

**CITY OF MARION
GENERAL COUNCIL MEETING
25 JANUARY 2005**

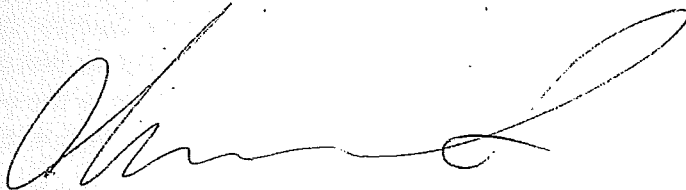
CONFIDENTIAL

**REPORT RELATING TO:
Employer of Choice**

Originating Officer: Mark Searle, Chief Executive
Subject: Occupational Health, Safety and Welfare
Ref No: GC250105F03
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 (Mark Searle, Chief Executive; Pauline Koritsa, Manager Governance; Peter Tsokas, Director Operations; Jeff Rittberger, Director Finance; Kiki Magro, Director Corporate Development, Kathy Jarrett, Governance Business Co-ordinator; Tracie McPherson, Senior Media Advisor; 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 alleged Occupational Health, Safety and Welfare issues.

CORPORATE OBJECTIVES:

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

BACKGROUND:

On 11 November 2003 the City of Marion Corporation management provided Elected Members with a briefing on a number of key performance indicators that have been developed to ensure the organisation is effectively managed. The Corporation has not historically used performance indicators and the introduction and ongoing development has required a cultural shift.

The presentation covered 5 key performance areas:

- Implementation of the corporate plan
- Implementation of the new lease agreements
- Percentage of customer requests responded to in accordance with the standard
- Percentage of direct dial calls responded to in 5 rings
- Annual employee turnover rate

The major discussion was around response to phone calls (direct dial and customer service centre) and employee turnover. The response times for direct dial calls had been improving as a result of a solid investment in training, support and staff involvement in problem solving at a work group level. Direct dial response is critical to effectively handling calls that come directly to these phones as well as calls directed from the Customer Service Centre. The objective has been to gradually improve the level of commitment and effective resourcing to responding to the needs of Council's customers (citizens, ratepayers ..). The employee turnover figures demonstrated a sustained reduction in employee turnover from 1999 to 2003.

On 12 November 2003 all staff received an email expressing appreciation for their sustained commitment to improving the response time for answering calls. They were also advised of a "mystery shopping" survey that had been completed where Council's quality of response to customer requests was tested. The result of that exercise demonstrated high levels of service quality.

On 14 November 2003 the Elected Members were advised of the email sent to staff and asked how they would like to be part of an approach to support and recognise the positive efforts of staff. Council leadership, including the recognition of the efforts of staff, has a significant impact on staff and can make a major contribution toward inspiring staff to continue to improve the level of service to Council's ratepayers.

On 14 November 2003 at 6.53 pm Councillor Hull responded to the email sent to Elected Members and also sent copies to all Elected Members and staff. The response was emotive and critical of the email sent to all staff recognising their successful efforts.

By 7.30 pm on 14 November 2003, staff concern about Cr Hull's email had been raised. On 15 November 2003 the mail system was disabled, and following legal advice, the email was removed from all each individual staff member's mailbox on Sunday 16 November 2003.

On 17 November 2003 staff were advised that an email from an Elected Member had been removed from their mailboxes.

On 28 November 2003 Councillor Hull distributed "hard" copies of his email response to the Depot staff at a 40 year service celebration.

On 19 December 2003, Councillor Hull was invited to a meeting with the Mayor, CEO and an independent dispute resolution consultant, Dr Josephine Tiddy, to discuss the occupational health, safety and welfare issues arising from his email response and its distribution. Cr Hull declined this invitation.

On 24 December 2003, Councillor Hull was advised: (1) of his statutory responsibilities under the Occupational Health Safety and Welfare Act, as an Elected Member; (2) that he had gone beyond his role and responsibilities under the Local Government Act; (3) in response to concerns expressed by staff the impact of his actions had to be fully assessed; and (4) that written assurance was sought that he would not contact members of staff other than CEO, Directors and the Manager Governance.

On 8 January 2004, Councillor Hull responded in writing confirming that he would not make further contact with staff as requested, "except wher my duty clearly dictates that I must do so."

In January 2004 Dr Josephine Tiddy was engaged to assess the impact of Councillor Hull's email on Corporation staff. Dr Tiddy has interviewed 5 staff, Councillor Hull, four Elected Members, CEO and a Depot Manager. Dr Tiddy's report is now presented for Council's consideration.

REPORT OBJECTIVE:

The report provides Council with an independent professional assessment of the:

- impact of Councillor Hull's email to all staff on 14 November 2003;
- issues raised by Councillor Hull; and
- actions taken by the CEO.

The report also makes recommendations for Council to consider. The recommendations seek to improve the level of safety of staff in the workplace to ensure staff are free of harassment and intimidation.

IMPLEMENTATION:

If Council adopts the recommendations, Council will be involved in the review of a number of policies. The substance of these policies would provide greater clarity to Council, Elected Members and staff on the appropriate conduct of Elected Members in their communications with staff as well options for Council and staff to address concerns about harrassment or bullying in this regard.

CONSULTATION:

Dr Tiddy has interviewed 5 staff, Councillor Hull, four Elected Members, CEO and a Depot Manager.

BUDGET IMPLICATIONS:

Whilst the policy development recommended in the report can commence in the current financial year it will continue into the next financial year. Provision for the cost of developing policies is made in Council's budget each year.

The cost to Council of not ensuring the workplace is free from bullying and harrassment is twofold. There are inevitable productivity losses as well as the risk of a compensation claim from affected parties.

ENVIRONMENT:

Council has adopted the principles of sustainability to its approach to the organisation as well as the City of Marion. "Bullying" is inconsistent with Council's vision for a safe and inclusive organisation and City.

CONCLUSION:

An assessment of the Occupational Health, Safety and Welfare implications of Councillor Hull's November 2003 email has been completed. The findings are set out in the Attachment pages 33 to 44 and there is no attempt to summarise the findings in this report. The assessment indicates and unacceptable risk to the Council and organisation. Dr Tiddy's recommendations seek to set in train the development of a set of policies, practices and consequences to eliminate that risk.

Whilst the findings are based on Dr Tiddy's interpretation of the Local Government Act 1999, Occupational Health, Safety and Welfare Act 1986 and other relevant Acts, Dr Tiddy is not implying any provision of legal advice. Dr Tiddy did have access to Council's legal advisors to clarify issues of law.

Dr Tiddy's Recommendations

1. No further sanctions be applied to Councillor Bruce Hull, even though the contents of his *Staff Recognition* email response and its circulation appear to have contravened his legislative responsibilities under the Local Government Act and other Acts. Further sanctions are unlikely to be effective, as Councillor Hull has apologised for his actions, made written commitments to the Mayor that he will never write, or circulate a similar email in the future and sustained those commitments over 12 months.
2. Where a City of Marion Corporation *employee* receives an email from an Elected Member that he or she informally or formally complains is "bullying", intimidating or creating for them a hostile and unsafe environment, the Chief executive, having informed the Mayor, will discuss the matter with the Elected Member, as soon as practicable. In the ensuing confidential discussion, conducted by telephone, or in a meeting between the Elected Member and the Chief Executive, the effect of the email on the staff member will be explained to the Elected Member. If the Elected Member agrees not to send such an email in future, and if appropriate, apologises to the employee, no further action will be taken, or official records kept.
3. Where in the opinion of the Chief Executive, in consultation with the Mayor, and Elected Member sends an email to Corporation *employees*, that could negatively impact on the safety of the Corporation workplace and its welfare, the Chief Executive will immediately instruct that the email be removed from the mailboxes of each employee. Following the removal of such an email the Chief Executive will inform Corporation employees accordingly.
4. Following the removal of the email from Corporation employee' mailboxes, the Chief Executive will invite the Elected Member to confidentially discuss the offending email with him, either by telephone, or in a meeting between the Elected Member and the Chief Executive. At such a meeting, if the Elected Member seeks to have a support person present, then this will be permitted, only if the Mayor is also present.
5. Where the Elected Member refuses to discuss the offending email with the Chief Executive, the Elected Members' right to use electronic mail will be restricted to the Chief Executive and other Elected Members.
6. Where the Elected Member continues to send emails to the same Corporation employee or to other Corporation employees, or to the Chief Executive, and the employee/s complains informally or formally, or if in the opinion of the Chief Executive, in consultation with the Mayor, such emails could be "bullying", intimidating to an employee/s, or creating a hostile, unsafe workplace, or could undermine the welfare of the Corporation, the Elected Members' right to use electronic mail will be restricted to the Chief Executive and other Elected Members.
7. Where the Elected Member's right to use electronic mail is restricted, the Chief Executive will issue an instruction, without explanation, to the relevant staff to restrict the Elected Member's right to use electronic mail through the Corporation's computer server, for a specified period of time or indefinitely, as is appropriate, in the particular circumstances.
8. The Chief Executive will immediately inform the Elected Member in writing that his or her right to sending and receiving electronic mail has been suspended for a defined period and of the reasons for that suspension.

9. The Chief Executive, in the same letter, will accord the Elected Member with an early opportunity to meet, or to respond in writing to the reasons for the suspension and the length of time of the suspension.
10. The Chief Executive, in consultation with the Mayor, will give due consideration to the Elected Member's response. Depending on his or her response, the Chief Executive, in consultation with the Mayor, will reconsider his action and may sustain, extend, reduce or cease the suspension, as deemed appropriate.
11. Where an Elected Member again potentially breaches his or her occupational health safety and welfare obligations to other Elected Member or employees of the Corporation, the Chief Executive, in consultation with the Mayor, will determine whether or not to permanently cease his or her right to use electronic mail for communicating with staff, except the Chief Executive and other Elected Members.
12. Where the Chief Executive, in consultation with the Mayor, determines that an Elected Member's use of electronic mail to communicate with Corporation staff will cease permanently, the Elected Member will be afforded the opportunity to show why such action should not be taken.
13. The Information Technology Policy for Elected Members be reviewed and amended to reflect these recommendations.
14. The occupations health, safety and welfare responsibilities of Elected Member as the body corporate – the Marion Council, being the employer, with a general duty of care and accountability for any breaches of their legislative obligations are set out in the Code of Conduct for Elected Members.
15. The Code of Conduct for Elected Members will also include commitments to ensuring that the interactions between Elected Members and Corporation staff conform to the principles underpinning Occupational Health Safety and Welfare legislation.
16. The Marion Council adopts a policy that ensures that Elected Members adopt the principles underpinning Discrimination and OHS&W laws that provide for fair treatment of Corporation employees by Elected Members. Such a policy will include provision to ensure Corporation staff work in an environment that is free from intimidation, humiliation, offensive, harassing, "bullying" behaviours and/or discrimination from Elected Members, and that a hostile and/or unsafe environment is not created by Elected Members. This policy will include sanctions against Elected Members, if a Corporation staff member/s formally or informally complains that they are being treated unfairly by an Elected Member/s, and that their complaint is not frivolous, vexatious or misconceived.

RECOMMENDATIONS:**That:**

1. No further sanctions be applied to Councillor Bruce Hull, even though the contents of his *Staff Recognition* email response and its circulation appear to have contravened his legislative responsibilities under the Local Government Act and other Acts.
2. Dr Tiddy's recommendations 2 to 12, 14 and 15 be referred for consideration as part of the Elected Member Code of Conduct review.
3. The '*Information Technology- Provision and Use of Equipment (Elected Members)*' policy be reviewed and Dr Tiddy's recommendations 2 to 12 be referred for consideration as part of that review.
4. Council's policies be reviewed consistent with Dr Tiddy's recommendation 16.
5. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the report, '*Occupational Health, Safety and Welfare*' and the minutes arising from this report be kept confidential and not available for public inspection until the Chief Executive retires from gainful employment on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person being the Chief Executive Officer of the Council. This confidential order will be reviewed at the December 2005 meeting of Council.

