



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

Report of the Inquiry into the Shire of Coolgardie

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



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About DLGSC

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 November 2023.

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1. Introduction

The Shire of Coolgardie (Shire) is a local government area in the Goldfields–Esperance region of Western Australia (WA), located southwest of the City of Kalgoorlie-Boulder.

The Shire covers an area of 30,400 square kilometres, and its seat of government is the town of Coolgardie, although the twin towns of Kambalda East and Kambalda West contain two-thirds of the Shire's population.

The community is represented by a President and six councillors, each elected to four-year terms. The current Shire President is Councillor (Cr) Malcolm Cullen and the Chief Executive Officer (CEO) of the Shire is Mr James Trail.

The overwhelming source of employment within the Shire is mining and the development of infrastructure in the region.

The towns of Kambalda East and Kambalda West were established several decades ago by Western Mining Corporation (WMC) which was purchased by BHP in 2004 with BHP handing over the administration of the town to the Shire in 2014.

In more recent times, there has been an unprecedented increase in the mining of various resources including gold, nickel, lithium and iron ore.

Section 8.3 of the *Local Government Act 1995* (Act) gives the Director General (DG) of the Department of Local Government, Sport and Cultural Industries (DLGSC) the authority to inquire into all local governments and their operations and affairs.

On 1 April 2020, the then DG of DLGSC authorised an inquiry into the Shire, in accordance with section 8.3(2) of the Act.

The authorisation directed the Inquiry into the Shire and its operations and affairs, from 1 January 2016 to the present day. In particular, the Inquiry sought to review the following:

- a) The Shire's tendering processes, assessments, approvals and payments.
- b) The adequacy of and adherence to Council's policies and procedures by both elected members and administration staff.
- c) Declarations of interests by elected members.
- d) The financial viability of the Shire.
- e) The culture of the organisation.
- f) Other matters that come to the investigator's attention during the Inquiry under section 8.4(2) of the *Local Government Act 1995*.

During the Inquiry, a significant amount of information was received by DLGSC in relation to the operations of the Shire. The information received alleged maladministration by the Council.

The Authorised Person initially travelled to the Shire on 22 June 2020 to seek information and conduct inquiries in accordance with the authorisation made under section 8.3(2) of the Act.

Subsequently in June 2022, the Authorised Person travelled to the Shire and conducted interviews with 22 community members including ratepayers and former councillors.

In September 2022, the Authorised Person again travelled to the Shire and conducted formal interviews with the current elected members including Shire President Malcolm Cullen, Cr Kathie Lindup, Cr Sherryl Botting, Cr Rose Mitchell and former Cr Tammee Keast. Mr James Trail (the CEO) and Deputy CEO, Robert Hicks (the Deputy CEO), were also interviewed. During October 2022, Deputy Shire President, Cr Tracey Rathbone, was interviewed.

An independent review of purchasing card transactions made by the CEO and a data analysis of vendor payments by the Shire was also undertaken.

A total of 12 directions notices were issued to the Shire for information and documents relevant to the Inquiry. The directions notices were complied with and the requested information received.

This report on the outcome of the Inquiry has been compiled in accordance with section 8.13 of the Act by an officer of DLGSC who was authorised to conduct the Inquiry (Authorised Person).

2. The Shire's tendering processes, assessments, approvals and payments.

DLGSC had received information alleging the CEO had used and was using his position to gain a personal benefit for himself, or another person, through contracts awarded for the Shire of Coolgardie. The claims included procurement irregularities and a failure to follow proper tendering processes.

2.1 Investigation

The Authorised Person attended the Shire offices at Kambalda on 22 June 2020 and 23 June 2020 and conducted inquiries into the Shire's tendering processes and associated procedures.

Whilst in attendance at the Shire offices, a review was conducted of recent tenders and approvals. Numerous relevant documents were seized by the Authorised Person and conveyed to DLGSC for further examination.

Additionally, documents relating to the financial processes of the Shire were seized for further examination.

Alleged discrepancies in Shire's finances initially reported to DLGSC were found to be accounted for when reviewed by the Authorised Person. Further assessment failed to identify any other apparent concerns or additional lines of inquiry in respect to the Shires finances or procurement.

However, the Authorised Person was of a view that given the information received by DLGSC, a further interrogation of the Shire's financial process was warranted by a suitably qualified forensic auditor.

In May 2023, 2020 Global Pty Ltd (2020 Global) was contracted by DLGSC to undertake a forensic audit of the Shire which included:

- A review of the credit card transactions by some officers of the Shire. The key objective was to assess the appropriateness or otherwise of the transactions to determine whether there were any patterns to expenditure to suggest personal use, corruption or inappropriate use of credit cards.

- A review of payment data of the Shire to identify any patterns of expenditure that may identify any potential misappropriation of funds, possible illegal practices, or collusion with contractors and tenderers by Shire administration.

The Authorised Person also issued a Direction Notice SOC13 of 2023 to the CEO of the Shire to provide access to payment data for the period 1 November 2016 to 30 June 2023 to 2020 Global for review, analysis and interrogation which coincided with the appointment of the CEO.

The Direction Notice was satisfied with data that was sourced from the Shire's general ledger software provider for the period 1 July 2016 to 30 June 2023, due to the data being captured in full financial years. The data was reviewed and analysed to familiarise the reviewers with the data, identify trends and determine if any other suppliers are of concern.

All data reviewed was based on payment files, thus the payments made include GST. From the data analysis, specific information required for identified suppliers such as vendor invoices, tender documents, review forms and contracting documents, were obtained from the Shire.

For known and possible persons of interest and corporate entities 2020 Global conducted searches of public and ASIC databases to establish any links between the CEO and the identified vendors.

2.2 Conclusion

The Authorised Person assessed the information supplied by the Shire. No obvious suspicious financial activity, tendering practices or any other breaches of the Act or associated regulations were identified.

2020 Global reported that from a review of the credit card transaction records there was no evidence of systemic fraud, corruption or collusion. The opinion was based on the following factors:

- The transactions seemed appropriate for the nature of the work that would be conducted by the Shire.
- Total value expended was not particularly high and the highest spend by value was for travel expenditure, typically flights between Kalgoorlie and Perth. This represents limited opportunity for engagement in corrupt activities with these suppliers.
- For suppliers who appeared on a recurring basis, expenditure wasn't particularly high and had sufficient annotation and description to appear appropriate.
- An analysis of the data showed there to be a pattern of controls in place, whilst not always well executed.
- It was also noted that although there were some purchases made on credit cards for personal purchases, these were self-reported and promptly repaid and resolved in both instances.

The broader analysis of the data provided and specific information that 2020 Global requested and reviewed did not identify any evidence that any Shire employee influenced the appointment of the nominated contractors and vendors during the scope period.

Payments were consistent with contracts formed with these vendors after independent assessment by multiple employees, or via preferred suppliers at the Western Australian Local Government Association (WALGA). The nominated vendors were approved by Council. All evaluations of the nominated vendors, and in particular, in the more recent contract awards, the Deputy CEO and two other Shire employees formed the evaluation panel.

2020 Global reviewed the publicly available ownership records from ASIC, and reported there was no direct link observed between the vendors and Shire employees.

2020 Global could not substantiate or identify any patterns of misappropriation of funds, possible illegal practices or collusion with contractors and tenderers by the Shire administration.

2020 Global noted some concerns about the quality of documentation of the process followed, with few documents being signed by those employees who prepared or evaluated them; however, from the documents provided, no examples of overt interference with the independence of process could be identified. 2020 Global also noted that there was no evidence that any conflict of interest was considered or documented for any of the quotation/tender assessments reviewed.

It is the view of the Authorised Person that there is no credible evidence that the Shire has acted inappropriately when dealing with tendering processes, assessments, approvals and payments.

3. The adequacy of and adherence to Council's policies and procedures by both elected members and administration staff

Prior to and during the Authorised Inquiry, allegations had been made regarding the Council's meeting procedures. This included allegations that the CEO had not disclosed conflicts of interest and that more generally, Council was not following proper processes for its council meetings.

