



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

Report of the Inquiry into the Town of Cambridge

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



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To obtain such permission, please contact the Corporate Communications team at:

Department of Local Government, Sport and Cultural Industries

Leederville office

246 Vincent Street
Leederville WA 6007

Postal address: PO BOX 8349,
Perth Business Centre WA 6849

Email: info@dlgsc.wa.gov.au

Website: www.dlgsc.wa.gov.au

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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 October 2020.

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1. Introduction

1. The Town of Cambridge (**the Town**) is located in Perth's western suburbs, about 8 kilometres west of Perth. It is home to approximately 28,480 people, residing in over 10,770 dwellings.
2. The community is represented by a Mayor and eight elected members, voted by residents in four-year terms. Elected members (also known as **Councillors** and **Mayor**) represent residents across two wards.
3. The Town includes the suburbs of Town Beach, Floreat (part), Jolimont (part), Mount Claremont (part), Wembley (part), Wembley Downs (part) and West Leederville.
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 18 April 2018, the Deputy Director General of the department authorised an inquiry (**the Inquiry**) in accordance with section 8.3(2) of the Act (as delegated). The Terms of Reference directed the Inquiry to the following aspects of the Town:
 - a. Whether the Town council and administration are functioning in the best interest of the community.
 - b. The operations and affairs of the Town.
 - c. Adequacy of council's policies and procedures.
 - d. Land acquisition.
 - e. Any other issues that are determined to be of relevance to the above.
7. This report on the outcome of the department's Inquiry has been compiled in accordance with section 8.13 of the Act by officers of the department who were authorised to conduct the inquiry (**Authorised Persons**).
8. In order to perform their functions, the Authorised Persons issued directions notices to relevant persons at the Town under section 8.5(c) of the Act to provide documents, information or property.
9. A number of those 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 2018 and early 2020. A number of persons also participated in voluntary interviews during the course of the Inquiry.
10. Authorised Persons acknowledge the Inquiry was ongoing for more than two years. Prior to the Inquiry commencing and during its early stages, concerns were regularly raised with the department regarding the relationship between council

and the administration and about council decisions related to procurement of legal services.

11. In the early to mid-stages of 2019, the Town implemented an organisational restructure and the Acting Chief Executive Officer (Acting CEO) was permanently appointed by decision of council.
12. Authorised Persons monitored the actions of the Town through this time to ascertain if the organisational restructure, permanency of the Chief Executive Officer (CEO) and implementation of new governance processes (see Section 6.2) resulted in an improvement in the culture and working relationship between council and the administration.
13. Between January and April 2020, Authorised Persons interviewed five elected members including the Mayor and a number of the Town's employees including the CEO.
14. The current CEO, all current elected members and former Councillor Nelson (who had resigned on 8 July 2020) were given an opportunity to comment on this report in draft form before it was finalised.
15. A number of extensions of time to compile responses to this report were given, with the last response provided to the Authorised Persons on 23 September 2020. All submissions were considered by the Authorised Persons and form part of this report.

2. Matters not considered

16. Prior to the commencement of the Inquiry in April 2018, the Town identified the following issues:
 - a. Development setbacks – in early 2018 questions were raised as to the correct application of setback criteria in the Town's Streetscape Policy, and the consequent validity of development approvals by the Town.
 - b. The validity of delegations of authority at the Town.
 - c. The response of the former CEO to the above matters and the working relationship between the former CEO and the council.
17. It is acknowledged that a large amount of information about these matters was provided in response to directions notices issued in 2018, especially in relation to employment matters regarding the former CEO. Specifics of these matters will not be detailed in this report except where required for context regarding other matters.

3. Statutory framework

18. The Act and associated local government regulations set out the framework for the administration and financial management of local government.

19. Extracts from the Act and associated legislation have been reproduced where applicable.
20. Division 2, Section 2.5 of the Act is headed “*Local governments created as bodies corporate*”. A local government is also deemed to be capable of making decisions in the best interests of its community which on occasions may not reflect the opinions of all residents.
21. The Act defines the roles and responsibilities of the council, mayor, councillors and the 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.

22. 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.
23. 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.
24. 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.
25. 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.
 26. 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.
 27. 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.

28. 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.

29. Relevant provisions of the *Local Government (Code of Conduct) Regulations 2007* include:

3. General principles to guide 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.
- (2) The general principles referred to in subregulation (1) are for guidance of council members but it is not a rule of conduct that the principles be observed.

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. Key Town policies

Code of Conduct

30. The Town's Code of Conduct dated August 2008 applied to matters that occurred prior to the adoption of their Code of Conduct dated 27 August 2019.

31. The Code which applied to council members and employees' states:

1.4 Relationships between Council Members and Staff

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other members of staff. That teamwork will only occur if Council Members and staff have a mutual respect and co-operate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position, Council Members need to observe their statutory obligations which include, but are not limited to, the following:

- *accept that their role is a leadership, not a management or administrative one;*
- *acknowledge that they have no capacity to individually direct members of staff to carry out particular functions;*
- *refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility.*

32. A new Code of Conduct, adopted at the Ordinary Council Meeting of 27 August 2019, applies to matters that occurred post this date.

33. The Code, which applies to council members and employees', states:

4.4 Relationships between Council Members and Employees

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other members of staff. That teamwork will only occur if Council Members and staff have a mutual respect and co-operate with each other to achieve the Council's corporate goals and implement the Councils strategies to

respect the Towns reputation. To achieve that position Council members need to observe their statutory obligations.

13.2 Breaches of this Code by Council Members and Committee Members

A breach by a Council Member of the Local Government (Rules of Conduct) Regulations 2007 may be reported to the Town’s Complaints Officer (the CEO) in accordance with the prescribed Complaints Form, as determined from time to time. Such complaints will be dealt with under Division 9 of Part 5 of the Local Government Act 1995.

Procurement Business Rules Manual

34. The Procurement Business Rules Manual documents the Town’s procurement requirements and under the title ‘Application’ states: *The following requirements are to be followed by all Town employees when procuring Goods and Services on behalf the Town. These requirements and any inherent policies, protocols and the like must be strictly adhered to.*
35. The policy applies specifically to the Town’s employees, not elected members.

Policy 3.2.1 Contracts and Procurement Policy

36. The Town’s Contracts and Procurements Policy (**procurement policy**) provides purchasing thresholds to guide the purchases of goods and services.
37. The objective of the procurement policy is to *provide a comprehensive framework for all procurement undertaken by the Town and articulate the Town's expectations of all officers when performing duties in relation to procurement. This document shall be read and applied in conjunction with the Procurement Business Rules Manual.*
38. The policy applies specifically to the Town’s employees, not elected members.
39. The purchasing thresholds for the purchases of goods and services are:

Amount of Purchase	Quotation Requirements
Up to \$2,999	<ul style="list-style-type: none"> • Direct purchase from supplier requiring only one verbal quotation.
\$3,000 - \$9,999 \$3,000 - \$14,999	<ul style="list-style-type: none"> • Obtain three verbal quotations (excl. prequalified panels). • Invite three verbal quotes from a member of a prequalified panel of suppliers, which includes the Town's, ALGA's and CUA prequalified panels
\$10,000 - \$49,999 \$15,000 - \$49,999	<ul style="list-style-type: none"> • Obtain three written quotations (excl. prequalified panels). • Invite three written quotations from prequalified panel of suppliers
\$50,000 - \$149,999	<ul style="list-style-type: none"> • Purchasing process by Request for Quotation (RFQ) or Request for Tender (RFT) process in consultation with the contracts officer (with procurement decision based on all value for money considerations).
\$150,000 and above	<ul style="list-style-type: none"> • Conduct a public tender process i.e Request for Tender (RFT). For repetitive contracts, best practice requires that if this threshold (\$150,000) is exceeded within three years, then a public tender shall be invited.

