

Director of Local Government

Report to the Derwent Valley Council

August 2017

Table of Contents

- 1. Introduction3
- 2. Overview..... 4
- 3. Management of Council funds.....7
- 4. Implementation of and adherences to Council policies9
- 5. Failure to adopt the Model Code of Conduct..... 14
- 6. Optimal Organisational Structure 15
- 7. Management of relationships..... 17
- 8. Pecuniary Interest complaints 18
- 9. Summary of Recommendations 19
- Appendix A. Summary of Sanctions Imposed Recommendations..... 21

I. Introduction

In the period October to December 2016 I received, in my capacity as the Director of Local Government (the Director), complaints regarding the governance and operational performance of the Derwent Valley Council (the Council) as well as an issue regarding the failure by the Council to adopt the Model Code of Conduct before 13 July 2016 as required by the *Local Government Act 1993* (the Act).

Given the nature of the complaints I have undertaken an investigation into the Council pursuant to the provisions of section 339E(4) of the Act. The investigation involved interviews with the elected members and senior staff of the Council as well as the examination of a variety of Council documents.

All investigations conducted by the Director under the Act are conducted on a confidential basis. This approach was undertaken in this investigation to reassure councillors and council staff that were interviewed that matters would be treated confidentially and would not be attributed to any particular individual.

This report provides findings and recommendations on the governance and operational issues considered during the investigation.

I have consulted with all councillors and the General Manager on a draft of the report. Fourteen days was allowed for responses to be submitted to me, and three responses were received. I have considered the responses prior to finalising the report.

2. Overview

The role of the Director of Local Government is to administer the *Local Government Act 1993*. The role supports Tasmanians to receive high quality and cost effective access to local government services, and also performs statutory responsibilities that include regulatory activities to support good governance by elected members within this important tier of government. Ensuring and maintaining community confidence is crucial.

The statutory responsibilities of the Director impose obligations to investigate complaints into alleged non-compliance with, or offences under, the Act. It is these obligations that have resulted in the investigation into the Derwent Valley Council.

Officers of the Local Government Division undertook the investigations under the Director's authority. The officers were sensitive to the need to conduct the investigation in a manner so as to have as little adverse impact to the ongoing operations of the Council as possible.

It is pleasing that all members of Council and Council staff participated in the investigation in the interests of dealing with the matters raised and with the intention of improving governance and operations to ensure that the Derwent Valley community receives a high standard of local government service.

While this report finds there have been instances of non-compliance by Council and some individuals with the Act and with some Council policies, the more important outcome is how Council receives and acts on the findings and recommendations that are presented. Council has a duty to make improvements to governance and operations, for the benefit of its ratepayers and community. Efforts to make improvements now will not only support current councillors, but should produce a supportive environment for any new councillors who are elected in the future to understand and perform their roles successfully.

It is worth noting here the difference between a finding against the Council as a body and a finding against an individual councillor. The Act contains many provisions which prescribe specific actions or outcomes which must be undertaken by the Council. In any Council resolution, councillors have the opportunity to vote either for, against or alternatively abstain from voting in relation to the matter resolved. Irrespective, the Council as a body will still be subject to the finding and recommendations where the resolution or action is not in accordance with the legislative provisions of the Act. Where Council has taken a decision that has been found to be non-compliant with the Act, the voting record of individual councillor's is on the public record (unless the relevant matter was resolved in a closed meeting).

Broadly speaking, there are four key areas that the Council needs to address in terms of governance and operational performance, namely:

- the management of Council funds;
- implementation of and adherence to Council policies;
- optimal organisational structure; and

- the management of relationships.

Additionally, the other area of note to which I must specifically refer is:

- failure to comply with *Local Government Act 1993* section 28T, which is the failure to adopt the Model Code of Conduct by 13 July 2016.

Of particular importance in my view is that the General Manager and councillors collectively have a clear understanding of the Act with respect to the roles and responsibilities established under the Act. The findings from this investigation reveal that a clear understanding has been lacking at the Derwent Valley Council in some instances and that there has been some 'creep' in terms of exercising functions or powers outside of the Act or Council policies.

