



CONFIDENTIAL AGENDA

FOR SPECIAL COUNCIL MEETING TO BE HELD ON

13 JUNE 2023 AT 6.30 PM

IN THE COUNCIL CHAMBER, 34 CHURCH STREET, SALISBURY

MEMBERS

Mayor G Aldridge
Cr G Bawden
Cr B Brug
Cr L Brug
Cr C Buchanan
Cr S Burner
Cr J Chewparsad
Cr A Graham
Cr K Grenfell
Cr D Hood
Cr P Jensen
Cr M Mazzeo
Cr S McKell
Cr S Ouk
Cr S Reardon

REQUIRED STAFF

Chief Executive Officer, Mr J Harry
General Manager Business Excellence, Mr C Mansueto
General Manager City Infrastructure, Mr J Devine
General Manager Community Development, Mrs A Pokoney Cramey
General Manager City Development, Ms M English
Manager Governance, Mr R Deco
Team Leader Council Governance, Ms J O'Keefe-Craig
Governance Support Officer, Ms K Boyd

APOLOGIES

GENERAL BUSINESS

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John Harry
CHIEF EXECUTIVE OFFICER

Confidential

ITEM	C1
	SPECIAL COUNCIL
DATE	13 June 2023
HEADING	Absenteeism Cr Severina Burner
AUTHOR	John Harry, Chief Executive Officer, CEO and Governance
CITY PLAN LINKS	4.2 We deliver quality outcomes that meet the needs of our community

SUMMARY

At its special meeting on 29 May 2023, Council resolved that it intended to exercise its power under section 54(1)(d) of the *Local Government Act 1999* to remove Cr Severina Burner from office as a member of the Council, on the ground that Cr Severina Burner has been absent from three (3) consecutive ordinary Council meetings without the leave of the Council. This would be subject to the receipt and consideration of any submissions from Cr Severina Burner to be received by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the *Local Government Act 1999* to remove her from office as a member of the Council. A request for an extension of time until close of business 9 June 2023 was received and granted by resolution on 5 June 2023. This report supports Council's further consideration of this matter, presents the submissions received on Friday 9 June 2023 and the options and the next steps depending on the decision of Council.

RECOMMENDATION

That Council:

EITHER (option1)

1. Having considered the report and all attachments to that report for Item C1, titled Absenteeism Cr Severina Burner, 13 June 2023 Special Meeting of the Council:
 - 1.1 Notes that Cr Severina Burner has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
 - 1.2 Notes the submissions received from Cr Severina Burner on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C1, Special Council, 13 June 2023]
 - 1.3 Reminds Cr Severina Burner of the importance of attending Council meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.

OR (option 2)

1. Having considered the report and all attachments to that report for Item C1, titled Absenteeism Cr Burner, 13 June 2023 Special Meeting of the Council:
 - 1.1 Notes that Cr Severina Burner has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
 - 1.2 Notes the submissions received from Cr Severina Burner on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C1, Special Council, 13 June 2023]
 - 1.3 Exercises its power under section 54(1)(d) of the *Local Government Act 1999* to remove Cr Severina Burner from office as a member of the Council with immediate effect, on the ground that Cr Severina Burner has been absent for three (3) consecutive ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council.
 - 1.4 Requests the Mayor and the Chief Executive Officer to notify the Electoral Commission of South Australia of this resolution.
 - 1.5 Requests the Mayor and the Chief Executive Officer to notify the Minister for Local Government of this resolution.
 - 1.6 Requests the Mayor to notify Ms Severina Burner of this resolution and requests the Chief Executive Officer to organise for all Council owned assets issued to Ms Severina Burner to assist her in performing or discharging her official functions and duties as a member of the Council be returned to Council.
2. Orders that, pursuant to Section 91(7) of the *Local Government Act 1999*, paragraphs 3.14, 3.15 (and the associated paragraph heading) 3.25 and 3.26 of the report for item C1, titled Absenteeism Cr Burner, 13 June 2023 Special Meeting of the Council, Attachment 4 to the aforementioned report, paragraphs numbered 13 up to and including 16, and paragraph 21 of the submissions of Cr Severina Burner set out in the letter from Robert Balzola & Associates dated 9 June 2023 at Attachment 6 for this item C1 will remain confidential and not available for public inspection until 30 June 2024 on the grounds that the identified parts of the report and attachments contain information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person (living or dead).
3. Delegates, pursuant to Section 91(9)(c) of the *Local Government Act 1999*, the power under Section 91(7)(a)&(b) of the *Local Government Act 1999* to revoke the order set out in paragraph 2 of this resolution in full or in part at any time to the Chief Executive Officer.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Letter to Cr Burner seeking submission by 2 June 2023 12pm
2. Emails from the Chief Executive Officer to Cr Severina Burner
3. Email from Administration to Cr Severina Burner

4. Certificate Cr Burner
5. Extract Local Government (Elections) Act 1999
6. Submissions Cr Severina Burner 9 June 2023
7. Letter Robert Balzola & Associates
8. E-mail Robert Balzola & Associates - Errata
9. E-mail from Cr Burner to the Mayor
10. Attendance Table

1. BACKGROUND

1.1 Council resolved at its 29 May 2023 Council meeting:

That Council:

1. Notes the absence of Cr Severina Burner and Cr Grace Bawden for the third consecutive ordinary Council meeting, taking the total months of absence to three months;
2. Notes that Elected Members are to participate in the deliberations and activities of the Council pursuant to s59(1)(v) of the Local Government Act 1999;
3. Notes that Elected Members are aware of section 54(1)(d) of the Local Government Act 1999, and in the specific circumstances, Cr Grace Bawden and Cr Severina Burner were explicitly reminded of this statutory provision;
4. Requests the Mayor and CEO to write to Cr Grace Bawden and Cr Severina Burner, seeking a written explanation of their ongoing absence from Council meetings, by 12pm, 29 May 2023, and advising them that their response will form part of a public report to Council for further consideration.

1.2 Following a further motion, it was then also resolved that Council:

1. Requests that administration provide a report to Council as part of the report considering the response around absenteeism to also include the total number of CEO Briefing sessions, Sub Committee Meetings, Committee Meetings and Council meetings that Cr Severina Burner and Cr Grace Bawden attended and the duration of time that they partially attended.
2. The report to also include the amount of allowance that both Cr Severina Burner and Cr Grace Bawden have received to date.

1.3 Subsequently, a special Council meeting was called for 29 May 2023, 6.30pm to consider the matter. Cr Severina Burner was absent from this meeting.

1.4 The Administration report presented (item C1, Special Council, 29 May 2023) provided further information, to inform Council's consideration.

1.5 Elected Member allowances are determined by the Remuneration Tribunal (Determination number 2, 2022) and for City of Salisbury are set at \$25,838 per annum for an Elected Member.

1.6 Following the last monthly payment on 1st of June 2023, Cr Severina Burner has received a total allowance of \$13,923.83.

1.7 At its special meeting on 29 May 2023, Council resolved that it:

1. Notes the information requested at its 22 May 2023 meeting, included in this report (Council, 29 May 2023, item C1).

2. Notes no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023, on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.

1.8 A further resolution then followed:

That Council, having considered the confidential report item no C1 titled "Consideration of Elected Members' Absence pursuant to section 54(1)(d) of the Local Government Act 1999 - Cr Grace Bawden and Cr Severina Burner", 29 May 2023 Special Meeting of the Council,

1. Notes that no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023 on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.

2. Determines that it intends to exercise its power under section 54(1)(d) of the Local Government Act 1999 to remove Cr Severina Burner and Cr Grace Bawden from office as a member of the Council, on the grounds that Cr Severina Burner and Cr Grace Bawden have been absent for three (3) consecutive ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council subject to the receipt and consideration of further submissions from Cr Severina Burner and Cr Grace Bawden.

3. Requests the Mayor and Acting Chief Executive Officer to write to Cr Severina Burner and Cr Grace Bawden seeking a submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove them from office as a member of the Council.

4. Calls a Special Council meeting to occur on Monday 5 June 2023 6.30pm to consider any submissions received as a result of part 3 above, and whether to exercise its powers under section 54(1)(d) of the Local Government Act 1999

1.9 At its special meeting held 5 June 2023, Council resolved that it:

1. Notes that no written explanation from Cr Severina Burner was received by 29 May 2023, 12 pm or subsequently on her absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.

2. Notes that no written submissions to the Council were received by Friday 2 June 2023, 12pm or subsequently as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove Cr Severina Burner from office as a member of the Council.

3. Defers items C1 until a further special meeting to be held on Tuesday 13 June 2023, 6.30pm to accommodate a request received 5 June 2023, 4.32pm, from Cr Severina Burner and her legal representative Robert Balzola and Associates to put a submission forward by close of business Friday 9 June 2023 as requested by

Legal representative Robert Balzola and Associates to allow for Cr Severina Burner to put in a submission by COB Friday 9 June 2023.

- 1.10 The communication from Cr Burner and her legal representative, Robert Balzola and Associates, received 5 June 2023, is included in Attachments 7, 8 and 9.

2. CONSULTATION / COMMUNICATION

2.1 External

- 2.1.1 Norman Waterhouse Lawyers
2.1.2 Office of the Minister for Local Government
2.1.3 Electoral Commission South Australia

3. REPORT

Notification of intention to exercise power in section 54(1)(d) of the *Local Government Act 1999*

- 3.1 An e-mail and letter via courier (Attachment 1) were sent to Cr Severina Burner on 30 May 2023 by the Mayor and Acting Chief Executive Officer, in execution of the Council resolution, to seek a submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the *Local Government Act 1999* (the Act) to remove Cr Severina Burner from office as a member of the Council.
- 3.2 A delivery receipt was obtained from the courier confirming delivery of the letter referenced in paragraph 3.1 above, in the morning on 30 May 2023.
- 3.3 No submissions were received by the due date of Friday 2 June 2023, 12pm.
- 3.4 On Monday 5 June 2023, Council's solicitors received a letter from Cr Severina Burner's solicitor requesting an extension of time to make submissions to the Council by close of business Friday 9 June 2023. The Council granted the extension as requested.
- 3.5 Submissions were received from Cr Severina Burner by Council's solicitors on Friday 9 June 2023.

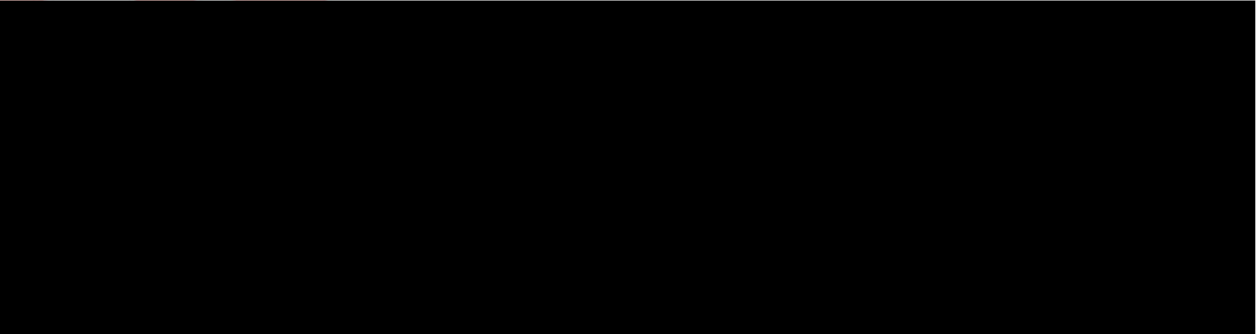
Statutory Provisions

- 3.6 Pursuant to section 54(1)(d) of the Act, the office of a member of the Council becomes vacant if the member is removed from office by the Council on the ground that he or she has been absent, without leave of the Council, from three or more consecutive ordinary meetings of the Council.
- 3.7 Leave of the Council to be absent from a Council meeting requires a decision by the Council to grant the member leave. It is a matter of discretion as to whether the Council grants leave or not.

Leave of Absence

- 3.8 Cr Severina Burner was advised by the Chief Executive Officer of the process around requesting a leave of absence and the implications of being absent without

leave of the Council for three or more consecutive ordinary meetings of the Council by e-mail on 9 March, 22 March 2023 and 28 March 2023 (Attachment 2, as redacted to remove reference to personal/unrelated information). In addition, Cr Burner was specifically and expressly advised that submitting an apology for a meeting was not an application for a leave of absence and did not constitute a leave of absence. Council Administration also advised Cr Severina Burner on the leave of absence application process by e-mail on 1 March 2023 (Attachment 3, as redacted to remove reference to personal/unrelated information).

- 3.9 The Mayor and Chief Executive Officer received via e-mail on 24 April 2023, 4.53pm, a leave of absence application from Cr Severina Burner, which was tabled by the Chief Executive Officer at the Council meeting held the same evening at 6.30pm.
- 3.10 Council subsequently considered the request and unanimously resolved at its 24 April 2023 meeting that Council:
1. *Notes the request and reasons for Leave of Absence from Cr S Burner as provided to the CEO and Mayor "I would like to formally request the Council to allow me three month's leave. It is not my intention to subject myself to any further bullying, threatening or misconduct by council"*
 2. *Does not grant a Leave of Absence.*
- 3.11 A further motion was subsequently moved and carried unanimously as follows:
- That Council:*
- Notes the reasons for the Leave of Absence request from Cr Burner and requests the CEO to write to Cr Burner requesting that she provides details of the unsubstantiated allegations in accordance with the reporting provisions of the Model Behaviour Management Policy and again provides information to Cr Burner on how to make such complaints.*
- 3.12 In execution of this resolution (paragraph 3.11 above), the Mayor and Chief Executive Officer wrote to Cr Severina Burner on 28 April 2023 accordingly, however no response was received.
- 3.13 The Council has not granted Cr Severina Burner leave to be absent from any ordinary Council meeting. Cr Severina Burner's attendance at meetings of the Council, Council Committees and CEO Briefings/Workshops is listed in Attachment 10.
- 


Section 8 Principles

- 3.16 Section 8 of the Act requires the Council to act to uphold and promote the observance of the principles set out therein in the performance of its roles and functions. The following specific principles are considered relevant to this matter:
- (a) provide open, responsive and accountable government;*
 - (b) be responsive to the needs, interest and aspirations of individuals and groups within its community;*
 - (g) manage its affairs in a way that emphasises the importance of service to the community;*
 - (h) seek to ensure that council resources are used fairly, effectively and efficiently and council services, facilities and programs are provided effectively and efficiently;*
 - (j) achieve and maintain standards of good public administration.*
- 3.17 Council members have a dual role as a member of the governing body of the Council and as a person elected to the Council. These roles encompass:
- 3.17.1 participating in the deliberations and activities of the Council;
 - 3.17.2 representing the interests of residents and ratepayers of the Council;
 - 3.17.3 providing community leadership and guidance; and
 - 3.17.4 facilitating communication between the community and the Council.
- 3.18 Section 59(1)(a)(viii) of the Act provides that one of the roles of members of the Council is to ensure, as far as practicable, that the principles set out in section 8 are observed.
- 3.19 Council members are accountable to their community for, amongst other things, ensuring they fulfill their roles. Council members receive an allowance in relation to their office which, in part, recognises expenses and time associated with preparing for and attendance at Council meetings.
- 3.20 Attendance at Council meetings is essential to a Council member fulfilling their role effectively and being accountable to their community. A member who does not consistently attend Council meetings is less able to effectively represent the interests of individuals and groups within its community at least to the extent to which those interests and affected by the deliberations and decisions at Council meetings. A member who consistently does not attend Council meetings is less able to contribute to ensuring the Council achieves and maintains standards of good public administration. The requirement to obtain leave of the Council to be absent is evidence of the importance placed on Council meeting attendance.

Submission Received 9 June 2023 from Cr Severina Burner

- 3.21 Cr Severina Burner submits that whilst she was not physically present at the ordinary Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023 she did attend the ordinary Council meeting on 27 March 2023 in part by video link and she was permitted to do so. This is incorrect. Council members are not lawfully able to attend Council meetings electronically (*Legislation Interpretation*

Act 2021, section 39(3), Legislation Interpretation Regulations 2021, regulation 4(1)(a).