3.1 Investigation

Whilst in attendance at the Shire offices between 22 June and 23 June 2020, the Authorised Person reviewed the Council and Administration's policies and procedures.

In addition to reviewing policies and procedures, the Authorised Person monitored a sample of Ordinary and Special Council Meetings which included a review of councillor behaviour, conduct of meetings and a review of confirmed minutes.

The CEO also advised the Authorised Person that he had a previous relationship with one company contracted by the Shire to provide services. He advised that he had always disclosed his previous relationships to that company and ensured he was open and accountable by recusing himself from any matters involving that company.

Additionally, similar allegations were investigated by DLGSC in 2018 and did not establish any breaches of the Act by the CEO.

When interviewed, Cr Rathbone stated she was aware of the CEO's former association and was aware that he had previously declared an interest with that company.

She added that previously, any matters involving the company were not managed by the CEO but were deferred to the Deputy CEO of the day, Ms. Jill O'Brien.

3.2 Conclusion

The Authorised Person is of the view that the Presiding Member, Councillors and Administration were aware of their obligations under the Act, Regulations, Standing Orders and Local Laws in relation to their conduct and meeting procedures.

A review of meetings and minutes did not raise any significant issues relating to procedures followed by the Council.

The Authorised Person is of the view that councillors made themselves available to community members and were complying with their roles and responsibilities as prescribed by the Act.

In relation to the CEO's association with the company, the Authorised Person did not identify any evidence indicating that the CEO had acted inappropriately.

4. Declarations of interest by elected members.

The DLGSC was made aware of several allegations regarding elected members receiving advice on declaring their conflicts of interest and/or 'apprehended bias' on matters for consideration at Council meetings.

The allegations mainly related to decisions and processes undertaken in respect of decision making around various projects that were being undertaken and or proposed by the Shire.

The matter of declaration of interests was raised by the Authorised Person with several interviewees. Councillors Mitchell and Rathbone as well as Mr John Williams and the CEO provided further clarification which is summarised below.

4.1 Investigation

Prior to her election, Cr Rose Mitchell and Mr John Williams (former Cr Williams) had made it known that they were opposed to the proposed Kambalda Workers Accommodation Village (workers accommodation village). Cr Mitchell recalled her first meeting after she and Mr Williams had been elected to Council.

Cr Mitchell alleged that at that meeting, the CEO advised her and Mr Williams that they could not be present at that meeting as they had a conflict of interest and Cr Mitchell said she left the meeting.

Mr Williams told the Authorised Person in his interview that during that meeting the CEO advised the Council that they should not participate in any discussion or debate related to the proposed workers accommodation village if they had a bias against the item.

Mr Williams said he and Cr Mitchell were strongly urged by the CEO to not participate in the meeting. Mr Williams and Cr Mitchell reluctantly complied with the advice of the CEO as in the absence of any legal advice or support from any of the other councillors to the contrary, they believed that they had no other option.

Mr Williams also stated that councillors who were seemingly in support of the workers village were not advised to sign impartiality declarations and did participate in the meeting.

Mr Williams inquired with the CEO as to whether he could obtain some legal advice before deciding whether to leave the meeting. The CEO advised him there was no time but if he wanted legal advice, he would have to pay for it himself.

As Mr Williams was new to Council, he was inexperienced in relation to declarations of interest and was concerned about the consequences of not declaring the appropriate interests therefore he reluctantly signed a declaration of interest on impartiality grounds.

Mr Williams contacted DLGSC to seek further advice and was subsequently advised that DLGSC held a contrary view to that of the CEO's legal advice regarding the declaration of interests in accordance with the Act. The advice contended that any declaration was a matter for the individual councillor.

On 11 December 2021, the CEO sent an email to all Shire Councillors reiterating his previous advice. The email read in part:

“As you are all aware everyone was briefed and explained the significance of the legal advice received from the Shire solicitors on any Councillor voting on an item where they have a perceived Bias or an admitted Bias. Consequently, if a councillor now votes on an item where they have a perceived Bias, an admitted Bias or already declared at a previous meeting such and left the room, the CEO will have no choice but to report to the CCC and Dept a breach of serious misconduct. Furthermore, it would warrant reporting under the Shire Code of Conduct as well.

Furthermore, as you are all aware legal advice received on a specific item takes precedence over any generic advice or advice received from the Dept, WALGA, etc. This was also reinforced during your induction workshops.”

Deputy President Cr Tracey Rathbone was interviewed by the Authorised Person and referred to the allegation that Mr Williams was pressured to make a declaration of interest at the meeting of 14 December 2021.

She said that prior to his election in October 2021, Mr Williams had voiced significant opposition to the proposed workers accommodation village on social media platforms during his election campaign.

Based on her previous training, Cr Rathbone raised her concerns in relation to a possible conflict of interest that Mr Williams may have in relation to the issue. She stated she did so in good faith and out of concern that as a newly elected councillor, he may not have a complete understanding of his obligations in relation to declarations of interest.

The CEO was asked about the allegation that on 26 October 2021, he pressured Cr Mitchell and then Cr Williams not to participate in any discussion or debate related to the proposed workers accommodation village, because they had a bias against the item.

He said that he had obtained legal advice in relation to councillors with a bias in items before Council. As a result of that information, he had emailed councillors to advise that any non-declarations of interests may be required to be reported to the CCC as possible serious misconduct.

The CEO maintained that he had sought the legal advice to assist councillors to decide if they had an interest that should be declared at the meeting.

The CEO said that his understanding of the legal position and his advice to Council members, was based on legal advice that considered and applied the decision of the Supreme Court in the case of *Dain Pty Ltd v Shire of Peppermint Grove*.¹

4.2 Conclusion

Declarations of interest are always the responsibility of the individual councillor and the decision to make such a declaration is a matter for the individual councillor.

The Authorised Person is of the view that while it may be understandable for new council members, on occasion, to have a misunderstanding of the operation of the declaration of interest provisions (especially four days after their election), it is incumbent on them to declare the correct interests in matters before Council.

The DLGSC maintains a differing view of the Dain case and its effect on declarations of interest to that of the CEO's legal advice, which was viewed by the Authorised Person. The Authorised Person recognises that it was open to the CEO to give advice to Council members that was based on the legal advice that he had sought on behalf of Council.

5. The financial viability of the Shire

Prior to the Authorised Inquiry and throughout the Inquiry, allegations were raised regarding the impact of previous and on-going Council financial and budgetary decisions of Council.

The financial viability of the Shire was raised with four councillors, the Shire President, the CEO and the DCEO and their commentary is summarised below.

5.1 Investigation

The Authorised Person conducted a preliminary assessment of the Shire's finances. No obvious suspicious financial activity or any breaches of the Act's financial provisions or associated regulations were identified.

Cr Mitchell said the Shire was financially viable and outlined what she understood to be the major projects recently undertaken by the Shire. This included the workers accommodation village and proposed upgrades of the Kambalda Airport (airport) and Coolgardie waste facility (waste facility).

¹ *Dain v Shire of Peppermint Grove* [2019] WASC 264 ('Dain').

Cr Mitchell was of the understanding that the budget for the workers village had gone from around \$11 million to \$21 million which she considered to be a significant increase.

However, she believed that the income generated from the village, income from landing fees generated by the airport and income generated by the waste facility would provide a positive return for the Shire, with the debt to ANZ Bank being paid in approximately four years.

Cr Mitchell said she was comfortable with Council embarking on these projects as she was confident they would provide a financial return to the Shire and ratepayers.

Former Cr Tammee Keast was interviewed by the Authorised Person in Kambalda on 28 September 2022. When asked about the current financial viability of the Shire, former Cr Keast was of the belief that based on current rateable income, the Shire could maintain current assets and services. However, without new and varied sources of income, the Shire would not be able to provide significant improvements.