Policy 1.2.2. Legal Opinions – Management Arrangements

40. The policy states that:
- (i) *legal advice given to the Council by the Council's Solicitors which was requested by decision of Council, be recorded in the Council's document management system and delivered to the Mayor and Councillors as soon as practicable;*
 - (ii) *all Elected Members of the Council may inspect and/or obtain a copy of the legal advice so filed at any time, except in exceptional circumstances when it is considered by the Chief Executive Officer that the information is private and confidential (such as advice with respect to defamation, allegations of criminal activity or negotiations on commercial or contractual matters). In such cases a letter to this effect should be provided to the Elected Member who requested the information.*

Policy 1.1.14 Elected Member Requests

41. The policy identifies the procedure for elected members to submit their requests or enquiries to the Town's administration.
42. The policy states that elected members are to refer their requests/enquiries to the CEO via the 'Elected Member Requests' mailbox. Requests/enquiries forwarded will be entered into the Register of Elected Member Requests.
43. The elected member requests will be actioned within ten (10) working days, with a written response provided by the relevant director to the elected member, advising of the action taken. A copy of the response will be forwarded to the 'Elected Member Requests' Outlook Mailbox for recording in the register.
44. Where an elected member's request requires a diversion of significant employee resources or where the matter has not been included in the Town's current budget, the request is not to be actioned without the prior approval of the CEO. Where this occurs, the CEO will discuss the request with the elected member.

5. Inquiry findings

5.1 Relationship between council and administration

45. Prior to the commencement of the Authorised Inquiry, the Town underwent a governance review which consisted of a survey sent to elected members and administrative staff asking them to rate the Town against a large set of governance statements.
46. In summary, the review identified issues in the following areas:
- a. The Mayor and CEO's working relationship is not productive.
 - b. Council does not act as a co-ordinated body or as a cohesive team – no effective working relationship among members.

- c. Council strays into operational matters.
 - d. Council members tend not to represent the interests of electors and ratepayers, but generally pursue their own interests.
47. Throughout the Inquiry, Authorised Persons were cognisant of ascertaining whether the changes of elected members and administrative staff (detailed in Section 6.1 of this report) resulted in an improvement in the Town's culture.
48. Authorised Persons held interviews with a number of elected members and administration staff in January, February and March 2020 which indicated the culture at the Town was still poor.
49. The Town's employees interviewed indicated they felt the poor culture at the Town was due to a poor working relationship between Mayor Shannon, particular elected members and the administration staff.
50. Employees stated:
- a. the Mayor acts as if the she is the CEO and that CEO John Giorgi reacts to all the Mayor's requests
 - b. the poor culture was in part due to the ongoing Authorised Inquiry, expressing a deep fear of losing their jobs if they provided any information to the Authorised Persons. The employees felt this is what had happened to previous staff
 - c. the culture at the town had become increasingly worse since the appointment of CEO John Giorgi, in part because he does not stand up to the Mayor.
51. During interviews, employees informed the Authorised Persons of alleged inappropriate conduct by Mr Giorgi. These matters have been referred to Worksafe and the Public Sector Commission for independent investigation.
52. During a voluntary interview, CEO John Giorgi stated he believes staff need to toughen up, and if they 'can't take the heat, they should look elsewhere'.
53. In accordance with section 5.40(e) of the Act, the Town has a duty to provide staff with safe and healthy work conditions.

Finding 01: The Town has not fulfilled its duty to provide safe and healthy work conditions for its employees.

54. The Town's employees have expressed fear about providing frank advice to the Town, and in particular the Mayor around planning matters.
55. For example, on 6 February 2020, several employees and the Mayor attended a Joint Development Assessment Panel (**JDAP**) meeting. One of the Town's employees was asked to provide information at the meeting that Mayor Shannon became unhappy with, and the Mayor told another employee to 'shut her up'.
56. On 13 February 2020, Councillor Rod Bradley attended the Town's offices and asked CEO John Giorgi how to 'get rid of' the two of the Town's employees that attended the JDAP meeting.

57. CEO John Giorgi then told other administrative staff about the conversation, scaremongering that the employees were not liked by council and could lose their jobs.
58. During a voluntary record of interview, CEO John Giorgi confirmed Councillor Bradley asked him how to 'get rid of' the employees. He stated he believed what was said by Councillor Rod Bradley was said flippantly and maintained that no employee had been sacked because the Mayor or Councillor did not want them employed.
59. The Town's employees paint a different picture, alleging that one particular employee '*was called into John's office and she was walked out that night*' because she had provided advice to the Mayor that she was not happy with.
60. The employees also stated that the employment contracts of particular employees were regularly mentioned. The Mayor had asked to view the contract of one particular employee with a view to ending the contract, and the CEO regularly made comments that gave the employees the impression their employment was in jeopardy.
61. Comments allegedly made by the CEO included:
 - a. *You're in the bad books this week, you better watch your back.*
 - b. *She's on to you.*
 - c. *Be careful, make sure you do your job properly.*
62. Information was also provided by the Town's employees regarding their lack of confidence and capacity to undertake their functions because of undue pressure and fear of consequences.
63. During their interviews, the Town's employees gave general observations of the working relationship between the Mayor, elected members and administration staff.
64. In summary, they gave the following evidence:
 - a. The Mayor requires staff to keep a log of contact between planning staff and developers, then uses that log to criticise staff and accuse staff of collusion if they discuss proposals with developers
 - b. The Mayor and Councillor Timmermanis criticise staff members in public and are always trying to find fault with staff members.
 - c. Council gets involved in tender matters, such as changing tender criteria and directing staff to contact particular contractors, hindering staff from following appropriate processes.
 - d. Legal advice obtained by the Mayor is not always provided to other elected members.
 - e. The working environment has negatively affected the ability of the Town to recruit staff and backfill acting positions.
65. All the employees stated they did not feel supported by the CEO and that they had not, or would not, make complaints about anything because they felt they would be targeted and lose their jobs.

66. Specific comments included:
- a. *“So it's just a horrible environment. Nobody feels safe in there. Everyone feels as if their job could be taken away from them at any minute.”*
 - b. *“..working with the Mayor can be very stressful, very demanding. I feel there is too much interference in the role... and some of the behaviour is inappropriate.”*
67. In relation to the Mayor’s relationship with the administration staff, CEO John Giorgi reported:
- a. There is a perception that you don’t cross the Mayor because she is very quick to criticise.
 - b. He has told staff to be careful and not give the Mayor an opportunity to find fault.
 - c. He has told the Mayor to back off, or he will report the situation to Worksafe.
68. The relationship between the administration and council does not reflect the mutual respect and confidence necessary for the Town’s administration to properly perform its functions.
69. For example, a recent Facebook exchange between Mayor Shannon, Councillor Timmermanis and a Town employee raised questions about the appropriateness of the interaction between the elected members and the employee.
70. The exchange commenced after Mayor Shannon posted a link to a consultation on the design of new change rooms for Alderbury Sports Ground and made the following comment:
- “The Town has been paying \$1.2M in salaries per month for 90% of its staff who have been working from home but have had limited access to email so work from home is difficult – with about \$400k paid to staff who are employed at closed facilities – in my humble opinion stone cladding and a Hamptons façade would make a bigger contribution to ratepayers over a longer time for a modest increase in price.”*
71. An employee posted a comment detailing the work staff had been doing during the period when facilities were closed as a result of COVID pandemic restrictions.
72. Cr Timmermanis then posted a question as to whether there were statistics to support the employee’s statements about the work being undertaken. Cr Timmermanis then posted the following comment:
- “I get the Facebook feeds...they always become noticeably more active following queries about the need to look at making appropriate resource adjustments. Would be nice to get some information about the actual engagement with the activity rather than the usual and very predictable platitudes”.*
73. When the employee advised Cr Timmermanis that staff were keeping statistics, Cr Timmermanis stated *“Good.... I’ll ask for them”.*