- 3.22 Cr Severina Burner submits that in considering whether or not to exercise its power in Section 54(1)(d) of the Act to remove her from office as a member of the Council, the Council ought to consider her “*particular individual circumstances*”. Cr Severina Burner refers to her (relatively) limited experience as a Council member and that this matter is being considered “*early in the term of the new Council*”.
- 3.23 Cr Severina Burner submits that her absence needs to be considered against the background of the investigations of the complaints made against her alleging breaches of the Behavioural Standards for Council Members (the Complaint Matters) and considered by the Council at its meetings on 27 March 2023, 24 April 2023 and 22 May 2023. Further Cr Severina Burner alleges confidential information has been disclosed to the media and other Council members have made comments about her and her conduct as a Councillor in Council meetings and to the media which she submits also forms part of the background to her absence from Council meetings. Cr Severina Burner states that this “background” has had an adverse effect on her health which according to Cr Severina Burner the Mayor and Chief Executive Officer have acknowledged. Further Cr Severina Burner submits that in light of the Council’s consideration at the 27 March 2023, 24 April 2023 and 22 May 2023 ordinary Council meetings of the Complaint Matters the Council ought to have inferred that her attendance at those meetings would have been further detrimental to her health and it was “*entirely unreasonable and inappropriate for the Council to expect Cr Burner’s attendance*” at those meetings.
- 3.24 The basis for Cr Severina Burner’s statement that there has been an acknowledgment of the impacts on her health and her need for mental health support is not clear. Cr Burner has been advised that she is able to access the Employee Assistance Program and this is a standard response provided to any employee or Council Member who states they feel their mental health is being affected.
- 3.25 
- 3.26
- 3.27 The submission that it would have been inappropriate for Cr Severina Burner to attend the Council meetings she missed due to the Complaint Matters being on the agenda for those meetings also does not explain or address her failure to apply for leave. In addition, the Complaint Matters were one item on each of the relevant agendas which included a significant number of other agenda items of business for Council’s consideration.

- 3.28 Cr Severina Burner submits she had a genuine doubt she was lawfully permitted to attend Council meetings in light of the Chief Executive Officer's direction issued pursuant to section 75G of the Act. The direction issued does not prevent Cr Severina Burner from communicating with the Chief Executive Officer or Manager Governance both of whom were present at the 27 March 2023, 24 April 2023 and 22 May 2023 ordinary Council meetings. The direction issued also does not prevent Cr Severina Burner from attending Council meetings and so section 75G(3) of the Act does not apply. In any event Council staff are not participants at Council meetings and attend in a support role to assist the meeting if required. Council members generally do not communicate directly with staff during the conduct of Council meetings and must direct their questions and comments to the Presiding Member.
- 3.29 In her submissions Cr Severina Burner also alleges "*...many elected members are in a position where a fair-minded lay observer, approaching the matter objectively, might entertain a reasonable apprehension that the decision-maker (being the elected members) might not bring an open mind to the consideration of the agenda items. Cr Severina Burner alleges that other Council members have made "derisive personal and political statements in the chamber [and] media..."*" but does not provide examples or evidence to support this allegation.

Next Steps

- 3.30 Council can consider this matter further and may resolve:

Option 1: Council does not to exercise its powers under section 54(1)(d) of the Local Government Act 1999

That Council, having considered the report and all attachments to that report for Item C1, titled Absenteeism Cr Severina Burner, 13 June 2023 Special Meeting of the Council:

1. Notes that Cr Severina Burner has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
2. Notes the submission received from Cr Severina Burner on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C1, Special Council, 13 June 2023]
3. Reminds Cr Severina Burner of the importance of attending Council meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.

Option 2: Council determines to exercise its powers under section 54(1)(d) of the Local Government Act 1999

That Council, having considered the report and all attachments to that report for Item C1, titled Absenteeism Cr Burner, 13 June 2023 Special Meeting of the Council:

1. Notes that Cr Severina Burner has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
2. Notes the submissions received from Cr Severina Burner on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C1, Special Council, 13 June 2023]
3. Exercises its power under section 54(1)(d) of the *Local Government Act 1999* to remove Cr Severina Burner from office as a member of the Council with immediate effect, on the grounds that Cr Severina Burner has been absent for three (3) consecutive ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council.
4. Requests the Mayor and the Chief Executive Officer to notify the Electoral Commission of South Australia of this resolution.
5. Requests the Mayor and the Chief Executive Officer to notify the Minister for Local Government of this resolution.
6. Requests the Mayor to notify Ms Severina Burner of this resolution and requests the Chief Executive Officer to organise for all Council owned assets issued to Ms Severina Burner to assist her in performing or discharging her official functions and duties as a member of the Council be returned to Council.

Vacancy

- 3.31 In the event Council resolves to remove a Council Member from office, an immediate vacancy would occur and the vacancy could be filled pursuant to section 6(2)(c) and in accordance with section 6A of the *Local Government (Elections) Act 1999* (Attachment 5).
- 3.32 A supplementary election may not necessarily need to be held and the vacancy may be able to be filled by the Returning Officer in accordance with Regulation 3A of the *Local Government (Elections) Regulations 2010*.

4. CONCLUSION

- 4.1 Following the Council's decision at the Special Council meeting of 29 May 2023 and 5 June 2023, the Council is now considering whether or not to proceed with its intention to remove Cr Severina Burner from office as a member of the Council, in consideration of the submissions received 9 June 2023 (Attachment 6).



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30 May 2023

Cr Severina Burner



BY COURIER AND EMAIL sburner@salisbury.sa.gov.au

PRIVATE AND CONFIDENTIAL

Dear Cr Burner

We refer to our letter and email both sent on the 23 May 2023 in regard to the resolution of Council at its 22 May 2023 meeting that sought a written response from you in relation to your absence from Council meetings by 12pm 29 May 2023.

We note that we had not received a response to this correspondence.

As such the Mayor determined to hold a Special Meeting of Council to be held at 6.30pm on the 29 May 2023, to which all Elected Members were invited as per the usual meeting notice process.

At this meeting Council considered the matter and resolved that it:

1. Notes the information requested at its 22 May 2023 meeting, included in this report (Council, 29 May 2023, item C1).
2. Notes no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023, on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.

Council subsequently resolved:

That Council, having considered the confidential report item no C1 titled "Consideration of Elected Members' Absence Pursuant to section 54(1)(d) of the Local Government Act 1999 - Cr Grace Bawden and Cr Severina Burner", at 29 May 2023 Special Meeting of the Council,

1. Notes that no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023 on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.
2. Determines that it intends to exercise its power under section 54(1)(d) of the Local Government Act 1999 to remove Cr Severina Burner and Cr Grace Bawden from office as a member of the Council, on the grounds that Cr Severina Burner and Cr Grace Bawden have been absent for three (3) consecutive Ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council subject to the receipt and consideration of further submissions from Cr Severina Burner and Cr Grace Bawden.
3. Requests the Mayor and Acting Chief Executive Officer to write to Cr Severina Burner and Cr Grace Bawden seeking a submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove them from office as a member of the Council.

4. Calls a Special Council meeting to occur on Monday 5 June 2023 6.30pm to consider any submissions received as a result of part 3 above, and whether to exercise its powers under section 54(1)(d) of the Local Government Act 1999

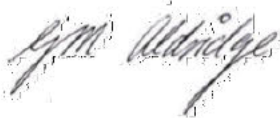
This letter is to advise you of these resolutions and specifically requesting your submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove you from office as a member of the Council.

Please note that a Special Meeting of Council has been scheduled for Monday 5 June 2023 at 6.30pm to consider any written submission received.

Subject to consideration of any written response, Council has determined that it intends to exercise its power under section 54(1)(d) to remove you from office as a member of the Council on the grounds that you have been absent for three (3) consecutive ordinary Council meetings (27 March 2023, 24 April 2023, and 22 May 2023), without the leave of Council.

Please do not hesitate to contact the Mayor or myself as the Acting CEO if you have any questions or need clarification on the resolution of Council and its implications.

Yours sincerely



Gillian Aldridge OAM
MAYOR



Charles Mansueto
ACTING CHIEF EXECUTIVE OFFICER

From: [John Harry](#)
To: [Severina Burner](#)
CC: [Sillian Aldridge](#); [John Harry](#); [REDACTED]
Subject: RE: Apologies / Request for leave
Date: Thursday, 9 March 2023 3:33:44 PM
Attachments: [FW: Access to Professional Counselling Services.msg](#)
Importance: High

Dear Cr Burner

I refer to your email below providing apologies for yourself and Cr Bawden indefinitely. Can you please clarify if you are indicating you will not be attending Council meetings, Council committee meetings, CEO briefings and other information or workshop sessions indefinitely.

Please note that pursuant to section 54(1)(d) of the *Local Government Act 1999* you may be removed from office by the Council on the ground that you have been absent, without leave of the Council, from three or more consecutive ordinary meetings of the Council. Providing an apology for a Council meeting does not constitute a leave of absence from the Council.

Can I suggest that if you are indeed intending not to attend Council meetings that you seek a leave of absence from the Council. You may request a leave of absence by putting your request in writing to me and/or the Mayor. If you do request a leave of absence this would be considered by the Council at the next ordinary meeting of the Council. Whilst I cannot pre-empt the Council's decision I suggest if you do request a leave of absence that you specify a period of time you will be absent rather than indefinitely.

If Cr Bawden also intends to request a leave of absence it is necessary for Cr Bawden to make that request herself.

By way of a reminder I have enclosed my previous email to All Elected Members re the opportunity for you to access professional counselling services if so wish

Please contact me if you have any queries.
Regards
John

John Harry
Chief Executive Officer
D: 08 8406 8212
E: jharry@salisbury.sa.gov.au

34 Church Street, Salisbury, South Australia, 5108
P: 08 8406 8222
W: www.salisbury.sa.gov.au

From: Severina Burner <SBurner@salisbury.sa.gov.au>
Sent: Wednesday, 8 March 2023 4:37 PM

To: Gillian Aldridge <GAldridge@salisbury.sa.gov.au>; John Harry <JHarry@salisbury.sa.gov.au>
Subject: Apologies

Dear Gillian and John

Please accept apologies from myself and Cr Bawden indefinitely.

We are both seeking instruction on formally applying for [REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



From: [John Haery](#)
To: [Severina Burner](#)
Subject: PRIVATE AND CONFIDENTIAL - Cr Burner
Date: Wednesday, 22 March 2023 3:06:00 PM
Attachments: [0020683EC42C230321114726.pdf](#)
Importance: High
Sensitivity: Confidential

Hi Councillor Burner,

[REDACTED]
 [REDACTED]
 [REDACTED]. I also reiterate you're able to access the Employee Assistance Program for counselling support should you wish.

Details of our EAP providers are:

Corporate Health Group (CHG)
 08 8352 9898 (business hours)
 0418 883 855 (after hours)
www.chg.net.au

ACCESS Programs
 08 8215 6799 (business hours)
 1300 667 700 (after hours)
www.accesssa.com.au

I acknowledge receipt of [REDACTED] (attached) [REDACTED]

Please note you're not deemed to be in City of Salisbury employment [REDACTED]

In relation to your expectation of Council [REDACTED]:

As clarified before, Leave of Absence can be requested.

Pursuant to section 54(1)(d) of the Local Government Act 1999 you may be removed from office by the Council on the ground that you have been absent, without leave of the Council, from three or more consecutive ordinary meetings of the Council. Providing an apology for a Council meeting does not constitute a leave of absence from the Council. Therefore I suggest that if you are indeed intending not to attend Council meetings that you seek a leave of absence from the Council. You may request a leave of absence by putting your request in writing to me and/or the Mayor. If you do request a leave of absence this would be considered by the Council at the next ordinary meeting of the Council. Whilst I cannot pre-empt the Council's decision I suggest if you do request a leave of absence that you specify a period of time you will be absent.

If you're not intending to submit a leave of absence, and rather provide an apology at the meeting for being absent, please advise accordingly.

Failing this you will be listed as "absent".

If Cr Bawden also intends to request a leave of absence, it is necessary for Cr Bawden to make that request herself.



I trust this clarifies.

Regards,
John Harry

John Harry
Chief Executive Officer
D: 08 8406 8212
E: jharry@salisbury.sa.gov.au

24 Church Street, Salisbury, South Australia, 5108
P: 08 8406 8222
W: www.salisbury.sa.gov.au

Confidential

From: [John Haery](#)
To: [Severina Burner](#)
Cc: [John Haery](#); [REDACTED]
Subject: FW: Please forward to Mayor Aldridge
Date: Tuesday, 28 March 2023 2:06:18 PM
Attachments: [RE: Please forward to Mayor Aldridge .msg](#)
[PRIVATE AND CONFIDENTIAL - Cr Burner .msg](#)
Importance: High

Dear Councillor Burner

In regard to your email I received from yourself Monday morning I confirm that I have sent your email dated 23 March to the Mayor as identified in my acknowledgement of its receipt by myself to you – Plse refer attached email dated 23 March at 8.56 am on the same day .

In relation to point 6 of your requests [REDACTED] I draw your attention to my email titled private and confidential dated 22nd March at 3.06pm (attached to this email) wherein I noted the fact [REDACTED] and identified the appropriate and necessary course of action of seeking the leave of Council for being absent from Council for whatever period you seek . (This advice was also sent to Cr Bawden on the basis of your email advice to me that the Councillor maybe having difficulty in receiving emails).

In relation to your request not to receive e-mails I cannot action such a request as you're still an Elected Member and i'm not in a position to exclude you from communications, as it would negate your ability to discharge your functions and duties as an elected representative.

[REDACTED]

[REDACTED]

As per your advice yesterday Council noted your apologies for the Council meeting last night but I again reiterate your need to seek the approval of Council for granting you leave of absence .

Regards John

John Harry
Chief Executive Officer
D: 08 8406 8212
E: jharry@salisbury.sa.gov.au

34 Church Street, Salisbury, South Australia, 5108
P: 08 8406 8222
W: www.salisbury.sa.gov.au

From: Severina Burner <SBurner@salisbury.sa.gov.au>
Sent: Monday, 27 March 2023 8:56 AM
To: John Harry <JHarry@salisbury.sa.gov.au>
Subject: Re: Please forward to Mayor Aldridge

Dear John Harry

[Redacted]

[Redacted]

Action I require from you today are:

1. [Redacted]
 2. [Redacted]
 3. [Redacted]
 4. [Redacted]
 5. Please send apologies for the Council meeting tonight.
 6. Please action my request [Redacted] or at least 2 months.
 7. Please notify everyone else not to include me in their emails.
 8. [Redacted]
 9. [Redacted]
- [Redacted]

Kind Regards,

Get [Outlook for Android](#)

From: Severina Burner <sburner@salisbury.sa.gov.au>
Sent: Thursday, March 23, 2023 6:16:15 AM
To: John Harry <JHarry@salisbury.sa.gov.au>

Item C1 - Attachment 2 - Emails from the Chief Executive Officer to Cr Severina Burner

Subject: Please forward to Mayor Aldridge

Dear Mayor Aldridge

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Confidential

Item C1 - Attachment 2 - Emails from the Chief Executive Officer to Cr Severina Burner

From: Severina Burner
To: John Harry
Subject: Re: Follow up
Date: Wednesday, 1 March 2023 1:58:23 PM

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: [Redacted]
Sent: Wednesday, March 1, 2023 1:45:29 PM
To: Severina Burner <SBurner@salisbury.sa.gov.au>; John Harry <JHarry@salisbury.sa.gov.au>
Subject: RE: Follow up

Hi Severina,

[Redacted]

[Redacted]

Just click on the Teams link at the time of the start of the meeting, and you can then attend the briefing session online.

In relation to your leave request, Council can resolve to grant you leave of absence. You can email the CEO with such request and the duration (start and end date). If this is something you would be interested in, please advise and I will send you the details around this.

With kind regards,

[Redacted]
Manager Governance
Governance
[Redacted]

City of Salisbury
34 Church St, Salisbury, South Australia, 5108
P: 08 8406 8222
W: www.salisbury.sa.gov.au

Item C1 - Attachment 3 - Email from Administration to Cr Severina Burner

From: Severina Burner <SBurner@salisbury.sa.gov.au>
Sent: Wednesday, 1 March 2023 12:45 PM
To: John Harry <JHarry@salisbury.sa.gov.au>
 [REDACTED]
Subject: Follow up

Dear John and Rudi,

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Can someone also follow up on facilitating the meeting tonight from the safety of our own home?