Elected members and Council staff should be aware of the significant responsibility placed upon them in terms of control and expenditure of ratepayer and grant funds. Dealings must always be within legislative parameters, subject to good governance and commercial practice principles and able to withstand public scrutiny. Of particular note, the investigation has found poor and non-compliant practices with respect to the making of loans. This follows earlier findings by the Auditor-General with respect to poor controls over credit card expenditure at the Council.

My investigation also noted that the Council regime in relation to policies was a catalyst to a number of the issues that have been raised. Ensuring that clear, concise policies are in place is essential for any well governed council. Policies should be reviewed on a regular basis, indeed with the Act requiring that major council policies be reviewed every 4 years.

The investigation noted that there has been a significant program of policy review undertaken by the Council in the past 15 months, however it noted that there was still a significant amount of work to do to have in place an appropriate policy framework under which staff can make consistent and appropriate decisions. Additionally, even where policies are in place, the investigation noted that the lack of adherence, certainly historically, has been a catalyst to the issues and non-compliance identified in this report.

I accept that these failures are as a result of some historical practices, however it is incumbent upon the current Council and General Manager to act rapidly to address deficiencies to support effective and sustainable governance. Whilst there is some evidence of attempts being made, the program should be accelerated.

It was heartening to note that all councillors agreed that generally the Council operated with the best interests of the community in mind. Indeed, most councillors believed that the Council was an effective working unit that was now focussing on many of the strategic priorities the Council needs to confront into the future. However, information provided during the investigation appeared to indicate that there are some relationships within the Council that are preventing the focus of Council remaining on strategic issues. It is likely that the causal factors for those issues is likely to be ineffective and insufficient communication between parties combined with a failure by some councillors to fully understand the role that they have been elected to perform.

The Act is clearly framed to restrict the interference of councillors in the operational sphere of council business. This is to ensure the integrity of the authority of the General Manager to conduct day-to-day business effectively, whilst carrying out the strategic decisions made by Council. All councillors need to clearly understand their role to avoid undermining this relationship.

The Derwent Valley community will expect to know what action their Council takes with respect to the recommendations in this Report. Consequently, I will require quarterly reporting on progress on the recommendations. The quarterly reports will be published on the Local Government Division website and it would be beneficial for the Council to make the progress reports available as well. A review for the ongoing need for quarterly progress reporting will be conducted following the fourth quarter report, and will be based on progress against the recommendations and evidence of improvements.

3. Management of Council funds

The investigation focussed on the circumstances surrounding the issue of a loan to the Derwent Valley PCYC for the amount of \$100,000 and also of a loan by the General Manager to the Mayor in relation to the payment of an invoice for the repair of his vehicle (this matter is further discussed at 4.1).

3.1 Loan to the PCYC

The investigation determined that the Mayor, Deputy Mayor, General Manager and Council accountant were all party to negotiations and discussions with the Tasmanian Association of PCYC (TAPCYC), in order to secure the commencement of a Derwent Valley PCYC. Further, I find that the Council had supported the idea of having the PCYC operating out of the Council owned sports centre.

On 29 June 2016, a meeting was held at the Derwent Valley Council Chambers between Mayor Evans, Deputy Mayor Shaw, General Manager Winton, the Minister for Police, the then CEO of the TAPCYC and a senior police officer. During that meeting the establishment of the Derwent Valley PCYC was discussed including an understanding on the behalf of the Mayor, Deputy Mayor and General Manager that a grant of \$100,000 would be provided by the Tasmanian Association of PCYC.

The investigation noted that as the venture neared fruition, a representation was made by the Chief Executive Officer of the TAPCYC, for the Derwent Valley Council to provide a loan of \$100,000 of Council funds in order to commence operations, on the understanding that the loan would be repaid to the Derwent Valley Council upon receipt of the grant from the TAPCYC.

The loan was made by the General Manager, without appropriate approval by the Council, notwithstanding that the Mayor and Deputy Mayor were aware of the loan. I note that the General Manager identified that he believed that the general powers provided to the General Manager pursuant to section 62 provided adequate authorisation to issue the loan.

