

Extraordinary Council Meeting Business Paper

3 December 2021

Grafton – 4.00pm



Agenda

- | | | | |
|----|---|------|------|
| 01 | OPENING OF EXTRAORDINARY MEETING | | |
| | <ul style="list-style-type: none">• Opening Prayer• Acknowledgement of Country• Announcement – Recording of Meeting | | |
| 02 | APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE | | |
| 03 | DISCLOSURES AND DECLARATION OF INTERESTS | | |
| 04 | REPORT | Page | Att. |
| | 6a.21.059 Removal of Residents from the Unreasonable Complainants Conduct List | 1 | Conf |
| 05 | LATE ITEMS OF BUSINESS AND MATTERS ARISING | | |
| | 10.21.006 Annual Report 2020/21 | 5 | TBT |
| | Motion:
That late Item 10.21.006 Annual Report 2020/21 be considered at the extraordinary meeting even though due notice of the business has not been given, as the business to be considered is of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council. | | |
| 06 | CLOSE OF EXTRAORDINARY MEETING | | |

RECEIVED 10.08 AM
FRIDAY 26/11/21
J.

REQUEST FOR EXTRAORDINARY MEETING

25 November 2021

Dear Mayor Simmons.

I write to request an Extraordinary Meeting be held in accordance to 3.2.1 of Council's Code of Meeting Practice which reflects s365 of the Local Government Act 1993, before Friday December 3, the last day of this term.

As you are aware, I have received advice from the General Manager Mr. Lindsay today Thursday 25 November, advising me this is the course of action that must be taken for my request to remove Mr and Mrs. Cairns and Mr Shane Powell from the Unreasonable Complainants Conduct List.

Motion

That Council

1. Direct the Acting General Manager to release Mr and Mrs Robert Cairns and Mr Shane Powell from their classification under Council's Unreasonable Complainants Conduct Policy immediately
2. Advise them in writing within seven days their restricted access to services has been lifted by council resolution and include an apology for departing from its UCC procedure.

Attachment: Yes Unreasonable Complainants Conduct Policy and Procedures

Background

Ombudsman Investigator Mr Michael Conaty has recently written to Mrs Cairns advising her he has spoken to Mr Lindsay and told him it was his view, Council had departed from its UCC procedure which states:

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the Director of Corporate & Governance will provide them with a written warning letter about their conduct in the first instance.

K. Torns

Cr Karen Torns

Cr Debrah Novak

D. Novak

Budget Implications

Staff resources to write a letter and send to Mr and Mrs Cairns and Mr Powell can be taken from existing budget allocations from the General Fund.

ITEM	6a.21.059	REMOVAL OF RESIDENTS FROM THE UNREASONABLE COMPLAINANTS CONDUCT LIST
Meeting	Council	3 December 2021
Directorate	General Manager	
Reviewed by	A/General Manager - (Laura Black)	
Attachment	Confidential	

SUMMARY

The report is provided in response to a request by Crs Toms and Novak that an Extraordinary Meeting of Council be held to consider removal of Mr and Mrs Cairns and Mr Powell from the Unreasonable Complainants Conduct List.

This report provides the background to the application of the Unreasonable Complainant Conduct Policy in this instance.

Council's Unreasonable Complainant Conduct Policy was adopted in May 2020 by Council and is scheduled for review by the new Council in May 2024.

The Policy provides for management of unreasonable complainant conduct to ensure the success of Council and in particular:

- Our ability to do our work and perform our functions in the most effective and efficient ways possible.
- The health, safety and security of our staff.
- The ability to allocate Council resources fairly across all the complaints it receives.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviours

The Unreasonable Complainant Conduct Procedure provides guidance on implementation of the Policy.

OFFICER RECOMMENDATION

That the information contained in the report be noted in considering the motion put by Councillors Toms and Novak.

LINKAGE TO OUR COMMUNITY PLAN

Theme	5 Leadership
Objective	5.2 We will have an effective and efficient organisation
Strategy	5.2.4 Ensure a safe and healthy work environment

BACKGROUND

In July 2021, Council's Executive, following consultation with staff across Council's Planning, Property, Governance and Executive Support sections, formed a substantiated view that the behaviour of two customers had escalated to a point where it amply fulfilled the criteria to be classified as Unreasonable Complainant Conduct (UCC) specifically 'unreasonable persistence', defined as 'continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources' Specifically, the Executive was aware of the direct impact on the health and wellbeing staff of the unreasonable persistence and demands of the residents, and the disproportionate Council resources allocated to resolving, responding and satisfying the residents' demands.