Appendix 1: Assessment of Occupational Health, Safety and Welfare Implications of November 2003 email and its circulation. Dr Josephine Tiddy, January 2005.

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**REPORT FOR CORPORATION OF CITY OF
MARION**

**ASSESSMENT OF OCCUPATIONAL HEALTH,
SAFETY AND WELFARE
IMPLICATIONS OF
NOVEMBER 2003 EMAIL AND ITS
CIRCULATION**

***ASSESSMENT, FINDINGS AND
RECOMMENDATIONS***

**Dr Josephine Tiddy
January 2005**

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REPORT FOR CORPORATION OF CITY OF MARION

ASSESSMENT OF THE OCCUPATIONAL HEALTH, SAFETY AND WELFARE IMPLICATIONS OF COUNCILLOR BRUCE HULL'S NOVEMBER 2003 EMAIL AND ITS CIRCULATION

BACKGROUND

On 11 November 2003, the City of Marion Corporation management provided Elected Members with a briefing on the customer service achievements relating to the improved response times of staff answering telephone calls to direct line extensions. It was noted that the telephone statistics did not include the answering of incoming telephone calls to the Customer Service Centre. Although this briefing was an informal gathering of Elected Members, (Elected Members' forum) the material presented was deemed confidential and therefore only available to Elected Members and staff of the Corporation of the City of Marion (the Corporation).

On 14 November 2003, Chief Executive Mark Searle sent an email to Elected Members, titled *Staff Recognition* (*Staff Recognition* email). In that email he informed Elected Members that he had included the text of his *Two Big Customer Wins* email that he had sent to all Corporation staff. Chief Executive Searle wrote that he wanted to ensure that the "excellent customer service efforts" of all staff were recognised, as the team was performing at a "very high level" and he sought to work with Elected Members to recognise their achievements.

At 6.53pm on the same day, Councillor Bruce Hull responded by email to Chief Executive Searle's *Staff Recognition* email, and also sent copies of his email to all Elected Members and Corporation staff with internal mailboxes.

In his email response Councillor Hull claimed that:

- the statistics relating to the response times for Corporation staff to answer the telephones that were presented at the November 2003 "secret" meeting were questionable and he intended to create his own log as evidence to reveal the real situation and not the "fantasy" that the Chief Executive was heralding as a "corporate win"
- the timing of the Chief Executive's *Staff Recognition* email was "an attempt to embrace the staff that had presumably been flogged and under resourced throughout the year"
- the Chief Executive's *Staff Recognition* email pushed his "tolerance to crap to the limit" and that he was "unimpressed with the Chief Executive's performance on this matter and the many other matters that he (Councillor Hull) had brought to the Chief Executive's attention in recent times."

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

BACKGROUND (continued)

At approximately 7.30pm on Friday 14 November 2003, a staff member informed Chief Executive Mark Searle of Councillor Bruce Hull's email response and expressed concern about its contents.

On 16 November 2003, cognisant of his statutory responsibilities under the Local Government Act and the Occupational Health Safety and Welfare Act (OHS&W Act) and supported by legal advice, Chief Executive Searle instructed staff to remove Councillor Hull's email response from all the internal mailboxes of staff. Over approximately four hours on that Sunday evening, Councillor Hull's email was removed from each individual's mailbox.

On 17 November 2003, several staff expressed their concerns to Chief Executive Searle about the negative impact of Councillor Hull's email response, and that they felt 'bullied' by his comments which they believed had the potential to undermine the morale of the Corporation staff and make their work environment unsafe.

While several staff made informal complaints, none lodged a formal complaint under the terms of the occupational health and safety policy.

Around midday on 17 November 2003, Chief Executive Searle emailed all staff informing them that he had authorised the removal from their mailboxes of an email sent by an Elected Member.

On 28 November 2003, Councillor Hull distributed 'hard' copies of his email response to the Corporation's Depot staff at a 40-year service celebration.

On 19 December 2003, Chief Executive Searle telephoned Councillor Hull and invited him to meet with Mayor Felicity Lewis, himself and an independent dispute resolution consultant, Dr Josephine Tiddy, to discuss the occupational health, safety and welfare issues arising from his email response and its distribution. Councillor Hull declined the invitation.

On 24 December 2003, Chief Executive Searle wrote to Councillor Hull confirming that Councillor Hull had declined Chief Executive Searle's invitation.

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**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
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Dr Josephine Tiddy

January 2005

BACKGROUND (continued)

In his 24 December 2003 letter to Councillor Bruce Hull, Chief Executive Mark Searle set out his statutory responsibilities under the Occupational Health Safety and Welfare Act (OHS&W Act). Chief Executive Searle also informed Councillor Hull that his legal advice was that he had "gone beyond his role and responsibilities under the Local Government Act."

Chief Executive Searle continued that, "in the light of feedback that I have received from staff, that the impact of your actions and words must be fully assessed and considered." He added, "I am now writing to advise that the next stage of the assessment, with appropriate professional assistance and legal advice, will commence." Chief Executive Searle also sought Councillor Hull's written assurance that he would not contact members of staff, other than himself, Directors and the Manager, Governance.

On 8 January 2004, Councillor Hull replied by letter to Chief Executive Searle confirming that he would not make further contact with staff as requested, "except where my duty clearly dictates that I must do so."

He wrote, "I am quite happy to admit that I would not have written all that I had written if I thought that it would be taken as offensive, instead of being treated in the light in which it was made, namely supportive of the staff in their efforts to answer whilst under so much pressure of their own – and of course critical of the way you flaunted the figures which I still feel are missing the main point. That point is how long before a human answers the caller."

Councillor Hull raised several other issues in his letter, including how the OHS&W Act applied to him when he was "neither an employee, nor an employer, nor within the definition of 'contract of service'."

Councillor Hull also wrote that if Chief Executive Searle pursued the matter that he would be seeking further advice from "any adviser/s I care to consult."

In January, 2004, Dr Josephine Tiddy, Managing Director, JTCT was contracted by Chief Executive Searle, to assess the impact on Corporation staff of Councillor Hull's email response to Chief Executive Searle's *Staff Recognition* email, in terms of the OHS&W Act and provide a report with her findings and recommendations.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

ASSESSMENT

From January 2004, Dr Josephine Tiddy conducted individual interviews with Councillor Bruce Hull, four Elected Members, Chief Executive Mark Searle, five staff and a Depot Manager.

COUNCILLOR BRUCE HULL

During Dr Tiddy's several interviews with Councillor Hull, he:

- clarified his reasons for writing his email response to Chief Executive Searle's *Staff Recognition* email
- explained why he had written certain allegations in that email
- provided his rationale for circulating his email response to all staff in the Corporation, including Depot staff
- apologised for his actions and made commitments not to take such actions in the future.

Councillor Bruce Hull's reasons for writing his email response

On 11 November 2004, Councillor Hull noted that Corporation management had briefed Elected Members on the achievements made by Corporation staff in **answering telephone calls to their direct line extensions**. While Councillor Hull and some other Elected Members raised concerns about the answering of the telephone calls in the Customer Service Centre, Councillor Hull claimed that he recognised that the statistics presented at the Elected Members' forum did **not** encompass the Customer Service Centre.

On 14 November 2003, Councillor Hull wrote his email response to Chief Executive Searle's *Staff Recognition* email, sent earlier on the same day to all Elected Members. Councillor Hull acted on his firm belief that following his election to the Marion Council in May 2003, with a relatively large number of votes, his role was to represent his constituents and take up issues that they raised with him. One such issue was the long waiting time his constituents told him they were experiencing **when telephoning the Corporation's Customer Service Centre** (which was not the issue being addressed in Chief Executive Searle's *Staff Recognition* email).

Supported by his campaign commitments to his constituents to change the status quo, Councillor Hull believed he had a mandate to ensure that Chief Executive Mark Searle and the staff of the Corporation were accountable for improving the services provided to the City of Marion community.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

ASSESSMENT (continued)

COUNCILLOR BRUCE HULL

Councillor Bruce Hull's reasons for writing his email response (continued)

Councillor Bruce Hull stated he was "outraged" with the content and timing of Chief Executive Mark Searle's *Staff Recognition* email. This was because Chief Executive Mark Searle had included in his *Staff Recognition* email the text of his *Two Big Customer Service Wins* email that he had sent to all staff recognising their achievements in answering the telephones within 5 rings. Councillor Hull believed that the *Two Big Customer Service Wins* email had 'glossed up' the customer service achievements of Corporation staff and failed to recognise the problems in the Customer Service Centre.

Councillor Bruce Hull claimed he was also "outraged" that Chief Executive Mark Searle could present such an inaccurate picture, of what was happening to the Customer Service Centre services being provided to his constituents. This was particularly so, as Chief Executive Searle had sent his email shortly after the Elected Members' forum, where concerns had been raised by some Elected Members, including Councillor Hull about the timeliness in answering of incoming calls to the Customer Service Centre.

Councillor Hull also believed that it was unfair and inaccurate for Chief Executive Searle to highlight the achievements of some Corporation staff in answering the calls to direct line extensions, when the Customer Service Centre staff were experiencing difficulties.

From anecdotal information Councillor Hull had received from his constituents' complaints, he believed that the response times to incoming calls and reaching a Corporation staff member at the Customer Service Centre was declining rather than improving.

Councillor Hull stated that he had been informed by some Customer Service Centre staff and their Union representatives that the difficulties being experienced in the Customer Service Centre were caused by the large number of incoming calls and a lack of staff to respond to those calls.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

ASSESSMENT (continued)

COUNCILLOR BRUCE HULL

**Councillor Bruce Hull's reasons for writing his email response
(continued)**

Councillor Bruce Hull stated he wrote his email response because he believed that he had a mandate to achieve greater accountability within the Corporation and accordingly had a responsibility to 'put the record straight'. From his perspective, even though he was aware from the information presented at the Elected Members' forum that the improvements in customer service standards related to the time taken for staff to answer telephone calls to direct line extensions, that was **not** the issue.

For Councillor Hull, **the issue was** that Chief Executive Mark Searle had not differentiated, in his *Staff Recognition* email, between the response rate of staff answering direct line extensions and those of the Customer Service Centre staff. He believed that Chief Executive Searle should have raised the negative impact the Customer Service Centre was having on the efficiency and effectiveness of the provision of services to the City of Marion community.

Councillor Hull stated **had** Chief Executive Searle differentiated between the telephone statistics and recognised the problems in the Customer Service Centre, he would **not** have written his email response.

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**Report for Corporation of City of Marion
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of Councillor Bruce Hull's November 2003 email**

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January 2005

ASSESSMENT (continued)**COUNCILLOR BRUCE HULL*****Councillor Bruce Hull's explanations for the allegations he had made in his email response***

Councillor Bruce Hull's allegations in his email response to Chief Executive Searle's *Staff Recognition* email centred on: *a secret meeting* where *questionable statistics* were presented, *Chief Executive Searle's heralding a 'fantasy' as a 'corporate win'* and *'staff presumably being flogged and under resourced'*.

Councillor Hull also wrote comments about the performance of the Chief Executive, which have been addressed in the Findings of this Report.

Councillor Hull alleged that a '*secret meeting*' had been held on 11 November 2003. While Councillor Hull recognised the '*secret meeting*' was an Elected Members' forum, it was a confidential forum. Councillor Hull recognised that the term '*secret*' is emotive, but claimed that he used it because the press uses this term to refer to confidential Elected Members' forums.

