



Department of
Local Government, Sport
and Cultural Industries

Report of the Inquiry into the City of Melville

Authorised Inquiry under Part 8 Division 1
of the *Local Government Act 1995* (WA)

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1. Introduction

1. The City of Melville sits upon the shore of the Swan River in Perth, Western Australia. It is home to 102,252 people made up of 69,846 electors, living in 41,262 dwellings.
2. The community is represented by a Mayor and 12 Elected Members, voted by residents in four year terms. Elected Members (also known as Councillors and Mayor) represent residents across six wards.
3. The City of Melville covers the suburbs of Alfred Cove, Applecross, Ardross, Attadale, Bateman, Bicton, Booragoon, Brentwood, Bull Creek, Kardinya, Leeming, Melville, Mount Pleasant, Murdoch, Myaree, Palmyra, Willagee and Winthrop.
4. Section 8.3 of the *Local Government Act 1995* (the **Act**) gives the Director General of the Department of Local Government, Sport and Cultural Industries (the **Department**) the authority to inquire into all local governments and their operations and affairs.
5. The Director General may, by written authorisation, authorise a person to inquire into and report on any aspect of a local government or its operations or affairs.
6. On 30 November 2017, the Director General of the Department authorised an inquiry in accordance with section 8.3(2) of the Act. The Terms of Reference directed the inquiry to the following aspects of the City of Melville (City) and its operations and affairs beginning 1 January 2015:
 1. Council's relationship with the City of Melville administration
 2. the adequacy of Council's Policies and Procedures, including, but not limited to:
 - a. the manner in which the City and Council deal with complaints from members of the public
 - b. management of public question time
 - c. public access to information, and
 - d. adherence to Council policies and procedures by the Council and City of Melville administration
 3. Acquisition of land
 4. Any other issues that are determined to be of relevance to the above.
7. This report on the outcome of the Department's inquiry has been compiled in accordance with section 8.13 of the Act by officers of the Department who were authorised to conduct the inquiry (the **Authorised Persons**).
8. In order to perform their functions, the Authorised Persons issued 13 directions to the City under section 8.5 of the Act to provide documents, information or property. The City complied with each of those directions.
9. Four of the directions, issued to the City on 4 and 6 April 2018, required one member of Council and three City staff members to participate in formal records of interview as per section 8.5(a) and (b) of the Act. All required persons complied with this direction and interviews took place on 10, 11 and 20 April 2018. Other persons were informally interviewed during the course of this investigation.
10. The current CEO, Executive Manager Governance and Legal Services, Mayor Russell Aubrey and other councillors both past and present were given an opportunity to comment on this report in draft form before it was finalised. A number of other persons potentially affected by the report were also given relevant parts of it so as they too had an opportunity to comment. Those submissions submitted were considered by the Authorised Persons and form part of this report.
11. A number of persons requested extensions of time to compile a response to this report which were given. The last response was provided to the Authorised Persons on 5 March 2019.

2. Statutory framework

12. The Act and associated local government regulations set out the framework for the administration and financial management of local government.
13. Extracts from the *Local Government Act 1995* and associated legislation have been extensively reproduced as it was identified during the investigation that a number of members of the public were not familiar with the legislation applicable to the administration, governance and management of a local government.
14. Division 2, Section 2.5 states “Local governments created as bodies corporate”. Local governments are also deemed to be capable of making decisions in the best interests of its community which on occasions may not reflect the opinions of all residents.
15. The Act and regulations define the roles and responsibilities of the Council, Mayor, Councillors and the Chief Executive Officer (CEO). Relevantly, the Act provides:

2.7. Role of council

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.*

2.8. Role of mayor or president

1. The mayor or president –

- a. *presides at meetings in accordance with this Act; and*
- b. *provides leadership and guidance to the community in the district; and*
- c. *carries out civic and ceremonial duties on behalf of the local government; and*
- d. *speaks on behalf of the local government; and*
- e. *performs such other functions as are given to the mayor or president by this Act or any other written law; and*
- f. *liaises with the CEO on the local government’s affairs and the performance of its functions.*

2. Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

2.10. Role of councillors

A councillor –

- a. *represents the interests of electors, ratepayers and residents of the district; and*
- b. *provides leadership and guidance to the community in the district; and*
- c. *facilitates communication between the community and the council; and*
- d. *participates in the local government's decision-making processes at council and committee meetings; and*
- e. *performs such other functions as are given to a councillor by this Act or any other written law.*

16. It is important to note that individual elected members have no authority to make decisions or participate in the day-to-day operations of the local government. All authority sits with the Council and that authority is exercised by simple or majority decisions at formal council or committee meetings.

17. As the Mayor and councillors are not involved in operational matters, each local government employs a CEO and other staff for the purposes of day-to-day running of the local government. The CEO is appointed by Council and is the link between Councillors and local government staff. All other local government staff report to the CEO. The Act provides:

5.41 Functions of CEO

The CEO's functions are to –

- a. *advise the council in relation to the functions of a local government under this Act and other written laws; and*
- b. *ensure that advice and information is available to the council so that informed decisions can be made; and*
- c. *cause council decisions to be implemented; and*
- d. *manage the day to day operations of the local government; and*
- e. *liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and*
- f. *speak on behalf of the local government if the mayor or president agrees; and*
- g. *be responsible for the employment, management, supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and*
- h. *ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- i. *perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

18. Section 5.42 of the Act allows a council to delegate in writing to the CEO the exercise of its powers or the discharge of its duties, subject to some exceptions (e.g. borrowing money, decisions requiring an absolute majority of council members, appointing an auditor).
19. The role of local government staff is determined by the CEO. Section 5.44 of the Act allows the CEO to delegate in writing to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties, other than the power of delegation. With some qualifications, under section 5.44 the CEO is permitted to delegate a power or duty the exercise or discharge of which was delegated to the CEO by the Council under section 5.42 of the Act.
20. The Act stipulates the definition of a major land transaction and business case requirements.

3.59. Commercial enterprises by local governments

1. In this section —

acquire has a meaning that accords with the meaning of dispose;

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not; land transaction means an agreement, or several agreements for a common purpose, under which a local government is to —

- a. *acquire or dispose of an interest in land; or*
- b. *develop land;*

major land transaction means a land transaction other than an exempt land transaction if the total value of —

- a. *the consideration under the transaction; and*
- b. *anything done by the local government for achieving the purpose of the transaction, is more, or is worth more, than the amount prescribed for the purposes of this definition;*

major trading undertaking means a trading undertaking that —

- a. *in the last completed financial year, involved; or*
- b. *in the current financial year or the financial year after the current financial year, is likely to involve,*

expenditure by the local government of more than the amount prescribed for the purposes of this definition, except an exempt trading undertaking;

trading undertaking means an activity carried on by a local government with a view to producing profit to it, or any other activity carried on by it that is of a kind prescribed for the purposes of this definition, but does not include anything referred to in paragraph (a) or (b) of the definition of land transaction.

2. *Before it —*

- a. *commences a major trading undertaking; or*
- b. *enters into a major land transaction; or*
- c. *enters into a land transaction that is preparatory to entry into a major land transaction,*

a local government is to prepare a business plan.

3. *The business plan is to include an overall assessment of the major trading undertaking or major land transaction and is to include details of —*

- a. *its expected effect on the provision of facilities and services by the local government; and*
- b. *its expected effect on other persons providing facilities and services in the district; and*
- c. *its expected financial effect on the local government; and*
- d. *its expected effect on matters referred to in the local government's current plan prepared under section 5.56; and*
- e. *the ability of the local government to manage the undertaking or the performance of the transaction; and*
- f. *any other matter prescribed for the purposes of this subsection.*

4. *The local government is to —*

- a. *give Statewide public notice stating that —*
 - i. *the local government proposes to commence the major trading undertaking or enter into the major land transaction described in the notice or into a land transaction that is preparatory to that major land transaction; and*
 - ii. *a copy of the business plan may be inspected or obtained at any place specified in the notice; and*
 - iii. *submissions about the proposed undertaking or transaction may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*

and

- b. *make a copy of the business plan available for public inspection in accordance with the notice.*

5. *After the last day for submissions, the local government is to consider any submissions made and may decide* to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.*

** Absolute majority required.*

5a. A notice under subsection (4) is also to be published and exhibited as if it were a local public notice.