74. Mayor Shannon has sought to make a complaint about the staff member commenting on Facebook, however no action appears to have been taken by the council or the Town regarding the posts written by Councillor Timmermanis.
75. These public comments showed a lack of respect for the Town's employees and undermined staff confidence that their work was valued.
76. Staff who continued working at the Town's facilities that were closed to the public during the COVID shutdowns indicated they felt the comments were a personal attack on their work ethic and integrity.

Finding 02: The Town's employees' have been unable to properly perform their functions because of undue pressure and fear of consequences.

77. On 14 February 2020, CEO John Giorgi held a meeting with several of the Town's employees telling them he had asked Councillor Kate McKerracher and Councillor Ian Everett to tell the Mayor to 'back off' as it would not be good if the employees were to take stress leave during the inquiry.
78. CEO John Giorgi then told several employees that he had told the Councillors to tell the Mayor to back off.
79. During interview, Councillor McKerracher confirmed CEO John Giorgi asked her to relay the message to the Mayor and that she did so. Councillor McKerracher stated Mayor Shannon is a workaholic and possibly emails people too much, but she is not aware of any interference.
80. On 6 March 2020, CEO John Giorgi held a management meeting with the Town's Directors and Managers stating if he finds out anyone from the Town has provided information to the department 'for the wrong reasons', there would be serious consequences.
81. Authorised Persons asked the employees if the CEO stated what those consequences would be. CEO John Giorgi did not say what the consequences would be, however the staff took it to mean their employment would be at risk. Staff reported the meeting as 'threatening'.
82. Draft meeting minutes stated: *It appears that information from within the Town is being provided to the AI [Authorised Inquiry] and so long as this is being done for the right reasons, the CEO is comfortable with this. If information is being provided for the wrong reasons, then these people will suffer the consequences.*
83. The draft meeting minutes were slightly amended on request of the CEO John Giorgi to state: *CEO advised that it appears that information from within the Town is being provided to the AI and so long as this is being done for the 'right reasons', the CEO is comfortable with this. If information is being provided for the 'wrong reasons', then these people may suffer the consequences.*
84. On 7 March 2020, CEO John Giorgi summonsed various staff to his office and questioned them about whether they had been interviewed by the department.
85. Warning staff not to provide information to the department for the 'wrong reasons' could have intimidated employees and may have hindered Authorised Persons from undertaking their inquiry functions.

Finding 03: The CEO's comments could be construed as intimidating to any employees that provided or wanted to provide information to the Inquiry.

5.2 Interference in administration

Authorisations by council

86. From early 2018 to early 2020, certain motions passed by council contained authorisations for the Mayor or another elected member to undertake certain administrative tasks, in reliance on Regulation 9 of the *Local Government (Code of Conduct) Regulations 2007*.
87. At a Special Council Meeting on 7 February 2018, council:
- a. passed motions appointing specific lawyers or law firms to act for or provide advice to the Town;
 - b. authorised the Mayor to provide instructions directly to lawyers; and
 - c. did not observe any procurement processes or purchasing policy when engaging legal services.
88. At a Special Council Meeting on 15 May 2018, council:
- a. passed motions appointing specific lawyers or law firms to act for or provide advice to the Town;
 - b. authorised the Mayor to provide instructions directly to lawyers; and
 - c. did not observe any procurement processes or purchasing policy when engaging legal services.
89. At an Ordinary Council Meeting on 28 August 2018, council:
- a. passed motions appointing specific lawyers or law firms to act for or provide advice to the Town;
 - b. authorised the Mayor to provide instructions directly to lawyers; and
 - c. did not observe any procurement processes or purchasing policy when engaging legal services.
90. At an Ordinary Council Meeting on 9 April 2020, council:
- a. passed motions appointing specific lawyers or law firms to act for or provide advice to the Town;
 - b. authorised the Mayor to provide instructions directly to lawyers; and
 - c. did not observe any procurement processes or purchasing policy when engaging legal services.
91. At the same Council meeting on 9 April 2020, council passed a motion authorising Councillor Timmermanis, on behalf of the council, to "*assist the CEO in relation to the Employee Arrangements in response to COVID-19*", including but not limited to

attending all meetings with unions and staff unable to be redeployed and attending meetings of the COVID Taskforce.

92. At an Ordinary Council Meeting on 23 June 2020, council revoked the decision made at its Special Council Meeting on 9 April 2020 authorising the Mayor (pursuant to Regulation 9) to provide instructions directly to lawyers and authorising Councillor Timmermanis to assist the CEO in relation to employment arrangements.
93. At the same council meeting council resolved to establish a COVID-19 committee, comprising of council members and employees.
94. The motion stated that council approved by absolute majority to appoint four named Councillors, the CEO, the Director Infrastructure and Works, the Manager Regulatory Services, the Co-ordinator Governance and the Office of the CEO and *'other Town of Cambridge Officers, as nominated by the Chief Executive Officer'*.
95. The part of the resolution that states *'other Town of Cambridge Officers, as nominated by the Chief Executive Officer'* is not a valid appointment as:
 - a. it does not identify the member/s or employee positions that may be appointed; and
 - b. it is only council that can appoint members to a committee which is to be by absolute majority (the CEO is not able to appoint other Town of Cambridge officers to the committee).
96. Council's reliance on Regulation 9 of the *Local Government (Code of Conduct) Regulations 2007* to authorise elected members to undertake administrative tasks was erroneous.
97. Regulation 9 was a statement that a council member will have breached a rule of conduct if he or she involves himself or herself in the local government's administration without that involvement being authorised by council.
98. Being a rule of conduct, Regulation 9 is not itself a source of authority for intervention in administration. Rather the regulation contemplates any power of authorisation be found elsewhere.
99. Council will be vested with the power of authorisation contemplated by Regulation 9(1) if the power to permit the particular involvement is explicit or implied and is not precluded by the application of other provisions of the Act or regulations.
100. Whether council is legally empowered to authorise a Councillor's involvement in administration in a particular case requires analysis of the relevant provisions of the Act and any relevant regulations, and consideration of the involvement contemplated. The starting point will ordinarily be those provisions setting out the functions of the council and of Councillors, the functions of the local government and the functions of the CEO.
101. Even where council might have the broad power to authorise a particular type of involvement by Councillors in administration, it may be that when regard is had to proper governance principles it would be inappropriate from a governance perspective for the particular power to be exercised in any event or, alternatively, for it to be exercised without conditions or safeguards.

102. The motions passed on 7 February 2018, 15 May 2018, 28 August 2018 and 9 April 2020 authorising elected members' involvement in administrative matters and the use of Regulation 9 as the authorisation went beyond the confines of the role of a councillor under the Act, contained inadequate conditions or safeguards and were inappropriate from a good governance perspective.
103. It is incumbent on council to pass motions that align to the local government regime and recognise the roles and responsibilities of both council and the administration.

