



ORDINARY COUNCIL MEETING

Attachment 1

**Independent Governance Review Report
(Shire of Toodyay) from Hammond Woodhouse
Advisory.**

Agenda Item

**9.3.6 Governance Review – Recommendation
to Department of Local Government, Sport
and Cultural Industries**

27 July 2021

REVIEW REPORT
Shire of Toodyay
Independent Governance Review

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Hammond Woodhouse Advisory

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1. SCOPE OF REVIEW AND METHODOLOGY

1.1 Scope

The scope of this review is stated in the Shire's Request for Quotation to be:

"The review will need to include an assessment of:

Area of Review - Detailed Scope of Work

The Role of the Council

i. Assess role of Council, for the period 1 November 2019 – 28 February 2021 fulfilling its prescribed role under s 2.7 of the Local Government Act 1995, as follows:

1. The Council —

a. governs the local government's affairs; and

b. is responsible for the performance of the local government's functions.

2. Without limiting subsection (1), the Council is to —

a. oversee the allocation of the local government's finances and resources; and

b. determine the local government's policies.

ii. Assess the performance of Council; (including conduct of meetings, compliance with Meeting Procedures Local Law – i.e. Standing Orders, clarity of motions, voting patterns – including casting vote, Presiding Member's role and responsibilities etc.).

iii. Assess the structure and functions of the Committees of Council (Terms of Reference, purpose, number of members, performance evaluation).

iv. Consider the degree to which Council involves itself in day-to-day operational matters in accordance with clause 19 of Schedule 1 of the Local Government (Model Code of Conduct) Regulations 2021. NB: prior to 3 February 2021, Regulation 9(1) of the Local Government (Rules of Conduct) Regulations 2007 applied.

The Role of Individual Council members

i. Assess the role of individual Council members for the period 1 November 2019 – 28 February 2021, to ensure they are performing in accordance with s 2.8, 2.9 and 2.10 of the Local Government Act 1995.

Council Culture and Dynamics

i. Assess the Council culture and dynamics for the period 1 November 2019 – 28 February 2021, to ensure adherence with the Local Government (Model Code of Conduct) Regulations 2021. NB: Prior to 3 February 2021, the Shire of Toodyay's Code of Conduct applied.

Relationship between Council and the CEO

i. Assess the relationship between Council and CEO(s) for the period 22 June 2020 – 28 February 2021 to ensure it is productive, positive, professional and compliant with the Local Government Act 1995.

Relationship between Council and the Administration

i. Assess the relationship between Council and the administration for the period 1 November 2019 – 28 February 2021 to ensure it is productive, positive, professional and compliant with the Local Government Act 1995, including but not limited to the Principles identified under section 5.40.

ii. The scope of work should detail the ability of councillors/administration staff to provide their commentary and feedback anonymously to the engaged entity undertaking the governance review, ensuring they can speak and / or submit information freely.

Management of employees

i. Assess the Shire's processes for CEO recruitment (and termination where applicable) for the period 1 November 2019 – 28 February 2021 review to ensure compliance with Schedule 2 of the Local Government (Administration) Regulations 1996. NB: Prior to 3 February 2021, the Shire's human resources policies applied.

ii. Assess the Shire's annual performance reviews for the Chief Executive Officer for the period 22 June 2020 – 28 February 2021 to ensure compliance with s5.38(1) of the Local Government Act 1995.

- iii. Assess samples of annual performance reviews for the Shire's employees the period 1 November 2019 – 28 February 2021 to ensure compliance with s5.38(2) and s 5.38(3) of the Local Government Act 1995.*
- iv. Assess the Shire's human resources policies to ensure that they meet the needs of the Shire, including compliance with the Occupational Safety and Health Act 1984 and grievance processes.*
- v. Assess any anomalies between officers who were provided an adequate review under section 5.38(3) and within 12 months had their employment terminated.*
- vi. Assess the Shire's empowerment of employees and delegation process in accordance with section 5.44.*

Procurement and probity

- i. Assess samples of the Shire's procurements above \$50,000 during the period 1 November 2019 – 28 February 2021 to ensure compliance with the legislative requirements and relevant Council Policies and make recommendations based on review findings having regard to industry best practice.*
- ii. Review the Council's current Purchasing Policy and the Shire's processes, procedures and guidelines to ensure compliance with legislative requirements and make recommendations based on the findings having regard to industry best practice.*

Record Keeping

- i. Assess the Shire's record keeping and records management to ensure compliance with the Local Government Act 1995, State Records Act 2005 and the Shire's Record Management Policy and make recommendations based on review findings having regard to industry best practice.*

Other Policies

- i. Assess the Shire's current Litigation Policy (adopted in October 2020) in relation to the scope and authority of the CEO regarding any litigation on the Shire's behalf.*

1.2 Interviews conducted, and documents reviewed

- (1) The interviews conducted and the documents reviewed are described later in this report under the headings “Methodology” for each individual topic within the Scope.

2. BACKGROUND

2.1 The Department’s inquiry

- (1) On 6 December 2018, the Director-General of the Department of Local Government, Sport and Cultural Industries (the “Department”) authorised an inquiry into the Shire of Toodyay in accordance with section 8.3(2) of the Local Government Act 1995.

- (2) The nature and scope of the inquiry were as follows:

- a) the adequacy of and adherence to Council’s policies and procedures by both elected members and administration staff,*
- b) enforcement action undertaken by the Shire,*
- c) the function of the audit committee,*
- d) declarations of interests by elected members,*
- e) the culture within the Shire,*
- f) any other matter that comes to the persons attention during the inquiry under section 8.4(2) of the Local Government Act 1995.*

- (3) Since the commencement of the Inquiry, the following changes have occurred at the Shire of Toodyay (according to the Shire’s Request for Quotation):

- a) Local government ordinary elections were held with five new members elected, with a later extraordinary election held to replace a member who resigned.*
- b) In accordance with new regulations, Councillor training has been undertaken across a range of areas including governance and financial management.*
- c) A new Chief Executive Officer was appointed following a comprehensive recruitment process and Performance Criteria that include actions relating to governance and compliance were set.*
- d) The Minister for Local Government; Heritage; Culture & the Arts accepted an invitation to visit Toodyay and address the Council.*

e) Council met with officers of the Department to discuss the outcomes of the Inquiry.

f) Council has commenced a comprehensive policy review.

g) A review of procurements practices has been undertaken.

(4) Again, according to the Request for Quotation, the organisation continues to seek and implement improvements, both in response to the Inquiry and generally, as part of a transition process to a more effective and accountable local government.

(5) The Inquiry Report was tabled in Parliament on 13 October 2020 and contained 25 findings in relation to the above.

(6) As a result, the Department made the several recommendations to the Council, one of which is that:

The Shire undertake a Governance Review as approved by the Director General within 6 months of this report becoming final and the review is to be made available to the Director General.

(7) The Department required the Shire to select an organisation to undertake an independent governance review and submit its preferred supplier, scope and timeline to the Department for approval.

2.2 The Inquiry Report

Subsequent to the Inquiry, a Report was published and is available on the Department's website. The link is:

https://www.dlgsc.wa.gov.au/docs/default-source/local-government/inquiries/report-of-the-inquiry-into-the-shire-of-toodyay.pdf?sfvrsn=95f11b3f_1

2.3 The Inquiry's recommendations

(1) As stated above, a recommendation from the Inquiry Report, was the need to undertake a Governance Review which need to be made available to the Director General of the Department.

(2) The recommendations, in full, were as follows:

“1. The Shire undertake a Governance Review as approved by the Director General within 6 months of this report becoming final and the review is to be made available to the Director General.

2. The Elected Members undertake training as determined appropriate by the Director General within 6 months of this report becoming final. That training is to include but not limited to;

- Governance*
- Accountability*
- Roles and responsibility of both elected members and administration*
- Financial matters*
- Tendering and procurement*
- Meeting management.*

3. Following completion of the training referred to in Recommendation 2, the CEO is to deliver to the Director General a comprehensive report:

- a. demonstrating the knowledge and understanding gained by the Elected Members from the training; and*
- b. identifying members who have attended the training and any reasons for non-attendance; and*
- c. outlining the steps taken by the Shire to implement such knowledge and understanding.*

4. Conduct a review of the CEO’s performance by an independent consultant on an annual basis for the duration of the contract.

5. Council review the Litigation Policy to reflect the scope and authority of the CEO regarding any litigation on behalf of the Shire.”