The power for a Council to make loans is not explicitly provided for under the Act. In my opinion, the power for a Council to make a loan is implicit within certain sections of the Act (but not section 62 alone) and are qualified by conditions which require a significant level of control and scrutiny. There is no evidence that the specific loan made to the TAPCYC was made in accordance with any provisions of the Act and, in any event, the General Manager has relied on section 62. In the absence of a specific delegation by Council (and other conditions being met), I find that the loan was not legally made in accordance with Part 8 of the Act.

I do note that the majority of councillors stated when questioned that they would have supported the issue of the loan should it have been brought to Council in accordance with section 82(4) of the Act.

Leaving aside the legality of the loan, of concern is the failure to follow good commercial practice with respect to having in place a loan or deed type documentation for a transaction of this type – particularly with consideration to the value – and this concern was exacerbated upon reviewing correspondence from the TAPCYC following the departure of the previous CEO. The loan should have been supported by appropriate documentation that gave some protection to ratepayers in terms of security for the loan. While there is an argument that the loan was effectively an ‘advance’ whilst a grant from the TAPCYC was awaited, the fact that the grant was yet to be provided and that detailed terms of the grant were yet to be agreed or documented, exposed ratepayers to some risk.

On a related matter, the position of the Mayor sitting as the chair on the DVPCYC Board was examined. There was a potential conflict of interest with respect to the Mayor’s role as chair of the Board and his position of Mayor of Council. It is noted that the Mayor stated that his undertaking the chairpersonship of the DVPCYC Board was only transitional, and that he had declared conflicts of interest and removed himself from meetings when he considered he had a conflict. The Mayor has since resigned from the Board effective 19 June 2017.

Recommendations

In order to avoid similar non-compliance in the future, I recommend that:

- the Council ensures it complies with Section 82 (Estimates) and more broadly Part 8 of *the Local Government Act 1993*;
- the Council’s audit panel review all loans made by Council over the past 3 years and provides advice in relation to whether policies and practices require change to ensure compliance; and
- the Council ensures that where such loans are approved by Council, that adequate contractual provisions are in place with regards to securing the repayment of the loan.

Action by the Director

- that the General Manager receive a reprimand in relation to the failure to comply with the Act – specifically by issuing a loan to the Tasmanian Association of PCYC outside of the powers of Part 8.
- that the Council receive a reprimand relation to the failure to comply with the Act – specifically by issuing a loan to the Tasmanian Association of PCYC outside of the powers of Part 8.

4. Implementation of and adherence to Council policies

Policies are critical to the effective and efficient operation of a council and therefore the Council needs to ensure that it has appropriate up-to-date policies. This is particularly the case with respect to the expenditure of council funds where policies can define appropriately approved expenditures in addition to the express detail contained within the estimates process pursuant to section 82 of the Act. Where there is a deficiency in this area, there is the risk that the separation of the strategic and operational components of Council are insufficiently defined – and thus Council officers or elected members can be subject to criticism for decisions made on an ad hoc basis.

As a part of the investigation, the General Manager produced a schedule of the current Council policies. This revealed a total of 36 Council policies that were in place as at 4 April 2017. As a part of his interview and the information provided, the General Manager indicated that he had been implementing a significant program of policy implementation and review since he commenced in July 2015, in total progressing more than 17 policies in the past 15 months. The General Manager further indicated that there was much work to do, but that he had been asked by Council to restrict the policy program to three policies per month.

A search of the Council's website reveals that a number of policies need updating. There were 16 policies found to be more than 7 years since the last review, with a number being more than 10 years old.

The complaint relating to a loan issued to the Mayor centres around adherence to Council policy.

4.1 Loan to Mayor Evans

The investigation found that the loan, originally reported as being to an employee or a member of Council was to the Mayor. Upon examining this matter, a number of issues are concerning. Firstly, the loan was non compliant with the provisions of Part 8 of the Act in that it was not made lawfully by Council under the specific conditions upon which a Council may make a loan (as discussed in section 3.1 above).