Finding 04: By authorising elected members to undertake administrative tasks, council has created a situation where employees are not able to properly perform their functions.

Finding 05: By authorising the Mayor to undertake administrative tasks, council have failed to ensure good governance processes with respect to procuring law firms and the appropriate allocation of the Town's finances.

Finding 06: By authorising Councillor Timmermanis to undertake administrative tasks related to employment of staff, council is interfering with the CEO's role to manage the day to day operations of the local government and the employment or dismissal of staff under section 5.41(g).

Procurement of law firms

104. Throughout the inquiry, the Council has engaged a number of law firms to deal with a range of matters without applying any procurement processes.
105. While the Town has a *Contracts and Procurement Policy* and *Procurement Business Rules Manual*, neither document stipulates it applies to or should be followed by Elected Members.
106. The Policy and Business Rules provides guidance on what is required by employees prior to procuring goods and services, such as obtaining verbal or written quotes when the expected cost falls below a certain threshold and ensuring requests for quotations or tenders are used when the expected cost is above a certain threshold.
107. These rules are typical of the basic procurement processes that apply to all government departments. While neither document stipulates it applies to Elected Members, basic procurement processes should have been followed to provide the local government and its constituents with a level of confidence that the services were procured in a fair and transparent manner.
108. At a council Meeting on 7 February 2018, council resolved to engage a law firm and a barrister with fees associated being approved as unbudgeted expenditure. Emails identify that Mayor Shannon had been in discussions with the law firm involved prior to the motion being debated at the council meeting.
109. The motion did not provide a quote for the cost of works to be provided by the law firm and the amount of unbudgeted expenditure was left open.
110. On 8 February 2018, an elected member sent an email to all Councillors and the CEO stating (in part):

"it appears Council has approved an unbudgeted blank cheque for an ill-defined scope of works with no clear timeframes and no clear understanding of how the work

is to be managed or the accountability mechanisms...'

111. The email sought clarification from Mayor Shannon in relation to a number of issues concerning the motion passed by council, in particular:
- a. What measures will be put in place to ensure transparency with regard to the instruction and the conduct of the investigations?
 - b. Why that particular law firm?
 - c. Why the lawyers/counsel requested?
 - d. Will council be provided with a copy of correspondence between the Mayor and the law firm?
 - e. Is it good governance to approve unbudgeted expenditure without any indication as to cost of the commitment?
 - f. Can a cost estimate be provided so initial provision can be made for the unbudgeted item?
 - g. Will an update be provided at each council meeting regarding the costs incurred?
112. On 9 February 2018, Mayor Shannon responded to the above email stating *'I note that you did have an opportunity to speak at the meeting, however you chose to ask a question without speaking to the motion. As the motion has passed and is a decision of council, I do not intend to descend into further discussion about the merits and detail behind the motion'*.
113. During an interview with Authorised Persons on 6 September 2018, Mayor Shannon was asked whether she had any prior relationship with any person at the law firm engaged.
114. Mayor Shannon replied *"I had met [name] before, I obviously worked at Browns in the past and [name] worked for a partner that worked there – well, she worked for us. So yeah, they were just an employment law firm that had sufficient resources and the size to undertake an investigation. We could have picked any number of firms. But usually you go on people that you think are quite good."*
115. Mayor Shannon was asked *"Did you obtain any quotes of any other law firm to engage?"* to which Mayor Shannon replied *"No"*.
116. In the interview, Mayor Shannon stated *'the tendering policy is something for the Administration'* and as an Elected Member she was not provided with policies that apply to the Town's employees, therefore, she was not required to abide by the Town's procurement policy.

Finding 07: Council failed to obtain quotes prior to engaging the law firm to undertake work and has not applied any procurement processes.

Finding 08: The Mayor selected the law firm based on her prior knowledge and relationships rather than any procurement processes.

117. On 15 May 2018, during a council meeting, council resolved to engage a second law firm and authorising the fees associated as unbudgeted expenditure.

118. The motion did not provide a quote for the cost of works to be provided by the law firm and the amount of unbudgeted expenditure was left open.
119. On 17 May 2018, an elected member emailed Mayor Shannon expressing his dissatisfaction with the procurement processes being followed for obtaining legal advice. Specifically, the Councillor wrote:
- 'Thankyou for advising of the potential motion. Unfortunately, I will continue to be unsupportive of any motion where we instruct the Administration on who to engage. The practice of direct engagement without transparent procurement process does not pass the pub test and would not be considered acceptable in a business environment unless a previously documented supplier. At a minimum, a justification should be documented and supported by Administration on why only a single provider is being considered so a business risk assessment can be considered.'*
120. In her email response, Mayor Shannon stated:
- 'We are not instructing the administration on who to engage. Rather we are instructing the Town's independent lawyers ... to obtain independent advice from a senior counsel. The rates charged by ... are comparable to the rates charged by other law firms that the Town has engaged. As for the pub test I do not believe your continued insistence on asking the administration to investigate their own shortcomings or appoint lawyers to provide advice on their own shortcomings passes the pub test.....This is a one-off very limited scope engagement...'*
121. Mayor Shannon states that the engagement of the second law firm is as a *one off very limited scope engagement*, however evidence reviewed by Authorised Persons shows Mayor Shannon engages services or directs staff on which services to engage outside of this 'limited scope engagement' without regard for procurement processes.
122. On 27 April 2018, Mayor Shannon emailed administration staff without including the CEO stating *'...Can we please get advice on this from [name]...I don't want to use a law firm who works and gets work from developers...Can we discuss this before you seek the advice?'*
123. The email directs the engagement of a particular lawyer without following a procurement process.
124. On 29 January 2020, Mayor Shannon emailed administration staff without including the CEO or stating *'Is [name] doing any consulting? And if so would he give us his thoughts on...'*
125. The email directs the administration to make inquiries with a particular consultant without following a procurement process.
126. During the Special Council Meeting on 9 April 2020, council resolved to appoint a particular law firm in relation to their COVID 19 Recovery and Relief Plan and approved payment of an unknown amount as unbudgeted expenditure.
127. The motion requires the administration to appoint a particular lawyer without following a procurement process.

Finding 09: Council interfered in administrative matters by engaging law firms which is a function of the administration.

Involvement in day to day operations

128. The Town's employees stated Mayor Shannon regularly emails the Town's employees requiring them to provide her with information which impacts on their ability to do their job.
129. On 26 June 2018, CEO John Giorgi implemented an Elected Member Request policy where Elected Members are to make requests for information by referring their requests/enquiries to the Chief Executive Officer via the 'Elected Member Requests' Outlook mailbox (**EMR**).
130. Emails reviewed by Authorised Persons show that Mayor Shannon does not always include the EMR mailbox in her emails.
131. The Town calculated the number of emails sent to the EMR mailbox which showed between July 2018 and June 2019, 937 emails were received by the EMR mailbox, and 560 (58%) of those emails were from the Mayor. This number does not take into account the emails sent by Mayor Shannon to staff that did not include the EMR email address.
132. The remaining 377 emails were somewhat evenly split between the other eight elected members.
133. Between July 2019 and mid-March 2020, 300 emails were received by the EMR mailbox, and 153 of those emails were from the Mayor. The remaining 147 emails were split between the eight other elected members. This number again does not take into account the emails sent by Mayor Shannon to staff that did not include the EMR email address.
134. The content of the emails sent by Mayor Shannon to administrative staff shows Mayor Shannon directly requests information from, and asks for tasks to be undertaken by, administration staff without advising the CEO (through the EMR) of matters raised.
135. Regulation 10 of the *Local Government (Code of Conduct) Regulations 2007* states a council member must not direct or attempt to direct a local government employee or 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.
136. Council members should liaise with the CEO who would direct administration staff to undertake a task if required. Options available to elected members would be to:
 - a. advise the CEO of matters identified and request the CEO provide a report on matters for review by whole of council; and /or
 - b. raise a motion with the CEO for discussion at the next council meeting and where a motion is passed have council direct the CEO to undertake the administrative tasks associated with the matter.
137. Mayor Shannon unilaterally directs administration staff to undertake tasks without following the above process and informing the CEO of her requests.

