



Department of  
**Local Government, Sport  
and Cultural Industries**

# **Report of the Inquiry into the City of Subiaco**

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



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The DLGSC works with partners across government and within its diverse sectors to enliven the Western Australian community and economy through support for and provision of sporting, recreational, cultural and artistic policy, programs and activities for locals and visitors to the State.

The department provides regulation and support to local governments and the racing, gaming and liquor industries to maintain quality and compliance with relevant legislation, for the benefit of all Western Australians. This publication is current at April 2021.

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## 1. Introduction

1. The City of Subiaco (**the City**) is located in Perth's western suburbs, about 8 kilometres west of Perth. It is home to approximately 17, 251 people residing in over 8,410 dwellings.
2. The community is represented by a Mayor and eleven Elected members, voted by residents in four-year terms. Elected members (also known as **Councillors** and **Mayor**) represent residents across four wards.
3. The City includes the suburbs of Subiaco (part), Jolimont (part), Daglish, and Shenton Park (part).
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 6 May 2020, the Director General of the Department authorised an inquiry (**the 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:
  - a. The employment and management of staff
  - b. inappropriate workplace behaviour and the systems for dealing with said behaviour
  - c. systems for the reporting of misconduct to the appropriate authorities
  - d. the adequacy of and adherence to Council's policies and procedures by both elected members and administration staff
  - e. declarations of interests by elected members and administration staff
  - f. the workplace culture at the City
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 (**Authorised Persons**).
8. In order to perform their functions, the Authorised Persons issued direction notices to the City under section 8.5(c) of the Act to provide documents, information or property. The City complied with each of those directions.
9. A number of directions notices required elected members and employees to participate in interviews as per section 8.5(a) and (b) of the Act. All required persons complied with the directions and interviews took place throughout late June and July 2020. A number of persons also participated in voluntary interviews during the course of the inquiry.

## 2. Relevant considerations

10. On 13 August 2020, the Chief Executive Officer (**CEO**) Rochelle Lavery stepped down from her role as the CEO. Director Corporate Services, Scott Hawkins, was appointed acting CEO for a short period in her absence.
11. During a Special Council Meeting on 8 September 2020, Council resolved to appoint Cliff Frewing as the interim acting CEO until Council recruited and appointed a permanent CEO.
12. Primary references to the CEO in this report will be regarding CEO Lavery, however where relevant A/CEO Hawkins and A/CEO Frewing will be mentioned.
13. It is acknowledged that on 3 February 2021, the *Local Government (Code of Conduct) Regulations 2007* was repealed and replaced with the *Local Government (Model Code of Conduct) Regulations 2021*.
14. However, at the time of the matters raised in this report the *Local Government (Code of Conduct) Regulations 2007* applied (except where specifically stated otherwise).

## 3. Statutory framework

15. The Act and associated local government regulations set out the framework for the administration and financial management of local government.
16. Extracts from the Act and associated legislation have been reproduced where applicable.
17. Division 2, Section 2.5 is headed “*Local governments created as bodies corporate*”. Local governments are deemed capable of making decisions in the best interests of its community which on occasions may not reflect the opinions of all residents.
18. The Act defines 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
19. It is important to note that individual elected members are unable to make unilateral decisions or participate in the day-to-day administration 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.
20. As the Mayor and Councillors are not involved in administration 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.
21. Relevantly, 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.

22. 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.
23. 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.
24. Other relevant provisions of the Act state:

#### 5.22. Minutes of council and committee meetings

- (1) The person presiding at a meeting of a council or a committee is to cause minutes to be kept of the meeting's proceedings.
- (2) The minutes of a meeting of a council or a committee are to be submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.
- (3) The person presiding at the meeting at which the minutes are confirmed is to sign the minutes and certify the confirmation.

#### 5.40. Principles affecting employment by local governments

The following principles apply to a local government in respect of its employees —

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity; and
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and
- (c) employees are to be treated fairly and consistently; and

- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the *Equal Opportunity Act 1984* or on any other ground; and
- (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Safety and Health Act 1984*; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.

#### 5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate 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 under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
  - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and
  - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,
 are subject to any conditions imposed by the local government on its delegation to the CEO.
- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.
- (5) In subsections (3) and (4) — conditions includes qualifications, limitations or exceptions.

#### 5.92. Access to information by council, committee members

- (1) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.
- (2) Without limiting subsection (1), a council member can have access to —
  - (a) all written contracts entered into by the local government; and
  - (b) all documents relating to written contracts proposed to be entered into by the local government.

### 25. Relevant provisions of the *Local Government (Code of Conduct) Regulations 2007*:

#### 3. General principles to guide the behaviour of council members

- (1) General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should —



- (a) act with reasonable care and diligence; and
- (b) act with honesty and integrity; and
- (c) act lawfully; and
- (d) avoid damage to the reputation of the local government; and
- (e) be open and accountable to the public; and
- (f) base decisions on relevant and factually correct information; and
- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting substances.

## 9. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

## 10. Relations with local government employees

- (1) A person who is a council member must not —
  - (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person’s capacity as a local government employee; or
  - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person’s capacity as a local government employee.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (3) If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —
  - (a) make a statement that a local government employee is incompetent or dishonest; or
  - (b) use offensive or objectionable expressions in reference to a local government employee.
- (4) Subregulation (3)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

## 4. Inquiry Findings

### 4.1 The employment and management of staff

- 26. This limb of the scope was in reference to ongoing issues being raised with the Department regarding conduct of CEO’s employment performance reviews.

27. CEO Lavery was employed by the City of Subiaco on 8 January 2018 as the Director of Community and Development. In March 2018, following the resignation the CEO Don Burnett, CEO Lavery was appointed the interim acting CEO whilst recruitment for a permanent CEO was undertaken.
28. CEO Lavery applied for the CEO role and was awarded the position on 4 September 2018 under contract for a five-year term.
29. CEO Lavery was placed on a six-month probation with a performance review to be undertaken in March 2019.
30. CEO Lavery's employment contract contained a number of clauses relating to performance criteria, performance review and how the performance reviewers would be selected. Primarily the contract stated these matters would be settled by agreement through consultation between CEO Lavery and the Council, and that if agreement on any of the matters was unable to be reached, Council was to make the relevant determination.
31. CEO Lavery's performance was to be reviewed by a body authorised by the Council to conduct the performance review, called the Review Panel or the Reviewers.
32. After CEO Lavery was appointed CEO in September 2018, it is alleged Mayor Taylor held discussions with CEO Lavery regarding which elected members should sit on the review panel and that she had discussed suitability with some councillors to caucus their views, excluding other councillors from the conversation.
33. On 26 November 2018, Mayor Taylor emailed all elected members regarding advice they had been given during a recent governance forum regarding actual or apprehended bias and stated *'if any elected members are affected by this, please refrain from nominating for the CEO review...'*. The email postulated that if a CEO (in their role as Complaints Officer under the Act) had submitted complaints about councillors, there could be a perceived or actual bias by councillors that could adversely influence them against the CEO.
34. On 27 November 2018, the CEO's key performance indicators and performance review were discussed by the whole of Council as a confidential staff matter behind closed doors.
35. At the meeting, Mayor Taylor allegedly re-iterated some councillors may have a bias being on the review panel in circumstances where CEO Lavery had made complaints about those councillors.
36. These comments reportedly caused councillors to ask CEO Lavery whether she had submitted complaints about them. The CEO did not answer those questions with any clarity and did not state whether she had, or had not, lodged complaints against the councillors.

