



City of Cockburn
Special Council Meeting
Agenda Paper

For Wednesday, 22 August 2018



City of Cockburn
PO Box 1215, Bibra Lake
Western Australia 6965

Cnr Rockingham Road and
Coleville Crescent, Spearwood

Telephone: (08) 9411 3444
Facsimile: (08) 9411 3416

NOTICE OF MEETING

Pursuant to Clause 2.5 of Council's Standing Orders, a Special Meeting of Council has been called for Wednesday 22 August 2018. The meeting is to be conducted at 6:00 PM in the City of Cockburn Council Chambers, Administration Building, Coleville Crescent, Spearwood.

The purpose of this meeting is to consider:

- (1) a Motion of 'No Confidence' in Deputy Mayor Lee-Anne Smith;

- (2) the suspension of the Deputy Mayor from representing Council on specified Standing Committees, Reference Groups and external organisations; and

- (3) removal of the Deputy Mayoral allowance,
to be reviewed following a period of 6 months.

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

A handwritten signature in black ink, appearing to read 'Stephen Cain', is written over a horizontal line.

Stephen Cain
CHIEF EXECUTIVE OFFICER

CITY OF COCKBURN

SUMMARY OF AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON WEDNESDAY, 22 AUGUST 2018 AT 6:00 PM

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CITY OF COCKBURN

**AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL
MEETING
TO BE HELD ON WEDNESDAY, 22 AUGUST 2018
AT 6:00 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**
- 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

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to be reviewed following a period of 6 months.

10. COUNCIL MATTERS

10.1 NOTICE OF MOTION

Author(s) D Green

Attachments 1. Proposed Draft of Motion [↓](#)

RECOMMENDATION

That Council considers the Draft Motion provided with a Notice of Motion submitted pursuant to Clause 4.9 (1) (a) of the City of Cockburn Standing Orders 2016, as shown in the Attachment to the Agenda

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

Background

By notice received on 2 August 2018, Councillor Sands submitted a Motion, as contained in the Attachment, for consideration by Council, for the reasons provided with the Motion. Subsequently, a Special Meeting of Council has been called pursuant to Clause 2.3 (a) (2) of the City of Cockburn Standing Orders 2016 to consider this matter.

Submission

N/A

Report

Legislative Context

Sub – recommendation 1

Section 5.103 of the Local Government Act 1995 (the Act) provides for all local governments to prepare or adopt a Code of Conduct to be observed by Council elected members and employees.

The content of the Codes of Conduct is currently effective only to the extent to which it is not inconsistent with Regulations. In this regard, the Local Government (Rules of Conduct) Regulations 2007 are in place to govern behavioural standards of individual elected members of Council, which appears to contradict the necessity for the existence of a Code of Conduct "to be observed" by elected members. This apparent anomaly was identified by Council and recommended, at its October 2017 Council Meeting, to be rectified by the State Government in the current review of the Local Government Act. It is understood that the review Bill currently before State Parliament contains provisions to strengthen the application of the Codes of Conduct adopted by local governments. In the meantime, the City of Cockburn Code of Conduct for elected members, which was recently reviewed and adopted by Council in May

2018, remains as a statement of behavioural ethics which, although technically unenforceable, provides for basic standards by which the actions of elected members may be measured. In addition, the Rules of Conduct (Regulation 3) provides further guidance on the manner in which elected members are expected to act when fulfilling their civic duties.

The information documented in both instances should provide sufficient cause for members to act with reasonable care in the performance of their public role and particularly in their interactions with others.

Accordingly, while there is no actionable outcome relative to a motion of “no confidence”, if carried by Council against an elected member, it could be seen as a symbolic message of disapproval by Council at the behavioural standards being demonstrated by any of its members not being prepared to comply with the “rules” adopted by the Council in the form of its Code of Conduct and those stipulated in the Rules of Conduct Regulations.