Cr Kathie Lindup was interviewed by the Authorised Person in Kambalda on 28 September 2022. Cr Lindup said the Shire was embarking on some major projects that would create a financial benefit, which included the workers accommodation village, upgrade of the airport and the waste facility.

She said the income from rates was simply no longer enough to allow the Shire to provide the facilities expected by the ratepayers and that the Shire needed to develop other sources of revenue.

The Authorised Person ascertained that consultants had been engaged to carry out certain duties at the Shire. This was due to the inability for the Shire to recruit staff with the requisite skills in some areas.

Cr Lindup was asked about the Shire's use of consultants to deal with planning and financial matters. She confirmed that the Shire utilises the services of consultants in relation to financial and planning matters.

She was supportive of this strategy as she considers it to be an effective use of financial resources given the two consultants are not employed fulltime and are utilised on a needs-only basis, therefore saving the Shire money. Additionally, she was aware that attracting senior executive staff to the administration to reside in Kambalda was extremely difficult.

Cr Sherryl Botting was interviewed by the Authorised Person in Kambalda on 29 September 2022.

When interviewed, Cr Botting responded to community criticism of the Council's financial management. Primarily these accusations related to the construction of the workers accommodation village, the airport upgrade and the establishment of the new waste facility.

Cr Botting defended the decisions of Council to embark on these projects and was comfortable the Shire had the ability to repay the loans which were endorsed by the Western Australian Treasury Corporation (WATC).

Cr Botting was asked about the Shire's use of consultants to deal with planning and financial matters. She was supportive of this strategy citing the same reasons as those provided by Cr Lindup.

Shire President Cr Malcolm Cullen (Cr Cullen) was interviewed by the Authorised Person in Coolgardie on 29 September 2022. He conceded that Council and the Shire had been through some challenging times in the past and cited the fluctuating nature of the mining industry and resulting population increases and decreases, along with an ageing infrastructure as contributing factors.

He stated that the original townsite of Kambalda was constructed and owned by WMC several decades ago and the administration of the town was transferred to the Shire in 2014.

Cr Cullen said the Shire had embarked on several major projects in recent times to establish new revenue streams for the Shire.

Those projects included the upgrade of the Coolgardie waste facility, the upgrade of the airport and the construction of the workers accommodation village in Kambalda.

He said Council recognised the demand for an upgraded waste facility that could meet the waste disposal needs of the mining industry and producing revenue for the Shire.

Similarly, the Council recognised the severe accommodation shortage in the Shire which was unable to meet the accommodation needs of a booming mining industry and subsequently embarked on the workers accommodation village project.

Cr Cullen said most of the initiatives the Council had embarked on recently had been because of the Council's vision. He said the Council recognised several years ago that the region was at the beginning of a mining boom and they should make the most of the ensuing financial opportunities.

Cr Cullen said Council and the administration drove the current initiatives undertaken by the Shire and the workers accommodation village was borne out of a need to meet the demand of an increasing workforce, consultation with industry and the need to find alternate revenue streams for the Shire.

Cr Cullen conceded the costs for the construction of the village had increased since the commencement of the project but believed those increases would be offset by the increases in room hire.

The DCEO, Mr Robert Hicks was interviewed at Kambalda on 28 September 2022.

He was comfortable with the decision by the Council to borrow money from the ANZ Bank after it had conducted its due diligence and said the Shire had complied with the appropriate WATC protocols.

Mr Hicks said that the previous financial year had been challenging, mainly due to COVID requirements; however, the long-term financial plan was positive going forward. Mr Hicks' view was that the investment in some major projects including the workers accommodation village and waste facility upgrade has established new revenue streams other than rate income.

He also felt that recent decisions by the Council to invest in these projects sat within the Shire's 2018-2028 Community Strategic Plan and the decision of Council to embark on these projects was appropriate.

During interview, the CEO reported that the Shire has a rate base of approximately \$9 million and a total revenue base of approximately \$13.5 million. Without increased revenue streams, the Shire could not do much more than maintain current assets and services.

The CEO believed the Council was of the view that in the past the Shire had not taken full advantage of previous upturns in the mining sector and given the current volume of mining activity taking place in the Shire, the Council saw a great opportunity to take advantage of the current boom.

The CEO explained that in 2019 the Shire met with executives from the mining sector and discussed a collaborative approach, with the Shire to deliver community services and infrastructure. As a result of that meeting, an MOU was developed which committed companies such as BHP, Mincor and Goldfields St Ives to work to future proof the Shire.

He said that historically, companies such as WMC, which were responsible for establishing Kambalda, also contributed greatly to the maintenance of the assets and services within the town. Now the obligation for that falls to the Shire. He also said the practice of mining companies simply providing additional revenue to the Shire was becoming increasingly rare.

The CEO explained that Council looked at alternative methods of securing finances from the mining sector and believed that given that the company had budgeted for the payment of rates, employee accommodation, waste disposal and airline flights in their operating budgets, this may be a source of revenue the Shire could secure.

These factors led the Shire to embark on the construction of the workers accommodation village, airport upgrade and waste facility.

The CEO maintained that as a result of establishing these projects in consultation with the mining sector, the Shire has forecast going from a projected revenue of \$13.5 million for the 2021/2022 financial year to \$27 million for the 2022/2023 financial year and \$34 million for the 2023/2024 financial year.

During the Inquiry it became clear to the Authorised Person that some ratepayers were critical of the Shire's financial management practices. The criticism related to the loans established with the ANZ Bank and the commitment of funds by the Shire to several major projects, including the construction of the workers accommodation village.

The Authorised Person reviewed the Shire's finances including its decision to borrow money from the ANZ Bank and the 2022-23 budget.

The Shire was advised by the WATC on 29 November 2021 that WATC consented to the Shire entering the following facilities with the ANZ Bank, subject to several conditions:

- A floating rate loan facility of \$7 million for the construction of an accommodation village.
- A floating rate loan facility of \$2.5 million for the expansion of the local rubbish waste facilities.
- An overdraft facility of \$500,000.

ANZ's Regional and State Manager visited the Shire for two days in December 2021 to examine the current and future projects being considered by the Shire.

ANZ advised the Shire that, given the Shire's financial position and cashflow position at the time, ANZ would be prepared to provide additional funding for projects such as the expansion of the airport and the waste facility.

The Shire also provided to the Authorised Person an overview of its 2022-23 annual budget which had been adopted by Council. The 2022-23 budget concentrates on core services, efficiencies, an extensive array of community initiatives and renewal and maintenance of the Shire assets.

The 2022-23 annual budget highlighted operating revenue of \$26,895,575 compared to \$13,821,180 in 2021-22 and operating expenditure of \$24,079,858 compared to \$16,728,630 in 2021-22. Consequently, for the 2022-23 year the budget operating surplus is \$2,815,717 compared to an operating deficit in 2021-22 of \$2,907,450.

This turnaround estimated at \$5,723,167 is a direct result of the progression of new revenue generating opportunities. The 2022-23 annual budget also highlighted an estimated \$7,296,251 net cash provided by operating activities.

The Shire's rates are raised predominately from the mining sector (more than 85 per cent) and increasingly local governments are moving away from relying on such rate income and annual rate increases. The Shire advised that it has adopted an approach to deliver increased growth in non-rate revenue through major projects.

The Shire advised that it faces a key challenge to maintain or increase the level of services within the community, in an environment of escalating costs and with a decrease in valuation of most residential, commercial, general and light industry properties. As such, the Shire is of the view that through its approach, it is successfully demonstrating strong planning for future revenue generating opportunities.

5.2 Conclusion

In relation to the financial viability of the Shire, it is the view of the Authorised Person that the Shire has adopted an approach that they believe is to be in the best interests of the Shire and its strategic planning going forward.

The Authorised Person has also confirmed that the Shire is meeting its financial reporting obligations under the *Local Government Act 1995*.

6. Culture of the organisation

DLGSC had received allegations and ongoing commentary from the community that indicated a poor culture with both elected members and the administration.