2.4 Summary of the Inquiry’s key findings

The summary of the key findings of the Inquiry is as follows:

“Finding 01

The minutes of the Ordinary Council Meeting held on 19 February 2013 did not comply with regulation 11(da) of the Local Government (Administration) Regulations 1996, as they did not provide written reasons for a decision that is significantly different from the Chief Executive Officer’s written recommendation in relation to the Merrick matter.

Finding 02

The CEO has failed to keep Council abreast of costs of litigation of the Merrick matter thus not enabling Council to make informed decisions regarding to matter.

Finding 03

Mr Scott, as CEO, failed to comply with Policy F3 by failing to obtain three (3) written quotes for the purchase of goods or services relating to the provision of legal services for the Merrick matter.

Finding 04

The Shire has failed to adopt a policy to give guidance and direction to the CEO on matters concerning litigation on behalf of the Council.

Findings 05

The CEO has failed to ensure that the resources of the local government are effectively and efficiently managed, by pursuing a \$60 parking infringement at the cost of \$5381 in circumstances where the infringement notice had been issued to the wrong person.

Finding 06

The CEO did not adequately discharge the responsibility he had under the s5.41(d) of the Local Government Act 1995 for the management of the day to day operations of the local government by managing legal costs, which were excessive given the nature of the matter.

Findings 07

The CEO has failed to discharge his duty as per regulation 5(2)(a) Financial Management Regs in regard to ensuring that the resources of the local government are effectively and efficiently managed in relation to litigation of the Warragenny Holding Pty Ltd matter.

Finding 08

The CEO has failed to keep Council abreast of continuing costs of litigation of the Warragenny matter thus not enabling Council to make informed decisions regarding to matter.

Findings 09

The CEO has failed to ensure that efficient systems and procedures are to be established by the CEO of the local government for the

proper collection of all money owing to the local government in regard to rates setting.

Finding 10

The CEO did not have adequate oversight of the day to day operations of the local government, and this failure by the CEO has caused, or contributed to the potential unnecessary costs to the Shire of Toodyay.

Finding 11

The Audit Committee appears not to have complied with section 5.14 of the Act by not choosing one of themselves to preside at the 17 December 2018 meeting in the absence of the presiding member, Cr Welburn.

Finding 12

The Shire of Toodyay has breached of r33A(4) of the Local Government (Financial Management) Regulation 1996 by not submitting the Shire of Toodyay Budget Review to the Department of Local Government Sport and Cultural Industries for the 2018-19 financial year.

Finding 13

The CEO has breached of r5(g) of the Local Government (Financial Management) Regulation 1996 by not submitting the Shire of Toodyay Budget Review to the Department of Local Government Sport and Cultural Industries.

Finding 14

The CEO has failed to ensure that the Shire adhered to Local Government (Functions and General) Regulation 1996 r11 by neglecting to invite tenders before awarding the contract to Fire Mitigations Services.

Finding 15

The Council has failed to adhere to the F12 Disposal of Property policy by neglecting to contact all effected stakeholders as nominated in the policy.

Finding 16

The Council has failed to adhere to the Local Planning Policy 20 by not justifying why full compliance was impractical, or may result in

reasonably demonstrated detriment, or why variation was warranted in the circumstances of the case.

Finding 17

The Shire has provided incorrect advice allowing the use of a conventional septic system, when an Alternative Treatment Unit wastewater system was required.

Finding 18

The Shire was inconsistent in its approach in this case, in relation to the planning and building conditions to be adhered to with respect to the subdivision of land.

Finding 19

The CEO has failed to ensure that the resources of the local government are effectively and efficiently managed, by pursuing an unwarranted prosecution at the cost of \$36,500 in circumstances where the infringement notice had already been paid.

Finding 20

The CEO did not adequately discharge the responsibility he had under the s5.41(d) of the Local Government Act 1995 for the management of the day to day operations of the local government by managing legal costs, which were excessive given the nature of the matter.

Finding 21

The Shire has shown to have inconsistent dealings in relation to a planning application over a period of five years with no change in Shire planning or policies during that time, and at a significant cost to the applicant and rate payers.

Finding 22

The Shire has failed to adhere to their own O.2 Volunteer Policy by ensuring to provision of orientation/induction as per item 7.7 Induction of the Volunteer Policy by the Shire of Toodyay was provided to Ms Graham.

Finding 23

The Shire has failed to adhere to their own O.2 Volunteer Policy item 13 of Inappropriate Behaviour and Volunteer Dismissal, specifically affording the volunteer with procedural fairness and following the procedure for termination of a volunteer's services.

Finding 24

The CEO has breached Code of Conduct 3.5 Avoid Derogatory Statements by failing to communicate in a professional manner which may cause any reasonable person unwarranted offence or embarrassment.

Finding 25

The CEO has acted in an unethical manner by not disclosing to the Council that his son is working with the legal firm that the Shire has frequently engaged to provide legal services.”

3. THE ROLE OF THE COUNCIL

3.1 Methodology

- (1)** We conducted interviews with:
 - (a)** the Shire President, the Deputy Shire President and 5 other Councillors; and
 - (b)** the CEO, the Manager Assets and Services and the Acting Manager Planning and Development.
- (2)** We reviewed the agenda papers and minutes of the ordinary and special meetings and committees of the Council for the period under review.
- (3)** We undertook an extensive review of the following:
 - (a)** the Policy Manual;
 - (b)** the Strategic Community Plan; and
 - (c)** the Corporate Business Plan.

3.2 Findings

- (1)** In our view, all of the councillors interviewed demonstrated the knowledge and awareness necessary to collectively fulfil the role of the Council.
- (2)** Whilst readily identifying as either an “old” (presumably elected in 2017) or “new” (presumably elected in 2019 or later) councillors, those interviewed stated that they considered there was no evidence that block or factional voting occurred at the Council meetings. This was supported by our review of the minutes of the meetings.

- (3)** A review of the minutes of the Committees of the Council demonstrated compliance with the Act, with Committee recommendations being given ultimate consideration by the Council at subsequent meetings.
- (4)** In fulfilling the role of the council, councillors rely upon the CEO to provide advice and information on which to base their decision making. Section 5.41(b) of the Act¹ provides that the CEO is to ensure that advice and information is available to the council so as informed decisions can be made.
- (5)** At the Shire, the forums in which this information is exchanged, and advice tendered, comprise:
- (a)** agenda briefing sessions convened one week before the Ordinary Council Meeting conducted on the fourth Tuesday of the month; and
 - (b)** Council Workshops conducted monthly or more regularly depending upon demand and typically on a Monday.
- (6)** The Council Policy entitled “Council Forums” adopted on 27 May 2014 sets out the rules and processes to be used in convening and conducting forums. It states that Council Forums will convene 2 weeks prior to scheduled Ordinary Council Meetings.
- (7)** The current practice does not accord with this Council Policy. This Policy requires review.
- (8)** The quality of this advice and information, in the form of agenda papers, reports, financial information, and strategic planning documents, is a critical component in assisting the Council to achieve the role set out in s. 2.7 of the Act. That role is to:
- (a)** govern the local government’s affairs;
 - (b)** oversee the performance of the local government’s functions;
 - (c)** oversee the allocation of the local government’s finances and resources; and
 - (d)** determine the local government’s policies.
- (9)** Our examination of the Agenda papers, for the period under review, demonstrated a number of recurring shortcomings requiring improvement.

¹ In this Report, “Act” refers to the Local Government Act 1995.

- (10)** The phrase “no adverse implications”, or other similar words, is used regularly in the implications section of the agenda papers. The purpose of the implications section is to explain and convey the underlying strategy, policy, legal or financial implications that might impact upon the conclusion of the report, the officer’s recommendation and the ultimate decision of the Council. “No adverse implications” should not be applied as a default position.
- (11)** Several instances of the incorrect application of the definition of Council’s decision-making roles are evident. For example, Item² 9.2.3 of the Ordinary Council Meeting of 24 March 2020 relating to the making of a local law provides that Council’s role in the matter is “Quasi-Judicial” when it is, in fact, legislative.
- (12)** Item 9.6.1 of the same meeting provides that the receipt of committee minutes and acceptance of a quotation was “Quasi-Judicial” when it is, in fact, an executive function.
- (13)** The “legal implications” section of agenda reports varies from containing no implications whatsoever, no adverse implications, unexplained reference to legislation (Item 9.3.4 of 28 August 2020 and Item 14.2 of 28 August 2020) or large amounts of unexplained excerpts of legislation being copied and pasted (Item 9.3.1 of 24 November 2020).
- (14)** The legal implications sections of agenda papers should provide an explanation of the legislation that is applicable to the subject matter. The explanation should be succinct, clear and in “plain English”.
- (15)** Referencing legislation within a council motion is unnecessary and potentially confusing (e.g. Item 9.1.1 of 24 November 2020 and Item 10.2.3 of 23 February 2021).
- (16)** A common theme that emerged from the councillors interviewed was that there was a need to improve the quality of agenda papers. Specific concerns were as follows:
- (a)** the “cutting and pasting” of large swathes of unexplained legislative material was unhelpful and at times confusing. In some instances it was seen as being intimidating;
 - (b)** financial information was, at times, difficult to comprehend and, on several occasions, had contained significant and material errors.;
- and

² “Item” refers to an item of the agenda of the relevant meeting.

