

Management report to Council

Agenda item 3.1

Update on the investigation into allegations against the former Lord Mayor, Robert Doyle

Council

Presenter: Ben Rimmer, Chief Executive Officer

13 March 2018

Purpose and background

1. The purpose of this report is to provide Council with the outcomes stemming from the First Report of Dr Freckelton QC's investigation into allegations against the former Lord Mayor, Robert Doyle.
2. On 15 December 2017, Councillor Tessa Sullivan made serious allegations against the Lord Mayor and resigned as a Councillor. Given legislative obligations to ensure a safe workplace, the Chief Executive Officer (CEO) immediately commissioned an independent external investigation of these matters by Dr Ian Freckelton QC to examine the facts related to the allegations. The Lord Mayor resigned on 5 February 2018.
3. An update on the investigation was provided to the Future Melbourne Committee on 6 February.
4. The CEO received the First Report from Dr Freckelton on Sunday 11 March 2018.

Key issues

5. A detailed 'Summary report concerning the status of the investigation into the allegations concerning the former Lord Mayor' (Summary Report) by the CEO is contained in Attachment 2.
6. The investigation into matters relating to Ms Sullivan and Cr Oke has now concluded. In relation to allegations by a third complainant the CEO has decided to suspend the investigation in relation to this matter until Mr Doyle is able to respond.
7. Productive discussions are continuing regarding the issues identified by management with the existing provisions of the *Local Government Act 1989* in dealing with allegations of this nature. Management is providing a submission to the Local Government Exposure draft. This submission includes commentary on the sufficiency of the current provisions in dealing with allegations of this nature.

Recommendation from management

8. That Council:
 - 8.1. Notes the Chief Executive Officer's Summary Report concerning the status of the investigation into the allegations concerning the former Lord Mayor, Robert Doyle.
 - 8.2. Notes that the CEO has decided to suspend the investigation in relation to allegations by a third complainant until Mr Doyle is able to respond.

Attachments:

1. Supporting Attachment
2. Summary report concerning the status of the investigation into the allegations concerning the former Lord Mayor (Summary Report)

Supporting Attachment

Legal

1. Legal advice has and will continue to be sought in relation to the investigation.

Finance

2. There are no direct financial implications of the management recommendation.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. As part of the investigation a number of past and present Councillors, staff and members of the public were interviewed.

Environmental sustainability

5. Environmental sustainability issues or opportunities are considered not relevant to this matter.

SUMMARY REPORT CONCERNING THE STATUS OF THE INVESTIGATION INTO THE ALLEGATIONS CONCERNING THE FORMER LORD MAYOR

The investigation

1. On Monday, 18 December 2017 I, through the Council's solicitors (**MinterEllison**) commissioned an independent investigation into concerns raised about allegations of inappropriate sexual conduct by the Lord Mayor, Robert Doyle, in his role as Lord Mayor. The appointed investigators were Dr Ian Freckelton QC and Ms Sarah Keating of the Victorian Bar (**Investigators**).
2. As CEO I have responsibility for providing a safe workplace to Councillors and staff of the Council. The concerns that had been raised were relevant to my discharge of these responsibilities. I requested the investigation be conducted so that I could be independently informed as to any facts able to be established, as this was relevant to any steps I would take. Before commissioning an investigation, I established there were no practical options available to me under relevant legislation that would achieve and appropriately preserve workplace safety.
3. The investigation was conducted with expedition by reason of the seriousness of the matters raised, their significance in the context of the good governance of the Council and the importance of enabling the Council to maintain efficient and harmonious operation.
4. It is clear that the investigation has attracted intense media interest, which has undoubtedly placed considerable strain on the complainants

and Mr Doyle. However, I am satisfied that the process adopted by the Investigators was rigorous, forensic and fair.