37. After that discussion, the elected members resolved that Mayor Taylor and Councillor's McAllister, Nash and McMullen be appointed to the Review Panel for a period of two years.
38. After the meeting, some elected members asked via email whether the CEO had made complaints against them. CEO Lavery delayed answering the questions and by the time the information was provided, the new review panel had been formed and those elected members uncertain about whether there would be a perceived bias did not nominate.
39. The matter of complaints, including whether or not complaints were made, by who and how they were handled appears to be an underlying issue for number of matters at the City.
40. Through miscommunication or a lack of process, CEO Lavery's six-month probationary review due in March 2019 was not conducted until May 2019. CEO Lavery's annual performance review was held in September 2019 when due.
41. During the elections in October 2019, five new councillors were elected and in November 2019 nominations to form a new review panel were called.
42. During their interviews, all elected members were asked about CEO Lavery's appointment as CEO and the review processes that followed.
43. The new councillors elected in October 2019 said they did not nominate for the review panel in November 2019 given that they had only been sworn in a few weeks earlier and felt they were not equipped for the role. The elected members cited having no prior knowledge of the CEO's performance to draw from and the Officers Report accompanying the agenda for the November 2019 OCM suggested that as new councillors it may not be in their best interest.
44. Cr Davis stated that *'two elected members nominated, and I thought we are going to be here until midnight unless someone put their hand up. Clearly no one else was interested, so I did'*.
45. Consequently, Mayor Taylor and Councillors Mansfield, Nash and Davis became the review panel.
46. At the 17 March 2020 council meeting, a motion regarding the CEO Performance Review was submitted by Cr Stephanie Stroud. The motion was moved requesting that the reviewers of the CEO's performance (being the Mayor and Councillors Mansfield, Nash and Davis) provide the December 2019 and March 2020 performance reports to the next council meeting to be held on 21 April 2020. The vote was carried 6/5.
47. During interview, Cr Rowe advised that there had been an attempt to hold a CEO performance review workshop on 26 March 2020. The workshop was for the whole of council to come together in a zoom meeting and discuss an overview of the CEO's 2019/2020 performance process and outcomes, obtain high-level feedback on the CEO's progress against achievements of the agreed KPI's and feedback on improvement relating to the focus areas identified at the annual review completed in September 2019.

48. The workshop was delayed, and when asked why, Cr Rowe cited a number of reasons including *'that they were not given sufficient information on it, that it was right at the start of COVID and that he felt it was not the right time to be doing it'*.
49. Cr Stroud stated that she was *'available but welcomed a delay until after they receive the crisis plan for managing the COVID pandemic'*.
50. Cr's Hamersley, Rowe and de Vries all said that they felt that there were higher priorities to focus on and that a meeting at a later date was preferable.
51. Cr McMullen said that he would not participate in the workshop but submitted several points for the panel to consider.
52. At the end of March 2020, the entire review panel resigned. In their interviews with Authorised Persons, members of the review panel were asked why they resigned.
53. Cr Mansfield stated *'that if the work being done by the reviewers was to be dismissed, then discussions with the consultant was that she should resign from the panel with the review panel reverting back to the council as a whole'*.
54. Cr Davis stated *'they did everything possible to in order to bring the review to the Council. Workshops and SCM's were denied so the advice was to step aside and by default, it comes to council'*.
55. Cr Nash stated *'that the reviewers were at the end of a process that had led to a conclusion about where to go next. We needed to bring this back to the whole of council. We had made our recommendation and we needed to bring it back to council'*. Cr Nash also went on to say that he felt he had no option other than to resign, and that the situation was *'untenable'*.
56. On 7 April 2020, prior to the 21 April 2020 council meeting where the reviewers were to report on the CEO's performance review for December 2019 and March 2020 (decision from the 17 March 2020 council meeting), Mayor Taylor called a Special Council Meeting in relation to the employment of the CEO.
57. The agenda and attached documents were sent to Elected members at 2:46pm on 7 April 2020. The attachments included three resumes for interim CEO's, the current CEO's interim performance review and a confidential attachment with two recommendations. One of those recommendations being to terminate the CEO and place an interim CEO in her place.
58. Cr Stroud returned an email on the afternoon of 7 April 2020, stating that she had spoken with the Mayor that morning. Cr Stroud said that she did not have confidence in the content of the attachments as a basis to proceed with the special council meeting and as such would not be attending.
59. During interviews, some elected members stated that they did not attend the 7 April 2020 special council meeting because it was too short notice, they had work/family commitments or did not feel comfortable to attend. One elected member responded by email stating that as a quorum would not be achieved, they would not be attending. Another elected member stated that they would *'deny a quorum'*.

60. Cr McMullen said that he thought that the trigger for the lack of a quorum was because the meeting was called that day, that it seemed rushed and because of the sensitive business, more time was needed.
61. Cr Rowe said that the documents arrived around three o'clock in the afternoon and it all came as quite the surprise, that he needed more time to look at the documents as he felt this was all out of the blue.
62. During interview with the Authorised Persons Cr Hamersley said she didn't attend because they were being given three hours' notice to make a big decision.
63. In an email from Mayor Taylor to all elected members on 8 April 2020 titled '*Deliberately not attending the SCM was disgraceful*', the Mayor said that the conduct of some elected members in deliberately not attending the SCM was '*disgraceful*'. The email communication that followed between the Mayor and Cr Hamersley were argumentative in nature with neither party coming to an agreed conclusion.
64. CEO Lavery lodged a written complaint to the Council on the 16 April 2020, regarding the Performance Review process being followed by Council.
65. CEO Lavery's March 2020 performance review was placed on hold pending an outcome of CEO Lavery's complaint.
66. Between April 2020 and September 2020, the relationship between Council and CEO Lavery soured further, with Council voting to enter arrangements to dissolve CEO Lavery's contract as CEO.
67. On 12 August 2020, CEO Lavery resigned from her position as CEO effective immediately.
68. In summary, it is the Authorised Persons view that the way Council managed CEO Lavery's performance reviews was poor, lacking both in effective communication and timely decision making.

#### **4.2 The adequacy of and adherence to Councils policies and procedures by both elected members and administration staff**

69. This limb of the scope was in reference to ongoing issues being raised with the Department regarding the possible mismanagement of complaints, and whether elected members and staff were adhering to the City's policies and procedures. Authorised Persons also inquired into whether elected members completed an induction and undertook their mandatory training after being elected.
70. The City has a series of policies, protocols and procedures. Policies are documents approved by Council. Protocols are considered formal procedures approved by the Executive Leaderships Team. Procedures (or guidelines/processes) are created by branches to guide their internal operations

71. The city's external facing policies can be found on its website. Of the 82 policies on their website, the City adopted/reviewed the majority of their policies between 2017 and 2018 with the new COVID-19 Financial Hardship policy adopted in 2020.
72. Staff were asked about the processes for reviewing their external facing policies and Authorised Persons were advised that they were previously reviewed by the Policy and Priority Committee. According to the City's leadership team, the Committee was abolished because it '*did not function well in terms of its objectives*'. City staff stated that some Elected members wanted to rewrite and '*wordsmith*' policies whereas other Elected members were satisfied with a more high-level review.
73. Currently, policies are reviewed by City staff and then sent to Council via a strategic workshop where they are evaluated, approved and implemented.
74. Authorised Persons reviewed the City's complaints management and internal grievance policies/procedures, their communication protocols and record keeping practices.

#### *Complaints Management*

75. The City does not provide any external facing complaints management policy, process or guidance material.
76. When asked to provide Authorised Persons with evidence of how the City manages complaints, the City advised that complaints from an employee about another employee was handled through the Grievances Procedure.
77. However, when asked about the process for managing complaints against elected members, Authorised Persons were provided with:
  - (a) the *Customer Service Charter* which advises that feedback, including complaints, can be provided to the city via post, telephone or email;
  - (b) a document titled *Registered Complaint Guidelines* which is primarily a process for managing complaints about employees, not elected members; and
  - (c) copies of emails that had been sent to people who had asked for information on how to make a complaint about elected members.
78. The only reference to complaints on the City's website was through the Feedback tab which provides people with a free text box to provide any type of feedback, whether that be a compliment or complaint. No guidance material about the process for complaining about minor or serious beaches is available to guide a person wishing to make a complaint about an elected member.
79. In the latter stages of the Inquiry, Authorised Persons have supported A/CEO Frewing to develop a complaints management policy and appropriate procedures to guide the City in the future.