6. If the local government wishes to commence an undertaking or transaction that is significantly different from what was proposed it can only do so after it has complied with this section in respect of its new proposal.

7. The local government can only commence the undertaking or enter into the transaction with the approval of the Minister if it is of a kind for which the regulations require the Minister's approval.

8. A local government can only continue carrying on a trading undertaking after it has become a major trading undertaking if it has complied with the requirements of this section that apply to commencing a major trading undertaking, and for the purpose of applying this section in that case a reference in it to commencing the undertaking includes a reference to continuing the undertaking.

9. A local government can only enter into an agreement, or do anything else, as a result of which a land transaction would become a major land transaction if it has complied with the requirements of this section that apply to entering into a major land transaction, and for the purpose of applying this section in that case a reference in it to entering into the transaction includes a reference to doing anything that would result in the transaction becoming a major land transaction.

10. For the purposes of this section, regulations may –

a. prescribe any land transaction to be an exempt land transaction;

b. prescribe any trading undertaking to be an exempt trading undertaking.

21. The Act provides a list of information that is to be made available for the public to inspect.

5.94. Public can inspect certain local government information

A person can attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection –

a. any code of conduct;

aa. any regulations prescribing rules of conduct of council members referred to in section 5.104;

ab. any register of complaints referred to in section 5.121;

b. any register of financial interests;

c. any annual report;

d. any annual budget;

e. any schedule of fees and charges;

f. any plan for the future of the district made in accordance with section 5.56;

- g. *any proposed local law of which the local government has given Statewide public notice under section 3.12(3);*
- h. *any local law made by the local government in accordance with section 3.12;*
- i. *any regulations made by the Governor under section 9.60 that operate as if they were local laws of the local government;*
- j. *any text that —*
 - i. *is adopted (whether directly or indirectly) by a local law of the local government or by a regulation that is to operate as if it were a local law of the local government; or*
 - ii. *would be adopted by a proposed local law of which the local government has given Statewide public notice under section 3.12(3);*
- k. *any subsidiary legislation made or adopted by the local government under any written law other than under this Act;*
- l. *any written law having a provision in respect of which the local government has a power or duty to enforce;*
- m. *any rates record;*
- n. *any confirmed minutes of council or committee meetings;*
- o. *any minutes of electors' meetings;*
- p. *any notice papers and agenda relating to any council or committee meeting and reports and other documents that have been —*
 - i. *tabled at a council or committee meeting; or*
 - ii. *produced by the local government or a committee for presentation at a council or committee meeting and which have been presented at the meeting;*
- q. *any report of a review of a local law prepared under section 3.16(3);*
- r. *any business plan prepared under section 3.59;*
- s. *any register of owners and occupiers under section 4.32(6) and electoral rolls;*
- t. *any contract under section 5.39 and variation of such contract;*
- u. *such other information relating to the local government —*
 - i. *required by a provision of this Act to be available for public inspection; or*
 - ii. *as may be prescribed.*

5.95. Limits on right to inspect local government information

1. *A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information —*
 - a. *which is not current at the time of inspection; and*
 - b. *which, in the CEO's opinion, would divert a substantial and unreasonable portion of the local government's resources away from its other functions.*
2. *A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (m), (n), (p) or (u) of that section if the information relates to any debt owed to the local government by a person other than the first mentioned person.*
3. *Subject to subsection (4), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (n) or (p) of that section if the meeting or that part of the meeting to which the information refers —*
 - a. *was closed to members of the public; or*
 - b. *in the CEO's opinion, could have been closed to members of the public but was not closed.*
4. *Subsection (3) does not apply in relation to information —*
 - a. *that is a record of the decisions made at a meeting of a council, a committee or electors; or*
 - b. *of a kind prescribed as being information that can be inspected by members of the public despite subsection (3).*
5. *A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (t) of that section if —*
 - a. *the information relates to a matter other than the salary or the remuneration or benefits payable under the contract; and*
 - b. *the information is prescribed as being of a private nature.*
6. *Subject to subsection (7), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information —*
 - a. *referred to in a paragraph of that section that is prescribed as being confidential information for the purposes of this subsection; or*
 - b. *referred to in that section of a type prescribed as confidential for the purposes of this subsection,*
for the period of time prescribed in relation to the information.
7. *Subsection (6) does not apply in respect of information in relation to a local government if —*
 - a. *the information is prescribed as information that is confidential but that*

may be available for inspection if the local government so resolves; and

- b. *the local government has resolved that the information is to be available for inspection.*

8. *A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (m) of that section if the information is information that has been omitted by regulations made under section 4.38 from the electoral roll for the protection of an elector or his or her family.*

5.96. Copies of information to be available

If a person can inspect certain information under this Division, the person may request a copy of the information and, unless regulations prescribe otherwise, the local government is to ensure that copies are available and that the price at which it sells copies does not exceed the cost of providing the copies.

22. The Act stipulates provisions for public question time.

5.24. Question time for public

1. Time is to be allocated for questions to be raised by members of the public and responded to at —

- a. every ordinary meeting of a council; and
- b. such other meetings of councils or committees as may be prescribed.

2. Procedures and the minimum time to be allocated for the asking of and responding to questions raised by members of the public at council or committee meetings are to be in accordance with regulations.

23. The Local Government (Administration) Regulations 1996 (**Administration Regulations**) provide requirements for local governments to facilitate public question time during selected meetings of Council.

5. Question time for public, meetings that require prescribed (Act s. 5.24)

For the purposes of section 5.24(1)(b), the meetings at which time is to be allocated for questions to be raised by members of the public and responded to are —

- a. every special meeting of a council;
- b. every meeting of a committee to which the local government has delegated a power or duty.

6. Question time for public, minimum time for (Act s. 5.24(2))

1. *The minimum time to be allocated for the asking of and responding to questions raised by members of the public at ordinary meetings of councils and meetings referred to in regulation 5 is 15 minutes.*

2. *Once all the questions raised by members of the public have been asked and responded to at a meeting referred to in subregulation (1), nothing in these regulations prevents the unused part of the minimum question time period from being used for other matters.*

7. Question time for public, procedure for (Act s. 5.24(2))

1. *Procedures for the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6(1) are to be determined —*

- a. *by the person presiding at the meeting; or*
- b. *in the case where the majority of members of the council or committee present at the meeting disagree with the person presiding, by the majority of those members,*

having regard to the requirements of subregulations (2), (3) and (5).

