

Released in part
as per Council
Resolution
GC191206R11

**CITY OF MARION
GENERAL COUNCIL MEETING
26 OCTOBER 2004**

CONFIDENTIAL

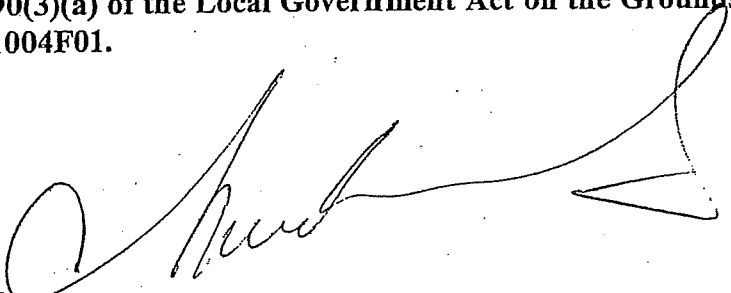
REPORT RELATING TO:

KRA1 – Provide Leadership

Originating Officer: Narelle Jeffery, Senior Governance Officer
Manager: Pauline Koritsa, Manager Governance
Subject: Alleged Breach of Elected Members' Code of Conduct
Ref No: GC261004F01
File No: 15/05/62

RECOMMENDATION

If the Council so determines, this matter may be considered in confidence under Section 90(2) and 90(3)(a) of the Local Government Act on the Grounds included in the Report Ref No: GC261004F01.


Mark Searle
Chief Executive

1. That Pursuant to Section 90(2) and (3)(a) of the Local Government Act, 1999 the Council orders that all persons present, with the exception of the following Council officers (Mark Searle, Chief Executive; Pauline Koritsa, Manager Governance; Peter Tsokas, Director Operations; Jeff Rittberger, Director Finance; Kathy Jarrett, Governance Business Co-ordinator; and Jaimie Thwaites, Governance Business Officer) be excluded from the meeting as the Council considers that the requirement for the meeting to be conducted in a place open to the public has been outweighed in circumstances where the Council will receive and consider a report into the findings of an investigation pertaining to an alleged breach of the Elected Members' Code of Conduct.

CORPORATE OBJECTIVES:

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

BACKGROUND:

A report was presented to the 23 March 2004 meeting of Council in relation to a formal complaint from Councillor Bruce Hull alleging breaches of the Elected Members' Code of Conduct by Councillors Irene Whennan and Vincent Brown. At that meeting it was resolved that:

- 2. Dr Josephine Tiddy, Managing Director and Principal Consultant, Josephine Tiddy Corporate Transformations, be engaged to undertake the investigation and mediation into the alleged breaches of the Code of Conduct for Elected Members;*
- 3. A report on the findings of the investigation and mediation be provided to Council for its consideration.*
- 4. The Guidelines for Investigating an Alleged Breach of the Code of Conduct for Elected Members be endorsed until a new Code of Conduct for Elected Members has been adopted;*
- 5. In accordance with 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 will be reviewed at the General Council Meeting in December 2004.*

REPORT OBJECTIVE:

In accordance with the Council resolution the matter has now been investigated by Dr Josephine Tiddy and her findings are presented to Council, via a copy of a report to the Chief Executive, for consideration (Appendix 1).

As indicated in Dr Tiddy's report to the Chief Executive, Dr Tiddy has undertaken individual interviews with Councillors Hull, Whennan, Brown, Veliskou, Tilbrook and as part of the investigation. To obtain a resolution to the matter, a mediation conference was held between Councillors Hull, Whennan and Brown at which time Councillors Whennan and Brown indicated that their behaviour may have caused unintended offence to Councillor Hull.

Dr Tiddy has also provided a number of recommendations for Council to consider as follows:

- **Recommendation 1**
A filtering system be established immediately for complaints lodged by Elected Members under their Code of Conduct, where the Manager, Governance reviews the written complaint and determines whether the matter is based on hearsay and therefore not valid, or is frivolous.
- **Recommendation 2**
Manager Governance determines which complaints should be subject to investigation. Such complaints should include those matters that may be vexatious, or lacking in

substance, as they are often complex, and should not be determined on the basis of the written complaint.

