Dorset Council Board of Inquiry

Report to the Minister for Local Government

18 October 2024

DORSET COUNCIL BOARD OF INQUIRY

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The Hon Nic Street MP
Minister for Local Government
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Dear Minister

In accordance with section 224(1) of the *Local Government Act 1993*, the Board is pleased to submit a report of its findings and recommendations to you for consideration.

Yours sincerely

Mr Andrew Paul
Dorset Council Board of Inquiry
18 October 2024

Mr Andrew Walker

Glossary

Abbreviation	Meaning
the Act	*Local Government Act 1993* (Tas)
Building Act	*Building Act 2016* (Tas)
CLS	Crown Land Services
Council, the Council	Dorset Council
LUPA Act	*Land Use Planning and Approvals Act 1993* (Tas)
NRE Tas	Natural Resources and Environment Tasmania
PWS	Tasmania Parks and Wildlife Service
RMPS	Resource Management and Planning System
TASCAT	Tasmanian Civil and Administrative Tribunal
WHS Act	*Workplace Health and Safety Act 2012* (Tas)

Contents

Executive Summary

The municipal area of Dorset has undergone remarkable change over the last decade. It has developed a number of leading tourist destinations, including the world famous Barnbougle golf courses and the Blue Derby Mountain Bike Trails. It has long-established seaside towns that continue to grow in popularity. A significant irrigation scheme has in recent years commenced and will provide a major opportunity for growth within the vitally important agricultural sector.

The Dorset Council is in a sound financial position. In recent years it has delivered operating surpluses and implemented an extensive program of capital works. During an inspection tour of the municipality, the Board noted that townships and public spaces displayed a high degree of amenity, and that infrastructure was generally well maintained. There can be no argument that outcomes such as these have been enabled by the stewardship of Council and council staff over a number of council terms.

This Board of Inquiry is not looking at what has been achieved by Dorset Council, but rather the means by which Dorset Council went about its statutory roles and functions and other activities, and the manner in which Council and council staff engaged with both internal and external stakeholders.

In local government, where often limited public funds are being used, there is no place for an 'ends justify the means' approach to governance or to operations.

The Board has received many thousands of pages of documentation, over 60 submissions, and has taken oral evidence from more than 40 witnesses. The Board records that all persons who were requested to provide information, and to appear before it, did so on time and with full co-operation.

The Board's findings, so far as councillors are concerned, were not so much what councillors did, but what they did not do.

The Board found that councillors and the mayor, among many other findings:

- did not monitor the performance of the general manager as required by the Act;
- did not pursue the provision of legal advice when it ought to have been provided to them;
- did not have appropriate policies or processes in place to ensure that all of the Council's obligations under the LUPA Act were complied with;
- did not ensure that appropriate governance arrangements were in place to

manage a range of statutory obligations;

and that the Mayor:

- commonly used offensive and inappropriate language in communications.

The Board has also made a number of findings in relation to senior council staff members.

The Board found, among many other findings, that:

- the former general manager and the former Director of Infrastructure caused Council to commence construction of the Derby depot without any permit approvals having been obtained, and on Crown land without authority;
- senior council staff failed to cease the unlawful works when requested;
- the former general manager failed to act in accordance with qualified legal advice, or on occasions failed to obtain qualified legal advice where required to support or inform council actions;
- the former general manager improperly recommended that Council continue to act unlawfully by continuing vegetation removal on the Bridport foreshore “with or without” approval;
- the Director Community and Development failed on a number of occasions to take all reasonable steps to ensure that planning permit conditions were complied with;
- the former general manager sent correspondence to a resident that contained false assertions, and made improper and highly insulting comments;
- the former general manager and the former Director of Infrastructure breached the Act in not declaring their shareholding in Trailsnaps Pty Ltd;
- senior council staff issued infringement notices illegally or in a retributive manner; and
- the former general manager in communications used language that was often combative, inappropriate and offensive in nature and content.

In relation to these findings the Board has made 22 recommendations.

The recommendations include:

- that the Minister consider the establishment of development assessment panels to determine development applications where the council is the applicant or developer, to remove the actual conflict of interest currently existing in the decision-making process;

- development of a compulsory and ongoing training and development program for elected members;
- an amendment to the Act to require that funds raised by way of a specific service rate or service charge (including any variation) are used only for the purpose of the relevant services, and not used for other purposes;
- that possible breaches of section 55 of the Act be referred to the Director of Public Prosecutions;
- that the Director of Local Government write to all mayors reminding them of their obligations under section 27 of the Act, in particular regarding their function to liaise with and monitor the performance of the general manager on an ongoing basis;
- that the Minister issue a direction under section 225(2)(d) of the Act to Mayor Greg Howard concerning his manner of written and verbal communication; and
- that the Minister consider including, in the definition of 'enterprise powers' in section 21 of the Act, the purchase of tradeable water entitlements by a council in an irrigation scheme.

A number of submissions made to the Board contended that there should be 'consequences' for councillors and senior managers. These submissions demonstrate a misunderstanding of the role of the Board, and its ability to make recommendations. They also misunderstand that the Minister has no power to direct or otherwise effect any 'consequences' for council employees.

Many of the findings in this report concern conduct of council employees, and in particular the former general manager, Tim Watson. However, the Board has no power to make any consequential recommendation concerning those employees.

The scope of the Board's Inquiry has extended over many years, and over three different council cycles. Issues that arose therefore may have involved different councillors than those who were suspended by the Minister on 2 August 2023. This has affected the recommendations that the Board has made.

Any recommendations concerning Council and councillors is limited to the councillors suspended on 2 August 2023. It would be largely futile to make any recommendations concerning former councillors, because the Minister is unable to take any action concerning them.

The findings made by the Board concern a variety of conduct. Many of the findings against the Council or councillors are about the failure to have in place and give effect to policies or procedures for dealing with their statutory obligations. This failure may well have existed in previous councils as well.

The Board has given very careful consideration to the issues raised concerning personal behaviour and conduct by councillors at meetings. While it is clear that there have been many instances where personal conduct, either by way of communication by speech or in writing, leaves a great deal to be desired (indeed some has been outright rude) and has probably impacted to some degree the effectiveness of how Council operated, the Board is unable to be satisfied that any particular councillor's conduct, or the conduct of any group, has seriously affected the operations of Council.

Council has not been unable to make decisions and, as described above, has been responsible for substantial improvement and development within the municipality and demonstrated responsible financial management.

If all the conduct that forms the subject of the Board's findings had occurred within the same council period, that position might have been different, but that is simply speculation. There is a code of conduct process, and it is not part of the Board's function to be a substitute for that process.

A number of submissions urged the Board to recommend that the suspended council or councillors be dismissed. That is a very serious outcome and should only be recommended where there is evidence of a *serious* effect on the operations of Council. As mentioned, the Board was not able to be satisfied of this. Further, it would be unjust to recommend dismissal because of conduct of previous councils.

The Board considers that much of the conduct which is the subject of its findings, and to a degree the behaviour of councillors, flows from a lack of understanding of their role and procedure for decision-making, a lack of basic understanding of the law, and in some cases a lack of preparation for meetings. All of this should be addressed by compulsory ongoing training and development.

The Board is aware that three councillors purported to resign following their suspension. Some other councillors have expressed within the inquiry process a reluctance to continue in this council if certain recommendations are not made. The Board has not given any regard to these issues because they concern future conduct, not the conduct being inquired into.

The Board wishes to acknowledge with thanks the support provided to this inquiry by the staff of the Office of Local Government of the Department of Premier and Cabinet and the cooperation of the Commissioner and staff of Dorset Council in the undertaking of this inquiry.

Background

Establishment of the Board of Inquiry

On 26 July 2023, the Minister for Local Government, the Hon Nic Street MP, announced the establishment of a Board of Inquiry (the Board) under section 215(1)(b) of the *Local Government Act 1993* (the Act) to investigate the Dorset Council.

The Minister's announcement followed an investigation and report by the Director of Local Government into a series of complaints about the actions, decisions and behaviour of the Council, councillors, and senior council employees. The complaints received about the Council were internal and external.

The Director's report revealed evidence of improper use of statutory power; systemic failure to comply with statutory obligations; mismanagement of conflicts of interest; decision-making compromised by poor governance and disrespect for councillors, community members and businesses by the mayor, the former general manager and some councillors.

Membership of the Board

The members of the Board of Inquiry are Andrew Paul and Andrew Walker Secretariat support is from the Office of Local Government within the Department of Premier and Cabinet.

Andrew Paul was general manager at City of Clarence for 16 years, retiring in July 2019. Commencing in 1977, Andrew served in local government for over 40 years, with over 20 years being in executive roles. Prior to being appointed at the City of Clarence in 2003, Andrew worked in Melbourne and regional Victoria.

Andrew Walker is a barrister and member of the Tasmanian Bar and a former partner at Dobson, Mitchell and Allport; he has a strong background in local government. Andrew is an author of Civil Procedure Tasmania, is a member of the Supreme Court of Tasmania Rules Committee and member of the Tasmanian Liquor and Gaming Commission. Andrew was counsel for Alderman Pearce in a successful legal challenge to the Board of Inquiry's initial report into Glenorchy City Council.

Terms of Reference

The Board was established in response to the matters referred to in the Director of Local Government's *Investigation Report – Investigation into concerns regarding statutory non-compliance, conflicted interests, governance of decision-making and*

improper use of statutory authority in Dorset Council. The role of the Board is to inquire into, and make findings and recommendations with regard to, the matters referred to in the Investigation Report, in particular that:

- council officers have used legislative authority improperly and/or with bias;
- the Council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law;
- conflicts of interest have not been adequately managed by senior council officials;
- the mayor, councillors or general manager has tolerated retributive action against people that disagreed with the Council, the mayor or the general manager through, for example, inappropriate and offensive forms of communication; and
- the Council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

The powers and functions of the Board are set out in Part 13, Division 1 of the Act. The full Terms of Reference are provided in Appendix 1.

Reporting date

The Board was directed to report to the Minister for Local Government with its findings and recommendations by 28 February 2024. On 15 January 2024, the Minister announced an extension of the reporting date to 30 April 2024 due to the emergence of additional issues during appearances before the Board of Inquiry.

The Board provided its report on 30 April 2024. Following a direction from the Minister to reconsider its report under section 224(2) of the Act, the Board invited submissions from the Council on its draft findings and recommendations. Having regard to those submissions, the Board made some limited changes to its report and submitted a revised version to the Minister on 18 October 2024.

Inquiry Process

Public submissions to the Inquiry

On 12 August 2023, the Board invited written submissions from persons and organisations wishing to raise matters within the scope of the Terms of Reference for the Inquiry. Public notices inviting submissions were published in the Examiner, Advocate, Mercury and North-Eastern Advertiser newspapers. Submissions closed on Friday, 8 September 2023. 63 submissions were received from persons and organisations.

Targeted appearances

Following considerations of submissions, the Board conducted appearances between 22 November 2023 and 2 February 2024 to obtain further information and evidence from councillors and persons of interest. 46 people were summoned to appear before the Board. Appearances were held in Launceston, Hobart and Scottsdale on the following dates:

Launceston	Hobart	Scottsdale
22 - 23 November 2023	20 December 2023	9 January 2024
6 - 8 December 2023		
13 - 14 December 2023		
10 January 2024		
25 January 2024		
1 - 2 February 2024		

All current councillors and former councillors elected in 2018 were summoned to appear. All persons summoned attended and cooperated in the hearing process.

The Board visited the Dorset municipality on 9 January 2024, including visits to Derby, Bridport and Scottsdale.

Requests for information

Throughout the investigation, the Board made multiple requests for information from Council, other entities and persons. These requests were made, and complied with, in accordance with sections 222 and 217 of the Act.

Draft findings and recommendations

In compliance with its obligations to afford procedural fairness, the Board provided draft findings and recommendations to the suspended councillors and to those individuals in respect of whom adverse findings might be made. Those persons were provided with reasonable time to provide responding submissions.

The Board received a number of submissions in response and has taken them into account in finalising its report.

The Board separately provided its draft findings and recommendations to Dorset Council. Dorset Council provided submissions, and these have been considered.

List of Findings

Issue 1 – Derby suspension bridge	
1.1	Council commenced construction of the bridge without complying with two of the conditions required to be complied with under the Crown Authority to commence construction. These works were therefore commenced unlawfully.
Issue 2 – Derby depot	
2.1.	Dwaine Griffin, former Director Works and Infrastructure, caused Council to commence construction of the Derby depot without permit approvals having been obtained, and on Crown land without authority. These works were therefore commenced unlawfully.
2.2.	Tim Watson, former general manager, and Dwaine Griffin caused Council to continue construction of the Derby depot without permit approvals having been obtained, and on Crown land without authority. These works were therefore undertaken unlawfully.
2.3.	Tim Watson failed to stop the unlawful works when requested on multiple occasions.
2.4.	Rohan Willis, Director Community and Development, failed to take all reasonable steps to ensure the unlawful works, which were being conducted in breach of the Council planning scheme, ceased.
2.5.	Council likely committed a number of offences as a consequence of the conduct of Dwaine Griffin, Tim Watson and Rohan Willis.
2.6.	No councillors were aware of the unlawfulness of the works until they were advised by email dated 9 June 2020, at which time the works had been completed.
2.7.	Council failed to implement a policy or procedure to address the actual conflict of interest existing where Council was the applicant for development and was at the same time the planning authority.

Issue 3 – Waste management service charge increase	
3.1	That the then general manager, Tim Watson, failed to act in accordance with qualified legal advice in recommending a waste management service charge to Council that likely did not comply with the requirements of the *Local Government Act 1993*.
3.2	That Council failed to exercise good governance, or acted unlawfully, in adopting a waste management service charge without complying with section 65(2) of the *Local Government Act 1993* concerning qualified legal advice.
3.3	That Council failed to exercise appropriate governance in that the substantially increased waste management service charge was primarily raising funds for the purposes of bike trail maintenance and was not for the purpose of waste management services.
3.4	That Council failed to exercise good governance in making a decision without considering that there was little or no correlation between the quantum of funds proposed to be raised by the increased waste management service charge and any purported increase in the cost of providing waste management services.
Issue 4 – Bridport foreshore	
4.1	Council undertook unlawful vegetation removal works on Crown land on the Bridport foreshore in 2017.
4.2	Tim Watson improperly recommended that Council continue to act unlawfully by continuing vegetation removal works “with or without approval.”
4.3	Council undertook unlawful vegetation removal works on Crown land on the Bridport foreshore in 2019, including the partial destruction of an Aboriginal midden.
4.4	Dwaine Griffin caused contractors to undertake those unlawful works.
4.5	Tim Watson misled Council and the public at a council meeting on 15 April 2019 about the existence of legal advice.

4.6	Council undertook unlawful vegetation removal works on Crown land on the Bridport foreshore in 2020.
Issue 5 – Nabowla quarry	
5.1	Rohan Willis, Director Community and Development, failed to take all reasonable steps to ensure the use or development under the permit issued to the operator of the Nabowla quarry on 17 February 2020 was not carried out in a manner contrary to the permit conditions.
5.2	Rohan Willis, and Council, failed to take any steps to ensure the requirements of the section 71 agreement sealed by Council on 12 May 2020 were complied with.
5.3	Council failed to implement a procedure to monitor and record whether permit conditions that were required to be satisfied before a use or development commenced, were in fact satisfied.
Issue 6 – Emma Street, Bridport	
6.1	The relocation of the stormwater pipeline servicing 37 Emma Street was unlawful, and a likely offence under the *Building Act 2016*.
6.2	Council took no enforcement action in relation to such an offence, nor otherwise against the former owner of 35 Emma Street, who was responsible for the unlawful works.
6.3	There was no agreement between the owners of 37 Emma Street and the former owners of 35 Emma Street concerning the relocation.
6.4	Tim Watson sent correspondence to the owners of 37 Emma Street that contained false assertions, and improper and highly insulting comments.
6.5	Tim Watson sent correspondence to the owners of 37 Emma Street that contained a representation strongly implying that he would cause or persuade Council to act unlawfully to ensure that an amendment to a sealed plan which would be detrimental to those owners would succeed.

Issue 7 – Construction of Blue Derby Mountain Bike Trails	
7.1	That the then general manager, Tim Watson, did not satisfy the requirements of section 65 of the *Local Government Act 1993* because no legal advice from a qualified person was provided to Council in relation to the awarding directly to World Trail Pty Ltd of the contract for Stage 2 of the Derby Mountain Bike Trails.
7.2	That the report provided to Council by the general manager, Tim Watson, did not identify any matters that satisfy the exclusions from an open tender process provided for in regulation 27 of the *Local Government (General) Regulations 2015*.
7.3	That there were other parties that could potentially have participated in an invitation to tender for the Stage 2 works.
7.4	That Council exercised poor governance in not inviting tenders for the construction of Stage 2 of the Derby Mountain Bike Trails.
7.5	That Council failed to meet its obligation to include in its Annual Report the application of the exemption under regulation 27(i) of the *Local Government (General) Regulations 2015* in awarding the contract to World Trail and did not provide a brief description of their reasoning.
7.6	That the Council should not have included an extension clause in the contract with World Trail for Stage 2 because under regulation 23(5) of the *Local Government (General) Regulations 2015* an extension may only be given where an open tender process had been undertaken in the first instance.
Issue 8 – Delegated decision-making on development applications	
8.1	There is no evidence of decisions on development applications being made outside the scope of the extensive delegations given by Council.

Issue 9 – Trailsnaps Pty Ltd	
9.1	Tim Watson was required to disclose his interest as a shareholder in Trailsnaps Pty Ltd. He clearly had at least a potential conflict of interest, which his own evidence establishes he recognised.
9.2	Tim Watson breached section 55(1) of the *Local Government Act 1993* by not notifying the mayor in writing (or at all) of his shareholding in Trailsnaps Pty Ltd on and from the time that company was registered.
9.3	Tim Watson breached section 55(2) of the *Local Government Act 1993* in relation to his own disclosure and (if it were given to him) in relation to Dwaine Griffin's disclosure.
9.4	Tim Watson breached clause 3.1.1 of his contract of employment by not devoting his whole time and attention to his duties when he was advocating for Trailsnaps Pty Ltd to obtain an access licence from Sustainable Timber Tasmania.
9.5	Dwaine Griffin, former Director Works and Infrastructure, was required to disclose his interest as a shareholder in Trailsnaps Pty Ltd.
9.6	Dwaine Griffin breached section 55(1) of the *Local Government Act 1993* by not notifying the general manager in writing of his interest in Trailsnaps Pty Ltd.
9.7	Dwaine Griffin breached clause 5 and clause 10 of his contract of employment by not obtaining prior written consent from Council for his shareholding in Trailsnaps Pty Ltd.
9.8	Dwaine Griffin lied to the general manager, John Marik, when questioned about the ownership of Trailsnaps Pty Ltd.
9.9	Dwaine Griffin made a false declaration to Council in the related party declaration dated 18 July 2022.

Issue 10 – Scottsdale Irrigation Scheme	
10.1	Mayor Howard should have disclosed an interest, as a person who was the applicant for 100 water entitlements in the Scottsdale Irrigation Scheme, and he should have removed himself from the meetings for the votes on the resolutions concerning that scheme on 16 November 2015 and 16 May 2016.
10.2	Tim Watson as general manager failed to provide to councillors a copy of the 'legal counsel', or a summary of it, to satisfy the condition to his delegation before signing the water supply agreement.
Issue 11 – Failure to manage/monitor General Manager Tim Watson	
11.1	Dorset Council did not have any process in place for the ongoing monitoring by Council of the performance of the general manager under section 28 of the *Local Government Act 1993*.
11.2	Since the commencement of this Board of Inquiry, Dorset Council has introduced a general manager performance review process which appears to include ongoing monitoring, and the general manager's current contract contains relevant and appropriate performance criteria.
Issue 12 – Councillor induction and training	
12.1	That councillors, without adequate training and professional development, cannot be expected to fulfill their roles and responsibilities adequately.
12.2	That induction training as currently undertaken by newly elected councillors, if undertaken in isolation, is inadequate for the role and responsibilities of a current day councillor.
12.3	That initial induction training must be supplemented by ongoing training and development opportunities in key areas of responsibility.
12.4	That ongoing training and development should be compulsory and enforced.
Issue 13 – Appointment of General Manager John Marik	
13.1	By directly appointing Mr Marik to the role of general manager, Council have met the minimum requirements of the *Local Government Act 1993* as it was in force on 6 December 2022.

13.2	In relation to the appointment of the general manager, Council did not demonstrate good governance or contemporary human resources practice by: • not inviting applications publicly for this important role; • not undertaking a formal interview or assessment process to ensure that the appointee was the correct strategic fit for Council; • not preparing a detailed role description and statement of expectations for the general manager role; and • not ensuring that all councillors were adequately trained or experienced to assess the requirements of the general manager role in relation to Dorset Council or were supported by an external recruitment adviser before proceeding to make a decision about the appointment.
Issue 14 – Workshops	
14.1	The manner in which workshops were conducted raised the prospect that debate at a subsequent council meeting on the same resolution might be curtailed, contrary to the statutory functions of Council.
Issue 15 – Federal Tavern, Derby	
15.1	The 'dilapidation report' concerning the Federal Tavern, which is undated but refers to an inspection undertaken on 21 February 2019, was not lawfully prepared. It was not prepared by the general manager, and it did not state the works that were required to be done.
15.2	The Dilapidation Building Notice issued on 3 April 2019 by Rohan Willis was not lawfully issued.
15.3	The Building Order issued on 27 September 2019 by Rohan Willis was not lawfully issued.
15.4	There was no proper basis for preparing the dilapidation report as at 21 February 2019.

15.5	The process starting and following the dilapidation report was an act of retribution by Tim Watson against the owner of the Federal Tavern for perceived “enormous grief” the owner caused regarding the Blue Derby Mountain Bike Trails. Accordingly, it was an improper use of statutory authority.
15.6	The issue by Council of abatement notices and infringement notices concerning the storage of recyclables in the garage at the Federal Tavern was not inappropriate.
15.7	The then general manager, Tim Watson, used, or directed other council officers to use, the parking infringement process to harass the owner of the Federal Tavern.
Issue 16 – Treatment of Lawrence Archer	
16.1	There was not any proper basis for the purported extensive ‘ban’ imposed by Tim Watson’s letter dated 4 March 2022, including purporting to restrict Mr Archer’s conduct away from any Council building and, potentially, anywhere in Tasmania.
16.2	The ‘ban’ dated 4 March 2022 was retributive action by Tim Watson against Mr Archer for his persistent questioning of council actions and persistent requests for information.
16.3	The direction to issue eight infringement notices over six weeks was retributive action by Tim Watson against Mr and Mrs Archer as punishment for their conduct. Accordingly, it was an improper use of statutory authority.
16.4	Mayor Greg Howard acted inappropriately in representing the general manager at a Code of Conduct hearing in a complaint made by the general manager against a councillor.
Issue 17 – Culture of intimidation at council meetings	
17.1	There were instances where the outcome from previous workshops tended to limit debate at subsequent Council meetings.
17.2	While the behaviour of some councillors at meetings was on occasion inappropriate, it did not reach the stage where it affected the operation of Dorset Council.