80. The development of these Policies will align with the new *Local Government (Model Code of Conduct) Regulations 2021* that took effect on 3 February 2021 and provides a more robust process for dealing with complaints against elected members.

#### *Grievance Procedure*

81. On initial examination the procedure had not been reviewed since 2011, however Authorised Persons were advised through the course of interviews that the procedure had been updated during the inquiry.
82. No information was provided during the Inquiry to indicate the procedure was not being adhered to.

#### *Communications Protocol*

83. The Communications protocol outlines how, and with whom, elected members are to communicate with the administration. The protocol identifies a clear process for communications between elected members and the CEO, nominated Directors and Managers within the City.
84. The protocol specifically stipulated that elected members could communicate with the CEO and Directors with regard to agendas, meeting minutes, information relevant to the performance of their functions, and the Manager Information Services and Manager Finance and Governance with regards IT concerns and routine finance and governance matters.
85. Employees were permitted to communicate with elected members regarding non work-related matters and in an unofficial capacity. The purpose of such a process is to ensure the delineation between Council's roles and responsibilities and the day to day operations in an administrative capacity.
86. Information was provided during the Inquiry indicating the Mayor had deviated from this process on a number of occasions, requesting information from employees directly rather than through the CEO / Directors as required by the protocol. For further information, see heading *FOI applications by elected members and Mayor's access to administration building*.

#### *Record Keeping*

87. The City has a Record Keeping policy as required by the *State Record Act 2000*, however, at the time of the management staff interviews (August 2020) it had not been reviewed within the appropriate timeframe outlined within the Act (5 years).
88. Authorised Persons advised senior management during the Inquiry of this non-compliance with the *State Records Act 2000*.

#### *Elected members Training*

89. With the introduction of new provisions contained within the *Local Government Legislation Amendment Act 2019*, section 5.126 of the Act now stipulates each

council member must complete training in accordance with Regulations.

90. Regulation 35 of the *Local Government (Administration) Regulations 1996* requires council members to undergo a course of training titled *Council Members Essentials* within twelve months of being elected. The training is available through Tafe and WALGA.
91. The course consists of five training modules that must be completed:
- Serving on Council
  - Understanding Local Government
  - Conflicts of Interest
  - Meeting Procedures
  - Understanding Financial Reports and Budgets
92. Councillor's Hamersley, Powell, de Vries, Jennings and Phelan were elected on 22 October 2019 and were required to undertake the training within twelve months.
93. As of November 2020, Cr Hamersley and Powell had completed all five required units, Cr de Vries had completed one of the five required units.
94. Cr Phelan had not completed any of the training units required.
95. The Act does not provide for any regulatory action to be taken against elected members that do not complete the training within the prescribed timeframe.

#### **4.3 Inappropriate workplace behaviour and the systems for dealing with said behaviour; and Systems for reporting of misconduct to the appropriate authorities**

96. This limb of the scope was in reference to ongoing issues being raised with the Department regarding the manner in which the City was managing concerns/complaints made by elected members about other elected members.
97. The Act sets out a process for managing complaints about elected members, called minor breaches and serious breaches.
98. The minor breach system is part of the disciplinary framework for council members in Western Australia under the Act. The minor breach provisions are designed to address conduct by individual council members, with the aim of responding to disruptive or inappropriate conduct. The system responds to and deters conduct by council members that disrupts the effective functioning of their local government.
99. There are four main elements to the minor breach system:
1. A council member engages in conduct that is believed to contravene the *Local Government (Rules of Conduct) Regulations 2007* (legislation in force during the investigative phase of the inquiry).
  2. A complaint of minor breach is lodged with the local government's complaints officer about the conduct.
  3. The Local Government Standards Panel (Standards Panel) makes a finding



about whether the conduct did or did not constitute a minor breach.

4. If a finding of minor breach is made, the panel may order a sanction.
100. The Standards Panel can only make a finding if the Panel is of the view, it is more likely that the breach occurred than it did not occur, and a complaint has been lodged in accordance with the Act.
101. Complaints relating to an elected member alleging a serious breach of the Act can be made direct to the Department in accordance with section 5.114 of the Act.
102. A complaint of a serious breach must be made in writing and in the prescribed form and must give clear details of the following:
  - The person making the complaint
  - The person (and their role) alleged to have committed the breach
  - The action that is alleged to have resulted in the breach
  - Any other information supporting the complaint
103. Serious breaches of the Act include (but are not limited to) the following:
  - Section 5.21 Failure to vote
  - Section 5.65 Members interest to be discussed at meetings to be disclosed
  - Section 5.67 Disclosing members not to participate in meetings
  - Section 5.75 Failure to lodge primary return by due date
  - Section 5.76 Failure to lodge annual return by due date
  - Section 5.93 Improper use of information
  - Section 5.123 Breach of confidentiality
104. Allegations of serious breaches are heard by the State Administrative Tribunal (or prosecuted as an offence in the Magistrates Court).
105. Concerns raised at the City that did not give rise to a complaint under the above framework consisted of complaints about inappropriate conduct by elected members. Introduction of the new model code of conduct regulations is designed to address these types of complaints, however at the time of the issues being addressed in this report, the model code of conduct did not exist.
106. During 2018, staff became overwhelmed with the number of concerns/complaints being raised by elected members and the City felt that they did not have the capacity or resources to deal with the concerns.
107. City staff stated that concerns had been raised by the Mayor and the City staff about elected member behaviour, specifically the leaking of confidential information and fidelity to council with information ending up in the POST newspaper or Face Book.
108. The City resolved to engage a consulting firm to provide assistance in the preparation of material to support the City to manage these concerns, and whether there was any basis for those concerns to be raised as minor breach or serious breach complaints.
109. The City did not have any other process in place on how to assess concerns and

lodge appropriate complaints from elected members about elected members.

110. There were eight reports completed by the consulting firm that were used as supporting documents in the submission of both minor and serious breach complaints between August and November 2018.
111. The reports provided incorrect advice to the City regarding the process for complaints management. For example, one report regarding an alleged minor breach stated that *'it should be noted that only the CCC has jurisdiction over elected members of Local Governments and therefore minor breaches concerning elected members are not within the jurisdiction of the Public Sector Commission'*.
112. This advice is inconsistent with the legislative framework set out above and the investigation leading to the report undermined the process of making a complaint to the Standards Panel, the body that does have jurisdiction for determining minor breaches.
113. This manner of dealing with concerns raised at the City led to division amongst elected members, with some saying only selected concerns/complaints were investigated by the consulting firm, whereas nothing happened with others. One elected member described the matters investigated by the consulting firm as *'witch hunts'* seeking evidence of wrongdoing to justify submitting formal complaints to the appropriate jurisdictions and to strengthen the possibility of breaches being sustained.
114. Prior to the 2019 elections, the City entered discussions with a law firm to investigate a number of matters concerning the behaviour of some elected members towards staff.
115. City staff stated that they were concerned about the elected members behaviour and interactions with staff, the nature and tone of emails and increased pressure and demands placed on staff. The law firm was to review correspondence and communications from certain elected members and provide a report back to the City to advise if any further inquiry into the matters was required.
116. The investigation did not eventuate, in part due to a change in the elected members following the 2019 election, and a desire by the City to see what effect that change in council brought to the City.
117. In early 2020, the Authorised Inquiry commenced amid further concerns that issues amongst elected members had deteriorated to an extent that there was obvious division between council, the administration, the Mayor and the CEO. It was reasonable for Authorised Persons to deduce that any formal complaints regarding minor or serious breaches may not be managed in accordance with the legislative framework given the manner in which previous concerns had been outsourced.
118. The City's management staff were advised during the Inquiry that it would be prudent to develop a complaints management procedure to ensure all concerns regarding elected members behaviour are handled in accordance with the legislative framework.
119. The City has identified that it is not its role to investigate matters on behalf of the

elected members wishing to lodge a minor breach complaint.

