



Government of **Western Australia**
Department of **Local Government**

REPORT OF THE INQUIRY INTO THE CITY OF CANNING

Authorised Inquiry under Part 8 Division 1
Local Government Act 1995

November 2012



Report of the Inquiry into the City of Canning

Authorised Inquiry under Part 8 Division 1
Local Government Act 1995

November 2012

Prepared by:

Department of Local Government
Gordon Stephenson House
140 William Street
PERTH 6000

GPO Box R1250
PERTH WA 6844

Tel: (08) 6552 1500
Fax: (08) 6552 1555
Freecall: 1800 620 511 (Country Only)
Email: info@dlg.wa.gov.au
Web: www.dlg.wa.gov.au

Translating and Interpreting Service (TIS) - Tel: 13 14 50

© Crown Copyright 2012

No part of this Report of the Inquiry into the City of Canning may be reproduced in any manner without the prior written approval of the Director General, Department of Local Government.

Division 3 of the *Copyright Act 1968* (Commonwealth) recognises that limited further use of this material can occur for the purposes of 'fair dealing', for example, study, research or criticism, etc. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968*, please write to the postal address below.

This report and further information about the Department of Local Government can be found on the Department's website at www.dlg.wa.gov.au

TABLE OF CONTENTS

Executive Summary

Administration

Part 1: Allegations and Complaints

Relevant Terms of Reference	1:1
Chapter 1: Allegations & Complaints	1:2
Chapter 2: Investigation of the Mayor's Allegations	1:8
Chapter 3: Allegations and Complaints from CEO, Staff, Community and Others	1:52

Part 2: Complaints about Council decisions

Relevant Terms of Reference	2:1
Chapter 4: Questionable Decisions	2:2
Chapter 5: Nicholson Road/Bannister Road Project	2:5
Chapter 6: Centenary Avenue/Manning Road Project	2:19
Chapter 7: Willetton Child Care Centre	2:31
Chapter 8: The Willetton Sports Club	2:60
Chapter 9: Council's dealing with the Southern Metropolitan Regional Council	2:85
Chapter 10: Refuse Truck Purchase	2:113
Chapter 11: Council decisions related to Regulatory Services	2:120
Chapter 12: Legal Services Tender	2:125

Part 3: Council's Relationship and Management of the CEO, Mark Dacombe

Relevant Terms of Reference	3:1
Chapter 13: Council's relationship with the CEO	3:2
Chapter 14: CEO Performance Appraisals	3:24
Chapter 15: The CEO separates from the City	3:46

Part 4: Allegations of improper or undue influence

Relevant Terms of Reference	4:1
Chapter 16: Improper or Undue Influence	4:2
Chapter 17: Engineering Consultancy Services Tender	4:4
Chapter 18: 'Sevenoaks' Engineering Contract September 2011	4:22
Chapter 19: Recruitment, Executive Engineering and Technical Services, November 2011	4:27
Chapter 20: Recruitment, Executive Engineering and Technical Services, second attempt April 2012	4:52
Chapter 21: Conclusion	4:67

Part 5: Governance – Adequacy of the City's procedures

Relevant Terms of Reference	5:1
Chapter 22: Governance	5:2
Chapter 23: Public Question Time	5:4
Chapter 24: Additional issues with questions raised at Council meetings	5:24
Chapter 25: Minutes and Agendas	5:30
Chapter 26: Standing Orders – access to information	5:33
Chapter 27: 'Secret Votes'	5:35
Chapter 28: Council interference in tender evaluation	5:39
Chapter 29: Governance, Summary and Findings	5:43

Part 6: Overall conclusions

Relevant Terms of Reference	6:1
Chapter 30: Conclusion and Recommendations	6:2

Annexures

Annexure I:	Transcript, ordinary Council meeting 22 May 2012, deliberation on Executive Engineering and Technical Services recruitment
Annexure II:	Exhibit list

EXECUTIVE SUMMARY

PART 1: ALLEGATIONS AND COMPLAINTS

Chapter 1: Allegations and Complaints – Mayor’s allegations

After receiving representations from the City of Canning’s Mayor Delle Donne and other sources, on 9 February 2012, the Minister for Local Government, Hon John Castrilli MLA, in accordance with section 8.3(3) of the *Local Government Act 1995* directed Ms Jennifer Mathews, Director General of the Department of Local Government to commence an Authorised Inquiry into the City of Canning. Consequently, on 23 February 2012, Ms Mathews authorised this Inquiry, pursuant to section 8.3(2) of the *Local Government Act 1995*, to inquire into and report on matters identified in the Inquiry’s Terms of Reference.

The representations made by the Mayor to the Minister expressed concerns about the operations and affairs of the City, the performance of the Chief Executive Officer (CEO), Mr Dacombe, the appointment of Executive staff, contracts for supply of goods and services and possible conflicts of interest. The Mayor also advised he had submitted complaints to the Corruption and Crime Commission (CCC) and anticipated more matters being brought to the attention of that investigative agency.

Chapter 2: Investigation of the Mayor’s Allegations

It became apparent during examination of the Mayor’s allegations that the matters he had referred to the CCC had been investigated and that the entities investigating had not identified any misconduct. It was therefore considered by this Inquiry that it was unnecessary and questionable that the Mayor had identified these same matters to support his allegations of misconduct at the City.

Other issues raised by the Mayor fell into a pattern of concerns about operational matters that generally related to some perceived or actual flaw in the City’s operational or

management practices. The operational problems identified in the Mayor's allegations were found to have been caused directly by Council's refusal to accept relevant information or advice from its administrative staff.

The Inquiry's investigation of the Mayor's allegations against the CEO revealed that these allegations had no reasonable basis.

It was considered highly significant that the Mayor first formally made allegations against Mr Dacombe around the time when the relationship between the Mayor and the CEO had broken down and disagreement had arisen between the CEO and the Mayor over the recruitment process for the Executive Engineering and Technical Services position. The Inquiry considered that the allegations were made to justify the suspension of the CEO.

Chapter 3: Allegations and Complaints from CEO, Staff, Community and Others.

Prior to the commencement of this Inquiry and during the investigation of the City, a number of other complaints were received from a broad range of individuals, groups and organisations. It became apparent that, contrary to the Mayor's view that the problems lay exclusively with the CEO and administrative staff, the majority of these complaints concerned the behaviour of elected members and the quality of Council decision making. It was considered significant by this Inquiry that the complainants included City officers, neighbouring local governments, a Regional Council and established community organisations. This showed there was diverse and wide reaching dissatisfaction with the City of Canning.

PART 2: COMPLAINTS ABOUT COUNCIL DECISIONS

Chapter 4: Questionable Decisions.

Elected members are well placed to weigh up the political and policy implications of matters before Council. This is due in no small part to the direct contact they have with their constituents, and the diverse backgrounds and experience each elected member can

bring to their role. In some circumstances this will result in decisions being made that are significantly different from the recommendations provided by the City's Officers. If there are appropriate grounds, and it is clearly in the interests of the local government, elected members may change or alter the Officer's recommendations.

However, elected members generally do not have the qualifications or expertise needed to make informed decisions on technical issues. For this reason, in order to act in the best interests of the local government and provide good government to the persons in the district, elected members must take into account the technical and/or professional advice that is provided to them by the City's employees when making decisions.

Council's manner of decision making came under criticism in relation to a number of matters that were seen as high profile issues at the time. Part 2 of this Report examines in detail the circumstances surrounding a number of Council decisions that appeared at odds with any expected reasonable and rational outcome.

Chapter 5: Nicholson Road/Bannister Road Project

As early as 2006, the City had been liaising with the City of Gosnells on a jointly funded \$2.2 Million project to carry out upgrade works to the intersection of Nicholson Road and Bannister Road in Canning Vale. This intersection is located in an area where the boundaries between the two local governments run through the middle of the project area. The City planned to use its own construction workforce for the project.

At the same time, the City of Gosnells was preparing to carry out its own project in close vicinity, to upgrade the intersection of Garden Street, Yale Road and Nicholson Road in Canning Vale. However, as it was still preparing its application for State Government funding, Gosnells had possibly two years before it could progress its project.

At 13 September 2011 Ordinary Council Meeting it was reported to Council that purchasing a new traffic signal array was a prerequisite before the broader project of redeveloping the

intersection could proceed. The Officer's report recommended Council accept the tender for the new traffic signals which would allow the project to proceed without delay. During debate Council became fixated on whether the City of Gosnells Yale Road/Garden Street project should be carried out at the same time as the City's project. As a result of this debate no decision on the tender was made, with the Council deciding to hold the matter over until discussions with Gosnells and Main Roads WA could be arranged. This was an unnecessary delay and resulted in the City of Gosnells writing to the City with its concerns.

On 22 November 2011, a meeting was held at the City of Gosnells with Mayor Delle Donne, and two senior engineers from the City attending. Advice was provided to Mayor Delle Donne by both the City of Gosnells' and the City of Canning's qualified staff, that to conduct the two projects at the same time would create immense traffic disruption. According to witnesses present at the meeting, Mayor Delle Donne indicated that he did not accept the advice from the City's engineers, and he remained of the belief that the two projects should be done at the same time.

Following this meeting in December 2011, City Officers again recommended the traffic signal tender be accepted to allow progress of the project. However, without consulting with or seeking Officer advice, Council resolved to suspend all work on the project until City Officers had completed a planning and design schedule. This decision required City Officers to duplicate work they had already done.

By February 2012 media articles appeared reporting concerns over Council's decisions and delays in commencing this project. Again, at 13 March 2012 Ordinary Council Meeting, City Officers recommended that Council accept the traffic signal tender to allow the project to proceed. Council amended this recommendation, again without consulting with or seeking Officer advice, with a decision that accepted the tender, but added a requirement that the City call for outside tenders to conduct the road construction works on the project. This decision required the City to call for outside tenders to conduct works that the City Officers had scheduled and budgeted to have the City's own construction workforce carry out.

This decision had a significant impact on the operations of the City. At this same meeting Council had been advised that the City's construction workforce would shortly not have enough work to keep the construction staff occupied. Despite Council being made aware of this issue, it passed a resolution to call external tenders for work that the internal workforce had been scheduled to perform. This decision exacerbated the problem with the lack of work for the City's internal workforce. This was a clear example of the consequences of Council interfering in operational matters.

Council's decision making in this matter demonstrated poor judgement and little understanding of the technicalities of the matter under consideration. Council displayed further poor judgement by rejecting the professional and technical advice that had been provided by qualified City Officers. It is clear Council would have benefited if it had consulted with City Officers before implementing significant changes that were inconsistent with Officer advice.

Chapter 6: Centenary Avenue/Manning Road Project

In 2010, an opportunity arose for the City to access a grant from the Federal Government's *Nation Building – Black Spot* fund for road improvement works along Centenary Avenue in Shelley. This project was to include works to the intersection of Manning Road and Centenary Avenue. A portion of the work on Manning Road was within the boundaries of the City of South Perth. After the initial survey and design stage, the City was successful in obtaining \$600,000 from the Black Spot funding program.

Whilst reports to Council indicated that a substantial part of the stage one works were to be in a part of the Centenary Avenue/Manning Road reserve that is within the boundaries of the City of South Perth, it was also identified that the majority of the work to be undertaken – in terms of the whole project – was to be within the City of Canning's boundary. However, even though the majority of the stage one works were in the City of South Perth's area, it was relevant from a cost perspective, that the \$600,000 Black Spot grant covered the expenditure of the whole project, particularly after the City revised the

scope of the design to ensure the project was achievable within the grant that had been provided.

Council rejected the project on the basis that it considered the majority of works were within the City of South Perth. Notwithstanding that the Council decided it would not carry out the project itself, Council inexplicably rejected a proposal by the City of South Perth to have the grant funds transferred so the City of South Perth could assume responsibility for the project. Irrationally, rather than allow South Perth to undertake the project, Council voted to return the \$600,000 Black Spot Grant to Government and not allow the project to proceed at all.

Chapter 7: Willetton Child Care Centre

The Willetton Child Care Centre (WCCC) was a not for profit community organisation run by volunteers. It has operated for over 25 years in the same premises that are leased from the City. When the original lease expired in 2007 a new lease was required from the City. Council commenced the process in 2010 to draft a new lease between it and the Department for Communities, for the benefit of the WCCC.

Council's deliberations on providing a new lease for the WCCC have been marked by continued delays and referrals to "Council Forum" meetings. In the face of repeated questions and requests from the WCCC for some clarity on what Council's intention was with the WCCC lease, Council offered no information that was of assistance to the WCCC, or the parents who used this facility. This generated considerable community uncertainty over the future of the centre.

Officer recommendations to resolve the issue were ignored with Council repeatedly deferring decision on the matter. A relatively simple lease issue that should have been resolved reasonably quickly extended to over 2 years of protracted deliberations. During this time Council's lack of information to the WCCC demonstrated that it failed to

recognise the significant interest the WCCC had in the outcome of any assessment of its lease. Council should have openly and honestly stated its position at the outset.

Chapter 8: Willetton Sports Club

The Willetton Sports Club (WSC) is a not for profit community organisation run by volunteers. It had been in existence for over 30 years with a history of some financial difficulties that the City had graciously assisted with in the past. In 2009-2010 the WSC again experienced financial difficulty. A newly elected Board of the WSC recognised that the WSC was in danger of closing through its inability to pay its debts. The Board demonstrated significant community spirit by their efforts to save the WSC from insolvency. It was clear to the Inquiry that the new Board consisted of highly experienced members who possessed the necessary financial and business expertise to implement a financial recovery of the WSC.

As part of the Board's financial recovery strategy they approached Council with a business plan requesting Council underwrite a loan that would allow the Board to conduct renovations and consolidate debts. The Board considered this was crucial if its attempt to save the WSC from insolvency was to be successful.

This approach was made in the form of a deputation to Council in September 2011, with the Board presenting a detailed business plan identifying how the Board proposed to return the WSC to profit. Despite the best efforts of the Board, Council declined to assist the WSC. The Inquiry recognises this was a choice open to Council, however, the Inquiry also noted that Council may not have given sufficient consideration to the comprehensive information presented by the newly elected WSC Board. The Council had appropriately identified that it required a full audit be conducted before it would consider underwriting any loan, but ignored the Board's advice that the state of the WSC financial records that the new Board had inherited, meant this would be difficult and require funds the WSC did not have. A motion moved by Cr Clarke to provide funds for the audit was not supported by a majority of councillors. Elected members were fully aware that the WSC had no

financial capacity to conduct the audit and without Council's agreement to underwrite the loan the WSC would fall into insolvency. That being the case the WSC would be forced to close for the first time in over thirty years.

Consistent with Council's dealings with the Willetton Child Care Centre, Council's dealings with representatives of the WSC were characterised by insensitivity.

The WSC was placed into insolvency on 30 October 2011 and closed its doors permanently.

Chapter 9: Council's Dealings With the Southern Metropolitan Regional Council (SMRC)

The City of Canning was a founding member of the Southern Metropolitan Regional Council (SMRC) in 1991. The City contributed \$15 million dollars as its share of a loan that the SMRC needed to fund the operations of the authority including the construction of the Regional Resource Recovery Centre (RRRC) facility.

The RRRC site has had a history of odour complaints dating back to 2004. Despite the intervention of the Department of Environment and Conservation (DEC), odours continued to emanate from the facility.

After the 2009 Council elections, Council decided that it wanted to withdraw from membership of the SMRC. The Inquiry found this decision to withdraw was made with unreasonable and unnecessary haste. Resident complaints about the facility were a matter for the Council to consider, but the City's decision to resign from the SMRC had significant impact on a number of areas, not the least of which was the operational effect on staff. However, the decision to withdraw did not resolve the issue of odour complaints about the RRRC for the affected residents. It is apparent to the Inquiry that a majority of elected members had taken the view that it was politically advantageous to divorce themselves from the problems associated with the SMRC/RRRC, rather than stay and work with SMRC/RRRC (and the other member Councils) to find a solution to reduce the effect of the odour emissions. Council's hasty decision to withdraw was made without Officer advice or

consultation and left the City's staff to deal with the many administrative and financial issues surrounding the withdrawal, along with having to identify alternative locations to dump the one thousand tonnes of waste previously processed through the RRRC on a weekly basis. These are implications Council should have explored before making its uninformed decision.

Chapter 10: Refuse Truck Purchase

Council commenced a process in September 2011 to purchase new refuse trucks at a cost of approximately \$1.3 Million. The Officer's report contained a technical assessment concluding with a recommendation supporting the purchase of a particular make and model of refuse truck.

Council instead adopted a resolution to reject the Officer's recommendation without giving proper consideration to the advice offered to them by the City's technical staff who had considerable expertise in this area. The uninformed motion moved by Cr Barry favoured a model refuse truck other than the one supported in the Officer's recommendation. The Inquiry questioned why elected members supported a motion of a fellow elected member who clearly had no expertise in matters of this nature. The result of Council's decision was a higher unit price for the trucks with service delivery affected.

Chapter 11: Council Decisions Related to Regulatory Services

The City commissioned a review of its Regulatory Services in 2011. This review determined there were an unusually high number of development applications dealt with by Council. This Inquiry determined the high number was caused by Council's reluctance to delegate authority to Officers to deal with low level applications. This lack of delegation is the result of a breakdown in trust and respect between the Council and the City's Administration. The Inquiry understands that the City is taking steps to improve the performance of this area.

Chapter 12: Legal Services Tender

The City had a three year Professional Services Contract which expired on 30 June 2010 with law firm McLeods. Although Council initially decided to go to tender to appoint a new legal services provider the deliberations over the appointment became protracted over a number of Council meetings with Officer recommendations being repeatedly changed or altered. This eventually resulted in the appointment of a panel of legal services providers and the introduction of a legal firm onto the panel which was not in the original recommendations for consideration.

The Inquiry found that prior to the Council decision introducing this particular legal firm onto the panel of legal services providers, Mayor Delle Donne and Cr Mason had been taken to lunch by representatives of this legal firm. This lunch meeting was not disclosed to Council by Mayor Delle Donne or Cr Mason. Moreover Mayor Delle Donne did not disclose that he had engaged this legal firm in a private debt recovery action.

As a client of this legal firm Mayor Delle Donne was, on the face of it, required to disclose the nature of his interest and, after disclosing the nature of his interest, was required not to participate in this part of the meeting (Section 5.67 The Act).

PART 3: COUNCIL'S RELATIONSHIP WITH THE CEO

Chapter 13: The Refocus Program

In July 2010 the CEO presented a plan to Council to introduce the Refocus Program. The Refocus Program was a high level change management mechanism that impacted on the operations of the City at every level. It was a long term program designed to improve the operations of the City and to address the many problems the City was facing. Significantly, it was a program that was created in cooperation with, and with the ongoing involvement of, Council.

However it was apparent that within a year elected members had begun to question the effectiveness of the Refocus Program and the performance of the organisation. It is clear from elected member comments that most elected members had little understanding of the strategic significance of the Refocus Program. Comments from Mr Dacombe support the view that most elected members struggled to operate at the strategic level their role required, preferring to focus their attention on low level operational issues. In fact, the Refocus Program had been partly designed to promote Council's strategic role and leave the day to day management to City Officers. The Council's attitude towards rejecting or overturning Officer recommendations is, in the Inquiry's view, evidence of an intent by Council to control and/or become involved in day to day administrative decisions. This made for a very difficult environment for the CEO, who had to manage the conflict between progressing a change management program designed to elevate Council to its leadership and strategic role, and dealing with well-established habits of some elected members who focused their attention on operational matters.

Council's dissatisfaction with the Refocus Program culminated in Council summarily cancelling, without warning, all activities and projects associated with it (aside from those already contracted or tendered) on 13 December 2011. This was significant considering the broad range of activities affected by the Refocus Program. Council's decision to cancel Refocus was done without any input from the CEO as to the risks to the City of cancelling this program.

Whilst on leave overseas the CEO learned of the notice of motion to cancel Refocus and emailed crucial advice to Mayor Delle Donne and Cr Mason, warning of the risks of summarily cancelling Refocus. This advice was not shared with the rest of the Council. The confusion that was created when staff attempted to implement the resolution that all activities associated with the Refocus Program were to cease, meant that the CEO and his Staff needed to continually seek further information from Council as to what aspects of the broad range of City activities affected by the Refocus Program the resolution applied to. The motion itself was unclear as to what activity was to stop and what was to continue.

This could have been avoided had the Council sought and given proper consideration to advice from its administrative staff.

Chapter 14: CEO Performance Appraisals

As a result of the performance review of the CEO conducted in 2011 the Council, obviously satisfied with the CEO's performance, decided to award the CEO a 5% pay rise, which was above the 3.5% recommended in the Officer's report.

Mayor Delle Donne conducted another performance appraisal of the CEO some 11 months later on 12 January 2012. It is clear from the manner in which the Mayor conducted the CEO's performance review on 12 January 2012, without advising Mr Dacombe or in fact involving Mr Dacombe in the appraisal process, that it was unplanned and conducted with haste. The Inquiry concluded that the review was conducted by the Mayor with no regard for fairness or accuracy and with the primary intention of arriving at a premeditated adverse outcome. The CEO rejected the performance appraisal itself and the manner in which it was conducted.

A week later, on 18 January 2012, aggrieved by the way the flawed performance review had been conducted, Mr Dacombe went to the Mayor and offered to surrender his position as CEO. He said the performance review was the 'trigger' for his decision to leave.

Chapter 15: The CEO Separates from the City

At the subsequent Ordinary Council Meeting of 23 January 2012, elected members accepted the CEO's resignation but were unaware of the reason why Mr Dacombe was leaving. It is clear that knowledge by all elected members of the manner of Mr Dacombe appraisal and of its impact on his decision to leave, would have been a factor of significance in Council's consideration of this matter. There is no doubt that the information Mayor Delle Donne and Cr Mason had in relation to the conduct of the performance review, was information that elected members were entitled to know. The

Inquiry concluded that the intent of Mayor Delle Donne and Cr Mason in withholding this information, was to mislead Council in order to ensure the CEO's resignation was accepted.

On 30 January 2012 Mayor Delle Donne suspended the CEO on full salary. The Inquiry has concluded that Mayor Delle Donne acted without reasonable grounds in suspending Mr Dacombe.

Mayor Delle Donne action in suspending the CEO occurred without the knowledge or authority of Council. The Inquiry found that the fact the CEO had been suspended was withheld from elected members who remained unaware until the Inquiry brought it to their attention.

Following the CEO's suspension Mayor Delle Donne proceeded to make a number of allegations about the CEO's conduct. The Inquiry considers that these allegations, similar to the flawed performance review, were made by the Mayor as a means to justify the removal of the CEO.

PART 4: ALLEGATIONS OF IMPROPER OR UNDUE INFLUENCE

Chapter 16: Improper or Undue Influence

Mayor Delle Donne has on a number of occasions disclosed an 'impartiality' interest relating to Mr Terry Blanchard. Mr Blanchard is the father-in-law of Mayor Delle Donne's daughter. When the Inquiry began to analyse Council decisions, a pattern was identified in which a small group of elected members were prominent in influencing Council deliberations on matters that involved, in some capacity, Mr Blanchard. Mr Blanchard is the sole operator of Blanchard Consulting Solutions.

Chapter 17: Engineering Consultancy Services Tender

In September 2010, the City advertised a tender for the provision of consultancy services to the City's engineering division. Mr Blanchard submitted a tender but was ruled out of contention because he did not meet the selection criteria required by the tender. This was reported to Council on 9 November 2010. However, instead of Council adopting the Officer's recommendation to appoint the preferred tenderer, a motion by Cr Barry inappropriately attempted to replace the preferred tenderer with Mr Blanchard. A subsequent 'foreshadowed' motion by Cr Mason proposed that the contract for engineering services be awarded to more than one consultant. In moving these motions Cr Barry and Cr Mason were seeking to have the Council reject the properly conducted tender process by not accepting the preferred tenderer. Council's eventual decision was to replace the Officer recommendation with a direction to the CEO to conduct a review of the City's engineering consultancy services and report back to Council. With this tender to award all the City's engineering services to one consultant being thrown out, the way was left open for Mr Blanchard to later tender for an engineering contract with the City that would not have been available had this tender been awarded.

The outcome of the CEO's review was reported to Council on 14 December 2010 with the same recommendation to appoint the preferred tenderer. Cr Mason moved that the Officer's recommendation be rejected in favour of a proposal to form a panel of engineering consultants, with Blanchard Consulting Solutions at the top of the list. Council adopted this motion. This created problems for the City's staff as they grappled with the legality of implementing a Council decision that had rejected the outcome of a properly conducted and independent tender assessment process.

Chapter 18: 'Sevenoaks' Engineering Contract, September 2011

In September 2011 the City issued a brief for consultants to quote for conducting a design review of the Sevenoaks project. Five quotes were received, with Blanchard Consulting Solutions being the lowest. The City's staff were aware of his relationship with the Mayor

and were openly uneasy over the relationship. Ultimately, the City awarded the Sevenoaks review project to Mr Blanchard based on price.

Chapter 19-21: Recruitment, Executive Engineering and Technical Services

On 27 September 2011 Council, upon a motion moved by Cr Mason, directed the CEO to advertise the vacant position of Executive Engineering and Technical Services and to appoint Mayor Delle Donne and Deputy Mayor Mason to the selection panel. The CEO obtained advice from the Department of Local Government that the motion appointing the Mayor and Deputy Mayor to the selection panel was contrary to the *Local Government Act 1995*.

The position was advertised, with a closing date for applications of 5 December 2011. Mr Blanchard was an applicant for the position.

Part 4 of this Report provides details of the actions of the Mayor's Group (that consisted of Mayor Delle Donne, Cr Mason, Cr Barry and Cr Olsen) in improperly influencing the decision of Council in relation to the recruitment for the Executive Engineering and Technical Services position. Motions and amendments originating from the Mayor's Group show there was a clear intention to prevent the appointment of the recommended candidates on two separate occasions. The Inquiry concluded that these actions were done - for motives that are not clear - to show favour to Mr Blanchard, who was an applicant.

PART 5: GOVERNANCE – ADEQUACY OF THE CITY'S PROCEDURES

Chapter 22: Governance

Corporate governance is important because it enhances organisational performance through the management and minimisation of risks. It also plays a significant role in ensuring that the organisation is meeting its legal and ethical obligations and assists in the prevention and detection of dishonest or unethical behaviour. In the local government

context, it increases the confidence of the community and the local government sector in the organisation.

Chapter 23: Public Question Time

The Local Government Act requires Council to convene Public Question Time at Council meetings, so that community members may ask questions of Council about issues that are important to them. As part of this process, the City's Standing Orders Local Law allows the Mayor to manage this process and provides the means to avoid offensive or inappropriate questions being directed at the City's employees or elected members.

Whilst Mayor Delle Donne has demonstrated an understanding of the need to maintain appropriate control over the nature of questions asked by members of the public during Public Question Time, in practice Mayor Delle Donne has not been consistent in his management of disallowing inappropriate questions. On occasions Mayor Delle Donne has allowed offensive and inappropriate questions and statements from one ratepayer to be made in the Council chamber, with defamatory comments contained in these questions subsequently being published in the City's minutes.

Chapter 24: Additional Issues with Questions Raised at Council Meetings

The other issue which arises out of questions raised generally (excluding Public Question Time) is the inordinate number of questions asked by sitting members.

It is evident that an inordinate amount of time is taken up during meetings with questions from some elected members such as Cr Barry, who saw it as his role to challenge and question the competence of the City's administrative staff by asking large numbers of questions about operational matters in the minutest detail.

Chapter 25: Minutes and Agendas

The City's Minutes in particular are of a poor quality. Debate between Council members is inconsistently recorded and sometimes not recorded at all. The Minutes themselves contain no detail of the Officers' reports relating to the Agenda items that were approved or refused, and no attachments or tabled documents are included in the Minutes or available for viewing on the City's website. The Inquiry considered that the City needs to develop and adopt a new format for its Council meeting Agendas and Minutes that reflects the requirements and expectations of contemporary local government.

Chapter 26: City's Standing Orders

The City's Standing Orders contain procedures which include provisions governing elected member access to information. The City's Standing Orders are problematic in that they contain provisions that do not sit comfortably with the *Local Government Act 1995* and the *Freedom of Information Act 1992*.

For example, Standing Order 2.38 allows a Council member to gain access to any document or file held on the City's file system. Access to information by elected members is regulated by section 5.92 and section 5.94 of the *Local Government Act 1995* which restricts elected member access to information to matters which relate directly to the elected member's functions and business that is to be discussed at a Council meeting. In addition, the provisions of the City's Standing Orders also inappropriately allow the Mayor to veto elected member access to Council information without any appeal or recourse.

Chapter 27: 'Secret Votes'

A 'secret vote' is one in which a ballot is taken in a manner that conceals the identity of the voter. City of Canning Standing Orders at 3.3.4 prohibits voting at Council meetings in secret.

At Council's Ordinary Meeting of 25 October 2011, there were two nominations to represent the Council on the *Local Emergency Management Committee - Canning and South Perth SES*, being Cr Clarke and Cr Barry. Cr Barry was appointed to that committee. The audio recording of the Council meeting reveals that Mayor Delle Donne conducted a secret ballot of Council's vote on this matter.

The manner of determining membership of the committees by secret vote is contrary to the City's Standing Orders Local Law.

Chapter 28: Council Interference in Tender Evaluation

A recent trend adopted by Council is the placement of the Mayor on tender evaluation panels.

The decision by Council to appoint the Mayor to jointly undertake initial shortlisting with the tender evaluation panel was made without any input or advice from the CEO or the City's Executive staff on the appropriateness of the decision.

The process adopted by the Council of involving the Mayor in the administrative functions of tender assessment and selection is inconsistent with the governance principles of the *Local Government Act 1995*. The appointment of the Mayor to fulfil this function is inappropriate and undermines the separation of powers principles that are designed to instil accountability and prevent Council interference in an administrative process of the City.

PART 6: PROVISION OF GOOD GOVERNANCE

The *Local Government Act 1995* defines the roles of Council, Mayor, Councillors and the CEO, with intentional and largely clear boundaries between management and governance responsibility. The principle behind this delineation is ensuring an efficient and clear decision-making process. As outlined by the then Minister for Local Government, Hon Paul

Omodei MLA, in his second reading speech for the Local Government Bill on 31 August 1995:

“There will be a clear specification of the roles of key players; that is, council, mayor or president, and councillors. This is designed to promote efficient administration at the local government level and to avoid conflicts caused by uncertainty. The lack of role clarity has led to some mayors/presidents and councillors becoming involved in administrative matters which should be handled by staff. The new Act will provide a clear distinction between the representative and policy making role of the elected councillors and the administrative and advisory role of the chief executive officer and other staff.”

(Second Reading Speech, Minister for Local Government, Local Government Bill, Hansard 31 August 1995, pp7547-7553)

Section 2.7(1)(a) of the Act as it was when it came into operation on 1 July 1996 read *“The council...directs and controls the local government’s affairs”*. Since the enactment of the *Local Government Amendment Act 2009*, the phrase *‘directs and controls’* in section 2.7(1)(a) of the Act has been replaced by the word *‘governs’*. On 8 September 2009, when the *Local Government Amendment Bill 2009* was being considered in detail in Parliament, the Hon John Castrilli MLA, Minister for Local Government, said in regard to the intent of that replacement:

“It really clarifies the position that elected members are there to govern at that higher strategic level, and directed control is really invested in the position of the chief executive officer, who handles the everyday, hands-on running of the organisation. That is the distinction we are trying to draw.”

(Response to Questions on Notice, Minister for Local Government, Local Government Amendment Bill 2009, Hansard 8 September 2009, p6517).

A significant further reason for defining the duties of Council and the Administration of a local government is to curtail inappropriate influence or corruption:

“...prior to the reforms of the 1990s, [local government] had to deal with a local government culture where councillors were involved in directing employees in the implementation of decisions. Legislation had played a role

in this by conferring powers on the mayor that would normally be exercised by a CEO as an appointed official. Prior to the reforms, there was no real distinction between policy making and implementation (Clark 2004:xv). This was explicitly addressed by recent legislation to provide a clear distinction between the policy/strategic functions of the elected council and the administration's responsibility to carry out the policy. Despite this legislative change, significant problems remain in how councils operate. The temptation to interfere in the operations of council administration for political (or even personal) advantage remains in the system (Daly 2003)."

(Warburton, J. & Baker, G. (2005). 'Integrity Systems and Local Government', Australian Journal of Public Administration, 64 (2):62-68)

The Inquiry considers these quotes identify the importance of Council understanding and practising the principles of the 'separation of powers' and highlights the serious implications for a Council that involves itself with administrative matters whilst ignoring its role to govern at the strategic level.

This Inquiry concluded that the Canning City Council was inappropriately involved in operational matters by directing employees through Council resolutions. Council ignored the clear distinction between its policy/strategic function and the separate operational level responsibility of the Administration.

The concerns the Inquiry received from a diverse range of interested parties who had dealings with the City demonstrate to some degree the extent of dissatisfaction a broad range of community groups and neighbouring local government authorities have with the manner in which Council operates. It is clear Council's relationships with:

- Willetton Child Care Centre,
- Willetton Sports Club,
- SMRC,
- City of South Perth,
- City of Gosnells and
- City of Melville,

could have been managed more professionally by Council. The Inquiry considers this could have been achieved had Council followed the advice and recommendations of its Administration.

The Mayor's Group

It became clear after the Inquiry examined elected member emails, particularly those sent during the CEO's performance appraisal (Part 3) conducted by the Mayor, that an association existed between a small group of elected members and the Mayor. Evidence showed the Mayor chose to consult with this small group and discuss with it Council business to the exclusion of other elected members.

The Mayor's Group consisted of Mayor Delle Donne, Cr Mason, Cr Barry and Cr Olsen. All the questionable resolutions that formed the basis for Part 2 of this report were derived from a motion or amendment moved by one of Cr Mason, Cr Barry, Cr Olsen and Mayor Delle Donne. Following scrutiny of a number of these motions and amendments, the Inquiry has concluded that the Mayor's Group had arrived at certain Council meetings with an agreed plan to influence the outcome of some matters on the City's Meeting Agenda. They maintained this predetermined position in opposition to expert and specialist Officer advice. Whilst meeting privately with fellow elected members for the purposes of lobbying can be an acceptable part of the political process, each elected member must be in a position to enter the Council chamber with an independent mind and be prepared to consider any item on its merits. The specific examples examined in this Report demonstrate that the adoption (in these cases) of the Mayor's Group's resolutions resulted in outcomes that were adverse to the City's interests.

Suspension of the CEO

In relation to the Inquiry's consideration of whether good governance has been provided, the single most concerning event at the City of Canning was the action of the Mayor in unilaterally suspending the CEO, Mr Dacombe, without the authority of, or informing,

Council. The Mayor's actions in unilaterally suspending the CEO establish the extent of the power he, as an individual, inappropriately wielded over the Administration. The fact the Mayor made an inappropriate decision of this magnitude and took unauthorised action to ensure it was carried out, demonstrates a significant breakdown in good governance at the City.

Also of significant relevance to the Inquiry's consideration of Council's delivery of an acceptable level of open and accountable governance was the influence of the Mayor's Group in matters having implications for the father-in-law of the Mayor's daughter. The Inquiry concluded there has been a serious breakdown in open and accountable governance when the Council:

- rejected the preferred candidate for the Engineering Services contract after a properly conducted tender selection process,
- on two separate occasions, rejected preferred candidates, who had been selected after two properly conducted recruitment processes, and
- appointed the Mayor and Cr Mason on selection panels for employee recruitment.

Council's actions in these matters demonstrate that in relation to these decisions, Council did not deliver open and accountable governance.

Breakdown in the Relationship Between Council and the Administration

The Inquiry also concluded that there was a serious breakdown in the professional relationship between Council and the Administration. The level of distrust some elected members had in the Administration adversely affected the delivery of good governance. In the Inquiry's view the damage has been caused by Council:

- Continually rejecting sound Officer advice.
- Making decisions on complex or technical operational matters without seeking Officer guidance.
- Repeatedly interfering in administrative matters.
- Unreasonably accusing the Administration of serious maladministration and the CEO of misconduct.

A professional relationship between Council and Administration is essential to the delivery of good governance. In acting in this manner Council has seriously eroded this relationship to the extent that the Inquiry considers the City can no longer function in a manner that delivers good governance.

RECOMMENDATION TO APPOINT PANEL OF INQUIRY

The Inquiry submits that it is demonstrated by the number of examples of poor decision making and the adverse influence of the Mayor's Group in Council decision making, that there has been a clear failure by Council to ensure the City of Canning performs its functions properly. It is further submitted by this Inquiry that this Report has identified that this failure has been both serious and continuous over an extended period of time.

The situation that exists now is that Council has seriously eroded its professional relationship with its Administration to the extent that the Inquiry considers that if the Council were to remain in office the potential exists for further major problems to develop.

It is recommended that the Minister for Local Government appoint an Inquiry Panel under section 8.16 *Local Government Act 1995* to inquire into, and report upon, particularly having regard to the contents of this Report, the ability of the City of Canning to provide for the good government of the persons in its district. An Inquiry Panel has power under section 8.22 to recommend that a Council be dismissed or that a Council that has been suspended be reinstated.

Because there is clear evidence of a serious failure by the Council over an extended period of time to ensure the City of Canning performs its functions properly, it is submitted by this Inquiry that it would be inappropriate for the Council to continue to act as the governing body of the City, pending the outcome of the Panel of Inquiry.

It is recommended that pending the outcome of the Inquiry Panel, the Minister suspend the Council under section 8.19(1) *Local Government Act 1995*.

RECOMMENDATION 1

That the Minister:

- appoint an Inquiry Panel pursuant to section 8.16 *Local Government Act 1995* to inquire into and report upon, particularly having regard to the contents of this Report , the ability of the City of Canning to provide for the good government of the persons in its district and,
- suspend the Council under the provisions of section 8.19(1) *Local Government Act 1995* pending the outcome of the Panel Inquiry.

PROBITY RECOMMENDATIONS

Mayor Delle Donne and Cr Mason were obviously aware of the fact they met with and received a benefit (albeit minor) from Civic Legal prior to their involvement in the decision upon Cr Barry's motion to introduce Civic Legal to the Legal Services Panel. In accepting a 'free lunch' Mayor Delle Donne and Cr Mason were obliged to reveal this benefit as soon as Civic Legal became the subject of Council deliberations. This lunch meeting was not disclosed at the Council meeting in which Civic Legal was discussed.

RECOMMENDATION 2

Mayor Delle Donne and Cr Mason's failure to disclose an 'interest' that could, or could reasonably be perceived to, adversely affect their impartiality (Reg 11 *Local Government (Rules of Conduct) Regulations 2007*) in relation to the making of a decision to introduce Civic Legal to the City's Legal Services Panel be referred to the City of Canning's Complaints Officer as a Minor Breach under section 5.107 *Local Government Act 1995*.

It is apparent from the contents of emails between Mayor Delle Donne and Civic Legal indicate some business relationship had commenced and continued at the time this matter came before Council. Mayor Delle Donne, as a closely associated person to Civic Legal, was on the face of it required to declare an interest and not vote on this issue.

RECOMMENDATION 3

Mayor Delle Donne's failure at the 13 December 2011 Ordinary Council Meeting to disclose a financial interest existing by virtue of his 'close association' (as defined by Regulation 20 (1) and (2) *Local Government Administration Regulations*) with Civic Legal, be considered for referral under section 5.114 *Local Government Act 1995* to the Department CEO as a Serious Breach.

RECOMMENDATION FOR PROCESS IMPROVEMENTS

During the course of this Inquiry it became evident that there were operational areas within the City of Canning that required improvement. However, the Inquiry concluded that if the City applied the appropriate resources and accepted advice and support from

outside agencies such as the Department of Local Government, the City had the ability and motivation to make significant changes. The devotion and commitment of staff was a significant factor that led the Inquiry to conclude process improvement was something that the City Administration was committed to.

RECOMMENDATION 4

The City undertakes a comprehensive internal review of its operations and processes, paying particularly attention to:

- the structure and content of its Minutes and Agendas,
- its practices in conducting Public Question Time,
- its approach to providing timely information to elected members,
- its Standing Orders Local Law to ensure legislative compliance, and
- the appropriateness of any operational policies relating to membership of employee selection panels (apart from CEO's selection panel) and tender evaluation panels.

The percentage of planning and development applications being considered by Council during the period September 2010 to February 2011 (6 months) far exceeded the commonly accepted benchmark presented by the Western Australian Local Government Association (WALGA) that less than 10% of development applications should be referred to Council.

RECOMMENDATION 5

Delegations to City Officers are reviewed to identify a means of reducing the number of low level regulatory services matters that come before Council.

ADMINISTRATION

Authorisation and Process

1. After receiving representations from the City of Canning's Mayor Delle Donne and other sources, on 9 February 2012, the Minister for Local Government, Hon John Castrilli MLA, in accordance with section 8.3(3) of the *Local Government Act 1995* directed Ms Jennifer Mathews, Director General of the Department of Local Government to commence an Authorised Inquiry into the City of Canning. Consequently on 23 February 2012 Ms Mathews authorised an Inquiry ("the Inquiry") into the City of Canning ("the City") pursuant to section 8.3(2) of the *Local Government Act 1995* ("the Act") to inquire into and report on matters concerning the City. The terms of reference were:
 - 1) *Implementation of Council resolutions by the City of Canning Chief Executive Officer, Mr Mark Dacombe;*
 - 2) *Council's relationship with, and management of, the City of Canning Chief Executive Officer, Mr Mark Dacombe;*
 - 3) *The appointment of Executive and other employees at the City of Canning from 23 February 2009 and the appropriateness of the processes used for those appointments;*
 - 4) *The conduct of Council members and employees of the City of Canning, including but not limited to:*
 - a) *tendering, purchasing and procurement, and contract management;*
 - b) *improper or undue influence; and*
 - c) *behaviour at Council meetings.*

5) *The adequacy of the City of Canning's procedures, including but not limited to:*

a) transparency of decision making, information provided to Council members, and recording of Council decisions; and

b) the conduct of Council meetings, including observance of relevant legislation and protocols.

6) *Whether the City of Canning has provided good government in respect of these matters, and;*

7) *Any other issue that is determined to be of relevance to the above.*

2. This report has been prepared to comply with section 8.13 of the Act and to report on the outcome of the Inquiry into the City.
3. The Inquiry is an administrative inquiry that follows a well-established precedent from prior authorised inquiries into local government where the requirements of natural justice and procedural fairness apply.
4. The role of an inquiry such as this is to seek out the truth in relation to issues that may be considered to have been affecting a Council's ability to provide good government. In order to achieve this, the Inquiry investigates its Terms of Reference independently of the parties involved and without bias toward the interest of one party over another.
5. Where adverse findings or comments attracting the requirement of procedural fairness are made against a person in this report, the Inquiry has given those persons an opportunity to respond to the adverse findings or comments in their proposed form.
6. Witnesses were formally directed by notice to provide documents, information or property relating to the terms of reference. Those notices were issued utilising the provisions of section 8.5(1) of the Act.

7. Evidence given to the Inquiry under section 8.5(1) cannot be used in any civil or criminal proceedings against the person who tendered the evidence other than proceedings under section 8(11) of the Act for knowingly giving false or misleading evidence to the Inquiry.
8. This Inquiry, as with others before it, has proceeded on the basis that the evidentiary standard for determining the veracity of facts is *proof on the balance of probabilities*. However the strength of the evidence required to establish a fact may vary according to the nature of what is to be proved. The approach to a court's findings described in the High Court of Australia case of *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 is based on the principle that a court in a civil action should not lightly find that a party has engaged in criminal conduct. As accusations of wrongdoing usually involve serious consequences for the defendant, justice demands that the accuser, whether in civil or criminal matters, or the fact finder, as in an Inquiry such as the present, carries the burden of proof to the requisite standard.
9. These principles were considered by Her Honour Branson J, in her separate reasons for judgment in the Full Federal Court case of *Qantas Airways Limited v Gama* [2008] FCAFC 69. Those views were generally agreed with by French J, as he then was, and Jacobson J in their joint reasons for judgment, at [110].
10. This Inquiry has not been established for the purpose of identifying any criminal or disciplinary conduct. Where information is identified that is suggestive of criminal or disciplinary conduct, the Inquiry may refer any matter discovered during its investigations to an authority of the State or Commonwealth that has the power or authority to investigate those matters.

Witness Interviews

11. Interviews were conducted with witnesses to allow persons to put forward their point of view or to raise matters that were considered to be of relevance to the terms of reference. Each witness interviewed under oath was provided with a copy of the audio recording of their interview.

Elected Member Interviews		
Name	Date(s) interviewed	Position
Joe Delle Donne	19 March 2012, 20 April 2012, 27 April 2012	Mayor
Bruce Mason	20 April 2012, 7 May 2012	Councillor
Graham Barry	26 April 2012, 9 May 2012	Councillor
Lindsay Elliott	24 April 2012	Councillor
Bev Olsen	27 April 2012	Councillor
Robert Morgan	17 April 2012	Councillor
Tim Dowsett	7 June 2012	Councillor
Stuart Clarke	1 May 2012	Councillor
Mary Daly	2 May 2012	Councillor
Stephen Boylen	26 April 2012	Councillor
Megan O'Donnell	24 April 2012	Councillor

City Employees		
Name	Date(s) interviewed	Position
Domenic Carbone	13 April 2012	Former CEO
Mark Dacombe	16 March, 16 April 2012	Former CEO
Andrew Sharpe	4 April 2012	Acting CEO
Fiona Armstrong	27 April 2012	Former Executive
Mike Mouritz	30 April 2012	Executive
Kevin Jefferies	4 May 2012	Former Executive
Paul Merlo	4 May 2012	Project Manager
Tania Trengove	3 May 2012	Manager HACC
Penny Wright	3 May 2012	Media Liaison Officer
Lee Gyomorei	13 April 2012	Former employee
Colin Leek	26 June 2012	Former employee
Troy Bozich	3 April 2012	Manager
Denise Polinelli	17 April 2012	Former employee
Suzanne Lockwood	27 March 2012	Former employee

Community Groups		
Name	Date(s) interviewed	Position
Lindsay Holland	30 March 2012	Manager, Willetton Child Care Centre
Ian Marshall	29 March 2012	Willetton Sports Club
Godfrey Lowe	11 April 2012	Willetton Sports Club (fmr)
John Tidman	22 March 2012	Willetton Sports Club
Alison Bunn	10 April 2012	Board Member, Willetton Sports Club

Other Witnesses		
Name	Date(s) interviewed	Position
Tim Youe	20 March 2012	Acting CEO SMRC
John Harding	7 June 2012	Ratepayer
Mike Nahan	11 April 2012	Member for Riverton
Mike Richardson	Via Written Submission	External Consultant
Helen Passmore	Via Written Submission	LO-GO Recruitment
Dr Mick Lekias	12 October 2012	Former Mayor City of Canning

Public Submissions

12. Whilst the Inquiry did not advertise for public submissions, the Inquiry did provide its contact email address, canninginquiry@dlg.wa.gov.au to any interested party who advised they wished to make submissions.
13. The Terms of Reference for the Inquiry were published in the *Canning Times* on 13 March 2012 and on the Department of Local Government's website on 7 March 2012, including the Inquiry's contact email address.
14. A number of submissions were received during the early part of the Inquiry and these are referred to in Part 1; Chapter 3 of this report.

Natural Justice

15. As part of the Inquiry's natural justice process, persons who it was considered may be affected by adverse comments and findings in the draft Inquiry report were invited to provide a written submission. As part of this process, relevant parts of the draft Inquiry report were provided on 17 September 2012 to these parties to allow them to comment within the submission period.

16. The following table identifies the submissions that were received during the natural justice process:

NATURAL JUSTICE SUBMISSIONS					
Name	Closing Date for Submission	Extension Requested	1 st Extension Closing Date	2 nd Extension Closing Date	Received
Joe Delle Donne	8 October 2012	YES	5 November 2012		YES
Bruce Mason	8 October 2012	YES	1 November 2012	5 November 2012	YES
Graham Barry	8 October 2012	YES	5 November 2012		YES
Bev Olsen	8 October 2012	YES	5 November 2012		YES
Lindsay Elliott	1 October 2012	YES	5 October 2012		YES
Robert Morgan	1 October 2012	NO			YES
Tim Dowsett	1 October 2012	YES	19 October 2012		NO SUBMISSION
Stuart Clarke	1 October 2012	NO			YES
Mary Daly	1 October 2012	YES	1 November 2012		YES
Stephen Boylen	1 October 2012	NO			NO SUBMISSION
Megan O'Donnell	1 October 2012	YES	5 November 2012		YES
John Wibberley	1 October 2012	NO			YES
Michelle Wheaton	1 October 2012	YES	5 October 2012		YES
Mark Dacombe	1 October 2012	NO			YES
City of Canning	28 Sept 2012	YES	2 October 2012		YES
Faye Morgan	5 November 2012	NO			9 October 2012 YES

17. All comments and submissions received by the Inquiry were examined and where it was considered necessary amendments were made to the draft report.

Process Following Completion of Authorised Person's Report

18. Under section 8.13 of the Act, the Authorised Person's Inquiry report is to be given to the Director General, who shall give a copy of the report to the Minister. Unless the Minister directs otherwise, the Director General is to give a copy of the report to the local government that is the subject of the Inquiry. However, the Director General may remove from the report anything that;

- (a) could prejudice any legal action arising from the Inquiry;*
- (b) could prejudice any Inquiry that the Minister may wish to institute under Part 8; Division 2 of the LG Act;*
- (c) could be considered defamatory; or*
- (d) the Director General considers ought, for any other reason, to be removed.*

19. After receiving the Inquiry report the local government is to give the Minister written advice setting out the things that it has done, or proposes to do, to give effect to the recommendations contained in the report within 35 days of receipt of the report.

Constitution of a Local Government

20. The role of the Council of a local government is set out in section 2.7 of the Act:

- (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.*

[Section 2.7 amended by No. 17 of 2009 s. 4.]

21. Section 2.7(1)(a) was amended by the *Local Government Amendment Act 2009*, so that the phrase '*directs and controls*' formerly in section 2.7(1)(a) of the Act was replaced by the present word '*governs*' to clarify the role of Council.

22. A local government is required to have a Mayor or President, as the case may be. The role of the Mayor or President is described as follows in section 2.8 of the Act:

“(1) The mayor or president —

(a) presides at meetings in accordance with this Act;

(b) provides leadership and guidance to the community in the district;

(c) carries out civic and ceremonial duties on behalf of the local government;

(d) speaks on behalf of the local government;

(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.”

23. The Mayor (or President) is usually considered by the community to be the 'face' and the voice of Council and is authorised by the Act to speak on behalf of the local government.

24. Section 2.9 of the Act outlines the role of the Deputy Mayor:

The deputy mayor or deputy president performs the functions of the mayor or president when authorised to do so under section 5.34.

25. The Deputy Mayor may act for the Mayor when the office of the Mayor is vacant, or if the Mayor is unavailable or unwilling to perform his or her function. It is important to note that the Deputy Mayor is not elected in the same manner as the Mayor and Councillors; the Deputy Mayor is a Councillor who takes on this specific role when the Mayor is absent or unavailable.

26. Section 2.10 defines the role of a Councillor:

A councillor —

- (a) represents the interests of electors, ratepayers and residents of the district;*
- (b) provides leadership and guidance to the community in the district;*
- (c) facilitates communication between the community and the council;*
- (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.*

27. Elected members constitute the Council. They are responsible for observing and implementing section 2.7 of the Act and ensuring the needs and concerns of their community are addressed.

28. An elected member will often make representations to the Administration of their respective local government on behalf of a constituent; it is consistent with their role as an elected member, especially when considering section 2.10(c) of the Act as outlined above. However an elected member may not give directions to the Administration of a local government. This can only be done by Council collectively, in the form of a Council decision or resolution.
29. By law, the local government must employ a Chief Executive Officer (“CEO”). Council itself is responsible for employing a CEO pursuant to section 5.36 of the Act; the CEO is the local government’s most senior employee. Apart from the exception provided by section 5.37 of the Act relating to Senior Employees, Council has no lawful ability to give directions to the CEO on matters concerning the local government’s employees.
30. Section 5.41 of the Act sets out the CEO’s function:

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;*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) cause council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the mayor or president on the local government’s affairs and the performance of the local government’s functions;*
- (f) speak on behalf of the local government if the mayor or president agrees;*
- (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);*

- (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.*

31. The exception mentioned in relation to Senior Employees (referred to as 'Executives' at the City of Canning) is set out by section 5.37(2) of the Act:

(2) The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the 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 its doing so.

32. By virtue of the above subsection, Council's involvement in the management of personnel (apart from the CEO) is limited to the acceptance or the rejection of the CEO's recommendation to employ or dismiss a senior employee.

The City of Canning

33. The City of Canning is a local government district located within the Perth metropolitan region and shares boundaries with the City of South Perth, the City of Gosnells, the City of Cockburn, the City of Melville, the Town of Victoria Park, the Shire of Kalamunda and the City of Belmont. It is situated roughly 10 kilometres south-east of the Perth GPO and is 64.8 square kilometres in area. According to the Australian Bureau of Statistics, at 31 March 2010 the City's population was estimated to be 88,433.

34. The City's administrative centre is located at 1317 Albany Highway, Cannington. The City is partitioned according to the Ward system and has 4 Wards, which are Nicholson, Bannister, Beeliar and Mason:

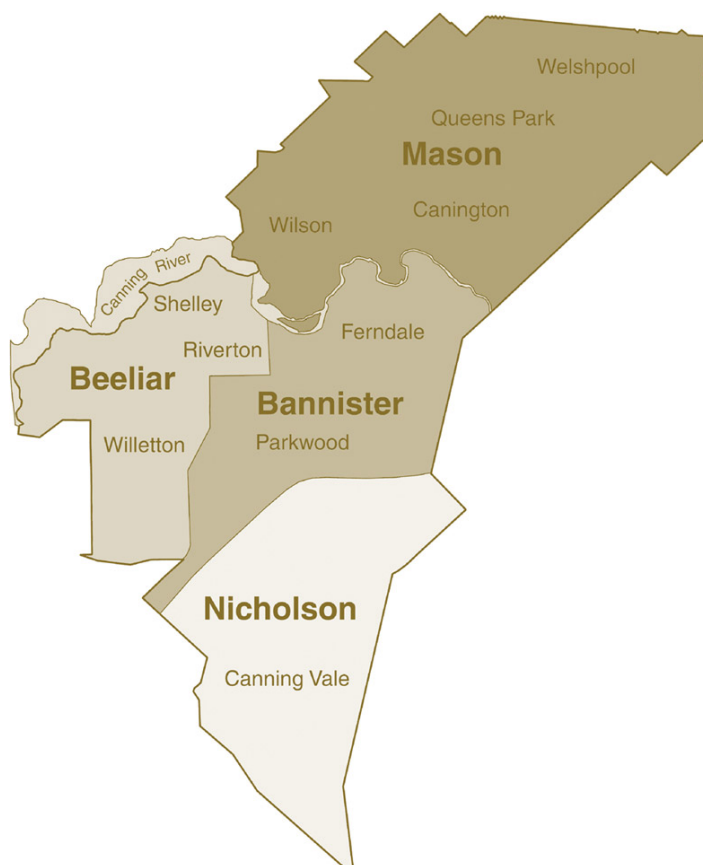


Figure 1: City of Canning Ward map. Source: City of Canning

35. With the exception of Nicholson Ward, which has one seat, each Ward is represented by 3 Council members, thereby distributing the representation of the elected Council. The Mayor is popularly elected by the voters. The current sitting Council members of the City are:

- Giuseppe (Joe) Delle Donne (Mayor)
- Bruce Mason (Deputy Mayor, Bannister)
- Mary Daly (Bannister)
- Tim Dowsett (Bannister)
- Stuart Clarke (Beeliar)
- Bev Olsen (Beeliar)
- Robert Morgan (Beeliar)
- Stephen Boylen (Mason)

- Lindsay Elliott (Mason)
 - Graham Barry (Mason)
 - Megan O'Donnell (Nicholson)
36. Former Councillor John Wibberley retired prior to the October 2009 local government election and did not contest his seat. Former Councillor Michelle Wheaton represented the Nicholson Ward until being defeated in the October 2011 local government election.
37. The City employs in excess of 650 administrative and operational staff including 4 Executive positions (Directors) and the Chief Executive Officer:
- Mr Andrew Sharpe, Acting Chief Executive Officer.
 - Vacant – Executive Client and Customer Services.
 - Dr Mike Mouritz, Executive City Futures.
 - Vacant – Executive Property Assets and Economic Development.
 - Vacant – Executive Engineering and Technical Services.
38. The position of Executive Engineering and Technical Services was previously occupied by Mr Charles Sullivan. Mr Kevin Jefferies was overseeing this directorate, but has now left the employment of the City and the position is now vacant. Mrs Fiona Armstrong was formerly the Executive Client and Customer Services. The City is taking steps to fill all vacancies.
39. Mr Andrew Sharpe is currently Acting Chief Executive Officer, because the position of Chief Executive Officer remains vacant following Mr Mark Dacombe's separation from the City on 30 January 2012.

PART 1

Allegations & Complaints

RELEVANT TERMS OF REFERENCE:

- “1) Implementation of Council resolutions by the City of Canning Chief Executive Officer, Mr Mark Dacombe;*
- 2) Council’s relationship with, and management of, the City of Canning Chief Executive Officer, Mr Mark Dacombe;*
- 3) The appointment of Executive and other employees at the City of Canning from 23 February 2009 and the appropriateness of the processes used for those appointments;*
- 4) The conduct of Council members and employees of the City of Canning, including but not limited to:*
 - a) tendering, purchasing and procurement, and contract management;*
 - b) improper or undue influence; and*
 - c) behaviour at Council meetings.*
- 5) The adequacy of the City of Canning’s procedures, including but not limited to:*
 - a) transparency of decision making, information provided to Council members, and recording of Council decisions; and*
 - b) the conduct of Council meetings, including observance of relevant legislation and protocols...”*

CHAPTER 1

Allegations & Complaints

MAYOR'S ALLEGATIONS TO SUPPORT CALLING OF AN INQUIRY

1. After receiving representations from the City of Canning's Mayor Delle Donne and other sources, on 9 February 2012, the Minister for Local Government, Hon John Castrilli MLA, in accordance with section 8.3(3) of the *Local Government Act 1995* directed Ms Jennifer Mathews, Director General of the Department of Local Government to commence an Authorised Inquiry into the City of Canning.
2. On 23 February 2012 Ms Mathews, authorised this Inquiry pursuant to section 8.3(2) of the *Local Government Act 1995*, to inquire into and report on matters identified in the Inquiry's Terms of Reference.
3. The representations made by Mayor Delle Donne to the Minister expressed concerns about the operations and affairs of the City of Canning. The Mayor had written to the Minister on 29 December 2011 and later met with him personally on the afternoon of 24 January 2012. The Mayor's concerns specifically related to the performance of the CEO, Mr Dacombe, and the appointment of senior staff, contracts for supply of goods and services and possible conflicts of interest. The Inquiry understands that the Mayor advised he had submitted complaints to the Corruption and Crime Commission (CCC) and anticipated more matters being

brought to the attention of that investigative agency. In his letter of 29 December 2011 (EXH 1), the Mayor stated:

“I am writing to you as Mayor of the City of Canning to bring to your attention concerns over what I and members of my Council believe is a breach of conduct by the Administration of our City, in particular the Chief Executive Officer Mr Mark Dacombe.

This notification is a result of the attached Confidential Memorandum [Memo from CEO dated 23 December 2011] supplied to me and Councillors in reply to questions received on notice from Cr Graham Barry for the Ordinary Council Meeting of 13 December 2011.

The matter relates to what Council believes is a serious breach of the City’s Code of Conduct (Feb 2008) under Clause 2 Disclosure and Conflict of Interest.

While there are concerns over the matters contained in [Question] 01 that may or may not have ramifications in the future, it is the revelations of relationships in the answers to [Questions] 02 and 03 that raise serious concerns.

Over recent months, I and my Council have become increasingly concerned over the conduct of the Executive team led by Mr Dacombe and have had cause to bring a number of issues to the attention of the CCC.

It is our feeling that the Council is being by-passed in the decision-making process in a manner that not only contravenes the City’s Code of Conduct and the Local Government Act, but in a manner that will have a major impact on the future of my Council and the residents and ratepayers of the City of Canning.

This letter is a personal appeal to you as Minister to grant me the opportunity of discussing this matter with you further.”

4. The Minister was also advised by the Mayor that the CEO, Mr Dacombe, had tendered his resignation at a Special Council Meeting held on 23 January 2012, and that this resignation was unanimously accepted by Council.

Clarifying the Mayor’s Allegations

5. On 19 March 2012 the Inquiry interviewed Mayor Delle Donne at the City of Canning premises, principally to obtain an understanding of the allegations he was making and the basis on which they were formed.

Corruption and Crime Commission referrals

6. The Mayor advised he had referred two operational matters to the CCC following a Council resolution. The matters related to a cheque from the City of Canning to electricity provider Synergy, to settle an overdue electricity account the Willetton Sports Club had not paid.
7. The second matter related to a project at the Lyndale Compensation Basin in Parkwood, in which a large amount of sand was excavated from the Lyndale Compensation Basin as part of an engineering project run by the City. The excavated sand was later found to have been dumped on privately owned residential land without the City's permission.
8. The Mayor advised during the interview that these were the only two matters referred to the CCC. The Mayor also advised he was not aware, at this time, of any other matters to be referred to the CCC.

CEO Performance Allegation

9. The Mayor stated there was a report of '59 pages' of Council resolutions that had not been implemented by the Administration. The Mayor referred to this as evidence of poor performance by the CEO.

Transparency of Recruitment of Executive Staff

10. The Mayor also stated that he had concerns about the transparency of the recruitment processes for the City's Executive employees, specifically, Dr Mike Mouritz, Ms Fiona Armstrong, and Mr Kevin Jefferies. The Mayor alleged that during the recruitment processes, information was not disclosed to Council, namely, that the CEO Mr Dacombe, had a '*close association*' with at least one or two of these Executives.

WITNESS: *"The issue – the issue with that as far as I – it come to my notice, is that at no stage through the process of recruitment and appointments – has been disclosures of close association that – that has come to light."*

AUTHORISED PERSON: *Disclosure of - - ?*

WITNESS: *Close association, between the – the current CEO and at least two of those Executives.*

AUTHORISED PERSON: *So are you questioning the process, or - -*

WITNESS: *No no, I'm questioning [indistinct] me and the Council, were questioning the – the withholding of information – at the time it was not revealed, to say that the CEO would have known those – appointees if you like."*

(Mayor Delle Donne interview: 19 March 2012 transcribed from 09:19)

AUTHORISED PERSON: *"Just to clarify that. You were concerned with the non-disclosure of relationships between the CEO and at least two of the candidates.*

WITNESS: *Yeah one.*

AUTHORISED PERSON: *At least one?*

WITNESS: *Yeah.*

AUTHORISED PERSON: *What did you think or believe was the relationship.*

WITNESS: *Well I didn't believe anything at the beginning to start with. This has come out following the - er some- probably 12 months later.*

AUTHORISED PERSON: *Okay.*

WITNESS: *Not at the time. At the time it was never revealed. But as the time went on the Council's – I discovered via a Council's, a councillor, asking questions on notice of the – it was any association with various employees.*

AUTHORISED PERSON: *And what did that reveal, what was the relationship?*

WITNESS: *It revealed that, for example the CEO had worked with Kevin Jefferies and also knew Dr Mike Mouritz, that's as far as I know from that document anyway that's where I got everything from I didn't get it from anywhere else.*

AUTHORISED PERSON: *And that obviously concerned you at the time or since then, that concerns you. And that's the basis for drawing our attention to that area?*

WITNESS: *That's right."*

(Mayor Delle Donne interview: 19 March 2012 transcribed from 13:06)

11. The Mayor advised that he had learned of these relationships some 12 months after the appointments through a Councillor [Cr Barry] asking questions on notice [at 13 December 2011 Council Meeting]. The Mayor considered that the answers provided by the CEO in his memo dated 23 December 2011, revealed that there was a relationship between the CEO and these Executives that should have been disclosed to Council. The Mayor stated at this interview that he was not making any allegations about the recruitment process of other employees.

Purchases and Tenders

12. The Mayor raised concerns about a particular amendment to the City's Purchasing Policy AF 301 that was not recorded in the Minutes of "14 December" Council meeting, and which was subsequently not attached to the Policy.

WITNESS: *"The amendment was something to the affect quotations to be dealt as a form of tendering if I remember correctly".*

AUTHORISED PERSON: *"Can you remember the rationale behind that?"*

WITNESS: *"Well the rationale I think was because from various other questions there it sort of ensued; you know a year or so before is that it seems that the purchasing order has been issued after the work has been done."*

AUTHORISED PERSON: *"Okay"*

WITNESS: *"So in other words, in other words under, under the policy is that he was to get a certain amount, I dunno, from \$1 to \$1500 you get a verbal quotation, three verbal quotations and then anything above that you get a written quotation and then up to a \$100,001 you get Tenders. And I think just - the process from what I can recall is that they wanted to make it sort of secure to the extent there would be no perception if you like the verbal quotation could be manipulated."*

(Mayor Delle Donne interview: 19 March 2012 transcribed from 16:13)

13. It is apparent from this exchange that the Mayor's allegation concerning purchases and tenders referred to a resolution to amend Policy AF 301 in relation "*to the affect quotations to be dealt as a form of tendering*" that was not recorded in the minutes nor attached to the relevant policy document AF 301.

Conflicts of Interest between Contractors and Suppliers

14. The Mayor considered that a number of conflicts of interest, either perceived or actual, existed in relation to some of the City's tenders and contracts.
15. The Mayor advised, by way of example, that he was aware of a situation in which a third party was asked to write the scope of works for a contract for which he was allowed to tender for. The Mayor stated that a person should not be given the task of writing the scope of works and then be allowed to tender for the same job, as it provides them with an unfair advantage.

CHAPTER 2

Investigation of the Mayor's Allegations

16. Two issues arose in 2011 that resulted in internal investigations being conducted by the City and referrals being made to the CCC and other oversight agencies. These matters were subsequently raised as matters of concern by Mayor Delle Donne with the Minister for Local Government at their meeting on 24 January 2012.
17. The first of those matters involved the payment of a Synergy electricity account related to the Willetton Sports Club, and the second was an incident involving excavation of sand from the Lyndale Compensation Basin and the dumping of the same sand on private property in Parkwood.

THE SYNERGY PAYMENT

18. The Synergy payment issue originated at Council's Ordinary Meeting held on 26 July 2011 (EXH 2) , Report CR-113-11 (EXH 3), when Cr Barry sought clarification of why the City had drawn a cheque payable to Synergy rather than referring the account to the Willetton Sports Club (WSC) for payment. The WSC had incurred the debt through electricity use at its leased premises.
19. Cr Barry subsequently moved an amendment to the Officer's recommendation that the City pay the Synergy account by including new parts (d) and (e). This amendment

carried by a majority vote. The amended motion was then adopted by a majority vote:

“(a) ...

(b) ...

(c)....

(d) That a comprehensive and detailed report be complied(sic) and presented to the City’s Auditor and the City’s Audit Committee for assessment and comment into the reasons for and why authorisation leading to the payment of Cheque 00213513 to the benefit of Synergy for the annual Lease payment to the Willetton Sports Club from the Youth Projects Service Department.

(e) That an interim report be compiled and presented to Council relating to (d) above as well as a summary of the broader Financial Position of the Willetton Sports Club and any possible implication or impact that it may have on the City.

For: Cr’s Elliott, Barry, Olsen, Wheaton and Boylen

Against: Cr’s Dowsett, Clarke and Morgan”

20. In accordance with parts (d) and (e) of the resolution, the matter was referred on 22 August 2011 to the City’s Auditors, Macri & Partners, for examination and investigation. To assist them with their audit, Macri & Partners were provided with all documents relating to the matter, including copies of invoices.
21. On 24 October 2011 Macri & Partners forwarded the results of their Audit Investigation in a report (EXH 4) addressed to Mayor Delle Donne, concluding:

“Due to WSC’s failure to pay the Synergy’s increasing amounts outstanding, we understand that there was a threat of Synergy disconnecting the electricity to the sporting complex...In these circumstances, the Executive Corporate Services made a decision to direct the lease payment due to WSC to the Synergy account in the name of the club...This was done to avoid the electricity being disconnected to the sporting complex which would have caused large disruption to a large number of local and neighbouring residents who use the facilities...The approval to do so came from the Executive Corporate Services which we understand is after discussing the matter with

the CEO and we sighted an email document to support this. On the basis of this directive, the City Accountant authorised and made the payment.”

22. The Inquiry confirmed that an email (dated 7 July 2011) containing the authorisation to make the payment, had been sent by the Executive Corporate Services, Mr Andrew Sharpe, to his subordinate (EXH 5).

23. In their Audit Report, dated 24 October 2011 (EXH 4), Macri & Partners stated that:

“In our opinion, the process conducted by the Executive Corporate services was administered fairly and impartially to all parties, and that the process has been managed at all times in manner that has sought to protect the interests of Council.”

24. The advice from Macri & Partners, along with a report and recommendation from the Executive Corporate Services was presented to Council at its Audit Committee meeting of 1 November 2011 (Report AC-013-11)(EXH 6). The report contained the following recommendation:

“That the report from the Auditor on Specific Cheque Payment as requested by Council be received”.

25. However it was clear that some elected members were not satisfied with the findings of the audit. Cr Mason moved an amendment, seconded by Cr Daly, that read:

“The Mayor be authorised to officially report this matter, including all documents to the Minister and Department of Local Government, Auditor General and the CCC for their consideration and further investigation to safeguard the Council and ratepayers”.

Cr Mason’s motion was adopted by a unanimous vote (EXH 7).

26. In their evidence to the Inquiry, the elected members appeared unsure if the issue had warranted that level of scrutiny. Responses from elected members on that question were:

"Same answers as before, I think there's two ways of managing this situation and I think it would have been a management situation rather than a very adversarial approach."

(Lindsay Elliott interview: 24 April 2012 transcribed from 2:20:13)

"There was Council resolution that I had to act on. It's – was Council's resolution that I report the matters to those authorities."

(Mayor Delle Donne interview: 20 April 2012 transcribed from 27:05)

"Only what's been in the paperwork, you know, coming through and that's about any particular cheques not just about the Willetton Sports Club."

(Megan O'Donnell interview: 24 April 2012 transcribed from 1:25:43)

"It was absolutely ridiculous."

(Robert Morgan interview: 14 April 2012 part 2 transcribed from 26:30)

"As I said, I – I haven't – haven't really been involved in this a lot I...look I hear what you're saying...I yeah look I don't know, I don't have a lot to comment on that."

(Bruce Mason interview: 20 April part 2 transcribed from 2:21:38)

"No".

(Stuart Clarke interview: 1 May 2012 transcribed from 1:23:10)

"I didn't think it was but there was clearly a view on Council that it – it was like an unresolved issue, and so I supported the motion to refer it to those bodies – I believed it had been – I mean, the thing is, it was there as an issue for some Councillors and it was going to continue to eat away at things and it – it was no cost solution to send it there, so I appreciate that it would not be something that an officer would want to see, but it seemed the way to bring it to an end."

(Stephen Boylen interview: 26 April part 2 transcribed from 50:45)

"I think so, I think that due to the questions that were being asked, it was only fair to the people involved that a full investigation was made so that the conclusion could be the best outcome."

(Bev Olsen interview: 27 April 2012 transcribed from 1:13:20)

"Yes I think it was. Most definitely."

(Graham Barry interview: 26 April 2012 part 2 transcribed from 59:29)

"I don't know, sorry I – I don't know."

(Mary Daly interview: 2 May 2012 transcribed from 14:23)

27. The recollections of some elected members do not reconcile with their actions on the night. For example, Cr Mason told the Inquiry that he *"...hadn't really been involved in this a lot"* but it was he who moved the motion to refer the matter for further investigation. Similarly, Cr Daly could not recall, but seconded Cr Mason's motion, and Cr Morgan, who stated that it was "ridiculous" to refer the matter, voted in favour of its referral.

FINDING 1

In relation to the 'Synergy payment issue' the Inquiry agrees with the conclusions arrived at by the City's auditors that *"the process...was administered fairly and impartially to all parties, and that the process has been managed at all times in manner that has sought to protect the interests of Council"* and agrees with the subsequent conclusions of the CCC review that *"There is no suggestion that an officer, or anyone else, received a private benefit, committed an offence, acted dishonestly or breached the trust placed in them"*.

ILLEGAL DUMPING OF SAND

28. The second of these issues arose on or about 21 February 2011, when it was brought to the attention of the City that a large quantity of sand had been dumped on a vacant block of residential land situated at 22 Nerida Way, Parkwood. This sand had been extracted from an area known as the Lyndale Compensating Basin by Downer EDI, which had been contracted by the City to do the work and to cart the sand to Centenary Park for reuse.

29. As a result of concerns raised by elected members, Hardy-Bowen Lawyers were engaged to conduct an investigation into this matter with the following terms of reference:

1. *To establish independently the chain of events that resulted in the dumping of spoil at 22 Nerida Way, Parkwood.*
2. *To consider and advise whether there is any evidence of illegal or corrupt conduct on the part of any employee of the City.*
3. *To consider and advise whether there is any evidence of illegal or corrupt conduct on the part of any contractor or employee of any contractor, to the City.*
4. *To consider and advise whether there has been any breach by the contractor of its contract with the city.*
5. *To make recommendations to the mayor and the Chief Executive Officer on any further action considered appropriate.*

30. Hardy Bowen prefaced their report (EXH 9) with the following comment:

“As a precursor to my recommendations, I note that no discussions have taken place with any representative of Downer to verify or amplify any of the matters contained in this interim report. Because of my view as to the truthfulness of the information provided to me and the assumptions to which I have referred above, I do not believe that it is necessary to do so in this instance.”

In the Mayor’s submission to the Inquiry (dated 6 November 2012) he advised his view was that the enquiry was deficient in that neither the owner of the property where the sand was dumped nor the driver of the private contractor were interviewed.

31. Mr Michael Hardy, a legal practitioner from Hardy Bowen, reported his findings to the CEO, Mr Dacombe, on 1 September 2011 (EXH 9):

“In summary, in my view the events which occurred provide no evidence of corrupt conduct on the part of any person. Rather, there were some systemic failures in relation to specification of contract details, a miscommunication in

relation to what was intended to occur in relation to the diversion of part of the fill and a lack of appreciation on the part of the each of the relevant officers of the City and the employee of the contractor as to the legality of providing that benefit to the owner of the vacant land, Mr Yap. These issues can be dealt with by a better educational process. I do not believe that any person involved in this exercise should be liable for any form of censure or other punishment."

32. Mr Hardy said on page 8 of his report (EXH 9):

"Whatever errors occurred arose from that mis-communication I do not believe that blame or liability should be attached to the contractor or any employee of the contractor in these circumstances."

33. On 1 November 2011 a confidential report (report AC-012-11) outlining the findings of the Hardy Bowen investigation was presented the City's Audit Committee with a recommendation that the report be received (EXH 7).

34. Despite the advice contained in the report, Cr Mason moved an amendment proposing an additional part to the motion that:

"The mayor be authorised to officially report this matter, including all documents to the Minister and Department of Local Government, Auditor General and the CCC for their consideration and further investigation to safeguard the Council and ratepayers."

The amendment was adopted and the motion was passed by unanimous vote.

THE OUTCOME OF THE REFERRAL TO THE CCC

35. In accordance with the decision made by Council on 1 November 2011 to refer both matters, Mayor Delle Donne wrote letters to the Minister for Local Government, the CCC, the WA Ombudsman, and the Department of Local Government on 12 December 2011 in which he formalised the allegations of misconduct related to the payment of the Synergy account, and the matter involving the sand dumping issue on the vacant land in Parkwood.

36. In referring these matters, the City relied on Section 28 of the *Corruption and Crime Commission Act 2003*, which requires the Council, through the principal officer of the notifying authority, to report any *suspected* misconduct or corruption committed by a City employee or elected member. In this case the letter to the CCC should have been in the name of the CEO rather than the Mayor. That aside, the matter was reported in accordance with the CCC Act.
37. In the letter of 8 February 2012 to Mayor Delle Donne the CCC advised the results of their investigations into the two issues the Mayor had raised on behalf of the Council (EXH 11).

The CCC letter firstly dealt with the alleged illegal dumping of sand and advised:

“On the information available it appears to the Commission that the matters you have raised, relating to the actions of City Officers, are essentially administrative in nature, and do not constitute misconduct...Michael Hardy discussed the matter with City officers involved and considered other documents. He concluded that the City officers were truthful about the events. He found no evidence of illegal or corrupt conduct by any party, although there was a misunderstanding between the contractor and the City officers about the timing, the amount, and the permissibility of the sand being placed on the block. Mr Hardy said that these issues can be dealt by a better educational process.”

38. The CCC had advised that it had accepted the conclusions reached by Hardy Bowen on the issue of alleged illegal sand dumping.
39. The CCC secondly dealt with the matter of the “Synergy cheque”:

“Having examined the documents you provided with your notification it seems to the Commission that, while the method of payment may have been unusual, the information available does not suggest that there has been misconduct by a City officer. There is no suggestion that an officer, or anyone else, received a private benefit, committed an offence, acted dishonestly or breached the trust placed in them.”

40. Similar to the first matter, the CCC review had accepted the findings of the audit investigation conducted by Macri & Partners.

41. At the 13 March 2012 Ordinary Meeting, Council considered a confidential report (report CR-034-12) outlining the findings the CCC had made in relation to their review of the two matters mentioned above (EXH 13). The Officer's recommendation read:

"That report CR-034-12 Audit Committee matters referred for review is received."

42. Following debate on the issue, Cr Mason moved for the inclusion of two new parts to the motion, those being:

"(b) The Mayor be authorised to clarify the information contained in the response from the CCC.

(c) This matter be referred to the Ministerial Inquiry."

The new motion was put and carried unanimously (EXH 12).

43. In endorsing (part b) of the above motion to seek clarification from the CCC as to how they arrived at their findings on both matters, it is obvious that elected members were still not satisfied that they had sufficient information to put these matters to rest.

44. To illustrate how Cr Barry felt about the findings made by the CCC in relation to the dumping of sand on the vacant land, the Inquiry provides comments provided by him when he was interviewed on 26 April 2012:

"I mean, Lyndale basin is another one, I'm surprised there that – I think that went to the – the CCC, and it come back and basically the CCC only agreed only with what the solicitor of the day said, it didn't even do an investigation. I'm still waiting to find out what the final cost of that was."

45. The Inquiry has established that despite part (b) of the above motion, the Acting CEO at the City has decided to await the findings of this Inquiry into these two matters before writing to the CCC seeking clarification of the rationale for their determination on these two matters. Confirmation of that decision can be found in a letter from the Acting Chief Executive Officer Mr Sharpe, dated 13 June 2012.
46. The Inquiry has recognised that City managers acted immediately when they became aware of the sand dumping matter by reviewing their Operating Procedures to ensure that this practice would not occur in the future. This was a prudent measure.
47. Similarly, having examined the information that is available in relation to Council's concerns about payment of the cheque to the Willetton Sports Club, the Inquiry saw no benefit in re-visiting the investigation that was conducted by Council's Auditor Macri & Partners and reviewed by the CCC. Mr Sharpe, who authorised the payment, did so in accordance with the delegated authority issued to him and it is noted that the payment of the outstanding Synergy account on behalf of the Willetton Sports Club was intended to be recouped by the City by retaining rent payments to the Willetton Sports Club for the next twelve months for the usage of the premises by the City's Youth Projects Services Department.
48. It should be noted that at the time of his meeting with the Minister for Local Government on 24 January 2012, Mayor Delle Donne was aware that both of these matters had already been the subject of independent investigations by legal firms and auditors engaged by the City, and that in the opinion of those firms it was concluded that there was no evidence of misconduct by City officers or any other person. Mayor Delle Donne should have informed the Minister of this at the meeting.
49. In addition, when Mayor Delle Donne was interviewed by the Inquiry on 19 March 2012 he was asked to substantiate the suspicions he had that caused him to

approach the Minister for Local Government calling for an inquiry into the administration of the City. Mayor Delle Donne did not mention at this point that he had received a response from the CCC concluding that it did not consider the matters involved misconduct of a public officer and that the CCC would be taking no action on his allegations.

FINDING 2

In relation to the 'illegal sand dumping issue' the Inquiry agrees with the conclusions arrived at by the Hardy Bowen investigation that there was *"no evidence[found] of illegal or corrupt conduct by any party"* and the conclusions of the CCC review that *" the actions of City Officers, are essentially administrative in nature, and do not constitute misconduct...there was a misunderstanding between the contractor and the City officers about the timing, the amount, and the permissibility of the sand being placed on the block...[and] that these issues can be dealt [with] by a better educational process"*.