Issue 18 – General Manager – Inappropriate communications	
18.1	That language used in communications from the general manager, Tim Watson, was often combative, inappropriate, and offensive in nature and content.
18.2	That the mayor failed to adequately exercise his function in monitoring the performance of the general manager and liaising with the general manager in the exercise of his functions in supporting the Council.
Issue 19 – Mayor – Inappropriate communications	
19.1	That Mayor Howard had an aggressive and forthright communication style.
19.2	That Mayor Howard commonly used offensive and inappropriate language in communication with both internal and external parties.

List of Recommendations

#	Recommendation
1	That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* to implement a policy and procedure to address the conflict of interest existing where Council is the applicant and/or developer, and at the same time is the planning authority determining that application.
2	That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* that any development application where Council is the applicant or developer must be referred to external consultants for assessment and recommendation.
3	That the Minister consult with the Minister for Planning to consider amendments to the Land Use Planning and Approvals Act 1993 to establish development assessment panels to determine development applications where a council is the applicant and /or developer, so as to remove the actual conflict of interest currently existing in the decision-making process.
4	That the Minister work with the Local Government sector to establish a compulsory and enforceable ongoing development and training program for all councillors.
5	That the Director of Local Government issue guidelines to all councils in relation to the appropriate application of Part 9, Division 3 and Division 6 of the *Local Government Act 1993*.
6	That consideration be given to an amendment to sections 93 and 94 of the *Local Government Act 1993* to require that funds raised by way of a service rate or service charge (including any variation) in respect of a specific service, are only used for the purposes of that specific service, and are not used for other purposes.
7	That the Director of Local Government request the Secretary of the Department of Natural Resources and Environment Tasmania to write to all councils reminding them of their obligations when performing works on Crown land.

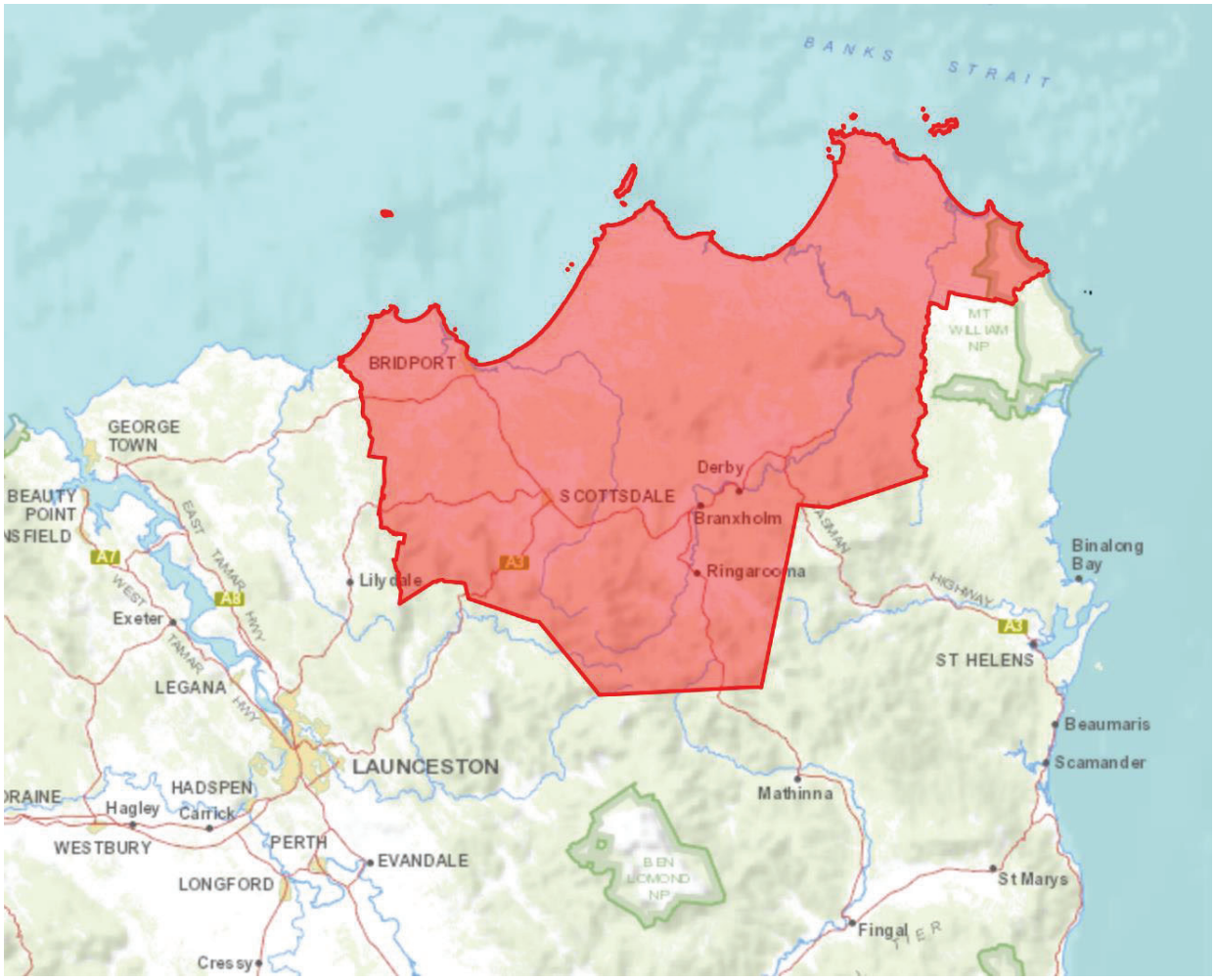
#	Recommendation
8	That the Minister give a direction under section 225(2)(d) of the *Local Government Act 1993* to the Council to implement a procedure to ensure that permit conditions are satisfied, and to ensure that Council's obligations under section 63A of the *Land Use Planning and Approvals Act 1993* are being met.
9	That the Minister direct the Council under section 225(2)(a) of the *Local Government Act 1993* to implement a procedure to conduct its functions and obligations under Division 5 of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* according to law.
10	That the Minister direct the Council under section 225(2)(a) and (b) of the *Local Government Act 1993* that no additional work under the Stage 2 contract with World Trail Pty Ltd is to be procured and that any additional proposed trail works be undertaken only after a suitable tender or procurement process in accordance with the requirements of the *Local Government Act 1993* and associated regulations.
11	That the breaches of section 55 of the *Local Government Act 1993* by Tim Watson and Dwaine Griffin be referred to the Director of Public Prosecutions for consideration of prosecution.
12	That the Minister consider including, in the definition of "enterprise powers" in section 21 of the *Local Government Act 1993*, the purchase of tradeable water entitlements by a council in an irrigation scheme.
13	That a compulsory and enforceable ongoing development and training program for all councillors include training on general manager recruitment, appointment and performance assessment.
14	That the *Local Government (Meeting Procedures) Regulations 2015* be amended to clarify that workshops must not be used by Councils as a determinative forum for matters that should rightly be considered in open Council meetings.
15	That the *Local Government (Meeting Procedures) Regulations 2015* be amended to require Councils to keep a record of the proceedings of a Council workshop.

#	Recommendation
16	That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* to implement a procedure to ensure that any actions taken by Council under Part 18 of the *Building Act 2016* are undertaken lawfully.
17	That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* to implement a procedure to ensure that the requirements for the issue of infringement notices under the *Building Act 2016* are satisfied.
18	That the Director of Local Government write to all mayors informing them that it is inappropriate for the mayor to appear as advocate for another person in Code of Conduct proceedings against another councillor.
19	That the Director of Local Government write to all mayors reminding them of their obligations under section 27 of the *Local Government Act 1993*, in particular in regard to their function to liaise with and monitor the performance of the general manager on an ongoing basis.
20	That the Minister give a direction under section 225(2)(d) of the *Local Government Act 1993* to Mayor Greg Howard concerning his aggressive, offensive and inappropriate language in written and verbal communication with parties internal and external to council
21	That the Minister consider amendments to the *Local Government Act 1993* to require councils to adopt a policy regarding the issue and use of credit cards, and that the policy must have procedures for the authorisation and approval of all credit card usage within the council.
22	That the Director of Local Government provide guidance to all mayors and general managers in relation to the operation of section 61B of the *Local Government Act 1993*.

Overview of the Council and Region

Dorset municipality

The main townships in the Dorset municipality are Scottsdale and Bridport, and smaller townships are at Branxholm, Derby, Gladstone, Legerwood, Ringarooma and Winnaleah.



The Dorset Council Annual Report 2022-23[1], ABS census data[2] and 2021-22 Consolidated Data Collection[3] provides the following information about the municipality and council:

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[1] Dorset Council. 2022/23 Annual Report (2022_23-Annual-Report.pdf (dorset.tas.gov.au))
[2] ABS 2023. Dorset 2021 Census All persons. (https://abs.gov.au/census/find-census-data/quickstats/2021/LGA61810)
[3] Tasmania Local Government Consolidated Data Collection. 2021-2022 data. (https://listdata.thelist.tas.gov.au/opendata/)

Municipal snapshot

Land area	3,231 km^2	**Major industries**	Agriculture, forestry and tourism
Population	6,829	**Median age**	48 years
Median weekly household income	$1,039	**Main population areas**	Bridport, Derby, Ringarooma, with Scottsdale the regional centre
Electors enrolled	5,537	**Rateable properties**	5,376
Average rates and charges per rateable property	$1,530.13	**State electorate**	Bass

Key council data

Elected members: 9	Total operating revenue: $17,239,000	Adjusted capital value of properties: $3,261,914,800 (30 June 2023)
Employees: 70.3 FTE (30 June 2023)	Total operating expenditure: $15,541,000	Adjusted assessed annual value of properties: $130,661,776 (30 June 2023)
Capital expenditure: $9,267,000	Loan debt: $3,870,000 (30 June 2023)	General rate in $ assessed annual value: 0.05243 cents in $ (1 July 2022)

The Council

The current Council was elected at the October 2022 local government elections and at the time of suspension comprised:

- Mayor Greg Howard
- Deputy Mayor Dale Jessup
- Councillors Mervyn Chilcott, Anna Coxen, Jerrod Nichols, Beth Donoghue, Leonie Stein, Edwina Powell and Kahlia Simmons

Council meetings are held monthly and open to members of the public to attend in person. Agendas, attachments and minutes are available on the Council's website. Audio recordings of council meetings are also made available on the website.

Executive Management Team

At the time of writing, Council's Executive Management Team comprises:

- John Marik: General Manager
- Rohan Willis: Assistant General Manager / Director Community and Development
- Michael Buckley: Director Infrastructure
- Allison Saunders: Finance Manager
- Lauren Tolputt: Acting Director Corporate Services

Key Issues, Findings and Recommendations

A number of significant matters were raised with the Board during the Inquiry. These included matters raised in the Director of Local Government's Investigation Report and matters raised in submissions to the Inquiry and evidence given during appearances before the Board. Most of these matters came within the Board's Terms of Reference, with many of them relating to multiple Terms of Reference. For simplicity, the Board has grouped these matters under the following broad themes:

- Non-compliance with statutory obligations
- Conflicts of interest
- Governance and decision-making
- Bias/improper use of legislative authority
- Inappropriate behaviour/communications

The relevant Terms of Reference for each matter is indicated at the beginning of the Board's consideration.

As part of its obligation to ensure that it complies with the rules of natural justice, the Board provided copies of the draft findings to those persons (including, where appropriate, the suspended councillors) who may be adversely affected by them. Those persons were invited to make submissions on the relevant draft findings and recommendations prior them being finalised and provided to the Minister for Local Government. The Board's response to any submissions received, are detailed under each of the matters discussed below.

Non-compliance with statutory obligations

1. Derby suspension bridge

Terms of reference

(1.2) The Council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law.

(2.4) The compliance by Council, councillors, the general manager and council employees with relevant laws relating to the performance of their duties and functions.

(3.1) The approach taken by Council to manage the actual conflict of interest where Council as developer applies for approval from Council as a Planning Authority, and the subsequent compliance with permits.

(3.1) The manner by which councillors disclosed and recorded interests.

Issue

The Council's dealing with the then Department of Primary Industries, Parks Water and Environment (DPIPWE), PWS and CLS with regard to landowner approvals for the construction of a pedestrian suspension bridge across the Ringarooma River at Derby through late 2017 until late 2018.

Summary of relevant issues raised with the Board during submissions and appearances

Concerns about the construction of the pedestrian suspension bridge were canvassed in a submission from a resident and also by the Secretary of NRE Tas, Mr Jason Jacobi, during his appearance before the Board on 20 December 2023.
After this appearance, the Board made a request for NRE Tas to provide material relevant to the construction of the pedestrian suspension bridge. This occurred by a detailed email from NRE Tas with 32 attached documents dated 18 January 2024.

Background

In 2017, Dorset Council was proposing to construct a suspension bridge over the Ringarooma River at Derby to link existing track infrastructure on the township side with a new track to be constructed around Breisis Hole on the opposite side of the

river.

Because the proposed bridge spanned the river and its banks, which are Crown land, it was necessary for Council as the developer to apply for a works permit under the *Crown Lands Act 1976.* DPIPWE first became aware of the Council's plan for a pedestrian suspension bridge when it received a Works and/or Development Application request from the Council's Director of Infrastructure, Dwaine Griffin, on 2 October 2017.

The address noted in this Application was "Crown Land adjacent to the Ringarooma River". The Application noted a proposed start date to be "after approval granted" with an end date being "3 months after completion".

This Application was emailed to DPIPWE by Council's Director Community and Development, Mr Rohan Willis, on 26 October 2017. The subject field of this email was "Planning Application (CLS consent required for lodgement) – Suspension Walking Bridge at Derby".

On 9 December 2017 by email, Mr Jacobi responded to an email from the Council's general manager, Mr Tim Watson, dated 8 December 2017 seeking Mr Jacobi's assistance to "clear a road block regarding CLS consent for the suspension bridge".

Mr Jacobi's email of 9 December 2017 included the comment "the consent to lodge the DA for the bridge will issue in a couple of days". In addition, Mr Jacobi advised a number of matters requiring attention by the Council to advance the construction of the pedestrian suspension bridge.

Crown consent for the making of a Development Application for the suspension bridge was provided to the Council by email on 13 December 2017. This document was acknowledged as received by the Council.

Subsequent to a meeting between Mr Jacobi and Mr Watson, Mr Jacobi emailed Mr Watson to confirm the meeting outcomes, and relevantly offered the Council DPIPWE engineering assistance for the bridge construction.

By email from Mr Watson to Mr Jacobi at 9.16am on 14 February 2018, Mr Watson provided engineering documents and structural calculation documents for the bridge authored by the engineering consultants.

By email from Mr Jacobi to Mr Watson at 6.02pm on 20 February 2018, Mr Jacobi provided Parks and Wildlife Service (PWS) (DPIPWE) engineer commentary on the engineering documents provided by Mr Watson on 14 February.

Notice of Planning Application pursuant to the *Land Use Planning and Approvals Act 1993* (the LUPA Act) was received by CLS on 28 March 2018.

By an email from Mr Watson to Mr Jacobi at 12.27pm on 28 March 2018, Mr Watson provided an update to Mr Jacobi in which he relevantly stated "On receipt of the picture of the bridge, you guys should now be in a position to issue the work approvals…I hope you are now comfortable where we are at, and we can close out this last remaining approval."

Mr Jacobi responded by email at 11.19 pm stating "I agree that based on this advice from you below we are in a position to issue the works approval subject to you providing the detailed design drawings prior to commencement of construction."
In an email of 4 April 2018 at 8.58am Mr Watson advised Mr Jacobi "Just build your info requirements into the approval re supplying drawings and permits prior to construction, thanks."

Via email to Mr Watson at 1.27am on 17 April 2018, the Council was provided with the Crown authority to construct the suspension bridge with extensive conditions, several of which were to be completed prior to the commencement of the works.

The authority was subject to 20 conditions, including:

1. Prior to commencement of the works, a copy of Planning and Building Permits issued by Council Planning (as well as Council approved plans and documents) must be supplied to this Department.
2. Prior to commencing works, a copy of engineered bridge drawings, which comply with Australian Standards, must be supplied to the Department.

The fact that these conditions were to be satisfied 'prior to commencement of works' is important.

Tender

In 2018, Council put out to tender the construction of the suspension bridge. A tender from a bridge manufacturer was accepted at a council meeting on 16 April 2018 in closed session. The minutes record that Councillor Jessup left the meeting, and that Mayor Howard declared an interest but stated that it was immaterial and did not leave the room. The agenda for that meeting provided a comprehensive report to councillors, setting out the considerations of the tender assessment committee. The acceptance of this tender is not questioned.

Declaration of interests

The Board notes that the register of interests, required to be kept by the general manager under section 54 of the Act, discloses that Councillor Jessup declared at the tender acceptance meeting that "employer supplied a quote for one of the tenders". So far as Mayor Howard is concerned, the register simply states that "Cr Howard declared an interest, however it is immaterial did not leave the room." This entry in the register is unsatisfactory. It does not record details of what the declared interest was. It is impossible to determine, now or at any future time, whether Mayor Howard's own determination that the interest, whatever it may have been, was immaterial was appropriate.

In this response submission to the Board, Mr Howard maintained that in the circumstances the Board has not established that Mr Howard had a pecuniary interest that was required to be declared. That response misses the point. Any interest recorded on the register should record the details of the interest. Further, the Dorset Council Code of Conduct required a declaration where a councillor had an actual, potential or perceived conflict of interest in a matter before the Council. This applies whether the conflict was a pecuniary interest or otherwise.

Development application

Council lodged a development application with itself for planning approval for the bridge. It was required to do so because of the provisions of the LUPA Act. Council was, at the same time, the proponent of this discretionary development and also the planning authority responsible for determining whether it should be approved. This actual conflict of interest is one that has been created by the provisions of the LUPA Act.

Dorset Council planning officers prepared a comprehensive assessment report for the council meeting held on 21 May 2018, which included responses to representations made against the proposal by members of the community. At that meeting the application was approved, and a permit issued with a number of conditions.

While the Board considers that the preparation of the development assessment report was properly undertaken in this instance, it is firmly of the view that in order to address more thoroughly the actual conflict of interest in which the councillors found themselves, the assessment of this application should have been undertaken externally, either by planning officers at another council or by contract town planners.

Mr Howard's response submission contended that the conflict of interest is a matter for Parliament to address, because the conflict is statutory. He also submitted that the

Board had not identified any basis on which Council should have adopted any alternative assessment process. The Board's view is formed by considering the attitude to this type of development expressed by the then general manager Tim Watson in his memo to Council dated 9 June 2020 (discussed in the next section) that:

> *"Internally we were comfortable with gaining approval retrospectively as Council was going to be the landowner and approvals would be a formality."*

Councillors, including Mayor Greg Howard, appear to acquiesce in this "formality" of approval, which appears to give little regard to the requirements of the relevant planning scheme.

At a council meeting on 21 May 2018, the Council approved the Development Application (2018/21) for the pedestrian suspension bridge "subject to certain conditions". Landowner consent was not mentioned.

The first indication that construction of the bridge had commenced is set out in an email from Mr Jesse Walker, Unit Manager CLS, to Rohan Willis of the Dorset Council at 4.12pm on 16 October 2018.

Therefore, the construction of the pedestrian suspension bridge commenced prior to all required planning and building permits and copies of engineered bridge drawings that complied with Australian Standards having been supplied.

Subsequent to PWS review of the Council planning permit, at 3.25pm on 19 October 2018 Mr Jacobi emailed Mr Watson confirming his understanding that the bridge construction had commenced and raising a number of concerns with the material provided subsequent to engineering review. Notably that documents provided were incomplete and that the previously provided drawings from engineering consultants stamped as approved by the Council "do not comply with Australian Standards".

After a CLS follow-up with Mr Willis on 22 and 26 October 2018, Mr Willis replied by email at 12.22am on 29 October 2018 in which he provided the requested CEMP (Construction and Environmental Management Plan) but also noting in this email:

> Regarding engineering plans, you will note I have previously supplied you with final engineering plans (supplied by the engineer to the Council). I understand CLS officers have contacted the engineer directly to verify the bridge has been constructed in accordance with required Australian

> Standards. Irrespective, please see the attached Form 55 Bridge Site Survey and Computation pertaining to the bridge design/construction.[4]

At 6.28am on 19 October 2018, Mr Watson emailed Mr Jacobi to confirm Mr Willis had provided the revised plans etc and also stated “Suffice to say that we are the regulatory agency for approval of structures and I can confirm we are fully compliant with the law.”

The Board notes that Mr Watson appears to be confusing the two hats worn by Council. The issue here did not concern Council as ‘regulatory agency’; it concerned Council as a developer not complying with permit conditions.

Mr Watson responded to Mr Jacobi’s correspondence of 19 October 2018 at 3.25pm in an email on Saturday, 20 October 2018 at 9.01am in which he indicated:

> Jason, the permit to which you refer is the planning permit and I am pretty sure it’s not the design we sent in. I also know that our project manager did not surrender the site to the contractor until they met the requirements of the Tender which included full set of design drawings etc. I am also sure that the design does not have a 20- person load limit and from memory I let you know this earlier in the year after you shared your experiences with us. I’ll follow up in more detail next week.

PWS/CLS concerns with the situation regarding the approvals for the construction of the pedestrian suspension bridge were detailed in a letter dated 9 November 2018 from Mr Jacobi to Mr Watson, which was provided by email to both Mr Watson and Rowan Willis on that day. This summarises the concerns held at that time, particularly about what was occurring around the constructed bridge.

On 12 November 2018, Mr Watson provided partial acknowledgement of requirements set out in Mr Jacobi’s letter of 9 November 2018.

By email of 15 November 2018 at 1.37pm, Mr Watson provided Mr Jacobi with:

1. Form 55
2. Construction drawings
3. Certificate of Constructed Computations.

In this email Mr Watson further asserted:

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[4] Form 55 is the Certificate of Qualified Person – Assessable Items, in accordance with section 321 of the *Building Act 2016.*

> Here is the final documents you require to satisfy CLS that the risk sits with the certifying engineer. It is an amazing looking structure – I would be happy to give you a personal tour next time you are up this way. Regards Tim.

Subsequent to Mr Jacobi's receipt of a series of photographs of commercial activity on Crown land in the Derby area on 11 December 2018, he emailed Mr Watson seeking provision of the lease/licence Mr Watson was provided with "last week" and advising he had not received the requested Bridge Inspection Report.