#### 4.4 Declarations of interest by elected members and administration staff

120. This limb of the scope was in reference to matters being raised with the Department regarding the declaration of interests by elected members and the CEO. In particular:
- (a) The requirement for the CEO to declare a financial interest when attending her performance review meetings.
  - (b) The requirement for certain elected members to declare an impartiality interest in matters discussed at Council meetings relating to former Cr Matheson.
  - (c) The nature of the impartiality interests declared by Cr Blake Phelan in matters discussed at Council meetings related to former Cr Matheson.

#### *Financial Interest - CEO Lavery*

121. Throughout her employment, CEO Lavery attended numerous performance review meetings and was present when the topic of her employment was discussed at Council meetings.
122. Section 5.60A of the Act states that *a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.*
123. Section 5.63 of the Act states section 5.70 does not apply to a relevant person who has an interest relating to the pay, terms or conditions of an employee unless the relevant person is the employee.
124. Section 5.70 of the Act states *an employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.*
125. The obligation for whether a CEO is required to declare a financial interest at CEO performance meeting hinges on whether the CEO has advised or provided direct report to council about their pay, terms or conditions where there is a reasonable expectation it may result in a pecuniary gain or loss.
126. It is not the case that merely by the attendance of a CEO at their performance meeting that a financial declaration is required. If the purpose of a meeting (or a specific item in a meeting) is that the Council in its capacity as the CEO's employer is conducting a performance appraisal of the CEO, it can be said that the CEO is not providing advice or a direct report to council, rather they are participating in the performance appraisal in their capacity as the council's employee.
127. If the CEO is present and the Council are discussing the contents of a report or

advice from the CEO which only seeks to advocate for the quality of their performance as a CEO, this may be viewed as providing advice. That being said, if the meeting (or a specific item in a meeting) was for the purposes of the performance appraisal of the CEO, it would be difficult to construe an attempt to advocate for their own abilities (like all other employees do as part of a performance appraisal process) as advice.

128. A CEO should declare a financial interest in circumstances where the CEO is directly involved in providing recommendations or conclusions contained within a report (or gives such advice) and there is a reasonable expectation it may result in a pecuniary gain or loss. Examples could include where the CEO actively provides a recommendation on what action the Council should take or where the CEO advocates for a pay rise or other pecuniary benefit.
129. At the 17 June 2019 council meeting, agenda item 13.1 was voted on by Council which referred to a motion concerning the CEO Progress Performance Review. CEO Lavery did not make a declaration at the meeting.
130. CEO Lavery had previously advised the Department she did not provide advice or a report directly to the Council in relation to the three agenda items and therefore was not obliged to disclose an interest.
131. CEO Lavery submitted a financial interest in relation to item 13.3 at the OCM on 17 September 2019, citing '*I am an employee of the city and the report deals with my performance and remuneration review*'.
132. CEO Lavery submitted a financial interest and an impartiality interest in relation to item 13.1 at 19 November 2019 council meeting, citing that the item '*may have a future financial impact and I may have an impartiality interest as I am an employee of the city and the report deals with appointment of my performance reviewers*'.
133. CEO Lavery submitted a financial interest in relation to an Urgent Business item at the OCM on 17 March 2020, citing '*the urgent business item relates to a matter to do with my employment*'.
134. CEO Lavery submitted a financial interest and an impartiality interest relation to item 13.2 at the OCM on 21 April 2020, citing that the item '*may have a future financial impact and I may have an impartiality interest as I am an employee of the city and the report deals with items dealing with my performance review*'.
135. CEO Lavery submitted a financial interest and an impartiality interest in relation to item 13.2 at the SCM 27 on May 2020, citing that the item '*may have a future financial impact and I may have an impartiality interest as I am an employee of the city and the report deals with item relating with my performance review*'.
136. In summary, it is the Authorised Persons view that CEO Lavery erred on the side of caution by submitting declarations at five out of the six relevant meetings in 2019 and 2020. Further, more clarity in the meeting minutes as to whether CEO Lavery actually provided advice or a report that was reasonable to expect may result in a pecuniary gain or loss could have been included to make it clearer whether a declaration of financial interest was required.

### *Matters involving former Councillor Matheson*

137. Matters involving former Cr Matheson were the subject of council discussions on 17 March 2020, 21 April 2020 and 19 May 2020. Several elected members declared impartiality interests in relation to those matters.
138. Cr Mansfield declared impartiality interests in relation to former Cr Matheson on 17 March 2020, 21 April 2020 and 19 May 2020. The nature of the impartiality interest was she was the complainant in the minor breach complaint lodged with the Standards Panel against Cr Matheson and the subsequent appeal of the Standards Panel decision being heard by the State Administrative Tribunal.
139. Cr Hamersley declared interests in relation to former Cr Matheson on 17 March 2020, 21 April 2020 and 19 May 2020. The nature of her interest was that in the period prior to her election as a councillor, she provided Ms Matheson with assistance in respect of the complaints lodged against her including the complaint the subject of the matter before the SAT in the Matheson and Local Government Standards Panel [2020] WASAT 26 (Matheson SAT matter).
140. Cr Stroud declared interests in relation to former Cr Matheson on 17 March 2020, 21 April 2020 and 19 May 2020. The nature of her interest was that she was a councillor present at the OCM 28 August 2018 and voted on item 13.1 which is a subject of the Matheson SAT matter. Cr Stroud also declared that she had been with information through the FOI process that may have been used as evidence in the SAT decision and that she attended the hearing and SAT decision on 5<sup>th</sup> February and 4<sup>th</sup> March 2020.
141. Cr Jennings and Cr Rick Powell declared interests in relation to former Cr Matheson on 17 March 2020, 21 April 2020 but neither declared an interest at the OCM on 19 May 2020. The nature of the interest was that they both attended the hearing of the Matheson SAT matter on 5 February 2020 as a member of the public in the public gallery.
142. Mayor Penny Taylor declared interests in relation to former Cr Matheson on 17 March 2020, 21 April 2020 and 19 May 2020.
143. In summary, it is the Authorised persons view that the elected members, with the exception of Cr Phelan, declared appropriate impartiality interests in relation to the Matheson SAT matter.
144. Any impartiality interests not declared would not have precluded any elected member from participating in the discussion or voting on the matters involved.

### *Impartiality Interest - Cr Blake Phelan*

145. Regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007* states an interest means an interest that could, or could reasonable be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.
146. Regulation 11(2) states that a person who is a council member must disclose the nature of the interest.

147. Cr Blake Phelan lodged declarations an impartiality interest in matters discussed at council meetings held on 17 March 2020, 21 April 2020 and 19 May 2020, stating '*I reside at the same address as Julie Matheson*'. The nature of the interest – kinship, friendship or member of an association – was not disclosed.
148. At the 17 March 2020 council meeting, six councillors submitted declarations of interest surrounding items 11.5 and 12.3 regarding Matheson SAT Matter.
149. The receipt of a large number of declarations were discussed between the city's administration staff and a decision was made to obtain advice surrounding possible issues of apprehended bias. The advice was emailed to all councillors on 9 April 2020.
150. The advice contained, amongst other things, reference to the lack of detail in Cr Phelan's declarations with regard to the nature of the relationship. During his interview, Cr Phelan was asked about his relationship with former Cr Matheson. The answers provided by Cr Phelan indicated the nature of his interest is one of friendship.
151. Cr Phelan was also asked why he continued to make declarations to the effect that he resides at the same address as Ms Matheson without divulging the nature of the interest despite having received the advice via email on 9 April 2020. Cr Phelan stated he had not read the advice and was not aware that a section of the advice pertained directly to himself.
152. In summary, Cr Phelan did not declare the full nature of his interest in the matters involving former Cr Matheson on 17 March 2020, 21 April 2020 and 19 May 2020, however this did not preclude him from participating in the discussions and voting on the matters involved.

#### **4.5 Workplace culture at the City**

153. This limb of the scope was in reference to concerns being raised with the Department that:
- the CEO and a Director appeared to be obstructing the Mayor during council meetings; and
  - several motions of council passed by the City highlighted division amongst elected members and the CEO.

