

**CITY OF MARION
GENERAL COUNCIL MEETING
28 FEBRUARY 2006**

CONFIDENTIAL

**REPORT RELATING TO:
Excellence in Governance**

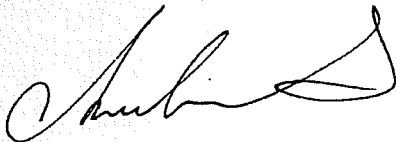
Originating Officer: Mark Searle, Chief Executive

Subject: Adjourned Item:
Legal Advice

Ref No: GC280206F01
File No: 9.33.3.13, 9.24.1.1

RECOMMENDATION:

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(a) of the Local Government Act 1999 on the grounds that it relates to the personal affairs of a person (living or dead).



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 (*name officers present*), 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 information relating to the personal affairs of a person (living or dead).

Note that in considering whether the matter should be discussed in confidence, Council might like to take into account the views of the person to whom the matter relates. Where the person has no objection to the matter being considered in public, it would be consistent with the Freedom of Information Act to consider the matter in public.

**CITY OF MARION
GENERAL COUNCIL MEETING
14 FEBRUARY 2006**

CONFIDENTIAL

**REPORT RELATING TO:
Excellence in Governance**

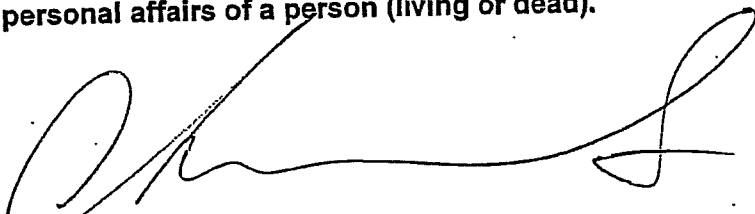
Originating Officer: Mark Searle, Chief Executive

Subject: Legal Advice

Ref No: GC140206F01
File No: 9.33.3.13, 9.24.1.1

RECOMMENDATION:

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(a) of the Local Government Act 1999 on the grounds that it relates to the personal affairs of a person (living or dead).



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 (*name officers present*), 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 information relating to the personal affairs of a person (living or dead).

Note that in considering whether the matter should be discussed in confidence, Council might like to take into account the views of the person to whom the matter relates. Where the person has no objection to the matter being considered in public, it would be consistent with the Freedom of Information Act to consider the matter in public.

CORPORATE OBJECTIVES:

2.1 A cohesive and highly informed Council achieving its' democratic and community priorities.

REPORT OBJECTIVE:

To inform Council of Councillor Bruce Hull's formal written request seeking Council funding to engage legal advice during the process adopted to restore trust, promote "good faith" working relationships and provide a safe workplace in accordance with Council's commitment to and obligations under the Occupational Health, Safety and Welfare Act.

RECOMMENDATIONS:

That:

1. Council provides direction on the matter of Councillor Hull's request for his choice of legal representation, to be funded by Council, in association with the process being adopted to restore good working relationships between himself and Development Services staff.
2. 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 any other information distributed at the meeting having been considered in confidence under Section 90(2) and (3)(a) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2006.

DUE DATES:

Recommendation 1
Recommendation 2

14/2/2006
December 2006

BACKGROUND:

At the 27 September 2005 General Council meeting, it was resolved that:

1. Council provide support to staff and Councillor Hull through a process to restore trust, promote "good faith" working relationships and provide a safe workplace in accordance with Council's commitment to and obligations under the Occupational Health, Safety and Welfare Act

This resolution was passed as a result of information presented to Council detailing the concerns of staff that Councillor Hull had misused the information and assistance provided to him, and publicly criticised a member of staff.

Following the above resolution, I sought the assistance of the LGA Workers Compensation Scheme with a view to working through this incident with staff and Councillor Hull, and also to consider the development of some broader policy positions that would guide the standard of relationships between councillors and staff into the future. The reason I sought the assistance of

the LGA Workers Compensation Scheme was because of their expertise in the area of occupational health, safety and welfare.

The process adopted with the LGA Workers Compensation Scheme has involved a number of meetings between Ms Maureen Inglis (recommended by the Scheme) and Development Services staff to ascertain the impact and effects of the incident from an occupational health and safety perspective. To a large extent, the meetings focused on the development of strategies / policies to address any possible future situations.