On 21 November 2018 at 10.05am, Senior Engineer Assets and Infrastructure for PWS, Mr Tim Chappell, emailed Mr Watson indicating "We now have an acceptable level of documentation relating to the design of the bridge" but also indicating within that email further requirements for approvals.

Subsequent to the receipt of a Form 55 from Graham Cox (Engineer for Dorset Council) on 17 December 2018 at 12.50pm, Mr Chappell in an email to Catherine Clarke and others (including Mr Jacobi) at 1.05pm on 18 December 2018 relevantly stated "…I am now satisfied with the level of documents provided for the as built structure. I recommend that the bridge can now be licensed for public use."

The Board notes the aerial image of the bridge provided by NRE Tas indicating Crown land on both the western and eastern sides, confirming both the western and eastern sides of the Ringarooma River where the bridge is located was Crown land.

When the Board questioned Mr Watson about the commencement of construction of the bridge, his evidence was that when the issue came up his understanding was that all approvals were in place. He told the Board that the responsibility for obtaining approvals for infrastructure lay with Dwaine Griffin, Director Works & Infrastructure. He also told the Board that Rohan Willis, Director Community and Development, assisted Mr Griffin in getting approvals.

Concerningly, Mr Watson described a conversation in which Mr Willis said he was "sick of doing Dwaine's job" of getting approvals, and Mr Watson replied, "It's his role; you have to push back on him and say you are not going to do it."

When asked what steps Mr Watson, as the person with the most interest and control over the development of the Derby Bike Trails, would have taken to monitor the progress of the permit, Mr Watson stated that it was Rohan Willis' job to keep him in the loop.

Mr Willis explained the conversation referred to above by submitting that he was frustrated at 'having to hold Mr Griffin's hand' in completing basic administrative tasks

and providing the required information. His professional expectation was that the Director of Infrastructure ought to have been capable of attending to those matters himself.

When the Board questioned Mr Griffin about the commencement of construction of the bridge, his evidence was that he wasn't aware of any issue with access to the Crown land on either side of the river. So far as authorisation was concerned, he said that he "would've authorised the go ahead via the general manager. The general manager would've authorised the go ahead. I'm not aware of any of that."

This evidence demonstrates to the Board that there was at least great uncertainty among senior council staff about who had responsibility for which actions. The responsibility for the day-to-day management of Council lies with the general manager, under section 62 of the Act.

Findings

The Board is comfortably satisfied that:

1.1. Council commenced construction of the bridge without complying with two of the conditions required to be complied with under the Crown Authority to commence construction. These works were therefore commenced unlawfully.

Recommendations

1. That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* to implement a policy and procedure to address the conflict of interest existing where Council is the applicant and/or developer, and at the same time is the planning authority determining that application.

2. That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* that any development application where Council is the applicant or developer must be referred to external consultants for assessment and recommendation.

3. That the Minister consult with the Minister for Planning to consider amendments to the *Land Use Planning and Approvals Act 1993* to establish development assessment panels to determine development applications where a council is the applicant and/or developer, so as to remove the actual conflict of interest currently existing in the decision-making process.

4. That the Minister work with the local government sector to establish a compulsory and enforceable ongoing development and training program for all councillors.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board made some additions and amendments to its consideration and clarified the wording of the recommendations.

The Board received submissions from Dorset Council concerning its draft intended findings and recommendations. Those submissions asserted that the Board's report "incorrectly records" that the first indication that work had commenced on the suspension bridge was an email sent by Crown Lands Services to Rohan Willis on 16 October 2018 and that "this email occurred on 26 October". Also, it asserts that the first indication that work had commenced was an email sent on 19 October 2018 from Jason Jacobi to Tim Watson. Both of these assertions by Dorset Council are themselves incorrect, and it is not referring to the correct email. The relevant email was sent on 16 October at 4:12 pm, not 26 October, and it was the first indication.

Council in particular submitted that requirements imposed by the Crown (which were not complied with before commencement of works) should have been imposed before commencement of use rather than before the commencement of works.

The Board rejects that submission and finds it troubling. The Crown requirements were directed to design and construction issues for a bridge. To contend that such a structure should be first constructed, and then consideration be given to formalisation of its design and construction suitability before use, misunderstands the appropriate sequence of approvals. It also creates a serious risk, in the event that a design issue is subsequently ascertained (or potentially overlooked altogether) after the expenditure of substantial funds.

The submissions received from Dorset Council did not address a fundamental aspect of the Board's recommendations which is the actual conflict of interest which in fact exists where Council is at the same time the developer and the planning authority.

The Board received submissions from Dorset Council on its recommendation to the effect that it would be inappropriate for any more rigorous training or development requirements to be placed on Dorset Council than on other councils. The Board's recommendation is one directed to the whole local government sector, and in making that recommendation the Board acknowledges that the issues identified in this report

are highly likely to be present in many councils throughout the State.

Having carefully considered Dorset Council's submission, the Board determined not to change its findings or recommendations.

2. Derby depot

Terms of reference

(1.2) Council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law.

(2.4) The compliance by Council, councillors, the general manager and council employees with relevant laws relating to the performance of their duties and functions.

(3.1) The approach taken by Council to manage the actual conflict of interest where Council as developer applies for approval from Council as a Planning Authority.

Issue

Landowner approvals were an issue between the Crown and the Council relating to the construction of a works depot in Derby from March 2019 to 2 August 2022. Council undertook works without authority and without approvals in place.

Concern about the Council's dealings with the Crown regarding the construction of the works depot in Derby were initially raised in a submission from NRE Tas, with substantial accompanying documents, in September 2023.

This issue was raised briefly by the Secretary of NRE Tas, Mr Jason Jacobi, during appearances before the Board on 20 December 2023.

Significant documentary evidence was provided to the Board relating to this issue.

Background

In 2017, Council was considering purchasing some Crown land at Derby for the purpose of relocating the Council depot. At that time, the depot was located on an area of land on the banks of the river and, in March 2018, was described by Tim Watson in a council meeting as an eyesore not in fitting with the historical character of Derby. It was stated that the depot site could be better used for commercial purposes to service the Derby and surrounding communities, for example, a restaurant, doctors' surgery, pharmacy etc.

As it transpired, the existing depot site ultimately became a carpark and shuttle bus transfer area with toilet facilities and a children's all weather circuit bike track. This change in utilisation is without question of great benefit to the Derby community and contributes to the great success of the broader Mountain Bike (MTB) trail network in

the area. The Board is inquiring not into what was done, but rather how it was done.

Negotiations progressed over the following two years. In 2019, by an order pursuant to section 12 of the *Crown Lands Act 1976*, the Minister then administering the Crown Lands Act set aside the land described in a plan attached to that order at Briseis Hole, Derby. By Schedule 2, Clause 2 of the order, there was to be a transfer of that land to the Council "in accordance with the agreement for sale", a copy of which was also attached to the order.

The Council executed the agreement for sale on 20 May 2019, and it was signed by the Minister on 9 August 2019.

The purpose of setting aside this land was to allow the Council to construct the depot and undertake other community purposes. It was a condition of the agreement that this land was not to be used for commercial purposes.

The purpose of attaching a plan for both the order and the agreement was to ensure that the boundaries of the land to be sold to the Council were properly delineated and that there was no encroachment onto adjoining Crown land on which there was a mining lease.

A condition precedent of the agreement was to the effect that the Council was required to procure a survey of the correct boundaries to the satisfaction of the Minister, the Surveyor-General, and the Recorder of Titles.

On 10 June 2020, the Council's general manager, Tim Watson, emailed Mr Jacobi raising a number of matters concerning the completion of the contract.

On 18 December 2019, CLS received a development application for the construction of a depot on the land from the Council for endorsement with the landowner's consent, pursuant to section 52(1)(B) of the LUPA Act.

The Board observes that given the consent/authority issues which had already occurred with the pedestrian bridge, it might be thought that Council would apply extra diligence to the approvals process for the depot. It did not.

It was at about this time that the Crown first became aware that the Council, either by its employees or contractors, had unlawfully entered and taken possession of the land. It was clearly unlawful because the Council had clearly not received the Crown's permission to take possession, nor had the Crown, at that time, given its consent to the development application.

It also became apparent to the Crown that not only had the Council commenced construction of the shed on the land without authority, but it had also encroached onto

adjacent Crown land, which was associated with an active mining lease.

Evidence given to the Board indicates that, from 18 December 2019, Council was advised that they did not have the authority to construct this shed on the following occasions:

1. In a response from Ms Anne Maginnity to the lodgement of the development application documentation on 18 December 2019;
2. In a letter to Mr Watson from Mr Jacobi of 26 March 2020;
3. In a further response to Mr Watson on 29 March 2020;
4. In a telephone conference between then Department of Primary Industries, Parks Water and Environment (DPIPWE) staff and Mr Watson and a follow-up letter on 9 April 2020;
5. In a letter demanding that the work on the site cease, dated 5 May 2020;
6. The response of 5 May 2020 to the Council assurances that work had ceased providing photographs of wet concrete taken on 8 April 2020;
7. In a response on 6 May 2020 to councillors' assurances that work had ceased providing photographs of wet concrete taken on 8 April 2020;
8. In a letter to Mr Watson on 29 May 2020.

On 9 April 2020, Mr Watson forwarded a communication from Mr Jacobi to Mayor Howard, which included a photograph showing the depot incursion onto the adjoining mining lease.

On 9 June 2020, Mr Watson emailed all councillors, including the following:

> Internally we were comfortable with gaining approval retrospectively as Council was going to be the landowner and approvals would be a formality. On this basis construction of the Depot commenced in December 2019.
>
> As explained in the Workshop there is a very small encroachment into the mining lease which we now realise should have been picked up in the survey plan commissioned by Council. Unfortunately, the Depot was located using this survey plan and no one in Council was aware that the plan of survey encroached into the mining lease.
>
> To resolve this matter we are in communication with the Deputy Secretary of Crown Land Services and are awaiting their advice as to how the encroachment can be dealt with. Whilst we know there are two reasonable solutions we are having to be very patient.

The Board notes that this was the first communication by Tim Watson to councillors. It also omits to tell them that there had been numerous demands sent by CLS to stop works, and these had been ignored.

On 19 June 2020, the then Solicitor-General, Mr Michael O'Farrell SC, wrote a letter to Mr Watson. After setting out the history of matters to that time, Mr O'Farrell went on to state:

> By entering the land and constructing the depot without permission, the Council has acted unlawfully in a number of respects. A responsible local government authority should obey the law.
>
> First, the Council has trespassed on the land. It is irrelevant that it had entered the agreement. The agreement has never been completed. The Council has not and has never had a right to enter into possession.
>
> Secondly, the Council, has contravened the following provisions of the LUPA Act,
>
> s 48 – the general duty, as planning authority, to enforce its planning scheme;
>
> s 51(1) – the prohibition on commencing a use or development of land without a permit;
>
> s 52(1B) – failing to obtain landowner's consent from the Minister (or delegate);
>
> s 63(2) – using or developing land contrary to its planning scheme;
>
> s 63A(1) – failing to take reasonable steps to ensure that its planning scheme has effect.
>
> Thirdly, the Council has contravened the Crown Lands Act 1976, s 46(1)(a), which makes it an offence for a person without lawful authority to use, occupy or be found in possession of Crown land.
>
> To compound the matters to which I have referred, part of the depot building and the majority of the wash down area have been constructed by the Council, or its contractors, on land which would (if there were a separate title issued for the land the subject of the agreement) encroach on the adjoining Crown land subject to the mining lease. The Council depot waste water is also plumbed to discharge onto that land. The encroachments were pointed out to the Council's Mr Willis on 25 December 2019. His response was to the effect that the mining lease could be amended. Mr Willis is mistaken. In the absence of the mining lessee's agreement, there is no power to further vary the mining lease boundaries.

Mr O'Farrell SC's letter then went on to raise a number of concerns with the conduct of Mr Watson as general manager of the Council. In addition to these matters, Mr O'Farrell's correspondence of 19 June 2020 to Mr Watson indicated the following:

> The matter does not end there.
>
> It has now come to the Crown's attention that the Council, presumably with your knowledge, has come to an agreement with a commercial operator to operate a floating sauna on Briseis Hole. The order and the agreement both operate to prevent the Council from permitting the land to be used for commercial purposes. Had the land been transferred to the Council, the consequence of the provisions of the order, the agreement, and the transfer, would be to revest the land in the Crown. I refer you to clauses 2(a), (b) and (c)(v) and (vi)(B) of the agreement.

Mr O'Farrell SC, after detailing the range of options available to the Crown, sought a response from Mr Watson within 14 days.

By its lawyers the Council provided a response to Mr O'Farrell SC in a letter dated 31 July 2020.

A number of admissions were made in this letter, in relation to both the contravention of the LUPA Act by commencing construction of the depot and associated infrastructure without first having obtained the permissions, consents and approvals. It was also conceded there had been a breach of the *Crown Lands Act 1976*.

Additionally, it was conceded that the agreement to locate a commercial operator to operate a floating sauna on Briseis Hole was as a result of a complete misunderstanding and error as to the boundary of the land which was the subject of the agreement to transfer.

Deputy Mayor Jessup liaised with the councillors, and Councillor Powell with the mayor and deputy mayor, between 18 August and 22 August 2020. On this date Mayor Howard emailed all councillors indicating:

> Evening all
>
> We have scheduled a discussion for the upcoming workshop in September [scheduled for 1 September].
>
> Copies of the SG's letter and our reply will be handed out at the workshop to read and for discussion however due to the fact that these documents are highly confidential all copies will be collected at the completion of the workshop.
>
> All information contained in the documents is also confidential and cannot be released under any circumstances.
>
> We will not be scheduling a special workshop.

The issues relating to the depot were the subject of several highly critical emails to the Council and letters to the Editor of the North Eastern Advertiser, and in September 2020, Mayor Howard responded in an open letter to the newspaper stating:

> Council openly admits that the depot was built without proper planning and building approval. While this is extremely disappointing, as I have previously stated there were some significant extenuating circumstances regarding that decision.
>
> For most of the latter half of last year and for the early part of this year the General Manager (Tim Watson) was suffering from a medically diagnosed acute medical condition, namely a mental health issue.

> While senior staff and myself were aware Tim was unwell, we had no way of knowing just how unwell he was.

It appears that communications occurred between the Solicitor-General and the Council's solicitors through the early part of 2021.

Tim Watson further reported to councillors at a council meeting on 16 August 2021. The minutes of that meeting record that Mr Watson apologised to the Council for the issues associated with the construction of the Derby depot. The Minutes note Mr Watson stating:

> …I acknowledge (and which is on the public record) that Council constructed the new Depot before completing the requisite approvals process…I acknowledge that this was not the correct way to deliver this project and I take this opportunity to unreservedly apologise to Councillors, the community, the lessee and the two State Government agencies for the angst, disruption and diversion of resources that this has caused. I also want to acknowledge and thank the senior officers within the State Government who have found a pragmatic and sensible resolution to the issue.

On 12 April 2022, Mr Rohan Willis, Director Community and Development, Dorset Council, sent an email to CLS entitled "D22-122989 – Planning permit and Endorsed Plans – Derby Depot (retrospective) – Dorset Council (PLA/2022/18)".

On 2 August 2022, the Council was given authority to access the depot thus making its possession of the Crown land lawful.

Appearances before the Board

The Board summoned a number of officers to give evidence about the construction of the depot.

Dwaine Griffin

Dwaine Griffin was the Director Works & Infrastructure at Dorset Council.

Mr Griffin gave evidence that he wasn't aware if the Crown had given its consent to the original development application. He said that he had no part in the approvals side of things, and that was with "the development regulatory services department and the GM".

He gave evidence that the depot was built very quickly, and that it had been "lined up for months". When asked whose decision it was to go ahead, Mr Griffin stated: "Well, I was instructed to build, instructed to start."

He confirmed that he was told by Tim Watson.

When asked whether he had any discussions with Rohan Willis about Tim Watson's instruction to go ahead with the building, he replied that he could not remember.

When asked who was responsible for getting any approval needed for undertaking works on Crown land, he replied that:

> Regulatory services undertook all approvals…It's Rohan's department…What would normally happen is that…Rohan would either let Tim or myself know or both of us know that it was approved and ready to go.

He confirmed that when he gave the contractor the go-ahead he was aware that no permits were in place.

When asked whether there had been any discussion about whether it was not appropriate to proceed with the build, he replied:

> Yes, we spoke about that in the [management team] meetings, and it was decided that the way forward was to get retrospective approval. There was [sic] timelines that has been pushed out for a long time and there was the EWS, the mountain biking event was coming up and that's obviously very important. So Tim wanted the site cleared, the old site cleared for the EWS.

EWS is the Enduro World Series mountain bike event. When asked if he felt uncomfortable about the direction to start building it without a permit, he replied "absolutely". When asked why he didn't ask for an email instruction from the general manager, he replied "I'm not sure that would have been welcomed."

Rohan Willis

Rohan Willis was, and is, Director Community and Development at Dorset Council.

Mr Willis was asked whose decision it was to commence construction. He replied:

> The GM. I think there was probably a degree of enthusiasm from the Director of Infrastructure, but the GM had the call. The Director of Infrastructure would not have commenced works without that authorisation of the GM.

Mr Willis said that he found out that the build had started, while the approvals process was ongoing, in mid-November 2019. He was working on obtaining information for Traffic Impact Assessment, for the development application, and soil report, waste water management design, and bushfire report for the building application. He was also waiting for Crown consent to be given.

Mr Willis gave the following evidence:

> …I was made aware by the GM and the Director of Infrastructure that the works were already underway…I was brought down to the office and they said 'this thing's going up'. And I said 'oh shit…we haven't got approvals'…[they said] 'no, we know that but Whittington will take care of it. Consent's been sent through.'

He went on:

> This was a development services manager. He knew very well what he was doing. Of course it was made loud and clear. 'We do not have approvals. This is against the law. This is unlawful.' 'It will resolve itself' is what we were effectively being assured of.

Mr Willis told the Board that he never went out to the site, and the Board notes that he did nothing to attempt to stop the works. Enforcement of the planning scheme (at least) was his responsibility.

He also said that the development application he was working on in 2019 was not progressed, and after all issues with CLS had been resolved, a new application was lodged in 2022 and progressed to a permit.

Tim Watson

Tim Watson was the general manager of Dorset Council. He gave evidence that he did not tell Dwaine Griffin to start construction of the depot. He said:

> I'll tell you what happened. So the depot site was cleared without my prior knowledge. I then gave the instruction to proceed. So the second part is correct, the first part is that the site was cleared without my knowledge…[by] Dwaine Griffin and his people. And I have a witness. The first time I saw it I had a witness with me. He was not given instruction to clear that site. I did subsequently give the direction to plough ahead with the project, I don't deny that.

Mr Watson said that after this time, in December 2019 and January 2020, he had some sick leave.

Mr Watson said he thought Dwaine Griffin was acting as general manager during this time, but the Board has considered minutes of council meetings which show Tim Watson was present at the December 2019 and January 2020 meetings.

When asked about receiving correspondence in early 2020 from CLS to stop works, Mr Watson said:

> …I have had the conversation with Dwaine Griffin and said 'We've been told to stop' and he said 'We're not stopping, we're too far gone now'.

Greg Howard

Greg Howard was, and is, the mayor of Dorset Council.

He gave evidence that he first became aware there was an issue with the Derby depot when he:

> …got an email from Tim Watson saying that there was potentially an issue with the depot being built over the boundary…but I can't remember what the date was…We'd been updated regularly at workshops about the progress of the construction [over] I'm thinking a three- or four-month period from initial construction…

When asked when he first became aware there had been no permit in the first place, Mr Howard said:

> Every Monday morning I used to go to the North Eastern Advertiser to give the local paper an update on council activities and the then editor of the newspaper Taylor Clyne, said she's been told that the depot had been built without a planning permit and that the land transfer agreement hadn't gone through. Got no idea how she found out…I went back to the office. I fronted Tim about it. He was very, very coy about what happened… I asked him "Is it true?" He was very coy about it and then he sort of admitted that it was true…he sent all the councillors an email to say 'There's going to be a story appear in the Advertiser…

Breach

From the evidence set out above, it is patently clear that Council commenced construction of the depot without approval from CLS, and without any planning or building permit, and encroached onto adjoining land. That is in the Board's view quite extraordinary.

That conduct, as set out in the letter from the Solicitor-General dated 19 June 2020, constituted multiple offences.

The Board is satisfied that no councillors, including the mayor, were aware of any issue before the email from Tim Watson on 9 June 2020. Mayor Howard was told by email of the encroachment on Crown land on 9 April 2020, but this was downplayed by Tim Watson when he stated in the email only that "this looks pretty trivial in the context of the mining lease".

The Board has also seen an email from Rohan Willis to Greg Howard dated 4 June 2020 which is only a little more illuminating.

There is conflict between the evidence given by council officers. This demonstrates a troubling picture of uncertainty within Council about who was supposed to be doing

what.

However, the Board is comfortably satisfied, following its consideration of this evidence, that the clearing of the site was conducted by Dwaine Griffin without the knowledge of Tim Watson, but that Tim Watson then directed the works to continue.

In addition, Tim Watson did not direct works to cease when these issues were first raised with him by CLS, and both he and Dwaine Griffin directed works to continue, which made the breaches much worse.

This displays a troubling, cavalier approach by Council and its officers to its legal obligations. One councillor responded to the Board's draft findings with the comment that highlighted Tim Watson's determination to get the result he desired with disregard for all the required processes.

Conflict of interest

Of great concern is the comment by Tim Watson in the 9 June 2020 email as follows:

> Internally we were comfortable with gaining approvals retrospectively as Council was going to be the landowner and approvals would be a formality. On this basis construction of the Depot commenced in December 2019.

This, in the Board's view, demonstrates a clear disregard for the law. There is a statutory process which must be followed to issue planning and building permits. Council as the developer is, by reason of provisions in the LUPA Act, required to make application to itself as the planning authority for approval.

This obvious and direct conflict of interest appears to have been ignored. Tim Watson considered that Council would grant the approval "as a formality". It is not a formality. Proper process and assessment must be undertaken. The practice of Dorset Council was one which, rather than addressing the conflict of interest, made it more of a problem.

When asked by the Board about the process that Council adopted when considering one of its own applications, one of Council's planners said that he treated the application like any other. In the Board's view, such an application is very different to others – it is shrouded in a conflict of interest.

When asked why Council did not have its own development applications assessed externally, which the Board is aware is a process followed by many Tasmanian councils, Rohan Willis said:

> So with the rail trail we did exactly that…We got a consultant to do the assessment, make the recommendation to Council. We went through that process.

He also made the comment that there was no requirement for another planning authority to be engaged or to make a decision and added "And of course a development assessment panel process may take care of that. No dramas."

Evidence from other officers and councillors was that there is no policy or process in place at Dorset Council to address the conflict of interest where Council is the applicant and the planning authority at the same time.