Councillor Hull stated he decided to use the wording of a '*secret meeting*' to make the point that he believed that it was unnecessary for many of the matters raised at Elected Members' forums to be deemed 'confidential'.

Councillor Hull stated that there was nothing sensitive or potentially detrimental to the Marion Council to reveal to the public the improvement in the responses to answering direct line extensions, or the problems being experienced in the Customer Service Centre.

Councillor Hull also alleged that '*questionable telephone statistics*' were presented at the Elected Members' forum, as they related to the achievements of Corporation staff in answering calls to the direct line extensions. Councillor Hull believed that management was not 'listening' to the Elected Members' concerns about the problems in the Customer Service Centre and by not including the telephone statistics from the Customer Service Centre, the telephone statistics presented were '*questionable*'. If the Customer Service Centre telephone statistics had been presented, Councillor Hull believed that the results would not have been so positive.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

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ASSESSMENT (continued)

COUNCILLOR BRUCE HULL

Councillor Bruce Hull's explanations for the allegations he had made in his email response (continued)

Councillor Bruce Hull alleged that Chief Executive Mark Searle was *'creating a fantasy as a corporate win'*. He believed that the telephone statistics Chief Executive Searle was using in his *Staff Recognition* email as the basis to recognise the achievements of Corporation staff were a selective use of the telephone statistics as they related only to answering calls to direct line extensions. This skewed the reality and created the *'corporate fantasy'*, as those statistics did not include the Customer Service Centre telephone statistics. With the current problems in the Customer Service Centre, if those telephone statistics had been included, Councillor Hull stated that this would have shown that the Corporation staff's achievements were not as good as Chief Executive Searle was purporting.

Councillor Hull believed that his allegations of *'questionable telephone statistics'* and *'creating a fantasy as a corporate win'* showed how there were "gross inaccuracies" in Chief Executive Searle's *Staff Recognition* email.

Councillor Hull also alleged in his email response that Chief Executive Searle's *Staff Recognition* email came out *"just before Christmas couched in a fashion that would attempt to embrace the staff that have presumably been flogged and under resourced during the year."* He claimed that he had been told by some Customer Service Centre staff and their Union representatives that the difficulties being experienced were caused by the large number of incoming calls and a lack of staff to respond to the calls.

He stated that when he wrote his email response that he was **not** blaming the Customer Service Centre staff for the problems in answering the telephones. He believed a lack of resources (determined by management) was the reason that his constituents were complaining to him about the worsening levels of services they were receiving from the Customer Service Centre.

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Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

ASSESSMENT (continued)**COUNCILLOR BRUCE HULL*****Councillor Bruce Hull's rationale for circulating his email response to all staff in the Corporation, including Depot staff***

Councillor Hull believed that all Elected Members and Corporation staff should be made aware of what he perceived as 'gross inaccuracies', in Chief Executive Searle's *Staff Recognition* email, hence his widespread electronic distribution of his response.

Councillor Hull stated that his reason for his subsequent distribution of 'hard' copies of his email response to Depot staff was based on information from some Depot staff. Councillor Hull had 'heard' that a Depot manager had told Depot staff that he (Councillor Hull) had sent an 'abusive' and 'degrading' email to Elected Members and other Corporation staff. Councillor Hull believed that such a description of his email response was inaccurate. He therefore decided to distribute 'hard' copies of his email response to Depot staff to 'put the record straight'.

Councillor Hull also believed that there had been a direction from Chief Executive Searle, or from one of his managers to Depot management, to inform Depot staff about Councillor Hull's email response.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

ASSESSMENT (continued)

COUNCILLOR BRUCE HULL

Councillor Bruce Hull apologised for his actions and made commitments to never write such an email response in the future

In her interviews with Councillor Bruce Hull, Dr Josephine Tiddy advised him of his obligations, the likely impact his email response could have had on occupational health safety of Corporation staff and its potential to damage the welfare of the Corporation.

Councillor Hull subsequently sought legal advice from Duncan Basheer Hannon Lawyers who advised him that in their view his email response to Chief Executive Searle's *Staff Recognition* email had not contravened the OHS&W Act.

However, with hindsight and further advice, Councillor Hull stated that he had recognised that the tone of his email was emotive, inflammatory and offensive to Elected Members, Chief Executive Mark Searle and Corporation staff, and that his allegations did not convey the message that he intended.

Councillor Hull apologised for his actions and has committed to never distributing any similar type of email, electronically or in 'hard' copy, in the future. Councillor Hull confirmed his commitments in a letter to Mayor Felicity Lewis, dated 15 April 2004, attached as **Appendix 3**.

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**Report for Corporation of City of Marion
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of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

ASSESSMENT (continued)**ELECTED MEMBERS**

In Dr Josephine Tiddy's interviews with four Elected Members, each Elected Member stated that they had been "appalled" that Councillor Hull would send such an inflammatory and offensive email response to the Chief Executive, all Corporation staff and Elected Members.

In summary, those Elected Members confirmed that at the November 2003, Elected Members' forum, there had been confusion about the telephone statistics, although they recognised that management had attempted to clarify the issue that the statistics presented only related to the answering of calls to direct line extensions.

The Elected Members noted that confusion amongst some Elected Members remained, after the meeting, as a number of Elected Members at that time were very concerned about the problems in the Customer Service Centre and believed that these difficulties should have had a greater focus at the forum.

When Dr Tiddy interviewed the Elected Members she was unaware that Chief Executive Mark Searle had sent his *Staff Recognition* email, or that this was the reason Councillor Bruce Hull had sent his email response. She therefore did not ask those Elected Members for their opinions of Chief Executive Searle's email.

The Elected Members noted that Councillor Hull's beliefs about the need for accountability by Corporation management dominated his actions in the Marion Council. They recognised that accountability was important, but felt that it should be balanced with greater attention to the bigger picture. They also noted that Councillor Hull was quick to criticise, when he saw something was wrong and frequently personally attacked individuals, rather than focussing on the issues. They believed that he was also very reluctant to recognise the good efforts of many staff, including Chief Executive Searle.

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ASSESSMENT (continued)

CHIEF EXECUTIVE MARK SEARLE

During Dr Josephine Tiddy's several interviews with Chief Executive Mark Searle he:

- clarified the telephone statistics presented at the November 2003 Elected Members' forum
- clarified the collation of telephone statistics in the Customer Service Centre and its staffing levels
- stated what he believed occurred at the November 2003 Elected Members' forum
- provided his rationale for sending his *Staff Recognition* email
- responded to the allegations made by Councillor Hull in his email response
- expressed his views about the impact Councillor Hull's email had on him personally
- confirmed that he had not received a formal complaint from any Corporation staff member about Councillor Hull's email response, but that he had received a number of informal complaints from Corporation staff about the matter

Chief Executive Mark Searle also provided written materials to support his statements.

Chief Executive Mark Searle's clarification of the telephone statistics presented at the November 2003 Elected Members' Forum

Chief Executive Searle noted that prior to his appointment, that the Marion Council had never been provided with evidence-based performance measurement of the organisation's objectives that could give Elected Members a basis for tracking the performance of the Corporation. He stated that in the past, both the Elected Members and the Corporation had used anecdotal information, which can never be as reliable as rigorous performance management and reporting.

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ASSESSMENT (continued)**CHIEF EXECUTIVE MARK SEARLE**

Chief Executive Mark Searle's clarification of the telephone statistics presented at the November 2003 Elected Members' Forum (continued)

By way of example, in 2002 Chief Executive Mark Searle introduced performance management and reporting of the telephone statistics for the answering of telephone calls to direct line extensions.

Chief Executive Searle stated that the purpose of the 11 November 2003 Elected Members' forum was to update Elected Members on progress being made with KPI 1 *Governance* and KPI 2: *Quality Customer Service*. The format of the forum consisted of a visual presentation by management on Key Performance Indicators. It also included the rationale for measuring the Key Performance Indicators (KPIs) and the statistics as they related to KPIs 1 and 2.

Chief Executive Searle noted that the statistics specifically related to the answering of incoming telephone calls to direct line extensions by Corporation staff. This was supported by a visual presentation that included a graph labelled *Incoming Direct Dial Telephone Calls*.

Chief Executive Searle stated that there were several issues discussed at the November 2003 Elected Members' forum, one of which was the improvement in the answering telephone calls to direct line extensions. This was part of a deliberate cultural change strategy to increase the level of customer service awareness with the majority of staff. He sought to demonstrate to Elected Members that the cultural change strategy was achieving the desired outcomes and that the majority of Corporation staff were delivering a greater customer focus.

Chief Executive Searle stated that the target set for answering telephone calls to direct line extensions was for the calls to be answered within 5 rings. To achieve this target a range of staff training and system improvements had been implemented over the previous 12 months.

Chief Executive Searle noted that there are 199 direct dial extensions and 7 Customer Service Centre telephone extensions. Of the total staff of 205 who answer telephones, 196 answer direct line extensions. Hence his emphasis on improving the response rate for this significant majority of the Corporation's telephone extensions.

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ASSESSMENT (continued)**CHIEF EXECUTIVE MARK SEARLE*****Chief Executive Mark Searle's clarification of the telephone statistics presented at the November 2003 Elected Members' Forum (continued)***

Chief Executive Mark Searle noted that there has been significant improvement in relation to the Key Performance Indicators for answering calls to direct line extensions. The statistics for late 2002 through to early 2003 indicated that the lowest levels of performance may have been around 87%, or approximately 1550 telephone calls to direct lines being answered in **more** than 5 rings or not at all, that is 'mishandled calls'. Achieving the target of 96% of answering telephone calls to direct lines in 5 rings was anticipated to reduce the number of 'mishandled calls' from 1550 per month to less than 500.

Chief Executive Searle stated that for the first quarter of the new financial year (2003/2004) the number of telephone calls to direct line extensions was 36,858 (12,286 per month) with 93.4% answered within 5 rings. Nearly 200 staff with direct line extensions had been involved in developing and implementing strategies that had resulted in sustained improvements over the previous 18 months.

Chief Executive Searle noted that the improvement for the 4 previous months prior to the November 2003 Elected Members' forum, was from 90.8% telephone calls to direct line extensions answered in 5 rings to 93.4%.

Chief Executive Mark Searle's clarification of the collation of telephone statistics in the Customer Service Centre and its staffing levels

Chief Executive Searle said that developing telephone statistics for the Customer Service Centre was more complex, when compared to the answering of telephone calls to direct line extensions.

That is, it is not only the time taken to answer incoming telephone calls to the Customer Service Centre, but it is also the number of calls coming in at the one time and the abandoned calls.

Chief Executive Searle stated that in the Customer Service Centre, the key measurement is the number of abandoned calls. He noted that the industry standard for 'best practice' is around 5%. The Corporation target is to achieve 4% or less of abandoned calls.

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ASSESSMENT (continued)

CHIEF EXECUTIVE MARK SEARLE

Chief Executive Mark Searle's clarification of the collation of telephone statistics in the Customer Service Centre and its staffing levels (continued)

Chief Executive Mark Searle noted that even though there are industry standards of 'best practice', in every 'call centre' across Australia, which in the Corporation is the Customer Service Centre, there are always some level of abandoned calls and some wait-time for the telephones to be answered.

Chief Executive Searle commented that the Customer Service Centre staff rely on the rest of the staff to be able to respond to many customer queries and requests. Between 30% and 40% of telephone calls to the Customer Service Centre are forwarded to staff with direct line extensions. It is therefore vital that these staff are ready to take these telephone calls, otherwise the customer is frustrated in having their request addressed, as are the Customer Service Centre staff in their attempts to meet the customer's needs. There has been considerable work done to build a culture that values giving prompt attention to customers whether telephoning through the Customer Service Centre or directly.