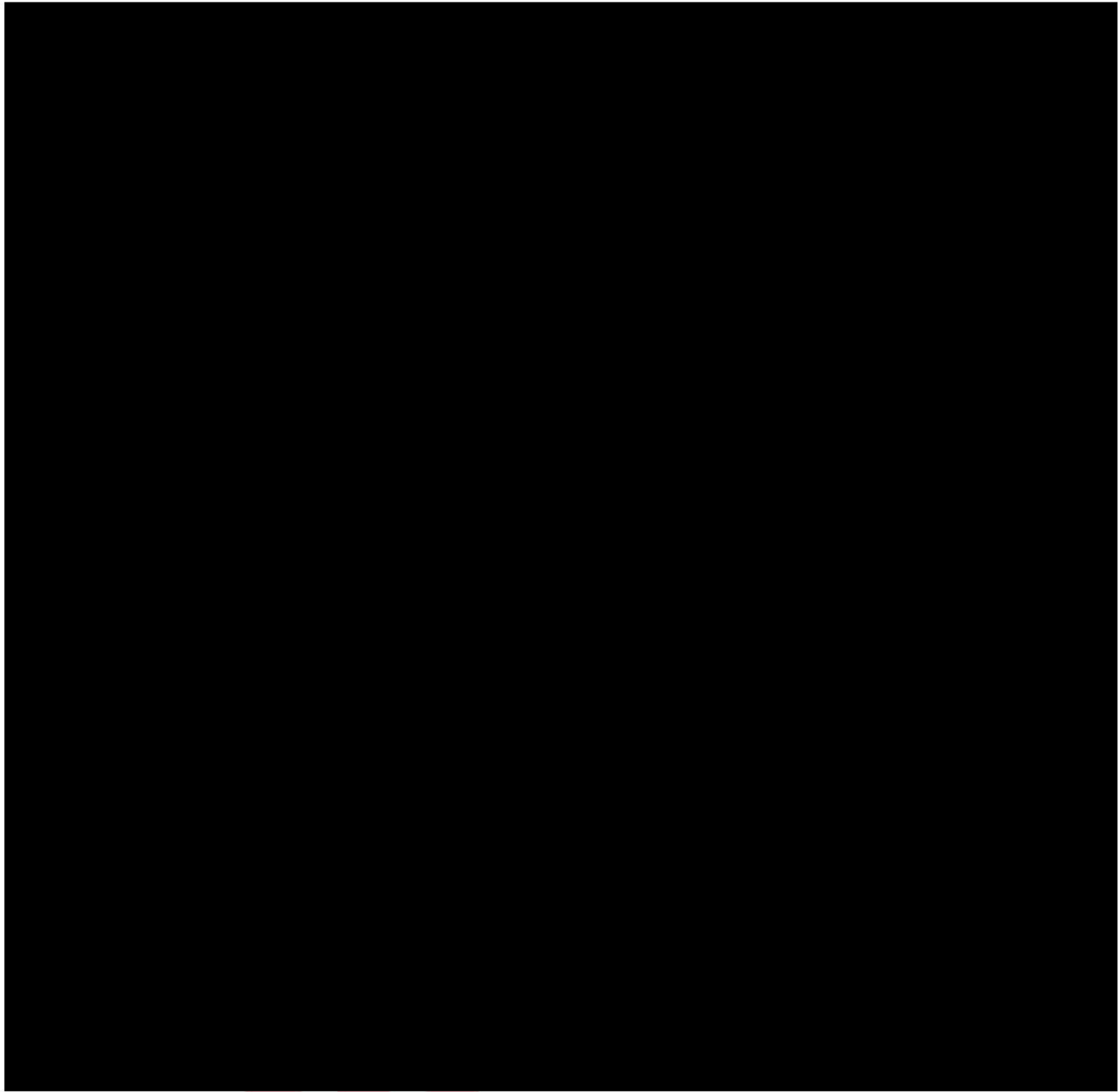
And, how do I formally seek [REDACTED] leave? [REDACTED]

Kind Regards

[REDACTED]

Confidential

Item C1 - Attachment 3 - Email from Administration to Cr Severina Burner



Part 2—Elections and polls to be held**Division 1—Elections****5—Periodic elections**

Elections to determine the membership of each council must be held in accordance with this Act at intervals of 4 years on the basis that voting at the elections will close at 5 pm on the second to last business day before the second Saturday of November in 2022, at 5 pm on the second to last business day before the second Saturday of November in 2026, and so on.

6—Supplementary elections

- (1) Subject to this section, if—
- (a) an election (other than a supplementary election) wholly or partially fails or is declared void; or
 - (b) a casual vacancy occurs in the office of a member of a council,
- a supplementary election will be held to fill the office or offices not filled by the election, or the office that has become vacant.
- (2) A supplementary election will not be held to fill a casual vacancy if—
- (a) the vacancy occurs within 12 months before polling day for—
 - (i) a periodic election; or
 - (ii) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy; or
 - (b) —
 - (i) the vacancy is for an office other than mayor; and
 - (ii) the area of the council is not divided into wards; and
 - (iii) —
 - (A) if the council has 9 or more offices (excluding the office of mayor)—there is no more than 1 other vacancy in the office of a member of the council; or
 - (B) in any other case—there is no other vacancy in the office of a member of the council; and
 - (iv) it is a policy of the council at the time the vacancy occurs that it will not fill such a casual vacancy or vacancies until the next general election; or
 - (c) the vacancy—
 - (i) is for an office of a member of the council, other than—
 - (A) mayor; or
 - (B) a member who was declared elected under section 25(1);
 - and

Local Government (Elections) Act 1999—7.7.2022

Part 2—Elections and polls to be held

Division 1—Elections

- (ii) occurs—
- (A) within 12 months after the conclusion of a periodic election or a designated supplementary election; or
 - (B) after the close of nominations for a designated supplementary election and before the conclusion of that election,
- (and can be filled in accordance with section 6A) (the *subsequent vacancy*).
- (3) However, if—
- (a) 1 or more vacancies have not been filled due to the operation of subsection (2)(b); and
 - (b) another vacancy occurs in the office of a member; and
 - (c) the other vacancy has not occurred within 12 months before polling day for—
 - (i) a periodic election; or
 - (ii) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy,
 then a supplementary election must be held to fill the vacant offices.
- (4) If—
- (a) a casual vacancy has occurred; and
 - (b) a supplementary election is not to be held by virtue of the operation of subsection (2)(b),
- any subsequent revocation or alteration of a policy of the council in force for the purposes of subsection (2)(b) cannot have effect so as to require the casual vacancy to be filled before the next general election.
- (4a) If, before the close of nominations for a designated supplementary election, another vacancy (the *subsequent vacancy*) occurs in the office of a member of the council (other than in the office of mayor), the subsequent vacancy may be filled by the designated supplementary election.
- (4b) If the subsequent vacancy is to be filled by the designated supplementary election—
- (a) the returning officer must give public notice that the vacancy will be filled by that election; and
 - (b) the material accompanying the voting papers to be issued under section 39 for the designated supplementary election must advise voters that the vacancy will be filled by that election.
- (5) Subject to this Act, a supplementary election must be held as soon as practicable after the occasion for the election arises.
- (6) The returning officer must, by public notice, fix a day as polling day for the supplementary election.

- (7) A notice under subsection (6) must also fix—
- (a) a day for the close of the voters roll for the purposes of the election (the *closing date*); and
 - (b) the time at which voting at the election will close on polling day.
- (8) In this section—
- designated supplementary election** means—
- (a) if the area of the council is not divided into wards—a supplementary election held to fill an office or offices of the council; or
 - (b) if the area of the council is divided into wards—a supplementary election held to fill an office or offices of the ward in which the subsequent vacancy has occurred.

6A—Filling vacancy in certain circumstances

- (1) If—
- (a) a casual vacancy has occurred; and
 - (b) a supplementary election is not to be held by virtue of the operation of section 6(2)(c),
- the vacancy will be filled in accordance with this section.
- (2) For the purposes of subsection (1)—
- (a) the returning officer must, in accordance with the regulations, determine the candidate—
 - (i) in the most recent election for the relevant office; or
 - (ii) if a supplementary election is not to be held by virtue of the operation of section 6(2)(c)(ii)(B)—in the designated supplementary election referred to in that subsubparagraph,
 to fill the vacancy (a *successful candidate*); and
 - (b) the returning officer must ascertain (in such manner as the returning officer thinks fit) whether the candidate who becomes a successful candidate—
 - (i) is still willing to be elected to the relevant office; and
 - (ii) is still eligible to be elected to the relevant office; and
 - (c) —
 - (i) if the person then indicates to the returning officer (within 1 month) that they are so willing and eligible, the returning officer will declare the person elected; or
 - (ii) if the person then indicates to the returning officer (within 1 month) that they are not willing or eligible, or the person does not respond to the returning officer within 1 month, the returning officer must determine the next successful candidate in accordance with the regulations and so on until the vacancy is filled or there are no candidates still willing and eligible to be elected to the relevant office.


Robert Balzola & Associates (Legal)

Mr Robert Balzola
Grad Cert Arts (Theol)
Grad Dip Leg Prac; Grad Dip Mil Law
B.Ec LLB LLM MA (Theol)

Level 8 25 Restwell Street
 BANKSTOWN NSW 2200

MARN: 0108072
 ABN: 77 143 726 943
 MIA No.: 1423



Your reference: FXD/SXP/14409-511323/2382758
 Our reference: RB:SAL:798

Norman Waterhouse
 GPO Box 639
 ADELAIDE SA 5001

Attention: Felice D'Agostino
 By email: [REDACTED]

9 June 2023

**SUBMISSION
 CITY OF SALISBURY
 RESOLUTION 0358/2023**

Dear Ms D'Agostino,

**IN THE MATTER OF CITY OF SALISBURY COUNCIL – CR S BURNER
 SUBMISSION RESOLUTION 0358/2023**

Further to your instruction by letter dated 3 May 2023 directing 'Please direct all future correspondence in relation to these matters to this office'. We now direct this Submission to you for forwarding to your client the City of Salisbury for consideration and action.

We refer to your letter dated 6 June 2023 instructing:

'We advise that at the Special Council meeting on 6 June 2023, the Council resolved to adjourn consideration of the matters concerning its intention to remove your clients from office pursuant to Section 54(1)(d) of the *Local Government Act 1999* to accommodate your clients' request for an extension of time to make submissions to the Council to close of business Friday, 9 June 2023'

We refer to motion 0358/2023 carried by Council on 5 June 2023 extending the time for Cr Severina Burner to make submissions in respect of the business before the Council in considering Cr Burner's absence now scheduled for 13 June 2023.

Cr Burner instructs us to make the following submissions on her behalf such that the Council can consider the business before it.

T: (02) 9747 0050
 F: (02) 9743 0633

PO Box 255
 CROYDON NSW 2132


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Background

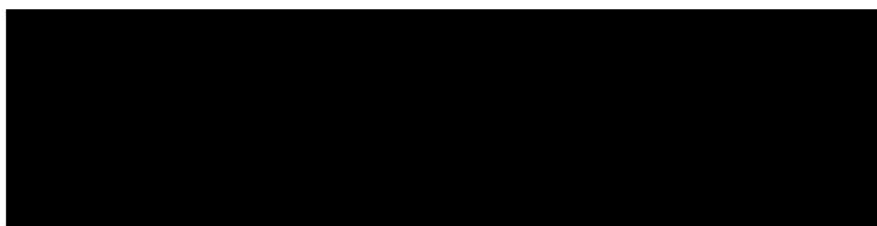
1. Cr Burner was elected as a councillor for the Central Ward in the 2022 local government elections. Cr Burner had never previously been a member of Council and while having a significant interest in civic affairs and her community had a broad understanding of the day-to-day role of an elected member including participation in ordinary meetings of council.
2. Cr Burner accepts that she participated in the relevant induction processes of the Council.
3. Cr Burner respectfully submits that in the consideration of the business before the Council it is incumbent of Council to consider the particular individual circumstances as they apply to Cr Burner as opposed to considering her position as against some hypothetical objective standard. Cr Burner respectfully submits that considering her position as against some kind of hypothetical objective standard would lead the Council into jurisdictional error in considering the exercise of its powers.
4. Having regard to Cr Burner's (relatively) limited experience as an elected member and that this motion is being considered by Council relatively early in the term of the new Council Cr Burner respectfully submits to the Council that a motion to expel Cr Burner would be unreasonably excessive having regard to this background and the matters set out below.

Alleged Absenteeism

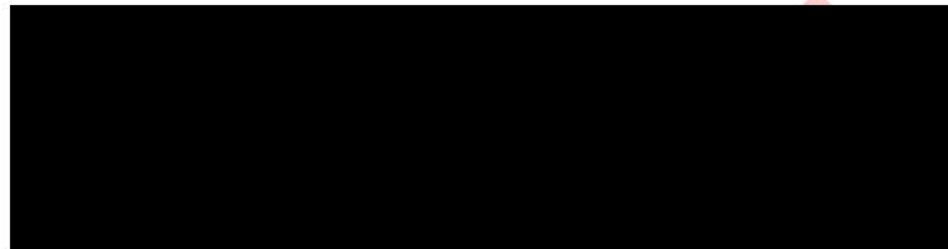
5. Cr Burner accepts that she was not physically present at the ordinary council meetings scheduled on 27 March 2023, 24 April 2023 and 22 May 2023.
6. Cr Burner however submits that she attended the 27 March 2023 meeting of Council, at least in part, by videolink and she was properly permitted to do so. In the circumstances she submits that Council lacks jurisdiction to expel her in any event.
7. However, Cr Burner's absence needs to be considered against the background of the environment comprised in the current council whereby Cr Burner is currently the subject of a number of investigations arising from complaints in respect of other members of council and are indeed the subject of materials on the agenda as comprised in meetings of the Council. Further, Cr Burner has ostensibly been briefed against in The Advertiser, ABC, 5AA and other news sources comprising information where Cr Burner was entitled to confidentiality as a matter of common law or alternatively arising from the confidentiality provisions of the *Local Government Act 1999*.

8. That is, fellow elected members have made comments personally, within council meetings and to the press passing comment on Cr Burner and her conduct as a councillor. Cr Burner accepts that the membership of the Council is fundamentally that of a political body and that by necessity there is a place for vigorous debate whereby views might be expressed, and colleagues treated differently than they might be in other workplaces.
9. However, notwithstanding that being an elected member is not the same as being an employee of an equivalent workforce, concerns and the potentially extraordinary consequences arising from perceptions of bullying and associated anxieties are well known along with their consequential impact on mental health.
10. Cr Burner has communicated to the Council by way of correspondence addressed to Mayor Aldrige and the Chief Executive Officer (and acting Chief Executive Officer) noting the toll the present environment surrounding the early months of the present Council. Indeed, the Mayor and Chief Executive Officer have acknowledged the impacts on Cr Burner's mental health arising from the environment surrounding the present council and referred her to appropriate mental health support services on at least 28 February 2023 and 22 March 2023.
11. Given the agenda items comprised in council meetings scheduled for 27 March 2023, 24 April 2023 and 22 May 2023 the Council, by way of the Mayor and Chief Executive Officer would or at least should have logically inferred that having appropriately recognised that Cr Burner was in need of appropriate mental health supports that the issues, which the Council was well aware of, would unnecessarily be exacerbated arising from her attendance at those meetings.
12. Respectfully, having regard to the material matters affecting Cr Burner which the Council was well aware of it was entirely unreasonable and inappropriate for Council to expect Cr Burner's attendance at the relevant meetings. Plainly attendance would have been further detrimental to Cr Burner's health (to which the Council professed concern) and having regard to the substance of the Council's business inappropriate for Cr Burner's attendance in any event.
13. 

14.



15.



16.