Given other examples, such as the Derby Suspension Bridge, where issues have arisen in the approvals process for Council's own applications, the Board is strongly of the view that there needs to be action to address this conflict. In the Board's view, the examples at Dorset Council are likely to produce a lack of confidence that proper decision-making process is followed. External assessment should be required. This should apply to all councils.

So far as the determination of the application is concerned, at the very least there should be a robust policy and process in place to ensure that Council makes its decision according to law, and not according to what may be convenient to Council.

Having the application determined by another council as planning authority would in the Board's view be problematic, not least because it might give rise to another level of conflict, between councils.

Far preferable in the Board's view is that applications where councils are the developers should be assessed independently by external consultants and determined by an independent Development Assessment Panel. That would remove completely the actual conflict of interest which exists.

The mechanism for such a panel would need considerable work, but the Board sees no issue with having a panel of experts drawn from the Tasmanian Planning Commission to undertake that determination. Such panels have determined development applications, which have been made in combination with planning scheme amendments, for over 30 years.

If this were to occur, in the Board's view there would need to be provision for an appeal process, to correlate with the standard process for determination of development applications.

Findings

2.1. Dwaine Griffin, former Director Works and Infrastructure, caused Council to commence construction of the Derby depot without permit approvals having been obtained, and on Crown land without authority. These works were therefore commenced unlawfully.

2.2. Tim Watson, former general manager, and Dwaine Griffin caused Council to continue construction of the Derby depot without permit approvals having been obtained, and on Crown land without authority. These works were therefore undertaken unlawfully.

2.3. Tim Watson failed to stop the unlawful works when requested on multiple occasions.

2.4. Rohan Willis, Director Community and Development, failed to take all reasonable steps to ensure the unlawful works, which were being conducted in breach of the Council planning scheme, ceased.

2.5. Council likely committed a number of offences as a consequence of the conduct of Dwaine Griffin, Tim Watson and Rohan Willis.

2.6. No councillors were aware of the unlawfulness of the works until they were advised by email dated 9 June 2020, at which time the works had been completed.

2.7. Council failed to implement a policy or procedure to address the actual conflict of interest existing where Council was the applicant for development and was at the same time the planning authority.

Recommendations

This issue was taken into account by the Board in its general recommendations regarding where a council is the applicant for a development, the assessment and determination of the application should be undertaken external to the council. **(Recommendations 1 - 3)**

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board made some minor changes to its consideration and clarified the wording of its recommendations.

The Board received submissions from Dorset Council concerning its draft intended findings and recommendations. Having carefully considered Dorset Council's submissions, the Board corrected a typographical error in one date, but otherwise determined not to change its findings or recommendations.

3. Waste management service charge increase

Terms of reference

(1.2) That the council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law.

(2.3) The performance by the current and former general manager of the functions under section 6.2 of the Act, including to implement the policies, plans and programs of the council, to be responsible for the day-to-day operations and affairs of the council, to liaise with the mayor on the affairs of the council and the performance of its functions, and to manage the resources and assets of the council.

(2.4) The compliance by Council, councillors, the general manager and council employees with relevant laws relating to the performance of their duties and functions.

Issue

Significant concerns were raised in several submissions and in evidence given to the Board about Council's decision to vary the waste management service charge in respect of retail, hospitality, and short-term accommodation (STA) providers in Derby, and subsequently in other townships in the municipality.

Background

At Council's Briefing Workshop on 2 April 2019, the general manager presented a proposal to introduce a levy for STA providers at Derby. Under the proposal, these providers would be charged a $1,000 annual levy in order to raise revenues for maintenance of the Blue Derby MTB Trails. The rationale for the proposal was based on what was described by the general manager as a significant undervaluing of properties at Derby by the Valuer-General, compared to the rest of the municipality, and the assertion that STA providers were making significant yields from MTB tourism, while not making any financial contribution to trail maintenance.

Several options were canvassed for implementing the levy, with the proposed option being the targeting of the levy at STA providers using residential properties for commercial purposes, either by differential rating or by a specific service charge. It was also proposed that where STA providers entered into a Blue Derby sponsorship agreement, Council would provide a remission to offset the charge.

The general manager provided further briefings on the proposal at Council's Workshops on 31 May 2019 and 4 June 2019. These recommended that the proposal be implemented by way of variation to the waste management service charge targeting STA and commercial properties benefiting from MTB tourism, along with a proposed rate remission for entering into an annual sponsorship agreement. It was anticipated that the levy would raise in excess of $30,000 for the purpose of trail maintenance costs.

Around this time, Council began engaging with its legal advisers on whether it could validly vary the waste management service charge made under section 94 of the Act instead of the general rate, to implement the levy.

On 17 June 2019, Council received some legal advice on the matter, which provided in part:

> As discussed, I have concerns regarding the proposed variation of the waste management service charge (waste transfer station facilities) at para 2.1(b) in that Council risks challenges regarding:
>
> 1. firstly, the amount of the increase (i.e. how it translates to the cost of operating the relevant stations) and whether the charge is legitimate; and
>
> 2. secondly, the applicability of the variation to residential uses that are conducting Air B&B activities – i.e. it could be argued that use as a residence is the predominant use, etc.
>
> If successfully challenged, I consider the first issue above to pose a higher risk to Council than the second (i.e. a challenge to the validity of the variation, versus a landowner challenging the applicability of the variation to their land).
>
> As an alternative to varying the waste management service charge, I suggest that Council consider varying (i.e. increasing) the general rate for all properties in Darby [sic] used or predominantly used for commercial purposes. This approach would avoid the risk posed by the first issue identified above, leaving only the second lesser risk.

Acknowledging these concerns, Council then sought further legal advice on refining the proposed variation to the waste management service charge to target the increase at specific sub-types of 'use' (i.e. predominantly retail/hospitality and STA use).

The response from Council's legal advisers was that such a proposal would further heighten the risk of legal challenge for Council and recommended against the proposal. The advice proposed an alternative option of reviewing the most recent Land Use Codes published by the Valuer-General, as these were prescribed variation factors under section 107(1)(e) of the Act. It was further noted that the proposal to target specific sub-types of use would "increase the risk that the variation is challenged and found to be an invalid use of the power to vary."

Council decision

On 24 June 2019, Council approved its rates resolution for 2019-20.

The resolution included:

- A service charge of $93.65 for waste management services on all rateable land for the making available by Council of waste transfer station facilities.
- A variation of the charge for all land in Derby which was used or predominantly used for commercial purposes, whereby the service charge was increased to $1,000.

The resolution was carried unanimously.

There is no evidence sighted by the Board that details that the legal advice either written, or in summary form, was presented to Council before the resolution was carried.

Section 65(2) of the Act provides that a council is not to decide on any matter which requires the advice of a qualified person without considering such advice unless the general manager certifies in writing that such advice was obtained and the general manager took that advice into account in providing general advice to the council.

Importantly, that subsection goes on to provide that a copy of that advice, or if the advice was given orally a written transcript or summary of that advice, is to be provided to the council with the general manager's certificate.

It appears that oral advice was likely given at a Council workshop, but because of Council's practice to not make detailed records of proceedings at workshops, what that advice may have been is far from clear. In the Board's view, Council appears to have acted unlawfully in making that resolution because it did not satisfy section 65(2) of the Act.

The Board is not suggesting that the councillors should have sought their own legal advice, rather that they should have required the general manager to provide the legal advice obtained in writing to them as the Act required. This is particularly so where the imposition of such a charge was likely to be contentious.

At that meeting, Council also approved the following policy on remissions:

1. A 100 per cent remission of the varied waste management service charge for all commercial properties that are not used for retail, hospitality, or STA purposes; and
2. A remission of the annual value of all Blue Derby sponsorship contributions and accommodation listing fees paid by all business owners and STA providers in Derby for bookings on the Blue Derby website, up to the value of the variation.

Subsequent variations

The variation was again adopted in 2020-21 and 2021-22.

In 2022-23, Council expanded and increased the variation to the waste management service charge to include all land used for commercial purposes in Derby, Branxholm and Winnaleah (increased from $120 to $3,020) and in Bridport, Scottsdale and Tomahawk (increased from $120 to $1,920).

Council also amended its remissions policy to accommodate a 100 per cent remission for properties that are not used for retail, hospitality or STA purposes and a remission against the varied waste management service charge of up to $2,900 for all booking commissions, annual sponsorship contributions, and website and other contributions paid by businesses and STA providers towards the maintenance of the MTB trails.

Evidence provided to the Inquiry

Several submissions to the Inquiry raised concerns with the legality and fairness of the varied waste management charge. Concerns included a lack of openness and transparency by Council, a failure to consult with STA providers in relation to the change, a lack of nexus between the purpose of the charge and the actual utilisation of funds raised under the charge, and the excessive and inequitable nature of the variation. These concerns were reiterated in appearances before the Inquiry.

A further submission raised the concern that the remission policy concerning the Council-operated Blue Derby website booking platform, may have amounted to an instance of third line forcing under the *Australian Competition and Consumer Act 2010.*

In oral evidence given to the Inquiry, the then general manager, Tim Watson, in response to a proposition that "The fact of the matter is, however, that the waste management was really a fiction to justify a charge for the purpose of trail maintenance" responded:

> Correct. I don't dispute that. It's in there. I can't deny that. There's an audit trail, so I'd be lying if I said otherwise.

In further evidence, Mayor Greg Howard in response to a proposition that the waste charge was merely a mechanism for raising additional funds for trail maintenance, and that significantly more revenue was raised than was required for the increase in the cost of waste management, responded:

> Look, it may not have been the appropriate way to go about it and I think the intention that you mentioned probably has some merit.

In further evidence, the Board noted a letter from the Director of Local Government, dated 22 September 2022, to the then general manager, Tim Watson, expressing concern that the waste management service charge was not in compliance with the Act.

In response, the acting general manager, John Marik, advised in part:

> After giving your feedback due consideration, I am satisfied that the variation of the waste management charge is compliant with the Act, and I confirm that Council do not intend to revoke the varied charge at this point in time.

It is not apparent to the Board whether the response provided to the Director was based on any legal advice or indeed whether the proposed response was presented to Council for information prior to being sent.

Despite this response to the Director, Council abandoned the increased waste management service charge when setting its rates and charges in 2023.

The Board accepts that Council was seeking to raise funds to cover the increased cost of waste services in Derby and other townships in addition to raising additional funds

for trail maintenance and like activities. The evidence before the Board was, however, that the actual increase in waste management costs was likely well below the increase in the 'waste management charge', and that the funds raised were substantially used for trail maintenance.

Section 94 of the Act empowers a Council to make a separate service charge "for any of…the services specified" in section 93 "which the council supplies or makes available". One of the services specified in section 93 is waste management.

In the Board's view, the proper interpretation of section 94 is that Council may make a service charge for waste management which the council supplies or makes available to particular land. The emphasis is that it is 'for waste management'. There is no 'service' in s 93 for 'trail maintenance', and nor is one prescribed in the Local Government (General) Regulations 2015.

It is tolerably plain that if a council makes a waste management charge, then that charge is 'for' waste management. That is, it is required to be used for waste management. To use it for other purposes would not appear to be lawful.

The Board is of the view that other rating options in the Act provided scope to raise the additional trail maintenance funds sought in a lawful manner rather than as an unlawful construct of the service charge provisions of the Act. Those other rating options have now been utilised.

The Board is comfortably satisfied that the imposition of the increased waste management service charge was an exercise of poor governance, and was unlawful in the sense that it was not made strictly in accordance with the Act.

The Board does not consider it necessary to examine the submission that the remission program attached to the waste management service charge was a breach of the *Australian Competition and Consumer Act 2010*.

Findings

3.1. That the then general manager, Tim Watson, failed to act in accordance with qualified legal advice in recommending a waste management service charge to Council that likely did not comply with the requirements of the *Local Government Act 1993*.

3.2. That Council failed to exercise good governance, or acted unlawfully, in adopting a waste management service charge without complying with section 65(2) of the *Local Government Act 1993* concerning qualified legal advice.

3.3. That Council failed to exercise appropriate governance in that the substantially increased waste management service charge was primarily raising funds for the purposes of bike trail maintenance and was not for the purpose of waste management services.

3.4. That Council failed to exercise good governance in making a decision without considering that there was little or no correlation between the quantum of funds proposed to be raised by the increased waste management service charge and any purported increase in the cost of providing waste management services.

Recommendations

5. That the Director of Local Government issue guidelines to all councils in relation to the appropriate application of Part 9, Division 3 and Division 6 of the *Local Government Act 1993*.

6. That consideration be given to an amendment to sections 93 and 94 of the *Local Government Act 1993* to require that funds raised by way of a service rate or service charge (including any variation) in respect of a specific service, are only used for the provision of that specific service, and are not used for other purposes.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board made clarifications to its consideration and made minor changes to its findings and to the recommendations.

The Board received submissions from Dorset Council concerning its draft intended findings and recommendations. Those submissions included that Council had acted on legal advice and asserted that a summary of the advice was provided to Council. It is contended that the words 'Council officers have taken advice to ensure that Council has the head of power to vary the waste management charge' amount to such a summary. In the Board's view they obviously do not, and the Board has not seen any other document that can reasonably be described as providing such a summary of legal advice. It is noted that the summary is to be provided under s 65(2) where the advice is given orally. Where it is written advice, a copy of that advice is to be provided.

The submissions also contended that councillors and employees never understood the levy was being raised for trail maintenance. That submission is inconsistent with evidence given to the Board by Tim Watson and Greg Howard, as referred to above, and the following evidence also given to the Board.

John Marik, when responding to the proposition that the waste management charge

was not in fact to recover waste management cost, but instead to generate extra funds to maintain the bike tracks said:

> A…I'm 90% certain that there was correspondence that went out from Tim that actually mentioned that didn't it?...
>
> Q…But you would have seen that written legal advice if it had been in the agenda papers for the council meeting…
>
> A…Well, I certainly saw it. I just can't remember whether it was in the agenda papers or whether I just saw it as part of like in the document management system…
>
> A…The way it was framed is we've got additional waste, can we put a waste charge in and then it…
>
> Q No reference to what the funds were actually going to be used for in the legal advice?
>
> A Yes. Then I suppose it gets publicly spoken about as a way to raise funds for the trails, when in fact – so I suppose where I'm going is I feel for the solicitors because they were – well, they weren't briefed correctly as to the intent.

Having carefully considered Dorset Council's submissions the Board has decided not to make any changes to its findings or recommendations.

4. Bridport foreshore

Terms of reference

(2.4) The compliance by Council, councillors, the general manager and council employees with relevant laws relating to the performance of their duties and functions.

Issue

A number of submissions raised the issue of non-compliance with Council's statutory obligations concerning the clearance of vegetation on the Bridport foreshore.

Councils are both land managers and significant users/occupiers of land in Tasmania. Together with the Tasmanian and Australian Governments, councils are custodians of public and reserved land held for the common benefit of all Tasmanians.

The *Crown Lands Act 1976* governs the management, sale and disposal of land held by the Crown. It requires that the management of public reserves must be guided by the objectives of the State's Resource Management and Planning System (RMPS) objectives, which are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;
- provide for the fair, orderly and sustainable use and development of air, land and water;
- encourage public involvement in resource management and planning;
- facilitate economic development in accordance with the objectives set out above; and
- promote the sharing of responsibility for resource management and planning between the different spheres of government, the community and industry in the State.

Compliance of all levels of government with the obligations imposed by the *Crown Lands Act 1976* is critical to balancing each of the often-competing objectives of the RMPS.

Throughout the Inquiry, the Council's disregard for its obligation to comply with the requirements of the *Crown Lands Act 1976* was highlighted through:

- knowingly and deliberately conducting works on Crown land without authority; and
- intentionally clearing native vegetation on Crown land without authority.

Background

The deliberate clearance of native vegetation on the Bridport foreshore without authority relates to three separate programs of work.

Goftons Beach

Evidence

The first occasion relates to works undertaken by Council on Goftons Beach in 2017. As outlined by Dorset Council's submission to the Director of Local Government's Investigation report:

> … these works sought to complement the recent installation of the Bridport Lions Playground by providing additional green space in an area contiguous to the playground…

On 20 February 2017, Council's then general manager, Tim Watson, wrote to Ms Kathryn Clark, Manager Crown Land Services, explaining the purpose of the work and Ms Clark advised there was no need for a works application in this instance, as the activity was covered by the existing agreement.

The position of CLS altered in the months between February and April 2017, because of works being done in excess of the previously agreed activity. This culminated in a letter from Ms Clark to Mr Watson on 3 April 2017 with a formal direction for all vegetation maintenance works to immediately cease and no further works to be undertaken at that location. This letter noted that this request was further to instructions issued verbally to council officers and separate emails to Mr Watson on 29 March 2017 and 3 April 2017.

The letter from Ms Clark to Mr Watson states that:

> I refer to your email, dated 3 April 2017, advising that the Dorset Council intends to ignore previous Departmental instructions to discontinue vegetation clearance works on the Bridport foreshore.
> …
>
> [t]he Council is directed to immediately cease all works within the area outlined in red on the attached plan. No further works may be undertaken at this location until duly authorised to do so by the Crown.

A Council Briefing Workshop held the following day on 4 April 2017 details Mr Watson's associated commentary:

> As Councillors are aware we have been busy clearing the weed infested foreshore adjacent to the Surf Life Saving Club. We are receiving extremely positive feedback from the community via social media sources, however there are elements within the community who have put pressure on Crown Land about this project.
>
> As a result, we have been instructed to stop work and Crown Land are requiring us to submit a works application outlining how we will revegetate the foreshore before we are allowed to proceed any further. They have also told us that we are not to proceed with an expansion of the proposed RV Site because they have concerns about the National Competition Policy – Competitive Neutrality.
>
> In respect of the foreshore Crown Land have said that they only gave us approval for about half of what we have cleared and would not have given approval for what we have cleared to date. When questioned WHY, I got a range of bureaucratic responses which in my opinion are symptomatic of state agencies simply being incapable of making decisions because of fear of kick back by a noisy minority. Also be aware that they are likely to issue Council with an infringement for breaching the Crown Lands Act (approx. $1,000).
>
> In my view this is an issue that Council needs to take a stand on and we should be extending the foreshore clean-up to include further vegetation removal on the foreshore right up to the southern zone of the Holiday Park and to bring this matter to a head – with or without Crown approval.

On 19 April 2017, Mr Walker from the then DPIPWE emailed Mr Watson:

> Based on the information CLS has to hand it appears that further living vegetation has been removed, and sand over broad-scale areas has clearly been scraped/bulldozed into rows and is currently being removed from site.
>
> Could you clearly instruct Council staff and/or contractors to immediately cease any further works, other than the removal of loose vegetation and debris in accordance with the conditions of the attached correspondence.
>
> This matter requires your urgent attention.

In Mr Watson's response to DPIPWE, he stated it was near impossible to remove cleared vegetation without removing a bit of sand, saying he was struggling to make much sense of Ms Walker's email.

On 21 April 2017, Mr Thompson from CLS compiled a report on an inspection of the Bridport foreshore:

> …
>
> Works being undertaken involved excavating the sand to a depth of at least 300mm below surface level to remove the existing root systems of the previously cleared vegetation, stockpiling into windrows then removing from site.

> I later learned the sand and vegetation was being stockpiled on a piece of unlicensed Crown land off Maxwell Street, Bridport. This section of Crown land was once under license to Dorset Council but cancelled in 2003. Council has continued to boom gate the area and use it to stockpile material and dump soils and concrete.
>
> …
>
> Unfortunately, it is becoming all too clear that Dorset Council cannot be trusted to perform any approved works on Crown land without strict supervision and guidance. The current issues involving the Bridport foreshore certainly provide an insight into how little council regard us as landowners or indeed any instructions issued by Crown Land Services.
>
> It is obvious that Dorset Council has a vision on how they want to alter the foreshore and it appears that nobody, including the landowner, will prevent them from achieving this.

Throughout May and June 2017, the Dorset Council worked with DPIPWE and NRM North to design the landscaping plan and secure the replacement works authorisation.

Consideration

The Board is readily satisfied that works were undertaken on Crown land that well exceeded the works which had been approved. Of most concern in this evidence is the briefing note provided by Tim Watson to councillors which, rather than acknowledging that the works may not have been properly undertaken, instead made the extraordinary recommendation that:

> In my view this is an issue that Council needs to take a stand on and we should be extending the foreshore clean up to include further vegetation removal on the foreshore right up to the southern zone of the Holiday Park and to bring this matter to a head – with or without Crown Approval.

For a general manager to recommend that a council should deliberately act unlawfully is disgraceful. It is noted that Mr Watson's briefing note fails to mention that the day before he had emailed CLS stating that the Dorset Council intends to ignore previous Departmental instructions to discontinue vegetation clearance works on the Bridport foreshore. He of course had no authority to make that statement because Council had not discussed the issue. This is another instance of Mr Watson being selective with the information he provided to Council.

What is deeply concerning is that Council, or at least a majority of councillors, apparently acquiesced in the unlawful activity. The Board considers this briefing note to be a red flag document on which councillors should have acted. It is no answer to say that this was an 'operational' issue. No part of Council's operations is to act unlawfully. And it is no function of the general manager to cause the Council to act unlawfully.

The language used by Tim Watson concerning Crown Land Services, and his apparent attitude toward that public land manager, appears to the Board to have permeated

through to other council employees. That senior employees would acquiesce in such unprofessional behaviour is also deeply concerning.

There are no minutes of the 4 April workshop. In fact, apparently there are no minutes of any workshops conducted by Council. At the council meeting on 24 April 2017, a recommendation was advanced by Mr Watson that Council seek to obtain a transfer of Crown land at Bridport. The report included the following:

> Despite this positive feedback from the community and an overwhelming community desire to see further vegetation maintenance carried out by Council, CLS officers have taken an obstructionist approach and are demanding Council halt all further works until a detailed plan is submitted to the satisfaction of the Hobart based bureaucracy.
>
> The critical point to note here is that Council is elected to represent its community and is best based placed to understand and respond to community expectations –not the Hobart based bureaucracy. Council should not be required to have its plans for its community vetted and approved by a bureaucracy that has no connection to the Dorset community.

This indicates to the Board that Mr Watson did not like dealing with bureaucracy. The protection of Crown lands has been determined by Parliament to be under the control of a state entity, and not under the control of a local political entity whose makeup may change at the next election.

Mr Watson's actions and correspondence demonstrate unprofessionalism and a troubling lack of insight into how councils should act to comply with the law.

Fire abatement on Bridport foreshore

The second occasion of concern regarding Council's compliance with the requirements of the Crown Lands Act involves the issuing of a fire abatement notice to the Crown in November 2018.

On 28 November 2018, the Council issued a fire abatement notice on the PWS regarding the Bridport foreshore. The abatement notice was issued by Rohan Willis, but in his evidence, he confirmed that Tim Watson directed him to issue it.