On 25 May 2004 Council adopted the current Code of Conduct for Elected Members that indicates the process to be utilised for the investigation of alleged breaches of the Code of Conduct, as follows:

"The Chief Executive Officer will refer the complaint to an independent person to enable an investigation to be conducted into the complaints using a mediation style process. The mediation process will incorporate discussions with an independent investigator, individually and/or in a group environment. This will enable consideration to be made on the merits of the complaints. The results of this process will be the subject of a further report to Council."

Council is aware that the Code of Conduct for Elected Members is currently undergoing review with a workshop to be conducted with Elected Members in February 2005, facilitated by Dr Josephine Tiddy. It is therefore pertinent to consider any changes to the investigation process of alleged breaches of the Code of Conduct for Elected Members as part of this review.

- **Recommendation 3**

Councillor Brown is moved from his position in the Council Chamber so that he and Councillor Hull do not sit together, to prevent further conflict arising over Councillor Brown's perception that his personal space is being intruded upon.

Council to consider the above recommendation.

- **Recommendation 4**

With the implementation of the above recommendations, that Councillor Hull's complaint, lodged under the terms of the Code of Conduct for Elected Members, is considered finalised and no further action is taken on the matter.

Council to consider the above recommendation.

CONCLUSION:

Dr Josephine Tiddy has undertaken and finalised her investigation and mediation in relation to the formal complaint of alleged breaches of the Elected Members' Code of Conduct by Councillors Whennan and Brown. The result of this investigation is provided to Elected Members for consideration.

RECOMMENDATION:

That:-

1. The report be received.
2. The results of Dr Tiddy's investigation and mediation in relation to the formal complaint alleging breaches of the Elected Members' Code of Conduct by Councillors Irene Whennan and Vincent Brown be considered.

3. Recommendations 1 and 2 of Dr Tiddy's report be included as part of the current review of the Code of Conduct for Elected Members.
 1. *A filtering system be established immediately for complaints lodged by Elected Members under their Code of Conduct, where the Manager, Governance reviews the written complaint and determines whether the matter is based on hearsay and therefore not valid, or is frivolous.*
 2. *Manager Governance determines which complaints should be subject to investigation. Such complaints should include those matters that may be vexatious, or lacking in substance, as they are often complex, and should not be determined on the basis of the written complaint.*
4. In accordance with Recommendation 3 of Dr Tiddy's report that Councillor Brown be moved from his position in the Council Chamber so that he and Councillor Hull do not sit together, to prevent further conflict arising over Councillor Brown's perception that his personal space is being intruded upon.
5. In accordance with Recommendation 4 of Dr Tiddy's report that Councillor Hull's complaint, lodged under the terms of the Code of Conduct for Elected Members, is considered finalised and no further action is taken on the matter.
6. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, the minutes arising from this report and the report detailing the findings of the investigation and mediation into alleged breaches of the Elected Members' Code of Conduct be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). This confidentiality order will be reviewed at the General Council Meeting in December 2004.

Appendix 1: Report from Dr Jo Tiddy to the Chief Executive.

**CITY OF MARION
GENERAL COUNCIL MEETING
19 OCTOBER 2004**

**Report of the Investigation and Mediation of Councillor
Bruce Hull's complaint of an alleged
Breach of the Code of Conduct of Elected
Members, Findings and Recommendations**

INTRODUCTION

At the 23 March 2004, General Marion Council meeting, Council endorsed the recommendation that Dr Josephine Tiddy, Managing Director of JTCT be engaged to undertake the investigation and mediation into an alleged breach of the Code of Conduct for Elected Members.

The recommendation arose from a formal written complaint, submitted to Chief Executive Mark Searle, on 1 March 2004, by Councillor Bruce Hull wherein he claimed that Councillors Irene Whennan and Vincent Brown had allegedly breached the Code of Conduct for Elected Members.

