his story'.
- While Mayor Knight denies breaching confidentiality, he has not provided any persuasive argument as to how the information he disclosed during the Facebook Live interview, as detailed in Table 1, was not covered by a confidentiality order, or alternatively, information he ought to have known was confidential.

47. I note Mayor Knight's various remarks about the sensitive nature of the information he was disclosing during the interview, for example when he stated:

- 'now obviously I can't identify anybody, and some of the people I can't identify anyway'
- 'I must be very careful here, like ... I think the people have a right to know some of the things she said'
- 'I've got to be careful how I do this one, because that would identify her'
- 'I'm not allowed to talk about it'
- 'the whole issue with this stuff is everything is supposed to be confidential. How can you defend yourself?'

[REDACTED]

48. In my provisional report, I concluded that comments like this indicate that Mayor Knight was acutely aware of the confidential nature of the information he was disclosing, and by extension, the restrictions on its disclosure. Also of concern was that Mayor Knight

¹⁵ Letter from Mayor Knight's legal representative to the Ombudsman, 18 November 2022.

¹⁶ Section 91(9)(c) of the *Local Government Act 1999*.

appeared to have confidential documents in front of him while being videoed; for example Mayor Knight read aloud verbatim evidence from [REDACTED] that formed part of an ICAC referral (breach 10) and this document is in view of the camera; he subsequently held this document to the camera despite it being under a confidentiality order.

49. In response to my provisional report, Mayor Knight's legal representatives submitted the following:

during the course of the interview, Mr Knight made a number of remarks about needing to be "careful" about what information he disclosed. Indeed, on one occasion, he made the comment, "I'm not allowed to talk about it". Whilst you have used these comments to suggest that Mr Knight was aware of the confidential nature of the information being discussed, we submit that these comments clearly demonstrate Mr Knight's thoughtful consideration of the information that was being disclosed and evince an attempt on his part to avoid disclosing information which he believed to be confidential.

Indeed, we note that in relation to alleged breach number 7, Mr Knight explicitly prefaces a statement with the phrase *"They've released, that I've been found guilty and they have redacted everything, so I think I'm allowed to say what the complaint was..."*. This clear statement is reflective of Mr Knight's thinking at the time and, more particularly, the fact that he did not believe the information which he was providing (which, we note again, had already been the subject of significant media attention) to be confidential.

If, as you suggest, Mr Knight had decided to conduct the interview and knowingly breach confidentiality, he would have not even attempted, or remarked upon the need, to be "careful".¹⁷

50. I am not persuaded by this argument. In my view, Mayor Knight's submission that he was being 'careful' about the nature of the information he was discussing is disingenuous, given that each time he made mention of the need to be 'careful' or highlighted the restrictions on him to not discuss relevant matters, he proceeded to disclose said confidential information anyway. For example, I note breach 7 in which Mayor Knight stated [REDACTED] While Mayor Knight acknowledged a need to be 'careful', he immediately followed it with a statement that members of the public have 'a right to know' and detailed the information from a [document which is] subject to a confidentiality order. Whether Mayor Knight considered the information he was discussing to be in the public interest does not determine whether that information was in fact confidential, or by extension, remove the need for him to maintain confidentiality.
51. Even if I were to accept the argument that Mayor Knight 'demonstrated thoughtful consideration' of the information he was disclosing throughout the interview, this does not address the fact that he disclosed information subject to an order. Either he disclosed the information knowingly, or negligently; this does not alter my view that Mayor Knight breached Clause 3.3 of the Code of Conduct on 3 February 2022 by disclosing information that the council had ordered be kept confidential.

¹⁷ Letter from Mayor Knight's legal representative to the Ombudsman, 18 November 2022.