In a letter to the Council on 13 December 2018, Mr Jacobi stated that:

> The area has been assessed by a specialist PWS fire officer and is not considered to be an immediate high risk threat to life or property. The area is narrow and easily accessible and defendable. Recent rainfall and predicted heavy falls this weekend are also likely to render it too wet to burn for many weeks…
>
> Notwithstanding that, some planned burning in the area, breaking the foreshore strip into manageable sections, will assist in natural regeneration and mitigate against fire risks…

On 25 February 2019, Mr Willis wrote to Ms Kathryn Clark, Manager Crown Land Services:

> Senior Council Officers have conducted a recent inspection of the works carried out by CLS (PWS) and I write to inform you that in the view of Council Officers the works conducted to date represent only a small portion of that required. Accordingly, Council will be invoking its powers under the *Local Government Act 1993* and will be engaging contractors to complete the required works in the immediate future. As outlined in the Notice of Abatement the costs of these works will be invoiced to Crown Land Services.

Mr Jacobi wrote again to Mr Watson on 4 March 2019 stating that:

> …following receipt of the original notice, PWS carried out substantial works on the Bridport foreshore to remove trees, dead timber and other vegetation. Following the completion of these works, there has not been any contact from the Council to indicate that the works conducted by the PWS were unsatisfactory and, furthermore, I am advised that the Council and PWS staff have not yet had the opportunity to meet on-site to review the works due to the PWS' commitment to protecting life and property over the last two months of wildfire activity.

On 12 March 2019 Mr Watson wrote to Mr Jacobi:

> … PWS works completed to date, they are superficial at best and have not addressed the fundamental issue of reducing the fuel load on the foreshore. To address this shortcoming Council will be taking a far more balanced approach, ensuring potential habitat is preserved where applicable whilst achieving the primary objective of reducing the fuel load in the understory.
>
> Contrary to the paranoia and neuroses that afflicts PWS and CLS officers whenever Dorset Council is mentioned, in adopting this balanced approach Council will of course take into consideration advice previously provided by PWS officers regarding observed tree hollows and the like.

Mr Jacobi sent a further letter on 22 March 2019 stating that:

> The works were inspected by representatives of the PWS on 21 March 2019. Based on the report of these activities, it appears that a significant quantity of living native vegetation has been removed from the Crown foreshore. I note that the Council has not been provided with any approvals from the Department to remove living native vegetation from its lease and licence area. I also remind the Council that the removal of living vegetation is inconsistent with the notice issued by Mr Willis on 28 November 2018, which only sought the limited removal of 'dead and fallen vegetation' from the area highlighted in the notice.
>
> I consider that the works undertaken to date are excessive and unnecessary for the purpose of abating any alleged nuisance. Further, that the scale of the clearing constitutes an unacceptable risk for erosion and for the introduction of weed regrowth on the foreshore. If the works currently being undertaken with an excavator cannot be done without causing significant damage to the

> foreshore and living native vegetation upon it, then the works must cease until less invasive work methods can be arranged.

A stop works notice was issued to the Council on 4 April 2019 that stated:

> I direct that the Council immediately desist from any further works on the Bridport foreshore until such time as approval is granted by me to remove vegetation as per the provisions of the licence agreement between the Crown and the Council, dated 3 September 2014.

The notice was issued by the Deputy Secretary of PWS and emailed to Tim Watson, Dwaine Griffin and Rohan Willis**.**

Tim Watson and Dwaine Griffin met PWS officers on site. Clearing was still underway. This was the day after the contractor had been informed of another possible midden site. When asked if Council were intending to stop, Tim Watson replied that they would not be stopping and that it had been discussed with John Whittington (then Secretary, DPIPWE) and it was agreed they could continue for the day. The site identified to the contractor the previous day had by then been destroyed.

On 8 April 2019, Mr Thompson compiled a further report on two inspections of the Bridport foreshore:

> …
>
> 03/04/19
>
> I inspected the site on the 03/04/19 in the presence of Shannon Mansell and PWS Recreational Engagement Officer Luke Mabb. Our objective was to re-inspect the area and possibly locate more traces of Aboriginal artefacts.
>
> …
>
> We then inspected the registered midden site AH13653 where Shannon confirmed the site had been partially destroyed by machinery undertaking clearing works. This has been confirmed by GPS. A decision was then made to inspect the uncleared Crown Land south of the ongoing clearing occurring to the north of Croquet Lawn Beach.
>
> Passing the excavator working on the Crown foreshore, I noted that more large live standing vegetation was being removed and I took a few photos from a safe distance. The excavator operator then began yelling at me to “stop taking his f#cking photo”. He then jumped from the cabin and began running towards me continuing to shout. At one point, I did fear I was in physical danger.

Mr Watson emailed Mr Whittington on 8 April 2019 advising that the Council’s intention was to recommence works on the foreshore under the authority of the abatement notice issued to the Crown. Mr Watson noted that “…we have no legal advice contrary

to the position", but it did not note that this legal advice had been sought by Rohan Willis on 4 April 2019 under the direction of Mr Watson.

On 13 April 2019, the then Secretary of DPIPWE emailed Mr Watson acknowledging that the works were not considered to be required for fire abatement but were rather primarily for maintenance and general amenity consistent with the Crown Land Public Reserve. The Council was given permission to continue with weed removal and site maintenance provided that it avoided impacting on Aboriginal heritage and did not remove healthy, living native trees.

On 15 April 2019, Councillor Leonie Stein moved a motion at the council meeting to:

> …support the resumption of vegetation maintenance works on the Bridport foreshore and extend the works all the way to the beginning of the industrial precinct at the Brid River Bridge.

Councillor Powell moved an amendment motion to add:

> adhering to the Dorset Council's Strategic Plan Section 2 'to work with stakeholders and agencies to provide action on an integrated collaborative approach to natural resource management' and abiding by the 2014 Crown Land Lease Agreement.

This amendment was lost two votes to seven.

The final agreed motion was:

> that Dorset Council support the resumption of the vegetation maintenance works on the Bridport foreshore and extend the works, where necessary, all the way to the beginning of the industrial precinct at the Brid River Bridge.

On 18 April 2019, Council received legal advice to the effect that the Council was not empowered to issue an abatement notice on the Crown.

Mr Watson forwarded the advice to Mayor Howard on 27 May 2019. There is no evidence to suggest that Mr Watson or Mayor Howard provided the advice to any other councillors or to Mr Jacobi.

Some councillors expressly raised in their submissions that the legal advice about the clearing of the foreshore had not been shared with them, despite the legality of actions by the Council being questioned, saying they had been lied to.

Evidence was given by a councillor who observed live vegetation being removed at this time.

Consideration

Before undertaking any works on Crown land, Council is required to obtain approval. Here Council has issued an abatement notice for fire hazard removal, referring to dead and fallen vegetation. Works were done by CLS, but Council then maintained the works were insufficient. Given the previous issues with unauthorised works, it might have been thought that Council would approach the issue of that alleged insufficiency with care, and common sense. Unfortunately, it did not.

The Board notes that Council did not attempt to identify what the insufficient works were, other than to say there were dead trees, fallen branches and overgrown dead grass. In his letter dated 25 February 2019, Rohan Willis noted that: “Senior Council Officers have conducted a recent inspection” and in their view the works conducted to date represent only a small portion of the work required.

The expertise of the ‘Senior Council Officers’ is not explained. The Board has no evidence of any trained and experienced fire hazard control, or similar, officer within Council.

The Council proceeded to engage contractors, purportedly acting in line with section 201 of the Act based on non-compliance with an abatement notice. It is to be recalled that the abatement notice referred to dead and fallen vegetation, and the stated non-compliance was “dead trees, fallen branches and overgrown dead grass.”

In engaging contractors, Council did not use its own maintenance staff, who would be well able to remove dead trees, fallen branches and dead grass. The contractors were earthmovers.

On 22 March 2019, an Aboriginal midden was discovered in a section of uncleared foreshore by a PWS Aboriginal Engagement Officer, and the contractor was shown the site and told not to do any works within 50 metres of the site. Council’s Director Community and Development, Rohan Willis, was contacted concerning other potential midden sites in the area and was emailed details of the registered midden site AH13653 on 2 April 2019.

An inspection by PWS on 3 April 2019 revealed that site AH13653 had been partially destroyed by machinery undertaking clearing works. PWS officers noted that large live standing vegetation was being removed and took photos of the removal. Tim Watson was present on site the following day while clearing continued and stated that Council would not be stopping and that John Whittington had agreed they could continue for the day. The Board has seen an email from Tim Watson’s phone to John Whittington at 12.24 pm simply saying that “works will cease at around 3:00 today”, but there is no

evidence of any discussion between them about that. The Board has no evidence that John Whittington in any way 'agreed' to anything.

The Board is not satisfied that any such 'agreement' was made.

In his evidence before the Board, Tim Watson referred to 'infractions' by Dwaine Griffin. When asked to explain he said:

> Well, if I look at the Bridport foreshore, and there's stuff I wasn't previously aware of, so the fire abatement notice. Some of the evidence tabled in the attachments and there's one that I saw where one of the new councillors actually witnessed removal of live vegetation. Now, he was never given that instruction to do that. It was a fire abatement notice, so if live vegetation has been removed unnecessarily, that's what I'm talking about because he had carriage for that.

Mayor Howard referred to the fire abatement vegetation removal in his submission to the Director of Local Government:

> In terms of allegations that the contractors were removing green native vegetation then that is very much a condition of fuel load reduction. Most native vegetation species will burn when they are green and at reasonably low temperatures.
>
> The most common method of fuel reduction in native forest communities is fuel reduction burns which remove most of the dry and green fuel loads. To undertake a mechanical fuel reduction process, it is vital that you achieve the same result. In addition, years of neglect by Parks has resulted in no regrowth of the dominant overstory species eucalyptus viminalis. This is because eucalypts require bare mineral earth for eucalypt seeds to land on in order to achieve germination and just removing a bit of dry matter will not achieve this requirement.
>
> Therefore, removal of green vegetation and baring and partial scarification of the soil is absolutely necessary to achieve germination of the eucalypt species.

That may all be so, but the relevant issue here is that the works Council was undertaking were purportedly under the fire abatement notice, which specified the works required to be removal of dead and fallen vegetation. Fuel reduction is not the issue; in order for an abatement there must be a nuisance, and that nuisance was identified by Council as dead and fallen vegetation. Any removal of live vegetation was unlawful. Plainly, too, was the destruction of Aboriginal middens.

After these events, Tim Watson received legal advice on whether the abatement notice issued against the Crown was valid. That advice was that it was not. That advice should, of course, have been sought before Council embarked on a process that would inevitably lead to dispute.

The Board also notes that there was a motion passed at a council meeting on 15 April 2019:

> That Dorset Council support the resumption of the vegetation maintenance works on the Bridport foreshore, and extend the works…

The mayor, deputy mayor and five councillors voted for the resolution. Mr Watson had provided an answer to a public question at that same meeting that referred to the question about the authority to issue the fire abatement notice. He said that the Council's view is that they have the authority and that "we have no legal advice to the contrary."

This last statement is, in the Board's view, grossly misleading. The clear implication is that Council had legal advice, but that it was not to the contrary. Council had no legal advice at all. Legal advice had been sought, but not yet received. Councillors should have been advised about this before any consideration of the resolution.

Councillors also should have themselves queried the issue of legal advice, because under section 65 of the Act a council is not to decide on any matter which requires legal advice without considering the advice, unless the general manager certifies that that advice was obtained, the general manager took it into account, and a copy is provided to councillors. Given the question about authority, the Board considers that legal advice clearly was required. The general manager did not even tell the councillors that legal advice had been sought.

The use of the earthmoving contractors to perform abatement was ill-considered. Given that Council would be committing an offence if unauthorised works were done, Council should have appointed contractors with expertise in removal of fallen vegetation or undertaken the works using their own maintenance staff. It appears that little if any competent supervision of those contractors was given by any council officer in any event.

Storm repair at Bridport

The final occasion considered relates to vegetation removal associated with clean-up activities following a storm in Bridport in 2020.

On 2 July 2020, a severe storm resulted in several large trees being damaged and/or blown over in Bridport. Council undertook clearing activity following the storm. Reports were made of vegetation being removed at the same time. Mr Jacobi wrote to Mr Watson on 6 July 2020 stating that:

> The Parks and Wildlife Service (PWS) has become aware of unauthorised works being conducted on Crown land by Dorset Council.
>
> These works involve the unauthorised removal of vegetation from the Crown land adjacent to Main Road, Bridport (please see map attached indicating the location of the works).

> PWS does not appear to have received any application from Council seeking approval for these works.
>
> The works conducted to date therefore appear to have been undertaken without lawful authority.
>
> The Council and its contractors, employees and agents, are hereby directed to immediately desist from any further works on the Crown land.

Mr Watson advised on the same day that:

> I have followed up the matter and I am informed that the vegetation removal relates to a violent storm that ripped through Bridport in the early hours of Thursday morning. My understanding is that at least 10 large trees were either severely damaged or blown over and there was substantial damage to undergrowth.

On 22 July 2020, Mr Baker (then Secretary, DPIPWE) wrote to Mayor Howard in response to concerns raised about the works, advising that:

> … the Department received a complaint by a resident that Dorset Council was cleaning up vegetation in excess of that which was storm damaged and that none of the trees or understory [sic] vegetation being removed posed a safety risk to the public. This was confirmed by photographic evidence provided to the Department and substantiated in a subsequent inspection report prepared by PWS officers that understory [sic] vegetation was cleared unnecessary. [sic]
>
> Further to that, the clearing works were being performed outside of any licensed area and significant disturbance was being caused in a foreshore location that has the potential to contain Aboriginal heritage. Council did not provide any advice or undertake due diligence to ascertain the existence of heritage values. Accordingly, the Deputy Secretary of the PWS, (Mr Jason Jacobi) on the advice of his officers, acted swiftly to suspend the works.

This demonstrates another example of Dorset Council undertaking works on Crown land that were not authorised. It used the limited authority given to remove fallen trees, to also remove additional living vegetation and in the process disturbed a foreshore area that had the potential to contain Aboriginal heritage. The Board's view is that there was no necessity for any of these additional works at that time.

Findings

4.1. Council undertook unlawful vegetation removal works on Crown land on the Bridport foreshore in 2017.

4.2. Tim Watson improperly recommended that Council continue to act unlawfully by continuing vegetation removal works "with or without approval".

4.3. Council undertook unlawful vegetation removal works on Crown land on the Bridport foreshore in 2019, including the partial destruction of an Aboriginal midden.

4.4. Dwaine Griffin caused contractors to undertake those unlawful works.

4.5. Tim Watson misled Council and the public at a council meeting on 15 April 2019 about the existence of legal advice.

4.6. Council undertook unlawful vegetation removal works on Crown land on the Bridport foreshore in 2020.

Recommendations

7. That the Director of Local Government request the Secretary of the Department of Natural Resources and Environment Tasmania to write to all councils reminding them of their obligations when performing works on Crown land.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board made some changes to its consideration but determined not to make any change to the finding or recommendations.

The Board received no submissions from Dorset Council.

5. Nabowla quarry

Terms of reference
(3.1) Council failed to ensure that use and development is not carried out contrary to the terms of a permit**.**

(3.1) Council failed to implement a policy or process for monitoring the compliance with permit conditions and taking action on non-compliance if necessary.

Issue
An issue was raised in submissions concerning lack of compliance with a planning permit.

Background
The operators of a quarry at Nabowla made an application in October 2018 to increase extraction from 20,000 tonnes per year to 50,000 tonnes per year.

The application required Council consent, because it included land owned by Council. A consent for the lodgement of the application was given by General Manager Tim Watson by letter dated 30 May 2018, and the consent on the application itself was given by Dwaine Griffin on 1 May 2019.

The application also required Crown consent, and the consent to make the application was given on 9 November 2018, and consent on the application itself was given on the same date.

The application contained a Mining Plan (Figure 4), which identified where progressive rehabilitation areas and dust, and sediment monitoring stations would be located. It also included comprehensive noise assessments and a traffic impact assessment.

The existing operations were level 2 activities and were subject to permit conditions including many required by the Environmental Protection Authority Tasmania (EPA). The EPA assessed the proposed increase in operations.

The application noted only two complaints concerning quarrying operations. The first was by the EPA in 2016 and concerned the operator exceeding the maximum disturbed area. This seems to have been verified, and the 2019 application included an increase in the maximum disturbed area. The second was a complaint by the Council in 2018 that the extraction limit had been exceeded. The application notes that this was investigated by Mineral Resources Tasmania and found not to have been established.

The application noted that dust emissions would be produced, primarily from crushing and screening operations, throughout the quarry's operation. It also specifically noted gravel road surfaces also generating dust emissions, and the operator committed to dust suppression practices.

It is noted that Council's Project Development Officer Wayne Williams recommended some additional traffic conditions on the permit.

A former town planner with Council was primarily responsible for the assessment of the application and presented the application to Council as a planning authority for its decision at the July 2019 meeting. It was subsequently approved. The town planner represented Council at the Resource Management and Planning Appeal Tribunal, which concluded with a consent decision.

The planning permit was issued by Council on 17 February 2020. This permit included the required EPA conditions. They formed part of the permit, and Council was under a duty, by virtue of section 63A of the LUPA Act*,* to take all reasonable steps to ensure the use or development under the permit was not carried out in a manner contrary to the permit conditions.

Were Council not to comply with this duty, it would be committing an offence.

The Board has been provided with a delegation given to the general manager and the Director Community and Development which delegates, among other things, authority to enforce compliance with a planning scheme including to initiate legal proceedings for any use of land or development in breach of a condition of a planning permit. The Board notes that this delegation does not appear to have been correctly noted in the Master Delegation Register.

It appears that no action had been taken by Council, or any officer with delegation, in the 3.5 years since the issue of the permit to verify that this use or development has not been carried out in a manner contrary to the permit conditions.

The permit contained condition 6, which required that before the operator used Gillespie's Road for cartage purposes, the two accesses to the quarry property from Gillespie's Road must be sealed and marked.

That condition was not complied with. Indeed, it appears to have been simply ignored by the operator who, it seems, continued using Gillespie's Road from the time the permit was issued.

No action appears to have been taken by Council to verify that this condition had been satisfied (before any cartage could lawfully be undertaken) until an email from Rohan Willis, Director Community and Development to the operator dated 21 November 2023. This is more than three years after the operator appears to have used Gillespie's Road, purportedly under the permit, and it is also three months after the establishment of this Board of Inquiry.

Mr Willis is the council officer responsible for planning enforcement.

Mr Willis in a responding submission explained that he was unaware of the status of the permit after the town planner left Council in 2023, and the issue of the road was brought to his attention by another council employee in November 2023.

Also included in the permit conditions was the requirement for an agreement under section 71 in Part 5 of the LUPA Act. That document was sealed by Council on 12 May 2020. It required compliance by the owner of the land from time to time to establish and maintain landscaping in compliance with the Nabowla Quarries Landscaping Plan. This plan comprised four landscape plans which were endorsed with the permit.

Mr Willis explained in a responding submission that the town planner verbally told him that compliant plantings had been undertaken. It is not apparent that any record was made of this, or that action has been taken to verify that the requirement in the section 71 agreement that the plantings be 'established and maintained', was being complied with.

The Board is satisfied that there was not any sufficient system in place for the monitoring by Council, and its officers, of compliance with permits issued for level 2 activities, or for that matter level 1 activities.

Mayor Greg Howard gave evidence that there was not any procedure or process of which he was aware implemented by Council to undertake its obligations under section 63A of the LUPA Act. He said that councillors:

> …rely on the professionalism of our staff to make sure that those…conditions [are] met to the satisfaction of a particular staff member.

The new general manager, John Marik, confirmed that there was no policy on the enforcement of permits.

Findings

5.1. Rohan Willis, Director Community and Development, failed to take all reasonable steps to ensure the use or development under the permit issued to the operator of the Nabowla quarry on 17 February 2020 was not carried out in a manner contrary to the permit conditions.

5.2. Rohan Willis, and Council, failed to take any steps to ensure the requirements of the section 71 agreement sealed by Council on 12 May 2020 were complied with.

5.3. Council failed to implement a procedure to monitor and record whether permit conditions that were required to be satisfied before a use or development commenced were in fact satisfied.

Recommendations

8. That the Minister give a direction under section 225(2)(d) of the *Local Government Act 1993* to the Council to implement a procedure to ensure that permit conditions are satisfied, and to ensure that Council's obligations under section 63A of the *Land Use Planning and Approvals Act 1993* are being met.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions and making some clarifications to its consideration, the Board determined to make a minor change to its findings, and not to change to its recommendations.

The Board received submissions from Dorset Council concerning its draft intended findings and recommendations. Those submissions included that for the purposes of the enforcement of permit conditions, Council delegated to Rohan Willis on 16 December 2019 its authority to monitor and enforce compliance under the *Land Use Planning and Approvals Act 1993.* The Board accepts that, but notes that delegation does not displace the primary statutory obligation. Given that the statutory scheme contemplates that a council may commit an offence by not enforcing its planning controls, Council should have in place a system for retaining oversight of the delegated actions. This is also, self-evidently, a risk management response.

Council also submitted that during the relevant period the small planning team at Dorset, including the relevant delegate, was very busy, covered a large geographical

area, and were in a period of relative turmoil dealing with the Derby Depot issue. Council also highlighted the shortage of qualified planners in Tasmania.

The Board recognises that the shortage of qualified planners has affected the ability of many councils to perform their statutory functions in a timely manner and has placed council officers under additional pressure in performing their duties.

After having carefully considered Dorset Council's submissions, the Board determined to remove its original draft finding 5.2 concerning the reasonable steps taken by Dorset Council in this instance, but otherwise determined not to change its findings or recommendations.

6. Emma Street, Bridport

Terms of reference

(1.3) Council officers failed to comply with statutory obligations to process a legitimate right to information request.

(1.3) The former general manager, Tim Watson, sent inappropriate and offensive communications to residents of the municipal area.

Issue

The owners of 37 Emma Street, Bridport, were required by Council to undertake works on the stormwater infrastructure servicing their property after other persons had moved that infrastructure unlawfully. The then general manager, Tim Watson, sent to the owners an offensive letter, refusing to comply with his obligations under the *Right to Information Act 2009.*

Background

The owners of 37 Emma Street have the benefit of a stormwater easement across an adjoining property, 35 Emma Street, along which their stormwater pipes are placed to join into Council's stormwater system. They have owned the property for over 15 years.

The adjoining owners were initially Mr S and Ms G (the former owners of 35 Emma Street) and are now Mr and Ms C (the current owners of 35 Emma Street). In 2021 the former owners of 35 Emma Street approached the owners of 37 Emma Street with a proposal for development which could be undertaken on 35 Emma Street and part of 37 Emma Street. The owners of 37 Emma Street responded that they wished to have no part in facilitating the proposed development. The Board has seen the email dated 21 July 2021 confirming this.