Secondly, and more concerning, are the circumstances that led to the loan being issued.

The loan resulted from a situation where the engine in the Mayor's vehicle ceased to operate and the invoice for repair was presented to Council for payment.

The investigation found that the catalyst for the issue of the non compliant loan was as a result of a failure to adhere to Council policy.

As a part of the investigation, the General Manager provided a copy of the Derwent Valley Council "Councillor Allowances, Entitlements and Expenses Policy" dated 16 June 2016. Additionally, he provided the superseded policy dated 19 April 2012 – of the same name. The

policy essentially provides for the reimbursement of kilometreage for a councillors/mayor's private vehicle when used for Council business. The provision of reimbursement for kilometreage allows for depreciation and hence, any repair costs resulting from a mechanical failure should be borne by the individual.

Whilst this policy had been in place since 2012, there was a historical practice of the Mayor using the Council issued credit card for payment of vehicle related expenses for his privately owned vehicle. As a result of the failure to adhere to the policy and claim mileage, when the Mayor's vehicle failed, an expectation was upon Council to pay for the repair of the vehicle.

I acknowledge that the General Manager, in recognising the payment of such an invoice was inappropriate, acted to resolve the situation by paying the invoice, but then issuing a loan for the Mayor to recoup the invoice amount. The General Manager and the Mayor submit that the loan was made in circumstances that are contested as to whether the Council has an obligation to re-imburse the Mayor for mileage not claimed in accordance with the policy.

The circumstance was one where the General Manager used a solution which was non-compliant with legislation to deal with a situation which was also non-compliant with a long held Council policy. Compliance with Council policy from the outset should have prevented this matter from occurring.

This matter has caused a significant amount of discontent within the Council and likely in the community generally (given it has been a focus of media attention). My investigation finds that another significant factor in this was as a result of the lack of transparency. The failure by the General Manager to put this matter before the Council in the first instance to seek appropriate approval of the expenditure, and then by not providing information when the matter was raised by councillors has significantly contributed to the longevity and the perceived severity of the matter.

As a final note in relation to this matter, it was noted that the financial treatment of the Mayor's invoice with respect to GST and the application of the loan are incongruous. On the basis of the information provided during the investigation, it would appear that the Mayor has benefited from the loan issued by the Council being minus the GST amount of \$685.27. The Council accountant confirms that GST credits were claimed on the basis of the invoice. This would appear to be at odds with the usual application of GST rules.

My investigation noted that the Council is considering the implementation of a policy to allow the Council's General Manager to advance short-term interest free assistance of not more than \$5,000 in cases of extreme hardship affecting a Council staff member.

The assumption I make is that such loans would be made from ratepayer provided Council funds. Without having the final considered policy, it is impossible to determine the exact merits or otherwise of such a policy, although I would caution Council to carefully consider the ramifications of a policy allowing such loans because it would leave itself open to the same criticisms that have dogged the Council in relation to this matter. Council should also consider how such a policy would be perceived by the community, where staff are able to access loans

from the Council but ratepayers facing financial hardship cannot. Councils should not act in general as a financial lending institution and particularly not one of last resort. If an employee cannot secure up to \$5,000 in finances in the private finance market, they are likely to be a high risk client. It is not reasonable for ratepayers to bear this risk. In my view there are other options available for the Council to offer staff suffering financial hardship including financial counselling.

Actions by the Director

- that the Mayor receive a reprimand in relation to failing to comply with the policies and decisions of the Council in performing the functions of Mayor (*Local Government Act 1993* section 27(1A)).
- that the General Manager receive a reprimand in relation to a failure to comply with the Act – specifically by issuing a loan to the Mayor outside of the powers of Part 8.
- that the Council receive a reprimand relation to the failure to comply with the Act – specifically by issuing a loan to the Mayor outside of the powers of Part 8.

