



City of Cockburn
Special Council Meeting
Agenda Paper

For Monday, 4 November 2019



City of Cockburn
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Western Australia 6965

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NOTICE OF MEETING

Pursuant to Clause 2.5 of Council's Standing Orders, a Special Meeting of Council has been called for Monday 4 November 2019. The meeting is to be conducted at 7:00 PM in the City of Cockburn Council Chambers, Administration Building, Coleville Crescent, Spearwood.

The purpose of this meeting is to consider a confidential staff matter..

The Agenda will be made available on the City's website prior to the Meeting.

A handwritten signature in black ink, appearing to read 'Stuart Downing', is written over a faint, light-colored signature line.

Stuart Downing
ACTING CHIEF EXECUTIVE OFFICER

CITY OF COCKBURN

SUMMARY OF AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON MONDAY, 4 NOVEMBER 2019 AT 7:00 PM

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CITY OF COCKBURN

AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON MONDAY, 4 NOVEMBER 2019 AT 7:00 PM

- 1. DECLARATION OF MEETING**
- 2. APPOINTMENT OF PRESIDING MEMBER (IF REQUIRED)**
- 3. DISCLAIMER (TO BE READ ALOUD BY PRESIDING MEMBER)**

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.
- 4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN
DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT
OF INTEREST (BY PRESIDING MEMBER)**
- 5. APOLOGIES & LEAVE OF ABSENCE**

Cr Kevin Allen - Apology
- 6. PUBLIC QUESTION TIME**
- 7. DEPUTATIONS**
- 8. DECLARATION BY MEMBERS WHO HAVE NOT GIVEN DUE
CONSIDERATION TO MATTERS CONTAINED IN THE
BUSINESS PAPER PRESENTED BEFORE THE MEETING**

9. PURPOSE OF MEETING

The purpose of the meeting is to consider a confidential staff matter.

10. COUNCIL MATTERS

10.1 CONSIDER A CONFIDENTIAL STAFF MATTER

Author(s)	S Downing
Attachments	<ol style="list-style-type: none">1. Statement from the CEO 23/10/19 (CONFIDENTIAL)2. Mayor's letter to the CEO dated 28/10/19 (CONFIDENTIAL)3. Legal advice from Jackson McDonald (legal Privilege asserted) (CONFIDENTIAL)

RECOMMENDATION

That Council

- (1) initiate an investigation as per the Terms of Reference contained in the legal advice attached under separate confidential cover and consider the outcomes and advice arising from the investigation at a future Meeting; and
- (2) provide the Chief Executive Officer with special paid leave whilst the investigation takes place, on the basis that he is not to return to work or attend to work related functions pending the outcomes of the investigation being considered by Council

Background

The Special Council meeting has been requested to deal with the Statement from the CEO dated 23 October 2019, a copy of which is attached to this report under separate confidential cover.

Submission

N/A

Report

The Chief Executive Officer, Mr Stephen Cain, issued a statement by email to all Elected Members on the 23 October 2019 titled "Statement from the CEO" in which Mr Cain made claim that the City of Cockburn, as his employer, is not providing him with a safe working place.

Mr Cain provided Council with a doctor's note stating he was unfit to attend work for the period 23 October to 8 November 2019 due to the issues associated with the Statement from the CEO.

The Mayor wrote to the Chief Executive Officer on the 28 October 2019 acknowledging the email and medical certificate. The Mayor assured the CEO the City was committed to providing a safe workplace and the

Elected Members will be collectively addressing the CEO's concerns with the utmost seriousness and urgency with the primary focus being on his health and wellbeing.

The CEO was advised of the recommended actions the Council was going to consider.

At the same time, legal advice was requested from Council's solicitors, Jackson McDonald, represented by Ms Renae Harding and Mr Mathew Reid, a copy of which is also attached under separate confidential cover.

Given the serious nature of the allegations made, it is recommended that Council initiates an investigation into them in order to be in a position to make more informed decisions on the outcomes of the investigation.

Once the report from the investigator is completed, the solicitors will provide Council with a report on the outcomes of the investigation and actions for council to consider. The report of the investigator will have legal privilege and will not be released unless Council waives that legal privilege.

The timeframe for such an investigation is unknown and will be dependent on the availability of relevant persons.

In the meantime, it is recommended that Council grants special paid leave to Mr Cain, in order for the matters raised to be adequately assessed and a subsequent report prepared for Council to consider.

Strategic Plans/Policy Implications

Leading & Listening

Attract, engage, develop and retain our employees in accordance with the Workforce and Long Term Financial Plan.

Budget/Financial Implications

The actual cost of this action is uncertain at this stage especially if the CEO and Elected are reimbursed legal fees under the existing policy of Council.

Legal Implications

As noted above, the City will be represented by Jackson McDonald in this matter.

Community Consultation

N/A

Risk Management Implications

The provision of a safe work place is paramount. The extent of the claims in the Statement from the CEO will need to be examined and if found substantiated, changes to processes and protocols will need to be implemented. Consequently, there is a “Substantial” level of “Occupational Health and Safety / Well Being” risk associated with this item.

There is also a “High” level of “Financial Impact” risk associated with this item.

Advice to Proponent(s)/Submitters

Nil

Implications of Section 3.18(3) *Local Government Act, 1995*

Nil

11. CONFIDENTIAL BUSINESS

Nil

12. RESOLUTION OF COMPLIANCE

RECOMMENDATION

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (1) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (2) not duplicated, to an extent Council considers inappropriate, services or facilities as provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (3) managed efficiently and effectively.

13. CLOSURE OF MEETING