In 2022, the former owners of 35 Emma Street installed new stormwater pipework on 35 Emma Street and connected the stormwater outlet belonging to the owners of 37 Emma Street to that new pipework. The new pipework was not laid in an easement, and the works were done without the knowledge or consent of the owners of 37 Emma Street, and without Council's consent.

The new location of the pipework became an issue when the current owners of 35 Emma Street purchased the property. The owners of 37 Emma Street contacted

Council and received an email from Council's Town Planner which included:

1. advice that Wayne Williams, Council's Stormwater Authority, had advised that he had given verbal approval for a new stormwater pipeline within 35 Emma Street;
2. advice that Mr Williams stated that once a stormwater pipe leaves the relevant property it forms part of the public stormwater network, and maintenance was the responsibility of Council; and
3. a recommendation that the owners seek legal advice concerning the easement.

The owners of 37 Emma Street consulted their lawyers for advice on what to do. In the course of obtaining all necessary information, their lawyers made a request to Council under the *Right to Information Act 2009* (the RTI Act).

In response, the general manager, Tim Watson, who was the principal officer for Council under the RTI Act, wrote directly to the owners by letter dated 22 June 2022.

That letter stated that Mr Watson had ascertained that:

> …your private stormwater infrastructure is not contained within the drainage easement over 35 Emma Street and is therefore non-compliant with your legal requirements.

The letter went on that "in further investigating the matter", it was clear that the owners agreed with the son of the former owners of 35 Emma Street to relocate the pipework.

Mr Watson continued with a comment about a "misguided belief" that Wayne Williams gave approval for the new pipework.

Mr Watson continued by saying that:

> My observation is that the Right to Information request is nefarious in nature and seeks to apportion blame on Council for what is clearly an illegal treatment of stormwater.

Mr Watson went on that he had instructed relevant staff to issue a plumbing order to the owners.

Mr Watson concluded that:

> …if the owners of 35 Emma Street petition Council to amend a sealed plan to relocate the easement to where the stormwater is now located, that Council would support such an application.

Council subsequently issued the owners of 37 Emma Street with a Plumbing Order, dated 23 June 2022 signed by Rohan Willis, which required the owners to rectify and reinstate the stormwater pipework into the easement, or to apply for a variation of the easement so that it moved to cover the new pipework.

Understandably the owners of 37 Emma Street were unimpressed at having to pay to rectify works done without their consent by the former owners of 35 Emma Street (by this time the current owners of 35 Emma Street had purchased the adjoining property). Neither could they see why they would have to go to the time and expense of applying for a variation.

On 13 July 2022, the lawyers for the owners of 37 Emma Street wrote to Mr Watson. This is unsurprising given the terms of Mr Watson's letter. They challenged the lawfulness of the Plumbing Order and Mr Watson's comments about the RTI request.

Further correspondence ensued over the next few months, and ultimately the owners of 37 Emma Street undertook the works to relocate the stormwater pipe, and these were completed in 2023 presumably at no little trouble and expense to them. The Board understands that action may be taken to recover the cost of these works, and that is a matter for the owners of 37 Emma Street to pursue in the appropriate forum.

A petition to amend the location of the easement was made by the current owners of 35 Emma Street in February 2023. However, this was withdrawn, and a new application made in June 2023, which the Board understands remains on foot.

When he appeared before the Board, Rohan Willis provided an eight-page timeline of events, which was prepared by the former Council Planner in early 2023 as background for Mayor Howard to respond to questions to him from the owners of 37 Emma Street. This will be referred to as the council memo.

Agreement

The actions of Council were clearly driven by Mr Watson's 'enquiries' demonstrating that 'it was clear' that the pipework was moved by agreement. The Board sought all documents held by Council that relate to these 'enquiries' and the 'further investigation' mentioned in the letter. The Council has no records concerning these matters.

In their appearance before the Board, the owners of 37 Emma Street were adamant that there had been no agreement, and that they had always had the position that there should be no change to the location of the pipework, which was their property. The Board accepts their evidence, noting that there would be no benefit to them at all in any change of location.

The council memo records that in 2021 there were sporadic phone calls from the former owners of 35 Emma Street to Council concerning potential for subdivision, potential pathways to relocate the stormwater pipe and a separate drainage easement on 35 Emma Street. It records that it was made clear to the former owners of 35 Emma Street that it was necessary to come to an agreement with the owners of 37 Emma Street prior to relocating the pipe.

The council memo also records that in early March 2022, the owners of 37 Emma Street spoke with Wayne Williams and did not support any relocation of the easement because that might result in potential for a building to be constructed near their dwelling which would block their views.

On 17 March 2022 there is a note made by council counter staff recording that the owners of 37 Emma Street wish to keep the easement so a building cannot be built close to their property.

This is entirely consistent with their evidence.

The council memo continues that on 5 May 2022 the former owners of 35 Emma Street called Council about the stormwater stating that:

> He has a sale for the property, but the neighbour won't sign off on the stormwater and the sale may fall through…Lawyers have tried to get the neighbour to sign off on this but with no luck.

It goes on to record that Rohan Willis spoke to the former owners of 35 Emma Street about this time and made it very clear that they had acted without authorisation and would need to seek retrospective approval for the works.

The Board is comfortably satisfied that there was no such agreement, and that the work was done by the former owners of 35 Emma Street unlawfully. Mr Watson's assertion concerning the agreement is false. His 'further investigation', if it took place at all, did not actually consider the records that the council memo shows were in existence before he sent his letter.

Council's representations

As noted above, the Council Planner informed the owners of 37 Emma Street that Wayne Williams had given verbal approval to move the pipe. Necessarily that contemplates some form of application. That was later contradicted by Tim Watson in his letter.

The owners were also advised that the pipework was Council's, and it was responsible for maintenance. That was later contradicted. It is unsurprising that the owners sought further information.

In his evidence before the Board, Rohan Willis referred to a council stormwater map, which was apparently produced before the owners of 37 Emma Street purchased the property, which showed some inconsistency between the location of the easement and the location of the stormwater pipes. Mr Willis said that it appeared that the previous location of the pipeline was outside the easement as well.

However, the owners produced to the Board a survey undertaken during their subsequent relocation works in 2023 which shows that original pipework was found in the excavated trench of the surveyed easement.

The Board is satisfied that to the extent that Council's records indicate to the contrary, those records are inaccurate.

Right to Information

The Board has evidence that the RTI request was determined by Council's Director Corporate Services, with all council documentation concerning stormwater and 37 Emma Street provided.

Mr Watson's statement about the nature of the RTI request in his letter of 22 June 2022 is, in the Board's view, improper and highly insulting. To state that a request is 'nefarious', the ordinary meaning of which is 'wicked' or 'criminal' was highly improper. The RTI request was, in the circumstances described above, entirely proper and was made pursuant to a statutory right by lawyers needing the information sought.

Relocation of stormwater

The Board is readily satisfied that the former owners of 35 Emma Street unlawfully relocated the stormwater pipeline located in the easement on their property. That pipeline belonged to the owners of 37 Emma Street, and the works likely amounted to a trespass on their property (being the pipework). It is plain that the former owners of 35 Emma Street wanted to subdivide, and that they simply proceeded to move the pipeline without any agreement or approval. The former owners of 35 Emma Street had an excavation business and therefore had access to the necessary equipment.

The Board cannot be satisfied that Council knew that this work was being done until it had been completed.

The Board considers that the Council's use of plumbing orders to compel the owners to pay for rectifying the unlawful work by others was completely unreasonable. It was clearly driven by Tim Watson. That is plain from the terms of his 22 June 2022 letter.

The unlawful relocation of the pipeline was likely an offence under Part 9 of the *Building Act 2016.* The former owners of 35 Emma Street were the persons responsible for the work under that Act. Council took no action in relation to that offence. Instead, it took action against the effective victim of that offence.

Sealed plan amendment

The Board is very concerned at Mr Watson's statement in his 22 June 2022 letter that if an application were to be made by the current owners of 35 Emma Street to amend the plan to move the stormwater easement:

> Council would support such an application.

The only reasonable understanding of this statement is that Mr Watson intended to cause or persuade Council to make the amendment. That would be a corruption of the procedure set out in the *Local Government (Building and Miscellaneous Provisions) Act 1993*, which requires Council to conduct a hearing into opposition to the proposed amendment. At the conclusion of such a hearing, the Council may cause the amendment to be made (or not) or modify it and may require compensation to be made.

This means that the Council is charged with determining the issue. Mr Watson's statement that Council would 'support the application' at the very least implies that he intended Council to act unlawfully in that determination by taking sides. That is plainly highly improper, and in the Board's, view is far below the standard of behaviour that is reasonably expected of a person holding the position of general manager.

There is no suggestion in evidence before the Board that Council was aware of Mr Watson's statement. However, given that an application to amend is on foot, the Board is concerned that Council does not conduct itself in the way suggested by Mr Watson, and considers that an appropriate direction should be made.

Findings

6.1. The relocation of the stormwater pipeline servicing 37 Emma Street was unlawful, and a likely offence under the *Building Act 2016*.

6.2. Council took no enforcement action in relation to such an offence, nor otherwise against the former owners of 35 Emma Street, who were responsible for the unlawful works.

6.3. There was no agreement between the owners of 37 Emma Street and the former owners of 35 Emma Street concerning the relocation.

6.4. Tim Watson sent correspondence to the owners of 37 Emma Street that contained false assertions, and improper and highly insulting comments.

6.5. Tim Watson sent correspondence to the owners of 37 Emma Street that contained a representation strongly implying that he would cause or persuade Council to act unlawfully to ensure that an amendment to a sealed plan which would be detrimental to those owners would succeed.

Recommendations

9. That the Minister direct the Council under section 225(2)(a) of the *Local Government Act 1993* to implement a procedure to conduct its functions and obligations under Division 5 of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* according to law.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined not to make any change.

The Board received submissions from Dorset Council concerning its draft intended findings and recommendations. Those submissions contend that the letter sent by Tim Watson on 22 June 2022 was based on 'information from a solicitor for former owners' that the owners of 37 Emma Street agreed to relocation of the infrastructure. The Board was not satisfied for the reasons set out above that there was any such agreement, for which there was no credible evidence produced.

The submissions also disagree with the Board's proposed finding concerning no

enforcement action, and identify that Council informed the owner of 35 Emma Street that a retrospective approval for works would be needed. That is not enforcement action, rather simply informing the owner of what application is required. Enforcement includes taking proceedings against the owner for committing an offence under the *Land Use Planning and Approvals Act 1993* and taking action to require the owner to replace the stormwater infrastructure that had been unlawfully moved.

The Council also submits that the Board's recommended direction is 'not necessary to comply with the law'. The conduct of the former general manager demonstrates in the Board's view such a disregard for the law that the direction, which carries with it additional consequences, is appropriate.

After carefully considering Dorset Council's submissions, the Board determined not to change its findings or recommendations.

7. Construction of Blue Derby Mountain Bike Trails

Terms of reference

(1.2) Council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law.

(1.5) Council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

(**2.4)** The general manager failed to comply with relevant laws relating to the performance of their duties and functions.

Issue

Submissions received by the Board of Inquiry queried the awarding of a construction contract for the development of Stage 2 of the Derby Mountain Bike Trails. Concerns were raised about a lack of an open tender process and a failure to comply with legislated procurement requirements, including Council's *Code for Tenders and Contracts*.

Background

Section 333A of the Act provides that a council must invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the prescribed amount. At all relevant times, the prescribed amount was $250,000 under the *Local Government (General Regulations) 2015* (the Regulations). Councils are also required to adopt, and comply with, a code for tenders and contracts.

Council's Code for Tenders and Contracts was adopted in December 2005. Its stated aim is to promote open and effective competition, value for money, ethical behaviour and fair dealing, and enhance the capabilities of local business and industry.

In 2013, following a publicly invited tender process, Council awarded a tender to World Trail Pty Ltd for the construction of Stage 1 of the Derby Mountain Bike Trails.

In 2017, Council resolved to enter into a further contract with World Trail for the construction of Stage 2 of the Derby Mountain Bike Trails without undertaking a public or closed tender process.

Evidence and matters considered

On 28 September 2013, Council invited tenders for the construction of 75 km of purpose-built mountain bike trails in and around Derby and the Blue Tiers.

Four tenders were received with one tender being excluded due to non-conformity.

A tender assessment panel comprising officers of Dorset Council, Break O'Day Council, Sport and Recreation Tasmania and the Parks and Wildlife Service convened on 6 November 2013 to assess the received tenders against the assessment criteria which were:

- project planning and methodology;
- previous experience and key personnel offered; and
- tendered sum.

Funding of $2.37 million was provided for the tendered project.

On 18 November 2013, a report was presented to Council in closed session with the following recommendation:

> That Dorset Council award Contract 2013/2014-07 – North East Mountain Bike Trails – Construction of 75 km of purpose-built mountain bike trails in Derby and Blue Tier to World Trail subject to the Commonwealth Government signing the Regional Development Australia Fund – Round 4 Contract.

The report to Council was supported by a comprehensive tender assessment report prepared by the tender assessment panel.

Council adopted the recommendation to award the tender to World Trail Pty Ltd.

In early 2014 (contract undated) Dorset Council and World Trail Pty Ltd executed the contract to deliver a minimum of 75 km of purpose-built MTB trails in accordance with the original tender.

The contract provided for the contractor to prepare plans and specifications for the trails and for Council within 28 days of receipt of the plans and specifications to approve or require variations.

The contract further provided for the contractor to commence work on the site from 7 April 2014.

The contract sum (excluding variances) was for $2,342,362.40 with practical completion by 30 June 2016.

There was no provision for the contract to be extended to include any additional trail segments other than those identified in the contract.

The trails were subsequently constructed and were fully opened to the public in March 2017.

At a council workshop on 4 July 2017 the general manager presented a briefing paper to councillors advising that Council had received $800,000 in State Government funding towards the construction of additional trails in Derby (Stage 2). Together with Council funding from asset sales of approximately $600,000, $1.4 million funding could be provided to construct an additional 30 km in trails, commencing in September 2017. The expected expenditure of around $1.4 million well exceeded the regulation tender threshold of $250,000 and as such was not exempt from the requirement to conduct a public tender process.

The briefing paper further provided that Council continues to use World Trail to design and construct the additional trails. It noted that:

> Typically, a contract of this size would have to go to tender under Councils Policy 31 – Code for Tenders and Contracts. However, there is the ability for Council to either apply an exemption from the tender process or extend the contract. Legal advice is currently being sought on the best way forward.

At a council meeting on 17 July 2017, a late closed session agenda item titled ‘Stage 2 Derby Mountain Bike Trails Contract’ was submitted to Council for consideration.

The stated purpose of the report was ‘to award World Trail with a new contract to design and construct Stage 2 of the Derby Mountain Bike Trail network’.

The report presented opinion from the general manager in relation to why Council should award the contract directly to World Trail rather than proceed to an open tender process.

The report recommended:

1. That the contract for the design and construction of Stage 2 of the Derby MTB trail network be exempt from the normal council tender process in accordance with:

    a. Regulation 27 of the *Local Government (General) Regulations 2015* because of extenuating circumstances and the unavailability of competitive and reliable tenders; and
    b. Section 4(h) of the Dorset Council Code for Tenders and Contracts where the original product or service has been selected through an open tender process and the request for exemption relates to the proposed purchase of an upgrade or addition to the existing system, and there are limited supply options.

2. That a contract for the design and construction of Stage 2 of the Derby MTB trail network be awarded to World Trail. The contract will be based upon Contract 2013/2014-07 and will include a clause allowing Council to extend the contract should it deem appropriate.

Council resolved to adopt the recommendation without amendment.

No mention in the report is made in relation to the legal advice that Council had previously been advised was being sought. Evidence in submissions made to the Board indicate that the legal advice was received orally, although there was no clarity provided as to what the advice was.

The Board has seen an email sent requesting the advice, by Guy Jetson who was the then Director Corporate Services. Guy Jetson gave evidence that he did not recall receiving any legal advice.

During his appearance before the Board, Tim Watson insisted that the existence of this email established that legal advice had been obtained. However, the email was the one requesting the advice. Neither Council nor any witness appearing before the Board could produce any legal advice in writing.

Mr Watson's evidence before the Board included the following exchange:

> WATSON: So he can't recall talking to [lawyer]?
>
> WALKER: No.
>
> WATSON: There's an email between him and [lawyer].
>
> WALKER: I know there's an email; it's the response to that email that we simply can't find any evidence of.
>
> WATSON: OK, all right. So I am absolutely certain Guy Jetson gave me verbal advice. I'm also certain that he presented in the workshop to the councillors what that advice was. And on that basis, I took the item to a council meeting.
>
> WALKER: In the workshop?
>
> WATSON: Guy Jetson will have presented in the workshop the advice that he had verbally from [lawyer]. That's what occurred.
>
> WALKER: But your workshop paper says, "Legal advice is currently being sought on the best way forward."
>
> WATSON: OK. So when I put the workshop paper out, that predates – so I might put the workshop papers out, it could be a week, two weeks before, I don't know what the lead time is. So Guy would have been talking to [lawyer] leading up to that. Or we might've been in the process to get it, so it may have been – bearing in mind I can't recall – it's a long time ago, if you asked me two weeks after the workshop, I could recall with clarity.

> It's a long time ago, so two things could've happened. One could've been that Guy was in receipt of that verbal advice, so between when I put the workshop paper out and the workshop occurs, Guy could've received the advice. That is one possibility. Now, neither myself nor Guy will be able to recall that because it's so long ago. Hang on.
>
> WALKER: Well, did you make a note?
>
> WATSON: No.

The Board subsequently sought information from the relevant lawyer.

That information confirmed that some advice was given orally, although no clear recollection of what the advice was could be given.

The lawyer, however, further added that "to the extent that it may be useful to the Board, I have outlined or reconstructed what I believe the nature of my oral advice would have been..."

The outline provided as follows (in part):

> Turning secondly to the public tender exemptions in r27 of the Local Government (General) Regulations 2015 (as reproduced in Part 4 of Councils then Code of Tenders and Contracts), I most likely gave preliminary advice that the only potentially viable exemption was one of the matters in r27(i) (prima facie none of the others apply) but before relying on that provision Council must establish that the necessary factual foundation exists, then reduce those facts and the associated reasoning to a written document/report which would form the basis of any Council decision under r27(1).

This outline was, of course, reconstructed supposition. The Board is concerned that legal advice about a matter of such importance was not provided in writing, even by confirmation email after the telephone conversation. Further, without that written advice, the Board is not satisfied that Council's lawyers were provided with all necessary information by way of instructions. Of most significance is that it does not appear Council's lawyers were instructed that Council was intending to include an extension clause in the proposed contract.

In the general manager's report presented to Council as a late item in closed session on 17 July 2017, the recommendation to award the tender to World Trail is primarily based on regulation 27 of the Regulations which provides for non-application of the public tender process if a satisfactory result would not be achieved by inviting tenders because of:

(i) extenuating circumstances; or
(ii) the remoteness of the locality; or
(iii) the unavailability of competitive or reliable tenderers.

In the opinion of the Board, there is no evidence presented to Council in the general manager's report that would satisfy any of the tests under regulation 27 of the Regulations.

Rather, the report's recommendations appear to be based on the general manager's own opinion about various matters, including the quality of the previous work undertaken by World Trail, the perceived quality of the work undertaken by other prospective tenderers at other MTB venues and the 'extras' that may come with the relationship with World Trail.

When asked about this in his appearance before the Board, Mr Watson stated that he gave Council advice that another constructor, Dirt Art, was fully committed to Maydena and did not have the capacity. Mr Watson said that he already knew enough about the MTB industry that he knew details of their key personnel.

None of these matters in the view of the Board are sufficient to satisfy the extenuating circumstances test or the unavailability of competitive or reliable tenders tests prescribed under regulation 27. The matters noted in the general manager's report that purport to meet the extenuating circumstances test are in the view of the Board plainly matters that should have been considered as part of an appropriate tender evaluation process following a public call for tenders of Stage 2 of the Derby MTB Trails, as had been undertaken in Stage 1 of the Derby MTB Trails.

In evidence given to the Board, a director of one of the companies that participated in the Stage 1 tender process, stated that they had sought to participate in the Stage 2 tender process but that no notice of tender or invitation to tender had been extended to his company. The director believed that the company could have submitted a competitive tender if given the opportunity to participate in a tender process. His evidence continued:

> "*This failure to follow statutory procurement processes likely resulted in uncompetitive pricing, and poor value-for-money in expending taxpayer's money. Arguably, more importantly though, this failure to follow procurement processes denied opportunities for Tasmanian companies (of which there are several who could have completed the work to a world-class standard) to bid for projects in their home state."*

This evidence directly contradicts Mr Watson's statements to Council.

Given the number of responses to the Stage 1 tender process, it is possible, if not likely, that other parties may have tendered for the Stage 2 project if tenders had been publicly invited.

Without an open tender process, the Council is unable to demonstrate that they achieved best value or the best outcome for the expenditure of significant public funds.

The Board received a response submission concerning the money that would have gone to consultants and the tender process. The Board does not accept that as a valid justification for no tender. The question of the tender is a requirement of the law.

It was not established that there were ‘extenuating circumstances’ nor ‘an unavailability of competitive or reliable tenderers.

The reports presented to Council in 2013 and 2017 indicated that the expected expenditure for stages 1 and 2 would be in the vicinity of $2.37 million and $1.4 million respectively. Inquiries made by the Board and information provided by Council indicate that since the awarding of the initial tender to World Trail in 2013, in excess of $5.5 million in payments have been made to World Trail. The Board understands that significant further works have been undertaken in accordance with an extension clause in the Stage 2 contract entered into between Council and World Trail.

While the Stage 2 contract entered into with World Trail provided for additional works at the discretion of Council to be undertaken after the initial Stage 2 works, it further highlights that works far in excess of what was originally approved by Council have been undertaken without an appropriate tender or quotation process.

Further the Board considers that the extension clause used in the contract was unlawful. Such a clause may be used where the contract works have been subject to an open tender process, in accordance with regulation 23(5) of the Regulations.

This again raises the question of whether Council and the Dorset community have received best value for the expenditure of significant public funds for this second stage of works.

The Board is aware that in September 2019 the Tasmanian Auditor-General, in a report to Parliament titled ‘Procurement in Local Government’, examined the contract entered into between Dorset Council and World Trail.

The report found that (in part):

1. The procurement process followed by Dorset Council in applying the exemption met the procedural requirements of the Local Government Act and the Regulations.
2. The extension clause included in the contract for Stage 2 by Dorset Council, if used, would contravene the Local Government Act.
3. Dorset Council did not fully comply with its reporting obligations under regulation 29 – Annual reporting requirements in relation to tenders and contracts, as it failed to disclose the application of the exemption under regulation 27(i) in awarding the contract and did not provide a brief description of the reason for the exemption.