#### *Relationship between the Council and Administration*

154. During interviews, City staff were asked about the relationship between the administration staff and the elected members. City staff mentioned that there was a breakdown between the administration and the council, that some councillors have no faith in the advice being given, emails from elected members were often *accusatorial, complicated, demanding* and *atagonistic*. City staff also commented that emails from the Mayor and some elected members were *rude, dismissive or critical of staff*.
155. A city staff member stated that '*advice that was once trusted is now being*

*questioned. Legal advice is then being sought and then that advice is being questioned or declined’.*

156. Another city staff member stated that the new council coming in (October 2019) really looked positive: *‘The new elected members responded really well with the inductions and training, and the relationship the Executive were building with the new councillors look promising. That then went pear-shaped at the AGM in December. The councillors that came on board were really unhappy with how the AGM was run and the inability of the community to move motions or ask questions’.*
157. Another city staff member stated that the trust between the new and the old council *‘began to dissolve after the December AGM and then the SCM’s in January [2020]. The good work that was being done to build positive relationships between admin and council was broken down with COVID and the difficulties that are faced with interactions only being via zoom. The breaking down of barriers is very difficult when conversations are remote and not face to face’.*
158. Cr Davis stated that *‘I think that there is a general desire amongst some councillors to go against some recommendations or the ideas of other councillors just because they are contrary’.* Cr Davis made mention that *‘the current council is divided, much like the old council and that it’s interesting that there are Councillors who think that the admin are the enemy’.*
159. Cr Mansfield stated that *‘there is a lack of communication and trust and there is a deep division in council which means people become very wary, guarded, sceptical and they are unable to discuss things in an open manner’.*
160. Cr McMullen stated *‘I think where things break down when there is a lack of communication between council and staff or within council then people start to think there is a conspiracy going on or people feathering their own interests or staff aren’t doing the right thing’.*
161. Specific matters raised that fuelled a divide between the elected members and the administrative staff (addressed below) included:
- The volume of emails received through the elected member communication (**EMC**) inbox requesting information
  - FOI applications by elected members
  - Mayor questioning staff recruitment processes
  - Mayors access to the administration building
162. In summary, the lack of trust between elected members and the administration was evident through all of the interviews conducted by Authorised Persons. The particular issues addressed below are demonstrations of how the lack of trust is affecting interactions and processes at the City.

#### *The volume of elected member requests for information*

163. City staff stated the number EMC’s being received from elected members had significantly increased causing pressure on staff and time delays in responding to the emails not only due to the volume but often complexity of responses required.

164. It was reported by the City that for the 18-month period from 1 January 2019 to 30 June 2020, EMC's sent to the EMC folder, which included:
- (a) all EMCs – average of 65.5 per week
  - (b) the Mayor and Deputy Mayor – average of 43.76 per week
  - (c) the Mayor alone – average of 29.56 per week
165. For comparison, it was reported that in the 12-month period between 1 October 2016 and 30 September 2017, the previous Mayor sent a total of 152 EMC requests – averaging 2.92 per week.
166. Throughout the inquiry, it was noted that elected members made multiple comments through email, interview and through CEO Lavery's performance review that sometimes her responses to emails lacked detail, did not answer the question asked, were not timely or were are passed on to the other staff to answer further delaying the response time.
167. CEO Lavery was asked by the Authorised Persons why she defers emails to Acting Director Paul Moll or Director Scott Hawkins. CEO Lavery stated that in the period of the inquiry, she had received *'over two and a half thousand emails just from the Mayor'*.
168. CEO Lavery stated *'I can't deal with that volume of emails myself, so in order to try and meet the elected members expectations of getting timely responses to emails, I do need to have directors respond to those emails'*.
169. Director Scott Hawkins said that when working with previous CEO's and councils, probably in terms of the governance space, he estimated he'd spend 20 percent of his time doing responding to emails. With the current council and the council since the 2017 elections, he estimated he was spending 80 to 90 percent of his time dealing with governance email responses.
170. Scott Hawkins said that there are elected members who are trying to fulfill an administrative role for the community so that increases the volume of emails. Instead of referring someone to the City, elected members would send an email and then request that the administration respond to the community member. The city has a customer request management system to deal with those emails. With elected members now being part of the process, it had increased the volume of correspondence required.
171. Cr McMullen made a request for an elected members Information Supply Process at the OCM on 20 August 2019. It was noted at that meeting that a streamline process for responding to elected members communications in a timely manner was currently underway. It was agreed at that meeting that a means by which legal and governance advice received by the city would be distributed to elected members and saved in a location accessible by elected members, for elected members future reference.
172. Cr McMullen submitted an elected member's motion (**EMM**) to Acting Director Paul Moll on 8 August 2019 for inclusion into the 20 August 2019 council meeting. The EMM, titled *Elected Member Information Supply Policy* outlined a policy to be



prepared by the CEO. The policy was to address seven points including addressing an expected maximum staff response time for existing documents, the criteria that the CEO used when assessing a document to be confidential and the establishment of a legal and governance database.

173. In the response from Acting Director Paul Moll, Cr McMullen was advised that Council are not able to instruct the CEO to prepare a draft policy as the effect of the motion would be to extend to functions of the council into the day to day operations of the local government.
174. Cr McMullen stated that he was not able to put up his EMM as it was supposedly directing staff. Ultimately, Cr McMullen was required to concede and amend his EMM to two points and request that the CEO give consideration to whether and how, and to what extent, the new process may accommodate any or all of the following in order to have the EMM tabled.
175. Cr McMullen made a second request at the 17 March 2020 council meeting for a Legal and Governance Database. The motion was to establish a secure electronic legal and governance advice database relevant to the role of councillors, accessible by councillors, with advice to be sorted to, subject matter, date and advisor.
176. A city staff member was asked why the database had not been created as part of the EMM, given that this was a decision of council. The staff member stated that it just wasn't a feasible possibility to do it, to procure what is essentially a database. It was going to be a complication to do what they wanted.
177. CEO Lavery said that the city had been reviewing a way to try and improve their timeliness. The city had agreed to respond within three working days, but it was not always achievable with the number of emails they were receiving and the complexity of them.
178. In summary, the number and complexity of emails requesting information or access to documentation was taking an excessive amount of the administrations time, causing delays in the time and perhaps quality of the information being provided. This has caused frustration from the elected members point of view who felt they were not being provided the information they required in a timely and fulsome manner.

#### *FOI applications by elected members*

179. During 2016 to 2018, the city averaged eight Freedom of Information (FOI) applications per year with no applications being submitted by elected members. At that time, it was estimated that processing FOI applications comprised of approximately 15% of the workload for the staff member tasked with that role.
180. In 2018 to 2019, the city received eighteen FOI applications with seventeen of the those being from elected members. Ten of those applications were received from one elected member.
181. City staff stated that some of the FOI applications by elected members were inappropriate and that they were using the FOI process to gain advantage for

themselves over another. This was having an impact on staff who were feeling that, by processing the applications, they were being directed or pressured to act in a certain way.

182. CEO Lavery stated she had spoken with the Mayor on occasion about her attitude towards a staff member during communications with the officer regarding an FOI matter. In the CEO's opinion, there had been some pushy behaviour and questioning of the staff members professional capabilities by the Mayor.
183. A grievance was submitted and as part of the outcome, all emails from elected members that are sent directly to the FOI email account are now automatically placed into an Elected member's folder. This folder is checked by a Manager. The City's staff member is no longer in direct receipt of these emails.
184. During interview, the Mayor said she felt that the FOI process was not being undertaken appropriately and commented that her questions about the release of information was met with a lack of response, obstructionist behaviour and an inconsiderate approach.
185. Mayor Taylor advised that she requested the process be reviewed as she felt that it was not being applied consistently to all applicants and involved parties.
186. In summary, the increase in FOI applications put pressure on staff. The added factor that the applications were by elected members increased that pressure to not only process the applications in a manner consistent with the law as well as the applicants and/or affected parties' satisfaction.