Dr Tiddy undertook an investigation by individually interviewing
, Councillors Hull, Whennan, Brown, Tilbrook and
Veliskou.

This matter was discussed through mediation with Councillor Hull and Councillors Whennan and Vincent and conclusions reached.

This report details Dr Tiddy's investigation, mediation, findings and recommendations.

While this report has not been sighted, it has been discussed in detail with Councillor Hull, Whennan and Brown and all three Councillors have agreed with the material to be included in this report and the proposed recommendations.

PRIVATE AND CONFIDENTIAL***Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent***

Dr Josephine M Tiddy

8 October 2004

COMPLAINT LODGED BY COUNCILLOR BRUCE HULL

Councillor Hull alleged that:

"Moments prior to the Council Meeting I had prepared my personal diary, notes and material for the meeting and preceded to the Elected Members room for any last minute mail and to get a drink from the parlour where I briefly spoke to Ms Tsokas and Mr Donaldson.

"On return to my desk in the Chamber I found that my notes and material had been interfered with, some of the documents were now facing the opposite direction to which they were placed i.e. face up. At that time I had no idea who had been at my desk.

"However, it was the following day that Councillor Chris Tilbrook advised me that he observed Councillors Irene Whennan and Vincent Brown rifling through and viewing my personal notes and diary that I had left on my desk in preparation for the meeting.

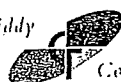
"To conclude, it is my strong view that if this is true, and I have no reason to doubt Cr Tilbrook, that this constitutes a serious breach of what is expected of Elected Members in the Chamber before-during-after a meeting of the Council. It is also a serious affront to my privacy, trespass of my property and perhaps theft of my intellectual property."

INVESTIGATION**12 May 2004 – Interviews with Councillor Irene Whennan, Councillor Vincent Brown and Councillor Vicky Veliskou**

Appointment times were arranged for Dr Tiddy to individually interview Councillors Whennan, Brown and Veliskou, on that day.

Interview with Councillor Vicky Veliskou and Dr Tiddy

Although Dr Tiddy had been advised that Councillor Veliskou had observed what had happened prior to the Council meeting on 23 February 2004, Councillor Veliskou stated that she had not seen the incident and therefore could not comment on the events that might have occurred.



PRIVATE AND CONFIDENTIAL***Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent***

Dr Josephine M Tiddy

8 October 2004

INVESTIGATION (continued)**Interview with Councillor Irene Whennan and Dr Tiddy**

At interview, Councillor Whennan responded to the allegations.

She stated that "prior to the Council meeting on 23 February 2004, I was walking around the back of the semi-circle of our desks behind the chairs to go and see Lisa to check whether or not she had received my monthly report. I wanted to let her know that I had remembered to bring a hard copy of my report to Council this time. That issue was on my mind as I was walking past.

"When I passed Councillor Bruce Hull's desk, behind his chair, I noticed that his papers were on his desk and that his Agenda folder was open. I could not read the papers as I was too far away. All I noticed was the piece of paper on the top and this looked like his monthly report and there seemed to be a lot on it.

"I returned to my seat on the inside of the semi-circle and said to Councillor Vincent Brown that 'Bruce has done a lot this month'.

Councillor Whennan stated that she had heard that Deputy Mayor Graham Watts had written to Chief Executive Mark Searle on this matter. She asked the Deputy Mayor and he had confirmed that he had written the letter.

Councillor Whennan concluded by stating that, "I can't be expected to go around wearing blinkers. I don't know how this can be fixed. I suppose that I could say 'sorry Bruce that you felt that I invaded your privacy, because I spoke to Vin about your monthly report'.

"I suppose that it was an invasion of Bruce's privacy when I spoke to Vin about his monthly report."

PRIVATE AND CONFIDENTIAL***Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent***

Dr Josephine M Tiddy

8 October 2004

INVESTIGATION (continued)**Interview with Councillor Vincent Brown and Dr Tiddy**

At interview Councillor Brown responded to the allegations.