In relation to these matters the Board agrees with the findings of the Auditor General on points 2 and 3, but disagrees with point 1.

Following significant inquiry, including the examination of witnesses and the consideration of the asserted legal advice obtained by Council, the Board is compelled to conclude that the decision made by Council to award the contract for Stage 2 was not in compliance with Council's obligations under the Act or the Regulations. While the Board's finding differs from that of the Auditor-General on this point, the Board notes that it had access to substantially more information not available to the Auditor-General on the matter.

Findings

7.1. That the then general manager, Tim Watson, did not satisfy the requirements of section 65 of the *Local Government Act 1993* because no legal advice from a qualified person was provided to Council in relation to the awarding directly to World Trail Pty Ltd of the contract for Stage 2 of the Derby Mountain Bike Trails.

7.2. That the report provided to Council by the general manager, Tim Watson, did not identify any matters that satisfy the exclusions from an open tender process provided for in regulation 27 of the *Local Government (General) Regulations 2015*.

7.3. That there were other parties that could potentially have participated in an invitation to tender for the Stage 2 works.

7.4. That Council exercised poor governance in not inviting tenders for the construction of Stage 2 of the Derby Mountain Bike Trails.

7.5. That Council failed to meet its obligation to include in its Annual Report the application of the exemption under regulation 27(i) of the *Local Government (General) Regulations 2015* in awarding the contract to World Trail and did not provide a brief description of their reasoning.

7.6. That the Council should not have included an extension clause in the contract with World Trail for Stage 2 because under regulation 23(5) of the *Local Government (General) Regulations 2015* an extension may only be given where an open tender process had been undertaken in the first instance.

Recommendations

10. That the Minister direct the Council under section 225(2)(a) and (b) of the *Local Government Act 1993* that no additional work under the Stage 2 contract with World Trail Pty Ltd is to be procured and that any additional proposed trail works be undertaken only after a suitable tender or procurement process in accordance with the requirements of the *Local Government Act 1993* and associated regulations.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board made changes to its consideration but determined not to make any change to its findings or recommendations.

The Board received submissions from Dorset Council. Those submissions tend to reinforce the Board's draft findings and recommendations. The Council submits that legal advice was obtained from Council's lawyer. As set out above, Council's lawyer could not produce that advice to the Board and reconstructed what he considered 'would have been' his oral advice.

The Board finds it surprising that the Council would contend that not obtaining written advice on such an important issue was appropriate. Further, Mr Watson did not provide to Council a summary of that oral advice. It was submitted that Mr Watson certified in the agenda for the Council meeting on 17 July 2017 that the qualified advice was obtained, something which it appears he did for every meeting, but that does not establish that advice was actually provided with the agenda.

Council submits that regulation 23(5) of the Regulations does not limit Council to including a contractual extension clause only where an open tender process is taken. That submission is rejected. The regulation plainly refers to extension of "a contract entered into by tender". That is, a contract the result of a tender process. This was not a standing contract situation, nor was it a multiple use register situation. The Board finds this submission troubling and considers it to be a significant misunderstanding by Dorset Council of the requirements of the Regulations.

Council submits that the extension clause in the contract 'has not been invoked'. That does not dissuade the Board from its recommendations.

After carefully considering Dorset Councils submissions, the Board determined to change part of its finding 7.1 but otherwise not to change its findings or recommendations.

8. Delegated decision-making on development applications

Terms of reference

(3.1) Council failed to undertake its functions as a planning authority under Division 4, Part 2 of the *Land Use Planning and Approvals Act 1993.*

(3.1) Council staff acted outside their delegations approved by Council under the *Land Use Planning and Approvals Act 1993.*

Issue

During the course of the Inquiry, the Board considered the Council's Master delegations register. In the context of a number of councillors giving evidence that they were not confident in understanding their planning authority role under the LUPA Act *and* noting the few occasions on which they exercised that role, the Board considered the extent of delegations given to council staff.

The Board was concerned to satisfy itself that Council was complying with its statutory role.

Background

The general manager and the Director Community and Development have delegation to determine applications for discretionary permits if:

- the recommendation of the Director is to grant a permit, and the total cost of the development is less than $5 million; and
- either only a single representation has been received; or
- two or more representations have been received but they fail to address standards or requirements of the planning scheme; or
- there is no representation from residents of Dorset that object to the application.

When asked how the cost of a development was ascertained, the Director Community and Development told the Board that it was up to the applicant to identify the cost on the application. This appeared to the Board to provide a potential opportunity for development applications to be funnelled to determination by a council staff member, by understating the cost of works.

It appeared to the Board from reviewing the agenda papers for council meetings that councillors were notified, by a brief description in a table, of the development

application that had already been determined by council staff in the previous month. It appears that councillors were not given advance notice of such development applications before they were determined. A number of councillors appeared surprised when told that they were legally responsible for the decisions made as a planning authority under delegation even thought they had never seen, or given any consideration to, the development applications.

That position has changed since the appointment of John Marik as general manager, and now every councillor is sent an email with links to the documentation for all undetermined development applications.

The Board sought specific information from Council on the number of development applications that were actually determined by Council as the planning authority. In the period 1 January 2018 to 25 July 2023, which is a period of 5.5 years, Dorset Council determined only 21 development applications. That is fewer than four a year. This represents around two per cent of the development applications determined.

Put another way, nearly 98 per cent of all development applications filed with Dorset Council are determined under delegation by a member of staff.

It was explained by the mayor, by Tim Watson and by the Director Community and Development that it is the practice of planning staff at Dorset Council to encourage applicants to bring their applications within the permitted pathway in the Dorset Interim Planning Scheme (and subsequently the Tasmanian Planning Scheme – Dorset). In other words, if an application were drafted or modified to meet the acceptable solutions in the scheme, Council would have to issue a permit, and there would be nothing for Council as a planning authority to determine.

The Board notes that is not in fact correct, because even if Council is required to issue a permit, there remains the determination of appropriate permit conditions, which can provide a robust control on the development.

The Board accepts that the situation explained by the Council officers appears to be the case, and that the way in which the Tasmanian Planning Scheme is drafted enables that outcome. The Board has no evidence of any inappropriate or questionable activity in this sphere. There is no suggestion of any council staff member acting outside their delegation.

The Board does consider, however, that with almost all development applications filed with the Council being determined by council staff, there exists a risk or opportunity for improper influence to be exerted by a proponent. If a proponent knows that a particular officer will be making the decision, that officer may be placed under pressure or

influence. The Board has no evidence that this has occurred, and no suggestion of any improper conduct by council staff is intended.

However, it appears to the Board to be an obvious risk.

These circumstances also lead to the question, if almost all development applications are determined by employees, and not by Council itself, why should Council retain the role of a planning authority? But the answer to that question is outside the scope of this report.

Findings

8.1. There is no evidence of decisions on development applications being made outside the scope of the extensive delegations given by Council.

Recommendations

Nil.

Submissions on draft findings

Dorset Council made submissions on some of the Board's reasoning in this section. They included concerning the Board's observation that there existed a risk or opportunity for improper influence to be exerted by a proponent. Council contended that whilst it was a possibility "that is not the evidence here". This appears to be a misunderstanding of the nature of risk identification and management. Waiting for a risk to actually occur is not risk management.

After carefully considering Dorset Councils submissions, the Board determined not to change its findings or reasoning.

9. Trailsnaps Pty Ltd

Terms of reference

(1.3) Conflicts of interest have not been adequately managed by senior Council officials.

Issue

Undeclared ownership of shares by council officers in a company intending to contract with Council and benefit from council assets and works.

Background

Glen Donnellan, who was the developer of a camera business intended to be operated by Trailsnaps Pty Ltd, gave evidence that he first met Dwaine Griffin around 25 years ago when Mr Griffin sold a car to him. They later met occasionally while at a coffee shop in Riverside Drive, at which Mr Griffin used to stop on the way to work.

Mr Donnellan gave evidence that he had been to Derby and was thinking about and researching an idea he had for a business involving automatic cameras on bike tracks. One day at the coffee shop Mr Donnellan told Mr Griffin about his idea and, knowing that Mr Griffin was involved with Dorset Council, asked what he thought. Mr Griffin said "Mate, leave it to me…would you mind if I put it to the general manager?"

Shortly after, they met again and Mr Griffin said to Mr Donnellan that the general manager was very impressed with the idea, and could he pass Mr Donnellan's number on to him. Mr Donnellan said Mr Griffin warned him "he's a good fellow, excuse his arrogance but he loves what you are doing."

Mr Donnellan gave evidence that he spoke to his lawyer and was advised to prepare some form of confidentiality document, so as to protect his intellectual property.

The Board has considered two documents titled 'Deed of Confidentiality (Non-Disclosure Agreement)' drafted by Mr Donnellan's lawyers. These refer to the business plan being "the concept of installing cameras on bike tracks anywhere in the world with a view to capturing photographic images of cyclists participating in and using those

bike tracks and then offering those photographic images for sale to those cyclists for a fee."

The documents seen by the Board are signed by Mr Donnellan but are not signed by the other named person (Tim Watson in one case and Dwaine Griffin in the other). The Board is satisfied that there were significant discussions between Mr Donnellan and Mr Watson at least around mid-March 2022 because Mr Watson refers, in an email to Sustainable Timbers Tasmania (STT) on 21 September 2022 that he had emailed Stephen Rymer (at STT) on 22 March "asking for instruction on how Glen could obtain licence for the cameras". Plainly this communication was made with the intent of furthering the "business plan".

This was confirmed by Mr Watson, who gave evidence that he put Mr Donnellan in touch with Stephen Rymer in March 2022. Mr Watson gave evidence that Mr Donnellan a few weeks later said that he wanted Mr Watson "to be part of it".

Mr Donnellan gave evidence that in May 2022, prior to signing the confidentiality agreements, he had spoken to Dwaine Griffin and Tim Watson about his lawyer advising that Mr Griffin and Mr Watson had a conflict of interest as employees of the Council which had constructed and operated the tracks from which they intended to profit.

Mr Donnellan's evidence was that Mr Griffin stated that he had disclosed his interest to Mr Watson and that was sufficient. Mr Griffin gave evidence that he typed out a disclosure of interest form saying to the effect "I Dwaine Griffin am formally declaring an interest in Trailsnaps, a business that will be operating in Derby as of this date." Mr Griffin said that he gave this to Tim Watson, and as far as he was concerned, that was all he was required to do under the Act.

When asked why this claimed disclosure did not state that the business was doing business with the Council, Mr Griffin said he discussed this many times with Tim Watson, who was confident and happy that Mr Griffin didn't have a conflict of interest in the area of trail maintenance at Derby.

The new general manager, John Marik, gave evidence that he had been unable to find in Council's records any disclosure by Mr Griffin.

The Board asked Mr Watson if he had the disclosure, and his response was that since he left employment at Council, he returned any documents to Council, and stated where in the council records such documents would be.

Following his appearance before the Board, Mr Griffin was asked whether he had a copy of the disclosure. He provided what appears to be an original document dated 1 June and signed by Tim Watson on 2 June 2022. It describes the relevant interest as:

> This is my written disclosure notification as required in my employment contract clause 5.3.
>
> I have a shareholding in a company that is intending to do business on the trails at Derby.

The Board is satisfied that, if this disclosure was given to Tim Watson, it did not make it to council records. Further, it is an insufficient disclosure because it omits to mention that the company proposes to contract with Council which is the critical issue.

The Board also notes that clause 5.3 of Mr Griffin's contract requires a disclosure of such an interest to be made to Council (not to the general manager) and that was not done.

The Board has also seen a related party declaration made by Dwaine Griffin dated 18 July 2022. In this declaration Mr Griffin declares that the above list includes all his close family members likely to have transactions with Council.

That list has no entries. Mr Griffin's partner was at the time a shareholder in Trailsnaps Pty Ltd. The Board is comfortably satisfied that Mr Griffin made a false declaration to Council.

Mr Donnellan's evidence was that in response to his query about his conflict of interest, Tim Watson said words to the effect of:

> How can there be a conflict? I am the general manager. I have a bakery in Scottsdale, I've been involved in business. The decision stops with me.

Mr Watson had a different recollection. He gave evidence that Mr Donnellan asked how he would avoid the conflict of interest, to which Mr Watson replied "Well, I'm going to have to think about that and get back to you." Mr Watson continued in his evidence that a few weeks later (which would likely be in June 2022), he told Mr Donnellan that "...if I'm going to be part of it, how you handle this is I'd have to declare an interest."

The Board prefers the evidence of Mr Donnellan on this discussion. Mr Watson's evidence is to be treated with caution. In a number of instances when appearing before the Board, he sought to downplay his involvement in many activities, and attempted to cast blame for events onto others, where it is plain to the Board that Mr Watson had responsibility for them, or at least a responsibility to oversee them.

Midway during his appearance before the Board, at which he had initially affirmed that he would tell the truth, the whole truth and nothing but the truth, Mr Watson stated after a break that "…I'd rather tell the truth, so I'm going to tell the truth". In these circumstances, the Board treats his evidence with caution where it is not otherwise supported by other evidence.

Mr Watson stated in his evidence before the Board:

> So my view was from day dot is if I'm going to be part of this thing, at a point in time, at the appropriate time, when that interest becomes real, I declare it under s 55, my reasoning being that every time I did something in Derby, it would be implied that I could potentially benefit from it and therefore it would be very wise to declare a s55 interest. So my view was always that trigger point for declaring an interest under s55 was when an application was lodged with Sustainable Timber.

The Board accepts that Mr Watson has in this evidence correctly identified why he has a conflict of interest which was required to be declared but does not accept his evidence about when that interest arose. The Board considers that at this time, late May 2022, both Dwaine Griffin and Tim Watson were in a position of having an interest which placed them in a conflict of interest with Dorset Council. Under section 49 of the Act, when read with section 55(1A), an interest is one where the general manager would receive, have an expectation of receiving, or be likely to receive a pecuniary benefit.

That became even clearer when Trailsnaps Pty Ltd was incorporated on 2 June 2022, when the application form was signed by Tim Watson. The application form disclosed that Dwaine Griffin was a director and, jointly with Andrea Johnston, holder of one-third of the issued shares. Tim Watson was a director and, jointly with Amanda Watson, holder of one-third of the issued shares.

Subsequently, Mr Griffin contributed $24,000 to the company, and Mr Watson $29,000

On about 10 June 2022, Mr Donnellan's equipment started taking test images on the 'Air Ya Garn' bike trail, with the knowledge of Mr Griffin and Mr Watson.

The trails on which it was proposed to locate cameras were constructed on land owned by STT and licensed to Dorset Council.

On 1 July, Mr Watson as general manager of Dorset Council emailed Mr Stephen Rymer at STT in the following terms:

> Hi Stephen,
>
> Glen Donnelly [sic] from Trailsnaps is the guy I mentioned that is wanting to put cameras on the trails. My comments are as follows:
>
> Make it a 5 year agreement or maximum you can if less with an option to renew for a further term. Put in Std stuff such as indemnifying Council and STT, provision of Public Liability insurance, removing from trails etc if cease to operate.
>
> Location and signage on trails to be approved by Trail Manager – Dorset Council.
>
> Required to enter into sponsorship agreement with Council making a donation of $1 per photo toward trail maintenance (Glen has offered this up and I am very happy with the offer)
>
> We are very supportive because it value adds to the visitor experience and will generate some nice income for trail maintenance which is my ongoing challenge.
>
> I can't think of anything else at this stage. Please copy me in so I can ensure everything is covered from Council's perspective. All pretty straightforward.
>
> Email Glen to source whatever you need…

The Board is compelled to conclude that this email was at least disingenuous and amounted to a serious misrepresentation by silence concerning Mr Watson's true involvement with "the guy" from Trailsnaps and with that company. The subject of the email, if it were to be implemented, would produce a significant pecuniary benefit to Mr Watson as a shareholder. Both Mr Watson and Mr Griffin had invested not insignificant amounts of money in the company as shareholders and, it is reasonably inferred, expected to make a return on that investment. It makes their actual conflict of interest more serious.

When he appeared before the Board, Mr Watson was asked whether he thought it would have been appropriate to have declared an interest at the time he was openly advocating on behalf of Trailsnaps under council letterhead while at the same time being a director of that company. He conceded that point.

Mr Donnellan gave evidence that, in August 2022, Mr Watson told him that he "had issues with Council" and thought it could impact Trailsnaps, so he wanted to resign as a director but said he would continue to assist the business.

Mr Watson gave evidence that he made the decision when he was in Whistler in August 2022 that he couldn't be part of this while he was in Derby because, even if he declared an interest, "…the perception in the community, I was going to be in the paper again." He said, "I cannot be anywhere near this." Mr Watson also gave evidence that

he had put “a tiny little bit of capital” into the company. The Board does not accept that $29,000 is a ‘tiny little bit’.

The Board was provided with a copy of minutes of a meeting of Trailsnaps Pty Ltd, held on 24 August 2022, at which Mr Watson tabled a letter of resignation as a director, which was accepted, and share transfer forms for the shares held by Tim Watson and Amanda Watson were also approved. This increased Dwaine Griffin and Andrea Johnston’s shareholding.

Mr Watson gave evidence that he didn’t have a discussion with Mr Griffin about whether he too should pull out of the company but added “he should’ve read the writing on the wall when I got out.”

Mr Watson continued to advocate for Trailsnaps over the following months. On 27 October 2022, STT granted a licence to Trailsnaps, which was signed on behalf of Trailsnaps by Dwaine Griffin. That licence was for a term of 1 year with an option to renew for 2 years.

On 5 November 2022, Dorset Council signed a sponsorship agreement with Trailsnaps, which was signed by Glen Donnellan on behalf of Trailsnaps and Tim Watson on behalf of Council. The Board notes that this date is after Tim Watson had submitted his resignation as general manager, which was to have effect from 6 December 2022. This agreement provided benefits to Trailsnaps including use of logos, authority to place signage, and promotion on website and social media. Trailsnaps was to pay $1 to Council from each photo sold, to be used for trail maintenance. It would obviously retain the balance of the sale price for a photo.

Mr Griffin gave evidence that he received an email in mid-December 2022 from the new general manager, John Marik, that he cease all involvement in Trailsnaps, and that he then removed himself from the company.

However, it is plain that there was more to his departure than simply that. John Marik gave evidence that he became aware of the company Trailsnaps via a post on Instagram on 12 December 2022. He did not at that stage know who was involved. He spoke to Mr Griffin and said words to the effect of “this is strange, who is involved in this, this seems like something that Tim Watson would do.” Mr Griffin replied “I don’t know. I don’t know anything about it.” Mr Marik also gave evidence that once the issue was being discussed on social media, he again asked Dwaine Griffin, whose reply was to the effect of “gee, this is a bit strange isn’t it.”

Mr Griffin’s responses to Mr Marik’s queries were simply dishonest.

Mr Marik gave evidence that Mayor Howard contacted him on 16 December 2022, saying he had obtained an ASIC search that showed Mr Watson and Mr Griffin were involved with the company. Mr Marik said he challenged Mr Griffin about his earlier responses to which Mr Griffin replied "The way you framed the question in the lunch room, I didn't understand what you meant."

This response by Mr Griffin was also simply dishonest. There can have been no doubt about the meaning of Mr Marik's earlier queries.

Mr Griffin gave evidence that he never received any income from Trailsnaps. He also said that he sold his shares in the company to Glen Donnellan for $1. In response to questioning from the Board, he insisted that he had made no claim that Mr Donnellan pay back the funds Mr Griffin had put into the company.

This evidence appears to contradict the terms of a deed signed by Mr Griffin and Mr Donnellan on 1 February 2023 in which there is an express term that Mr Donnellan is to pay to Mr Griffin the amount of $24,000 by three annual instalments. The Board notes that a similar deed was signed by Tim Watson concerning $29,000.

Mr Watson's Obligations

First, section 55(1) of the Act provides that the general manager must notify the mayor in writing of having an interest in any matter in which the general manager provides advice to council, makes a recommendation to council or makes a decision or determination. Not to do so is an offence.

Second, section 55(2) of the Act provides that the general manager must advise the council of the existence of any interest notified under subsection (1) and keep a register of any such interest. Not to do so is an offence.

Third, Tim Watson's contract of employment at clause 3.1.1 required Mr Watson to devote his whole time and attention to his duties during the hours reasonably required to properly perform the duties.

Fourth, his contract It also at clause 3.2 provided that Mr Watson must not engage in any additional business which conflicts with the interests of the Council, or his ability to perform those duties. If there is any risk of such a conflict occurring, he must immediately notify the Council and obtain Council's written consent to engage or continue in that additional business.

Mr Griffin's obligations

First, section 55(1) of the Act provides that an employee must notify the general manager in writing of having an interest in any matter in which the employee provides advice to council, makes a recommendation to council or makes a decision or determination. Not to do so is an offence.

Second, section 55(2) of the Act provides that the general manager must advise the council of the existence of any interest notified under subsection (1) and keep a register of any such interest. Not to do so is an offence.

Third, Mr Griffin's contract of employment dated 16 March 2016 at clause 5 required him during his employment not to be directly or indirectly engaged or concerned in the conduct of any business or trade, except as a representative of Council or with its prior written consent, and if such a business could, in Council's opinion, potentially compromise the performance of his duties, he must make a prior written disclosure.

Fourth, his contract at clause 10 provided that he must comply with Council's policies. Council had in place from 26 September 2022 an employee conduct policy. Clause 5.4 of that policy required employees not to engage directly or indirectly in any outside business activity involving commercial contact with Council without prior written consent.

Findings

The Board is comfortably satisfied that:

9.1. Tim Watson was required to disclose his interest as a shareholder in Trailsnaps Pty Ltd. He clearly had at least a potential conflict of interest, which his own evidence establishes he recognised.

9.2. Tim Watson breached section 55(1) of the *Local Government Act 1993* by not notifying the mayor in writing (or at all) of his shareholding in Trailsnaps Pty Ltd on and from the time that company was registered.

9.3. Tim Watson breached section 55(2) of the *Local Government Act 1993* in relation to his own disclosure and (if it were given to him) in relation to Dwaine Griffin's disclosure.

9.4. Tim Watson breached clause 3.1.1 of his contract of employment by not devoting his whole time and attention to his duties when he was advocating for Trailsnaps Pty Ltd to obtain an access licence from Sustainable Timber Tasmania.

9.5. Dwaine Griffin, former Director Works and Infrastructure, was required to disclose his interest as a shareholder in Trailsnaps Pty Ltd.

9.6. Dwaine Griffin breached section 55(1) of the *Local Government Act 1993* by not notifying the general manager in writing of his interest in Trailsnaps Pty Ltd.

9.7. Dwaine Griffin breached clause 5 and clause 10 of his contract of employment by not obtaining prior written consent from Council for his shareholding in Trailsnaps Pty Ltd.