In particular, it is noted that one of the residents had commenced Requesting Information on the residential address of a staff member about whom the residents had lodged a number of complaints. Concern at the time was sufficient that discussions were held with the Local Area Command.

Under the UCC Policy a restriction on access to Council services for a period of six months (except in the case of emergency or electoral matters) was enacted. Under the associated Procedure this is due to be reviewed in February 2022 (refer **Attachment A**).

At no point in time did Council staff discuss the application of the UCC Policy with anyone other than communicating the matter with the complainants themselves.

KEY ISSUES

Prior to the application of the restriction, the following correspondence pertaining to Requests for Information (RFIs) and complaints were received from the residents and were recorded by Council officers in Council's Electronic Content Management (ECM) system at that time:

Cairns, L: 174 (please see **Attachment B** for both raw and itemised lists).

Powell, S 59 (please see **Attachment B** for both raw and itemised lists).

Examining Attachment B, alongside the large amount of correspondence pertaining to DAs generally and the DAs for 19 Gumnut Road in particular, it is also evident that:

- Continually processing these requests and responding to correspondence absorbed, and continues to absorb, considerable Council resources.
 - The disproportionate amount of time spent responding to the 19 Gumnut Road DA, in particular, has distracted three staff in particular from DA assessment generally and the Executive team more broadly from attending to other more pressing matters.
- The decision to invoke the UCC by the AGM followed from:
 - (1) Termination of responding to enquiries regarding 19 Gumnut Road on 28 June;
 - (2) the multitude of RFIs (17) and other correspondence from that date until the date the UCC was invoked—29 July, and
 - (3) concerns about staff generally, and one staff member in particular, the details of whose property were being requested (see above).
- Three Code of Conduct complaints being made against Councillors and staff, all of which have been assessed as unfounded in the opinion of the NSW Ombudsman (refer **Attachment C**);
- Three offices of state government—the NSW Ombudsman; the Information and Privacy Commission and the Office of Local Government—have been involved in these issues *writ large* since March 2021, alongside an independent assessor engaged by Council for assessing the validity of the Code of Conduct complaints at a cost of \$455.00 (see, in particular pp. 17-22 of **Attachment B**);
- On occasions, the requests have been duplicate requests that have already been fulfilled;
- The residents have not been required to make payment, in accordance with Council Fees and Charges 2021/2022 for any of these services except for lodgement of one formal access (GIPA) application (\$30.00).

A search of Outlook files across Council for the email addresses of both residents from 1 December 2020—i.e., to determine any correspondence not uploaded to the ECM system was undertaken. The results are as follows:

Email for Cairns, L: N=2,353 (refer **Attachment D**)

Email for Powell, S: N=826 (refer **Attachment D**)

There are important caveats to these numbers. First, the whole numbers do not represent examples of individual emails, Rather,

- (i) they are computed from emails being sent to another email address (thus, the one email can have multiple recipients—e.g., multiple staff members) and
- (ii) each email with a Council address (i.e., @Clarence.nsw.gov.au—i.e., for Councillors and staff) is replicated for a 'journal entry'.

Nevertheless, this represents a significant amount of email traffic/correspondence beyond what was uploaded to ECM (Attachment B).

There are multiple entries for the Mayor and all Councillors, the GM and the three Directors as well as multiple entries for no less than nine other staff, the majority of whom are not responsible for handling RFIs or complaints.

Notably, this does not include Council's Customer Service Team.

Where an email may take between 5 and 15 minutes to read and comprehend in full, this is multiplied significantly when there are multiple recipients reading emails prior to the most appropriate officer, and appropriate action, being determined.

The amount of staff time allocated to correspondence from Mr and Mrs Cairns and Mr Powell is disproportionately higher than any other resident.

When emails are sent to individuals as well as council@clarence, this is exacerbated, as individual recipients read and determine action and the Customer Service team also allocate the correspondence for action in either the Electronic Content Management system or the Customer Request Management system, dependent on the nature of the request, which requires a duplicate layer of administrative action.

In effect, each piece of correspondence is being dealt with by numerous staff in various ways, regularly unbeknownst to the next.