- (c) complex policy and strategy matters had been placed upon the meeting agenda for a decision, giving the councillors little chance of comprehension of the subject matter that could lead to an informed decision being made.
- (17) It should be understood and acknowledged by officers writing agenda reports that they do so not only to inform and advise the councillors, but also members of the community. Reports should be written in such a way that a member of the community with reasonable literacy and numeracy skills can understand the contents of the body of the report and its alignment with the officer's recommendation.
- (18) As will be mentioned later in this report, it is our view that the application of s.5.23(2) of the Act, relating to when matters are dealt with "behind closed doors", is too broad.
- (19) According to s.1.3(2) of the Act, the Act is intended to result in greater community participation in the affairs and decisions of local governments and, greater accountability of local governments to their communities.
- (20) The provisions of s.5.23 of the Act that allow a council to treat matters confidentially, involves a discretionary decision. In our view, the preferable "default position" of the Council should be one of openness and transparency, unless there are compelling reasons to conclude that dealing with a matter publicly might expose the local government to inappropriate legal or financial risk or be otherwise inappropriate.
- (21) Currently, all tenders are treated confidentially (commented upon elsewhere in this review) as are most matters relating to the recruitment, appointment and review of the CEO.
- (22) For example, the subject matter relating to CEO Recruitment (Item 14.2 of 26 November 2019) does not, in our view, contain sensitive or personal material and therefore could have been dealt with in a public forum.
- (23) A further example is Item 14.3 of 26 November 2019, entitled "Sport and Rec Update" which is a progress report on the Sport and Recreation Precinct project. We were told that this project was contentious within the community. The report provides a detailed summary of the work in progress as well as details of project costings and project funding sources. It seems that the report was treated confidentially because of the sensitivity of some of the attachments. However, it is noted that the officer's report on page 32 (first sentence) states "While it is proposed that Officer (sic) Report be public, the attachments will remain confidential.

- (24)** A search of the publicly available minutes of the Council’s ordinary meetings for November 2019 and December 2019 demonstrates no evidence of the release of this report. In any case, it is our view, that there was no good reason for the matter to be dealt with behind closed doors. The attachments were technical documents relating to operational project management matters and therefore the province of the administration and not the Council. They need not have been included.
- (25)** In August 2020 (Item 9.3.1), the Council resolved to request the CEO to undertake a comprehensive review of the Shire’s Policies and Delegations, acknowledging the scale of the task, by allowing a 12-to-18-month timeframe.
- (26)** The current Shire Policies are demarcated into 7 functional areas comprising of Administration, Engineering, Finance, Local Planning, Member, OSH and Other. This is despite advice contained within a report submitted to Council in March 2020 (Item 9.5.1) for the purposes of revoking the Council Policy - M1 Policy Manual that stated “the policy page on the Council website will separate the policies into their relevant departments as follows:
- Community Development;
 - Corporate Services;
 - Executive Services;
 - Planning and Development;
 - Works and Services.
- (27)** A recurring theme, in our interviews with the councillors, was a desire, on their part, to become more involved in the development and review of policies. Concern was expressed that draft policies or significant revision of existing policies had been submitted for decision without opportunity for the councillors to effectively discuss and explore the context and purpose of policies in their formative stages through a workshop process.
- (28)** Given this general acknowledgement that the Council Policy suite and processes requires review, it might be timely to consider a Council Policy on Policies. Such a policy would set the necessary guidelines on how a policy should progress from origination of concept through to adoption. The policy would prescribe when, how and in what forum the Council and the community are to be engaged and what processes would guide revision and review.

(29) In developing a policy of this nature clear delineation should be made between:

(a) Council Policies which should deal with matters relevant to the role of the Council, set out in s.2.7 of the Act, serving to provide uniformity in decision making, guidance in exercising discretion and establishing clear direction regarding the delegation of authority and exercising the role of the CEO; and

(b) Administration Policies which should be relevant to the role of the CEO as provided for in s.5.41 of the Act and establish corporate processes and systems, business rules and underpin where necessary the implementation of Council policy.

(30) The current suite of Council Policies contains some policies that do not reflect current practices, for example Council Policy – Council Forums, however other than the Local Planning Policies the suite is generally comprehensive and capable of guiding consistent and orderly decision making.

(31) The suite of Local Planning Policies, however, require review. There are 23 Local Planning Policies in existence. Thirteen of those 23 were last reviewed in 2010, 6 in 2012, 22 in 2014, one in 2015 and one in 2018.

(32) The Local Planning Policy Guide published by the Western Australian Local Government Association provides useful insight into the writing, development and review of these type of policies.

(33) The section on reviewing policies (page 11) provides the following relevant and important information:

*“LPP’s (Local Planning Polices) should be reviewed regularly to ensure that they remain relevant and in line with sound town planning principles. The age of an LPP reduces its relevance when making decision making, and thus possibly becomes a less useful tool as it ages. **The State Administrative Tribunal has determined that the age of an LPP has direct relevance to the weight afforded to it**” therefore regular review is warranted.” (Our emphasis added).*

(34) The Corporate Business Plan was last adopted in May 2020. It is a comprehensive document effectively representing the aspirations of the Strategic Community Plan and containing 5 years’ financial projections.

- (35)** All of the councillors interviewed knew of the existence of the Corporate Business Plan but, when questioned as to its use as a key planning tool, responded that reference to it was rarely, if ever, made.
- (36)** Given the major capital expenditure on the new recreation facility and the resulting significant increase in year in year out operating expenses, the Corporate Business Plan becomes an important tool in assisting the Council in overseeing the local government's finances and allocating resources into the future.
- (37)** The financial information and forecasts contained within the document conform with contemporary accounting standards and include non-cash items such as depreciation and asset revaluation. The inclusion of non-cash items, whilst necessary by law, can make understanding and analysing "year in year out" financial scenarios somewhat daunting for councillors and members of the community.
- (38)** Another set of financial projections excluding depreciation and asset revaluation, essentially a "year in year out" rate setting statement over 5 years, would provide a particularly useful tool for analysis and decision making. Current and projected reserve balances, borrowings and relevant performance ratios should also be included in the business plan.
- (39)** A review of the Strategic Community Plan was commenced in 2020 culminating in a draft document being submitted to the Council for approval on 25 May 2021 (Item 9.3.2). Up until this time, the Council was not involved, nor had it discussed the development of the plan.
- (40)** The majority of councillors interviewed were unhappy that the Council had essentially been isolated from such an important process until the ultimate approval phase. Some were concerned that the draft document made no mention of the need to manage community expectations and acknowledge that careful and considered financial management relevant to the capital expenditure and commensurate year in year out operating costs of the new recreation facility was necessary.
- (41)** Whilst the Strategic Community Plan should be informed by significant community and stakeholder input, the Council is responsible for overseeing the process to ensure that input is balanced, relevant and inclusive.
- (42)** In the circumstances, in our view, it would have been preferable for the Council to have had an opportunity to consider and endorse the process

that was to be used, including the methods of community and stakeholder consultation and the role of the Council and of the councillors throughout the process. In our view, it would also have been preferable for the draft document to have been submitted to a workshop for discussion prior to being submitted for formal consideration.