2. *The time allocated to the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6(1) is to precede the discussion of any matter that requires a decision to be made by the council or the committee, as the case may be.*

3. *Each member of the public who wishes to ask a question at a meeting referred to in regulation 6(1) is to be given an equal and fair opportunity to ask the question and receive a response.*

4. *Nothing in subregulation (3) requires —*

- a. *a council to answer a question that does not relate to a matter affecting the local government; or*
- b. *a council at a special meeting to answer a question that does not relate to the purpose of the meeting; or*
- c. *a committee to answer a question that does not relate to a function of the committee.*

5. *If, during the time allocated for questions to be raised by members of the public and responded to, a question relating to a matter in which a relevant person has an interest, as referred to in section 5.60, is directed to the relevant person, the relevant person is to —*

- a. *declare that he or she has an interest in the matter; and*
- b. *allow another person to respond to the question.*

3. Inquiry findings into the City's Management of Public Question Time

24. Complaints, concerns and criticisms of the City's management of public question time were sent to the Department. There were allegations that the City did not answer questions submitted to Council. During the inquiry period, the City's processes in relation to public question time were reviewed and subsequently explored in depth with relevant findings set out below:

3.1 Adequacy of Council's Public Question Time Policy

25. In accordance with section 5.24 of the Act, time is to be allocated for questions to be raised by members of the public and responded to at every ordinary meeting of a council, and such other meetings of councils or committee as may be prescribed. The procedures and minimum time to be allocated for the asking of and responding to questions raised by members of the public at council or committee meetings are to be in accordance with regulations.
26. Regulations 5, 6 and 7 of the Local Government (**Administration**) Regulations 1996
27. *City Policy CP-014 – Question Time at Committee and Council Meetings (CP-014)*. The City's Policy CP-014 provides a generalised process for submitting questions to Council.
28. In relation to submitting questions, the Policy states:
- In accordance with the Act and Regulations, the minimum time of fifteen minutes will be allocated at the commencement of a meeting prior to the debate of any matter that requires a decision to be made by the Council or the Committee.
 - For the purposes of ensuring that question time is conducted in an orderly and effective manner and to ensure an accurate record of the questions are maintained, questions are to be submitted in writing prior to the commencement of Question Time.
 - The Presiding Member may accept or reject the question, or determine that any complex questions requiring research, be answered in writing following the meeting and included in the Minutes.
 - Questions raised at Committee or Special Meetings of Council must relate to matters relating to the purposes of the meeting or a function of the Committee.
 - In consideration of the limited time available for Question Time, the Presiding Member may limit the amount of questions raised by an individual member of public in order to enable other members of the public to have an equal opportunity to ask their question/s.
29. The City's policy also expressly acknowledges that:

“Council recognises that Agenda Briefing Forums, as currently structured, are not prescribed meetings within the meaning of the Local Government Act in respect to the matter of Public Question Time. Council, as a matter of policy, allows a public question time at its Agenda Briefing Forums subject to the following requirements;”.....

Finding 1: City of Melville policy CP-014 provides some overarching principles, the Authorised Persons considered the Policy at the time of this investigation lacked clear directives that are readily understandable by members of the public, Council and the City.

3.2 Adequacy of City's Meeting Procedures regarding Public Questioning Time

30. As of 21 July 2017, the Meeting Procedures Local Law 2017 (Meeting Procedures 2017) came into effect which also addresses Public Question Time under Part 7- Public Participation.
31. The City's previous Meeting Procedures – City of Melville Standing Orders Local Laws 2003 (which did not previously address procedures for questions time) were repealed when the Meeting Procedures Local Law 2017 came into effect.
32. The purpose and effect of the Meeting Procedures 2017 are stated as follows;
 - The Meeting Procedures provide rules for the conduct of meetings of the Council, committee and electors.
 - These Meeting Procedures are intended to result in-
 - Better decision making by the Council and committees;
 - The orderly conduct of meetings dealing with Council business;
 - Better understanding of the process of conducting meetings; and
 - The more efficient and effective use of time at meetings.
33. Under Part 7.8 – *Other procedures for question time for the public*, the Meeting Procedures 2017 states the following points:
 - A member of the public who wishes to ask a question at a meeting, must before the commencement of the meeting submit their question in writing, on the form provided by the local government, to the CEO or his or her representative.
 - The completed form must include-
 - the name and residential or contact address for the person who wishes to ask the question; and
 - the question in a concise and legible form.
 - Unless the presiding member determines otherwise, a question of which prior written notice has been given to the CEO is to be given priority in question time.
 - A question may be taken on notice by the Council for later response.
 - When a question is taken on notice, the CEO is to ensure that –
 - a written response is given to the person who asked the question; and
 - a summary of the response is included in the minutes of the meeting.
 - The presiding member may decide that a question is not to be responded to where –
 - the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - it is in the form of a statement, provided that the presiding member has taken all reasonable steps to assist the member of the public to rephrase the statement as a question; or
 - the question is offensive or defamatory in nature, or is one, which, if asked by a Member, would be in breach of these Meeting Procedures or any other law.
 - Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.
 - The presiding member may decide that the Council is not required to answer a question that in the opinion of the presiding member is vexatious, frivolous or has been asked to cause detriment to a Council Member or employee, or is insulting or harmful to the Council Member or employee's reputation.

Finding 2: The Meeting Procedures 2017 provide more structure than the City's previous policy around the procedures to be undertaken for public question time and therefore is considered adequate at this time.

3.3 Circumstances surrounding increased number of questions submitted to Council

34. The City provided the following information demonstrating the increase in questions submitted to Council.

| Year | 2014 | 2015 | 2016 | 2017 |
|------------------|--|------|------|------|
| Total questions | 131 | 257 | 297 | 737 |
| Ordinary Meeting | 80 | 101 | 161 | 461 |
| Special Meeting | 19 | 0 | 34 | 60 |
| Agenda Briefing | 5 | 24 | 36 | 36 |
| Annual Electors | 27 | 108 | 42 | 56 |
| Special Electors | 0 | 24 | 24 | 115 |
| Committee | The City advised that they do not have any committees with delegated powers, therefore Committee meetings are not open to the public and do not have public question time. | | | |

Table of questions submitted by members of public to the Council.

35. In November 2016, the City sought legal advice from the City's solicitors. The CEO, during a Record of Interview, explained the reason for seeking this legal advice was to manage the increase in questions during public question time and the impact it was having on the City's resources. The CEO expressed concerns that the City has to balance their resources attending to 107,000 other residents of the City and provide appropriate answers in response to the quantity of questions submitted.
36. On 30 November 2016, the City received legal advice, upon which the City and Council acted upon soon after it was received by adopting the procedure set out below.
37. Questions submitted to Council are received by the City's Governance Team and a determination is made as to whether the questions submitted are for the Council or the administration. Questions for Council are answered by the Mayor prior to the meeting with the assistance of the administration. Those questions are read out and responded to at the meeting and recorded in the minutes.
38. Questions for the administration are distributed to the relevant Directors in the City for responses. The administration then responds to the questions in writing, which can occur before or after the Council meeting, and these responses are not recorded within the minutes of the meeting. The City advised that, in accordance with legal advice that the City has received, the questions submitted to Council that have been determined to be for the administration, are not required to be recorded in the minutes as per regulation 11(e) of the Administration Regulations.
39. The Council did not update policy CP-014, Meeting Procedures or work instructions, nor did the City provide any advice on its website that suggested that the Council/City had

changed the way it in which it managed public question time. The CEO advised the method of managing question time as per received legal advice was in 'test mode' and therefore the policy CP-014, Meeting Procedures and work instructions did not require updating.

40. Following the Ordinary Meeting of Council held on 19 September 2017, Complainant A sought an explanation from the City as to how the questions were and will be handled. The response provided by the City was vague and did not specifically communicate the City's reasons and adoption of a new method being trialled to manage public question time.
41. The explanation provided was not open and transparent and could have been an opportunity for the City to explain why and how the City handles questions, which has been a result of many concerns submitted to the Department.
42. Following two record of interviews with City staff, the City provided some communication regarding its current management of public question time on the City's website. Whilst the Authorised Inquiry was on foot, Council decided to review its policy CP-014 and implemented a new policy on 18 December 2018.

Finding 3: The City and Council were not open and transparent regarding the current management of public question time by failing to advise the community of a change in the City's policy.