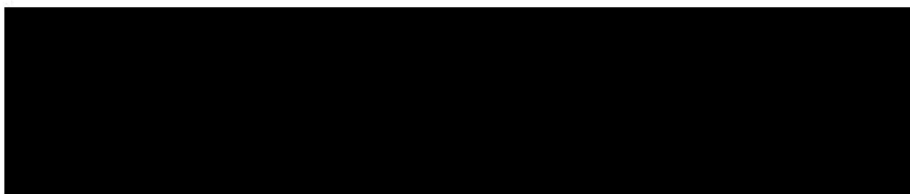
Legal Implications of Decision

17. It is trite law that where Council is conferred with a statutory power it must be exercised for the purposes for which it has been conferred.
18. The power to which the Council purports to exercise is comprised within section 54(1)(d) of the Act. That is, the power provides the Council with a discretionary power in which to remove a fellow council member from the Council where the member has been absent without leave from three or more consecutive ordinary meetings of Council.
19. The purpose of the power is clear. Electors at local government elections are entitled and expect their elected representatives to attend council meetings and deliberate on behalf of the people who elected them. The basis for three consecutive absences reflecting a “trigger” is that this would tend to indicate a councillor who is unwilling or unable to adequately represent their electorate such that those electors are robbed of their democratic voice.²
20. In other words, the power exists to ensure that electors are represented in accordance with the *Local Government Act 1999* rather than as an arbitrary provision entitling Council to expel members at its mere whim.

¹ *Local Government Act 1999* s 75G(3).

² Compare and contrast to members of the previous council who were frequent apologues.

21.



22. The use of Council's power, in all of the circumstances, would be contrary to the purpose to which parliament has conveyed the power. That is, Council would not be expelling a member unwilling or unable to represent their electors. Cr Burner stands, today, an elected member of the central ward, willing and able to represent its community. In all of the circumstances, it goes without saying that the exercise of power in the manner contemplated would be contrary to the purpose of for which it was conveyed.

Members to participate in decision making process

23. Consistent that Council may only exercise the power for which it was conveyed it is plain that councillors cannot exercise any power to expel arising from personal or political difference.
24. Noting the regrettable environment of the present council and the somewhat extraordinary personal and political statements which have been directed at Cr Burner we respectfully note that many elected members are in a position where a fair-minded lay observer, approaching the matter objectively, might entertain a reasonable apprehension that the decision-maker (being the elected members) might not bring an open mind to the consideration of the agenda items.⁴
25. In the event where elected members who have made derisive personal and political statements in the chamber or media were to participate in the decision-making process in a manner that was averse to Cr Burner we respectfully consider that this would lead the Council into judicially reviewable error.
26. This would lead to embarrassing and regrettable proceedings where matters (including ostensible breaches of common law duties of confidentiality and the confidentiality provisions of the Act) would necessarily be investigated in judicial proceedings.
27. Plainly this is not in the interests of the Council as a body corpus, the elected members, or the City of Salisbury.

³ Of which the Mayor and Chief Executive Officer are in significant receipt of correspondence of same. Further note the contents of the apologies received by Council prior to the concerned meetings expressly referencing Cr Burner's concern as to her mental health.

⁴ *Kirby v Dental Council of NSW* [2018] NSWSC 1869.

28. As such, we respectfully urge the elected members to carefully consider their positions in respect of the agenda item and the propriety of their participation in the decision-making process.

Proposed Resolution

29. Cr Burner regrets the environment and atmosphere that has transpired in the first six months of the new council. Further, Cr Burner does not wish to individually apportion blame in respect of the prevailing environment and accepts that, if she had her time again, she would have dealt with matters differently or approached them in a different way.
30. In the circumstances, Cr Burner considers that the agenda item provides for an opportune circuit breaker whereby the tension and animosity arising from the environment of the present council is put behind, and the elected members can work together collectively and collaboratively to enhance the City of Salisbury and enrich the civic lives of their citizens.
31. This presents an opportunity for the Council to move past childish taunting and bullying over differences in ideology and expression but to focus as a collective as to how it may best serve its electors. As such, in all of the circumstances, Cr Burner submits that an appropriate resolution of Council would be as follows:

The Council

32. Notes receipts of the submissions on behalf of Cr Burner by Robert Balzola and Associates and dated 9 June 2023.
33. Notes that Cr Burner has not been present at three consecutive ordinary council meetings namely 27 March 2023, 24 April 2023 and 22 May 2023.
34. Reaffirms the importance of elected members attending Council Meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.
35. Notes Cr Burner's desire to attend and respectfully participate in Council meetings.
36. Reaffirms the Council's desire to conduct meetings of Council and all other Council business in an environment free from bullying or harassment to enable the orderly conduct of the Council's business.

Rights Reserved

37. For the avoidance of doubt Cr Burner reserves all of her rights including to tender this correspondence in future proceedings as necessary.

Yours faithfully,

Robert Balzola

Robert Balzola

Confidential


Robert Balzola & Associates (Legal)

Mr Robert Balzola
Grad Cert Arts (Theol)
Grad Dip Leg Prac; Grad Dip Mil Law
B.Ec LLB LLM MA (Theol)

Level 8 25 Restwell Street
 BANKSTOWN NSW 2200

MARN: 0108072
ABN: 77 143 726 943
MIA No.: 1423



Your reference:
 Our reference: RB:SAL:798

Norman Waterhouse
 GPO Box 639
 ADELAIDE SA 5001

Attention: Felice D'Agostino
 [REDACTED]

6 June 2023

Dear Ms D'Agostino,

**IN THE MATTER OF CITY OF SALISBURY COUNCIL
 SPECIAL RESOLUTIONS FOR CONSIDERATION THIS EVENING**

We act for Councillors Bawden and Burner in respect of the proposed special resolution (copy attached). Please confirm whether you will accept service of this letter on behalf of your client in light of your previous instructions that all communications to City of Salisbury be first served upon your practice.

We note that Council purported to provide a deadline in respect of submissions as to the matter the subject of the special resolution which has passed.

Notwithstanding that the deadline has passed, Councillors Bawden and Burner each would like to make submissions in respect of the special resolution to be considered by the Council tonight and request an extension of time in which to make those submissions to close of business **Friday 6 June 2023**.

We accept that this would necessitate an adjournment of tonight's meeting for a week.

Councillors Bawden and Burner have instructed me to brief counsel with expertise in respect of the subject matter and I have subsequently briefed said counsel.

[REDACTED]
 F: (02) 9743 0633
 [REDACTED]

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We are concerned that if Council were to act in respect of the special resolution in a manner contrary to the interests of our client it would be doing so in breach of relevant provisions of the Local Government Act 1999 such that our clients would have to apply urgently to the Supreme Court of South Australia seeking injunctive and other relief.

As such, in the interests of saving both our clients and the council the costs and inconvenience of litigation it would be better to permit our clients to have the opportunity to make a proper submission to Council such that Council can consider their submission.

Yours faithfully,

Robert Balzola

Robert Balzola

Confidential

From: Felice D'Agostino
To: [REDACTED]
Subject: FW: ERRATA: [798] Crs S Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant
Date: Monday, 5 June 2023 4:35:50 PM
Attachments: image001.png
[\[798\] Bawden + Burner Ltr Salisbury re absenteeism Salisbury CC 050623.pdf](#)
[05062023-Special-Council-Meeting-Agenda-Confidential-Redacted.pdf](#)
Importance: High
Sensitivity: Confidential

Please note error in letter from Mr Balzola as set out below.

Kind regards,

Felice D'Agostino

Principal



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From: Robert Balzola <Robert.Balzola@balzola.com.au>
Sent: Monday, June 5, 2023, 4:19 PM
To: [REDACTED] Norman Waterhouse
 <normans@normans.com.au>
Subject: ERRATA: [798] Crs S Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant

ERRATA

Sentence reads '**Friday, 9 June 2023**', not 6 June 2023.

Sincerely,
Robert Balzola

From: Robert Balzola
Sent: Monday, June 5, 2023 4:44 PM
To: [REDACTED]
 'normans@normans.com.au', <normans@normans.com.au>
Subject: [798] Crs S Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant

Atth: Ms D'Agostino,

We act for Crs Severina Burner and Grace Bawden, City of Salisbury.

Attach please find out letter date instant. We further attach copy of City of Salisbury Special

Council Meeting Agenda for this evening.

Sincerely,
Robert Balzola

Robert Balzola and Associates (Legal) Pty Ltd
Regus Flinders Centre
Level B 25 Restwell Street
BANKSTOWN NSW 2200

[A.C.N. 143 726 943]

MARN 0108072

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Confidential

From: [Severina, Burner](#)
To: [Cr Burner Requests](#)
CC: [REDACTED]
Subject: Tonights Special Meeting
Date: Monday, 5 June 2023 4:48:16 PM
Attachments: [\[798\] Bawden - Cr Burner Ltr Salisbury re absenteeism Salisbury CC 050623.pdf](#)

Dear Mayor Aldridge

Please find the attached letter from our lawyer, Robert Balzola (note, due to urgency, the date of the letter should read today's date and as below, the correction which should read 9 June 2023).

Furthermore, please accept apologies for myself and Grace Bawden (just in case she can't get through to you).

Kind Regards

ERRATA: [798] Crs S. Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant Inbox



Robert Balzola via [robert...](#)

4:19 PM (15 minutes ago)



ERRATA

Sentence reads '**Friday, 9 June 2023**', not 6 June 2023.

Sincerely,
Robert Balzola

From: Robert Balzola
Sent: Monday, June 5, 2023 4:44 PM
To: [REDACTED];
'normans@normans.com.au' <normans@normans.com.au>
Subject: [798] Crs S Burner and G Bawden: City of Salisbury Council
Absenteeism Resolutions to be determined instant

Attn: Ms D'Agostino,

We act for Crs Severina Burner and Grace Bawden, City of Salisbury.

Attach please find out letter date instant. We further attach copy of City of Salisbury Special Council Meeting Agenda for this evening.

Sincerely,
Robert Balzola

Robert Balzola and Associates (Legal) Pty Ltd
Regus Flinders Centre
Level 9 25 Restwell Street
BANKSTOWN NSW 2200

[A.C.N. 143 726 943]

MARN 0108072

Liability limited by a scheme approved under Professional Standards
Legislation

Cr Severina Burner

Elected Member

M: 0433 393 298 | WK: 08 8406 8222

E: SBurner@salisbury.sa.gov.au

</style="font-style">

Attendance Information – Cr S Burner

November 2022	Cr S Burner
28 November 2022 Council (first meeting) 7:09pm – 8:19pm	Present
December 2022	Cr S Burner
5 December 2022 CEO Briefing/Workshop 6:30pm – 7:50pm	Present
<i>*No Committee meetings held in December 2022</i>	
19 December 2022 Council 6:30pm – 8:39pm	Partially present from 6.36pm to end of meeting.
January 2023	Cr S Burner
<i>*No CEO Briefing/Workshop held in January 2023</i>	
23 January 2023 Special Council 6:15pm – 6:20pm	Present
23 January 2023 Policy & Planning 6:21pm – 8:19pm	Partially present: left at 8:00pm
23 January 2023 Finance & Corporate Services 8:20pm – 8:22pm	Absent:
23 January 2023 Urban Services 8:32pm – 9:26pm	Not a member
23 January 2023 Governance & Compliance 8:28pm – 8:42pm	Absent:
31 January 2023 Council 6:30pm – 11:16pm	Present
February 2023	Cr S Burner
20 February 2023 Confidential CEO Briefing/Workshop 6:11pm – 6:33pm	Partially present: from 6:26 pm
20 February 2023 Policy & Planning 6:36pm – 6:59pm	Present
20 February 2023 Finance & Corporate Services 7:02pm – 7:14pm	Present

February 2023 ... (cont'd)	Cr S Burner
20 February 2023 Urban Services: 7:27pm – 8:28pm	Not a member
20 February 2023 Governance & Compliance: 7:26pm – 8:14pm	Present
27 February 2023 Council 6:31pm – 11:16pm	Partially present: until 9.57pm
March 2023	Cr S Burner
1 March 2023 CEO Briefing/Workshop	Attended online via Teams VC
6 March 2023 CEO Briefing/Workshop	Attended online via Teams VC
8 March 2023 CEO Briefing/Workshop	Apology given
8 March 2023 Special Council 6:02pm – 6:52 pm	Apology given
20 March 2023 Policy & Planning: 6:32pm – 6:59pm	Partial attendance. online via Teams VC Left the meeting at 6.43 pm
20 March 2023 Finance & Corporate Services: 7:11pm – 7:56pm	Absent
20 March 2023 Urban Services: 8:08pm – 8:36pm	Not a member
20 March 2023 Governance & Compliance: 8:08pm – 8:11pm	Absent
27 March 2023 Council 6:30pm – 10:50pm	Apology given
29 March 2023 CEO Briefing/Workshop 6:40pm-8:00pm	Unable to attend due to [REDACTED] [REDACTED]

April 2023	Cr S Burner
<i>3 April 2023</i> CEO Briefing/Workshop Session	Unable to attend due to [REDACTED]
<i>17 April 2023</i> Policy and Planning: 6:32pm – 6:41pm	Apology given
<i>17 April 2023</i> Finance & Corporate Services: 6:42pm – 7:26pm	Apology given
<i>17 April 2023</i> Urban Services: 7:39pm – 8:49pm	Not a member
<i>17 April 2023</i> Governance & Compliance: 7:37pm – 8:10pm	Apology given
<i>24 April 2023</i> Council 6:33pm – 10:57pm	Absent
May 2023	Cr S Burner
<i>1 May 2023</i> CEO Briefing/Workshop	Unable to attend due to [REDACTED]
<i>15 May 2023</i> Finance & Corporate Services: 6:32pm – 6:56pm	Apology given
<i>15 May 2023</i> Urban Services: 7:07pm – 7:49pm	Not a member
<i>15 May 2023</i> Governance & Compliance: 7:05pm – 7:17pm	Apology given
<i>22 May 2023</i> Council 6:34pm – 9:23pm	Apology given
<i>29 May 2023</i> Special Council Meeting: 6:30pm – 6:37pm	Absent
June 2023	Cr S Burner
<i>5 June 2023</i> Special Council Meeting: 6:30 – 6:50pm	Apology given

ITEM	C2
	SPECIAL COUNCIL
DATE	13 June 2023
HEADING	Absenteeism Cr Grace Bawden
AUTHOR	John Harry, Chief Executive Officer, CEO and Governance
CITY PLAN LINKS	4.2 We deliver quality outcomes that meet the needs of our community

SUMMARY

At its special meeting on 29 May 2023, Council resolved that it intended to exercise its power under section 54(1)(d) of the *Local Government Act 1999* to remove Cr Grace Bawden from office as a member of the Council, on the grounds that Cr Grace Bawden has been absent from three (3) consecutive ordinary Council meetings without the leave of the Council. This would be subject to the receipt and consideration of any submissions from Cr Grace Bawden to be received by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the *Local Government Act 1999* to remove her from office as a member of the Council. A request for an extension of time until close of business 9 June 2023 was received and granted by resolution on 5 June 2023. This report supports Council's further consideration of this matter, presents the submission received on 9 June 2023 and the options and the next steps depending on the decision of Council.

RECOMMENDATION

That Council:

EITHER (option1)

1. Having considered report and all attachments to that report for Item C2, titled Absenteeism Cr Grace Bawden, 13 June 2023 Special Meeting of the Council:
 - 1.1. Notes that Cr Grace Bawden has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
 - 1.2 Notes the submissions received from Cr Grace Bawden on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C2, Special Council, 13 June 2023].
 - 1.3 Reminds Cr Grace Bawden of the importance of attending Council meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.