INVESTIGATION OF ALLEGATION THAT THE CEO HAD A CONFLICT IN RECRUITMENT OF EXECUTIVE STAFF

50. The Inquiry examined the Mayor's allegation that information was withheld, namely that at least one or two of these Executives had a 'close association' with the CEO, Mr Dacombe, and that this association should have been disclosed to Council prior to their appointment.
51. Whilst not mentioned at this interview, the Mayor's letter to the Minister for Local Government advised:

"This notification is a result of the attached Confidential Memorandum [Memo from CEO dated 23 December 2011] supplied to me and Councillors in reply to questions received on notice from Cr Graham Barry for the Ordinary Council Meeting of 13 December 2011.(EXH 15)

The matter relates to what Council believes is a serious breach of the City's Code of Conduct (Feb 2008) under Clause 2 Disclosure and Conflict of Interest."

52. The City's Code of Conduct relevantly provides:

2.1 Conflict of Interest

(a) Council Members, Committee Members and staff will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.

And...

(d) Council Members, Committee Members and staff who exercise a recruitment or other discretionary function will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

53. The Inquiry had some difficulty defining the Mayor's concerns sufficiently to identify the actual complaint he was making. The explanation the Mayor provided at the Inquiry's interview identified that he believed the CEO had a close association in that "the CEO had worked with Kevin Jefferies and also knew Dr Mike Mouritz", and that this was not disclosed at the time the CEO reported to Council that they were to be appointed to senior officer positions.

54. The Mayor's allegation arose as a result of questions raised by Cr Barry at the Ordinary Council Meeting of 13 December 2011 (EXH 14):

"Question(2) Could you please provide details of whether any of the Executive Team, have previously worked with (been employed) or employed the services of any individual or Consultants in relation to the Speak Out series or any other place, if so, where and when and for what purpose."

55. The CEO (Mr Dacombe) responded to this question by providing a detailed confidential memo dated 23 December 2011 (EXH 15) to the Mayor and Councillors (the '23 December Memo') responding to this and other questions raised by Cr Barry:

“Answer (2) Executive City Futures: Mike Mouritz- Dr Mouritz undertook his PhD at the same time as Dr Sarkissian at Murdoch University in the early 1990’s, graduating in 1996. At the time both Dr Mouritz & Dr Sarkissian where(sic) employed on part time basis at Murdoch University. While Dr Mouritz was working at Kogarah Council (NSW) in 1997/98 the Council engaged Sarkissian & Ass to provide community engagement support to Kogarah Council. In 2009 Dr Mouritz reviewed books written by Dr Sarkissian on community engagement and provided endorsement of those books as they developed and described practices that demonstrate leading edge in this field. The CEO was made aware of Dr Mouritz’s prior association with Dr Sarkissian prior to the engagement.

Dr Mouritz is the only member of the Executive Team with any prior association with Dr Sarkissian.

Question (3)(a) Further to that, have any of the Executive Team, worked together, either collectively or as individuals at any previous place of employment...

Answer (3) (a) As most Council members are aware Kevin Jefferies was employed at Kapiti Coast District Council when I (Mark Dacombe) was CEO from June 2002 until January 2007. Mr Jefferies held the position of Manager (Executive equivalent) Consents & Compliance and Manager Development Projects during that period.

Dr Mike Mouritz visited Waitakere City Council twice in the late 1990’s when I (Mark Dacombe) was the CEO. He was the guest of Whaitakere City having been identified by senior elected members at an international conference in Istanbul as an expert in sustainable urban development. He facilitated workshops with members and staff on water sensitive urban design. At the relevant times Dr Mouritz was employed at Newcastle City Council and Kogarah City Council.

As Council is aware when Dr Mouritz was employed by HASSELL the City of Canning engaged HASSELL to provide consultancy services associated with the Queens Park Precinct project. Further, Dr Mouritz was part of the HASSELL team engaged by the Dept of Housing on the Brownlie Precinct project, where the City is involved in a MOU with the Dept of Housing.

No other members of the Executive have had any prior working associations with each other.

Question (3)(b) – and or, have they, at any previous place of employment utilised the services of any (sic) the Consultants engaged by the City in the past 18 months, with an explanation of What For and What Outcome?

Answer (3)(b) Time Well Spent – Director Mike Richardson- was, as advised to Council, engaged to undertake an organisational development programme. This programme was provided to approximately 300 staff at Kapiti Coast District Council while I was CEO, Mr Richardson has subsequently continued to be engaged from time to time by the Kapiti Coast District Council because of the quality of his work.

Professor Peter Newman was involved with the Whaitakere City Council during the 1990s as an urban sustainability expert (particularly transport) on an occasional basis...”

56. The 23 December memo went on to identify, in some detail, a number of links between other various members of staff, contractors and consultants, relating to their employment, consultancy or engagement with the same organisation. The common theme appeared to be that the relationships that were revealed all fell into the category of professional work related contacts or relationships.
57. The Mayor’s allegations however, specifically targeted the Executive team and in particular, those team members who were known to Mr Dacombe before they were employed. The Executive team consisted at that time of Ms Fiona Armstrong, (former Executive Client and Customer Services), Dr Mike Mouritz (Executive City Futures) and Mr Kevin Jefferies (Executive Property Assets and Economic development).
58. Mr Dacombe had of course identified in the 23 December memo that most elected members were aware that he had previously worked with Mr Kevin Jefferies. However, the Inquiry conducted interviews with the Executive team to examine the extent of Mr Dacombe’s relationship with Executives prior to their appointment.
59. Mr Kevin Jefferies responded:
- “I worked with Mark for probably five and a half years in a professional capacity, there’s never been – I would have to say I know Mark reasonably well, but it’s not as though we had a long standing friendship or visit each other, and, you know – I can – I can tell you we’ve had one meal over all that time - one meal together and that’s when my wife arrived here in Perth. So it’s always been a professional relationship, nothing more, nothing less.”*

(Kevin Jefferies interview: 4 May 2012 transcribed from 6:47)

60. Ms Fiona Armstrong was also questioned by the Inquiry as to whether she had a prior association with Mr Dacombe:

“No, because I didn’t know him. I didn’t meet him until my second interview.”

(Fiona Armstrong interview: 27 April 2012 transcribed from 5:59)

61. Dr Mike Mouritz’s answer to the same line of questioning was:

“The – I was actually doing some consulting work for the City and for the Department of Housing, and had some interaction with the City through those processes. And I was advised that a – particular time on that journey that there was a restructure – was going on, by Mark Dacombe at a – at a meeting, and a couple of weeks later – a few weeks later the ads were in the paper. I responded to the ads, and was successful. So, Mark was just indicating that the – there was a restructure going on – at the time, he didn’t – wasn’t actually out – what’s the right word – encouraging me to apply or anything, I – he just told me there was going to be a restructure going on, I was working for a consultancy firm Hassell at the time, I’d been with them for about two years, and I saw the opportunity because I’d had some interaction with the City and I knew of Mark’s reputation because I’d met him in the nineties when he was CEO in New Zealand. I actually visited Waitakere City Council.”

(Mike Mouritz interview: 30 April 2012 transcribed from 4:49)

62. The Inquiry pursued with the Mayor whether he had any information apart from the information that had been disclosed to Council in the 23 December memo. The Mayor advised he had no other information and had relied on this memo as the basis for his allegation.
63. The difficulty arising in understanding the Mayor’s concerns is that if the CEO was dealing with relatives, or if Mr Jefferies and Dr Mouritz were close friends, the need to deal with the conflict this created would arise during the recruitment process. Mr Dacombe would need to declare his relationship and probably (depending on the relationship) exclude himself (if he was involved) from the selection process. However, the Mayor advised that he had no concerns with the appointment process, just the failure to disclose to Council he had a ‘close association’ with Mr Jefferies and Dr Mouritz .

64. The use by the Mayor of the term “*closely associated*” is not dealt with in the City’s Code of Conduct. The Mayor could have been referring to section 5.70(2) and 5.62 *Local Government Act 1995*, which would bring into relevance 5.60 of the *Local Government Act 1995* “*When a person has an interest*”.

“5.70 (2) An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.”

“5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

- (a) the relevant person; or*
- (b) a person with whom the relevant person is closely associated, has —*
- (c) a direct or indirect financial interest in the matter; or*
- (d) a proximity interest in the matter.”*

“5.62. Closely associated persons

- (1) For the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if —*

- (a) the person is in partnership with the relevant person; or*
- (b) the person is an employer of the relevant person; or*
- (c) the person is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee; or*
- (ca) the person belongs to a class of persons that is prescribed; or*
- (d) the person is a body corporate —*
 - (i) of which the relevant person is a director, secretary or executive officer; or*
 - (ii) in which the relevant person holds shares having a total value exceeding —*
 - (I) the prescribed amount; or*
 - (II) the prescribed percentage of the total value of the issued share capital of the company,**whichever is less;*

or

- (e) *the person is the spouse, de facto partner or child of the relevant person and is living with the relevant person; or*
 - (ea) *the relevant person is a council member and the person —*
 - (i) *gave a notifiable gift to the relevant person in relation to the election at which the relevant person was last elected; or*
 - (ii) *has given a notifiable gift to the relevant person since the relevant person was last elected;**or*
 - (eb) *the relevant person is a council member and since the relevant person was last elected the person —*
 - (i) *gave to the relevant person a gift that section 5.82 requires the relevant person to disclose; or*
 - (ii) *made a contribution to travel undertaken by the relevant person that section 5.83 requires the relevant person to disclose;**or*
 - (f) *the person has a relationship specified in any of paragraphs (a) to (d) in respect of the relevant person's spouse or de facto partner if the spouse or de facto partner is living with the relevant person.*
- (2) *In subsection (1) —*
notifiable gift means a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election;
value, in relation to shares, means the value of the shares calculated in the prescribed manner or using the prescribed method."

65. Section 5.60 of the *Local Government Act 1995* defines when a person has an interest. In these circumstances an 'interest' would exist if Mr Dacombe or a *closely associated* person to Mr Dacombe, has a direct or indirect financial interest in a matter requiring a Council decision. Section 5.70(2) stipulates that an employee who has an interest in a matter must disclose this interest when giving advice or reporting on the matter. Section 5.62 of the Act defines a '*closely associated*' person.
66. Mr Dacombe's relationship with Mr Jefferies and Dr Mouritz is not considered by the Inquiry to be a close friendship and the provisions of sections 5.60, 5.70(2) and 5.62 of the *Local Government Act 1995* do not require Mr Dacombe to disclose a relationship as described in the CEO's memo (EXH 15). In fact there was no requirement for Mr Dacombe to disclose to Council that he had previously worked with both, when he advised Council the selection process had been completed.

67. The Inquiry found that there was no reasonable basis for the Mayor's assertion that Mr Dacombe needed to disclose to Council the professional relationships revealed in the 23 December memo. The Inquiry also found that it was not reasonable for Council to believe that this memo supported allegations against the CEO that he had committed a *"serious breach of the City's Code of Conduct (Feb 2008) under Clause 2 Disclosure and Conflict of Interest."*
68. The Inquiry considers it was obviously a serious step for the Mayor to write to the Minister for Local Government and make allegations of this nature. It is clear that little care was taken in ensuring a reasonable basis existed before these allegations were made.

FINDING 3

There was no reasonable basis for the Mayor's assertion that Mr Dacombe needed to disclose to Council the professional relationships revealed in the CEO's 23 December 2011 memo.

FINDING 4

The Inquiry makes no conclusion in relation to Council and its stated belief in the Mayor's letter of 29 December 2011, that a *"serious breach of the City's Code of Conduct (Feb 2008) under Clause 2 Disclosure and Conflict of Interest"* had been committed by the Administration and the Chief Executive Officer, Mr Mark Dacombe.

INVESTIGATION OF ALLEGATION CEO HAD NOT IMPLEMENTED A RESOLUTION RELATED TO PURCHASES AND TENDERS

69. The Mayor made an allegation that a Council decision to require the City to treat all quotes as tenders was not implemented. In addition the Mayor alleged that this 'amendment' was not recorded in the minutes and neither was the required amendment made to the City's purchasing policy (Policy AF 301).
70. During the Inquiry interview (19 March 2012) the Mayor referred to the relevant Council meeting being the "14 December". There was in fact a Council meeting on the 14 December 2010 in which Cr Mason tabled a motion to make changes to Policy AF 301. However these changes did not relate to treating all quotes as tenders and Cr Mason's motion was not passed by Council. Therefore the Inquiry has concluded the Mayor was referring to the meeting of 13 December 2011 when Policy AF 301 was amended by a motion from Cr Mason to include provisions for treating all quotes as tenders.
71. The Mayor advised that the Council decision and resultant amendment to Policy AF 301 was to address a perceived lack of effectiveness of the City's probity measures to ensure appropriate purchasing procedures.
72. The City's purchasing policy AF-301 relates to financial management and essentially details the monetary thresholds and the model policy for the City's employees to adhere to in obtaining quotations and calling tenders.

An abridged summary of its original form is shown in the table below:

Amount of purchase	Model Policy
Up to \$1500	Direct purchase. No quotation required
\$1501 to \$10,000	At least two verbal or written quotes.
\$10,001 to \$20,000	At least three verbal or written quotes
\$20,001 to \$50,000	At least three written quotes
\$50,001 to \$100,000	At least three written quotes with written evaluation
\$100,001 or above	Public Tender.

73. The Inquiry's examination of the resolution that *"All quotes to be treated like tenders"* - revealed that it originated from comments made by the Mayor at a Forum held on 1 November 2011.

74. A review of the audio recording of this Forum revealed the Mayor had the following concerns relating to the City's purchasing and procurement standards:

- The Mayor has a concern about getting quotes verbally.
- Wants a minimum of three (3) quotes.
- Quotes to be treated like a tender.
- Quotes to be submitted in a sealed envelope.
- Has concerns that quotes could be manipulated.

75. The Council decision requiring the City to treat all quotes as tenders requiring the amendment to Policy AF301, originated as part of a notice of motion submitted by Cr Olsen at Council's 22 November 2011 Ordinary Meeting (EXH 16). At page 23 of the Minutes, the Motion is recorded as being carried unanimously by Council:

"11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Cr Olsen

MOVED Cr Olsen, Seconded Cr Barry, that:

All Quotes to be treated like tenders and to be presented in a sealed document.

Cr Mason then suggested a further amendment, as follows:

MOVED Cr Mason, Seconded Cr Clarke,

(a) The Chief Executive Officer prepare a report to Council within one month on the current process and procedures of Council's acceptance of quotes.

(b) Report to discuss options in that all quotes are to be treated like tenders and to be presented in a sealed document, placed in the Quote Box and opened at a set time by an Authorised Officer.

Further to comment by Cr Mason, the Mayor put the amended Motion.

CARRIED UNANIMOUSLY

76. It is clear from the 22 November Minutes that the Council resolution *“All Quotes to be treated like tenders and to be presented in a sealed document”* was passed and is recorded in the Minutes of the Ordinary Council Meeting of 22 November 2011. The Mayor’s allegation that this decision did not appear in the Minutes is therefore unfounded.
77. It was also identified by the Inquiry that an identical motion was later passed at the Ordinary Council Meeting of 13 December 2011 (EXH 17):

“Cr Olsen

MOVED Cr Olsen, Seconded Cr Barry, that:

All Quotes to be treated like tenders and to be presented in a sealed document.

Cr Mason then suggested a further amendment, as follows:

MOVED Cr Mason, Seconded Cr Clarke,

(a) The Chief Executive Officer prepare a report to Council within one month on the current process and procedures of Council's acceptance of quotes.

(b) Report to discuss options in that all quotes are to be treated like tenders and to be presented in a sealed document, placed in the Quote Box and opened at a set time by an Authorised Officer.

Following further comment from Cr Mason, the Mayor then put the amendment to the Motion.

CARRIED UNANIMOUSLY”

78. Therefore, somewhat confusingly, the same resolution that *“All Quotes to be treated like tenders and to be presented in a sealed document”* appears in the Minutes of 13 December 2011 Ordinary Council Meeting.
79. The Inquiry’s examination of an email exchange between Cr Olsen on 20 December 2011 and the CEO (EXH 18) indicated this duplication was probably a result of Cr

Olsen pointing out that the original Minutes of the Council meeting of 22 November incorrectly recorded her Motion:

“At the Council Meeting of 13th Dec I stated I would not vote for the minutes of the previous meeting on 22nd November to be accepted unless corrections were made in regard to the two motions I had put to Council under point 11 in the beginning of the meeting. THIS HAS NOT BEEN CARRIED OUT.”

(Bev Olsen email to Mark Dacombe: 20 December 2011)

80. Cr Olsen’s email to the CEO went on to explain:

“On page 10 of the minutes of 13th December under point 7 should read- The above resolution to be confirmed subject to the following correction to the Minutes requested by Cllr Olsen of the Ordinary Council Meeting of 22 November 2011.

The following Motion I had put to Council at the 22 November Meeting in regard to all quotes to be treated like tenders and to be presented in a sealed document had not been corrected and WAS NOT EVEN INCLUDED IN THE ACCEPTED CHANGES TO BE MADE AS I PUT TO COUNCIL AT THE DECEMBER 13th MEETING.

THE FOLLOWING IS THE MOTION THAT WAS TO BE CORRECTED

Cr Olsen

"MOVED Cr Olsen, Seconded Cr Barry. that:

All Quotes to be treated like tenders and to be presented in a sealed document.

Cr Mason then suggested a further amendment. as follows:

MOVED Cr Mason. Seconded Cr Clarke,

(a) The Chief Executive Officer prepare a report to Council within one month on the current process and procedures of Council's acceptance of quotes.

(b) Report to discuss options in that all quotes are to be treated like tenders and to be presented in a sealed document, placed in the Quote Box and opened at a set time by an Authorised Officer.

Further to comment by Cr Mason, the Mayor put the amended Motion. - This should read –

The Mayor put the amendment to the Motion

CARRIED UNANIMOUSLY

For: The Mayor, Crs, Mason, Daly, Dowsett, Ciarke, Olsen, Morgan, Barry, Elliott, Boylen and O'Donnell

THE MOTION WAS SUPPOSED TO HAVE BEEN CORRECTED TO READ

Moved Cr Olsen. Seconded Cr Barry, that:

(a) All Quotes to be treated like tenders and to be presented in a sealed document.

(b) The Chief Executive Officer prepare a report to Council within one month on the Current process and procedures of Council's acceptance of quotes.

(c) Report to discuss options in that all quotes are to be treated like tenders and to be presented in a sealed document, placed in the Quote Box and opened at a set time by an Authorised Officer.

And then the voting recorded etc.

All these corrections were discussed at 13th December Meeting under point 7 - Confirmation of Minutes.

THEN THESE TWO MOTIONS WERE SUPPOSED TO BE CORRECTED IN OUTSTANDING BUSINESS TO REFLECT THE CORRECT FORMAT OF HOW THEY ARE IN OUTSTANDING BUSINESS , AS THEY HAD BEEN INCORRECTLY PRINTED INTO THE DECEMBER 13th AGENDA.

AS the resolution of the minutes of the 22 nd November has not been confirmed subject to the correction of the minutes I presume this will have to be brought back to Council at the next meeting.

I ALSO HAVE AN ISSUE IN REGARD TO THE MOTION THAT I PUT AN AMENDMENT TO AT COUNCIL ON THE 13th DECEMBER - Amendment to Notice of Motion - page 8 - Cllr Mason - December 13th 2011 THIS SHOULD READ

(b) In the meantime the CEO AND MAYOR immediately appoint or outsource an independent THE MAYOR WAS LEFT OUT!!! !!

I SUPPLIED THIS AMMENDMENT TO THE MOTION OF Cllr BRUCE MASON ON A USB AND I HAD A PRINTED COPY AND IT WAS STILL RECORDED WRONG IN THE MINUTES.

Please attend to the above issues

*Regards
Bev Olsen"*

81. The exchange between Cr Olsen and the CEO indicates that there was an issue with the way this resolution was recorded in the Minutes. The corrections identified in Cr Olsen's emails relate to the phrase *"All Quotes to be treated like tenders and to be presented in a sealed document"* to have been included as part (a) to the Motion, with the existing parts (a) and (b) becoming (b) and (c). Notwithstanding the Minutes do not record the correction sought by Cr Olsen, the resolution is recorded in the Minutes.
82. Following this resolution the City was required to amend Policy AF-301 to essentially remove the City's existing 'quote' procedures for purchases under \$20,000 and replace them with more complex tender processes that the City had previously only used for more significant amounts. The resolution also called for an Officer report to present options for replacing the existing quote procedures with procedures that required *"all quotes are to be treated like tenders and to be presented in a sealed document, placed in the Quote Box and opened at a set time by an Authorised Officer."*
83. Later in the Ordinary Council Meeting 13 December 2011, the CEO provided an information report on the City's procurement project (report CR-207-11), advising that Policy AF301 was shown in the Attachments with the heading reviewed in November 2011.
84. According to the Minutes of this meeting, questions followed from Cr Mason who then provided elected members with a new reworded copy of Policy AF301 'Payment of Accounts' with amendments he had prepared for Council consideration. It was then:

"MOVED Cr Mason, Seconded Cr Daly,

(a) That the report on CR-207-11 Information Report on City Procurement Project be received.

(b) Policy AF301 Payment of Accounts and AF 305 with amendments as presented by Cr Mason at the Council meeting of 13 December 2011 be adopted and included in the minutes of this meeting.

(c) A Council Forum to be held to provide Elected Members with further Information on the City's procurement projects.

Cr Mason provided further comment then the Mayor put the amended Motion.

CARRIED UNANIMOUSLY

85. Cr Mason's amendments to Policy AF301 included requiring a "detailed" written quotation instead of a "written quotation"; and

*"5.1 Quotations are required to be recorded in the City's standard quotation form. **All quotations are to be placed in the tender box and opened at the same time on the same date after the closure of the nominated quoting period.** Detailed written quotations are required to be issued by the supplier on their stationery."* [Emphasis Cr Mason's amendments].

86. The passing of this resolution lacked coordination with Council's earlier resolution and made Council's intentions unclear. The earlier resolution requires a report to be submitted on the options available for implementing the changes to the City's quote procedures. Council's subsequent resolution, that had now been adopted, contained amendments to Policy AF 301 that related to the earlier resolution. This is confusing.
87. As instructed by the resolution, the Minutes of 13 December 2011 meeting contains the full copy of Cr Mason's amended Policy AF 301. An examination of the 13 December 2011 Minutes does not disclose any Officer advice on the above resolutions.
88. As directed by the resolution of 22 November and 13 December 2011, the CEO presented a report to Council on the current process and procedures of Council's acceptance of quotes. The report was submitted to the 24 January 2012 Ordinary

Council Meeting and titled: *Guidance requested towards operation of Administrative Policy AF301 – Payment of Accounts* (report CR-007-12)(EXH 19). The lack of Council's consultation with Administrative staff on this matter and the problems this caused is indicated in this report. The report identified a number of difficulties in implementing this resolution.

"Currently, staff are without resource or an efficient means by which to meet this requirement of policy. It is therefore noted that compliance in relation to providing Council with an information briefing note as detailed in the policy will be implemented following the introduction of OLR project."*

(*OLR is a reference to the OnLine Requisition project.)

89. The report (CR-007-12) sought clarification from Council by recommending:

(b) "That Council provides confirmation of the dollar value threshold at which quotations are to be placed in the tender box in accordance with clause 5.1 of administrative policy AF301 Payment of Accounts is \$_____ (to be confirmed by Council)."

90. The report's recommendation seeking clarification was ignored after a motion from Cr Mason substituted the Officer recommendation with his recommendation:

"That a further report be presented to Council within one month outlining methodologies for Council to accept secure quotations via email. The report to include a process for applying the cost and charges received to the procurement system for future reference and tender evaluation."

This motion was carried unanimously.

91. Despite the concerns in the Officer's report about the impact on the City's operations, the Council, at its Ordinary Meeting on 28 February 2012 (report CR-024-12)(EXH 20) *Procurement Update*, resolved to maintain the implementation of the policy changes to its quote procedures by approving the engagement of more staff to deal with its impact:

“The Chief Executive Officer employ additional staff resource on a contract basis for 12 months to implement and support the preferred alternative.”

92. The Officer’s report identified that no consultation was undertaken with suppliers to address the impact on them. It also identified that:

“At present, whilst alternative methods to manage the tender like treatment of the City’s requests for quotations are identified and assessed, staff are without a defined and co-ordinated means to achieve compliance with section 5.1 of policy AF301.”

93. To place this in context, in the financial year 2010/2011 the City of Canning had 51,359 transactions across 5,176 individual suppliers. The City is expecting to receive some 7,148 quotation responses that will be required to abide by these new amended procedures.
94. To implement Council’s amendments to Policy AF 301, that quotes are opened all at the same time and date, the City would need to engage an external quote management system at a possible cost of approximately \$475,000. This is based on a current lodgement price of \$160 per purchase request lodged. In this case, Council displayed little understanding or willingness to consider the impact of their resolutions. The lack of consultation with the Administration directly contributed to the adverse consequences to the City’s operations.

SUMMARY AND FINDINGS

95. The allegations made by the Mayor that a Council decision to require the City to treat all quotes as tenders was not implemented, that this ‘*amendment*’ was not recorded in the minutes and that the required amendment was not made to the City’s purchasing policy (Policy AF 301) are unfounded.
96. Whilst Council has a legitimate and accepted role in setting the policy direction for the local government, it is expected that policy implementation will take place in

consultation with the Administration. This obviously becomes more pronounced when the policy change could have a major impact on the operations of the City. The risk involved in a Council setting policy in isolation from the advice of its Administration is demonstrated by the adverse impact and confusion shown in this case. There is little doubt this action by Council constituted poor decision making and poor governance.

FINDING 5

The Mayor's allegation that the CEO failed to implement a Council resolution to treat all quotes as tenders is unfounded. The Resolution of 22 November 2011, repeated on 13 December 2011, has been actioned and is in the process of being implemented.

FINDING 6

The Mayor's allegation that the CEO failed to record a Council resolution to treat all quotes as tenders in the Minutes is unfounded. The Resolution appears in the Minutes of 22 November 2011, and is repeated in the Minutes of 13 December 2011.

FINDING 7

The Mayor's allegation that amendments that were required to be made to Policy AF 301 were not made, is unfounded. The Minutes of 13 December 2011 and the City's website contain a full copy of Policy AF 301 including the amendments passed by Council on 13 December 2011.

FINDING 8

The Council decision to amend a City Policy in a manner that had a significant effect on the operations of the City, without first seeking Officer advice on the ramification of that decision, displayed poor governance by Council.

INVESTIGATION OF ALLEGED CONFLICTS OF INTEREST BETWEEN CONTRACTORS AND SUPPLIERS

97. The Mayor considered that a number of conflicts of interest existed, either perceived or actual, in relation to some of the City's tenders and contracts. By way of example the Mayor advised he was aware of a situation in which a third party was asked to write the scope of works for a contract they were allocated. The Mayor stated to the Inquiry that a person should not be allowed to write a scope of works for a particular project and then be allowed to tender for that same project, as it would give that person an unfair advantage.
98. To examine this matter further, the Mayor was asked at interview on 19 March 2012 for clarification and to provide details of his allegation. The Mayor was unable to identify any specific information about conflicts relating to any contract, supplier or contractor. He spoke in general terms without providing specific information to allow the Inquiry to pursue this allegation.
99. However, Mayor Delle Donne did raise concerns about how Council dealt with tenders in his letter to the Minister and he confirmed in his interview with the Inquiry how he became concerned with the deficiencies in the City's probity processes when he found out that an invoice submitted by RAUM International for work they conducted for the City, pre-dated the City's purchase order:

"Well this particular company or person – I dunno I would have to look at [indistinct] I have to rely on my memory no...is that – is that there was a commission to do the scope of works – as far as I can recall now, and then this person ended up with the actual – was given the job to do the review and the purchasing order is provided the day after that we received the tax invoice."

(Mayor Delle Donne interview: 19 March 2012 transcribed from 35:09)

100. The Mayor advised that this matter motivated Council's changes to policy AF-301.

101. The Inquiry's examination of documents relating to this matter confirmed the invoice was dated 12 September 2011 and the purchase order was dated 13 September 2011.

102. Discovery of this matter occurred at the Ordinary Council Meeting 25 October 2011 (EXH 21), when Cr Barry sought clarification on a number of cheques that included:

"Question 12 – Cheque 00217500 payable to Raum International Pty Ltd and requested further information on this payment for Environmental Services."

103. Prior to a formal response at the next scheduled ordinary council meeting due 8 November 2011, Cr Barry sent an email (28 October 2011) to the City requesting further detail (EXH 22):

"Apart from what you will provide as answer for the Questions on Notice in relation to the above subject, could you please secure and provide me with a hardcopy of the Raw data of the report requested and presented to City Futures by Raum International Pty Ltd in relation to Chq 00217500 of CR 173-11 p32 of the warrant Listings. Could you also provide an answer as to what precipitated this request and by whom and for what purpose."

104. The response to this question on notice was provided on 3 November 2011 to Cr Barry by memorandum from the Executive City Futures, Dr Mike Mouritz (EXH 23). Cr Barry asked subsequent questions about how the review came about and sought to view the quotes.

105. After interviewing Dr Mike Mouritz, the Inquiry determined that:

- RAUM provided a verbal quote to perform a review on an hourly rate as the length of time to do the work was undeterminable at that point.
- The quotation was accepted and approved.
- The review was performed in 20 hours @ \$120/hour.
- The Strategy Report was provided to the City with the invoice for work dated 12 September 2011 from the provider.

- The City, accepting the report and invoice, prepared the corresponding purchase order to accompany the invoice, dated 13 September 2011.

106. Dr Mouritz stated that a project based on cost calculated on length of time taken, such as this review, cannot be invoiced with any accuracy until its completion.

107. No dishonesty or conflict was identified by this Inquiry in either the processes of calling for the scope of works or payment for the work done. The Inquiry was informed by the City that process improvement has now been implemented to ensure that any future invoice will not be processed until a purchase order has been provided.

FINDING 9

The Mayor provided an example of a transaction with a City contractor that purportedly supported his allegation that a number of conflicts existed, either perceived or actual, in relation to some of the City's tenders and contracts. The Inquiry's examination of this transaction did not reveal any dishonesty or conflict of interest, in either the processes of calling for the scope of works, or the payment for this works. However, it is noted that process improvement has occurred in relation to procedures for payment approvals. Without further information the Inquiry was unable to pursue the allegation that a number of conflicts of interest existed, either perceived or actual, in relation to some of the City's tenders and contracts.

INVESTIGATION OF ALLEGED LACK OF CEO PERFORMANCE

Evidence provided by Mayor Delle Donne

108. On 24 January 2012 Mayor Delle Donne raised concerns with the Minister for Local Government about the performance of the City's Chief Executive Officer, Mr Dacombe.
109. Prior to the commencement of this Inquiry, representatives from the Department of Local Government visited Mayor Delle Donne at the City on 15 February 2012 to establish the exact nature of the allegations he was making against Mr Dacombe and obtain documentary evidence he had previously referred to in support of his allegations. At this time, he produced a handwritten note, dated 14 February 2012, which asserted that he and a majority of elected members had met with the CEO in the Council chamber on two occasions between November and December to discuss the CEO's performance (EXH 24). That document read:

"14/2/12

Note

I Joe Delle Donne, Mayor of the City of Canning recall that on two occasions between November and December 2011 that an informal meeting in the Council chamber [was] attended by a majority of Councillors. The subject of the CEO performance and members concerns about the operation/management of the City were raised with the CEO.

At this time I cannot recall the exact date".

The note was signed by Mayor Donne Delle. (Document A9 JDD 002 001).

110. On 20 April 2012 the Inquiry interviewed Mayor Delle Donne to discuss amongst other things, the details of the purported meetings identified in this handwritten note:

AUTHORISED PERSON: *"Now when you were interviewed by Mr Peyton, he asked you did – did you ever sit down formally with Mr Dacombe to – and tell him that you were assessing his performance as CEO and either that day or*

very shortly after you sent a – you gave him a handwritten note, and for the purpose of the tape it's A9 JDD 002 001, dated the fourteenth of February 2012. Mayor is that the handwritten note that you handed to Mr Peyton?"

WITNESS: *"Yeah, it would be, yeah it is."*

AUTHORISED PERSON: *"Alright, thank you. And what are you saying in that note, what are you claiming happened?"*

WITNESS: *"Oh this is – this is not related to the assessment, this is related to a [indistinct] forums that Mr Dacombe had with the Councillors, subsequent to this I found the date when those meetings were held but at the time I didn't have it and it's got nothing to do with the assessment".*

AUTHORISED PERSON: *"So the – the what I was reading from this was, that you were – you were using these time – dates as occasions when you and a majority of Councillors informally assessed the performance of the CEO, and that's not correct?"*

WITNESS: *"No, that's not correct as far as I am concerned that was purely to brief Council on the second refocus and other things"*

(Mayor Delle Donne interview: 20 April 2012, transcribed from 2:09:35)

111. From the answers given by Mayor Delle Donne on 20 April 2012 it is clear that the information in the hand written note was incorrect. There had been no formal performance appraisals of Mr Dacombe by Council as recalled by Mayor Delle Donne. Notwithstanding this, the Inquiry is aware of more complex issues involving the CEO's working relationship with the Mayor and Councillors, in relation to performance management. For this reason, the CEO performance issue is covered in more detail later in this Report (see Chapter 14: CEO performance appraisal).
112. Mayor Delle Donne had also identified specific concerns about the performance of the CEO by referring to a document said to consist of over fifty pages of Council decisions that had not been implemented. The Mayor was referring to the City's "Outstanding Business Report" as the basis of his allegation that the CEO had not implemented Council decisions.

The Outstanding Business Report

113. In all local government authorities it is important that resolutions passed by Council are implemented and actioned within a reasonable timeframe. To monitor the implementation of resolutions most Councils maintain some form of system to track the progression of the business that is associated with each resolution to the point where their implementation can be declared completed. The City has had such a system in place for many years.
114. Records held by the City show that at a meeting held on 13 February 1996, a motion was passed requiring that a report (the Outstanding Business Report) be presented to each Ordinary Meeting of Council, detailing any actions associated with a Council resolution that are awaiting implementation or completion.
115. At the Ordinary Meeting of Council held 26 October 2010, elected members were provided with a detailed update on the “outstanding business” that was awaiting action at that time. As a result of that advice, Council resolved that future reports on this subject would be styled to:
- (a) Ensure no resolutions are left off the agenda.
 - (b) Confirm that resolutions are being implemented.
 - (c) Provide a succinct report of outstanding business.
116. The Inquiry has also established that in late 2011 the (then) CEO, Mr Dacombe, decided to review the “tracking system” the City had been using with a view to moving to a more efficient electronic system that would include capability to search for a particular item. The introduction of that new system was due to be implemented in the first half of 2012.

Mayor's Allegation – Non Implementation of Council Resolutions

117. During the Inquiry's initial interview with the Mayor, he was asked to clarify his allegations, in particular the failure by the CEO to implement Council resolutions. He offered the following:

"Well it has been my view because – and probably find it might be the members as well, because over twelve months period, and when we look at the outstanding business that needs to be carried out, we have fifty nine pages of recommendation – of Council recommendations that hasn't been carried out."

(Mayor Delle Donne interview: 19 March 2012 transcribed from 29:30)

118. The Mayor made it clear that he considered the CEO bore the responsibility for the implementation of a large number of resolutions that had been passed by Council over a period of time, and supported this allegation with reference to the City's Outstanding Business Report.
119. Several elected members when interviewed by the Inquiry commented on the list of outstanding business items:
120. In his interview with the Inquiry Cr Barry provided his view of the basic accountability trail that exists with implementing Council decisions:

"Council makes the decisions and the resolutions and then the CEO – that's his job to make sure they're acted upon through the organisation, we can't go to the Executives and say, you know, 'why haven't you done that' because it's the CEO's job..."

"I suppose the – the point is – and outstanding business – you know, I'll bet – I'll bet London to a brick you hear this ad-nauseam, I think we've got something like fifty – between fifty and sixty pages of outstanding business, and a lot of those are resolutions of Council, now the fact of the matter is that in turn, the buck has to stop with somebody."

(Graham Barry interview: 26 April 2012 part 1 transcribed from 58:00)

121. When commenting on this issue, Cr Boylen linked the issue of outstanding business with the decision to cancel the Refocus Program. In that regard he said:

“And again it is one of those things where we would have benefited from a better discussion – about the areas of conflict and indeed if those five points that Mark Dacombe had raised in his letter had been subject to – to – to a better workshop environment. So, look I – I don’t think I got it right there, to some extent it’s a case of listening to the more experienced Councillors, and they’re – but as I say I think – think – really think, that the nub was, from my perspective was that Refocus getting, being caught-up in the outstanding projects, outstanding business, rather than keeping them separate”.

(Stephen Boylen interview: 26 April 2012 part 2 transcribed from 30:40)

122. Cr Mason when interviewed on this matter said:

“I would suggest that there were the Refocus Forums before that motion where I expressed my concern on the amount of outstanding business, the motions that hadn’t been acted on, those point – those matters that would completely disappear off the list of outstanding business, and I made it quite clear in the forums and the forums are, you know, an information session that – that I didn’t see that Refocus was working and it was my view that we should stop it.”

(Bruce Mason interview: 20 April 2012 part 2 transcribed from 1:1:30)

123. It was not disputed by either Mr Dacombe or other members of his Executive Team that a number of Council’s resolutions in the Outstanding Business Report could, or should, have been actioned with more expediency. However, they advised that most delays that had occurred were caused by resolutions necessarily having to be prioritised to match available resources.

Response from Mark Dacombe

124. When asked for his view on the claims that he had failed to implement or action a large number of Council resolutions, Mr Dacombe offering the following response:

“There – there is a good record of Council resolutions that are under action, and the Councillors view of those is as I understand it, there are a number there that weren’t progressing fast enough. Now its possible to say that what – what we initiated towards the end of last year was a complete – and there’s

a Council resolution asking for this but I had initiated it anyway – was a complete inventory or database of all resolutions passed back to the beginning of 2009. Now I don't think that that will show any significant gaps, but there's a bundle of work called outstanding business and if you go through that it's all recorded fortnightly. If you go through that you will find a reasonable record of what's going on there. Sorry I'm coming back because I'm not dodging your question, I think there are one or two things there that we could have progressed faster, but I would also say that – that across the board we were managing a very significant change program, and that with an organisation which is fairly well documented was lean to be – in some cases to the point of being overly lean, and working into some areas where we actually we didn't have the capacity on-board, so yes – yes there could be areas there where there could be some criticism, but I don't think that we can be criticised for, you know, wilfully not implementing Council's resolutions."

(Mark Dacombe interview: 16 March 2012 part 1 transcribed from 1:14:52)

125. From the comments provided by Mr Dacombe it is clear that there were factors which impacted on his ability to progress the implementation and progression of all Council resolutions to the standards expected by some elected members.
126. When questioned further on whether there were any specific causes for delays in completing the implementation of Council resolutions, Mr Dacombe raised, as one cause for delays, Council's decisions to defer appointment of senior personnel and other staff:

"The Council – the Council's decision on the budget to withhold resources pending – pending further hurdles etcetera, definitely impacted on my ability to deliver, and you – one example that springs to mind is that we – we had approved a well-developed – what we called customer service game-plan or something like that – and it was formally approved by the Council and it was reasonably specific, but it did rely on resources which they – which they put a hold on, and as far as I am aware are yet to release, so on the one hand they are saying your responses to customers, your responses to Councillor's enquiries and all of that sort of thing – too slow, erratic whatever, on the other hand they withheld the resources to put in place the plan that they approved. So that's the long answer to say – say yes, some of those decisions definitely impacted."

(Mark Dacombe interview: 16 March 2012 part 1 transcribed from 1:17:30)

Executive City Futures

127. Another senior employee of the City well placed to comment on the number of unimplemented Council decisions in the City's Outstanding Business Report was the Executive City Futures, Dr Mike Mouritz.

128. Dr Mike Mouritz was interviewed in relation to this, and other matters:

AUTHORISED PERSON: *"Mike, during the inquiry we've had a number of elected members suggest that one of the reasons they were losing faith in the administration was there is fifty plus pages of unfinished business. In your view – or have you heard that firstly?"*

WITNESS: *"Yes, yes."*

AUTHORISED PERSON: *"Could it be that the Councillors were confusing the fifty one pages of unfinished business, whatever it is, with Refocus or are those things all meshed in together?"*

WITNESS: *"I don't know if I can answer your question because - -"*

AUTHORISED PERSON: *"- - no it is a difficult question I know - -"*

WITNESS: *"In my view there're very different things, I mean there's a range of outstanding business that – some of which have got – well, there's a range of things on the outstanding business that have been asked to be put back on the outstanding business even if they have been dealt with that's one matter, and then there is a range of outstanding business that haven't been completely dealt with, or are in the process of being dealt with, and some of them there have been there for a damn sight too long partially because they're way down the pecking order in terms of priorities..."*

129. During his interview, Dr Mouritz provided clarification on the process that is followed with the Outstanding Business Report when it is reported to Council:

AUTHORISED PERSON: *"So this goes to every Council meeting does it?"*

WITNESS: *"Yes, it goes as an attachment."*

AUTHORISED PERSON: *"So from a procedures point of view does it change, does it always have 51 pages or is it –"*

WITNESS: *"No it gets bigger and longer, bigger and shorter and – over the time I've been here."*

AUTHORISED PERSON: *"So it's a snapshot of where the organisation is every time you go to the meeting, so – "*

WITNESS: *"Its where those things are - deemed to be outstanding business have – have got to, and you know Councillors ask for a more thorough review of everything back to 2009 or whatever."*

AUTHORISED PERSON: *"In the time that you've been here does it display that there's – there's an issue with the operations the fact that list is fifty one pages – I don't know whether if that is a lot or not, considering the size of the organisation but in your experience has that grown or shrunk considerably that – "*

WITNESS: *"Well I think it's – I don't think it's –it stayed roughly the same size since I have been here, with new things going on and you know, things dropping off because it's basically - you know, outstanding resolutions that were seen as being the ones that Council wanted to have brought forward, it didn't have all the planning approvals for example because then you know mechanically sorted out [indistinct]."*

AUTHORISED PERSON: *"I suppose what I'm getting at and I would welcome your comment, if you used that as a KPI measure of the success of the operational facilities, how successful would that be, would it be a good reflection of how well the organisation is progressing?"*

WITNESS: *"I can see why some of the – some of the Councillors are frustrated with that, and so therefore it is probably a good KPI but whether or not the things that are on there are of significant merit or not is a different question, and a lot of those things – you know, people would have different views about the level merit and importance of the – the things, so when you're dealing with the amount of business that any organisation – Council does it's – and the priorities some things don't necessarily get tidied up or – or dealt with."*

AUTHORISED PERSON: *"And I imagine that it's a changing document – I'm presuming that as things get completed they'd get taken off and then get replaced with other things?"*

WITNESS: *"That's correct and on some occasions some Councillors have asked for some of the things that have already been dealt with to come back on because they see it as a record of something that was done..."*

(Mike Mouritz interview: 16 March 2012 part 1 transcribed from 57:12)

130. As with Mr Dacombe, Dr Mouritz identified circumstances in which Council resolutions had hampered his efforts to employ new staff whom he needed to allow him to progress a number of major projects for which he was responsible. In particular he referred to a comprehensive report he provided to Council in the lead-up to the presentation of Council's 2011 – 2012 budget. The report sought funding he needed to properly resource his division to enable him to achieve the priorities that had been signed-off by Council. His recommendations on that occasion were endorsed by Council, and provision was made in the budget for those (human) resources.

131. Inexplicably, the Council subsequently passed a motion (without any consultation with the CEO or members of the City's Executive) at the 11 August 2011 Budget meeting which had the significant effect of "freezing" all funds for the recruitment of personnel including those that Dr Mouritz had received approval for (EXH 25). As a result of that resolution Dr Mouritz was unable to recruit staff until the CEO brought a detailed report back to Council setting-out the staffing structure he was proposing:

"(5) That no expenditure of Account 46149 be approved until a Report comes before Council outlining the numbers of Employees engaged along with a Job Description and all new possible Recruitment of Senior and Technical Positions."

132. As a result, Dr Mouritz submitted a report to Council at the meeting held on 13 December 2011 (EXH 14) nominating the number of specialist positions he would need to create to meet his responsibilities in relation to progressing the City's Local Planning Strategy. The recommendation put forward by Dr Mouritz in his report was rejected by Council on a motion moved by Cr Mason and seconded by Cr Daly. When asked to comment on Council's decision he said:

"there were two or three different options and the – in terms to their attitude to it, I mean their attitude to it is Councillor's prerogative, I don't agree with it, but it is their prerogative."

(Mike Mouritz interview: 16 March 2012 part 1 transcribed from 23:58)

133. That Council decision again left Dr Mouritz with the task of looking for other ways of getting the resources to implement and manage the projects for which he was responsible. As a result he provided a further report (report CF-039-11) to Council giving Council three options they could consider with respect to resourcing the City's Local Planning Strategy. Council chose the option least preferred by Dr Mouritz, which in turn, caused further delays in delivering this project.

Executive Client & Customer Services

134. It is relevant that some elected members had associated the Outstanding Business Report and the items detailed in it with a perceived failure of the Refocus Program to deliver.
135. Ms Fiona Armstrong, Executive Client & Customer Services, was also asked to comment on whether the decision by Council to cancel the Refocus program had impacted on her ability to progress projects that were linked to her portfolio:

"It had a very significant effect because it basically stopped in its tracks quite a number of very major pieces of work until we could get some kind of clarification as to whether or not those were included in the things that they wanted to cease or not included in the things that they wanted to cease....but I think the more significant thing for me in terms of the impact on my team was about the damage that it did between the staff and the relationship with Councillors because obviously a lot of people would view it as a very damning statement and for a team that was actually trying it's hardest to really sort of make some changes and deliver what the elected members had set as priorities and there wasn't an understanding as to why that happened."

(Fiona Armstrong interview: 27 April 2012 transcribed from 30:10)

136. Ms Armstrong was also hampered when Council denied her request to recruit staff she needed to establish the City's Customer Service Improvement program which had been approved by Council in September 2011. In explaining her disappointment at that decision she said:

"When they approved the Customer Service Improvement Program in – in September, I quite clearly caveated that, in terms of saying [indistinct] it is

contingent on getting the ok to actually move forward with the recruitment processes that I'd outlined as part of the budget...Basically when we put forward the budget in August, it was a blanket resolution that was put forward at that point in time that said yep, we approve the budget apart from you can't move forward with recruitment with any of the posts you've identified."

(Fiona Armstrong interview: 27 April 2012 transcribed from 34:39)

Analysis of Outstanding Business Reports

137. Examination of a number of Outstanding Business Reports found some Council resolutions had not been progressed over time. However, the reports that were examined also provided details of progress and identified issues that had impacted on the City's ability to progress or conclude each matter. This is important to note, as these reports only covered those aspects of the City's operations that related to Council decisions. It did not, for instance, include day to day business. Obviously, management of items on this list could not be isolated from the requirement to meet day to day priorities and long term commitments that fell outside Council resolutions. It is also necessary to realise, if the list is to be used to gauge a level of performance, that the list is dynamic. It will increase and decrease from time-to-time depending on the workload, complexity, and duration of the task at hand. All local government Authorities, the City of Canning included, would expect to have a degree of unimplemented Council decisions that are waiting to be implemented, actioned and finalised. The reasons for any delays were contained in reports that were made available to elected members at each and every Ordinary Meeting of Council dating back to 1996.
138. It is for this reason that the Inquiry considers that the significance placed on this list to gauge the CEO's performance is unfair. The number of matters on the list is irrelevant, a large number could just indicate a busy work schedule, whereas the more significant information, the details of why delays have occurred, appears to have been largely ignored by elected members.

SUMMARY AND FINDINGS

139. From the information provided by Officers, it is reasonable to conclude that some difficulties and delays attributed to the CEO for failing to implement or progress matters on this list, were as a direct result of inappropriate Council interference. It is also noteworthy that the claim that there were fifty or more pages of Council decisions that had not been implemented was not true. It was never the case that the Outstanding Business Report could be described as a record showing Council decisions that were not implemented. It was more accurately described as a 'progress tracking' report that showed the resolutions that were being implemented and the progress the City was making in completing their implementation.
140. This information was readily available to Mayor Delle Donne who was also aware that the list of outstanding business had been at similar levels for several years. The question that arises is why this became such a pressing issue toward the end of 2011. The Inquiry has examined in this Report a number of issues that occurred during the latter part of 2011 that may suggest a motivation for Mayor Delle Donne to look for grounds to question the ability of Mr Dacombe to fulfil his role as Chief Executive Officer.

FINDING 10

The Mayor's allegation that there were over fifty pages of Council decisions that had not been implemented is unfounded. The 'Outstanding Business Report' referred to by the Mayor is not a record of Council decisions that were not implemented. It can be more accurately described as a 'progress tracking' report that shows Council decisions that have been, and are being implemented, and the progress the City is making in completing implementation.

FINDING 11

The Outstanding Business Report provides Council with a progress report on the Administrations progress in implementing Council decisions. The extent of outstanding business has been at similar levels for several years and this report does not provide any reasonable basis to criticise Mr Dacombe or members of his administration for the current level of outstanding business that was the subject of complaint by Mayor Delle Donne and some elected members.

CHAPTER 3

Allegations and Complaints from CEO, Staff, Community and Others

INTRODUCTION

141. This part of the report documents the additional complaints that were received by the Inquiry relating to the operations and affairs of the City of Canning. It needs to be noted that it was not possible to investigate every allegation the Inquiry received. Some matters fell outside the Inquiry's Terms of Reference and others arrived at a late stage. However, this part of the report provides some indication of the extent of complaints that were being raised with this Inquiry.
142. Those complaints that were considered of relevance to the Inquiry's Terms of Reference have been investigated and are detailed in this Report either as a distinct issue or as a component of a more major issue.

COMPLAINTS OR ISSUES RAISED BY (FORMER) CHIEF EXECUTIVE OFFICER- MR DACOMBE

143. In late November 2011 and prior to the Inquiry being called, Mr Dacombe took it upon himself to express his concerns to Ms Jenni Law, Manager of Advice and Support at the Department of Local Government. The CEO was concerned with the actions of Mayor Delle Donne and several elected members who had put forward a number of “notices of motion” that he considered to be contrary to the Local Government Act. In particular, one of the motions resulted in a resolution appointing Mayor Delle Donne and Cr Mason to a selection panel for the vacant position of Executive Engineering and Technical Services. Ms Law provided advice and support at that point which Mr Dacombe was able to use in an effort to counter the inappropriate appointment of those elected members on a selection panel.
144. Upon announcement of the Inquiry, Mr Dacombe lodged two written submissions, dated 9 February 2012 (EXH 26) and 12 March 2012 (EXH 28). In those submissions he made reference to a number of concerns he had about the actions of Mayor Delle Donne and a small group of elected members whom he believed were working in concert to undermine his authority. In those submissions he pointed to a number of issues that were of concern to him, namely:
1. A failure by some elected members to accept the changes that had occurred through the introduction of the “Refocus Program”.
 2. Failure of some elected members to understand and accept their role as distinct from the role of the CEO.
 3. Some elected members adopted the approach of “directing” him by Notice of Motion, without any prior consultation.
 4. Constant challenges to his authority by some elected members at Council Forums and meetings.
 5. Interference in the tendering process to the point where the Mayor became involved in decisions to appoint contractors.
 6. Officers recommendations being overturned (on a regular basis) without sufficient justification.

7. The hostility exhibited by some elected members toward him and members of his staff.
8. A tendency to lodge large numbers of “questions on notice” rather than meet out of session with Executives to seek the answers to those questions.
9. That he had been subjected to a biased performance review (conducted by Mayor Delle Donne and Cr Mason) which he refused to accept; and
10. That he had been unilaterally placed on leave by Mayor Delle Donne and Cr Mason.

SUBMISSIONS – ELECTED MEMBERS

145. All elected members were served with a direction notice to provide documents and information in relation to the Inquiry’s Terms of Reference. Two elected members took the opportunity to lodge a submission raising issues for the attention of the Inquiry.

Councillor Clarke

146. In his submission (EXH 29), he pointed to a number of issues that were a concern to him, namely:
1. Waste Management – South Metropolitan Regional Council – 11 issues that included:
 - a. Calling of an urgent Special Council meeting to withdraw from SMRC.
 - b. Withdrawal from SMRC without any alternative plan.
 - c. Cr Clarke being intimidated by the Mayor.
 - d. Conflicts of interest by elected members for odour monitoring.
 2. Exodus of Executive Staff.
 3. Outlined concerns of deteriorating governance.
 4. Concerns with unmanageable levels of program change initiated by Mr Dacombe.

5. Refocus 2010 Program and its impact on staff levels and service.
6. Recruitment and turnover of staff from 2010 to 2012.
7. Conduct of Council meetings and elected member representation:
 - a. Lack of public invitation to forums and special purpose meetings.
 - b. Appointment of Council representatives through secret votes and “cliques”.
 - c. Volume of Council agendas and business papers.
 - d. Lack of transparency over use of confidential business.
 - e. Problems with management of Public Question Time.
 - f. Particular Council members attempting to direct CEO by volumes of questions on notice.
 - g. Annual Budget 2012/2013 amendments against recommendations on the striking of property rates.
 - h. The “colouring” of public affairs releases.
8. Strategic Planning and Project Development officer recommendations overturned and outsourced.
9. Community buildings use:
 - a. Willetton Child Care Centre.
 - b. Willetton Sports Club.
10. Minor breach complaints lodged against Cr Clarke by core “clique” members.

147. In a later submission received by the Inquiry on 28 May 2012 (EXH 30), Cr Clarke also raised concerns about a contentious Council resolution dealing with the selection process for the position of Executive Engineering and Technical Services:

“Because of my grave concern as to the action of the Council at its meeting on 22 May 2012 in dealing with the appointment of applicants for the above vacancy on the Council senior staff, I find it necessary to bring this matter to the attention of the Inquiry...I was so disillusioned by the manner this important item had been dealt with, I excused myself from the meeting.”

Councillor Morgan

148. He forwarded a submission outlining his concerns that related to:

1. The Mayor using his casting vote to defeat a motion to make previous Mayor, Dr Lekias, Honourable Freeman of the City.
2. Centenary Avenue Road Improvements.
3. Refuse Truck Tender – Officer Recommendations in relation to replacement of side loading refuse compactor trucks were ignored.

SUBMISSION – EMPLOYEES FROM THE CITY OF CANNING

149. A number of employees and former employees expressed their joint concerns about the issues at the City of Canning in a letter dated 22 December 2011, addressed to the Hon. Minister for Local Government. In summary they raised a number of concerns that they felt were affecting the good governance of the City. Those issues included:

1. Possible nepotism – claims that the CEO Mr Dacombe had used his authority to bypass the City's Human Resources processes and procedures to employ people whom he had worked with previously in New Zealand.
2. A distinct lack of trust and respect by elected members of Council officers at all levels.
3. Consultants and Senior Executives appointed without proper process.
4. Intimidation of Council officers by some elected members.
5. Failure by elected members to accept officer advice by elected members.
6. Officer's recommendations constantly ignored and overturned by elected members without any rational basis.
7. Cuts to maintenance budgets causing delays in completion of projects.
8. Tendency for elected members to delve-down into the roles and duties of Council officers.
9. Members of the Executive were frightened of the elected members and some Councillors had openly "bullied" staff.

COMPLAINTS RECEIVED FROM MEMBERS OF THE PUBLIC

150. Following the announcement of the Inquiry and publication of the Inquiry's Terms of Reference a number of submissions were received from members of the public. The concerns were from individuals or representatives of a group, club or association.
151. Submissions were received from or on behalf of:
- The Willetton Child Care Centre – Failure of Council to renew lease to facilitate a Lottery West funding grant and inappropriate use of confidentiality by Council.
 - Willetton Sports Club – Failure of Council to support the underwriting of a loan to ensure its ongoing viability.
 - Riverton Rossmoyne and Shelley Residents Association – concerned with issues relating to the City's membership of the Southern Metropolitan Regional Council.

MATTERS RAISED BY INDIVIDUAL RATEPAYERS

152. The Inquiry received a number of submissions from individual ratepayers that were assessed to determine if they fell within the Inquiry's Terms of Reference. Those that failed to meet these criteria were referred to the Acting Chief Executive Officer at the City of Canning for his attention.

CONCERNS RAISED BY NEIGHBOURING LOCAL GOVERNMENTS

153. Through the course of the Inquiry, it was identified that significant projects that impacted on neighbouring local governments were the subject of public criticism. The Inquiry sought cooperation from surrounding local governments which were possibly adversely impacted by decisions of the City of Canning Council. Submissions

of concern from the following Councils and the project that impacted on each of them were then identified:

- City of Gosnells – Bannister Road and Nicholson Road project (Chapter 5).
- City of South Perth – Centenary Avenue modifications (Chapter 6).
- City of Melville- Jandakot Link Road project and impact on SMRC (Chapter 9).

FURTHER ISSUES RAISED BY COUNCILLORS LATE IN THE INQUIRY PROCESS

Councillor Morgan (27 May 2012)

154. Concerns with selection process for Executive Engineer and Technical Services.

Councillor Clarke

155. Disillusioned with 22 May Ordinary Council meeting selection process for Executive Engineer and Technical Services.

Councillor Boylen (23 May 2012)

156. Concerns with proceedings and debate relating to the 22 May Ordinary Council Meeting dealing with selection process for Executive Engineer and Technical Services.

Councillor O'Donnell (17 July 2012)

157. Concerns with:

- Sevenoaks Street.
- Outstanding business.
- Budget carry overs.

- Community consultation.
- Questions on Notice.
- Rana Court.
- Time taken to answer questions.
- Incorrect Minutes.
- Jandakot Link Road.
- Strategic Waste Management Plan.

PART 2

Complaints About Council Decisions

RELEVANT TERMS OF REFERENCE:

“4) The conduct of Council members and employees of the City of Canning, including but not limited to:

- a) tendering, purchasing and procurement, and contract management;*
- b) improper or undue influence...*

5) The adequacy of the City of Canning's procedures, including but not limited to:

- a) transparency of decision making, information provided to Council members, and recording of Council decisions...”*

CHAPTER 4

Questionable Decisions

INTRODUCTION

1. This part of the report is about Council's decision making and specifically deals with those complaints the Inquiry received that criticised decisions of Council. The complaints generally referred to a number of Council decisions that lacked any justification or rationale.
2. There are five types of decisions a Council may make in order to fulfil its responsibility:
 - 1) **Advocacy:** when Council advocates on its own behalf or on behalf of its community to another agency or body outside of Council.
 - 2) **Executive:** when Council sets the overall strategic direction, governance and operational framework of the local government - for example, adopting plans and reports, accepting tenders, and setting and amending budgets.
 - 3) **Legislative:** when Council adopts local laws, policies, and Local Planning Scheme amendments.
 - 4) **Quasi-Judicial:** when Council determines an application or matter that directly affects a person's rights and interests. Examples of Quasi-Judicial

authority include town planning applications, building licences, applications for other permits/licences (such as under Local Laws) and other decisions that can be appealed to the State Administrative Tribunal. Frequently, the judicial character of these decisions raises the obligation to abide by the principles of natural justice.

- 5) **Information Purposes:** when Council is provided items for information purposes only which do not require a decision of Council (i.e. - for 'noting').
3. Elected members are well placed to weigh up the political and policy implications of matters before Council. This is due in no small part to the contact they have with their constituents, and the diverse backgrounds and experience each elected member can contribute.
4. Nevertheless, elected members generally do not have the qualifications or expertise needed to make informed decisions on technical issues. For this reason, in order to act in the best interests of the local government and provide good government to the persons in the district, elected members must take into account the technical and/or professional advice that is provided to them by the City's employees.
5. Mr Douglas in the *Report of the Inquiry into the City of Cockburn* summed up this important aspect of elected member deliberations:

“These duties to which an elected member of the City is subject require that, in respect of a matter that is to be the subject of a committee or Council decision, an elected member must –

- (a) read the advice and information provided to him or her by the City's employees;*
- (b) pay due regard to the advice and information;*
- (c) not act inconsistently with the advice or information unless there are proper grounds, in the interests of the City, for doing so; and*
- (d) in the absence of adequate advice or information, seek additional advice or information.*

This is not to suggest that elected members should blindly follow the recommendations of the City's employees. It is essential that an elected member brings an independent mind to the decision making process. There are many instances where elected members, particularly through their contacts with constituents, have a different perspective and a better understanding of the community's needs and wishes. Where these considerations are relevant to a particular decision before a committee or the Council, it is important that they are properly taken into account by all elected members."

6. In some circumstances this will result in decisions being made that are alternative to the recommendations provided by the City's Officers. If there are appropriate grounds, and it is clearly in the interests of the local government, elected members may disregard the Officer's recommendations. In these circumstances rejecting Officer advice is not necessarily an indicator of inappropriate decision making, rather it can be a sign of elected members demonstrating that an independent mind has been brought to the Council chamber.
7. Where a resolution is passed that is significantly different to the written recommendation provided by the relevant Officer or committee, Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires the local government to provide written reasons in the minutes of the relevant Council meeting
8. It should be said that in regard to technical and specialist items, such as planning, tenders and management of operational practices, most elected members would lack the technical expertise or qualifications to be able to replace an Officer recommendation with an appropriate alternative.
9. In such circumstances where Officer's technical and/or specialist advice has been rejected or ignored by elected members, Council must be prepared to persuasively defend such a decision as being in the interests of the local government.

CHAPTER 5

Nicholson Road / Bannister Road Project

INTRODUCTION

10. As early as 2006, the City had been liaising with the City of Gosnells on a jointly funded project to carry out upgrade works to the intersection of Nicholson Road and Bannister Road in Canning Vale. This intersection is located in an area where the boundaries between the two local governments run through the middle of the project area.



Figure 2: Cadastral extract showing the Bannister Road/Nicholson Road/Wilfred Road intersection. Boundary demarcation between the City of Canning and the City of Gosnells is indicated by the broken green line. (Source: www.landgate.wa.gov.au, retrieved 28 March 2012).

11. At roughly the same time, the City of Gosnells was preparing to carry out a project to upgrade the intersection of Garden Street, Yale Road and Nicholson Road in Canning Vale. Users of this intersection would know that it presently consists of a roundabout, rather than a set of traffic lights. Gosnells still had some time, possibly two years, before it could progress its project as it was still preparing its application for State Government funding before it could proceed.
12. Both these projects involved major intersections in the Canning Vale area, within a short distance of each other. Nicholson Road is one of the busiest roads in the South-East corridor of Metropolitan Perth and is classified in the Metropolitan Region Scheme as a 'regional road', a classification that is second only to Perth's freeway system. Main Roads WA classifies Nicholson Road as "State Route 31" and a "main road". Such a term carries with it an appropriate level of importance as it is a road that serves a significant part of the Perth Metropolitan Region. Any changes or upgrades to this road are of regional significance.
13. Over 40,000 vehicles use this corridor on a daily basis (north of Bannister Road but south of Roe Highway (Source: Main Roads Metropolitan Traffic Digest 2003/2004 – 2008/2009)).
14. In relation to the project to be conducted by the City of Canning, the scope of works consisted of:
 - Upgrade of the existing traffic signals at the intersection of Nicholson Road, Bannister Road and Wilfred Road.
 - Lengthening of existing turning pockets.
 - Provision of an additional right turn lane into Bannister Road, continuing as an additional traffic lane along the northbound carriageway of Nicholson Road.
15. In July 2011 Main Roads WA approved the traffic signal design submitted by the City. As part of the overall project, it was agreed that the City of Gosnells would

provide a funding contribution of \$770,000 for the portion of works that was in its district. This contribution was 50% of the cost of the works (less the money received from grants). In addition, the City had applied for and was granted \$571,326 from the Federal Government's Nation Building Program, 'Roads to Recovery' fund, as well as a \$500,000 grant from the State Government's Black Spot fund. All three of these contributions were listed in the City's 2011/2012 budget which Council approved at a Special Council Meeting held on 11 August 2011. The total project cost was \$2,276,054.

16. In 2008, the City commenced surveying and design work. In March 2009, signal and intersection design was initiated and by mid-way through 2009, the City had started negotiations with Western Power to relocate some essential services in the area that would otherwise impact on the City's proposed work.
17. By May 2011, Western Power had completed this work at a cost to the City of \$170,000 which was below the \$260,000 amount originally anticipated by the City.
18. It was proposed that in order to minimise disruption to commuters the works would be carried out at night (referred to as "night works" in the industry) and that the City's own road construction workforce would be used. Requiring construction crews to work at night is relatively unusual and gives an insight into the necessary planning and preparation required for a project of this nature:

"Our staff – we advised our staff – it wasn't me, it would have come from our Manager Construction Services, but he would have advised the staff of the proposed project and the need that – people would have been required to work at night – we usually give them a fairly long lead in time because, you know – taking kids to school and babysitting and so forth."

(Troy Bozich interview: 3 April 2012 part 2 transcribed from 7:15)

19. On 6 September 2011 Mayor Delle Donne, Cr Elliott, former Cr Wheaton, Cr Clarke and Cr Morgan attended a presentation at the City of Gosnells that was

conducted by Main Roads WA regarding lane metering technology. Mr Kevin Jefferies, Executive Property Assets and Economic Development and Mr Troy Bozich, Manager Engineering Services also attended this presentation. The presentation was made in the context of how lane metering technology could be used at the Yale Road/Garden Street roundabout by the City of Gosnells and how the flow of traffic through the Bannister/Nicholson/Wilfred Road intersection would benefit from the use of this technology at the Yale Road/Garden Street roundabout to regulate interruptions in the flow of traffic along this corridor.

20. The point was emphasised at this meeting that these intersections required upgrading in order to meet current and future capacity demands and that works to these individual intersections needed to proceed without delay. It was emphasised that the City of Canning should proceed as planned because the City of Gosnells still had work to do in terms of finalising its design and securing funding.
21. At the City of Canning Ordinary Council Meeting held on 13 September 2011 (EXH 31), an Officer's report on a tender for traffic signal modification works at the Nicholson/Bannister/Wilfred Road intersection (report ET-082-11) (EXH 32) was considered. It was pointed out that selecting and purchasing a new traffic signal array was a prerequisite before the broader project of redeveloping the intersection could proceed. It is understood that due to the item involving a tender, the report was classified as '*confidential*' and Council deliberated on the item behind closed doors. However, the reason for the confidentiality was not recorded in the minutes of the Council meeting, as required by the *Local Government (Administration) Regulations 1996*.
22. The tendency for the City's minutes not to contain the reasons for dealing with matters behind closed doors as required by Regulations, are addressed in Part 5 Chapter 24 of this report.

23. The Officer's report stated that *"The modifications to the traffic signals are required as a result of the upgrade of the intersection which is designed to reduce traffic queues."* The report went into further detail as to the merits of each of the competing companies' quotes, including a section discussing the resolution of some risks associated with the project:

"With reference to the Project Report (refer Attachment 3), with reasonable certainty of the cost for the installation of the traffic signals, this cost is no longer a risk. The delay risk associated with the approval process by Main Roads W.A. for the traffic signal design is also no longer applicable. However, until Main Roads provides specifications and drawings for the installation of the CCTV, the completion date of the traffic signals works is uncertain."

24. The Officer's recommendation in the report was:

"That:

- (a) Council accept the quote from Quality Traffic Management Pty Ltd for Quote No. 01434 – Traffic Signals Modification at Nicholson Road/Bannister Road/Wilfred Road, Canning Vale, as the most advantageous*
- (b) Both respondents be advised of (a) above and thanked for their submission."*

25. It is clear that the intent of the report was solely for Council to make a decision on selecting an appropriate tenderer to provide the new traffic signals.

26. During debate on this matter, Council became fixated on whether or not the overall Nicholson/Bannister/Wilfred Road intersection project should be carried out at the same time as the City of Gosnells conducted its works to the Yale Road/Garden Street roundabout.

27. Council passed a motion moved by the Mayor:

"MOVED the Mayor, Seconded Cr Dowsett, that this item be held over until a meeting has been arranged co-jointly with the City of Canning, City of Gosnells and Main Roads WA for further discussion on the issues raised."

For *The Mayor, Crs Barry, Olsen, Daly, Dowsett and Wheaton*

Against *Crs Clarke, Morgan, Boylen and Elliot*

28. Whilst it is recognised that the Mayor and some Council members had attended a presentation by Main Roads WA (at the City of Gosnells) on the projects proposed for this corridor as a whole, the matter of the various components of the intersection upgrades being timed to coincide with the City of Gosnells works was not the subject of the report to Council. The report was for the purpose of accepting or rejecting a tender for traffic signals, a critical component that affected the progress of the overall project.

29. Council's rejection of the Officer's recommendation in favour of discussions on the merits of conducting the works in unison with the City of Gosnells' project delayed this critical component. On 14 October 2011 the City received a letter from the CEO of the City of Gosnells expressing concern over Council's decision which resulted in a delay to the commencement of the traffic signal modification (EXH 33):

"The City of Gosnells would be concerned with any further delay in implementing the improvement at this location due to the continuing impact on intersection capacity, traffic delays through and into the area, traffic safety and the escalation of costs which the City of Gosnells is partially responsible."

30. The letter went on to point out that the City of Canning's proposed works were separate to those proposed by the City of Gosnells, and delaying them to coincide with Gosnells works was undesirable. Gosnells advised it was still to secure funding for the works it intended for the Yale Road/Garden Street roundabout.

31. On 22 November 2011, a meeting was held at the City of Gosnells. In attendance at the meeting from the City of Gosnells were Mr David Griffiths, the Mayor, Mr Ian Cowie, CEO, and Mr Dave Harris, Director of Infrastructure. From the City of

Canning were Mayor Delle Donne, Mr Kevin Jefferies, Executive of Property Assets and Economic Development, and Mr Troy Bozich, the Manager of Engineering. At this meeting, Mr Cowie and Mr Harris expressed concern over Canning's decision to suspend the project for talks over conducting both road projects at the same time. The City of Gosnells reiterated that it was not ready to carry out its own project adjacent to Canning's Nicholson road project, as it had not yet secured funding, and that this could be another two years away. Advice was also given at the time by both the City of Gosnells' and the City of Canning's engineering staff, that to conduct the two projects at the same time would create immense traffic disruption which could potentially make the area impassable. According to witnesses present at the meeting, Mayor Delle Donne indicated that he did not accept the advice from the City's engineers, and he remained of the belief that the two projects should be done at the same time.

32. On 13 December 2011, a report was again presented to Council requesting it reconsider the acceptance of a quote for traffic signals for the project (report ET-120-11) (EXH 34). The Officer's recommendation was:

"That:

- (a) Council accept the quote from Quality Traffic Management Pty Ltd for Quote No. 01434 – Traffic Signals Modification at Nicholson Road/Bannister Road/Wilfred Road, Canning Vale, as the most advantageous.*
- (b) Both respondents be advised of (a) above and thanked for their submission."*

33. However, Council again rejected the Officer recommendation by resolving on a motion moved by Cr Barry, that the Officer's recommendation not be adopted as it was *"...not the most advantageous option for the City."* Cr Barry then moved, in lieu of the Officer's recommendation that:

"(a) Council RESOLVE to suspend all works referred to in ET-120-11 until such time as a completed comprehensive planning and design

schedule with full funding is presented by and or in liaison with Main Roads WA, City of Gosnells and City of Canning.

(b) Both respondents be advised of (a) above and thanked for their Submissions."

34. Council members gave various reasons at interview for how they voted on Cr Barry's motion. It was clear that some Council members had not understood the content of the Officer's report that was before them:

"I was concerned about the processes of Council being followed and especially that – that project – my view – and I can quite clearly state it because I stated it on the Centenary one as well – is that I had a fear that the budget [indistinct] process for that item would go over budget if we didn't have all of our ducks in a row, and I said at that item and the previous item on Centenary that as a Councillor at the City of Canning, I didn't believe it was right that I would have to go back to the ratepayers and ask for more funds for a project that went over budget because when I was asked where the project was, I would have to tell the ratepayers that most of it was in the City of Gosnells. And I didn't believe that our ratepayers should be funding projects outside of our Council."

(Bruce Mason interview: 20 April 2012 part 2 transcribed from 28:03)

"Because like I said we wanted to go and [indistinct] talk to the other parties to find out exactly what's [indistinct] on paper so that the current staff or the current members are not here everybody knows what needs to be done."

(Mayor Delle Donne interview: 20 April 2012 transcribed from 3:07:06)

"When it first came up it got deferred, [because] we needed some more information. It came back – we knew about the funding – but then I remember about – on the night, a comment by Mr Jefferies about it being minor works and I just remember thinking "for something so major I didn't think it'd be in the budget as minor works" so I know I was a little bit – yeah – concerned about that."

(Megan O'Donnell interview: 24 April 2012 transcribed from 44:51)

"The first vote I think Joe wanted to consult with Gosnells. And – and sort of get [indistinct] get the project more organised because it was on the

boundary – he wanted to tie the whole thing up and get all the work done at the same time.”

(Robert Morgan interview: 17 April 2012 transcribed from 49:56)

WITNESS: “I would have liked to have supported it – I can’t remember whether I did or not, I – I normally would have, but once again, because of the pressure that’s put on because it is [indistinct] – you know, you shouldn’t be doing work outside the City of Canning. I may have changed my mind and that would have been the reason why I did it, but I – I basically support – supported the idea.

AUTHORISED PERSON: “Was any particular elected member exerting pressure – to have this cancelled?”

WITNESS: “The – the throwaway lines – you know, the innuendo that was – that would’ve been from the Mayor.”

(Lindsay Elliott interview: 24 April 2012 transcribed from 1:26:12)

“Yeah I know why I did that. It was a part [indistinct] a part of Gosnells. We want funding from Gosnells as well as from us, yeah.”

(Mary Daly interview: 2 May 2012 part 2 transcribed from 1:05:47)

“Yes, and also the Mayor was quite adamant that he wasn’t – he wasn’t going to spend money that might go into the City of Gosnells. Yet what we were planning to do was in the City of Canning’s – we were looking at the slip road.”

(Stuart Clarke interview: 1 May 2012 transcribed from 2:42:35)

“I believe I that I would have supported the decision to defer it – it wasn’t to knock it on the head.”

(Stephen Boylen interview: 26 April 2012 part 1 transcribed from 1:19:42)

“Basically it was the – the timing, and the dollars – I mean, that – that was really – I mean, in my estimation it seemed like – it was just the City that was possibly just going to do the work, I mean – what I, what I think I was suggesting there was that they have a meeting and they work out a specific time table to get – the get it done together as one.”

(Graham Barry interview: 26 April 2012 part 1 transcribed from 1:21:28)

“Well – Council didn’t have very much information at all on this issue, and as a responsible Councillor [indistinct] I spose he [Cr Barry] asked for more.”

(Bev Olsen interview: 27 April 2012 transcribed from 2:45:36)

35. The work alluded to by Cr Barry’s motion had already been conducted by the City. Main Roads WA had already been consulted and had approved the traffic signal design, and Council itself had approved the relevant budget entries to conduct the works. Cr Barry’s motion was superfluous and essentially required the City’s Officers to duplicate the work they had already done.
36. Regulation 11(da) of the *Local Government (Administration) Regulations 1996* require the local government to provide written reasons in the minutes of the relevant Council meeting where a resolution is passed that is significantly different from the written recommendation provided by the relevant Officer or committee. Council supported its resolution with the reason that it was *“the most advantageous for the City.”* It is difficult to accept that rejecting the Officer’s recommendation and requiring Officers to duplicate the work they had already done with the unnecessary delay this would cause was the outcome that was the most advantageous for the City. An assertion that a decision is *“the most advantageous for the City”* is not itself relevantly a reason for the decision. One cannot determine from such an assertion how the decision was arrived at.
37. In January 2012 the City revised the overall project cost down to \$1.9 million and delivered a surplus to the City’s budget of \$352,190 from the project cost.
38. After Council’s decision to refuse to allow the project to proceed became public knowledge, media articles documented the story. On 23 February 2012 the *Gosnells Examiner* ran a front page story on the subject, quoting both the City of Gosnells and the Member for Southern River, Mr Peter Abetz. The article was critical of the Council’s decision and quotes attributed to both the City of Gosnells and Mr Abetz reinforced this criticism (EXH 35).

39. The City of Gosnells continued to pursue its concern about the delay in the project and again wrote to the City on 2 March 2012 urging it to reconsider its position. Also at around this time, Main Roads WA advised the City that if the works were not completed inside the financial year (2011/2012), access to the \$500,000 grant via the Black Spot fund would no longer be available.
40. At Council's Ordinary Meeting on 13 March 2012, the project was raised for the third time by City Officers with a recommendation to award the tender for traffic signals (EXH 36). This would have allowed the project to proceed as planned, albeit delayed. However, the Officer's recommendation was again amended by a motion moved by Cr Mason, so as to read:

- “(a) Report ET-041-12 Nicholson Road - Bannister Road - Wilfred Road Intersection in Canning Vale, be received.*
- (b) The City of Canning be authorised to enter into a legal agreement with the City of Gosnells and Main Roads WA outlining the obligations and responsibilities to carry out the proposed works at Nicholson Road - Bannister Road - Wilfred Road Intersection in Canning Vale.*
- (c) Council accept the quote from Quality Traffic Management Pty Ltd for Quote No. 01434 – Traffic Signals Modification at Nicholson Road/Bannister Road/Wilfred Road, Canning Vale, as the most advantageous.*
- (d) Both respondents be advised of (c) above and thanked for their submission.*
- (e) The Chief Executive Officer be authorised to call tenders for the Road Construction works at Nicholson Road - Bannister Road - Wilfred Road Intersection in Canning Vale.*
- (f) A further report be presented on the outcome of (b), (c), (d) and (e) above*

CARRIED UNANIMOUSLY

For: The Mayor, Crs, Mason, Daly, Dowsett, Clarke, Olsen, Morgan, Barry, Elliott, Boylen and O'Donnell”

41. Parts (b), (e) and (f) were added by Cr Mason's motion. Evidence given to the Inquiry by the City's technical staff, as well as the City of Gosnells' engineering officers, indicates that they considered the requirement for a legal agreement between the City, Main Roads WA and the City of Gosnells was an unnecessary measure as, in their experience, local governments are accustomed to working collaboratively. The Inquiry considers it was not unreasonable to require some form of commitment in writing by the local governments and State agency. However, in this case where time was of the essence, the question arises whether it was appropriate for Council to require a formal legal agreement at this time, when the option was available to introduce this requirement (in consultation with City Officers) in the City's future negotiations.
42. The Officer's report to Council on 13 March 2012 for the project clearly stated that the City of Gosnells had contributed \$770,000 towards funding the portion of the project that fell within its area. Only one part of the four-way intersection was within the boundaries of the City of Gosnells (where Wilfred Road intersects with Nicholson Road – refer to Figure 1). The Inquiry understands that had the work to be conducted in the City of Gosnells been over budget, the City would simply have requested additional funding from the City of Gosnells to cover the shortfall. Enough cooperation existed between the two local governments to cover this contingency in a timely manner, if it had arisen.
43. It is also important to note that part (e) of the Council decision resulted in an additional significant effect on the operations of the City. It required the City to call for outside tenders to conduct works that the City Officers had scheduled and budgeted to have the City's own construction workforce carry out.
44. The impact of this decision was in conflict with Council's view it was acting in the best interests of the City.
45. At this same meeting (13 March 2012) a report was presented to Council advising of an emerging issue with the City's construction workforce, namely that it would

shortly not have enough work to keep the construction staff occupied (Report ET-040-12). Council were therefore made aware of this issue before its resolution to call tenders for works on the Bannister/Nicholson/Wilfred Road project, work that the internal workforce had been scheduled to perform. This amendment from Cr Mason, thereby exacerbated the problem with the lack of work for the City's internal workforce.

46. The Council resolution resulted in adverse consequences, of which elected members were probably unaware, as no Officer advice had been sought on Cr Mason's motion. Elected members showed poor judgement in not seeking any information on the full implications of their decision to seek tenders for this work. If they had, they would have been aware of the detrimental implications it would have to the City's workforce. Cancelling this scheduled work, together with engaging an external contractor to do the same work, created a cost and resource liability on the City and is a clear example of the consequences of Council interfering in operational matters.
47. Another significant issue with part (e) of the motion to call tenders for the road construction works was that it conflicted with the existing service agreements that the City held for this type of work. In effect, the City had entered into contractual commitments with a number of preferred suppliers to carry out this type of work on a revolving basis. Council's decision created a conflict with these arrangements by requiring Officers to ignore these legal commitments and commence a new tender process. The Inquiry understands the City Officers found it difficult to progress this resolution because of this purported conflict and as such sought legal advice to clarify how to address the ramifications of Council's uninformed decision.