Chief Executive Searle commented that the development of the capacity of the Customer Service Centre has been a priority since he commenced in 2000. In March 2000, there were two Customer Service Centre telephone extensions and a staffing level of four full-time equivalent positions. In late 2000 and early 2001 this was overhauled. The full implementation resulted in seven Customer Service Centre telephone extensions and staffing levels increasing to 8 full-time equivalent positions. This level of resourcing is delivering 'best practice' abandoned call rates (5% or less) for 75% of the time and an average abandoned call rate of 4.82% for the period the data has been collected.

Chief Executive Searle noted the telephone statistics (finalised since the November 2003 Elected Members' forum) show that the Customer Service Centre staff met industry 'best practice' standards for abandoned telephone calls. During the first half of 2003, the abandoned call rate for the Customer Service Centre from January to June was less than 4% for each month, except April, which was 4.5% (still below the 5% industry 'best practice' standard).

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ASSESSMENT (continued)

CHIEF EXECUTIVE MARK SEARLE

***Chief Executive Mark Searle's views of what occurred at the
November 2003 Elected Members' forum***

Chief Executive Mark Searle observed that some Elected Members raised complaints that they had received from their constituents about the delays experienced when attempting to telephone the Customer Service Centre and that some constituents had abandoned their calls before they were answered.

Chief Executive Searle also noted that some Elected Members complained that they could not reach, by telephone, particular staff members on their direct line extensions. He believed that some Elected Members were providing anecdotal evidence gained from their constituents and their own experiences about the problems with telephone calls to **both** the Customer Service Centre and to the direct line extensions.

Chief Executive Searle noted that Corporation management explained to Elected Members that the telephone statistics being presented did **not** include the telephone statistics for the Customer Service Centre, but only related to the answering of telephone calls to direct line extensions. He stated that it was clarified at least twice during the Elected Members' forum that the statistics **did not** include the answering of incoming calls to the Customer Service Centre.

Chief Executive Searle stated that at that time the statistics for the Customer Service Centre were not finalised. However, he intended to provide Elected Members with a briefing once the Customer Service Centre statistics had been finalised and verified. In fact, that briefing occurred in March 2004.

Chief Executive Searle stated, based on his previous experience, that Elected Members are very effective at clarifying issues. He therefore believed that Elected Members had clarified the difference and recognised that the briefing only related to the answering of telephone calls to **direct line extensions**.

Chief Executive Searle noted that occasionally Elected Members seek further clarification following an Elected Members' forum and have his contact details to do so. He stated that no Elected Member attempted to raise the issues arising from the Elected Members' forum, between Tuesday 11 November 2003 and Friday 14 November 2003 when he sent his *Staff Recognition* email to Elected Members.

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ASSESSMENT (continued)**CHIEF EXECUTIVE MARK SEARLE****Chief Executive Mark Searle's rationale for sending his Staff Recognition email**

Chief Executive Mark Searle stated that he sought to work with Elected Members to recognise the achievements of staff, hence his follow-up *Staff Recognition* email sent on 14 November 2003.

Chief Executive Searle believed that the support of Elected Members in recognising the improvements in the performance of staff would enhance the morale of Corporation staff. He therefore included in his *Staff Recognition* email to Elected Members, as an example, the text of an email he had circulated to all staff titled *Two Big Customer Service Wins*. In this email he focused on the achievements of staff, in terms of "phone quality and quantity". He praised the staff for answering 94.3% of phone calls within 5 rings, noting this was a significant improvement.

Chief Executive Mark Seale's responses to the allegations made by Councillor Hull in his email response

Councillor Bruce Hull's allegations centred on: *a secret meeting* where *questionable statistics* were presented, *Chief Executive Searle's heralding a 'fantasy' as a 'corporate win'* and *'staff presumably being flogged and under resourced'*.

Chief Executive Mark Searle stated that the November 2003 Elected Members' forum was **not 'secret', it was confidential**.

Chief Executive Searle noted that he does not consider that it would be appropriate for information about Corporation staff's performance to be in the public arena, as this is an internal matter.

Chief Executive Searle stated that the **telephone statistics were not 'questionable'**, but verified evidence of the improvements that Corporation staff had made in answering telephone calls to **direct line extensions**.

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ASSESSMENT (continued)**CHIEF EXECUTIVE MARK SEARLE****Chief Executive Mark Seale's responses to the allegations made by Councillor Hull in his email response (continued)**

Chief Executive Mark Searle claimed that he was **not heralding a 'fantasy' as a corporate win** when he included the text of his *Two Big Customer Service Wins* email in his *Staff Recognition* email to all staff. He noted that the *Two Big Customer Service Wins* email was addressed to staff, not Elected Members. Because of the intensive focus in the Corporation on improving the answering of calls to direct line extensions, Chief Executive Searle was certain that staff, including the Customer Service Centre staff, knew that his *Two Big Customer Service Wins* email was referring to the collective staff improvements in answering calls to direct line extensions.

Chief Executive Searle noted that in working as a team, staff are prepared to recognise the achievements of others, even if their area is facing difficulties, as was the case with the Customer Service Centre. Chief Executive Searle noted that while some Elected Members may have been confused about the telephone statistics, staff were not.

Chief Executive Searle stated that Councillor Hull's allegations that **'staff presumably being flogged and under resourced' were inaccurate** as Chief Executive Searle had increased staffing resources for the Customer Service Centre by 100% since he commenced with the Marion Council in 2000. There were four full-time equivalent positions in the Customer Service Centre in March 2000. In late 2000/early 2001 this was reviewed and since the outcomes of the review have been fully implemented there have been eight equivalent full-time positions in the Customer Service Centre. This level of resourcing is delivering an average abandoned call rate of 4.82%, which meets the industry 'best practice' benchmark of 5%.

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ASSESSMENT (continued)**CHIEF EXECUTIVE MARK SEARLE**

Chief Executive Mark Searle's views about the impact Councillor Bruce Hull's email response had on him personally

Chief Executive Mark Searle stated that he believed that Councillor Bruce Hull's email response was a deliberate challenge to his authority and to the position of the Chief Executive. He also believed that Councillor Hull was attempting to intimidate him.

Chief Executive Searle stated that he would not be intimidated and was prepared to take whatever steps were necessary to address any challenge to his authority by Councillor Hull.

Chief Executive Mark Searle's confirmation that he had not received a formal complaint from any Corporation staff member about Councillor Bruce Hull's email response, but that he had received a number of informal complaints

Chief Executive Searle confirmed that a number of Corporation staff had raised concerns that they felt intimidated, 'bullied' and unsafe when they had read Councillor Hull's email response.

Chief Executive Searle also confirmed that those staff had informed him that they believed Councillor Bruce Hull was attempting to undermine the welfare of the Corporation in sending such an emotive and inflammatory email response critical of the Chief Executive, to Elected Members, and the Corporation staff.

Chief Executive Searle stated that his obligations under the OHS&W Act required that whenever staff raised concerns, formally or informally about feeling intimidated, 'bullied' or unsafe in their workplace that pursuant to the OHS&W Act, as the 'responsible officer', he has a statutory duty to secure the health, safety and welfare of people at work.

Chief Executive Searle noted that also under the Local Government Act, he is required to appropriately manage the staff of the Corporation having regard to the human resource management principles entrenched in that Act. He stated that he must ensure, as far as reasonably practicable, that staff are able to perform their duties in a work environment that is not offensive, hostile or intimidating.

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ASSESSMENT (continued)

DEPOT MANAGER

In November 2003, as there were three Depot managers Dr Josephine Tiddy requested that Councillor Bruce Hull nominate one of those managers whom he believed would confirm the statements allegedly made by another Depot manager, about his email response.

In his telephone interview with Dr Tiddy, although the nominated Depot manager stated that he had 'heard' Councillor Hull had distributed 'hard' copies, he had not read his email response, nor had a 'hard' copy of it, because he had been on leave until early December 2003. Councillor Hull had distributed his 'hard' copies a week before the Depot manager returned from leave.

On his return to work, the nominated Depot manager stated that he had been told that there had been some discussion about Councillor Bruce Hull's email response amongst the other Depot managers and Depot staff, but as he had been on leave, he could not verify what had been said. Nor could he verify whether another Depot manager had made the statements claimed, or whether there had been a direction given by Chief Executive Searle or another manager for the Depot managers to comment about Councillor Hull's email response.

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ASSESSMENT (continued)**STAFF**

Dr Josephine Tiddy interviewed five staff.

The process for determining if any staff member had read Councillor Hull's 14 November 2003 email response and who had concerns about its contents was through the managers. The managers were personally asked if they were aware of any employee who had read the email and raised concerns about it. These staff members were asked if they would like to discuss their concerns with Dr Tiddy.

In her interviews with staff Dr Tiddy asked each staff member the same set of questions. These questions related to the impact Councillor Bruce Hull's email response had on them. Each staff member was also given the opportunity to elaborate or raise any other issues of concern relating to the matter.

All staff members interviewed by Dr Tiddy indicated their willingness to participate on the basis that her reports of their interview would not identify them by name or by occupation.

Following the interviews, Dr Tiddy verified with each staff member that her report of their interview was an accurate reflection of what they had said. All five staff 'signed off' on their report as an accurate record.

Staff Member 1

"On Saturday 15 November 2003, I came into work. I often come in on weekends, particularly if there are specific issues to be dealt with that will affect the whole staff. Sorting these issues out helps on Mondays because delays are avoided.

"It was late afternoon on that Saturday when I logged on and looked at my emails. I noticed that Councillor Hull had sent an email to all staff on 14 November 2003, at around 7pm.

"When I had read Councillor Hull's email I was horrified. My first reaction was that I thought it was very slanderous in nature, particularly towards Chief Executive Mark Searle. I thought that Chief Executive Searle would come in on Monday, not knowing about it and all the staff would have read it and I thought that would be terrible.

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ASSESSMENT (continued)

STAFF

Staff Member 1 (continued)

"I rang Staff Member 2 and asked for advice on what to do. I believe that I have a responsibility to raise an issue such as this, because I could see that the email could create conflict for Chief Executive Mark Searle on Monday. As far as possible, I believed that this conflict should be avoided.

"Staff Member 2 agreed to contact Chief Executive Searle and discuss the content of the email with him. Later Staff Member 2 rang and told me of the discussions with Chief Executive Searle. I also rang him and pointed out the consequences of staff reading the email. Chief Executive Searle told me that he would seek advice.

"I am aware that the direction to remove the email came through late Sunday afternoon (16 November 2003). I know too that removing the email from each email box took until around 1.30am on that Sunday.

"I thought it was wrong for Councillor Bruce Hull to send such an email, because he should not have tried to say such things to all the staff. These were issues he should have taken up with Chief Executive Mark Searle.

"As to the content of Councillor Hull's email, I don't believe he is right when he stated that staff were under-resourced. In my area the issue of resources has been assessed through a proper process.

"I don't have a problem with how the telephones are being answered. A lot of time has gone into improving the telephone services. We have attended workshops and filled out questionnaires, but the reality is that if you can't get to your phone you can't."

"I don't walk around the building and hear people grumbling about the phones, or discussing being under-resourced and not being able to answer the phone within a reasonable time. Anyway, what can be classed as good service delivery if organisations the size of Telstra with all that capacity make people wait for up to 15 minutes before the phone is answered? This is far too long.

"I want to be involved in improvement of services, as do most staff and Chief Executive Searle is aware of this, but it is wrong for all staff to get involved in the political issues that go with how to improve services.

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ASSESSMENT (continued)**STAFF****Staff Member 1 (continued)**

"At first the email did not have much impact on me, as it was not directed towards me, although overwhelmingly I felt that Councillor Bruce Hull should have taken up the issues directly with Chief Executive Mark Searle and not tried to involve the staff.

"I thought that the email would generate more gossip, both positive and negative amongst the staff and this would not be good. I know that gossip at work is not good for anyone.