138. These emails do not provide any context as to why the information is required or a time frame on when the information is needed, or the tasks are to be done.
139. Administration staff stated they feel there is an expectation that a response be provided almost immediately and when it's not provided the Mayor follows up.
140. Administration staff further stated the amount of emails sent by the Mayor requesting them to provide her with information takes them away from their completing their day to day work.
141. Statements made by the staff included:
- a. *So we live in this world where we can't really function. I can't really do my job.*
 - b. *And you'll see from that the level of pressure. Even regardless of what the content of all her correspondence is. Without even opening it, you will see the level of pressure that she puts on everyone, because of the amount of emails.*
 - c. *So we get all this ad hoc piecemeal work that we've not scheduled for, and we could spend days running about doing stuff.*
 - d. *We're basically running about for the Mayor. We're not doing what we're supposed to do.*
 - e. *It's the fear that if you say no – John has already said "She's a strong character, so you just say yes to her. You don't say no."*
 - f. *It really is a toxic environment. It's absolutely – it's a horrible place to work...*
142. During a voluntary record of interview, Mayor Shannon stated she believed there was a 'disconnect' between council and the administration and she felt motions passed by council are not always completed by administration in the manner that council wants.
143. Mayor Shannon gave various examples, and when questioned about the degree of her involvement in administrative matters, she stated she doesn't want to be involved in the administration but without her oversight or checking in, council's intentions would not be fulfilled.
144. When Mayor Shannon was asked if she feels the CEO or administration staff were unskilled or incompetent in any areas, she stated no. Rather, that it was council have a certain intention or know what they want and that the end result often does not meet council's expectations.
145. Mayor Shannon stated she has raised the issue of a 'disconnect' with CEO John Giorgi and they have discussed ways to fix the issue, but no resolution has been achieved as yet.
146. During a voluntary record of interview, CEO John Giorgi stated:
- 'Now, the policy says that they deal through the CEO or if it's an operational matter they can go to the directors. Now, I do know that, you know, in some cases she goes down to managers and – like the manager of parks and, you know, then she'll be driving along and there's a, you know, tree fallen or something and she records that or she might go to one of the other managers, but that's very, very infrequently. When*

I was first appointed, she was going to be – even below that, she was emailing, you know, our normal officers and so forth and I tried to put a stop to that and I said to Keri, "You can't go emailing the officers." I think from memory I even sent her an email saying, "The officers are under instruction not to action any of your requests," and that stopped, and to my knowledge, I don't believe she's doing that now. If she is, it's without my knowledge.'

147. It is the employee's perception that if they do not respond to the Mayor's requests in a manner that aligns with the Mayor's point of view, they will be targeted and their employment jeopardised.
148. Emails reviewed by Authorised Persons show Mayor Shannon is often trying to find fault or place blame on an employee for events that do not align with the Mayor's point of view or turn out how the Mayor would like them to.
149. The perception of a disconnect has resulted in Mayor Shannon sending a large number of emails to administration staff, either requesting information, directing staff or involving herself in the details of administrative matters, that staff state they are unable to complete their day to day tasks.
150. By excluding the CEO from the emails and not sending the emails through the proper channels, CEO John Giorgi is unable to effectively manage employees' workloads.

Finding 10: By not consistently following the Town's policy for Elected Member Requests and communicating directly with employees, the Mayor has impeded the CEO from effectively managing the day to day operations of the local government.

Finding 11: By emailing administration staff directly without including the CEO and requiring the employee to act, the Mayor has failed to comply with Regulation 10 of the *Local Government (Code of Conduct) Regulations 2007*.

Curtailling administration

151. Section 5.41(g) expressly provides that the CEO be responsible for the employment, management, direction and dismissal of other employees, subject to section 5.37(2) in relation to senior employees where the CEO is to inform the council of each proposal to employee or dismissal employee. Council may accept or reject the CEO's recommendation, but if the council rejects a recommendation it is to inform the CEO of the reasons for doing so.
152. At the Ordinary Council Meeting held on 19 December 2017, council passed a motion stating the CEO was not authorised to allow specific termination clauses for senior employees.
153. Council's decision to accept or reject a recommendation by the CEO can possibly relate to the conditions of employment, however, making an alternative decision related to any conditions of employment is outside the scope of section 5.37(2). The motion curtailling the CEO's functions is beyond the role of council.

Finding 12: Council's interference in employment matters of senior employees infringed upon the CEO's functions and responsibilities under section 5.41(g) of the Act.

5.3 Employment matters

154. In accordance with Section 5.40 of the Act, employees are to be selected and promoted in accordance with the principles of merit and equity and no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage.
155. In June 2019, interviews were held for a Manager's position at the Town. The interview assessment matrix completed by the panel members indicated four people had been interviewed and the candidates were rated in terms of the suitability for the role. Two people were rated as suitable for the role and two were 'not deemed suitable for further assessment'. One of the applicants deemed 'not suitable' was an internal applicant employed in another role at the Town and was rated fourth on the list.
156. The interview assessment matrix was provided to CEO John Giorgi on 20 June 2019 requesting approval to seek reference checks for the preferred candidate. Reference checks were completed without issue and on 9 July 2019, a recommendation report was provided to CEO John Giorgi recommending the preferred candidate for the role.
157. On 9 July 2019, CEO John Giorgi advised that he wanted to conduct a second round of interviews so that he could be involved in the interview process.
158. The second round of interviews took place on 18 July 2019. The preferred applicant from the first round of interviews withdrew from the process. The second preferred applicant and the internal applicant deemed 'not suitable for re-assessment' were interviewed. The other person rated not suitable was not re-interviewed.
159. The internal applicant interviewed in the first round of interviews that was fourth on the list was subsequently offered the Manager's role.
160. Evidence reviewed by Authorised Persons shows that the person's door plaque was ordered prior to the candidate being interviewed on 20 June 2019 indicating that his appointment to the role may have been predetermined.
161. On 23 March 2019 a Request for Staff document was signed by CEO John Giorgi for a temporary Level 2 position. The position was advertised externally with a closing dated of 12 April 2019.
162. On 3 May 2019, an email states all applicants were to be made unsuccessful and the role regraded to a higher level with a higher pay band and a change of position title.
163. On 10 July 2019, CEO John Giorgi interviewed one candidate for the upgraded Level 3 role and the person was offered the temporary position.
164. Information and evidence provided to Authorised Persons indicates the regraded position was not advertised, no application for the role was received other than the person's CV, the person was the only one interviewed for the role and she was known to the interviewer CEO John Giorgi.

Finding 13: The Authorised Persons' perception of patronage by the CEO throughout the two recruitment processes is significantly high.