SUMMARY AND FINDINGS

48. Council's decision making on this matter is characterised by poor judgement and little understanding of the technicalities of the matter under consideration.

Consequently, the elected members had no understanding of the problems they were creating.

49. It is disturbing that this is not an isolated case and that there are numerous other examples demonstrating where elected members failed to properly consider, or simply ignored, the professional and technical advice that was provided to them, preferring to implement their own uninformed decisions that adversely affected the operations of the City.

FINDING 12

Council's decision making in this matter demonstrated poor judgement and little understanding of the technicalities of the matter under consideration. Council displayed further poor judgement by rejecting the professional and technical advice that had been provided by qualified City Officers. It is clear Council would have benefited if it had consulted with City Officers before implementing significant changes that were inconsistent with Officer advice. The actions of Council's uninformed decision making had adverse impacts on the City from a resourcing perspective and unnecessarily disadvantaged residents and motorists who rely on this important arterial road for travel.

CHAPTER 6

Centenary Avenue / Manning Road Project

50. In 2010, an opportunity arose for the City to access a grant from the Federal Government's *Nation Building – Black Spot* fund for road improvement works along Centenary Avenue in Shelley. This project was to include works to the intersection of Manning Road and Centenary Avenue. A portion of the work on Manning Road was within the boundaries of the City of South Perth.

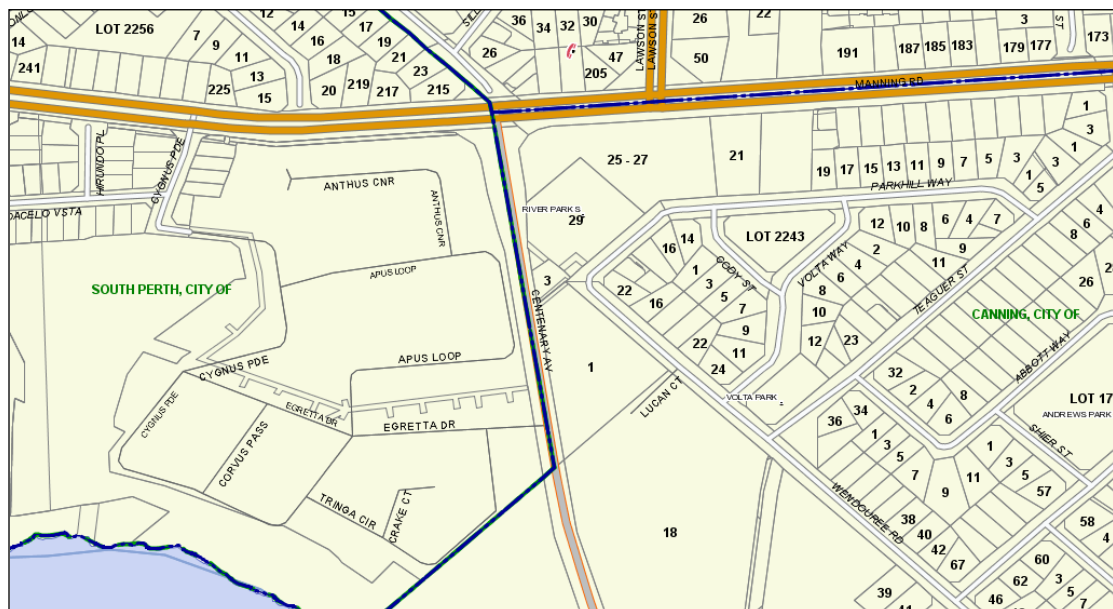


Figure 3: Centenary Avenue/Manning Road area. The local government boundary between the City of Canning and the City of South Perth runs down the centreline of Centenary Avenue for a substantial portion of its length. Source: Landgate. Retrieved 27 March 2012.

51. After the initial survey and design stage, the City was successful in obtaining \$600,000 from the Black Spot funding program. This funding was identified in the City's 2011/2012 budget, which was adopted at the special Council meeting on 11 August 2011.

52. In the process of adopting the budget, a motion was moved by Cr Mason seeking further information on a number of items within the budget, including this project. Part of the motion adopted as a resolution by Council was:

" (b) That a Report/Business Case be provided to Council within three months on the following subjects:

(15) Delete Account 53915 Centenary Avenue/Manning Road – extend Right Turn."

53. This part of the resolution required the City's Officers to prepare a detailed report on the project. On 13 December 2011, a report was presented to Council at its Ordinary Meeting (report ET-115-11) (EXH 37) detailing the project background, design and cost considerations. The report also referred to the Black Spot grant of \$600,000 that had been secured for the project. The report also highlighted that during detailed design of the project, further road improvements were identified which would result in higher project costs. In light of this, the City received approval from Main Roads WA to reduce the scope of the works to ensure expenditure remained within the funding provided by the Black Spot grant.

54. The report provided details of the two stages of the project:

"Stage one is the works along Centenary Avenue between Manning Road and Chainage 500 metres. These works include the following:

- *Extend the right turn lane from Manning Road into Centenary Avenue,*
- *Construct an additional left turn lane from Centenary Avenue to Manning Road under traffic signal control,*
- *Construct an additional northbound lane along Centenary Avenue, and*

- *Upgrade the shared path along the western side of Manning Road.*

Stage two is the works along Centenary Avenue between Chainage 500 metres and Leach Highway. These works include the following:

- *Construct an additional northbound lane along Centenary Avenue,*
- *Accommodate a right turn pocket from Centenary Avenue north into the Sea Scouts and TS Canning facility,*
- *Accommodate a right turn pocket from Centenary Avenue south into Centenary Park,*
- *Extend the bus priority lane along the north approach to the traffic signals at the Centenary Avenue – Leach Highway On/Off Ramps, and*
- *Widen the northbound Leach Highway Off-Ramp to Centenary Avenue to accommodate two lanes.*

The stage two works estimated to cost \$670,000 will be submitted as part of future State and Nation Building Black Spot submissions, should the stage one works proceed.

The stage one works are 500 metres long, of which 360 metres is a boundary road, with the City of South Perth and 140 metres is in the City of Canning. The stage two works are 500 metres long and are totally within the City of Canning. It is considered to be logical for the City of Canning to manage the design and construction of the Centenary Avenue project.”

55. Whilst the report indicated that a substantial part of the stage one works were to be in a part of the Centenary Avenue/Manning Road reserve that is within the boundaries of the City of South Perth, the report also identified that the majority of the work to be undertaken – in terms of the whole project – was to be within the City of Canning’s boundary. However, even though the majority of the stage one works were in the City of South Perth’s area, it was relevant from a cost perspective, that the \$600,000 Black Spot grant covered the expenditure of the whole project, particularly after the City revised the scope of the design to ensure the project was achievable within the grant that had been provided.
56. In his evidence to the Inquiry, Mayor Delle Donne asserted that the City’s reporting Officers had not made Council aware of the fact that the \$600,000 was a grant:

WITNESS: *"This came at the budget time, and there was six hundred thousand dollars [\$600,000] put on the budget –*

AUTHORISED PERSON: *Black Spot funding – federal funding?*

-- well – Council didn't know that at the time. And – the officers had never made Council aware that when the motion was moved that [indistinct] has to be deleted – at the time of the – budget time, no one from the Executive or the CEO [indistinct] make the Council aware to say this is not our money, but its State or Federal Government money."

(Mayor Delle Donne interview: 20 April 2012 transcribed from 3:08:03)

57. Mr Dacombe's advice (dated 2 October 2012) pointed out that during the budget process elected members were provided with a bound booklet containing reports on every proposed project and program with a value of \$50,000 or more. These reports included details of the source of funds for each project including the \$600,000 grant funding. Mr Dacombe advised this report was considered page by page by elected members during the budget workshop process.
58. When the matter was brought back to Council on 13 December 2011, the grant was referred to in the report. The Officer's recommendation in the report to Council on 13 December 2011 was:

"That Council proceed with the first stage of the Centenary Avenue road improvement project that is listed on the 2011/2012 Annual Budget at a cost of \$600,000 which is 100 per cent funded under the Nation Building Black Spot Program."

59. However Council passed a motion moved by Cr Mason, that the Officer's recommendation not be adopted because:

*"1. the work is to be conducted in the City of South Perth
2. South Perth have contributed no funding, labour, materials or equipment to the project.*

and in lieu of, the following be adopted:

Council re-affirm its recommendation of 11 August 2011 and the funds be returned to the State Government."

For: The Mayor, Crs Mason, Daly, Clarke, Olsen, Barry, Elliott, and O'Donnell
Against: Crs Morgan and Boylen

60. Council's position on this matter appears to be primarily related to two issues. The first is that the majority of the works was to be conducted in the City of South Perth. The second is that the City of South Perth had not contributed in any way to the project. Notwithstanding that it was the case that the majority of work for stage one was to be conducted within the City of South Perth, the project was fully funded by the Black Spot grant and would have been cost neutral for the City. The importance of the project and the benefits that would be derived, not only by the City of Canning, but by other community members, was explained in the Officer's report:

"The proposed road improvements to Centenary Avenue will increase the capacity of the road which will reduce the attractiveness of Bungaree Road through Wilson as an alternate travel route between Leach Highway and Manning Road during peak periods. The road improvements will also result in a reduced travel time for the Public Transport Authority's successful circle route bus service which utilises Centenary Avenue."

61. Council members gave varying reasons for the way they voted on this matter, but, maintaining some consistency in their attitude to the Nicholson/Bannister/Wilfred Road project, namely that the City of Canning should not be spending its money on projects outside its boundaries:

"The risk management is based on past experience. [indistinct] the ratepayer of the City of Canning have to pay for the overruns in other cities."

(Mayor Delle Donne interview: 20 April 2012 transcribed from 3:09:32)

"I just remember yeah – someone saying that it was City of South Perth and I'm thinking "well, why are we spending City of Canning's money" – yeah, I didn't get that bit."

(Megan O'Donnell interview: 24 April 2012 transcribed from 47:37)

“When that item came before Council I moved it as it was outside the City of Canning and once again, we could not afford to go over budget on an item that was outside of our Council. I moved that – that money be handed back. And at no time – at that stage – did the CEO or – the CEO, not the acting CEO – the CEO or any Executive pull me up and say that it was a fully funded project and these were the reasons why we needed to continue it.”

(Bruce Mason interview: 20 April 2012 part 2 transcribed from 33:52)

“We had a full set of plans as to what the work to be carried out was, I think the Mayor said it’s – it’s all in South Perth and [indistinct] we’re not going to go ahead with the project and [indistinct] I think the motion was to send the five – six hundred thousand dollars back to the Black Spot program which seemed ridiculous to me.”

(Robert Morgan interview: 17 April 2012 part 1 transcribed from 51:53)

“I voted with him [Cr Mason], yeah. We – there was questions. There was questions that needed to be answered, and I think that it was suspended until such time – because I think part of what Councillor Mason was saying was – I mean, ‘why is it we’re dealing with something in the City of South Perth, how did it come about. I mean, basically, we need to know these things so can you come back and tell us that’.”

(Graham Barry interview: 26 April 2012 part 1 transcribed from 1:22:56)

“I was – we had the officer’s report and maps indicating what was happening, yes. I was familiar with what was due to happen and I was supporting it.”

(Lindsay Elliott interview: 24 April 2012 transcribed from 1:27:39)

“We ended up paying for it, and City – the City of South Perth haven’t given us the money back”

(Mary Daly interview: 2 May 2012 part 2 transcribed from 1:07:21)

“It was the same chestnut that money was going to be spent in South Perth rather than the City of Canning.”

(Stuart Clarke interview: 1 May 2012 transcribed from 2:43:42)

“Once again – needed more information, it was to do with the City of South Perth and – I was concerned at the KPI’s we had in the City of Canning [indistinct] engineering works, road works in the City of Canning and how this would involve the workers from the City of Canning in that we would – we were going to be doing work in another municipality and if there was overruns on it, or it didn’t – you know, went over the six hundred thousand – all those sort of things.”

(Bev Olsen interview: 27 April 2012 transcribed from 2:46:57)

62. Cr Boylen referred to his recollection that he spoke strongly in support of the Officer’s recommendation and specifically recalled clarifying with Officers at the meeting that the grant funding fully covered all costs for the City. Cr Boylen appeared to be the only councillor who acknowledged and understood the significance of the project being fully funded by a grant:

“Well I spoke very very strongly that we should accept the funding. I asked if I – I specifically asked the question does the funding coming from the Federal Government fully cover – not only the road works, the bitumen, the engineering works [indistinct] the cost of our Council staff involved and I was told yes. So the item fully paid for – was fully paid for – there was no cost in any way to the City. We were shown a plan of the works which included also a phase two – phase two to my mind I don’t recall asking the question but phase two wouldn’t go ahead until you did phase one – but everyone seemed happy with [indistinct] eventually do phase two which was in the City and needed. To me it was an irrational decision, but, it was democracy at work and I was on the losing side.”

(Stephen Boylen interview: 26 April 2012 part 1 transcribed from 1:21:49)

63. The City of South Perth had recognised the importance and benefits this project would deliver. On learning of the City of Canning’s decision it took the unusual step of writing on 13 January 2012 to the City of Canning to raise its concerns with the Council’s decision to reject the project (EXH 38). In its letter the City of South Perth stated:

“South Perth is very disappointed by the recent decision of the Council of the City of Canning and considers it not to be in the best interests of the broader community. South Perth also believes that Centenary Avenue needs to be upgraded as a matter of priority to improve traffic flow and

eliminate congestion at Leach Highway (near Shelley Bridge) and Manning Road during the AM and PM peak travel times.

Both of the above roads (part thereof) are located within the City of Canning, with the recommended improvements providing significant traffic and transport benefits to residents of Canning and the broader community.”

64. The Inquiry interviewed staff from the City of South Perth who advised that after learning the City of Canning had rejected this project and voted to return the funds, it sought approval from the City of Canning to conduct the works itself. In order to assume responsibility for the project and the Black Spot grant, the approval of the Council of the City of Canning was required. After receiving this request from the City of South Perth, Officers from the City of Canning submitted a report to Council for its consideration at its Ordinary Meeting of 24 January 2012 (report ET-007-12) (EXH 39). The Officer’s recommendation in that report was:

“That:

- (a) Council advise the City of South Perth of its approval to undertake works along Centenary Avenue, in the City of Canning, as detailed on Plan No’s S416-1 and S416-2.*
- (b) Council provide the City of South Perth with a quote to undertake the works along Centenary Avenue.”*

65. The Canning Officer’s report detailed that the City of South Perth was prepared to assume management over the project and that advice obtained from Main Roads WA indicated that it was possible to transfer the \$600,000 Black Spot grant to the City of South Perth, as Project Manager.
66. The City of South Perth also provided the City of Canning with an opportunity to provide a quote if it utilised Canning’s road construction workforce to undertake the construction works on the project. This would become important when some two months later at Council’s Ordinary Meeting on 13 March 2012 a report was presented to Council advising of an emerging issue with the City’s

construction workforce in that it did not have enough projects to keep the construction staff occupied.

67. However, the report, its writer perhaps conscious of the need not to delay the project, noted that the City of Canning did not have to provide a quote and could just agree for the City of South Perth to do works in the City of Canning.
68. At the Council meeting the response to the City of South Perth's proposal was provided (EXH 40):

"Following questions by Cr Mason, Executive Property Assets and Economic Development took on notice the following questions by Cr Mason:

(a) why is the work being carried out in other Councils by the City.

(b) is the City of South Perth contributing to the ingress and egress on Manning Road.

(c) if the budget amount exceeds the works being carried out, would the City's ratepayers be expected to pay the balance.

Cr Mason then sought a ruling from the Mayor that this item is out of order.

The Mayor ruled that this item be dealt with under Clause 3.14 of the Standing Orders, being:

3.14 NEGATIVED MOTION NOT TO BE ENTERTAINED WITHIN THREE MONTHS

A motion to the same effect as any motion, (other than a motion moved in pursuance of a report of a committee of the Council) which has been decided in the negative by the Council shall not again be entertained within a period of 3 months unless an absolute majority of the Councillors signify to the CEO in writing before a meeting their consent to the motion being entertained at that meeting.

Accordingly, the Mayor's ruling was accepted by the Council and item ET-007-12 could not be entertained."

69. The Inquiry's review of the Officer's report identified that the item and the recommendation were markedly different from what had been presented before. The report and the recommendation that accompanied it clearly requested Council approval to transfer responsibility (and the Black Spot grant) to the City of South Perth, whilst the previous reports to Council on the subject were on the premise that the City of Canning was managing the project and conducting the work. The report should have been considered on its merits and ruling the item out of order was not appropriate.
70. Had Council debated the issue it would have been clear that its earlier rejection of the Officer recommendation, because the works were primarily to be conducted in the City of South Perth and it had not contributed in any way to the project, were no longer relevant.

SUMMARY AND FINDING

71. Council's position in rejecting this project appears to be primarily related to two issues. The first is that the majority of the works was to be conducted in the City of South Perth. The second is Council's belief that the City of South Perth had not contributed in any way to the project.
72. This was not an acceptable basis for Council to reject the project and the significant benefits it provided to the community and the City. Only stage one was largely conducted within the City of South Perth, with stage two largely conducted in Canning's area. But this was irrelevant as stage one of the project was fully funded by the Black Spot grant and would have been cost neutral for the City.
73. Furthermore, Council was advised by City Officers that the City of South Perth was prepared to assume management over this project and that Main Roads WA indicated that it was possible to transfer the \$600,000 Black Spot grant to the City of South Perth to allow this to happen. This offer from South Perth

addressed the flawed considerations that supported Canning Council's earlier rejection. But again, Council prevented the project proceeding by refusing to consider the offer on technical grounds. Again the grounds for rejecting this offer were incorrect and unacceptable.

74. Other consequences followed, Main Roads WA had advised the City that if the work was not completed by June 2012, access to the grant would be terminated.

FINDING 13

The Council's ruling that the Officer's recommendation to approve the transfer of the Black Spot grant to the City of South Perth to undertake works along Centenary Avenue be rejected under Clause 3.14 of the Standing Orders was not appropriate. Council should have recognised that the matter subject of the Officer's report and recommendation was markedly different from previous motions dealing with works on Centenary Avenue.

FINDING 14

Notwithstanding Council ruled the Officer's recommendation be rejected under Clause 3.14 of the City's Standing Orders, elected members failed to ensure they fully understood the Officer's report dealing with the transfer of the Black Spot grant, along with responsibility, for the Centenary Avenue project to the City of South Perth. The Officer's report to the 24 January Ordinary Council meeting made it clear that the basis for Council's earlier rejection of the Centenary Avenue project - because the majority of the works were primarily to be conducted in the City of South Perth and Council believed South Perth had not contributed in any way to the project - were no longer relevant in rejecting the recommendation.

FINDING 15

The choice Council made to not only reject undertaking the Centenary Avenue/ Manning Rd project themselves but also to refuse to allow the City of South Perth to assume management over this project, demonstrates poor governance. The Inquiry considers there was no justifiable reason why the Council denied commuters the significant benefit of a safer more efficient intersection. The flawed reasons provided by Council as grounds for rejecting this project, displays an unacceptable narrow-minded approach that is at odds with the cooperative holistic model of modern government.

CHAPTER 7

Willetton Child Care Centre

INTRODUCTION

75. The Willetton Child Care Centre (WCCC) was established in 1986 and is a 'not-for-profit' community managed organisation, providing child care services to residents in the Willetton area and surrounding suburbs. It is managed by a volunteer committee of parents and interested community members on behalf of the Department of Communities. The management committee meets once a month.
76. The Department of Community Development, as it was then known, built the facility that the WCCC now uses, with the land being owned by the City. There has been a suggestion that the land was Crown land vested in the care and control of the City, however this is not correct. The City has owned the land outright since 8 November 1978.
77. The Department of Community Development subsequently leased the site back from the City via the terms of a 21 year lease for an annual "peppercorn" rent of one dollar. The lease agreement between the Department for Communities and the City expired in 2007 and was not renewed through error. By reason of a 'holding over clause' in the expired lease agreement, the State, through the

Department for Communities, continues to be responsible for the maintenance of the building.

78. Whilst it is understood that attempts to negotiate a new lease commenced in 2007, it would appear that this work became protracted to the point that the City was requested to start afresh in 2010 with a new lease agreement.

79. A new draft lease document was prepared by the State Solicitor's Office (SSO) on behalf of the Department for Communities, which was then provided to the City. The draft lease was then referred for review to the City's solicitors, who referred the lease document back to the SSO, highlighting some changes that the City requested be made. Due to an organisational restructure at the Department for Communities, there was a delay in making these changes. The lease was eventually returned to the City's solicitors and a draft lease document was received by the City in August 2010.

80. A report was presented to Council at its Ordinary Meeting on 14 September 2010 (report CS-086-10) (EXH 41) outlining the new draft lease agreement for the WCCC, and recommending that Council approve the new lease with a comment in the conclusion of the Officer's report stating *"Given the amenity provided to the community by the facility, it is recommended that a new lease be entered into within the parameters detailed in this report."*

81. The recommendation in that report was:

"That:

a) A new lease be entered into with the Department for Communities through the Minister for Community Services on the terms detailed in Report CS-086-10 and summarised as follows:

i) Use – Child Care Centre;

ii) Term – 10 years plus 10 year option;

iii) Rental - The equivalent of annual rates payable to the City as if the land was rateable, inclusive of any Emergency Services Levy;

- iv) Outgoings – responsibility of the lessee;*
- v) Maintenance and Insurance – responsibility of the lessee; and*
- vi) Lease costs – responsibility of the lessee.*

b) Authority be given for the signing and affixing of the Common Seal to the above lease agreement between the City of Canning and the Minister for Community Services.”

82. However Council passed a motion, that:

“MOVED Cr Olsen, Seconded Cr Wheaton, that this item be moved to a Council Forum for further discussion on the Lease to the Willetton Child Care Centre.

Further comment was provided by Cr Olsen, with Cr Clarke speaking against the Motion. Following further comment by the Chief Executive Officer and questions by Cr Elliott, Cr Olsen closed the debate.

The Mayor then put the Motion.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Elliott, Clarke, Olsen, Morgan, Wheaton and Boylen”

83. It is unclear as to what “further discussion” was needed on the matter and why this discussion was to take place at a Council Forum meeting, as meetings of this nature are strictly for the purposes of presentation of information, not discussion or decision making on the matters at hand.
84. It may be that elected members felt uncomfortable in making an important decision on this matter without more information being provided as to the background of it.
85. This is an acceptable position to take. However if this was indeed the reason, it should have been noted on the public record.
86. The Council Forum meeting was held on 25 November 2010 and a presentation on the issue was provided to elected members by Mr Geoff Moor, the City’s

Manager of Recreation Services. Matters concerning a possible future City assets review and a strategic planning process were also raised *"...to ensure they were being managed in the best interests of the City's ratepayers and community and allowing business as usual for Canning's community groups."*

87. Other matters concerning the business of the WCCC itself were raised. As a follow up to the Council Forum meeting, Mrs Fiona Armstrong, who was then the City's Executive Client & Customer Services, sent an email to Mayor Delle Donne on 20 December 2012 at 12:59PM clarifying some matters about the WCCC (EXH 42):

*"Mayor,
We had a good meeting this morning with the President of Willetton[sic] Child Care. They are reporting strong demand and few vacancies. Dept of Communities has just upgraded the building (new roof etc) and they are now pursuing Lotterywest for funding to upgrade kitchen area.*

Dept of Communities do not currently charge them any rent although they are aware of and expecting to pay the rates equivalent in rent when the new lease is drawn up. There is no advantage to them of leasing directly from us (as Dept currently picks up legal fees as well). They are keen to secure a 5 + 5 lease as a minimum. If this is ok, we will progress the lease with the dept on a 5 +5 basis and have it ready for council approval in January.

*The forum had also asked for information on the centre's charges:
They currently charge families \$70.00 per day or \$300.00 per week for child care. These fees apply to all age groups and include meals which comprise of morning tea, lunch, afternoon tea and for those children still in our care late in the day a late snack. The centre is licensed to care for 48 children daily. Families are charged a one off \$20.00 enrolment fee to cover administration costs and children's hats for sun care etc.*

*kind regards
fiona"*

88. As outlined by Ms Armstrong in her email, in order to comply with legislation relating to the preparation of meals, the City's Health Local Laws, and requirements of the Department for Communities relating to kitchen amenities

for child care centres, the WCCC applied to Lotterywest for a grant to refurbish the centre's kitchen which required upgrading to meet these requirements.

89. A condition Lotterywest imposed on the issuance of a grant was that the City was to provide confirmation for the WCCC that a new lease would be entered into between the Department for Communities and the City.
90. To evidence this support, the CEO of the City sent a letter to Lotterywest dated 21st December 2010 stating that, *"Currently, the renewal of the lease between the City of Canning and the Department for Communities is receiving consideration and it is intended that a new lease will be formalised in the New Year"*[2011] (EXH 43).
91. Following the Council Forum of 25 November 2010, an Officer's report (report CS-004-11) was presented to Council at its Ordinary Meeting on 18 January 2011, recommending that Council agree to sign the draft lease, now with a five year lease period with an option to renew the lease for a further five years (EXH 44).
92. Aside from the five year terms, this was consistent with the advice the CEO had sent in his earlier 21 December 2010 letter to Lotterywest. The full recommendation to Council was:

"That:

a) A new lease be entered into with the Department for Communities through the Minister for Community Services on the terms detailed in Report CS-004-11 and summarised as follows:

- i) Use – Child Care Centre;*
- ii) Term – 5 years plus 5 year option;*
- iii) Rental - The equivalent of annual rates payable to the City as if the land was rateable, inclusive of any Emergency Services Levy;*
- iv) Outgoings – responsibility of the lessee;*
- v) Maintenance and Insurance – responsibility of the lessee; and*
- vi) Lease costs – responsibility of the lessee.*

b) Authority be given for the signing and affixing of the Common Seal to the above lease agreement between the City of Canning and the Minister for Community Services."

93. However Council passed a motion, moved by Cr Mason, that:

"MOVED Cr Mason, Seconded Cr Barry, that this item be deferred to a Council Forum to allow Council to address Section 3.58 of the Local Government Act 1995 in relation to the Lease, Rent, Sub-letting, Maintenance and Rubbish Collection and disposition of the site.

Following comment by Cr Mason, the Mayor put the new Motion.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Mason, Clarke, Morgan, Daly, Dowsett, Wheaton and Boylen" (EXH 45)

94. It is noted that the Officer's report to Council did not raise any issues with reference to section 3.58 of the Act. It did however, detail a number of other considerations under the heading of 'legal considerations':

"It should be noted that the City's interests have been protected during the period taken to finalise this matter by the conditions of a holding over clause in the original lease. This clause permits continued use under the original terms and conditions.

Whilst this holding over clause protects the interests of Council it should be noted that delays in entering a new lease could result in the licence for operation as a Child Care Centre being withdrawn which would result in closure of the amenity."

95. Section 3.58 of the Act deals with the steps a local government must take when it proposes to 'dispose' of property. In this section, the terms 'dispose' and 'property' are defined in the following manner:

*"**dispose** includes to sell, lease, or otherwise dispose of, whether absolutely or not;*

***property** includes the whole or any part of the interest of a local government in property, but does not include money." (emphasis in original).*

96. Whilst the requirements of section 3.58 of the Act appeared relevant to the City, as it was proposing to “...lease...part of the interest of a local government in property...”, the provisions in fact did not apply to the proposed disposition to the Department for Communities as an exemption exists in Regulation 30(2)(c)(ii) of the *Local Government (Functions and General) Regulations 1996* in relation to dispositions to government agencies:

“30. Dispositions of property excluded from Act s. 3.58

- (1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.*
- (2) A disposition of land is an exempt disposition if —*
 - ... (c) the land is disposed of to —*
 - ... (ii) a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth;...”*

97. Whilst it is arguable this should have been made clear in the Officer’s report to Council, it is more significant that again a motion was moved from the floor without any Officer advice or consultation. Consistent with previous actions of Council, the subsequent resolution adopting the motion resulted in adverse and unnecessary consequences.
98. Cr Mason’s motion would have benefited from Officer advice that section 3.58 was not applicable in this case, and therefore the referral to discuss this aspect at a forum was an unnecessary delay.
99. In addition, Cr Mason’s motion raises issues concerning maintenance, rubbish collection and sub-leasing as items that needed to be discussed at the Forum. However, these responsibilities were outlined in the Officer’s report and contrary to the motion moved by Cr Mason and subsequently adopted by Council, had no connection to the requirements of section 3.58 of the Act.

100. During this period, a Lotterywest grant to the WCCC for an amount of approximately \$132,000.00 was approved to enable the WCCC to conduct its kitchen upgrades. As noted previously, the payment of this grant was contingent upon the existence of a current lease.
101. In March 2011 Mayor Delle Donne and CEO Mr Dacombe had a meeting with Dr Mike Nahan MLA, Member for Riverton, and Mr Lindsay Holland, the President of the WCCC regarding the ongoing issue of the WCCC's tenure.
102. On 8 April 2011 the City sought legal advice from its legal advisers, McLeods, regarding the issues surrounding the now expired lease and the ongoing tenancy arrangements the WCCC had with the Department for Communities.
103. The response from McLeods, dated 13 April 2011 (EXH 46), outlined to the City that:
1. Whilst the Minister for Communities remained in possession of the premises, the use of the premises was now subject to a periodic tenancy (due to the expiration of the original lease in 2007) which could be terminated by the City with one month's notice;
 2. If this occurred, the entire premises, including the building and any improvements would become the responsibility of the City; and
 3. The legal advice confirmed the City was exempt from applying the requirements of section 3.58 of the Act for the disposition of the property.
104. Following this legal advice, the City sought information and advice from Landgate on 10 May 2011 concerning the current valuation of the land and buildings and

indicative rental that could be obtained from the premises based on a number of alternative scenarios.

105. Landgate's response detailed three scenarios for the City to consider. It is considered that these scenarios were presented in accordance with the instructions from the City:

"Fair Rental for the existing premises as a child care centre (to a commercial operator)"

The market rental for a child care centre is based on a rate per child per annum. Our market evidence for childcare centers indicate a rental rate of \$1300 to \$1400 per child per annum net of outgoings is applicable for the subject premises.

Based on the subject premises being licensed for 48 children a rental in the range of \$62,400 to \$67,200 per annum is applicable to the subject premises.

Fair rental for the existing premises for an alternative use

Based on the rezoning of the premises to a commercial or retail zoning it may be possible to utilise the premises for an alternate use.

Based on the plans provided, the building area is approximately 355 square metres. The location of the subject site is considered quite secondary with limited street front exposure. We consider retail or commercial use of the site would be unlikely unless it formed part of an extension to the existing Southland Boulevard Shopping Centre. This would require the sale of the land to the adjoining owner which would seem an unlikely scenario.

Our recent research into suburban offices indicate suburban office rates in the range of \$250 to \$300 per square meter per annum for profile areas such as Belmont, Booragoon and Myaree. The conversion of the existing premises into offices would at best yield a rental of say \$200 per square metre per annum net, taking into consideration the location of the premises. This option results in an annual rental that is similar to the market rental for the existing use as a child care centre. Therefore it would not be economically viable to undertake the cost of converting the premises for office use. In addition we are of the opinion the leasing market for a childcare centre in this location in Willetton would be stronger than the leasing market for an office in this locality.

Fair ground rental for the lease area.

Based on our previous conclusions above, we consider the current use of the site for a child care centre to be the highest and best use. Therefore we consider the option to demolish the existing improvements and lease the land on a ground rental to be economically unviable."

106. Critically, the letter from Landgate concluded, amongst other things "As requested this rental is on the basis that the premises' is leased on the open market to a commercial operator" (EXH 47)
107. It is clear that at this point in its negotiations the City had approached the matter of the lease renewal with a view to entering into a new lease on a commercial rent basis.
108. It is also apparent that Council did not see any value in a continuation of the arrangement whereby the City would lease the premises to the Department for Communities, who would then lease the premises to the WCCC.
109. It would appear that the Council's preference was for the City to lease the premises directly to the WCCC.
110. On 29 June 2011, a "Council Forum" meeting was held, with a presentation to elected members. The presentation was based on a previous one provided to elected members. However, this time it referred to advice having been obtained from McLeods and Landgate. It is not clear if copies of the advice from McLeods and Landgate were given to elected members at this meeting.
111. In the presentation, four options were provided to Council for a "fair rental" to be charged if the WCCC leased the premises directly from the City.
112. The first option was to continue with a peppercorn rent arrangement. The second was to adopt an annual rent that was equivalent to the amount of Council rates an owner or lessee would have to pay if the property was rated (in

this case, at the time it would have been \$2,356.38). The third option was to set a new amount based on precedents for other community facilities. The fourth option was to set a new amount based on a new sliding scale formula.

113. The presentation went into detail about the 'sliding scale' option and how it might work. It was proposed that rent would be based on the commercial value of the building, but to recognise the not-for-profit nature of some community run operations (like the WCCC), a discount would be applied based on a percentage of the "income opportunities" of the operation.
114. For example, a not for profit organisation with an annual turnover of up to \$750,000 would be eligible for a discount of 40% off the commercial rental valuation. This valuation would have been provided to the City by Landgate. In the case of the WCCC, whose financial statements for the 2010/2011 financial year were provided to the Inquiry, the rental they would have been required to pay (based on a gross income of \$753,911 and the maximum commercial valuation provided by Landgate on 10 May 2011 of \$67,200) would have been \$40,320.
115. The presentation made it clear that Council was to set the direction for the lease of the WCCC, and decide on the preferred lease and rental approach. Aside from the confidential advice provided to the Council by McLeods and Landgate, there was no reason why the WCCC could not have been informed of this new proposal.
116. Once again, the matter was presented to Council for a decision, this time at its Ordinary Meeting of 12 July 2011 (report CS-041-11) (EXH 48). Consistent with previous reports to Council on the matter, a recommendation was presented that would have allowed Council to move forward with the matter, and provide some clarity to the WCCC on where they stood.

117. Five options were put to Council in terms of how the premises could be used, with two options for rent:

“That

Council adopt option As outlined in Report CS-041-11 with regard to the portion of Lot 102 Burrendah Boulevard that is the subject of an expired lease between the City and the Minister for Community Development.”

118. However the Council decision, based on a motion moved by Cr Barry, was:

“Moved Cr Barry, Seconded Cr Wheaton that:

(a) That CS-041-11 be referred to a Confidential Forum to view all documents relating to this item, and for a comprehensive briefing on all options presented in relation to CS-041-11.

(b) A further report be presented to Council.”

119. At this point, the matter had been deferred to a confidential Council Forum for the third time. The protracted Council decision making on the new (or any) lease for the WCCC was generating concern with representatives of the WCCC, in particular, its President Mr Lindsay Holland. The options, as they were presented in the report, were obvious and properly explained. Council should have made a decision at this point to move forward with the lease issue instead of deferring it again to a confidential Council Forum.

120. Questions started to be raised. The President of the WCCC, Mr Lindsay Holland, attended Council’s Ordinary Meeting on 26 July 2011 and challenged Council during Public Question Time about the lease (EXH 49). He also stated to Council that the WCCC had until February 2012 to have a new lease in place, or access to the Lotterywest grant for kitchen refurbishments would be lost.

121. Mr Holland’s questions asked at the Council meeting on 26 July 2011 were taken on notice and a written response was provided to him by the City on 23 August

2011 (EXH 50). The vague answers from the City gave the WCCC little assurance that the issue would be dealt with expeditiously.

122. The matter also started to receive local media attention. On 2 August 2011 the *Canning Times* ran a front page article titled “Children face loss of centre” and referred to the City’s protracted deliberations and the risk the WCCC faced of with losing the Lotterywest grant if lease arrangements were not entered into.
123. The article also quoted the City’s CEO Mr Dacombe who made what was probably the first public acknowledgement of the fact that the City was conducting a review of all of the City’s leased assets with a view to incorporating this review into a future asset management survey.
124. Following his initial unsuccessful attempt to solicit information in a public forum, Mr Holland attended the next ordinary Council meeting on 9 August 2011. A summary of the exchange between Mr Holland and Mayor Delle Donne is recorded in the minutes of that Council meeting (EXH 51):

“Mr L Holland – President of the Willetton Child Care Centre

Statement: *I was here at the last Council meeting. I bought up a number of points about our lease and why we haven’t got our lease and asked a number of questions. I was guaranteed I would be answered, that you would get back to me, I have had no such answer. I have since put in a call to the Chief Executive Officer, which has not been responded as well. If you people are having trouble deciding what to do with your secret meetings and you need some information, we are quite happy to give you that information on how the Centre is run, the Board of Committee, the profitability, viability, staff numbers, how it is funded, we have offered to give this before. I also faxed off to one your staff our projected budget, which has allowed us a profit of about \$11,000. That is \$11,000 on a non-profit organisation, community based Child Care Centre, which is nothing, that allows for incidentals, or anything that may come up time after time. If we are running at an \$11,000 loss, we would be in trouble. We would like our questions answered, not just my questions, you have been asked these questions by the local Member of the Lower House, local Member of the Upper House. You even not replied to the Director General Department for Communities. You haven’t replied to anybody. Now the*

ramifications of that, so you other people who aren't on this secret Committee, who won't ask the questions, because it is a secret...

Cr Barry stood and raised a Point of Order that we have no secret Committees, we don't hold anything in secret.

Statement: *You do, it is a secret Committee...*

The Mayor intervened and advised that you heard my instructions at the beginning, you are not to become argumentative, please ask the questions – this is question time and I am allowing you to have a bit of leeway, like I did with everyone else, but if you can get to the point and your questions, I have no problem with that.

Statement: *You know we have a Lotteries Grant of \$132,000 to replace and repair our Kitchen, which needs to be done as per the Department for Communities Health Inspectors and the City of Canning Health Inspectors, we need to get that done. We are running out of time to get that done and to utilise the budget at all. What we are also hoping to do is do it when we close over Christmas break. Now if can't do it then we will have to close again, because we can't have people going around there with sledgehammers and drills, etc when we have little children there. That would mean we be closed for another week or two weeks and will be running at a loss, about \$25,000 per week that is going to cost us. Let alone all the parents with kids who will not be able to use the Day Care Centre.*

Question: *What we are trying to find out is will you please answer our questions on when we are going to get our Lease?*

Answer: *The Mayor. I can answer that now. As you outlined at the beginning that you were here at the last Council meeting and says here, and this document was for public consumption since last Friday, and reads "The Chairman will take the question on notice and will respond to you in due course". You made a Statement, then the answer to all that is in the Agenda and reads: - "Council is still undertaking a review of community facilities to ensure equality and sustainability. We are aware of the situation Willetton Childcare Association are currently in. We cannot provide a date when the lease will be concluded but we will ensure Department for Communities (the leasee) are kept informed." What is the problem?*

Statement: *It has gone to 3 Committee meetings of yours already, this has taken 12 months since the lease was ratified by the Department for Communities and paid for by the Department for Communities to the Lawyers who drew up the Lease. It is recommended by your own staff, this has taken twelve months after 3 referrals to Committees. I have got a*

right to know when it's going to be done and we have got uncertainty at the Centre. This is a non-profit Centre.

Answer: *The Mayor. Council doesn't work the way you want it to work. The Council has to work in accordance with the rules and regulations, that is what the Council done.*

Statement: *You have not even answered the Director General of the Department for Communities,*

Answer. *The Mayor. Yes we have, the Department failed in its duties as far I understand, in relation to the Lease being expired 3 years ago, you are aware of that. Now you saying because of that this Council has to move heaven and earth to accommodate you as an Association, which Council is concerned about the families and the children of the area.*

Question: *What are your concerns?*

Answer. *The Mayor. Council concerns are the kids that still use the facility.*

Question: *What is the problem with that?*

Answer: *I can't see any problem with that, the only problem, is far as I can see, it has taken 21 years to reveal that the kitchen is in the state that it is.*

Statement: *It is fine, it's just the way the Health Regulations have changed over the years with the Federal Health Government Regulations have changed and your own health regulations. It has passed inspections.*

Answer *The Mayor. Until Council makes a resolution to that effect, we can't tell you anymore about that.*

Statement: *You cannot blame it on 21 years ago, it is not 21 it is 25 years.*

Answer. *The Mayor. 21 years Lease with the Department of Community Services.*

Statement: *We have passed every health inspection of our Kitchen and the place throughout those times/years. That is irrelevant, now with the health regulation change, the place is getting old, we have had the place upgraded thanks to grants from the Department for Communities of nearly \$200,000, airconditioning, roof, painting.*

Question. *The Mayor. Do you have a copy of the Head Lease?*

Statement: *I certainly can get one, you have a copy – I can send it to you, the one recommended by the Department for Communities.*

Answer. *The Mayor. That is not the Head lease, the original Lease.*

Statement: *I am sure we have that somewhere.*

Answer. *The Mayor. You better go away and read it.*

Statement. *Please don't patronise me.*

Answer. *The Mayor. I'm trying to help you, if you don't want to be helped it's up to you. I am going to take your questions on Notice and obviously you are not satisfied with it, I'm sorry but can't help you anymore, if you have any more questions, please resume your seat.*

Statement: *I have not got any more questions, I am very dissatisfied with that answer.*

Answer. *The Mayor. Even the person before you was dissatisfied with the answers.*

Statement: *What does that say about the Council then.*

Answer. *The Mayor. Like I said to you, Council has to work within its rules and regulations, there are Acts that we have to abide by.*

Statement: *Like the Department for Communities goes by and we adhere to those Acts all the time. Child Care Centres are the most regulated places, just about in the whole of Australia. They have changed their Federal laws.*

Answer. *The Mayor. We understand that. I have had my own kids at Child Care Centres and my grandkids go, its nothing new you are telling me. This is Council property, needs to be looked at like every other property within the City.*

Statement: *I totally understand that, but please tell us what you want.*

Answer. *The Mayor. When Council deals with it, they will ask you what they want.*

Question: *How long does this go on for – another 12 months.*

Answer. *The Mayor. Sometimes, things take longer than that. I am just telling you that what can happen with items.*

Statement: *You Councillors just standing by and letting this happen, I'm astonished. Thank you for your time."*

125. It should have been obvious to Council that Mr Holland was seeking clear and honest answers about the tenure of the WCCC. The answers to these questions were of importance to the parents who had their children enrolled in the WCCC and who would naturally be entitled to know what the City intended to do with the lease if it affected their use of this facility. Understandably, frustrations emerged when Mayor Delle Donne managed public questions raised by Mr Holland in a manner that was insensitive and evasive to Mr Holland.
126. The next Ordinary Council Meeting was on 23 August 2011. A number of people with an interest in the future of the WCCC, including Mr Holland, attended this Council meeting and asked questions of Council during Public Question Time. The answers given by the chair of the meeting, Mayor Delle Donne, were again evasive, vague and insensitive. This pattern of question-answer exchanges over this issue was repeated again at Council's Ordinary Meeting on 13 September 2011 (EXH 52, 53).
127. At Council's ordinary meeting on 13 September 2011 a report was presented to Council titled "Review of Community Use Buildings" (report CS-054-11) (EXH 54). The report outlined a presentation to Council in March regarding a land and property asset review. The information provided to Council demonstrated that there were 42 City-owned buildings leased to community groups and not-for-profit organisations. 38% of the leases had expired (but were being held over) and 56% had peppercorn or nominal rentals. Those leases (35%) that had been renewed since 2002 had used a standard lease and moved to a rent equivalent to rates. The report then set out the scope for the proposed property and asset review.
128. Mr Holland, again, attended the Council meeting and asked questions of Council during Public Question Time. As had been the case with previous Council meetings where Mr Holland asked questions of Council on this subject, he was unable to obtain useful answers to his questions. The underlying issue is that despite repeated questions and requests from the WCCC for some clarity and

direction on what Council's intention was with the WCCC lease, Council offered no information that was of assistance to the WCCC, and the parents who used this facility.

129. It is not in dispute that the City has a right to undertake a review of its assets and buildings and to set what it considers is a "fair rent". The issue that emerged in this case is the unnecessary secrecy and unjustified confidentiality that Council attached to its deliberations over the WCCC.
130. This could have been promptly decided by Council had it simply stated to the WCCC what it intended to do with the WCCC premises. Instead, it chose to embark on a course of action that created a perception that the issue was shrouded in secrecy, which inflamed an already emotive and sensitive issue.
131. Evidence given by elected members on this subject demonstrated that their understanding of the issue varied significantly:

"I think anyone in that situation deserves – yeah, needs – something to be done, not for it to be going on for so long. And I – I don't understand the processes of that."

(Megan O'Donnell interview: 24 April 2012 transcribed from 1:30:13)

"The way Holland – Lindsay Holland was treated in – at question time at Council meetings was shocking I thought."

(Robert Morgan interview: 17 April 2012 part 2 transcribed from 38:47)

"I – I don't believe that it's ever been put in Council that we were going to shut that facility down. Now it may be running on a month to month basis, but that gives the Council the opportunity to consider what direction we will go with that facility. Certainly it's been raised and it was raised in the forum – sorry, in the working group that we had regarding a facility at Willetton – that there may be consideration given to including a brand new child – facility in that – and that that child care centre could be moved into that brand new facility and then the Council could consider what it could do with that asset."

(Bruce Mason interview: 20 April 2012 part 2 transcribed from 2:28:48)

"This was a matter that – once again, you – you've quoted a part of the Local Government Act there, and – and many of the decisions were made under – threat – under the guise of – that if you don't do this it's against the Local Government Act. And I believe we should have made a decision earlier."

(Lindsay Elliott interview: 24 April 2012 transcribed from 2:36:15)

"Peppercorn rents are basically a thing of the past. Now, Wilson – Wilson playgroup, it's a similar situation, where another organisation wants to lease that, but you have to – it has to be leased on a fair and equitable basis. So, instead of now you get the one dollar bit, well, you have to pay twenty five, thirty thousand dollars for rent a year because – this is an organisation which, one way or another, is making money. And the fact is that the Department for Communities can't make a lease."

(Graham Barry interview: 26 April 2012 part 2 transcribed from 1:04:49)

"Well – I've – I spoke against it quite a few times. I found that the – the attitude the Council were – was actually appalling in this case. We were conducting a – a review, of all – things like that within the City of Canning, and it was the Mayor's firm view that we would not deviate from that"

(Stuart Clarke interview: 1 May 2012 transcribed from 1:29:24)

"I know why it went to briefings and why it was held up, because it was so long, and the – so long before we were actually advised – I think we were advised 2010 or 2011"

(Mary Daly interview: 2 May 2012 part 2 transcribed from 17:40)

"Given – I think, once we reached the point where it was quite clear that the best use of the building was as a child care centre, it was arguably unreasonable to continue to use the building report that we were waiting for on – the asset report that we were waiting for on all Council assets as a reason for delaying, I – so I – from my – that's one answer. The other answer is that of course what we haven't done, and I know what some Councillors wish to do was to determine why we should have non-government service providers providing child care, when there are also private operators and why we wouldn't have them bid for it."

(Stephen Boylen interview: 26 April 2012 part 2 transcribed from 56:05)

“Ok, when this – this item – and this goes back to my Refocus and one of the big issues in that of asset reviews and rent and lease – lease reviews and rent inspections in the City of Canning. Before, the previous Mayor that – this goes back to when I first came into Council – when this report came to Council, I withdrew this on – when it was first presented to us the very first time, because in that report it contained ‘their lease had expired three years previously’ and nobody had picked it up within the organisation. So we were being asked to give them a peppercorn lease, but their lease had run out three years before.”

(Bev Olsen interview: 27 April 2012 transcribed from 1:20:18)

“The people from the Willetton child care are very disturbed and very upset – they get a fair hearing, they do get a hearing, but their questions aren’t being answered and that’s where the problem lies.”

(Tim Dowsett interview: 7 June 2012 transcribed from 20:06)

WITNESS: *“It depends where you stand. You know, which side of the equation you stand, it’s that the Council has got to look after the interest of all the community, and it is a fact that the Council has – believes, anyway, that the community for the child care centre, is imperative for that area.”*

AUTHORISED PERSON: *“Wouldn’t it be logical to assume that the Willetton Child Care Centre was servicing the community?”*

WITNESS: *“Oh yeah, there’s no doubt about that.”*

(Mayor Delle Donne interview: 20 April 2012 transcribed from 39:29)

132. At Council’s Ordinary Meeting held on 13 December 2011, a report was presented titled ‘Land and Property Asset Strategy Action Plan’ in which Dr Mike Mouritz, the City’s Executive City Futures, sought Council endorsement to call for submissions for the development of a plan that would catalogue, assess and report on future action needed for management of the City’s assets and landholdings (report CE-047-11) (EXH 55).
133. Inexplicably, despite the protracted discussions that had already taken place, the WCCC become part of this plan, which further hindered progress on obtaining its lease and provided no certainty for the future of the WCCC. Given the

protracted history of the WCCC matter, it was open to Council to resolve the WCCC lease issue independently of the Land and Property Asset Strategy Action Plan.

134. The subject was revisited at Council's Ordinary Meeting held on 24 January 2012 at which a report was submitted entitled 'Land and Property Asset Strategy Action Plan Update' (report CE-003-12) (EXH 56). Council decided to:

"MOVED the Mayor, Seconded Cr Daly,

(a) That Council receives Report CE-003-12 and adopts by issuing of a tender for Land and Property Asset Action Plan Update to develop via a business case process.

(b) For Council to assess the likely benefits and returns prior to implementation with a regular reporting of progress to Council Forums.

CARRIED

For: The Mayor, Crs, Daly, Olsen, Morgan, Barry, Elliott, Boylen and O'Donnell

Against: Cr Mason"

135. Whilst the above resolution is poorly worded, it is understood that the Council decision supported calling for tenders for suitable companies to conduct the land and property asset review.
136. At the same Council meeting, another report titled '*Consultation with Community Lease Holders and Regular Users of Council Community Halls*' (report CS-006-12) (EXH 57) was presented seeking approval to consult with community groups that have either a lease on a building within the City, or were a regular user of a community hall or centre. A motion to have this item deferred was carried unanimously.
137. At Council's Ordinary Meeting held on 27 March 2012, yet another report was presented to Council dealing with the subject of a lease with the WCCC (report CE-023-12) (EXH 58). The report was confidential to elected members only and

detailed both the legal advice received from McLeods on the subject, and the valuation advice the City had obtained from Landgate. The report noted that:

"The leased area alone is not viable for redevelopment given its location. Use as a child care centre is considered to be the best use for the land in its current format. However, when taken together with the rest of lot 102 (where the library is located) and considered as part of the Burrendah redevelopment, other options are possible."

138. This report also referred to the WCCC's desire to upgrade the kitchen, and the Lotterywest grant which was still available because in October 2011 Lotterywest had advised the City that it was prepared "...to waive that requirement [for a lease to be in place] if the City could make certain assurances that the building would remain for community use". In response, Council passed the motion that: *"The City confirms that it intends to continue to provide a community use facility at 41 Burrendah Drive Willetton that meets that needs of the City of Canning residents."*

139. This report also went on to refer to a previous decision on 13 September 2011, details of which were not made available for public scrutiny:

"Willetton Childcare required the lease to be in place so it could access Lotterywest funds for kitchen and toilet improvements. They planned to carry out these works during the December/January 11/12 holidays.

However, Council resolved that while it was undertaking the review of community use buildings it would not consider any further lease requests. (CS-054-11 13 September)."

140. The Report identified that the Department for Communities, on behalf of the WCCC, was seeking Council approval, as Council was the landlord, so that the kitchen upgrade works could proceed. The report referred to a development application for planning approval for the kitchen works, submitted by the Department for Communities to the City.

141. The report acknowledged that the Department for Communities would have a continued role with the WCCC, not only as a regulator of child care services, but also in providing support to the WCCC. However, the Officer's report identified, from the City's perspective, *"having the Department for Communities sublet the building does not provide any advantages"*, and in any future lease arrangements consideration should be given to directly leasing to the WCCC.
142. The report made a passing mention of the financial implications for Council renegotiating a lease over the site. In the Inquiry's view, this aspect had greater significance than what it was given in the report:

"The current arrangement is a peppercorn rental. If a new arrangement is established there is the opportunity to consider a greater rental return for the city. The current approach for community lease is to charge the rates equivalent. Any significant increase over this will need to be balanced against the likely concern from parents if their fee increases as a result. Council may wish to take a stepped up approach, starting with a lower level for this short term arrangement and leading up the potential commercial fee for any new facility."

143. The Officer's recommendation was-

"That:

(a) Council resolves that in the Interests of good governance, it authorises the Acting Chief Executive Officer, in conjunction with the Mayor, to discuss with Department for Communities and Willetton Childcare Association Inc, opportunities to establish a 1 year licence for use.

(b) Following the above discussion, a further report to Council outlining the terms of the licence and proposed rental to be presented for Council for approval.

(c) Subject to the successful agreement of a licence, Landlord approval (for the building works as proposed in the attached plans will be granted.

(d) All efforts are to be made for the above to be completed in a timely manner to ensure no disruption to the operation of the Childcare centre."

144. However Council passed a motion moved by Cr Olsen, that:

“(a) The City give notice to the Department for Communities that the City is terminating the periodic tenancy by written notice and when this occurs the property reverts to the City.

(b) Council resolves that in the interests of good governance, it authorises the Acting Chief Executive Officer, in conjunction with the Mayor, to discuss with Willetton Childcare Association Inc, opportunities to establish a 1 year licence for use.

(c) Subject to the successful agreement of a licence, Landlord approval for the building works as proposed in the attached plans will be granted.

(d) All efforts are to be made for the above to be completed in a timely manner to ensure no disruption to the operation of the Childcare centre.

CARRIED

*For: The Mayor, Crs, Daly, Olsen, Barry and O'Donnell
Against: Crs Clarke, Morgan, Boylen. Elliott”*

145. This decision, when put into effect, would have ended the Department for Communities’ role as a party to the lease. In any event, a “12 month licence” was unacceptable to the WCCC as it gave the centre no greater long term security than before. Indeed, it is difficult to form the conclusion that any organisation that provides a service or business would willingly enter into a lease period of only 12 months, much less a mere licence, without some form of guarantee of future tenure.

146. The following day on 28 March 2012, the City’s Executive Client and Customer Services, Mrs Fiona Armstrong, emailed Mr Holland and the Department for Communities’ representative regarding the Council’s decision (EXH 59).

“Council discussed the Willetton Childcare lease and development application approval issues last night and I wanted to give you both an update on the decisions.

Council is keen to try and set things onto the right footing as we go forward and although Lotterywest no longer require the lease to be in place before the grant can be released, Council in giving landlords

approval for the development application would prefer to get the arrangement into good order.

As you know, Council had resolved not to consider any new lease requests while it was conducting its review of community use assets and that is still underway. As part of the review the building condition surveyor was recently at Willetton Childcare but they have many more buildings to inspect before we will be able to inform the review. I still intend to involve Lotterywest and Dept for Communities in the review at the appropriate stage.

However, we have a way forward. Council would like to meet with Willetton Childcare to discuss a one year licence for use with the intention that during that year we will have completed the review and can discuss and resolve possible future lease options.

The City's legal advisor has advised that we need to serve notice on the current arrangement before we can transfer to a new arrangement. However, there is no intent to disrupt the operation of the Childcare centre.

I have included the actual resolutions passed last night below for your reference."

147. The issue, however, did not end at this point. The Department for Communities was not prepared to be excluded from the lease arrangements, and the lease offer by Council was not acceptable to the WCCC as they considered the Department for Communities provided the support to the WCCC to allow it to function and provide services.
148. Taking these matters into account, Mayor Delle Donne and the Acting CEO, Mr Sharpe, met with representatives of the WCCC and the Department for Communities on 5 April 2012 to resolve the impasse.
149. It was reiterated by the WCCC that it would not entertain a one year licence and both the Department for Communities and the WCCC required the continued involvement of the Department for Communities as a party to any lease.

150. Council again considered the matter of a lease for the WCCC on 26 June 2012 (EXH 60). The Officer's report to Council (report CS-064-12) (EXH 61) outlined three main issues put forward by both the WCCC and the Department for Communities:

"1. Involvement of Department for Communities

Both the DFC and the WCCA request that the DFC enters into the new lease with the City of Canning and that the WCCA continues to sublet from the DFC. Since the arrangement would be short term, there is no disadvantage to Council in pursuing this approach. To the contrary, there may be some advantage. The DFC explained that they had recently been successful in establishing an ongoing maintenance programme which would see funds available for upgrade works at Willetton Childcare Centre.

2. Length of contract & continuity of service

Discussion also centred on the length of contract. Concerned with continuity of service and addressing the current uncertainty, both parties expressed a preference for a longer-term arrangement. Whilst the WCCA would have preferred a lease of 10 years plus, the DFC appears willing to accept a 3 year arrangement.

3. Rental fee

Neither the DFC nor WCCA have paid a rental fee for the facility historically. During discussions in 2010 both were aware that the Council had moved all new community leases to a rental equivalent to rates. This would have equated to a rental fee of approximately \$3,000 for Willetton Child care. However, as part of the review of community use buildings Council is also considering new charging models that will bring both sustainability and equality to all of the City's groups." (emphasis in original)

151. The report went into further detail on the implications of Council's earlier (27 March 2012) decision on the matter versus subsequent negotiations with the WCCC and Department for Communities. Judging from the comments in the report, it was apparent that a compromise could have been reached:

"Negotiations with DFC and WCCA have suggested that the following arrangement may be a suitable outcome to all parties:

- *City of Canning enters into a three year lease for use with DFC.*

- *That Council approves the sub-letting of the building to WCCA for the purpose of continued service to the community.*
- *That DFC and the City of Canning agree the maintenance required based on the DTZ building condition report, the maintenance budget available from OFC and taking into account the short lease term involved.*
- *Based on the DFC contribution to building maintenance and the short term nature of the arrangement, an annual rental based on rates equivalent for the premises is established.*

This proposal requires compromise from all parties but aims to provide a way forward that all can agree to."

152. It was further proposed that, in line with an assessment conducted earlier in the year, a baseline rental of a rates equivalent cost of approximately \$3,000 per year would be required.
153. The proposal as submitted in the Officer's report, whilst not ideal for all parties, offered a way forward and would have allowed the WCCC to continue providing services with a degree of certainty, for the next three years at least. As the Officer's report stated, the *"...proposal requires compromise from all parties but aims to provide a way forward that all can agree to."* This was a realistic and sound position for Council to take.
154. However Council decided to reject the Officer's recommendation based on a motion moved by Cr Barry:

"Council RESOLVES to re-affirm its position in relation to CE-023-12 via the following;

That;

(a) The City give notice to the Department for Communities that the City is terminating the periodic tenancy by written notice and when this occurs, the property reverts to the City.

(b) Council RESOLVES, in the interest of good governance, it authorises the Mayor, in conjunction with the Acting Chief Executive Officer, to discuss/negotiate with the Willetton Childcare Association Inc, the opportunities to establish a 3 year Lease made up of a 2 year Lease with a further 1 year (Option of the City of Canning) on a monthly basis, with any

fees or lease payments to be negotiated by the Mayor in conjunction with the Acting Chief Executive Officer.

(c) Subject to a successful agreement of a Lease, Landlord approval for building works as proposed in previous attached plans will be granted.

(d) All efforts are to be made for the above to be completed in a timely manner to ensure little or no disruption to the operation of the Childcare Centre.

(e) A further report be presented to Council within two (2) months of meeting held 26 June 2012.

CARRIED

*For: The Mayor, Crs Mason, Barry, Olsen, Daly and O'Donnell
Against: Crs Dowsell, Clarke, Boylen, Morgan and Elliott"*

155. Notwithstanding the fact that the decision to place the Mayor in charge of negotiating lease terms and rental amounts is *Ultra Vires*, the above decision ignored the detailed advice and the recommendation contained in the Officer's report.

SUMMARY AND FINDINGS

156. After facing some media attention, Council relied on a land and property asset review as a reason for dealing with matters involving the WCCC in confidence. Once the land and asset review had commenced, Council shifted its reasons for confidentiality to another process, the *Burrendah Precinct Planning study*.
157. A year later, the WCCC is still no closer to obtaining any form of tenure on the premises it has used for the past 25 years, and no closer to guaranteeing the security of its operations to the families of Canning that use its services.

FINDING 16

There was no rational reason for Council to have not recognised the significant interest the WCCC had in the outcome of any assessment of its lease. Council should have openly and honestly stated its position during the early stages so the WCCC was in a position to plan for its future and provide information to its community members on whether it could continue to deliver services. The WCCC had a right to receive this information and Council acted unreasonably by denying them access.

CHAPTER 8

The Willetton Sports Club

HISTORY

158. The Willetton Sports Club (WSC) was established in 1975. The WSCs' Board of Management leased sporting grounds and a building from the City and provided coordinated access to these facilities for eight different sporting codes. Those facilities included tennis courts, soccer pitches, football (AFL) ovals, cricket nets (in addition to a fully maintained cricket pitch), a lawn bowling green, netball courts, basketball courts, a general athletics field (for little athletics) a licensed bar with facilities to serve meals, as well as change rooms and associated amenities. Located on Burrendah Boulevard opposite the Willetton Southlands Shopping Centre, the WSC has, as a multi-use recreational facility, served the community for in excess of 30 years.

LEASE AGREEMENT

159. Under the terms of the lease the WSC Board of Management were obliged to cover the cost of the building loan from the City over an extended term, operate and maintain the premises, and organise the payment of all utility bills incurred by the sporting divisions that utilise the associated playing fields and courts. The lease arrangement with the City was scheduled to expire in 2015.
-

MEMBERSHIP AND FEE STRUCTURE

160. Operational funding for the WSC was generated by way of a requirement that each person become a financial member of the WSC as well as a member of his or her chosen sporting division. The WSC membership fee was an important source of funds to meet repayments of the building loan to the City.
161. This arrangement proved to be highly successful for years, however in the mid-nineties when many of the foundation members began to move away, the importance of paying the membership fee to the WSC was lost on people who were seeking to join one of the affiliated clubs but did not necessarily need to use the licensed sports club facilities, hence their reluctance to pay that additional requisite membership fee.
162. In addition to the loss of income previously generated through membership fees: society's changing attitudes to drink-driving and alcohol consumption, combined with people's tendency to work longer hours, meant the patronage of the WSC's licensed premises was affected, leading to a serious reduction in the WSC's annual income.

ABILITY TO SERVICE LOAN – HISTORY OF PREVIOUS ASSISTANCE

163. These changes started to impact heavily on the WSC's ability to service the loan repayments to the City, at a time when the debts owed by the WSC were increasing.
164. The WSC's financial difficulties deepened in 1998 when they were unable to meet their loan repayments to the City. During this period of financial hardship, the WSC introduced a regime of stringent financial controls and cost reduction strategies, which caused building maintenance to be deferred and a cut in staff numbers. Annual surpluses during this period were low and on at least one occasion, produced a negative budget outcome.

165. Some relief was provided when the City of Canning graciously agreed to write off substantial debts that were owed by a number of community organisations who were operating within the City's boundaries. The WSC was one of the beneficiaries, with the City agreeing to write-off a debt in the amount of \$697,959. At the same time they assisted the WSC by restructuring a new loan so they could continue to trade.

BOARD RESTRUCTURE – CHANGES TO MANAGEMENT

166. Early in the year 2000, formal discussions were held with the City's then-CEO and other senior staff members that resulted in the City's Executive Finance & Corporate Services, Mr Andrew Sharpe, attending WSC Board Meetings in an ex-officio capacity during the first half of 2000. This arrangement was helpful to the WSC and lasted until 2004, leaving it in a much stronger financial position. In describing the contribution he made to the WSC during this period Mr Sharpe gave the following overview:

"Firstly I was involved in the Willetton Sports Club I believe in the mid 2000's – and that came directly as a request from the Willetton Sports Club for some financial assistance, professional advice and someone to – to guide them. So then I was involved in the sports club, not directly on the board but more providing advice and assistance. I went through a process of restructuring the organisation because it was experiencing significant financial stress. I got the – that particular entity back into a solvency – in my view, working with the board back into solvency position, then I think I exited – that time at the club probably extended for at least two years".

(Andrew Sharpe interview: 4 April 2012 part 5 transcribed from 00:27)

167. During the period 2009-10, the WSC experienced several changes in senior staff. Management systems that had been developed and implemented fell into disuse, which in turn had a detrimental effect on financial record keeping. Following a down-turn in revenue, several members of the Board of Management made the decision to surrender their positions for varying reasons.

168. Being aware of the WSC's standing as a respected and valued community facility, and recognising the unsustainable state of the WSC's finances, the Member for Riverton, Dr Mike Nahan MLA, offered to assist by nominating a new Board member who he knew possessed the necessary skills and qualifications to provide guidance and advice that would help the WSC. As such, Mr Godfrey Lowe was appointed to the Board by decree in January 2010. In February 2010 he was appointed formally to the Board, and in March 2010 he became President (elect).
169. Late in August 2010 Mr Ian Marshall, a local businessman (with degrees in Management, Marketing and Economics) was asked to examine the finances of the WSC and to report his findings to Mr Lowe. Mr Marshall was given a set of accounts to review and as a result of his analysis of those accounts, stated in a report to the Board of the WSC, dated 13 September 2010 (EXH 62) that:

"The level of inaccuracies in the accounts was such that a true picture was unlikely to be clear without significant reworking of the data file."

170. Mr Marshall added that,

"the Club was in poor financial state and that it was likely to be trading in a position of insolvency", and that "from a review of the Club's bank account the figures would tend to suggest that the Club was basically profitable-marginally and could trade through this situation however it would be difficult."

171. Mr Marshall listed the other major creditors with a disclaimer as to his awareness of their creditor history.
172. Mr Lowe resigned his position on the Board in February 2011 and was replaced as President by Mr John Tidman. Mr Tidman has a strong background in business and corporate management, and is a member of State Government Committees linked to incident planning and risk management. He has been a member of the local Rotary and Chamber of Commerce for twenty years, Chair of the Willetton

Senior High School for fourteen years and currently holds a seat on the Board of Management at Canning College.

173. At that same time the Board appointed Mr Marshall as Business Manager of the WSC, and they invited Mr Sharpe from the City to re-join the Board to assist them with his financial expertise. When asked to comment on why he had returned to the Board he said:

"I was invited directly through Council by a new Board – was being formed – they – the club had found themselves in a similar situation – they had some concerns around their – their solvency and they asked for myself – given my background with the club, they made an approach for me to be involved in the club again. That was – was reported to Council and my involvement with the club was purely through my position as a local government officer at the City of Canning."

(Andrew Sharpe interview: 4 April 2012 part 5 transcribed from 01:25)

174. Under Mr Tidman's leadership the new Board commenced with a wide ranging review to identify how they could prevent the WSC from becoming insolvent.

NEW BOARD PRODUCES POSITIVE OUTLOOK

175. Under Mr Marshall's management, and with the support of the new Board, the WSC was able to achieve a substantial increase in annual turnover from approximately \$400,000.00 to \$900,000.00 by securing a number of confirmed bookings for the use of their premises.
176. In addition to the existing income streams, the WSC secured rental commitments from two organisations, namely the Youth Projects Services Department of the City of Canning, and John's Christian Group, which when combined, would give the WSC a projected income stream of approximately \$40,000.00 per annum.
177. Despite the increased income streams, funds generated by the WSC continued to be absorbed to settle unpaid accounts that continued to surface without notice.

Negotiations with the Australian Tax Office, superannuation companies and individual creditors resulted in repayment plans being arranged by the new manager to meet those demands.

AUDIT ISSUES – NEW BUSINESS PLAN

178. The difficulty facing Mr Marshall as the new Manager, was that he had inherited a “set-of-books” that had not been maintained to proper accounting standards. One consequence of the poor record keeping practices led to the City’s Officers making the decision to pay an outstanding electricity account in the amount of \$12,143.08 direct to Synergy to prevent the power being cut to the facility. The circumstances surrounding payment of that account has been examined by this Inquiry, and the result and findings of that review are dealt with in detail in Part 1 Chapter 2 of this report.
179. Several opinions were sought in relation to the solvency of the WSC, and given its new direction and management structure, there was general consensus by Board members that the WSC could improve its financial overall position if it was given time to trade out of difficulty. At that same time the Board acknowledged that it needed to consider how it could fund the refurbishment of the premises which was a requirement of the lease with the City. The kitchen facilities were in need of repair, certain parts of the building need re-painting, lighting in the main lounge needed attention, toilet facilities were in a state of disrepair, and floor coverings needed replacing.
180. Based on Mr Marshall’s assessment and other advice that had been sought, the Board decided that the only way forward was to seek a loan of \$256,000.00 to clear all outstanding debts and to carry out the refurbishments so that the WSC could continue trading. Mr Marshall, acting at the request of the Board, conducted an internal audit of the WSC’s accounts and compiled a business plan setting out its financial position including projections for the future.

181. With the new business plan in hand, the Board made a decision to approach the City to request it underwrite the loan that the Board was seeking to secure. A copy of the new business plan was to be made available to the City when the request for assistance was made.

APPROACH TO THE CITY - OPTIONS FOR CONSIDERATION

182. Sometime in August 2011, the Chairman of the Board, Mr Tidman, had an informal meeting with Mayor Delle Donne and representatives of the City to discuss the status of the WSC's financial affairs. As a follow-up to that meeting, Mr Tidman sent a letter to the City's CEO, Mr Dacombe, dated 22 August 2011 (EXH 63), outlining the WSC's position and formalising its request for support. The letter stated that WSC needed an answer to its request within eight (8) working days.
183. The CEO Mr Dacombe informed Mayor Delle Donne of Mr Tidman's letter, and that he had told him (Mr Tidman) that *"his deadline was unrealistic."* (EXH 64)
184. The letter to the City outlined two options for consideration that would see the WSC's solvency issues decided one way or the other.

OPTION 1

The first option, the option favoured by the WSC, was that the City agree to "underwrite" the loan that was being sought, which would allow the WSC to continue trading and thereby avoid insolvency.

OPTION 2

The second and only other option was to place the WSC into administration, terminate the lease, and close the facility.

185. On 2 September 2011 Mr Tidman sent a letter to Mayor Delle Donne (EXH 65) seeking a meeting with the Mayor and Councillors:

"I approach you in an effort to secure an informal audience with the City of Canning Councillors.

It has come time for the Board of the Willetton Sports Club to present factual information as to the true position of the club and to make recommendations to the Council as to the future operations.

It has taken the Board a considerable amount of time and effort to ascertain the correct financial status and to understand its business and therefore be in a position to explain what we need to do to sustain a profitable operation for Council.

I would ask that this commitment to discussion be made as soon as possible as the decision on which action to take is crucial."

186. In addition to the letter he sent to the Mayor, Mr Tidman told the Inquiry that he had extended an invitation to elected members to attend an informal briefing at the WSC club premises so that the Board could provide them with a good understanding of the WSC's financial position. He said that while all elected members had accepted the invitation, none of them attended the briefing.
187. Inquiries revealed that Mr Dacombe had sent an email to the elected members, dated 9 September 2011 advising them not to attend the briefing at the WSC (EXH 66). In that communication he explained the reasons for his decision:

"The Willetton Sports Club has applied to the Council for a loan for operational expenses. The Club has requested the Council receive a deputation to enable them to put their case. The request to receive a deputation will be put to the Council at the Ordinary Council Meeting to be held on 13 September 2011. I am advised that the President of the Club has invited members to meet with him at the Club premises this evening at 6.00 pm.

Given that the matter has entered a formal process my advice is that members do not meet separately with the Club to discuss this issue and that all information be provided through the formal process. I suggest that Club Officers be referred to me in the event of any further direct approaches.

I will advise the President of the Club that I have given members this advice.”

(Mark Dacombe Email to elected members: 9 September 2011)

188. Having examined the reasons for providing advice that elected members should not meet with the WSC, the Inquiry has found that it was open for Mr Dacombe to have made that decision.

MR SHARPE’S RESIGNATION FROM WSC BOARD

189. It was noted that Mr Sharpe resigned from the Board of the WSC effective from 12 September 2011, citing a conflict of interest due his work as Chief Financial Officer and his involvement with the Board. The Inquiry has commented further on Mr Sharpe’s resignation later in this Chapter.

DEPUTATION TO COUNCIL

190. To formalise their request to Council to underwrite the loan, Mr Tidman and Mr Marshall from the WSC were given approval to make a deputation to a Special Meeting of Council held on 22 September 2011 (EXH 67). Having reviewed the audio recording of that Special Meeting, the Inquiry has found it necessary to discuss (in some detail) the issues that arose from their presentation to the Council. In advance of the deputation, elected members had been given copies of the WSC’s business plan along with a report that outlined future income streams, projected earnings and information on how the WSC would service the loan they were seeking to secure.
191. At the meeting, Mr Tidman and Mr Marshall presented what appeared to be a professional, comprehensive and measured assessment of the WSC’s financial position. The exception being that Mr Marshall made several “throw-away” remarks that were not well received by the elected members.

192. The following excerpts from Mr Tidman's presentation to Council provide an account of the degree of detail that was provided to Council about the difficulties that WSC had encountered and a comprehensive assessment of its financial position:

"We inherited a number of things, we inherited a leased kitchen arrangement, where the chef leased the kitchen facility, we inherited a manager of the club and his bookkeeper, and a couple of bar staff. It became apparent within the first three or four months that – it was an indicator that the level of debt was around about the fifty thousand dollars. It was then decided to [indistinct] to then get an auditor in to establish what level of debt was actually there, he established to some degree that the debt level was greater than that. But because of the lack of records and because of the way things were unsub – unsubstantiated, the – the debt level was assumed to be around at the ninety thousand. We then took action against the management of the club, so we changed the manager, we changed – we got rid of staff, we took hold of the lease of the kitchen because it wasn't operating properly, and disbanded that. Godfrey [Lowe] then knew of Mr Ian Marshall, and approached Ian with his forensic accounting ability, to come on as manager with the simple purpose of forensically – trying to break down the business to understand it better and to establish what the true debt level was. It was then found that – Ian found that the ATO hadn't been paid BAS [Business Activity Statement] from January through to about September. PAYG [Pay As You Go tax] wasn't paid, super wasn't paid. So the debt levels were actually increasing. That's what we inherited. And I believe that's in the report. What we then did was – set about establishing systems – there was no invoicing systems, there was no accounting systems, there was no records of database of members, there was no database of anything at all operationally that allowed us to identify what we had as a business, so Ian has fixed all that and put those systems in place. We put a payment plan in place with the ATO that has allowed us to continue trading, and we didn't actually incur any extra debt. We reduced that debt level from ninety down to about sixty, we've established that the best year for the past fifteen odd years was sitting around about three hundred and seventy thousand – as an annual turnover, that has now increased to the past year where we established in June eight hundred and fifty-odd. So we've doubled the – the activity rate which needed to be our focus, we've also increased – you'll notice the increase in margins, they were sitting at around about forty one per cent which is way below benchmarks, we're still below benchmarks, but we've increased it over a period of time to give us a decent profitability. That then allowed us to continue trading and to reduce our debt and to increase – bring into line our creditors from ninety days to thirty days, and to increase our stock levels, it also allowed us then to establish a proper practice in the kitchen with the chef, and

kitchen hand, our bar staff, a book keeper, and a receptionist along with Ian's management position. So we've actually increased the operation parameters of the business, and we're going along very well, we tried to report through what we believe was a good reporting system – that's debateable sometimes – we could have done better – through to Council to give a clear indication things were on the up, but things were going to be tight."

(Audio Recording Special Council Meeting 22 September 2011 transcribed 12:10mins)

"Our biggest problem with it came about 3 months ago which we had a number of months with unreported debts still appearing monthly, from areas that were – which were on the books at one stage as – as a debtor but it was unsubstantiated, the other difficulty we had was unreported debt coming out of the woodwork with previous management when they did the function. So over time – and that was workers comp for instance, that wasn't paid and that was \$10,000 we had to end up paying that out quickly – can't operate without that, so those sort of – we managed to cope with all that but it had the effect of bogging us down a little bit. The next – the actual problem we have at the moment that has caused us to approach you with this proposal is the kitchen. The kitchen is the facility that's got – I take it – thirty-odd year old facilities, ovens, cookers, fryers, dishwashers and we've spent some considerable time and money in patching it, the problem we've got now is with the increased business is putting extra strain on it and we've now only got one oven which has three trays cooking in it at one time, and when you've got a function coming up with three hundred seated meals it's a little bit difficult to cope with – that's – that's our major issue is the kitchen but along with that is the toilet facilities, where we've only half of operational toilets. Those two things alone are hindering us doing business, continued business..."

"... We're looking at a kitchen facility of around about \$40,000 to upgrade properly. We've had to purchase a fryer – that was our first cooker that went under, and we're able to have enough reserve to be able to purchase one [indistinct] with the continued breakdowns though, we just haven't got enough reserves to do anything about it. So what we decided to do was to actually look at the asset, and put a proper proposal in place to see if we could work through our numbers over a period of time to be able to self-fund it. That's the proposal on the table there's two – under proposal A there are two options. One is to ask for support for a self-funding loan of \$256,000. The \$256,000 was to give us the ability to not only continue trading but to increase trading, as a market share. That 256 was broken down as an identification of 56 which was our outstanding loan that I believe is still with Council, it was to upgrade the facilities totally in the kitchen, it was to re-carpet the whole club, was to re-light the whole club and to re-paint the whole club. And then a portion of that which was \$44,000 - \$45,000, part of that plan was to pay that off to the ATO and

then restructure that debt level over the next two or three years to a manageable level that'll allow us then to increase our operating parameters. The – part of that loan also was to identify a need at the moment to do some active marketing. We haven't allocated – we haven't had the reserves to allocate any marketing, we've done it purely on hard work, and door knocking, Ian himself has actually door knocked on a thousand businesses. So that's – and the website you'll note is up and running which we – hadn't been done before. So our business had been doubled by very very minimal marketing, but to take it to the next level that's what we need to do. When we started at the club the – the turnover was sitting at about \$35,000 a month, it is currently averaging around 70 – somewhere between 65 and 70 is the figure each month as a turnover so it's quite a significant shift in business. We believe that the maximum we can take it to given the infrastructure of the club should be sitting around about \$115,000 per month because that's about all we can cope with – with storage and ramp delivery, all those sort of things, and the size of the kitchen. What we have in that proposal is based on the very fact that we believe that that facility should make money for you as a Council, you are the owners of that asset so what we've done in that proposal is recognise a couple of things. Twelve months ago it was on the table to actually return it to Council by way of putting it into the hands of an administrator. I spoke against that motion because at that time when I came on-board and we felt that it was about 50 to \$60,000 worth of debt, I couldn't see how that sort of facility with that footprint and that number of members can't make money. We looked at it and believed we could increase business sufficiently to get out of it and trade. That's proved to be the case and I must say that that is been the work of Ian and the building of his team.”

(Audio Recording Special Council Meeting 22 September 2011 transcribed 16:20mins)

“What we would like to think now is that we are giving you a window of opportunity for us to consider a couple of things. One is to go in and self-fund a loan that allows us to do that work, but at the same time we would recommend that we would need to do two other things and that is to put some checks and balances in reporting back to you as Council, which I don't believe was done in the past, so you know how that business is monitored better. The other thing that it does is it will give you commercially – when we do property we look at commercially we got about five to six years of any refurb as a life, so it gives us five to six years of starting the process now working where you want this facility to be and what you want to do with it by the time 2015 comes up at the end of the lease, rather than a knee jerk reaction like we've done in the past where various people have come to you with hand-outs and expect the Council to do it. So that's the proposal, the second part of that proposal is proposal B which simply is we haven't got the capacity if there's a negative to proposal A, a negative decision basically means that we'll then need then

to look at our business model and say that it's not sustainable. We need the kitchen operating to be a viable business..."

(Audio Recording Special Council Meeting 22 September 2011 transcribed 22:18 mins)

193. In continuing his presentation, Mr Tidman spoke of targeting clients from a range of corporate, business and community groups and local schools outside of the affiliated groups that are currently involved, to increase the turnover and to increase their profit margins.
194. In closing his part of the presentation, Mr Tidman told elected members that he and his Board had been able to rejuvenate the business to a point whereby they were confident of being able to trade their way out of difficulty if the Council were willing to assist them by underwriting the loan they were seeking to secure. Failure to secure the loan would mean that the club may have to cease trading and be placed in the hands of an administrator.
195. In his presentation to the Council, Mr Marshall endorsed the comments made by Mr Tidman and reassured elected members that based on the "best information available", the WSC had been able to increase the turnover which in turn had led to increased profits. He reported that the Board was confident that the WSC would be "trading profitably" by the financial year ending 2012, if they were able to secure the loan they were seeking. He made mention of the twelve hundred new bookings he had been able to secure which were crucial to the future success of the WSC.
196. In answer to a question from Cr Mason as to how Council could get a "positive" from this proposal, Mr Tidman responded:

"There's two things that I ask. From a business point of view, is - if that that is a loan, and we defaulted that is, \$56,000 we would pay that out. But who owns the building if it is loan? So I don't want to get along those lines, I don't want to get into public opinions, I don't want to get into anything at all, I will start playing that game if you want to, but I don't want to be in - I'm not interested in that - what I'm interested in is

focusing on the very real need of that community club to have a spruce-up at the moment to keep it running and to put it into a spot where, for a window of five to six years you as owner of that asset have the ability to control what happens at the end of that period. End of story."

