

**CITY OF MARION
COUNCIL COMMITTEE MEETING
10 FEBRUARY 2004**

CONFIDENTIAL

**REPORT RELATING TO:
KRA1 – Provide Leadership**

**Originating
Officer:** Mark Searle

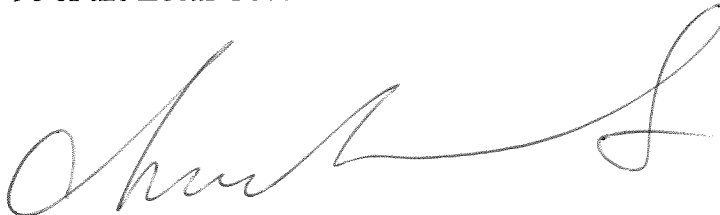
Subject: Legal Advice

Ref No: CC100204F01

File No:

RECOMMENDATION

If the Council so determines, this matter may be considered in confidence under Section 90 of the Local Government Act on the Grounds included in the Report Ref No:



Mark Searle
Chief Executive Officer

1. That Pursuant to Section 90(2) and (3)(a) and (3)(h) of the Local Government Act, 1999 the Council orders the public be excluded, with the exception of Council officers present, on the basis that the Council will receive and consider information pertaining to alleged breaches of the Council's Code of Conduct the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead) and will also receive legal advice pertaining to this matter.

CORPORATE OBJECTIVES:

- 1.1 A cohesive and highly informed Council achieving its' democratic and community priorities*

BACKGROUND:

At the General Council Meeting on Tuesday 27 January 2004, Council approved the engagement of Dr Josephine Tiddy, Managing Director and Principal Consultant of Josephine Tiddy Corporate Transformations, to undertake the investigation and mediation into the alleged breaches of the Code of Conduct for Elected Members by Councillor Bruce Hull.

Councillor Hull now seeks Council funding to engage Mr Peter Hannon of Duncan Basheer Hannon to provide legal advice in relation to the investigation of the alleged breaches of the Code of Conduct for Elected Members. Councillor Hull's request is attached (Attachment 1).

REPORT OBJECTIVE:

To inform Council of Councillor Bruce Hull's formal written request seeking Council funding to engage legal advice during the process of the investigation and mediation of the alleged breaches of Council's Code of Conduct for Elected Members.

IMPLEMENTATION:

The process that has been determined by Council for investigating the complaints of alleged breaches of the Code of Conduct for Elected Members by Councillor Hull is not an adversarial process. Council has approved a conciliatory process of mediation with an independent person to achieve this objective. Dr Tiddy has been engaged by Council, as a corporate body, and not by the complainants or administration. She is not representing any party but, rather, will impartially consider the complaints relating to alleged breaches of Council's own Code of Conduct. As part of Dr Tiddy's investigation and mediation process, consideration will be given to the interests of the Council, the complainants and Councillor Hull. Neither the Council nor the complainants will be legally represented in this process. All parties will be equally protected with the principles of equity applied to enable a process of natural justice and procedural fairness.

The Council is referred to the Local Government Act 1999 for guidance in this matter.

- Section 39 of the Local Government Act states:
 - (1) *No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or council's powers, functions or duties under this or other Acts.*
 - (2) *A liability that would, but for this section, attach to a member of a council attaches instead to the council.*

This provision of the Act does not provide indemnity for Councillor Hull as there is no civil liability issue associated with the alleged breaches of the Code of Conduct for Elected Members.

- Section 63 of the Local Government Act states:
 - (1) *A council must prepare and adopt a code of conduct to be observed by the members of the council.*
 - (2) *A council must, within 12 months after each general election of the council, complete (and, as appropriate, implement) a review of its code of conduct under this section.*
 - (3) *A council may at any time alter its code of conduct, or substitute a new code of conduct.*
 - (4) *A person is entitled to inspect (without charge) the code of conduct of a council at the principal office of the council during ordinary office hours.*
 - (5) *A person is entitled, on payment of a fee fixed by the council, to a copy of the code of conduct of a council.*

The Code of Conduct provisions in the Act are silent on the issue of legal advice for Elected Members. Council's Code of Conduct for Elected Members is also silent on the provision of legal advice for a member.