Information Mayor Knight ought to have known was confidential

52. Regarding alleged breaches 8, 9 and 11, the information disclosed by Mayor Knight was not ordered by the council to be kept confidential under the Local Government Act. Therefore, the issue for me to consider is whether Mayor Knight disclosed information he should 'reasonably know' was confidential for the purposes of Clause 3.3 of the Code of Conduct.
53. Regarding alleged breach 8, Mayor Knight disclosed the names of witnesses to an incident investigated by the council, as referred by the ICAC. As I have already expressed, the fact that evidence formed part of an ICAC matter should have been sufficient reason enough for Mayor Knight to understand that this information was confidential and not to be disclosed to the public. The council told my Office that Mayor Knight was provided witness names at the time of investigation to 'enable procedural fairness' in order to respond to the allegations against him. The names were not disclosed in the final report provided to the council (instead de-identified), and they were redacted entirely in the final report released to the public by the council on 19 April 2021. In my view, this only strengthens the view that Mayor Knight reasonably ought to have known the information was confidential and to be treated as such.
54. In relation to alleged breach 9, Mayor Knight disclosed information about the status of a council matter, stating that [REDACTED] It is evident this information is not subject to a council confidentiality order. However, I have considered the council's policy, 'Process for Handling Code of Conduct Complaints against Council Members' which requires that any report relevant to a complaint be kept confidential until presented to a public meeting of the council. In my view, in line with this policy, Mayor Knight ought to have known that detail about complaints against him remained under investigation and (at that stage) had not been presented to the council, therefore remained strictly confidential. I do not consider any of the exceptions to these confidentiality requirements (such as for the purpose of obtaining legal advice) are applicable to Mayor Knight's disclosure of information.
55. I note that on occasion throughout his interview, Mayor Knight referred to matters being dealt with by my Office. At all times, matters dealt with under the Ombudsman Act remain confidential unless disclosure is otherwise authorised by me. I am satisfied that Mayor Knight was aware of his obligations under the Ombudsman Act at the time of this interview, and that he ought to have known any information connected to these matters, however insignificant in his mind, was (and remains to be) confidential.
56. Lastly, I have considered comments by Mayor Knight (outlined as alleged breach 11). Mayor Knight stated [REDACTED] The council told my Office that this matter relates to confidential information considered by the council's Audit Committee (of which Mayor Knight is not a member). It is alleged that this internal information appears to have been disclosed from an unknown employee, to Mayor Knight. Having regard to the substance of the information alone, even without knowing how Mayor Knight became aware of this information, it is my view that Mayor Knight reasonably ought to have known that the information was confidential, noting the matter was of particular sensitivity to the council and its reputation, as well as for the employee involved. Having been an elected member for around 30 years, I consider it highly unlikely that Mayor Knight would not understand the need to handle such information with care.
57. On balance, I consider that Mayor Knight ought to have known information contained as breaches 8, 9 and 11 was confidential, and not intended to be disseminated or
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shared with members of the public. In disclosing this information on 3 February 2022, I consider that Mayor Knight breached Clause 3.3 of the Code of Conduct.

Misconduct in public administration

58. In my view, Mayor Knight's conduct was both intentional and serious and amounts to misconduct in public administration under the Ombudsman Act having regard to the following:
- Mayor Knight remarked on several occasions that he had to be 'careful' with what he was sharing, demonstrating an awareness of the confidential nature of the interview's subject matter, but proceeded to disclose information subject to a council confidentiality order and information he reasonably ought to have known was confidential
 - Mayor Knight had previously been made aware of concerns about his disclosure of confidential information, having referred to this himself in the interview [REDACTED]
[REDACTED] Mayor Knight disregarded these concerns and proceeded with the interview, demonstrating a pattern of conduct that I consider to be serious
 - the council had determined that it was not in the public interest for the information to be disclosed and that it ought to be confidential; Mayor Knight intentionally disregarded these determinations and disclosed the information anyway, demonstrating a lack of consideration or respect for the elected body's orders
 - he disclosed information that was not just considered confidential by order of the council, but potentially subject to confidentiality provisions under the ICAC Act and the Ombudsman Act
 - he disclosed particularly sensitive information, including personal information about council staff, and [information obtained by the council as part of its investigation into a complaint], without regard for the impact this would have on the individual involved in the matter
 - Mayor Knight did not disclose information to one person, but in a forum accessed by thousands of community members, in my view reflecting a deliberate attempt by Mayor Knight to have his views heard by as many people as possible to benefit himself, rather than acting in accordance with the Local Government Act and the Code of Conduct.
59. In response to my provisional report, Mayor Knight's legal representatives submitted the following:
- As you are doubtless aware, Section 4(1) of the *Ombudsman Act 1972* (SA) defines "*misconduct in public administration*" as "*an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer*".
- Quite apart from the fact that Mr Knight denies having breached the Code, for the reasons set out above, it is simply not open to you to find that any breach of the Code by Mr Knight was intentional.
60. While I considered the submissions raised by Mayor Knight's legal representatives in response to the issue of whether his conduct amounts to misconduct under the Ombudsman Act, I do not consider those arguments to be persuasive. For the reasons I have already set out, I maintain the view that Mayor Knight's conduct in disclosing confidential information was both intentional and serious.