#### *Mayor questioning staff recruitment processes*

187. During the inquiry, information was provided concerning Mayor Taylor's request for information about the recruitment of an employee in mid-2020.
188. At the 7 July 2020 council meeting, the Mayor submitted an EMM Confidential Staff Matter to which the Mayor requested that the city prepare for the council a report on how the city recruitments/appointments are conducted as per Section 5.40 of the Act.
189. During interview, Mayor Taylor stated that she had initially asked the CEO for non-specific, non-identifying information in relation to the recruitment processes. The Mayor stated that the discussion surrounding recruitment with the CEO was conversational. However, CEO Lavery stated that the Mayor asked for a 'blow by blow' report on how a particular staff member was recruited.
190. CEO Lavery stated Mayor Taylor asked the CEO to provide her with details of a particular recruitment process involving a particular successful applicant, and details of that staff members performance reviews. The CEO refused to provide the information citing section 5.41(g) of the Act.
191. In an email from Mayor Taylor on 25 June 2020 to elected members, the Mayor advised CEO Lavery had refused to provide a summary to the Mayor, and given that it is the prerogative of Council to be able to question and ask for information as part of understanding that proper management is occurring at the city, the only option left for the Mayor was to bring an EMM despite this being unfortunate and

unnecessary in normal circumstances.

192. The Mayor stated that she had received advice from WALGA that she could ask questions about the particular recruitment process and that she asked the CEO how many people had applied for the position. CEO Lavery replied to the email stating that she did not have to give the Mayor any information about that recruitment.
193. During interview, Authorised Persons asked the Mayor if she was concerned that the recruitment process had not been undertaken. The Mayor stated that she was unaware if it happened. When asked what made her believe that perhaps it didn't happen, the Mayor stated that people quite often talk to her about various job ads, when there is a big recruitment it gets discussed and there are conversations about it. According to the Mayor, she felt that did not occur on this occasion.
194. During interview, CEO Lavery was asked if the recruitment process had been undertaken in accordance with appropriate policy/procedures. CEO Lavery advised that an external recruitment process had been undertaken with several people interviewed. The applicant selected was the most qualified person for the position.
195. CEO Lavery stated the Mayor put up an EMM which was moved behind closed doors because it contained information about a particular staff members recruitment process, and the matter was only brought out from behind closed doors when the Mayor agreed to remove the component that specifically mentioned the staff member.
196. A motion was then put to Council for the CEO to prepare a report on how city recruitment/appointments with specific reference to sections 5.40 of the Act. The information was to be provided to the Mayor and Elected members by 15 September 2020.
197. In summary, it is the Authorised Persons view that this depicts the type of debate that often occurred between the Mayor and the CEO and was indicative of the breakdown in relationship between them. Matters that should have been resolved during their regular meetings were brought before Council, highlighting how their working relationship had deteriorated.

#### *Mayor's access to the administration building*

198. The City has a clear Communication Protocol that states elected members are to direct any queries to 'authorised officers' which are the CEO and Directors. Elected members may also contact the Manager of Information Services for requests for IT assistance or the Manager of Finance and Governance Services for routine finance and governance matters. The Mayor also has access to the Manager of Communication and Engagement for all media and communication information. The policy states that all communication should be through email or by phone.
199. City staff were asked about the Mayor's restriction to the administration side of the building that occurred in March 2020.

200. During the interview with CEO Lavery, she stated that when the offices were closed due to COVID-19, the City reduced staff access to the administration side of the building just to essential staff and staff that were going to be in the office.
201. CEO Lavery stated that as part of that, the Mayor lost her access to the Administration side of the building, but maintained access to her office, the Councillor's kitchen, council chambers, committee room and facilities. CEO Lavery stated she did not specifically mention it to Mayor Taylor and that she was aware the Mayor found out when she went to access the building but was unable to.
202. Acting Director Paul Moll stated that he had been requested by CEO Lavery to cease the Mayors swipe card access at the beginning of COVID-19.
203. Mr Moll stated that previously the Mayor had used the opportunity to walk through the administration building and chat to staff and that the Mayor had interrupted meetings including one between the CEO and one of the Directors during a performance review.
204. CEO Lavery was asked why the Mayors access had not be reinstated to which she stated that the City has a Communication Protocol which advises elected members how to channel communications through to the administration.
205. CEO Lavery stated that she had previously spoken with the Mayor about her dealings with the staff and her entering the administration building and going straight up to staff and talking to people. The CEO gave several examples of the Mayor interrupting her and other staff at inappropriate times.
206. CEO Lavery stated that after speaking with the Mayor and reminding her of the Protocol, the Mayor continually used her access as an opportunity to request information from staff and disrupt meetings.
207. On the 24<sup>th</sup> March 2020, CEO Lavery requested by email that the Mayor refrain from entering the administration (staff/offices) portion of the building.
208. CEO Lavery stated that she had had 'words' with her about it, that it was an ongoing issue, and that the very next day, *'she was back doing the same thing'*.
209. Authorised Persons identified that without access to the administrations of the building, the Mayor still had access to tea and coffee facilities, amenities, printing and stationery and her own Personal Assistant (appointed 19 August 2019). The CEO stated that she had explained to the Mayor that given her ongoing actions, her access to the administration building would not be reinstated.
210. As at 9 September 2020, Acting CEO Scott Hawkins had not reinstated the Mayors access to the administration side of the building stating that due to the Mayors interactions with staff, access status has not changed. Mr Hawkins reissued the 'Communication by Elected Members' protocol to the Mayor and elected members for their information and conformance.
211. In summary, it is the Authorised persons view that this highlights the discordance between the administration and Mayor Taylor.

### *Relationship between Elected members*

212. During interviews, it became clear that most elected members felt there was poor communication amongst the elected members, with most stating they only spoke to each other at council meetings or through emails. Some felt that Mayor Taylor only communicated to them via email and was not modelling a collegiate environment for cohesive relationship building between elected members which may have helped to break down some barriers.
213. One councillor stated: *'There has been times when there has been no communication, other times when there has been small amounts of communication. Very rarely has it been adequate.'*
214. Another councillor stated: *'I could sit here and say that she could be more collaborative but there are a number of people who have come to council and made it clear to her directly that they are not interested in doing that and are upset with her performance over the last two years..'*
215. Mayor Taylor explained that relationship building had been difficult: *'Well, I guess it's kind of tricky, because particularly as a number of councillors who were elected were quite vocal critics of council before they were elected and one of the things that was mentioned a bit was around the transparency and not having discussions outside of council. So there is a tension between.... being friendly and meeting [to make decisions]'*.
216. Mayor Taylor stated: *'We don't have to like each other but as best we can we should be respectful to each other, and the same with admin. If admin don't necessarily agree but give us professional advice on options that council have asked for, we will make good decision. I'm having trouble seeing that and that's what I would like Subiaco council to work towards'*.
217. Almost all elected members indicated that this situation was exacerbated by the government restrictions imposed in response to COVID19 and the move to holding council meetings online.
218. During interviews, Authorised Persons asked elected members about the culture of the council. Most elected members discussed how the council is divided with some stating that there were constant referrals to the 'SaveSubi' endorsed members.
219. Cr Davis stated that he had seen some abhorrent behaviour but had not lodged a complaint as a previous minor breach complaint had taken over a year with no outcome because the elected member was no longer a councillor.
220. Cr Jennings made comment that elected members had been quoted in the papers about certain things that had been said at council meetings and there had been various things said about some councillors *which were probably adverse reflections and untrue things but yes it's happening.*