3.3 Recommendations

- (1)** The content, layout and structure of reports being submitted to the Council should be reviewed and standard templates developed with the objective of providing clear, succinct, and informative reports that can guide effective and considered decision making.
- (2)** Formal report writing and agenda preparation training should be provided to all staff involved in the development of agenda items.
- (3)** The Council should consider proposals to deal with confidential matters individually and on their merits and do so only after they have carefully balanced the relevant financial and legal risks of openness against the principles of accountability and transparency espoused in the Act.
- (4)** A risk-based review should be undertaken on all Council Policies, identifying those policies that might expose the Shire to inappropriate levels of risk. Local Planning Policies should be afforded special attention. Policies identified in this process should be reviewed as a priority.
- (5)** The Council should consider developing a new policy on the manner in which important corporate documents are to be managed from inception including their review and their rescission. These documents would include Council Policies, Local Planning Policies, Community Strategic Plans and Corporate Business Plans. The objective of the new policy would be to clearly identify the process to be utilised and role and involvement of the Council and the community when dealing with corporate documents.
- (6)** The Corporate Business Plan should be modified to include a 5-year financial forecast of income and expenditure which excludes non-cash items such as depreciation and asset revaluation not dissimilar to a “rate setting statement”. The plan should also include reserve fund balances actual and projected and long-term outstanding debt principal actual and projected.

- (7) The Corporate Business Plan should be elevated in priority to be the Council's principal guide to strategic financial management. Workshops should be convened at least twice per year to afford the councillors and senior staff the opportunity to analyse, discuss and deliberate upon the allocation of the local government's finances and resources. It is suggested that the workshops are convened in October and April of each year to align with end of financial year performance (October) and formulation of the annual budget (April).

4. THE ROLE OF INDIVIDUAL COUNCIL MEMBERS

4.1 Methodology

- (1) We conducted interviews with:

- (a) the Shire President, Deputy Shire President and 5 other councillors;
and
- (b) the CEO.

4.2 Findings

- (1) No evidence was found that suggested individual councillors were not performing their roles in accordance with s.2.8, 2.9 or 2.10 of the Act.

5. COUNCIL CULTURE AND DYNAMICS

5.1 Methodology

- (1) We conducted interviews with:

- (a) the Shire President, the Deputy Shire President and 5 other councillors; and
- (b) the CEO.

- (2) We examined and reviewed the agenda papers and minutes of the ordinary and special meetings of the Council for the period under review.

5.2 Findings

- (1)** Each of the councillors who were interviewed, when asked about the behaviour of other councillors at meetings of the Council, stated that, in their view, there were instances where one or more councillors behaved in ways, or spoke using language, that was considered to be contrary to the principles set out in the Shire's Code of Conduct or contrary to provisions of the Shire's Standing Orders Local Law.
- (2)** For example, it was said that there were instances when a councillor spoke in a disrespectful fashion concerning fellow councillors.
- (3)** It appeared to be the case that:

 - (a)** generally, the councillors to whom we spoke had a reasonable understanding of the standards of behaviour required of them by the Shire's Code of Conduct and the Shire's Standing Orders Local Law; and
 - (b)** the instances to which they referred would not, therefore, be attributable to a lack of understanding of the applicable standards.
- (4)** We understand that no formal complaints were made in relation to the instances raised by the councillors. The councillors appeared to understand what steps could be taken to address instances of alleged, unacceptable behaviour, including steps under the Act and under the Standing Orders Local Law. We can only surmise that there may be any one of a number of reasons why a councillor may have chosen not to lodge to take those steps.
- (5)** Most importantly, in our view, each of the councillors who were interviewed stated that they had encountered:

 - (a)** no "factional" voting;
 - (b)** no instances where voting had not occurred on what could be considered the merits of the matter; and
 - (c)** no instances where they were not afforded a proper opportunity to be heard on a matter or to properly debate a matter.
- (6)** These statements lead us to find that, whilst the councillors have concerns as to occasional, unacceptable behaviour and language at council meetings, nevertheless, the Council, as a whole, is functioning properly and proper decision making is taking place.

(7) It should be said that, in our view, if there are instances of behaviour which are considered to fall short of the applicable standards, then it is for each of the councillors, including the presiding member, to consider taking whatever steps are appropriate in the circumstances. This may include a councillor immediately objecting to the behaviour or language by way of a point of order or the presiding member calling the particular member to order. These steps may not prevent future such instances but, nevertheless, can highlight that the councillors do not consider that that behaviour is acceptable or will be permitted to take place without comment. This would demonstrate to the public that the correct standards of behaviour are important.

5.3 Recommendations

(1) We have no recommendations to make to the Shire but we recommend that each of the councillors should pay particular attention to the views we have expressed in para 5.2(7) above.

6. RELATIONSHIP BETWEEN COUNCIL AND THE CEO

6.1 Methodology

(1) We conducted interviews with:

- (a) the Shire President, the Deputy Shire President and 5 other councillors; and
- (b) the CEO.

(2) We examined and reviewed the agenda papers and minutes of the ordinary and special meetings of the Council for the period under review.

6.2 Findings

(1) All of the councillors interviewed spoke of the CEO in positive terms and of the improvements that the CEO had instituted since commencing in the role in June 2020.

(2) The CEO stated that she was enjoying the role but that she was facing challenges with the recent departure of the Manager of Corporate Services

particularly with regards the implementation of a new enterprise ICT system. We were advised at the time that the recruitment process was well underway and that she had recruited adequately qualified temporary officers to assist in the interim.

- (3)** An independent consultant was engaged to undertake the annual CEO probation review (Item 14.1 of 24 November 2020).
- (4)** The review was undertaken in December 2020 with a councillors' median score on assessment of overall performance demonstrating that the CEO had performed above expectations.
- (5)** In March 2021 (Item 14.1) the Council resolved to adopt revised performance criteria and referred the review of remuneration as part of the next performance review process.
- (6)** Upon the information provided, we believe that the councillors and CEO enjoy a sound and productive working relationship underpinned by an appropriate and compliant performance review and goal setting arrangement.

6.3 Recommendations

- (1)** We emphasise the importance of engaging a qualified independent facilitator to assist in the annual performance review process, in alignment with recommendation 4 of the Authorised Inquiry.

7. RELATIONSHIP BETWEEN THE COUNCIL AND THE ADMINISTRATION

7.1 Methodology

- (1)** We conducted interviews with:
 - (a)** the Shire President, the Deputy Shire President and 5 other councillors;
 - (b)** the CEO; and
 - (c)** 5 of the employees.
- (2)** We reviewed the agenda papers and minutes of the ordinary and special meetings of the Council for the period under review.

7.2 Findings

- (1)** All of the councillors interviewed expressed a clear understanding of the separation of roles between the elected members and the employees. All requests for information or communications regarding constituents were typically channelled through the CEO or on rare occasions her reporting Managers. The CEO collaborated this view. Other staff who were interviewed did not refer to any inappropriate elected member involvement in administrative functions.
- (2)** Of the 5 employees interviewed, 3 stated that, on occasions, they had experienced unpleasant and inappropriate behaviour from elected members when attending workshops and agenda briefings.
- (3)** A majority of the councillors interviewed stated that there were instances where the “atmosphere” in workshops and meetings could become somewhat strained as a result of questions or comments directed at staff.
- (4)** One of the councillors who we interviewed gave several examples (supported with written evidence) of information provided by staff to the councillors for consideration at meetings that contained errors or was lacking in relevant detail. Some errors were relatively minor, but in one example of a series of financial statements submitted, errors were of a magnitude that could have suggested a material financial problem for the Shire.
- (5)** Section 5.41 (b) of the Act provides that the CEO must ensure that advice and information is available to the council so that informed decisions can be made. It follows that this advice and information should be factual, contemporary, relevant and accurate.
- (6)** Clause 5 of the Model Code of Conduct Regulations provides, in part, that a council member should treat others with respect, courtesy and fairness and should maintain and contribute to a harmonious, safe and productive working environment.
- (7)** Clause 19 of the Model Code of Conduct Regulations prohibits abusive or threatening behaviour towards others.
- (8)** Inappropriate behaviour at meetings, whether or not it is thought to be borne of the frustration of receiving incorrect or inadequate advice or information, is unjustified and inappropriate.
- (9)** If any of the councillors were to have a concern as to the quality of advice or information provided by the CEO, to assist in their decision making and

governance, then they should raise the matter with the Shire President who should then liaise with the CEO in accordance with s. 2.8(1)(f) of the Act.

- (10)** If after liaison, improvement is still not forthcoming, the matter should then be dealt with as part of the annual performance review process with consideration being given to identifying the shortcoming as a performance criterion requiring resolution.