(Audio Recording Special Council Meeting 22 September 2011 transcribed 57:40)

197. Later in the deputation, further comments were made by Mr Marshall when responding to a question from one of the elected members:

"And that's the reason I'm saying, clear cut now – if the decision on the twenty seventh is a no, I'm out of there because I've spent twelve months trying to hang it together on three tray ovens – half a deep fryer – all of that stuff in truth Council should have been looking at a long time ago. The board should have been looking at it a long time ago. I've done me[sic] bit, I've worked 50-60 hour weeks, I get paid for about 25 of them. John's been doing it as a volunteer, I don't really give a bugger which way you go but do something and that's – I can't make it more definite than that, I'm out of there because I can't keep telling a chef there's a bit of a – bit of a glimmer of hope on the horizon here, they might do something. If we know no, I can tell them all it's – it's over, we stick a notice on the door and we go. And what happens to it afterwards is someone else's business – I've put, John's put, my staff have put an unbelievable amount of time and effort in trying to make – trying to stitch it all together. It's not a case of oh, we'll wait until we've got audited figures or wait until we've got six months of more trading we'll wait this we'll wait that – I'm saying cold hard facts, twenty seventh, that's it, because I can't make it – I cannot get up in the morning with some degree of enthusiasm marketing a spot, making it happen from something that is falling apart for somebody else."

(Audio Recording Special Council Meeting 22 September 2011 transcribed 1:47:23)

ELECTED MEMBERS - RECOLLECTION OF DEPUTATION

198. Elected members gave varying accounts to the Inquiry of the WSC's deputation to Council on 22 September 2011. In doing so several elected members told the Inquiry that they felt that they had been given an ultimatum when Mr Marshall (in particular) and Mr Tidman were putting forward their submission. They also felt that the tone from Mr Marshall was a little threatening and somewhat

dismissive of the City's obligations to consider the merits of the WSC's financial position.

"I can't remember word for word but I mean – in that deputation, near the end, I mean – whatever the – the probabilities of him giving the – that extra information, I don't know. The fact was, that that's what was required by the City to substantiate – even us considering lending that. Now basically, those two guys sat there at the end and said – I think, because Councillor Olsen asked them well what about if we give you forty thousand dollars or something to – to just fix up the kitchen or whatever it was, and they said, either the lot, or we close the doors. So, it was basically a threat to the Council. This – my way or the highway type thing."

(Graham Barry interview: 26 April 2012 part 2, transcribed 2:33mins)

"It was a verbal, there was no information put in front of us, they came in and demanded that either the Council underwrite that or provide a loan for that – by the next Tuesday night, they wanted a decision by the next Tuesday night. I don't believe that there was even an item before Council – it would have had to have been a late item, and – and certainly – you know, it would've had to have been brought forward somehow, but I – my recollection of it was that it was more of an ultimatum than anything else."

(Bruce Mason interview: 20 April 2012, Part 2, transcribed 2:16:34)

199. The comment made by Cr Mason was not entirely accurate because following the meeting held 27 September 2011, Mayor Delle Donne released a statement to the media touching upon the decision Council had made in relation to the Willetton Sports Club's request for financial assistance. One of the quotes made in that media release said:

"At the Ordinary Council Meeting of 13 September, Council agreed to receive a deputation from the club which took place at a Special Council meeting last Thursday..."

"... Council also requested full financial statements for the club up to June 2011 to be made available to Councillors prior to the deputation being received"

“Councillor’s received the financial statements and pertinent information prior to the meeting with Acting President Mr John Tidman and Club Manager Mr Ian Marshall...”

(Mayor’s Media Release 28 September 2011)

200. The statement released by Mayor Delle Donne conflicts with the answer Cr Mason gave when interviewed in relation to what information elected members had been given prior to the Special Meeting.

“The – the management of the club was putting deadlines on us that was unreasonable to make a decision to – to be able to get further information and they wanted us to make a decision ‘yesterday’ to – to go ahead. And we weren’t in a position, we felt, that we could make that decision when we asked for the information, and – we were told unless we made a decision by – I forget what the date was, that they would have to go to insolvency. And Councillor Clarke’s motion to give them the extra money – the – the decision to vote against that was part of that reasoning, that by giving them the extra money, they said they had to close – bank was going to close – foreclose prior to that “

(Lindsay Elliott interview: 24 April 2012 transcribed 2:17:32)

“My recollection is that there was resistance to doing the audit, now it may have been purely because of the finances, but I don’t recall there ever having been any negotiation about how the audit could be undertaken without having that financial impact. And if they – they are in a position to pay it even though that – that would take that money out of [indistinct] not be there for other operational uses, it would seem a short term loss for a long term gain of Council’s support to keep that model operating.”

(Stephen Boylen interview: 26 April 2012 part 2 transcribed from 49:11)

“Let’s just go back to this for a minute. At the time – I know we’ve pumped so much money into that club over the years, and I’m thinking how much more money do we pump into that club. That’s not – and I – I didn’t want to be in that situation where he would force me into saying yes, I agree with you if you know what I mean.”

(Mary Daly interview: 2 May 2012, Part 2, transcribed from 09:51)

“The general feeling was that – you know, the Council was not to put any more of ratepayer’s money into the – into the sports club, which – each of the – each of the clubs that operate there are sort of independent, the Willetton Sports Club they – they ran the building, they leased it out, they

had a bar, [indistinct] the turnover of the bar was falling, but I know they had all these advance bookings. The place looked pretty tired and needed some money spent on it."

(Robert Morgan interview: 17 April 2012 Part 2 transcribed from 23:37)

"Well, apart from closing the argument, and about forty people in the gallery from the club – I found it so disappointing, that I can – it's hard to say if I'm putting things on tape here, but the Mayor was not a fan of the Willetton Sports Club."

(Stuart Clarke interview: 1 May 2012 transcribed from 1:19:50)

"The Council considered that on the information supplied, at the meeting I asked them – they said their biggest issue was the kitchen and the toilet – I said to them, if the Council agreed tonight – I was thinking of putting a foreshadowed motion through – that the kitchen and toilets be upgraded, because they were – at that forum they stated its one of the biggest reasons they couldn't continue, would that – if the Council proceeded to, you know – if other people – if other Councillors agreed, to have the kitchen upgraded, and the toilets fixed up, that they could keep on going, and he said to me no, you either give us the money, or that's it."

(Bev Olsen interview: 27 April 2012 transcribed from 1:07:29)

"In actual fact if you were to replay the tape, is that some questions were asked at the Council meeting, the effect to say – what is the minimum amount of money that was required to keep the organisation going, you know, and some figures that [indistinct] was thrown up there to say was thirty thousand dollars, maybe, but they said no, he said we want two hundred fifty six thousand dollars – which, sixty thousand dollars was to repay the current outstanding loan, and the other two hundred and fifty or whatever would have gone to the tax department or whatever, its – it's all on paper."

(Mayor Delle Donne interview: 20 April 2012 transcribed from 12:45)

201. From the audio recording of the Special Meeting it is clear that the elected members had been given an advanced copy of the WSC's new business plan together with a statement outlining the WSC's projected income for the remaining years of the lease. In addition to that information, Mr Tidman and Mr Marshall spent considerable time telling elected members how they fell into difficulty and how they proposed to save the WSC from insolvency.

ELECTED MEMBERS CONSIDERATION – POST DEPUTATION

202. In responding to a question about whether the Council could underwrite the loan without a full audit being conducted, Mr Sharpe offered the following advice:

“Mr Mayor, Council is able to advance the money if you were so of the mindset to do – but you would have to through the provisions of the Local Government Act, if you were looking to establish a self-supporting loan you would have to do it under – as the Mayor has indicated earlier, you’d have to comply with section 6.20 of the Local Government Act because it is not on our budget you would have to advertise the fact that we were looking to borrow, the terms of the borrowing, and then you would have to have a submission period and then you would bring that back to Council. In terms of good governance you would have to make sure as a Council that you undertook your due diligence and you – at the moment the proposal that’s before you has no guarantee and if – if at a future date there was default on the loan you would have no security for recovery...”

“Mr Mayor there’s nothing precluding you giving consideration to the request and advancing the loan, as it currently stands, but from a good business perspective and doing due diligence you would have to question whether that would be the right decision to make.”

(Special Council Meeting 22 September 2011 transcribed 2:07:50)

203. When speaking on the issue after Mr Tidman and Mr Marshall left the chamber, Mayor Delle Donne made a statement from the chair that was inconsistent with what had been presented by the speakers during the deputation. He claimed that:

“I think that if you look at the balance sheet, the two hundred and fifty thousand is not for the refurbishment for the building at all – it’s to repay the – the creditors it’s not to do anything with the club whatsoever.”

(Special Council Meeting 22 September 2011 transcribed 2:10:08)

204. The comments made by Mayor Delle Donne were promptly corrected by Mr Sharpe who was at the meeting in his capacity as Chief Financial Officer:

“Mr Mayor just to clarify the proposal that’s before you, if I can just indicate how the money would be applied – so there’s a – there’s a current amount outstanding that’s due to you of the Council being \$56,000 so what their proposing they would look for an advance of \$256,000 dollars, then \$56,000 dollars of that would come back to the Council to repay the existing debt, so there’s two ways of looking at it you can give them \$200,000 and leave the \$56,000 you’re still in the same position as outstanding but – in essence they’re looking for \$200,000 of new funding and that would be applied – \$50,000 immediately to the ATO debt reduction, \$26,000 to immediate superannuation requirements, \$30,000 in working capital marketing and creditor control, \$45,000 to paint the club, \$30,000 to supply new carpet, \$8,000 in supply of new lights to the main lounge, \$5,000 in work on President’s room, \$6,000 to allow the deposit paid to lease kitchen equipment, so what their proposing to is hire purchase kitchen equipment and a number of the debt arrangements that are in place in terms of repayment to the ATO and creditors would remain in place and their forward projections are indicating that they would – they would remain in place...”

(Special Council Meeting 22 September 2011 transcribed 2:10:30)

MR SHARPE’S ASSESSMENT OF CLUB’S FINANCIAL POSITION

205. Mr Sharpe gave evidence to the Inquiry that in his view, any figures provided by the WSC needed to be independently scrutinised:

“It was from my view it was difficult to get a full understanding of the impact of the finances because the accounting system was in such bad shape that the reports that were coming before the Board in my view, were not able to be fully analysed and provide a true position of the club – and that’s where I was concerned and raised that on a number of occasions with the Board, and actually requested that they engage independent advice and support to assess their solvency.”

(Andrew Sharpe interview: 4 April 2012 part 5 transcribed from 02:56)

206. He stated that his advice to Council was that it should not refuse to underwrite the loan, but due to the WSC’s history there was definitely a need for an independent assessment of the WSC’s financial position. Conditional upon the production of audited accounts, security for the loan and a plan for the future, Mr Sharpe believed that Council would then be well placed to make an informed

decision of whether they could support the WSC's request to 'underwrite' the loan the WSC was seeking to secure.

ALTERNATIVE PROPOSAL – CR MASON

207. Cr Mason placed a different perspective on the issue during the debate on 22 September 2011, when he is recorded as saying:

“Mr Mayor I guess when I alluded to the fact that – that what alternatives that they had in place, it would seem to me that rather than come to this Council and ask for \$250,000 that they could have put a proposal to us that said, if you guys can cover the maintenance on the kitchen, the carpet, the President's room, and write-off the \$56,000 we want to borrow \$50,000 to pay our tax debit it probably would have been a hell of a lot more palatable because we would be able to say that part of that is general maintenance of that building. But I suspect that the \$250,000 is not going to go where they saying it's going to go, and that's the thing that concerns me a little bit, because I just think that you know we're look at six or eight months before that refurbishment is done, there's no way in the world that place is going to survive for six months while there're – you know, doing all that refurbishment – but it would have seem to me that if most of the money that they're going to spend is on maintenance on the building, then they could have come to the Council with a presentation that said would you guys look after that maintenance side of it, and that leaves us a small debt to the tax department at that's it and I'm – I'm – you know – I know we went down the path of cancelling loans for them before and 56 is not as much as 920,000 but, I mean we could – we could quite comfortably handle that, we can sell that to the ratepayers and say it's just general maintenance to the building, but I didn't see that proposal, this proposal was on a business model that said give us the \$250,000 or we're out of here, and that's what concerns me a little bit.”

(Special Council Meeting 22 September 2011 transcribed 2:20:10)

208. There are two matters arising from the comments made by Cr Mason. The first was that he said he doubted that “they” would spend the loan money in the manner outlined in the presentation. Such a comment was uncalled for and could reasonably be perceived as questioning the honesty and integrity of the WSC and its Board. Cr Mason did not have any grounds for making such a claim.

209. Secondly, and more importantly, the idea he put forward about the Council covering the cost of the maintenance, thereby leaving the WSC to borrow a lesser amount was not pursued. Cr Mason's suggestion at that time appeared more than reasonable, and could have been put to Mr Tidman and Mr Marshall while they were in the chamber on the night of the deputation. Had that offer been made, the two parties may have been able to reach a compromise that would have allowed the WSC to continue operating.
210. Mr Marshall and Mr Tidman provided their thoughts on how elected members reacted to their deputation:

"We then did a two and a half hour presentation, questions, answers, dadada to Council. At the end of that – that, Joe said basically, well that's fine, we all know – any more questions, no, and then he said I've got a [indistinct] we will need to do – you guys will need to have due diligence done on the thing, plus the audit, and I said well basically, we aren't in a position, we – we've now got a situation, we cannot contract someone to do them and not put ourselves into insolvency. Right, so therefore any decision other – and that's stated in here [refers to document] what I was after was a definite answer."

(Ian Marshall interview: 29 March 2012 transcribed from 28:27)

"There was a closing comment just before the decision was made, by the Mayor, effectively saying to Council – Councillors are you aware that if this is a negative decision that the club will close. "

(John Tidman interview: 22 March 2012 transcribed 23:28)

COUNCIL RESOLUTION

211. In response to the WSC's deputation, and despite the option he had discussed at the Special Meeting held days earlier, Cr Mason moved to amend the Officer's recommendation by adding parts (c), (d) and (e) essentially requiring the WSC to provide further information detailing their financial position which he knew they were not able to produce:

“That:

- (a) The Willetton Sports Club (Inc) be advised that in order for Council to give the request for financial assistance due consideration it requires independently audited financial statements to the 30 June 2011, together with current financial statements to the 31 August 2011.*
- (b) Subject to (a) above the following additional information is also requested; details of the security that will be provided to support the loan borrowing and a business plan that address the sustainability of the Club moving forward.*
- (c) The Chief Executive Officer be authorised to place a suitable notification in the Canning Times and Examiner Newspapers outlining the Council’s decision regarding its position with the Willetton Sports Club.*
- (d) The Chief Executive Officer write to the affiliated Clubs advising them of the decision of Council.*
- (e) A further report be presented to Council on the outcomes of (a), (b), (c) and (d) above.” (EXH 68)*

212. Cr Mason’s natural justice submission to the Inquiry expressed the following view about the issue of the WSC’s financial viability and Council’s requirement for an audit:

“It would be unacceptable to any lending institution for the underwriting of a loan to be demanded from it on short notice on the basis of a verbal business plan and unaudited figures. We consider it is unreasonable to expect the council to decide to underwrite the loan on the scant information it had before it on the WSC’s financial viability and the unaudited accounts.

213. This is a view that the Inquiry accepts. However, a proposal moved by Cr Clarke at this meeting (seconded by Cr Morgan) for Council to provide a one-off contribution of \$30,000 to cover the cost of the audit was opposed by several elected members. His attempts to obtain an extension of time to speak on his motion was defeated by a majority vote.

214. When Mr Marshall and Mr Tidman became aware of the Council's decision, they both knew that it would not be possible for the WSC to meet the requirements Council had set, due to the past poor record keeping at the WSC. Both men gave evidence to the Inquiry that the WSC did not have the financial capacity to fund a full audit of the WSC's accounts and that the elected members had been made aware of that fact. Accordingly, the WSC could not meet Council's demands.
215. Mr Tidman told the Inquiry that following this, the WSC continued to trade until it reached a point where it became insolvent. The WSC was declared insolvent on 30 October 2011 when the doors closed, with the keys handed back to the City.

SUMMARY AND FINDINGS

216. In reviewing the presentation Mr Tidman and Mr Marshall made to the Council, it was clear that they had gone to enormous lengths to prepare for this important event. As stated by Mr Tidman, they spent considerable time and effort analysing the business before putting together a new business plan outlining the best possible way forward.
217. Mr Tidman and the WSC Board demonstrated a high degree of commitment and professionalism to keep this community based WSC afloat.
218. The Inquiry has found that the Council may not have given sufficient consideration to the fact they were dealing with an entirely new group of Board members. It was open for Council to consider that whilst the WSC had a poor trading history, it was not the current Board who presided over the period of poor governance that had occurred prior to their appointment. The new Board members and management of the WSC had worked extremely hard to repair the damage that had been done to the WSC in the past, and demonstrated, under their leadership, that significant improvements had been made to the WSC's finances and management.

219. The fact that Cr Mason, in criticising the WSC's proposal, suggested an alternative, demonstrates there may have been an acceptable way for Council to help the WSC. Cr Mason's suggested alternative was never explored or progressed.
220. The Inquiry recognises that Council had a right to insist that a full audit was conducted of the WSC's finances, but it was equally clear that the WSC could not fund such an undertaking. Nor was it possible to conduct a full audit of the WSC's accounts due to the state of the records that the new Board had inherited some eighteen months earlier. This fact was made clear to elected members during the deputation and should have had a bearing on their decision. To insist on this requirement, without acknowledging the impossibilities this created for the WSC, meant the Council made a decision it knew the WSC could not implement.
221. The elected members were fully aware that if the WSC could not secure the loan it would fall into insolvency and that the WSC would be forced to close for the first time in over thirty years.
222. Consistent with Council's dealings with the Willetton Child Care Centre, Council's dealings with representatives of the WSC were characterised by insensitivity.
223. Local Government Authorities in this state have a long history of subsidising sporting clubs and community groups as a sign of "community support and service". This decision of Council, although one it was entitled to make, lacked, in the opinion of this Inquiry, the element of community spirit that was so strongly displayed by the volunteers who fought hard to save the WSC.
224. After reviewing the audio recording of the Special Council Meeting of 22 September 2011, the Inquiry considers that a number of elected members appeared to be looking for reasons not to assist, rather than a way to cooperate in finding a solution that would have allowed the WSC to return to a profitable

position and continue its long history of providing sporting services to the community.

FINDING 17

The Inquiry notes and recognises the extensive commitment shown by WSC Board Members in their efforts to help the WSC survive. The Inquiry further notes the considerable support Council had provided to the WSC historically. It is an unfortunate outcome for the community that Council could not continue this support due to the absence of a financial audit of the WSC.

FINDING 18

Council made a decision to require the WSC to provide an audit of its financial records, a decision Council knew the WSC was unable to fund. This was a decision that inevitably meant the WSC would close.

CHAPTER 9

Council's Dealings with the Southern Metropolitan Regional Council (SMRC)

INTRODUCTION

225. The Southern Metropolitan Regional Council (SMRC) is a regional local government authority constituted under section 3.61 of the *Local Government Act 1995 (the Act)* and was established in 1991. Its membership consists of local governments situated in the southern portion of the Perth Metropolitan Region. The SMRC is administered from its own premises in Booragoon.
226. The City of Canning was a founding member of both the SMRC, established in 1998, and its predecessor, the South West Metropolitan Regional Waste Management Council, which was formed in 1991. The creation of this regional partnership was considered to be one of the largest waste management projects to be undertaken by local government in Western Australia.
227. The current membership of the SMRC is comprised of six local authorities, namely the City of Cockburn, the Town of East Fremantle, the City of Fremantle, the Town of Kwinana, the City of Melville and the City of Rockingham. Collectively, the SMRC services approximately 297,000 residents and 123,000

households. The City of Canning was a member of the SMRC until it withdrew its membership on 19 February 2009.

228. The SMRC Council is comprised of one elected member from each member Council. Each member of the SMRC holds equal voting rights, with the exception of the Chairman who may exercise a casting vote where the vote is tied. The SMRC elects its Chairman from its members every two years.
229. Now that the City of Canning has resigned from the SMRC, the remaining six member local governments continue to collaborate with the SMRC on issues that are topical to their region, and continue with the existing waste disposal arrangements that are coordinated through the SMRC's waste management business unit, the Regional Resource Recovery Centre (RRRC).
230. Mayor Delle Donne, Cr Mason and Cr Barry have all represented the City as members of the SMRC prior to the City withdrawing.
231. The Inquiry has examined the Council's decision to withdraw from the SMRC after receiving several submissions on the issue.

HISTORY OF SOUTHERN METROPOLITAN REGIONAL COUNCIL

232. The City's former CEO, Mr Domenic Carbone, offered the following recollection of the City's involvement in the SMRC during its early stages:

"Just taking it back from the time I was involved, is that the City of Canning basically wanted to be involved in new processes of recycling or at least treating household waste and turning it into – into mulch. The – in view of that obviously became a member of the SMRC, I was very involved in relation to the business plan in order to allow the leasing of the land where the SMRC is actually located. From that time onwards as the CEO things went pretty smoothly my view there was their business plan was perhaps, when I analysed it was a bit optimistic, but nevertheless it could work. It was new – new technology, it needed to be explored – we went through process in later years where there was noise – basically

complaints about odour and that began I suppose a change there in relation to given the type of Councillors that were coming into Council on that issue."

(Domenic Carbone interview: 13 April 2012, Part 2 transcribed from 00:38)

233. As with the other member councils, the City entered into a legal agreement to contribute their share of the loan that the SMRC needed to fund the operations of the authority including the construction of the Regional Resource Recovery Centre (RRRC) facility. The City's loan liability in that regard was in the vicinity of \$15 million dollars. This liability remains outstanding to this date.

234. Mr Carbone recalled the initial financial arrangements between the City and the SMRC:

"In relation to finances, the City of Canning from my recollection was a – around about a twenty seven – twenty seven per cent share of that facility purely because it was based on a population base so would have owed something like around about 15-18 million dollars."

(Domenic Carbone interview: 13 April 2012, Part 2 transcribed 1:50)

235. The City also leased industrial zoned land to the SMRC for the construction of the RRRC facility. Under the lease agreement with the City, the SMRC was obliged to pay rent to the City. In describing that arrangement Mr Carbone offered the following:

"Look, and – and the way it was done is that they had a little gold mine, not because I was involved in, Stuart McCall who is the ex CEO of the SMRC, and obviously we put a formula together and it – it allowed for Council's rent or the amount of rent payable to the City of Canning to be indexed and indexed very favourably that – I think it went up during my time from around about two hundred and fifty thousand to just under five hundred thousand – per year."

(Domenic Carbone interview: 13 April 2012, Part 2 transcribed from 4:41)

236. The RRRC has been operational since 2005 and its goal is to divert 85% of household waste, collected by member Councils, away from landfill.

DEPARTMENT OF ENVIRONMENT & CONSERVATION INTERVENTION

237. According to the Department of Environment and Conservation (DEC) the RRRC site has had a history of odour complaints dating back to 2004. The DEC reported that the first environmental protection notice relating to odour was served on the SMRC in 2006, requiring the refurbishment of the RRRC's bio-filters. The second environmental protection notice was issued in 2009, requiring the SMRC to engage a qualified engineer to conduct a review of its operations and to identify possible solutions to reduce odour emissions.
238. Despite the intervention of the DEC, odours continued to emanate from the facility. This resulted in continual complaints against the facility, together with the City's elected members becoming increasingly involved in the odour issues.

WASTE DISPOSAL OPTIONS – LEGAL ADVICE TO COUNCIL

239. The (then) acting Mayor Delle Donne was a candidate for the October 2008 Mayoral vacancy, and had campaigned actively in the area affected by odour complaints. Former CEO, Mr Carbone was asked about Mayor Delle Donne's election campaign and his support base at that time:

"I can only go back to the time that he ran for Mayor the first time, and Councillor Clarke at that time became the Mayor, my view is having been involved in the counting of those votes is that Cr Delle Donne lacked support to what I called the suburbs south of the Canning River, he had reasonable support north of the Canning River but not south. This issue probably would have given him certain amount of support, from electoral type of support, in his mission to become Mayor."

(Domenic Carbone interview: 13 April 2012, Part 1 transcribed 8:50)

240. Council began to research alternative methods of waste disposal as early as November 2008 soon after Cr Delle Donne was appointed as Mayor. After receiving advice that a survey conducted by DEC had found that there was an

acute odour problem emanating from the RRRC, Council at its Ordinary Meeting of 4 November 2008, decided:

“...

(b) “That in light of the recent DEC Survey Report confirming the acute odour problem emanating from the SMRC Waste Composting facility, and also with the possibility of closure of the facility that:

- (i) The Acting Chief Executive Officer be authorised to investigate alternate Waste Disposal Sites for the City’s solid waste;*
- (ii) The Acting Chief executive Officer and mayor be authorised to request the City’s Solicitor to attend a briefing session to acquaint and advise Councillors on the recent DEC SMRC Odour Survey Report and the implication of matters of liability and Due Diligence relating to Statutory Non-Compliance to the DEC Report.*
- (iv) The City’s Solicitor be requested to compile a dossier in Chronological Order on all matters relating to the SMRC since 2000.”*

- 241. It was not unreasonable for Council to have initiated these actions given that the results of the DEC survey provided some support to the complaints that had been received from residents living in the vicinity of the RRRC site.
- 242. Council at its Ordinary Meeting of 2 December 2008, authorised the engagement of a suitably qualified consultant to provide quotations to prepare a ‘*Strategic Waste Management Plan*’ for the City.
- 243. At Council’s Ordinary Meeting held on 13 January 2009, were Mayor Delle Donne, Councillors Barry, Olsen, Clarke, Faye Morgan, Mason, Daly, Wibberley and Wheaton. Councillor Elliot submitted an apology and was absent from the meeting. On a motion moved by Cr Olsen, it was a unanimous decision that the Mayor be given authority to seek a second legal opinion concerning alternative waste management options for the City, and that this new advice be brought back to Council within one month or earlier. The same motion contained a

clause that McLeods, who originally provided legal advice to Council on the issue, be advised of Council's actions.

FINDING 19

The Inquiry has found that it was not appropriate for the Council to have given Mayor Delle Donne authority to personally obtain the second legal opinion on what was essentially a technical matter.

244. In Cr Mason's submission (5 November 2012), it is suggested that Council relied on Regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* to authorise the Mayor to "*undertake a task that contributes to the administration of the local government*" i.e. in this case to obtain legal advice. This view is rejected by the Inquiry. The Inquiry's view as to the application of Regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* and as the powers available to Council, are dealt with in Part 6 of this Report.
245. The responsibility for advising Council in matters that is before it falls within the management role of the CEO. The Council in authorising the Mayor to instruct the City's legal advisors effectively excluded the A/CEO and Administration from providing any independent and expert advice in the form of a report to Council. There was no appropriate reason to exclude the administration from obtaining this legal advice for Council.
246. These same matters were the subject of further consideration by Council at its Ordinary Meeting on 10 February 2009, at which Council resolved to receive a confidential report (report CM-031-09) (EXH 69) which the Inquiry understands contained an update on the second legal opinion into the '*Investigation of Alternative Waste Management Options for the City of Canning*'. The opinions

contained in the report were from solicitors' Hardy Bowen, whom the Mayor had engaged to undertake the work. At that same meeting it was also decided to hold a "confidential forum" to discuss the options that had been put forward in the Hardy Bowen report.

- 247. Council considered a further report at the same meeting of 10 February 2009 (report SRS-040-09) which resulted in Council resolving to take enforcement action against the RRRC under the City of Canning Town Planning Scheme 40. Council also passed a motion that the City notify the DEC that the RRRC was not operating in compliance with DEC Licence Condition 5.1.
- 248. The Inquiry sought access to the legal advice that had been provided to the City by Mcleods and Hardy Bowen, but the request was denied on the grounds of legal professional privilege. The Inquiry did not seek Council's waiver of legal privilege.

LEGAL BRIEFING – ADVICE RECEIVED

- 249. The Inquiry has established that Mayor Delle Donne, and the Acting CEO Mr Andrew Sharpe met with representatives from Hardy Bowen at the City on 19 February 2009 when they received the final report containing the legal advice Mayor Delle Donne had requested.
- 250. Elected members were telephoned and told of the Special Council Meeting to be held that evening. They did not receive an Agenda for this meeting.
- 251. Council Minutes show that nine elected members attended the Special Meeting: Mayor Delle Donne, Councillors Barry, Clarke, Mason, Faye Morgan, Olsen, Wheaton, Elliot and Wibberley. Cr Daly was on leave of absence. During the meeting, a motion was moved and subsequently adopted to allow elected members fifteen minutes to read the confidential report from Hardy Bowen (report CM-039-09). Mayor Delle Donne told elected members that

representatives from Hardy Bowen were in the building and available to brief the Council on the report they had submitted. A motion allowing a presentation to occur was passed by unanimous vote.

252. Following the presentation from Hardy Bowen, Cr Mason advised that it was his intention to move an amendment to the Officer's recommendation. The Acting CEO advised Cr Mason that his team had not been given time to consider the report and had made no recommendations on the issues involved. Cr Mason subsequently moved a motion that presumably aligned with the advice that Hardy Bowen had provided in their report.

253. Reference to the Minutes of that meeting show that Cr Mason's motion read:

"MOVED Cr Mason, Seconded Cr Olsen, that:

Following the advice and recommendation provided by Hardy Bowen Lawyers in its confidential advice of 19 February 2009, the Acting Chief Executive Officer be instructed to write to the Southern Metropolitan Regional Council (SMRC), instructing them under the provision of the Establishment Agreement, that:

- (a) The City of Canning withdraws from the SMRC.*
- (b) The City is not amenable to direction in relation to the delivery of waste, other than to the Regional Resource Recovery Centre (RRRC), and that if the RRRC is unable to accept the waste, it will be delivered by the City to a site of its choosing.*
- (c) The SMRC be advised that the City is of the view that there is a dispute in relation to the obligations of the RRRC, having regard to:*
 - (i) the economic sustainability of the facility; and*
 - (ii) the environmental hazards caused by the facility;*

which requires to be dealt with in accordance with the good faith negotiations in the Project Participants Agreement.

- (d) *The City should initiate a dispute under the lease in relation to the odour emissions, with a view to determining whether there has been a breach of the lease.*
- (e) *A further report be presented to Council outlining the progress of the above matters within one month.*
- (f) *A further report be presented to Council outlining a media campaign to the ratepayers of the City within one month of this motion."*

Cr Faye Morgan spoke on the matter, before putting forward a foreshadowed motion:

"That advice on the withdrawal from the SMRC be delayed until April/May 2009."

254. At that point in the meeting, and with agreement from all present, Mr Michael Hardy responded to a number of questions from Councillors Clarke and Faye Morgan before Cr Mason agreed to a suggestion by Mr Hardy to include the word "immediately" in part (a) of his motion. The extract below has been taken directly from the minutes of the Special Meeting on 19 February 2009:

"Following comment by Mr Hardy in relation to timing of withdrawal and the recommendations, with consent of the Seconder, Cr Mason agreed to include the word "immediately" at the end of Part (a) of the motion."

255. Part (a) of the motion was amended to read:

"The City of Canning withdraws from the SMRC immediately."

256. Following further input from elected members speaking for and against the motion, the debate was closed by Cr Mason and the substantive motion was put and carried by a majority vote.

<i>"For:</i>	<i>Mayor Delle Donne, Cr's Barry, Elliott, Mason, and Olsen & Wheaton.</i>
<i>Against:</i>	<i>Cr's Clarke, [F] Morgan & Wibberley."</i>

DISCLOSURES OF INTEREST

257. Cr Elliott declared an interest that was in common with a significant number of ratepayers (his daughter lives in the area affected by the odour) when this matter came before Council on 19 February 2009. Having seen the declaration made by Cr Elliott, Cr Clarke said that he would have anticipated that Cr Olsen would also declare an interest as she was the co-founder of the *Canning Melville Odour Action Group* which still has a web site for odour complaints. Cr Olsen advised in her submission on 5th November 2012 that she was not a co-founder of the organisation and had received advice from the Department of Local Government that she was not required to declare an interest. The Inquiry identified a submission to Parliament retrieved from www.parliament.wa.gov.au/eu.su.059.002 authored by Mr Rod Olsen states:

"As a result of a public meeting held in early in June (2006), some concerned and frustrated residents (including myself and my wife Bev [Olsen]) formed an action group to share information, ideas and strategies, and the work load associated with these activities, and those of distributing that information to the relevant authorities to try and rid our suburbs of the odour.

The Action Group (Canning Melville Community Odour Action Group – CMCOAG) has attended council meetings at the City of Canning...."

258. Cr Clarke's submission to the Inquiry dated 7 March 2012 (page 15) states:

"Cr Olsen was the seconder to the motion moved by Cr Mason. Cr Olsen also takes a future leading role in attempting to close the Region(sic) Recovery Centre. She is the Cofounder of the Canning Melville Odour Action Group which continues a web site for odour complaints. On previous occasions she had sought a ruling to have a resolution of an interest in common with a significant number of ratepayers passed by those members supporting the closure. She did not declare an interest in the motion for withdrawal to which I question the validity of her being the seconder of this important decision."

259. Cr Olsen's public profile on the City of Canning website (retrieved from www.canning.wa.gov.au/beeliar-ward/cr-olsen-2011.html 1 March 2012) (EXH 70) states in part:

".....Cr Olsen was involved in establishing Air Care Australia (an Australia wide Clean Air monitoring and reporting agency....."

INQUIRY OBSERVATIONS

260. The Inquiry can find no support for treating this matter with such a level of urgency that it had to be considered by Council before the A/CEO and the City's Executive staff had had the opportunity to assess the legal advice that had been provided. The A/CEO and his Executives were not given the opportunity to report on the implications if the City were to withdraw their membership of the SMRC.
261. Ceasing all relationships with the SMRC before knowing what the ramifications may be was not an example of rational or defensible decision making. It would also appear that those who supported the motion gave little consideration at the time to the position of the remaining member Councils who would be left to deal with the decision the Council had made. As a founding member of the SMRC it would also have been a good communication strategy for the City of Canning to have discussed their intentions with their fellow Member Councils before making its decision to withdraw.

In Cr Mason's response to the Inquiry (5 November 2012), it was submitted that:

"...the council's decision to withdraw from the SMRC would only take effect "from the end of the financial year after the financial year in which notice of the withdrawal has been given by the Participant [ie the City] to the Regional Local Government [ie the SMRC]"...That is, despite resolving to withdraw from the SMRC on 19 February 2009, the City's decision would only be effective on 1 July 2011."

This response further demonstrates why Council's urgent calling of a Special Council Meeting and hurried decision on 19 February 2009 to withdraw from the SMRC were unnecessary.

262. The unnecessary haste with which this significant decision was made by Council placed added pressure on the incoming CEO, Mr Dacombe, who was about to start in his new role on 23 February 2009. Both he and the Executive Leadership Team were subsequently left to attend to the many administrative and financial issues surrounding the withdrawal from the SMRC, along with having to identify alternate locations to dump the one thousand tonnes of waste (by June 2010) that had previously been processed through the RRRC on a weekly basis.
263. The full financial impact to the City associated with its withdrawal from the SMRC had not been identified by the Council when it made its decision to withdraw. As indicated by Mr Carbone, the City had borrowed approximately \$15m dollars as their member contribution to the SMRC. At the time of ceasing their involvement the City's loan liability stood at \$14,361.181.
264. When asked for his opinion on the City's decision to withdraw from the SMRC, Mr Carbone stated:

"In relation to it all is to move away – a new business plan needed to be done and there would be a payout amount needed to be – basically to payout the proportion of loans that were taken by the SMRC because each member Council was really responsible for it...The SMRC was – borrowed the money, and at any time that a – a Council indicated that they would wish to withdraw, then a new business plan needed to be done with a new model, you know the decision of – I suppose whether the City of Canning would stay in or move out was subject to quite a number of reports, I suppose I had the feeling that Council wanted the officers to write a report in a way that would support moving out of the SMRC. We couldn't – I definitely couldn't do that, they were given options – and the options were basically subject to legal advice that they could either opt to stay in or work through it, or alternatively the – the agreement allowed them to withdraw. They seem to hesitate for quite a number – for a period of time in order – in relation to a decision they would make. That decision was made after I left and really had no part to play. But really from the point of view of costing, yeah there was a lot of legal cost involved – in the hundreds of thousands. There was time factored to the time that the staff were involved in dealing with the matter is the other factor. Never mind [indistinct] that at some stage they would probably have to pay out that – their share of the loan."

(Domenic Carbone interview: 13 April 2012, Part 2, Transcribed 2:12)

265. When asked if Council had been supportive of the SMRC in their attempts to rectify the problems, Mr Carbone said:

“No...My view there – and it’s recorded very much in the minutes, they weren’t very supportive at all, they – when it was to raise additional loan funding, basically Council was trying to find every avenue it could to stop that happening [indistinct] because the advice that we got is that we couldn’t stop the SMRC from actually raising the loan. So legally they couldn’t stop [indistinct]. But – and at the end they agreed to it. But yeah, they were putting every barrier in its way.”

(Domenic Carbone interview: 13 April 2012, Part 2transcribed 7:56)

266. While it proved cheaper per tonne for the City to divert their waste from the RRRC to landfill, little or no consideration had been given at that time to the costs involved in transporting their waste to landfill sites operated by other local governments. The diversion of waste to landfill was also contrary to the City’s earlier commitment to achievement of the State Government’s Zero Waste Objective Plan 2020.

COMMUNITY – SMRC COMMENT

267. Council’s decision to withdraw from the SMRC and to later cease all use of the RRRC generated a range of comments:

“I have grave concerns about what will happen now. Where will Canning dispose of its rubbish? Landfill sites are at capacity.”

(Doug Thompson, Chairman of the SMRC: *Canning Times* 10 March 2009)

268. The irony of Council’s decision was not lost on ratepayers who had suffered the odour problem since the facility commenced operations in 2005. In a letter published in the *Canning Examiner* newspaper on 13 March 2009, the author wrote:

“As a long time suffer of the toxic cloud that floats over Riverton and surrounding suburbs, I have to say that I am a bit disappointed about the Canning Council’s withdrawal from the recycling plant. I know that

sounds weird but the plant is still going to operate with or without the City of Canning's input. I get poisoned every night by a noxious and potentially hazardous cloud that causes sore throats, running eyes, and bloody noses. But, Mayor, the fumes are still going to make residents sick regardless of if you are involved."

269. The Council decision did not resolve the odour complaints nor address any of the technical issues associated with the cause of the odour problems. What appears to have transpired is elected members isolated themselves from the problems by withdrawing from the SMRC, thereby attempting to distance themselves from any criticisms levelled at the SMRC.
270. On 26 March 2009 the Chairman of the SMRC appeared before the *Parliamentary Environment and Public Affairs Committee* and gave evidence on the impact of the City's withdrawal from the SMRC and participation in the RRRC (EXH 71):

"The impact for the SMRC is that a member is withdrawing. That member is part of the participants' agreement. My understanding – obviously we are looking at the legal implications at the moment – is that as set out under the process in the participants' agreement, the requisite amount of notice has been given and all that will proceed. The matter is now between the member council; it is not a matter for negotiation between the SMRC and the Canning Council, because the SMRC is effectively the vehicle. I believe the answer to your questions is that the SMRC is currently taking legal advice, and that advice will be given to member council CEOs so they can take the matter up with Canning.

I am disappointed that this has happened with Canning. I can understand why it has happened. It has lost a very experienced Mayor, Mick Lekias, a very experienced CEO, a very experienced Engineer, and some senior staff. In my view it is not a good decision for Canning, and it is certainly a decision that SMRC regrets. However, the withdrawal is now between the member councils and Canning."

(Environment and Public Affairs Committee, 2009: Sixteenth Report. Transcript of Evidence, page 34)

271. In that same report the Environment and Public Affairs Committee published their findings into a range of matters related to the management of domestic

waste in Western Australia. In the executive summary of that report, the committee made the following findings in relation to the RRRC:

“The Committee’s Inquiry arose from Petition 59, which dealt with Community concern regarding odour emissions from the Southern Metropolitan Regional Council’s Resource Recovery Centre in Canning Vale.

The Committee found those community concerns to be justified. Whilst the odour issue has not been fully addressed at the time of reporting, the Committee is confident that there is a technical, engineering, solution to the problem, and that there is an effective environmental regulatory regime in place to deal with the issue.”

CITY OF CANNING MEDIA STRATEGY

272. At Council’s Ordinary Meeting of 19 February 2009, when the decision was made to withdraw from the SMRC, it was also resolved that a report be presented to Council within one month outlining a media strategy on how to manage this issue.
273. Mayor Delle Donne’s comments in relation the Council’s decision to immediately withdraw from the SMRC were reported in *The West Australian* newspaper on 20 April 2009:

“Mayor Joe Delle Donne said the City was reviewing its waste services and an “effective and environmentally sound” strategy would be in operation before July next year. He could not say where the waste would go.”

274. There is some evidence that the swift decision to withdraw from SMRC without expert Officer advice caused some difficulties for the Mayor in answering questions about how the City was going to deal with the ramifications of its withdrawal. In the course of responding to questions from the public gallery approximately one week after the City had stopped conveying waste to the RRRC for treatment, Mayor Delle Donne was asked to explain the cost associated with the withdrawal from the SMRC (EXH 72).

275. The following exchange occurred:

“Question: Would you please answer the question, where will the domestic rubbish be taken to?”

Mayor: It will be taken to the tenderer.

Question: All right, I will rephrase it, where will the tenderer take the City’s rubbish?”

Mayor: I don’t know where he will take it, I’m not even interested as to where he takes it, I’m only interested in the money for the ratepayers of the City.

Question: So suddenly now you want to save money?”

Mayor: Of course, for you the ratepayer

Question: What will it cost to deposit the rubbish at another site per tonne?”

Mayor: I wouldn’t know, I know that the SMRC charge much more than other organisations charge per tonne.

Question: So as a Mayor you made a vote and you didn’t know what price per tonnage it would be to.

Mayor: I just told you, that I know what we pay for SMRC, but we pay far less than any other organisations which is confidential, its commercially confidential, and that would be reflected on your rates this coming year.”

(Public Question Time. Ordinary Council Meeting, 6 July 2010)

276. It was clear the Mayor was dismissive and evasive when questioned on costs per tonnage and the location of future disposal, before claiming that the information was commercial in confidence. As mentioned earlier, the decision to withdraw from the SMRC left the new CEO and his team with a significant legacy. In two of his submissions to the Inquiry dated 9 February 2012 and 12 March 2012, Mr Dacombe wrote:

“The withdrawal of the City of Canning from the Southern Metropolitan Regional Council (SMRC) was a major and pressing issue. The week before

I started the Council had decided to give one year's notice of its complete withdrawal from the SMRC. The implication of this was that 30 June 2010 new arrangements had to be in place for disposal of all municipal solid waste, all recyclables and all green waste. The withdrawal also triggered a process for the consequential business planning and financial separation that had to take place.

The relationship between the City of Canning and the SMRC had completely broken down which created a difficult environment for moving issues forward."

277. The size of the undertaking left to Mr Dacombe and his team to resolve should not be underestimated both in financial terms and the ongoing staff-time in identifying new disposal methods at a time when staff were also about to embark on a major organisational reform program.

RRRC PAPER RECYCLING SHED FIRE

278. On 1 June 2009, the RRRC paper recycling shed caught fire and was destroyed. Green waste and compost recycling facilities were not damaged by the fire. This part of the recycling facility needed to be rebuilt and to that end in August 2009 the SMRC submitted a development application to the City to obtain planning approval to construct a new paper recycling shed.
279. The City sought further information from the SMRC, particularly in relation to the issue of fire control and proposed methods to ensure that the fire that occurred in June 2009 would not recur. The SMRC provided this further information. However, the City's Officers considered that it was insufficient to be able to make a determination in relation to the application and it was deemed refused.
280. On this basis, the SMRC appealed the City's decision to the State Administrative Tribunal, which overturned the City's decision. The State Administrative Tribunal ordered that planning approval is granted to the SMRC for a new paper processing shed, subject to conditions: [see SOUTHERN METROPOLITAN REGIONAL COUNCIL and CITY OF CANNING [2010] WASAT 185]. In his decision, Senior Member Mr D R Parry, as he then was, noted that:

“The parties are to be congratulated for the constructive and sensible way in which they have proceeded in the matter. The City properly identified environmental planning issues in its statement of issues, facts and contentions in April 2010. It indicated that it did not have sufficient information in order to be able to make a decision. The development application is obviously a major application concerning a facility in relation to which there may well have been some controversy in consequence of the unexplained fire. For the City to have sought detailed information in relation to fire management was understandable and appropriate.”

The SMRC subsequently built a new paper processing facility at its RRRC.

281. There was some conjecture and insinuation that the City had been deliberately obstructive with the SMRC’s development application, because it did not want to allow the SMRC to strengthen its position. The decision by Mr Parry above refutes this view.

MONITORING DEVICES – EVIDENCE GATHERING

282. At the Ordinary Council Meeting 11 May 2010, Cr Olsen, without declaring an impartiality interest, moved with support of Cr Daly to have air monitoring devices installed in the vicinity of the RRRC with a report back to the CEO in one month (report SRS-138-10) (EXH 73). The intent of that motion was to gather evidence that could be referred to the Department of Environment and Conservation (DEC) to show that the level of toxins in the samples collected were above those permitted under the licence held by the SMRC.
283. The *Canning Times* reported the action taken by the City in an article they published on 20 July 2010:

“The City employed consultants Dingle Bird Environmental to identify suitable technologies for monitoring odours and analysing chemicals, after it earlier resolved to look at how it could put in place a more effective monitoring program.”

284. In that same article the reporter made reference to a comment from Cr Clarke:

“Cr Stuart Clarke questioned the need to “fight” the SMRC now the City was no longer a member. He said he was concerned the matter could end up in a legal wrangle costing thousands of ratepayers dollars.”

TEMPORARY CLOSURE OF RRRC

285. Several years later the RRRC waste compost facility was eventually forced to close after the DEC found that it had breached conditions of its licence by allowing odours to be released from the site.

286. In that regard, DEC gave the SMRC ten weeks to finish all composting operations at the Canning Vale site by 30 March 2012.

287. In May 2012 the Southern Metropolitan Regional Council was granted an amended two year operating licence for the RRRC. The licence included 54 conditions monitored by the DEC.

288. The RRRC’s Bulletin of 11 June 2010 states that they have commenced implementing several of the conditions required by the amended licence. The amended licence required the SMRC to ensure that all remaining conditions were completed by 15 March 2013, with a final report on the overall compliance issues having to be submitted to the DEC by 13 April 2013.

289. There is little doubt that the RRRC was operating in a manner that generated odour complaints from some residents. The actions of Canning Council in resigning from the SMRC was an action it was legally entitled to make and certainly an option that was available for it to take. The process that the Council took to arrive at this decision is somewhat questionable in relation to Council ensuring it was fully informed and was acting in the best interests of the ratepayers of the district.

290. It is acknowledged that resident complaints were an appropriate reason for the Council to act. However, the outcome arrived at as a result of the City of Canning resigning from the SMRC had significant impact on a number of areas, not the least of which was the operational level effect on staff who were left to cope with the costly and resource intensive aftermath of the decision. The Inquiry has concluded that the decision was hastily made and lacked the benefit of an Officer report providing detailed and informed advice to Council.

JANDAKOT AIRPORT – EASTERN ROAD LINK

291. Another matter affected by the Council's decision to withdraw from the SMRC is the Eastern Link Road proposal.
292. Part of the initial Jandakot Airport Master Plan from 2005 (updated in 2009) included a proposal for an eastern link road to improve access to the airport. Currently, Karel Avenue provides the only access in and out of Jandakot Airport. The master plan envisaged the eastern link road intersecting with Ranford Road in Canning Vale.
293. There are a number of unconstructed roads to the east of Jandakot Airport. Whilst these roads exist in a legal sense (i.e. reserved as roads and are shown on maps and cadastral diagrams) they do not exist in a physical sense. Some of these unconstructed roads were identified as a possible means of access for a new eastern link road to the airport. The majority of these unconstructed roads are within the City of Canning's boundaries.
294. At its Ordinary Meeting on 13 January 2009, Council received the proposal for an Eastern Link Road from Jandakot Airport. At this time, Council identified some issues relating to possible impact on residential lots from the proposed (preferred) alignment of the link road. Council decided to hold a community forum on 29 January 2009 to discuss these issues with residents.

295. On 29 May 2009 Council considered an item pertaining to arrangements for the disposal of solid waste (report CM-108-09) (EXH 74). This was necessary given the fact that Council had decided earlier to withdraw from the SMRC, and would need to make alternative arrangements to dispose of household waste.
296. The report also dealt with a request from the SMRC to temporarily close a portion of the Bannister Road reserve that the SMRC's RRRC facility was using. The RRRC has its security gate and weighbridge situated in the middle of the road reserve. It is at the extreme end of Bannister Road, and no public access is possible through the area.
297. Council decided not to support the request from the SMRC to close the portion of Bannister Road to the public, and requested the SMRC to find alternative access arrangements. In the reasons for the decision, Council made a number of claims attacking the SMRC:
- "1) The SMRC have had personal and exclusive use of a public thoroughfare for the last three to four years, without it being formalised.*
 - 2) The Road has been illegally closed.*
 - 3) Access to Ken Hurst Park has been denied to members of the public, many who used to access the Park on a regular basis before the RRRC was constructed, to observe and study the unique flora and fauna. If access is presently wanted, to have to jump the fence along Roe Highway, or walk along the railway line from Ranford Road, both of these things are illegal.*
 - 4) The SMRC have increased their land holding, lease free, when they already have sufficient leased land to adequately carry out their operations.*
 - 5) The cost quoted by the SMRC to correct the present situation, a cost that any business has to allow for in its budgets to have security of their premises.*
 - 6) The City of Canning considers many planning issues, and issues compliance orders to those business or individuals if they have not followed the regulations.*

- 7) *If the City allows this blatant non compliance by a Regional Council, ie the unlawful enclosure of a public road for their own exclusive use, the City will be sending a clear message to other future and present businesses that there are some who are treated differently, more favourably than others.*
- 8) *The reason for the initial temporary closure granted was when the RRRC was being established, and that was understandable, however this is now a \$110M business, and should set an example to all other businesses that it complies with all regulations.*
- 9) *The SMRC have a fifty year lease, with another fifty year option, so they are expecting to have a temporary road closure for 100 years. Do not let the SMRC have this land to use as they see fit. I would like the public to have access to the park, the rate that Jandakot are clearing this land, this may well be the last reserve we can observe in this unique bushland."*

298. On 28 June 2011 Council decided to commence the process to close the unmade (but reserved) Johnston, Lothian and Govan Roads pursuant to the provisions of the *Land Administration Act 1997*. This effectively meant that despite the Council being aware that the Jandakot Airport Master Plan showed these road reserves as the preferred alignment for the future 'Eastern Link Road', it decided that those road reserves would become legally inaccessible to any future attempt to construct the 'Eastern Link Road' to Jandakot Airport.

299. As part of this closure process, a number of objections to the closure were received, including by the Minister for Planning and the SMRC.

300. The SMRC in particular lodged a comprehensive objection to the City's proposal to close the road reserves. Having been made aware of the City's Eastern Link Road proposal – essentially to run the thoroughfare straight through the middle of the SMRC's recycling facility on an unmade portion of Bannister Road – the SMRC objected to the proposal quite vigorously.

301. On 8 November 2011 the CEO Mr Dacombe submitted a report to Council on the subject of the road closures and the Eastern Link Road. In the report, the letter of

objection from the Minister for Planning was mentioned. The report contained little to no detail of other objections that had been lodged.

302. Considering the size and strength of the SMRC's submission, it should have been referred to in the report, as well as submissions from other objectors. The only reference in the report was one sentence that said *"...A number of objections have been received and clarification is being sought from Landgate on the amalgamation of the closed roads with adjoining lots."*

303. Council decided

"That:

- (a) The report be received.*
- (b) That the Council convene a public meeting within three (3) months and invite the Minister for Planning, Culture and the Arts to address the City of Canning community on planned road developments to provide an Eastern link to Jandakot Airport.*
- (c) The Chief Executive Officer make arrangements to notify residences and electors of the City of Canning and Nicholson Ward via mail and by placing notices in the two local newspapers.*
- (d) Notices to be vetted by the Mayor to include the date, time to inform the community of the State Government's plan to design and construct a road in an area reserved for "Bush Forever".*
- (e) Council reaffirm its position on providing access to Jandakot Airport via Banister Road and a further report be presented to Council within one month on the removal of the gate and weigh bridge at the SMRC.*
- (f) The site be formally referred to the Federal Minister for the Environment for assessment and approval under the EPBC Act as it is an important ecological community, nesting and feeding ground for both the Forrest Redtail and Carnaby's Black Cockatoo.*
- (g) An invitation be extended to the MLA, Mr Peter Abetz and the representatives from SERCUL, Members of the Canning River Regional Park Volunteers and other environmental volunteer groups and a representative from Perth Zoo.*

(h) *An invitation also be extended to the City of Gosnells Mayor and Councillors as any changes to traffic management in the area will have an impact of the residents of that City as well.*

(i) *The Mayor responds to the Minster Day's letter and notifies him of the Council resolution (a), (b), (c), (d), (e), (f),(g) and (h) above.*

CARRIED UNANIMOUSLY

For: The Mayor, Crs, Mason, Daly, Dowsett, Clarke, Olsen, Morgan, Barry, Elliott, Boylen and O'Donnell"

304. Much emphasis was placed on environmental issues with a 'Bush Forever' site being impacted by the Jandakot Airport Master Plan's preferred option for the Eastern Link Road. Cr Mason spoke at length about the potential environmental impacts from the proposal that was being promoted. However the Council's preferred road alignment (using Bannister Road) would have meant that another 'Bush Forever' site would be impacted. It would seem that this was overlooked because the 'Bush Forever' site that would be threatened by the City's proposal is not within the City of Canning's borders.

305. Part (e) of the resolution referred to the SMRC's weighbridge and security gate, which is located within the Bannister Road reserve. However, that portion of Bannister Road is not open to the public. Without a functioning weighbridge the SMRC would not be able to accept waste. It has been claimed that relocating the weighbridge would cost in the order of \$1 Million. It is also noted that no detail was provided in the report relating to the legal considerations of the lease the SMRC has with the City for the RRRC site. This should have been a factor in Council's decision making.

306. At this time, it is clear that the SMRC became concerned over the City's behaviour. It lobbied its member Councils to put pressure on the City of Canning to reverse its decision. The City of Melville in particular made a submission to the Inquiry on 29 May 2012 expressing concern over the City's actions (EXH 75). The

Officer's report presented to the City of Melville Council was particularly critical of Canning's proposal, and made a number of pertinent points:

"From a regional strategic planning viewpoint it is noted that an area on Ranford Road, adjacent to the existing freight rail line, is designated under the Metropolitan Region Scheme as a site for a future (long term) passenger rail station. In the shorter term, the land may be developed as a park and ride bus station, with high frequency bus connections to Murdoch Station. Access to such facilities would require a new road to be constructed off Ranford Road. Topography and intersection spacing suggests that the intersection may be best placed in the area between the Johnston and Lothian Road road reserves..."

"...The City of Canning has previously initiated road closure procedures to remove the unmade road reserves (specifically Johnston, Lothian and Govan Road). Reasons for the road closures include concerns that an eastern link road in the vicinity may result in loss of vegetation, disturbance to nearby residents and general traffic congestion in the vicinity of Ranford Road..."

"...The alternative Clifton Road/Bannister Road route is considered impractical given that it is indirect, requires substantial investment in constructing a bridge over the freight rail line (in the order of \$10-30 million) and would adversely impact the operation of the heavily congested intersection of Bannister Road and South Street. Earthworks to provide for a bridge and likely changes to road positioning to accommodate the 90 degree bend at the intersection of Clifton and Bannister Road would also be expected to result in loss of environmentally significant vegetation within Ken Hurst Park, which is reserved as a "Bush Forever Site." This route also has implications on the operations of the RRRC..."

307. The practicalities, and the regional planning context of the City of Canning's road closure proposal does not appear to have been considered. Indeed, the City of Melville report concluded that:

"Closure of the existing unmade road reserves to the east of Jandakot Airport is considered detrimental to sound regional planning. The City of Melville has concerns with the rationale forwarded by the City of Canning for the closure of all roads apart from Bannister Road, which impacts on the leased area, as the justifications are not based on sound land use and transport planning grounds nor is it a cost effective option. Similarly the alternative proposal to provide the eastern link to South Street via Clifton

Road and Bannister Road is impractical and problematic due to the then required relocation of essential infrastructure currently within the road reserve which was approved by the City of Canning. The proposed route is indirect, requires a major bridged rail crossing, will result in loss of native vegetation and is likely to cause the failure of the intersection of Bannister Road and South Street. Avoidable disruption to the operations at the RRRC site associated with this option is also noted."

308. The recommendations offered by the City of Melville show that the most practical and cost effective options would be to connect the new Eastern Link to Ranford Road, in the vicinity of Johnson Road.

SUMMARY AND FINDINGS

309. As stated previously, the decision of the Council to resign from the SMRC was a course of action open for it to take. However, examination of the process raises questions as to whether Council was ensuring it was fully informed and was acting in the best interests of the ratepayers of the district. Resident complaints were a reason for the Council to consider, but the City's resignation from the SMRC had significant impact on a number of areas, not the least of which was the operational effect on staff. The Inquiry has concluded the decision was hurriedly made without Council seeking any Officer report providing advice.
310. The decision by Council to authorise the Mayor to directly obtain legal advice was inappropriate in these circumstances. The decision prevented any Officer involvement and left Council without any advice on the impact on the City's operations. The basis for withdrawing from the SMRC was the odour complaints from residents, but the final decision of Council has done nothing to alleviate this problem. Council's actions have been a costly exercise that had no practical impact on the problem facing the City's local residents and the remaining members of the SMRC.
311. If the City of Canning's suggested closure of the existing unmade road reserves to the east of Jandakot Airport is implemented - despite the Council being aware

that the Jandakot Airport Master Plan showed these road reserves as the preferred alignment for the future 'Eastern Link Road'- it will mean Jandakot Airport will have no other option but to adopt the City's proposal of using Bannister Road, an option that will seriously disrupt the operations of the RRRC.

312. It is the Inquiry's view that the Council suggested the closure of these roads with the intended outcome that the consequence of Jandakot Airport having to use the City's Bannister Road option would adversely impact on the operations of the RRRC. This intended outcome may have been motivated more by the political agendas of some elected members rather than being an intended result arrived at after careful consideration of sound technical and practical advice.
313. Critically, the Minister for Regional Development and Lands, who has ultimate authority for approving road closures, has refused to approve the City's road closure application. This is a position the Minister for Planning has supported. The Inquiry considers this rejection of the City's preferred option is some recognition of the City's flawed rationale for pursuing this proposal.
314. As has consistently been raised in this Report, Council is operating in isolation from the benefit of professional advice that would guide them on taking the best approach in dealing with complex problems.

FINDING 20

The decision taken by the Council to relinquish its membership of the SMRC was ill considered and made with unreasonable and unnecessary haste. It is apparent to the Inquiry that a majority of elected members had taken the view that it was politically advantageous to divorce themselves from the problems associated with the SMRC/RRRC, rather than stay and work with them (and the other member Councils) to find a solution to reduce the effect of the odour emissions.

FINDING 21

At Council's Ordinary Meeting of 19 February 2009, when the decision was made to withdraw from the SMRC, the Council did not give sufficient consideration to the financial implications to the City of withdrawing from membership.

FINDING 22

Council's attempts to close all unmade road reserves to the east of Jandakot airport were in order to remove the ability of Jandakot Airport to pursue its preferred Eastern Link Road alignment. This would leave the City's own Bannister Road proposal as the only option open to progress the proposal.

FINDING 23

Council preferred its Bannister Road option because it would impact adversely on the operations of the RRRC.

CHAPTER 10

Refuse Truck Purchase

BACKGROUND

315. At its Ordinary Meeting on 13 September 2011, Council gave its approval to commence a procurement process for budgeted plant replacement that included new refuse trucks. This expense was to be in excess of \$1.3 Million.
316. The purchase was not dealt with via public tender, with the City instead sourcing quotes from preferred suppliers. A tender exemption applied under Regulation 11(2)(b) of the *Local Government (Functions and General) Regulations 1996* due to the City using the Western Australian Local Government Association's *Preferred Supplier Contract*.
317. Four suppliers provided quotes. One failed to meet the City's specifications and one could not meet delivery date expectations. An assessment was conducted of the two remaining qualifying quotes, with the result a recommendation was made to accept an IVECO vehicle based on an evaluation of both performance and cost.
318. The Officer's report to Council outlined the most advantageous method for the City to dispose of the existing rubbish trucks. It was proposed to auction the

superseded rubbish trucks separately in single lots. This was to avoid flooding the limited market for these specialist vehicles and therefore ensuring the City obtained the best return when it disposed of these assets. The Officer's recommendations were presented to Council at its Ordinary Meeting on 22 November 2011 (report ET-109-11) (EXH 76):

- “(a) Council receives the report on Waste Services plant replacements undertaken in the previous financial year,*
- (b) Council accepts the offer from Skipper Trucks offering four (4) IVECO ACCO 2350G/280 6 x 2 cab chassis trucks fitted with SuperiorPAK 25m³ side loading compactors and the Accuweigh Air Transducer Weighing System for a total price of \$1,371,640 ex GST.*
- (c) Council authorises the over expenditure for the purchase of these trucks with the additional funding being sources from the Waste Reserve Account.*
- (d) All companies who lodged submissions be advised of (a) above and thanked for their submission.”*

319. However, Cr Barry moved a motion amending the Officer's recommendation, in particular part (b) of the recommendation, which was subsequently adopted by Council and became part of the Council decision:

- “(b) Council accepts the offer from WA Hino offering four (4) Hino 500 Series 1728 Long Auto 6 x 2 Cab Chassis Trucks fitted with SuperiorPAK 25m³ side loading compactors and the Accuweigh Air Transducer Weighing System for a total price of \$1,376,931 ex GST.*

For: The Mayor, Crs, Mason, Daly, Olsen, Barry, Elliott, Boylen and O'Donnell
Against: Crs Dowsett, Clarke and Morgan”

320. The reason given for the departure from the Officer's recommendation, as recorded in the minutes of the meeting, was that *“...The Offer by Hino WA No 3 as per Schedule offers a competitive, recorded reliable alternative with a greater warranty.”*

321. In order to determine the rationale behind the rejection of the Officer's recommendation, the Inquiry interviewed Cr Barry, who offered the following response:

"I think if you – if you go through the prices, you'll find that the – the Hinos were probably – they were pretty much a – apples with apples. There might have been five thousand dollars difference in total, I believe on the night that I asked Mr Jefferies – and if you can go back to the tape I'm sure that he said that he didn't have a problem with it – because the fact of the matter was that we had Hinos and we have had Hinos for a number of years, and that was my rationale behind – because obviously they were a successful fleet truck for the purpose that they were."

(Graham Barry interview: 9 May 2012 transcribed 8:15)

322. Therefore Cr Barry's rationale for rejecting the Officer recommended IVECO trucks appeared to be mainly based on the City's history of successfully utilising these 'Hino' trucks. Cr Barry further stated that he had spoken with a driver of one of the City's rubbish trucks, who advised him that the Hino was 'more comfortable'. He was critical that no detail had been provided in the Officer's report as to trade in values. He advised that he could not see the value of changing to IVECO's given that the existing fleet consisted of HINO's.
323. Mr Jefferies – who was at the time the City's Executive responsible for the City's Engineering Department which includes Waste Services - gave some background on the Officer's recommendation:

"We put – went out for tender – quotes actually, went out for quotes for the refuse trucks, we had done a thorough analysis of each of the trucks, we had put up a recommendation that – to purchase a particular type [IVECO] – it was the cheap – it actually was the cheapest as well. We had put that recommendation up on the basis of that truck – they are actually purpose built for refuse collection. Now I don't know if you know [indistinct], a truck – a truck doing normal pick up and delivery type things is quite different to a refuse truck. Because its stop-start, stop-start, stop-start – so they – you overheat it quite quickly. Heavy on the brakes, those types of [indistinct]. So they – the truck we were recommending – purpose built and it had high – a much larger radiator – it has two radiators"

actually. Has a far lower gear ratio, so the engine's not working over – much, it has bigger brakes and that and a few other things to it that makes it excellent for what its – designed to do. Plus, the delivery time – we had a guarantee that it would be delivered to us – I think we would get them by May of this year. Now that process – I think we put the report up twice in the end, we had Councillor Barry and the Mayor unbeknown to me turn up at the Waste Services to look at our waste trucks, prior to the meeting – then we had Councillor Barry move a motion to purchase the third cheapest of the trucks simply because the cab on that truck had a four year – well, this was the reasoning – four year warranty compared to three on the one we were recommending. But on the waste services trucks, our experience is that the cab and chassis are not the ones that cause us the problems, it was the brake pads. So, that was – that [indistinct] that recommendation went through.”

(Kevin Jefferies interviews: 4 May 2012 transcribed 39:53)

324. Subsequent to this resolution the Mayor became concerned when he sighted one of the IVECO trucks in the City's Works Depot. In an email dated 8 February 2012 sent by Mr Jefferies to Mayor Delle Donne and forwarded by the Mayor to Cr Barry (EXH 77):

“The Acco that you saw (Rego:1DSM967) was the one delivered “late” September 2011 and there was a project Report for it. It is the first 6 x 2 configuration in the fleet and was ordered in December 2010. It is performing magnificently, good power at low speed, no overheating, really good fuel economy and productivity returns better than anticipated.

Hope this is helpful.”

325. It is noteworthy that contrary to Cr Barry's understanding that the City used only Hino trucks, there was in fact an IVECO already on the City's waste services fleet that Mr Jefferies described as: *“performing magnificently, good power at low speed, no overheating, really good fuel economy and productivity returns better than anticipated”*.
326. As stated previously, according to Cr Barry his rationale (and Council's subsequent resolution) for rejecting the Officer's recommendation was based on the City's history of successfully using HINO's *“...because the fact of the matter*

was that we had Hinos and we have had Hinos for a number of years, and that was my rationale behind – because obviously they were a successful fleet truck for the purpose that they were.”

327. It can reasonably be determined that Cr Barry was unaware he was the seconder of a motion at Council’s Ordinary Meeting on 14 December 2010 that approved the acquisition of the IVECO truck sighted by the Mayor (EXH 78):

“Moved Cr Elliott, seconded Cr Barry

That:

- (a) Council accept the offer from Skipper Trucks offering an Iveco Acco F 2350G 6 x 2 cab chassis truck fitted with a SuperiorPAK 23m side loading compactor for a total price of \$364,584 inclusive of GST (\$331,440 ex GST)*
- (b) All companies who lodged submissions be advised of (a) above and thanked for their submission.*

Carried Unanimously”

SUMMARY AND FINDINGS

328. As the Tender involved a significant outlay of the City’s finances (around \$1.3 million) it was a matter that warranted some careful consideration and it is clear the decision surrounding this matter needed to be supported by technical and specialist Officer advice.
329. The Officer’s report to Council provided technical information on the merits of the recommended option. It is not in dispute that Cr Barry did not have the technical expertise or knowledge to support the argument that choosing another vehicle was a better option for the City. Elected members would have been aware of this. The basis for his view primarily centred on an opinion that as the City had used Hino’s in the past he saw no reason to change - as they should be okay to use in the future. Cr Barry also discussed the value for money obtained in choosing the HINO’s because they had a four year warranty on the Cab

compared to the three year warranty offered by the IVECO's. It would also appear that Cr Barry considered the view of the employee he spoke to, who suggested that the HINO vehicles were "*more comfortable*", as relevant.

330. In their responses to the Inquiry, some elected members have expressed the view that the Officer's recommendation gave no tangible justification to choose one truck over another (in this case Iveco ACCO versus Hino). For example, Cr Mason said to the Inquiry (5 November 2012) that "*The report did not make clear why the Iveco ACCO was to be considered better than the Hino unit...*"

331. It was further stated by Cr Mason's legal representative that "*It appeared to our client that Mr Jefferies was suggesting that, despite the past performance and reliability of the four Hino units, the council should consider changing the trucks to a make of truck which had been used for approximately two months for the minimal savings indicated in the report.*" A similar sentiment was expressed by Mayor Delle Donne in his response to the Inquiry.

332. Contrary to Cr Mason's and other elected members views, the Officer's report gave a clear and logical reason why the Iveco ACCO was being recommended for purchase, the reason being far from a "minimal saving" for the City:

"This replacement [Iveco] truck is already demonstrating efficiency gains on a daily basis where an hour per day is saved in travelling time. This has meant that an additional 120 bins can be serviced per day on average and will allow the service to incorporate the yearly additional bins (from growth) to be accommodated without increasing the fleet or staff numbers over the next few years."

333. Cr Barry's argument in support of his motion demonstrated his lack of expertise and technical awareness that was needed to appropriately assess the City's requirements in this area. As Mr Jefferies explained in relation to Cr Barry's view on the warranty: "*But on the waste services trucks, our experience is that the cab and chassis are not the ones that cause us the problems, it was the brake pads*". In other words the warranty, contrary to what Cr Barry believed, did not have an

overall benefit to the product, as the parts covered were not parts and systems of the vehicle that according to the professional assessment, are problematic or high-risk components of the vehicle.

334. The end result for the City was a higher unit price, with service delivery affected as a result of Cr Barry's motion.

335. It is recognised that Cr Barry was supported by seven other Councillors who voted on his motion.

FINDING 24

The Mayor, Crs Mason, Daly, Olsen, Elliott, Boylen, O'Donnell and Barry supported a resolution to reject an Officer's recommendation without giving proper consideration to the advice offered to them by the City's technical staff, who had considerable expertise in this area.

FINDING 25

It should have been obvious to elected members who voted for Cr Barry's motion that Cr Barry was not in a position to offer any professional expertise in providing advice on the purchase of specialist equipment that would cost in the region of \$1.3 million.

CHAPTER 11

Council Decisions Related To Regulatory Services

REVIEW OF THE CITY'S REGULATORY SERVICES

336. In a review commissioned by the City of Canning in 2011, the City's Regulatory Services area was examined by consultancy firm Planning Context. This review was instigated as part of the Refocus Organisational Reform program. The review found that there were a number of significant issues and challenges facing the City in terms of the performance of its regulatory planning functions.
337. One of the issues identified by the review was that the number of planning and development applications being considered by Council during the period September 2010 to February 2011 (6 months) far exceeded the number considered by other local governments in Western Australia. The primary finding of the review was that 43% of all items and 32% of all development applications were being referred to Canning Council.
338. The commonly accepted benchmark presented by the Western Australian Local Government Association (WALGA) is that less than 10% of development applications should be referred to Council. The City is currently operating at approximately 22% above the WALGA best practice benchmark.

339. The review also found that there were a large number of regulatory matters currently being reported to Council and conversely very few of those were strategic in nature. It was recommended that the Council should be concentrating on matters of strategic importance, and allow simple regulatory applications to be processed and approved under delegated authority. As things currently stand, approximately 43% of all planning and development applications are being reported to Council for determination. This is clearly unnecessary.

340. In the report from “Planning Context” (EXH 79) it was found:

“The policy framework at the City of Canning is very incomplete and a number of existing policies need revision. Without detailed policies against which to assess applications, inconsistencies and uncertainty can occur.....As a result of these policy shortcomings, there is a greater avenue for the applicant to appeal the City’s decisions to the State Administration Tribunal (SAT).

The review found that there are a large number of regulatory matters being reported to Council and conversely that few of those items are “strategic” in nature..... The long-term objective should be to have the vast majority of simple regulatory applications being addressed by the administration under delegated authority.....This is not the case at the City, where 40% of all regulatory items are being reported to Council for determination.....The fundamental problem here is the apparent breakdown in trust and respect, at least in terms of planning functions, so that Council is reluctant to delegate items to administration for decisions.

The review also found that for the City to function in accordance with best practice planning, it is essential that there is a clear understanding of the respective roles and a better level of coordination between elected members and the administration.”

(Review of Regulatory Services Group Report, 2011.)

341. For a Local Government Authority to be truly effective it is important that everyone involved understands and respects their roles and responsibilities. Elected members in particular must appreciate the boundaries of their function

and not allow themselves to interfere unnecessarily or inappropriately with the functions of the CEO and members of staff.

342. A significant measure of the efficiency and effectiveness of local government authorities can be measured by the level of trust and respect that exists between the elected members and the Officers. On the evidence available to the Inquiry there is a level of “distrust” at the City of Canning which is affecting the delivery of good governance.
343. This observation is confirmed partly by the review of the City’s Regulatory Services, with the Planning Context Report finding that there had been a fundamental breakdown in trust and respect, at least in terms of planning functions, to a point that Council was reluctant to delegate items to the administration for decision. They also found that for the City to function in accordance with best practice planning, it is essential that there is a clear understanding of the respective roles and a better level of coordination between elected members and the administration.

STATE ADMINISTRATIVE TRIBUNAL (SAT) APPEALS

344. When a local government determines applications for planning approval, it is acting in what can be described as a ‘quasi-judicial’ manner when considering whether to grant planning approvals.
345. At formal Council meetings, Officers typically present written reports on matters requiring a Council decision. These reports provide details and background to recommendations about each matter being considered. Officer reports are usually included in the Council meeting agenda provided before the meeting.
346. Staff expertise and training is a valuable resource for elected members, particularly in the complex and technical area of planning and development. For

this reason Officer recommendations generally form the basis of a Council decision. However, Council is not bound to adopt these recommendations.

347. Examination of records held by the City of Canning show that of the thirty one appeals lodged with SAT during 2008, 2009 and 2010, twenty nine, or 94% were determined in favour of the applicants. From these figures it is clear that there is an extraordinarily high percentage that the City lost on appeal to SAT (EXH 80).
348. In examining this particular matter, the Inquiry has found that the City Administration has been able to implement a number of the recommendations that were proposed in the report from Planning Context. The Manager of Approval Services, Mr Bride advised that:

“We have responded to the report, and to date we have implemented 90% of the short term recommendations that were made. We have implemented all of the recommendations that were made in relating to the structural changes that were proposed in the report. I can also report that we have implemented several of the mid-term recommendations that were made, but most importantly the Council has given the division more “delegated authority to deal with regulatory applications at the lower end of the scale. We are working toward being able to extend our “delegated authority” even further to streamline the approval process that will align us more closely with the norms at other local government authorities.”

(Graham Bride, Manager of Approval Services, 6 July 2012)

SUMMARY AND FINDINGS

349. On the evidence available to the Inquiry it is clear that the number of Regulatory applications being referred to Council for consideration is above the WALGA benchmark of 10% by a considerable amount. On this basis, the number of applications declined by Council is excessive, given that the majority of those decisions were not upheld by subsequent SAT review.
350. On the basis of the feedback provided by the City, the Inquiry is encouraged that the changes recommended in the review are being implemented, which should

in turn allow the Regulatory Services Division to function more effectively. It is also encouraging that Council has broadened the Division's authority to use their powers of delegation to approve regulatory applications that do not need to be referred to the Council.

351. The Inquiry has found that the decisions taken by the City to implement the recommendations made in the Planning Context Report should relieve the pressure on the City's Planning Officers, and allow them to process low level applications in a timelier manner, leaving Council to focus on more strategic level decisions.

352. Time will tell if the "trust" and "respect" issues identified in the review improve, where the number of low level regulatory applications going to Council can be reduced to a level commensurate with that of other local authorities.

FINDING 26

The number of regulatory services applications being referred to Council for consideration is considerably above the WALGA benchmark of 10%.

FINDING 27

Council needs to review its delegations to overcome the number of low level regulatory services matters that come before Council.

CHAPTER 12

Legal Services Tender

BACKGROUND

353. The City had a three year Professional Services Contract with law firm McLeods, which was entered into on 1 July 2007. When the Contract expired on 30 June 2010, it was not renewed or renegotiated. It would appear that after this time, the City used McLeods on an ad-hoc basis until such time as new arrangements for the provision of legal services to the City were implemented.

APPOINTING LEGAL SERVICES PROVIDER

354. In order to attend to the issue of the City not having a contracted legal services provider, it was suggested that Council give consideration to utilising the WALGA preferred supplier panel for the provision of legal services. The City's (then) current legal services provider, McLeods, had recently been appointed to the WALGA preferred supplier panel. At Council's Ordinary Meeting on 12 October 2010, a report was presented detailing this proposal (report AF-133-10) (EXH 81).

355. The Officer's recommendation in the report to Council on 12 October 2010 was:

"That:

- (a) The Western Australian Local Government Association (WALGA) be invited to brief the Council on their legal services contract number TPS 0609 (expiry 22 June 2012) at a Confidential Forum.*
- (b) Subject to (a) above a further report be presented to Council on this matter."*

356. However, instead of accepting the Officer recommendation to receive a briefing on the benefits of using the WALGA preferred supplier panel, the Council chose to conduct a tender process to appoint legal services.

357. Council passed a motion moved by Cr Barry, with an amendment proposed by Cr Mason, that:

- "(a) Seek expressions of interest from a suitably qualified Lawyer to be employed as an in-house Lawyer, as defined by the Chief Executive Officer.*
- (b) Council apply tendering process from qualified/experienced law firms to undertake the City of Canning's legal requirements.*
- (c) Council invite WALGA to put forward pricing schedules of those legal firms outlined on WALGA Legal Services preferred supply panel, for consideration.*
- (d) McLeods Barristers and Solicitors be invited to forward an expression of interest and pricing schedule, independent of the WALGA preferred supply panel if they so desire.*
- (e) Council to advertise these expressions of interest for legal services for the City of Canning via and on days and a timeframe to be determined by the Mayor and the Chief Executive Officer.*
- (f) Subject to (a), (b), (c), (d) and (e) above, a further Report be presented to Council on this matter.*
- (g) An ability to include additional firms to the list in the future."*

358. The amendment Part (g) to the motion appears contradictory to the intent of calling for parties to tender to provide a service to the City:

“Part (g) An ability to include additional firms to the list in the future.”

359. In compliance with the Council decision, the City was obliged to go to tender, and tender 37/2010 “Provision of Legal Services” was advertised in *The West Australian* on 13 November 2010 and closed on the 29 November 2010. As a result of the tender process, four Tenders were received:

- McLeods Barristers and Solicitors.
- Kott Gunnings Lawyers.
- Jackson McDonald Lawyers.
- Doyles Construction Lawyers.

Letters of interest were received from two others:

- Civic Legal Local Government Lawyers.
- Freehills.

360. The decision had implications from a policy perspective, particularly relating to the City’s Legal Services Policy (CM-108) and the City’s Purchasing Policy (AF-301). The Purchasing Policy did not have a provision for dealing with services provided to Council via a panel arrangement.

361. At Council’s Ordinary Meeting of 22 March 2011, the result of the legal services tender was presented in a report to Council (report CR-048-11) (EXH 82). The minutes of the meeting outline the sequence of amendments rejecting the Officer’s recommendations.

362. The Officer's recommendation was:

"That:

- (a) Council resolve to appoint a panel of suppliers for Tender 37/2010 – Provision of Legal Services including the following providers for a three year term, being:
 - i. McLeods Barristers & Solicitors*
 - ii. Kott Gunning Lawyers*
 - iii. Jackson McDonald Lawyers**
- (b) A further report be provided to Council detailing the amendment to Policy CM108 – Legal Advice with specific reference to how legal service will be obtained utilising the Panel of suppliers detailed in (a) above.*
- (c) That all successful, unsuccessful Tenderers and parties that lodged letters of interest be advised of Council's decision and be thanked for their interest in the Tender."*

363. However, a motion moved by Cr Barry recommended that the Officer's recommendation not be adopted, because:

"The new position for Manager Legal and Democracy Services is currently advertised and when appointed should be involved in the selection assessment and will provided[sic] further input to the process for the appointment of external legal services."

