



REPORT FOR

CONFIDENTIAL MEETING OF COUNCIL

MEETING DATE

12 DECEMBER 2023

RECORD NO:

D23/99869

REPORT OF:

OFFICE OF THE CHIEF EXECUTIVE OFFICER

TITLE:

SACAT MATTER 2023/SA001373 - MR KEVIN KNIGHT

1. *That pursuant to Section 90(2) of the Local Government Act 1999, the Council orders that the public (except staff on duty) be excluded from the meeting to enable discussion on the SACAT matter 2023/SA001373 - Mr Kevin Knight.*
2. *That the Council is satisfied that pursuant to section 90(3)(i) of the Local Government Act 1999, the information be received, discussed or considered in relation to this item is:*
 - *information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.*
 - *on the basis that public release of any litigation strategy or approach prior to the matter being resolved could compromise Council's ability to obtain an outcome satisfactory to the Council.*
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 that the meeting be conducted in a place open to the public has been outweighed in the circumstances on the basis that public release of any litigation strategy or approach prior to the matter being resolved could compromise Council's ability to obtain an outcome satisfactory to the Council.*

PURPOSE

To consider authorising the Chief Executive Officer (CEO) of Council to negotiate a settlement outcome for matter 2023/SA001373 (being City of Tea Tree Gully and former Mayor Kevin Knight) in the South Australian Civil Administrative Tribunal (SACAT) on behalf of Council, to give effect to Council’s public authority obligations.

RECOMMENDATION

That the CEO be authorised to negotiate in ‘good faith’ a settlement outcome within the parameters of the orders sought for SACAT matter 2023/SA001373, including a settlement sum by way of reimbursement to the Council that may be less than that specified in the proposed orders sought, which are currently as follows:

- a. an order requiring former Mayor Knight to reimburse the Council \$110,000, being the reimbursement of the Council’s costs relating to the investigation of the matters, the subject of this complaint; in addition to the Council’s costs of these disciplinary proceedings; and/or**
- b. an order disqualifying the Respondent from any Office under the Act; and/or**
- c. such further or other order as the Tribunal deems fit.**

in order to give effect to Council’s public authority obligations.

RETENTION OF CONFIDENTIAL DOCUMENTS

1. That having considered the agenda item titled “ SACAT MATTER 2023/SA001373 - MR KEVIN KNIGHT” and dated 12 December 2023 in confidence under section 90(2) & (3)(i) and Section 91(7) of the Local Government Act 1999:

- information relating to actual litigation, or litigation that the Council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council**

the Council pursuant to section 91(7) of the Act orders that the report and minutes relevant to this item be retained in confidence (with the exception of those third parties impacted or involved in the SACAT matter) until the SACAT matter is finalised or until the Council resolves otherwise, whichever occurs first.

2. That Council gives the power pursuant to Section 91 of the Local Government Act 1999 to the Chief Executive Officer to revoke the order made under Section 91(7) of the Local Government Act 1999 subject to the Chief Executive Officer consulting with the Mayor and reporting to the Elected Members of the revocation.

1. BACKGROUND

At its meetings on 8 November 2022 (previous term of Council) and 14 March 2023, Council considered two Ombudsman final investigation reports in relation to the conduct of former Mayor Kevin Knight (matters 2021/01843 and 2022/00900 respectively). At these meetings, Council supported the Ombudsman's findings and recommendations which included:

- a failure of Mr Knight to issue an apology in accordance with resolution 388 of the Council's meeting of 24 March 2020, a breach of Part 2.6 of the former Code of Conduct for Council members
- Mr Knight engaged in repeated and sustained inappropriate behaviour as listed in Part 2 of the Code of Conduct which amounts to misconduct under Part 3 of the Code of Conduct
- Mr Knight disclosed information that the Council had ordered be kept confidential, a breach of Clause 3.3 of Part 3 of the Code of Conduct.
- that Mr 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 1972*.