With the above meetings having occurred in late November 2005, I wrote to Councillor Hull on 24 January 2006 with the view to arranging a meeting between Councillor Hull and Ms Inglis to assist Ms Inglis in gaining an understanding of the issues from Councillor Hull's perspective. In the letter, I also highlighted that the meeting with Ms Inglis is not intended to be an investigation, but an exploration of potential strategies to improve the relationship between Development Services staff and Councillor Hull. The focus of the meeting is to be on strategies that meet the needs of all persons, and not adversarial in nature.

On 31 January 2006, Councillor Hull responded to my letter advising that he is "*happy to meet Ms Inglis from the LGA Workers Compensation Scheme on the provision that he has with him a legal representative of his choice funded by council*". Councillor Hull's letter is provided at Appendix 1 for information.

DISCUSSION

As mentioned above, the process adopted to restore the relationship between Councillor Hull and Development Services staff is not an investigation and is not otherwise adversarial, but rather, one that seeks to develop strategies that meet the needs of all persons. Ms Inglis is an independent person recommended by the LGA Workers Compensation Scheme who is not representing any party but is working for the benefit of all parties in a co-operative and non-confrontational process. Neither the Council nor any participants have been legally represented in the process.

The Local Government Act 1999 also provides guidance on matters of this nature:

- 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 process being adopted to restore the relationship between Councillor Hull and Development Services staff.

- 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. Council also needs to consider, if it is giving favourable consideration to such a request, whether the particular circumstances warrant legal representation or assistance.

INTERNAL ANALYSIS:

Consultation:

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

Financial Implications:

Costs associated with the provision of legal advice to Councillor Hull on this matter would be funded from the Governance Department's Elected Members 2005/2006 approved budget, if approved by Council.

If Council endorses 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.

CONCLUSION:

The process adopted to restore working relationships between Councillor Hull and Development Services staff is in no way an investigation or otherwise adversarial or confrontational. The process does not give rise to any issues of liability or raise concerns of procedural fairness. Quite the contrary, the process is a positive and co-operative undertaking involving an exploration of potential strategies to improve the relationship between Development Services staff and Councillor Hull. The engagement of legal advice (funded by Council) for Councillor Hull as part of this process is a decision to be made by Council.

31 January 2006

Mr Mark Searle
Chief Executive
City of Marion
PO Box 21
Oaklands Park
SA 5046

Dear Sir

Alleged of Occupational Health and Safety Act

I respond to your letter dated 24.01.05 in relation to Councils resolution of 27 September 2005 "Council provide support to staff and Councillor Hull through a process to restore trust, promote "good faith" working relationships and provide a safe workplace in accordance with Council's commitment to and obligations under the Occupational Health, Safety and Welfare Act."

I am not sure why it has taken 5 months to receive this letter, however I am happy to meet Ms Inglis from the LGA Workers Compensation Scheme on the provision that I have with me a legal representative of my choice funded by council.

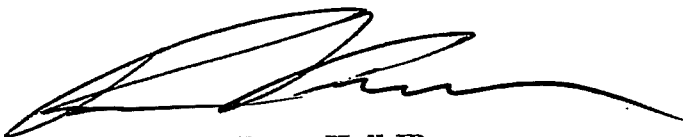
As you would be aware, in your letter you make a serious allegation that I have misused information and assistance from Council. Hence I request that you provide me with the detail of this claim, what information and assistance did I misuse?

What you have alleged is that I have abused Public Office and hence I reasonably seek natural justice with the independent legal advice that I request.

May I take this opportunity to remind you of your responsibility to report to the appropriate authority any incidents of abuse of public office, if this was to happen in this instance I would be more than happy to assist in any investigation?

I await your response

Yours faithfully



Councillor Bruce Hull JP
Cc Duncan Basheer Hannon



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CITY OF MARION

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10 August 2005

Councillor Bruce Hull
139 Diagonal Road
Warradale SA 5046

CONFIDENTIAL

Dear Councillor Hull

It has recently come to my attention that you have written to the Environment Resources and Development Court (ERD Court) appealing the Development Assessment Panel's decision to approve Development Application 100/468/2005 – extension to an existing telecommunications tower by Optus Mobile Pty Ltd.

In your letter, you indicate your *"disappointment in the City of Marion planner and Department Manager who initiated the original Category 2 notification re this application, only corrected to a Category 3"* after you complained.

I am aware that staff in the Development Services Department regularly provide responses to questions you raise and that they often go to great lengths to assist you where possible. However, on this occasion, the criticism of staff in your letter to the ERD Court dated 25 July 2005 causes me concern particularly given the impact that your criticism has on staff after they have, in good faith, sought to assist you. I am sure that you would agree with me that to have a member of your governing body (e.g. a board or Council) criticise you in a form that is likely to be widely read can be distressing for staff.