61. Having regard to the interview in its entirety, I note with significant concern Mayor Knight's statements about individuals within the council, and his apparent disregard for sharing information about them, including for their mental health. I note that at one point Mayor Knight stated, 'I don't want to cause this young woman any more grief', and yet he proceeded to share personal information about the individual, including their confidential disclosures, in a public forum. In my view, this reflects a serious lack of insight as to the effect of his conduct on other individuals and the impact his statements may have on their wellbeing. In my view Mayor Knight's conduct throughout the interview was entirely unbecoming of a principal member of a council and it is of great concern that Mayor Knight thought it appropriate to engage in such an interview at all.

Opinion and Final Comments

In light of the above, I consider that by disclosing information that the council had ordered be kept confidential and information that he reasonably ought to have known was confidential, Mayor Knight breached Clause 3.3 of Part 3 of the Code of Conduct on 3 February 2022. By extension, Mayor Knight breached section 63(2) of the Local Government Act.

I consider that Mayor Knight's breach of the Code of Conduct was both intentional and serious and amounts to misconduct in public administration per section 4(1) of the Ombudsman Act.

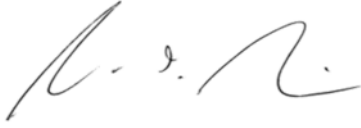
In my provisional report I foreshadowed recommending under section 25(2) of the Ombudsman Act and section 263B(1) of the Local Government Act that in the event Mayor Knight was re-elected to the council following the local government election in November 2022, the council ensure that a complaint be lodged with SACAT for Mayor Knight's breach of clause 3.3 of the Code of Conduct, seeking an order that Mayor Knight be suspended or disqualified from membership of the council and any committees of the council, whichever the Tribunal deemed appropriate. I proposed this recommendation having regard to the intentional and serious nature of Mayor Knight's breaches, the sensitivity of matters about which he breached confidentiality, and his apparent disregard for the impact of his conduct on others.

However, since issuing my provisional report the council has undergone an election, which resulted in Mayor Knight not being re-elected as Mayor. Given this, I no longer consider it necessary to make a recommendation that the council lodge a complaint with SACAT about Mayor Knight's conduct.

I now report Mayor Knight's misconduct to the principal officer of the council, as required by section 18(5) of the Ombudsman Act.

In accordance with Part 3 of the Code of Conduct for Council Members, a report from me that finds a council member has breached that Part of the Code must be provided to a public meeting of the council within two ordinary meetings of the council receiving my report. In this instance I have provided the council with a redacted version of this report for tabling, in order to de-identify any third parties referred to in the report, as well as prevent further disclosure of information subject to a council confidentiality order, or confidentiality provisions within the Ombudsman Act or ICAC Act.

I have also sent a copy of my report to the Minister for Local Government as required by section 25(3) of the *Ombudsman Act 1972*.

A handwritten signature in black ink, appearing to read 'W. Lines', with a stylized flourish at the end.

Wayne Lines
SA OMBUDSMAN

2 March 2023