5.4 Principles of conduct

165. The *Local Government (Rules of Conduct) Regulations 2007* provides general principles to guide the behaviour of council members.
166. During public question time of the 24 April 2018 Ordinary Council Meeting the following question was asked (by constituent Hilary Pinerua):
- "When were we going to be told, as the ratepayers who pay his salary, why Mr Buckley has been suspended?"*
167. In response to the question, the draft minutes for that meeting stated:
- The Mayor advised that Mr Buckley has not been officially suspended, that was something you wrote in the post and I do not know where you got it from. The Town has been very clear in its communication with the Post. We have said that Mr Buckley is not currently in the role of CEO and that we have a new Acting CEO.*
168. During the portion of Ordinary Council Meeting held 22 May 2018 where previous meeting minutes are submitted for confirmation, the draft written response to Ms Pinerua's question in the above minutes was discussed. The wording was changed and inserted into the confirmed minutes:
- Moved by Cr Bradley, seconded by Cr Timmermanis*
- That the Minutes of the Ordinary Meeting of the Council held on 24 April 2018 be confirmed subject to the following amendment by Mayor Shannon:*
- In response to the following question asked by Hilary Pinerua, [address details omitted] "When were we going to be told, as the ratepayers who pay his salary, why Mr Buckley has been suspended?", the Mayor amended her response from "Mr Buckley has not been officially suspended" to "it had not been officially confirmed that he had been suspended".*
169. To determine the accuracy of the answer provided to the question, Authorised Persons reviewed the audio recording of the 24 April 2018 meeting to hear the Mayor's verbatim response, which was:
- Mr Buckley has not been officially suspended, that was something you wrote in the Post and I don't know where you got it from. The Town has been very clear in our communication with the Post, we have said that Mr Buckley is not currently in the role of CEO.*
170. Mayor Shannon was not open and transparent with Ms Pinerua by stating that Mr Buckley was not officially suspended.
171. Mr Buckley was suspended during the Special Council Meeting on 9 April 2018 and Mr Lyon was appointed as the A/CEO during the Special Council Meeting on 10 April 2018. Mayor Shannon was the presiding member for both meetings and would have known this to have been the case when providing her answer on 24 April 2018.

Finding 14: The Mayor failed to adhere to the principles as set out in Regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007*– General principles to guide the behaviour of council members, specifically (e) be open and accountable to the public.

172. On the 7 June 2018 a Special Council meeting was called for that evening to hear a confidential motion put by Cr McAllister. The motion contained 2 ½ pages of written information called Background Information and related to the use of Regulation 9 as an authority for council to undertake administrative tasks.
173. A motion to have the meeting heard behind closed doors was put and lost 5/4. The Background Briefing was discussed in an open meeting.
174. Draft minutes were prepared after the meeting that included the full version of the Background Briefing.
175. Evidence reviewed by Authorised Persons shows multiple versions of those minutes were created prior to the meeting minutes being presented to the next Ordinary Council Meeting on 28 August 2018 for confirmation.
176. Those versions contained numerous edits and amendments in terms of the amount of information from the Background Briefing that was to be included in the minutes.
177. One version had the Background Briefing as a confidential attachment to the Public Minutes and in the final version the Background Briefing was not a confidential attachment but was heavily redacted.
178. The final version submitted to the August 2018 meeting was put and passed 5/3.
179. Redacting the Background Briefing of a matter deemed by council not to be confidential and consequently discussed in an open meeting does not demonstrate conduct that is open and accountable to the public.

Finding 15: Council failed to adhere to the principles as set out with Regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007*– General principles to guide the behaviour of council members, specifically (e) be open and accountable to the public.

5.5 Access to information by elected members

180. On 3 April 2018, Mayor Shannon emailed all Councillors a document containing a summary of legal advice she had obtained.
181. On 5 April 2018, Councillor McAllister sought copies of the instructions and any correspondence provided by the Mayor that caused the legal advice to be provided. Councillor McAllister stated the instructions and correspondence between the Mayor and the lawyers would help her to understand the legal opinion provided.
182. On 7 April 2018 Mayor Shannon replied *“I do not believe you require the correspondence” to understand the legal advice, and “Unless you are able to provide some cogent reason for being provided all the correspondence with Hall and Wilcox, I do not believe it is appropriate to provide it to you. It seems to be a fishing expedition and not relevant to the issues at hand”.*

183. In an email dated 8 April 2018 Councillor McAllister asks Mayor Shannon: *“I don’t seem to have the email titled “Next Steps” with the letter of engagement and costs agreement. Can you please re-send it?”*
184. Mayor Shannon replies *“I have not provided you or any elected member the letter or engagement and costs agreement. There was no requirement in the motion for me provide copies of the correspondence to the elected member, and I don’t believe it will assist your understand of the legal advice to provide you with the correspondence between myself and [lawyers], so I will not be providing the correspondence you have requested to you.”*
185. On 22 April 2018, Councillor McAllister sought information from Mayor Shannon that related to decisions being made by council on employment matters.
186. In response to that email, Mayor Shannon stated she will not be providing the information requested and gave reasons including, *“I note circulating correspondence was not required by decision of council”* and *“If (other persons) want to circulate their view of the world to elected members that is their prerogative but I note the Local Government Act requires that all matters involving employment matters should be kept confidential’.*
187. It is the Authorised Persons’ view that Mayor Shannon has misunderstood the legislation by stating that the Act requires all matters involving employment matters to be kept confidential from elected members who are entitled to the information when making decisions on the employment matters.
188. On 10 May 2018, Councillor McAllister sought information from Mayor Shannon that related to decisions being made by council on employment matters.
189. On 6 June 2018, Mayor Shannon responded with comments such as *“Given the obvious sensitivity and confidentiality surrounding this matter, the Town did not require me to provide all the correspondence to the elected members”* and *“If you can articulate a valid basis for seeking the information ie how it is relevant to your role as an ELECTED MEMBER then I am happy to provide the documents”.*
190. Councillor McAllister then sought copies from CEO John Giorgi of the all the advice provided to the Town regarding the use of Regulation 9 as an authorising power.
191. On 28 June 2018, CEO John Giorgi sought to obtain those documents from administration staff. CEO John Giorgi was advised *“I will ask (staff member) to see what records are held by the Town, however I believe the Mayor will hold the majority of documents sought by Councillor McAllister”* and then *“I have searched the ECM system and could not find any documentation to or from [lawyers] relating to the seeking of advice for Regulation 9”.*
192. The Town’s policy regarding legal opinions states legal advice given to the council which was requested by decision of council be recorded in the council's document management system and delivered to the Mayor and Councillors as soon as practicable, and that all elected members may inspect and/or obtain a copy of the legal advice, except in exceptional circumstances when it is considered by the Chief Executive Officer that the information is private and confidential.
193. Section 5.92 of the Act states a council 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.

194. The Authorised Persons accept that the matters above are confidential from the public and are private to the persons concerned, but in order for council to make fully informed decisions on matters before them, all elected members are entitled to the legal advice that pertains to those decision.
195. That legal advice would also extend to the briefings given or questions asked of the lawyers providing the advice, as the context of the advice is dependent on the questions asked and information provided.
196. Mayor Shannon's email responses to Councillor McAllister indicates a misguided opinion that the authorisation by council to obtain legal advice on their behalf entitles her to withhold information from the other elected members that she decides is confidential or 'not required'.

Finding 16: The Mayor failed to comply with the Town's Legal Opinions policy by withholding legal advice and associated correspondence from council members entitled to access the information.