221. Cr Mansfield said that there is a deep division in the council which meant that people become *'wary, guarded, and sceptical'* to the point where they are unable to discuss things in an open manner. She further stated the *'divisions were really playing out on council and in council decisions and EMM's'*.
222. Cr Hammersley commented that as a Councillor, she felt she was constantly being attacked in the media and the newspapers and that it made her *'wary'*. Cr Hammersley's comment was made evident in a POST newspaper article published on 1 August 2020, where Mayor Taylor was quoted to make comments surrounding Cr Hamersley's email denying a quorum for the 7 April 2020 SCM and then *'within minutes, all other SaveSubi endorsed councillors also emailed saying they would not attend.'*
223. Throughout the Inquiry, Authorised Persons observed several Council meetings where references were made to those perceived to be associated with 'SaveSubi' and comments about them being required to declare an interest in matters where 'SaveSubi' was mentioned or concerned.
224. During interview, Cr Hamersley stated *'to my knowledge SaveSubi is not an organisation to which membership is available. In any event, I reject any claim or insinuation that I am in some way beholden to or directed by any group'* as her reason for never declaring an interest in matters raised with Council concerning or mentioning 'SaveSubi'.
225. This issue has been a cause of concern and debate for some elected members and will likely continue to be whilst differences of opinion exist as to whether elected members endorsed by 'SaveSubi' during their elections should declare any ongoing interest.
226. As an example of the discord affecting council, a Strategic Workshop held on 4 February 2020 for elected members to discuss the Strategic Financial Plan and Corporate Business Plan disintegrated into arguments. The workshop was facilitated by an external consultant, but despite being externally facilitated, Authorised Persons were informed that the conduct and outcomes of the workshop were seriously affected by the unprofessional behaviour of individual elected members who demonstrated their ill-feeling and hostility towards other elected members.
227. At a subsequent workshop on 25 February 2020, a Manager gave an update on a development application that had been refused at a previous OCM. At the end of the workshop, following a very robust discussion, some elected members began having an argument, shouting at each other over the way they voted and debated the development application.
228. By way of another example of the discord affecting council, two elected members had engaged legal representation, with one accusing the other of defamation and seeking to take action against the other if an apology was not forthcoming.
229. In summary, it is the Authorised Persons view that there is a significant divide and hostility amongst elected members that is affecting their interactions with each other. The hostility and poor behaviour has played out in the media and at council

meetings but has not resulted in minor breach complaints being lodged during the inquiry.

230. It is unclear whether that is due to people not wishing to make complaints or whether the behaviour did not meet the elements of a particular type of breach removing that as an option. Regardless, elected members behaviour has been an ongoing concern which has not been managed or resolved.
231. It is acknowledged that A/CEO Cliff Frewing held a meeting with the elected members on 8 February 2021 to share his experience and expertise based on what he had observed during his short time as the City's CEO.

#### *Unresolved issues for the City*

232. Throughout the inquiry, two internal matters have continually been raised that appear to be unresolved by the City – the handling of Local Planning Scheme 5 (**LPS5**) and the Matheson SAT matter.

#### *Handling of LPS5*

233. On 12 December 2019, CEO Lavery received a letter from the Planning Minister, Hon. Rita Saffioti MLA, directing that certain modifications were to be made to the City's draft LPS5 and that it would be approved on that basis.
234. During interviews, it was ascertained that the details of the letter was not shared with all elected members, rather only Mayor Taylor was made aware of the letter's contents.
235. On 16 December 2019, City officers provided Mayor Taylor with a verbal briefing of the Minister's and Western Australian Planning Commission (**WAPC**) decisions.
236. On 18 December 2019, Mayor Taylor and Minister Saffioti both released media statements on advising that the Minister had approved the new local planning scheme for the City.
237. According to senior management at the City, all elected members were provided with notification of the decision by email on the same day as the media release, being 18 December 2019.
238. During interviews, elected members confirmed that either media release or email communications on 18 December 2019 was how they became aware of the planning scheme's approval, depending on which they happened to read first.
239. Almost all elected members stated the media release by Mayor Taylor had not been sanctioned by the whole of Council, and that this raised a number of concerns for Council.
240. On 3 January 2020, a number of elected members called for a special council meeting to be held on 6 January 2020. Mayor Taylor and Cr's Mansfield, Rowe and Davis did not attend. 81 members of the public attended, and 12 people gave public statements.
241. The motion discussed at the special council meeting contained 11 points, each of considerable length and detail. Each point was discussed and voted on separately

in accordance with the City's Meeting Procedures Local Law.

242. Of significance was points 6 and 10. Point 6 was carried seven to one, and read:  
*'The City of Subiaco, the CEO, any of her staff, the Mayor or any elected member are not to return or cause the return of any modified LPS5 documents or amended Local Planning Strategy documents to the Minister or the Western Australian Planning Commission until authorised by the Council to do so'.*
243. Point 10 was carried seven to one, and read:  
*'Neither the Mayor, Chief Executive Officer or her staff are to make or authorise the making of any further public communication, other than in a manner consistent with the statements in this notice of meeting and Attachment B to it (if approved) regarding draft LPS5 and the draft Local Planning Strategy without the prior approval of the Council. For the avoidance of doubt, the prohibition excludes engagement and communication with members of the public regarding draft LPS5 and the draft Local Planning Strategy as envisioned by the news item dated 18 December 2019 about the Minister's decision etc on the City's website'.*
244. Officers comments in the minutes raised the following issues with both points:
245. With regard to Point 6: *'The City does not recommend the adoption of this motion in its current terms. The City's legal obligations under regulation 31(2) of the Planning and Development (Local Planning Schemes) Regulations 2015 (being its obligations to modify the draft scheme as required, to execute the modified local planning scheme documents and to submit to the Minister a copy of the executed documents) must be complied with by no later than 23 January 2020 (or by any later specified date of an extension were to be granted by the Minister). That legal obligation would override any prohibition sought to be imposed by a Council decision preventing the City from complying with regulation 31(2) 'unless authorised by the Council to do so'.*
246. With regard to Point 10: *'The city does not recommend the approval of this motion for a number of reasons. First, the prohibition is expressed to apply to the Mayor but does not prohibit any other Council member from making public communications about the same matters. Second, the terms of the exclusion appear to be at least as wide as the terms of the prohibition (and, on that basis, the prohibition would not have any legal or practical effect). Third, the Local Government Act 1995 gives the Mayor the power to speak on behalf of the City. The Council cannot restrict that power by requiring Council approval before the Mayor makes a public statement (on this or any other matter). Fourth, the apparent objective underlying this motion is covered by the duty of fidelity (to the City and the Council) that is owed to the Mayor, each Council member and City employees'.*
247. Legal advice was obtained on the motions and the City was advised that Motion 6 was ultra vires, invalid and of no legal effect. Following the City's receipt of legal advice confirming that Resolution 6 was invalid and of no legal effect, the CEO complied with the City's obligations under regulation 31(2) by executing the relevant documents and returning them to the Minister.
248. Point 10 was widely reported as attempting to 'gag' the Mayor by prohibiting her



from making any further public communication about LPS5 without the approval of Council.

249. During interview, a number of elected members stated that the Mayors media release did not represent Council's views and point 10 was designed to ensure that any media release by the City accurately represented the views of Council as a whole.
250. On 7 February 2020, hostility amongst elected members and the CEO was again illustrated when, at the request of the Mayor and Cr Mansfield, the administration provided all elected members with costing details of the special council meetings held on 6 and 23 January 2020. This information was provided to, and widely reported, in the media.
251. Shortly after, a Subiaco community group petitioned for a Special Electors meeting which was held on the 24 February 2020. A motion of no confidence in Mayor Taylor was passed.
252. On the 6 March 2020, Mayor Taylor and Cr's Nash, Davis and Mansfield signed a Notice of Motion of Revocation, to revoke Points 6 and 10 of the council decisions at the 6 January 2020 Special Council Meeting. The motion was tabled at the 17 March 2020 council meeting and was lost by absolute majority.
253. On the 7 March 2020, the City updated their website to advise that the original news release by Mayor Taylor and/or CEO Lavery on 18 December 2019 did not represent Council's views about the Ministers decision about the draft LPS5.
254. During interview, one elected member stated: *'What I would have like to have seen was as soon as [the letter] came in for her to circulate it to elected members to say there is an opportunity as a group to formulate a position as to what City of Subiaco wanted to do instead we were told there was no role for us to play and the reason I think that position was taken was because there were people who didn't want to see any hiccups at this final stage of the planning scheme and they just wanted it finished.'*
255. Another elected member stated: *'I didn't see motion [point] 10 as being an abrogation of anyone's statutory responsibilities, rather just...clawing their actions back to something that resembled what they should have been doing...which was expressing opinions that were in keeping with the City of Subiaco's positions'.*
256. In summary, it is the Authorised Persons view that Council has been divided on this matter and that division has flowed through to and affected other matters as a result. A number of elected members raised concern regarding CEO Lavery and Mayor Taylors decision, whether on purpose or simply overlooked, not to inform elected members of the contents of the Ministers letter prior to the media release.
257. This appears to have led to a distrust between elected members, the CEO and other staff that then gave rise to an elected member raising a motion about delegations, resulting in a number of routine decisions having to be bought back to Council that had previously been actioned by the CEO or administration staff.