364. Cr Barry's motion was then put:

- "(a) That no tenders be accepted.*
- (b) Following the appointment of the Manager Legal and Democracy Services a further report is presented to Council on the Provision of Legal Services.*
- (c) That all Tenderers and parties that lodged letters of interest be advised of Councils[sic] decision and be thanked for their interest in the Tender."*

365. Cr Barry was advised that his motion required an 'absolute majority', and when Council voted on Cr Barry's motion, the Minutes record MOTION LOST – NOT CARRIED BY ABSOLUTE MAJORITY. It is further recorded in the minutes that an

absolute majority was not required, accordingly the Minutes reflected that the Motion should read as follows: – MOTION CARRIED.

366. After further amendments the end result was that neither the Officer's recommendation nor Cr Barry's alternative motion was adopted, and no tenders were awarded.
367. On 4 July 2011 a '*Manager of Legal and Democracy Services*' was appointed to the City. At this time no formal arrangement for the provision of legal services to the City existed. However, three providers, McLeods Barristers and Solicitors, Civic Legal Pty Ltd and Hardy Bowen Lawyers, continued to provide legal services to the City.
368. Some eighteen months after the original legal services contract expired, a report was presented to Council at its Ordinary Meeting of 13 December 2011 (report CR-217-11) (EXH 83) with a recommendation to accept the three WALGA panel providers that had also responded under the advertised tender:

"That:

- (a) The following suppliers are invited to brief the Council, by mid February 2012, on their legal services, with a view to the Council appointing one or more for a three year term, commencing 1 March 2012:*
- i. McLeods Barristers & Solicitors*
 - ii. Kott Gunning Lawyers*
 - iii. Jackson McDonald Lawyers*
- (b) subject to (a) above, a further report be provided to Council detailing the required amendments to Policy CM108 – Legal Advice, with specific reference to how legal services will be obtained utilising a Panel of suppliers."*

369. When this item came up for deliberation, Cr Barry moved an amendment to the Officer's recommendation requiring the addition of another three legal firms to the list: Freehills, Minter Ellison and Civic Legal. Part of Cr Barry's motion called

for a requirement for Council to give consideration to other unnamed legal firms who expressed an interest in briefing Council and being added to the legal services panel, however the minutes of the meeting indicate Cr Barry agreed to withdraw that part of his motion after being advised that it would require going to tender again. The motion was then put and Council's decision was:

"That:

(a) The following suppliers are invited to brief the Council, by mid February 2012, on their legal services, with a view to the Council appointing one or more for a three year term.

- i. McLeods Barristers & Solicitors*
- ii. Kott Gunning Lawyers*
- iii. Jackson McDonald Lawyers*
- iv. Freehills*
- v. Civic Legal Pty Ltd*
- vi. Minter Ellison*

(b) subject to (a) above, a further report be provided to Council detailing the required amendments to Policy CM108 – Legal Advice, with specific reference to how legal services will be obtained utilising a Panel of suppliers.

CARRIED

For: The Mayor, Crs, Mason, Daly, Olsen, Barry, Elliott, Boylen and O'Donnell

Against: Crs Clarke and Morgan"

MAYOR'S AND DEPUTY MAYOR'S LUNCH

370. The Inquiry located email correspondence dated 18 August 2011, between Cr Mason and three representatives of Civic Legal (EXH 84). This was before Council's decision to invite Civic Legal *"to brief the Council, by mid February 2012, on their legal services, with a view to the Council appointing one or more for a three year term"*.

"Subject : Lunch

Guys

Thanks again for the opportunity to meet and the lunch yesterday, I know the mayor and I found it most informative. I would be interested in following up a few business matters with Richard and wondered if you could supply his contact details as he didn't have a card with him.

Look forward to supporting your expertise when our legal tender items returns to Council (emphasis added)

*Best regards
Bruce Mason."*

371. This lunch meeting was not disclosed either at the Council meetings in which Civic Legal was discussed nor was the value of the lunch entered in the City's gift register. The evidence from the Mayor and Cr Mason was that:

- They both attended a luncheon hosted by representatives of Civic Legal in West Perth on Wednesday 17 August 2011, although the Mayor's recollection was that this was at the Parmelia Hotel.
- No declaration or disclosure in the City's gifts register appears for this luncheon (EXH 85) (The value of the luncheon needed to be above \$50 to require entry in the gift register).
- No other elected member was apprised of the meeting, its purpose or result.
- Neither could remember the context of the discussions with Civic Legal.

372. For comparison, the City's gifts register (EXH 85) has two entries on 7 December 2011 for gifts received by Mayor Delle Donne of \$20 value for a three litre bottle of olive oil, and Deputy Mayor Mason, from the same ratepayer, for a \$40 cask of olive oil. It would appear disclosing these other minor gifts did not prompt them to consider disclosing the luncheon from Civic Legal. Further investigations have revealed that following this luncheon, Mayor Delle Donne sought legal assistance from Civic Legal in the form of advice on a private debt collection issue related to one of his rental properties.

373. Email correspondence obtained by the Inquiry shows the Mayor provided substantial documentation to Civic Legal to support his request for legal services (EXH 86).

"Hello Joe (Cianfrini)

Please find attached herewith documentation to assist you to collect the outstanding amount that is owed to me."

[...]

Many Thanks

*Joe Della Donne
Mayor City of Canning"*

374. In an email dated 23 August 2011 Civic Legal responded to Mayor Delle Donne advising:

"Hi Joe

I have contacted Don Esposito the guy I use to locate people and he is also a process server. I've sent him the details of the tenant he will call you direct when he finds him. I have asked him to keep you updated.

Once he is located if you need any assistance please don't hesitate to call me.

*Regards
Joseph Cianfrini
Solicitor
Civic Legal Pty Ltd"*

375. A further exchange of emails was located showing Mayor Delle Donne seeking follow-up action on his request to have Civic Legal engaged in debt recovery action through to January 2012.

376. In an email dated 13 January 2012 Civic legal respond to Mayor Delle Donne advising in part:

*“Hi Joe
Regarding the rent arrears I have drafted the minor case claim for you and
it’s at our Perth office for you to collect.*

*Regards,
Joseph Cianfrini
Solicitor Civic Legal Pty Ltd”*

377. The Mayor’s response to Civic Legal, is provided the same day, and states in part:

*“Hello Joe Thanks for the response
...
... If it’s not much trouble for you could you post it for me”
...
Many Thanks
Please let me know what is the damage?*

*Many thanks
Best Regards
Joe Della Donne
Mayor City of Canning”*

378. This exchange clearly indicates Mayor Delle Donne had engaged Civic Legal in a professional capacity (EXH 87).

379. The Mayor has used his Council email address and signature block, rather than his private email address that would have been appropriate for conducting his private business matters. This use of his Mayoral office may have created a perception he was using his position to seek preferential treatment from Civic Legal.

FINDING 28

It was inappropriate for Mayor Delle Donne to have used his City provided email address and his Mayoral office title in conducting his private business.

380. It is clearly evident from the dates of the email exchanges that the Mayor was in some form of a business relationship during the time Council dealt with the item of the appointment of the legal services panel on 13 December 2011 and as such, the provisions of the financial interest provisions of the Act may be relevant.

381. Mayor Delle Donne was questioned by the Inquiry on whether he had any relationship, professional or otherwise with Civic Legal. His response was:

"I met them at a conference in the city and I asked one of them for some advice on a private matter."

382. When questioned whether he declared a benefit in relation to the lunch he received, he answered:

"I was advised that lunch had to be of \$30 or more to be declared."

383. Mayor Delle Donne and Cr Mason were obviously aware of the fact they met with and received a benefit (albeit minor) from Civic Legal prior to their involvement in supporting Cr Barry's motion to introduce Civic Legal to the Legal Services Panel. In that regard, the provision of Regulation 11 of *Local Government (Rules of Conduct) Regulations 2007* is relevant. The rule of conduct in that rule is that a Council member must disclose the nature of an "interest" to the CEO before the meeting or at the meeting immediately before the matter is discussed, "interest" being defined as *"an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association"*. In any event, ordinary decision making principles dictate that factors which might affect, or be reasonable perceived as affecting, the objectivity of a elected member be made known before the member's participation in the making of the relevant decision.

384. In State Administrative Tribunal: *Bradley and Local Government Standards Panel* [2012] WASAT 44, at paragraph [42] Senior Member McNab said that an

allegation that a council member has committed a breach of regulation 11(2) of the Regulations *“is an allegation of undeclared conflict or bias (apparent or real clouding the exercise of public duty)”*.

385. Quite apart from Regulation 11 of *Local Government (Rules of Conduct) Regulations 2007*, Mayor Delle Donne was aware of the existence of a business relationship between himself and Civic Legal.

386. Section 5.60 and 5.62 of the *Local Government Act 1995* stipulates in part, that a person has an interest in a matter if a person with whom the relevant person is ‘closely associated’ has a direct or indirect financial interest. In other words, if a person you are closely associated with has a financial or proximity interest, then you are considered to have an interest that should be disclosed (s5.65). In this case, Section 5.62 of the Act and Regulation 20 (1) *Local Government Administration Regulations 1996* is relevant in defining that Mayor Delle Donne would be ‘closely associated’ to Civic Legal if he was a client of Civic Legal.

“20. Closely associated persons, matters prescribed for (Act s. 5.62)

(1) In subregulation (2) —

client or adviser means a person who supplies, or receives, legal or financial professional services.

(2) A relevant person who, within the previous 12 months, was a client or adviser of a relevant person is a person of a class of persons prescribed for the purposes of section 5.62(1)(ca).”

(20 (1) Local Government Administration Regulations 1996).

387. Therefore, there is sufficient indication that Mayor Delle Donne was required to disclose the nature of his interest in the matter proposed by Cr Barry at the meeting of 13 December 2011, to invite Civic Legal *“to brief the Council, by mid February 2012, on their legal services, with a view to the Council appointing one or more for a three year term”*.

388. Mayor Delle Donne would then have had a responsibility, after disclosing the nature of his interest, not to participate in this part of the meeting (Section 5.67 *Local Government Act 1995*).
389. Mayor Delle Donne did not declare the nature of his interest and did not remove himself from the Council Chamber knowing that he was a client of Civic Legal when Council was deliberating on this issue.

SUMMARY AND FINDINGS

390. The circumstances of calling tenders for legal services again raises the now common situation of an Officer recommendation being overturned by a resolution moved by an elected member (a so-called 'motion from the floor') without any consultation or regard for the advice being provided. In this case the amendment was made by Cr Barry, whose role in overturning Officer recommendations had become common.
391. This issue also demonstrates the double standards of the Mayor and Cr Mason in making allegations of conflicts concerning other people, whilst ignoring or not recognising their own.
392. Whilst the Mayor showed he was willing to raise concerns about a large range of possible conflicts of others -see *Chapter 1: Transparency of Recruitment Process, Chapter 20: Recruitment, Executive Engineering and Technical Services, Second Attempt* - in this case the Mayor failed to demonstrate the same vigilance in recognising his own conflicts. In accepting a 'free lunch' Mayor Delle Donne was obliged to reveal this benefit as soon as Civic Legal became part of Council deliberations. This lunch meeting was neither disclosed at the Council meeting in which Civic Legal was discussed nor, for that matter noted in the City's gift register as Mayor Delle Donne and Cr Mason had done with other minor gifts they had received.

393. The contents of emails between Mayor Delle Donne and Civic Legal also indicate a business relationship commenced and continued when this matter came before Council. Whilst Mayor Delle Donne disputes he is ‘closely associated’ with Civic Legal within the context of Reg 20 (1) *Local Government Administration Regulations 1996* the Inquiry has concluded there is sufficient indication that Mayor Delle Donne, as a closely associated person to Civic Legal, was required to declare an interest and not vote on this issue.

FINDING 29

Mayor Delle Donne and Cr Mason failed to disclose their luncheon with Civil Legal representatives before the motion dealing with inviting Civic Legal “*to brief the Council, by mid February 2012, on their legal services, with a view to the Council appointing one or more for a three year term*”.

This was an ‘interest’ that could, or could reasonably be perceived to, adversely affect the impartiality of Mayor Delle Donne and Cr Mason for the purposes of Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007*.

FINDING 30

There is sufficient indication that Mayor Delle Donne was ‘closely associated’ with Civic Legal within the meaning of Regulation 20 (1) and (2) *Local Government Administration Regulation*. However the Mayor failed to disclose at the 13 December 2011 Ordinary Council Meeting his interest arising out of his business relationship with Civic Legal.

PART 3

Council's Relationship and Management of the CEO Mark Dacombe

RELEVANT TERMS OF REFERENCE:

"2) Council's relationship with, and management of, the City of Canning Chief Executive Officer, Mr Mark Dacombe:

3) The appointment of Executive and other employees at the City of Canning from 23 February 2009 and the appropriateness of the processes used for those appointments;

5) The adequacy of the City of Canning's procedures, including but not limited to:

- a) transparency of decision making, information provided to Council members, and recording of Council decisions; and...*

CHAPTER 13

Council's Relationship with the CEO

THE REFOCUS PROGRAM

1. The Refocus Program was introduced to Council by the CEO, Mr Dacombe, during 2010 as a multi-year program, designed to ensure that the organisation could live up to its motto of “*Above all – Service*”, and to breathe new life into its everyday operations, with a strong emphasis on customer service.
2. In July 2010 the CEO, Mr Dacombe, presented a report to Council setting out the overarching purpose of the Refocus Program. That report was designed to give elected members a clear understanding of what the program was designed to achieve, namely:
 - Set out a clear way forward for the organisation
 - Propose a new Executive Structure
 - Describe a changed role for Executive Positions
 - Clarify the role of Managers in the organisation
3. In his comprehensive presentation (which included a series of PowerPoint slides and other aids) to the Council, the CEO made it clear that the new structure was designed to create *strategic capability*, a *whole-of-organisation* approach to customer service, improved *operational leadership* and a more *coherent and integrated* approach to dealing with corporate issues such as *risk management*.

4. Mr Dacombe and members of his Executive team worked through December 2010 and January 2011 in developing and shaping the new program and incorporating Council's priorities. This work culminated in a two day workshop involving members of the Executive Leadership Team facilitated by Mr Mike Richardson, a consultant engaged to oversee the organisational change process.
5. Following this workshop, Mr Dacombe met with Mayor Delle Donne in early 2011 and suggested the creation of a new governance structure to deal with Council business. In short, Mr Dacombe was proposing that Council adopt a committee structure to complement the existing format of fortnightly Ordinary Council Meetings.
6. Mayor Delle Donne rejected that proposal but agreed to an alternative structure of "*Forum Meetings*" and "*Project Advisory Groups*" (PAGS) that would allow elected members, firstly, to be kept fully informed of the plans and progress of all business activities housed under the Refocus banner and, secondly, to actively contribute to the overall management of the program.
7. This new structure was adopted at the 22 February 2011 Ordinary Meeting of Council. (Report CE-008-11) (EXH 89).
8. Documents produced by Mr Dacombe establish that elected members were involved in workshops in June-July 2011, which resulted in Council adopting eight key priorities to take the City forward.
9. The Refocus Program was also discussed during budget workshops and resulted in Council approving funding generally for the various Refocus proposals in their 2011 – 2012 budget.
10. During Inquiry interviews with some elected members, it became clear that a number of them had begun to question the value of the Refocus Program during

the second half of 2011. Also, some openly voiced their concern about the number of outstanding business items that had not been actioned by the CEO and his team.

11. It is clear this dissatisfaction had grown to a significant degree by early November 2011.
12. Prior to the Ordinary Council Meeting of 8 November 2011, Cr Olsen submitted a Notice of Motion to summarily abolish the PAGS that were created to keep elected members informed of the progress of the Refocus Program. As had become common practice for some elected members, the motion was submitted without Cr Olsen seeking advice from the CEO or members of his Executive team. It is significant that these PAGS had been established as a part of a governance structure as an alternative to Committees of Council. They were an opportunity to enable elected members and staff to work together to progress the important range of projects under the Refocus 'banner' that had been agreed was for the overall benefit of the City.
13. The CEO, Mr Dacombe, made attempts to address elected members' concerns and, to counter the effect of the subsequent resolution to abolish the Refocus PAGS, Mr Dacombe met with elected members at two Forum workshops that took place on 9 and 23 November 2011. Mr Dacombe used these Forums to update elected members on the merits of the Refocus Program and to identify the steps that were needed to take the program forward.
14. In his submission to the inquiry, dated 9 February 2012, Mr Dacombe stated that the meetings were not successful, because rather than trying to re-engage with the Refocus Program and work cooperatively with him and members of his Executive Team, a small group of elected members used both sessions to question and criticise the lack of progress.

15. On 5 December 2011, Cr Mason sent an email (with an attachment) to Mayor Delle Donne, and Councillors Barry and Olsen giving notice of two motions he would be proposing at the 13 December 2011 Ordinary Council Meeting (EXH 90). In his email Cr Mason wrote:

“Guys, Can you review the attached document. Make any changes in a different [sic] and send it back. Graham can you lend me a copy of the Refocus document so I can make up my argument”

16. The attachment to Cr Mason’s email outlined two Notices of Motion that he was proposing to present at that meeting. The first of these motions was a proposal to cease all activities associated with the Refocus Program, and the second related to the placement of an advertisement for the position of Executive of Town Planning Services and appointing himself and Mayor Delle Donne to the selection panel.
17. It is clear from Cr Mason’s email that he was asking his three colleagues for their input on these matters to the exclusion of other elected members. There are a number of other instances of Mayor Delle Donne, and Councillors Mason, Olsen and Barry conferring on motions before they are raised at a subsequent Council meeting.
18. On 7 December 2011 Cr Mason, without consulting Mr Dacombe or members of the Executive Leadership Team, submitted these same two Notices of Motion via email to Mr Dacombe (who was overseas on leave at the time), with cc’s to Mayor Delle Donne and the Acting CEO, Mr Sharpe (EXH 91). His forwarding email to Mr Dacombe read:

“Further to the concerns I raised with you at the confidential meeting, I wish to have the following motions presented to the Council Meeting”.

19. Cr Mason chose not to wait for Mr Dacombe's return from his overseas holiday (he was due to return in six days) to discuss the ramifications of cancelling the Refocus Program. It should be noted that Cr Mason did not include in his email any request to Mr Dacombe for his advice on the possible effect of the proposed motions.
20. It is clear that when Mr Dacombe received Cr Mason's email advice about the motion to cease all activities associated with the Refocus Program, he was most disturbed by the ramifications of cancelling it in this manner. Whilst still overseas on leave he responded on 9 December 2011 to Mayor Delle Donne and Cr Mason expressing a number of serious concerns.
21. Cr Mason's Notices of Motion (EXH 92) which were proposed for the meeting to be held 13 December read in full:

"Notice of Motion 1

1. *All matters relating to the City's program of Refocus cease immediately.*
2. *The Mayor and CEO look at the structure and management of the Organization Divisions including, staffing levels, a management systems, job structures followed by a briefing to members on the outcome of the findings.*
3. *The Chief Executive Officer prepare a comprehensive report by February 2012 on all outstanding business of the progress and status of each one of them and also the ones that have not been implemented since 2009. The report includes:*
 - (a) All items moved as resolutions of Council*
 - (b) Include a timeline for implementation for each items*
 - (c) Any staffing implications, current and future*
 - (d) Contain a budgetary breakdown for the remainder of 2011/12 and 2012/12.*

Notice of Motion 2

The Chief Executive Officer be authorized to immediately advertise for the position for an Executive of Town Planning Services and that the mayor and the deputy be appointed to the selection Panel.

*Cr. Bruce Mason
Deputy Mayor
City of Canning"*

22. Mr Dacombe expressed concern that the proposed motion would halt a number of projects intended to reform the way the City did business and delivered services. Chief among these projects were organisational reform initiatives that affected organisational development, an improvement program for the City's customer service functions, the Canning City Centre Strategy, and implementation of new State government requirements for Integrated Planning and Reporting (EXH 93):

"I note that the proposal is that all matters related to the City's program of "Refocus" cease immediately.

I would like to raise some concerns and respectfully ask you to consider them in deciding how to proceed with the Notice of Motion.

In considering the notice of motion you need to take into account the following matters in order to avoid any unintended consequences...

As you read down the paper below you will see that I am concerned that the effect of the Notice of Motion will be to halt things that you want to do and in some cases cut across statutory obligations.

The "Refocus" program is a comprehensive program of change comprising both externally and internally focused projects. You will recall that it is structured in three key categories:

- i) City Building*
- ii) Customer (and Community) Service*
- iii) Organisation development.*

These formed the basis of the priorities determined by the Council on which the 2011/12 budget was constructed.

City Building

The "Refocus" projects under this heading:

Canning City Centre Strategy – development of a Structure Plan and implementation program. As you know this is well underway. It can't be halted now without breaking consulting contracts..."

...the other aspect of "Refocus" related to the project is the service planning and the operations of the new centre and the decommissioning of those facilities to be closed when the new centre opens. The way the notice of motion is worded I would have to cease that work..."

Customer (and Community) Services

The "Refocus" projects under this heading:

Many of the issues you have asked me to fix are grounded in systems shortcomings. While marginal improvements continue to be made significant implementation of the plan has been on hold since the August approval of the budget and the September consideration of the Refocus" program. A separate report is on the agenda for the 13 December meeting of the Council...

Organisation Development

The "Refocus" projects under this heading:

Strategic Review of Engineering Services – a wide ranging review to improve processes, systems and structures to ensure best value and efficient service delivery. This includes the capability for effective asset management planning; capital works delivery, project management, vehicle fleet management and depot facilities. Some of these matters are the responsibility of management to progress under the Local Government Act...

Community Plan

Underpinning all of the above (and identified as a "Refocus" project) is the development of the Community Plan in line with the Department of Local Government's Integrated Planning and Reporting Guidelines. This work is a legal requirement and requires the development of:

- Strategy Community Plan*
- Strategic Corporate Business Plan*
- Asset management plans*
- Workforce plan*
- Risk management plan.*

There are compliance dates and standards to be met and these are challenging as it is. A resolution that halts this work would mean that the Council could not meet its statutory obligations.

SECOND NOTICE OF MOTION RE APPOINTMENT OF AN EXECUTIVE

The motion in its current form is contrary to the Local Government Act as was the motion related to the Executive Engineering and Technical Services. While I am happy to proceed with recruitment as requested the matter of the selection process will need to be resolved and agreed.

I look forward to my return and working with you on moving the organisation forward with an agreed program.

Kind regards,

*Mark Dacombe
Chief Executive Officer"*

23. The Inquiry has established that Cr Mason forwarded an unedited copy of this email to Councillors Barry and Olsen on the same day – 9 December 2011 – however, he did not share a copy of the CEO's email with the remaining members of Council. Cr Mason's email (marked Confidential) to Councillors Barry and Olsen reads:

"Graham/Bev, Have a look and any comment and feedback would be appreciated at our meeting in line with those items on the Agenda 13th Dec 2011". (EXH 94)

24. Neither Mayor Delle Donne nor Cr Mason responded to Mr Dacombe's email, nor did they attempt to discuss those same matters with him when he returned to work on the day of the meeting (13 December 2011).

25. In his submission to the Inquiry dated 12 March 2012 Mr Dacombe stated:

"I arrived back in Perth on the day of the meeting. I was not able to see the mayor until a few minutes before the meeting started and he said he had not read the email from me".

26. On 11 December 2012, Cr Mason sent a further email with a series of attachments to Councillors Olsen, Barry and Mayor Delle Donne advising them how he intended dealing with a number of matters that were coming before the 13 December 2011 Council Meeting. Again he excluded all other elected members from his mailing list.

27. Included within one of those attachments headed, *“Notice of Motion – Ordinary Council Meeting 13th December 2011”*, was Cr Mason’s written comments about his views on the Refocus Program:

“Expensive waste of time and money

3 years and have achieved nothing

Increases in outstanding business, only after the executive heeded the concerns of Councils

Overruns on projects, lack of work practices (identified by the officers) but still no improvement

Project reports that tell us nothing and not worth the paper they are written on

Jobs for mates

SAT unprepared and ill resources and where was out(sic) legal counsel, organizing an extravagant Christmas party to be paid for by our ratepayers.”

(Cr Mason email: 11 December 2011 – Attachment Notice of Motion – Ordinary Council Meeting 13th December 2011)

28. Despite the important advice and serious concerns expressed by Mr Dacombe in his email, Cr Mason moved his Notice of Motion to cease all activities associated with the Refocus Program at the 13 December 2011 Council Meeting. The audio recording of the meeting revealed that Mayor Delle Donne, Crs Mason, Barry and Olsen chose not to disclose to the other elected members present the information they had received in the CEO’s email of 9 December 2011.
29. Their decision to withhold this information effectively prevented the remaining Councillors from being informed of the serious consequences forewarned by the CEO. Notwithstanding this, elected members present at this meeting should have been aware that neither the CEO nor his senior executive had provided any advice on this matter. It should have been relatively obvious that Council was being asked to consider ceasing a large number of activities associated with the Refocus

Program. Equally obvious was that making such a decision would have far reaching consequences that would significantly impact on all levels of the organisation. Elected members should have realised that they would have benefited considerably from having a full understanding from City Officers of the effect such a decision would have on the operations of the City. Clearly, without that advice, elected members had not ensured they were fully informed as required under Standing Order 2.26.

30. Having received Cr Mason's emails, Mayor Delle Donne in particular had a responsibility to ensure every other elected member had the benefit of the same information the CEO had provided.
31. The issue that emerges from Mayor Delle Donne and Councillors Mason, Barry and Olsen (the Mayor's Group) regularly conferring on Council business in isolation from other elected members, is the propensity for the Mayor's Group to reach a predetermined position prior to receiving relevant and important advice. Whilst meeting privately with fellow elected members for the purposes of lobbying can be an acceptable part of the political process, each elected member must be in a position to enter the Council chamber with an independent mind and be prepared to consider any item on its merits – and importantly be open to recognise and accept relevant advice. To do otherwise is incompatible with a transparent and genuine decision making process.
32. Late in the Inquiry's process, the Inquiry became aware that on 17 April 2008 a number of former councillors and a current sitting councillor attended a meeting with representatives of the Department of Local Government to express their concerns at what they described as a factional group on Council block voting in a manner which was negatively affecting the City's good governance.
33. While those concerns echo findings made and themes identified by the Inquiry in this Report, the Inquiry's investigations have not extended to events as far back as

2008 and the Inquiry merely notes the fact and nature of the concerns expressed at that time.

34. Part 5 of the Local Government Act sets out the framework whereby elected members meet as the governing body for the purpose of decision making on behalf of the local government. Such decisions are to be:

- Open and transparent,
- Accountable with due probity and integrity
- Acknowledging relevant community input
- With the fullest possible participation of elected members.

35. In this case emails between the Mayor's Group demonstrate they were conferring and exchanging information on the position they would take prior to debating the issue at 13 December 2011 Council meeting. It is possible that the Mayor's Group had arrived at this meeting with an agreed plan to influence the outcome of the matters they had conferred on. The information from the CEO should have influenced their position; it was an important consideration in deciding the best course of action. As it was, they chose not to share this information with other elected members and they maintained their predetermined position despite the warning in the CEO's advice.

36. When speaking to his motion Cr Mason expressed his overall disappointment in the Refocus Program and questioned its overall value to the City. Amongst other things he had to say, he made the point that, in his opinion the:

"Refocus Program had been designed to dissect the structure and to dilute the power of the Council".

He also suggested that:

“tilting everything under “Refocus” with a lot of spin and lack of communication would prove to be a folly”.

(Audio recording of OCM held 13 December 2011 commencing at 50 mins. 28sec).

37. It is relevant to note at that point in the debate, Cr Barry proposed an amendment to the motion as a “Part B”. His amendment to the motion read:

“That Council resolve it shall honour all existing current and written signed contracts relating to the Refocus Program up to December 13 2011.”

38. Mindful that Cr Mason had not made Council aware of the advice he had received from the CEO warning of the serious consequences resulting from ceasing Refocus activities, it is reasonable to conclude that Cr Barry had recognised the importance of this advice in the CEO’s email of 9 December 2011, thereby leading him to formulate this amendment prior to the meeting. Even accepting this amendment acknowledged the CEO’s advice about the impact the Motion would have on contracts, it failed to adequately address the issue and highlights the importance of the need for him to have shared and discussed the CEO’s advice with other elected members.

39. Notwithstanding that the CEO had just returned from leave and as such had no opportunity to provide any formal written advice, he did take the opportunity to respond to a question from Cr Clarke. The Mayor allowed the CEO to comment on what effect the motion would have in relation to the existing contracts that had already been signed. In allowing the CEO to speak, the Mayor directed the following comment to the CEO:

“I hope you’re not going to sway anybody one way or the other, just the facts”.

(Mayor Delle Donne: 13 December Meeting Audio, transcribed 1:09:05)

40. The CEO's response to Cr Clarke's question was advice that if the word "Refocus" was to remain in the motion, then there would be a number of consequences that Council may not have intended. The CEO stated he had concerns that the motion could detrimentally affect existing statutory obligations that would impact on Council and himself as CEO. Those statutory obligations related to the introduction of the State Government's 'Integrated Planning' framework with the first key deliverable due in the next financial year. The second matter related to the impact the decision would have on his ability to effectively manage the day-to-day operations of the City.

41. Mr Dacombe made a relevant comment in his second submission to the Inquiry. Under the heading "Legitimacy to Lead" he wrote:

"The decision to cease Refocus immediately unilaterally without any discussion or advice from me was effectively a vote of no confidence and it has been clearly read that way by many staff. The behaviour of key members of the Council has continued to undermine me since".

(Mark Dacombe submission received 9 February 2012)

42. It is clear that Mayor Delle Donne and Councillors Mason, Barry and Olsen, along with a number of other elected members had determined that the Refocus Program had not produced the outcomes they had expected, and for that reason the motion to cease the program received favourable consideration from the majority of elected members.

43. In speaking against the motion Cr Boylen explained why he felt the program should not be discontinued:

"I am concerned that we have come part way down the track, I'm not happy with all that's happened but I think to cut it off without some explanation from the officers about what they intend to do and where they're going to is not appropriate. There are a number of things that are happening and a number of things that seem to have dragged on forever. I'm not saying that there are not- but I'm saying that there are things that are in the process of happening and that if we don't let them finish I think

what Councillor Clarke was trying to say was that what we have done thus far will be wasted. And that is my concern and I would like to have some of a report put back to us about what those things might be that we partly started, or may even be nearly finished, and to continue with them is going to be of some benefit to council. To stop them now is just going to mean that what we have done thus far is wasted. I believe there needs to be some sort of report to answer some of those questions before we put a cease to it immediately."

(Comments from Councillor Boylen taken from Council Audio of Ordinary Meeting of Council held 13 December 2012 commencing at 1.05.40.)

44. In his submission to the Inquiry, dated 7 March 2012, Cr Clarke made reference to why he supported the motion to cancel the Refocus Program. At page 21 he wrote:

"At the Council meeting of 13 December 2011 on the motion of Cr Mason seconded by Cr Daly 'all matters relating to the City's program of Refocus cease immediately."

The CEO was asked to report on the structure and management of the Organisation's Divisions including business units, staffing levels, management systems, job structure followed by a briefing of members on the outcome of all findings. This motion was carried by 7 for and 3 against (1 absent). The clique I referred to earlier in this submission voted for the cessation of the program.

I voted for this motion as I had become completely lost by what had taken place under the City name, which included the Community Plan. I believe the Refocus Program had taken precedence over the essential running of the Council's ordinary business to its detriment."

45. In closing the debate, Cr Barry spoke in support of his amendment to the motion before it was carried by a majority vote (EXH 95).

*For: The Mayor, Crs Mason, Daly, Clarke, Olsen and O'Donnell.
Against: Crs Elliot, Boylen and Morgan.*

46. Interviews with City Officers revealed that the motion, when passed as a resolution, had a dramatic adverse effect on the operations of the City. It effectively meant that the CEO and his staff would not be able to continue with a

large number of existing projects that were linked to this overarching program. The resolution itself also added to the complexity, in that it was unclear and provided no guidance to City Officers as to what Refocus activity was to stop, and what was to continue.

MOTION TO APPOINT MAYOR AND DEPUTY MAYOR ON SELECTION PANEL

47. In addition to the motion to cease activities associated with the Refocus Program, Cr Mason moved his second Notice of Motion at that same Meeting of 13 December 2011. This motion was proposed without any prior discussion with, or advice from, the CEO:

“The Chief Executive Officer be authorised to immediately advertise for the position for an Executive Town Planning Services and that the Mayor and the Deputy Mayor be appointed to the selection Panel.”

48. In presenting this motion to Council, Cr Mason again showed little regard to the advice he had received in Mr Dacombe’s email dated 9 December 2011 (EXH 93). The CEO’s advice spelled out that this Notice of Motion, in its current form, was not consistent with the Local Government Act in relation to appointing the Mayor and Deputy Mayor on the selection panel for a City employee. The advice from Mr Dacombe was as follows:

“The motion in its current form is contrary to the Local Government Act as was the motion related to the Executive Engineering and Technical Services. While I am happy to proceed with recruitment as requested, the matter of the selection process will need to be resolved and agreed”.

49. Despite the advice received from the CEO by Mayor Delle Donne and Councillors Mason, Barry and Olsen, the motion to immediately advertise for the position of an Executive Town Planning Services and appoint the Mayor and Deputy Mayor to the selection Panel was moved by Cr Mason and passed by unanimous vote. The other elected members were unaware of the CEO’s advice in his email of 9 December 2011 regarding this issue.

SUMMARY AND FINDINGS

50. The Refocus Program was a high-level change-management mechanism that impacted on the operations of the City at every level. It was a long term program designed to improve the operations of the City and to address the many problems the City was facing. Significantly, it was a program that was created in cooperation with, and with the ongoing involvement of, Council. Evidence from Mr Dacombe and senior staff identified many occasions and opportunities where elected members were kept fully informed on the purpose and progress of this program.
51. It is clear from elected member comments that most elected members had little understanding of the strategic significance of the Refocus Program. Comments from Mr Dacombe support the view that most elected members struggled to operate at the strategic level their role required, preferring to focus their attention on low level operational issues. In support of his motion, Cr Mason made the following comment:

“Refocus Program had been designed to dissect the structure and to dilute the power of the Council”.

52. This observation indicates that Cr Mason at least, viewed the Refocus Program as a means to undermine Council’s power. In fact the Refocus Program had been partly designed to promote Council’s strategic role and leave the day-to-day management to City Officers.
53. The view that Council’s power was being undermined, when considered in conjunction with Council’s attitude towards rejecting or overturning officer recommendations, evidences intent by Council to control and/or become involved in day-to-day administrative decisions. This made for a very difficult environment for the CEO, who had to manage the conflict between progressing a change management program to elevate Council to its desired leadership and strategic role, whilst dealing with well-established habits of some elected members who focused their attention on operational matters.

54. Of particular relevance to the circumstances surrounding Council's decision to cease the Refocus Program are the roles played by Mayor Delle Donne, Cr Mason, Cr Barry and Cr Olsen. The Inquiry has found repeated incidences of Mayor Delle Donne, Cr Mason, Cr Barry and, to a lesser extent, Cr Olsen, discussing and exchanging views on items to be brought before Council. The disturbing element of this 'caucusing' is the number of times where Cr Mason or Cr Barry subsequently feature in motions from the floor that resulted in the rejection or overturning of Officers' recommendations. These occasions are not only marked by the absence of any consultation or officer advice, but resulted in uninformed decisions that have impacted adversely on the operations and day to day management of the City.
55. The lead up to the motion from Cr Mason to cancel the Refocus Program provides an insight into the degree of frustration City officers must have experienced in providing important advice that went unheeded.
56. The confusion that was created when staff attempted to implement the resolution that all activities associated with the Refocus Program were to cease, meant that the CEO and his Staff needed to continually seek further information from Council as to which aspects of the broad range of City activities affected by the Refocus Program the resolution applied to. The motion itself was unclear as to which activity was to stop and which was to continue. This could have been avoided had the Council sought and accepted advice from its administrative staff.

FINDING 31

Deputy Mayor Mason acted inappropriately, when he moved the motion at the Ordinary Council Meeting 13 December 2012 to place the Mayor and Deputy Mayor on a selection panel, after the CEO had advised such a motion would be contrary to the *Local Government Act 1995*.

57. Despite relevant information being withheld from elected members present at this meeting, it was obvious to all present that neither the CEO nor his senior executive had provided any advice on this matter. It was also obvious that Council was being asked to consider cancelling a significant number of activities that impacted on all levels of the organisation.

FINDING 32

Prior to voting to cease all activities associated with the Refocus Program, elected members failed to seek officer advice on this matter before proceeding to make a decision of this magnitude. Therefore, elected members failed to ensure they were fully informed as required under Standing Order 2.26.

58. Having received advice provided by the CEO, Mayor Delle Donne in particular had a responsibility to ensure every other elected member had the benefit of the same information. On this occasion it was particularly important that all elected members had the same opportunity to consider the information the CEO had provided.

FINDING 33

Mayor Delle Donne failed in his role as presiding member of the 13 December 2011 Ordinary Council Meeting to ensure his fellow elected members had the opportunity to receive the same advice he had received from the CEO about the problems created by Cr Mason's motions.

APPOINTING MAYOR AND DEPUTY MAYOR ON SELECTION PANEL

59. In presenting the motion to Council that included the instruction *“that the Mayor and the Deputy Mayor be appointed to the selection Panel”*, Cr Mason again showed little regard for the advice he had received in Mr Dacombe’s email dated 9 December 2011.
60. The CEO had advised that this Notice of Motion, in its current form, was contrary to the Local Government Act. The advice from Mr Dacombe *“While I am happy to proceed with recruitment as requested, the matter of the selection process will need to be resolved and agreed”* indicated that the motion should not proceed in its present form and the matter of the ‘*selection process*’ needed to be *“...resolved and agreed”*.
61. Despite Mayor Delle Donne and Councillors Mason, Barry and Olsen receiving this advice from the CEO, the motion to immediately advertise for the position of an Executive Town Planning Services and appoint the Mayor and Deputy Mayor to the selection Panel was moved by Cr Mason and passed by unanimous vote. Mayor Delle Donne, Councillors Mason, Barry and Olsen, all voted for this Motion knowing other elected members were unaware of the CEO’s advice that it was contrary to the Local Government Act .

FINDING 34

Councillors Barry, Olsen and Mayor Delle Donne acted inappropriately when they voted for the motion at the Ordinary Council Meeting 13 December 2012 to place the Mayor and Deputy Mayor on the selection panel, after becoming aware the CEO had advised the Motion was contrary to the *Local Government Act 1995*.

FINDING 35

Mayor Delle Donne and Councillors Mason, Barry and Olsen acted inappropriately at the 13 December 2011 Ordinary Council Meeting when they failed to ensure fellow elected members received the same advice they had received from the CEO about the problems created by Cr Mason's motion to appoint the Mayor and Deputy Mayor to an employee selection panel.

Natural Justice Response

62. In the course of preparation of this Report, the suggestion was made by some councillors that criticisms foreshadowed by this Inquiry of their conduct, were also indicative of a failure by the CEO to properly perform his function under section 5.41 *Local Government Act 1995* to ensure that advice and information was available to the Council so that informed decisions could be made.
63. The Inquiry provided Mr Dacombe with these criticisms and an opportunity to respond. In that response Mr Dacombe provided information that was relevant to the alleged absence of his advice to Council at the Ordinary Council Meeting of 13 December 2011.
- Because of the manner in which the motion was introduced by Councillor Mason there was no opportunity for the CEO to provide any formal advice to Council prior to the meeting as he had departed on leave on 24 November and returned to work on the day of the meeting.
 - Whilst on leave (overseas) the CEO had learnt of Cr Mason's proposed motion to cancel the Refocus Program. Whilst still on leave, he sent a detailed email providing advice detailing his concerns to Cr Mason and the Mayor.

- After returning from leave on the day of the meeting, he made several unsuccessful attempts to speak to the Mayor about his advice prior to the meeting, but claimed the Mayor frustrated his attempts to talk to him.
- During the meeting the CEO did provide oral advice that should have halted the motion to cancel Refocus. He advised Council that the motion could detrimentally affect existing statutory obligations that would impact on the Council and himself as CEO. The CEO's oral advice reinforced Refocus being an integrated program with wide ranging impacts. This advice, in the CEO's view, should have caused Councillors to deeply question the matter and/or defer a decision.
- The CEO considers the Mayor restricted his oral advice at the meeting when he was told by the Mayor "*stick to the facts and not sway the Council*".
- The CEO considered his email advice left it open for the Mayor to:
 - o Withdraw the motion ahead of the meeting (or reject it on the grounds provided in the CEO's email of 9 December 2012)
 - o Provide CEO's email advice to all elected members
 - o Invite CEO to verbally present his email advice

The CEO considered he provided the best advice he could in the circumstances.

64. The Inquiry does not accept the allegations that the CEO did not meet his obligations at the Ordinary Council Meeting 13 December 2011 to ensure advice was provided to Council so informed decisions could be made.

Natural Justice Response

65. In Cr Mason's submission (5 November 2012), it is suggested that Council relied on Regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* to authorise the Mayor and Cr Mason to "*undertake a task that contributes to the administration of the local government*". This view is rejected by the Inquiry. The Inquiry's view as to the application of Regulation 9(1) of the *Local Government*

(Rules of Conduct) Regulations 2007 and as the powers available to Council, are dealt with in Part 6 of this Report.

CHAPTER 14

CEO Performance Appraisals

BACKGROUND

66. In accordance with the conditions set out in the CEO's contract of employment, Council developed a performance review document for the assessment period 2009 - 2010 that contained nine performance criteria. That same document also set-out a number of "competencies" that Mr Dacombe would be measured against during the assessment period.
67. A numerical scale was devised to rate the performance of the CEO against the performance criteria. A score of five signified *"Outstanding (consistently demonstrates outstanding competence) – exceptional quality of work"*, descending to one to indicate that *"there needs to be significant improvement"*.
68. The competencies were designed to be measured on an alphabetical rating scale of 'A' through to 'D' that allowed the assessor to select the most appropriate subset of descriptors that matched the level of performance against each competency (Document A9COC003007).
69. In his evidence to the Inquiry, Mayor Delle Donne agreed that it had been his decision to take personal responsibility for managing, reviewing and reporting on the performance of Mr Dacombe in this first performance review period. In

explaining why he was the only member of Council to conduct the performance review, Mayor Delle Donne gave the following answer:

“No one, it just – it just – I thought it was a matter of course that the Mayor do a annual review of the CEO performance, and then from there I give that to him to sign it and then that goes to Council as a report.

(Mayor Delle Donne interview: 20 April 2012 transcribed from 1:53:04)

70. In finalising the performance review process for the 2009 – 2010 period the two parties to the agreement, Mayor Delle Donne and the CEO, agreed to a revised set of performance criteria for the next assessment period of 2010 – 2011. Those revised criteria were designed to reflect the direction the City was heading under Mr Dacombe’s leadership.
71. The revised performance criteria are listed below in the order they appear in the performance review document for the 2010 – 2011 assessment period:
- 1. Continued Implementation of the Organisational review;*
 - 2. Commence review of the Strategic Plan integrated with financial & asset management plans along with other implementation plans;*
 - 3. Ensure Business/development Plans are prepared for major New Initiatives and are incorporated in the financial Plan for the City;*
 - 4. Ensure the Financial Affairs of the City on Canning are conducted in accordance with Council Policy and legislative requirements;*
 - 5. Ensure all Council operations are conducted within legislative guidelines and corporate objectives;*
 - 6. Assess Executive performance on an annual basis;*
 - 7. Advise and support the mayor and Councillors on matters of Council business;*
 - 8. Ensure all decisions of the Council are implemented in accordance with statutory requirements;*
 - 9. Ensure that the City meets its statutory management and Business Unit financial reporting obligations.*
72. Mayor Delle Donne and Mr Dacombe met formally to conduct the assessment and reached an agreement that the CEO had achieved all of the performance criteria in the performance review document for the period 2009 – 2010 (EXH 96).

73. The Performance Appraisal document for the period 2009 – 2010 was signed by both parties on 8 October 2010.
74. The Inquiry interviewed all elected members to establish the extent of their knowledge of Mayor Delle Donne's performance assessment of Mr Dacombe. They all confirmed they had never been invited to participate in the formal process of assessing the CEO's performance.
75. Whilst all elected members said they were not in a position to comment on Mayor Delle Donne's performance assessment of the CEO, as they had not been consulted, there was general agreement that Mr Dacombe's performance for that period had been extremely good.

2011 SALARY INCREASE

76. At Council's Ordinary Meeting 8 February 2011, elected members dealt with the performance of the CEO for the 2009 -2010 period (Report CE-006-11) (EXH 97).
77. The confidential report, authored by the City's Human Resources Manager, advised that if Council were satisfied with the CEO's performance it was open for Council to approve a 3.5% increase to the CEO's salary. This level of increase was in accordance with the amount recommended by the Salaries and Allowances Tribunal. The report gave elected members two options to consider. Those were:
- a) That the CEO's total remuneration not be increased and that it remain at the current level until the next review in July 2011 or;
 - b) That the Salaries and Allowances Tribunal's recommended general adjustment of 3.5% be applied to the CEO's total remuneration effective from 1 August 2010.

78 Following discussion and questions from elected members, it was moved that:

“MOVED Cr Elliott, Seconded Cr Barry that:

- (a) That the Salaries and Allowances Tribunal's recommended general adjustment of 3.5% be applied to the Chief Executive Officer's total remuneration effective from 1 August 2010.*
- (b) That the Council approve the Chief Executive Officer's proposal for Professional Development by attending the Commonwealth Local Government Conference and Research Colloquium from 14 March 2011 with the costs being met from the training budget.”*

79. Having considered the content of that report, Cr Mason moved an amendment to part (a) of the motion that Mr Dacombe be awarded a 5% pay rise in recognition of the way he was performing his role as CEO:

“MOVED Cr Mason, Seconded Cr Dowsett, that the Chief Executive Officer's total remuneration be increased by 5%.”

80. Council adopted Cr Mason's amendment unanimously and the pay increase of 5% took effect.

81. The Officer's report stated that the Mayor had “consulted” with Mr Dacombe and that both parties had agreed and signed off on the results of the performance review. Item 10 in Report CE-006-11 reads:

“The Mayor's review of the performance of the Chief Executive Officer was conducted in consultation with him and he has agreed with and signed the results of the review.”

82. However, elected members were not provided with the actual performance review document that had been signed and adopted by the Mayor and Mr Dacombe. This was a highly relevant document for Council to consider as it deliberated on the performance of the CEO. Given that the confidential Officer report did not reveal how Mayor Delle Donne had conducted the performance review and arrived at the ratings he had awarded, it is difficult to establish what Council based its decision on to reject the HR recommendation of a 3.5% salary

increase and replace it with a 5% increase. It is not disputed that the 5% salary increase may have been justified, but such a decision should be supported with formal documentation demonstrating the rationale for Council's decision. As elected members had not been involved in the formal performance assessment that the Mayor had conducted, and had not been provided with a copy of this document, this could not be said to be the basis for their decision, and the report itself recommended only a 3.5% per cent increase. Public accountability required Council to demonstrate, through the public record, that it had been made on a properly considered basis.

MAYOR AND DEPUTY MAYOR LOSE FAITH IN CEO

83. Mayor Delle Donne and Cr Mason gave evidence to the Inquiry that they had begun to lose faith in Mr Dacombe's ability to perform his duty as CEO in the second half of 2011.
84. An indication of this is found in comments contained in emails at that time between Mayor Delle Donne and Cr Mason - shared with Councillors Olsen and Barry.
85. In an email joke dated 23 November 2011, that Mayor Delle Donne received from Cr Mason, it was suggested in the context of the joke that the CEO of a major company did not have any idea what was happening within his organisation. In referring this joke to his three colleagues, Cr Mason wrote the following in his email (EXH 101),

"Given our Council seems to be splashing money around like it is going out of style and Refocus is cleaning out staff and planning and engineering is going so well this brought a smile to my face."

86. In his reply to Cr Mason (with cc's to Councillors Barry and Olsen) on 24 November 2011, Mayor Delle Donne wrote:

"Hello Board members, I know a similar place where the person in charge does not even know who is who, and what they do/so it was decided to engage a consultant to find these things out mind you paid very good money and now everyone is waiting for the outcomes; meanwhile keeps spending the dollars to make it appears that everyone is busy. The stakeholders these days are no fools! Good luck keep watching this space?"

87. Mayor Delle Donne was asked during his interview with the Inquiry if he had Mr Dacombe in mind when he wrote those words:

"It could have been. You could read between the lines I suppose"

(Mayor Delle Donne interview: 20 April 2012 transcribed from 2:47:30)

PERFORMANCE APPRAISAL PROCESS 2010 – 2011

88. Mayor Delle Donne made a decision sometime in early January 2012 to conduct a performance review of the CEO for the period 2010 – 2011.
89. The numerical scale used during the previous performance review was again applied during the assessment to rate the performance of the CEO against a range of criteria. A score of five would signify *"Outstanding (consistently demonstrates outstanding competence) – exceptional quality of work"*, down through to 1 to indicate that *'there needs to be significant improvement'*.
90. The "competencies" were measured using the alphabetical rating scale of 'A' to 'D' that allowed the assessor to select the sub-set of descriptors that he felt matched the level of performance. The appraisal document was designed so that a 'D' rating was deemed more favourable than an 'A' rating.

91. Mayor Delle Donne, without the knowledge or involvement of Mr Dacombe, completed a draft of the CEO's performance assessment appraisal, before sending a copy to Cr Mason on 2 January 2012 for his consideration and input.
92. During interviews the Mayor was asked about his preparation of the CEO's performance appraisal document that was subsequently handed to the CEO at the 12 January 2012 meeting:

AUTHORISED PERSON: *"Did you arrive at that meeting with that performance assessment appraisal already completed?"*

WITNESS: *Yes it was, yes.*

AUTHORISED PERSON: *Ok. Why did you do that?*

WITNESS: *Why?*

AUTHORISED PERSON: *Yes.*

WITNESS: *Well because I thought that I had – I had this for – so little while there, and I thought there was an opportunity to for me to give it to him because he's been away, when he comes back I said I'll give this to him to get his comments on it.*

AUTHORISED PERSON: *Right. So in 2009-10 you actually did the right thing and sat with him, and you've both discussed one on one his performance and you've both agreed and arrived at what would seem to be a very fair and reasonable assessment.*

WITNESS: *Yeah.*

AUTHORISED PERSON: *Why didn't you use that same process this time?*

WITNESS: *I dunno."*

(Mayor Delle Donne interview: 20 April 2012 transcribed from 2:25:09)

93. Cr Mason gave evidence to the Inquiry that in addition to correcting some spelling and grammar, he chose to award 'C' ratings against each of the "competencies" (which were reasonably favourable to Mr Dacombe) before returning the

document to the Mayor on 3 January 2012. Cr Mason advised that he had used a red coloured font to assist the Mayor with noting the changes he had made.

94. Mayor Delle Donne disagreed with the alphabetical ratings suggested by Cr Mason favouring a far less complimentary set of ratings. He chose to award one 'C', three 'B's and six 'A's, being the lowest ratings against the ten competencies (EXH 100).
95. In relation to the nine performance criteria, which were rated 1 to 5, 1 being the lowest and 5 being the highest, Mayor Delle Donne stated that he alone had arrived at the numerical scores for the performance criteria, rating Mr Dacombe at the lower end of the scale. He considered that Mr Dacombe was "competent" against only one of the nine performance criteria. In awarding the remaining eight ratings, namely three scores of 1 and five scores of 2, Mayor Delle Donne determined that Mr Dacombe's overall performance during this period was either:
- “(1) *Unacceptable (does not meet the expected standards – significant improvement required;*
- (2) *Needs improvement (occasionally does not meet the expected standards – some improvement required)”*
96. During this entire assessment process neither Mayor Delle Donne nor Cr Mason had informed Mr Dacombe or any other elected member of, or involved them in, the review of the CEO's performance.

AUTHORISED PERSON: *“Now before sitting down with Mister – Mister [Councillor] Mason and taking his view, and completing this final document, did you consult with any other elected member to get their opinion on Mr Dacombe's performance?”*

WITNESS: *No”*

(Mayor Delle Donne interview: 20 April 2012 transcribed from 2:07:30)

PERFORMANCE REVIEWED ON OUTDATED CRITERIA

97. On examining the performance assessment appraisal document used by Mayor Delle Donne for the 2010 – 2011 performance review, the Inquiry has identified that he used out dated performance criteria.
98. As detailed in paragraph 65 of this part, the performance criteria set out for Mr Dacombe was updated following the 2009 – 2010 performance review, and was to be used to measure Mr Dacombe’s performance in a subsequent performance review in a year’s time. However, Mayor Delle Donne did not use these updated performance criteria.
99. As the performance criteria used by Mayor Delle Donne to assess the CEO’s performance in the 2010 – 2011 period were not the correct criteria, it brings into question the entire review process.

THE “STACCATO MEETING”

100. On 4 January 2012, Mayor Delle Donne sent an email to Mr Dacombe inviting him to attend a meeting on 12 January 2012 with him and Cr Mason to discuss issues of “*mutual concern*” (EXH 98). No further details were provided to Mr Dacombe on what was to be discussed.
101. On the day before that meeting, Mr Dacombe asked the Executive Corporate Services, Mr Andrew Sharpe, if he could make himself available to attend the meeting for the purpose of recording the matters that were to be discussed. Mr Sharpe told the Inquiry that he was not aware of the purpose of the meeting when he was approached by Mr Dacombe, but that he attended as requested.
102. The meeting commenced at 8.37am on 12 January 2012 and concluded at 12.15pm. Mr Sharpe took hand written notes of the issues discussed. He later transcribed those notes (EXH 99).

103. Mr Sharpe also gave evidence to the Inquiry about how the meeting was conducted:

“There was certainly a number of questions that were quite awkward both towards – well I felt quite awkward being there – I think it was fair to say the relationship between the CEO the Mayor the Deputy and the Council was certainly in question”.

(Andrew Sharpe interview: 4 April 2012 part 4 transcribed from 07:30)

104. In his submission to the Inquiry, Mr Dacombe described the events of that morning:

“A meeting took place on 12 January 2012. The Mayor and Deputy Mason were present. Executive Corporate Services, Andrew Sharpe was invited on my suggestion to take notes. The Mayor went through a long list of issues which were put to me in “Staccato” style that culminated in him handing me a completed document purporting to be a review of my performance. Prior to handing me the document he signed it and said that I might want to comment on it before I sign it.

I have since, through my Lawyer, advised the Council that I do not accept the content of the document or the process by which the purported review was conducted. It was clear to me at this point that my relationship with the Council was unrecoverable and while I had made several suggestions over several weeks of approaches we might use to address the issues there was no evidence of a reciprocal desire to find a way forward. In the best interests of the community, the organisation and myself, I initiated “without prejudice” discussions with the mayor about a negotiated end to my contract”.

105. Mr Sharpe agreed with Mr Dacombe’s description that the matters raised had been put to Mr Dacombe in “staccato style”, and that he had witnessed Mayor Delle Donne hand Mr Dacombe a copy of a performance assessment appraisal document toward the end of the meeting. On page 17 of Mr Sharpe’s notes (EXH 99):

“Mayor: Performance review presented to CEO.

CEO: Will confirm the process followed last year and Advise Mayor.”

106. Mr Dacombe offered further comment on the meeting during his interview with the Inquiry:

“Well first of all it was clearly in hindsight intended to be some sort of performance review. [indistinct] and the fact that it was –and the fact that they intended to make adverse comment to my mind was complete breach of any sort of reasonable process at all. The – the meeting was conducted as I think I have said the statement to you in a “staccato” fashion so the Mayor went through a list of things – you’ll see in those notes some reference to some responses to me – from me and those were generally along the lines that I will need to check that or follow that...There were some quite astounding ones that actually just - that were put to me that left me quite gob smacked – a couple there around changes to building plans [indistinct] yeah I feel quite angry about the way it was conducted”.

(Mark Dacombe interview: 16 March 2012 part 1 transcribed from 34:34)

107. As a result of the way the purported performance review had been conducted, and mindful that his relationship with Mayor Delle Donne and some elected members had broken down, Mr Dacombe went to the Mayor on 18 January 2012 offering to surrender his position as CEO subject to a number of specified conditions.
108. On that occasion Mr Dacombe told Mayor Delle Donne that he did not accept the results of the supposed performance review and that he would not sign the document. In his interview with Authorised Officers on 16 March 2012, Mr Dacombe made reference to what he had told Mayor Delle Donne on that day.

“I went back, I went back to the Mayor and I’ve got the dates here if you don’t mind me referring to, I went back to the Mayor after, after the twelfth of January – ok – I went back to the Mayor on the eighteenth of January and had a discussion along the lines of, I don’t agree with the content of the purported performance review, I don’t intend to challenge the detail of it to me that is the probably the – you know the final piece in the jigsaw that suggests that you see, you and the Deputy Mayor in particular, see me as a problem. I don’t think it’s in the interests of the organisation, myself or yourself, that we continue with this level of dysfunction and therefore, subject to being able to enter into an appropriate agreement, I’d be prepared to move on. Those and the response to that was positive in terms of ‘Yes Mark we will receive a

proposal from you' which I took back the next day to a meeting with the Mayor and the Deputy Mayor. I did, my recollection was that I did repeat basically what I'd said to the Mayor the day before in front of the Deputy Mayor and again they both responded in the same way..."

(Mark Dacombe interview: 16 March 2012 part 1 transcribed from 38:00)

109. On the 19 January 2012, Mr Dacombe presented a formal written proposal to Mayor Delle Donne and Cr Mason outlining the terms and conditions of his "without prejudice" offer to leave his position as Chief Executive Officer (EXH 101) (Document MD 003 010).

"Without Prejudice and Confidential"

Proposal for Mark Dacombe to leave the position of Chief Executive Officer City of Canning

Financial

- 1. Mark will give three months' notice as per the contract to assist with transitional issues;*
- 2. The Council will pay on or before Mark's final working day the value of an amount equivalent to one year's total remuneration in accordance with clause 3.4 of the contract and in addition to the notice period;*
- 3. Holiday pay and any other entitlements will be paid;*
- 4. The Council is to provide Mark with a draft itemisation of the proposed payments within the next 14 days;*
- 5. An agreed contribution to Mark's legal expenses;*
- 6. The agreement will be subject to confidentiality and an appropriately worded Deed of Settlement and release.*

Practical Arrangements

Mark is willing to work out the three months' notice period or any lesser period as may be agreed between Mark and the Council.

Statement to Staff and Media

Any comment will be limited to that below

Announcement from the City of Canning

Mark Dacombe, Chief Executive, is leaving on ... to take up new opportunities. We thank Mark for his service to the City of Canning and wish him all the best in his future endeavours.

Comments from Mark Dacombe

I am leaving to take up new opportunities. I would like to thank the Council for the privilege of serving the City of Canning and wish the Council all the best for the future.

*Mark Dacombe
19 January 2012"*

110. When interviewed on the process he had used to measure and report on the CEO's performance, Mayor Delle Donne conceded that he had made mistakes and that he denied Mr Dacombe procedural fairness when he conducted the performance review process.

AUTHORISED PERSON: *"Do you think you denied Mr Dacombe procedural fairness and natural justice?"*

WITNESS: *"Yeah, most likely I did yes".*

AUTHORISED PERSON: *"You did?"*

WITNESS: *"Yeah"*

(Mayor Delle Donne interview: 20 April 2012 transcribed from 2:25:52)

ORDINARY MEETING OF COUNCIL 23 JANUARY 2012

111. The terms outlined in Mr Dacombe's separation proposal were submitted in a confidential report from Mayor Delle Donne to Council at a Special Council Meeting of 23 January 2012 EXH 105). When Mayor Delle Donne attended this meeting he should have been aware that the manner in which he had conducted the CEO's performance assessment had had a significant bearing on the CEO's

decision to offer to leave. As an experienced Mayor he should also have been able to identify the importance of providing information to his fellow elected members about matters associated with the conduct of the performance review.

AUTHORISED PERSON: *"Now at that Council meeting can you tell me what documents all of the other elected members had in front of them, to inform them how this process unfolded?"*

WITNESS: *"Yeah, I think that the – there were – there were documents that Mr Dacombe put forward, and it was given to the members from my recollection."*

AUTHORISED PERSON: *"For the purpose of the tape it is COC 003 033 and that's a copy of a deed – a deed of settlement, is that the document that was presented to Council that night?"*

WITNESS: *"Yes I think it is, yep. Yep, that's correct."*

AUTHORISED PERSON: *"Thank you. Now do you know if, in addition to that document, all of the other elected members were actually given a copy of the performance appraisal that Mr Dacombe refused to sign?"*

WITNESS: *"No, like I said that never came back for me to put it before Council."*

AUTHORISED PERSON: *"Right, now before that meeting of the twenty third, knowing what you know about this document, did you go to the other elected members and tell them that you had prepared this performance appraisal without the knowledge of Mr Dacombe and that he had refused to sign it?"*

WITNESS: *"No I didn't."*

AUTHORISED PERSON: *"So can I conclude then the other elected members, except [Councillor] Mason, walked into that chamber that night blind – they had no idea what had happened on the twelfth of January and subsequent to this meeting, leading up to this meeting on the twenty third. All they knew was that Mr Dacombe was offering to leave. Would that be a fair assessment?"*

WITNESS: *"Yeah, that's right yeah."*

(Mayor Delle Donne interview: 20 April 2011 transcribed from 2:51:28)

112. The CEO and all staff were asked to leave the meeting before the item was deliberated on. A motion was moved by Cr Mason and seconded by Cr Barry to give Mayor Delle Donne delegated authority to negotiate an end to the CEO's contract:

"(1) Report CE- 005- 12 be received.

(2) Council resolve to delegate authority to the mayor to finalise as soon as possible, the contractual arrangements between the City and the Chief Executive Officer and in accordance with section 6.8 of the Local government Act 1995 to finance the cost of settlement."

Unaware of what had transpired in the lead-up to 23 January 2012 meeting, elected members supported the motion and Council unanimously resolved to give Mayor Delle Donne delegated authority to finalise the contractual arrangements between Mr Dacombe and the City, against the terms and conditions of the draft Deed of Release (report CE-005-012) (EXH 103).

113. A number of issues arise from the manner in which Council dealt with this matter at the meeting.

COUNCIL RECORDING DEVICE DE-ACTIVATED

114. During the 23 January 2012 meeting Mayor Delle Donne inexplicably ruled that the audio recording device be turned off before the debate began on the CEO's separation proposal. This instruction was issued by the Mayor without consultation with elected members present, and therefore did not have the authority of a Council resolution.
115. Reference to the partial audio recording of the meeting held 23 January 2012 reveals the following comment made by the Presiding Member, Mayor Delle Donne:

"This also is a confidential item and I would like to probably ask the CEO if maybe [indistinct] if he can leave the room if he can stay nearby, and Donna and Natalie to leave the room thank you. Sorry? [inaudible background chatter] The tape? No. No thanks. Can you switch it off? Switch it off. Thanks."

(Special Council Meeting 23 January 2012 transcribed from 39:40)

116. The Mayor was interviewed about why he made the decision to turn off the recording device:

AUTHORISED PERSON: *"See the great shame about this is, we would have had a record of that had you not ruled – arbitrarily – to turn the tape off. Why did you turn the tape off?"*

WITNESS: *"I'm not in charge of the tape."*

AUTHORISED PERSON: *"Why did you – why did you give instructions to turn the tape off?"*

WITNESS: *"Because the CEO didn't want to have it recorded."*

AUTHORISED PERSON: *"Did he tell you that?"*

WITNESS: *"Well I think that he agreed to that –from my recollection."*

AUTHORISED PERSON: *"Mayor I have listened to the tape of that meeting, you asked Mr Dacombe to leave the room, you suggested that he should leave the room, and then you asked the staff to turn off the tape. You did not ask Mr Dacombe if he wanted the matter recorded or not. You might – you might like to check the tape for yourself."*

WITNESS: *"Yeah that's fine, I believe what you are saying."*

AUTHORISED PERSON: *"Did you, in making a ruling to turn the tape off, did you seek the approval of the other Councillors to do that?"*

WITNESS: *"Well nobody objected."*

(Mayor Delle Donne interview: 27 April 2012 transcribed from 14:00)

117. Mr Dacombe confirmed that he did not tell Mayor Delle Donne he did not want the debate recorded:

Question: "Did you tell Mayor Delle Donne not to record the debate at the above meeting when Council moved a resolution giving him (the Mayor) delegated authority to finalise your employment contract with the City?"

Answer: "No, I did not tell the Mayor not to record the debate held on 23 January 2012 concerning my employment with the Council."

(Mr Dacombe email exchange with Inquiry: 19 July 2012).

118. In an effort to establish what had been discussed during that meeting, a number of elected members were asked for their recollections of what was discussed when this confidential item went behind closed doors. Their responses varied:

"I can't remember".

(Megan O'Donnell interview: 24 April 2012 transcribed from 22:45)

"No I can't. I couldn't remember – I know from memory that Bruce [Mason] had a lot to say but you know I couldn't really remember what it was I just thought – holy mackerel he's here and suddenly he wants to go".

(Stuart Clarke interview: 1 May 2012 transcribed from 2:23:29)

"I think questions were asked as to why he was leaving -- I remember thinking at the meeting that it was very fair that the CEO obviously wanted to move on because probably he felt that we had ended Refocus, I don't know – in my own mind I was thinking that he wanted to move on".

(Bev Olsen interview: 27 April 2012 transcribed from 2:14:25)

"I can't [remember]. I'm sorry -- there should be a recording on it anyway".

(Mary Daly interview: 2 May 2012 part 2 transcribed from 48:48)

"There was legal representative present and they explained the situation and – there wasn't a lot of debate to my understanding"

(Lindsay Elliott interview: 24 April 2012 transcribed from 50:10)

119. It should be noted that while Mr Michael Hardy from Hardy Bowen Solicitors was present at the meeting on 23 January 2012, for matters unconnected with the CEO position, he had been asked to leave the chamber with Mr Dacombe and remaining staff members, before the confidential item relating to the CEO was discussed.

SUMMARY AND FINDINGS

120. There are a number of areas of concern with the manner in which Mayor Delle Donne conducted the 2010-2011 performance review of the CEO Mr Dacombe. Mayor Delle Donne should not have conducted this performance review process in isolation of Council. It is clear the Mayor did not involve Mr Dacombe in carrying out the performance review process, even though he did consult with Cr Mason for his comments.
121. It is questionable why the Mayor decided to conduct this important function in isolation from Council and without any professional advice. As a direct result of his haste to conduct the review and lack of specialist advice, the Mayor used the wrong performance criteria and failed to involve the CEO in the process before arriving at adverse conclusions. The Inquiry considers this supports the view that the Mayor's primary motivation in conducting the unscheduled 2010 – 2011 performance review of the CEO was to allow the Mayor to quickly arrive at a premeditated adverse outcome.

FINDING 36

Mayor Delle Donne has through unnecessary haste, conducted a review of the Chief Executive Officer's performance against a number of out-dated criteria which invalidate the CEO's performance assessment for the 2010 – 2011 period.

122. The performance appraisal document significantly criticised Mr Dacombe's performance and was only offered to him in a completed form for him to sign. Understandably, Mr Dacombe refused to accept the results of the review or to sign the document. From the manner in which the purported review was conducted, it became clear to Mr Dacombe that his relationship with both Mayor Delle Donne and Cr Mason had irretrievably broken down.

FINDING 37

Mayor Delle Donne's –

- haste to conduct the review;
- failure to obtain specialist advice;
- use of the wrong performance criteria; and
- failure to involve the CEO in the process –

leads to the conclusion the Mayor's primary motivation in conducting the unscheduled 2010 – 2011 performance review of the CEO was to allow the Mayor to quickly arrive at a premeditated adverse outcome.

FINDING 38

The process used by Mayor Delle Donne to review, measure and report on the Chief Executive Officer's performance for the period 2010 – 2011 was rushed, flawed and unjust.

123. During the 23 January 2012 Council Meeting Mayor Delle Donne ruled that the audio recording device be turned off without consultation with elected members present, and therefore the Mayor's instruction did not have the authority of a Council resolution.

FINDING 39

The Mayor acted without a Council resolution when he directed that the audio recording of 23 January 2012 meeting be turned off.

124. The previous 2009 – 2010 performance review concluded with a report to Council which identified that Mayor Delle Donne and the CEO had consulted and agreed on the findings of that review. However, information regarding the 2010 – 2011 performance review was presented to Council in a confidential report (Report CE-005-12) from Mayor Delle Donne. The Mayor's report did not provide any of the significant information that Mayor Delle Donne and Cr Mason knew was relevant to the CEO's offer to terminate his employment.
125. It is clear from some elected members comments that they were not aware of the CEO's reasons for wanting to leave the City and were unaware of the dispute that was ongoing about the way in which Mayor Delle Donne had conducted the CEO's performance review and its outcome.
126. This demonstrates the tendency the Mayor had to act without consideration of the limitations of his role.
127. Not only did the Mayor perform this function in isolation from Council, he undertook it in a manner that was grossly unfair and resulted in the CEO seeking to terminate his contract with the City.
128. As Mayor he has no more powers than any other elected member and has no authority to make any decisions outside the deliberative role of Council. Under the Local Government Act a Mayor has a figurehead or leadership role of Council and has the unique authority to speak on behalf of Council. In this case Mayor

Delle Donne had taken it upon himself, in conjunction with Deputy Mayor Mason, to undertake one of the most important functions a Council can perform, reviewing the performance of its CEO.

129. This information was relevant to Council and the Mayor had no right to withhold this information from Council.

FINDING 40

Mayor Delle Donne behaved improperly when he failed to inform the elected members (at the Special meeting of Council held 23 January 2012) of relevant information that the Chief Executive Officer had told him (on 19 January 2012) that:

- (1) He did not agree with the results of the performance review the Mayor had conducted;
- (2) He would not be signing the review document; and
- (3) The inappropriate manner in which the performance review was conducted had been the 'final piece in the jigsaw' that caused him to decide to offer to resign as CEO.

130. At the 23 January Council meeting elected members were effectively being asked to consider what they (with the exception of Mayor Delle Donne and Cr Mason), saw was the relatively straight forward issue of the CEO seeking to leave the City. They were unaware of the flawed performance review or that Mr Dacombe had refused to accept or sign the performance appraisal.

131. They were also unaware that the working relationship between Mr Dacombe and Mayor Delle Donne and his Deputy, Cr Mason had completely broken down.

132. Council was oblivious as to why Mr Dacombe had made (in what would appear to elected members as) such a sudden decision to surrender his position. This meant

elected members could only make a decision based on the limited information that was before them at the meeting.

133. Mayor Delle Donne was in possession of information that was highly relevant to the matters that were to be discussed, but for his own reasons, reasons best known to himself, he decided to withhold this information from the remaining elected members.

Natural Justice Response

134. In the course of preparation of this Report, the suggestion was made by some councillors that criticisms were foreshadowed by this Inquiry, of their conduct, was also indicative of a failure by the CEO to properly perform his function under section 5.41 *Local Government Act 1995* to ensure that advice and information was available to the Council so that informed decisions could be made.
135. The Inquiry provided Mr Dacombe with these criticisms and an opportunity to respond. In that response Mr Dacombe provided information that was relevant to the absence of his advice to Council at the OCM of 23 January 2012.
136. Mr Dacombe stated in his response that *“At the meeting of 23 January 2012, I was asked to leave the meeting before the item was deliberated on (as were all staff and advisors) and [I] had no opportunity to add any information. I waited outside the Council Chambers and could have been called for any clarification if required. Having put my proposal to the Mayor and the Deputy Mayor and having received a favourable response I ensured that the Mayor had access to quality HR advice in the form of the Acting Human Resources Manager I stepped back as was appropriate.*

CHAPTER 15

The CEO Separates from the City

BACKGROUND

137. The Inquiry considers the 13 December 2011 Ordinary Council meeting was the point in time when Mr Dacombe's relationship with the Mayor had seriously broken down. It is useful at this point to recap the sequence of events that contributed to Mr Dacombe eventually separating from the City.
138. In a memo dated 23 December 2011 (EXH 15), Mr Dacombe responded to questions raised by Cr Barry at the 13 December 2011 Council meeting. Cr Barry's questions sought to discover any conflicts members of the Executive team may have had in their relationships and associations with contractors, consultants and the CEO. This memo from the CEO became the basis for the Mayor's letter of 29 December 2011 to the Minister for Local Government supporting his allegations of misconduct by the CEO (EXH 1). The allegations in his letter related mainly to *"what Council believes is a serious breach of the City's Code of Conduct (Feb 2008) under Clause 2 Disclosure and Conflict of Interest."* Essentially the allegations centred on "conflicts" that the Mayor considered had been revealed by the information in the memo.
139. Mr Dacombe's private email on 21 December 2011 (EXH 162) to his colleague Mike Richardson reveals his view of what was taking place. *"...Since I have been back the Mayor has hardly spoken to me. At some point he has decided that I am working against him and I think the plan is to drive me out using techniques they have developed over time."*

“The Mayor and his two helpers are crawling all over the organisation now looking for evidence to support their conclusions.”

(Mark Dacombe to Mike Richardson email: 21 December 2011)

140. On 4 January 2012 Mayor Delle Donne advised the CEO he wanted to meet with him on 12 January to discuss *“issues of mutual concern”*.
141. On 5 January 2012 Mr Dacombe advised the Mayor and Cr Mason that, in addition to the Mayor and Cr Mason, he had appointed two further members to the selection panel for the Executive Engineering and Technical Services position. On 9 January 2012 Mr Dacombe conducted the interviews and selected a preferred candidate against the wishes of the Mayor. The full significance of this is discussed in Part 4 of this report.
142. On 12 January 2011 the Mayor conducted the unplanned performance review of Mr Dacombe without giving Mr Dacombe prior notice.
143. A week later, on 18 January 2012, aggrieved by the way the performance review had been conducted, Mr Dacombe went to the Mayor and offered to surrender his position as CEO. He advised the performance review was the “trigger” for his decision to leave.
144. On 23 January 2012, a Council decision moved by Cr Mason and Seconded by Cr Barry, gave Mayor Delle Donne delegated authority to negotiate an end to the CEO’s contract (EXH 105). Council had not been informed of the CEO’s concerns about the flawed performance review, or that this had been the catalyst for his offer to terminate his contract with the City.
145. On 24 January 2012 the Mayor met with the Minister for Local Government raising concerns specifically related to the performance of the CEO and the operations of the City. The Mayor also advised that he had submitted complaints

to the CCC and anticipated more matters being brought to the attention of that investigative agency. The Mayor advised the Minister that the CEO Mr Dacombe had tendered his resignation the previous evening, which had been unanimously accepted by Council.

146. On 25 January 2012 Mayor Delle Donne met with a representative from Allion Legal who had been engaged to provide legal advice and to review the Deed of Release that had been prepared by Mr Dacombe's Solicitor (EXH 104).

147. On 25 January 2012, in responding to Mayor Delle Donne's request for advice on the CEO's employment status, Allion Legal (EXH 107) provided the following:

"In our meeting with you today, we discussed the risks involved in the CEO continuing to perform his role during his 3 months' notice period. We agree with you that this is not desirable, however we suggested that there may be matters where the CEO's assistance is required. We therefore suggested that rather than paying out the notice period and having the employment end immediately, you might consider a period of 'gardening leave' where the CEO remains an employee but is not required to perform his role unless specifically directed by you...

On that basis, we recommend that you immediately:

Advise the CEO that:

- It is best that he does not attend work or perform his role whilst negotiations concerning his termination of employment are ongoing, but he will continue to be paid during that period;*
- In order to expedite the process, the City's lawyers would like to liaise with his lawyers regarding the draft deed...;*
- That you appoint the Deputy CEO as Acting CEO;*
- Instruct the City's Acting Human Resource Manager to arrange for the CEO's access to the City's internet, email and other IT services to be disabled effective from the time the CEO leaves the workplace."*

(Allion Legal to Mayor Delle Donne email: 25 January 2012)

148. Allion Legal provided Mayor Delle Donne with further legal advice on 27 January 2012, (EXH 108) setting out the format he and City of Canning staff should follow when they meet with Mr Dacombe to effect the Allion Legal's recommendation to send him on 'gardening leave'. That advice included a draft letter outlining the terms of that arrangement.
149. Having received legal advice that recommended that the CEO be placed on 'gardening leave', Mayor Delle Donne had two options, which were consistent with that advice. The first was to immediately call a Special Meeting of Council to pass a motion to stand down the Chief Executive Officer under the terms recommended by Allion Legal. The second option was to seek, through a "Notice of Motion", to have the matter considered at the next Ordinary Meeting of Council.
150. Mayor Delle Donne did neither.
151. On 30 January 2012 Mayor Delle Donne, in the presence of Cr Mason, Mr Sharpe and the Acting Manager Human Resources, served Mr Dacombe with a letter suspending him immediately on full salary. Mayor Delle Donne dealt with this important issue without authority or informing Council of the significant step he was taking.
152. The conditions stated by Mr Dacombe in his "*without prejudice proposal*" dated 19 January 2012, referred to him working through the three month notice period or any lesser period as may be agreed between him and the Council. The legal advice to send the CEO on 'gardening leave' appears to arise from a discussion with the Mayor "*In our meeting with you today, we discussed the risks involved in the CEO continuing to perform his role during his 3 months' notice period. We agree with you that this is not desirable*". It is not clear what 'risks' were involved in Mr Dacombe working out his three month notice or a lesser period. It is presumed these risks related to the misconduct allegations.

153. When interviewed by the Inquiry and asked if he had been consulted by Mayor Delle Donne about a letter dated 30 January 2012 that effectively suspended the CEO, Cr Boylen offered the following reply:

“I – I do think that something as significant as a complete loss of faith between the Mayor – in the Mayor and his belief that we should be suspending the CEO should be something that you would bring back to Council”.

(Stephen Boylen interview: 26 April 2012, part 1 transcribed from 1:15:14)

154. The report prepared by Allion Legal for the City of Canning, dated 5 February 2012, (EXH 109) identifies the issues Allion Legal had been asked to review.

“The City of Canning is currently reviewing its Chief Executive Officer’s ongoing employment, in light of recent events. These events include:

- the CEO’s unfavourable 2011 performance review*
- the CEO’s recent offer to resign in return for one year’s remuneration; and*
- allegations which have now been made of possible serious misconduct.”*

155. It is also important to note that in paragraph 5 on page 2 of this report, the author wrote:

“Whilst conducting the CEO’s performance review, the Mayor became concerned that the CEO may have engaged in conduct that contravened the LG Act: Section 5.38 [“Annual Review of certain employees’ performance”] and Regulations and/or City tendering guidelines. We understand it is alleged the CEO awarded contracts to third parties he was associated with, in which he failed to declare an interest. Further it is alleged he structured the contracts in a manner designed to avoid putting work out to tender”.

156. The Allion Legal statement that *“Whilst conducting the CEO’s performance review, the Mayor became concerned that the CEO may have engaged in conduct that contravened the LG Act”* indicates that the Mayor was claiming that his concerns about the CEO emerged around the time that the Mayor conducted the CEO’s

performance review on 12 January 2012. If this was the case, it raises the question of why such a serious issue was not raised by the Mayor at the 23 January 2012 Council meeting when Council dealt with finalising the CEO's contract. In addition the "notes" recorded by Mr Sharpe and Mr Dacombe's personal account of his performance review do not support that misconduct allegations were raised.

157. The Allion Legal report also refers to allegations "*which have now been made*" of "*possible serious misconduct*", indicating that additional allegations of "*possible serious misconduct*" had emerged around the date of this report (5 February 2012).

SUMMARY AND FINDINGS

158. The Inquiry considers the 13 December 2011 Ordinary Council Meeting was the point in time when Mr Dacombe's relationship with the Mayor had seriously broken down.
159. It was at 13 December 2011 Council meeting that Cr Barry formally submitted questions seeking to discover any conflicts members of the Executive team had in their relationships and associations with contractors, consultants and the CEO. This appeared to be a 'fishing exercise' by Cr Barry. In a memo dated 23 December 2011, Mr Dacombe responded to Cr Barry's questions by providing information that the Inquiry found revealed nothing more than professional working relationships. This memo became the basis for the Mayor's letter of 29 December 2011 to the Minister for Local Government supporting his allegations of misconduct.
160. Mr Dacombe's email to his colleague Mike Richardson reveals that by 21 December 2011 Mr Dacombe believed that the Mayor was seeking to drive him out using techniques that "*they had developed over time*". It is clear Mr Dacombe believed the Mayor, with the assistance of his "*two helpers*", was looking to find evidence to justify removing him from his position.