5. I have now received a detailed document prepared by the Investigators ("**the First Report**") which runs to approximately 100 pages (including annexures). Other than myself, the only person at the City of Melbourne to have read the First Report is the Manager, Governance and Legal.
6. I have formed the view that the:
 - a. confidential nature of the First Report and the investigation process (in which information was provided on a voluntary and confidential basis which allowed a more thorough investigation process);
 - b. statutory obligations regarding the collection, use and dissemination of "personal information" and "health information" which are set out throughout the First Report; and
 - c. interests of complainants, Mr Doyle and other participants;all weigh against the public disclosure of the First Report.
7. However, the seriousness of the findings in the First Report and the public interest in the resolution of these matters, mean that it is imperative that the Council is properly briefed about the outcome of the Investigation and the findings in the First Report.
8. Councillors are elected officials, who are accountable to the public. The CEO is a public servant who is accountable to Council and through Council, to the community. Ordinarily, it is inappropriate for the CEO to attempt to control or manage Councillor behaviour or actions as elected representatives. However, my duties under OH&S legislation may conflict with this general principle.
9. I have formed the view that it would be inappropriate to delay the finalisation of the First Report or briefing of the Council on the outcomes set out in the First Report for a further period awaiting the uncertain date when Mr Doyle will recover from his current ill health.

10. As a result, I have determined to brief the Council on the outcomes and findings recorded in the First Report because this is one of the few actions I can take to improve the safety of the Council workplace when Councillor behaviour is in question.
11. I wish to acknowledge the very significant and courageous personal action Ms Sullivan took in raising her concerns with me and therefore precipitating this investigation.
12. The following summary is derived from the executive summary of the First Report prepared by the Investigators. Where appropriate to do so, I have quoted directly from the First Report itself.

Scope of the First Report

13. The First Report addresses concerns raised by Ms Sullivan (formerly Councillor Sullivan) and Councillor Oke.
14. The First Report does not consider other matters that have been raised by others in relation to Mr Doyle's conduct. Such matters, where relevant to his role as Lord Mayor, may be the subject of a further report – and this is the reason for which this report bears the title "First" Report.

The investigation process

15. The terms of reference for the investigation required the Investigators to make findings of fact as to whether Mr Doyle has engaged in certain conduct, as alleged, and to then evaluate whether in all the circumstances that conduct was sexually inappropriate.
16. The Investigators were required to determine what occurred and then whether, objectively viewed, the conduct constituted "sexually inappropriate conduct". Detailed reasons have been provided for all findings at which the Investigators have arrived.
17. It is necessary to say something about the way in which the First Report defines the term "inappropriate sexual conduct". The Investigators

(having considered objections raised by Mr Doyle's legal team) defined the term in this way:

... the wording of "sexually inappropriate conduct" in our view is straightforward. The words are ones of ordinary English usage, rather than a legal term of art. Inevitably, application of those words requires the exercise of judgement as to:

- whether the conduct occurred; and if so,
- whether it was deliberate; and if so,
- whether it had a sexual connotation to it; and
- whether it was inappropriate in the circumstances in which it took place.

We have interpreted the words "sexually inappropriate conduct" as designating deliberate conduct that, objectively viewed, has a sexual flavour or connotation that is inappropriate in the circumstances. The circumstances which are relevant are those pertaining to conduct within a workplace, taking place between the Lord Mayor and his elected colleagues, Councillors, or where the Lord Mayor interacted with a member of the public in his role as Lord Mayor.

18. The Investigators were also required to apply what is known as the "Briginshaw standard". Given the seriousness of the allegations made, the Investigators were required to be reasonably satisfied of specific allegations of sexually inappropriate conduct relating to Mr Doyle in his term of office as Lord Mayor.
19. In practice, this meant that the Investigators were required to be satisfied to a level which goes beyond mere likelihood that something happened. It meant the Investigators had to reach a high level of satisfaction before they were prepared to conclude that something in fact happened. A failure to find something proven to the Briginshaw standard does not mean the thing did not happen or that the person who alleged the event to have occurred was lying. It simply means that the body of evidence viewed as a whole did not comfortably satisfy the Investigators that the event was proven as alleged.
20. All Councillors who were in office at the time the investigation was commissioned were spoken to during the investigation, as well as a number of former Councillors. In addition, members of staff of the

Council were interviewed, as were a number of members of the general community. Various members of the public made contact with the investigation by telephone, letter and email. Those who raised substantive issues in relation to the conduct of the Mr Doyle while he was in his office as Lord Mayor were formally interviewed. Where necessary, further interviews were undertaken.