5.6 Financial transparency

197. During the inquiry, questions were asked by the Town's residents or ratepayers about the transparency of certain financial transactions, including the repurchase of Lot 501 Omaroo Terrace, City Beach and the amount of money paid to law firms throughout 2018/2019.

Lot 501 Omaroo Terrace

198. Lot 501 Omaroo Terrace (**Lot 501**) was created in 2016 through the subdivision of land owned by the Town called the Ocean Mia subdivision. The lot was identified as a multiple dwelling lot in the Ocean Mia Design Guidelines. The guidelines stated Lot 501 was created for medium-density dwellings and must accommodate a minimum of 15 dwellings (no maximum provided). The guidelines further provided provisions for the building footprint in relation to the building zone.
199. On 7 March 2014, the Town sold Lot 501 to Bigdeal Investments Pty Ltd (**Bigdeal**). The contract which settled on 26 March 2014, included provisions that a development application would be submitted to the Town for approval within 150 days and that, if for whatever reason the buyer has not obtained approval for its development application within nine months of the settlement date, the buyer would be in breach of contract. The consequence of a breach, if not remedied, was that the Town was entitled to re-purchase the land.
200. On 18 March 2016, Bigdeal lodged a development application two years after the settlement date and approximately 19 months after the required submission date. The proposed development application included multiple dwellings with 31 units comprising three single bedroom units and 28 two-bedroom units as well as other features.
201. Residents within the Ocean Mia development complained to the Town regarding the proposed application by Bigdeal to build 31 dwellings citing the building application breached the original guidelines. The complaints indicated that advertising for the sale of Lot 501 inconsistently represented the number of dwellings that could be

built on Lot 501, ranging from the minimum of 15 up to 37 creating confusion regarding the dwelling capacity of the land.

202. The development application was not approved by the Town and on application by Bigdeal, the Town's non-approval of the application was reviewed by the State Administrative Tribunal (SAT). On 13 September 2017 SAT found against Bigdeal, in that their development application was inconsistent with the Ocean Mia Development Guidelines among other factors.
203. Lengthy negotiations between the parties to resolve the dispute included two options, the repurchase of Lot 501 by the Town or for the Town to pay a compensation amount to Bigdeal to only build 25 dwellings on the land. The Town exercised its contractual right to re-purchase the land, and on 18 October 2018 the purchase of Lot 501 by the Town and all associated legal matters was completed.
204. The agreement to repurchase the property stipulated that the cost was to remain confidential.

Finding 17: The Town has complied with its obligations under the *Local Government (Financial Management) Regulations 1996* in relation to the re-purchase of Lot 501.

Expenditure on law firms

205. Authorised Persons are aware that ratepayers have asked questions of the Town in relation to financial transparency regarding the use of law firms. This can be seen throughout question time during meetings as detailed through meeting minutes.
206. To comply with the *Local Government (Financial Management) Regulations 1996*, the Town is required to provide sufficient information in their reports to identify transactions.
207. Between 1 November 2017 and 26 February 2019, the Town paid \$1,004,366.54 (inclusive of GST) to various law firms on a range of matters.
208. By comparison, between 1 March 2019 and 29 February 2020, the Town paid out \$447,476.91 (inclusive of GST) to various law firms.

Finding 18: The Town has complied with its obligations under the *Local Government (Financial Management) Regulations 1996* in relation to identifying transactions.

5.7 Recordkeeping requirements

209. All local governments must keep records relating to all activities in accordance with:
 - the *State Records Act 2000* (WA)
 - the local government record keeping plan
 - the local government's record keeping policy
 - associated procurement procedures.
210. Section 19 of the State Records Act provides that "[e]very government organisation must have a record keeping plan that has been approved by the [State Records] Commission". The Town is a "government organisation" for the purposes of the State Records Act.

211. Section 17 of the State Records Act provides that "a government organisation's record keeping plan must be complied with by – (a) the government organisation; and (b) every government organisation employee of the organisation".
212. Section 78(1) of the State Records Act provides that a "government organisation employee" who does not keep a government record in accordance with the record keeping plan of the organisation commits an offence.
213. A "government organisation employee" includes a person who, whether or not an employee, alone or with others governs, controls or manages a government organisation, and in this case would include the CEO and elected members.
214. The Town's current Recordkeeping Plan (**Recordkeeping Plan**) was submitted and approved by the State Records Commission in 2018 in accordance with section 23 of the State Records Act.
215. The Town's Recordkeeping Policy (**Recordkeeping Policy**) and Recordkeeping Plan applies to all government records, regardless of format, created or received by an employee or elected member.
216. Section 6.1 of the Recordkeeping Policy states "*The Chief Executive Officer (CEO) is to ensure an organisational system for the capture and management of records is maintained, which is compliant with legislative requirements and best practice standards.*"
217. Section 6.2 of the Recordkeeping Policy states "*Elected Members' Recordkeeping responsibilities shall be met through the creation and retention of records of meetings of Council; Committees of Council by Local Government; and other communications and transactions of Elected Members which constitute evidence affecting the accountability of the Council and the discharge of its business. The Town shall ensure appropriate practices are established to facilitate the ease of capture and management of Elected Members' records, up to and including the Council's decision-making processes.*"
218. Section 9 of the Recordkeeping Policy states: "*All records are corporate assets and as such, do not belong to individual employees. The Town recognises its records as a government-owned asset and will ensure they are managed accordingly. Ownership and proprietary interest of records, created or collected during the course of business (including those from outsourced bodies or contractors), is vested in the Town.*"
219. Section 10 of the Recordkeeping Policy states: "*The CEO or appropriate Director or Manager shall approve all disposal lists before records are destroyed or transferred to State Archives.*"
220. Information was provided to Authorised Persons that some Town records are held on personal USB drives that cannot be accessed by any of the Town's employees.
221. On 28 June 2018, CEO John Giorgi sought to obtain some documents from administration staff. CEO John Giorgi was advised "*I will ask (staff member) to see what records are held by the Town, however I believe the Mayor will hold the majority of documents sought by Councillor McAllister*" and then "*I have searched the ECM system and could not find any documentation to or from [law firm] relating to the seeking of advice...*".

- 222. Under direction, relevant person's was asked to provide copies of quotes for procuring services and on one particular occasion Authorised Persons were advised these documents could not be found on the Town's electronic content management system, and if they did exist, they would be on the Mayor or the CEO's USB drive.
- 223. During interview, CEO John Giorgi stated the documents requested above were in hard copy in his office, the IT system used at the Town was old and that it had not been reviewed or updated in a long time.
- 224. Staff interviewed stated the IT system was old and required updating.

Finding 19: The Town's current information technology system may not be suitable for complying with contemporary recordkeeping requirements.