7.3 Recommendations

- (1)** We recommend that the councillors pay particular attention to the provisions of the Shire's Code of Conduct relating to relationships with others and behaviour when dealing with Council staff in meetings and workshops.
- (2)** We recommend that a councillor should advise the CEO, as soon as practicable, where the councillor considers that he or she has been provided with information which may be incorrect. Preferably, this should be done before the commencement of the meeting or workshop to which the information refers, so that the CEO can consider the position and can rectify any erroneous advice.
- (3)** We recommend that the CEO pays particular attention to the quality of the information and advice that is to be provided by the administration to the councillors (in accordance with the responsibilities under s 5.41(b) of the Act). If shortcomings are identified then improvements to systems, procedures and organisational capacity should be instituted as a priority.

8. MANAGEMENT OF EMPLOYEES

8.1 Methodology

- (1)** We conducted interviews with:
- (a)** the CEO; and
 - (b)** 5 of the employees.
- (2)** We examined and reviewed:
- (a)** the agenda papers and minutes of the ordinary and special meetings of Council for the period under review;

- (b) documentation relevant to the recruitment of the incumbent CEO;
- (c) the Council policies relating to human resource management and occupational health and safety;
- (d) samples of performance reviews undertaken for level 3/4, 5/6, 7-9, Manager, and Executive Manager positions; and
- (e) all correspondence relating to terminations that occurred during the period under review.

8.2 Findings

- (1) The Shire has no adopted Council policies regarding the recruitment or appointment of a CEO.
- (2) The timing of the appointment process, commencing in December 2019 and concluding in April 2020 means that Division 2 of the Local Government (Administration) Regulations 1996 relating to standards for the recruitment for CEO's could not practically be applied.
- (3) In the circumstances, the Local Government Operational Guideline number 10 entitled "Appointing a CEO" was used as a guide to assess the efficacy of the process.
- (4) The following is a chronology of decision making relating to the appointment of the CEO which ultimately resulted in the appointment in April 2020.

26 November 2019 Item 14.2

Resolution 303/11/19

Council resolves not to appoint a CEO recruitment committee and to seek the services of a consultant to guide the recruitment process

Resolution 308/11/19

Council resolves to invite tenders for the services of a recruitment consultant to guide and advise upon process. Council also decides to establish selection criteria and authorise the CEO to prepare a specification and submit it to the December meeting for endorsement.

17 December 2019 Item 9.5.2

Resolution 322/12/19

Council resolves to approve the advertisement for the position, endorse the tender specifications, and authorise the CEO to undertake the procurement process.

28 January 2020 Item 14.1

Resolution 28/01/20

Council resolves to accept the tender from Beilby Downing Teal Pty Ltd to provide CEO recruitment services and authorises the CEO to issue a letter of award and sign the AS 4122 -2010 General Conditions Contract

7 and 14 April 2020

Council meets to select preferred applicant, agree upon the terms of the contract and to authorise the Shire President to negotiate contract terms with the preferred applicant.

No resolutions were made as to the preferred applicant or contract terms but according to the minutes "consensus" was reached.

Resolution 119/04/20

Council resolves to authorise the Shire President to negotiate contract terms

April 21 and 23 April 2020

Resolution 125/04/20

Council resolves to authorise Shire President to make an amended offer on the terms of contract

28 April 2020

Resolution 150/04/20

Council resolves to employ the incumbent CEO and endorses contract of employment.

- (5)** On the information provided, we are satisfied that the process leading to the appointment of the CEO complied with the relevant conditions of the Local Government (Administration) Regulations in force at the time of commencement of the process.
- (6)** In applying the operational guidelines, we found that there was no record contained within the minutes of the Council reviewing the selection criteria and performance criteria of the position description prior to the vacancy being advertised.
- (7)** However, we have reviewed the position description and consider the selection criteria and performance criteria contained in the position description to be relevant, appropriate, and reflecting of sound human resource management practice.
- (8)** Matters relating to the setting of new performance criteria and dealing with the probation period are dealt with elsewhere in this report.

- (9)** An analysis of annual performance reviews was undertaken utilising samples representing administration and clerical, para-professional, professional, managerial, and executive managerial roles.
- (10)** Feedback from the staff interviewed was that the most recent round of performance reviews was undertaken in a professional and considered manner. This is corroborated by the supporting documentation that was provided to us.
- (11)** During this review we have received feedback from some staff that they had been requested to perform roles considered to be beyond the scope of their position description. We observed that these staff, to their credit, had taken on the new roles along whilst still fulfilling their existing specified roles. Those employees said that they did so in recognition of what they saw as limited human resources and in an endeavour to “get the job done”.
- (12)** Directing or inviting staff to perform roles and functions outside of the remit of their position description, and possibly outside of the scope of their skills and experience, notwithstanding that they might be eager or willing to do so, can expose the organisation to significant risk. It also has the potential to expose the employee to unfair professional reputational risk should the outcome not meet expectations.
- (13)** On the information provided to us, there is no evidence that the currency and relevance of position descriptions is being discussed or assessed as part of the review process. This is so notwithstanding that there is an introductory message on the second page of the review form which contains an invitation or opportunity to do so. Employees should only perform functions and undertake roles commensurate with their skills and qualifications. An important function of the position description is to align the skills qualifications and experience of the employee with the functions, roles, and objectives of the position.
- (14)** Based upon the information provided to us, there is no evidence of any anomalies between officers who were provided an adequate review under section 5.38(3) and within 12 months had their employment terminated.
- (15)** In our view, the empowerment of employees and delegations in accordance with s. 5.44 of the Act is appropriate and sufficient to allow for the efficient and effective day to day operation of the Shire.
- (16)** In our view, the Shire’s Human Resource Policies and the

Occupational Safety and Health Policy reflect sound human resource management practice and do not expose the Shire to any inappropriate levels of risk. It is noted however that template varies between policies and most policies have not been subject to a review.

8.3 Recommendations

- (1) The annual performance review form should be modified to incorporate a section for identifying any changes in the year under review to the role or function of the position. The modifications should include provision for the identification of training and development programs that will assist the employee in meeting the objectives of the redesigned position.
- (2) No employee should be directed or permitted to undertake functions or roles outside of the specification of the employee's position description unless the employee clearly possess the skills and experience necessary to do so.
- (3) As part of the forthcoming annual performance review process, the job specification contained within each position description should be reviewed to identify any variations with the staff member's actual role and functions.
- (4) Training and development opportunities should be identified as part of this process.

9. PROCUREMENT AND PROBITY

9.1 Methodology

- (1) Prior to conducting interviews, we requested the complete files of all procurements of \$50,000 or more for the relevant period.
- (2) We were provided with electronic files of documents for 7 separate procurements which included some "Requests for Quote" and some "Invitations To Tender".
- (3) The files initially provided to us were not comprehensive. Our expectation would be that each of the Shire's procurement files, within its record system, would contain:

- The Request for Quote or Invitation To Tender including the proposed contract or conditions of contract;
- The advertisement in the case of tenders;
- The actual submissions or tenders;
- The evaluation report;
- The report and recommendation; and
- The decision and the award.

(5) Later, further documents were provided to us which, whilst not comprehensive, were sufficient for us to make findings and recommendations concerning the Shire’s procurements.

(6) We conducted interviews with:

- (a)** CEO;
- (b)** the Compliance and Communications Officer; and
- (c)** the Manager Assets and the Services.

(7) In this regard, we consider it relevant to note that:

- (a)** Some of the Shire’s employees who were involved with procurements during the relevant period are no longer with the Shire.
- (b)** The CEO commenced with the Shire only in June 2020 which was after the period to which the Inquiry Report relates and roughly mid-way through the period to which this Review relates.
- (c)** Whilst the responsibilities of the Compliance and Communications Officer include oversight of the tender process and assistance with some administrative components of the tender assessment, they do not extend to the development of the proposed contract or the scope of works or specification.
- (d)** The Manager Assets and Services only commenced with the Shire in January 2021 (the previous Manager Assets and Works having finished in October 2020). The Manager was therefore present for the last 2 months of the period of this review. He was responsible for one relevant report to the Council during this period which was a report recommending the award of a tender relating to “Bridge 0700”.

(8) We were also given access to, and reviewed, the Shire’s relevant policy namely, Policy F3 – Purchasing.