I draw your attention to a resolution passed by Council at the 25 January 2005 General Council meeting that stated:

"Having regard to the content of the report and incidents that have occurred since, Council acknowledges the information presented in the report and remains concerned in relation to Council's ability to maintain a safe working environment. If the CEO thinks that the appropriate way to ensure the health and safety of staff is adequately protected is to restrict access to staff by Elected Members, then Council supports staff being advised accordingly".

Please note that after reviewing your letter to the ERD Court I would like to remind you that you can not use your position as a Councillor to obtain the advice and



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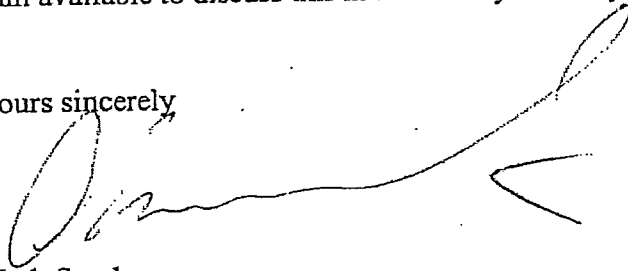


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assistance of staff for your own personal use (i.e. appealing to the ERD Court). Furthermore, I believe that on this occasion you have misused the information and assistance provided in that you have criticised staff in your letter to the ERD Court. Accordingly, under the terms of the 25 January 2005 Council resolution, and from the perspective of a responsible employer, I advise that I am restricting your access to staff of the Development Services Department. I would therefore appreciate you directing all future enquiries regarding Development matters to Doug Aylen, Manager Development Services.

I am available to discuss this matter with you at any mutually convenient time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Searle', with a long horizontal flourish extending to the right.

Mark Searle
Chief Executive Officer
City of Marion



14 September 2005

Councillor Bruce Hull
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CONFIDENTIAL

Dear Councillor Hull

In relation to your request that I review the restriction I have placed on your access to Development Services staff, I advise that given you raised the matter during Council's meeting on Tuesday 13 September 2005, I will now be seeking Council's input to the review.

While I have almost completed the review, I think it is important that now you have raised this issue publicly, the input of your peers in Council be sought.

In addition to this, before I consider lifting the restriction, I will need to be convinced that you fully appreciate your responsibilities with regard to the Occupational Health and Safety requirements as it applies to staff.

Accordingly, I am deferring the finalisation of my review until such time as I have the opportunity to seek Council's input.

In the interim, I am not prepared to lift the restriction on your access to Development Services staff given a relationship of "good faith", in my view, is yet to be restored.

Yours sincerely

Mark Searle
Chief Executive Officer
City of Marion



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**CITY OF MARION
GENERAL COUNCIL MEETING
27 September 2005**

CONFIDENTIAL

**REPORT RELATING TO:
Employer of Choice**

Originating Officer: Mark Searle, Chief Executive
Subject: Occupational Health, Safety and Welfare
Ref No: GC270905F01
File No: 9.33.3.13, 9.24.1.1

RECOMMENDATION:

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(a) of the Local Government Act 1999 on the grounds that it relates to the personal affairs of a person (living or dead).

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 (*name officers present*), 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 information pertaining to possible Occupational Health, Safety and Welfare issues.

Note that in considering whether the matter should be discussed in confidence, Council might like to take into account the views of the person to whom the matter relates. Where the person has no objection to the matter being considered in public, it would be consistent with the Freedom of Information Act to consider the matter in public.

CORPORATE OBJECTIVES:

Ensure the system for managing occupational health, safety and welfare is performing in accordance with best practice.

REPORT OBJECTIVE AND EXECUTIVE SUMMARY:

To seek Council's input on the manner in which to proceed with addressing an occupational health safety and welfare matter concerning Councillor Hull and certain staff of the Corporation.

RECOMMENDATIONS:

That:

- 1. Council provide support to staff and Councillor Hull through a process to restore trust, promote "good faith" working relationships and provide a safe workplace in accordance with Council's commitment to and obligations under the Occupational Health, Safety and Welfare Act.**

DUE DATES:

Recommendation 1

Due Date 27/9/05

BACKGROUND:

On 29 July 2005, it was brought to my attention that in a letter to a public body, Councillor Hull indicated his disappointment with a certain City of Marion staff member.