4.2 Councillor Allowances and Expenses

The new Councillor Allowances, Entitlements and Expenses Policy of 2016 has an addition which provided an allocation of \$2,500 for the Mayor to use in relation to Council related expenses. This clause would appear on the face of it, to be outside the powers provided within Schedule 5 of the Act. Section 1(2)(b) of Schedule 5 provides that a councillor is entitled to be *reimbursed* for reasonable *expenses* in accordance with the policy adopted by Council. The wording of clause 7 of the Derwent Valley Council 'Councillor Allowances, Entitlements and Expenses Policy' dated 16 June 2016, appears to allow for an amount of \$2,500 to be paid in advance to the Mayor.

Council should be clear about the distinction between allowances and expenses. Allowances are prescribed by regulation to be paid to councillors, with additional amounts to Mayors and Deputy Mayor's in recognition of their additional responsibilities. Allowances must be paid in arrears under the Act. A Council cannot agree to increase allowances for any councillor, Deputy Mayor or Mayor above the prescribed amount.

Councillors are entitled to the reimbursement of legitimate expenses they incur in the conduct of Council business. Section 43 of the *Local Government (General) Regulations 2015* provides for certain expenses councillors are entitled to claim for. Councils then have discretion to put in place policies to provide for other expenses to be reimbursed in addition to the expenses councillors are entitled to under the Regulations. A claim for reimbursement of expenses should be supported by appropriate proof, such as the provision of tax receipts.

The current policy to provide the Mayor with a set allowance, in advance, is not compliant with the Act or Regulations.

Recommendations

I recommend that:

- that the Councillor Allowances, Entitlements and Expenses Policy be reviewed by Council legal counsel and the Council audit panel to ensure compliance with the provisions of the *Local Government Act 1993* (and Regulations). A priority is to review and amend the policy in relation to the \$2,500 allowance provided to the Mayor;
- following the review, the General Manager ensures that the councillors are aware of the provisions of the Councillors Allowances and Expenses Policy and are provided with a copy of that document;
- a schedule of Council policies, processes and delegations to be reviewed by the Council should be developed and implemented by September 2017; and
- the Council refer to its audit panel for investigation and determination if there is a GST credit which has been improperly accounted for in Council finances; and if this is the case, determine if there is an additional amount payable by the Mayor and an alteration made with the Australian Taxation Office.

4.3 Use of Council Credit Cards

It was noted during the investigation that the Council did not have a policy in place regulating the use of Council credit cards prior to December 2015. The General Manager reported in his interview that in 2015, the Tasmanian Audit Office has reported to Parliament that there were concerns in relation to the use of credit cards at the Derwent Valley Council. Specifically, these concerns were in relation to the consistent failure to submit receipts related to the purchases. (*Report of the Auditor-General No 6 of 2015-16 p20*).

During interviews, a councillor made allegations in relation to the Mayor's use of his Council issued credit card. Specifically, the councillor provided information which suggested that the Mayor's credit card was being used for private expenses and that some charges to the card were improper. Purchases questioned by the councillor were –

- a series of fuel purchases in 2014 where significant amounts of fuel were allegedly purchased on 'consecutive' days;
- purchases at BWS and at Woolworths; and
- a Tasmanian Collection Services bill which was alleged to be the Mayor's personal bill.

The investigation sought explanations from the Mayor in relation to the series of fuel purchases and the explanations provided indicate that the purchases are likely to have been Council

related expenditure. The Mayor provided corroborating evidence to substantiate his explanations.

The alleged purchases at Woolworths and BWS were subject of a preliminary assessment and on the basis of the information gleaned, these matters were not further examined by the investigation.

It should be noted that the lack of records and receipts relating to council credit cards prevents a definitive conclusion being made.