3.4 Allegations regarding breaches of legislation concerning Public Question Time

43. Pursuant to section 5.24 of the Act and regulation 5 of the Administration Regulations, time is to be allocated for questions to be raised by members of the public and responded to at every ordinary meeting of council, every special meeting of a council and every meeting of a committee to which the local government has delegated a power or duty.
44. There were complaints received by the Department from members of the public alleging that questions were not answered by Council.
45. Evidence from the City was obtained by Authorised Persons which confirmed that all questions submitted were responded to by the City. The questions referred to were deemed administrative in nature and therefore responded to in writing by the Administration in the days or weeks following the Council meeting and not recorded in the minutes of the meeting as per the City's legal advice.
46. Some questions directed to the administration were not answered as they would divert a substantial and unreasonable portion of the City's resources away from its other functions, which is permitted for under section 5.95 of the Act.

Finding 4: The allegations that Council failed to respond to all questions is unsubstantiated as questions were answered in writing but not recorded in the minutes.

47. It was alleged that on one occasion, the Mayor, as the Presiding Member at the Ordinary Meeting of Council on 19 September 2017, re-opened public question time after discussion of the matter that required a decision by Council, and thereby failed to comply with regulation 7(2) of the Administration Regulations.
48. The Authorised Persons have established that in this instance the Mayor only discovered the question before him after discussion and a decision was made on one matter following public question time. In order to comply with regulation 7(2), this question should have been taken on notice and responded to in writing.

Finding 5: The Presiding Member did not comply with regulation 7(2) of the Administration Regulations.

49. Members of the public often include long preambles to their questions and allege that the City does not read them out or include them in the minutes. Under regulation 11(e) of the Administration Regulations, the minutes only need to include a summary of each question raised by members of the public at the meeting and a summary of the response to the question.

Finding 6: There is no requirement under the Administration Regulations for the City to read preambles to questions during Council meetings, or to publish preambles to questions in the minutes provided by Council. Therefore no breach of the Administration Regulations has been identified.

3.5 Council's adherence to its policies and procedures regarding Public Question Time

50. The policy CP-014 adopted by Council on 18 October 2016 provides some general principles for Council to manage public question time. Although the City has undergone the "test mode" to try and manage the volume of questions submitted, the Council is technically compliant with their own policy.
51. The Meeting Procedures that came into effect on 21 July 2017, provides some further guidelines surrounding the management of public question time. The Council's current method is, in principle, compliant with the Meeting Procedures.
52. The City's internal procedure – *Public Question Time Forms for Council Meetings* provides some basic instructions for staff regarding the management of incoming questions. The Council's current management of question time is technically compliant with the City's internal procedure, however the City should ensure that all staff are aware of the current procedure.
53. It is understood at the time of writing this report that Council has reviewed CP-014 and is awaiting the findings of this inquiry before it is approved.

Finding 7: The City and Council are compliant with current policies and procedures. Those policies have now been updated to reflect the way in which public question time is currently managed in practice.

3.6 Volume of questions submitted to meetings

54. The Authorised Persons are unaware of any other Local Governments in Western Australia which have received a similar volume and complexity of questions from members of the public to that received by the City in recent years.
55. An example is one set of questions submitted by Complainant A for the Ordinary Meeting of Council on 19 September 2017.
56. On review of the questions submitted, it was calculated that a total of 76 specific questions were requested by the Complainant A in one submission.

57. In general the nature of the questions asked are questions that do not appear to relate to the functions of Council and would have been more appropriately directed to the administration and responded to in detail at a later date.
58. The City advised Complainant A that the information regarding the suppliers, which translates to approximately 60 questions, can be located publicly via minutes and through the City's websites. It is the Authorised Persons' view that this response is proportionate in relation to the amount of questions submitted.
59. This information provided by the City reflects the amount of questions submitted by a small minority, which are often complex and long in nature.
60. The inquiry notes that it is a person's democratic right to ask questions, however it has been highlighted by the City that it is required to manage its resources to ensure that answering questions does not divert an unreasonable proportion of the City's resources from the performance of its functions (s5.95 (1)(b) *Local Government Act 1995*).

Finding 8: It is the view of the Authorised Persons that the volume, frequency and complexity of questions submitted to Council by some organisations and individuals is extreme and it would be unreasonable to expect that all questions would be answered within the time permitted under the regulations.

4. Inquiry findings into City providing access to information

61. There were allegations regarding the City's adherence to legislation concerning the release of information requested by members of the public.

4.1 Information available for public inspection

62. A complaint regarding the City's alleged non-compliance with section 5.94 of the Act was received.
63. On 14 September 2017 at 8:27am, the Complainant A sent an email to the CEO requesting all information concerning the Council's Financial Management, Audit, Risk and Compliance, Government Committee (sic) meetings dating back to January 2012. This was to include notice papers, agendas, minutes, reports, presentation, and other documents that had been tabled at a Council or Committee meeting and/or produced by the City or the Committee. Unless directed otherwise, Complainant A requested this information to be put onto a CD for collection by one of their members by 10am the following day on 15 September 2017.
64. Section 5.94 of the Act allows for a person to attend the office of a local government during office hours (unless contrary to section 5.95) to inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection, the documents and information specified in section 5.94 of the Act.
65. Complainant A's request went beyond the scope of the right to access information under section 5.94, as it required the City to compile information and provide a copy of documents rather than merely seeking to inspect the information in the form or medium in which it was held by the City.
66. Although it is noted that the request to have almost six (6) years' worth of Committee Meeting minutes and associated paperwork downloaded onto a CD within one business day may not be reasonable Complainant A did advise they could be directed otherwise, however the City failed to follow up on this offer.

67. A summary of the correspondence between the City and the Complainant A is outlined below:
- At 12pm, the City (CEO) requested the Complainant A to advise of further details regarding Complainant A so that the City may consider its response.
 - At 3:39pm, the Complainant A responded to the City (CEO) and referred to section 5.94 of the Act.
 - At 8:50am on 15 September 2017, the City again requested the information sought in order to consider a response to the request.
 - At 9:34am, Complainant A wrote to the City requesting the City's reasons for its apparent obstruction/refusal to access to the requested information.
 - At 10:03am, the City invited Complainant A to advise if they have difficulty in responding to the question posed in an earlier email from the City (CEO).
68. The City advised that it has no record of the Complainant A attending the City's office and reviewing the requested documentation.
69. The City explained that its request for further information about Complainant A was a reasonable request, so that the person who would collect the CD from the City's office could be identified. Upon inquiry by the Authorised Officers, the City acknowledged that Complainant A's request for access to information could not be refused merely because further information about Complainant A was not provided.
70. As Complainant A's request went beyond the scope of the right conferred by section 5.94, the City did not act contrary to that section in failing to provide the information requested. However, this example is brought to the attention of the inquiry to highlight that the City could have engaged with Complainant A in a more professional approach.
71. In fact both parties could have been more open with their communication and reconciled their differences in order to achieve the desired result rather than be obstinate in relation to the matter.
72. The Authorised Persons are of the view that the City could have taken the opportunity in the first instance to explain to Complainant A the issues they had with the request as outlined below:
- a. why they sought the further information requested about Complainant A,
 - b. explain that their request did not come within the scope of section 5.94 of the Act,
 - c. explain that Complainant A could arrange an appointment at a time that suits all parties to inspect the information at the City's offices during office hours, or alternatively
 - d. if the City was happy to provide the information on a CD, advise Complainant A the time it will take to process their request.

Finding 9: There was no legislative basis for the City to request the identity of Complainant A office bearers prior to the processing of the request for information, and more professional and reasonable efforts should have been made by the City to facilitate this request through more effective means of communication.

Finding 10: Complainant A's request to have almost six (6) years' worth of information to be provided on a CD in one business day did not come within the scope of section 5.94 of the Act, and was also considered unreasonable in any event.

