

Cultural Investigation Report

ITEM 12.2.1 09/03/2021
Council

Strategic Alignment - Enabling Priorities

2013/01266

Confidential - s 90(3) (a) unreasonable disclosure of personal affairs

Confidential - s 90(3) (g) breach of law, duty of confidence, obligation or duty

Confidential - s 90(3) (h) legal advice

Approving Officer:

Clare Mockler, Acting Chief
Executive Officer

EXECUTIVE SUMMARY

At its meeting on 14 April 2020, Council resolved as follows in relation to Agenda item 15.13:

That Council:

1. Recognises the valuable role the City of Adelaide administration plays in supporting Council Members.
2. Expresses concern about the impact the conduct and behaviours of some Council Members may have on the health and wellbeing of the Administration.
3. Request an urgent independent investigation to determine the extent of any impact and provide recommendations where appropriate.

At its meeting of 12 May 2020, Council resolved to approve the Scope of Work for the Cultural Investigation and to appoint EMA Legal, a nationally recognised employment, industrial relations and dispute resolution law firm, to undertake the investigation as recommended by the Independent Audit Committee Members' Working Group.

The investigation has now been completed, and a Confidential Cultural Investigation Final Report dated 30 November 2020 was shared on a confidential basis with the Independent Audit Committee Members' Working Group on 5 February 2021.

Additional third party legal advice was subsequently sought to fully understand the potential legal implications of the substance and findings of the Confidential Cultural Investigation Final Report and whether the report could be presented to Council and the public.

Consideration in confidence is sought to retain legal privilege, not breach any law, duty of confidence or other legal obligation or duty, and to not disclose the personal affairs of any person.

RECOMMENDATION

THAT COUNCIL

1. Notes that the Confidential Cultural Investigation Final Report dated 30 November 2020 undertaken by EMA Legal was submitted confidentially to the Chief Executive Officer and shared on a confidential basis with the Independent Audit Committee Members' Working Group on 5 February 2021
2. Notes the legal advice provided and the implications of this legal advice as outlined in Item 12.2.1 [Cultural Investigation Report] listed on the Agenda for the meeting of the Council held on 9 March 2021.
3. Notes with approval the initial actions of the Acting Chief Executive Officer outlined in Attachment A to Item 12.2.1 on the Agenda for the meeting of the Council held on 9 March 2021 to enable the City of Adelaide to act decisively and swiftly to meet its obligations under the Work Health and Safety Act 2012 and the *Local Government Act* 1999 to ensure the work health safety and wellbeing for employees and assist in the immediate improvement to culture.

4. In accordance with Section 91(7) and (9) of the *Local Government Act 1999 (SA)* and because Item 12.2.1 [Cultural Investigation Report] listed on the Agenda for the meeting of the Council held on 9 March 2021 was received, discussed and considered in confidence pursuant to Section 90(3) (a) (g) (h) of the *Local Government Act 1999 (SA)*, this meeting of the Council do order that
- 4.1. Attachment A be included in the Minutes of the meeting.
 - 4.2. The report, minutes of the meeting, the discussion and any other associated information submitted to this meeting in relation to the matter (excluding Attachment A) remain confidential and not available for public inspection until 31 December 2028.
 - 4.3. The confidentiality of the matter be reviewed by March 2022.
 - 4.4. The Chief Executive Officer be delegated the authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities
Policy	Council Standing Orders
Consultation	EMA Legal undertook consultation consistent with the Scope of Work approved by Council.
Resource	Training and development by relevant internal and/or external resources.
Risk / Legal / Legislative	<p>Council has an obligation to ensure that it provides a workplace free from risk, in accordance with its statutory obligations under the <i>Work, Health and Safety Act 2012</i>.</p> <p>The implications for Council in failing to give effect to these statutory obligations are that the Council is exposed to an investigation being undertaken by Ombudsman and/or Safework SA and adverse findings being made against it for failure to ensure that it has taken all reasonable measures to ensure, so far as is reasonably practicable, the health and safety of its employees.</p> <p>Failing to manage the findings in the investigation may result in the risks identified in the report eventuating, and negatively impacting the Council and its staff.</p>
Opportunities	To reduce the risks highlighted by the investigation and result in increased wellbeing and a more effective, efficient, and responsive organisation.
20/21 Budget Allocation	Not as a result of this report
Proposed 21/22 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
20/21 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

GROUNDS AND BASIS FOR CONSIDERATION IN CONFIDENCE

Grounds

Section 90(3) (a) of the *Local Government Act 1999* (SA)

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)

Section 90(3) (g) of the *Local Government Act 1999* (SA)

- (g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty

Section 90(3) (h) of the *Local Government Act 1999* (SA)

- (h) legal advice

Basis

This Item is confidential as it contains matters that must be considered in confidence in order to ensure that the Council does not breach any law, any duty of confidence, or other legal obligation or duty, and preserves legal privilege.

The disclosure of this report would waive legal privilege and involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

The disclosure of information in this report could reasonably prejudice the identity of the persons named in the report and would prejudice the ability of the Chief Executive Officer to act as required by law. By maintaining the confidentiality of this report, procedural fairness will be observed.