A breach of Council's Code of Conduct for Elected Members does not attract any penalising provisions. Council is restricted in its powers and may only make recommendations or censure a member who has been found to breach the Code of Conduct.

- Section 137 of the Local Government Act states:

"Subject to this or another Act, a council may expend its funds as the council thinks fit in the exercise, performance or discharge of its powers, functions or duties under this or other Acts."

Council needs to consider whether the payment of legal expenses for an individual member who has chosen to or who seeks to engage such assistance amounts to a use of funds which falls within Section 137.

Councillor Hull, in his written request, also seeks Council funding to engage legal advice for the investigation into the alleged breach of the Occupational Health, Safety and Welfare Act 1986. Dr Tiddy is currently undertaking an investigation into the alleged breach of this Act and her subsequent findings will be provided to Councillor Hull. At this stage, no determination has been made as to whether Councillor Hull has breached this Act, therefore, consideration for funding to engage legal advice for this issue is premature.

CONSULTATION:

Consultation has been undertaken with Norman Waterhouse Lawyers regarding the requirements of the Local Government Act 1999.

BUDGET IMPLICATIONS:

Costs associated with the provision of legal advice to Councillor Hull for the investigation of the alleged breaches of the Code of Conduct for Elected Members would be funded from the Governance Department's Elected Members 2003/2004 approved budget, if approved by Council.

If Council determines to accede to Councillor Hull's request, consideration may need to be given to setting a dollar limit that requires further consideration by Council when it is reached to determine if any further funds are to be allocated.

ENVIRONMENT:

Nil.

CONCLUSION:

The investigation into the formal written complaints of the alleged breaches of the Code of Conduct for Elected Members by Councillor Bruce Hull requires an objective and confidential approach. Utilising a mediation style process for investigating the alleged breaches of the Code of Conduct for Elected Members, undertaken by Dr Josephine Tiddy, will enable an effective and efficient process to be undertaken that incorporates procedural fairness and natural justice. Dr Tiddy does not represent any party in this process and has no fetters placed upon her considerations and determination. The engagement of legal advice for Councillor Hull as part of this process is a decision to be made by Council.

RECOMMENDATION:

That:

1. **the report be received;**
2. **Council provides direction on the matter of the request by Councillor Hull to engage Mr Peter Hannon of Duncan Basheer Hannon to provide legal advice to Councillor Bruce Hull for the investigation and mediation of the alleged breaches of the Code of Conduct for Elected Members;**
3. **under Section 91(7) and (9) of the Local Government Act the Council orders that this document be kept confidential for a period of 12 months, and that it be reviewed at the General Council Meeting in December 2004.**

Appendix 1: Councillor Bruce Hull's formal written request.

**West
Ward**

Bruce Hull
Councillor
City of Marion

139 Diagonal Road
Warradale SA 5046
Ph 08 82960574
Fax 08 82960574
Email: bruce.hull@marion.sa.gov.au

30.01.04

Mr Mark Searle
Chief Executive
City of Marion
245 Sturt Road
STURT
SA 5047

Dear Sir

With regard to the investigations being conducted by Council in relation to alleged Code of Conduct breach and Occupational Health & Safety Act breach. I formally seek council's permission to allow me to engage Mr Peter Hannon of Duncan Basheer Hannon as to provide me with legal advice in relation to these investigations.

I trust that the council may find it prudent to fund this request on the grounds of natural justice and procedural fairness.

Yours sincerely


Bruce Hull

REF NO CC100204

CONFIDENTIAL ITEM

Legal Advice

Ref No: CC100204F01

Moved Councillor Brown, Seconded Councillor Durward that:-

1. the report be received;
2. Council defer consideration, at this stage, of the request by Councillor Hull to engage Mr Peter Hannon of Duncan Basheer Hannon to provide legal advice to Councillor Bruce Hull for the investigation and mediation of the alleged breaches of the Code of Conduct for Elected Members on the basis that the mediation process has not been completed;
3. the mediation process be undertaken as soon as possible to enable completion of the process in a timely and expedient manner;
4. under Section 91(7) and (9) of the Local Government Act the Council orders that this document be kept confidential for a period of 12 months, and that it be reviewed at the General Council Meeting in December 2004.

Carried unanimously