4.2 Freedom of Information (FOI)

73. Concerns from a Freedom of Information (FOI) applicant were raised regarding the City's handling of FOI requests. In particular, it was alleged that the City refused to provide information requested.
74. The Authorised Persons observed that applications received from the applicant were often very broad and requested a large amount of information. The City has often requested the FOI applicant narrow the scope of the application for access to documents in accordance with the *Freedom of Information Act 1992* (FOI Act).
75. Upon receipt of the City's decision regarding a FOI application, it was observed that the applicant generally requested an internal review of the decision. Upon internal review, the City can either affirm or amend the FOI officer's original decision and City advises that the internal review is conducted by the City's 'Internal Ombudsman' who also fulfils the role of Executive Manager Governance and Legal Services. The applicant often sent the internal reviewer's decision to the Information Commissioner for an external review as allowed for under the FOI Act.
76. Although numerous concerns regarding the City's compliance with the FOI Act have been received by the Department, it is not for the Department nor the inquiry to intervene or make determinations on the City's compliance with the FOI Act as this falls within the Information Commissioner's jurisdiction.

Finding 11: The Authorised Persons note that the City has clear processes regarding FOI requests. Any complaints regarding FOI should be sent to the appropriate oversight body being the Information Commissioner.

5. Inquiry findings into the City's complaint handling processes

5.1 Adequacy of Council's complaint handling policy

77. There is no legislative requirement under the Act for a local government to implement a policy to manage complaints. The City's Council adopted its current policy – *Complaints Management Policy* (CP-101) on 15 November 2016.
78. CP-101 provides the policy's objectives and scope and provides a definition of a complaint. It also includes a Policy Statement which provides the following principles:
 - a. Fairness and objectivity
 - b. Confidentiality
 - c. Data collection
 - d. Remedies and resolution of complaints
 - e. External review
 - f. Reporting to Council
79. The City also has a Customer Charter and Internal Procedure which are recognised by the Authorised Persons to be adequate frameworks.

5.2 City's adherence to Policies and Procedures

80. The City provided a register of complaints against City staff during the inquiry period from the City's complaints management system - Pathway. This register demonstrated that the City did action the complaints it received.
81. The Authorised Persons observed that the City appropriately recorded and processed complaints received through the Pathway system.

82. The Authorised Persons reviewed an example which concerned a complaint made by a member of the public to the Deputy Mayor.
83. It was observed that the matter was appropriately dealt with by the City as the following occurred:
 - a. Deputy Mayor asked the A/CEO to acknowledge the complaint which he did
 - b. The complainant replied requiring an independent person to respond
 - c. A/CEO referred him to Ombudsman
 - d. A/CEO asked a staff member to contact witnesses which he did
 - e. Statements were obtained from witness/member of public in attendance and an elected member
 - f. Executive Managers account given
 - g. File notes made of a meeting with the Director Urban Planning

5.3 The manner in which the City and Council deal with complaints

84. Concerns regarding the way in which the City and Council deal with complaints were raised by some members of the public.
85. Complainant B has lodged several complaints that date back to 2012 regarding a personal issue with his property.
86. During the course of the inquiry the policy stated:

For the purposes of this policy, the following is not classified as customer feedback and are out of the scope of this policy:

- Feedback obtained during stakeholder and community engagement processes.
- Queries and requests for specific information.
- Requests for a direct service.
- Matters currently being dealt with or have been previously dealt with by a court, tribunal or external complaints agency.
- Matters that have already been subjected to an Internal review and an outcome has been determined.

87. It is the Authorised Persons belief that the City could convey the contents of its policy to complainants when corresponding to complaints that fit the scope of said policy. This would allow a better understanding of the reasons why some complaints were not dealt with.
88. It was observed that Complainant B sends a large amount of correspondence titled 'COMPLAINT' to the City and the Mayor. (see table at para 102)
89. Attempts have been made by the City to restrict the amount of ongoing complaints received from a small number of individuals.
90. For instance, on 1 April 2015, the CEO wrote to Complainant C advising him that the City has expended extensive resources in addressing his personal requests without new matters being raised. Complainant C was advised that the City will not engage in further correspondence with him on these matters which are regarded as concluded.
91. On 12 November 2015, the CEO wrote to Complainant B advising him that the City has dealt with him regarding a number of issues, such as:
 - a. Instability of dividing masonry fence between his property and a neighbour
 - b. Encroachment of the same fence as well as the retaining wall that supports the fence

- c. The levels of development at complainants property
 - d. Complaints of misconduct levelled against City Officers to Elected Members and various agencies
 - e. Allegations of misfeasance and non-compliance with pool fencing requirements by his neighbour and the City's actions relating thereto
 - f. Allegations against the City and City's officers of non-compliance with orders by the Magistrate's Court and State Administrative Tribunal to produce documents.
92. The CEO highlighted in his correspondence that Complainant B was evidently well aware of his legal rights and had already raised most of these matters with the following agencies:
- a. Department of Local Government and Communities (DLGC)
 - b. State Administrative Tribunal (SAT)
 - c. Federal and State Members of Parliament
 - d. Premier Barnett
 - e. Mayor and Elected Members of the City
 - f. Corruption and Crime Commission (CCC)
 - g. Public Sector Commission (PSC)
 - h. Ombudsman of WA
 - i. Building Commission
93. The CEO acknowledged that the City was currently dealing with Complainant B's issues:
- a. Application to the SAT for a review of the City's decision relating to his building licence
 - b. The City's prosecution against him in the Magistrate's Court
 - c. Complainant B's review application to the FOI Commissioner
94. The CEO acknowledged that the City will continue to deal with these three matters, as directed by the three relevant agencies. He further acknowledged that the City would deal with him on any new matter; however the CEO advised that he has directed his staff to only do so in writing.
95. The CEO provided the following reasons for those restrictions, and for deeming Complainant B to be an unreasonable complainant:
- a. Complainant B's behaviour had become so habitual, obsessive or intimidating that it constituted an unreasonable demand on City's resources
 - b. The CEO was satisfied that the City had dealt with Complainant B's issues and complaints correctly and that no material element of the complaints have been overlooked or inadequately addressed
 - c. All internal review procedures have been exhausted.
96. On 21 April 2017, the CEO wrote to Complainant D acknowledging a number of emails from him relating to his various allegations of misconduct by the Mayor, Elected Members and a number of officers. The CEO advised him that the City and the Mayor would no longer respond to any further correspondence from him relating to past or future allegations concerning elected members and/or officers. He also advised that any correspondence received would be replied to with a comment of 'noted' and filed in the City's records management system. The CEO reiterated that Complainant D could report allegations to appropriate bodies.
97. The CEO further advised Complainant D that the City would continue to interact with him on any matters that did not relate to allegations of misconduct or improper behaviours.

98. In an attempt to resolve the significant amount of incoming correspondence from persons or organisations who directed their correspondence to several City staff officers, the City implemented a system whereby emails from these persons or organisations sent to City staff were centralised to one inbox. The City explained this was a matter of document control to ensure that the issues raised by these persons had been responded to, and that their requests were been managed appropriately by the City.
99. The City provided information to the inquiry that in a one month period (18 April 2018 to 17 May 2018), 94 pieces of incoming correspondence were received from only four persons.
100. The City has confirmed that emails sent to Councillors are not centralised and go directly to the Councillors. All 4 persons who participated in formal ROIs stated emails to Councillors go directly to them and were not stopped by City.
101. The Authorised Persons do not take issue with the way in which the City manages incoming correspondence. However we believe that it would be in the City's best interest if the parties involved were advised that their correspondence would be managed this way and the reasons why were explained to the involved parties to save suspicion and confusion.
102. It is acknowledged that the City is not obliged to explain the internal workings of its processes to manage any incoming correspondence from members of the public. The City stated they did not feel they needed to as the requests from these members of the public would still get answered, and how the City operates in order to provide that answer was not in the interest of the complainants.
103. However, the Authorised Persons believe that communicating the City's reasons for implementing the system and how it operates would have assisted in extinguishing suspicions that the City was trying to hide something.
104. It is acknowledged that the City attempted to communicate ways of managing incoming correspondence from these persons. However, because the City's recent decision was not communicated to Complainant A, the issue was then raised at public question time at the Ordinary Meeting of Council on 20 March 2018.
105. The following question was asked by the Complainant A:

We have reason to believe the City of Melville administration has screened and is still screening inbound emails and on forwarding emails from Electors and entities to others within the City such as the Mayor and the Executive Manager Governance & Legal Services, please confirm:

A) If all councillors are fully aware that their emails are being Screened and on-forwarded;

B) When the screening and on-forwarding practise was introduced, why, and who approved it;

C) Which Electors and entities have had active alerts and who are those emails on-forwarded to; and

D) Does the City apply this same practise to any of its staff?