Section 56 of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) prohibits the publication of:

- information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under the Act;
- information that might enable a person who has made a complaint or report under the Act to be identified or located;
- the fact that a person has made or may be about to make a complaint or report under the Act;
- the fact that a person has given or may be about to give information under the Act.

Contravention of these provisions is a criminal offence. However, these provisions do not prevent the making of this confidential report to Council.

DISCUSSION

1. At its meeting on 14 April 2020, Council resolved as follows in relation to Agenda Item 15.13:
That Council:
 1. *Recognises the valuable role the City of Adelaide administration plays in supporting Council Members.*
 2. *Expresses concern about the impact the conduct and behaviours of some Council Members may have on the health and wellbeing of the Administration.*
 3. *Request an urgent independent investigation to determine the extent of any impact and provide recommendations where appropriate.*
2. At its meeting of 12 May 2020, Council resolved to approve the Scope of Work for the Cultural Investigation and to appoint EMA Legal, a nationally recognised employment, industrial relations and dispute resolution law firm, to undertake the investigation as recommended by the Independent Audit Committee Members' Working Group.
3. The investigation has now been completed, and a Confidential Cultural Investigation Final Report dated 30 November 2020 was shared on a confidential basis with the Independent Audit Committee Members' Working Group on 5 February 2021.
4. Following consideration of the Final Report, the Acting Chief Executive Officer obtaining legal advice on the implications arising from the Final Report and the necessary actions that ought to be taken upon its receipt.
5. The advice the Council received indicates:
 - 5.1 The Final Report contains allegations which, if taken at their highest, on their face, amount to serious or systemic misconduct in public administration.
 - 5.2 Section 4(2) of the ICAC Act provides the following test for when misconduct is 'serious or systemic'. For the purposes of the Act, misconduct in public administration will be taken to be serious or systemic if the misconduct—
 - (a) is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and
 - (b) has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned).
 - 5.3 As Acting Chief Executive Officer, I am required by law to report serious or systemic misconduct in public administration to the Office for Public Integrity (OPI).
 - 5.4 There are proper grounds for me as Acting Chief Executive Officer to make a report to the OPI regarding the matters outlined in the report.
 - 5.5 If a report is to be made to the OPI regarding the information contained in the Final Report, the Final Report should remain confidential and not be presented to a public meeting of the Council while any investigation conducted as a result of the report to the OPI is ongoing.
 - 5.6 There may be procedural fairness defects in the manner in which the investigation was conducted and in the matters included in the Final Report. Any defects in this regard must be remedied prior to any publication of the Final Report by Council.
 - 5.7 From a work health and safety perspective it is incumbent on Council to take immediate steps to examine its current approach to employee wellbeing to determine whether or not there are actual incidences that could be deemed bullying or harassment under work health and safety law which would justify the taking of internal action and whether there are gaps in the Council's current employee wellbeing scheme.
6. As Acting Chief Executive Officer, I am in the process of implementing the recommendations received in our legal advice.
7. At this time, Council cannot publish the Final Report in any format or forum.
8. Once guidance is received from the OPI in respect of their proposed approach, as Acting Chief Executive Officer, I will report back to Council members on next steps, including as to whether the Final Report may be published.
9. The City of Adelaide is acting decisively and swiftly to meet its obligations under the Work Health and Safety Act 2012 and comply with the Code of Conduct (section 63) of the Local Government Act 1999.

10. To ensure the work health safety and wellbeing for employees and assist in the immediate improvement to culture, I am taking the initial action outlined in Attachment A to the Agenda for the meeting of the Council held on 9 March 2021.

DATA AND SUPPORTING INFORMATION

EMA Legal Confidential Cultural Investigation Final Report dated 30 November 2020 has informed the preparation of this report

ATTACHMENTS

Attachment A – Cultural Investigation Report – Acting Chief Executive Officer Initial Actions

- END OF REPORT -

ATTACHMENT A Cultural Investigation Report – Acting Chief Executive Officer Initial Actions

Council Resolution

At its meeting on 14 April 2020, Council resolved as follows:

That Council:

1. *Recognises the valuable role the City of Adelaide administration plays in supporting Council Members.*
2. *Expresses concern about the impact the conduct and behaviours of some Council Members may have on the health and wellbeing of the Administration.*
3. *Request an urgent independent investigation to determine the extent of any impact and provide recommendations where appropriate.*

At its meeting of 12 May 2020, Council resolved to approve the Scope of Work (Terms of Reference) for the Cultural Investigation and to appoint EMA Legal to undertake the investigation as recommended by the Independent Audit Committee Members' Working Group.

Progress To Date

A Confidential Cultural Investigation Final Report dated 30 November 2020 undertaken by EMA Legal was shared with the Independent Audit Committee Members' Working Group on a confidential basis on 5 February 2021. Administration is in the process of considering the approach to and outcomes of the report, which remains confidential.