The matter was brought to my attention as an expression of concern on the part of staff that Councillor Hull had misused the information and assistance provided to him, and publicly criticised a member of staff. In turn, this caused me to consider Council's duty of care as an employer from an occupational health, safety and welfare perspective.

As a result of the above, I wrote to Councillor Hull advising that I was concerned about the incident and in particular with his public criticism of staff given the impact that such criticisms have on staff after they have, in good faith, sought to assist him. At this time, and consistent with the terms of a Council resolution passed on 25 January 2005, I restricted Councillor Hull's access to staff of the relevant Department. That is, I restricted access to only the Manager of the Department thereby ensuring that Councillor Hull would not be denied assistance, but that it would only be through the managerial level.

Subsequent to my letter, Councillor Hull asked me to review the restriction, which I agreed to undertake. However, as I was drawing near to completing this review, Councillor Hull raised the matter publicly at the Council meeting held on 13 September 2005. I am therefore now seeking Council's input on the manner in which to solve this matter, consistent with Council's occupational health, safety and welfare commitment and obligations.

DISCUSSION:

Council will recall that earlier this year, Dr Josephine Tiddy finalised her report regarding the occupational health, safety and welfare implications of Councillor Hull's November 2003 email. In that report, Dr Tiddy highlighted that with hindsight and further advice, Councillor Hull had recognised that the tone of his email was inflammatory and offensive to Corporation Staff, and that his allegations did not convey the message he had intended.

If required, I can provide additional information drawn from Dr Tiddy's report that illustrates the impact that inflammatory comments can have on staff. However, this information can only be provided in confidence given it relates to personal information from staff.

I draw Council's attention to the above comments in the context of the current circumstances and the need for Council to be aware of all relevant considerations.

Whilst I understand that Councillor Hull is committed to achieving outcomes for the people of the City of Marion, the manner in which he approaches his work as an Elected Member can sometimes have a negative effect on the welfare of staff.

For example, staff are aware of the comments he made in his recent letter, and as mentioned previously, staff are concerned that he has misused the information and assistance provided to him, and resorted to public criticism. Once again, and if required, I can provide additional information on a confidential basis that illustrates the impact that Councillor Hull's letter has had on staff.

In a letter that Councillor Hull wrote to the Mayor apologising for the November 2003 email, he "accepted that any denigration of staff is personally damaging to individual staff, impairs morale and is counter productive to achieving our Corporate objectives". The acceptance of this principle has equal relevance to this particular incident as it did to the November 2003 incident.

I am committed to exploring options to establish a relationship of 'good faith' and am seeking Council's input to a process that should be adopted. For example:

- What process can be undertaken to support staff and assist Councillor Hull adopt behaviours, when dealing with staff, that are consistent with our duty of care in terms of occupational health, safety and welfare and in alignment the principles outlined in his letter to the Mayor?
- Who should be consulted during the review e.g. staff member(s), Elected Member(s)?

INTERNAL ANALYSIS:

Consultation:

At this stage, I have consulted with some of the staff that raised the concerns.

The process of review should include consultation with the staff themselves, as well as their designated support people.

Organisational Culture Impact:

Council is continuing to build a constructive culture that has a strong focus on delivering outcomes and respects all individuals.

The relationship between Elected Members and staff is important for the achievement of Council's objectives, and must be founded on trust and relationships of good faith. Attempts to publicly (or privately) undermine the reputation of any individual can undermine the level of trust and good faith and as such, the level of safety of the workplace.

Legal / Legislative and Risk Management:

Council has made a commitment that the interactions between Elected Members and Corporation staff will conform to the principles underpinning Occupational Health, Safety and Welfare legislation.

Staff have a right to work in an environment that is free from intimidation and humiliation, and Council, being the employer has a duty of care and accountability to ensure that a safe working environment is maintained.

Financial Implications:

The cost of providing support for this process will depend on the choice of the designated support person. If staff select union representation, there will be no cost to Council. However, if staff prefer a professional mediator, the anticipated cost should be no more than \$5,000.

CONCLUSION:

The recent concerns expressed by staff that Councillor Hull has misused information and assistance provided to him in "good faith" has occupational health, safety and welfare implications for Council.

Accordingly, and as a responsible employer, strategies need to be developed to review the current restriction on Councillor Hull's access to the staff concerned and to work towards restoring a constructive relationship where both staff and Councillor Hull can work together for the benefit of the community.

Supporting staff and Councillor Hull to find a solution to this problem that restores trust promotes a good faith relationship and provides a safe workplace is recommended.