The culture of the organisation of the Shire was raised with five councillors, the Shire President, the CEO and the Deputy CEO and their commentary is summarised below.

6.1 Investigation

Cr Mitchell advised the Authorised Person that she completed her mandatory councillor training module soon after being elected to Council and continues to complete the additional WALGA training modules relevant to her role as a councillor.

Cr Mitchell appeared to have a clear understanding of her role as a councillor, as well as the roles of the Shire President and CEO.

Cr Mitchell believed that Council was operating well and she was satisfied that her and her fellow councillors were making decisions in the best interests of the ratepayers.

Cr Mitchell further stated that the CEO will bring items to Council and seek direction from Council as to how those matters should be progressed.

Cr Mitchell stated she was not well versed in financial matters but was continually striving to improve her knowledge of those matters and believed she was well supported by the administration.

When asked further about the CEO's conduct, Cr Mitchell stated that it was her view that the CEO could be impatient at times and had witnessed the CEO become frustrated on occasions when under some pressure.

She said the Shire President and the CEO have a good working relationship and the President managed that relationship well. She was aware that there had been allegations from some community members that the CEO manipulated Council to achieve his own agenda; however, she completely refuted those allegations.

Cr Mitchell was aware of a lot of ill feeling towards the CEO, mainly as a result of the Shire committing funds to projects such as the workers accommodation village.

She was aware that there had been threats made against him which she felt was unfair and unacceptable. Cr Mitchell did not like being called corrupt as a result of some elements within the community not agreeing with the decision of Council to approve the workers accommodation village. She said that neither her, or in her opinion, any other Council members had engaged in corrupt or inappropriate behaviour and always made decisions that benefitted the community and ratepayers.

Cr Lindup has resided in Kambalda for 42 years and was first elected to the Shire Council in 2008. She saw her role as a councillor being to represent the interests of the people of the Shire.

Cr Lindup admitted she had not received a great amount of training over the years to assist her in her role but stated that since the introduction of the compulsory councillor training, she had developed her skills and completed further training through WALGA.

Cr Lindup expressed a clear understanding of her role as a councillor, as well as the roles of Shire President and the CEO.

She said that Council has many more meetings and briefings than they had in the past and believes that she and her fellow councillors are more than adequately informed by the CEO, which allows her to make sound and well-informed decisions.

She was supportive of the Administration and believed it supported Council appropriately.

In her opinion, Council was functioning well with councillors respecting one another and working collaboratively. She conceded that the role of a councillor is somewhat demanding, given the number of meetings, briefings and reading required; with most meetings and briefings being held on Tuesdays during the day.

Former Cr Keast has resided in Kambalda for the past 28 years and was first elected to the Shire Council in 2019. She saw her role as a councillor being to consult with the wider community to ensure that short and long-term strategic goals were met by Council.

Former Cr Keast expressed a clear understanding of her role as a councillor and that of the Shire President and CEO. She said when she was first elected to Council, she resolved to question anything she did not understand or anything that appeared untoward. She is satisfied that her queries are answered appropriately and has no concerns with the financial management or administration of the Shire.

Former Cr Keast believed the CEO was aware of his role and did not attempt to direct her as councillor. She was satisfied he provided the appropriate advice and guidance to her to carry out her duties and did not overstep his responsibilities.

Cr Botting has been a resident of Kambalda for the last 35 years and was first elected to the Shire Council in 2013. She said her role as a councillor was to represent the community and have input into the community of which she is a part of.

Cr Botting has completed the relevant councillor training and expressed a clear understanding of her role as a councillor, the Shire President as well as that of the CEO. She said the primary role of the CEO was to implement the decisions of Council and was satisfied that the CEO had a distinct understanding of those roles.

She also said that whilst all the councillors are individuals with differing views, Council works well as a collective. She saw the Council as a strategic decision-making body, whilst the CEO operationally implements those decisions.

She also advised that she had taken part in several workshops to better understand the financial details of the major projects being undertaken by the Shire. Cr Botting explained she had made the effort on many occasions to explain the details of projects undertaken by the Shire to ratepayers and further stated she believed the Council only dealt with matters behind closed doors when necessary and in accordance with the Act.

Cr Botting refuted any claim that members of the public had been stopped from receiving information from Council. She did, however, refer to an instance when a member of the public was advised that she could only contact the Administration through the CEO given that person's continual requests for information from the administration staff.

She said this person's unrelenting questioning of Council during public question time and unrealistic demands upon the administration staff, had led to this course of action.

Shire President Cr Malcolm Cullen has resided in Coolgardie his entire life and was first elected to the Shire Council in 2008.

Cr Cullen demonstrated a clear understanding of his role as President and it is his view that the Council is a strong and united group, operating in the best interests of its ratepayers. He said that councillors are not generally in conflict with one another, nor are there factions within Council. He believes all councillors are diligent in their duties and make informed decisions. Cr Cullen said he maintained the utmost confidence in the CEO and Administration of the Shire.

Cr Rathbone has resided in Kambalda for more than 45 years and was first elected to Council in October 2011. She became Deputy President of the Council in 2013.

Cr Rathbone expressed a clear understanding of her role as a councillor, the Shire President as well as that of the CEO.

When asked about the dynamics of the Council and councillors, Cr Rathbone said that as many councillors had been elected unopposed over the last eight years, she felt that they had a very trusting relationship with one another. As a result, councillors were able to speak openly with one another even when opinions differed.

Cr Rathbone said all councillors were respectful of each other's opinions and she could not recall an instance where a meeting had become unruly or mismanaged. She said she has complete trust in her fellow councillors and said there are no factions within the Council.

Cr Rathbone stated the relationship and roles between the President, Councillors and CEO were clearly defined and appropriate. She has confidence in the CEO's abilities and believes the Council has the appropriate policies and procedures in place to maintain good governance of the CEO and the administration.

Cr Rathbone is confident that she can have any of her questions and queries in relation to Council business freely asked and answered by the Administration. She believes the Council is transparent and that it attempts to disseminate as much information as possible to the public through agendas, meetings and subsequent minutes.

She said it could be challenging at times, explaining to some community members that meetings of Council are required to adhere to a process governed by the Act and local laws and some things need to remain confidential in accordance with the legislation.

Cr Rathbone said Council has ensured, through the CEO, that they receive all available information from the Administration to enable them to make informed decisions. She said that perhaps sometimes some community members are not privy to how much discussion has occurred by Council prior to voting on the item.

Cr Rathbone said that some negative behaviour from some community members had impacted upon the CEO, administration and councillors.

The Deputy CEO advised his duties include managing finance, emergency and ranger services and facilities, and assisting the CEO with day to day administrative and operational duties.

As part of his role, Mr Hicks attends all council meetings and told the Authorised Person that it was his view Council was functioning well and appeared to operate as a cohesive unit.

He was of the view that Council was very well informed which is a result of regular briefing sessions and timely and relevant information being supplied by the Administration.

The Deputy CEO was asked about the restrictions placed upon a community member by the CEO not to contact the administration staff for information or queries but to contact only the CEO. He supported the actions of the CEO as he believed that the community member was placing undue stress upon the staff and it was the CEO's role to ensure a safe workplace for the staff.

The Deputy CEO said that the relationship between councillors and the administration staff is productive, and all had a healthy respect of each other's roles and duties. He believed the relationship between the Shire President and the CEO was appropriate with both those individuals being clear as to what their roles and responsibilities are.

When interviewed, the CEO outlined to the Authorised Person his approach to the utilisation of contracted professionals to assist with the administration of the Shire. He said it could be challenging to recruit and retain employees with the required skill set to towns like Kambalda and had therefore resorted to contracting various services such as planning, finance, procurement and governance when required.

He said this approach allowed the Shire to call upon a high level of expertise on a needs basis and provide quality services to Council. These resources can be called upon by Council at briefings, meetings and other forums to provide advice and direction. The CEO said this model had also been cost effective for the Shire as the consultants are not employed on a full-time basis.