Response

Emails are not being screened and on forwarded.

106. After the City was questioned on the matter, the City provided an amended response which has been included in the minutes of the 20 March 2018 Ordinary Meeting of Council.

“Amended Response

In response to questions A and B, these are not applicable as emails are not being screened and on forwarded.

In response to question C, the City may decide on the basis of operational criteria that correspondence of a specified class may be managed most effectively by being collated and referred to an appropriate staff member for a response. It would be inappropriate for the City to publish the identities of correspondents to whom this management procedure may apply at any particular time.

The response to question D is no.”

Finding 12: It is the Authorised Person’s view that the City should be more open and transparent with each piece of correspondence. Whatever the status of the correspondence, the way in which it is dealt with should be clearly explained to the author.

5.4 Escalation of complaints, not allowing time for City to respond

107. In reviewing incoming correspondence, the Authorised Persons observed that certain individuals and organisations appear to expect that their complaints will be dealt with immediately by the City. If not addressed by the City in an expedient manner, these individuals and organisations appear to go to the Mayor and then the Deputy Mayor alleging that the Mayor is unwilling or unable to perform his functions as mayor (section 5.34 of the Act).
108. The referral of complaints to the Deputy Mayor has been a continual theme during this investigation. Complainants, in almost all circumstances, do not understand that the Mayor is required to formally refer matters to the Deputy Mayor. For the complainant to declare the Mayor is unwilling or unable to deal with a complaint under the Act only shows there is a misinterpretation of legislation.
109. One complainant often alleges that several staff and councillors of the City have real or perceived conflicts of interests. He often requests an independent person to review his request/complaint however this is sometimes difficult. An example of this is on one occasion this particular complainant alleged 12 people from the City’s administration were conflicted.
110. That same complainant often sends complaints to personal/work emails of Councillors rather than follow the appropriate process of emailing the city.
111. The Mayor raised concerns during the ROI that when a complaint from Complainant A is received, he must maintain confidentiality as per policy CP-101, and often initially requests the Complainant A reveal the identity of the person making the complaint and under what authority Complainant A has delegated that person to represent the Organisation.
112. The Mayor acknowledged that the City has received legal advice which confirms he as Mayor is obliged to respond, however he expressed his caution in responding to Complainant A, due to previous dealings with them.

Finding 13: That the Mayor and/or the City of Melville failed to respond to requests from individuals or organisations based on the status of the organisation or individual until such time legal advice had been provided to them therefore breaching s5.96 of the LG Act.

6. Land Acquisition

113. Concerns were raised regarding Council's decision to purchase properties contained within the Canning Bridge Activity Centre (CBAC). It was alleged that the purchase of the properties constituted a major land transaction, and concerns were raised as to whether the City had Council's authority to purchase a property.

6.1 Purchase of 27A, B and C Moreau Mews, Applecross

114. Prior to 2016, the City owned 29 Moreau Mews, Applecross which was purchased approximately 20 years ago and 31 Moreau Mews which was purchased on approximately 24 December 2015.
115. Following the Agenda Briefing Forum on 2 February 2016, an Elected Member raised concerns regarding item P16/3689 – *Purchase of Applecross Strategic Properties* that would be considered at a Special Meeting of Council the following day on 3 February 2016.
116. Confidential item P16/3689 sought Council's approval to purchase a strata triplex property 27 A, B and C Moreau Mews, Applecross and 50-52 Kishorn Road, Applecross, should it become available in the future.
117. The concerns raised by an Elected Member was whether the purchase of the properties constituted a major land transaction as per section 3.59 of the Act and therefore require a business case.
118. The City sought urgent legal advice from their solicitors regarding the Elected Member's concerns. That legal advice was received by the City prior to the Special Meeting of Council on 3 February 2016.
119. The legal advice confirmed the City's assertions that the purchase of the properties 27A, B and C Moreau Mews and pre-approval to purchase 50-52 Kishorn Road, Applecross in the future should it become available, did not constitute a major land transaction as per section 3.59 of the Act.
120. Despite receiving legal advice which confirmed the City's stance that the purchase of 27 A, B and C Moreau Mews and pre-approval of 50-52 Kishorn Road, Applecross would not constitute a major land transaction and therefore require a business case, the City advised they decided to remove all reference to 50-52 Kishorn Road, Applecross in the report for item P16/3689 – *Purchase of Applecross Strategic Properties* to avoid confusion and to provide further clarity.
121. The report was circulated to Elected Members without reference to 50-52 Kishorn Road, Applecross.
122. A motion was put forward to defer the item to the February Council Meeting in order to obtain further legal advice and a valuation.
123. A further motion was put forward to defer the item to the February Council Meeting to only obtain further legal advice.

124. At the Special Meeting of Council, Council decided the following:

Council Resolution

That the Council approve the confidential recommendation in Confidential Attachment “A”.

At 8.26pm the Mayor submitted the motion, which was declared CARRIED (8/4)

| Vote Result Summary | |
|---------------------|---|
| Yes | 8 |
| No | 4 |

| Vote Result Detailed | |
|----------------------|-----|
| Cr Aubrey | Yes |
| Cr Foxton | Yes |
| Cr Macphail | Yes |
| Cr O’Malley | Yes |
| Cr Phelan | Yes |
| Cr Robartson | Yes |
| Cr Wieland | Yes |
| Mayor Aubrey | Yes |
| Cr Barling | No |
| Cr Barton | No |
| Cr Pazolli | No |
| Cr Woodall | No |

125. The recommendation was as follows:

ATTACHMENT “A” CONFIDENTIAL ITEM OFFICER RECOMMENDATION (3689)
That the Council:

APPROVAL

Instruct the Chief Executive Officer to acquire 27A, 27B & 27C Moreau Mews, Applecross as one parcel;

2. That the approved purchase price being not more than 110% of the assessed independent market valuation for the property;

3. Authorise His Worship the Mayor and the Chief Executive Officer to sign the Contract of Purchase documents to acquire 27A, 27B & 27C Moreau Mews, Applecross;

126. It appears that land has been acquired for land banking purposes over a period of time with the ultimate aim of providing the City with a strategic development site for the future.
127. As the City did not have any control regarding the availability of the other properties when 31 Moreau Mews was purchased, it follows that there was no requirement for the City to prepare a business plan under section 3.59 of the Act because the consideration under each of the agreements by which the City acquired the properties was less than \$9 million.

Finding 14: Council's decision to purchase 27 A, B and C Moreau Mews, Applecross did not constitute a major land transaction and therefore a business case was not required.