He stated that, "Councillor Bruce Hull came into the Council meeting on 23 February 2004, and as he always does proceeded to spread his stuff over my space. (We sit next to one another in Council meetings). Then Councillor Hull went off somewhere, not saying where he was going.

"I was sitting in the Council Chambers doing nothing and became very frustrated that once again Councillor Hull had spread his stuff into my personal space. I had warned him before not to intrude onto my space, so I shoved his papers over onto his desk.

"I don't recall if his personal diary was open or not. I was irritated with his 'pile of rubbish' and shoved it back.

"I didn't thumb through his papers. If the order was disarranged it was because I had shoved Bruce's papers back onto his side.

"Irene said when she came back that 'Bruce seems to have done a lot this month'. I can't remember if I got up. I said 'Oh yeah' or words to that effect and looked towards Bruce's monthly report. I was curious, but couldn't read it from where I was sitting. I wouldn't be able to read it anyway because I am short sighted and I won't wear glasses. Even if I wanted to look I couldn't read it.

"When Bruce came back he made no comment about his 'stuff'; we eyeballed each other for some time and that was that. If I'd have come back and found my stuff moved I would have commented, but then Bruce had been warned - he knew that if he put his stuff on my side I'd move it."



INVESTIGATION (continued)

14 May 2004 - Interview with Councillor Chris Tilbrook and Dr Tiddy

At interview Councillor Tilbrook provided Dr Tiddy with his observations of the events that had occurred.

Councillor Tilbrook stated that, "before the 23 February 2004 Council meeting started, Bruce had walked out of the Council Chamber and I was sitting in the Chamber waiting for the meeting to start and observing what was happening. I was watching and waiting.

"I saw Irene looking at Bruce's papers. I can't recall if she was behind his chair or not, nor can I recall if she touched the papers or not.

"I saw her looking at some of Bruce's papers and assumed that she was reading them, then she beckoned to Councillor Vincent Brown to come and look at what she was looking at. Councillor Brown got up and looked to his right, the direction in which Bruce would have come back, and went and looked at the papers.

"I thought at the time, I should go over and close whatever was open, but it all happened quickly, while I was thinking what I should do.

"I have no idea what they were looking at and don't know if they were looking at his personal diary or not.

"They looked at his papers in full view of everyone, so someone else must have seen what was happening.

"The next day, after the Council meeting I told Bruce, when he wasn't in the Council Chamber that Councillors Whennan and Brown had been rifling through his papers for some reason, and that they were having a good look.

"Bruce said that he thought that was a breach of the Code of Conduct and he was going to lodge a complaint."

PRIVATE AND CONFIDENTIAL**Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent**

Dr Josephine M Tiddy

8 October 2004

INVESTIGATION (continued)

17 May 2004 – Dr Tiddy confirmed with Chief Executive Mark Searle that [redacted] had contacted him about the incident.

In his letter to the Chief Executive, the [redacted] wrote, "I am writing to help with the events around the Councillor Bruce Hull paper tampering incident.

"I have not spoken to any elected members about this event, so I am not making this up. I can remember an event about this time that fits the complaint, but cannot be sure of the date.

"Before the meeting Councillor Hull entered the Chamber and placed his bag on his table and unloaded his papers on the area next to his bag (Councillor Brown's table area), and left the Chamber.

"Councillor Brown entered and asked, 'what are these papers doing here?'"

[redacted] wrote, "Councillor Whennan (at her table) told him they were Bruce's, to which Councillor Brown flicked them away. I think some fell onto the floor, to which Councillor Whennan said, 'you had better put them back.' They both picked them up and arranged them as well as they could.

"I saw nothing of a prying nature as other members of Council were present preparing for the meeting."

31 May 2004 - Interview with [redacted] and Dr Tiddy

At interview [redacted] confirmed his observations of the events that he believed had occurred, relating to Councillor Bruce Hull's breach of the Elected Members' Code of Conduct complaint.