6.2 Conclusion

At the conclusion of the investigation process, the Authorised Person is of the view that the Shire Councillors, President and CEO each had demonstrated an understanding of their respective roles. The relationship and roles between the President, Councillors and CEO were clearly defined and appropriate.

The Council appears to be confident that it has in place the appropriate policies and procedures to maintain good governance of the CEO and the administration.

The councillors maintained that Council were the absolute decision-makers and refuted the allegation that the CEO directs Council to achieve his own agenda. It was also evident to the Authorised Person that the Shire President and CEO have a robust and effective relationship that ensures the nexus between Council and the Administration is maintained.

7. Other matters that came to the investigator's attention during the Inquiry under section 8.4(2) of the Act

Section 8.4(2) of the Act provides that the Authorised Person may inquire into any other matter that comes to the person's attention during the inquiry if the person considers it necessary or expedient to inquire into that matter and notifies the Departmental CEO accordingly.

Whilst inquiring into other matters that came to the investigator's attention during the Inquiry under section 8.4(2) of the Act, all councillors, the Shire President, senior staff and several members of the community were interviewed.

7.1 Investigations

After the commencement of the Inquiry, Shire community members and councillors raised several concerns with the way the Shire has conducted its operations.

Much of the information received related to the decisions being made by Council and the performance of the CEO.

During June 2022, the Authorised Person travelled to Kambalda, Coolgardie and Kalgoorlie and conducted interviews with relevant persons to further investigate the concerns and gather any evidence of potential mismanagement or malfeasance by councillors and the Shire administration.

As a result of these interviews, the Authorised Person identified a series of concerns regarding Council and the CEO which could be summarised as the following:

- The approval and construction by the Shire of a workers accommodation village located within the town of Kambalda West.
- The upgrade of the airport.
- The rezoning and lease of the Kambalda Cultural and Arts Group (KCAG).
- The financial management of the Shire by Council and the Administration.
- Behaviour of the CEO and his relationship with Council.

7.1.1 Kambalda Workers' Accommodation Village

As a result of the current mining boom in the region, the Shire identified a critical accommodation shortage and as a result explored the option of constructing a workers' village within the town of Kambalda West.

A large percentage of workers employed within the Shire commute to Kalgoorlie on a FIFO roster and are then conveyed to and from various mine sites each day by bus, which is a round trip of approximately 120km.

In 2021, the Council approved the construction of a 500 room workers' village located at Lot 562, Salmon Gums Road, Kambalda West. Geographically, the village is situated in the centre of the town and will accommodate people primarily employed within the mining sector.

There are currently two other workers' villages in the town which are owned by Compass and Goldfields St Ives. Both companies requested approval of Council for the expansion of their facilities, with Compass planning an expansion of a further 280 rooms (from a current total of 450) and Goldfields St Ives expanding by 400 rooms (from a current total of 300).

Council viewed the initiative of constructing a workers' accommodation village as a way of creating an alternate revenue stream for the Shire by taking advantage of the area's accommodation shortage.

From the information received by DLGSC and information gleaned from the interviews of several ratepayers, concerns were raised by some community members and councillors in relation to the construction of the workers' village.

Those concerns could be summarised as:

- The interviewed ratepayers were opposed to FIFO rosters and asserted that it discourages community engagement and increases anti-social behaviour, including sexual harassment and assault.
- The location of the workers' village in the centre of the town and opposite a school was considered inappropriate.
- The business plan provided by the Shire was flawed.
- The Shire did not possess the appropriate level of funding to embark on the project.
- The Shire did not provide adequate community engagement and consultation regarding the project.
- Estimated costs of the project were inadequate and the project would result in massive financial over-runs.
- Council does not adequately consult the community and makes decisions based largely on the sole recommendations of the CEO.

One community member expressed her view that the CEO has too much delegated authority to make decisions on behalf of Council. She maintained that councillors are too easily led by the CEO and their decisions are made depending on what the CEO decides.

The community member said that the public are not properly consulted during the decision-making process and the basic principles of good governance are not visible.

The community member had raised her concerns regarding the construction of a workers' accommodation village at Kambalda with the Council and administration.

Her primary concern was with the Shire's financial commitment to undertake such a project. She believed the Shire was not in a financially viable state to undertake such a project.

The person believed that previously the Shire had twice placed itself in a financially precarious position and she was worried if the workers' accommodation village failed financially, the ratepayers of the Shire would suffer the consequences of poor decision making by Council.

She said that even though the CEO had reported significant interest from the mining sector to utilise the village, she wasn't convinced and was critical of the CEO for engaging with the mining companies, through forums such as the Diggers & Dealers Mining Forum and not engaging with the community.

The community member contended that many ratepayers were not in favour of the workers' accommodation village and at one point delivered a petition signed by approximately 200 people to Council. She was critical of Council when they deemed the petition invalid due to missing information of the signatories and she believed it was an attempt by Council to suppress opposition to the proposed project.

She further alleged that tenders for the project were advertised prior to the business plan being distributed for public submissions and prior to the final resolution of Council on 14 December 2022.

Cr Mitchell reported that although the community member was initially against the workers' accommodation village, mainly due to its proximity to the town of Kambalda and some other philosophical reasons, she became supportive of the initiative once she became convinced of the financial benefits the village could bring the Shire.

Cr Lindup believed there was an accommodation crisis within the Shire as a result of the growth in mining activity in the region. She also believed the expansion of the airport and the construction of the workers accommodation village would help relieve the accommodation shortage and at the same time create a new revenue stream for the Shire.

Cr Lindup believed that those against the construction of the village believed that workers and their families should be attracted to the Town to take up full time residency to create a stronger community, and the village would prevent this from happening.

Cr Lindup believed that Council and the administration had engaged in the appropriate level of public consultation in relation to, not only the workers' accommodation village, but all the major projects that Council are involved in.

Cr Lindup was of the view that the location of the workers' accommodation village inside the town was ideal as it would encourage the village residents to become engaged by utilising local shops, the swimming pool and recreation centre.

Cr Lindup said that based on the information presented to her and the figures supplied to her through the Council process, she was confident the borrowings obtained to construct the workers' accommodation village would be repaid in three to five years.

Former Cr Keast advised that several major projects were currently being undertaken by the Shire which included the airport, workers' accommodation village and waste facility upgrades.

She had been aware of the opposition to the proposed workers' accommodation village as she had considered the public submissions of September/October 2021.

Former Cr Keast recalled that there were around 180 submissions, most of which expressed opposition to the village based on a philosophical disagreement with the FIFO lifestyle.

Many other submissions were less about the proposed village and more about how better the Shire could use the funds. She believed 180 submissions represented about only 10 per cent of the population of the Shire and that a relatively small group of objectors had been quite vocal in their opposition.

Former Cr Keast said she was conservative in her thinking when considering the approval of the workers' accommodation village proposal and that she preferred to look at a worst-case scenario business plan.

That said, she was convinced the Shire could repay all debt for the project over a three to five-year period. She was also confident the current positive economic climate, driven by the mining sector, could be sustained for the next five to seven years.

Former Cr Keast spoke about the community consultation meeting regarding the proposed workers' accommodation village that took place on 7 October 2021. She believed that many objectors viewed the CEO as responsible for the proposed village and that he was directing Council to embark on the project.

As such, Council thought it prudent to have the meeting facilitated by an independent person and as a result, a private consultant was, engaged to facilitate the meeting.

Former Cr Keast recalled the audience reaction was vocally negative and the consultant was unable to deliver his presentation and had to stop his address.

She said that during that time period, there had been some ill feeling from some community members towards the CEO and councillors as a result of negative content on social media sites regarding the proposed village, as well as threats being made on these platforms. She said several of the councillors were apprehensive and concerned about their safety due to the threats.

It was Cr Botting's view that most of the opposition for the workers accommodation village came from a small but vocal group and thought that a lot of the opposition had subsided once the village had progressed through its construction stage. She also maintained the Shire conducted the appropriate level of public consultation regarding the village.