During the finalisation of the report, the allegations regarding the Tasmanian Collection Services bill were withdrawn. The evidence available indicates the expenditure was Council related. Issued identified in relation to these investigations are as follows:

- 1) The Mayor's use of his private vessel to tow a pontoon from New Town to New Norfolk for the autumn festival is an activity which should have been better controlled, authorised and planned by the previous General Manager. The use of contractors for this type of activity would be a far more appropriate arrangement due to a wide range of risks associated with what actually occurred; and
- 2) As noted in the *Report of the Auditor-General No 6 of 2015-16*, the consistent failure of the Mayor to provide receipts related to the Council issued credit card was of concern. It is noted that the Mayor chose to no longer be issued with a council credit card from November 2015;

Recommendations

It is recommended that the Council:

- asks the Audit Panel to conduct a review of the Council's credit card and/or expenses policies – and with regard to the actual practice - to ensure that it complies with best practice and refer it to the Council for approval and implementation;
- that the General Manager seek advice from Worksafe Tasmania, Marine and Safety Tasmania and the Council insurer in relation to risk management and compliance with respect to councillors performing tasks related to their functions.

5. Failure to adopt the Model Code of Conduct

All Tasmanian councils were required to adopt the Model Code of Conduct as per the *Local Government (Model Code of Conduct) Order 2016* before 13 July 2016 as passed by Parliament. (noting that the Bill when introduced to Parliament proposed that the Code would simply apply and councils would not be required to take any action to adopt it).

The investigation finds that the Council failed to do so and accordingly failed to comply with Section 28T of the *Local Government Act 1993*. The Council remained non-compliant with the provision for 233 days until it finally became compliant, when it adopted the code at a Council meeting on 2 March 2017.

I also find that the General Manager has provided sound and timely advice to the Council in relation to the requirement to adopt the Model Code of Conduct and, along with the provision of legal advice at appropriate junctures in the process, adequately outlined the Council's legal obligations.

I am concerned with the situation where the Council actively chose to undertake a course of action to leave a Council in breach of a legislative provision. While some argument was put by some Councillors that the Act should simply have imposed the Code, rather than require a Council to adopt it by decision, it is notable that all other councils in the State complied with the requirement to adopt the Code before 13 July 2016.

Furthermore, regardless of individual councillor concerns regarding the process upon which the Code was required to become effective, Council and councillors have a responsibility to lead by example in their communities. Knowingly being non-compliant with the law sets a poor example to ratepayers and community members regarding their own legal responsibilities. If Council expects, for example, persons to abide by its By-Laws, it has to demonstrate a high degree of integrity in relation to its own practices and decisions.

Actions by the Director

- that Council receive a reprimand in relation to the failure to comply with the provisions of section 28T of the *Local Government Act 1993*.

6. Optimal Organisational Structure

The investigation has raised questions in regard to the adequacy of the Council's organisational structure, and whether some of the issues that have been experienced are partly a result of sufficient resourcing to support good governance. It was noted that the previous General Manager 'flattened' the organisational structure to a situation where all divisional areas now report to the General Manager.

The 2005 Local Government Board review reported the Derwent Valley Council as having the following 'Senior' positions:

- General Manager
- Deputy General Manager
- Environmental Services
- Works Manager
- Accountant

Twelve years later, the Council only has two senior managers – the General Manager and the accountant. It is understandable for smaller, regional councils such as Derwent Valley to have a 'lean' organisational structure, given the limited financial resources available. Nonetheless, the consequences of this can be a lack of resources to support good governance practices and resultant risks, such as those identified in this report. If there is a lack of management support for a General Manager between the operational levels of Council that General Manager will likely be challenged in meeting the expectations of his or her Council.

Perversely, some of the more strategic management positions that are considered 'core' in larger, more well-resourced councils, are arguably more important in smaller, less resourced councils who struggle to be able to fund them. The sustainability of such councils in the longer term may rely on more flexible approaches to ensure appropriate skills and services can be accessed, such as increased resource sharing. It is notable that some councils surrounding Derwent Valley face similar issues, and there may be cost effective opportunities that could be pursued through joint approaches. It is understood that some work is already under way at a regional level with respect to workforce planning.

There is a 'balancing act' between the additional expense incurred by having such positions and the value that they can provide.

It is noted that the Council has provided funding for the appointment of additional management staff in the 2016-2017 budget although for a variety of reasons, at the time of the investigation, this has not resulted in personnel being appointed to those positions.