OR (option 2)

1. Having considered the report and all attachments to that report for Item C2, titled Absenteeism Cr Grace Bawden, 13 June 2023 Special Meeting of the Council:
 - 1.1 Notes that Cr Grace Bawden has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
 - 1.2 Notes the submissions received from Cr Grace Bawden on 9 June 2023 [Attachment 6, Item no C2, Special Council, 13 June 2023]
 - 1.3 Exercises its power under section 54(1)(d) of the *Local Government Act 1999* to remove Cr Grace Bawden from office as a member of the Council with immediate effect, on the grounds that Cr Grace Bawden has been absent for three (3) consecutive ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council.
 - 1.4 Requests the Mayor and the Chief Executive Officer to notify the Electoral Commission of South Australia of this resolution.
 - 1.5 Requests the Mayor and the Chief Executive Officer to notify the Minister for Local Government of this resolution.
 - 1.6 Requests the Mayor to notify Ms Grace Bawden of this resolution and requests the Chief Executive Officer to organise for all Council owned assets issued to Ms Grace Bawden to assist her in performing or discharging her official functions and duties as a member of the Council be returned to Council.
2. Orders that, pursuant to Section 91(7) of the *Local Government Act 1999*, paragraphs 3.10, 3.11 and 3.12 and the associated paragraph heading, and paragraphs 3.19 and 3.27 of the report for item C2, titled Absenteeism Cr Grace Bawden, 13 June 2023 Special Council meeting, Attachments 3 and 4 to the aforementioned report and paragraphs numbered 6, 8, 10, 13 up to and including 16 of the submissions of Cr Bawden set out in the letter from Robert Balzola & Associates dated 9 June 2023 at Attachment 6 will remain confidential and not available for public inspection until 30 June 2024 on the grounds that the identified parts of the report and attachments contain information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person (living or dead).
3. Delegates, pursuant to Section 91(9)(c) of the *Local Government Act 1999*, the power under Section 91(7)(a)&(b) of the *Local Government Act 1999* to revoke the order set out in paragraph 2 of this resolution in full or in part at any time to the Chief Executive Officer.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Letter to Cr Grace Bawden seeking submission by 2 June 2023 12pm
2. E-mails from Chief Executive Officer to Cr Grace Bawden
3. Certificate 1 Cr Grace Bawden
4. Certificate 2 Cr Grace Bawden

5. Extract Local Government (Elections) Act 1999
6. Submissions Cr Grace Bawden 9 June 2023
7. Attendance Table
8. E-mail Robert Balzola & Associates - Errata
9. Letter Robert Balzola & Associates

1. BACKGROUND

- 1.1 Council resolved at its 29 May 2023 Council meeting:

That Council:

1. Notes the absence of Cr Severina Burner and Cr Grace Bawden for the third consecutive ordinary Council meeting, taking the total months of absence to three months;
2. Notes that Elected Members are to participate in the deliberations and activities of the Council pursuant to s59(1)(v) of the Local Government Act 1999;
3. Notes that Elected Members are aware of section 54(1)(d) of the Local Government Act 1999, and in the specific circumstances, Cr Grace Bawden and Cr Severina Burner were explicitly reminded of this statutory provision;
4. Requests the Mayor and CEO to write to Cr Grace Bawden and Cr Severina Burner, seeking a written explanation of their ongoing absence from Council meetings, by 12pm, 29 May 2023, and advising them that their response will form part of a public report to Council for further consideration.

- 1.2 Following a further motion, it was then also resolved that Council:

1. Requests that administration provide a report to Council as part of the report considering the response around absenteeism to also include the total number of CEO Briefing sessions, Sub Committee Meetings, Committee Meetings and Council meetings that Cr Severina Burner and Cr Grace Bawden attended and the duration of time that they partially attended.
2. The report to also include the amount of allowance that both Cr Severina Burner and Cr Grace Bawden have received to date.

- 1.3 Subsequently, a special Council meeting was called for 29 May 2023, 6.30pm to consider the matter. Cr Grace Bawden was absent from this meeting.

- 1.4 The Administration report presented (item C1, Special Council, 29 May 2023) provided further information, to inform Council's consideration.

- 1.5 Elected Member allowances are determined by the Remuneration Tribunal (Determination number 2, 2022) and for City of Salisbury are set at \$25,838 per annum for an Elected Member.

- 1.6 Following the last monthly payment on 1st of June 2023, Cr Grace Bawden received a total allowance of \$13,923.83 each.

- 1.7 At its special meeting on 29 May 2023, Council resolved that it:

1. Notes the information requested at its 22 May 2023 meeting, included in this report (Council, 29 May 2023, item C1).

2. *Notes no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023, on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.*

1.8 A further resolution then followed:

That Council, having considered the confidential report item no C1 titled "Consideration of Elected Members' Absence pursuant to section 54(1)(d) of the Local Government Act 1999 - Cr Grace Bawden and Cr Severina Burner", 29 May 2023 Special Meeting of the Council,

1. *Notes that no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023 on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.*
2. *Determines that it intends to exercise its power under section 54(1)(d) of the Local Government Act 1999 to remove Cr Severina Burner and Cr Grace Bawden from office as a member of the Council, on the grounds that Cr Severina Burner and Cr Grace Bawden have been absent for three (3) consecutive ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council subject to the receipt and consideration of further submissions from Cr Severina Burner and Cr Grace Bawden.*
3. *Requests the Mayor and Acting Chief Executive Officer to write to Cr Severina Burner and Cr Grace Bawden seeking a submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove them from office as a member of the Council.*
4. *Calls a Special Council meeting to occur on Monday 5 June 2023 6.30pm to consider any submissions received as a result of part 3 above, and whether to exercise its powers under section 54(1)(d) of the Local Government Act 1999*

1.9 At its special meeting held 5 June 2023, Council resolved that it:

1. *Notes that no written explanation from Cr Grace Bawden was received by 29 May 2023, 12 pm or subsequently on her absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.*
2. *Notes that no written submissions to the Council were received by Friday 2 June 2023, 12pm or subsequently as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove Cr Grace Bawden from office as a member of the Council.*
3. *Defers items C2 until a further special meeting to be held on Tuesday 13 June 2023, 6.30pm to accommodate a request received 5 June 2023, 4.32pm, from Cr Grace Bawden's legal representative Robert Balzola and Associates to put a submission forward by close of business Friday 9 June 2023 as requested by Legal representative Robert Balzola and Associates to allow for Cr Grace Bawden to put in a submission by COB Friday 9 June 2023.*

1.10 The communication from Cr Bawden's legal representative, Robert Balzola and Associates, is included in Attachments 8 and 9.

2. CONSULTATION / COMMUNICATION

2.1 External

- 2.1.1 Norman Waterhouse Lawyers
- 2.1.2 Office of the Minister for Local Government
- 2.1.3 Electoral Commission South Australia

3. REPORT

Notification of intention to exercise power in section 54(1)(d) of the Local Government Act 1999

- 3.1 An e-mail and letter via courier (Attachment 1) were sent to Cr Grace Bawden on 30 May 2023 by the Mayor and Acting Chief Executive Officer, in execution of the Council resolution, to seek a submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the *Local Government Act 1999* (the Act) to remove Cr Grace Bawden from office as a member of the Council.
- 3.2 A delivery receipt was obtained from the courier confirming delivery of the letters referenced in paragraph 3.1 above, in the morning on 30 May 2023.
- 3.3 No submissions were received by the due date of Friday 2 June 2023, 12pm.
- 3.4 On Monday 5 June 2023, Council's solicitors received a letter from Cr Bawden's solicitor requesting an extension of time to make submissions to the Council by close of business Friday 9 June 2023. The Council granted the extension as requested.
- 3.5 Submissions were received from Cr Grace Bawden by Council's solicitors on Friday 9 June 2023 (Attachment 6).

Statutory provisions

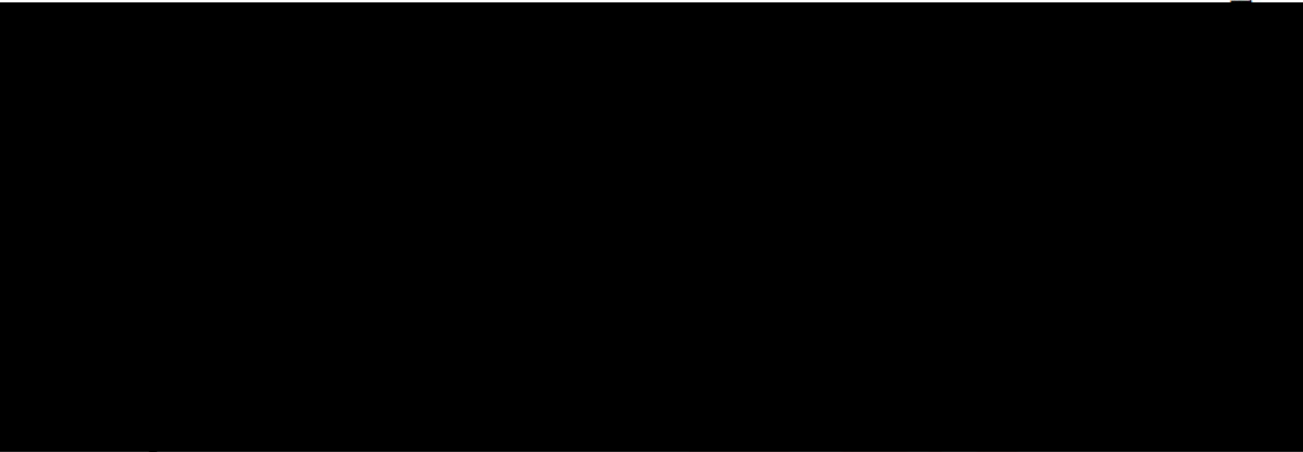
- 3.6 Pursuant to section 54(1)(d) of the Act, the office of a member of the Council becomes vacant if the member is removed from office by the Council on the ground that he or she has been absent, without leave of the Council, from three or more consecutive ordinary meetings of the Council.
- 3.7 Leave of the Council to be absent from a Council meeting requires a decision by the Council to grant the member leave. It is a matter of discretion as to whether the Council grants leave or not.

Leave of Absence

- 3.8 Cr Grace Bawden was advised by the Chief Executive Officer of the process around requesting a leave of absence and the implications of being absent without leave of the Council for three or more consecutive ordinary meetings of the Council by e-mail on 16 March 2023, 22 March 2023 and 24 April 2023 (Attachment 2, as redacted to remove reference to personal/unrelated information). In addition, Cr Bawden was specifically and expressly advised that

submitting an apology for a meeting was not an application for a leave of absence and did not constitute a leave of absence.

- 3.9 Cr Grace Bawden did not apply for any leave of absence and the Council has not granted Cr Grace Bawden leave to be absent from any ordinary Council meeting. Cr Grace Bawden's attendance at meetings of the Council, Council committees and CEO briefings/workshops is listed in Attachment 7.



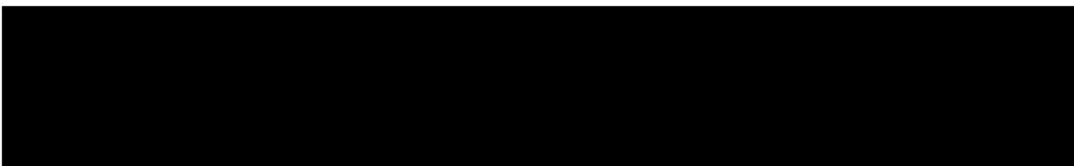
Section 8 Principles

- 3.13 Section 8 of the Act requires the Council to act to uphold and promote the observance of the principles set out therein in the performance of its roles and functions. The following specific principles are considered relevant to this matter:
- (a) provide open, responsive and accountable government;*
 - (b) be responsive to the needs, interest and aspirations of individuals and groups within its community;*
 - (g) manage its affairs in a way that emphasises the importance of service to the community;*
 - (h) seek to ensure that council resources are used fairly, effectively and efficiently and council services, facilities and programs are provided effectively and efficiently;*
 - (j) achieve and maintain standards of good public administration.*
- 3.14 Council members have a dual role as a member of the governing body of the Council and as a person elected to the Council. These roles encompass:
- 3.14.1 participating in the deliberations and activities of the Council;
 - 3.14.2 representing the interests of residents and ratepayers of the Council;
 - 3.14.3 providing community leadership and guidance; and
 - 3.14.4 facilitating communication between the community and the Council.
- 3.15 Section 59(1)(a)(viii) of the Act provides that one of the roles of members of the Council is to ensure, as far as practicable, that the principles set out in section 8 are observed.
- 3.16 Council members are accountable to their community for, amongst other things, ensuring they fulfill their roles. Council members receive an allowance in relation

to their office which, in part, recognises expenses and time associated with preparing for and attendance at Council meetings.

- 3.17 Attendance at Council meetings is essential to a Council member fulfilling their role effectively and being accountable to their community. A member who does not consistently attend Council meetings is less able to effectively represent the interests of individuals and groups within its community at least to the extent to which those interests and affected by the deliberations and decisions at Council meetings. A member who consistently does not attend Council meetings is less able to contribute to ensuring the Council achieves and maintains standards of good public administration. The requirement to obtain leave of the Council to be absent is evidence of the importance placed on Council meeting attendance.

Submission Received 9 June 2023 from Cr Grace Bawden

- 3.18 Cr Grace Bawden submits that in considering whether or not to exercise its power in Section 54(1)(d) of the Act to remove her from office as a member of the Council, the Council ought to consider her "*particular individual circumstances*". Cr Grace Bawden refers to her (relatively) limited experience as a Council member and that this matter is being considered "*early in the term of the new Council*".
- 3.19 
- 3.20 It may be that the Council can grant a leave of absence retrospectively. However, there is no entitlement to a leave of absence. It is in the Council's discretion as to whether it grants a leave of absence.
- 3.21 By way of explanation for not applying for leave, Cr Grace Bawden submits that she "*has been unable to access the City of Salisbury Microsoft exchange server for a number of months. The effect of this is that Cr Bawden never received the advice of the Chief Executive as to the statutory process for applying for a leave of absence in accordance with the Act*". It is not clear if Cr Grace Bawden is stating that she did not know about the process for applying for a leave of absence and the potential consequences of being absent from ordinary Council meetings without leave. The submissions only state that Cr Grace Bawden did not receive the Chief Executive Officer's emails. It is noted that Cr Severina Burner emailed the Chief Executive Officer on 8 March 2023 submitting an apology for herself and Cr Grace Bawden. On 9 March 2023 the Chief Executive Officer sent an email to both Councillors providing advice regarding the process for applying for a leave of absence and the potential consequences of being absent from ordinary Council meetings without leave.
- 3.22 In relation to Cr Grace Bawden's assertion that she has been unable to access the Council's Microsoft exchange server, this has been a matter that Council staff have sought to clarify with her on numerous occasions. From the start of her term, Cr Grace Bawden continued to verbally raise 'IT issues' which were apparently preventing her access to her Council e-mail. Numerous attempts were made by Council administration to speak with Cr Grace Bawden but phone calls were not

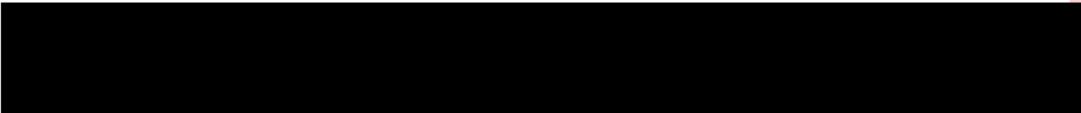
returned. Below is a list of the attempts made by Council staff to make contact with Cr Grace Bawden:

- 3rd Feb 9.18 am No answer, left message.
- 3rd Feb 2.54pm No answer, left message.
- 6th Feb 10.24am No answer, left message.
- 7th Feb 8.48am No answer left message.
- 8th Feb 10.15am No answer, left message.
- 8th Feb 03:34 pm No answer, left message.
- 8th Feb Sent email from Service Desk ticket #INC-5702.
- 10th Feb 11.43am No answer, left message.
- 13th Feb 1:15pm No answer, left message.
- 14th Feb 12.07pm got hold of Cr Grace Bawden but she asked for a call back the following day. Made a time to call at 2pm on 15th.
- 15th Feb called at 2.08pm No answer, left message.
- 15th Feb called at 2.30pm No answer, left message.
- 15th Feb, called at 3.25pm No answer, left message.
- 16th Feb, called at 10.48am No answer, left message.
- 17th Feb called at 10.36 am No answer, left message.
- 20th Feb, called at 12.32pm No answer, left message.
- 21st Feb, called at 1.51pm No answer, left message.
- 28 Feb, called at 1.59pm No answer, left message.
- 28 Feb, called at 3.29pm No answer, left message.
- the Chief Executive Officer's Personal Assistant also left a message on Cr Grace Bawden's phone on 2 February 2023 requesting to call back to set up a time to meet with the Chief Executive Officer in person, No response was received.
- The Manager Governance verbally asked Cr Bawden to make contact with him on various occasions before and after Council or Committee meetings but Cr Grace Bawden did not get in contact.