Procedural fairness

21. Through Minter Ellison, I have sought to extend appropriate opportunities for Mr Doyle to have input into the matters raised with the Investigators. All proper efforts were made by the Investigators to ensure that Mr Doyle was able to participate fully and fairly in the investigation.
22. Mr Doyle is legally represented. He attended an interview with the investigators on 5 January 2018 so that he could respond to the allegations. He was notified in advance of that interview of the topics that were proposed to be the subject of discussion with him.
23. In addition to participating in an interview with the Investigators, Mr Doyle's legal advisers submitted a detailed 15-page written submission to the Investigators that specifically addressed each of the allegations levelled against him by Ms Sullivan and Councillor Oke.
24. Mr Doyle was also given the opportunity to make comment upon the contents of a draft Report but did not avail himself of this particular opportunity by reason of ill health.
25. Having read the First Report, I am satisfied the evidence of Mr Doyle provided at interview along with his detailed submissions were carefully weighed by the Investigators in the course of making their findings.

Analysis in the First Report

26. The First Report contains a careful evaluation of the credibility of:
 - a. Mr Doyle;
 - b. Ms Sullivan;

- c. Councillor Oke; and
 - d. other relevant witnesses.
27. The Investigators concluded on the basis of early or contemporaneous complaint about a matter raised by Ms Sullivan and the consistency of her allegation, that they were satisfied to the relevant standard, of one of the matters she raised concerning Mr Doyle's conduct. The Investigators took into account Mr Doyle's strong denial of engaging in the alleged inappropriate conduct, but nevertheless concluded that they were satisfied that the inappropriate conduct had occurred.
 28. Ms Sullivan raised a number of other matters in relation to the conduct of Mr Doyle that the Investigators were not sufficiently satisfied of based on the *Briginshaw* standard. The Investigators did not record adverse findings in relation to those other matters.
 29. The Investigators concluded on the basis of the clarity and detail of Councillor Oke's report (as well as an eyewitness account of one of the matters, and an early complaint in respect of the other) that where her account differed from that of Mr Doyle, the Investigators were satisfied of her account to the relevant standard.
 30. The Investigators did not accept the argument advanced by Mr Doyle in respect of an incident at a restaurant that his touching of Ms Oke was a signal to her that he was impressed by a candidate for a job.
 31. The Investigators also took into account Mr Doyle's strong denial of ever having attempted to kiss Councillor Oke improperly, but ultimately, they did not accept what he said about this incident and were persuaded by Ms Oke's account to the relevant standard.
 32. Mr Doyle has stated clearly throughout the investigation that he either did not engage in the acts constituted by the allegations or that his conduct in engaging in them was not sexually inappropriate.
 33. The Investigators noted that Mr Doyle denied drinking to the point of being significantly intoxicated on relevant occasions and that he pointed

out he was the best person to know how much alcohol he had consumed.