Cr Cullen said that he was aware of the opposition to the village by some sections of the community.

However, he was adamant that Council had maintained the appropriate level of public consultation and did not withhold information from the public aside from what matters were required to be kept confidential in accordance with the Act.

Cr Rathbone said the Shire of Coolgardie had recently embarked on some major projects which included the workers' accommodation village, the airport upgrade and the waste disposal facility. She also said that in recent times other major projects had been completed including the Kambalda Swimming Pool and a significant upgrade to a haulage road at Widgiemooltha.

She conceded the workers' accommodation village had likely been the most controversial of the projects undertaken by the Shire.

Cr Rathbone was asked about the criticism of the workers' accommodation village where Council has been accused of not engaging in public consultation with the ratepayers and irresponsibly borrowing funds to undertake the project.

Cr Rathbone responded by saying that all councillors were community orientated and made themselves available to be contacted at any time by members of the public.

She said the Shire had conducted the appropriate level of community engagement and referred to a community meeting at which the task of engaging with those wanting to hear about the project was made extremely difficult by some community members disrupting the meeting.

She referred to the borrowing of funds from the ANZ Bank for the project and advised that the Shire had sought the appropriate guidance and permissions from WATC prior to engaging with the ANZ. She advised that whilst WATC were unable to finance the project under its criteria, it was supportive of the Shire borrowing from the ANZ.

Those matters were dealt with by Council behind closed doors and she conceded that whilst that may have caused some angst for a small number of the community, it was legislatively appropriate to be dealt with in that manner.

The CEO explained that around two and a half years ago, the Shire reviewed its land holdings to assess what land was available, how that land was zoned and what opportunities may exist to create revenue from that land. He said this had placed the Shire in a good position to be able to capitalise on market opportunities that come with the increase in mining activity in the region.

The CEO said that the original concept was for the Shire to construct a workers' accommodation village at Coolgardie as well as one in Kambalda.

He said that as planning for the proposal progressed, it became apparent that the construction of two villages may present too much of a risk for the Shire and it was decided to only proceed with the proposed Kambalda village.

The Shire had engaged in discussions regarding the prospects of companies leasing Shire-owned land in Coolgardie to construct a 100-person accommodation village under a long-term lease agreement. The CEO said this was another opportunity to create further revenue streams for the Shire.

The CEO said he was more than satisfied with the level of public consultation the Shire had engaged in to explain the benefits of the project but believed that a small group of people could simply not be convinced and remained opposed to the project. He did add that since the workers' accommodation village had commenced construction much of the opposition, especially on social media, had subsided.

He said that information surrounding the workers' accommodation village proposal was readily available from the Shire. The CEO explained that the original business plan approved by Council outlined the concept of the workers' accommodation village and as the project developed, more detailed cost estimates were obtained which may have given the impression of a cost blowout. However, all budgeting for the project was approved by Council.

He said that although costs had increased during the project, the projected revenue from the workers' accommodation village had also increased. The CEO said that the total cost for the project had arrived at about \$20 million. About \$11 million was used to lease the accommodation units which would be paid for with the operating revenue and after five years would be owned by the Shire.

The CEO was asked about the borrowings the Shire had undertaken to complete the project. He said the Shire had initially approached WATC to borrow \$2 million for the upgrade of the waste facility which was not supported by WATC.

He said that WATC advised him that based on the Shire's current budget and balance sheet, the Shire would meet the lending criteria of the WATC and he advised that WATC did not consider future cash flow, whereas commercial banks could.

He said the WATC approved the Shire to pursue bank borrowings and the Shire supplied all reports and correspondence relevant on the banking applications to Council, WATC and the ANZ Bank. These documents were reviewed by the Authorised Person.

The WATC approved the Shire borrowing \$7 million for the workers accommodation village and \$2.5 million for the waste facility from the ANZ Bank, with Council approval at a lower interest rate than WATC.

The CEO said there had been some criticism by a small group of people and that much of the detail of the agreement with the ANZ had remained confidential.

The CEO said he had recommended to Council on occasion to go behind closed doors but believed there was a requirement to do so given a lot of the correspondence between Council and the ANZ Bank was commercial in confidence.

The CEO also refuted the allegation that tenders for the construction of the workers' accommodation village were awarded prior to a resolution of Council and were not awarded in accordance with the Act.

Recent inquiries with the Shire of Coolgardie revealed that the workers' accommodation village is complete and currently occupied by 120 workers.

The 2022-23 Draft Budget estimated revenue of \$5,651,920 for the accommodation village. Given recent conversations between the Shire and the mining sector, this revenue is estimated to increase by \$500,000 in 2022-23.

It is estimated over the next three years the revenue will increase from \$28,976,000 to \$31,867,000, an expected increase of \$2,891,000 per annum.

It is estimated over the next three years the profit will increase from \$129,492 to \$3,020,629 an expected increase of \$2,891,137.

The Shire reported that agreements have been established with several resource companies which is forecasted to provide enough security to pay the entirety of the loan within five years.

The proposed development applications for the two privately owned accommodation villages have been approved by Council. The applications were for a 280-room expansion, from the existing 450 room village by one company and an expansion of 400-rooms from a 300-room village by an already established village owned by another company.

7.1.2 Upgrade of the Kambalda Airport

In early 2022, Council approved a project involving the upgrade of the airport. Council resolved to commit to a \$3.5 million upgrade of the airport.

There was some opposition to the upgrade by a small group of ratepayers who were opposed to the increase of FIFO workers to the Shire and believed it would be more beneficial to the community to have the work force as residents of the Shire.

A former Shire President and long-term resident, Mr Norm Karafilis, provided a perspective in support of the project. He was of the view that Kalgoorlie had been operating on FIFO systems for more than a decade, with workers commuting the 60km to Kambalda.

In relation to the airport upgrade, Cr Rathbone said that the project was borne out of demand by the mining industry who approached the Shire.

Cr Rathbone said she was confident that revenue produced by the landing tax at the airport would service the financial commitment with no additional burden to the ratepayers.

She believed the project made good sense which would realise a new revenue stream for the Shire and benefit both employees and employers by decreasing travel time to work after landing in Kalgoorlie and commuting the 60km journey to Kambalda.

The Authorised Person reviewed the decision by Council to commit to the upgrade to assess whether the Shire had embarked on the project in accordance with the provisions of the Act.

7.1.3 Re-zoning of the Kambalda Cultural and Arts Group premises

The Authorised Person spoke to several community members in relation to their views of the KCAG lease of its premises at Kambalda West.

The KCAG consists of a small number of members and utilises a Shire building situated at 2 Marianthus Road, Kambalda West. The premises is a former service station and the building sits upon 8347 square metres of land. KCAG utilise about 925 square metres of the total area.

One community member told the Authorised Person that the KCAG became concerned when they were advised their ongoing lease was not going to be approved by Council. The group was aggrieved that they would be required to enter into a community use lease agreement (CUA) to retain the use of the premises as commercial leases were not going to be utilised for community groups going forward as the CUA was simpler and more user friendly.

The group have operated from the premise since September 2010 and maintained a commercial lease over the premises. The lease included an option of an additional five-year extension on its expiry.

As the lease was due to expire, the Shire requested that KCAG enter a CUA for the use of the premises. Additionally, the Council resolved to rezone the land for commercial use.

The rationale behind the rezoning of the land, was so Council could utilise the unused portion of the land which would be in line with Council's strategy of reassessing its use of land holdings within the Shire. Further, the parcel of land that KCAG is currently utilising a significant portion of that land is situated on a major highway.

The KCAG have disputed the Shire's request to enter a CUA and believe that they have the right to a commercial lease. This resulted in KCAG making an application to the State Administrative Tribunal (SAT) to arbitrate the issue.

This was unsuccessful as SAT did not have jurisdiction to hear the matter.