"I did feel that Councillor Hull's email had the potential to create conflict between staff and management and the Elected Members. I felt that anyone who opened Councillor Hull's agitating type email would be subject to the potential of breeding quite a lot of discontent and that potential was a large risk to the welfare of people at work.

"I felt the need to protect Chief Executive Searle. I did not want anything to happen to the Council, as I have had a very good association with Council over many years. I felt fearful too the something like this could hit the daily paper and that would be bad for Marion Council.

"I did not think that Councillor Hull's email would impact directly on my role, although I recognised that in the longer term its ongoing negative effects could undermine the welfare of the Council and my role within it.

"As a staff member at Marion Council, I am more than happy with the direction Chief Executive Searle is taking. His approach to staff has always been positive. I am glad that I am not a Chief Executive faced with putting up with that sort of thing."

Staff Member 2

"I have not read Councillor Hull's email of 14 November 2003, as I was not in my office on that Friday evening when it was sent. When I came into the office on Monday 17 November 2003 it had been deleted.

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ASSESSMENT (continued)**STAFF****Staff Member 2 (continued)**

"Staff member 1 telephoned me, late Saturday afternoon (15 November 2003) stating that he was most concerned about an email from Councillor Hull that was in his account and that he had just read. Staff member 1 told me about its contents and asked for my advice. I said that I would ring Chief Executive Mark Searle who told me that he had been alerted to it. I found his reaction interesting as we agreed that it was a personal attack on him. He saw it as a challenge to him, yet he had to manage it.

"I informed Staff Member 1 of my discussion with Chief Executive Searle. Following my telephone call to Staff Member 1, we agreed that he would discuss the matter further with Chief Executive Searle. Staff Member 1 later told me that Chief Executive Searle had said that he would seek advice as to the most appropriate course of action that should be taken.

"I understood that the Chief Executive Searle instructed that the email be deleted, recommending that 'Notes' be disabled on Monday. Staff Member 1 told me that he had said to him, that it would be in Council's best interest for the email to be deleted on Sunday evening (16 November 2003), prior to staff coming into work on Monday. I was told that this course of action would minimise the disruption to the work flow while the computers were down, when 'Notes' was disabled, and reduce the potential for a broader discussion about the email, which would not have been good for the organisation.

"Following the removal of the email, I was not involved in a lot of discussion about it, as I did not mention the email and it had been deleted. I do know that some staff saw it. I also know that some staff felt disturbed because they were unsure about what was going on. I encouraged others, reminding them that Marion Council is an ethical organisation. I am very aware that it was a laborious job for those involved in removing the email, as they had to go through everyone's email and specifically delete 14 November 2003 email from Councillor Bruce Hull.

"Initially I thought 'if people see it, so be it'. On reflection, I recognised that as I had worked in local government for a short time I did not have the background to recognise the potential consequences of such an email. I believe that it was better for the organisation for all staff not to have read the email."

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ASSESSMENT (continued)**STAFF****Staff Member 3**

"I read Councillor Bruce Hull's email when I came into work on Sunday. I can't remember, the content verbatim, but I do recall that it was pretty slamming about Chief Executive Mark Searle. I remember that I thought at the time that it was something that should have not happened as it was an invasion of staff members' privacy.

"I am aware that the email was to be removed on Sunday night. I had several messages on my mobile during Sunday, but I had turned it off. There was one from Chief Executive Searle, so I knew something was up.

"When I came in on Sunday it was the first time I had read Councillor Bruce Hull's email. I came in at 9pm went home around 12mn. I know that those removing the email thought that it was a great effort, as there were 300 people with email accounts. It had been estimated that removing the email would take 6 hours, but instead it took 3 hours.

"I thought that Councillor Hull's email was very unprofessional and that it would create ill-waves, start tongues wagging, start gossip. I felt that he should not have sent the email, but should have just gone directly to the Chief Executive Searle. Here was a disagreement for the two parties to resolve. You don't go over the top of the person involved and send it to everyone - that's not 'cricket'.

"I am aware that there were probably a couple of dozen emails that had been opened. I know that you can't ever tell if people have read their emails, only that they have been opened.

"I thought that a lot of the staff who had opened Councillor Hull's email would have been in the Library, as the Library is open Saturday and Sunday, but weren't likely to take much notice.

"When I came in I found that the server had been taken down. I believe that it was taken down on Saturday night or Sunday morning to prevent people reading the email.

"I am aware that there were two emails in question, one from Councillor Hull and one from Councillor Andrew Cole who gave the history of the issues Councillor Hull raised. I am aware that both emails were deleted, but the Elected Members email boxes were left alone."

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ASSESSMENT (continued)**STAFF****Staff Member 3 (continued)**

"I felt the impact of Councillor Bruce Hull's email was that it required me to come in out of hours and that invaded my privacy. I recognised that it was the call of duty, but it was the end of the day and a Sunday night.

"Chief Executive Mark Searle told me about the email, so I didn't come in cold. When I came into work I was tired, so my focus was not really on the content of the email, but on getting the job done. I was prepared for a horrible email. I have read a few 'doozies' over the years, so when I first read Councillor Hull's email I thought it wasn't as bad as I thought it would be, but I did think that it was bad.

"On reflection, I thought it was bad. The worst thing was that it had been sent to all staff, when it should only have been sent to Chief Executive Searle. If that had happened that would have been bad enough.

"I thought that Councillor Hull went underneath Chief Executive Searle on the issues and that was bad.

"When I am at work, I generally don't worry about anyone else. Everyone could say that we are under resourced, that the statistics about answering the phones weren't right but that's for management. I hate politics. At the end of the day I just want to do my job.

"I feel that Councillor Hull had pushed all these issues on us, that he was being derogatory about answering the phones. He didn't give credit that there has been a lot of emphasis on this. Councillor Hull was wrong in sending an email to all staff that was critical of Chief Executive Searle.

"At least one staff member came up to me and asked what was in the email, but it was a week or so later and I couldn't remember.

"I'm not sure whether or not there are any ongoing effects on the staff, as Councillor Hull's email has gone, so there is nothing to refer to."

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ASSESSMENT (continued)**STAFF****Staff Member 4**

"On Friday 14 November 2003 around 7pm, I was still at work. I opened my emails and read the email from Councillor Bruce Hull.

"I was really shocked. At first I thought that he had sent the email to staff mistakenly, that he had hit the wrong button, but meant to send it to Chief Executive Mark Searle.

"I felt the manner in which Councillor Hull dealt with the issues in his email was highly offensive and that made me very angry. I was shocked that an Elected Member was treating a staff member like that. There was clearly a personal attack in it.

"I thought Councillor Hull's email was 'bullying' of staff. It was late on a Friday night when staff were working late and this was an ugly way to treat people and very unprofessional.

"Councillor Hull's email made me feel quite sympathetic towards Chief Executive Searle, regardless of what my views might be about him. I felt a strong need to support him.

"Reading the email raised questions for me about what Elected Members could do to other staff, if this was the way Councillor Hull treated Chief Executive Searle. I felt very concerned.

"I work with Elected Members, and I thought there might be forums where I could be subject to same kind of treatment or worse, but I knew that I have recourse to my managers. I wondered who could look after Chief Executive Searle in such a situation.

"Councillor Hull's email made me want to defend Chief Executive Searle. It made me think, "My god is Mark having to deal with that stuff all the time." I could not see what processes could support him and I felt disconcerted that I could not positively support him.

"I believed that if Councillor Hull had wanted to get staff on-side with his negative comments about Chief Executive Searle and his criticism about the lack of resources, he wouldn't have achieved that. It certainly didn't make me feel sympathetic to his point of view."

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ASSESSMENT (continued)**STAFF****Staff Member 4 (continued)**

"I felt that Councillor Bruce Hull had failed to recognise lots of resources had been put into managing the telephones. There have been varying opinions expressed amongst the staff, but that is to be expected. The actual issue of the lack of resources is not the point, but it was the way in which Councillor Hull tried to deal with the issues.

"I thought that Councillor Hull was trying to undermine Chief Executive Mark Searle's attempts to be positive about the services provided. At the time, Chief Executive Searle was affirming the managers and people's efforts in providing the service levels to callers that they were able to achieve. I thought that Councillor Hull's approach was very destructive.

"If Councillor Hull also thought that staff would respond to his email, because he had commented about the lack of resources, then he was wrong. I know they would not have responded because he had used the email in such a bad way.

"I felt that if Councillor Hull believed there weren't enough people answering the telephones, then he should be arguing that in Council, not sending an email to all staff about the issue.

"On that Friday evening, I left my office feeling angry at Councillor Hull's destructive approach and very supportive of Chief Executive Searle's efforts.

"I ran into Chief Executive Searle in the car park. He said he was coming back to the office after a meeting. I said to him that there was an email from Councillor Hull that I thought he should read. I think I was the first person to tell Chief Executive Searle about Councillor Hull's email.

"I came into work on Monday and the email had been removed. I didn't talk to a lot of people about it, as it had been removed, but I had hoped that there would have been more follow up.

"Once the email was removed I found it confusing. I wasn't sure how to deal with information about something that was quite scary.

"I thought there might have been some follow-up that would have explained how the offending email would be dealt with. I wanted someone to tell me what was happening."

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Dr Josephine Tiddy

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ASSESSMENT (continued)**STAFF****Staff Member 4 (continued)**

"Chief Executive Mark Searle did send out an email saying that he had legal advice and that the email had been removed, but I would have liked more follow up. I felt that removing the email and not really dealing with the issue of Councillor Bruce Hull's actions, reinforced the 'cloak and dagger stuff', that is, some people know things and others don't know what's happening.

"The opportunity to talk about it today is going some way towards me feeling there is follow-up.

"I found Councillor Hull's behaviour unnerving. At least now with this investigation I no longer have to carry my concerns about his behaviour.

"I recognise that Chief Executive Searle had legal advice that he could remove Councillor Hull's 14 November 2003 email, but what protection do staff have from this form of bullying?

"I feel that this incident could and should be an isolated incident. The problem is that Councillor Hull used his power inappropriately in this instance. Who is to say he won't in the future, which is a potential risk to the safety of the workplace and this makes me feel vulnerable.

"On the other hand, I feel that it would be sad if this incident resulted in Elected Members not being permitted to talk to staff. Elected members talking with staff gives a shared purpose, a sense of being a team where we are all working together on projects for our community – this models real and positive relationships. But, on the other hand there must be parameters around what Elected Members request of staff, what they discuss with staff and how they do it.

"I feel the Mayor makes relationships with staff and staff feel engaged as a result of that, not just plodding along doing our jobs in the corner."

**Report for Corporation of City of Marion
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ASSESSMENT (continued)**STAFF****Staff Member 5**

"I read Councillor Bruce Hull's email on 14 November 2003. Another staff member called me over to their terminal saying, "Oh my god, look at this." I went over and read the email at their terminal.

"I thought Councillor Hull's email was totally inappropriate because it inferred that Chief Executive Mark Searle and the Governance Department were deliberately manipulating the statistics for their own personal gain.

"I felt that in sending the email to everyone, that Councillor Hull undermined staff and negatively affected staff morale, including my own.

"His tone in his email, too, was very aggressive and very threatening. I thought a lot of people wouldn't be able to manage that aggression, plus we are meant to be working towards a constructive approach. Instead he is moving beyond his role as an Elected Member. He should not be involved in staff issues even if he thinks he can be, as he does not have control over issues involving staff at Marion Council.

"I believe that Councillor Hull thinks that he has expertise in certain areas and makes judgements, which are not appropriate. His role as an Elected Member is to set directions for Council, not to be involved in the management of staff.