9.2 Findings

- (1)** Based on our examination of the 7 procurement files provided to us, there are a number of recurring “themes” for both our findings and our recommendations.
- (2)** Those “themes” relate to:

 - (a)** improvements which can be made with respect to the proposed contract and the proposed specification or scope of works;
 - (b)** matters which could improve the evaluation stage;
 - (c)** the need for the removal of unnecessary confidentiality with respect to reporting and decision-making; and
 - (d)** the need for a greater emphasis on targeted training to lift the skills of the Shire’s staff who are involved with procurement.
- (3)** In addition to the findings which follow, and which are of a general nature, there are a number of specific findings with respect to the tender for the management of the Recreation Centre (which tender was considered by the Council at a special meeting on 11 August 2020). We refer to this tender as the “Recreation Centre Management Tender”. Our findings lead us to make certain recommendations for the future.
- (4)** Our examination of a number of the files disclosed that the Request for Quote document (“RFQ”) and the Invitation To Tender document (“ITT”) did not use or incorporate a separate contract document. Rather, it was the case that the Conditions of Tendering component of the document included a set of “General Conditions” which were intended to set out the terms of the contract once the tender was awarded. We were not told of the origins of these “General Conditions”, and it was not known when, by whom or for what particular purpose they had been prepared.
- (5)** In our view, the preferable approach is for the RFQ and the ITT documents to comprise each of the following as a separate and identifiable component:

 - (a)** The conditions of tendering (or quoting);
 - (b)** The proposed contract;
 - (c)** The scope of works or specification; and
 - (d)** The form of tender.

- (6)** There are good reasons for this approach being the preferred approach. One significant reason, in the current context, will be to emphasise that the particular form of contract chosen must be suitable for the particular project and that there is not a “one size fits all” set of terms and conditions. The appropriate form of contract will differ, for example, on whether the nature of the work or services is a building contract, or a design and construct contract, or a minor works contract (which can be principal-administered or superintendent-administered), or a contract for consultancy services, or an agreement for the supply of goods, and so on.
- (7)** Generally speaking, it would be sensible for the Shire’s relevant Manager or senior officer who is directly responsible for delivering the project to be the person who determines the most appropriate contract. It is of vital importance that that person has adequate and appropriate training, skill and experience to make a decision of that sort.
- (8)** Where the procurement is from WALGA’s list of preferred suppliers then it is reasonable for the Shire to use the appropriate and relevant standard contract provided by WALGA.
- (9)** In other cases, it would be preferable and desirable for the Shire to have a suite of contemporary and recognised standard contract template for use in its differing procurements.
- (10)** With respect to the evaluation of tenders and quotes, we observed that, for each RFQ and ITT, the selection criteria and the percentage weightings to be considered by the evaluation panel differed. This appeared to indicate that a conscious and considered decision had been made in each case. This is as it should be and appeared to be reasonable, assuming of course that the decisions were made with a view to the Shire getting best value.
- (11)** In a number of cases, the Shire’s evaluation panel included the Compliance and Communications Officer in addition to “technical” officers of the Shire. In this regard, the view expressed by the Manager Assets and Services was that her inclusion was valuable because it added an independent viewpoint to the evaluation. In our view, whilst this has some merit, we think it is more sensible for the Compliance and Communications Officer to remain focussed on supervising the tender process for compliance with legislation and policy and not to have an active role as a member of the panel. In our view, members of the panel should be chosen because they can contribute to the evaluation of the

tenders and submissions by reason of their qualifications and experience relevant to the subject matter of the particular procurement.

- (12)** The specification or scope of works document is a separate document but is annexed, to the contract template, and thus forms an integral and critical part of the contract. It sets out the detailed requirements of the precise engineering works, building works, other works or services are required to be performed.
- (13)** Our examination of the Shire's procurement files revealed a "mixed bag".
- (14)** The example of the tender for "Bridge 0700" is pleasing. In this case, the drawings were prepared by the Shire's Asset team, and the specification used was one obtained from Main Roads. The Manager of Assets and Services considered that he and his team were more than capable of doing these drawings and generally capable of preparing specifications for "core" work such as road maintenance and road upgrades. We see no reason to question that.
- (15)** This example is in contrast with some others. For example, in the case of the tender for the consultancy services for the recruitment of a CEO, there was no scope of work or services as part of the ITT and, indeed, no detailed description of the precise services required. This is not to say that appropriate and suitable services were not delivered in this particular case or that the Shire did not receive good value.
- (16)** Rather, in our view, it would be preferable practice for the Shire to clearly state what services it expects to be performed and to do so in properly developed specification or scope of works.
- (17)** Our review of the ITTs and the related minutes of Council meetings revealed that, so far as we could ascertain the general position is that tenders are dealt with by the Council as a confidential item and that that part of the meeting is closed to the public.
- (18)** In our experience, there are differing approaches across WA local governments with respect to how tenders are dealt with by councils in terms of transparency.
- (19)** In our view, the preferred and better practice is for tenders to be considered and decided as an open item of business. Many metropolitan local governments take this approach, and the greater transparency has been welcomed and, indeed, is now taken as a given where it occurs.

- (20) Where the local government deals with tenders as an open item there is, nevertheless, a number of differing approaches as to what particular information is dealt with by way of a confidential attachment. In some cases the tender prices and the in-house panel's tender scoring matrix are kept as confidential attachments (only available to the Council) and in other cases that information is made public.
- (21) In our view, greater transparency is to be preferred. It promotes public confidence in the processes and decisions of the council, and we are not aware of any evidence of drawbacks or difficulties being experienced. We accept, however, that no one approach can be presently regarded as "best practice". Therefore, we consider that the decision as to whether the prices and evaluation should be publicly available is a matter which should be decided by the Council upon consideration of an appropriate report prepared by the CEO.
- (22) We turn now to our findings in connection with the Recreation Centre Management Tender which was considered by the Council at a special meeting on 11 August 2020.
- (23) As mentioned earlier, the current CEO commenced in June 2020 and had been with the Shire a little over 2 months at the time of the relevant report and the special meeting of the Council. Well prior to her commencement, a decision had already been taken to invite tenders for the engagement of a contractor to manage the Centre and the ITT had been issued by the Shire in May 2020. According to the report the Recreation Centre was due to be completed in August/September 2020.
- (24) Based on our interviews and examination of relevant documents, a number of aspects came to our attention as follows:
- (a) Firstly, there was no formal decision taken by the Council to seek tenders or to "outsource" the management of the Centre.
 - (b) According to the report, *"it was determined that the most appropriate method of ensuring the successful management of the facility was to invite tenders from the open market"*. Several councillors recalled that the outsourcing was raised for discussion at a council workshop. However, there was no disagreement that a decision of the council had not been taken. There was no indication that the Council would not have made that decision if it had been considered and we note that this aspect of the matter

was not raised by anyone when the award of the tender was considered in August 2020.

- (c) Nevertheless, in our view, it was a failing of proper process that no decision to outsource and to invite tenders was considered or decided at a meeting of the Council.
- (d) In our view, it would have been proper and sensible for there to have been proper consideration at a council meeting of the various alternatives open to the Council. These alternatives would include:
- to invite tender from external parties only;
 - to invite tenders from both external parties and with an in-house bid; or
 - to undertake the management itself (and not go to tender).

- (e) We consider our view to be reasonable given that, at least in 2017 the view of the Shire was that it would undertake the management itself. This appears in the Shire's "Business Plan" dated February 2017 where, in connection with management it was stated that:

"2.4.6 Management

The Shire manages the existing Toodyay Showgrounds and hence is responsible for the maintenance of the playing fields and buildings and management of all bookings, including receiving fees for use of the main pavilion. The long term operational management of the facilities will be part of the Shire's community development directorate and will house 3 to 4 operational staff."

- (f) The view we have expressed in para (d) above should not be seen as any criticism of the current CEO who commenced after the decision in a practical sense had already been taken and when a decision on the invited tenders was imminent.
- (g) Secondly, the ITT did not incorporate either a proposed contract or set of proposed terms and conditions. Also there was no separate and detailed scope of the services required. The ITT mentioned certain services expected but could not be described as a proper and detailed scope.

(h) To the contrary, the ITT stated that:

- (i) *“Council is seeking to apply a Contract Management Model and enter into a contract with a suitably qualified facility management organisation (Manager) to manage the Precinct for a fixed period of time, which may be through a Management Agreement (Agreement)”*; and
- (ii) Proposals from tenderers should include the *“Proposed contract agreement including performance based arrangements”*.

(i) The fact that the ITT did not incorporate a contract as proposed by the Shire is further evidenced by the fact that the recommendation in the report, and the decision by the Council, stated that the Council:

“Authorises the Chief Executive Officer to:

- (a) enter into contract negotiations with the successful tenderer in accordance with the provisions of the submitted tender.*
- (b) prepare and execute the necessary contract documents once negotiations have been finalised”*.

(j) We were advised that subsequent to the Council’s decision on 11 August 2020, the Shire instructed solicitors to prepare a contract and later that contract was entered into by the Shire and by the party identified as the “successful tenderer”.