The two email addresses are intertwined, with all three complainants being included in the signature to most if not all correspondence prior to 29 July 2021. In the absence of any objection from one or the other to being made a party to the correspondence, the application of the Unreasonable Complainant Conduct Policy was applied to all three.

Council has a role in balancing residents' rights for information against the cost of providing that information. These rights are encapsulated in the GIPA instruments and ought to be respected. However, ss. 53 and 60 of the GIPA Act also place important caveats on the resources that can be reasonably expected to be devoted to this. This qualification is reinforced by Council's Unreasonable Complainant Conduct Policy, as it is informed by the advice of Ombudsman, stating that one of the grounds for assessing a complainant as unreasonable is 'unreasonable persistence', defined as "continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources'.

It is noted, the information represents a point in time. However, there is evidence that the voluminous nature of correspondence, request for information and complaints is a pattern of behaviour, which in April and May 2021, was commented on by the Mayor in correspondence addressed to the Cairns.

COUNCIL IMPLICATIONS

Budget/Financial

Staff report an inordinate amount of time spent resourcing the persistent demands of the Mr and Mrs Cairns and Mr Powell that is disproportionate to the time spent on other resident requests. While the cost of staff time has not been quantified in dollar terms, any estimate should take into account the hourly rate plus 30% oncost for the various staff involved.

Asset Management

N/A

Policy or Regulation

Unreasonable Complainant Policy

Consultation

N/A

Legal and Risk Management

The Unreasonable Complainant Policy provides mitigating risk management action where the unreasonably persistent demands of a resident compromise the success of Council as detailed in the policy and affect the health and wellbeing of staff.

Climate Change

N/A

Prepared by	Bligh Grant, Governance Officer
Confidential	Attachment A. 29-Jul-2021. UCC notifications Attachment B. ECM Correspondence re RFIs and complaints 1 Dec 20-30 Nov 21 Attachment C. Ombudsman. 2021 078453 2021-06-10 Attachment D. Email records

ITEM	10.21.006	ANNUAL REPORT 2020/21
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Meeting	Council	3 December 2021
Directorate	General Manager	
Reviewed by	A/General Manager - (Laura Black)	
Attachment	To be tabled	

SUMMARY

The Annual Report is one of the key points of communicating the Council's achievements in meeting statutory compliance requirements throughout the year and also provides a snapshot of activities across Council's diverse remit.

The 2020/2021 Annual Report is being tabled a second time, because figures from the 2019/2020 Annual Report were incorrectly included in the document that was tabled at the November Ordinary Meeting.

OFFICER RECOMMENDATION

That:

1. Council note the 2020/21 Annual Report attached to the report.
2. The 2020/2021 Annual Report currently available to the community on Council's website be replaced with the 2020/2021 Annual Report attached to the report.
3. The URL link to the updated 2020/2021 Annual Report be sent to the Office of Local Government.

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.8 Ensure good governance, effective risk management and statutory compliance

BACKGROUND

The revised Guidelines for Integrated Planning and Reporting (September 2021) instruct councils to prepare an annual report within five months of the end of the financial year, to make it available on Council's website and to provide a URL for the Annual Report to the OLG.

On finding administrative errors in the copy previously noted by Council, corrections were made post the Council resolution and a copy of the link forwarded ensuring Council complied technically with the timing requirements of the OLG.

However, the final document should have been resubmitted to Council for consideration prior to the link being provided to the OLG. The error in administrative process will be reviewed.

KEY ISSUES

The report covers all reportable aspects of Council operations under the Office of Local Government Annual Reporting requirements.

Errors in the Annual Report previously considered by Council and now amended, include:

1. Page 11 in the table containing payments to councillors by councillor.
2. Page 12 in the table of Contractors.
3. Page 30 in Table B the number of applications by type of applications and outcome.

The footer in the document now reflects the correct year – 2020/2021 rather than 2019/2020.

It is recommended an updated link be sent to the OLG to ensure the amended footer is noted.

COUNCIL IMPLICATIONS

Budget/Financial

The Annual Report references Council's audited financial statements achievement for the year.

Asset Management

N/A

Policy or Regulation

Sections 406 and 428 of the *Local Government Act 1993* and Clause 217 of the *Local Government Regulation 2021*

Consultation

All managers were consulted in the development of the Annual Report.

Legal and Risk Management

N/A

Climate Change

N/A

Prepared by	Laura Black, Acting General Manager
To be tabled	Annual Report 2020/21