As a remedy, Council was to ensure (via the CEO) that a complaint was lodged against Mayor Knight with the South Australian Civil and Administrative Tribunal (SACAT). The Ombudsman was informed of the complaint lodged with SACAT to confirm Council's implementation of the Ombudsman's recommendations. The Ombudsman's file is now closed.

The Ombudsman investigation reports are available on the Ombudsman SA's public website ([2021/01843](#) and [2022/00900](#)), and will also be made available to Elected Members on their online portal (the Hub).

2. DISCUSSION

The orders sought as a result of SACAT matter 2023/SA001373 (with former Mayor Knight listed as the respondent) were as follows:

- a. an order requiring former Mayor Knight to reimburse the Council \$110,000, being the reimbursement of the Council's costs relating to the investigation of the matters, the subject of this complaint; in addition to the Council's costs of these disciplinary proceedings; and
- b. an order disqualifying the respondent from any Office under the Act; and
- c. such further or other order as the Tribunal deems fit.

Since the complaint and affidavit was lodged with SACAT in May 2023, there have been a number of directions hearings. Elected members are kept informed on a

monthly basis on the progress of the SACAT matter via CEO monthly information report.

To date, the SACAT directions hearings have not required any direction that would need a decision of the Council as an elected body. However, the matter has now been referred in the first instance to a compulsory settlement conference, which requires mediation/conciliation with the respondent (Mr Knight). The settlement conference is scheduled for 15 December 2023.

To support this process, and enable the CEO to have flexibility in settling the matter in an expedient manner, it is recommended that authorisation be provided to the CEO within the parameters of the SACAT orders to enable flexible negotiation at the settlement conference. The CEO, in conjunction with Council's lawyers, intends to attend the settlement conference in person.

3. FINANCIAL

Financial impacts in relation to this report are not entirely known at this stage. An indicative estimate for commencing action in SACAT, initial directions hearing(s) and up to any conciliation conference is estimated to be between \$6,000 and \$20,000. Approximately \$17,000 has been spent on the SACAT matter to date.

4. STRATEGIC OBJECTIVES

Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
Leadership	
<i>Decision making is informed, based on evidence and is consistent</i>	The Ombudsman's final reports and Council's SACAT application based on information and facts made available during the investigation

5. LEGAL

The following sections of the *Local Government Act 1999* are relevant to this report:

- Section 264 – complaint lodged with SACAT
- Section 265 – hearing by SACAT
- Section 267 – outcome of SACAT proceedings

6. RISK – IDENTIFICATION AND MITIGATION

There is a risk that if the matter is not resolved in an expedient manner, the costs involved in handling the SACAT matter could increase past the initial fee estimate. This is a low risk, noting that expenditure is monitored on a monthly basis.

There is also a risk that the existing jurisdictional issue around Mayor Knight no longer being an ‘elected member’ could result in not achieving an outcome satisfactory to the Council. It is on this basis, that it is proposed for the CEO to be given flexibility in negotiating a settlement outcome, in order to attempt to achieve a satisfactory outcome for the council.

7. ACCESS AND INCLUSION

N/A

8. SOCIAL AND COMMUNITY IMPACT

There is likely to be community interest in the outcome of this matter.

9. ENVIRONMENTAL

N/A

10. ASSETS

N/A

11. PEOPLE AND WORK PLANS

With the exception of work undertaken by Council’s lawyers in handling the SACAT application, the remainder of work is undertaken within existing staff workload, noting it has the potential to change or delay other work plan priorities at key stages of the matter.

12. COMMUNITY AND STAKEHOLDER ENGAGEMENT

This is not a matter for stakeholder or community engagement.

13. COMMUNICATIONS OF COUNCIL DECISION

Any promotion or communications of Council decisions regarding this matter would be directed through Council’s principal spokesperson.

14. INTERNAL REPORT CONSULTATION

Due to the nature of this report, no internal report consultation has been undertaken.

Attachments

N/A

Report Authorisers

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