The issue of General Manager relief and acting arrangements is also a concern. The investigation noted that when the General Manager took leave, that the Council's only other senior manager acted as the General Manager. It is crucial that the senior management hierarchy is addressed to ensure that sufficient and suitable personnel occupy vital positions

during periods of absence of the substantive staff members, and that the appointment of an Acting General Manager is done in accordance with the Act, which provides that the Mayor may appoint an Acting General Manager. It is likely that the recruitment of staff will solve this issue.

Recommendations

It is recommended that the Council:

- complete the recruitment of the allocated two additional management staff as soon as possible;
- conduct a review of operational staffing requirements to determine a strategy to achieve optimal structure for best practice administration;
- in accordance with the Mayor's powers to appoint the Acting General Manager, ensure that appropriate relief arrangements and appointment processes are in place for periods of leave and other absence by the General Manager; and
- engage with other councils to explore cost effective, joint opportunities to improve the capacity in the management structure.

7. Management of relationships

As a part of the investigation, elected members and councillors were questioned in relation to the relationships within the Council and that co-existed with the Council staff. These discussions were pleasing from the perspective that all members of Council believed that the group worked well together and generally had a healthy respect for each other. More pleasing was the unanimous feeling that all councillors were working in the best interests of the community.

The general feeling was the Mayor was effective in the role of chair of meetings.

It also became evident that there was a number of councillors who have taken on the role of the council 'check and balance'.

One councillor provided statements that indicated that he considered part of his role to ensure that action ensued from the various ratepayer complaints that he fielded on a '24/7' basis. The councillor was of the view that the ability to gain information from staff was necessary for him to be able to do his job. It is clear that from this statement that the councillor does not have clarity regarding the role of councillor and the role of General Manager and staff.

There is evidence that there are a number of personal relationships between elected members and staff where inappropriate information flow is causing unnecessary disturbance to the strategic agenda of the Council. It is likely that the desire to maintain these relationships is a causal factor for the failure to adopt the Code of Conduct, and in particular the part of the Code which stipulates that councillors must not talk to staff without the permission of the General Manager.

A contributing factor to this situation is likely to be the lack of management structure under the General Manager, as discussed above. The principle behind the need to have permission from the General Manager to talk to staff is so that the General Manager has some control and confidence over the priorities of his or her staff, and that staff who councillors are permitted to speak to have sufficient seniority to discuss a matter with authority. It would be rare to find a Council where the General Manager does not provide authority for councillors to speak to certain staff, and ordinarily there would be some form of 'standing authority' for councillors to speak to certain staff members on specific matters (ie planning).

It is imperative that the correct separation in the relationship between staff and elected members be maintained and that the focus of elected members is on their role as outlined in the functions contained within section 28 and 28A of the Act.

It was noted by a number of councillors that they considered that there would be value in the Council audio recording meetings. One councillor noted that it was crucial from a governance perspective to ensure that the wording of motions was accurate because interpretation of a motion has caused a number of issues at the Council – and the councillor added that some members appeared to take advantage of using the broad nature of some motions in what could be considered, or at least interpreted, as mischievous behaviour.

Recommendations

- that all members of the Derwent Valley Council undertake specific training in relation to:
 - the role of a councillor;
 - the role of Council; and
 - the relationship between Council and the General Manager.
- that the General Manager seek advice from other General Managers in relation to how they manage approvals in relation to councillors consulting with staff, and report back to Council a summary of how this works in other councils.
- that the Council implement the audio recording of Council meetings (pursuant to the *Local Government (Meeting Procedures) Regulations 2015* – regulation 33, subject to a business case that the capital and current expenditure required is not excessive relative to Council resources. The business case should include efficiency savings that can be attributed to processes that would otherwise be required to clarify minutes and motions, as well as non tangible benefits such as increased transparency through making audio recordings publicly available.

8. Pecuniary Interest complaints

During the investigation, a number of matters were submitted as additional complaints. All four complaints related to allegations of elected members holding pecuniary interests in matters discussed and deliberated upon.