3.23 Cr Grace Bawden did email the Chief Executive Officer on 24 April submitting an apology for the 24 April Council meeting.

3.24 Cr Grace Bawden submits that her absence needs to be considered against the background of the investigations of the complaints made against her alleging breaches of the Behavioural Standards for Council Members (the Complaint Matters) and considered by the Council at its meetings on 27 March 2023, 24 April 2023 and 22 May 2023. Further Cr Grace Bawden alleges confidential information has been disclosed to the media and other Council members have made comments about her and her conduct as a Councillor in Council meetings and to the media which she submits also forms part of the background to her absence from Council meetings. Cr Grace Bawden states that this 'background' has had an adverse effect on her health which according to Cr Grace Bawden the Mayor and Chief Executive Officer have acknowledged. Further Cr Grace Bawden submits that in light of the Council's consideration at the 27 March 2023, 24 April 2023 and 22 May 2023 ordinary Council meetings of the Complaint Matters the Council ought to have inferred that her attendance at those meetings would have been further detrimental to her health and it was "entirely

unreasonable and inappropriate for the Council to expect Cr Bawden's attendance" at those meetings.

- 3.25 The basis for Cr Grace Bawden's statement that there has been an acknowledgment of the impacts on her health and her need for mental health support is not clear. Cr Grace Bawden has been advised that she is able to access the Employee Assistance Program and this is a standard response provided to any employee or Council Member who states they feel their mental health is being affected.
- 3.26 Cr Grace Bawden's submissions do not explain or address her failure to apply for leave to be absent on three occasions. As noted, above advice was provided to Cr Grace Bawden on three occasions of the process to apply for leave (Attachment 2) and that submitting an apology was not an application for leave and also did not constitute leave for her to be absent from Council meetings.
- 3.27 
- 3.28 The submission that it would have been inappropriate for Cr Grace Bawden to attend the Council meetings she missed due to the Complaint Matters being on the agenda for those meetings also does not explain or address her failure to apply for leave. In addition, the Complaint Matters were one item on each of the relevant meeting agendas which included a significant number of other items of business for Council's consideration.
- 3.29 In her submissions, Cr Grace Bawden also alleges "*...many elected members are in a position where a fair-minded lay observer, approaching the matter objectively, might entertain a reasonable apprehension that the decision-maker (being the elected members) might not bring an open mind to the consideration of the agenda items. Cr Grace Bawden alleges that other Council members have made "derisive personal and political statements in the chamber [and] media..." but does not provide examples or evidence to support this allegation.*

Next Steps:

- 3.30 Council can consider this matter further and may resolve:

Option 1: Council does not exercise its powers under section 54(1)(d) of the Local Government Act 1999

That Council, having considered the report and all attachments to that report for Item C2, titled Absenteeism Cr Grace Bawden, 13 June 2023 Special Meeting of the Council:

1. Notes that Cr Grace Bawden has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
2. Notes the submissions received from Cr Grace Bawden on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C2, Special Council, 13 June 2023]

3. Reminds Cr Grace Bawden of the importance of attending Council meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.

Option 2: Council determines to exercise its powers under section 54(1)(d) of the *Local Government Act 1999*

That Council, having considered the report and all attachments to that report for Item C2, titled Absenteeism Cr Grace Bawden, 13 June 2023 Special Meeting of the Council:

1. Notes that Cr Grace Bawden has been absent from three (3) consecutive ordinary Council meetings, namely 27 March 2023, 24 April 2023 and 22 May 2023, without leave of the Council.
2. Notes the submission received from Cr Grace Bawden on 9 June 2023 set out in the letter from Robert Balzola & Associates dated 9 June 2023 [Attachment 6, Item no C2, Special Council, 13 June 2023]
3. Exercises its power under section 54(1)(d) of the *Local Government Act 1999* to remove Cr Grace Bawden from office as a member of the Council with immediate effect, on the grounds that Cr Grace Bawden has been absent for three (3) consecutive ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council.
4. Requests the Mayor and the Chief Executive Officer to notify the Electoral Commission of South Australia of this resolution.
5. Requests the Mayor and the Chief Executive Officer to notify the Minister for Local Government of this resolution.
6. Requests the Mayor to notify Ms Grace Bawden of this resolution and requests the Chief Executive Officer to organise for all Council owned assets issued to Ms Grace Bawden to assist her in performing or discharging her official functions and duties as a member of the Council be returned to Council.

Vacancy

- 3.31 In the event Council resolves to remove a Council Member from office, an immediate vacancy would occur and the vacancy could be filled pursuant to section 6(2)(c) and in accordance with section 6A of the *Local Government (Elections) Act 1999* (Attachment 5).
- 3.32 A supplementary election may not necessarily need to be held and the vacancy may be able to be filled by the Returning Officer in accordance with regulation 3A of the *Local Government (Elections) Regulations 2010*.

4. CONCLUSION

- 4.1 Following the Council's decision at the Special Council meeting of 29 May 2023 and 5 June 2023, the Council is now considering whether or not to proceed with its intention to remove Cr Grace Bawden from office as a member of the Council, in consideration of the submissions received on 9 June 2023 – Attachment 6].



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30 May 2023

Cr Grace Bawden
[REDACTED]

BY COURIER AND EMAIL gbawden@salisbury.sa.gov.au

PRIVATE AND CONFIDENTIAL

Dear Cr Bawden

We refer to our letter and email both sent on the 23 May 2023 in regard to the resolution of Council at its 22 May 2023 meeting that sought a written response from you in relation to your absence from Council meetings by 12pm 29 May 2023.

We note that we had not received a response to this correspondence.

As such the Mayor determined to hold a Special Meeting of Council to be held at 6.30pm on the 29 May 2023, to which all Elected Members were invited as per the usual meeting notice process.

At this meeting Council considered the matter and resolved that it:

1. Notes the information requested at its 22 May 2023 meeting, included in this report (Council, 29 May 2023, item C1).
2. Notes no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023, on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.

Council subsequently resolved:

That Council, having considered the confidential report item no C1 titled "Consideration of Elected Members' Absence Pursuant to section 54(1)(d) of the Local Government Act 1999 - Cr Grace Bawden and Cr Severina Burner", at 29 May 2023 Special Meeting of the Council,

1. Notes that no written explanation from Cr Severina Burner nor Cr Grace Bawden has been received by 12pm 29 May 2023 on their absence from Council meetings on 27 March 2023, 24 April 2023 and 22 May 2023.
2. Determines that it intends to exercise its power under section 54(1)(d) of the Local Government Act 1999 to remove Cr Severina Burner and Cr Grace Bawden from office as a member of the Council, on the grounds that Cr Severina Burner and Cr Grace Bawden have been absent for three (3) consecutive Ordinary Council meetings (namely 27 March 2023, 24 April 2023 and 22 May 2023) without the leave of the Council subject to the receipt and consideration of further submissions from Cr Severina Burner and Cr Grace Bawden.
3. Requests the Mayor and Acting Chief Executive Officer to write to Cr Severina Burner and Cr Grace Bawden seeking a submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove them from office as a member of the Council.

4. Calls a Special Council meeting to occur on Monday 5 June 2023 6.30pm to consider any submissions received as a result of part 3 above, and whether to exercise its powers under section 54(1)(d) of the Local Government Act 1999

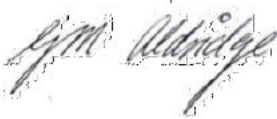
This letter is to advise you of these resolutions and specifically requesting your submission to the Council by Friday 2 June 2023, 12pm as to why the Council should not exercise its powers under section 54(1)(d) of the Local Government Act 1999 to remove you from office as a member of the Council.

Please note that a Special Meeting of Council has been scheduled for Monday 5 June 2023 at 6.30pm to consider any written submission received.

Subject to consideration of any written response, Council has determined that it intends to exercise its power under section 54(1)(d) to remove you from office as a member of the Council on the grounds that you have been absent for three (3) consecutive ordinary Council meetings (27 March 2023, 24 April 2023, and 22 May 2023), without the leave of Council.

Please do not hesitate to contact the Mayor or myself as the Acting CEO if you have any questions or need clarification on the resolution of Council and its implications.

Yours sincerely



Gillian Aldridge OAM
MAYOR



Charles Mansueto
ACTING CHIEF EXECUTIVE OFFICER

From: [Redacted] Chief of Police, [Redacted]
To: [Redacted]
CC: [Redacted]
Subject: [Redacted]
Date: Thursday, 26 March 2023, 1:43:33 PM
Attachments: [Redacted]

Dear Cr Bawden

Please find attached and below an email from myself in response to the email I have received from Cr Turner where she has sought information on behalf of yourself in relation to [Redacted]. The above provided below is equally relevant to you and I would be happy to provide you with the information again regarding [Redacted] should you require this.

I would appreciate it if you could please acknowledge receipt of this email.

Kind regards
 John

John Harry
 Chief Executive Officer
 01243 424110
j.harry@salisbury.gov.uk

35 Church Street, Salisbury, Wiltshire, BA1 1RN
 T: 01243 424110
 W: www.salisbury.gov.uk

From: John Harry
Sent: Thursday, 8 March 2023, 11:44:10
To: [Redacted]
CC: Gillian Aldridge, galdridge@salisbury.gov.uk; John Harry, jharry@salisbury.gov.uk; [Redacted]
Subject: RE: Apologies / Request for review
Importance: High

Dear Cr Bawden

I refer to your email being pending apologies for yourself and Cr Bawden indefinitely. Can you please clarify if you are indicating you will not be attending Council meetings, Council committee meetings, CIEC meetings and other information or working sessions indefinitely.

Please note that pursuant to section 54(3)(d) of the Local Government Act 1986 you may be removed from office by the Council on the ground that you have been absent, without leave of the Council, from three or more consecutive ordinary meetings of the Council. Providing an apology for a Council meeting does not constitute a leave of absence from the Council.

Can I suggest that if you are indeed intending not to attend Council meetings that you seek a leave of absence from the Council. You may request a leave of absence by putting your request in writing to me under the flagpost. If you do request a leave of absence this would be considered by the Council at the next ordinary meeting of the Council. Whilst I cannot guarantee the Council will consider I suggest if you do request a leave of absence that you specify a period of time you will be absent rather than indefinitely.

If Cr Bawden also intends to request a leave of absence it is necessary for Cr Bawden to make that request herself.

By way of a reminder I have enclosed my previous email to All Elected Members on the opportunity for you to access professional counselling services if so wish.

Please contact me if you have any queries.
 Regards
 John

John Harry
 Chief Executive Officer
 01243 424110
j.harry@salisbury.gov.uk

35 Church Street, Salisbury, Wiltshire, BA1 1RN
 T: 01243 424110
 W: www.salisbury.gov.uk

From: Steven Turner <stturner@salisbury.gov.uk>
Sent: Wednesday, 8 March 2023, 11:57:14
To: Gillian Aldridge, <galdridge@salisbury.gov.uk>; John Harry <jharry@salisbury.gov.uk>
Subject: Apologies

Dear Gillian and John

Please accept apologies from myself and Cr Bawden indefinitely.

We are both sending this email on to clarify anything to [Redacted] Bawden.

It is my wish to be present with council [Redacted] as regards to what I have [Redacted] [Redacted] at our last council meeting you choose to continue the [Redacted] [Redacted]

FOR THE RECORD...

I AM NOT [Redacted]

I HAVE NEVER BEEN [Redacted]

Regards

Cr: stturner@salisbury.gov.uk

From: [John Harry](#)
To: [Grace Bawden](#)
Subject: PRIVATE AND CONFIDENTIAL Cr Bawden
Date: Wednesday, 22 March 2023 3:05:00 PM
Attachments: [0020683EC42C230321114236.pdf](#)

Hi Councillor Bawden,

We have received [REDACTED].

I wish to reiterate you're able to access the Employee Assistance Program for counselling support should you wish.

Details of our EAP providers are:

Corporate Health Group (CHG)
 08 8352 9898 (business hours)
 0418 883 855 (after hours)
www.chg.net.au

ACCESS Programs
 08 8215 6799 (business hours)
 1300 667 700 (after hours)
www.accesssa.com.au

Cr Burner submitted on your behalf your expectation of Council to accept [REDACTED] (attached).

Please note you're not deemed to be in City of Salisbury employment and no [REDACTED] is required or requested.

As clarified before, Leave of Absence can be requested.

Pursuant to section 54(1)(d) of the Local Government Act 1999 you may be removed from office by the Council on the ground that you have been absent, without leave of the Council, from three or more consecutive ordinary meetings of the Council. Providing an apology for a Council meeting does not constitute a leave of absence from the Council. Therefore I suggest that if you are indeed intending not to attend Council meetings that you seek a leave of absence from the Council. You may request a leave of absence by putting your request in writing to me and/or the Mayor. If you do request a leave of absence this would be considered by the Council at the next ordinary meeting of the Council. Whilst I cannot pre-empt the Council's decision I suggest if you do request a leave of absence that you specify a period of time you will be absent.

If you're not intending to submit a leave of absence, and rather provide an apology at the meeting for being absent, please advise accordingly.

Failing this you will be listed as "absent".

I trust this clarifies.

With kind regards,
 John Harry

CEO

John Harry

Chief Executive Officer

D: 08 8406 8212

E: jharry@salisbury.sa.gov.au

34 Church Street, Salisbury, South Australia, 5108

P: 08 8406 8222

W: www.salisbury.sa.gov.au

Confidential

Item C2 - Attachment 2 - E-mails from Chief Executive Officer to Cr Grace Bawden

From: [John Harry](#)
To: [Grace Bawden](#)
Cc: [John Harry](#); [REDACTED]; [Gillian Aldridge](#); [REDACTED]
Subject: RE: [REDACTED] EMERGENCY
Date: Monday, 24 April 2023 11:59:36 AM
Attachments: PRIVATE AND CONFIDENTIAL Cr Bawden.msg
[BW Apologies Request for leave.msg](#)

Hi Grace,

I'm sorry to hear about your [REDACTED] and I hope the [REDACTED] [REDACTED]

I need to reiterate the advice I sent to you earlier (16 March 2023 and 22 March 2023 e-mail - attached) in relation to not being able to attend the Council meeting and offering apologies for non-attendance.

As I clarified earlier, please note you're not deemed to be in City of Salisbury employment and no such medical certificate is required or requested.

Please note that pursuant to section 54(1)(d) of the Local Government Act 1999 you may be removed from office by the Council on the ground that you have been absent, **without leave of the Council**, from three or more consecutive ordinary meetings of the Council. **Providing an apology for a Council meeting does not constitute a leave of absence from the Council.**

Therefore I suggest that if you are indeed intending not to attend Council meetings that you **seek a leave of absence from the Council**. You may request a leave of absence by putting your request in writing to me and/or the Mayor. If you do request a leave of absence this would be considered by the Council at the next ordinary meeting of the Council. Whilst I cannot pre-empt the Council's decision I suggest if you do request a leave of absence that you specify a period of time you will be absent.

Kind regards,
John

John Harry
 Chief Executive Officer
 P: 08 8406 8212
 E: jharry@salisbury.sa.gov.au

34 Church Street, Salisbury, South Australia, 5108
 P: 08 8406 8222
 W: www.salisbury.sa.gov.au

From: Grace Bawden <GBawden@salisbury.sa.gov.au>
Sent: Monday, 24 April 2023 9:58 AM
To: John Harry <JHarry@salisbury.sa.gov.au>
Subject: [REDACTED] EMERGENCY

Hi John

Just found out my [REDACTED] this afternoon urgently... I
won't be able to attend tonight because of this [REDACTED] ... send my apologies.
Thank you.