"I felt that Councillor Hull sent the email, using an item of business from an informal meeting as an opportunity to make a personal attack on Chief Executive Searle. He could have asked questions about the statistics, but he was obviously not trying to resolve the issue, only trying to score points. If he wanted to resolve the issues, all he needed to do was to sit down and discuss the issues with Chief Executive Searle, instead of distributing an email to all staff and then handing out 'hard' copies to Depot staff. I thought that was totally inappropriate for an Elected Member.

"I felt that by sending that email, Councillor Hull made it very difficult for staff. We don't know what he will do next, or what stress he is going to put on us as the staff, or on Chief Executive Searle.

"I believed that he would have kept this type of behaviour until towards the second part of his term, because lots of issues are fair game then. Instead he chose to use a staff issue to take on Chief Executive Searle by raising the issue of lack of resources."

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Assessment of Occupational Health, Safety and Welfare implications
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ASSESSMENT (continued)**STAFF****Staff Member 5 (continued)**

"The reality is that Councillor Bruce Hull gets on well with Depot staff, but has a gripe about Administration staff. By raising in his email the issue of lack of resources and the answering of the telephones and sending it to all staff and handing out 'hard' copies to Depot staff, I believe that he was trying to let the Depot know that he was being critical of Administration and Chief Executive Mark Searle. This seemed to be his way of trying to increase the divide between Depot staff and Administration staff and Administration staff and management. His behaviour was very divisive and that is very bad for Marion Council.

"More than that, Councillor Hull is not well informed. He doesn't have the in-depth knowledge to make the sorts of judgements he did in his email, nor the data or information to back his assertions – it is so hit and miss.

"I felt his criticism of Chief Executive Searle did impact on other staff. It undermined what people are doing and made them question whether it was worth doing. Not all staff knew that Councillor Hull's judgements were ill informed.

"I believe another problem with Councillor Hull's 14 November 2003 email was the longer-term impact, with staff wondering whether or not, they will be his next targets. The issues in the email related to staff and instead of arguing about the issues, he targeted and criticised the staff responsible.

"I believe the email was designed to alienate Chief Executive Searle from staff particularly the Depot staff, which made people feel uncomfortable. I felt this did negatively affect the morale of staff, making us all extremely cautious. The fact that Councillor Hull sent his email to everyone and then distributed it to Depot staff seemed to me to be very bad for the Council because he was attempting to interfere with management, gain leverage against Chief Executive Searle and undermine the organisation.

"I am concerned too about where else the email has been circulated. He sent it to all the other Elected Members. I can't know where they might have sent it, all I know is that their reach is quite broad. I still feel very concerned about the negative effects of his email, both on me personally and on the welfare of Marion Council. I also believe that Councillor Hull behaved in a very unethical way, because he sent an email that was very critical of Chief Executive Searle from his Council funded terminal."

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ASSESSMENT (continued)

Dr Josephine Tiddy provided copies of her interviews with Corporation staff to Councillor Bruce Hull for his response.

Two weeks later, Dr Tiddy interviewed Councillor Hull for his response, where he discussed the issues that staff had raised, in general terms. He was surprised by some of the comments made by staff, as he did not believe that his email response to Chief Executive Mark Searle's *Staff Recognition* email would have had the effect that the staff had claimed.

In December 2004, Dr Tiddy provided draft 1 of the Report to Chief Executive Searle for his response and discussed the report with Councillor Hull at a meeting and gained his response.

Dr Tiddy amended the report, into draft 2, taking into account the comments made by Councillor Hull and Chief Executive Searle. Both Councillor Hull and Chief Executive Searle were provided with a copy of draft 2 of the Report for their responses, as appropriate.

Draft 2 of the Report has been further amended into the final report.

In January 2005, Dr Tiddy provided the final report to Chief Executive Searle for presentation to the January 2005 Marion Council meeting.

A copy of Chief Executive Searle's *Staff Recognition* email to Elected Members is attached as **Appendix 1**.

A copy of Councillor Hull's email response is attached as **Appendix 2**.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

FINDINGS

Dr Josephine Tiddy's findings are based on information gained from her interviews with Councillor Bruce Hull and four other Elected Members, Chief Executive Mark Searle and Corporation staff, including the Depot manager, related research, legal advice from Norman Waterhouse Lawyers and her consideration of the matters raised.

While the **Findings** are based on Dr Tiddy's interpretation of the statutory provisions of the Local Government Act 1999, Occupational Health, Safety and Welfare Act 1986 and other relevant Acts, Dr Tiddy is not implying any provision of legal advice.

Dr Tiddy's findings are concerned with the following issues.

- I. **Was the content of Councillor Bruce Hull's email response to Chief Executive Mark Searle's *Staff Recognition* email accurate?**
- II. **In terms section 62 of the Local Government Act, where an Elected Member is required to act honestly, with reasonable care and diligence and not make improper use of information acquired or improperly use his or her position, did Councillor Bruce Hull's email response accord with his statutory responsibilities?**
- III. **Was the circulation of Councillor Bruce Hull's email response appropriate for an Elected Member and a holder of Public Office and did these actions accord with his obligations under the Local Government Act, the Criminal Law Consolidation Act and other Acts?**
- IV. **Where there any mitigating factors that could be taken into account in considering the accuracy and the appropriateness of the circulation of Councillor Bruce Hull's email response?**
- V. **Did Chief Executive Mark Searle take the appropriate actions, in accordance with his statutory responsibilities under the Local Government Act and the OHS&W Act to minimise any potential occupational health safety and welfare implications that may have arisen for Corporation staff from Councillor Bruce Hull's email response?**
- VI. **Did Councillor Bruce Hull's email response raise any occupational health and safety implications for Chief Executive Mark Searle and the Corporation staff who read it?**

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

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FINDINGS (continued)

Was the content of Councillor Bruce Hull's email response to Chief Executive Mark Searle's Staff Recognition email accurate?

Dr Josephine Tiddy finds that:

1. It is evident that the content of Councillor Bruce Hull's email response to Chief Executive Mark Searle's *Staff Recognition* email contained certain statements. These statements included:
 - ♦ "a secret meeting" where "questionable statistics were presented"
 - ♦ "Chief Executive Searle was heralding a 'fantasy' as a 'corporate win'"
 - ♦ (Chief Executive Searle's *Two Big Customer Service Wins* email sent to staff) came out "just before Christmas couched in a fashion that would attempt to embrace the staff that have presumably been flogged and under resourced during the year"
2. "It is evident that the statement "secret meeting" was inaccurate, as the meeting was a confidential Elected Members' forum. It is evident that Councillor Hull did not clarify the phrase 'secret meeting'. While the term 'secret' is emotive and can imply some underlying subterfuge and conspiracy, it is a term that is used by the press to refer to confidential Elected Members' forums.

There is evidence that most Elected Members interpreted Councillor Hull's "secret meeting" as being typical of his use emotive language. However, without explanation, the statement "secret meeting" was not only inaccurate but inappropriate language for an Elected Member to be writing and circulating in an email to Elected Members and Corporation staff.

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**Report for Corporation of City of Marion
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Dr Josephine Tiddy

January 2005

FINDINGS (continued)

Was the content of Councillor Bruce Hull's email response to Chief Executive Mark Searle's Staff Recognition email accurate?
(continued)

3. It is evident the statement "*questionable statistics*" was inaccurate. The statistics presented at the Elected Members' forum related only to the improvements in Corporation staff answering telephone calls to direct line extensions.

It is evident that some Elected Members at that Elected Members' forum, including Councillor Hull, raised their concerns and those of their constituents about the time taken by Corporation staff to answer incoming telephone calls to the Customer Service Centre. The fact that Elected Members raised their concerns about incoming calls to the Customer Service Centre, cannot change the telephone statistics presented at the Elected Members' forum, nor can their concerns make the telephone statistics that were presented, "questionable."

4. It is evident that in making the statement that Chief Executive Searle "*was heralding a 'fantasy' as a 'corporate win'*", Councillor Hull was referring to Chief Executive Searle's *Staff Recognition* email, which included the text of his *Two Big Customer Service Wins* email, sent to all staff.

While Councillor Hull believed the statistics should have been differentiated in the *Two Big Customer Service Wins*, which in his view would have shown less positive statistics, because of the problems in the Customer Service Centre, the focus of Chief Executive Searle's email was on different statistics, although that was not clarified in the email.

The telephone statistics in Chief Executive Searle's *Two Big Customer Service Wins* email had been verified and were presented at the Elected Members' forum. Corporation staff were also very aware that Chief Executive Searle's *Two Big Customer Service Wins* email related to the telephone statistics of direct line extensions, as that had been in the Corporation focus for at least the previous year.

5. The statistics relating to the Customer Service Centre that Councillor Hull considered should have been presented, or believed were being presented were not available, at that time. In this context, Councillor Hull's statement "*heralding a fantasy as a corporate win*" was inaccurate.

**Report for Corporation of City of Marion
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FINDINGS (continued)

***Was the content of Councillor Bruce Hull's email response to Chief Executive Mark Searle's Staff Recognition email accurate?
(continued)***

6. It is evident that Councillor Bruce Hull believed the timing of Chief Executive Mark Searle's *Two Big Customer Service Wins* email was inappropriate, because it had been sent out in November. While Councillor Hull claimed that this timing was "*just before Christmas*", such a statement is inaccurate, it was more than a month before Christmas.
7. It is evident that Chief Executive Searle was not "*attempting to embrace the staff that have presumably been flogged and under resourced during the year*", as there had been an increase in Customer Service Centre staff since 2001 from four to eight full-time equivalent positions. Councillor Hull's statement was therefore inaccurate.
8. It is evident that Councillor Hull's claims that staff were '*flogged and under resourced*' was not only inaccurate, but also misconceived. Under the terms of the Local Government Act, Chief Executive Searle is solely responsible with the statutory power, within the budget approved by the Marion Council, to ensure that staffing levels are appropriate to meet the demand to provide the requisite services to the community. It is the responsibility of Chief Executive Searle, not Councillor Hull to ensure that staff are adequately supported with sufficient resources.
9. It is evident that Councillor Hull did not attempt to verify the content of his email response with Chief Executive Searle or with other managers. There is evidence that instead his strong belief in his responsibility to call to account Chief Executive Searle for any perceived inaccuracies overrode any consideration that he should have followed 'due process' and clarified the content of his email response. It is evident that Councillor Hull's failure to ensure the accuracy of the information in his email response amounted to a possible abuse of office, as a holder of Public Office, pursuant to section 238 of the Criminal Law Consolidation Act.

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**Report for Corporation of City of Marion
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FINDINGS (continued)

In terms section 62 of the Local Government Act, where an Elected Member is required to act honestly, with reasonable care and diligence and not make improper use of information acquired or improperly use his or her position, did Councillor Bruce Hull's email response accord with his statutory responsibilities?

Dr Josephine Tiddy finds that:

1. It is evident that Councillor Bruce Hull's email response was sent in the **context** where there had been an Elected Members' forum, in which one of the topics was the improvements in the time taken by Corporation staff **answering telephone calls to their direct line extensions**. At the Elected Members' forum some Elected members, including Councillor Hull raised concerns about the problems they and their constituents had experienced with their telephone calls being answered in a timely manner by the Customer Service Centre.

The Elected Members' forum was followed by an email titled *Staff Recognition* sent to Elected Members by Chief Executive Mark Searle. In his email Chief Executive Searle sought to work with Elected Members in continuing to recognise the achievements of staff, as he had done in an email sent to all staff, titled *Two Big Customer Wins*, the text of which he included in his *Staff Recognition* email.

In his *Two Big Customer Wins* Chief Executive Searle did not differentiate between the improvements in the answering of calls to direct line extensions and the problems with incoming calls in the Customer Service Centre.

