

Code of Conduct - Outcome

Tuesday, 9 August 2022
Council

Strategic Alignment - Enabling Priorities

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Public

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EXECUTIVE SUMMARY

On 18 November 2021, the Chief Executive Officer (CEO) of the City of Adelaide (the Council) received an allegation that Councillor Jessy Khera had breached the Code of Conduct for Council Members (the Code).

Councillor Anne Moran (the Complainant) alleged that Cr Khera breached the Code due to his conduct following the 16 November 2021 Special Meeting of Council through a series of emails circulated on 17 November 2021 among Council Members. The Complainant alleged that the emails demonstrated abuse and bullying committed by Cr Khera.

The CEO was required to undertake a Preliminary Enquiry into the Complaint, to determine whether it warranted further action in accordance with clause 32 of the Standing Orders.

The Preliminary Enquiry found that there was prima facie evidence to suggest that there had been a breach of the Code. In accordance with Council's Standing Orders the matter proceeded to full investigation.

RECOMMENDATION

THAT COUNCIL

1. Notes the Final Investigation Report as per Attachment A to Item 10.22 on the Agenda for the meeting of the Council held on 9 August 2022.
2. Notes that following the investigation into alleged breaches of the Code of Conduct for Council Members, it has been found the actions of Cr Khera have resulted in a breach of the following clauses of the Code:
'2.3 Act in a reasonable, just respectful and non-discriminatory way when dealing with people.
2.9 Endeavour to establish and maintain a respectful relationship with all Council Members, regardless of differences of views and opinions.
2.10 Not bully or harass other Council members.'
3. Notes that, due to the minor nature of the breaches, Council will take no further action.

IMPLICATIONS AND FINANCIALS

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| City of Adelaide 2020-2024 Strategic Plan | Strategic Alignment – Enabling Priorities |
| Policy | Standing Orders and Code of Conduct for Council Members |
| Consultation | Not as a result of this report |
| Resource | Not as a result of this report |
| Risk / Legal / Legislative | The Code requires that a breach of the Behavioural Code must be the subject of a report to a public meeting of the Council. In accordance with section 45 of the Standing Orders, all determined and substantiated breaches of the Code of Conduct for Council Members will be listed by the CEO in a public register, which will be published on the City of Adelaide website, listing the date, the type of the breach and the name of the Council member found in breach. |
| Opportunities | Not as a result of this report |
| 22/23 Budget Allocation | Not as a result of this report |
| Proposed 23/24 Budget Allocation | Not as a result of this report |
| Life of Project, Service, Initiative or (Expectancy of) Asset | Not as a result of this report |
| 22/23 Budget Reconsideration (if applicable) | Not as a result of this report |
| Ongoing Costs (eg maintenance cost) | Not as a result of this report |
| Other Funding Sources | Not as a result of this report |

DISCUSSION

1. On 18 November 2021, the Chief Executive Officer (CEO) of the City of Adelaide (the Council) received an allegation that Councillor Jessy Khera had breached the Code of Conduct for Council Members (the Code).
2. Councillor Anne Moran (the Complainant) alleged that Cr Khera breached the Code due to his conduct following the 16 November 2021 Special Meeting of Council through a series of emails circulated on 17 November 2021 among Council Members. The Complainant alleged that the emails demonstrated abuse and bullying committed by Cr Khera.
3. The CEO was required to undertake a Preliminary Enquiry into the Complaint, to determine whether it warranted further action in accordance with clause 32 of the Standing Orders.
4. Following the Preliminary Enquiry process, it was determined that, having regard to the material available, the Complaint warranted further investigation under clause 35 of the Standing Orders.
5. In accordance with subclause 33.4 of the Standing Orders, the Complainant and Cr Khera were advised that the matter was to be referred for further investigation.
6. The Complaint was referred to independent legal counsel for it to be investigated on an objective basis and in accordance with the Standing Orders and the principles of procedural fairness.
7. In accordance with clause 45 of the Standing Orders, all determined and substantiated breaches of the Code will be listed by the CEO in a public register, which will be published on the City of Adelaide website, listing the date, the type of breach, and the name of the Council Member found in breach.
8. Following the conclusion of the investigation into the Complaint, it was determined that Cr Khera's actions which were the subject of the Complaint breached the following clauses of the Code:
 - 2.3 Act in a reasonable, just respectful and non-discriminatory way when dealing with people.*
 - 2.9 Endeavour to establish and maintain a respectful relationship with all Council Members, regardless of differences of views and opinions.*
 - 2.10 Not bully or harass other Council members.'*
9. The findings and recommendations made for the Council's consideration are set out in the enclosed Final Investigation Report (**Attachment A**).
10. The Complaint by the Complainant was made in two standalone parts.
11. The first part related to the conduct of Cr Khera in interacting with the Complainant in the corridor outside the Colonel Light Room after the Special Council meeting on 16 November 2021 had concluded:
 - 11.1. The findings of fact in relation to the corridor interaction do not demonstrate that Cr Khera's conduct fell short of the obligations imposed by the Code and no finding that there was, or was not, a breach was made.
 - 11.2. The evidence in relation to that part was so conflicting that no finding was able to be made.
 - 11.3. Due to the serious allegations made regarding the corridor interaction, and that no finding was made, the information specific to this investigation has been redacted from the final report.
12. The second part related to a series of emails circulated between councillors on 17 November 2021. The finding in relation to the series of emails is that Cr Khera did breach the Code:
 - 12.1. Where an investigation has determined that a breach of Part 2 of the Code has occurred, clause 2.24 of the Code provides that the breach must be the subject of a report to a public meeting of the Council.
 - 12.2. It is a matter for the Council to consider what action, if any, it wishes to take. The available outcomes are set out at clause 2.25 of the Code, and clause 43 of the Standing Orders as follows:
 - 43. Council has the power to impose by resolution one or more of the following sanctions where a breach of Part 2 of the Code of Conduct has been established to Council's satisfaction:*
 - 43.1 take no action*
 - 43.2 pass a censure motion in respect of the Council Member*
 - 43.3 request a public apology, whether written or verbal*
 - 43.4 request the Council Member to attend training on the specific topic found to have been breached*
 - 43.5 resolve to remove or suspend the Council Member from a position within the Council (not including the Council Member's elected Position on Council)*
 - 43.6 request the Council member repay monies to the Council.'*

13. The recommendation to this report reflects the recommendation provided by the independent investigators in their Investigation Report.

ATTACHMENTS

Attachment A – Final Investigation Report – Minter Ellison – Code of Conduct – Cr Khera dated 1 August 2022

- END OF REPORT -