Adverse findings against Mr Doyle in the First Report

34. The Investigators made the following adverse findings which are recorded in the First Report:

1. On Tuesday 2 May 2017, the following incident occurred in circumstances of sexual inappropriateness. The Lord Mayor's driver transported both Councillor Sullivan and the Lord Mayor from the workplace to their homes. The Lord Mayor was driven home first. He was seated in the front passenger seat and Councillor Sullivan was seated directly behind him. The Lord Mayor got out of the car at his address, opened the passenger door where Councillor Sullivan was seated, embraced her with his right arm and with his left hand, deliberately reached in and placed it on her right breast. Councillor Sullivan slapped his hand away, causing him to cease his conduct.
2. On or about 4 December 2014 whilst Ms Cathy Oke was a Councillor, the following sexually inappropriate conduct occurred. Councillor Oke, the Lord Mayor, Councillor Mayne and another were at Lupino Bistro and Bar at 41 Little Collins Restaurant as part of an informal process to select a candidate for the position of Chief Executive Officer. The Lord Mayor had consumed alcohol. Councillor Oke was seated beside the Lord Mayor. On a number of occasions, the Lord Mayor placed his hand on Councillor Oke's thigh so that his fingers were below her groin area stretched over her thigh. He moved his hand in a sexually inappropriate manner on her inner thigh, including on her inner thigh. On each occasion Councillor Oke brushed his hand away. This occurred three to four times until Councillor Oke prevented him from continuing his conduct by moving her chair from the vicinity of the Lord Mayor.
3. On another occasion in late 2016 or early 2017, on a Tuesday evening after a Council meeting, namely whilst Ms Oke was a Councillor, the Lord Mayor behaved in a sexually inappropriate way toward her in the following way. He asked her to come into his office on her own after both parties had consumed alcohol at a Tuesday post-Council meeting dinner. Councillor Oke went with the Lord Mayor into his office but before she could leave he embraced her and attempted to kiss her on the mouth, causing her to push him away and resulting in her leaving his office to get away from him and avoid his overtures.
4. Each of these matters (1, 2 and 3), which have been found established, occurred in the context of the Lord Mayor having consumed substantial amounts of red wine.

The First Report's conclusions

35. The Investigators noted the following important matters:

We note that when a workplace is sexualised, in the way engaged in on occasion by the conduct of Mr Doyle, this has the potential to contaminate and distort the

atmosphere between colleagues in ways which are hard to repair and which can impact upon the quality of work product. It can also cause significant confusion and distress to those the subject of the conduct; it is a breach of the right of any person in a workplace to dignity and a sense of safety and security.

We observe that a significant vulnerability in the Melbourne City Council workplace was the lack of a complaints process with which a Councillor or staff member could feel comfortable if they wished to make a complaint about the conduct of the Lord Mayor. This deficit played a role in when and how complaints were ultimately ventilated in respect of these matters.

In addition, the conduct the subject of findings in this investigation, on each occasion occurred in the context of consumption of alcohol. The information provided to the investigation reflects that the consumption of alcohol at Melbourne City Council on a Tuesday evening ought to be the subject of policy revision.

We comment that conduct of the kind the subject of these adverse findings is not consistent with standards and expectations in modern workplaces. It is conduct that is the more serious when it is a person in a position of authority and influence, an individual who is and should behave as a role model, who engages in it.

36. While no findings have been made by a court or tribunal, based on the information reported by the investigators, I have formed the belief that the Council was not a safe workplace for the two women involved and that the conduct which the investigators found proven could constitute sexual harassment within the meaning of section 92 of the Victorian *Equal Opportunity Act 2010* and may have constituted gross misconduct under the *Local Government Act 1989*.
37. The behaviour of Councillors is a matter for the electorate and their own judgement and is governed by the operation of the Councillor conduct framework contained in the *Local Government Act 1989*. It is not usually a matter that is properly the subject of judgement or comment by a CEO. Nevertheless, I take very seriously the findings recorded in the First Report concerning the nature of sexualised workplaces, the discomfort expressed about the complaints process by Councillors and the consumption of alcohol.
38. Appropriate steps to respond to these matters have already been commissioned by the Future Melbourne Committee at its meeting at 6 February 2018. Council agreed to review its Councillor Code of Conduct. It noted that management was reviewing all relevant administrative policies that referenced Councillors, including the alcohol and drug

policy. Management is in productive discussion with the Victorian Government about improvements to the *Local Government Act 1989* for dealing with allegations of this nature across the sector.

Further allegation

39. I am advised that a further serious matter was raised with investigators by another woman which involves allegations of improper conduct engaged in by Mr Doyle in his role as Lord Mayor at a public function. Sworn evidence was received by the investigation and the woman and her husband were interviewed.
40. Mr Doyle was invited by investigators to participate in an interview about this matter on more than one occasion but his attendance was not possible because of ill health.
41. In these circumstances, the investigators have formed the view that it would not be proper for them to make findings about this further allegation without Mr Doyle being able to engage with the investigation about this matter. As a result, I have decided to suspend the investigation in relation to this matter until Mr Doyle is able to respond.

**Ben Rimmer
Chief Executive Officer
City of Melbourne**

13 March 2018