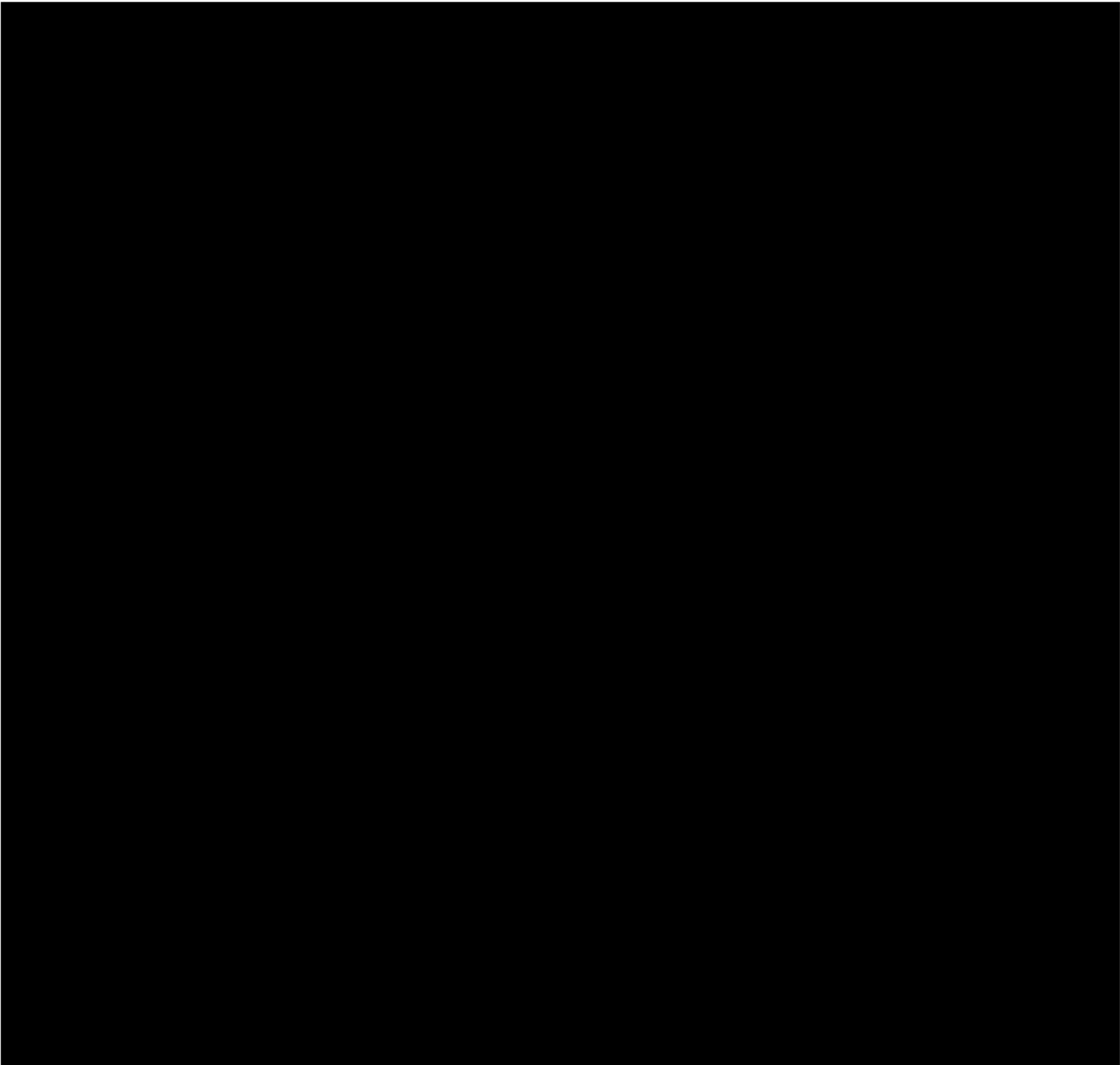
Also attached is my new [REDACTED] LEAVE CERTIFICATE from my Doctor..

Thanks,

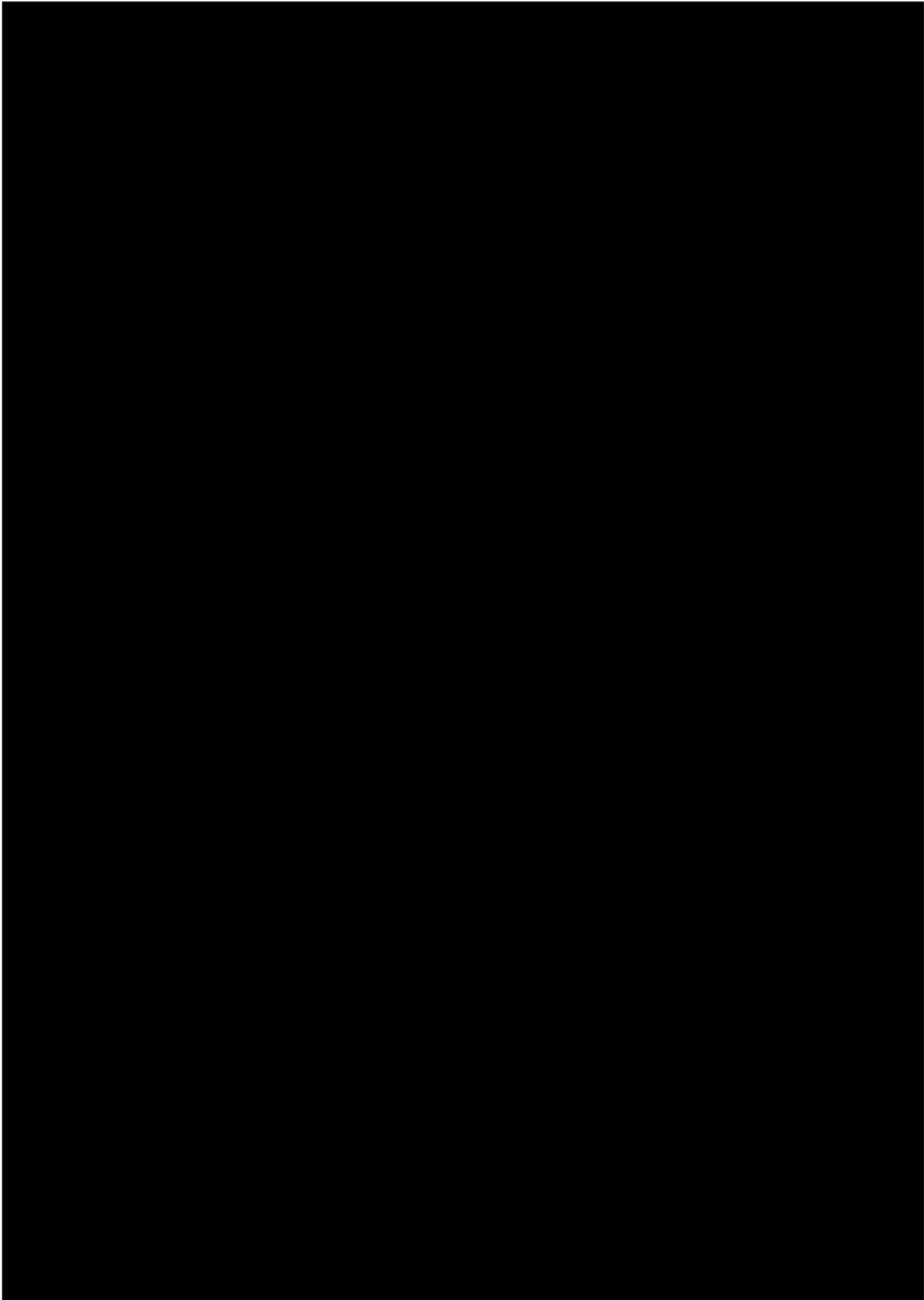
Grace

Get [Outlook for iOS](#)

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CONFIDENTIAL



Part 2—Elections and polls to be held**Division 1—Elections****5-Periodic elections**

Elections to determine the membership of each council must be held in accordance with this Act at intervals of 4 years on the basis that voting at the elections will close at 5 pm on the second to last business day before the second Saturday of November in 2022, at 5 pm on the second to last business day before the second Saturday of November in 2026, and so on.

6—Supplementary elections

- (1) Subject to this section, if—
- (a) an election (other than a supplementary election) wholly or partially fails or is declared void; or
 - (b) a casual vacancy occurs in the office of a member of a council,
- a supplementary election will be held to fill the office or offices not filled by the election, or the office that has become vacant.
- (2) A supplementary election will not be held to fill a casual vacancy if—
- (a) the vacancy occurs within 12 months before polling day for—
 - (i) a periodic election; or
 - (ii) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy; or
 - (b) —
 - (i) the vacancy is for an office other than mayor; and
 - (ii) the area of the council is not divided into wards; and
 - (iii) —
 - (A) if the council has 9 or more offices (excluding the office of mayor)—there is no more than 1 other vacancy in the office of a member of the council; or
 - (B) in any other case—there is no other vacancy in the office of a member of the council; and
 - (iv) it is a policy of the council at the time the vacancy occurs that it will not fill such a casual vacancy or vacancies until the next general election; or
 - (c) the vacancy—
 - (i) is for an office of a member of the council, other than—
 - (A) mayor; or
 - (B) a member who was declared elected under section 25(1);
 - and

Local Government (Elections) Act 1999—7.7.2022

Part 2—Elections and polls to be held

Division 1—Elections

- (ii) occurs—
- (A) within 12 months after the conclusion of a periodic election or a designated supplementary election; or
 - (B) after the close of nominations for a designated supplementary election and before the conclusion of that election,
- (and can be filled in accordance with section 6A) (the *subsequent vacancy*).
- (3) However, if—
- (a) 1 or more vacancies have not been filled due to the operation of subsection (2)(b); and
 - (b) another vacancy occurs in the office of a member; and
 - (c) the other vacancy has not occurred within 12 months before polling day for—
 - (i) a periodic election; or
 - (ii) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy,
- then a supplementary election must be held to fill the vacant offices.
- (4) If—
- (a) a casual vacancy has occurred; and
 - (b) a supplementary election is not to be held by virtue of the operation of subsection (2)(b),
- any subsequent revocation or alteration of a policy of the council in force for the purposes of subsection (2)(b) cannot have effect so as to require the casual vacancy to be filled before the next general election.
- (4a) If, before the close of nominations for a designated supplementary election, another vacancy (the *subsequent vacancy*) occurs in the office of a member of the council (other than in the office of mayor), the subsequent vacancy may be filled by the designated supplementary election.
- (4b) If the subsequent vacancy is to be filled by the designated supplementary election—
- (a) the returning officer must give public notice that the vacancy will be filled by that election; and
 - (b) the material accompanying the voting papers to be issued under section 39 for the designated supplementary election must advise voters that the vacancy will be filled by that election.
- (5) Subject to this Act, a supplementary election must be held as soon as practicable after the occasion for the election arises.
- (6) The returning officer must, by public notice, fix a day as polling day for the supplementary election.

- (7) A notice under subsection (6) must also fix—
- (a) a day for the close of the voters roll for the purposes of the election (the *closing date*); and
 - (b) the time at which voting at the election will close on polling day.
- (8) In this section—
- designated supplementary election** means—
- (a) if the area of the council is not divided into wards—a supplementary election held to fill an office or offices of the council; or
 - (b) if the area of the council is divided into wards—a supplementary election held to fill an office or offices of the ward in which the subsequent vacancy has occurred.

6A—Filling vacancy in certain circumstances

- (1) If—
- (a) a casual vacancy has occurred; and
 - (b) a supplementary election is not to be held by virtue of the operation of section 6(2)(c),
- the vacancy will be filled in accordance with this section.
- (2) For the purposes of subsection (1)—
- (a) the returning officer must, in accordance with the regulations, determine the candidate—
 - (i) in the most recent election for the relevant office; or
 - (ii) if a supplementary election is not to be held by virtue of the operation of section 6(2)(c)(ii)(B)—in the designated supplementary election referred to in that subsubparagraph,
 to fill the vacancy (a *successful candidate*); and
 - (b) the returning officer must ascertain (in such manner as the returning officer thinks fit) whether the candidate who becomes a successful candidate—
 - (i) is still willing to be elected to the relevant office; and
 - (ii) is still eligible to be elected to the relevant office; and
 - (c) —
 - (i) if the person then indicates to the returning officer (within 1 month) that they are so willing and eligible, the returning officer will declare the person elected; or
 - (ii) if the person then indicates to the returning officer (within 1 month) that they are not willing or eligible, or the person does not respond to the returning officer within 1 month, the returning officer must determine the next successful candidate in accordance with the regulations and so on until the vacancy is filled or there are no candidates still willing and eligible to be elected to the relevant office.


Robert Balzola & Associates (Legal)

Mr Robert Balzola
Grad Cert Arts (Theol)
Grad Dip Leg Prac; Grad Dip Mil Law
B.Ec LLB LLM MA (Theol)

Level 8 25 Restwell Street
 BANKSTOWN NSW 2200

MARN: 0108072
 ABN: 77 143 726 943
 MIA No.: 1423



Your reference: FXD/SXP/14409-511323/2382758
 Our reference: RB:SAL:798

Norman Waterhouse
 GPO Box 639
 ADELAIDE SA 5001

Attention: Felice D'Agostino
 By email: [REDACTED]

9 June 2023

**SUBMISSION
 CITY OF SALISBURY
 RESOLUTION 0358/2023**

Dear Ms D'Agostino,

**IN THE MATTER OF CITY OF SALISBURY COUNCIL – CR G BAWDEN
 SUBMISSION RESOLUTION 0358/2023**

Further to your instruction by letter dated 3 May 2023 directing 'Please direct all future correspondence in relation to these matters to this office'. We now direct this Submission to you for forwarding to your client the City of Salisbury for consideration and action.

We refer to your letter dated 6 June 2023 instructing:

'We advise that at the Special Council meeting on 6 June 2023, the Council resolved to adjourn consideration of the matters concerning its intention to remove your clients from office pursuant to Section 54(1)(d) of the *Local Government Act 1999* to accommodate your clients' request for an extension of time to make submissions to the Council to close of business Friday, 9 June 2023'

We refer to motion 0358/2023 carried by Council on 5 June 2023 extending the time for Cr Grace Bawden to make submissions in respect of the business before the Council in considering Cr Bawden's absence now scheduled for 13 June 2023.

Cr Bawden instructs us to make the following submissions on her behalf such that the Council can consider the business before it.

T: (02) 9747 0050
 F: (02) 9743 0633


PO Box 255
 CROYDON NSW 2132

Liability limited by a scheme approved under Professional Standards Legislation

Background

1. Cr Bawden was elected as a councillor for the North Ward in the 2022 local government elections. Cr Bawden had never previously been a member of Council and while having a significant interest in civic affairs and her community had a broad understanding of the day-to-day role of an elected member including participation in ordinary meetings of council.
2. Cr Bawden accepts that she participated in the relevant induction processes of the Council.
3. Cr Bawden respectfully submits that in the consideration of the business before the Council it is incumbent of Council to consider the particular individual circumstances as they apply to Cr Bawden as opposed to considering her position as against some hypothetical objective standard. Cr Bawden respectfully submits that considering her position as against some kind of hypothetical objective standard would lead the Council into jurisdictional error in considering the exercise of its powers.
4. Having regard to Cr Bawden's (relatively) limited experience as an elected member and that this motion is being considered by Council relatively early in the term of the new Council Cr Bawden respectfully submits to the Council that a motion to expel Cr Bawden would be unreasonably excessive having regard to this background and the matters set out below.

Alleged Absenteeism

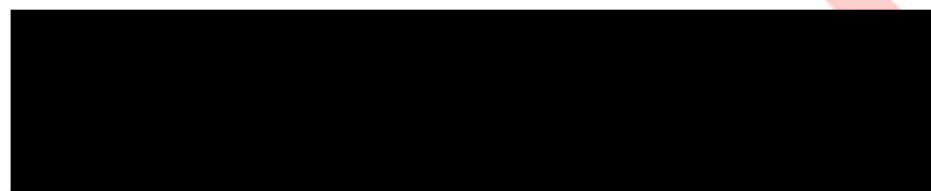
5. Cr Bawden accepts that she was not physically present at the ordinary council meetings scheduled on 27 March 2023, 24 April 2023 and 22 May 2023.
6. 
7. Cr Bawden accepts that she did not apply for a formal leave of absence pursuant to the provisions of the *Local Government Act 1999*. However, Cr Bawden has been unable to access the City of Salisbury Microsoft exchange server for a number of months. The effect of this is that Cr Bawden never received the advice of the Chief Executive as to the statutory process for applying for a leave of absence in accordance with the Act.