161. On 12 January 2012 the Mayor conducted a performance review of Mr Dacombe without prior warning or consultation with him. The lack of preparation and the absence of any consultation by the Mayor leads the Inquiry to conclude that the review was conducted by the Mayor with no regard for fairness or accuracy and with the primary intention of arriving at a premeditated adverse outcome. A week later, on 18 January 2012, aggrieved by the way the flawed performance review had been conducted, Mr Dacombe went to the Mayor and offered to surrender his position as CEO.
162. At the subsequent Ordinary Council Meeting of 23 January 2012, elected members were unaware of the reason why Mr Dacombe was leaving. The information Mayor Delle Donne and Cr Mason had in relation to the conduct of the performance review was not provided to elected members. The Mayor and Cr Mason's withholding of this information established the intent of both to mislead Council in order to ensure the CEO's resignation was accepted.
163. On 24 January 2012 the Mayor met with the Minister for Local Government raising concerns specifically related to the performance of the CEO and the operations of the City. The Mayor also advised that he had submitted complaints to the CCC and anticipated more matters being brought to the attention of that investigative agency. The Mayor further advised the Minister that the CEO had tendered his resignation at a Special Council Meeting held on 23 January 2012.
164. On 30 January 2012 Mayor Delle Donne effectively suspended the CEO on full salary. The Inquiry has concluded that the Mayor acted without reasonable grounds in suspending Mr Dacombe and the act of suspending Mr Dacombe was done without the authority of Council.
165. It is clear that it was the Mayor's intention to conceal his actions in suspending the CEO from Council. This is reinforced by the Inquiry's discovery that no other elected member, apart from Cr Mason, was aware the CEO had been placed on

forced leave. It should have been obvious to the Mayor that sending the CEO on ‘Gardening Leave’ was beyond his authority.

166. In a report dated 5 February 2012 Allion Legal indicated that the Mayor’s concerns that the CEO may have engaged in misconduct emerged around the time that the Mayor conducted the CEO’s performance review. It also indicated that allegations *“which have now been made”* of *“possible serious misconduct”*, only emerged around the date of this report.
167. Therefore it is concluded that the allegations concerning misconduct by the CEO were not raised with the CEO at the 12 January performance review and that the allegations of possibly serious misconduct emerged after the CEO was suspended on 30 January 2012.
168. It is also noteworthy that the allegations against Mr Dacombe appear to escalate in seriousness starting with the alleged breaches of the City’s Code of Conduct in the Mayor’s letter of 29 December 2011, with possible breaches of the Local Government Act purportedly arising at 12 January 2012 performance review, and possible ‘serious misconduct’ allegations emerging by 5 February 2012 after the CEO had been suspended.
169. The Inquiry has concluded that the Mayor’s allegations against Mr Dacombe had no reasonable basis. This is consistent with the findings of the City’s own investigation conducted by an independent legal practitioner who reported to Council on 23 April 2012 at a “Special Forum” that the Mayor’s claims the CEO had been involved in misconduct could not be supported.

FINDING 41

Mayor Delle Donne acted improperly in effectively ‘suspending’ Mr Dacombe, the Chief Executive Officer without Council’s knowledge or authority.

FINDING 42

Mayor Delle Donne failed to inform all elected members at the 23 January 2012 Ordinary Council Meeting, that he had suspected that the CEO had been involved in misconduct at the time the Mayor conducted the review of his performance on 12 January 2012.

PART 4

Allegations of Improper or Undue Influence

RELEVANT TERMS OF REFERENCE:

- “3) The appointment of Executive and other employees at the City of Canning from 23 February 2009 and the appropriateness of the processes used for those appointments;*
- 4) The conduct of Council members and employees of the City of Canning, including but not limited to:*
 - a) tendering, purchasing and procurement, and contract management;*
 - b) improper or undue influence; and*
 - c) behaviour at Council meetings.*
- 5) The adequacy of the City of Canning’s procedures, including but not limited to:*
 - a) transparency of decision making, information provided to Council members, and recording of Council decisions; and*
 - b) the conduct of Council meetings, including observance of relevant legislation and protocols...”*

CHAPTER 16

Improper or Undue Influence

INTRODUCTION

1. Mayor Delle Donne has on a number of occasions declared an impartiality interest in relation to Mr Terry Blanchard (“Mr Blanchard”). (EXH 110 and EXH 111). Initial declarations varied from an initial *“I know the family”* to a more recent declaration informing Council that:

“One of the applicants’ son is married to my daughter”

(Audio: Ordinary Council Meeting (OCM), 22 May 2012)

2. The applicant referred to by the Mayor in this recent disclosure is Mr Blanchard.
3. Mr Blanchard is a former elected member of the City of Bayswater and is a qualified Engineer. It is understood Mr Blanchard runs an engineering consultancy company (Blanchard Consulting Solutions) of which he is the sole operator.

ALLEGED IMPROPER MOTIVES FOR SOME QUESTIONABLE DECISIONS

4. When the Inquiry began to analyse Council decisions, it identified a pattern where a small group of elected members were prominent in influencing Council deliberations

on matters that involved, in some capacity, Mr Blanchard, who is the Mayor's daughter's father-in-law.

5. Over the course of a number of Council meetings it became evident that, consistently, decisions of Council (dominated by motions and votes by the Mayor's group consisting of Councillors Mason, Barry and Olsen) provided an avenue for Mr Blanchard to be given some form of benefit as a result of the decision.
6. These decisions relate to the following matters, which are examined in this part of the report:
 - Calling tenders for provision of Engineering Consultancy Services
 - Awarding of an Engineering Contract (Sevenoaks Street Project)
 - Recruitment of Executive Engineering & Technical Services (November 2011)
 - Recruitment of Executive Engineering & Technical Services (April 2012)

CHAPTER 17

Engineering Consultancy Services Tender

7. On Saturday 25 September 2010, the City advertised for tenderers to provide design services for civil works, road safety audits, submissions for government grants and traffic signal works. Based on historical expenditure and forward estimates, the expected annual costs of these services was considered to be in excess of \$100,000, requiring a public tender process. The legislation that applies to local government tender procedures is as follows:

3.57. Tenders for providing goods or services

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

(Section 3.57 Local Government Act 1995)

11. When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$100 000 unless subregulation (2) states otherwise.*

(Regulation 11(1))

8. The advertised tender specifications indicated the City was seeking to amalgamate its stated design services under one contract. As only one provider would be awarded the contract for these services, the successful tenderer would be provided with a reasonable amount of work and their tender submission could anticipate pricing their quote accordingly.

RESULT OF TENDER PROCESS

9. Seven tender responses were received and assessed by a panel of four City Officers including the Executive Engineering and Technical Services. An evaluation report dated 1 November 2010 was compiled assessing the seven applications for conformity and suitability. Mr Dacombe recalls:

"I was briefed by Charles Sullivan on the evaluation of the tenders prior to the draft report being passed through the Council agenda Executive approval process. I do not recall him raising with me the matter of the Mayor's familial connection with Mr Blanchard although he may have. Mr Blanchard was completely out of the running in the tender evaluation in any event. I may actually have signed the tender evaluation off at that point to go to the next Executive meeting [2 November 2010]."

(Mark Dacombe Submission: 5 June 2012)

10. The completed evaluation report (report ET-152-10) was presented to Council at its Ordinary Meeting of 9 November 2010. (EXH 112).
11. The Minutes of this meeting record that Mayor Delle Donne made a 'Declaration of Impartiality' relating to this report:

"With the matter listed above, I disclose I have an association with Mr Terry Blanchard. As a consequence, there may be a perception that my partiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly:

Nature of Interest: Know the Blanchard family" [emphasis added]

12. Mr Dacombe advised:

"I note that the minutes record that the Mayor had disclosed that he knew the Blanchard Family. He did not declare that there was a connection by marriage and I think that at that stage I still did not know that."

(Mark Dacombe Submission: 5 June 2012).

13. The opening comment in the report was quite specific in its determination that Blanchard Consulting Solutions was not considered to have met the tender specifications:

"Blanchard Consulting Services, whilst offering the lowest prices, is a consultancy operated by Terry Blanchard and has advised that no subcontractors will be utilized. He has not demonstrated sufficient recent experience in civil design and drafting and has not carried out any traffic signal design or street lighting design, which may be required as part of the civil design. He is also not an accredited road safety auditor."

(Tender Evaluation Report 32-2010: 1 November 2010.)

14. The report (EXH 113) provided further comment on the unsuitability of Blanchard Consulting Solutions:

"With the exception of Blanchard Consultancy Solutions, all tenderers demonstrated sufficient experience and staff qualifications to carry out works required under the tender specifications."

(Report ET-170-10: Attachment 2 [EXH 114])

15. In other words, the report to elected members had identified quite clearly that Mr Blanchard's submission was non-conforming and that he was unsuitable to be considered. The report went on to provide details of the assessment of the remaining six respondents and their ranking, concluding with a recommendation to award the single provider contract to Shawmac Pty Ltd (Report ET-152-10).

16. The recommendation in the Officer's report to Council was:

"That:

- (a) Council accept the tender from Shawmac Pty Ltd for tender 32/2010 – provision of Engineering Consultancy Services for a three year period effective 10 November 2010 as the most advantageous.*

(b) *All tenderers be advised of (a) above and thanked for their submission."*

17. The Minutes show there was an amendment from the floor by Cr Barry, which was seconded by Cr Olsen:

"The above motion not be adopted for the following reason:

- (1) *It is not the most advantageous for the City of Canning.*
- (2) *In lieu thereof, the following be adopted:*

- (a) *Council accept the tender from **Blanchard Consulting Solutions** [emphasis added] for a three year period effective 10 November 2010, as the most advantageous.*
- (b) *All tenderers be advised of (a) above and thanked for their submissions."*

18. Mr Dacombe provided his recollection of when Cr Barry moved his motion:

"I do recall being surprised that Councillor Barry then moved that the officers' recommendation not be adopted as I thought the issue was quite straight forward. The actual practice of overturning an officer's recommendation without prior notice or discussion with me or the Executive concerned was not however unusual."

(Mark Dacombe Submission: 5 June 2012).

19. When interviewed by the Inquiry, Cr Barry said the following about his motion:

AUTHORISED PERSON: *"I want to know why you actually suggested Blanchard be chosen when he wasn't even [indistinct]"*

WITNESS: *Well it probably was – it was probably because it was the – the best option from a price perspective for the City."*

(Graham Barry interview: 9 May 2012 transcribed from 23:45)

20. This answer by Cr Barry provides no insight into why specific advice in the Officer's report regarding Mr Blanchard not meeting the tender specifications was ignored. Cr Barry's explanation that he based his decision on price alone means he had ignored the clear advice in the Officer's report that Mr Blanchard was non-conforming and unsuitable to be considered. This suggests he only assessed the price and ignored

candidates' suitability and capability to undertake the work. This is considered an unreasonable position for Cr Barry to have taken.

21. Notwithstanding Cr Barry's amendment to the Officer's recommendation, a foreshadowed Motion was then introduced by Cr Mason that the contract for Engineering Consultancy should be awarded to more than one consultant:

"That a list of suitable Consultants be made available for the provision of Engineering Consultancy Services to the City of Canning."

22. After some debate this was followed by a motion moved by the Mayor and seconded by Cr Barry that:

"The matter be referred to the Chief Executive Officer for further review of the proposal for consultancy Services in the Engineering Department and a further report be presented to Council."

Councillor Barry withdrew his earlier motion and Council voted on the above motion.

Carried

*FOR The Mayor, Crs Barry, Elliot, Mason, Olsen and Wheaton
AGAINST: Crs Dowsett, Clarke and Morgan"*

23. Mr Dacombe provided his recollection:

"During the meeting I could see the potential developing for a Council decision that would have been difficult if not impossible for officers to work with and my recollection is that I intervened either directly or by way of an aside to the Mayor before any motion was put that resulted in him moving an amendment that the matter be referred to me for a further report."

(Mark Dacombe Submission: 5 June 2012).

24. The decision meant Council had ignored the information they had been provided with that a formal public tender had been conducted with seven applications being received. Council was aware that these applications had been appropriately assessed by an independent evaluation panel and a preferred candidate recommended.

Instead of accepting the recommended candidate or debating on the appointment of one of the other five qualifying candidates, Cr Barry had moved a motion to appoint the only non-qualified candidate. Cr Mason's motion subsequently resulted in the whole tender process being overturned. The Council resolution not only removed the opportunity for the contract to be awarded to the preferred candidate, but it had also introduced the new concept of awarding the work to a panel of consultants as opposed to the tender objective of a sole provider:

"Following the Council meeting, most likely the next day, I discussed the matter with Charles Sullivan. I think it was at that meeting I was advised that Mr Blanchard was the father-in-law of a son or daughter of the Mayor."

(Mark Dacombe Submission: 5 June 2012).

REVIEW OF ORIGINAL TENDER:

25. The decision of Council resulted in the CEO, Mr Dacombe conducting a further review of the proposal for engineering consultancy services for the City.
26. As part of the CEO's review, Mr Blanchard of Blanchard Consulting Solutions was provided with another opportunity to make a tender submission on his ability to meet the tender specifications. It should be noted at this stage that the tender process had already been finalised with an evaluation panel recommending a preferred candidate. There was no appropriate avenue for Mr Blanchard to be given another opportunity to address his suitability for the tender.
27. Mr Dacombe was asked about his knowledge of this matter:

"I have been asked by Inquiry consultants what I knew about Mr Blanchard having the opportunity to make further comment on his tender. I have no recollection of knowing that he had been approached by any Council officer however it is possible that he was approached to confirm his capability as very limited, which had been identified from his tender, following my discussion with Charles Sullivan after the Council meeting."

(Mark Dacombe Submission: 5 June 2012).

28. In an email dated 3 December 2010 (EXH 115), the City's Design Engineer sought further clarification from Mr Blanchard about his ability to meet the tender specifications by asking him to respond to the following questions:

- "1. Are you a Main Roads WA accredited Road Safety Auditor?*
- 2. Are you qualified to carry out street lighting design?*
- 3. Are you qualified to carry out traffic signal design?"*

29. In a letter dated 6 December to the CEO (EXH 116), Mr Blanchard responded by explaining that only a handful of companies provided the specialised services required by the tender specifications and that he did not possess these qualifications. He went on to argue there were advantages to using an alternative method that avoided using these specialists in the way required by the tender.

30. Mr Blanchard's letter also contained a recommendation that:

"I would have thought the best outcome for the City was to appoint a panel of consultants and then choose work based on the most advantageous price quotes for specific projects"

31. This suggestion has some consistency with Deputy Mayor Mason's earlier comments in support of his motion that the contract for Engineering Consultancy should be awarded to more than one consultant:

"That a list of suitable Consultants be made available for the provision of Engineering Consultancy Services to the City of Canning."

32. It may also be reasonable to infer that the suggestion from Mr Blanchard is also consistent with Cr Barry's reference to price alone affecting his decision to move a motion to award the tender to Mr Blanchard - despite the fact Mr Blanchard could not conform to the requirements of the tender.

COUNCIL'S SECOND CONSIDERATION OF THE TENDER

33. The CEO completed the review of the matter, and a report of this review (the Review Report) was submitted by the Executive Engineering and Technical Services to the

Council meeting of 14 December 2010 (EXH 117). The Mayor again made his Declaration of Impartiality.

34. The Review Report included advice that Blanchard Consulting Solutions had been contacted to specifically provide information on whether he could meet the requirements of the tender specifications.
35. In its response dated 6 December 2010, Blanchard Consulting Solutions confirmed:
 - It would not utilise sub-contractors.
 - The principal and sole engineer, Mr Terry Blanchard was not registered with Main Roads WA as accredited through them.
 - The principal and sole engineer, Mr Terry Blanchard was not qualified to carry out street lighting designs.
 - The principal and sole engineer, Mr Terry Blanchard was not qualified to carry out traffic signal designs.
36. The Review Report went on to confirm the previous report's findings that Blanchard Consulting Solutions did not demonstrate sufficient experience and qualifications to carry out the works required, and again referred to the evaluation panel's rationale for arriving at its previous recommendation to nominate its preferred candidate, Shawmac Pty Ltd.
37. The Review Report also attached a copy of Blanchard Consulting Solutions response confirming he was not qualified under the tender specifications.
38. Whilst the Report is authored by the Executive Engineering and Technical Services, the recommendation of the report that the tender process be recommenced is identified as being *"based on the CEO's review"*.

39. Mr Dacombe confirmed City Officers' were of the opinion the Review Report should reflect the original recommendation to appoint Shawmac Pty Ltd. Mr Dacombe explained his position on this matter:

"Following the 9 November Council meeting I believe that the engineering officers were of the view that I should simply go back to the Council and repeat the recommendation that the tender from Shawmac Pty Ltd be accepted.

I felt there were two good reasons not to do that:

- i) Given the approach taken at the Council meeting I considered there was a high probability the officers' recommendation would be declined and a tender accepted that the officers would find unworkable; or*
- ii) Given the foreshadowed motion of the Deputy Mayor the Council would go down the path of establishing a panel. I felt that given we had not provided the Council with that choice before going to tender it was a more sensible approach for the officers to facilitate proper consideration of that option alongside the acceptance of a single supplier rather than be intransigent."*

(Mark Dacombe submission 5 June 2012)

40. The Review Report concluded, *"The City has specified in the Request for Tender that only a single tenderer will be appointed. The review by the CEO determined that the best value for Council would be obtained by appointing a panel of two or three consulting firms. As there is no option to appoint a panel based on the existing tender the only option is to re-advertise."*

"Based on the review by the CEO, it is recommended that no tender be accepted, with a view to obtaining best value for Council, the tender should be re-advertised as a panel of consultants.

Recommendations:

That:

- (a) Council does not accept any tender.*
- (b) The tender be re-advertised as a panel of consultants."*

41. Amendments from the floor moved by Cr Mason followed:

"Not be adopted for the following reasons:

- (1) *the time and cost of the re-tendering*
- (2) *No guarantee that we will receive any more or less tender applications.*

In lieu thereof, the following be adopted:

- (a) *the following companies be invited to join Council's panel of consultants for the provision of engineering services:*
 - *Blanchard Consulting Solutions* [emphasis added]
 - *Porter Consulting Engineers*
 - *GHD Pty Ltd*
 - *Worley Parsons Pty Ltd*
 - *CPG Australia Pty Ltd*
 - *Shawmac Pty Ltd*
 - *Opus International consultants (PCA) Pty Ltd.*
- (b) *Council give further consideration to other firms who wish to submit in writing an expression of interest to join the panel of consultants for the provision of engineering services with a report to Council as, or when, such submissions are received.*
- (c) *Council's panel is not to exclude the WALGA panel of consultants with all purchases from WALGA panel members to be reported to Council as and if the services are required."*

42. Mr Dacombe provided the following comment:

"In my view these reasons missed the point of the recommendations which was to give effect to the path the Council wanted to go down while remaining procedurally correct. Accordingly, I suggested that an addition be made to the motion they intended to pass, authorising me to investigate any implications of the motion."

(Mark Dacombe Submission 5 June 2012)

43. The CEO quite correctly sought clarification and the following part (d) was included:

"(d) That the Chief Executive Officer be authorised to investigate any legal implications of the motion.

CARRIED

FOR The Mayor, Crs Barry, Elliot, Mason, Clarke, Olsen, Morgan, Daly, Dowsett, Wheaten, and Boylen."

44. It should be noted that the amendment by Cr Mason (not withstanding that there were no grounds to reject the evaluation panel's preferred candidate), again rejected the Officer recommendation:

"Based on the review by the CEO, it is recommended that no tender be accepted, with a view to obtaining best value for Council, the tender should be readvertised as a panel of consultants." (emphasis added)

45. Mr Dacombe advised the Inquiry of the benefit, as he saw it, in accepting the Officer's recommendation in the first report:

"Acceptance of the tender would have obviated the need to obtain competitive quotes for each job and would have therefore been more efficient. I considered however that given the officers' original recommendation for a single supplier was unlikely to have been accepted then the outcome on 14 December, despite its flaws, was preferable to having a single, possibly unsatisfactory, supplier imposed on the technical officers."

(Mark Dacombe Submission 5 June 2012)

46. The Motion moved by Cr Mason also rejected the clear advice that identified the inadequacies in Blanchard Consulting Solutions qualifications for fulfilling work under this tender. Despite this, the Motion reintroduced Blanchard Consulting Solutions – at the top of the list – for placement on the list of consultants to be considered for allocation of the work identified in the previous (now overturned) tender.

THE RAMIFICATIONS OF COUNCIL'S DECISION TO CANCEL THE TENDER

47. There is little doubt that Council's decision caused some frustration and confusion amongst the City's staff affected by this resolution. In an email from the City's Design Engineer to the City's legal advisers, McLeods, he referred to Council in such terms as *"Council took it upon themselves to select a successful tenderer/s themselves"*. (EXH 118).

48. It is also relevant that the City officers were left with the difficult task of explaining the outcome of the original tender process to the unsuccessful applicants, particularly Shawmac Pty Ltd, who would have been aware from the published minutes that they were the only recommended tenderer:

“While quite upset at the resolution and all the problems we knew it would cause. I feel that if any of the tenderers do decide to contest... the positive side of it may be that hopefully it will make those who make these decisions mindful of how much care needs to be taken when making them in future”

“You have a point that if Shawmac was to read the report on the 9th November (and they may already have), they may query as to why the recommendation to award was rejected by Council and why it is that rather than call for re-evaluation or re-tender, council took it upon themselves to select a successful tender/s themselves.”

(Email, From City’s Design Engineer to McLeods: 11 January 2011)

49. The City subsequently received advice from McLeods in a letter (EXH 119) dated 12 January 2011 attached to an email to the Design Engineer:

“The intent of Council’s resolution is apparently to appoint a panel of consultants in lieu of accepting a single tender, notwithstanding that the RFT did not contemplate such an appointment and only sought the appointment of a single Contractor as noted above. Given that the council refused to adopt the officer’s recommendation to reject all tenders and proceed to issuing a new RFT calling for tenders for appointment to a panel of consultants, we have proceeded on the assumption that Council’s decision is a purported determination of the tender process, rather than a decision separate to that process.

Council’s resolution in this report could only be effective if it were open to Council to vary at its discretion the terms and conditions of the RFT so as to seek the appointment of a panel of consultants rather than a single consultant/contractor. In our opinion it is not open to Council to do so....In our opinion, there is an arguable case that the decision of council purporting to appoint a panel of consultants in response to the tenders submitted, rather than a single contractor as contemplated by the RFT is invalid for the reasons that follow.

That decision firstly constitutes a breach of the pre-award or “process” contract to receive and evaluate tenders in accordance to the RFT, which expressly required the appointment of a single contractor to carry out

engineering design and associated services on behalf of the City, rather than a panel of contractors.

Secondly, Council's decision arguably results in unfairness to at least some of the tenderers. It is reasonable to expect that tenderers may have submitted different proposed pricing if they had been aware of Council's intention to appoint a panel of consultants for occasional engineering services rather than a single Contractor.

Furthermore, a tenderer such as Shawmac, whose tender was determined by the Evaluation Committee to be the most preferred tender, would arguable by particularly disadvantaged by Council's decision to appoint a panel of consultants rather than a single contractor as originally stated in the RFT. It is also arguable that Council has acted in breach of its duty to act in good faith by refusing to adopt the recommendations of the evaluation Committee, which were based on an evaluation of the tenders on the basis of the written criteria set out in the RFT, and purporting instead to appoint a panel of consultants comprising of all tenderers.

The City has purported to "accept" an offer of an entirely different nature which was never made, namely an offer or tender to be appointed to a panel of consultants. As the tenderers never applied or offered to be so appointed, the city's purported appointment of them to such a panel cannot have any contractual force."

50. This advice in effect warns the City that the resolution of Council was unsafe:

"...As the matter presently stands, the City is potentially vulnerable to legal action being taken against it by any tenderer that considers itself unfairly disadvantaged by Council's handling of the tender process. There are in our view reasonable grounds upon which it could be argued that Council has breached contractual obligations and duty of good faith that it owes to the companies that submitted a tender in response to the RFT."

51. McLeods' advice went on to *"recommend that Council consider revoking its decision of December 14 2010 and then resolve to decline all tenders submitted in response to the RFT".*
52. The CEO requested all copies of this advice be returned to him and any remaining hard and 'soft copies' be deleted. (EXH 120).
53. Mr Dacombe, explained his position on this matter in a submission to the Inquiry.

I subsequently became aware that a legal opinion on the Council's decision had been commissioned by officers from the Council's legal advisor, Mcleods. This had been done without prior reference to me or discussion with me about whether an opinion was required and if so what the key questions to be addressed should be.

"...I believe that it do(sic) not add anything of significance to what was already known about the issue. It was however, written in a language that would have been considered highly provocative if presented to Council and would certainly have been interpreted as officers working against the instructions of the Council adding to the wider problems I already had at the interface of the Council and the Engineering and Technical Services Division through the Executive.

For these reasons I decided the opinion should not formally be received and asked for copies to be handed back to me so they did not circulate. The opinion did however, remain in the Council records. "

(Mark Dacombe submission 5 June 2012)

54. The McLeod's advice was consistent with the Review Report's recommendation:

"That:

(a) Council does not accept any tender.

(b) The tender be re-advertised as a panel of consultants."

55. The full ramifications of Council's decision to ignore this Officer recommendation become clearer as the City engineering staff attempted to action the Council resolution (EXH 121). The effect on staff morale is evident from the following exchange:

"...We have been asked to disregard the tender request and ask for quotes for designs that we require presently. This may not be legal and even if it is, it is not proper and disadvantageous to the tenderers (bad customer service-remember 'Above all – service')..".

(Colin Gomes to Troy Bozich: Email 14 February 2011)

56. Attempting to cope with the continued repercussions of Council's decision, the Design Engineer sought advice from the Procurement Consultant within WALGA on

21 February 2011 (EXH 122) in an attempt to progress works that had become stalled due to the delay in awarding a tender for the engineering projects:

“Could you please advise me regarding the following-

- 1. Is there a time limit to how long the City can take to make a decision to award a tender (or reject all tender) after tenders have closed?*
- 2. If, during this time of indecision, part of the service under the tender is required (and would cost less than \$100,000) can the City seek quotes for the service?”*

57. Advice was received from WALGA to the effect that, having sought a tender for engineering works that exceeded the \$100,000 threshold, it was then difficult to justify splitting the tendered work into smaller individual contracts. The advice confirmed no other process should be engaged until the tender process had been resolved:

“In regards to seeking quotes you must firstly follow the process undertaken. A secondary consideration is the Regulations regarding anti-avoidance. This may come into play as it may be seen that you are avoiding seeking Tenders.”

(Craig Grant, Procurement Consultant WALGA: Email 21 February 2011)

58. The advice is consistent with earlier advice provided by the City’s legal advisers, McLeods:

“...However, if Council intends to proceed by entering into a contract with a member of the panel (or any other firm that subsequently submits an expression of interest), the consideration for which exceeds the prescribed amount of \$100,000, then the City would be in breach of section 3.57 if it did not issue a fresh request to tender prior to entry into the contract”

59. Again, staff sought clarification from WALGA on the matter of anti-avoidance:

“Q2. Also, if all tenders are rejected and, whilst organizing to readvertise for a tender for the complete service, Council requested quotes for part of the service in the meantime, could that be construed as violating the anti-avoidance regulation?”

60. WALGA attempted to provide some clarification for the City.

“...The general guide is if you (have) a project established and then decide to split this project into components to avoid tendering then it may be seen as anti-avoidance...”

61. Regulation 12 of the *Local Government (Functions and General) Regulations 1996* contains the tender anti-avoidance provisions:

“12. Anti-avoidance provision for r. 11(1)

If a local government enters into 2 or more contracts in circumstances such that the desire to avoid the requirements of regulation 11(1) is a significant reason for not dealing with the matter in a single contract, tenders are to be publicly invited according to the requirements of this Division before entering into any of the contracts regardless of the consideration.”

[Regulation 12 amended in Gazette 2 Feb 2007 p. 245-6.]

62. The unrest the matter caused within the City became apparent, with pressure growing for significant engineering projects to be progressed. The impasse caused by Council’s resolution placed officers in a difficult position with no obvious way to reach a solution. Emails between the Manager Engineering, the Design Engineer and the Executive for Engineering and Technical Services revealed there were some concerns and confusion about the Council resolution.
63. The Executive for Engineering and Technical Services made a decision not to follow the advice offered by WALGA stating “*we have to get a move on*” (email 24 February 2011). This Executive authorised the calling for quotes in conflict with legal and specialist advice to allow engineering work to continue. The Inquiry recognises he was placed in an untenable position.
64. This Executive subsequently resigned from his position with the City in June 2011.
65. There is evidence this matter still remained a contentious issue in October 2011, with an email from the Manager Legal and Democracy Services (EXH 123) responding to the Design Engineer’s query about seeking quotes for an unresolved tender, referring to WALGA’s previous advice on the matter. The Manager responded:

“FYI, I agree with WALGA’s comments.”

(Natalie Barton Leeson: Email 5 October 2011)

THE OUTCOME OF COUNCIL’S DELIBERATIONS

66. Significantly, the Council resolution to directly appoint consultants to the Panel had the effect of bypassing any opportunity to conduct a selection and appointment process. A proper selection and appointment process would have acted as a ‘filter’ for ensuring only those considered suitable would be placed on the panel of consultants for the provision of engineering services.
67. As it was, the Council considered it was a *“waste of time and money”* to re-advertise the tender and proceeded to nominate its own selection of consultants without any process to consider suitability. The Inquiry considers that this constitutes interference in the administration of the local government.
68. Notwithstanding the legal ramifications of this decision, the most notable effect of this interference was that it resulted in Blanchard Consulting Solutions being given an opportunity to be considered for City engineering contracts, an opportunity that did not exist at the time of the initial tender assessment process and the resulting recommendations.
69. There is no indication that the issues surrounding this tender have been resolved to date. It is the Inquiry’s understanding, that although it is contrary to legal advice, Staff are currently instructed to seek written quotations for work connected with this tender as and when required.

SUMMARY AND FINDINGS

70. There are legislative requirements local governments must follow in calling tenders. These requirements ensure the protection of the rights of those seeking selection, together with an open and accountable process that protects the public interest. In

this case Council rejected an appropriate tender process that was concluded with an independent tender assessment panel arriving at a justifiable decision to select a preferred candidate. Having received the assessment panel's recommendation, elected members were bound to either accept the qualified recommendation or provide sufficient justification to reject the recommendation. Inexplicably, the whole tender process was thrown out with Council introducing its own selection process and attempting to directly appoint outside the tender process.

FINDING 43

Cr Barry acted inappropriately by attempting to replace a tender assessment panel's recommended candidate with an alternative candidate without due regard to suitability, capability and conformity with the tender specifications.

FINDING 44

Council made a decision that may have resulted in the City breaching section 3.57 of the *Local Government Act 1995* and the tender avoidance provisions of Regulation 12 of the *Local Government (Functions and General) Regulations 1996*.

FINDING 45

By directly nominating its own selection of City engineering consultants, without any process to consider suitability, or without consideration being given to whether or not the decision was appropriate or lawful, Council interfered in the administration of the City,

CHAPTER 18

‘Sevenoaks’ Engineering Contract

September 2011

71. The City conducted the Sevenoaks Street project in consultation with Main Roads WA under the Road Improvement Program. It was a project that was an important part of the City’s road network upgrade aimed at addressing traffic pressures around the Cannington City Centre. It was a crucial component of plans currently being prepared for the long term development of the City Centre. It involved the construction of a dual carriageway to Sevenoaks Street between Mallard Way and Cecil Avenue.
72. Budget pressures were evident, with concerns raised in September 2011 that costs on this project had exceeded budget. The project had encountered some construction delays, including problems addressing Water Corporation requirements relating to the location of the road passing over a large water main.
73. Elected members expressed some dissatisfaction with a primary design feature that proposed to raise part of the road over the water main. This was considered necessary by the City’s engineers to avoid the very large costs that would have been involved in relocating the large water main owned by the Water Corporation.

74. Mr Dacombe explained:

"[In late May]... the Mayor raised the matter with me saying "the members" were most unhappy. To my layman's eye the design of the road was unusual and there were certainly issues from an urban design point of view but I was keen that the factors that the engineers had taken into account in the design were explained to the Councillors who had concerns.

I asked Charles Sullivan to arrange a site inspection. I believe the inspection took place while I was away and proved to be most unsatisfactory. It was reported to me that the elected members (who I believe included the Mayor, Councillor Mason and Councillor Barry) would not engage with the staff members present...

The inspection and discussion (or lack thereof) did not have a positive result or lay the ground for constructive resolution. The elected members' view that the staff had made severe design errors became entrenched and on several occasions afterwards the Mayor said that he did not believe what they had been told by the Council engineers about the Water Corporation main."

(Mark Dacombe Submission: 5 June 2012)

75. In September 2011 the City's CEO, Mr Dacombe, called for a stop to all works on the project until a report could be presented to Council seeking approval for additional funds. As the project had stalled, there was some concern about the length of time the intersection of Sevenoaks Street and Wharf Street would be left as a construction site:

"I do not think that the Sevenoaks project was a significant issue from the point of view of the budget review as at that time it was within the budget allocated for that year. The fact that the design and management of the project had become contentious coupled with the elected members' attitude to the budget review did have a bearing on how I handled matters related to the Sevenoaks project subsequently."

(Mark Dacombe Submission: 5 June 2012)

76. On the instructions of the CEO, a 'Request for Quote' was sent out on 15 September 2011 (EXH 124) to consultants for a design review of a section of Sevenoaks Street. It

should be noted that the earlier call for a tender for provision of engineering services to a single provider was still delayed, and questions as to the legality of Council's resolution to appoint specific consultants to a Panel had still not been resolved. Therefore the City had resorted to seeking quotes (even though this project was subject to the previous tender) despite the City having legal advice questioning the appropriateness of this.

77. Five quotes were received in total, including those from: Blanchard Consulting Solutions (EXH 125) who quoted at \$1287, Shawmac Pty Ltd at \$3,762 and GHD at \$10,681.
78. Some staff within the City's Engineering Division knew of the relationship between the Mayor and Mr Blanchard. Internal correspondence showed that staff were openly uneasy about both this relationship and the significant difference between the quotes. The Design Engineer expressed his concern in an email (EXH 126) to the Executive Engineering:

*"Hi Kevin,
I am truly, truly sorry for deliberating on this issue on the award of the Sevenoaks St review after we have discussed it twice, but as I start to write the letters of acceptance and rejection to the consultants, I cant help but wonder if we may be leaving the City open to questions about how we arrived at the selection of Terry Blanchard as the successful consultant I have no doubt that Terry is capable of carrying out the review of the levels but my concern is that, in the design brief that we sent out for quotes (refer attached), we did not make it clear that all we wanted was a review of the levels at the Cecil Avenue end. At the time I don't any of us were really sure of the specifics of the review.*

Many of the consultants that quoted would be aware of terry's work and as such, are also aware that he is not qualified to do a full review especially with regards to street lighting, signals etc. It would be difficult to justify selecting him when they have not been given the opportunity to quote on the specifics that terry has quoted on.

.....To ensure the City is not placed in an awkward position, I suggest that I e-mail to all consultants that submitted a quote and advise them of the change in the specification and give them an opportunity to requote for review of the levels only. Terry quote is very low (including his hourly rate)

Could you advise if you agree with this proposal or if you wish me to follow through on what you have already asked me to do: ie award to Terry Blanchard."

(Design Engineer to Executive Engineering with cc's: Email 17 November 2011)

79. The Executive Engineering agreed, as the email suggested, and subsequently a new design brief was forwarded to all the previous respondents (EXH 127) who had provided quotes, including Blanchard Consulting Solutions. This amended design brief clarified in more detail the limited scope of the works.
80. In an email dated 29 November 2011 (EXH 128), Mr Terry Blanchard advised the City that he had been informed that his original quote was the most competitive:

"I also through a staff member understand that my quote was most advantageous to the City. Accordingly I would have supposed that any reduction in costs would have been only asked of me"

81. Mr Blanchard also refers to a notice of motion (contained in the minutes of Council's Ordinary Meeting of 22 November 2011) that was not put to Council until 13 December 2011:

"I also understand that the City now requires all quotations to be treated similar to tenders and that they will be placed in the tender box to be opened with elected members present and request that this happens."

82. It is clear from an email from the Design Engineer (EXH 129) that staff were concerned about Mr Blanchard's access to City information:

"I refer to Terry's email below. I am concerned about his comment that a staff member has advised him that his quote was most advantageous."

His comment about quotes being treated similar to tenders is not correct. At the last council meeting, council asked that the City to investigate an option to treat quotes as tenders and to be placed in the Quote box (I believe they mean Tender box). There was no resolution at this time to make it so and there is nothing in the minutes about elected members being present."

(Design Engineer to Executive & Manager: Email 29 November 2011)

83. Four quotes were resubmitted that included Blanchard Consulting Solutions' revised quote of \$958.

84. Based on his quote being the cheapest quote, the City awarded the design review contract to Blanchard Consulting Solutions (EXH 130) on 12 December 2011. The City's Design Engineer commented his quote "was very low" (Design Engineer to Executive Engineering: Email 17 Nov 2011).

85. Mr Kevin Jefferies, who was the Acting Executive of Engineering and Technical Services, commented during his interview with the Inquiry that:

"...Council weren't satisfied that – because we didn't – we weren't recommending Terry Blanchard as one of those companies, because in our view he didn't have all the skills or meet all the criteria that we were looking for in that sort of a panel. Council didn't accept that, they wanted that reviewed – the impression I got was they wanted Terry Blanchard as part of that – that panel...there's no doubt in my mind he wanted that work..."

(Kevin Jefferies interview: 4 May 2012 transcribed from 1:06:56)

86. Four months later, on 13 April 2012, the report from Blanchard Consulting Solutions was received by the Acting CEO Mr Andrew Sharpe.

CHAPTER 19

Recruitment, Executive Engineering and Technical Services

November 2011

THE FIRST RECRUITMENT PROCESS

87. Mr Dacombe advised the Inquiry that around June 2011, the Executive Engineering and Technical Services, Mr Charles Sullivan, resigned following an extended period of hostility towards him, displayed in particular by Councillors Mason and Barry:

“Charles’ departure was proceeded(sic) by a prolonged campaign of hostility towards him by some Elected Members (particularly the Deputy Mayor and Cr Barry)

His decision in the end was to resign which he did some time in June 2011 I recall. His final date should have been towards the end of August however his relationship with the Mayor and Councillors by mid-July was such that he advised me he was leaving forthwith and I chose not to enforce his notice period.”

(Mark Dacombe Submission: 12 March 2012)

88. Following Mr Sullivan’s resignation, the position of Executive Engineering and Technical Services became vacant on 10 June 2011. The existing Position Description
-

was reviewed in line with other Executive positions as part of an organisational restructure under the *Refocus Program*. The CEO advised elected members on 6 July 2011, that he would temporarily place the engineering portfolio under Mr Kevin Jefferies, until the position could be filled. (EXH 133).

89. Mr Dacombe informed the Inquiry of his concerns regarding the Mayor's and Cr Mason's involvement in a management decision:

I was still working through what to do. I recall talking to the PAG about my preferred approach at that stage, being to complete the Engineering Review and then recruit into the new structure should any changes be desirable.

The Mayor objected to that on the basis a new appointee may not agree with the structure and may want to change it. The Mayor spoke at length and at the time I recall thinking that he was attempting to substitute his judgement for mine on a management issue for which I was ultimately responsible.

(Mark Dacombe submission: 7 June 2012).

90. In an email dated 6 July 2011, Cr Mason also expressed his view to the CEO that he did not support this decision. Cr Mason's email went on to describe various issues he had with the operation of the Engineering Department:

"Mark

After a couple of hours of careful consideration I am afraid that I cannot support your proposal to put Kevin in charge of the Engineering Department.

I appreciate your faith in Kevin and the work he has done so far in tidying up, what was the planning basket case and granted the assistance he received from a qualified planner in Charles Johnston went a long way in confirming the issues to address and what steps needed to be taken to rectify all of the problems but I believe the job in engineering is far too big and your outline this evening has done very little to instil any confidence in the outcome..."

(Cr Mason: Email to Mark Dacombe, 6 July 2011)

91. Mr Dacombe advised of the criticisms levelled at Mr Jefferies following his appointment to the Acting position.

“Through this period Kevin was subjected to a very high volume of queries from Councillors Mason and Barry in particular. At the same time I received complaints from the Mayor and the two Councillors that Kevin was not responsive enough, was never available when called and did not return calls. Some of these complaints were made about other Executives but they were most strident about Kevin. He also got a rougher ride in Council meetings with Councillor Olsen generally leading the charge sometimes with innuendo about Kevin’s lack of a town planning qualification. The evidence (which I can expand on) is clear that this was a campaign to discredit Kevin and show that the whole Executive team was not up to the job.”

(Mark Dacombe submission 7 June 2012)

92. On 11 August 2011, Cr Mason moved an amendment to the adoption of the Annual Budget (report CR-137-11) (EXH 134) adding a new part to the Officer’s recommendation:

“(b)...

...(5) That no expenditure of Account 46149 be approved until a Report comes before Council outlining the numbers of employees engaged along with a Job Description and all new possible recruitment of Senior and Technical Positions.

CARRIED BY ABSOLUTE MAJORITY”

93. This resolution effectively put on hold the ability of the CEO to recruit for senior and technical positions without first providing a report or business case to Council.
94. On 13 September 2011, report CE-034-11 (EXH 135) was provided to Council providing the requested information on the recruitment of key staff and the utilisation of the budget for the process. This report also highlighted the impact and risks created by the Resolution:

“In approving the 2011/2012 budget on 11 August 2011, Council resolved in part:

(5) That no expenditure of Account 46149 be approved until a Report comes before Council outlining the numbers of employees engaged along with a Job Description and all new possible recruitment of Senior and Technical Positions.

As all non-salary recruitment costs are covered from Account 46149 this has effectively put on hold all Recruitment in the interim.” [emphasis added]

95. It also identified the risk to Council:

“Progress with the implementation of the 2011/2012 budget programme depends on the availability of suitably qualified staff. The high risk of not proceeding with the recruitment process now is a failure to deliver significant parts of the programme.”

96. The Officer’s recommendation called on the Council to release the recruitment funds to in effect, allow the City to operate effectively:

(b) That the budget provided in Account 461479 Recruitment costs be released in order to enable positions to be filled and the costs of recruitment of staff to be met”

97. Cr Barry moved another amendment:

“MOVED Cr Barry, Seconded Cr Daly,

- (a) That this item be referred to a Council Briefing for clarification and a comprehensive breakdown of qualification, terms of Contract, or full time, part time as well as introducing already recruited Employees to explain their Scope/Briefs to Council.*
- (b) above to be held within 2 weeks of the Ordinary Council Meeting of 13 September 2011 with a further report being presented at the Ordinary Council Meeting of 11 October 2011.”*

Comment followed by Cr Barry, with questions by Cr Boylen responded to by Executive City Futures. Following further comment by the Chief Executive Officer and questions by Cr Barry, the Mayor suggested that the Motion include part (a) of the Officer’s recommendation and the following words be included in part (b) – “ that a Council Forum be held in relation to current and new positions to be recruited by the City”.

Following this, Cr Barry withdrew his Motion, which was agreed to by the Seconder.

98. Council resolved to refer the matter to the 20 September 2011 Council Forum (EXH 136) for further discussion:

*“MOVED Cr Barry, Seconded Cr Daly,
That:*

(a) That Report CE-034-11 be received.

(b) That the budget provided in Account 46147 Recruitment costs be released in order to enable positions to be filled, and a Council Forum to be held in relation to current and new positions to be recruited by the City.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Elliott, Clarke, Morgan, Daly, Dowsett, Wheaton and Boylen”

99. At the Ordinary Council Meeting 27 September 2011 a report from the 20 September 2011 Council Forum was reviewed. The report covered many items under the umbrella of the Refocus Program and provided suggestions and recommendations associated with structural changes (EXH 138).
100. Attachment 4 to that report included “*Engineering and Technical Services draft brief*” which was a report about the CEO’s proposal to engage an external consultant to conduct a review of the Engineering area to provide advice on “*developing a more commercial framework*”. The Officer’s report made ten recommendations, calling on the Council to approve or note various actions to progress matters including:

“(e) The Council APPROVE the draft brief for the review of the structure of the Engineering and Technical Services Division and NOTE that proposals and quotations will be invited and referred it to the Project Advisory Group for action.”

The above recommendation was in effect seeking Council approval to engage a consultant to conduct a review of the structure of the Engineering and Technical Services Division of the City.

101. The following amendment (EXH 137) deferred all recommendations (except (f)), replacing (e) with a resolution to immediately advertise the Engineering position.

*“Item No: CE-036-11
Amendment*

Cr Mason suggested an amendment with a new part (b) and (c) be included in the Officer's recommendation, as follows:

MOVED Cr Mason, Seconded Cr Daly, that:

(b) The Chief Executive Officer be authorised to immediately advertise for the position for an Executive Engineering and Technical Services and that the Mayor and Deputy Mayor be appointed to the selection panel. [emphasis added]

(c) All other items included in Recommendation CE-036-11 with the exception of (f) be deferred and brought back as individual items.

Following comment by Cr Mason, the Mayor put the amended Motion, viz;

(a) Report CE-036-11 be received.

(b) The Chief Executive Officer be authorised to immediately advertise for the position for an Executive Engineering and Technical Services and that the Mayor and Deputy Mayor be appointed to the selection panel.

...

CARRIED

*For: The Mayor, Crs Barry, Mason, Clarke, Olsen, Morgan, Daly and Wheaton
Against: Cr Elliott"*

102. The Inquiry asked Mr Dacombe to comment on this Council decision:

"This was done without any prior reference to me. From this resolution I understood the Council's intent to be that they wished me to recruit into a similar position to that vacated by Charles Sullivan and I proceeded on that basis.

While this resolution contradicted the structure the Council had approved in July 2010, I decided that it didn't preclude implementation of that structural change in the future."

(Mark Dacombe submission: 7 June 2012).

103. The Inquiry interviewed the Mayor and asked for clarification on the purpose of the motion:

AUTHORISED PERSON: *“Why was a motion passed to specifically appoint yourself and the Deputy Mayor onto this selection panel?”*

WITNESS: *I dunno. I cannot answer that.*

AUTHORISED PERSON: *What was the purpose for yourself to be on this panel?*

WITNESS: *I – I think, the way I read that was purely as a – as an observer, because other Council’s do the same sort of thing. That – that’s entirely up to the CEO.”*

(Mayor Delle Donne interview: 20 April 2012 transcribed from 3:23:05)

104. Mr Dacombe told the Inquiry that it was implied to him that he was tardy in the implementation of this Council resolution, and this became the subject of a question from Cr Barry discussed at the Council meeting of 8 November 2011.
105. In an email dated 7 November (EXH 139) Councillor Barry submitted a question to the CEO on notice:

“Question – Can the CEO please advise as to whether he has actioned, Council Resolution, Part (b) of CE -036-11, OCM 27th September 2011, i.e. the IMMEDIATE advertising, seeking applicants to fill the position of Executive Engineering and Technical Services for the City of Canning and if the answer is in the affirmative, then which publications (date / page and section) has it appeared, also which Agency has been commissioned to handle the prospective applicants, (If any at all)

If the answer to the above is in the negative, then can the CEO please provide clear substantiation as to why he has failed to action Council’s resolution of Part (b) CE- 036-11 of OCM September 27th 2011.”

(Cr Barry to Mark Dacombe: Email 7 November 2011)

106. The Minutes of Ordinary Council Meeting 8 November 2011 (EXH 140) record the CEO’s response:

“Answer 1: The following action has taken place in regards to Resolution CE-036-11 actions following the Ordinary Council Meeting held on 27 September 2011:

1. Review of job description

2. Quotations sought from 4 Recruitment Consultants on 10 October 2011.

3. 3 Quotations received and reviewed 14-17 October 2011.

4. Details of Consultant quotes referred to Mayor and Deputy Mayor on 18 October 2011. Preferred consultant LOGO.

*5. **Advertising and headhunting strategy discussed with consultants 27 October 2011.** (emphasis added)*

6. LOGO currently collecting information from Qld and NSW managers about possible candidates

6. (sic) Advertisement to be run this week in The Australian, followed by LOGO website and the West Australian"

107. In a later response to Mayor Delle Donne and Cr Mason dated 14 November 2011, (EXH 141), the CEO confirmed that elected members had been apprised at the November Forum meeting that he had been actively seeking to 'headhunt' a suitably qualified candidate, and in this regard had approached a Mr John King and asked if he would be interested in the position. Mr King declined the offer as he was unavailable to take on the role.

108. However, Mr King did offer to sit on any subsequent interview panel as an independent member with expertise in the area. Mr King advised he had some experience sitting on selection panels as he had just completed that function for interviews within the City of Armadale.

109. The following email between the Mayor and Cr Mason (EXH 142) refers to Mr Dacombe's advice he had been head-hunting a suitable candidate for the engineering position.

" Hello Bruce,

Think Mark is trying to take this appointment out of our hand? What do you think? I am of the view that this recruitment was not done in accordance with Council's resolution?"

(Document A9 COC 005 007: Email 14 November 2011)

110. The Mayor was asked by the Inquiry what message he was trying to convey in the email to Cr Mason (EXH 143):

WITNESS: *"Well, the advice I received [indistinct] – the – the I think Regulation eighteen, and under the Act it says any other Council – I think I got it here actually – [refers to document][indistinct] and I gave a copy of this to the CEO as well, at the time, for him to comment, but it was just purely in a manner that I wanted to make sure, as far as he was concerned, that everything was – was okay. Like (f) under 18(a) it says that any other information that the local government considers relevant, now I thought that the local government is the Council, I dunno, that's the way I read it. And I gave a copy of this to the CEO at the time."*

Regulation 18A(2) of the *Local Government (Administration) Regulations 1996*:

"An advertisement referred to in subregulation (1) is to contain —

...

(f) any other information that the local government considers is relevant."

AUTHORISED PERSON: *"Was it not the intention of yourself to specifically have yourself appointed and the Deputy Mayor on the panel to retain control of these appointments?"*

WITNESS: *No that's – can't be, no way. Because we don't – like I said to you is that these were purely as observer."*

(Mayor Delle Donne interview: 20 April 2012 transcribed from 3:25:28)

111. This 'headhunting' process by the CEO was referred to by the Mayor as *"Think Mark is trying to take this appointment out of our hand?"* This, together with the Mayor's and Cr Mason's appointment to the selection panel, demonstrates the intent of Mayor Delle Donne and Cr Mason to have direct involvement in the selection process.

MAYOR AND DEPUTY MAYOR APPOINTED AS 'OBSERVERS'?

112. It was later claimed by the Mayor during interviews with the Inquiry that he and Cr Mason were appointed on this selection panel only as 'observers'. This claim is in conflict with the Council resolution and the evidence received from the CEO, Mr Dacombe, who said he understood the resolution to be clearly appointing a selection panel consisting of the Mayor, Cr Mason and the CEO only. Obviously, this configuration meant the Mayor and Cr Mason were not just observers.

113. Mr Dacombe advised in his submission to the Inquiry:

"I was also clear that they intended that the Panel be me, the Mayor and the Deputy Mayor. I believed the resolution was contrary to the Local Government Act, [emphasis added] that it was not consistent with good governance, and that it was clear evidence that I was being manoeuvred with respect to the appointment."

(Mark Dacombe submission: 7 June 2012).

114. Mr Dacombe went on to explain what happened at a meeting he held with the Mayor on 17 November 2011 when the selection process was discussed:

"I was going on leave from the evening of 23 November 2011 and wished to cover a number of matters with the Mayor before I went. I think that meeting took place on or around 17 November 2011. (I took notes of the meeting and on request provided a copy to the Mayor before I went on leave.) At this meeting I recall that I discussed with him the process that I was following to recruit the Engineer. I recall him asking whether he and Councillor Mason would see the whole list of applicants or just the short-list. I said that I would be happy with showing them the whole list on a confidential basis. I believe that it was at this meeting that he commented to the effect that he supposed anyone he knew would not be considered for the role [emphasis added]. I recall saying that all candidates would be assessed on their merits...

...Given the context in which it was made I saw the comment as indicating I would be accused of bias if I did not favour the Mayor's relative, Mr Blanchard who by now I was aware was applying."

(Mark Dacombe submission: 7 June 2012).

115. On the 18 November 2011 Cr Barry sent an email to the CEO (EXH 144) seeking a copy of the *“Package details for the application of the position of Executive Engineering & Technical Services, i.e. Qualifications, Scope of work, Remuneration etc.”*

116. Mayor Delle Donne sent an email dated 18 November 2011 EXH 146 and EXH 147) with the subject: *Canning Executive Engineering & Technical Services Application Pack*. This email was only sent to Councillors Mason, Barry and Olsen:

*“Hi Councillors,
I think that the way I interpret last page is the selection criteria which are set to select a management qualified person not and (sic) engineer?
We got to be careful as to whom we are going to straiten (sic) the Engineering position this time or may be later on when the head is no longer there. Otherwise we are going to have another spin doctor into the folds. Read from different eyes.”*

(Mayor Delle Donne: Email 18 November 2011)

117. It was clear that leading up to 18 November 2011 the CEO, Mr Dacombe, had become concerned with the involvement of the Mayor and Cr Mason in the selection process:

“I had contemplated seeking advice from the Department of Local Government on the issue of the appointment of the panel but was concerned about escalating the conflict. The Mayor’s comment tipped the balance for me and I sought advice from the Department. I believe that I called Jenni Law (Manager Advice and Support) after the meeting and saw her on Friday 18 November.”

(Mark Dacombe submission: 7 June 2012)

118. Mr Dacombe emailed the Department of Local Government (EXH 148) outlining his concerns about the Council resolution that placed the Mayor and Cr Mason on the selection panel:

“Thank you for seeing me at short notice on Friday. I had intended to be composed however, stress got the better of me and I do appreciate how you handled that.

The resolution of the Council that I have a problem with was passed at the Ordinary Meeting held on 27 September.... That is being interpreted as the interview panel being the two elected members plus myself.

Following our discussion I propose to advise the Council that this is contrary to the provisions of the Local Government Act 1995, sections 2.8, 2.9 and 2.10, and Section 5.37 and that the Department of Local Government has confirmed this is the case.

I will be proposing to the Council a process that sees me presenting to them a recommendation pursuant S 5.37(2) based on an interview process conducted by a panel comprising myself, one of the current Executives and an independent person recognised as a senior member of the engineering profession...

I will be talking the Mayor tomorrow afternoon about this issue and the Council in the evening.”

(Mark Dacombe to Jenni Law: Email 22 November 2011)

119. Mr Dacombe advised that he held an informal meeting with the elected members on 23 November. He explained:

“The purpose of these meetings was to identify and work through issues that were of concern to the Council and to me. At that meeting I referred to the recruitment process that was then underway and floated the idea that the interview panel include Mr John King, a respected and independent senior member of the engineering profession. This received a very cool reception and I did not push the issue at the meeting.”

(Mark Dacombe submission 7 June 2012).

120. On 24 November 2011, Mr Dacombe emailed the Department and advised:

“Well, I have got agreement (I think) to bringing the outstanding matters back to Council and am gearing up for this to happen on 13 December.”

121. The position of Executive Engineering and Technical Services was subsequently managed by LO-GO, (EXH 149), a recruitment agency specialising in local government recruiting. A number of applicants responded by the closing date of 5 December 2011.
122. In an email to Cr Mason dated 9 December 2011, (EXH 150), Mr Dacombe advised that he was aware of Cr Mason's proposed motion to cancel the "Refocus" Program. Mr Dacombe warned of serious consequences if this motion was passed and also raised concerns about another proposed motion dealing with advertising a position of Executive Town Planning Services that proposed to appoint the Mayor and Cr Mason to the selection panel:

"SECOND NOTICE OF MOTION RE APPOINTMENT OF AN EXECUTIVE

The motion [advertising position Executive Town Planning Services] in its current form is contrary to the Local government Act as was the motion related to the Executive Engineering and Technical services. While I am happy to proceed with recruitment as requested the matter of the selection process will need to be resolved and agreed." [emphasis added]

(Mark Dacombe: Email to Cr Mason 9 December 2011)

123. Mr Dacombe advised in his submission to the Inquiry (5 June 2012):

"At the very brief meeting I had (with Andrew Sharpe present) just prior to the Council meeting on 13 December 2011 (the day of my return to work) I again advised the Mayor that the Council resolution on that matter was not in accordance with the Local Government Act. His response was that it did not matter who was on the panel as my recommendation on the appointment would have to be approved by the Council anyway.

At the 13 December Council meeting my advice regarding the panel, and other matters, was ignored and the Council passed a similar resolution regarding the appointment of an Executive Town Planning."

124. At the 13 December 2011 Ordinary Council Meeting, the motion that the CEO had previously advised Cr Mason was contrary to the *Local Government Act 1995*, was moved by Cr Mason (EXH 151) and adopted by Council:

“Motion 2

MOVED Cr Mason, Seconded Cr Daly, that:

The Chief Executive Officer be authorised to immediately advertise for the position for an Executive Town Planning Services and that the Mayor and Deputy Mayor be appointed to the selection panel.[emphasis added]

...

The Mayor then put the amended Motion, viz:

(a) The Chief Executive Officer be authorised to immediately advertise for the position for an Executive Town Planning Services and that the Mayor and Deputy Mayor be appointed to the selection panel.

(b) In the meantime, the Chief Executive Officer and the Mayor immediately appoint and outsource an independent and qualified planning consultant to assist the City with Planning Applications and Approvals before the end of January 2012.

(c) The Council to be kept informed of the progress and applications.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Mason, Daly, Clarke, Olsen, Morgan, Barry, Elliott, Boylen and O'Donnell”

125. On 16 December 2011 the CEO requested a meeting with the Department of Local Government (EXH 152) to raise his significant concerns about the Council meeting of 13 December 2011. The representative from the Department of Local Government documented the subsequent meeting with Mr Dacombe, which occurred on 19 December 2011.

126. The matters raised at the meeting by Mr Dacombe included:

- Major concern about the Resolution that all work associated with ‘Refocus’ to be ceased being in conflict with another resolution to continue some Refocus projects.
- Given the large scope of projects covered by Refocus, cancelling some projects would directly impact on the CEO’s administrative decision making.

127. The CEO advised in his email (EXH 153) that he saw his 'absolute obligation' was to carry out Council's lawful instructions and he wanted to make sure those were clear and unambiguous.
128. On 22 December 2011 Mayor Delle Donne was advised by Mr Dacombe via email (EXH 154) that interviews for the Executive Engineering and Technical Services position were scheduled for 9 January 2012. Records show that the Mayor forwarded this same email to Cr Mason the following day.
129. Cr Mason sent an email (EXH 155) to Mr Dacombe on 3 January 2012, seeking the same information he had already received from the Mayor. The CEO replied to both parties (EXH 156) advising that he would be providing further details of the interview process.
130. The CEO it appears, may have partially dealt with some of his concerns about the Mayor and Cr Mason sitting on the Panel by increasing the size of the panel. On 5 January 2012 (EXH 157) he wrote to the Mayor and Cr Mason:

"I would also normally include one of the other Executives but in this case I think that would make the panel too big.

The Panel will therefore be chaired by me and include yourselves, John King and one consultant from LOGO Appointments to assist the process.

The panel constructed in this manner will ensure that I meet my obligations under the Local Government Act 1995 S 5.41(g) while accommodating the Council's wish that you participate in the panel process"

(Mark Dacombe to Mayor Delle Donne and Cr Mason: Email 5 January 2012)

131. In relation to this email Mr Dacombe advised:

"I wrote to the Mayor and Deputy Mayor on a date that I cannot recall inviting them to be on the panel that would also comprise me, Mr John King, and a LOGO consultant. At some point the date for the interviews was agreed,

9 January 2012. That email may have included the full list of applicants that I had undertaken to provide to them."

(Mark Dacombe Submission: 7 June 2012)

132. At this stage it appeared the Mayor and Cr Mason had every intention of sitting on the selection panel despite the clear advice they had received from the CEO that this was contrary to the *Local Government Act 1995*. However, the panel, as it now stood, consisted of the CEO and two other members, which meant the Mayor and Cr Mason would not have the numbers to dominate the panel.
133. On 6 January 2012 the Mayor and Councillor Mason were provided documents (EXH 158) marked "Confidential", listing all applicants and the names of those applicants shortlisted for interview:

"I prepared four booklets containing the details of the applicants to be interviewed. I also believe that I included again the full list of applicants. I think there were four interviews scheduled plus one who subsequently withdrew. I then personally delivered these booklets to the homes of the Mayor, Deputy Mayor and Mr John King on Friday, 6 January 2012."

134. It would have come to the notice of the Mayor at this time that Mr Terry Blanchard was one of the applicants who had applied and been shortlisted for the position. In addition to the issue that had been brought to the Mayor's notice regarding the appropriateness of elected members sitting on an employee selection panel, he should have been aware of his obligations under the provisions of the City's Code of Conduct dealing with conflicts of interest:

Council Members...who exercise recruitment or other discretionary function will make disclosures before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

(City of Canning Code of Conduct, clause 2.1(d))

135. On the Sunday 8 January at 9:25pm the Mayor Delle Donne sent an email (EXH 159) to the CEO and cc'ed to all elected members calling for an urgent meeting:

"Good evening Mark

I would like to bring to your attention my concerns relating to tomorrow interviews that to my knowledge based on my research and review of the documentation available to me it appears that correct due process have not been adhered to?

In the morning I suggest that this issue needs to be addressed as matter of urgency.

Regards

Mayor Joe"

(Mayor Delle Donne: Email 8 January 2012, 9.35PM)

136. The Mayor, Cr Mason and the CEO met prior to the interviews and had a discussion about the Mayor's concerns. The Mayor provided his summary of the meeting (EXH 160) to the CEO by email at 10:40 AM:

"This is to confirm that this morning at approximately 9:10 AM in the presence of the Deputy Mayor Cr Mason in my office have discussed due process of the advertisement of the Executive Engineering and Technical Service position. In my view in some instances due process have not been followed and your admission have reviewed condition of the employment of this position.

I expressed my concern that certain elements in this matter have not been expressed by council to my knowledge. Therefore in my view section of the relevant Act 1995 and Regulations have not been adhered too. Consequently myself and Deputy mayor felt that would have been inappropriate to fulfil Council resolution to seat(sic) on the interviewing panel."

(Mayor Delle Donne to Mark Dacombe: Email 9 January 2012, cc all Elected Members)

137. The CEO, Mr Dacombe provided his account of this meeting:

"I had arranged for the panel to meet half an hour before the first scheduled interview. I recall greeting Helen Passmore from LOGO and John King and taking them to the interview room. I then went to the Mayor's Office and met with the Mayor and Deputy Mayor. The Mayor started by signing a form saying he had an association with Mr Blanchard. Councillor Mason then said that he had better sign one as well because he had met Mr Blanchard. The Mayor went on to say that he could not participate in the interviews because "due processes" had not been followed. He then read from that part of the

Regulations that set out what must be included in an advertisement for a "senior employee" vacancy. He said I was required to report those details to the Council and hadn't.

I said that I did not believe that the process was invalid at all and asked the Deputy Mayor what he planned to do. He said that like the Mayor he could not compromise himself by participating in the interviews. The Mayor then said that it my responsibility and up to me what I did. I told them that I would proceed with the interviews."

(Mark Dacombe submission: 7 June 2012)

138. The Mayor and Cr Mason appeared to primarily be concerned about the advertised position not being referred to Council. Presumably this either related to the position being a new senior position or he believed a Council resolution required it be reported to Council.

139. The CEO clarified with Cr Mason the same morning (EXH 161) the issue of the need to report a new senior position to Council advising:

"Just for the sake of clarity I did not indicate it was a new position. I did say that the job description was reviewed. This is good practice whenever a vacancy occurs."

(Mark Dacombe to Cr Mason: Email 9 January 2012)

The Inquiry noted that the position advertised as 'Executive Engineering and Technical Services' was an existing vacant position and not a newly created senior position.

140. In the Mayor's interview with the Inquiry on 20 April 2012, he expanded on his allegation that there was a breach in the recruitment process.

WITNESS: *"It was something to the effect to say that in relation to what I read in the Act, Regulation 18.*

AUTHORISED PERSON: *And – and what specifically was the breach that you felt –*

WITNESS: *That I thought that it was not conducted, as I understood, in accordance with the – with the Act, the Regulations.*

AUTHORISED PERSON: *And which part of – of the process did you think was in breach of that – process?*

WITNESS: *Well one of the process was that under the package, as I read it, was that the advertised – for example was for three years, when the interview was to be conducted to show there was five years and [indistinct] those things and, that's about it, I didn't do any more or less than that."*

(Mayor Delle Donne: Interview 20 April 2012: 3:27:53)

141. The Mayor was perhaps referring to the advertising process in which the position was advertised in *The West Australian* newspaper in 19 November 2011 and in *The Australian* newspaper on 12 and 19 November 2011 inviting potential applicants to obtain the application package. The application package stated the position was for a three year term.
142. LO-GO Appointments, who conducted the interview process, provided some explanation of the reference the Mayor made to the advertisement referring to a three year appointment "*when the interview was to be conducted to show there was five years*". LO-GO explained that when the interview package was delivered to the Mayor and Cr Mason on or about 6 January 2012, the package contained the proposed interview questions that were to be asked at the 9 January 2012 interviews. These interview questions contained a typographical error in the question "*Are you aware this is a Senior Officer appointment based on a 5 year performance based contract*". This error was apparently identified by the LO-GO consultant who sat on the selection panel, and the error was corrected at the 9 January interviews.
143. Notwithstanding that the error was identified and corrected at interview, the raising of this matter by the Mayor as grounds for his withdrawal from the process is confusing. If the Mayor had identified an error in the interview questions prior to the interview, why didn't he simply advise the CEO so this could be corrected? Given the interviews had not taken place and the questions had not been given to any

candidates, it was a simple matter to correct the typographical error. There were no grounds to use this issue to claim the process was in breach of the Act.

144. Cr Mason's emails to the CEO also asserted that the recruitment should have been reported to Council, as it was a new (senior) position. As stated previously, this was not a new position it was an existing vacant position.
145. In Cr Mason's evidence to the Inquiry he also described what he claimed was a conflict of interest that he believed breached the recruitment process. He advised (interview 20 April 2012 Part 2, commencing 1:30 mins) that he had claimed at a previous Council Forum that Mr John King had performed work for the City and as Mr King had been "head hunted" and refused an offer of this position, he should have subsequently declined to sit as an expert on the selection panel. Cr Mason suggested that this was a conflict of interest and a breach of the recruitment process.
146. Notwithstanding the publication of the advertisement for the position in the 19 November 2011 edition of *The West Australian* newspaper, and the apparent belief of the Mayor and Cr Mason that the appointment was for a new senior officer position that should have been reported to Council, the fact this appointment process had begun was a matter that they had been aware of for some time. However, the Mayor and Cr Mason did not raise these issues until the morning of the planned interviews, on 9 January 2012.
147. This purported desire to maintain the integrity of the process was not reflected in their actions regarding other issues that also affected the integrity of the selection process. For example, neither Mayor Delle Donne nor Cr Mason acted on the CEO's advice that their membership of the selection panel was contrary to the *Local Government Act 1995*, or acted in relation to the Mayor's membership being contrary to the City's Code of Conduct.

148. Despite the claims by Mayor Delle Donne and Cr Mason that the recruitment process had been 'breached', the interviews for the Executive Engineering and Technical Services position scheduled for this day went ahead though without the Mayor or Cr Mason participating.
149. The Inquiry considers a reasonable conclusion to draw from the information submitted to the Inquiry is that Mayor Delle Donne and Cr Mason were not simply seeking some avenue to withdraw from the interview process. After all, if they were concerned about the integrity of the process it would have been expected they would have withdrawn from the time the CEO informed them of something as significant as their membership of the selection panel being contrary to the Local Government Act. Another opportunity to withdraw presented itself when the Mayor became aware he had a relationship with one of the applicants. Inexplicably, instead of withdrawing, citing one of these reasons which appear to be just as, if not more, significant than the process issue they had raised, they state on the morning of the interviews that they are formally withdrawing because of the failure to inform Council of a new Senior Officer position and an error in the interview questions.
150. It is perhaps relevant that the reasons they cited for withdrawing, were not connected with the inappropriateness of their being on the selection panel (contrary to the Local Government Act) or to the Mayor's relationship disqualifying him from the panel (in accordance with the City's Code of Conduct). Rather, they chose to cite reasons that were more directly related to compliance and integrity of the appointment process.
151. It is the conclusion of this Inquiry from the late timing and nature of the attacks on the selection process that it was not the intent of the Mayor and Cr Mason to simply withdraw. They wanted to devise a way to discredit the process so it would be abandoned, leaving the position unfilled so they would have a further opportunity to influence the outcome at a later date. Significantly, the timing of the attacks followed the CEO's advice of 5 January 2012, that he had appointed an additional

two members to the selection panel. This meant the Mayor and Cr Mason would not be able to dominate any decision of the selection panel.

152. In a private email from Mr Dacombe to Mike Richardson, (EXH 162), the City's consultant on the organisational restructure, Mr Dacombe expressed a view that the Mayor and Councillors Mason and Barry were working together to drive him out:

"Things have taken a substantial turn for the worse. I had two sessions with the Council before I went to the UK on 24 Nov and these were pretty rough"...

"...Since I have been back the Mayor has hardly spoken to me. At some point he has decided that I am working against him and I think the plan is to drive me out using techniques they have developed over time."

"The Mayor and his two helpers are crawling all over the organisation now looking for evidence to support their conclusions."

(Mark Dacombe to Mike Richardson: Email 21 December 2011)

153. Following his experience with the flawed performance review and with the knowledge that the Mayor and Cr Mason had lost faith in him, Mr Dacombe went to Mayor Delle Donne on 18 January 2012 to offer to negotiate his separation from the City.

154. A short time later on 30 January 2012 Mr Dacombe was 'suspended' or placed on forced leave by Mayor Delle Donne. Mr Dacombe advised the Inquiry that he was shocked and surprised when, without warning, he was told to leave the premises:

"I had not resolved the matter sufficiently to take a report to the January meeting of the Council. Had I not been removed on 30 January I would have made every attempt to put my recommendation before the Council at its first meeting in February as I was most concerned about leaving the applicants in limbo."

(Mark Dacombe submission: 7 June 2012)

155. Mr Dacombe reasonably dismissed the Mayor's and Cr Mason's claims of a "breach" and continued to complete the interview process by selecting a preferred candidate whom he intended to put before Council at its first meeting in February. That did not

occur, because on 30 January 2012 Mr Dacombe was arbitrarily ‘suspended’ by the Mayor and instructed to immediately leave the City premises.

FINDING 46

Council interfered with the statutory functions of the CEO by directing him to immediately advertise the position of Executive Engineering and Technical Services and to appoint the Mayor and Cr Mason on the selection panel.

FINDING 47

By directing that the Mayor and Deputy Mayor be appointed to the selection panel for the Executive Engineering and Technical Services position, Council acted inconsistently with sections 2.8, 2.9, 2.10 and 5.37 of the *Local Government Act 1995*.

FINDING 48

Mayor Delle Donne acted contrary to clause 2.1(d) of the City’s Code of Conduct in that he failed to immediately exclude himself from the recruitment process when he became aware that Mr Blanchard, his daughter’s father-in-law, was an applicant for the Executive Engineering and Technical Services position.

FINDING 49

Mayor Delle Donne and Cr Mason failed to disqualify themselves after being advised by the CEO that their participation in the selection process for the Executive Engineering and Technical Services position was inconsistent with the *Local Government Act 1995*.

Natural Justice Response

156. In the course of preparation of this Report, the suggestion was made by some councillors that criticisms foreshadowed by this Inquiry of their conduct, were also indicative of a failure by the CEO to properly perform his function under section 5.41 *Local Government Act 1995* to ensure that advice and information was available to the Council so that informed decisions could be made.
157. The Inquiry provided Mr Dacombe with these criticisms and an opportunity to respond. In that response Mr Dacombe provided information that was relevant to the absence of his advice informing Council that it was acting inconsistently with sections 2.8, 2.9, 2.10 and 5.37 of the *Local Government Act 1995* when it made its decision to direct that the Mayor and Deputy Mayor be appointed to the selection panel for the Executive Engineering and Technical Services position.
158. Mr Dacombe advised in his response that prior to the 13 December 2011 meeting at he was not aware of any intention to move a motion to appoint the Mayor and Cr Mason on a selection panel nor had any advice been sought. The direction to appoint arose from an amendment moved by Cr Mason at the meeting. Mr Dacombe advised that this “ambush” approach of moving motions without warning became the norm. As such, there was no time to consult the *Local Government Act 1995*.

159. Mr Dacombe stated in his response that it was not until after this meeting that it was determined that Council's direction was not consistent with the *Local Government Act 1995*. Mr Dacombe became aware that Council was not empowered to give the direction it did , but that he could, if he chose, invite elected members to sit on the Panel.
160. It would appear in these circumstances that Council's actions in moving motions 'from the floor' (not placing them on the Agenda prior to the meeting) were a significant contributor to the CEO being unable to provide or make available relevant advice that would have assisted Council at the relevant meetings.

Natural Justice Response

161. In Cr Mason's submission (5 November 2012), it is suggested that Council relied on Regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* to authorise the Mayor to "*undertake a task that contributes to the administration of the local government*" i.e. in this case to place Mayor Delle Donne and Cr Mason on this employee selection panel. This view is rejected by the Inquiry. The Inquiry's view as to the application of Regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* and as the powers available to Council, are dealt with in Part 6 of this Report.

CHAPTER 20

Recruitment, Executive Engineering and Technical Services, Second Attempt

April 2012

THE SECOND RECRUITMENT PROCESS

162. The Acting CEO, Mr Andrew Sharpe, advised Council at its Ordinary Meeting of 27 March 2012 of his intention to readvertise the position of Executive Engineering and Technical Services.
163. This was confirmed via email (EXH 163) to all elected members dated 31 March 2012.
164. The advertisement was published on 31 March 2012, the application closing date being 16 April 2012. Eight applications were received. The City used its own internal resources to carry out the recruitment process, and short listed three applicants.
165. Mr Terry Blanchard was once again an applicant and was selected for interview. These interviews were conducted at the City on 30 April 2012.

166. An interview panel was constituted and consisted of the Acting CEO, Mr Andrew Sharpe, Mrs Anne Lake (a contracted Human Resources consultant to the City) and Mr Dave Harris, Director of Infrastructure for the City of Gosnells and past State President of the Institute of Public Works as an external engineering professional from the local government sector. Mr Harris was not approached to be on the panel until a week before the interviews were conducted on 30 April 2012.
167. Cr Mason was appointed to this selection panel via the earlier 27 September Council resolution. However, he advised the Inquiry that he attended the interviews only as an 'observer' and lodged an impartiality disclosure because he knew one of the applicants (being Mr Blanchard). This understanding of Cr Mason that he was to be appointed to this panel as an 'observer', follows a conversation he had with the Acting CEO Mr Sharpe and Ms Anne Lake. Mr Sharpe advised the Inquiry that he and Ms Lake made it clear to both Mayor Delle Donne and Cr Mason that it was not appropriate for them to take any part in relation to the selection process and they were to be on the panel only as 'observers'.
168. It is understood that the Mayor, who was also scheduled to attend as an 'observer' for the interviews, advised he was unable to attend because of prior engagements. However, he also submitted an impartiality disclosure in relation to the interviews for the same reasons as he had done previously.
169. Ms Lake advised the Inquiry that Cr Mason had submitted a declaration of interest form and had attended as an 'observer only' and took no part in the process. Cr Mason advised that he left the process immediately after the interviews and was not involved in any deliberations in relation to choosing a candidate. Cr Mason confirmed as an 'observer' of the process, he did not raise any concern in relation to the conduct of the recruitment process or interviews.
170. Cr Mason later explained to the Inquiry that his declaration of an impartiality interest in relation to the selection process was because *"I had met one of the candidates in my role as Deputy Mayor."*

171. During the recruitment process the Mayor received an anonymous telephone call on the morning of Friday 20 April 2012, informing him that *“at a recent Rivers Regional Council Meeting the name of the front runner for the position of Executive Engineering and Technical Services at the City of Canning was made. The person was from a neighbouring Council”*.
172. On the Monday morning of 23 April 2012 the Mayor referred this matter to the City of Canning Acting CEO, Mr Sharpe, and in the afternoon he spoke to Ms Lake raising his concerns that the leak of this information affected the integrity, ethics and reputation of the City.
173. Ms Lake advised that she had spoken to all three shortlisted candidates and was told that this recruitment was the subject of a lot of gossip as it *“was a hot topic for discussion because it was the second time around...It was widely discussed amongst IPEWA”* [Institute Professional Engineers Western Australia].
174. When asked what she did about the Mayor’s concerns she advised:

“The Mayor would not tell me where he gathered his information from so that I could further investigate. Word went around about a preferred applicant but that was not only gossip it was incorrect and had never been discussed.”

(Anne Lake: Email to Inquiry 30 May 2012) (EXH 165)

175. Ms Lake stated:

“Although the Mayor believes there has been a major leak and every know who (sic) was being interviewed. I do not believe this was the case. The Mayor believes the preferred candidate is from Vic Park which is not correct. There will be some flak over our choice”.

(Anne Lake: Email to Inquiry 7 May 2012). (EXH 164)

176. Mr Sharpe was also asked about what action he took:

"The allegation was that someone had leaked the three candidates names and it was known in the Local Government circles. The Mayor was not specific about the source of the leak; however I gathered he was concerned that it may have been one of the interview panel members."

(Andrew Sharpe to Inquiry: Email 25 May 2012)

177. Mr Sharpe went on to say that he sought further information from the Mayor to allow him to investigate the matter but the Mayor did not provide any 'specifics'. Mr Sharpe stated that he assured the Mayor there had been no leaks from the panel members.
178. Ms Lake advised that shortlisted applicants were contacted on 23 April 2012 with interviews conducted on 30 April 2012. The selection of the preferred applicant was made by the interview panel on the same day as the interviews were held, on 30 April 2012.
179. On 17 May 2012 the Acting CEO Mr Sharpe and Ms Lake informed the Mayor and Deputy Mayor of the name of the preferred candidate. That person was not, as the Mayor had been anonymously informed, from the Town of Victoria Park.
180. A report was prepared for presentation to Council for its Ordinary Meeting of 22 May 2012 (report CE-046-12) (EXH 166) which named and recommended the preferred candidate for appointment to the position.
181. The agenda for this Council meeting, which included report CE-046-12, was provided to elected members on or about 18 May 2012. After receiving the Agenda, Cr Barry submitted a comprehensive list of thirteen questions (EXH 167), that were mainly adversarial, questioning the integrity of the recruitment process:

*"Dear Andrew,
In relation to CE -046-12, Could you please answer the following questions in relation to the above subject matter. (keeping in mind the Terms of Reference*

of the Ministers Inquiry, and given that there are NIL items either Tabled or Attached to this Report)

Given that LO–GO conducted the previous LATE 2011 Engineering Executive recruitment program, and which for some reason fell away, and were/are presumably a Specialised recruiting agency, can you please explain the following questions.

(1) Apart from any possible monetary saving, what other Critical benefits did the City derive from conducting the Recruitment process in-house as opposed to using outside Independent recruitment agencies as the City has used on most occasions that I recall.

(2) Were LO-GO invited to re-convene their previous process and if so, did they decline. Did we notify them of the Abandonment of the previous Engineering Executive recruitment contract with them and what has that cost the City. Have we breached that Contract with this new In –House process.

(3) Was this Decision of recruitment made by you or in consultation with the Mayor and should not have Elected Members been advised of this new selection process or was there no need to consult with Elected members . (please explain what section of the L G Act pertains, if this is the case.)

(4) Can you please explain what was the Criteria of the selection of the Evaluation Panel Members, given that I /We know Council resolved that the Mayor / Deputy Mayor be authorised to sit on the assessment panel if they so desired.

(5) What was the Documented reason that Cr Mason Declared an Impartiality Disclosure and were any other Declarations forthcoming by participants during the interviews.

(6) Were all 8 applicants afforded an initial interview or were they culled on the basis of the content of their Application details.

(7) Could you please supply a list of all applicants and their qualifications

(8) Were the previous applicants from the LO–GO process invited to re submit their applications, and if not , why not, or were they advised of the City's new recruitment process and advised of the reasons why they need not apply.

(9) Were Selection Panel Members remunerated for their attendance, if so , who and how much.