Three of the complaints have been dismissed and one matter had been retained by my office for further investigation. The outcome of that investigation will only become known if there is sufficient evidence for the Director of Public Prosecutions to take an alleged offence to the Magistrates Court.

9. Summary of Recommendations

1. the Council ensures it complies with Section 82 (Estimates) and more broadly Part 8 of the *Local Government Act 1993*;
2. the Council's audit panel review all loans made by Council over the past 3 years and provides advice in relation to whether policies and practices require change to ensure compliance;
3. the Council ensures that where such loans are approved by Council, that adequate contractual provisions are in place with regards to securing the repayment of the loan;
4. that the Councillor Allowances, Entitlements and Expenses Policy be reviewed by Council legal counsel and the Council audit panel to ensure compliance with the provisions of the *Local Government Act 1993* (and Regulations). A priority is to review and amend the policy in relation to the \$2,500 allowance provided to the Mayor;
5. following the review, the General Manager ensures that the councillors are aware of the provisions of the Councillors Allowances and Expenses Policy and are provided with a copy of that document;
6. a schedule of Council policies, processes and delegations to be reviewed by the Council should be developed and implemented by September 2017;
7. the Council refer to its audit panel for investigation and determination if there is a GST credit which has been improperly accounted for in Council finances; and if this is the case, determine if there is an additional amount payable by the Mayor and an alteration made with the Australian Taxation Office;
8. that the Council asks the Audit Panel to conduct a review of the Council's credit card and/or expenses policies – and with regard to the actual practice - to ensure that it complies with best practice and refer it to the Council for approval and implementation;
9. that the General Manager seek advice from Worksafe Tasmania, Marine and Safety Tasmania and the Council insurer in relation to risk management and compliance with respect to councillors performing tasks related to their functions;
10. that the Council complete the recruitment of the allocated two additional management staff as soon as possible;
11. that the Council conduct a review of operational staffing requirements to determine a strategy to achieve optimal structure for best practice administration;
12. in accordance with the Mayor's powers to appoint the Acting General Manager, ensure that appropriate relief arrangements and appointment processes are in place for periods of leave and other absence by the General Manager; engage with other councils to

explore cost effective, joint opportunities to improve the capacity in the management structure;

13. that all members of the Derwent Valley Council undertake specific training in relation to:
 - a. the role of a councillor;
 - b. the role of Council; and
 - c. the relationship between Council and the General Manager.
14. that the General Manager seek advice from other General Managers in relation to how they manage approvals in relation to councillors consulting with staff, and report back to Council a summary of how this works in other councils; and
15. that the Council implement the audio recording of Council meetings (pursuant to the *Local Government (Meeting Procedures) Regulations 2015* – regulation 33, subject to a business case that the capital and current expenditure required is not excessive relative to Council resources. The business case should include efficiency savings that can be attributed to processes that would otherwise be required to clarify minutes and motions, as well as non-tangible benefits such as increased transparency through making audio recordings publicly available..

Appendix A: Summary of Sanctions Imposed / Recommendations

Caution	A formal written caution is issued in circumstances where the Director of Local Government finds that there is sufficient evidence of a breach of an offence provision of the <i>Local Government Act 1993</i> but where it is deemed that it is not in the interests of the community to proceed with a prosecution of the matter. The recipient of a caution has the option of having the matter heard in the Court of Petty Sessions if he or she disagrees with the finding.
Reprimand	A written sanction in relation to a finding by the Director of Local Government of a failure to comply with a non offence provision of the <i>Local Government Act 1993</i>
Prosecution	The Director of Local Government refers a breach of an offence provision of the <i>Local Government Act 1993</i> to the Director of Public Prosecutions for the matter to be proceeded against by summons to the Court of Petty Sessions.
Recommendation	A recommendation may be made by the Director of Local Government in relation to a finding from an investigation. When a recommendation is made it is expected that a Council will give careful consideration in relation to the acquitting of any aspects. The Director will require regular reporting provisions in relation to recommendation in this format. Failure to satisfactorily address recommendations may result in further actions by the Director.