8.



9. We note that there is no basis at law that would prevent such leave being granted retrospectively (and indeed the previous council granted such retrospective leave to an elected member)¹

10.



Proposed Resolution

11. Regarding Cr Bawden's application for a leave of absence Cr Bawden respectfully proposes the following resolution for Council's consideration:

The Council

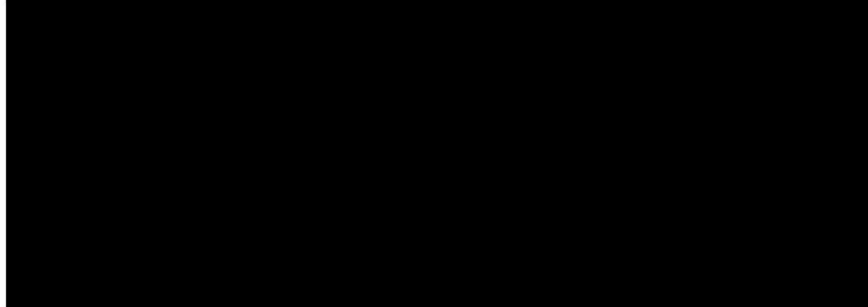
- (a) Notes the receipt of the submissions on behalf of Cr Bawden's by Robert Balzola and Associates and dated 9 June 2023 and in particular Cr Bawden's request for a leave of absence in respect of the 27 March 2023 and 24 April 2023 meetings.
- (b) Having considered Cr Bawden's reasons for requiring leave in respect of the 27 March 2023 and 24 April 2023 meetings grants Cr Bawden a leave of absence from 26 March 2023 to 30 April 2023.
- (c) Reaffirms the importance of elected members attending Council Meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.
- (d) Notes Cr Bawden's desire to attend and respectfully participate in Council meetings.
- (e) Reaffirms the Council's desire to conduct meetings of Council and all other Council business in an environment free from bullying or harassment to enable the orderly conduct of the Council's business.

¹ See motion of 23 May 2022 in respect of Cr Protela.

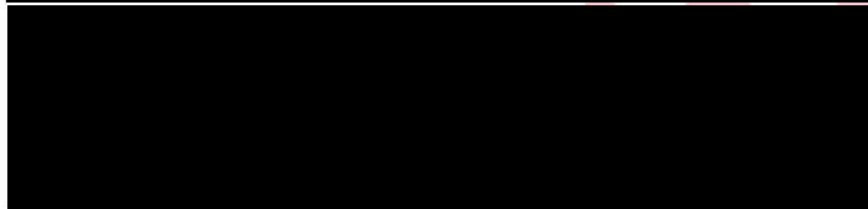
Motion to Expel

12. In the event that the Council were (in error) not to grant Cr Bawden a leave of absence Cr Bawden makes the following submissions.

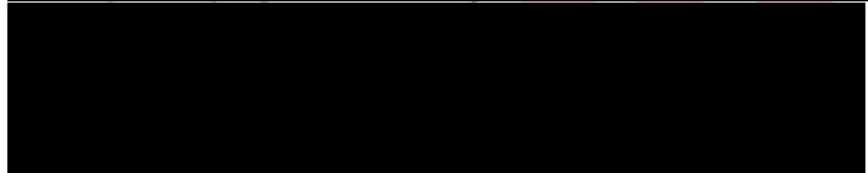
13.



14.



15.



16.



17. Given the agenda items comprised in council meetings scheduled for 27 March 2023, 24 April 2023 and 22 May 2023 the Council, by way of the Mayor and Chief Executive Officer would or at least should have logically inferred that having appropriately recognised that Cr Bawden was in need of appropriate mental health supports that the issues, which the Council was well aware of, would unnecessarily be exacerbated arising from her attendance at those meetings.
18. Respectfully, having regard to the material matters affecting Cr Bawden which the Council was well aware of it was entirely unreasonable and inappropriate for Council to expect Cr Bawden's attendance at the relevant meetings. Plainly attendance would have been further detrimental to Cr Bawden's health (to which the Council professed concern) and having regard to the substance of the Council's business inappropriate for Cr Bawden's attendance in any event.

Legal Implications of Decision

19. It is trite law that where Council is conferred with a statutory power it must be exercised for the purposes for which it has been conferred.
20. The power to which the Council purports to exercise is comprised within section 54(1)(d) of the Act. That is, the power provides the Council with a discretionary power in which to remove a fellow council member from the Council where the member has been absent without leave from three or more consecutive ordinary meetings of Council.
21. The purpose of the power is clear. Electors at local government elections are entitled and expect their elected representatives to attend council meetings and deliberate on behalf of the people who elected them. The basis for three consecutive absences reflecting a "trigger" is that this would tend to indicate a councillor who is unwilling or unable to adequately represent their electorate such that those electors are robbed of their democratic voice.²
22. We submit the power exists to ensure that electors are represented in accordance with the *Local Government Act 1999* rather than as an arbitrary provision entitling Council to expel members at its mere whim.
23. In the circumstances Cr Bawden has, at all material times, subject to limitations imposed by her health, has been able and willing to participate in ordinary meeting of the City of Salisbury subject to the direction of the Chief Executive discussed above and subject to being in attendance at an environment that could have deleterious effects on Cr Bawden's mental health.³
24. The use of Council's power, in all of the circumstances, would be contrary to the purpose to which parliament has conveyed the power. That is, Council would not be expelling a member unwilling or unable to represent their electors. Cr Bawden stands, today, an elected member of north central ward, willing and able to represent its community. In all of the circumstances, it goes without saying that the exercise of power in the manner contemplated would be contrary to the purpose of for which it was conveyed.

Members to participate in decision making process

25. Consistent that Council may only exercise the power for which it was conveyed it is plain that councillors cannot exercise any power to expel arising from personal or political difference.

² Compare and contrast to members of the previous council who were frequent apologies yet there was no motion to expel.

³ Of which the Mayor and Chief Executive Officer are in significant receipt of correspondence of same. Further note the contents of the apologies received by Council prior to the concerned meetings expressly referencing Cr Burner's concern as to her mental health.

26. Noting the regrettable environment of the present council and the somewhat extraordinary personal and political statements which have been directed at Cr Bawden we respectfully note that many elected members are in a position where a fair-minded lay observer, approaching the matter objectively, might entertain a reasonable apprehension that the decision-maker (being the elected members) might not bring an open mind to the consideration of the agenda items.⁴
27. In the event where elected members who have made derisive personal and political comments in the chamber or media were to participate in the decision-making process in a manner that was averse to Cr Bawden we respectfully consider that this would lead the Council into judicially reviewable error.
28. This would lead to embarrassing and regrettable proceedings where matters (including ostensible breaches of common law duties of confidentiality and the confidentiality provisions of the Act) would necessarily be investigated in judicial proceedings.
29. Plainly this is not in the interests of the Council as a body corpus, the elected members, or the City of Salisbury.
30. As such, we respectfully urge the elected members to carefully consider their positions in respect of the agenda item and the propriety of their participation in the decision-making process.

Proposed Resolution

31. Cr Bawden regrets the environment and atmosphere that has transpired in the first six months of the new council. Further, Cr Bawden does not wish to individually apportion blame in respect of the prevailing environment and accepts that, if she had her time again, matters she would have dealt with differently or approached in a different way.
32. In the circumstances, Cr Bawden considers that the agenda item provides for an opportune circuit breaker whereby the tension and animosity arising from the environment of the present council is put behind, and the elected members can work together collectively and collaboratively to enhance the City of Salisbury and enrich the civic lives of their citizens.
33. This presents an opportunity for the Council to move past childish taunting and bullying over differences in ideology and expression but to focus as a collective as to how it may best serve its electors. As such, in all of the circumstances, Cr Bawden submits that (if for whatever reason Council does not grant Cr Bawden leave as sought) an appropriate resolution of Council would be as follows:

⁴ *Kirby v Dental Council of NSW* [2018] NSWSC 1869.

The Council

- (a) Notes the receipt of the submissions on behalf of Cr Bawden's by Robert Balzola and Associates and dated 9 June 2023.
- (b) Reaffirms the importance of elected members attending Council Meetings as a member of the governing body of the Council and in order to represent residents, businesses and ratepayers of the City of Salisbury.
- (c) Notes Cr Bawden's desire to attend and respectfully participate in Council meetings.
- (d) Reaffirms the Council's desire to conduct meetings of Council and all other Council business in an environment free from bullying or harassment to enable the orderly conduct of the Council's business.

Rights Reserved

34. For the avoidance of doubt Cr Bawden reserves all of her rights including to tender this correspondence in future proceedings as necessary.

Yours faithfully,

Robert Balzola

Robert Balzola

Attendance Information – Cr G Bawden

November 2022	Cr G Bawden
28 November 2022 Council (first meeting) 7.09pm – 8.19pm	Present
December 2022	Cr G Bawden
5 December 2022 CEO Briefing/Workshop 6.30pm – 7.50pm	Present
<i>*No Committee meetings held in December 2022</i>	
19 December 2022 Council 6.30pm – 8.39pm	Present
January 2023	Cr G Bawden
<i>*No CEO Briefing/Workshop held in January 2023</i>	
23 January 2023 Special Council 6.15pm – 6.20pm	Present
23 January 2023 Policy & Planning 6.21pm – 8.19 pm	Partially present left at 8.00pm
23 January 2023 Finance & Corporate Services 8.20pm – 8.22pm	Absent
23 January 2023 Urban Services 8.32pm – 9.26pm	Absent
23 January 2023 Governance & Compliance 8.28pm – 8.42pm	Not a member
31 January 2023 Council 6.30pm – 11.16pm	Present
February 2023	Cr G Bawden
20 February 2023 Confidential CEO Briefing/Workshop 6.11pm – 6.33pm	Apology given
20 February 2023 Policy & Planning 6.36pm – 6.59pm	Apology given
20 February 2023 Finance & Corporate Services 7.02pm – 7.14pm	Apology given

February 2023 ... cont'd	Cr G Bawden
20 February 2023 Urban Services 7.27pm – 8.28pm	Apology given
20 February 2023 Governance & Compliance 7.26pm – 8.14pm	Not a member
27 February 2023 Council 6.31pm – 11.16pm	Partially present until 10.28pm
March 2023	Cr G Bawden
1 March 2023 CEO Briefing/Workshop	Attended online via Teams VC
6 March 2023 CEO Briefing/Workshop	Apology given
8 March 2023 CEO Briefing/Workshop	Apology given
8 March 2023 Special Council 6.02pm – 6.52 pm	Apology given
20 March 2023 Policy & Planning 6.32pm – 6.59pm	Partial attendance: online via Teams VC Left the meeting at 6.43 pm
20 March 2023 Finance & Corporate Services 7.11pm – 7.56pm	Absent
20 March 2023 Urban Services 8.08pm – 8.36pm	Absent
20 March 2023 Governance & Compliance 8.08pm – 8.11pm	Not a member
27 March 2023 Council 6.30pm – 10.50pm	Apology given
29 March 2023 CEO Briefing/Workshop 6.40pm-8.00pm	Absent

April 2023	Cr G Bawden
<i>3 April 2023</i> CEO Briefing/Workshop Session	Absent
<i>17 April 2023</i> Policy and Planning 6.32pm – 6.41pm	Apology given
<i>17 April 2023</i> Finance & Corporate Services 6.42pm – 7.26pm	Apology given
<i>17 April 2023</i> Urban Services 7.39pm – 8.49pm	Apology given
<i>17 April 2023</i> Governance & Compliance 7.37pm – 8.10pm	Not a member
<i>24 April 2023</i> Council 6.33pm – 10.57pm	Apology given
May 2023	Cr G Bawden
<i>1 May 2023</i> CEO Briefing/Workshop	Absent
<i>15 May 2023</i> Finance & Corporate Services 6.32pm – 6.56pm	Apology given
<i>15 May 2023</i> Urban Services 7.07pm – 7.49pm	Apology given
<i>15 May 2023</i> Governance & Compliance 7.05pm – 7.17pm	Not a member
<i>22 May 2023</i> Council 6.34pm – 9.23 pm	Apology given
<i>29 May 2023</i> Special Council Meeting 6.30 pm – 6.37pm	Absent
June 2023	Cr G Bawden
<i>5 June 2023</i> Special Council Meeting 6.30 – 6.50 pm	Apology given

From: Felice D'Agostino
To: [REDACTED]
Subject: FW: ERRATA: [798] Crs S Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant
Date: Monday, 5 June 2023 4:35:50 PM
Attachments: image001.png
[\[798\] Bawden + Burner Ltr Salisbury re absenteeism Salisbury CC 050623.pdf](#)
[05062023-Special-Council-Meeting-Agenda-Confidential-Redacted.pdf](#)
Importance: High
Sensitivity: Confidential

Please note error in letter from Mr Balzola as set out below.

Kind regards,

Felice D'Agostino

Principal



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From: Robert Balzola <Robert.Balzola@balzola.com.au>
Sent: Monday, June 5, 2023, 4:19 PM
To: [REDACTED] Norman Waterhouse
 <normans@normans.com.au>
Subject: ERRATA: [798] Crs S Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant

ERRATA

Sentence reads '**Friday, 9 June 2023**', not 6 June 2023.

Sincerely,
Robert Balzola

From: Robert Balzola
Sent: Monday, June 5, 2023 4:44 PM
To: [REDACTED]
 'normans@normans.com.au', <normans@normans.com.au>
Subject: [798] Crs S Burner and G Bawden: City of Salisbury Council Absenteeism Resolutions to be determined instant

Attn: Ms D'Agostino,

We act for Crs Severina Burner and Grace Bawden, City of Salisbury.

Attach please find out letter date instant. We further attach copy of City of Salisbury Special

Council Meeting Agenda for this evening.

Sincerely,
Robert Balzola

Robert Balzola and Associates (Legal) Pty Ltd
Regus Flinders Centre
Level B 25 Restwell Street
BANKSTOWN NSW 2200

[A.C.N. 143 726 943]

MARN 0108072

Liability limited by a scheme approved under Professional Standards Legislation

Confidential


Robert Balzola & Associates (Legal)

Mr Robert Balzola
Grad Cert Arts (Theol)
Grad Dip Leg Prac; Grad Dip Mil Law
B.Ec LLB LLM MA (Theol)

Level 8 25 Restwell Street
 BANKSTOWN NSW 2200

MARN: 0108072
ABN: 77 143 726 943
MIA No.: 1423



Your reference:
 Our reference: RB:SAL:798

Norman Waterhouse
 GPO Box 639
 ADELAIDE SA 5001

Attention: Felice D'Agostino
 [REDACTED]

6 June 2023

Dear Ms D'Agostino,

**IN THE MATTER OF CITY OF SALISBURY COUNCIL
 SPECIAL RESOLUTIONS FOR CONSIDERATION THIS EVENING**

We act for Councillors Bawden and Burner in respect of the proposed special resolution (copy attached). Please confirm whether you will accept service of this letter on behalf of your client in light of your previous instructions that all communications to City of Salisbury be first served upon your practice.

We note that Council purported to provide a deadline in respect of submissions as to the matter the subject of the special resolution which has passed.

Notwithstanding that the deadline has passed, Councillors Bawden and Burner each would like to make submissions in respect of the special resolution to be considered by the Council tonight and request an extension of time in which to make those submissions to close of business **Friday 6 June 2023**.

We accept that this would necessitate an adjournment of tonight's meeting for a week.

Councillors Bawden and Burner have instructed me to brief counsel with expertise in respect of the subject matter and I have subsequently briefed said counsel.

[REDACTED]
 F: (02) 9743 0633
 [REDACTED]

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Burner, S & Bawden G, Clrs

Absenteeism motions instant

City of Salisbury

We are concerned that if Council were to act in respect of the special resolution in a manner contrary to the interests of our client it would be doing so in breach of relevant provisions of the Local Government Act 1999 such that our clients would have to apply urgently to the Supreme Court of South Australia seeking injunctive and other relief.

As such, in the interests of saving both our clients and the council the costs and inconvenience of litigation it would be better to permit our clients to have the opportunity to make a proper submission to Council such that Council can consider their submission.

Yours faithfully,

Robert Balzola

Robert Balzola

Confidential

In Confidence

Page 2 of 2