6.2 Purchase of 50-52 Kishorn Road, Applecross

128. On 21 March 2017, the CEO and the Mayor entered into a contract to purchase 50-52 Kishorn Road, Applecross and paid a deposit of \$100,000.
129. The City acknowledged that it did not have Council approval to purchase 50-52 Kishorn Road, Applecross.
130. The City explained that an officer of the City mistakenly obtained the incorrect report of the 3 February 2016 minutes which included reference to the 50-52 Kishorn Road, Applecross property. The officer presented this to the CEO and Mayor in the mistaken belief that Council had authorised the purchase of the property.
131. The CEO and the Mayor used these minutes as confirmation of Council's approval and signed the contract to purchase 50-52 Kishorn Road, Applecross.
132. On 13 April 2017, the City communicated its purchase of 50-52 Kishorn Road, Applecross to Elected Members via an Electors Members Bulletin (EMB). On the same day, an Elected Member emailed the CEO recalling the events of 2 and 3 February 2016 and stated he was unaware of any subsequent proposal to council to purchase the property. The CEO confirmed that the elected member was correct and the matter would be presented as a late item for the Ordinary Meeting of Council held on 18 April 2017.
133. During discussion of the matter at the Ordinary Meeting of Council held on 18 April 2017, the City explained to Council that a mistake had occurred, for which the CEO apologised, and the CEO sought retrospective approval for the purchase of 50-52 Kishorn Road.

134. At the Ordinary Meeting of Council held 18 April 2017, Council resolved the following behind closed doors.

COUNCIL RESOLUTION (3752) APPROVAL

That the Council approve the confidential recommendation in Confidential Attachment “A” in respect to the purchase of the property at 50-52 Kishorn Road, Applecross for \$3,800,000 (exclusive of GST)

The Chief Executive Officer will present a report back to the Council detailing future uses for the property situated at 50-52 Kishorn Road, Applecross together with the City’s adjoining properties situated at 23-31 Moreau Mews. Applecross.

At 10.25pm the Mayor submitted the motion, which was declared

CARRIED (8/2)

| Vote Result Summary | |
|---------------------|---|
| Yes | 8 |
| No | 2 |

| Vote Result Detailed | |
|----------------------|-----|
| Cr Aubrey | Yes |
| Cr Barling | Yes |
| Cr Foxtton | Yes |
| Cr Macphail | Yes |
| Cr Phelan | Yes |
| Cr Schuster | Yes |
| Cr Woodall | Yes |
| Mayor Aubrey | Yes |
| Cr Barton | No |
| Cr Pazolli | No |

135. The Confidential Attachment A:

ATTACHMENT "A" CONFIDENTIAL ITEM

The following is the Council Resolution adopted at the Ordinary Meeting of the Council held on 18 April 2017.

COUNCIL RESOLUTION (3752) APPROVAL

That the Council:

1. Grants the Chief Executive Officer delegation to acquire the property situated at 50-52 Kishorn Road, Applecross;
2. Notes the assessed independent market valuation for the property;
3. Authorise His Worship the Mayor and the Chief Executive Officer to sign all necessary documents to settle the acquisition of the property situated at 50-52 Kishorn Road, Applecross.
4. Following receipt of the City's property Consultants report in July 2017, the Chief Executive Officer presents a report back to the Council detailing future uses for the property situated at 50-52 Kishorn Road, Applecross together with the City's adjoining properties situated at 23-31 Moreau Mews, Applecross.

136. With Council's retrospective approval, the City followed through with the purchase of 50-52 Kishorn Road, Applecross and the property was settled on 20 April 2017.
137. As these properties (27 A, B, C, 31 and 50-52) were acquired over a period of nearly 18 months and did not have any control regarding the availability of these properties. Therefore it is not considered that the purchase of the properties constituted a major land transaction.
138. At the time of signing a contract for the purchase of 50-52 Kishorn Road, Applecross and subsequent payment of a \$100 000 deposit the Mayor and then CEO did not have approval to proceed with that purchase.

Finding 15: The CEO did not have Council's approval to purchase 50-52 Kishorn Road, Applecross which in turn caused the administration to seek retrospective approval from council.

6.3 Wave Park/Tompkins Park

139. Submissions from the public were not accepted as part of the inquiry, however incoming correspondence was noted by the Authorised Persons. Although not part of the inquiry, there was much correspondence received either in favour for or opposition to the Wave Park.
140. A decision voted on by Council is not for the Authorised Inquiry to investigate. There are several other government agencies that must consider the Wave Park proposal before any works can be commenced.
141. Furthermore, an application for judicial review was lodged in the Supreme Court by the Swan Foreshore Protection Association Incorporated in relation to the ground lease for Tompkins Park. The Court delivered judgment in relation to the application for judicial review, finding that certain public notices published by the City did not comply with section

3.58 of the Act, which requires public notice of a proposed disposition of any interest of a local government in property. However, the Court found that this failure to comply with section 3.58 did not affect the validity of the City's decision to enter the ground lease.

142. The Court dismissed an argument that the City failed to comply with section 3.59 of the Act because local public notices in the Melville Times failed to give information about where a business plan could be inspected, and did not allow the requisite time for submissions.
143. Ultimately the Court refused leave for the application for judicial review to be brought outside of time, and dismissed the application.

Finding 16: Questions concerning the City's compliance with sections 3.58 and 3.59 of the Act in relation to the proposal for the Wave Park have already been dealt with in the Supreme Court proceedings, and the Authorised Persons make no findings in relation to these matters.

7. Council's relationship with the City of Melville administration

144. This reference was included as part the Authorised Inquiry to explore whether there were any underlying issues between the administration and Council which lead to the nearly 300 pieces of correspondence lodged with the Minister and the Department in relation to the City since 2014. The veracity of that correspondence needed to be determined in order to ensure the City of Melville was operating efficiently and effectively and in the best interests of the community.
145. The Authorised Inquiry did not identify any evidence of an adverse relationship between Council and the administration. Debate between elected members sometimes becomes robust however, debates can sometimes be like this.
146. When reviewing all the information received, there appears to be a good relationship between Council and the Administration with clear division between the two, with each aware of their separate roles.

8. Other issues of relevance

147. The Authorised Persons considered it was necessary to review the incoming correspondence received by the Department to determine the veracity of any complaints made. Most of the correspondence reviewed did not allege any breaches of the Act or regulations that the Authorised Officers had jurisdiction to deal with.
148. It was however observed that there appeared to be a few residents of the City who sent correspondence, criticisms and complaints about the City either directly or indirectly to several oversight bodies including the Corruption and Crime Commission, Public Sector Commission, Office of the Information Commissioner, WA Ombudsman, Building Commission, Local Members of Parliament, Ministers, the Premier, media outlets, Councillors and staff of the City.
149. The complaints received from these few residents appeared to relate to personal issues which had not been resolved by the City to the individuals' satisfaction.
150. One complainant lodged concerns that the City was not complying with legislation under the Building Act and believed there was an element of misconduct by City staff as it was his belief he was victimised by the City's actions or inactions and the subject to bias from the City. The PSC, CCC and Building Commission who have the jurisdiction to oversee these matters were included in the correspondence sent to the Department.
151. Some of these matters have been escalated to the State Administrative Tribunal or

Magistrates Court. However, despite the matters being appropriately escalated, it appears that some complainants are not satisfied with the results and continue to seek retribution for the City's alleged actions or inactions.

152. One example includes an allegation that the City did not act on complaints lodged against a neighbour for parking on the verge. The City provided evidence that they issued four (4) infringements to the neighbour regarding the illegal parking. There appears to be a disconnect between the complainant's expectations of the City itself and the services the City is able to provide.
153. The City advised the inquiry that they received approximately 1200 illegal parking complaints a year. It is the Authorised Persons view that Rangers of any local government would be required to prioritise complaints received and act accordingly. This may include Rangers utilising their discretion on how to deal with a matter, in a similar fashion to other regulatory bodies.
154. To get a sense of the City's attitude towards the complainant in this matter, relevant people within the City were interviewed on a variety of the matters raised and requested to provide supporting evidence by way of Direction Notices. The City explained its reasons for acting or not acting on certain requests made by the complainant. Those reasons appear to be fair and reasonable in the context of the role of a local government, taking into account the needs of all 107,000 residents of the City.
155. Despite numerous oversight bodies being provided with information from complainants the inquiry is not aware of any adverse findings made against the City by any other oversight bodies with the exception of the matter identified below.