(k) The Recreation Centre is currently being managed pursuant to that contract. Indeed, the initial contract term runs, we were advised, until December 2022, at which time a decision would need to be made by the Shire as to whether or not to exercise an option for a further term.

(l) In our view, it would make sense for the Council to be provided with a detailed report which analyses the benefits and disadvantages of each of the alternatives and for this to occur before any decision is made with respect to the contract option.

(25) In our view, the Shire must take steps, in the future, to ensure that whenever a decision is taken to invite tenders or request quotes that the

ITT or RFQ documents are of high standard and comprise the following essential elements:

- (a) the conditions of tendering (or quoting);
- (b) the proposed contract;
- (c) the scope of works or specification; and
- (d) the form of tender.

(26) Further, in our view, the CEO is to ensure that if the staff do not have the appropriate and relevant skill and experience, in the case of the contract template or the specification/scope, then external expertise should be sought to develop those documents. Where it would make sense to do so, existing staff should be provided with appropriate training.

9.3 Recommendations

- (1) A suite of standard contract templates should be established for those procurements which:
 - (a) are regularly encountered by the Shire; and
 - (b) are of a significant value (say over \$50,000); and
 - (c) are not procurements through the WALGA Preferred Panel (where a WALGA contract template would generally be used).

- (2) Examples of projects of this type might include:
 - (a) major road related works;
 - (b) significant consultancy engagements;
 - (c) orders for the supply of goods or services that are on an as required basis but which when aggregated would represent a significant total cost;
 - (d) building work of a major nature requiring the appointment of an independent superintendent;
 - (e) construction work which is usually referred to as minor works. This could need an independent superintendent or alternatively might be “principal administered”.

- (3) Those examples are appropriate cases for use of a high quality contract template.

- (4)** We recommend that, in each case, a good and well recognised base template be used. A Standards Australia set of general conditions would be appropriate. Examples include:
- (a)** AS 2124 - building contract.
 - (b)** AS 4122 - consultancy contract.
 - (c)** AS 4905 - minor works principal administered.
 - (d)** AS 4906 - minor works superintendent administered.
 - (e)** AS 4912 - contract for the periodic supply of goods.
- (5)** However, we recommend that the template be amended so as to contemporary and fairly balanced in terms of risk as between the Shire as principal, and the contractor or consultant. These amendments should be done through a suitably experienced and specialised law firm. Appropriate firms can be found from within the WALGA panel.
- (6)** Each contract template should be accompanied by firstly, a layman's guide to the more important provisions and secondly, by a simple statement explaining when the use of the template is suitable and useful and when it is not suitable or appropriate.
- (7)** These tasks need not all be done at once but should be done over a reasonable timeframe according to a prioritised list.
- (8)** Once one or more templates are developed, then their use by the employees should be mandated.
- (9)** This should be done by means of a directive by the CEO applying to all staff. This could take the form of, say, a "CEO Direction" or an "Administrative Procedure" (but not a Council Policy as it is an operational matter not a council matter).
- (10)** This directive, the templates and other supporting documents referred to above should be easily accessible to employees on the Shire's information system.
- (11)** Going forward, the Manager Assets and Services and other senior staff responsible for significant procurements should be strongly encouraged by the CEO to undertake targeted training in relation to any template contract with which they are not well acquainted or require greater familiarity and understanding.
- (12)** The use of the appropriate and contemporary contract template for each procurement is critical. Also of critical importance is the use of a high

quality Scope of Services or Specification which is attached to, and forms part of, the overall contract being offered.

- (13)** The Manager Assets and Services considered himself to be well experienced with the development of scopes and specifications for certain differing types of work particularly roadwork and road related infrastructure.
- (14)** There will other work types however where the services of a suitable external consultant is required and should be sought.
- (15)** This review did not extend to identifying all of those other areas where external assistance should be sought to prepare the scope/ specification. Therefore, a suitable list should be developed and mandated.
- (16)** It is recommended that the CEO instructs the Manager Assets and Services to prepare a list of matters where, by reason of:
- (a)** the nature or complexity of the work or of the goods or services;
 - (b)** the quantum of the likely expenditure involved; or
 - (c)** the level of the risks involved (whether the risk is reputational, financial or otherwise),
- the Shire's best interests are served by having an external professional (perhaps an engineer or other expert) prepare the scope/specification.
- (17)** Once this list is settled, it should be mandated and made available in the same way as described in paras (8), (9) and (10) above.
- (18)** The CEO should take steps to ensure that:
- (a)** the role of the Compliance and Communications Officer remain focussed on supervising the tender process for compliance with legislation and policy and that officer does not to have an active role as a member of any evaluation panel; and
 - (b)** members of the panel are be chosen because they can contribute to the evaluation of the tenders and submissions by reason of their qualifications and experience relevant to the subject matter of the particular procurement.
- (19)** The CEO should consider doing so in the form of a CEO Direction or an Administrative Policy.
- (20)** Well prior to any decision in connection with the exercise of the contract option for the Recreation Centre management, the CEO should ensure that the Council is provided with a detailed report, for its

consideration and decision, which analyses the benefits and disadvantages of each of the alternatives which are open to the Council for its ongoing management.

10. RECORD KEEPING

10. Methodology

- (1)** We undertook interviews with:
 - (a)** the Shire's Senior Records Officer who has been with the Shire for 9 years; and
 - (b)** the CEO.
- (2)** We also raised the topic of record keeping with the other employees who were interviewed in the event that any of them wished to provide information.
- (3)** We reviewed the Shire's Record Keeping Plan and the Shire's Record Keeping Policy.

10.2 Findings

- (1)** The Shire of Toodyay Record Keeping Plan contains the following objectives:
 - (a)** compliance with section 28 of the *State Records Act 2000*;
 - (b)** recordkeeping within the Local Government is moving towards compliance with State Records Commission Standards and Records Management Standard AS ISO 15489;
 - (c)** processes are in place to facilitate the complete and accurate record of business transactions and decisions;
 - (d)** recorded information can be retrieved quickly, accurately, and cheaply when required; and
 - (e)** the protection and preservation of the Local Government's records.
- (2)** For a number of years and at the time of our visit to the Shire, the Shire was utilising an enterprise-wide ICT system ("the current system") to record and retrieve documents in accordance with its obligations under the State Records Act and the Record Keeping Plan. We were advised that the current system carries integration across all software modules and is accessible to all staff who normally have access to a computer workstation.

- (3)** Inward and outward written correspondence is recorded on the current system. We were advised by the Senior Records Officer that the process of recording these documents is effective and facilitates their efficient retrieval. This was verified by all other staff interviewed.
- (4)** The Shire Record Keeping Policy adopted by Council on 25 June 2019 provides that all records are to be captured at the point of creation. “All records” includes emails. We were advised that no systems or practices are currently in place that facilitate the recording of either inward or outward emails relevant to the administration and councillors.
- (5)** This failure to effectively record emails would be in breach of the Shire Record Keeping Policy. It is also would not comply with the Record Keeping Plan endorsed by the State Records Commission.
- (6)** We were advised by the Senior Records Officer that a new enterprise-wide software system has been purchased by the Shire and is being installed in readiness for commissioning on 1 July 2021 (“the new system”).
- (7)** We were advised that the new system does not include a fully functional or integrated records management module. We were advised that the contract relevant to the purchase of the new system provides that the development and pricing of a records management module is a matter for both parties to resolve in the future.
- (8)** We were advised that records created on or before 30 June 2021 would not be accessible in the same manner as records created after 1 July 2021. It was suggested to us that a solution under consideration would be to retain a small number of the existing user agreement licences (for the existing system) to afford access to these records. In our view, limiting the number of user agreement licences and access in this manner might lead to a breach of the Record Keeping Plan in that all staff may not be able to properly keep their records.
- (9)** We were shown some details of “third party” software solutions that were being considered as a replacement for the existing system’s record keeping capability. However, we were not given any assurance that the efficacy of these new systems, if installed, would provide enterprise-wide functionality.
- (10)** In our view, a change to the Shire’s existing system should deliver either the same level of service, or preferably improvements in productivity and functionality across all software modules, including, importantly, records management.

- (11) On the information provided to us, it appears that the new system will not, at this time, provide a records management capability that is an adequate replacement of that capability in the existing system. It is vital that at all times the Shire has a system which meet the objectives, and complies with the requirements of, the Record Keeping Plan.