6. Considerations relevant to the recommendations

6.1 Change of council and administration staff

- 225. Throughout the course of the inquiry, the Town has undergone significant personnel changes within both council and the administration.
- 226. On commencement of the inquiry in April 2018, council was as follows:
 - a. Mayor Keri Shannon (first elected 2015, re-elected 2019)
 - b. Rod Bradley (first elected 2003, term ends 2019) - Coast Ward
 - c. Ian Everett (first elected 2017, term ends 2021) – Coast Ward
 - d. Kate McKerracher (first elected 2017, term ends 2021) – Coast Ward
 - e. Andres Timmermanis (first elected 2015, term ends 2019) – Coast Ward
 - f. Louis Carr (first elected 2011, term ends 2019) – Wembley Ward
 - g. Jo McAllister (first elected 2017, term ends 2021) – Wembley Ward
 - h. James Nelson (first elected 2017, term ends 2021) – Wembley Ward
 - i. Jane Powell (first elected 2015, term ends 2019) – Wembley Ward
- 227. Councillor Jo McAllister resigned from her position in July 2019 and Mr Gary Mack was appointed to her term ending 16 October 2021.
- 228. Results of the election held 19 October 2019 were as follows:
 - a. Mayor Keri Shannon (first elected 2015, re-elected 2019)
 - b. Rod Bradley (first elected 2003, re-elected 2019) - Coast Ward
 - c. Andres Timmermanis (first elected 2015, re-elected 2019) – Coast Ward
 - d. Alaine Haddon-Casey (first elected 2019, term ends 2023) – Wembley Ward
 - e. Kate Barlow (first elected 2019, term ends 2023) – Wembley Ward
- 229. The following Councillor's terms were not due for election and remain on council:
 - a. Kate McKerracher (first elected 2017, term ends 2021) – Coast Ward
 - b. Ian Everett (first elected 2017, term ends 2021) – Coast Ward
 - c. James Nelson (first elected 2017, term ends 2021) – Wembley Ward

230. On commencement of the Inquiry in April 2018, senior administration staff was as follows:
- a. Mr Jason Buckley, CEO
 - b. Mr Chris Colyer, Director of Infrastructure
 - c. Ms Marlaine Lavery, Director of Planning and Development
 - d. Mr Jason Lyons, Director Corporate and Strategic
 - e. Mr Cam Robbins, Director Community Development
 - f. Mr Brett Jackson, Director of Projects
231. On 9 April 2018, CEO Mr Jason Buckley's employment was suspended and on 10 April 2018 Mr Jason Lyon was appointed the acting CEO.
232. On 8 June 2018, council appointed Mr John Giorgi as Acting Chief Executive Officer, and appointed him permanently to the role on 15 May 2019.
233. On 30 June 2018, Mr Brett Jackson resigned from his position at the Town.
234. On 27 July 2018, Mr Jason Lyon resigned from his position at the Town.
235. On 30 November 2018, Mr Chris Colyer resigned and Mr Michael Hayward was employed into the role on 21 January 2019.
236. On 12 February 2019, a new administrative organisational structure was adopted at a Special Council Meeting, abolishing the Director of Projects position and amalgamating or restructuring other roles.
237. On 10 June 2019, Mr Michael Hayward resigned from the Town and Mr Peter Maloney acted in the role of Director of Infrastructure and Works and until the employment of Mr Kelton Hincks on 4 February 2020.
238. In the council minutes for the 30 April 2019 council meeting, it was reported that from the time John Giorgi was appointed Acting CEO to the time of the meeting, 27 staff had voluntarily resigned, and nine administration staff had been made redundant.
239. During his voluntary record of interview, CEO John Giorgi said the turnover of staff at the Town of Cambridge was much more than he had experienced in his executive career to date.
240. On 8 July 2020, Councillor James Nelson resigned from his role as Councillor.

6.2 Actions taken by the Town

241. The Authorised Persons acknowledge the Town provided the department with updates on 1 August 2018, 11 December 2018, 10 April 2019 and 2 July 2019 advising of actions they have taken to improve governance processes. In summary, the Town reports they:
- a. undertook an organisational review and implemented a new organisational structure
 - b. introduced the new Meeting Procedures Local Law
 - c. developed an improved delegation register
 - d. completed all annual performance reviews and implemented procedures to ensure future reviews are completed in a timely manner

- e. adopted a new code of conduct
- f. engaged an independent consultant to provide training to elected members on delegations, disclosure of gifts, conflicts of interest, PID, and conduct matters
- g. updated and introduced new policies, including:
 - i. Council Policy No 1.1.5 Media Communication
 - ii. Council Policy 1.1.6 Elected Members Fees, Allowances and Expenses
 - iii. Council Policy No.1.1.13 Public Question Time
 - iv. Council Policy No 1.1.14 Elected Member Requests
 - v. Council Policy No 1.2.19 Designation of Senior Employees and Organisational Structure
- h. implemented a new agenda report layout designed to assist with better decision making by elected members
- i. undertook WALGA training on the following topics
 - i. Media
 - ii. Planning
 - iii. Meeting Procedures and Standing Orders
 - iv. Understanding Financial Reports

7. Recommendations

242. It is recommended that the Town:

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. provide a written undertaking that the Town will follow through with any recommendations of the Governance Review and report to the Director General on actions taken to implement any recommendations within three months of the review being completed

4. 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)
5. evaluate the current information technology system to ascertain its suitability for complying with contemporary recordkeeping requirements and, if not suitable, commence making required improvements within three months of this report being finalised. Provide a detailed report to the Director General on the actions taken.

8. Schedule of findings

Finding 01: The Town has not fulfilled its duty to provide safe and healthy work conditions for its employees.

Finding 02: The Town's employees' have been unable to properly perform their functions because of undue pressure and fear of consequences.

Finding 03: The CEO's comments could be construed as intimidating to any employees that provided or wanted to provide information to the Inquiry.

Finding 04: By authorising elected members to undertake administrative tasks, council has created a situation where employees are not able to properly perform their functions.

Finding 05: By authorising the Mayor to undertake administrative tasks, council has failed to ensure good governance processes with respect to procuring law firms and the appropriate allocation of the Town's finances.

Finding 06: By authorising Councillor Timmermanis to undertake administrative tasks related to employment of staff, council is interfering with the CEO's role to manage the day to day operations of the local government and the employment or dismissal of staff under section 5.41(g).

Finding 07: Council failed to obtain quotes prior to engaging the law firm to undertake work and has not applied any procurement processes.

Finding 08: The Mayor selected the law firm based on her prior knowledge and relationships rather than any procurement processes.

Finding 09: Council interfered in administrative matters by engaging law firms which is a function of the administration.

Finding 10: By not consistently following the Town's policy for Elected Member Requests and communicating directly with employees, the Mayor has impeded the CEO from effectively managing the day to day operations of the local government.

Finding 11: By emailing administration staff directly without including the CEO and requiring the employee to act, the Mayor has failed to comply with Regulation 10 of the *Local Government (Code of Conduct) Regulations 2007*.

Finding 12: Council's interference in employment matters of senior employees infringed upon the CEO's functions and responsibilities under section 5.41(g) of the Act.

Finding 13: The Authorised Persons' perception of patronage by the CEO throughout the two recruitment processes is significantly high.

Finding 14: The Mayor failed to adhere to the principles as set out in Regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007*– General principles to guide the behaviour of council members, specifically (e) be open and accountable to the public.

Finding 15: Council failed to adhere to the principles as set out with Regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007*– General principles to guide the behaviour of council members, specifically (e) be open and accountable to the public.

Finding 16: The Mayor failed to comply with the Town's Legal Opinions policy by withholding legal advice and associated correspondence from council members entitled to access the information.

Finding 17: The Town has complied with its obligations under the *Local Government (Financial Management) Regulations 1996* in relation to the re-purchase of Lot 501.

Finding 18: The Town has complied with its obligations under the *Local Government (Financial Management) Regulations 1996* in relation to identifying transactions.

Finding 19: The Town's current information technology system may not be suitable for complying with contemporary recordkeeping requirements.

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

Perth office

Gordon Stephenson House
140 William Street
Perth WA 6000

Leederville office

246 Vincent Street
Leederville WA 6007

Postal address: GPO BOX 8349,
Perth Business Centre WA 6849

Email: info@dlgsc.wa.gov.au

Website: www.dlgsc.wa.gov.au