(10) Given that IPEWA was purportedly requested to put forward the names of someone to act as an Expert (please provide that communication) and also another LG Engineer (who did not attend please provide communication) ,

could this suggest that the selection process was deficient to at least the of One or More Experts (with due respect)

(11)With Due respect to yourself, Could you please tell me what experience you have in the City's recent past as being part of the selection process for Senior City Management Positions.

(12)Could you please provide me with the Qualifications of Ms Lake and Mr Harris have in relation to their Profession and Senior Employee selection (recent) as opposed to the Candidates, and how or why they were appointed.

(13)Could you please provide a detailed breakdown of the other 2 candidates Qualifications and CV's

*Kind Regards
Graham"*

182. In the Inquiry's view, Cr Barry's questions imply, in a speculative manner, inappropriate conduct, obviously designed to discredit the recruitment process. The personal information sought by Cr Barry about the candidates is confidential information irrelevant to his consideration of the matter.
183. Notwithstanding Cr Barry's questions, the report was presented to Council at its Ordinary Meeting of 22 May 2012 and a motion moved to accept the officer recommendation:

*"MOVED Cr Morgan, Seconded Cr Clarke,
The Council, pursuant to section 5.37(2) of the Local Government Act 1995, ACCEPTS the recommendation of the Acting Chief Executive Officer, to employ the preferred candidate as the City's Executive Engineering and Technical Services on a five (5) year Performance Based Contract, subject to the terms and conditions as determined by the Acting Chief Executive Officer and detailed in Report CE-046-12."*

(OCM: 22 May 2012)

184. However, after nearly an hour of debate on the matter, Council resolved to reject the CEO's recommendation:

*"The Mayor put Cr Morgan's Motion.
For: Crs Elliott, Boylen, Morgan and Clarke*

Against: The Mayor, Crs O'Donnell, Daly and Barry

MOTION LOST ON CASTING VOTE OF THE MAYOR"

185. As is evident, the vote was tied with the Mayor then exercising his casting vote to reject the recommendation.
186. The rejection of the officer's recommendation was based on the Mayor's and Cr Barry's attack on the integrity of the recruitment process, particularly evidenced by Cr Barry's speculative accusations of panel members possibly having a relationship with the preferred candidate.
187. Cr Mason, who had been "appointed" to sit in on the interview process as an 'observer', disclosed an interest and vacated the Council chamber for the entire debate. Upon being asked by the Inquiry after the Council meeting why he did this, Cr Mason offered the following response:

"Following the interview process for the position of Executive - Engineering and Technical Services, Council met with its solicitor to discuss some other Governance issues and he advised that the motion of Council to appoint myself and the Mayor as observers to the Panel was in fact illegal. It was he(sic) opinion that Councilors can be invited by the CEO to sit in on the process and after careful consideration of the response provided at the previous Council meeting by the then CEO "that he could live with that" when asked the question, it was my consider opinion that this response did not, constitute a formal invitation and therefore I decided that it would be inappropriate for me to take part in the debate."

(Cr Mason to Inquiry: Email 24 May 2012) (EXH 168)

188. It can be seen that Cr Mason's stated reason for declaring an interest (EXH 172) was the claimed legal advice he had received to the effect that his position as an 'observer' on the panel was subject to a formal invitation from the CEO. As then CEO (Mark Dacombe) had not properly invited him during a previous Council meeting, he believed it was not appropriate for him to take part in this debate.

189. It is unclear what interest or legal advice Cr Mason is referring to. Mr Sharpe advised that he was unaware of any such legal advice being provided in relation to Cr Mason's position as 'observer' on the panel being unlawful. The advice he recalls, that he discussed with Cr Mason was in relation to it being contrary to the *Local Government Act* for elected members to sit on selection panels as participants, but they could attend as observers by invitation of the CEO.
190. Notwithstanding the purported legal advice, with Cr Mason's absence (EXH 173) from the Council chamber during debate on this item, the Mayor and Cr Barry were able to attack the recruitment process without Cr Mason providing his 'observations' of the integrity of the process. Presumably, Cr Mason's role as an 'observer' on the panel would include "independent scrutiny" on behalf of Council. With Cr Mason absent and unable to add to the debate on the integrity of the process it is difficult to determine why Cr Mason was appointed to the panel as an observer.
191. The inference that the Inquiry has drawn is that Cr Mason removed himself in order to benefit the Mayor and Cr Barry by enabling them to attack the integrity of the process without Cr Mason being in a position to be called on to provide his 'observations'. His declaration of an "interest" is confusing and unwarranted considering he had fulfilled the Acting CEO's conditions that he sits on the panel only as an 'observer'.
192. The Inquiry pursued with Cr Barry the reasons for his motion and questioned what information he had to substantiate his concerns and the assertions he made during debate on the matter. Cr Barry offered the following response:

"(1)The information that was the base of my Questions was initially derived from the Agenda item CE-046-12 and put simply, I searched GOOGLE of which all of my information was derived and which is in the Public Domain for everyone to view if they so choose. It is a quite simple procedure as you will surely know. I GOOGLED the Following;

(a) Anne Lake Consultancy

- (b) Anne Lake Consultancy at City of Gosnells, City of South Perth, City of Melville,*
- (c) Mr David Harris at City of Gosnells*
- (d) Mr David Harris at LinkedIn*
- (e) Mr Stephen Bell at LinkedIn*
- (f) Mr Stephen Bell at City of Gosnells & South Perth*
- (g) Mr David Harris and Mr Stephen Bell at Rivers Regional Council*
- (h) Opus international list of referees/ references at December 2005*

(2) As I stated previously, Mine were questions on notice- Re-iterated. I am sure during my debate that I pointed out (with Due Respect) that I was not Questioning the Qualifications of the Assessment Panel or the Candidates or at least the ones divulged. I was aware of the expanse of experience in Local Government of those mentioned, and which in part was the basis for my questions, given that it would seem reasonable to assume that in recent and past times that they all have probably conducted business dealings amongst themselves, one way or another over an extended period of time, and given the written rules, regulations of the Local Govt Act and principles of meeting procedures and Codes of Conduct etc, I am confident that you as a Inquiry Officer would more than likely have asked the same questions as I did without imputing or implying on a person's integrity as such. I had a concern requiring an answer, like a question I raised in relation to Section 5.70 of the Local Govt Act, as to whether this Section applied here or whether if it did, was there dispensation under the Act, (still unanswered) the Question of Integrity was/is for others to judge.(also please note that this item was Confidential and held behind Closed Doors.

(3) In Relation to my Questions of May 22nd 2012, NO, If Cllr Mason had any prior knowledge of my Questions I am unable to explain how, as I said, My Questions were sent to A/CEO Sharpe and the Mayor. They were designated Confidential and were to be supplied to Councillors with answers when the Agenda item came up, which they were.

(4) In short , NO, Prior to the Meeting , Cllr Elliott drew my attention to a Document on the table(we sit next to each other), I had brought along to the Meeting relating to a previous Ministerial Inquiry, and I may have expressed my concern at CE-046-12, but not in detail. I may have also shown him my initial unanswered questions, I'm not sure of that as a fact. I also had a Conversation with Mr Steve Leeson about some previous question taken during debate, which I felt lacked clarity. I may have alluded to him in our conversation, my concerns about CE-046-12 but not in detail and I am not sure whether that this a fact or not. In saying all that, Councillor Boylen sits to my right and if such a conversation did take place, he may have overheard it. Once again I'm not sure if that is the fact of the matter."

(Cr Barry to Inquiry: Email 28 May 2012) (EXH 169)

193. It is apparent that Cr Barry's questions and allegations were founded on little more than speculations from information he derived from a search of the internet.
194. The Mayor produced a copy of the Report of the Inquiry into the City of Joondalup, (EXH 170) using this to support his view that elected members needed to ask questions about the recruitment process:

MAYOR: "OK – I'll just like to probably draw to the member's attention under the lesson learned from the Inquiry into the City of Joondalup. And you should all probably – should have read it. Because this is the – the – you members – whose phone is that - - - ?

MAYOR: You should make yourself available – au fait with what's before us and – each member around the table has to ask the question, that's what this report talks about. City of Joondalup Inquiry. Alright? So, I don't see any point of order in that, if Councillor wish to ask any questions of yourself, myself, shortly – Council – any Councillor around the table. So I – I don't see why you should not ask questions. Because you've got to be satisfied - - - now, you've moved the motion, you have to close the debate."

(Audio Transcript OCM 22 May 2012)

195. It is considered relevant by this Inquiry that Cr Barry also had a copy of the Joondalup Inquiry Report, and referred to it in support of his argument:

"...Councillors – should have been made aware of, and I mean, you can go through – and I also have a copy of the Joondalup Inquiry, and the fact of the matter is that it – its – it makes it quite clear what Councillors obligations are..."

(Audio Transcript OCM 22 May 2012)

196. It is beyond coincidence that two elected members should arrive at the same meeting with a copy of the same Inquiry Report to support their arguments. This provides support for the proposition that the Mayor and Cr Barry conferred on this matter before the meeting.

197. The Mayor, in attacking the integrity of the process at the Council meeting, stated that he had received an anonymous phone call in which he had been told the name of the preferred candidate:

“– anonymously I’ve been advised that the preferred candidate was already out and about in the industry.”

198. There are two issues with this statement by the Mayor. The first is that according to Ms Anne Lake, the Mayor advised her that the anonymous information he received was that the preferred candidate was from the Town of Victoria Park. Although the Mayor advised the Inquiry that he did not tell Ms Lake that the preferred candidate was from Victoria Park, the Inquiry has accepted Ms Lake’s recollection. The Mayor was later made aware that the successful candidate was actually from the City of South Perth. Therefore the information he received in the call was incorrect.

199. The second issue is that the Mayor received this anonymous information on 20 April 2012. This was before 23 April when the shortlisted candidates were notified they were selected for interview and before 30 April when interviews were conducted and the preferred candidate actually selected. As of 20 April when he received the call, no preferred candidate existed. Accordingly his reliance on this phone call to support his accusation at the 22 May Ordinary Meeting that confidentiality had been breached, is not credible:

“...Now I’m really disappointed that this is not in the report – because I would have thought that making the – my obligation to notify the acting CEO and the acting CEO is next to me now, and he can verify that that I did bring that up to his notice and also to Anne Lake’s notice, and with that I am very concerned about that – all the candidates may not have had a fair go. You can look at whichever way you like it, but this could probably end up in somewhere else. I got to make you aware of that. OK? Now if Mr Sharpe will like to confirm that - - -”

MR SHARPE: Yes Mr Mayor you certainly made me aware of that, I mean if you do have information as to where you believe that leak may have come from – if it has occurred I’m more than happy to investigate that in full detail, I can give you my one hundred per cent guarantee I haven’t breached confidentiality in relation to this particular matter, I’ve raised it with Mrs Anne Lake, she’s given me her commitment that she hasn’t breached

confidentiality – if – if its Council’s desire you want that to be investigated fully I’m more than happy to – to do that, I’m – I’m comfortable with the fact that we’ve followed due process in terms of the recruitment, I believe that you have a candidate that’s before you –“

MAYOR: And seeing that I’m concerned about the – what I revealed before I even knew all the candidates, it seems that no action has been taken [indistinct] I’m really concerned about that. And that will be one of my reasons for voting that the – play on the safe side to declare the motion lost.”
[Mayor exercised casting vote to declare motion lost]

(Audio Transcript OCM: 22 May 2012)

200. It should be noted that the Mayor never provided the Acting CEO or Ms Lake with the full details of the information he received anonymously in order to allow any investigation to take place into the veracity of his allegations. Ms Lake stated the Mayor refused on a number of occasions to provide the name of the person he had been told was the preferred candidate, (only revealing he was from the Town of Victoria Park, EXH 164). The Mayor did offer to write the name down and place it in an envelope and give it to Ms Lake after the process had been concluded. However, *“He didn’t do that”*(Anne lake to Inquiry: Email 31 May 2012).
201. The meeting became confused at the end, when Cr Barry’s motion to attempt to restart the recruitment process by calling tenders was ruled *ultra vires* (beyond power) by the Mayor based on advice from the Acting CEO:

*“MOVED Cr Barry, Seconded Cr Daly,
That the Acting Chief Executive Officer’s recommendation was not adopted
for the following reason:*

*Because of the lack of information provided in the report as per disclosure and
information supplied to Elected Members.*

*The Mayor then put Cr Barry’s Motion.
CARRIED*

*For: The Mayor, Crs Barry, Daly and O’Donnell
Against: Crs Elliott, Boylen and Morgan”*

As Cr Clarke had walked out of the meeting he was not available to vote and the motion was carried.

202. The Inquiry became aware that on the days following this meeting some Councillors were uneasy about Council's dealings with this matter.
203. Cr Boylen submitted to the Inquiry that the proceedings and the debate were inappropriate:

"From my perspective the strategy was 'Throw enough mud and some will stick' with the eventual result that the votes of other councillors would be swayed. As a reflection of trust and communication with the A/CEO the types of questions and the manner in which they were asked reflect a breakdown in trust between the questioner and the A/CEO (and through him with all Council staff). By extension, the fact that the Council voted (in a split decision requiring the Mayor to use his casting vote) against the A/CEO's recommendation also indicates a breakdown between the Council and staff.

Second, during the debate the Mayor interjected stating that we (the Council) should be careful of not going the way of Joondalup Council and advising that he had a copy of the Department of Local Government report into the City of Joondalup. By holding up papers which were purportedly part of that report and making vague references to the City of Joondalup I believe that the Mayor was attempting to inappropriately influence how Councillors should vote.

Additionally, given his track record of making reference to the Crime and Corruption Commission in an attempt to inappropriately influence discussion and questioning I believe that this was a continuation of inappropriate behaviour which has previously been brought to your attention (and presumably his)".

(Cr Boylen to Inquiry: Email 23 May 2012) (EXH 174)

204. Cr Boylen's comments above were reinforced by his support of the CEO's recommendation to Council during debate of the matter at the Council meeting:

CR BOYLEN: I wish to speak for the motion Mr Mayor. Having listened to all that was said I haven't heard anything that actually provides any substance to not accepting this recommendation. It's very clear that we've been put forward to Council a properly qualified engineer. If we look at how the person was selected, they were selected by a panel made up of engineering expertise,

of human resource expertise, and also with the acting CEO someone with a very good knowledge of the business of the City of Canning. Had we gone to an independent office to help with the selection – and remember they would have had to also involve the acting CEO in his role for this appointment – what would we have got – we would have got them bringing in engineering expertise and bringing in human resources people. The human resources people being there primarily – well most importantly to ensure that the whole process was properly observed as well as participating on the panel, we have got exactly the same outcome by having this done in house as we would have through having so called experts or specialists. We’ve gone through the process properly, it’s been quite clearly documented, how we got an engineer that we needed. In terms of persons being – could someone have been unfairly cut out, there is a whole transparent process all open to appropriate review. No, we haven’t received a whole lot of attachments, it’s not our business and I think as – lets ignore Joondalup as the Inquiry into the City of Canning would seem to indicate from the terms of reference given to us by the Minister that Councillors need to be aware of their own role. It is not appropriate for us to receive all the documentation, the appointment of this position – to this position is ultimately the role of the CEO. Yes, we get all the documentation – the contracts of the CEO was appointed, that’s different, because a CEO is appointed by our Council, there is a big difference. There is nothing here to suggest that there is any impropriety – yes they may know each other, they may have worked with each other, they have all been in local government for a long time and for better or for worse it’s a fairly small pool particularly at the senior level. So, I see nothing that indicates that there has been any conflict of interest, I see nothing that indicates any impropriety, and I believe that we had a very qualified panel make the selection.

(Audio Transcript OCM: 22 May 2012)

205. Cr Morgan also emailed the Inquiry on 27 May 2012 (EXH 175) and alluded to his belief that an ulterior motive was behind Cr Barry’s motion:

“The selection process conducted by the Acting CEO appeared to have been professionally conducted and I question the motive behind Councillor Barry’s motion.”

206. It is clear from the audio recording of the meeting that Cr Clarke walked out whilst this matter was being discussed. Cr Clarke subsequently contacted the Inquiry and raised his concerns about the actions of Council in dealing with this matter. Cr Clarke advised *“I was so disillusioned by the manner this important item had been dealt with, I excused myself from the meeting.”* (Cr Clarke to Inquiry: Letter 28 May 2012), (EXH 176).

FINDING 50

Mayor Delle Donne, together with Cr Mason and Cr Barry, attempted to influence Council to reject the appointment of the recommended applicant(s) for the position of Executive Engineering and Technical Services, without any proper justification for doing so.

CHAPTER 21

Part 4: Conclusion

UNDUE OR IMPROPER INFLUENCE

207. Under section 2.7(1) of the *Local Government Act 1995*, it is the role of the Council to govern a local government's affairs and to be responsible for the performance of the local government's functions. Section 3.1(1) of the Act provides that: "*The general function of a local government is to provide for the good government of persons in its district.*"
208. Put broadly, Regulation 7(1) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) prohibits a person who is a council member from making improper use of the person's office as a council member with the intent, purpose and aim of gaining directly or indirectly an advantage for the person or any other person; or causing detriment to the local government or any other person.
209. Regulation 3(1) of the Regulations sets out general principles to guide the behaviour of a person in his or her capacity as a council member. These principles are that a person in such capacity should: (a) act with reasonable care and diligence; (b) act with honesty and integrity; (c) act lawfully; (d) avoid damage to the reputation of the local government; (e) be open and accountable to the public; (f) base decisions on

relevant and factually correct information; (g) treat others with respect and fairness; and (h) not be impaired by mind affecting substances.

210. Although it is not a rule of conduct that the general principles referred to in regulation 3(1) of the Regulations be observed by elected members, those principles provide an indication of some of the standards of conduct which can reasonably be expected of elected members. Accordingly, those indicated standards can play a part in examining and determining whether the conduct of an elected member or a group of elected members has been improper.

FINDING 51

Mayor Delle Donne, Cr Mason and Cr Barry made improper use of their office as council members with the intent and purpose of gaining directly or indirectly an advantage for the Mayor's daughter's father-in-law and in so doing, caused a detriment to the local government and the persons selected as preferred applicants.

PART 5

Governance- Adequacy of the City's Procedures

RELEVANT TERMS OF REFERENCE:

- 4) *The conduct of Council members and employees of the City of Canning, including but not limited to:*
 - c) *behaviour at Council meetings.*
- 5) *The adequacy of the City of Canning's procedures, including but not limited to:*
 - a) *transparency of decision making, information provided to Council members, and recording of Council decisions; and*
 - b) *the conduct of Council meetings, including observance of relevant legislation and protocols.*

CHAPTER 22

Governance

INTRODUCTION

1. The term 'governance' has varied meanings across the spectrum of incorporated bodies, companies, government agencies and public organisations. In the context of a government agency, a comprehensive definition of 'governance' is offered by the World Bank Institute, an educational organisation that specialises in capacity building in third world countries. It describes it as:

"...the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them."

(Parliament, Accountability and Good Governance, PowerPoint presentation p. 3, World Bank Institute, Theodore Dreger, 19 May 2004).

2. Corporate governance is important because it enhances organisational performance; manages and minimises risks and in the local government context, increases the confidence of the community and the local government sector in the organisation. Governance also ensures that the organisation is meeting its legal and ethical

obligations; and assists in the prevention and detection of dishonest or unethical behaviour.

3. The Inquiry examined a number of aspects of the City's governance practices and procedures. These are detailed in this part.

CHAPTER 23

Public Question Time

BACKGROUND

4. The *Local Government Act 1995* promotes the participation of the community in Council meetings through Public Question Time which enables ratepayers, proponents and the community generally to interact with Council in seeking information on matters that may be of interest to them. It also provides a mechanism for the Council to recognise and promote issues that are important to their community.
5. In managing Public Question Time the Presiding Member, in this case Mayor Delle Donne, faces many challenges in ensuring members of the public are given a fair and equal opportunity to participate within the existing regulatory framework. The Mayor has an obligation under the Standing Orders (EXH 177) to ensure that questions and comments from the public gallery do not impinge on the rights of elected members, officers of the City, or other persons who might be mentioned.
6. While maintaining proper control over the process, the Presiding member must exercise sound judgement in managing Public Question Time to ensure that breaches of the Standing Orders do not occur.

7. Public Question Time at the City has been raised with the Inquiry as a matter for examination. The concerns centre on the number and type of questions one particular ratepayer has been permitted to ask from the public gallery.
8. The Inquiry has found numerous examples of questions that were 'allowed' by the Presiding member, which clearly attacked the integrity of elected members and staff.
9. It is clear from the evidence presented to this Inquiry that individuals who found themselves subjected to these derogatory accusations were often offended and stressed by the continued and relentless attacks on their integrity. In such situations, it is reasonable for those who were being targeted, to have expected the Presiding member to protect them from inappropriate comments and remarks.
10. It is clear from the concerns raised with this Inquiry that the Presiding member did not give sufficient consideration to questions that were clearly in breach of the City's Standing Orders.
11. In Cr Clarke's submission to the Inquiry he outlines his concern about a Ratepayer's repetitive line of questioning:-

"The numerous questions and statements raised by this person at council meetings date back to 2008 and beyond... to members and staff casting innuendo and doubt of integrity."

His number of questions go far beyond the normal three or four made by other public members. The time taken up at meetings and answering on notice questions by staff is considerable."

"...so serious has this matter become, I have to question why the Mayor Delle Donne has allowed this to persist."

12. The relevant legislation that covers the powers available to control inappropriate questions is contained in the City's Standing Orders Local Law, related sections of the

Local Government Act and the *Local Government (Administration) Regulations 1996*.

13. Standing Order 2.28.5 of the City's Standing Orders Local Law:

Questions Not to Involve Bad Language, Argument or Opinion, or Adverse Reflection on Integrity of any Councillor or Employee.

- 1) In submitting any questions, no bad language, argument or expression of opinion shall be used or offered, nor any facts stated except so far as may be necessary to explain the question. The Mayor may modify a question to make it comply with this section.*
- 2) A question shall not contain any statement reflecting adversely on the integrity of any councillor or employee.*
- 3) If in the opinion of a Councillor, false information or any adverse reflection is contained in any question, then through the Mayor, the Councillor may offer comment by way of correction.*

14. Section 5.25 of the *Local Government Act 1995*:

"5.25. Regulations about council and committee meetings and committees

(1) Without limiting the generality of section 9.59, regulations may make provision in relation to —

(f) the content and confirmation of minutes of council or committee meetings and the keeping and preserving of the minutes and any documents relating to meetings;

15. Regulation 11 of the *Local Government (Administration) Regulations 1996*:

11. Minutes, content of (Act s. 5.25(1)(f))

The content of minutes of a meeting of a council or a committee is to include —

(e) a summary of each question raised by members of the public at the meeting and a summary of the response to the question; and...

16. The Inquiry examined the City's Minutes from September 2010 to February 2012 (EXH 178 through to EXH 189) to identify whether the type of questions that were being raised at Public Question Time (particularly by this ratepayer) breached the

Standing Orders by containing bad language, argument or opinion, or adversely reflecting on the integrity of any elected member or employee.

17. The following is a selection of extracts from Ordinary Council Meeting Minutes which date from September 2010 to February 2012. The extracts have been categorised into two groups, Group 1 - those questions that are considered to have adversely reflected on councillors or employees that were not ruled out of order, and Group 2 - those questions that are recorded in the Minutes as reflecting adversely on councillors or staff and were ruled out of order and removed from the Minutes.

GROUP 1

QUESTIONS THAT CONTAINED ADVERSE REFLECTION NOT RULED OUT OF ORDER:

18. Mayor Delle Donne was the Presiding Member who chaired the Public Question Time referred to in the following extract from the minutes of Council meetings.

Ordinary Council Meeting Tuesday 28 September 2010

[Mr HARDING] *Question: Can I ask the Chief Executive Officer, will he investigate and take appropriate action whether any **City officer** has acted either incorrectly, dishonestly in retaliation or to discriminate against a Ratepayer for any reason and has the City Code of Conduct been breached?*

[Mr HARDING] *Question: Mr Dacombe, is that the type of behaviour that is expected or required of **City Executives** under your control?*

[Mr DACOMBE] *Answer: Chief Executive Officer. That incident and the letters and Mr Harding's complaint have all been referred to the Ombudsman, who has had the opportunity to review them and draw the conclusion that he or she has reached, I have nothing further to say on the issue.*

Ordinary Council Meeting Tuesday 8 February 2011

[Mr HARDING] *Statement: Whilst on the subject, I also made official complaints to the City in what I perceived excessive travel claims by a certain Councillor, which was forwarded to the CCC or the appropriate local government authority. Again I have heard nothing.*

[Mr HARDING] *Statement: I also made an official complaint into perceived Electoral Act breaches by two Candidates seeking election to Council in 2009 and involving a Ratepayer Association during the 2009 Election. I was advised in July 2010 that the City had referred the complaint to the Department of Local Government, who would investigate and possibly include the CCC.*

Ordinary Council Meeting Tuesday 8 March 2011

[Mr HARDING] *Question 4: Mr Mayor, it would appear, the Chief Executive Officer did not view the answer provided, prior to the Minutes being compiled and as that answer totally contradicts the wording of the Chief Executive Officer letter and the actual Policy AF301, does that prove the un-named Officer has not acted with honesty and integrity, thereby breaching the Code of Conduct.*

[Mr HARDING] Question 5: Mr Mayor, considering the recent decision by ASIC, will the Mayor or Chief Executive Officer identify the un-named Officer to Council, and will the Mayor or Chief Executive Officer investigate, to determine and confirm, the City Code of Conduct has been breached, by that person, in relation to dishonest behaviour, and not in best interests of City, as per items 5.1, 5.2, 5.3, 5.4, 5.5, 7.1 and 13.1 and apply punishment.

[Mr HARDING] Question 8: My Mayor, I believe I have now proven City's Finance Department is operating under its own Policies, rather than City's written Policies, is that illegal behaviour and will Mayor and Chief Executive Officer investigate and act, in best interests of Council, City and the community.

Ordinary Council Meeting Tuesday 12 April 2011

[Mr HARDING] Question 1: Mr Mayor given that the policy amendments of AF300 and CS406 come into effect from 1 July 2011 and Crs **Clarke, Dowsett and Morgan** have indicated by their vote that they oppose any future donations or grants, can I ask them individually through you Mr Mayor individually the following questions:

(a) Why, what was your reasoning to deny groups such as not-for-profit groups, athletic clubs, individual athletes etc access to grants or donations from the City because that is what your vote means? Correct.

(b) Was the motion to delete Clause 5.3 initiated to prevent illegal behaviour moved by Cr **Morgan**, seconded by Cr **Clarke**, made at the behest of any particular ratepayer association and does Cr **Dowsett** have any links with the RRSRA or any other resident group?

(c) What was the reason behind the impartiality declaration from Crs **Clarke and Morgan** when the agenda shows no reference whatsoever of an agenda item naming any ratepayer association, and I note that no other Councillor declared any impartiality. Gentlemen?

(d) Does the vote of Crs **Dowsett, Clarke and Morgan** in relation to item CR-042-11 suggest that they in fact support organisations like ratepayer groups denigrating even by omission people seeking election to Council, whilst endorsing certain individuals to the exclusion of others. Is this your version of democracy Councillors or maybe this is 1991 revisited?

(e) Does your vote mean that without any hesitation any future request for a grant or donation by the RRSRA not be recommended or supported by each of you?

[Mr HARDING] *Question 5: The common theme of discussion and final opinion, and my last question to each of you regarding your vote is, are your actions an evil pretence that you care? You didn't answer the other five questions, so I doubt whether you'll answer that one.*

[Mr HARDING] *Mr Mayor, Crs **Clarke** at the 22 of March 2011 meeting in item CR-048-11 Provision of Legal Services, declared an interest and withdrew from Council Chambers on the grounds he is a Director of a similar non-profit organisation. I am totally mystified by Cr **Clarke** suggestion that lawyers of law firms operate as non-profit organisations.*

[Mr HARDING] *Question 6: Mr Mayor, through you may I ask Cr **Clarke** was the real reason for your withdrawal because of your personal association with the principal of one particular law firm with the perception you did not want your vote publicly recorded, why make a pretence Cr **Clarke**?*

[Mr HARDING] *Question 7: Mr Mayor, how does this declaration affect any previous Council decisions or votes that Cr **Clarke** has made in the past or for that matter will in the future in relation to legal firms in particular Mcleods, Knott Gunning and Jackson MacDonald.*

[Mr HARDING] *Question 8: Mr Mayor, has the Councillor breached any section of the Code of Conduct of failing to declare an interest in previous Council matters involving those or any other law firms, and if so, will disciplinary action be taken.*

Ordinary Council Meeting Tuesday 24 May 2011

[Mr HARDING] *Mr Mayor, in other words, Councillors relied solely on the Officers honesty and integrity, that all requests had been fully verified. However, evidence last meeting proved one request untruthful and dishonest, which proves the Officer did not verify the validity of the request.*

[Mr HARDING] *Question 4: Mr Mayor, in the event, officers did not present correct and factual details to the Council and/or ignored a Council decision or directive, is that undermining Council authority, insubordination and would that behaviour be in breach of the City Code of Conduct, or the local government act?*

[Mr HARDING] *Question 13: Mr Mayor, May I ask the Chief Executive Officer, firstly, is that the behaviour you demand or expect of your Deputy or any other Executive, secondly, why are you allowing your Deputy and other Officers...*

[MAYOR] *Answer: The Mayor intervened and asked Mr Harding if he was accusing any Executive that they have done something wrong, if so would you please state it.*

[Mr HARDING] *Statement: Mr Mayor, I believe I have in my questions.*

[MAYOR] Answer: *The Mayor. Which one in particular?*

[Mr HARDING] Statement: *Will go back into that later.*

Ordinary Council Meeting Tuesday 28 June 2011

[Mr HARDING] Question 1: *Mr Mayor, may I ask Crs **Morgan, Dowsett and Clarke**, in accordance with Standing Orders 2.28.2.4, 2.28.2.7(a) and 2.28.2.9, when will you provide me with substantive answers, to my 12 April questions and based on the length of time, already taken, I would suggest before 11 July 2011. That will be 3 months, which I consider, to be more than reasonable.*

[MAYOR] Answer: *The Mayor. Does the 3 nominated Councillors like to give a response?*

[Mr HARDING] Statement: *Mr Mayor, I will table the questions again, to avoid any suggestion the 3 Councillors did not keep a copy of the questions, but due to an item on the Agenda tonight, may I be permitted to highlight and ask one question of the 3 Councillors, and I quote, Question 1(e) –does your vote (of 12 April) mean that without hesitation, any future request for a grant or donation, by the RRSRA, will not be recommended, or supported by each of you. Would each of you care to answer that question now.*

Ordinary Council Meeting Tuesday 9 August 2011

[Mr HARDING] Statement: *Mr Mayor, I believe Item CR-113-11 now raises doubts on Crs **Clarke, Morgan and Dowsett** decision, to oppose obtaining a comprehensive and detailed report for presentation to the Auditor and the Audit Committee.*

[Mr HARDING] Question 18: *Mr Mayor, in the past I have heard certain Elected Members refer to Democracy, Accountability, Transparency and now they object to questions, may I ask **Crs Clarke, Morgan and Dowsett**:-*

(a) Without questions, how do Ratepayers achieve, the proverbial look-in.

(b) What is your objection, to scrutiny of questionable issues.

(c) Edited to ensure compliance with Standing Orders.

Ordinary Council Meeting Tuesday 23 August 2011

[Mr HARDING] Statement: *Mr Mayor, for the record, I note Cr **Clarke's** Point of Order and my words in Public Gallery question time last meeting do not appear in the Agenda for tonight. Strangely, the questions I asked on 12 April 2011, were not objected to at the time and in the Minutes of 26 July, Item CR-113-11, a repeat instance of the contradictory voting pattern of 22 March, involving the same **three Councillors** occurs, which is perceived as very, very, odd.*

[Mr HARDING] Question 18: Mr Mayor, in the past I have heard certain Elected Members refer to Democracy, Accountability, Transparency and now they object to questions, may I ask Crs **Clarke, Morgan and Dowsett**:-

- (a) Without questions, how do Ratepayers achieve, the proverbial look-in.
- (b) What is your objection, to scrutiny of questionable issues.
- (c) Edited to ensure compliance with Standing Orders.

I again offer you the opportunity to answer my questions of 12 April 2011 and questions tonight.

Ordinary Council Meeting Tuesday 13 September 2011

[Mr HARDING] Mr Mayor, the interruption by Cr **Clarke** last meeting, contradicts his statement on page 5 of the 14 June minutes, that he had no intention of answering my questions. Once again, did not fully address the questions asked and I repeat I still have not received substantive answers in accordance with Standing Orders 2.28.9 from **Crs Clarke, Morgan and Dowsett**. [emphasis added] Maybe Cr **Clarke** has realised he was wrong on 14 June, however his words appear consistent with his meeting attendance record of 49% and the complete opposite to 23 August issues involving Willetton, which reinforces the recent comment from Federal Government identities.

- (a) people with a reasonable explanation have nothing to fear from the facts;
- (b) silence may be perceived as a (ad)mission of guilt
- (c) the crucial documents will reveal the truth.

Ordinary Council Meeting 24 January 2012

[Mr HARDING] Question 1. Mr Mayor, may I ask the CEO

- (a) because errors originate from either, lack of ability, or lack of management and supervision, has **CEO** implemented appropriate safeguards to prevent the numerous errors of 2011, being repeated in 2012.

Ordinary Council Meeting Tuesday 14 February 2012

[Mr HARDING] Q1. Mr Mayor, why would city, object to recording facts of improper behaviour, by **city of staff**, when LG Act 5.41 (h) states, CEO must ensure records / documents, are properly kept. Plus, where in LG Act, is it authorised, that actual facts of behaviour, innocent, or otherwise, cannot be recorded in council minutes, especially when answers provided by city, are proven to be incorrect, as per last meeting, when **CEO** answered Q1 (c).

[Mr HARDING] *Mr Mayor, and Council the 27th April 2011 request, for details of all Cr allowance payments, was answered by CEO, on 27 Sept 2011, and the 13 Jan 2012 FOI decision, confirms CEO on 27 Sept 2011, did not answer, in a judicious and truthful manner...*

[Mr HARDING] *Q3. Mr Mayor, do those 4 instances of perceived deceit, question CEO honesty and integrity, under code of conduct, plus, functions of CEO, in LG Act 5.41 (b) (g) (h), and should they be fully investigated.*

Ordinary Council Meeting 28 February 2012

[Mr HARDING] *“Question 1: May I ask Cr Clarke with regard to his mileage allowance claims*

- a) will you confirm each and every claim is totally honest, accurate and factual?*
- b) will you explain why your kilometre figures are clear and specific but your writing of the destination is perceived as total scribble, very difficult to read, with many words unreadable and many reasons for travel are not fully detailed.*

[Mr HARDING] *Statement: Mr Mayor, it is well documented that I have been attempting to obtain further and relevant information of mileage allowance payments since 27 April 2011, plus the suspicious and questionable lengths **management** has taken to prevent that to happen, all in breach of Code of Conduct and the Local Government Act.*

[Mr HARDING] *Under City’s Polices and Local Government Act, surely if people have or are suspected of acting incorrectly or illegally, City management have an obligation to prevent further and address past behaviour.*

[Mr HARDING] *Question 3: Why would management avoid disclosing information which may prove the accusations?*

[Mr HARDING] *Statement: Mr Mayor, **Cr Clarke’s** mileage claims of \$1,800 in 2008-2009, and \$2,068 in 2009- 2010 and strangely reduced dramatically down to an estimated \$1,400 in 2010/11, after questions were asked in late 2010. Plus it also has been discovered that there has been severe discrepancies in kilometres claimed by **Cr Clarke** to the distance of the journeys, ranging from 6 to 20%, been added to each trip since the first 1 July 2008 Plus some trips claimed are in excess of City’s official records, and many trips have insufficient information, all of which are perceived as suspect and blatant overclaiming of ratepayer funds, which also questions why the City processes the payments without querying the obvious errors.*

[Mr HARDING] *Cr **Clarke** has been an elected Member for approximately 25 years, which also prompts the question, did this suspect behaviour begin earlier than 1 July 2008.*

The Mayor advised Mr Harding his comments were reflecting on a Member and requested Mr Harding to withdraw his comments.

Mr Harding advised that he was stating the facts.

[Mr HARDING] *Question: Should I direct the detailed allegations to a person in the City or to a higher government authority, proving **City Officers** may have expended funds incorrectly, plus a **Councillor** with evidence proving has obtained ratepayer funds illegally through false pretence or by fraudulent claim and due to the nature, should that **Councillor** be suspended immediately until the investigation has been completed (emphasis added).*

GROUP 2

QUESTIONS RULED OUT OF ORDER

Ordinary Council Meeting Tuesday 28 September 2010

*Question: Mr Harding submitted a question that suggested dishonesty and untruthfulness on the part an **officer identified** by position. This is contrary to the standing orders.*

[MR HARDING] *Question: Mr Dacombe, does that dishonest behaviour question the integrity of the City and is that behaviour a dismissible offence?*

[MR DACOMBE] *Answer: Chief Executive Officer. Mr Harding continues to cast aspersions on people who he has identified by way of title and I think that's inappropriate in accordance with the Standing Orders of the Council.*

Question: Mr Harding repeated a question first posed on 20 July that, in the asking, alleges serious misconduct at a senior staff level in the organisation. This is contrary to the Council's standing orders.

Ordinary Council Meeting Tuesday 24 May 2011

Question 14: This question contained allegations of impropriety against Officers and is contrary to Standing Orders 2.28.5 and has accordingly been edited out.

Ordinary Council Meeting Tuesday 9 August 2011

"Mr Harding then asked 9 questions which collectively and individually have the potential to breach Standing Orders and be actionable and are accordingly edited out.

Statement: Mr Harding's opening comment alleges illegal activity and is potentially actionable and is edited out accordingly..."

Ordinary Council Meeting Tuesday 9 August 2011

Question 13: Mr Harding's question is edited out to ensure compliance with Standing Orders.

Question 14: Mr Harding's question is edited out to ensure compliance with Standing Orders.

Ordinary Council Meeting Tuesday 23 August 2011

The following questions have been edited to ensure compliance with Standing Order 2.28.5.

Mr Harding then asked 9 questions which collectively and individually have the potential to breach Standing Orders and be actionable and are accordingly edited out.

Statement: Mr Harding's opening comment alleges illegal activity and is potentially actionable and is edited out accordingly.

Question 13: Mr Harding's question is edited out to ensure compliance with Standing Orders.

Question 14: Mr Harding's question is edited out to ensure compliance with Standing Orders

Mr Harding's question has been edited to ensure compliance with Standing Orders.

Ordinary Council Meeting Tuesday 13 September 2011

Question 7: The Mayor ruled twice that this question reflected on a Councillor and was therefore in breach of Standing Orders.

Ordinary Council Meeting 24 January 2012

Statement: Mr Harding's statement was ruled out of order by the Mayor and is not reflected in the minutes of this meeting.

The Mayor intervened and requested Mr Harding to withdraw his previous Statement as it reflects on Officers of the City. Mr Harding accepted the Mayor's ruling and withdrew the above Statement.

19. All the extracts contained in Group 1 and 2 have been taken from the 'published' Minutes of the City of Canning. It is important to realise that any printed remarks that adversely, and perhaps unfairly, reflect on individuals are therefore publicly available for the community to read.
20. The City's Standing Orders Local Law, in particular Standing Order 2.28.5 defines questions that are not to be accepted by the Presiding Member. These questions can

be amended by the Presiding Member to remove offensive content or the question itself is to be ruled in breach of Standing Order 2.28.5 and not accepted.

21. It is clear that in a number of cases the Minutes reflect that questions from Mr Harding had been judged by the Mayor to reflect adversely on Councillors and/or employees and were subsequently not accepted and were not printed in the Minutes. While this indicates some offensive questions that breached the City's Standing Orders were not accepted - other quite defamatory accusations that are identified in Group 1 are contained in the Minutes and appear on the public record. These questions contain serious accusations that plainly breach Standing Orders and appear throughout the Minutes, in some instances inconsistent with other questions being 'edited' or 'removed' because they breached Standing Orders.
22. Mayor Delle Donne was interviewed on 20 April 2012 in relation to his management of Public Question Time at Council meetings. When asked if the type of questions from Mr Harding in particular contributed to the good governance of the City, he said:

"Well obviously it doesn't and like I said to you is that I endeavour to try and keep him within standing orders, because before the question time I read the rules and like I said earlier, is that when some of those things get said it's already got out and I don't do the minutes and that should never be reported on the minutes, and as a consequence of that now is for some time they have come up with some other procedures – how to deal with those things so that the bullet doesn't take off before we know what size it is – if I can put it that way."

(Mayor Delle Donne interview: 20 April 2012 transcribed from 1:02:10)

"I certainly am trying to address the situation, I have raised it with the Mayor, I've spoken to the Inquiry about it, I've got significant concerns – I have significant concerns about the nature of the questions, how they're – how they're being framed and how they're being re-produced and I have asked for the Inquiry to provide some assistance and also for the Department to – I would like to work with the Department to work out a strategy on how we can deal with this. I know – I know – they have – this has been an ongoing issue for some time."

(Andrew Sharpe interview: 4 April 2012 part 5 transcribed from 58:14)

23. Mr Sharpe said he had not received any instructions from Mayor Delle Donne about what should and should not be included in the Council minutes arising from Public Question Time. He said that if there was a guide to follow, it was that when the Mayor ruled a question was in breach of the Standing Orders, those questions and associated remarks would not be included in the Council Minutes.
24. While the limited defences to defamation (including the qualified privilege relating to some expressions of view in respect of government or political matters) applicable to any communication are of course available in the local government context, there is no specific defence or legislative protection afforded to persons making statements at public meetings conducted by local governments. Equally, there is no specific protection from liability for a local government which publishes defamatory statements made by others in its Minutes. The responsibility lies with the Presiding Member to ensure Public Question Time is not used by those present to damage individual's reputations by allowing serious untested allegations of impropriety or incompetence to be made. The CEO has the responsibility to provide direction and information to the Presiding Member on meeting procedure and to ensure that any defamatory comments made at the meeting have not been included when the CEO subsequently authorises publication of the Minutes. Allegations of impropriety are more appropriately referred to the appropriate agency which will decide on the veracity of the allegations. Substandard work performance by individuals needs to be properly managed, sometimes with sensitivity, and certainly within HR mechanisms.

COUNCILLOR CLARKE'S OBJECTIONS TO THE ATTACKS ON HIS INTEGRITY

25. Analysis of these extracts from the Minutes show consistently that, the criticisms of Mr Harding are targeted primarily at Cr Clarke, and to a lesser extent Councillors Dowsett and Morgan, and some senior members of staff, including the CEO, Mr Dacombe.

26. The distress these relentless attacks caused Cr Clarke were evident in his submission to this inquiry and also in his repeated calls to the Mayor asking him to deal with Mr Harding's repeated attacks as breaches of Standing Orders.

"[Cr CLARKE]: Thanks Mr Mayor, but I will leave but I have got to the stage where I find it an odious situation where I have to put up with this, especially personally against myself. I would appreciate it if you could 'ring the bell'."

27. As this analysis shows, in most cases Cr Clarke's requests to apply Standing Orders were ignored in circumstances in which he had the right to expect some protection and support from the Mayor.
28. The Minutes reflect the fact that on a number of occasions Cr Clarke pointed out to the Mayor that the questioning from Mr Harding was continually in breach of Standing Orders and he called on the Mayor to act to ensure future questions were not in breach. For example:

Ordinary Council Meeting Tuesday 24 May 2011

"[Cr CLARKE] I draw your attention to Standing Orders 2.28 Public Question Time. I know that you made a Statement then. I refer in particular to Clause 2.28.5, which reads – "questions not to involve bad language or opinion, or adverse reflection of Integrity of any Councillor or Employee" and also to the Department of Local Government Guidelines on Managing Public Question Time Clause 47, which reads – "People should be discouraged from asking inappropriate questions, such as those containing defamatory remarks, offensive language or questioning the competency of staff or Council members. Instead people should be encouraged to concentrate their questions on issues rather than Individuals".

I would now draw attention to questions put forward by J Harding of Wilson at past Council meetings, specifically to questions directed to myself as a Councillor and to other Council members and staff.

My reply is - I have no intention of answering these questions, my reason being I consider them to be inappropriate and contrary to the Standing Orders. More to the point, I find his continuous questions at Council meetings to be of no benefit to the operation of the City, but are his own mischievous satisfaction.

I now ask you Mr Mayor, have the questions proposed by J Harding at this meeting been submitted to the CEO or yourself in advance and do they comply with the Standing Orders and Guidelines I have referred to. If they have not, I will withdraw

from the Council Chambers. I know you made a Statement earlier on Mr Mayor, but I don't change my feeling on this situation. I will pass this on for recording.

[MAYOR] *Answer: The Mayor. The other thing Cr Clarke before you leave, is that I made it quite clear that it is not mandatory for the public to put forward, in writing, the questions they wish to ask. The only thing I can do is to ask, for example, Mr Harding, if he has his questions written out, he may be able to pass them to me so then I can see if any of the words are inappropriate in accordance with the Standing Orders.*

[Cr CLARKE]: *Thanks Mr Mayor, but I will leave but I have got to the stage where I find it an odious situation where I have to put up with this, especially personally against myself. I would appreciate it if you could ring the bell.*

[MAYOR] *The Mayor: That is your decision. No I am not going to ring the bell. The only thing you can do is disagree with my ruling for allowing Mr Harding to ask his questions and if he wishes, he can hand to me his questions."*

29. Whilst it is clear that Mayor Delle Donne did on some occasions invoke Standing Orders and rule on adverse comments in the questions put by Mr Harding, the Mayor's application of Standing Orders was inconsistent and ineffective, demonstrated by the number of occasions in which the Mayor, after ruling questions breached Standing Orders, went on to subsequently allow similar questions to be put to Cr Clarke that were equally in breach of the Standing Orders.
30. This inconsistent approach to the application of Standing Orders during Public Question Time led to the understandable perception by some councillors and staff that the Mayor was selectively applying the Standing Orders to the detriment of Councillors Clarke, Dowsett and Morgan and some senior members of staff.

MAYOR'S KNOWLEDGE OF APPROPRIATE PROCESS

31. The basis for some Councillors forming the view that the Mayor was selectively applying the Standing Orders to the detriment of Councillors Clarke, Dowsett and Morgan is to some degree supported by the number of examples in the Minutes that illustrate the Mayor's understanding of Standing Orders. These show the Mayor had

a reasonable understanding of the application of Standing Orders in relation to excluding inappropriate questions during Public Question Time.

Ordinary Council Meeting Tuesday 28 September 2010

“[MAYOR]: *Answer: The Mayor. Mr Harding as I alluded to you at the last Council meeting, is that anything to do with staff, under the Standing Orders is not allowed to be mentioned in here, and as like I said to you before I don't want to breach the Standing Orders and prosecute myself and yourself, so therefore we are unable to give you that answer here in public. If you think there has been anything improper, there are various authorities you can refer the matter to and will be investigated by the appropriate body.*

[MAYOR] *Answer: The Mayor. The only thing I can say to that is that Council will not come to this Forum and discuss any issues when the staff is involved in an Open Forum, because it is contrary to our Standing Orders and I'm the person to keep the Standing Orders in order, so that we don't stray from it, otherwise myself and everyone else could be prosecuted from it. Penalty is \$10,000 and I have not got that kind of money at the moment.”*

32. The Minutes of the Ordinary Council Meeting of 13 September 2011 contains an entry that identifies the Mayor ruling in relation to Mr Harding's Question 7 that the question itself reflected on a councillor and was in breach of Standing Orders. The Inquiry considered it relevant to examine the criteria Mayor Delle Donne used in this case to rule this question out of order. This was used to test the consistency of the Mayor's judgement in invoking Standing Orders on inappropriate questions.
33. As Question 7 does not appear in the Minutes, the audio recording of the Ordinary Council Meeting of the 13 September 2011 was examined to reveal the actual contents of Question 7 that the Mayor considered was in breach of Standing Orders:

“Question 7

[Mr HARDING] “My I ask Cr Clarke, once you consider the crucial documents re your mileage claims are obtained plus the recent suspicious behaviour of Craig Thomson, a), will you still remain silent, - b) are you aware if deceit [interrupted by Mayor Delle Donne]— I'm sorry, can you tell us who is Mr Thomson or whatever name you said?

[Mr HARDING] – he is a Federal politician

[MAYOR] - What's that got to do with the City of Canning

[Mr HARDING]- *I'm just – I'm just stating an incidence that's consistent with Cr Clarke's behaviour – a) will you still remain silent – [Interrupted by Mayor]- Excuse me, excuse me .*

[MAYOR] *(Mayor raising voice as Mr Harding continues to talk) Mr Harding I'm calling you to order, can you hear me or are you having difficulty hearing me?*

[Mr HARDING] – *I was asking you a question –*

[MAYOR] – *No I think you are reflecting on the character of the councillor, so can you please withdraw –*

[Mr HARDING]: *No I – No Mr Mayor I beg to differ, I'm not - I'm asking a question –*

[MAYOR] – *What is the question then?*

[Mr HARDING]- *a) will you still remain silent – because he won't answer the questions - b) are you aware if deceit is proven you may be sacked for the second time and c) –*

[MAYOR] *[Mayor interrupts Mr Harding] you are reflecting – sorry, you are reflecting on a councillor –*

[Mr HARDING] *Thank you for your time. “*

(Transcribed from the audio recording of Question 7- Ordinary Council Meeting, 13 September 2011)

34. The contents of this question clearly reflect adversely on Cr Clarke in relation to accusations from Mr Harding that Cr Clarke has been deceitful with his mileage claims. The actions of the Mayor in ruling that this question reflected adversely on a Councillor was correct and demonstrates his capacity to control and prevent continuation of inappropriate questioning. It also demonstrates willingness by Mr Harding to accept a ruling applied by the Mayor. This raises questions about the

Mayor's lack of action in dealing with similar questions from Mr Harding that accuse Cr Clarke of similar impropriety on other occasions.

35. The analysis of these questions show the Mayor failed to act in a consistent and appropriate manner and provides the basis for forming the view that the manner in which Mayor Delle Donne applied the City's Standing Orders was ineffective and inconsistent. This demonstrates a significant flaw in the Mayor's leadership of the Council. This flawed leadership has created an environment at Council meetings where elected members and employees of the City have been subjected to personal attacks, and has exposed the local government (and the individual making those attacks) to the potential for being sued for defamation and/or damages by the persons who have been offended by the uncontrolled remarks.

FINDING 52

Mayor Delle Donne inconsistently applied the City's Standing Orders Local Law during Public Question Time to allow personal attacks to be made on elected members and employees of the City.

36. The City acknowledged that there was a need to amend the City's approach to Public Question Time. To this end the City is in the process of appointing a Governance Team who will as a matter of urgency review the City's present approach to Public Question Time.

CHAPTER 24

Additional Issues with Questions Raised at Council Meetings

NUMBER OF QUESTIONS

37. The other issue which arises out of questions raised generally (excluding Public Question Time) is the inordinate number of questions asked by sitting members, in particular Cr Barry.
38. During the period in question (Refer Minutes 27/1/2010- to-27/3/2012; in particular Minutes dated 11/5/10; 6/7/10; 20/7/10; 28/9/10; 22/2/10; 24/5/10 28/6/11; 23/8/11; 24/1/12.) approximately 515 questions were asked by sitting members, of which 315 were asked by Cr Barry alone. In the main these questions related to minor administrative matters. Whilst it is commended that elected members, particularly Cr Barry, have sought to question, rather than simply accept, the information provided to Council, this must be balanced with an understanding of what impact the processing of a large number of questions had on the City's resources.
39. It is also interesting to note that in the more recent period of January to mid March 2012, approximately 146 questions were asked by councillors, of which 49 were

asked by Cr Barry. The attitude some elected members have towards the administrative staff and fellow Councillors is to some degree demonstrated by the manner in which they raise and deal with questions during Ordinary Council Meetings.

40. In early December 2011 the Department of Local Government became concerned about information it was receiving about a number of matters in terms of Councillors' conduct and their negative attitude towards their own administration. There were also concerns in relation to the working relationship between some Councillors.
41. As part of the Department of Local Government's general monitoring program, a Departmental representative attended the City's Council meeting on Tuesday, 13 December 2011, and observed proceedings from the public gallery. The City was unaware a representative had been sent from the Department to observe the conduct of the meeting.
42. The Officer noted that during Public Question Time, which is intended to be a forum for members of the community to put questions to Council and the administration, the only questions dealt with were from Cr Barry, indicating that question time was being used as a forum for Councillors to publicly question the administration. Elected members have many opportunities outside Council meetings to request and obtain information without utilising the only opportunity for members of public to have their questions answered.
43. It was also noted that at this Council meeting Cr Olsen requested several corrections to the minutes of the previous meeting and expressed her frustration that the administration was not accurately representing Council's deliberations on the public record. Cr Barry repeated this view when he moved that all elected members be provided with an audio recording of the previous Council meeting in addition to the written minutes. Cr Olsen supported the motion and again expressed her irritation

at the ongoing need for Councillors to correct mistakes made by the staff responsible for writing the minutes.

44. It was noted that when Cr Clarke spoke against the motion on the basis that he opposed a further administrative burden on the staff, he was challenged by Mayor Delle Donne, who rejected the view that the motion would represent an unreasonable amount of work. Cr Clarke expressed further concerns that recordings of confidential material could fall into the wrong hands in the future, prompting Cr Barry to state in his reply that he considered himself to be a man of honesty and integrity 'regardless' of whether the same could be said for Cr Clarke. Cr Clarke made no apparent response to this statement, nor did the Mayor make any comment about the inappropriateness of this remark.
45. Cr Mason moved several motions requiring the Chief Executive Officer to prepare reports on operational matters either within a month or, in the case of a comprehensive report on all aspects of the City's administration, structure, staffing levels and management systems, by February 2012. These discussions included Cr Mason's proposal that the Public Affairs Officer report to the Mayor rather than the CEO in order to ensure that the City's communications to the public reflected the views of Council rather than those of the administration. Cr Mason's motions were passed following amendments moved successfully by Cr Elliott to allow more time for the CEO to prepare the requested reports.
46. Considerable discussion was prompted by Cr Mason's motion that all matters relating to the City's Refocus Program cease immediately, pending the comprehensive report to Council by the CEO on the City's administrative structure and management. Cr Mason supported the immediate cessation of the program on the basis that he considered the administration to be taking over the role of the Council. Mayor Delle Donne expressed his support for Cr Mason's comments, indicating that he had been concerned by the administration's direction for some time and agreed that the Council was being sidelined.

47. Cr Barry supported the motion but moved an amendment that any current contracts entered into by the City be honoured, which was unanimously supported although some councillors indicated their continuing opposition to the substantive motion. Cr Stephen Boylen indicated concern that the proposal would “throw the baby out with the bathwater”, while Cr Clarke spoke against the motion on the basis that an immediate cessation of the program, given the number of activities being conducted under its auspices, could lead to unanticipated consequences in terms of finances already invested in the program being wasted, or work already done by the staff being discontinued. As such, he indicated his preference for more advice being requested from the CEO on these issues. Mayor Delle Donne at this point asked Cr Clarke to clarify what the unanticipated consequences would be, and what amounts of money would be wasted, which led to a brief exchange in which Cr Clarke seemed to be attempting to explain that this was what he was asking to have clarified by the administration, and Mayor Delle Donne continued to insist that Cr Clarke clarify it himself. The exchange ended with the Mayor apparently mocking Cr Clarke for being hard of hearing because of his inability to respond to the Mayor’s line of questioning. Cr Clarke became visibly distressed and responded that he could hear the Mayor perfectly well, before resuming his seat.
48. At this point, Mr Mark Dacombe, the CEO, requested an opportunity to speak to some of Cr Clarke’s concerns. The Mayor appeared reluctant but agreed, warning the CEO to not attempt to influence elected members with what he said. Mr Dacombe explained his concerns that a great number of the administration’s activities fell under the “Refocus” brand, and any proposal to immediately cease all those activities created concerns for him in terms of the administrative disruption which may result. He suggested that a report could be prepared for Council’s consideration without necessitating the immediate cessation of all activities. However, the motion to cease the program *‘immediately’*, was carried.
49. Also carried was a subsequent motion which directed the CEO to advertise immediately for an Executive of Town Planning Services and include the Mayor and

Deputy Mayor on the selection panel. Speaking in support of the motion, Cr Olsen moved that a qualified planning consultant be appointed in the interim, stating that immediate action was required to correct the ongoing mistakes being made in planning matters by staff who were not qualified to do their jobs.

50. As a general observation, the distrust of some Councillors for the administration continued to be displayed when dealing with Executive Officers' reports. Cr Mason made reference at one point to the agenda containing over 50 pages of unresolved items which the Council was compelled to keep track of because of the administration's continual delays.
51. It was also evident that questions from Councillors frequently drilled down to such levels as the compliance of individual elements of proposed structures with building and planning codes, the exact street locations of asphaltting for which payments were made to contractors, and why petrol costs for City vehicles would have reached the amounts reported to Council given the average cost of fuel per litre during the relevant periods. Generally these sorts of questions were taken on notice, apparently to be dealt with in the following meeting's Public Question Time.
52. Generally, the Departmental officer's account of the Council meeting prompted two principal matters of concern for the Inquiry, being:
 - that a certain portion of Council, including the Mayor and Deputy Mayor, were publicly indicating a lack of trust in their administration; and
 - that there may be issues with the working relationships between some of the Councillors themselves, though whether this was related to the first matter was not clear.
53. The City has advised that it is now looking at ways to determine the most appropriate method for Councillors to interact with the Administration in obtaining

information. Proposed Innovations include the introduction of a Councillor 'Portal' which will provide Councillors with electronic access to the Agenda of each Council Meeting. This 'Portal' will provide Councillors with a greater level of search facilities which should reduce the need for Councillors to seek further information by asking a large number of questions during the meeting. This provision will be supplemented with a process being set up for Councillors to request information at any time and be provided with a response in a timely manner. The Inquiry considers these changes will provide an alternative means for elected members to obtain information, but the Inquiry notes that their implementation will be largely dependent on the level of cooperation of individual elected members.

CHAPTER 25

Minutes and Agendas

QUALITY OF CITY'S MINUTES

54. The Act and Regulations require local governments to provide and maintain agendas and minutes for Council meetings. Of particular relevance to the City of Canning is section 5.25 (1)(f) *Local Government Act 1995* and Regulation 11 *Local Government (Administration) Regulations 1996*.

"5.25.Regulations about council and committee meetings and committees

- (1) *Without limiting the generality of section 9.59, regulations may make provision in relation to —*

...

- (f) *the content and confirmation of minutes of council or committee meetings and the keeping and preserving of the minutes and any documents relating to meetings; and..."*

[*Local Government Act 1995*]

"11. Minutes, content of (Act s. 5.25(1)(f))

The content of minutes of a meeting of a council or a committee is to include —

(da) written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to

only note the matter or to return the recommendation for further consideration); and...”

(Local Government (Administration) Regulations 1996)

55. Criticism has been levelled at the quality and adequacy of the City’s agendas and minutes. Certainly, upon an analysis of a wide range of agenda and minute papers covering a number of years of Council business, the Inquiry has found some support for this criticism.
56. The City’s minutes in particular are of a poor quality. Debate between Council members is inconsistently recorded and sometimes not recorded at all. The minutes themselves contain no detail of the Officers’ reports relating to the agenda items that were approved or refused, and no attachments or tabled documents are included in the minutes or available for viewing on the City’s website. This makes the meeting process as outlined in the minutes ambiguous and at times difficult for members of the public to follow. Contrary to Regulation 11 (da) *Local Government (Administration) Regulations 1996*, reasons given by Council for adopting an alternative recommendation to that provided by the reporting Officer are often not recorded. Where reasons are given, they lack detail and appear more to be views rather than a justifiable reason.
57. A number of matters are referred by Council to be dealt with ‘behind closed doors’ (ie - to be dealt with confidentially). There is a legislated requirement that Council provides its reasons for deciding to deal with a matter confidentially.

5.23. Meetings generally open to public

(1) Subject to subsection (2), the following are to be open to members of the public —

(a) all council meetings; and

(b) all meetings of any committee to which a local government power or duty has been delegated.

(3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

58. Again, either inadequate or no reasons are detailed in the Minutes.
59. The City needs to develop and adopt a new format for its Council meeting agendas and minutes that reflect the requirements and expectations of contemporary local government.
60. The City has acknowledged that it needs to make improvements to its approach to taking Minutes. In light of the Inquiry's comments the City agreed it would provide a more transparent release of information by including the attachments and tabled documents in the Minutes for viewing on the City's website. While it is noted that the City's present practice of the full Agenda not being reflected in its Minutes met legal requirements, the City has agreed with the Inquiry's position that there would be some benefit for members of the public in the City adopting a process that included contents of reports in the Minutes. The Inquiry understands that the City proposes to appoint a Governance Team who will take responsibility for the implementation of improvements in this area.

CHAPTER 26

City's Standing Orders

ACCESS TO INFORMATION

61. The City's Standing Orders contain procedures relating to Council business, including provisions governing elected member access to information. The City's Standing Orders are problematic in that they contain provisions that do not sit comfortably with the *Local Government Act 1995* and the *Freedom of Information Act 1992*.
62. For example, Standing Order 2.38 allows a Council member to gain access to any document or file held on the City's file system. Access to information by elected members is regulated by section 5.92 and section 5.94 of the Act which restricts elected member access to information to matters which relate directly to the elected member's duties and business that are to be discussed at a Council meeting. Under Standing Order 2.38, information can be provided to elected members concerning staff matters and other aspects of the City's operations that elected members have no reason to access. This is not appropriate. In addition, the provisions of the City's Standing Orders also allow the Mayor, without any appeal or recourse, to veto elected member access to Council information. The City of Perth Standing Orders Local Law 2009 is currently the best-practice model used by the local government sector and the City could consider implementing a similar version.

63. It is evident the City's Standing Orders Local law must be reviewed with a view to the production of a version consistent with the rights, responsibilities and principles of contemporary local government.
64. The City has advised it has commenced the review of its Standing Orders Local Law and is giving consideration to the Inquiry's suggestion that *City of Perth Standing Orders Local Law 2009* could be used as a guide for improvement in this area.

CHAPTER 27

‘Secret Votes’

BACKGROUND

65. As is common in local government, the first Ordinary Council Meeting held after the 2011 election (25 October 2011) was used to provide the opportunity for the new Council to appoint the City’s representatives to various government and community committees and bodies.
66. In the case of the City of Canning, for the period October 2011 through to the next election in October 2013 there were 49 places on external committees to be filled either as appointees or deputy positions.

APPOINTMENT TO EXTERNAL COMMITTEES

67. A ‘secret vote’ is one in which a ballot is taken in a manner that conceals the identity of the voter.
68. City of Canning Standing Orders at 3.3.4 prohibits voting at Council meetings in secret. This is reinforced by Regulation 9 of the *Local Government (Administration) Regulations 1996*: (EXH 190)

9. *Voting to be open (Act s. 5.25(1)(d))*

Voting at a council or committee meeting is to be conducted so that no voter’s vote is secret.

69. At Council's Ordinary Meeting of 25 October 2011, (EXH 191) in calling for nominations to represent the Council on the Local Emergency Management Committee - Canning and South Perth SES - there were two nominations, those being Cr Clarke and Cr Barry. Cr Barry was appointed to that committee.

70. The audio recording of the Council meeting reveals that Mayor Delle Donne said:

"Ok we need to have a ballot now... Members I have just been advised as to whether prepared to do an open forum or if you want to go to a secret ballot."

71. On confirming there had been two nominations, Cr Barry moved to go to a secret ballot. There was no objection from elected members to conducting the ballot in secret, nor was there any advice from the CEO, Mr Dacombe that a secret ballot would constitute a breach of Regulation 9 of the *Local Government (Administration) Regulations 1996*. (EXH 192)

72. When two nominations were received for Council representation on the Swan River Trust River Protection Advisory Committee, Mayor Delle Donne ruled that there would be another ballot. Ballot papers were distributed and a second secret ballot was conducted. The nominees were Cr Clarke and Cr Olsen. Cr Olsen was declared the successful candidate.

73. A further secret ballot was conducted when Councillors Clarke and Olsen were nominated to represent the Council on the Willetton Drug Action Group. Cr Clarke can be heard on the audio recording withdrawing his nomination, claiming that he was "wasting his time" by nominating.

74. Cr Dowsett told the Inquiry that he believed the committee selections were pre-arranged:

"With the committees, that was well orchestrated. It could not have been done there on the night. So – that proved to me – if you read the minutes on

that, you'll find that Stuart Clarke and myself and a few others were all wiped [indistinct] barring the secondary thing, wiped off everything – totally."

(Tim Dowsett interview: 7 June 2012 transcribed from 12:55)

75. The manner of determining membership of the committees by secret vote is contrary to the City's Standing Orders Local Law and not appropriate. It is also contrary to the principles of openness and transparency that a local government should observe in its deliberations.
76. Elected members gave evidence to the Inquiry that this was the manner in which Council had always made committee appointments and therefore the process was correct. Mayor Delle Donne stated that the process was followed due to incorrect advice given to him by the CEO, Mr Dacombe.

FINDING 53

The Council failed to comply with Regulation 9 of the *Local Government (Administration) Regulations 1996* and s3.3.4 of the City's Standing Orders Local Law when it conducted secret ballots to appoint members to external Community Committees at the Ordinary Meeting of Council held 25 October 2011.

Natural Justice Response

77. In the course of preparation of this Report, the suggestion was made by some councillors that criticisms, foreshadowed by this Inquiry, of their conduct, were also indicative of a failure by the CEO to properly perform his function under section 5.41 *Local Government Act 1995* to ensure that advice and information was available to the Council so that informed decisions could be made.

78. The Inquiry provided Mr Dacombe with these criticisms and an opportunity to respond. In that response Mr Dacombe provided information that was relevant to the absence of his advice informing Council that it was acting inconsistently with Regulation 9 of the *Local Government (Administration) Regulations 1996* and s3.3.4 of the City's Standing Orders Local Law when it conducted secret ballots.
79. Mr Dacombe conceded in his response that he was not an expert in the City's *Standing Orders Local Law* and stated that he dealt with this by having someone very familiar with the Standing Orders available at the meetings to provide that advice. Mr Dacombe pointed out in his response that the Mayor had been on Council for around 40 years and was very familiar with Standing Orders.

CHAPTER 28

Council Interference In Tender Evaluation

BACKGROUND

80. A recent trend adopted by Council is the placement of the Mayor on tender evaluation panels. Whilst it is not uncommon in the industry for an elected member to participate in a tender assessment panel, the caveat to this is that it is an administrative process. At the City of Canning, Council has directed the CEO and the administration of the City to include the Mayor on tender evaluation panels.

MAYOR APPOINTED TO EVALUATE TENDERS

81. An example of this is a decision made at Council's Ordinary Meeting on 13 December 2011, (EXH 194) where Council resolved to commence a tender process to appoint a consultant to develop the City's land and property asset action plan. The full resolution was:

That:

(a) That Council endorse the calling of tenders for the appointment of suitably qualified consultants to develop a land and property asset action plan.

(b) Subject to (a) above the Mayor and the tender evaluation panel select a short list of consultants to undertake a presentation to Council prior to the tender being awarded. (emphasis added)

(c) A further report is to be presented to Council to give consideration to the awarding of the tender and the associated funding requirements.

(d) This item be reviewed at the first meeting in January 2012 to allow the consideration of the progress, any delays, extra funding obligations that may need to be consider at Council's budget review, the possibility of funding across two budgets, any ongoing funding proposals and a list of priority matters.

(e) That in the Scope of Requirements for Preparation of a Land & Property Asset

Action Plan the second paragraph under the heading PREAMBLE is amended by inserting the words 'proactive and where appropriate' so that it reads:

"Council has placed a high priority on this proposed project as part of its overall City Building and asset management programs. The primary aim of this project is to establish a far more proactive and where appropriate entrepreneurial approach to the management of its land assets; both free hold and where appropriate reserved land. Wherever possible the action plan developed should aim to both fulfil Council's commercial aspirations and make a contribution to the social and economic development of the City."

CARRIED UNANIMOUSLY

*For: The Mayor, Crs Mason, Daly, Clarke, Olsen, Morgan, Barry, Elliott, Boylen and
O'Donnell*

82. An item of business later at the same meeting, concerning a local planning strategy review proposal, was amended by a Councillor motion to include a similar direction to involve the Mayor:

(a) The Chief Executive Officer be authorised to prepare a scope of works to employ a suitably qualified experienced external consultant to develop a local planning strategy.

(b) The Chief Executive Officer liaises with the Mayor regarding calling of tenders from Consultants to develop a local planning strategy. (emphasis added)

(c) The tender to include an opportunity for short listed applicants to do a presentation to council before award, outline, project timelines and any future expenditure which can be considered at Councils next budget review.

(d) The TP40 review work done by the former Executive be provided to Councillors

(e) A further report be presented on the outcomes of (a), (b), (c) and (d) above.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Mason, Daly, Clarke, Olsen, Morgan, Barry, Elliott, Boylen and O'Donnell

83. As to who raised the “concept” of having the Mayor on the tender evaluation panel jointly to “select a short list of consultants”, Mr Sharpe gave the following evidence to the Inquiry:

“My – I’ll keep reiterating – my understanding was that it was certainly never promoted or intended that the Mayor would be a part of any evaluation panel by the senior management team or the Executive.”

(Andrew Sharpe interview: 4 April 2012 part 5 transcribed from 1:29:56)

84. When asked if he saw any detriment or benefit in having the Mayor in effect on the Evaluation Panel he replied:

“My preferred position would be that the officers and any professional person would be put on to a selection evaluation panel, and that be done independently and provided back to – to the Council.”

(Andrew Sharpe interview: 4 April 2012 part 5 transcribed from 1:31:44)

85. The decision by Council to appoint the Mayor to jointly undertake initial shortlisting with the tender evaluation panel was made without any input or advice from the CEO or the City’s Executive staff on the appropriateness of the decision. This matter of who raised this issue, and the reasons why, is yet to be determined.
86. Whilst it is not unheard of for an elected member to be involved in a tender selection panel, it is unusual, and in those cases where it has occurred, the practice is that it is at the invitation of the CEO and usually where an elected member has some

specialist expertise to add to the panel. The process for tender assessment and selection is an administrative function that is the responsibility of the CEO and his or her employees.

87. The process adopted by the Council of the City of Canning of involving the Mayor in the administrative functions of tender assessment and selection is inconsistent with the governance principles of the *Local Government Act 1995*. The appointment of the Mayor to fulfil this function is inappropriate and undermines the separation of powers principles that are designed to instil accountability and prevent Council interference in an administrative process of the City.
88. The City advised that it has now engaged an independent external accounting firm to conduct a review of all of the City's financial policies including Policy AF301.

CHAPTER 29

Governance Summary and Findings

GOVERNANCE STANDARDS

89. Probity systems that are commonplace in local government, such as Standing Orders, Public Question Time and accurate recording and reporting of Council decisions are all processes designed to support sound and rational decision making by Council. This Inquiry examined a number of these processes to gauge the City of Canning's level of probity.
90. The examination of the matters detailed in this Part reveal that the City is not operating at a best practice level in terms of its processes that support the provision of good government. For example, the City's agendas and minutes are inaccurate and confusing and do not provide a clear picture of Council's decision making process. The reasons for certain decisions are sometimes not recorded, and the order of business makes items hard to follow. As discussed previously, the City's Standing Orders are in need of review and this review could examine the areas that affect Council business with the aim of identifying improvements in this area.
91. Another area that is important in the provision of good government is Public Question Time at Council meetings. The public record demonstrates that the Mayor

has not been applying aspects of the Standing Orders (no adverse reflection permitted upon elected members or employees) equitably. This has given rise to a perception by some elected members and staff that certain persons are given preferential treatment during Public Question Time. This has given rise to a perception that this preferential treatment has been to the detriment of some elected members and employees of the City. This is not a situation that the Mayor, as leader of the Council, should have allowed to happen.

92. There are also issues with Council interfering in the administration by ‘directing’ the CEO through resolutions, such as the example of the Council resolution directing the CEO to ‘appoint’ the Mayor and Deputy Mayor onto employee selection panels. Similarly, the ‘secret vote’ issue demonstrated an example of a procedure at a Council meeting that was not conducted in an open and accountable manner. No elected member’s vote on any matter is to remain a secret. This adds further weight to the perception the Council is not operating appropriately and in accordance with expected practices and standards.

FINDING 54

The City of Canning Standing Orders Local Law contains provisions and procedures that are in need of review to provide better support for the City’s governance practices.

PART 6

Overall Conclusions and Recommendations

RELEVANT TERMS OF REFERENCE:

- 6) *Whether the City of Canning has provided good government in respect of these matters.*

CHAPTER 30

Conclusion and Recommendations

MAYOR'S ALLEGATIONS

1. In late December 2011 and January 2012 Mayor Delle Donne made a number of allegations in relation to the operations of the City of Canning. In the lead up to and during this period, a number of other separate complaints were received by the Minister for Local Government and by the Department of Local Government.
2. On 9 February 2012, the Minister, in accordance with section 8.3(3) of the *Local Government Act 1995*, directed Ms Jennifer Mathews, Director General of the Department of Local Government, to commence an Authorised Inquiry into the City of Canning. On 23 February 2012, Ms Jennifer Mathews authorised this Inquiry pursuant to section 8.3(2) of the *Local Government Act 1995*, to inquire into and report on matters concerning the City.
3. It became evident to the Inquiry that the Synergy Cheque and Sand Dumping issues raised by the Mayor in the context of his complaints against Mr Dacombe and City staff, had been previously investigated and the entities investigating had not identified any misconduct. It was therefore unnecessary and questionable that the Mayor relied upon the same matters to support his allegations of misconduct at the City.

4. Other issues raised by the Mayor fell into a pattern of concerns about operational matters that generally related to some perceived or actual flaw in the City's operational or management practices. The Inquiry's investigation of the Mayor's allegations against the CEO revealed that these allegations had no reasonable basis. In other cases, the operational problems identified in the Mayor's allegations were found to have been caused directly by Council's refusal to accept relevant information or advice from its administrative staff. It is considered highly significant that it was during the latter part of December 2011 that the Mayor - in some cases relying on events that occurred 12 months previously - first formally made allegations against Mr Dacombe. At that time the relationship between the Mayor and the CEO had broken down and disagreement had arisen between the CEO and the Mayor over the recruitment process for the Executive Engineering and Technical Services position. The Inquiry has concluded that there was a correlation between the Mayor's making of his allegations and his action in unilaterally suspending the CEO in the sense the allegations were made to justify the suspension of the CEO.

MOTIVATION FOR ALLEGATIONS AGAINST THE CEO

5. Given the unfairness of the CEO's performance appraisal and the unsupported claims by the Mayor that during this appraisal he became concerned about misconduct of the CEO, the Inquiry concluded that the seriously flawed performance review and the subsequent allegations made by Mayor Delle Donne to the Minister for Local Government and the City's legal adviser, Allion Legal, were a tactic to unjustly discredit Mr Dacombe. These attacks were made to provide a basis for Mr Dacombe's subsequent separation from the City and were an attempt to justify the Mayor's action in suspending Mr Dacombe.

FINDING 55

Mayor Delle Donne made unreasonable complaints about Mr Dacombe, to unjustly damage Mr Dacombe. These attacks were made to provide a basis for Mr Dacombe's subsequent separation from the City and were an attempt to justify the Mayor's action in suspending Mr Dacombe.

OTHER COMPLAINTS

6. Prior to the commencement of this Inquiry and during the investigation of the City, a number of other complaints were received from a broad range of individuals, groups and organisations. It became apparent that, contrary to the Mayor's view that the problems lay exclusively with the CEO and administrative staff, the majority of these complaints concerned the behaviour of elected members and the quality of Council decision making. It was considered significant by this Inquiry that the complainants included City officers, neighbouring local governments, a Regional Council and established community organisations. This showed there was diverse and wide reaching dissatisfaction with the City of Canning.

THE MAYOR'S GROUP

7. During the course of this Inquiry a trend was recognised in relation to motions and proposed motions, incompatible with Officer recommendations, which originated from a small group of elected members.
8. It became clear after the Inquiry examined elected member emails, particularly those sent during the CEO's performance appraisal (Part 3) conducted by the Mayor, that an association existed between a small group of elected members and the Mayor. Evidence showed the Mayor chose to consult with this small group and chose

to discuss with it Council business to the exclusion of other elected members. This action did not go unnoticed by other elected members or City staff, with some comments being made to the Inquiry that it was suspected that this group met privately in isolation from Council to discuss Council business. Whether this group actually met privately before Council meetings was not the subject of investigation by this Inquiry due to the matter emerging as an issue late in the Inquiry proceedings. Whilst meeting privately with fellow elected members for the purposes of lobbying can be an acceptable part of the political process, each elected member must be in a position to enter the Council chamber with an independent mind and be prepared to consider any item on its merits. To do otherwise is not compatible with the process being transparent and involving genuine decision making.

9. The 'Mayor's Group' consisted of Mayor Delle Donne, Cr Mason, Cr Barry and Cr Olsen. All the questionable resolutions that formed the basis for Part 2 of this report were derived from a motion or amendment moved by one of Cr Mason, Cr Barry, Cr Olsen and Mayor Delle Donne. Following scrutiny of a number of these motions and amendments, the Inquiry has concluded that the Mayor's Group had arrived at certain Council meetings with an agreed plan to influence the outcome of some matters on the City's Meeting Agenda. They maintained this predetermined position in opposition to expert and specialist Officer advice. The specific examples examined in this Report demonstrate that the adoption (in these cases) of the Mayor's Group's resolutions resulted in outcomes that were adverse to the City's interests.
10. Interviews with Crs Clarke, Dowsett, Morgan and Elliot reveal that they were aware of the Mayor's Group's influence, but either felt pressured, or had simply yielded to the inevitable conclusion that they could do nothing to change things so voted to support the motions proposed by one of the Mayor's Group. A number of other elected members had only recently taken office and understandably looked to the more experienced elected members for guidance. This leads the Inquiry to conclude that the other elected members must share some of the responsibility for the Mayor's Group's success in inappropriately influencing the matters examined in Part 2 and later in Part 4 of this Report. It is clear the other elected members, when they

voted to support these motions, failed to sufficiently question the appropriateness of the Mayor's Group's motions they were supporting.

FINDING 56

The Mayor's Group arrived at some Council meetings with an agreed plan to influence the outcome of particular items on the City's Meeting Agenda in accordance with a predetermined position. This was not appropriate because of the circumstances discussed in this Report and because each elected member must be in a position to enter the Council chamber with an independent mind and be prepared to consider any item on its merits. To do otherwise is not compatible with the process being transparent and involving a genuine decision making process.

FINDING 57

The other elected members failed to question the appropriateness of the motions they were supporting. This resulted in the Mayor's Group inappropriately influencing the matters identified in Part 2 and in Part 4 of this Report.

11. Related to this issue is Mayor Delle Donne making important decisions without consulting with Council. The Inquiry cannot over emphasise the significance of the Mayor's inappropriate actions in unilaterally suspending the CEO, Mr Dacombe, without the authority and full involvement of Council. This action alone demonstrates the extent to which good governance had broken down, with the City's governing body completely unaware of an event of this magnitude. Months later elected members, in response to Inquiry questions, advised that they believed

Mr Dacombe had taken voluntary leave and that they had no idea the Mayor had suspended him.

FINDING 58

The Mayor's actions in:

- 1) Suspending the CEO without first consulting with and informing Council, and,
- 2) subsequently failing to advise Council that he had suspended the CEO,

demonstrates the extent to which good governance has broken down at the City of Canning.

UNDUE INFLUENCE

12. Part 4 of this Report provides the most significant example of the Mayor's Group's adverse influence over Council's decision making. A common element present throughout Council's dealing with the engineering services tender and the process for the recruitment of the Executive Engineering and Technical Services is the consistent domination of the decisions of Council by motions and amendments from members of the Mayor's Group. These motions and amendments ignored sound officer advice and provided an avenue by which Mr Blanchard, the father-in-law of the Mayor's daughter, might be given some form of benefit.
13. The Inquiry noted that after a properly conducted tender process for the Engineering Services contract an independent tender selection panel had recommended Shawmac Pty Ltd as the preferred tenderer from the list of applicants. Cr Barry (one of the Mayor's Group) attempted to replace Shawmac Pty Ltd by substituting Mr Blanchard, who was clearly identified as non-conforming and not qualified. This was clearly questionable and inappropriate. A subsequent 'foreshadowed' motion by Cr

Mason proposed that the contract for engineering services be awarded to more than one consultant. In moving these motions Cr Barry and Cr Mason were rejecting the properly conducted tender process by not accepting the preferred tenderer. A motion moved by the Mayor and seconded by Cr Barry resulted in Council voting to refer the matter back to the CEO for further review. With this tender to award all the City's engineering services to one consultant being thrown out, the way was left open for Mr Blanchard to later tender for an engineering contract with the City that would not have been available had this tender been awarded.