24 January 2006

Councillor Bruce Hull
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Dear Councillor Hull

As you are aware, we have been working through a process to restore trust, promote "good faith" working relationships and provide a safe workplace for staff in accordance with Council's commitment to and obligations under the Occupational Health, Safety and Welfare Act.

This process was commenced following an expression of concern on the part of staff that you had misused information and assistance provided in the matter of the Optus Tower extension at the Warradale Barracks, by publicly criticising a member of staff in a letter you wrote to the ERD Court.

In August 2005, I wrote to you advising that I was restricting your access to staff of the Development Services Department under the terms of a Council resolution (made on 25 January 2005). Following this, and after a number of discussions between you and me, we agreed that I would review the restriction. However, prior to finalising the review you raised the matter in a public forum (at Council's meeting on 13 September 2005). As such, I deferred the finalisation of my review until I had the opportunity to seek Council's input, which occurred on 27 September 2005.

At the General Council meeting held on 27 September 2005, Council resolved that:

"Council provide support to staff and Councillor Hull through a process to restore trust, promote "good faith" working relationships and provide a safe workplace in accordance with Council's commitment to and obligations under the Occupational Health, Safety and Welfare Act."

Following the above resolution, I sought the assistance of the LGA Workers Compensation Scheme with a view to working through this incident with staff and yourself, and also to consider the development of some broader policy positions that would guide the standard of relationships between councillors and staff into the future. The reason I sought the assistance of the LGA Workers Compensation Scheme was because of their expertise in the area of occupational health, safety and welfare.



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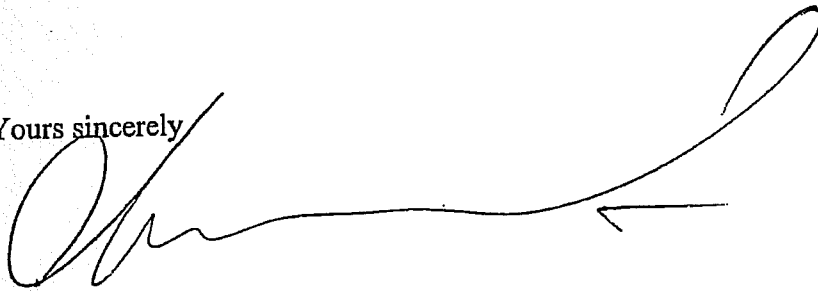
The process now adopted with the LGA Workers Compensation Scheme has involved a number of meetings between Maureen Inglis (recommended by the Scheme) and Development Services staff to ascertain the impact and effects of the incident from an occupational health and safety perspective. To a large extent, the meeting also focused on the development of strategies / policies to address any possible future situations.

With the above meetings having occurred in late November, it would now be useful if Ms Inglis could meet with you to gain a better understanding of the issues from your perspective. Note that this is not intended to be an investigation per se, but an exploration of potential strategies to improve the relationship between Development Services staff and yourself. Note that the focus will be on strategies that meet the needs of all persons.

To this end, it would be good if you could contact the Manager Governance (Kathy Jarrett) to advise of a time that would be suitable for you to meet with Ms Inglis. Kathy will then liaise between you and Ms Inglis to find a suitable time.

Please note that in the meantime, I am still not prepared to lift the restriction on you having contact with Development Services staff. However, I am confident that after you have spoken with Ms Inglis and we develop some strategies that will go some way to restoring a relationship of trust and good faith, I will be in a position to lift the restriction.

Yours sincerely

A handwritten signature in dark ink, appearing to be 'Mark Searle', with a long horizontal line extending to the right and a large loop at the end.

Mark Searle
Chief Executive Officer
City of Marion

REF NO: GC280206

CONFIDENTIAL ITEMS

Legal Advice

Ref No: GC280206F01

File No: 9.33.3.13 / 9.24.1.1

10.09pm Councillor Hull declared a conflict of interest, being that this matter relates to a request made by himself, and left the meeting.

10.11pm Councillor Bouwens re-entered the meeting

Moved Councillor Whennan, Seconded Councillor Watts that:

1. Council re-affirms its resolution of 27 September 2005 to provide support to staff and Councillor Hull through a process to restore working relationships with staff and encourages Councillor Hull to participate in the proposed conciliation process as described in correspondence attached as appendices.
2. Councillor Hull's request for his choice of legal representation to be funded by Council be refused as the conciliation process can be achieved without legal representation for any party.
3. 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 any other information distributed at the meeting having been considered in confidence under Section 90(2) and (3)(a) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2006.

Carried Unanimously