In the interim, to ensure the work health safety and wellbeing for employees and assist in the immediate improvement to culture, the City of Adelaide is acting decisively and swiftly to meet its obligations under the *Work Health and Safety Act 2012* and the *Local Government Act 1999*.

Initial Actions

1. Notes the standards and behaviours outlined in the Codes of Conduct or Practice required to be kept under the *Local Government Act 1999* (SA) set out below:
 - 1.1. Code of Conduct for Council Members (incorporated into the City of Adelaide Standing Orders)
 - 1.2. Code of Practice for Access to Meetings and Documents (incorporated into the City of Adelaide Standing Orders)
 - 1.3. Code of Practice for the Conduct of Council/Committee meetings when the Local Government (Procedures at Meetings) Regulations 2013 (SA) are varied (incorporated into the City of Adelaide Standing Orders)
 - 1.4. Code of Conduct for Employees.

2. Notes that the City of Adelaide's values of Achievement, Collaboration, Customer Commitment, Integrity and Innovation also guide the way employees interact with Council Members, with each other and with our customers, as well as the decisions that we make on a daily basis.
3. Notes that the Statutes Amendment (Local Government Review) Bill 2020 is expected to pass Parliament in March – April 2021. It acknowledges that the current conduct framework in the *Local Government Act 1999* (SA) has proven to be inadequate and proposes to address this by introducing a new behavioural management framework for Council Members. New Behavioural Standards will be made by the Minister and serious or repeated misbehaviour can be referred to the new Behavioural Standards Panel.
4. Notes that the City of Adelaide will submit feedback on the development of the behavioural management framework in response to the Local Government Association of South Australia's discussion paper and will engage in subsequent sector consultation.
5. Notes that the Behavioural Standards are expected to be relatively high-level standards that must be observed by all Council members. Councils have the option to adopt Behavioural Support Policies within six months of each periodic election, and will be required to undertake public consultation prior to the adoption of Behavioural Support Policies. Subject to the passing of the Statutes Amendment (Local Government Review) Bill 2020, a report will be prepared that recommends that Council adopt the optional Behavioural Support Policies.
6. Council Members and nominated employees are to be given opportunities to participate in the briefing sessions and training organised by the Local Government Association subject to the passing of Statutes Amendment (Local Government Review) Bill 2020 and any additional relevant training identified in the interim by the Chief Executive Officer.
7. Notes that the City of Adelaide is committed to continuous improvement in work health and safety and wellbeing and will immediately identify and will take all reasonable steps to address any gaps or opportunities in its People Experience Delivery and Work Health, Safety and Wellbeing programs, directly informed by employee feedback.
8. Notes that the City of Adelaide provides details of key workplace health, safety and wellbeing initiatives and statistics in its annual reports and that the Chief Executive Officer and the Lord Mayor will consider additional mechanisms to support wellbeing and improve culture.
9. The Chief Executive Officer will prepare a report for Council consideration and decision on an alternative model for Committee meetings, with the aim of improving behaviour, decision making, responsiveness to emerging issues and opportunities, and the wellbeing of staff and Council Members.
10. The Chief Executive Officer will present a future report to Council recommending the adoption of modifications to the Standing Orders designed to improve interactions between employees and Council Members.
11. Notes the requirements for dealing with the media and social media as outlined in Standing Orders 21-22.
12. Notes that the Strategic Risk and Internal Audit Group (SRIA) will identify additional practical ways in which more positive workplace engagement with Council Members and employees can be facilitated.

13. Notes that these measures to ensure the work health safety and wellbeing for employees and to assist in the immediate improvement to culture will be communicated to all City of Adelaide employees.

[illegible]

Moved by Councillor Hyde,
Seconded by Councillor Knoll –

1. Notes the Expression of Interest (EOI) process that was undertaken for the 'Rowing Club Building' located on the banks of the River Torrens within Red Gum Park / Karrawirra Park 12.

2. Supports Council entering into lease negotiations with the Torrens Rowing Club for the Rowing Club Building with further consideration given to operating hours.
2. In accordance with Section 91(7) & (9) of the *Local Government Act 1999 (SA)* and because Item 12.1.1 [Advice of the Adelaide Park Lands Authority in Confidence – Expression of Interest Results – Rowing Club Building – Red Gum Park / Karrawirra Park 12] listed on the Agenda for the meeting of the Council held on 9 March 2021 was received, discussed and considered in confidence pursuant to Section 90(3) (b) of the *Local Government Act 1999 (SA)*, this meeting of the Council, do order that:
 - 2.1 The resolution, the report, the discussion and any other associated information submitted to this meeting and the Minutes of this meeting in relation to the matter remain confidential and not available for public inspection until 31 December 2023.
 - 2.2 The confidentiality of the matter be reviewed in December 2022.
 - 2.3 The Chief Executive Officer be delegated the authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.

Discussion ensued

Acting CEO Undertaking – Expression of Interest Results – Rowing Club Building – Red Gum Park / Karrawirra [C]

In response to a query from Councillor Martin, the Acting CEO gave an undertaking to provide Council Members with information on when the lease for the Rowing Club Building will be brought to Council.

The motion was then put and carried