258. The current A/CEO, Cliff Frewing, advised Authorised Persons that this is causing meetings to be lengthy due to the number of matters now being brought before Council. These matters could be handled by the CEO through delegated authority if the trust in the administration was re-established and delegated authority returned to the CEO. This is a matter for Council to recognise and determine.

#### *Matheson SAT matter*

259. With regard to a planning matter to be discussed at the Council Meeting on 28 August 2018, Ms Matheson, who at that time was a councillor, raised concern that the procedural authority being relied upon by Council to close the meeting to the public was incorrect, and that to her mind regardless of whether the meeting was able to be closed to the public under the Act, it should not be on the basis of public interest.
260. The agenda documents stated the meeting would be closed to the public in accordance with section 5.23(2)(e)(iii) of the Act which relates to information about the business, professional, commercial or financial affairs of a person.
261. The legislative reference should have been section 5.23(2)(d) of the Act which concerns matters where legal advice has been (or may be) obtained regarding the matter to be discussed.
262. After raising the issue a number of times via email prior to the meeting, at the Agenda Briefing Forum on 24 August 2018 and at the Council meeting itself, the meeting was closed to the public whilst Council discussed the planning matter citing the incorrect subsection (e) rather than (d) as authority for doing so.
263. On 4 September 2018, the 28 August 2018 meeting minutes were put to Council for confirmation. Ms Matheson (then Cr Matheson) raised her concerns again, stating the minutes were incorrect because they again cited the incorrect subsection of the Act to close the meetings from the public.
264. It is the Authorised Persons position that, at this point, confusion regarding the purpose of the minutes contributed to the ongoing issues. The purpose of confirming minutes is to ensure that the minutes are an accurate record of what occurred at the meeting, and in this case, the meeting was closed by Council citing the incorrect subsection of the Act, and the fact that the minutes stated this is the correct process.
265. The issue was that Council used the wrong subsection of the Act to authorise closure of the meeting to the public, not that the meeting minutes were incorrect.
266. However, discussion ensued within Council regarding confirmation of the minutes and the minutes were not confirmed.
267. On 18 September 2018, another attempt was made by Council to confirm the minutes. A similar discussion ensued to that of the previous meeting and the minutes were not confirmed.
268. On 16 October 2018, the minutes were confirmed with the incorrect subsection of the Act on which the 28 August 2018 meeting was closed, which as previously stated, was the correct process because it created an accurate record of what

occurred at the meeting.

269. The issue that remained was what to do, if anything, about the fact that the incorrect section of the Act was used by Council to close the meeting on 28 August 2018.
270. Sometime during November 2018, an administrative notation was added to the minutes stating
- 'The reference to s.5.23(2)(e)(iii) is incorrect and an administrative error. The legislative reference should have been recorded as s.5.23(2)(d). This error has no material effect on the closure of the meeting for discussion of this matter, as the matter remains confidential in accordance with s.5.23(2) of the Local Government Act 1995.'*
271. This raised two issues:
- a. The annotation is incorrect. The minutes were accurate, and it was not an administrative error, rather the subsection relied upon at the meeting was incorrect.
  - b. The annotation was placed on the minutes by an unknown person without authority from Council.
272. During the events described above, Ms Matheson (then Cr Matheson) authored a letter that appeared in the Post Newspaper on 8 September 2018. The letter concerned Ms Matheson's issue with Council deciding to close the meeting to the public when discussing the planning matter.
273. The contents of this letter were the subject of a complaint to the Standards Panel for alleged contravention Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* which states a council member must not make improper use of the persons office to cause detriment to the local government or any other person.
274. On 27 March 2019, the Panel found that Ms Matheson (then Cr Matheson) had committed a minor breach of the regulations when she wrote the letter to the Post Newspaper. Ms Matheson appealed that decision.
275. Ms Matheson did not renominate for Council during the 2019 election, therefore matters prior to 22 October 2019 concerned Ms Matheson as an elected member and matters after this date concerned Ms Matheson as a former councillor.
276. On 4 March 2020, the Standards Panel decision was overturned by the SAT raising several concerns regarding practices at the City:
- a. The fixed mindset of council in closing the meeting to the public despite repeated concerns by Ms Matheson on the legal basis for doing so;
  - b. The veracity and completeness of the investigation undertaken by the consulting firm on behalf of the City that was submitted to the Standards Panel and the SAT;
  - c. The way the annotation was made to the meeting minutes; and

d. The perception that the City was not being transparent.

277. On 6 March 2020, CEO Lavery sent a letter to the Department raising her concerns that SAT's adverse findings and comments made against Mayor Taylor, herself and a number of the employees at the City were made without any of those affected being given the opportunity to be heard.
278. On 23 April 2020, Council sent a letter to the Department advising, amongst other things, that the letter sent by CEO Lavery was without Council approval and that it *'is not seeking any review or appeal of it. The Council does not have the information available to it to be able to determine whether or not a review or appeal of the Decision is appropriate and so has taken a position of neutrality towards the Decision'*.
279. The decision by the SAT cannot be reviewed or appealed.
280. Matters involving either the events of 28 October 2018, the resultant Standards Panel decision or Matheson SAT matter were subject of council discussions on 17 March 2020, 21 April 2020 and 19 May 2020.
281. At the 17 March 2020 council meeting, Cr Hamersley raised an EMM seeking answers from (in the form of a detailed report) CEO Lavery about how the events of the 28 August 2018 meeting occurred that led to the complaint and subsequent appeal. The motion lapsed for want of a mover.
282. At the 21 April 2020 council meeting, Mayor Taylor brought a notice of motion seeking to *revoke the Council decision in regard to 12.3 Motions re media release 6 March 2020 regarding the decision in Matheson –v- Local Government Standards Panel [2020] WASAT 26 made at 17 March 2020 OCM.*
283. Voting on the motion required an absolute majority. The motion was lost four to seven.
284. At the 19 May 2020 council meeting, Cr Hamersley moved a motion that documents previously made confidential during the 28 August 2018 council meeting be made public. The motion was carried seven to five.
285. In summary, as demonstrated by the numerous motions concerning the Matheson SAT Matter being discussed by Council, the City is dealing with residual issues of discontent felt by some elected members regarding the manner in which Council has handled the concerns raised by Cr Matheson at the 28 August 2018 council meeting.
286. It is the Authorised Persons position that this underlying discontent is symbolic of the fractious nature of Council at present and that without resolution, Council members will remain at odds with each other.

## 5. Recommendations

287. It is recommended that the City:

1. commence an independent Governance Review (with scope approved by the Director General) within three months of this report becoming final. The review will need to include an assessment of:
  - (a) the role of council
  - (b) the role of individual council members
  - (c) council culture and dynamics
  - (d) relationship between council and the CEO
  - (e) relationship between council and the administration
  - (f) management of employees
  - (g) recruitment and selection
  - (h) harassment and bullying
  - (i) procurement and probity
  - (j) record keeping.
2. provide a copy of the Governance Review report to the Director General immediately upon receipt
3. comply with an audit by the department of the actions taken to implement any recommendations from the review (to be commenced at least six months, but before nine months, after the review is completed)





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