When asked about the KCAG, Cr Mitchell was aware the Council were intending to rezone the land on which it sits to commercial use and agreed with that decision. She also agreed that the KCAG should enter a CUA which would bring the KCAG in line with other community users.

Former Cr Keast was asked about the KCAG and the group's perception that Council was trying to relocate them and repossess the premises. She explained that as far as she was aware and prior to being elected to Council, the Council had begun to move away from commercial leases for community groups and replace them with CUAs.

It was her understanding that the CUAs were far less complicated than commercial leases. Former Cr Keast also indicated that as each commercial lease became due for renewal, all community groups utilising Shire assets would be required to enter into the new agreements.

When the item went before Council in 2022, former Cr Keast was not convinced that that agreement was legally viable and Council subsequently did not accept the agreement.

Former Cr Keast advised that although the land on which the KCAG building sits was rezoned by Council for commercial use, it was never Council's intention to relocate the KCAG. The KCAG building utilises approximately 25 per cent of the total land area and it was her view that rezoning the area could in fact enhance it by attracting additional commercial enterprises as well as consolidating its land holdings.

Cr Rathbone spoke about the Shire's recent process of reviewing landholdings within the Shire and the appropriate use for those holdings. Given most of the Shire owned land was surrounded by mining tenements, use of that land was somewhat limited. She said this process was undertaken due to the likely increase in mining and business activity and development opportunities in the Shire.

One such parcel of land is the KCAG premises which is located on a significant portion of land situated on a major highway. The building occupied by the KCAG utilises a small portion of the total land area and Council wanted to rezone the land for other future potential uses. She advised that no decision had been made by Council as to the use of that land.

Cr Rathbone said that several years ago, at the request of Council, the Shire Administration developed a CUA to replace traditional commercial leases entered into by non-for-profit groups. The rationale being that the complexities of a commercial lease document would be replaced by a more streamlined, user-friendly document. Towards the end of each community group's lease, the group would be asked to enter into a new CUA, replacing the expired lease.

When asked about the KCAG premises, the CEO explained that as part of the Shire's strategic review of land holdings throughout the Shire, the land on which the KCAG was located could be an asset for the future if the land was re-zoned for commercial use. He stated that there were no plans to relocate the KCAG and should that be an option in the future, that group would be consulted.

He said the use of CUAs instead of commercial leases had been adopted by the Shire. The initiative was adopted as the CUAs were a far less complicated document than a commercial lease agreement and the Shire felt suited community groups better. He reiterated the Shire had no intention of cancelling the use of the premises by KCAG.

The CEO said KCAG has refused to sign the agreement as it is disputing the Council's decision to change from a commercial lease of the KCAG premises to a CUA.

The CEO raised KCAG's attempt to have the dispute heard in the SAT, which advised it did not have jurisdiction to hear the matter. The KCAG still refused to enter into the CUA and after several requests, the CEO said that the Shire were left with no choice but to issue a notice warning of eviction.

Subsequently, the board of the KCAG has entered the CUA with the Shire in December 2022.

7.1.4 Relationships with Council and the Chief Executive Officer

The CEO was employed as the Acting CEO by Council in November 2016 and appointed to the CEO position in May 2017. Of the councillors that employed the CEO, four are currently still elected members.

Criticism of the CEO included the perception that he had overstepped his roles and responsibilities as prescribed by the Act and was directing Council to act. One individual was of the belief that during Council meetings, the CEO would direct Council on how to vote.

John Williams resigned in January 2022, claiming his position on Council as a councillor had become untenable.

Mr Williams outlined many of the concerns he had encountered in his tenure as a councillor of the Shire.

Mr Williams stated that the first time he tried to nominate for Council, "James Trail tried to talk me out of it." It was common knowledge that he was locked out of WA due to COVID restrictions; however, he was still intending to nominate for Council. Mr Williams organised people in Coolgardie to deliver his nomination which he had mailed to them.

He said, on receiving his nomination form, the CEO phoned Mr Williams and advised him that he could not nominate for the elections as nominations had to be done in person. Mr Williams asked under what authority was that the case and the CEO advised him it was under the provisions of section 4.49 of the Act.

Mr Williams advised he would make further inquiries with the Western Australian Electoral Commission and through research found the CEO's advice to be incorrect.

When interviewed in relation to this allegation, the CEO stated that he recalled at the time that Mr Williams was in the Eastern States and wished to nominate for the upcoming local government elections. Mr Williams telephoned him and at the time the CEO advised Mr Williams that he did not believe he could nominate for Council unless it was in person.

The CEO later sought advice and realised he had provided him with incorrect advice. The CEO sent Mr Williams the correct information and necessary documents to enable him to nominate for the elections. The CEO supplied those emails to the Authorised Person.

Mr Williams recalled an incident involving the CEO on 14 December 2021 which occurred after a Council briefing with BHP, while he was a councillor. He contends a meeting took place between Council and BHP regarding the workers' village and he was intentionally not informed about and excluded from attending the meeting.

Cr Williams attended a Special Council Meeting (SCM) where, prior to the meeting, he met the Shire President Cr Malcolm Cullen outside the Kambalda Recreation Centre, where Cr Cullen appeared to be coming out of the meeting with BHP. Cr Williams asked Cr Cullen what the BHP meeting was about and why he was not briefed or provided any information so he could attend.

Mr Williams alleged that the CEO exited the recreation centre and approached him and Cr Cullen. The CEO positioned himself to prevent Cr Williams from talking to the Shire President and allegedly made intimidating and violent advances towards Cr Williams until the President had to ask the CEO to stand down at least three times. Mr Williams said the incident left him shaken and upset to the point he was reluctant to attend the SCM.

When interviewed about the incident, Cr Cullen recalled that he was approached by Cr Williams who accused the CEO of lying to him and providing misinformation to him.

Cr Cullen stated that Cr Williams was somewhat agitated and as he was aware that there were members of the public in the vicinity, he invited Cr Williams inside to discuss the matter, which he thought would be more appropriate.

Cr Cullen said that at that point, the CEO was returning to the Shire offices from the recreation centre, observed the interaction between Cr Cullen and Cr Williams and joined the discussion. The CEO approached the two at which time Cr Williams engaged with the CEO and accused him of lying to him.

Cr Cullen refuted the allegation that the CEO made intimidating or violent advances towards Cr Williams.

A large part of the meeting was consumed by the CEO and other councillors attempting to persuade Cr Williams and Cr Mitchell to leave the meeting because of a perceived bias and citing the Dain² Supreme Court decision.

On 21 December 2021 Cr Williams attended a meeting at the Shire offices in Kambalda with Cr Cullen and the CEO.

² [2019] WASC 264.

As he was heading to Perth in January 2022, he suggested he could complete his WALGA training courses during February 2022 which would save the Shire the cost of travel and accommodation.

Cr Cullen and the CEO agreed and suggested he could attend all meetings and briefings online during his absence under the COVID provisions of the Act.

On 25 January 2022, Cr Williams attempted to join the Annual Electors Meeting and was prevented from doing so by not being able to join the meeting remotely. When he later queried this with the President, he was advised that there was no obligation to do so because it was not in the legislation.

Mr Williams also alleges he was also prevented from remotely attending a council briefing and SCM on 1 February 2022.

Although Mr Williams acknowledges he was an inexperienced councillor, he believes he was not given the appropriate level of assistance to assimilate and develop into the role.

Mr Williams stated that on more than one occasion he had received emails from the President in which he felt he was berated for not knowing things. Mr Williams stated that early in his tenure, he sought a leave of absence for three weeks, as he was just coming back from the eastern states (being locked out over COVID) and had to start a new job out of the Shire. As a result, he couldn't attend the induction and was provided with no assistance to make up for this.

Mr Williams stated that after he was elected, he felt the President, Councillors and CEO were stand-offish and there were rumours around town emanating from multiple sources that some of the Council were going to make it as difficult as possible for him; in an action he believed was designed to ensure he wouldn't last long as a councillor.