14. The evidence in Part 4 of this Report provides further details of the actions of the Mayor's Group, the object of which was to improperly influence the decision of Council in relation to the recruitment for the Executive Engineering and Technical Services position. Motions and amendments originating from the Mayor's Group show there was a clear intention to prevent the appointment of the recommended candidates on two separate occasions. The Inquiry concluded that these actions were done - for motives that are not clear - to show favour to Mr Blanchard, who was an applicant.

FINDING 59

The 'Mayor's Group' inappropriately influenced the decisions of Council relating to:

- 1) the awarding of the contract for the City's Engineering Services, and
- 2) the recruitment process for the Executive Engineering and Technical Services position

SUSPENSION OF CEO, MR DACOMBE

15. The Inquiry considers that the 13 December 2011 Ordinary Council meeting was the point in time when Mr Dacombe's relationship with the Mayor had seriously broken down and was irreparable. What followed this meeting was a series of events that contributed to Mr Dacombe eventually separating from the City.
16. Mr Dacombe's private email on 21 December 2011 to his colleague Mike Richardson reveals his state of mind and his view of what was taking place.

"...Since I have been back the Mayor has hardly spoken to me. At some point he has decided that I am working against him and I think the plan is to drive me out using techniques they have developed over time."

"The Mayor and his two helpers are crawling all over the organisation now looking for evidence to support their conclusions."

(Email 21 December 2011 Mark Dacombe to Mike Richardson)

17. In a memo dated 23 December 2011, Mr Dacombe responded to questions raised by Cr Barry at the 13 December 2011 Council meeting. Cr Barry's questions sought to discover any conflicts members of the Executives team had in their relationships and associations with contractors, consultants and the CEO. This memo from the CEO became the basis for the Mayor's allegations of misconduct in his letter of 29 December 2011 to the Minister for Local Government. The Inquiry found that this memo revealed nothing more than professional working relationships.
18. On 12 January 2012 the Mayor conducted a performance review of Mr Dacombe without advising or consulting with him.
19. The Inquiry believes there is some correlation between the hastily conducted performance appraisal conducted by the Mayor and Cr Mason on the 12 January 2012, and the subsequent act of the Mayor in suspending Mr Dacombe.

20. The significance is that Mr Dacombe had displayed some opposition throughout to the Mayor's and Cr Mason's attempts to be in a position to influence the selection process for the Executive Engineering and Technical Services position through their membership on the selection panel. On 9 December 2011 Mr Dacombe had informed the Mayor and Cr Mason that their appointment to the selection panel was contrary to the *Local Government Act 1995*. On 3 January 2012 Mr Dacombe informed the Mayor and Cr Mason he had arranged the interviews to take place on 9 January 2012. On 4 January 2012 the Mayor informed Mr Dacombe that he and Cr Mason would meet with him on the 12 January 2012 to discuss "*all the various issues that you and I would like addressed*".
21. On 5 January 2012, Mr Dacombe informed Mayor Delle Donne that he had appointed two additional members to the selection panel, thereby in the Inquiry's view, limiting the influence the Mayor and Cr Mason could have over the selection process. On 9 January 2012, the day of the interviews, Mayor Delle Donne and Cr Mason raised issues with the integrity of the recruitment process in an attempt to prevent the interviews continuing. However, Mr Dacombe in the face of these attacks on the process proceeded with the interviews which resulted in the selection of a preferred candidate. It is the Inquiry's view that the selection of the preferred candidate did not accord with Mayor Delle Donne's and Cr Mason's wishes.
22. The statement by Cr Mason that the "*Refocus Program had been designed to ...dilute the power of the Council*" (Refer audio recording of OCM held 13 December 2011 commencing at 50 mins. 28sec) and the paragraph in the Mayor's letter to the Minister dated 29 December 2011 "*It is our feeling that the Council is being by-passed in the decision-making process*" gives some insight into the importance both Mayor Delle Donne and Cr Mason had attached to maintaining Council's power over decision making and into their view that they considered Mr Dacombe was undermining this power.
23. Given that the Mayor had conducted a performance review 11 months earlier (with Council awarding a pay rise to Mr Dacombe), there was no need to undertake a

performance review on 12 January 2012. It is clear from the manner in which the Mayor conducted the CEO's performance review on 12 January 2012, without previously consulting or involving Mr Dacombe, that it was unplanned and conducted with haste. The lack of preparation and the absence of any consultation by the Mayor leads the Inquiry to conclude that the review was conducted by the Mayor with no regard for fairness or accuracy and with the primary intention of arriving at a premeditated adverse outcome. The Inquiry considers that the manner in which the Mayor attempted to conduct the CEO's performance review is associated to some extent with Mr Dacombe's actions in resisting the Mayor's and Cr Mason's influence over the selection process for the Executive Engineering and Technical Services position.

24. A week later, on 18 January 2012, aggrieved by the way the flawed performance review had been conducted, Mr Dacombe went to the Mayor and offered to surrender his position as CEO. He said the performance review was the 'trigger' for his decision to leave.
25. The Inquiry found that at the subsequent Ordinary Council Meeting of 23 January 2012, elected members were unaware of the reason why Mr Dacombe was leaving. There is no doubt that the information Mayor Delle Donne and Cr Mason had in relation to the conduct of the performance review, especially information on how inappropriate the process was, was information that elected members were entitled to know. The Inquiry concluded that the intent of Mayor Delle Donne and Cr Mason was to mislead Council in order to ensure the CEO's resignation was accepted. It is clear that knowledge by all elected members that Mr Dacombe had been the victim of an inappropriate and unfair appraisal, and that this had impacted on his decision to leave, would have been a factor of significance in Council's consideration of this matter (*for relevant discussion see Part 6: Role of CEO to Provide Advice*).

FINDING 60

The Mayor and Cr Mason purposely misled Council to ensure the CEO's resignation was accepted by withholding information about why the CEO was offering to terminate his contract.

26. On 24 January 2012 the Mayor met with the Minister for Local Government raising concerns specifically related to the performance of the CEO and the operations of the City. The Mayor also advised that he had submitted complaints to the CCC and anticipated more matters being brought to the attention of that investigative agency. The Mayor advised the Minister that the CEO Mr Dacombe had tendered his resignation the previous evening which had been unanimously accepted by Council.
27. On 25 January 2012 the Mayor sought legal advice about placing the CEO on forced leave.
28. On 30 January 2012 Mayor Delle Donne, in the presence of Cr Mason, Mr Sharpe and the Acting Manager Human Resources, effectively suspended the CEO immediately on full salary. The Inquiry has concluded that Mayor Delle Donne acted without reasonable grounds in suspending Mr Dacombe on 30 January 2012.
29. In a report dated 5 February 2012, dealing with the CEO's ongoing employment, the City's legal adviser Allion Legal advised that it was currently reviewing the CEO's ongoing employment in light of recent events. These events included "*allegations which have now been made of possible serious misconduct*" [emphasis added].

On page 2 of this report Allion Legal advised:-

“Whilst conducting the CEO’s performance review... the Mayor became concerned that the CEO may have engaged in conduct that contravened the LG Act”.

30. The Allion Legal reference indicates that the Mayor’s concerns that the CEO may have engaged in misconduct emerged around the time that the Mayor conducted the CEO’s performance review. This raises the question of why, if the Mayor suspected misconduct by the CEO around the 12 January 2012 when he conducted the CEO’s performance review, he did not raise this at the 23 January Council meeting when Council dealt with the CEO’s separation. Alleged misconduct by the CEO would have been relevant when Council made its decision to delegate authority to the Mayor to negotiate an end to the CEO’s contract. The Allion Legal report also indicates that allegations of *“possible serious misconduct”, “which have now been made”* only emerged around the date of this report (5 February 2012). It is the Inquiry’s view that allegations concerning misconduct by the CEO only materialised into serious misconduct allegations after the CEO was suspended.
31. It is further relevant that the act of suspending Mr Dacombe was done without the authority of Council, and also that the fact of that suspension was withheld from other elected members who remained unaware until the Inquiry brought it to their attention. It is noteworthy that when Cr Barry and Cr Olsen (the other members of the Mayor’s Group) were informed by the Inquiry that the Mayor had suspended the CEO, neither saw any problem with this.
32. This supports the Inquiry’s conclusion that the Mayor and Cr Mason were pursuing the removal of Mr Dacombe and acted in isolation from Council to achieve this end.

FINDING 61

The Mayor and Cr Mason were seeking the removal of Mr Dacombe and acted in isolation from Council to achieve this end.

33. This Inquiry's examination of the Mayor's allegations and the findings of the City's own investigation into Mayor Delle Donne's allegations by an independent legal adviser to the City, found no evidence to support the Mayor's claims that Mr Dacombe committed acts of misconduct.

INTERFERENCE WITH ADMINISTRATION

34. This Report has identified repeated examples of elected members directing operational matters through resolutions. The Inquiry found that throughout Council's decision making, Council was intent on micromanaging the City's operations through resolutions that sought to direct the CEO in administrative matters. In these cases the resolutions were passed without allowing City's administrative staff to provide expert advice on the subject matter at hand or else rejecting expert and relevant Officer advice. This Report has identified the adverse, and in the Inquiry's view, predictable consequences of elected members interfering in complex and sometimes technical administrative procedures without seeking or accepting qualified Officer advice.
35. Mr Dacombe and members of the City's staff accused Council of being focused on low level operational matters at the expense of strategic leadership and decision making. This is borne out by a number of Council decisions such as placing the Mayor and Cr Mason on employee selection panels, Council's inappropriate interference in

tender selection processes, and the number of decisions adverse to the City's interests by reason of ignoring, or rejecting, sound Officer advice. These examples collectively establish Council's lack of understanding of its governance role.

Separation of Powers

36. The *Local Government Act 1995* defines the roles of Council, Mayor, Councillor and the CEO, with intentional and largely clear boundaries between management and governance responsibility. The principle behind this delineation is ensuring a efficient and clear decision-making process. As outlined by the then Minister for Local Government, Hon Paul Omodei MLA, in his second reading speech for the Local Government Bill on 31 August 1995:

"There will be a clear specification of the roles of key players; that is, council, mayor or president, and councillors. This is designed to promote efficient administration at the local government level and to avoid conflicts caused by uncertainty. The lack of role clarity has led to some mayors/presidents and councillors becoming involved in administrative matters which should be handled by staff. The new Act will provide a clear distinction between the representative and policy making role of the elected councillors and the administrative and advisory role of the chief executive officer and other staff."

(Second Reading Speech, Minister for Local Government, Local Government Bill, Hansard 31 August 1995, pp7547-7553)

37. Section 2.7(1)(a) of the Act as it was when it came into operation on 1 July 1996 read *"The council...directs and controls the local government's affairs"*. Since the enactment of the *Local Government Amendment Act 2009*, the phrase *'directs and controls'* in section 2.7(1)(a) of the Act has been replaced by the word *'governs'*. On 8 September 2009, when the *Local Government Amendment Bill 2009* was being considered in detail in Parliament, the Hon John Castrilli MLA, Minister for Local Government, said in regard to the intent of that replacement:

"It really clarifies the position that elected members are there to govern at that higher strategic level, and directed control is really invested in the

position of the chief executive officer, who handles the everyday, hands-on running of the organisation. That is the distinction we are trying to draw."

(Response to Questions on Notice, Minister for Local Government, Local Government Amendment Bill 2009, Hansard 8 September 2009, p6517).

38. A significant further reason for defining the duties of Council and the Administration of a local government is to curtail inappropriate influence or corruption:

"...prior to the reforms of the 1990s, [local government] had to deal with a local government culture where councillors were involved in directing employees in the implementation of decisions. Legislation had played a role in this by conferring powers on the mayor that would normally be exercised by a CEO as an appointed official. Prior to the reforms, there was no real distinction between policy making and implementation (Clark 2004:xv). This was explicitly addressed by recent legislation to provide a clear distinction between the policy/strategic functions of the elected council and the administration's responsibility to carry out the policy. Despite this legislative change, significant problems remain in how councils operate. The temptation to interfere in the operations of council administration for political (or even personal) advantage remains in the system (Daly 2003)."

(Warburton, J. & Baker, G. (2005). 'Integrity Systems and Local Government', Australian Journal of Public Administration, 64 (2):62-68)

39. The Inquiry considers this puts into perspective the importance of Council understanding and practising the principles of the 'separation of powers' and understanding the serious implications for a Council that ignores the requirement that it govern at the strategic level.
40. It is clear to this Inquiry that the Canning City Council was inappropriately involved in operational matters by directing employees through Council resolutions.

Regulation 9(1) Local Government (Rules of Conduct) Regulations

41. In the course of preparation of this Report, the suggestion was made by some councillors that criticisms, foreshadowed by this Inquiry, of certain conduct on the grounds that the conduct was incompatible with a legislative regime vesting certain

functions exclusively with the CEO, were unfounded because the relevant conduct had been authorised by Council as permitted by regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007*.

Regulation 9(1) provides:

"A person who is a council member must not undertake a task that contributes to the administration of local government unless authorised by the council or by the CEO to undertake that task."

42. The regulation is usefully to be read with regulation 10(1) which prohibits Council members from directing, or attempting by threat or reward to influence the conduct of, local government employees as such employees. Both provisions are, of course, rules of conduct, a breach of which may be referred to and dealt with by the Local Government Standards Panel.
43. Regulation 9 is merely 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 having been authorised by Council. The fact of Council authorisation renders acceptable conduct which, without such authorisation, would be unacceptable. Significantly, regulation 9(1), being merely a rule of conduct, is not itself a source of authority for intervention in administration. Rather, the regulation contemplates any power of authorisation being found elsewhere.
44. 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 Local Government Act and of 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. 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. Even where the Council might strictly have the power to authorise a particular type of involvement by councillors in administration, it may be that when regard is had to the legislative scheme and 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.

45. An illustration is this Inquiry's criticism in this Report of the Council's appointing the Mayor and Deputy Mayor to an employee selection panel. While the Council has general responsibility for the performance of the local government's functions (section.2.7), the CEO is very specifically vested with responsibility for the employment of employees (section.5.41(g)). In the case of senior employees designated under section.5.37(1), the Council has the power to accept or reject the appointment recommended by the CEO (section.5.37(2)), but not to substitute its own decision. It is the Inquiry's view that, not only is the presence of Council members on an employee or senior employee selection panel incompatible with the Act's statutory delineation of the functions of Councils and the administration, but in the case of senior employees, is inconsistent with a regime which limits Council's involvement to acceptance or rejection of the CEO's selected applicant.

FINDING 62

Council frequently made decisions, such as:

- appointing the Mayor and Cr Mason to employee selection panels,
- rejecting the preferred candidates from properly conducted tender assessment panels, and without any appropriate process, replacing them with Council's own choice,
- rejecting the preferred candidates for the Executive Engineering and Technical Services position after a properly conducted selection process, and
- after rejecting technical and/or specialist Officer advice, made a number of decisions that adversely impacted on the operations of the City,

which inappropriately interfered with the functions of the Administration and resulted in Council delivering poor governance.

FINDING 63

Council was inappropriately involved in operational matters by directing employees through Council resolutions. Council has been ignoring the clear distinction between the policy/strategic functions of the Council and the separate operational level responsibility of the Administration to carry out Council's strategic policies.

COUNCIL DECISION MAKING

46. Council's manner of decision making came under criticism in relation to a number of matters that were seen as high profile issues at the time. Part 2 of this Report examines in detail the circumstances surrounding a number of Council decisions that appeared at odds with any expected reasonable and rational outcome.
47. In the matters covered in Part 2 and in later parts of this Report it was revealed that there was a common theme of Council decisions being characterised by poor judgement and little understanding of the technicalities of the matters under consideration. The Inquiry concluded this was caused by Council members failing to properly consider, or simply ignoring, the professional and technical advice that was provided to them. In a number of matters dealt with in this Report, elected members demonstrated poor judgement by implementing or supporting uninformed motions of fellow elected members.
48. The Inquiry has been provided with no acceptable explanation for why Officer recommendations of a highly technical and specialist nature were rejected by the majority of elected members in favour of an uninformed motion moved by an unqualified fellow councillor. Making decisions in this manner remains a significant contributor to the poor governance problems at the City of Canning.

FINDING 64

Elected members frequent rejection of Officer recommendations of a technical and specialist nature in favour of an uninformed motion moved by unqualified fellow councillors contributed to poor governance at the City of Canning.

ROLE OF CEO TO PROVIDE ADVICE

49. In natural justice responses to the Inquiry it was claimed by some elected members that on a number of occasions the CEO, Mr Dacombe, had not properly performed his function to ensure that advice and information was available to the Council so that informed decisions could be made:

“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...”*

50. These natural justice submissions alleged Mr Dacombe had given no or insufficient advice during the events referred to in Findings 34, 35 and 47 (Mayor Delle Donne) Findings 34, 35 and 53 (Cr Olsen) and Finding 53 (Cr O’Donnell).

51. In Cr Mason’s submission it was also stated that, in relation to the Inquiry’s Findings 31, 35, 40 and 60, the Inquiry had not considered the provisions of the *Local Government Act 1995* and the City’s *Standing Orders Local Law*. These provisions, amongst other things, made it the function of the CEO to ensure advice and information is available to the Council.

52. In relation to the findings that generally related to Cr Mason not providing information to his fellow elected members, Cr Mason advised *“There is no responsibility imposed under the Act on councillors to ensure that other councillors have received the same information or advice that they have received”*.
53. It was also commented by Cr Elliot that the CEO lacked *“in depth understanding”* of the *Local Government Act 1995* and the *City’s Standing Orders Local Law* to the extent to enable him to advise the Council in a timely manner. Cr Elliot advised that often statements or comments were made by elected members during debate, that later, when Officers were informally asked, they would indicate the comments were not an appropriate interpretation of the Local Government Act. Cr Elliot advised *“The CEO did not intervene or correct the statement at the time”*.
54. The function of the CEO was to ensure that relevant information and advice was provided/available to all elected members. This is a factor of significance to the Inquiry’s consideration of the appropriateness of the relevant conduct of Council and individual elected members.
55. As part of the natural justice process the Inquiry provided Mr Dacombe with the opportunity to respond to assertions that he had not provided advice/information to Council in the circumstances identified in Findings 31, 32, 33, 35, 40, 47, 53, 60 and 62. Mr Dacombe responded in a submission dated 9 November 2012.
56. Mr Dacombe’s Natural Justice submission responded:

“Over an extended period of time I and my Executive team suffered a nasty and prolonged attack by the Mayor and his team. In your investigations you will have seen evidence of the nature of that. It was bullying and intimidation. For several months of my final year it was personally and professionally an unsafe work environment for me and the Executive.

Although the Council had plenty of evidence of the Mayor’s inappropriate behaviour, a majority backed him over and over and over again and the minority acquiesced with generally only Councillor Clarke putting up resistance. Through this period I and the Executive Team provided advice to the Council to the best of our ability in the

abnormal and dysfunctional political environment that existed where elected members were deliberately undermining and acting to thwart the provision of good advice and ignoring it when they received it.

Your investigations show that my team and I provided quality advice. Any assessment of how we did against the quoted section of the Local Government Act must take into account the appalling environment created by the Council and the deliberate attempts to prevent professional advice being given and the wilful ignoring of it on many occasions to the detriment of the organisation and the community.

It must be noted that the final breakdown between me and the Mayor and his cabal was precipitated by me preventing them from crossing a threshold that I was ethically and legally required to defend. I was anything but remiss in acquitting my responsibilities under the Local Government Act. The suggestion that I was responsible for their fifty shades of active and passive destruction of my ability to serve them as an effective Chief Executive Officer strikes me as the worst sort of victim blaming.

Several of the findings you have asked me to comment on relate to the same events so in the time available I have attempted to construct this response as logically as possible.”

57. Where relevant the Inquiry has provided Mr Dacombe’s further responses within the body of this Report in each section that deals with the specific finding.
58. The Inquiry considers there are a number of circumstances revealed in various parts of this Report that evidences the difficult environment the CEO and his executive team were operating within. The continued rejection of Officer recommendations, the tabling of motions without consulting with or seeking Officer advice and Council’s actions in interfering in administrative matters, supports the view that Council was operating in an atmosphere that did not support or encourage challenges to its actions. The Inquiry accepts that there were occasions in which the CEO should have provided robust and strong advice. However, there is no indication that had the CEO provided advice (on those occasions in which it is alleged he did not provide advice), that Council would have accepted it and acted differently. It is understandable in the circumstances that the CEO considered, on some occasions, that he was unable to meet his obligations to ensure advice was provided to Council so that informed decisions could be made.

LACK OF TRUST

59. It was repeatedly brought to the Inquiry's attention that some elected members did not trust staff and believed the Administration was working against them. This distrust was characterised at Council meetings by an adversarial environment in which some elected members openly displayed anger and hostility towards the City's executive and managerial staff, often resulting in the advice of an employee of the City being criticised. Some elected members, such as Cr Barry, saw it as his role to challenge and question the competence of the City's administrative staff by asking large numbers of questions about operational matters in the minutest detail. This exemplifies the damaging relationship the Council has with its staff. Whilst these questions could have been raised informally prior to Council meetings, they were instead asked only at public meetings, which added to the interrogation style exchange between Council and the Administration.
60. The Inquiry believes that on a few occasions the level of distrust between some elected members and some administrative staff was the reason for the rejection or amendment of Officer advice and recommendations.
61. This issue of distrust was repeatedly identified by some elected members and City Officers as the fundamental cause of the problems at the City.
62. Mayor Delle Donne made representations to the Minister for Local Government about concerns the Council had with the Administration of the City. At the time the Mayor also advised he had submitted complaints to the Corruption and Crime Commission (CCC) about the Administration and anticipated more matters being brought to this agency's attention.
63. All the allegations made by the Mayor were found by this Inquiry to be unfounded. Making allegations with no reasonable basis is one of the serious outcomes of the distrust that existed at the City. Clearly Council had allowed its distrust of the

Administration to reach the point where the Administration was being unreasonably accused of serious maladministration and the CEO misconduct.

FINDING 65

Council's lack of trust in the Administration had risen to the level that the Administration was being unreasonably accused of serious maladministration and the CEO misconduct.

PROVISION OF GOOD GOVERNANCE

64. The single most concerning event at the City of Canning was the action of the Mayor in unilaterally suspending the CEO, Mr Dacombe, without the authority of, or informing, Council. The actions of the Mayor establish the extent of the power he, as an individual, inappropriately wielded over the Administration. The fact the Mayor made an inappropriate decision of this magnitude and took unauthorised action to ensure it was carried out, demonstrates a significant breakdown in good governance at the City.
65. Also of significant concern was the influence of the Mayor's Group in matters affecting the father-in-law of the Mayor's daughter. In the Inquiry's view, there has been a serious breakdown in open and accountable governance when the Council:
- rejected the preferred candidate for the Engineering Services contract after a properly conducted Tender selection process,
 - on two separate occasions, rejected preferred candidates, who had been selected after two properly conducted recruitment processes, and

- appointed the Mayor and Cr Mason on selection panels for employee recruitment.

Council's actions in these matters demonstrate that in relation to these decisions, Council did not deliver open and accountable governance.

66. In addition, the Inquiry has concluded that there has been a serious breakdown in the professional relationship between Council and the Administration. The level of distrust some elected members had in the Administration adversely affected the delivery of good governance. In the Inquiry's view the damage has been caused by Council:

- Continually rejecting sound Officer advice.
- Making decisions on complex or technical operational matters without seeking Officer guidance.
- Repeatedly interfering in administrative matters.
- Unreasonably accusing the Administration of serious maladministration and the CEO of misconduct.

A professional relationship between Council and Administration is essential to the delivery of good governance. In acting in this manner Council has seriously eroded this relationship to the extent that the Inquiry considers it can no longer function in a manner that delivers good governance.

67. The concerns the Inquiry received from a diverse range of interested parties who had dealings with the City demonstrate to some degree the extent of dissatisfaction a broad range of community groups and neighbouring local government authorities had with the manner in which Council operated. It is clear Council's relationships with:

- Willetton Child Care Centre,
- Willetton Sports Club,
- SMRC,

- City of South Perth,
- City of Gosnells and
- City of Melville,

could have been managed more professionally by Council. The Inquiry considers this could have been achieved had Council followed the advice of its Administration.

68. The examples in this Report establish that Council has consistently operated without seeking, or accepting professional and expert guidance. This absence of guidance had a significant adverse effect on the quality of Council decision making. It is clear from the number of examples of poor decision making and the serious detrimental impact these decisions have had on the City's staff, operations and relationships that the Council of the City of Canning has not delivered good governance.

FINDING 66

On the basis of matters examined in the Terms of Reference, the Inquiry has concluded that the Council has not provided good governance to the residents and ratepayers of the City of Canning.

RECOMMENDATION TO APPOINT PANEL OF INQUIRY

69. The Inquiry submits that it is demonstrated by the number of examples of poor decision making and the adverse influence of the Mayor's Group in Council decision making, that there has been a clear failure by Council to ensure the City of Canning performs its functions properly. It is further submitted by this Inquiry that this Report has identified that this failure has been both serious and continuous over an extended period of time.

70. The situation that exists now is that Council has seriously eroded its professional relationship with its Administration to the extent that the Inquiry considers that if the Council were to remain in office the potential exists for further major problems to develop.
71. It is recommended that the Minister for Local Government appoint an Inquiry Panel under section 8.16 *Local Government Act 1995* to inquire into, and report upon, particularly having regard to the contents of this Report, the ability of the City of Canning to provide for the good government of the persons in its district. An Inquiry Panel has power under section 8.22 to recommend that a Council be dismissed or that a Council that has been suspended be reinstated.
72. Because there is clear evidence of a serious failure by the Council over an extended period of time to ensure the City of Canning performs its functions properly, it is submitted by this Inquiry that it would be inappropriate for the Council to continue to act as the governing body of the City, pending the outcome of the Panel of Inquiry.
73. It is recommended that pending the outcome of the Inquiry Panel, the Minister suspend the Council under section 8.19(1) *Local Government Act 1995*.

RECOMMENDATION 1

That the Minister:

- appoint an Inquiry Panel pursuant to section 8.16 *Local Government Act 1995* to inquire into and report upon, particularly having regard to the contents of this Report , the ability of the City of Canning to provide for the good government of the persons in its district and,
- suspend the Council under the provisions of section 8.19(1) *Local Government Act 1995* pending the outcome of the Panel Inquiry.

PROBITY RECOMMENDATIONS

74. Mayor Delle Donne and Cr Mason were obviously aware of the fact they met with and received a benefit (albeit minor) from Civic Legal prior to their involvement in the decision upon Cr Barry's motion to introduce Civic Legal to the Legal Services Panel. In accepting a 'free lunch' Mayor Delle Donne and Cr Mason were obliged to reveal this benefit as soon as Civic Legal became the subject of Council deliberations. This lunch meeting was not disclosed at the Council meeting in which Civic Legal was discussed.

RECOMMENDATION 2

Mayor Delle Donne and Cr Mason's failure to disclose an 'interest' that could, or could reasonably be perceived to, adversely affect their impartiality (Reg 11 *Local Government (Rules of Conduct) Regulations 2007*) in relation to the making of a decision to introduce Civic Legal to the City's Legal Services Panel be referred to the City of Canning's Complaints Officer as a Minor Breach under section 5.107 *Local Government Act 1995*.

75. It is apparent from the contents of emails between Mayor Delle Donne and Civic Legal indicate some business relationship had commenced and continued at the time this matter came before Council. Mayor Delle Donne, as a closely associated person to Civic Legal, was on the face of it required to declare an interest and not vote on this issue.

RECOMMENDATION 3

Mayor Delle Donne's failure at the 13 December 2011 Ordinary Council Meeting to disclose a financial interest existing by virtue of his 'close association' (as defined by Regulation 20 (1) and (2) *Local Government Administration Regulations*) with Civic Legal, be considered for referral under section 5.114 *Local Government Act 1995* to the Department CEO as a Serious Breach.

RECOMMENDATION FOR PROCESS IMPROVEMENTS

76. During the course of this Inquiry it became evident that there were operational areas within the City of Canning that required improvement. However, the Inquiry concluded that if the City applied the appropriate resources and accepted advice and support from outside agencies such as the Department of Local Government, the City had the ability and motivation to make significant changes. The devotion and commitment of staff was a significant factor that led the Inquiry to conclude process improvement was something that the City Administration was committed to.

RECOMMENDATION 4

The City undertakes a comprehensive internal review of its operations and processes, paying particularly attention to:

- the structure and content of its Minutes and Agendas,
- its practices in conducting Public Question Time,
- its approach to providing timely information to elected members,
- its Standing Orders Local Law to ensure legislative compliance, and
- the appropriateness of any operational policies relating to membership of employee selection panels (apart from CEO's selection panel) and tender evaluation panels.

77. The percentage of planning and development applications being considered by Council during the period September 2010 to February 2011 (6 months) far exceeded the commonly accepted benchmark presented by the Western Australian Local Government Association (WALGA) that less than 10% of development applications should be referred to Council.

RECOMMENDATION 5

Delegations to City Officers are reviewed to identify a means of reducing the number of low level regulatory services matters that come before Council.

ANNEXURES

ATTACHMENT 1

TRANSCRIPT ORDINARY COUNCIL MEETING 22 MAY 2012 (Transcribed from Time 3:32:40)

(Note: speech habits or hesitation such as “aah” and “umm” have been omitted)

CR MORGAN: *Mr Mayor I'd like to move the recommendation.*

MAYOR: *Moved – can we – can I declare that we've resumed – reconvened the meeting at nine thirty four, and Councillor Morgan moved that the recommendation as presented – sorry – seconded Councillor Clarke. Councillor Barry –*

CR BARRY: *Thanks Mr Mayor, I'd – speak against the motion. And I'd also foreshadow a motion that if the officer's recommendation is not adopted then the project of recruiting an Executive Engineering and Technical Services be put to tender slash expression of interest from a reputable experienced recruitment firms who are sufficiently recognised and accredited in the WA industry sector and b) a further report be presented to Council at a later date [indistinct] to report on the progress of a) above.*

MAYOR: *Is that a foreshadowed motion?*

CR BARRY: *Yeah a foreshadowed motion. I'll speak against it in the – in the first instance – in relation to the [indistinct] as you Councillors are aware they've probably just read the – the questions – the City has previously used in house – or in house and external consultants – could Mr Sharpe please provide me with the senior positions that have been previously dealt with in house – of similar significance?*

MR SHARPE: *Mr Mayor – certainly the – a number of positions have been – senior executive positions have been dealt with in house, I mean, it was [indistinct] by looking at the positions, I mean all the executive positions have been recruited in house previously, it's only been in more recent times that we have used LOGO consulting to appoint – some of the other external appointments have been predominantly around the CEO, there has been occasions where the City has tried in house and they haven't been able to get a quality of applicant that they have on occasion also used recruiting agencies but – it has been a mix of both in house and recruiting just depending on the tightness of the market and the skills that we have in house, I mean we have had up until recently a good HR manager, we – in this particular situation have got a – an – a lady on board by the name of Mrs Anne Lake that has got substantial experience in the local government sector and quite diverse networks and we felt that – we were able to – and it was demonstrated that we were able to attract a good quality of candidate in relation to the advertisement that was placed.*

CR BARRY: *Even though – even though Councillors are not aware of those candidates and I think as you explained in here, there's no obligation to let us know. The second question says – you talk about the Chief Executive Officer's the only person that's been part of the process*

and he's no longer contactable. After discussion with the Mayor it was decided that the best way [indistinct] begin under our own banner – can you – can you explain that, is that – that to me may be possibly part and parcel of why we're embroiled in a Inquiry now. Is that a fair assumption or not?

MR SHARPE: Mr Mayor no I don't believe so, I think this was very transparent, there was a conversation that took place with the Mayor that was also conveyed to Councillors and I think the email sent to elected members on the thirty first of March quite clearly states there was a process that was followed, it was very transparent, there was concerns raised by a number of elected members about the LOGO recruitment process, the advertisement technically wasn't in compliant with the Act, and in order to address those concerns there was a conversation held with the Mayor and it was felt that we would – at least in the initial stages – advertise it under the City of Canning banner – we felt that we had – we – I certainly believe we've got the expertise to handle recruitment in house, I think the credentials of Mrs Anne Lake are – are well regarded within the sector, she undertakes a number of CEO annual appraisals both metropolitan – significant metropolitan local government Councils – as well as right across the State with a number of country local government Councils, so, from that point of view, it was also – from my – my immediate priority was to get the position filled and I believe that it has been vacant for almost twelve months now, that's having a significant impact on the organisation in terms of not getting capital works programs done, its having a significant impact on the organisation in terms of the staff morale in the organisation and I – I consider that this position is mission critical in terms of getting the organisation back to a position – particularly in the capital works area, where we've got the skills in house and we can start the process going again – I don't believe that by having that position vacant for twelve months it's done this organisation any good, I mean, there's a significant amount of works that need to – a professional person heading up that division, I mean it's one of the largest divisions - - -

CR BARRY: Are we saying that we're not happy – I mean - - -

MR SHARPE: - - - No no, I'm not going - - -

CR BARRY: - - - I'm speaking – I'm speaking against it, but I mean, so – what you're saying there is that currently Mr Jefferies is not performing the job up to standard or is Mr Atwell previously?

MR SHARPE: Mr Mayor no, I'm not saying - - -

CR BARRY: He –

[interjection]

MAYOR: You can't reflect on staff.

CR :BARRY: No, no, no, well let – let – let me speak against – let me speak against the motion before we – we go into the – you know, you can probably do that a bit later. Are any of the – the people who are on the assessment panel – I note that Councillor Mason declared an

interest because he knew one of the – the candidates. Is it not incumbent upon the people on the assessment panel, if they have had dealings with any of the candidates, that they disclose that interest as well?

CR BOYLEN: *Point of order Mr Mayor [indistinct] –*

MAYOR: *What is your point of order? Councillor – Councillor excuse me a second – ‘scuse me a sec.*

CR BOYLEN: *Yep. We –*

MAYOR: *Councillor Barry would you please resume your seat.*

MAYOR: *What is the point of order?*

CR BOYLEN: *That Councillor – that – that we’ve moved to the point of the meeting where Councillor Barry is speaking against the meeting yet it has changed to an inquisition of the CEO - - -*

MAYOR: *- - - What is the point of order – there is no point of order - - -*

[interjection]

CR BOYLEN: *Well I would appreciate your advice as to whether it’s appropriate to go towards questioning the CEO when we’re calling for speaking against the substantive aspect of the motion.*

MAYOR: *OK – I’ll just like to probably draw to the member’s attention under the lesson learned from the Inquiry into the City of Joondalup. And you should all probably – should have read it. Because this is the – the – you members – whose phone is that - - - ?*

MAYOR: *You should make yourself available – au fait with what’s before us and – each member around the table has to ask the question, that’s what this report talks about. City of Joondalup Inquiry. Alright? So, I don’t see any point of order in that, if Councillor wish to ask any questions of yourself, myself, shortly – Council – any Councillor around the table. So I – I don’t see why you should not ask questions. Because you’ve got to be satisfied - - - now, you’ve moved the motion, you have to close the debate.*

CR BARRY: *So the question is, is – if any of the people on the assessment panel have had a working relationship with any of the candidates and should they not have disclosed that?*

MAYOR: *Yep. Mr Sharpe? Mr Sharpe?*

MR SHARPE: *Mr Mayor when you are looking at an interest declaration, it really rests with the individual if they believe that there’s an interest, whether that’s an impartiality or a full financial interest then that onus rests on the – rests with the individual to make that declaration.*

CR BARRY: *Well I take that on board and as you said, both – both people are eminently qualified in their field of local government. But I mean, for myself – I mean the – the work that I did I find that the preferred candidate previously was a manager for the City of Gosnells, and in 2010, 2011 – and 2011 and 2012, Ms Anne Lake did reviews down there, as well as – she states in a email to the City of Melville that she’s also recently just done work for Gosnells and the Shire of Cranbrook. Mr David Harris is – I believe – Mr – the preferred candidate’s immediate past boss, Mr Harris has been at the City of Gosnells for some nine years, and Mr – the preferred candidate was his immediate subordinate. Also, he also worked down there in the Shire of Plantagenet which Mrs Anne Lake – that was in 2004 – did some consultancy work down there when he was the Asset and Client Services, so, the people seem to go a long way back and I’m just wondering why, given the fact that Councillor Mason has declared an interest, why these people, with the experience they have in local government, have chose not to do so. I’m not saying that nobody is a good candidate one way or the other, but the fact of the matter still remains as I see it, there is basically a conflict of interest there that should have been – Councillors – should have been made aware of, and I mean, you can go through – and I also have a copy of the Joondalup Inquiry, and the fact of the matter is that it – its – it makes it quite clear what Councillors obligations are, and in a room too far from here, it’s been brought to my attention as well – and possibly – possibly others as well, I don’t know – but also, there’s another one that goes from the consultancy firm of Mrs Anne Lake, she’s also assisted in South Perth, so – and that was at a time when the preferred candidate was also working there, so there seems to be quite a history between the assessment panel, and the preferred candidate and or possibly the other two, but I don’t know because nobody’s told us who they are – I just find that this report with nil tabled items, nil attachments – for me, it doesn’t seem to do anything for transparency and accountability especially if someone else was to question whether or not that conflict of interest should come into play. Now I mean we talk about contracts, I don’t know whether we’ve – we ever have to see a contract, I know when the CEO comes up, that we have to have a look at the contract, I mean – and I know you said previously that it is imperative that we have a - - -*

MAYOR: *Councillor, your time seems to have expired on this, somebody move extension of time - - -*

MAYOR: *Moved Councillor Daly, sorry, that two minutes – two minutes – put the – put the motion – all those in favour – all those in favour – against? Against Councillor Morgan Councillor Clarke. OK two minutes –*

CR BARRY: *Yep, OK and look, I’m just going to wrap up anyway, I just thought that this would have come through with an in depth – a bit – more in depth analysis of the whole thing, I know Mr Sharpe said earlier that we – we need a – need an executive officer, I – I’m – I’m wholeheartedly agreeing with that, but I think the process that has been followed is – somewhat seems to be flawed – if somebody else was to call into the conflict of interest and the fact of the matter is, that no matter who out of the three got the nod, by the time – if – if we’re to believe what what’s written here [indistinct] three months it’s going to be the amount of time that the person is going to be – the budgets already going to be done, so how the person runs it from there is probably immaterial, I mean, the people that we have*

on board now seem to do a sufficient job, but like I said, I speak against it, and if people want to go and have a look at the lessons from the local government from the Joondalup Inquiry they'll see why, and they can remember like I said, in a room not too far away from here.

MAYOR: *Thank you. Councillor Boylen?*

CR BOYLEN: *I wish to speak for the motion Mr Mayor. Having listened to all that was said I haven't heard anything that actually provides any substance to not accepting this recommendation. It's very clear that we've been put forward to Council a properly qualified engineer. If we look at how the person was selected, they were selected by a panel made up of engineering expertise, of human resource expertise, and also with the acting CEO someone with a very good knowledge of the business of the City of Canning. Had we gone to an independent office to help with the selection – and remember they would have had to also involve the acting CEO in his role for this appointment – what would we have got – we would have got them bringing in engineering expertise and bringing in human resources people. The human resources people being there primarily – well most importantly to ensure that the whole process was properly observed as well as participating on the panel, we have got exactly the same outcome by having this done in house as we would have through having so called experts or specialists. We've gone through the process properly, it's been quite clearly documented, how we got an engineer that we needed. In terms of persons being – could someone have been unfairly cut out, there is a whole transparent process all open to appropriate review. No, we haven't received a whole lot of attachments, it's not our business and I think as – lets ignore Joondalup as the Inquiry into the City of Canning would seem to indicate from the terms of reference given to us by the Minister that Councillors need to be aware of their own role. It is not appropriate for us to receive all the documentation, the appointment of this position – to this position is ultimately the role of the CEO. Yes, we get all the documentation – the contracts of the CEO was appointed, that's different, because a CEO is appointed by our Council, there is a big difference. There is nothing here to suggest that there is any impropriety – yes they may know each other, they may have worked with each other, they have all been in local government for a long time and for better or for worse it's a fairly small pool particularly at the senior level. So, I see nothing that indicates that there has been any conflict of interest, I see nothing that indicates any impropriety, and I believe that we had a very qualified panel make the selection.*

MAYOR: *Sorry who was that? Could you please refrain from doing that? Thank you. Are there any further members that wish to speak for or against?*

MAYOR: *If not I would like to inform the members that in the report, [I'm] disappointed that [indistinct] not make mention of the – before – while the recruitment was going on and the application closed, I made this – the acting CEO aware and the – Mrs Anne Lake, in relation to that – the I been – anonymously I've been advised that the preferred candidate was already out and about in the industry. So if we talk about confidentiality, and also I asked Anne Lake as to whether our office was left open so that anyone could go through the candidates to find out who they were. Based on that, was that Mr David Harris was supposed to be substituted by another engineer, a qualified engineer – which Dave Harris is*

not a member of the institute of engineers Australia – and that to me – I’m very very concerned that this could be flawed to the extent that other people outside weren’t notified of that. Now I’m really disappointed that this is not in the report – because I would have thought that making the – my obligation to notify the acting CEO and the acting CEO is next to me now, and he can verify that that I did bring that up to his notice and also to Anne Lake’s notice, and with that I am very concerned about that – all the candidates may not have had a fair go. You can look at whichever way you like it, but this could probably end up in somewhere else. I got to make you aware of that. OK? Now if Mr Sharpe will like to confirm that - - -

MR SHARPE: Yes Mr Mayor you certainly made me aware of that, I mean if you do have information as to where you believe that leak may have come from – if it has occurred I’m more than happy to investigate that in full detail, I can give you my one hundred percent guarantee I haven’t breached confidentiality in relation to this particular matter, I’ve raised it with Mrs Anne Lake, she’s given me her commitment that she hasn’t breached confidentiality – if – if its Council’s desire you want that to be investigated fully I’m more than happy to – to do that, I’m – I’m comfortable with the fact that we’ve followed due process in terms of the recruitment, I believe that you have a candidate that’s before you – I do draw your attention to the fact that you need to deal with this under the Local Government Act – that’s quite clear in terms of the section of the Act that it relates to – being section five thirty nine – you actually asked the CEO to undertake the recruitment process and in my capacity as – of acting CEO I’ve transacted on that Council resolution and now I’ve brought forward back to you a recommendation – you now have the choice to either accept that recommendation, if you choose not to accept the recommendation then you need to give the reasons why – what I would also say is if you are going to set – accept the recommendation I think in the fairness to the applicant Mr Stephen Bell that his name be suppressed from that recommendation because it would potentially have a detrimental effect on his career if – from my point of view if the Council didn’t accept the recommendation, and that that was on the public record.

CR DALY: Mr Mayor?

MAYOR: Cr Daly?

CR DALY: Yes, may I ask is – Councillor Mason knows this particular gentleman, is that why he’s out of the room now? Or did he know one of the other candidates?

MAYOR: Don’t know, he has not revealed that to us. Or as far as I know, he hasn’t.

MR SHARPE: [indistinct] declared an impartiality.

MAYOR: He’s declared an impartiality - - -

MR SHARPE: - - - previously.

MAYOR: - - - previously, that’s right, yeah.

MR SHARPE: [indistinct]

MAYOR: *And now he's declared a full interest - - -*

CR DALY: *Can I ask why he'd be out of the room now?*

MAYOR: *He's declared an interest!*

MAYOR: *Councillor Mason CE forty six, recommendation the same, page number twenty eight to one forty three, item details is appointment of Executive Engineering and Technical Services, and he does not seek a ruling, and nature of interest – legal advice provided to comply with the Act. So we don't know what – what he's got, dunno. Cr Barry?*

CR BARRY: *Just a question and I don't know whether there's a dispensation under the Act, but five seventy – employees to disclose interests relating to advice or reports – is that applicable here or – is there a dispensation to that Act? [indistinct] there's employee includes a person under a contract for services – which I assume one of the people we're talking about here is - - -*

CR ELLIOTT: *Mr Mayor is it a question or - - -*

MAYOR: *Yeah yeah he asked – it's a question, that's what he said. That's the question. - - - well I'm reading – is – five seventy. And is there a dispensation under the Act.*

[indistinct background chatter]

MAYOR: *Where are you reading from Councillor?*

[indistinct background chatter]

MAYOR: *So what specifically - what's your question specifically please?*

CR BARRY: [audio cut off] *a person who under contract for services with the local governments provides advice or report on a matter. Employee who has an interest in a matter in respect of employee providing advice report directly to Council or a committee must disclose the nature of the interest when giving the advice or the report. An employee who discloses an interest under this section must if required to do so by Council as the case may be disclose the extent of that interest. The question I'm asking – is there a dispensation under the Local Government Act for five seventy [audio cut off] the human resources consultant.*

MR SHARPE: *Mr Mayor the – just to clarify, I mean the recommendation that must come before you is – is putting the statutory obligation back onto the CEO – under five thirty nine of the Local Government Act – I think whilst I don't have an interest to declare on this report, is that – is that the question?*

CR BARRY: *The question is the – the – the consultant – who I think you said earlier is under contract for the City and sat in on the panel. Now, as a contractor that makes her an*

employee of the City and from a disclosure of interest – I mean that was my question, it's like my question is not in relation to any of the – the candidates, I'm talking about the process and was a disclosure of interest made - - -

MR SHARPE: Yes Mr Mayor certainly – can I – the answer to that question is Mrs Anne Lake is actually acting in the capacity of HR Manager for the City of Canning, we don't have a – theoretically – a HR department, we've lost our HR manager, our HR advisor, Mrs Anne Lake is providing that service to the City of Canning and Mrs Anne Lake – in consultation with this process sat on the interview panel – I – I enquired of Mrs Anne Lake as to whether she knew this particular applicant that is being referred to the Council tonight, for consideration and she wasn't – she hadn't had direct – my understanding – her comments were she hadn't had direct dealings with this particular applicant in the past, even though she had worked and provided advice to the organisations he had worked in, she wasn't able to provide any comment on his performance [indistinct] she hadn't had direct dealings with him. So, the way that was then further researched is – in depth reference checking was undertaken in relation to the candidate.

CR BARRY: So, as – as I said before are you saying – what you're saying there is that from 2004 at Plantagenet and in the – 2010-11 and 2011-12 and 2009-10 at South Perth, they've never – they've never crossed paths in any of their performance reviews?

MR SHARPE: Mr Mayor I don't believe that – if the question is has Mrs Anne Lake undertaken a performance review of Mr Stephen Bell, to the best of my knowledge I don't believe that that has occurred, I'm more than happy to take that on notice if you want a categorical answer to that particular question.

MAYOR: Councillor Elliott.

CR ELLIOTT: Mr Mayor we have a recommendation before us tonight that we either have to accept or reject and give reasons. The – CEO has – acting CEO tonight has assured us that it's done according to all the appropriate requirements and that he is standing on it and saying: this has been done properly, I'm putting forward a recommendation. If we haven't got faith in our CEO to believe what he said, I guess that's what we're standing on now. I believe we've got a recommendation here which he has put forward in good faith saying this is the person I think is best for the City. And as such, I think we should support it.

MAYOR: [audio cut off] I got a question in relation as to whether – through the assessment was there a score matrix done on whichever candidate or the candidates was interviewed and without revealing the names, is that put down by numbers, because the – in my type of work [indistinct] never put the candidates name up, it just be a number, and from that everyone in the interviewing panel made the score and so that everybody can record what – and then at the end and some of them are - - -

MR SHARPE: Yes Mr Mayor there was an assessment of the interviews and the interview panel discussed that assessment as a – as a group.

MAYOR: *OK. Any further members wish to speak for or against it? If not, then I'll get Councillor Morgan to close the debate, thank you.*

CR MORGAN: *Thank you Mr Mayor. I too have read the Act, and the Act states that the CEO puts the name of the preferred candidate up to the Council, Council can either reject or accept the recommendation and that's where it stops, that's according to the Act, that's all we have to do – so yes or no, [indistinct] saying that you've got to give reasons, but we're before an Inquiry so you'll have to live with it.*

[inaudible background chatter]

MAYOR: *I just been suggested by the acting CEO that it may be prudent that the names of the candidate be deleted.*

[inaudible background chatter]

CR MORGAN: *I – I'll just move that the CEO's preferred candidate - - -*

MAYOR: *- - - sorry – sorry -*

MAYOR: *Yeah that probably sound better.*

MAYOR: *OK. Now, I'll put the – the motion, all those in favour? Against? For is Councillor Elliott, Councillor Boylen, Councillor Morgan, Councillor Clarke, against is myself, Councillor O'Donnell, Councillor Daly, Councillor Barry. And seeing that I'm concerned about the – what I revealed before I even knew all the candidates, it seems that no action has been taken [indistinct] I'm really concerned about that. And that will be one of my reasons for voting that the – play on the safe side to declare the motion lost. [Mayor exercised casting vote to declare motion lost]*

MAYOR: *OK. Now, would – please – sorry –*

CR CLARKE: *Can I be excused Mr Mayor.*

MAYOR: *Thank you Councillor Clarke.*

MAYOR: *Councillor – Barry, that's right, you foreshadowed an amend., – motion, sorry.*

CR BARRY: *I foreshadowed a motion that reads that the officers recommendation in CE forty six is not adopted and the project of recruiting an Executive Engineering and Technical Services be put to tender – expression of interest from reputable, experienced recruitment firms who are sufficiently recognised and accredited in the WA industry and b) a further report be presented to Council - - -*

MAYOR: *Sorry – sorry Councillor you – you can't put to tender, you can either do by quotation because - - -*

--- well, expression of interest?

MAYOR: *No, you can't put expression – quotations.*

CR BARRY: *OK quotation.*

MAYOR: *Well that's what the acting CEO suggesting next to me. Or suggesting to you, because you're the mover. Because [indistinct] go to one hundred thousand you got to call tenders.*

CR BARRY: *Quotation to carry out. That if it's not adopted then the recruiting officer the [indistinct] the [indistinct]. That if the officer's recommendation CE forty six is not adopted then the project of recruiting an Executive Engineering and Technical Services be put to quotation to carry out – to carry out – from reputable experienced recruitment firms – so as to carry out – what's – what's – what's the word? Used is assessment – carry out a ---*

MAYOR: *The recruitment process.*

CR BARRY: *Yeah.*

CR BOYLEN: *Excuse me ---*

CR BARRY: *To assist – to assist ---*

CR BOYLEN: *Mr Mayor ---*

MAYOR: *I got two ---*

--- sorry to interrupt but could I ask ---

MAYOR: *I got two people standing up, only one at a time can stand up – have you got a point of order if you've got a point of order I'll entertain it.*

CR BOYLEN: *No look I've asked once Mr Mayor ---*

[interjection]

--- quotation to carry out a recruitment process from reputable, experienced recruitment firms who are sufficiently recognised and accepted and accredited in the WA industry sector. So you can –

MAYOR: *I'll ask the acting CEO to read it – I can't read your handwriting.*

CR BARRY: *No no it's got to be seconded first.*

MAYOR: *Councillor Morgan? Sorry, just before you stand up, I need a seconder for it, if there is no seconder then I'll move on to the next item.*

MAYOR: *Moved – seconded Councillor O’Donnell. Can you read it? Can you decipher his hand writing? Now, Councillor - - -*

MR SHARPE [to the Mayor]: *You better just confirm that given – before we move here, has anyone given reasons why this isn’t going to be accepted?*

MAYOR [to Mr Sharpe]: *Well, I gave my reason. But I didn’t move the motion.*

MR SHARPE [to the Mayor]: *So we need to – I think the foreshadowed motion – just to comply with the legislation - - -*

MAYOR [to Mr Sharpe]: *OK well we ask for your assistance now.*

[inaudible background chatter]

[audio cut off]

04:07:12

MAYOR: *Councillor Barry I just want to clarify an implication in your motion is that where do you wish to start with the a) is a) starts at “the project of recruiting an Executive Engineering and Technical Services be put to” some – [indistinct] that goes up the top here. Put [indistinct] quotation to carry out recruitment process to assist the City - - -*

[inaudible background chatter]

MAYOR: *Just that it’s pretty hard to read your hand writing.*

[audio cut off]

[inaudible background chatter]

[audio cut off]

CR: MORGAN: *Can I ask a question Mr Mayor?*

MAYOR: *Yes, while we’re waiting, yep.*

CR MORGAN: *Do we as a Council have the power to direct the CEO as to the method of employment of the – the staff – the executive staff?*

MAYOR: *The – the – under the Local Government Act, is that the CEO is empowered to hire and fire if you like, of the staff, and in relation to the executive, a senior employee, is that he can put forward the person that he or she recommends and Council – if that does not adopt that recommendation, has to give a reason as to the reason why it’s not adopted. Is that – does that answer your question - - - OK*

CR MORGAN: *Not really, can we tell the CEO how he has to interview and select the person?*
[indistinct]

MAYOR: *No, we – we – we don't - - - we can't give any direction to him as to how – how the process is to go through.*

MR SHARPE: *Mr Mayor that's a valid point and I think I need to advise the Council that the resolution that you – whether its myself or somebody else that undertakes that – that recruitment process, the only direction that the Council can give is to the CEO and in terms of the hiring and termination of the CEO. When the CEO makes a recommendations in relation to any other staff member, whether they're a senior designated person under the Act which the Council's senior designated staff here are the executive plus the HR Manager, there is a potential that the resolution that you – that Cr Barry's putting forward – I'm not saying that it is but there is a potential that it could be Ultra Vires because I have not had a situation previously where I've heard that the Council hasn't accepted the recommendations of the CEO, not to say that it hasn't happened in WA, I did enquire with Jim Kelly today what the potential was if there was a – a situation that the recommendation wasn't adopted and it would possibly be that the CEO would then have to go and source another candidate to bring back to the Council for consideration Mr Mayor.*

MAYOR: *OK, I may be able to read the part of the Regulations which is – also refers to the Act – would you like me to read it out? OK. Under the Regulation 18A, advertisement for the position of CEO or a senior employee – and I understand that this position is a senior employee – so what I'm reading now, applies to that position. Alright? One 'in bracket' is if a position of CEO – which that's not the case or a senior employee – which it is the case – of a local government becomes vacant, the local government is to advertise the position. A 'in bracket' on a notice board exhibited to the public at the local government's offices if the position is 1 'in bracket' to be filled on a part time basis by a person who is also employed by another local government or 'in bracket' 2, an acting position for a term not exceeding one year. And just to explain that tonight, we have done exactly that for the acting executive community – community services I think it's her title – Client and Customer Services, sorry now I got it right – or b otherwise in a newspaper circulating generally throughout the state. Two – 'in bracket' two, is that an advertisement referred to in sub regulation one is to contain, a 'in bracket' the details of the remuneration and benefits offered, b 'in bracket' details of the place where applications for the position are to be submitted, 'in bracket' c, the date and time for the closing of applications for the position, 'in bracket' d, the duration of the proposed contract, e 'in bracket' contact details for a person who can provide further information about the position, and f 'in bracket' is that any other information that the local government considers is relevant. Now that's where the question comes as to whether – whether that motion from Councillor - - -*

[interjection]

- - - *Well, this is the Act, [I'm] reading part of the Act, so – what - - -*

[interjection]

- - - which question you want now.

[inaudible background chatter]

MAYOR: *Could you put your mike [microphone] on please so that we can - - -*

CR MORGAN: *My question is can we direct the CEO as to the process he employs to select the – recruit – the preferred candidate.*

MAYOR: *Like I said to you earlier, that – that the Council can not direct the CEO as to the process how he goes about it. The process is written in the Act - - -*

[interjection]

- - - *And in the Regulations. Now, under Regulation, no one has been able to explain to me under f any other information that the local government considers relevant – local government is not the CEO, the way I understand it, it's a constituted Council that is local government.*

[inaudible background chatter]

[audio cut off]

MR SHARPE: *Mr Mayor, the onus goes back on the CEO to undertake the recruitment process – I mean, the Act is quite clear – the CEO must undertake that process and make a recommendation back to the Council, I think that's quite clearly spelt out and – and included in the report as – under section five thirty nine. The Council in moving and – if you're willing to consider this recommendation that's before you, is – is giving an instruction to the CEO. I don't know whether this motion is actually Ultra Vires, I'm not saying that it is, I think potentially whether it's me or somebody else sitting in this role if they wanted to take exception to this – this motion or this recommendation, then you can't actually direct the CEO how they must undertake and go about the recruitment process. All the Council can do is consider the recommendations of the CEO and either accept or reject – if you reject, then you must give reasons – I don't know that you can actually say "you must go around a recruitment process in a certain way" but I'm more than happy to take advice on that matter, but – there – I am saying to you, there is a potential that this foreshadowed motion is potentially Ultra Vires and out of order.*

CR MORGAN: [indistinct] *I would suggest that – that the motion be referred to the Department for a – for a ruling.*

[audio cut off]

MAYOR: *Look I – I take note as to what the acting CEO is saying, is that as far as I understand is that Councils can not direct under five thirty six and five thirty seven of the Local Government Act as to how he goes about he – doing the recruitment. That's what I*

understand. Alright? But there is part of the section there, where it talks about the part f where may be when the CEO comes back, at some stage he can report to Council. That's what I – the way I understand it, but the – the motion as foreshadowed I could – I could be – Ultra Vires. [indistinct] Ultra Vires means it can not be effected. Can not take place. Alright?

CR ELLIOTT: *[indistinct] ruling that way Mr Mayor?*

MAYOR: *Well – if the CEO doesn't advise me as to what – I'm listening to him as to what he's saying – to base that – I come to the same conclusion that as I understand it, is that the – Council can not instruct or give directive to the CEO as to how he goes about doing recruitment. OK, that's the way I understand it, and I'm already out of order.*

MR SHARPE: *[indistinct] really out of order?*

MR SHARPE: *Mr Mayor then can I suggest - - -*

MAYOR: *I've ruled it out of order based as to what the CEO – the acting CEO is advising me to say that this – foreshadowed motion could be Ultra Vires. And maybe that you can not work with it. Because of the connotation in the motion – the way I read it is that it's to give instructions to the CEO and that is contrary to the – the Act, section five thirty six and five thirty seven and also 18A under the Regulations I just read to you. OK?*

MR SHARPE: *So, Mr Mayor, if you – if that – taking that on board, that that foreshadowed motion has been ruled out of order, where we are at the moment is that you have a – a lost motion of the CEO's recommendation, now in order to comply with the requirements of the Act being section five thirty nine, the Council needs to give reasons why that – that has not been accepted. And Councillor Barry has put some reasons forward that he – Council would have to agree to.*

MAYOR: *OK, what's - - -*

CR DALY: *Would we do that individually? Or as a - - -*

- - - [indistinct] just got to give a – the reason [indistinct] – read this out.

MAYOR: *Sorry? Process of recruitment – sorry?*

MAYOR: *Not quite sure what Councillor Barry wish to put as a reason, but to – he puts here the lack of information provided in the report as per disclosure and information supplied to Councillors. And – well, should be members, not Councillors as everybody keeps calling me 'Councillor' when I'm not a Councillor.*

[interjection]

MAYOR: *Elected members. That's fine.*

MR SHARPE *[to Mayor]: So is it just that bit - - -*

MAYOR [to Mr Sharpe]: *Is the bottom bit. OK - - -*

MR SHARPE [to Mayor]: *Is Council comfortable that will go on the public record?*

MAYOR: *Is – well, you got to put a reason there - - -*

CR BOYLEN: *‘Scuse me Mr Mayor – sorry I’ll stand – could I please have that read out again.*

MAYOR: *Yeah yeah I will. Yeah I will. The reason was that – Councillor Barry put forward was that lack of information provided in the report as per disclosure and information supplied to elected members.*

CR ELLIOTT: *Mr Mayor shouldn’t we have a recommendation reading that the CEO’s recommendation not be adopted for the following reason – because at this stage we’ve got nothing before the chair, and I would suggest the Mayor read the full motion.*

[inaudible background chatter]

MAYOR: *Probably should but the thing is that the five – under five thirty nine say that you got to give a reason - - -*

[inaudible background chatter]

- - - OK – so someone should move that – that recommendation be not adopted for the following reason then. So that he can deal with it.

CR BARRY: *But I wasn’t moving that it not be adopted [indistinct], I moved that if – if it was lost – if the officer’s recommendation was - - -*

MAYOR: [indistinct] *the foreshadowed motion that you moved Councillor, is that – is – could be deemed to be Ultra Vires. And unless we get a lawyer to look at that, we – I would like to play on the caution side to say that – the way I read it, is that we can not, like I said earlier, we can not direct the CEO on how he does his recruitment for staff. And – and the executive - - -*

CR BARRY: [indistinct] *you want me to put on there that I move that it not be adopted for the following reasons. And that’s – and that’s what’s going to happen, I mean, you can’t go through the whole process again.*

MAYOR: *The CEO’s recommendation not be adopted for the following reason.*

CR BARRY: *Is it the CEO or the officer’s? CEO? Alright the CEO - - -*

- - - CEO. Acting CEO or whatever.

- - - not be adopted – acting CEO, yep. Not be adopted for the following reason.

[inaudible background chatter] *that's out of order.*

[audio cut off]

MAYOR: *Members, you got to be aware of the – undue influence on members.*

MAYOR: *One two three four five six seven.*

CR DALY: *Can you explain that a bit more for me? Undue influence?*

MAYOR: *No, that's OK, no, that's alright*

MR SHARPE [to the Mayor]: *You used your casting vote so who's missing?*

MAYOR [to Mr Sharpe]: *Councillor Clarke, he went home.*

MR SHARPE [to the Mayor]: *Oh when did he go home?*

MAYOR [to Mr Sharpe]: *Yeah. He went home before – after we put the motion.*

MR SHARPE [to the Mayor]: *What time did he leave?*

MAYOR: *Does anyone made any note when Councillor Clarke walked out?*

[inaudible background chatter]

MAYOR: *About twenty five past nine. Twenty five past nine. [laughs] That's quite a while, yeah.*

MAYOR: *I think – it was at – it was nine fifty seven. That's right.*

MR SHARPE: *Nine fifty seven Councillor Clarke left.*

MAYOR: *OK, now, what is it, where are we now. OK now – reason for – no that's not it. The acting CEO's recommendation not be adopted for the following reason: lack of information provided in the report as disclosed and – disclosure and information supplied to elected members. Is there a seconder for that? OK, there's no seconder? And that lacks – falls because a lack of a seconder – Councillor Daly second the motion, now would you like to speak on the – on the motion? No?*

CR BARRY: *No I think – I think all's been said and I might only confuse the issue any further.*

MAYOR: *OK. Is there any member wish to speak against the motion? No? Then I'll put the motion, all those in favour – against – for is Councillor Barry, Councillor Daly, Councillor O'Donnell and myself. And against Councillor Elliott, Councillor Morgan, and Councillor Boylen.*

[interjection]

MAYOR: *Yes, everything is recorded. And now I'd like to move that the resumption of standing orders with open doors moved by Councillor Elliott seconded by Councillor – Councillor – we just like to collect that stuff as well – seconded Councillor Barry, I'll put the motion all those in favour – against – carried unanimously.*

04:25:37

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
1	PART I ref Chapter 1:	Letter: Mayor to Minister 29/12/2011
2	PART I ref Chapter 2 :	OCM - 26 July 2011
3	PART I ref Chapter 2 :	Report: CR-113-11
4	PART I ref Chapter 2 :	Report: Macri Partners Audit 24/10/2011
5	PART I ref Chapter 2 :	Email: A Sharpe to Corporate Services 07/07/2011
6	PART I ref Chapter 2 :	Report: AC-013-11
7	PART I ref Chapter 2 :	ACM - 01 November 2011 - Audit Committee
8	PART I ref Chapter 2 :	OCM - 08 November 2011
9	PART I ref Chapter 2 :	Report: Hardy Bowen Solicitors 01/09/2011
10	PART I ref Chapter 2 :	Report: AC-012-11
11	PART I ref Chapter 2 :	Letter: CCC to Mayor 08/02/2012
12	PART I ref Chapter 2 :	OCM- 13 March 2012
13	PART I ref Chapter 2 :	Report: CR-034-12
14	PART I ref Chapter 2 :	OCM - 13 December 2011
15	PART I ref Chapter 2 :	Memo: CEO to Mayor 23/12/2011
16	PART I ref Chapter 2 :	OCM - 22 Nov 2011 Abridged - Cr Olsen
17	PART I ref Chapter 2 :	OCM - 13 Dec 2010 Abridged - Cr Olsen
18	PART I ref Chapter 2 :	Email: Cr Olsen to CEO 20/12/2011
19	PART I ref Chapter 2 :	Report: CR-007-12
20	PART I ref Chapter 2 :	Report: CR-024-12
21	PART I ref Chapter 2 :	OCM - 25 Oct 2011
22	PART I ref Chapter 2 :	Email: Cr Barry to All 28/10/2011
23	PART I ref Chapter 2 :	Memo: M Mouritz with attachments RAUM 03/11/2011
24	PART I ref Chapter 2 :	Diary Notes: Mayor 14/02/2012
25	PART I ref Chapter 2 :	SCM - AUDIT MEET 11 Aug 2011
26	PART I ref Chapter 3 :	Submission: CEO Dacombe 09 Feb 2012
27	PART I ref Chapter 3 :	Submission: CEO Dacombe 09 Feb 2012 Attachments
28	PART I ref Chapter 3 :	Submission: CEO Dacombe 12 Mar 2012
29	PART I ref Chapter 3 :	Submission: Cr Clarke
30	PART I ref Chapter 3 :	Submission: Cr Clarke - Supplementary 28/05/2012

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
31	PART II ref Chapter 5 :	OCM 13 Sep 2011
32	PART II ref Chapter 5 :	Report: ET - 082-11
33	PART II ref Chapter 5 :	Report: ET-022-12 Letter: City of Gosnells
34	PART II ref Chapter 5 :	Report: ET-120-11
35	PART II ref Chapter 5 :	Media : Gosnells examiner 23 Feb 2012
36	PART II ref Chapter 5 :	Report: ET-041-12
37	PART II ref Chapter 6 :	Report: ET-115-11
38	PART II ref Chapter 6 :	Report: ET-007-12 Letter: City of South Perth
39	PART II ref Chapter 6 :	Report: ET-007-12
40	PART II ref Chapter 6 :	OCM - 13 March 2012 Questions on Notice response
41	PART II ref Chapter 7 :	Report: CS-086-10
42	PART II ref Chapter 7 :	Email: Ms Armstrong To Mayor 20/12/2012
43	PART II ref Chapter 7 :	Letter: CEO to Lottery West 21/12/2010
44	PART II ref Chapter 7 :	Report:CS-004-11
45	PART II ref Chapter 7 :	OCM- 18 Jan 2011 with CS00411
46	PART II ref Chapter 7 :	Letter: Legal - Mcleods Lease review WCCC 13/04/2011
47	PART II ref Chapter 7 :	Report: Landgate review WCCC 08/06/2011
48	PART II ref Chapter 7 :	OCM - 12 Jul 2011 with CS0411
49	PART II ref Chapter 7 :	OCM- PQT 26 July 2011
50	PART II ref Chapter 7 :	Letter: CEO to WCCC 23 Aug 2011 and PQT
51	PART II ref Chapter 7 :	OCM - 09 Aug 2011 and PQT
52	PART II ref Chapter 7 :	OCM - 23 Aug 2011 and PQT
53	PART II ref Chapter 7 :	OCM - 13 Sep 2011 QoN
54	PART II ref Chapter 7 :	Report: CS-054-11
55	PART II ref Chapter 7 :	Report: CE-047-11
56	PART II ref Chapter 7 :	Report: CE-003-12
57	PART II ref Chapter 7 :	Report: CS-006-12
58	PART II ref Chapter 7 :	Report: CE-023-12
59	PART II ref Chapter 7 :	Email: Ms Armstrong to WCCC 28/03/2012
60	PART II ref Chapter 7 :	OCM 26 June 2012
61	PART II ref Chapter 7 :	Report: CS-064-12 and attachments

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
62	PART II ref Chapter 8 :	Report: To the Board- WSC 13/09/2010
63	PART II ref Chapter 8 :	Letter: WSC to CEO 22/08/2011
64	PART II ref Chapter 8 :	Email: CEO to Mayor 01/09/2011
65	PART II ref Chapter 8 :	Letter: WSC to Mayor 02/09/2011
66	PART II ref Chapter 8 :	Email: CEO to All Crs 09/09/2011
67	PART II ref Chapter 8 :	SCM 22 Sept 2011 plus attachments - WSC
68	PART II ref Chapter 8 :	OCM 27 Sep 2011 and Report CR-160-11 re WSC
69	PART II ref Chapter 9 :	Report: Hardy Bowen Solicitors - CM-039-09
70	PART II ref Chapter 9 :	Web Site: Cr OLSEN profile
71	PART II ref Chapter 9 :	Report: Parliamentary Evidence 26/03/2009
72	PART II ref Chapter 9 :	OCM 6 July 2010 PQT
73	PART II ref Chapter 9 :	Report: SRS-138-10
74	PART II ref Chapter 9 :	Report: CM-108-09
75	PART II ref Chapter 9 :	Submission: City of Melville
76	PART II ref Chapter 10 :	Report: ET-109-11
77	PART II ref Chapter 10 :	Email: Mr Jefferies to Mayor 08/02/2012
78	PART II ref Chapter 10 :	Report: ET-171-10
79	PART II ref Chapter 11 :	Report: City of Canning - Planning Context
80	PART II ref Chapter 11 :	Spreadsheet: SAT Matters Analysis
81	PART II ref Chapter 12 :	Report: AF-133-10
82	PART II ref Chapter 12 :	Report: CR-048-11
83	PART II ref Chapter 12 :	Report: CR-217-11
84	PART II ref Chapter 12 :	Email: Cr Mason to Civic Legal 18/08/2011
85	PART II ref Chapter 12 :	Register: City of Canning Gifts
86	PART II ref Chapter 12 :	Emails: Mayor and Civic Legal 17-23/08/2011
87	PART II ref Chapter 12 :	Emails: Mayor and Civic Legal 13/01/2012
88	PART II ref Chapter 12 :	Policy: Code of Conduct - City of Canning
89	PART III ref Chapter 13 :	Report: CE-008-11
90	PART III ref Chapter 13 :	Email: Cr Mason to Mayor, Olsen, Barry 05/12/11
91	PART III ref Chapter 13 :	Email: Cr Mason to CEO 07/12/2011
92	PART III ref Chapter 13 :	Notice of Motion Cr Mason OCM 13 Dec 2011

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
93	PART III ref Chapter 13 :	Email: CEO to Mayor and Cr MASON 09/12/2011
94	PART III ref Chapter 13 :	Email: Cr Mason to Barry and Olsen 09/12/2011
95	PART III ref Chapter 13 :	OCM 13 Dec 2011
96	PART III ref Chapter 14 :	Annual Performance Report CEO - 2009-2010
97	PART III ref Chapter 14 :	Report: CE-006-11
98	PART III ref Chapter 14 :	Email: Mayor to CEO 04/01/2012
99	PART III ref Chapter 14 :	Notes:A Sharpe 12/01/2012
100	PART III ref Chapter 14 :	Annual Performance Report CEO - 2010-2011
101	PART III ref Chapter 14 :	Email: Cr Mason to Mayor, Olsen, Barry23/11/2011 Pizza
102	PART III ref Chapter 14 :	Letter: CEO to Mayor 19/01/2012
103	PART III ref Chapter 14 :	Report: CE-005-012
104	PART III ref Chapter 14 :	Document: Deed of Release
105	PART III ref Chapter 14 :	SCM 23 Jan 2012
106	PART III ref Chapter 15 :	Email: HLS Legal to Ailion Legal
107	PART III ref Chapter 15 :	Legal Advice: Allion Legal 25/01/2012
108	PART III ref Chapter 15 :	Legal Advice: Allion Legal 27/01/2012
109	PART III ref Chapter 15 :	Legal Advice: Allion Legal 05/02/2012
110	PART IV ref Chapter 16 :	Register: City of Canning Declaration of Interest
111	PART IV ref Chapter 16 :	Register: City of Canning Notice of Impartiality
112	PART IV ref Chapter 17 :	Report: ET-152-10 within OCM 2010-1109
113	PART IV ref Chapter 17 :	Report: Tender Evaluation 32/2010
114	PART IV ref Chapter 17 :	Report: ET-170-10 Attachments
115	PART IV ref Chapter 17 :	Email: Engineer to Blanchard 03/12/2010
116	PART IV ref Chapter 17 :	Letter: Blanchard to CEO 06/12/2010
117	PART IV ref Chapter 17 :	Report: ET-152-10 within OCM 14 December 2010
118	PART IV ref Chapter 17 :	Email: Gomes to Lawyer 11/01/2011
119	PART IV ref Chapter 17 :	Report: Lawyers report to Engineering 12/01/2011
120	PART IV ref Chapter 17 :	Email: CEO to Engineering 19/01/2011
121	PART IV ref Chapter 17 :	Email: Engineer - Manager 14/02/2011
122	PART IV ref Chapter 17 :	Email - WALGA to CoC Engineering 21/02/2011
123	PART IV ref Chapter 17 :	Emai: Canning Manager Legal 05/10/2011

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
124	PART IV ref Chapter 18 :	RFQ: First Design review brief
125	PART IV ref Chapter 18 :	Blanchard Consulting 1st Quote
126	PART IV ref Chapter 18 :	Email: Design Engineer to Manager 17/11/2011
127	PART IV ref Chapter 18 :	Second Design Review
128	PART IV ref Chapter 18 :	Email: Blanchard to City 29/11/2011
129	PART IV ref Chapter 18 :	Email concerns Engineer to Manager 29/11/2011
130	PART IV ref Chapter 18 :	Email: Acceptance City to Terry Blanchard 12/12/2011
131	PART IV ref Chapter 18 :	Email - Requote responses 06/12/2011
132	PART IV ref Chapter 19 :	Email - Resignation Executive Engineering 06/07/2011
133	PART IV ref Chapter 19 :	Email: CEO to Mason 06/07/2011
134	PART IV ref Chapter 19 :	Report: CR-137-11 within SCM - 2011-0811
135	PART IV ref Chapter 19 :	Report: CE-034-11
136	PART IV ref Chapter 19 :	Forum: Refocus 20 September Forum
137	PART IV ref Chapter 19 :	Motion by Cr Mason: CE-036-11 Abridged
138	PART IV ref Chapter 19 :	Report: CE-036-11 at OCM
139	PART IV ref Chapter 19 :	Email: Cr Barry to CEO 07/11/2011
140	PART IV ref Chapter 19 :	QoN response OCM 2011-1108
141	PART IV ref Chapter 19 :	Email: CEO to Mayor 14/11/2011
142	PART IV ref Chapter 19 :	Email: Mayor to Mason 14/11/2011
143	PART IV ref Chapter 19 :	Legislation: Section 18A Regulations
144	PART IV ref Chapter 19 :	Email: Cr Barry to CEO 18/11/2011
145	PART IV ref Chapter 19 :	Memo: CEO to Mayor 21/11/2011
146	PART IV ref Chapter 19 :	JDF: Executive Engineering
147	PART IV ref Chapter 19 :	Email: Mayor to Mason, Barry 18/11/2011
148	PART IV ref Chapter 19 :	Email: CEO to DLG 22/11/2011
149	PART IV ref Chapter 19 :	Email: Ad managed by LOGO 08/11/2011
150	PART IV ref Chapter 19 :	Email: CEO to MASON 09/12/2011
151	PART IV ref Chapter 19 :	Notice of Motion Cr Mason 13 Dec
152	PART IV ref Chapter 19 :	Email: CEO to DLG 16/12/2011
153	PART IV ref Chapter 19 :	Email: CEO to DLG 16/12/2011 - further
154	PART IV ref Chapter 19 :	Email: CEO to Mayor 22/12/2011

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
155	PART IV ref Chapter 19 :	Email: Mason to CEO 03/01/2012
156	PART IV ref Chapter 19 :	Email: CEO response to Mayor and Mason 03/01/2012
157	PART IV ref Chapter 19 :	Email: CEO to Mayor/Mason re Interview Panel 05/01/2012
158	PART IV ref Chapter 19 :	Email attachments 06/01/2012 Confidential Interview Pack
159	PART IV ref Chapter 19 :	Email: Mayor to CEO 08/01/2012
160	PART IV ref Chapter 19 :	Email: Mayor to CEO 09/01/2012
161	PART IV ref Chapter 19 :	Email CEO to Mayor - 09/01/2012 - for clarity
162	PART IV ref Chapter 19 :	Email: CEO to Mike Richardson 21/12/2011
163	PART IV ref Chapter 20 :	Email: A/CEO to All 31/03/2012
164	PART IV ref Chapter 20 :	Email: HR Consultant to Inquiry 07/05/2012
165	PART IV ref Chapter 20 :	Email: HR Consultant to Inquiry 30/05/2013
166	PART IV ref Chapter 20 :	Report: CE-046-12 within OCM 22 May 2012
167	PART IV ref Chapter 20 :	Email: Cr Barry QoN re CE 046-12
168	PART IV ref Chapter 20 :	Email: Inquiry to Cr MASON re process
169	PART IV ref Chapter 20 :	Email: Inquiry to Cr Barry re process
170	PART IV ref Chapter 20 :	Report: Joondalup report extract
171	PART IV ref Chapter 20 :	Email: Inquiry questions and responses Mayor
172	PART IV ref Chapter 20 :	OCM: 22 May 2012 Declaration of Interest
173	PART IV ref Chapter 20 :	OCM: Cr Masons absence
174	PART IV ref Chapter 20 :	Submission: Cr Boylens re Recruitment process
175	PART IV ref Chapter 20 :	Submission: Cr Morgans re Recruitment process
176	PART IV ref Chapter 20 :	Submission: Cr Clarkes re recruitment process
177	PART V ref Chapter 22 :	City of Canning: Standing Orders
178	PART V ref Chapter 22 :	Public Questions - 28 Sept 2010
179	PART V ref Chapter 22 :	Public Questions - 8 Feb 2011
180	PART V ref Chapter 22 :	Public Questions - 8 Mar 2011
181	PART V ref Chapter 22 :	Public Questions - 12 Apr 2011
182	PART V ref Chapter 22 :	Public Questions - 24 May 2011
183	PART V ref Chapter 22 :	Public Questions - 28 Jun 2011
184	PART V ref Chapter 22 :	Public Questions - 9 Aug 2011
185	PART V ref Chapter 22 :	Public Questions - 23 Aug 2011

EXHIBIT No	Report Reference	DOCUMENT DESCRIPTION
186	PART V ref Chapter 22 :	Public Questions - 13 Sep 2011
187	PART V ref Chapter 22 :	Public Questions - 24 Jan 2012
188	PART V ref Chapter 22 :	Public Questions - 14 Feb 2012
189	PART V ref Chapter 22 :	Public Questions - 28 Feb 2012
190	PART V ref Chapter 26 :	Local Govt Regs S 5.25(1)(d)
191	PART V ref Chapter 26 :	OCM: 2011 25 OCT
192	PART V ref Chapter 26 :	Email: Mr Dacombe to Inquiry re secret votes
193	PART V ref Chapter 27 :	City of Canning: Policy 301
194	PART V ref Chapter 27 :	Agenda 13 Dec - Tender Policy
195	PART V ref Chapter 27 :	Minutes: Audit Committee Minutes
196	PART V ref Chapter 27 :	Agenda 13 Dec - Tender Policy Notes by Cr MASON
197	PART VI ref Attachment 2	Email - Mason to Mayor Private and Confidential 03/01/2012
198	PART VI ref Attachment 2	Emails re Aged care 13/01/2012
199	PART VI ref Attachment 2	Emails re Aged care 13/01/2012
200	PART VI ref Attachment 2	Emails re Aged care 13/01/2012
201	PART VI ref Attachment 2	SCM 2011-0811
202	PART VI ref Attachment 3	Email Mayor to Mason 09 Jan 2012
203	PART VI ref Attachment 2	Email: Mayor to Mason 18 Jan 2012
204	PART VI ref Attachment 2	Email Mayor to Allion Legal
205	PART VI ref Attachment 2	Email: Mason to others for OCM 24 Jan 2012

If you would like more information
please contact us.

Department of Local Government
Gordon Stephenson House
140 William Street
PERTH 6000

Tel: (08) 6552 1500
Fax: (08) 6552 1555
Freecall: 1800 620 511 (Country Only)
Email: info@dlg.wa.gov.au
Web: www.dlg.wa.gov.au