10.3 Recommendations

- (1) Administrative policies and procedures should be developed and implemented that facilitate the effective recording of all inward and outward emails being generated and received by the administration and the Councillors.
- (2) The Shire should take whatever steps are necessary to ensure that there is, at all times, enterprise wide access to the Shire's records management system so that the objectives and requirements of the Shire's Record Keeping Plan are satisfied and met. The manner by which this is achieved is the responsibility of the CEO.

11. THE SHIRE'S LITIGATION POLICY

11.1 Methodology

- (1) According to the Scope for this Review, the task in this regard was to:

“Assess the Shire's current Litigation Policy (adopted in October 2020) in relation to the scope and authority of the CEO regarding any litigation on the Shire's behalf.”

- (2) It became clear, from our investigation and our interviews, that the reference in the Scope to the Shire's “current Litigation Policy” was, in fact, a reference to the policy adopted by the Council in October 2020 entitled:

“G1 Compliance and Enforcement”.

- (3) In this Section 12, it is this “Compliance and Enforcement” Policy that we refer to as the “Policy”.
- (4) We reviewed the Policy and the minutes of the council's October 2020 meeting (at which the Policy was adopted).

(5) The Policy was discussed during an interview with the CEO.

11.2 Findings

(1) We were told that, whilst the Policy was referred to in the Scope as a “litigation” policy nevertheless it intended as a policy to deal specifically with prosecutions and enforcement of laws rather than with some wider field of litigation such as commercial litigation.

(2) This intention is reflected by the terms of the Policy itself as is evident from the “Introduction” to the Policy which states:

“This policy is intended to provide direction regarding the Shire’s approach to compliance and enforcement of legislation.”

(3) Key matters dealt with by the Policy are set out in the section entitled “Principles” and state as follows:

“(a) The Shire will administer its statutory responsibilities under the applicable legislation, in a fair, unbiased and equitable manner in the interest of public health, safety and amenity.

(b) Each compliance investigation undertaken by the Shire will be assessed case by case and on its merits.

(c) The Shire will generally not investigate or respond to anonymous allegations.

(d) The Shire will endeavour to protect the private details of complainants as much as possible within the legislative framework.

(e) Allegations of a breach or offence will be prioritised for investigation based upon the seriousness of the alleged breach or offence and resources available.

(f) Decisions regarding enforcement will be commensurate with the seriousness of the alleged breach or offence and have regard to upholding the Public Interest.

(g) Prosecution will only be commenced where the Chief Executive Officer (or delegate) has considered the prospects of achieving a conviction and is satisfied that prosecution is warranted.

(h) The Chief Executive Officer will keep elected members informed of any legal proceedings, anticipated costs and their progress.

(i) The Shire may discontinue an investigation where it reasonably considers that the allegation is unsubstantiated, mischievous, vexatious, pertains to a civil matter, has previously been investigated and concluded or is likely to result in disproportionate costs being incurred.”

- (4) Under the heading “Limit of Authority”, further matters are provided for as follows (our summary):
- Procurement of legal services will be done under the Purchasing Policy.
 - The CEO’s authorisation is limited to \$5,000 for any one matter.
 - The CEO is to report with details to the Council where a matter is likely to exceed that figure.
- (5) In our view, the Policy straight forward in terms of its intent and application. It is not unduly complex and seems reasonably appropriate for a local government such as the Shire.
- (6) In the course of our discussion with the CEO, we observed that whilst the Policy was reasonable and appropriate, 2 aspects of the Policy could, in our view, be improved.
- (7) The first matter relates to the considerations to be considered before initiating a prosecution. We noted that the prospects of “achieving a conviction” (under para (g) quoted above) is a relevant and important consideration for commencing a prosecution but is not the only relevant consideration. The CEO noted, correctly in our view that it was implicit that there were other relevant considerations where it was stated that the CEO or delegate must be “*satisfied that prosecution is warranted*”. In our view, it would be desirable if express reference were to be made in the Policy to other relevant considerations. In this regard, consideration ought to be given to Statement of Prosecution Policy and Guidelines currently published and adopted by the WA Director of Public Prosecutions.
- (8) The second matter relates to the CEO reporting to the Council. In this regard, we observed that it would be wise for the CEO to report to the Council as to any prosecution that was to be defended or was required to go to a hearing. The CEO advised us that she would do this in the normal course of keeping the Council informed and that this would be done via the existing information bulletin to councillors. In our view, consideration should be given to formalising this practice with a requirement to that effect in the Policy.

11.3 Recommendations

(1) Consideration should be given to amending the Policy:

- (a)** requiring that, when considering the commencement of a prosecution or when a matter is required to go to a hearing, consideration must be given to the factors set out in the Statement of Prosecution Policy and Guidelines published by the WA Director of Public Prosecutions; and
- (b)** requiring the CEO keep the Council informed of any prosecution that is defended or is required to go to a hearing.

**John M. Woodhouse
and Andrew Hammond**

Hammond Woodhouse Advisory

19 July 2021

TABLE A
TABLE OF CONSOLIDATED RECOMMENDATIONS

REVIEW TOPIC	Report paragraph	Recommendation (abbreviated)	Priority (H=high, M=medium and L=low)
THE ROLE OF THE COUNCIL			
	• 3.3 (1)	Review content, layout and structure of reports to the Council	M
	• 3.3(2)	Provide training to staff re report writing/agenda preparation	M
	• 3.3(3)	Council to consider all proposals to treat matters as confidential on individual basis	H
	• 3.3(4)	Undertake risk-based review of all Council Policies	H
	• 3.3(5)	Develop Council Policy for dealing with corporate documents	M
	• 3.3(6)	Modify Corporate Business Plan to include 5-year financial forecast	H
	• 3.3(7)	Undertake workshops to elevate CBP to guide strategic financial management	H
THE ROLE OF INDIVIDUAL COUNCILLORS			

	<ul style="list-style-type: none"> • Not applicable 	No recommendations	
COUNCIL CULTURE AND DYNAMICS			
	<ul style="list-style-type: none"> • 5.3(1) 	Councillors to pay attention to taking steps to address behaviour issues	H
RELATIONSHIP BETWEEN THE COUNCIL AND CEO			
	<ul style="list-style-type: none"> • 6.3(1) 	See Recommendation 4 of the Authorised Inquiry	M
RELATIONSHIP BETWEEN THE COUNCIL AND ADMINISTRATION			
	<ul style="list-style-type: none"> • 7.3(1) 	Councillors to pay attention to Code in dealings with staff	H
	<ul style="list-style-type: none"> • 7.3(2) 	Councillors to advise CEO promptly of advice concerns	H
	<ul style="list-style-type: none"> • 7.3(3) 	CEO to pay attention to standard of advice provided by staff	H
MANAGEMENT OF EMPLOYEES			
	<ul style="list-style-type: none"> • 8.3(1) 	Modify annual performance review forms re role changes	M
	<ul style="list-style-type: none"> • 8.3(2) 	Employees not to be directed to undertake functions outside PD without appropriate skills/experience	H
	<ul style="list-style-type: none"> • 8.3(3) 	Review of all job specifications when performance reviews done	M

	<ul style="list-style-type: none"> • 8.3(4) 	Identify training opportunities	M
PROCUREMENT AND PROBITY			
	<ul style="list-style-type: none"> • 9.3(1) • 9.3(2) • 9.3(3) • 9.3(4) • 9.3(5) • 9.3(6) • 9.3(7) 	Establish suite of standard contract templates	H
	<ul style="list-style-type: none"> • 9.3(8) • 9.3(9) • 9.3(10) 	Develop CEO directive to mandate use of templates	H
	<ul style="list-style-type: none"> • 9.3(11) 	CEO to encourage training	M
	<ul style="list-style-type: none"> • 9.3(12) • 9.3(13) • 9.3(14) • 9.3(15) • 9.3(16) • 9.3(17) 	Develop and mandate list of matters where scope of works to be prepared by external expert	H
	<ul style="list-style-type: none"> • 9.3(18) • 9.3(19) 	CEO to oversee evaluation panels and consider a suitable CEO Directive	M
	<ul style="list-style-type: none"> • 9.3(20) 	CEO to provide report to Council re Rec Centre option	M
RECORD KEEPING			
	<ul style="list-style-type: none"> • 10.3(1) 	Develop procedures re record keeping for councillor emails	M
	<ul style="list-style-type: none"> • 10.3(2) 	CEO to ensure enterprise-wide record keeping capability	H
LITIGATION POLICY			
	<ul style="list-style-type: none"> • 11.3(1) 	Consider amending Policy re prosecutions	M