At the time, Mr Williams provided an email to DLGSC which contained the following:

"As well as erroneous dates for meetings, the lateness of documents such as agendas and minutes were a regular problem which always made it difficult to prepare for upcoming meetings.

"At this point I was considering the next 4 years of obfuscation and trying to carry out my role as councillor. I then sent my resignation in email to President Mal Cullen. He responded that my resignation would not be accepted but had to be sent formally in writing to James Trail which I did on 2 February 2022."

Cr Cullen was asked about his relationship with the CEO and his opinion of his performance. He said he had a productive, robust and respectful relationship with him and was supportive of him.

He said that both he and the CEO were aware of their roles and responsibilities as President and CEO of the Shire and refuted any allegations that the CEO was directing Council.

Cr Cullen was aware of the pressures placed upon the CEO by Council at times, especially with Council embarking on several major projects at once but felt he was able to manage the CEO adequately through honest and open lines of communication.

Cr Cullen, the CEO and the Manager Human Resources have established a process where timely feedback can be given to the CEO whenever there is a need to address any performance issues, both positive and negative, that may arise. He said the CEO is open to feedback and continues to develop himself.

Cr Rathbone was questioned regarding the CEO's performance generally and stated that the Shire President Malcolm Cullen and the CEO have a very close working relationship, meaning that they are constantly in conversation and consultation. She said that in recent times, the CEO has been heavily scrutinised and criticised by a small vocal section of the community.

The CEO described his duties as managing the day-to-day operations of the Shire as well as providing strategic, governance, compliance and financial advice to the Council.

He is also responsible for ensuring that all Council reports are accurate and provide the appropriate level of information to enable Council to make informed decisions.

He said although the Shire President is responsible for communication of the Council to the CEO, the CEO believes it is incumbent on him to maintain a positive and open relationship with councillors. It is his view that the relationship between councillors and the CEO should involve open and robust discussion and a high level of trust between one another.

He said the current Council are operating cohesively and effectively and maintains he keeps them well informed.

The CEO was asked about the incident Mr Williams recalled which occurred on 14 December 2021 after a Council briefing with BHP.

He refuted the allegation that he was intimidating and violent towards Mr Williams and had merely got between Mr Williams and Cr Cullen to prevent him from being harassed further by Mr Williams.

The CEO said his relationship with the President and councillors was productive and respectful and he felt supported in his role. He said he was aware of his roles and responsibilities as CEO of the Shire and refuted any allegations that he was directing Council.

He conceded that the position of CEO could be demanding at times, especially with Council embarking on several major projects at once but felt he was supported by Council and believed in the Shire's vision.

7.2 Conclusions

7.2.1 Kambalda Workers' Accommodation Village

The revenue generated from the workers' accommodation village will directly benefit the community with the revenue not to be used to off-set the Shire's overheads or cost of administration. The revenue will be used to maintain and enhance services, community programs, events and community infrastructure.

It is the view of the Authorised Person that the process followed by the Shire for the workers accommodation village was consistent with the Act and the Shire's strategic objectives.

7.2.2 Upgrade of the Kambalda Airport

As a result of their investigations, the Authorised Person is of the view that the business plan for the upgrade of the airport is sound and in compliance with the Act.

The Authorised Person is of the view that the process followed by the Shire for the upgrade of the Kambalda Airport was consistent with the Act and the Shire's strategic objectives.

7.2.3 Re-zoning of the Kambalda Cultural and Arts Group premises

Recently, the KCAG entered into the community user agreement and the tenancy of the community group has continued unchanged.

The Authorised Person is satisfied that Council had no immediate intention of evicting the group but were merely trying to consolidate its land holdings and move to a more streamlined system of community group tenancy by implementing the community user agreements.

It is the view of the Authorised Person that there were no breaches of the Act or misconduct in relation to Council's decision to rezone the land utilised by the KCAG.

7.2.4 Relationships with Council and the Chief Executive Officer

It is the view of the Authorised Person that the councillors of the Shire are aware of their roles and responsibilities as elected members and discharge their duties in accordance with the Act.

They appear to be invested in their community and share a vision to work towards achieving financial security for the Shire by developing revenue streams other than rate revenue to provide quality services to the ratepayers.

Whilst the Authorised Person is satisfied that Council fulfills its obligations in managing the dissemination of information to the public, during the Inquiry several interviewees accused the Council of being secretive or not engaging enough with the ratepayers. The Shire should therefore continue to engage with the public as much as possible.

It is the view of the Authorised Person that the CEO is aware of his roles and responsibilities and is supported by the Council and Administration. The Authorised Person is satisfied that if needed, there are processes in place for the CEO to be appropriately managed by Council and especially Shire President Cr Cullen.

8. Conclusion – general comments

During the investigation phase of the Inquiry, the Authorised Person interviewed numerous people, many of whom had differing views on how the Council is operating.

It is the view of the Authorised Person that the councillors and employees who were spoken to supplied honest and credible information in response to the allegations made against them.

During the Inquiry, the Authorised Person identified some deficiencies of both councillors and administration related to declarations of interests in matters before Council and conflicts of interest during the procurement process.

In preparing this report on the Inquiry, the Authorised Person undertook an analysis of all other DLGSC holdings in relation to the Shire, to establish if any other governance concerns or issues exist.

Additionally, the Authorised Person undertook an audit of material relating to the Shire that had been received at DLGSC through correspondence.

The DLGSC, in its role as the local government regulator, also actively monitors local governments and uses several tools to identify at risk local governments and/or local governments of concern.

The DLGSC uses a risk-based approach to providing support and regulating local governments. Monitoring activities are also consistent with a local government's risk profile which is formulated through a series of indicators.

The DLGSC does not have any current reported concerns as to the Shire's operations or current financial status.

Accordingly, no further concerns about the Shire and its current operations could be established by the Authorised Person.

The Authorised Person is unable to obtain credible evidence of serious misconduct or breaches of the *Local Government Act 1995* by any elected members or employees of the Shire of Coolgardie.

A copy of this report has been provided to the Minister for Local Government in accordance with section 8.13(4) of the Act.

9. Recommendations

In accordance with section 8.13(1) of the Act, an Authorised Person is to compile a report on the outcome of any inquiry he or she conducts and under section 8.13(2) of the Act, the report is to contain any recommendations that the Authorised Person considers appropriate.

Whilst the Authorised Person through the inquiry has not identified any significant issues requiring further investigation or action, there are a number of identified administrative and governance processes that could be improved for the benefit of the Shire and the community.

The Authorised Person therefore makes the following recommendations:

1. All council members and staff to complete conflict of interest training that specifically provides clear guidance in respect of the requirements of the *Local Government Act 1995*, the relevant regulations and any code of conduct requirements relating to disclosing and managing conflict of interest within 6 months of the date of this report. The Shire is to maintain a public register of that training.

2. Within 6 months of the date of this report, the Shire to review and update its professional development and training program for council members and staff to include biennial conflict of interest training as an on-going requirement for all council members and staff members and to provide evidence of any updates and changes to DLGSC.
3. Within 6 months of the date of this report, the Shire to review and update its Procurement/Purchasing Policy and develop procedures that:
 - a. clearly articulate the staff members who have delegated authority to approve tender documentation, that each document is appropriately approved and signed, and the staff members who are responsible to ensure that tender documents are secured in the Shire's document management system and retain hard copies as required by relevant legislation;
 - b. includes a conflict-of-interest checklist, requiring any staff member involved in a tender or procurement process to disclose a conflict of interest and, subject to the extent of the conflict, a more senior staff member determining the conflict-of-interest management plan, if the conflict of interest can be appropriately managed;
 - c. includes a contract management process to undertake:
 - i. formal contract reviews on a periodic basis to confirm compliance with tender and scope requirements to limit scope creep, compliance with legislative requirements, budget and value for money; and
 - ii. formal contractor review on a periodic basis to ensure that each contractor is not insolvent, is not subject to litigation or regulator action and is not financially at risk.

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