2. It is evident that Councillor Hull was "outraged" by Chief Executive Searle's *Staff Recognition* email and sent his response on the same day to Elected Members and Corporation staff. In any reading Councillor Hull's email response was emotive and inflammatory and written without reasonable care and diligence.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

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January 2005

FINDINGS (continued)

***In terms section 62 of the Local Government Act, where an Elected Member is required to act honestly, with reasonable care and diligence and not make improper use of information acquired or improperly use his or her position, did Councillor Bruce Hull's email response accord with his statutory responsibilities?
(continued)***

3. It is evident that the focus of Councillor Bruce Hull's email response was to highlight his overriding concern of the difficulties being experienced by his constituents with the telephone calls to the Customer Service Centre. He believed his mandate permitted him to not only raise those issues, but to call Chief Executive Mark Searle to account for what Councillor Hull perceived as "gross inaccuracies" in Chief Executive Searle's *Staff Recognition* email. It is evident that the issues Councillor Hull raised in his email response were **not** the subject of the Elected Members' forum, or Chief Executive Searle's *Staff Recognition* email.
4. It is evident that Councillor Hull's gave little or no consideration to the potential consequences that could flow from writing and circulating such an emotive and inaccurate email response. It is evident that in sending his email response Councillor Hull did not act with reasonable care and diligence, in accordance with his statutory duties as set out in section 62 of the Local Government Act.

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of Councillor Bruce Hull's November 2003 email**

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January 2005

FINDINGS (continued)

Was the circulation of Councillor Bruce Hull's email response appropriate for an Elected Member and a holder of Public Office and did these actions accord with his obligations under the Local Government Act, the Criminal Law Consolidation Act and other Acts?

1. It is evident that Chief Executive Mark Searle's *Staff Recognition* email was sent to Elected Members and copies to the Corporation's management. Whatever his views about the content of such an email, or its perceived "gross inaccuracies", Councillor Bruce Hull's circulation of his response, not only to Elected Members, but also to all staff, may be a 'reckless' act and an improper use of his position which could breach his legislative obligations.
2. There is no evidence to support Councillor Hull's reasons for subsequently circulating 'hard' copies of his email response to Depot staff. The Depot manager whom Councillor Hull nominated to verify his reasons for circulating the 'hard' copies could not do so. He had been on recreation leave at the time Councillor Hull distributed his 'hard' copies of his email, so had no personal knowledge of the events which had taken place.
3. Councillor Hull's belief that in circulating his email response to Elected Members and to Corporation staff he was following through his mandate to ensure greater accountability within the Corporation and its staff is ill-founded. Councillor Hull has a legislative obligation, as an Elected Member, to raise his concerns about the Chief Executive or staff of the Corporation within the body corporate – the Marion Council and not to act unilaterally.

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January 2005

FINDINGS (continued)

Was the circulation of Councillor Bruce Hull's email response appropriate for an Elected Member and a holder of Public Office and did these actions accord with his obligations under the Local Government Act, the Criminal Law Consolidation Act and other Acts? (continued)

4. As an Elected Member with power and authority, circulating broadly an email response that offensively criticised Chief Executive Mark Searle personally and in terms of his performance, raised serious occupational health and safety implications. Such criticisms had the potential to damage the credibility of Chief Executive Searle, and as a consequence undermine the confidence of Corporation staff in its Chief Executive and ultimately the welfare of the Corporation.
5. Marion Council (made up of its Elected Members) is the 'employer' under OHS&W legislation and is required by law to eliminate at its source risks to the health, safety and welfare of its employees. Such circulation of an inflammatory and offensive email by Councillor Hull is creating a risk to the welfare of the organisation and its employees.
6. It is evident that under OHS&W legislation, both Marion Council as the 'employer' and Chief Executive Searle as the 'responsible officer' are also subject to the observance of a general duty of care. This general duty of care is to ensure that employees, including the Chief Executive, are able to carry out their duties in a safe working environment, which was impaired when Councillor Hull circulated his email response.

Marion Council is ultimately accountable for the actions of its Elected Members, including Councillor Hull. Moreover, the Marion Council, which includes Councillor Hull, cannot contribute in any way to doing anything that is inconsistent with a law of the State or Commonwealth, such as the State OHS&W Act.

7. It is not an official function or duty of an Elected Member to individually comment on the performance of the Chief Executive, and in so doing, it is likely that Councillor Hull abused his role and breached the provisions of the Local Government Act and other Acts.

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FINDINGS (continued)

Where there any mitigating factors that could be taken into account in considering the accuracy and the appropriateness of the circulation of Councillor Bruce Hull's email response?

Dr Josephine Tiddy finds that:

1. It is evident that Councillor Bruce Hull wrote his email response to Chief Executive Mark Searle's *Staff Recognition* email in anger, at what he perceived were "gross inaccuracies" in that email. Whatever his view of the content of Chief Executive Searle's email, anger is not a mitigating factor. Elected Members are required by the Local Government legislation to act with reasonable care and diligence. Writing and circulating an email in anger is not acting with reasonable care and diligence.
2. While Councillor Hull maintains that he was not confused about the differentiation between the telephone statistics presented at the Elected Members' forum and the Customer Service Centre telephone statistics, his email focussed entirely on his perceptions of the problems in the Customer Service Centre. Councillor Hull also believed that the telephone statistics from the Customer Service Centre should have been recognised in Chief Executive Searle's *Staff Recognition* email. Confusion or differences of view between an Elected Member and the Chief Executive are not mitigating factors.
3. It is evident that the political imperatives of some Elected Members do create barriers to their capacity to 'hear' or 'read the detail on matters in which they are briefed by Corporation management. Political imperatives are not mitigating factors.
4. It is therefore evident that there were no mitigating factors that should be taken into account in considering Councillor Hull's email response and its circulation. His email was inappropriate, inaccurate and his circulation of it was likely to have breached his legislative obligations.

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Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

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FINDINGS (continued)

Did Chief Executive Mark Searle take the appropriate actions, in accordance with his statutory responsibilities under the Local Government Act and the OHS&W Act to minimise any potential occupational health safety and welfare implications that may have arisen for Corporation staff from Councillor Bruce Hull's email response?

Dr Josephine Tiddy finds that:

1. On 14 November 2003, Chief Executive Mark Searle learned of Councillor Bruce Hull's email response to his *Staff Recognition* email, within fifteen minutes after it had been sent. He read it shortly afterwards.
2. It is evident that after further consideration, on Saturday 15 November 2003, on the advice of his staff, Chief Executive Searle instructed the computer server to be disabled. Cognisant of his statutory responsibilities pursuant to Local Government Act 1999 and the Occupational Health Safety and Welfare Act 1986, he took legal advice.
3. Under the Local Government Act, Chief Executive Searle is required to appropriately manage the staff of the Corporation having regard to the human resource management principles entrenched in that Act. This means that Chief Executive Searle must ensure, as far as reasonably practicable, that staff are able to perform their duties in a work environment that is not offensive, hostile or intimidating. Under the OHS&W Act, Chief Executive Searle also has a statutory duty as the 'responsible officer', to secure the health, safety and welfare of persons at work.
4. It is evident following consultation with key staff and in accordance with his legal advice, Chief Executive Searle directed that Councillor Hull's email response be removed from all the internal mail boxes of Corporation staff on Sunday 16 November 2003. In so doing, Chief Executive Searle minimised the impact on staff, if they had not accessed and read the email. Therefore, in compliance with the OHS&W Act he had 'eliminated at their source, risks to the health, safety and welfare of persons at work' and acted appropriately in terms of his OHS&W Act obligations.
5. It is evident on 17 November 2003, Chief Executive Searle informed all staff by email that he had taken action to remove an email from an Elected Member from their mailboxes and accordingly kept staff informed, in accordance with his human resource management responsibilities.

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of Councillor Bruce Hull's November 2003 email**

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FINDINGS (continued)

Did Councillor Bruce Hull's email response raise any occupational health and safety implications for Chief Executive Mark Searle and the Corporation staff who read it?

Dr Josephine Tiddy finds that:

1. It is evident that Chief Executive Mark Searle considered that Councillor Bruce Hull was attempting to undermine and personally attack him. On any reading of Councillor Hull's email response, it was a personal attack and an attempt to undermine Chief Executive Searle's credibility. By its very nature such an email negatively impacts on the welfare of the Corporation and therefore raises occupational health and safety implications for the Corporation.
2. It is evident that while the impact of Councillor Hull's *Staff Recognition* email response was minimised by the Chief Executive's prompt action, the potential consequences of such a personal attack by an Elected Member on the competence of the Chief Executive are extremely serious. Such criticisms can ultimately undermine the Chief Executive's capacity and that of the staff to effectively and efficiently meet the needs of the City of Marion community and implement the strategic directions of the Marion Council.
3. It is evident that for the majority of staff as they had left work before Councillor Hull had distributed his email response to Chief Executive Searle's *Staff Recognition* email at 6.53pm on Friday 14 November 2003, the occupational health and safety impact was all but eliminated.
4. There is evidence that by the time Corporation staff returned to work the following Monday (17 November 2003) the offending email had been removed from their mailboxes. The potential for discussion amongst staff about the content of Councillor Hull's email response and its negative impact was therefore minimised.
5. There is evidence that approximately 12 people accessed Councillor Hull's email response. Of those staff, it cannot technologically be estimated how many staff actually read it.
6. It is evident that even though Library staff were working on Saturday and/or Sunday, the computer server had been disabled on Saturday, so access was limited. Staff from the Library did not raise any concerns about Councillor Hull's email response with their managers.

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FINDINGS (continued)

Did Councillor Bruce Hull's email response raise any occupational health and safety implications for Chief Executive Mark Searle and the Corporation staff who read it? (continued)

7. Councillor Bruce Hull's action of distributing 'hard' copies of his email response also appears to have had little impact on Depot staff. The evidence is that there was some limited discussion about the content of the email, but as its content was not applicable to them, Depot did not raise any concerns.
9. It is evident that the occupational health and safety impact of Councillor Hull's email response was the greatest for those staff members who had read it and who worked directly with Elected Members on particular programs.
10. There is evidence that the staff members who worked directly with Elected Members believed that if Councillor Hull, or for that matter any other Elected Member could personally attack the competence of Chief Executive Mark Searle in such a public manner, then it was equally likely that they could be similarly attacked. As such, they felt a target for similar 'bullying' and intimidation and as a consequence, they believed their working environment would then become 'unsafe'.
11. It is evident that the staff involved in removing Councillor Hull's email response from the internal mailboxes, supported the actions taken by Chief Executive Searle, but were 'appalled' by the contents of the email, with its potential to negatively impact on their working environment. They too felt frustrated that the actions of an Elected Member could have such serious OHS&W consequences in that they were required to work late into the night. They believed that Councillor Hull should not have distributed the email to all staff, but that he should have privately raised the issues with Chief Executive Searle.
16. On Monday 17 November 2003, for those staff, who heard about 'an offensive email that had been sent by an Elected Member', most were unsure of its contents. From the evidence, comment and 'gossiping' about the content of Councillor Hull's email response was limited and therefore the occupational health and safety impact for the majority of staff was minimal.

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Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

RECOMMENDATIONS

Dr Josephine Tiddy recommends that:

1. No further sanctions be applied to Councillor Bruce Hull, even though the contents of his *Staff Recognition* email response and its circulation appear to have contravened his legislative responsibilities under the Local Government Act and other Acts. Further sanctions are unlikely to be effective, as Councillor Hull has apologised for his actions, made written commitments to the Mayor that he will never write, or circulate a similar email in the future and sustained those commitments over 12 months.