He stated that, "Councillor Hull had come in and put his bag down and put his papers 'on Vin Brown's side of the table, half on the blue mat'.

"Councillor Brown and Councillor Chris Tilbrook came into the Council Chamber at the same time.

"Vin did his thing and flicked at the papers, saying 'what's this?' Irene was in the centre of the horseshoe of the tables and saw that the papers had fallen to the ground.

"Councillor Tilbrook said, 'did you see that?' Irene said to Vin, 'you can't do that' and picked them up and packed them up.



INVESTIGATION (continued)

31 May 2004 - Interview with Tiddy (continued).

and Dr

"Councillor Chris Tilbrook said, 'did you see that they're going through his books – they're at it again?'"

" said, 'that'll get back' and noted that Councillor Tilbrook did not see everything."

claimed that Councillor Irene Whennan was very upset about it, which was why she picked up the papers.

"A week or so later after Councillor Bruce Hull had reported a perceived breach of the Code of Conduct by Councillors Whennan and Vincent Brown, spoke with Irene and asked her 'how come some of his papers were upside down.' Irene said, 'I couldn't leave them like that and had to tidy up.' Vin came round the horseshoe as she picked them up and packed them onto his table."

"Councillor Tilbrook said, 'now I've got proof.'"

believed that Councillor Tilbrook told Councillor Hull about the incident to 'stir', and as a means of getting back against Councillors Whennan and Brown.

31 May 2004 – Councillors Irene Whennan and Vincent Brown agree to attend a mediation conference with Councillor Bruce Hull.

At their meeting with Dr Tiddy Councillors Whennan and Brown agreed to attend a meeting to explain to Councillor Hull their version of events.

Councillor Brown agreed to inform Councillor Hull that he did not intend to cause any offence to him.

Councillor Whennan agreed to apologise for any offence that she may have caused, but that she had not read his papers and did not intend to cause offence.

15 June 2004 – Councillor Bruce Hull at a meeting with Dr Tiddy agreed to attend a mediation conference with Councillors Whennan and Brown.

18 August 2004 – Interview with Councillor Bruce Hull.

Dr Tiddy explained the process for mediation and the results of her investigation. It was agreed that a mediation conference would be arranged as soon as the other parties were available.

PRIVATE AND CONFIDENTIAL***Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent***

Dr Josephine M Tiddy

8 October 2004

MEDIATION**6 September 2004 – Mediation Conference.**

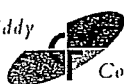
At the conference, chaired by Dr Tiddy, Councillors Irene Whennan and Vincent Brown explained to Councillor Bruce Hull what they claimed had occurred prior to the 23 February 2004 Council meeting.

Dr Tiddy confirmed that their version of events was congruent with Councillor Chris Tilbrook's version, but there were some differences in version, but she considered that on balance it was likely that the events that had occurred were as stated by Councillors Whennan and Brown.

Both Councillors Whennan and Brown claimed that they had not read Councillor Hull's papers.

Councillor Hull stated that he had not expected "much to come from mediation" and that he would be reluctant to make a similar complaint again, as he recognised that this was not a very serious breach of the Elected Members' Code of Conduct.

Councillor Hull claimed that all he had wanted from the very beginning was apologies from Councillors Whennan and Brown.



PRIVATE AND CONFIDENTIAL**Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent**

Dr Josephine M Tiddy

8 October 2004

RECOMMENDATIONS**I recommend that:**

1. A filtering system be established immediately for complaints lodged by Elected Members under their Code of Conduct, where the Manager, Governance reviews the written complaint and determines whether the matter is based on hearsay and therefore not valid, or is frivolous.

I further recommend that:

2. Manager Governance determines which complaints should be subject to investigation. Such complaints should include those matters that may be vexatious, or lacking in substance, as they are often complex, and should not be determined on the basis of the written complaint.

I further recommend that:

3. Councillor Brown is moved from his position in the Council Chamber so that he and Councillor Hull do not sit together, to prevent further conflict arising over Councillor Brown's perception that his personal space is being intruded upon.