8.1 Demolition of adjoining property without consent/provision of a safety compliant balustrade on a retaining wall

156. Complainant B lodged a complaint that the City did not act appropriately regarding the demolition of a dwelling adjoining a semi-detached property he owned. This complaint was investigated as part of the Authorised Inquiry.
157. Complainant B also lodged a complaint regarding a council requirement to provide a compliant safety balustrade to a retaining wall.
158. As a result of lodging a complaint with several different agencies and individuals an investigation was commenced by the WA Ombudsman during the Authorised Inquiry.
159. The Authorised Officers accept the findings of the WA Ombudsman investigation.

Finding 17: There were no adverse findings made by the Ombudsman against the City of Melville regarding either of these complaints.

160. The Ombudsman completed their investigation and notified Complainant B of their findings in September 2018.

9. Summary of key findings

9.1 Public Question Time

161. All questions submitted to Council have been answered either during the relevant meeting or in writing at a later date. The investigation has revealed that the City was not as open and transparent in relation to their policies, meeting procedures, work instructions and information as they could have been and they neglected to provide the public with information that reflected the changes in managing public question time.

162. This failure has led to allegations or concerns that the Council were not answering questions submitted for public question time when in fact all questions had been answered.
163. Individuals and organisations clearly flood the City with questions where there is no real chance of the City answering those questions during public question time therefore causing the administration to answer the questions in writing at a later date. During this investigation it was identified the majority of questions put to the council and or city were answered with the exception of those deemed to divert a substantial and unreasonable portion of the City's resources away from its other functions, which is permitted for under section 5.95 of the Act.

9.2 Public access to information

164. The City's request to provide further information regarding Complainant A on several occasions before actioning a request to provide information is not appropriate behaviour for a government body. Although the City did not provide the information as requested, the City did not breach section 5.94 of the Act as the request was outside the scope of right conferred by that section. However, in place of the City insisting on the provision of further information by Complainant A, the City could have attempted to manage their request in more professional manner. Now that the City has obtained legal advice, this should cease to be an issue, however the City should have been aware of its obligations in the first instance and dealt with the application in a more appropriate and timely manner.

9.3 Managing complaints

165. The Council has adequate frameworks in place regarding complaint management, however officers dealing with complaints need to be mindful that regardless of the complainant all complaints need to be addressed in a professional manner abiding by the process adopted by the City.
166. At times both the complainant and the person from the administration managing the complaint appear to be at loggerheads when it comes to dealing with said complaint. A more robust complaints handling policy would assist in dealing with the issues identified during this investigation particularly regarding a different avenue for persons to take should they be unsatisfied with the outcome.

9.4 The City did not have Council's approval to purchase 50-52 Kishorn Road, Applecross

167. The inquiry examined the circumstances surrounding the purchase of 50-52 Kishorn Road, Applecross. Authorised Persons note that that the Council had not authorised the purchase of 50-52 Kishorn Road, Applecross prior to the CEO and the Mayor signing the contracting and making a \$100,000 deposit.
168. This failure resulted in:
 - a. The Council having to consider giving retrospective approval for the purchase of 50-52 Kishorn Road, Applecross, and
 - b. Potentially incur a loss of \$100,000, should the Council have decided against the recommendation to purchase 50-52 Kishorn Road, Applecross.

9.5 Demolition of adjoining property without consent/provision of a safety compliant balustrade on a retaining wall

169. The WA Ombudsman's investigation of September 2018 has dealt with these complaints.

10. Considerations relevant to recommendations

170. The good culture of any organisation is at the heart of its success as an enduring institution. To instil confidence in the community that the administration and elected members are, as a collective body, providing good governance which is in the best interests of the community the Authorised Persons have made recommendations for both the immediate and longer term.
171. A number of the recommendations will be the catalyst the organisation needs to drive a cultural change which will ensure all parties are better informed, have a better understanding and ultimately more effective and positive governance.
172. The Authorised Persons are responsible for recommending the most suitable action to be taken as a result of findings of this Inquiry. Serious consideration has been given to the appropriateness of the recommendations to ensure the utmost benefit is afforded to the City and ultimately the community.

10.1 Challenging role of elected members in regional areas

173. Authorised Persons have observed that a number of residents and organisations, have not allowed for reasonable due process to occur. There appears to be an expectation that the City is required to act on their concerns immediately without giving due regard to reasonableness of the requests in the first instance.
174. There is no doubt some complainants are simply unreasonable in their expectations of the Council and the City. There is also evidence to show the City has not been as open and transparent as it could have been when dealing with requests from the public.
175. Whilst being interviewed a complainant stated that he had “never read the Local Government Act”. He went on to state that ‘if it looked wrong I would lodge a complaint with you guys and you can sort it out’.
176. The sheer volume of questions asked, requests to view documentation, and FOI requests make it difficult for the City to fulfil its obligations in an effective and efficient manner. Even when the City has achieved its obligations the complaints continue to be lodged.
177. The Department has received a significant amount of correspondence since this inquiry began. The majority of that correspondence has involved personal opinion, complaints lodged with the incorrect agency, complaints lodged with no substantiating evidence, and complaints which were ultimately unsubstantiated.
178. The challenge for the administration of the City of Melville is to deal with the issues raised by complainants, whatever they may be, in an open and transparent manner and in line with the policies and procedures they have in their repertoire which have been approved by council.
179. The challenge for dissatisfied persons is to become more familiar with the act and regulations surrounding their concerns and continue to raise issues and request information in accordance with the Local Government Act. Raising questions during public question time is an appropriate way to raise issues and seek answers to questions however it must be done in a reasonable and respectful manner.

10.2 Actions taken by the City/Council

180. The Authorised Persons acknowledge the City and Council has already taken the initiative to improve its governance arrangements by undertaking the following:
 - The Council have reviewed the Public Question Time Policy CP-014 and have implemented changes.
 - The City provided a summary of the City/Council’s trial process for managing public question time on its website following interviews held by the Authorised Persons with two senior staff of the City.

- The City has upgraded its website with the hope that it will assist in the public reviewing publicly available information through the website.
- The City has engaged WALGA to perform an independent review into the City's Meeting Procedures.
- Internal learning review with the assistance of WALGA to gauge an understanding of how the City could have dealt with complaints differently has also been undertaken.

11. Recommendations

It is recommended that:

1. Council continue to review their public question time policy on a regular basis to ensure it is clear, concise, and transparent.
2. That consideration be given by the Council to engage an independent person to review and act on complaints about City processes and decisions for a period of 3 months from the date of this report.
3. All senior staff undertake training in complaint management and dealing with unreasonable complainants within 3 months from the date of this report.
4. The City undergo an independent governance review as determined appropriate by the Director General within 3 months of the date of this report and provide the Director General with a copy of the full report upon its completion.
5. The City undergo a further independent governance review as determined appropriate by the Director General 6 months after the local government elections held in October 2019 and provide the Director General with a copy of the full report upon its completion.
6. The City implement processes and/or procedures to ensure that unauthorised acquisition of properties or any other assets does not re-occur.
7. Within 6 months of the date of this report the Chief Executive Officer is to deliver a comprehensive report to the Director General of the Department outlining:
 - i. the steps taken in response to the above recommendations;
 - ii. identifying the number of senior staff that have undergone the training as set out in recommendation 3;
 - iii. updating the status of the Governance Review in relation to the number of elected members and staff who have participated;
 - iv. the processes the City has put in place in response to recommendation 5; and
 - v. the impact, if any, of the updated policies on Public Question Time, Managing Unreasonable Conduct by Customers, Legal Representation and the Complaint Management Policy.