Dr Tiddy further recommends that:

2. Where a City of Marion Corporation *employee* receives an email from an Elected Member that he or she informally or formally complains is 'bullying', intimidating or creating for them a hostile and unsafe environment, the Chief Executive, having informed the Mayor, will discuss the matter with the Elected Member, as soon as practicable. In the ensuing confidential discussion, conducted by telephone, or in a meeting between the Elected Member and the Chief Executive, the effect of the email on the staff member will be explained to Elected Member. If the Elected Member agrees not to send such an email in future, and if appropriate, apologises to the employee, no further action will be taken, or official records kept.
3. Where in the opinion of the Chief Executive, in consultation with the Mayor, an Elected Member sends an email to Corporation *employees*, that could negatively impact on the safety of the Corporation workplace and its welfare, the Chief Executive will immediately instruct that the email to be removed from the mailboxes of each employee. Following the removal of such an email the Chief Executive will inform Corporation employees accordingly.
4. Following the removal of the email from Corporation employees' mailboxes, the Chief Executive will invite the Elected Member to confidentially discuss the offending email with him, either by telephone, or in a meeting between the Elected Member and the Chief Executive. At such a meeting, if the Elected Member seeks to have a support person present, then this will be permitted, only if the Mayor is also present.

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

RECOMMENDATIONS (continued)

5. Where the Elected Member refuses to discuss the offending email with the Chief Executive, the Elected Members' right to use electronic mail will be restricted to the Chief Executive and other Elected Members.
6. Where the Elected Member continues to send emails to the same Corporation employee or to other Corporation employees, or to the Chief Executive, and the employee/s complains informally or formally, or if in the opinion of the Chief Executive, in consultation with the Mayor, such emails could be 'bullying', intimidating to an employee/s, or creating a hostile, unsafe workplace, or could undermine the welfare of the Corporation, the Elected Members' right to use electronic mail will be restricted to the Chief Executive and other Elected Members.
7. Where the Elected Member's right to use electronic mail is restricted, the Chief Executive will issue an instruction, without explanation, to the relevant staff to restrict the Elected Member's right to use electronic mail through the Corporation's computer server, for a specified period of time or indefinitely, as is appropriate, in the particular circumstances.
8. The Chief Executive will immediately inform the Elected Member in writing that his or her right to sending and receiving electronic mail has been suspended for a defined period and of the reasons for that suspension.
9. The Chief Executive, in the same letter, will accord the Elected Member with an early opportunity to meet, or to respond in writing to the reasons for the suspension and the length of time of the suspension.
10. The Chief Executive, in consultation with the Mayor, will give due consideration to the Elected Member's response. Depending on his or her response, the Chief Executive, in consultation with the Mayor, will reconsider his action and may sustain, extend, reduce or cease the suspension, as deemed appropriate.
11. Where an Elected Member again potentially breaches his or her occupational health safety and welfare obligations to other Elected Members or employees of the Corporation, the Chief Executive, in consultation with the Mayor, will determine whether or not to permanently cease his or her right to use electronic mail for communicating with staff, except the Chief Executive and other Elected Members.

PRIVATE AND CONFIDENTIAL

**Report for Corporation of City of Marion
Assessment of Occupational Health, Safety and Welfare implications
of Councillor Bruce Hull's November 2003 email**

Dr Josephine Tiddy

January 2005

RECOMMENDATIONS (continued)

12. Where the Chief Executive, in consultation with the Mayor, determines that an Elected Member's use of electronic mail to communicate with Corporation staff will cease permanently, the Elected Member will be afforded the opportunity to show why such action should not be taken.

Dr Josephine Tiddy further recommends that:

13. The Information Technology Policy for Elected Members be reviewed and amended to reflect these recommendations.
14. The occupational health, safety and welfare responsibilities of Elected Members as the body corporate – the Marion Council, being the employer, with a general duty of care and accountability for any breaches of their legislative obligations are set out in the Code of Conduct for Elected Members.
15. The Code of Conduct for Elected Members will also include commitments to ensuring that the interactions between Elected Members and Corporation staff conform to the principles underpinning Occupational Health Safety and Welfare legislation.
16. The Marion Council adopts a policy that ensures that Elected Members adopt the principles underpinning Discrimination and OHS&W laws that provide for fair treatment of Corporation employees by Elected Members. Such a policy will include provisions to ensure Corporation staff work in an environment that is free from intimidation, humiliation, offensive, harassing, 'bullying' behaviours and/or discrimination from Elected Members, and that a hostile and/or unsafe environment is not created by Elected Members. This policy will include sanctions against Elected Members, if a Corporation staff member/s formally or informally complains that they are being treated unfairly by an Elected Member/s, and that their complaint is not frivolous, vexatious or misconceived.



Mark Searle/CoM

14/11/2003 02:27 PM

To Elected Members (Committee)

cc Corporate Management

bcc

Subject Staff recognition

Good afternoon.

I trust you are enjoying the warmer weather and looking forward to a good weekend.

I sent the email below to all staff this week to make sure their excellent customer service efforts were recognised. We have a great team of individuals performing at a very high level. I am keen to work through how we recognise staff achievements. With the progress we are making, the telephone response will be above 96% in 5 rings or less very soon and I think it is appropriate to take a moment to celebrate. I am interested in your ideas on how staff should be recognised for this team achievement.

We could do a workshop, a group discussion or I could just take email responses.

Regards
Mark

"Two Big Customer Service Wins

It is confirmed - we do deliver good results on the phone quality and quantity front.

I hope you are not surprised - I certainly wasn't!! My observations and the anecdotal information I have been receiving are confirmed. The positives are true and the very few "complaints" I get are definitely in the minority!!

The results of the **mystery shopping** exercise are in with more good results. Not only are we quick to answer the phone (see below), we also give competent to excellent responses.

Mystery shopping?? We engaged someone to ring us and ask specific questions for advice and information - just over 100 calls. You may have received one or two or more. The details will be made available to your areas as the results are finalised. Well Done!!!

(As you already probably know, we are at 94.3% of phone calls answered in 5 rings or less and within 1.7% of our target of 96%. A significant improvement over the past 12 months or so. A great team effort - again Well Done!!!)

I took the opportunity to advise Council last night. It certainly does give me a great deal of pride and pleasure to be part of a team of 272 people who are committed to achieving, and also to be in a position to make such strong and positive comments about our combined efforts.

So when we get the occasional complaint or make the odd mistake (which we all do), we can be very confident that these are indeed in the small (to very small) minority.

Please pause for a moment today and accept some positive recognition for our combined achievements.

Keep up the great work!

thanks
Mark

ps More good news coming soon on a couple of other great team efforts!"

Bruce Hull

14/11/2003 08:53 PM

To: Mark Searle/CoM@City of Marion, Corporate Management
Councillors, CR1/Administration Centre@City of Marion,
CR2/Administration Centre@City of Marion, Customer Services
Centre, Customer Services Department, Work Area Responsible
Officers, Um1/Um/Administration Centre@City of Marion,
Um2/Um/Administration Centre@City of Marion,
Um3/Um/Administration Centre@City of Marion, Training
Room/Park Holme Library@City of Marion, Enterprise Development
Team/CoM@City of Marion, Strategic Development, Strategic and
Economic Projects, RRTeam, Responsible Officers, Planning Park
Holme Library, Operations, Organisation, Organisational
Development, Mayor's Parlour/Administration Centre@City of
Marion, LocalDomainServers, Key Application Users (BluePrint),
Infrastructure, Information Management & Technology, Health Cove
Library, Gayle Roberts/CoM, General Inspectors, Front
Banner/Banner/Administration Centre@City of Marion, Enquiries -
Environmental Health, Enquiries - Cultural Centre
Library/CoM@City of Marion, Enquiries - Park Holme
Library/CoM@City of Marion, EMG (Committee), Elected Members
(Committee), Development Services, Depot Staff

cc:

Fax to:
Subject: Re: Staff recognition

Dear Mark

I'm not sure if you were listening to the Elected Members at the secret meeting the other night? Your stats are definitely in question by a number of the members.

You see the basis of what I am saying is that when the answering machine engages at the council it should not be logged as the call be answered at that point. I believe that it is when a living/breathing staff member answers the call, this is when the call is really answered.

I for one intend to create my own log as evidence to the real situation and not this fantasy that is being heralded as some sort of corporate win.

Curiously this comes out just before Christmas couched in a fashion that would attempt to embrace the staff that have presumably been flogged and under resourced throughout the year, or could it be that there is a corporate/governance awards night coming up where one's CV could be embellished with an award.

Quite frankly I must say that your email is pushing my tolerance to crap to the limit.

I am suitably unimpressed with your performance on this matter and the many other matters that I have brought to your attention in recent times.

Yours sincerely

Bruce Hull
Councillor

Scanned by Trend ScanMail
Think before you Print

**West
Ward**

**Bruce Hull
Councillor
City of Marion**

139 Diagonal Road
Warradale SA 5046
Ph 08 82960574
Fax 08 82960574
Email: bruce.hull@marion.sa.gov.au

P. 289

15 April 2004

**Her Worship Mayor Felicity-ann Lewis
Marion Council
PO Box 21
OAKLANDS PARK SA 5046**

Dear Mayor

I refer to my email, subject: *Staff Recognition*, dated 14 November 2003, which I distributed to Elected Members and staff on that day and in hard copy to Depot employees on 28 November 2003. I am aware that three Elected Members have lodged complaints that I have breached the Elected Members' Code of conduct.

I have apologised for my actions and reiterate my apology. I will not distribute any similar type of email electronically, or in hard copy to all staff and Elected Members ever again. However, I remain committed to achieving outcomes for the people of the City of Marion and ensuring through the Chief Executive that the Corporation of the City of Marion is accountable and focussed on gaining Council's positive objectives.

I accept that the tenor of my email was not appropriate, but I was concerned about the inability of Call Centre staff to answer telephone calls from our community within reasonable times. I was therefore flabbergasted with the Chief Executive's email, subject: *Staff Recognition*, dated 14 November 2003, where he attempted to gloss over the inadequacies in the services being provided.

While it was not my intention to 'take issue' with the staff, I accept that any denigration of staff is personally damaging to individual staff, impairs morale and is counter productive to achieving our Corporate objectives.

I reiterate my apology for my breach of the Code of Conduct and am committed to not taking such actions in the future. I further confirm that I am aware of my responsibilities to respect Elected Members and Corporation staff, as I carry out my statutory duties as an Elected Member.

Yours sincerely



**Bruce Hull
Councillor**

Occupational Health, Safety and Welfare
Ref No: GC250105F03
File No: 9.33.3.13, 9.24.1.1

10.43pm Councillor Hull declared an interest and left the meeting.

Moved Councillor Whennan, Seconded Councillor Cole moved that:

1. No further sanctions be applied to Councillor Bruce Hull, even though the contents of his *Staff Recognition* email response and its circulation appear to have contravened his legislative responsibilities under the Local Government Act and other Acts.
2. Dr Tiddy's recommendations 2 to 12, 14 and 15 be referred for consideration as part of the Elected Member Code of Conduct review.
3. The '*Information Technology- Provision and Use of Equipment (Elected Members)*' policy be reviewed and Dr Tiddy's recommendations 2 to 12 be referred for consideration as part of that review.
4. Council's policies be reviewed consistent with Dr Tiddy's recommendation 16.
5. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the report, '*Occupational Health, Safety and Welfare*' and the minutes arising from this report be kept confidential and not available for public inspection until the Chief Executive retires from gainful employment on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person being the Chief Executive Officer of the Council. This confidential order will be reviewed at the December 2005 meeting of Council.

Carried

Moved Councillor Connor, Seconded Councillor Durward that:

1. Having regard to the content of the report and the 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 work 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.
2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the report, '*Occupational Health, Safety and Welfare*' and the minutes arising from this report be kept confidential and not available for public inspection until the Chief Executive retires from gainful employment on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person being the Chief Executive

Officer of the Council. This confidential order will be reviewed at the December 2005 meeting of Council.

Carried Unanimously