I further recommend that:

4. With the implementation of the above recommendations, that Councillor Hull's complaint, lodged under the terms of the Code of Conduct for Elected Members, is considered finalised and no further action is taken on the matter.



Report of Alleged Breach of Code of Conduct by Councillors Whennan and Vincent

Dr Josephine M Tiddy

8 October 2004

FINDINGS

1. The current Code of Conduct of Elected Members which is operational during the development phase of the 2004/2005 Code of Conduct, is silent on Elected Members inappropriately handling Council papers and notes of other Elected Members. However, the Code of Conduct states that *an Elected member will not use, for any purpose other than Council business, information obtained as a result of their role.*
2. The privacy principles prescribed in State and Federal Privacy legislation provide guidance to Elected Members, as holders of Public Office, in dealing with personal information.
3. In Councillor Hull's complaint, on balance it would appear that information was neither collected, nor used from his personal papers attached to his Council papers, for any other purpose than comment and observation.
4. The rifling through of Councillors' private and public Council papers would be a serious matter, on balance, I consider this did not occur.
5. Mediation was arranged to enable Councillors Whennan and Brown to explain to Councillor Hull the circumstances surrounding his complaint and to recognise that their behaviour may have caused unintended offence. Mediation achieved an explanation of the circumstances surrounding the complaint and recognition from Councillor Whennan that her behaviour may have caused Councillor Hull unintended offence.
6. Mediation confirmed the long standing animosity that exists between Councillor Brown and Councillor Hull, and Councillor Brown's strong belief that Councillor Hull's Council papers are often placed in such a way that they intrude into his personal space. Councillor Hull disputes that he has ever intentionally placed his papers in such a way as to exacerbate the animosity between he and Councillor Brown.
7. Mediation also confirmed that Councillor Hull's complaint was not a breach of the Elected Members' Code of Conduct, but imprudent behaviour on the part of Councillors Whennan and Brown and not befitting holders of Public Office.
8. Council accepted this complaint as a valid complaint, yet it was based on hearsay with Councillor Tilbrook informing Councillor Hull of an incident that occurred involving Councillor Hull, when he was absent from the Council Chamber. Complaints that are based on hearsay are not valid complaints. It would have been appropriate for the Mayor to deal with this matter during the Council meeting, in the same way that she handles other imprudent behaviour of Elected Members.

CONFIDENTIAL ITEMS

10.52pm Councillors Whennan and Brown left the meeting

Alleged Breach of Elected Members' Code of Conduct

Ref No: GC261004F01

File No: 15/05/62

Moved Councillor Connor, seconded Councillor Durward moved that:

1. The report be received.
2. The results of Dr Tiddy's investigation and mediation in relation to the formal complaint alleging breaches of the Elected Members' Code of Conduct by Councillors Irene Whennan and Vincent Brown be considered.
3. Recommendations 1 and 2 of Dr Tiddy's report be included as part of the current review of the Code of Conduct for Elected Members.
 1. *A filtering system be established immediately for complaints lodged by Elected Members under their Code of Conduct, where the Manager, Governance reviews the written complaint and determines whether the matter is based on hearsay and therefore not valid, or is frivolous.*
 2. *A panel consisting of the Mayor and Deputy Mayor determines which complaints should be subject to investigation. Such complaints should include those matters that may be vexatious, or lacking in substance, as they are often complex, and should not be determined on the basis of the written complaint.*
4. In accordance with the above Recommendations of Dr Tiddy's report that Councillor Hull's complaint, lodged under the terms of the Code of Conduct for Elected Members, is considered finalised and no further action is taken on the matter.
5. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, the minutes arising from this report and the report detailing the findings of the investigation and mediation into alleged breaches of the Elected Members' Code of Conduct be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). This confidentiality order will be reviewed at the General Council Meeting in December 2004.

Moved Councillor Tilbrook, Seconded Councillor Moorman that the matter lie on the table until the next General Council Meeting on 23rd November 2004.

Lost

The motion was put and

Carried