Sub – recommendation 2

Section 5.12(2) (b) of the Act provides for the local government to remove a person from any committee, as previously nominated and appointed under 5.10 (1) of the Act, subject to the person being able to remain on at least one such committee as decided by Council (Section 5.10(2)). The suspension, as proposed by the motion before Council, requires the support of an absolute majority of Council to be effective, as required by Section 5.10 (3) of the Act and Section 52 (1) (a) of the Interpretation Act 1984.

Neither internal Reference Groups established by Council nor delegates appointed by Council to external organisations have any specific legislative reference and it is within the capacity of Council to remove any member previously appointed from representing Council on these. Similarly, the role of the Deputy Mayor at Citizenship Ceremonies hosted by the City of Cockburn has no formal standing and is capable of being performed by any other councillor, in conjunction with the Mayor.

Sub – recommendation 3

Section 5.98A of the Act provides that Council may decide to pay the Deputy Mayor an allowance of up to 25% of the annual Mayoral allowance. Council Policy SC 14 “Mayoral and Deputy Mayoral Allowances” stipulates, in clause (2), that the allowance “should be paid as a reimbursement of the time commitment made to the position”. Notwithstanding that the Policy holds no legislative power, should the Council determine that the functions of the Deputy Mayor do not require a time commitment which warrants an allowance, it is competent for Council to withdraw the allowance paid to the Deputy Mayor.

Strategic Plans/Policy ImplicationsLeading & Listening

Deliver sustainable governance through transparent and robust policy and processes.

Budget/Financial Implications

N/A

Legal Implications

Sections 5.103; 5.12; 5.10 and 5.98A of the Local Government Act 1995, Section 52 of the Interpretation Act 1984 and Clause 4.9 of the City of Cockburn Standing Orders Local Law refer.

Community Consultation

N/A

Risk Management Implications

There is a "Substantial" level of "Brand / Reputation" risk associated with Elected Members not complying with the adopted Code of Conduct and this issue being left unaddressed.

Advice to Proponent(s)/Submitters

N/A

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

Nil

That Council:

- 1) passes a vote of "no confidence" in Deputy Mayor Lee-Anne Smith as a result of her ongoing conduct which is considered to be unbecoming of an Elected Member and is alleged to have breached the Elected Members Code of Conduct and the general principles to guide the behaviour of council members, as specified in Regulation 3 of the Local Government (Rules of Conduct) Regulations 2007;
- 2) suspends Deputy Mayor Smith as:
 - a) a member of the following Standing Committees;
 - o Audit and Strategic Finance Committee
 - o Chief Executive Officer and Senior Key Staff Projects Appraisal Committee,
 - o Grants and Donations Committee,
 - o Delegated Authorities, Policies and Position Statements Committee;
 - b) all Internal Reference Groups of Council to which she has been previously appointed;
 - c) a delegate to any external stakeholder organisations to which she has previously been appointed by Council;
 - d) assistant to the Mayor in the conduct of citizenship ceremonies,for a period of 6 months;
- 3) removes the allowance paid for Deputy Mayor to Deputy Mayor Smith for a period of 6 months; and
- 4) reviews the matters referenced in (2) and (3) above following the nominated period of 6 months.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

REASON FOR DECISION

1. As the Local Government Act does not provide for a formal process for Council to sanction an Elected Member who breaches the City of Cockburn's Code of Conduct, the only way this can otherwise be addressed is for Council to pass a "no confidence" motion in that individual, in order to express its concerns at the behavioural standards being demonstrated.
2. As Council formally appoints Elected Members to positions that represent the City, both internally and externally, Council can also remove that representative role.
3. As Council formally adopts the value of allowance paid to the Deputy Mayor, the Council can also remove that amount.

The proposal in this motion is to do so for a period of 6 months, in order to send a clear message of the expectations that Council has of the individual performing the role of Deputy Mayor and reinforce that breaches to the Code of Conduct simply will not be tolerated.

The review period will also provide an opportunity for Deputy Mayor Smith to demonstrate that these concerns have been acknowledged, understood and will be addressed moving forward.

It is intended that the formal requirements related to appointments made to Standing Committees and other representative roles determined by Council, together with the allowance for Deputy Mayor, be reviewed by Council following the stipulated period of 6 months.

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