9.8. Dwaine Griffin lied to the general manager, John Marik, when questioned about the ownership of Trailsnaps Pty Ltd.

9.9. Dwaine Griffin made a false declaration to Council in the related party declaration dated 18 July 2022.

Recommendations

11. That the breaches of section 55 of the *Local Government Act 1993* by Tim Watson and Dwaine Griffin be referred to the Director of Public Prosecutions for consideration of prosecution.

NOTE: The Board has not considered the issue of Trailsnaps Pty Ltd beyond the point where Dwaine Griffin disposed of his shareholding. Any issues between Council, Trailsnaps Pty Ltd and/or Sustainable Timber Tasmania, and as between former shareholders, are matters of contract to be pursued in the appropriate forum.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined not to make any change.

The Board received no submissions from Dorset Council.

10. Scottsdale Irrigation Scheme

Terms of reference

(1.2) Council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law.

(1.5) Council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

(3.1) Councillors have not made adequate or complete declarations of interest.

Issue

Council resolved to invest in the Scottsdale Irrigation Scheme, in order to ensure it operated. Mayor Greg Howard proposed and voted on the resolution at a time when he held water entitlements in the Scheme that would be worthless unless the scheme began operating.

Background

An issue that arose during appearances before the Board was the involvement of Dorset Council as a major purchaser of water entitlements in the Scottsdale Irrigation Scheme. The Board heard evidence that the scheme would not proceed unless Council effectively underwrote the scheme by buying a substantial number of water entitlements. At the same time, Mayor Howard had applied for a number of water entitlements, which would be ineffective unless Council committed the funds for its purchase. This raises the prospect of a perceived conflict of interest.

The scheme was approved in March 2013, and construction started in May 2018. However, that construction did not commence until a certain number of water entitlements had been sold. A paper in support of the motion moved on 16 November 2015 that Council purchase water entitlements, prepared by Mayor Howard, records that the scheme was proposed to cost $47 million, with $23 million coming from the Commonwealth, $12 million from the State and $12 million from local farmers.

The funding from the Commonwealth was conditional on 75 per cent of the water entitlements being sold prior to construction. As at 16 November 2015, only 60.5 per cent had been sold. Tasmanian Irrigation approached Council with a proposal that Council buy water entitlements to enable the scheme to start, and these could

subsequently be sold by Council to farmers. Ultimately the number of water entitlements required was 1,250 megalitres, and on 16 November 2015 Council resolved to purchase these.

The purchase cost to Council was $1.75 million and there were fixed charges to pay each year, although Council was to be exempt from paying these for the first three years.

According to Tasmanian Irrigation's water entitlements register, as at January 2024, Dorset Council retained 547 water entitlements, and therefore it has sold over half of the original number.

Council's involvement

A number of submissions raised the success of the Scottsdale Irrigation Scheme, and that Council acted appropriately in supporting the scheme in the way it did. The Board accepts without hesitation that action taken by a municipal authority to facilitate the construction of irrigation infrastructure is appropriate, subject to proper analysis of the cost. There was an appropriate analysis provided to councillors in this case.

Such an application of council funds must also be subject to the declaration of any possible, or perceived, conflict of interest so far as councillors are concerned. That is so because the interests of the individual councillors as the potential holders of water entitlements would be substantially enhanced if the scheme were to proceed. Not only would they have access to the water, but the more participants in the scheme, the more valuable the water entitlements could be, as they are tradeable.

Mayor Howard's involvement

Mayor Howard had applied for 100 water entitlements, given serial number 41 on the register. He should have disclosed his interest before speaking in support of any motion that Council purchase entitlements and absented himself from voting on any such motion.

Mayor Howard explained to the Board that he did not consider that he was required to declare an interest because of section 52(1)(a) of the Act. This provides that the pecuniary interests provisions do not apply to a councillor if the benefit is one received in common with all or a substantial proportion of electors of the municipal area.

As the Board understands his reasoning, because there were potentially 400 properties that could access this irrigation scheme, and some of those properties that

did have entitlements were owned by trusts and companies, there was a substantial proportion of electors who shared the benefit.

The Board considers that there are two fundamental problems with this reasoning. First, section 48 of the Act applies where a councillor “has an interest”. Section 52(1)(a) of the Act also refers to the benefit being “one received in common” with the electors. This means that the interest held by Mayor Howard, being the applicant for water entitlements, must be the same as the interest which is “received in common” with the electors.

Electors who had not at the relevant time applied for water entitlements did not have the same “interest”. They had no relevant interest at all, unless they subsequently took action to apply. Of course, possible future conduct has no relevance to the conduct of the meetings at the time they were held in 2015.

Second, if water entitlements are owned by companies or trusts, that does not mean that all shareholders or beneficiaries are to be considered as “electors”, in the same way that if a company owns certain land, the shareholders are not the owners of that land.

The minutes of Council record the following, concerning the Scottsdale Irrigation Scheme:

1. 29 June 2015, item 95/15, Councillor Archer proposed a motion that Council investigate the feasibility of investing in the proposed Scottsdale Irrigation Scheme. That motion was opposed by Mayor Howard but was carried.

2. 16 November 2015 (a meeting at which all councillors were present), item 218/15, Mayor Howard proposed the motion that Dorset Council purchase 1,250 ML of water entitlements in the Scottsdale Irrigation Scheme. This was carried unanimously.

3. 16 May 2016, item 94/16, it was proposed to delegate to the general manager authority to sign a Tasmanian Irrigation Water Supply Agreement on behalf of Council, subject to obtaining legal counsel. This proposal was carried but opposed by Councillor Archer.

The minutes for the meeting on 16 November 2015 confirm that there were no declarations of pecuniary interests.

Legal advice ('counsel')

As noted above, the delegation to the general manager was to sign "subject to obtaining legal counsel". That is a condition of the delegation being exercised. Any such legal advice (or 'counsel') should have been provided to the councillors. The Council has provided to the Board a copy of a letter from Cormiston Legal dated 30 May 2016, which gives advice on the contents of the agreements, but this was not provided to councillors.

The Board was also unclear why former Councillor Archer had proposed the prospect of Council purchasing water entitlements in the scheme but had voted against the delegation for the general manager to sign. He clarified that his opposition to the delegation was because the entry into the contract with Tasmanian Irrigation was a significant financial decision and the councillors had not seen the proposed contract, nor any legal advice concerning the proposed transaction of the contract.

Further, he informed the Board that there was also a lack of information to councillors about where the water for the entitlements was available, and therefore whether Council's ability to trade them might be constrained by the design capacity of the scheme.

Enterprise powers

Further, the Board was concerned that the investment in water entitlements may have been an exercise of Council's enterprise powers, as set out in section 21 of the Act.

That section provides that a council must obtain the approval of the Minister before exercising any of those enterprise powers if the exercise would involve an expenditure of at least $250,000 or 5 per cent of its general rates revenue, whichever is the greater. In financial year 2015-16, general rates revenue would have been something under $6 million, based on the actuals in 2017-18 of $5.4 million. Therefore, the cost of the water entitlements far exceeded both of these triggers.

The approval of the Minister should have been obtained, if there was an exercise of enterprise powers, and no such approval was obtained. However, it is not clear that the application of council funds to the purchase of water entitlements in an irrigation scheme within the municipal area with the intention of selling those water entitlements at a later stage is indeed an exercise of enterprise powers.

Section 21 of the Act sets out enterprise powers as follows:

(a) the formation or participation in the formation or operation of a corporation, trust, partnership or other body; – here Council was not involved in the formation of any body; Tasmanian Irrigation Pty Ltd was formed many years previously under the *Irrigation Company Act 2011*, and the scheme itself is not relevantly a "body".

(b) the subscription for shares, debentures or other securities of a corporation; – here water entitlements are not securities.

(c) becoming a member of a company limited by guarantee; – here there is no membership of any company.

(d) subscription for units in a trust; – here there is no trust or units.

(e) acquiring an interest in a partnership or other body; – here there is no interest in a 'body' attaching to a water entitlement.

(f) entering into any arrangement for union of interest, or co-operation with any person about to carry on or engage in any business capable of being conducted so as to directly or indirectly benefit the community; – here Council has arguably entered into an arrangement of co-operation with Tasmanian Irrigation Pty Ltd, which was about to engage in the business of providing the Scottsdale Irrigation Scheme which arguably was to be conducted to indirectly benefit the community.

(g) undertaking a project or activity not directly authorised by the Act or any other Act for the purpose of raising money; – here the purpose was not to raise money but rather to ensure the project went ahead.

The Board is not satisfied that the purchase of water entitlements within an irrigation scheme conducted by Tasmanian Irrigation Pty Ltd falls within any of the defined enterprise powers, and that in this case, the Act did not require the Council to obtain approval of the Minister beforehand.

However, the Board's opinion is that, given the level of council funding applied to this purchase, the risk to Council of not being able to on-sell water entitlements, the loss to Council caused by removing the funds applied from interest bearing investment, and the ability of Council to trade the entitlements and thereby possibly sell them at a greater amount than purchased for, the purchase of water entitlements by a council may need, as a prudential measure, to be included in the definition of enterprise powers in section 21 of the Act. This is particularly so where Council is unlikely itself to use any water allocation attaching to any such entitlements.

The actions considered in this issue occurred many years before the Board was established. The Board is satisfied that Council's involvement, as an investor, in this irrigation scheme was appropriate. The Board is satisfied that Mayor Howard did not obtain any benefit which other owners of water entitlements did not also have. The consideration of this issue concerns process.

The Board will not make any specific recommendations concerning individuals or Council.

Findings

10.1. Mayor Howard should have disclosed an interest, as a person who was the applicant for 100 water entitlements in the Scottsdale Irrigation Scheme, and he should have removed himself from the meetings for the votes on the resolutions concerning that scheme on 16 November 2015 and 16 May 2016.

10.2. Tim Watson as general manager failed to provide to councillors a copy of the 'legal counsel', or a summary of it, to satisfy the condition to his delegation before signing the water supply agreement under that delegation.

Recommendations

12. That the Minister consider including, in the definition of "enterprise powers" in section 21 of the *Local Government Act 1993*, the purchase of tradeable water entitlements by a council in an irrigation scheme.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined to make minor changes to its findings, and not to change the recommendation.

The Board received submissions from Dorset Council. After carefully considering Dorset Council's submissions, the Board determined to make one change to its reasoning, but not to change its findings or recommendations.

11. Failure to manage/monitor General Manager Tim Watson

Terms of reference
(3.1) Council failed to implement an appropriate process for monitoring, on an ongoing basis, the performance of the general manager.

Issue
Many submissions raised the issue of conduct by the former general manager, Tim Watson, in the performance of his role, and that councillors felt unable to, or were told that they could not, make enquiries with staff about that conduct.

Councillors also said that there was only an annual performance review.

Background
Tim Watson was appointed as general manager of Dorset Council in 2012.

By section 27(1)(g) of the Act, it is a function of the role of mayor and deputy mayor to lead and participate in the appointment, and the monitoring of performance, of the general manager. Also, by paragraph (h) it is a function to liaise with the general manager on the activities of the general manager and the performance and exercise of his or her functions and powers in supporting the council.

By section 28(2)(d) of the Act, it is a function of the councillors of a council collectively to appoint and monitor the performance of the general manager.

Clause 7.1.1 of Tim Watson's contract of employment dated 20 August 2012 provides:

> [his] performance must be reviewed, and the review completed annually no later than 3 October each year. A committee of council will oversee the review…

Clause 7.1.2 of the contract of employment provides:

> In addition to the annual performance review Council must monitor [his] performance against the performance criteria on an ongoing basis without necessarily conducting a formal performance review.

The performance criteria were set out in a letter to Tim Watson from Mayor Barry Jarvis dated 8 February 2013. They were stated to be:

- Annual Plan
- Strategic Plan Review
- Review of the organisational structure and implementation of appropriate changes
- Review of operational costs and identification of efficiency and cost saving opportunities and implementation in the 2013/2014 operational budget
- Identification of Economic Development initiatives.
- Identification of initiatives and processes which promote improved engagement between Council and the community

These criteria do not appear to have changed since 2013.

Two things arise out of these performance criteria.

First, many of them are not performance criteria at all because there is no measure for them. For example, “Annual Plan” is meaningless. Council is required by section 71 of the Act to prepare an annual plan. It is not a matter that can be measured; it is a statutory requirement. So too is the strategic plan (section 66 of the Act). Also, it is a statutory function of the general manager to do these things (section 62(1)(e) of the Act).

Second, these performance criteria are plainly directed towards the annual performance review, and not towards any ongoing monitoring of the general manager’s performance during the year.

A number of submissions raised issues concerning the conduct of the general manager and the apparent lack of monitoring of his activities. Many councillors mentioned that when challenged about something, Mr Watson would say that it was ‘operational’ and councillors were not responsible for the issue.

While the general manager is responsible for the day-to-day operations of council, the manner in which he performs that function is subject to the ongoing monitoring by council.

The Board was concerned to ascertain what process Council has in place for the ongoing monitoring of the general manager.

Evidence
The Board questioned Mayor Greg Howard about what process the Council had in place to monitor the performance of the general manager. He replied that when he first came in as mayor in 2015 there was already a process in place and the Council had yearly performance reviews. Council had the opportunity to question the general manager at workshops and at meetings. He also said there were hundreds of emails

and phone calls between him and the general manager, and there would also be discussions in the office.

Mayor Howard said there were no performance criteria listed in the original contract. However, there were criteria subsequently agreed, which Mayor Howard seemed not to be aware of. He said that the general manager's performance was, until the Derby depot incident, outstanding in terms of management of the business and his ability to deliver on his functions.

He digressed to explain how questions for the annual performance review were refined over the years. When asked how low scores received by the general manager from some councillors in that process were considered, he maintained that does not necessarily indicate any problem, and that "…it just indicates that there is a personal issue between the person and the general manager".

In the Board's view, it could also indicate that there may be something the general manager was doing that other councillors have not seen, or do not care about.

When asked about how any issues that may have arisen concerning the 'ongoing' monitoring of the general manager were addressed, he replied, it "was addressed in the workshops or the meetings". The Board had much evidence that there were generally no minutes kept of the discussions in workshops. In addition, there was no evidence of the process or indeed practice of the mayor communicating to other councillors any issues he may have spoken to the general manager about in their ad hoc communications.

Mayor Howard explained that an issue he had with the Act was that the general manager was responsible for the day-to-day operations of the council, and when you are trying to gather information about someone, especially the general manager, every request for information has to go through the general manager. He said:

> We're not allowed to go to other staff members to get the information, which is a failing of the Act and the system. If you compare a council to a private or publicly listed company and my role would be chairman of the board and his would be the CEO, I would have the power to go to any person in the organisation to source information about the general manager. But I can't do that in a council because it says every request has to go through the general manager.

The Board raised with Mayor Howard the impression it had that the general manager would maintain that an issue was 'operational' as a mechanism to stop enquiry about various issues.

Mayor Howard said that the general manager did use the 'operational' tag to deny information to himself and other councillors:

> At times there were extremely robust discussions about whether or not that was proper. But he kept pulling out the line about the Local Government Act that says that a councillor cannot direct an employee or contractor of council of which he is one.

A number of other councillors have raised that same point. Section 28(3) of the Act provides that in performing any function under the Act a councillor must not direct or attempt to direct any employee of the council in relation to the discharge of the employee's duties.

That provision is directed to the discharge of the employee's duties. In other words, a councillor cannot direct an employee how to do their job. It does not mean, in the Board's view, that councillors cannot ask questions about the manner in which the general manager performs his role.

The Board questioned Mr Watson about what was in place to implement ongoing monitoring of his performance, and he replied that there was no formal process in place. The only time he got feedback about performance was in the annual review process.

He also said that following the death of Barry Jarvis, there was no review of any of the key performance indicators in his contract. He considered that the objective assessment of his performance was in his management of the Council's financial position and delivery of its capital expenditure budget.

Consideration
It is clear from sections 27 and 28 of the Act that the mayor, deputy mayor and the council are to monitor the general manager's performance on an ongoing basis. This is reflected in clause 7.1.2 of Mr Watson's contract.

Monitoring the performance of the general manager is an important function of councillors. Section 28(2)(d) of the Act is not satisfied by conducting a once yearly performance review. A lot can happen in a 12-month period.

'Monitor' means to keep under systemic review, over a period of time. There was a provision in Mr Watson's contract for Council to monitor on an ongoing basis, but this was limited to the unsatisfactory (or in later years non-existent) key performance indicators.

The Board is satisfied from this evidence that there was no process in place for councillors to exercise their statutory function of monitoring the performance of the

general manager, except in the once yearly performance review, and considers that there should have been.

Neither was there any process in place for councillors to undertake their contractual right to monitor on an ongoing basis performance against key performance indicators, because there had been none identified after 2013. One submission made to the Board was that those who were responsible for managing Tim Watson should be held responsible for his reckless behaviour. The council as a whole, meaning every councillor, was responsible for monitoring his performance.

It is not desirable to have individual councillors attempting to inquire into issues concerning the general manager's performance which may have been raised with them. That is because the monitoring function lies with the Council as a whole.

Such a process would be expected to have a mechanism for keeping a record of any enquiries and outcomes, which would then feed into the yearly performance review.

Findings

11.1. Dorset Council did not have any process in place for the ongoing monitoring by Council of the performance of the general manager under section 28 of the *Local Government Act 1993*.

11.2. Since the commencement of this Board of Inquiry, Dorset Council has introduced a general manager performance review process which appears to include ongoing monitoring, and the general manager's current contract contains relevant and appropriate performance criteria.

Recommendations

Nil.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions, and making some clarifications to its consideration, the Board determined not to make any change to the recommendation.

The Board received submissions from Dorset Council. These included that Council has, since the appointment of Commissioner Wardlaw implemented a significantly

expanded performance review process for the general manager, and that the general manager's contract contains expanded performance criteria. Following a careful consideration of these changes, the Board determined to change its findings, and to remove its draft recommendation for the issue of a Ministerial direction to Council concerning such a process.

12. Councillor induction and training

Terms of reference
(1.5) That the Council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

Issue
A number of the current suspended councillors and former councillors raised concerns in submissions and in evidence given to the Inquiry about the lack of an adequate induction program for new councillors and a lack of ongoing training and professional development.

Background
The role of councillor is a complex one with a range of statutory duties and responsibilities. Various practical responsibilities also exist in relation to general governance, understanding financial management principles, and acting as a planning authority as distinct from the role of a member of the corporate entity of the council.

Newly elected councillors come to the role from a range of diverse backgrounds and with a range of skills. Following each election or upon the election of a new councillor, most councils will run a corporate induction program, providing a vast array of information and material.

Additionally, the Local Government Association of Tasmania (LGAT) conducts a comprehensive induction workshop for new councillors in the weeks following the election cycle. This is supplemented from time to time by training sessions on specific topics or matters relevant at that particular time.

Additional resources and training modules are made available by LGAT, but these are not, as the Board understands it, well utilised and there is no compulsion to do so.

Submissions and evidence
A number of the suspended and former councillors made submissions to the Inquiry. Subsequently all councillors and former councillors from the 2018-2022 and the 2022-2023 (suspended Council) period were summoned to give evidence.

It was apparent from the evidence given that there were a number of common themes relating to the initial induction and training provided to newly elected councillors. The common themes include:

- Internal induction was provided generally by the Executive Assistant and

consisted of a briefing manual detailing Council's statutory role as planning authority, meeting schedules, organisational structure and the like. Generally, induction was undertaken on a one-on-one basis and went for around an hour.

- All councillors were offered the opportunity to attend the LGAT training day, generally conducted within the weeks following the council elections.
- The LGAT session was comprehensive. In fact, it contained far too much information, particularly around the key issues, to be absorbed or understood in a one-day training session.
- A view that training of councillors should be ongoing and compulsory.

Examples of statements given in evidence include:

> "New Councillors don't understand the Planning Scheme for probably 12 months."
>
> "Training should be compulsory."
>
> "LGAT session at Inveresk, too short a time for such a large range of responsibilities."
>
> "There is just too much to take in in a one-day session."

The Board of Inquiry accepts that the breadth of information and statutory responsibilities to be undertaken by a councillor are extensive and require a significantly longer induction and training program. Issues such as governance, roles and responsibilities, financial management, planning, asset management, rating and valuations, and strategic planning are simply too complex to be dealt with adequately in one or two days.

Specific examples of issues that have been dealt with elsewhere in this report and might have been dealt with in a different manner had councillors received better training include the process for appointing the general manager, the waste management service charge, the planning functions regarding the Derby depot, and the managing and performance monitoring of the general manager.

An initial one-day training or induction program can provide nothing more than a 'taste'. The Board is of the view that councillor induction and training must be more comprehensive, be ongoing and be compulsory.

No evidence was presented to the Board of further or additional training being offered to any of the submitters to the Inquiry.

The Board is aware that the LGAT induction program is designed as an 'introductory' program with supplementary or additional training modules offered throughout the year. The Board understands, however, that uptake on the subsequent training modules offered is relatively poor.

The Board also notes that councillors as part of the 'Declaration of Office' solemnly declare that they will: "(c) engage in ongoing professional development."

The role of a modern-day councillor is very much akin to the role of a company director. The Board notes that the Australian Institute of Company Directors offer their basic introductory director's course as a 5-day intensive training program.

The Board accepts that it is unreasonable to expect new councillors to fully understand their role and responsibilities without additional support and training. The Board also acknowledges that the commitment of time to the role of Councillor is substantial, and that the recommended compulsory training and development program should not act as a disincentive to stand for that role.

Findings

12.1. That councillors, without adequate training and professional development, cannot be expected to fulfill their roles and responsibilities adequately.

12.2. That induction training as currently undertaken by newly elected councillors, if undertaken in isolation, is inadequate for the role and responsibilities of a current day councillor.

12.3. That initial induction training must be supplemented by ongoing training and development opportunities in key areas of responsibility.

12.4. That ongoing training and development should be compulsory and enforced.

Recommendations

This issue was taken into account by the Board in its recommendation concerning ongoing professional development **(Recommendation 4)**.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions, and making some clarifications to its consideration, the Board determined not to make any change to its findings or recommendations.

The Board received submissions from Dorset Council. These included some more detail on the induction process provided by Dorset Council and noted that the process was 'not seen as comprehensive training, but rather an overview as the sheer amount of information required is quite overwhelming at the beginning'. This is consistent with the thrust of evidence given to the Board and reinforces its findings and recommendations.

The Council's submissions also provided additional information on access to training opportunities, predominantly through the resources of LGAT, which were offered to councillors, and noted that not all councillors took up these opportunities (or indeed the initial short training course provided by LGAT to all new councillors).

After carefully considering Dorset Councils submissions, the Board determined not to change its findings or recommendations.

13. Appointment of General Manager John Marik

Terms of reference

(1.5) That the council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

(2.1) The performance by the mayor of his functions under section 27 of the Act, including promoting good governance by, and within, the Council and leading and participating in the appointment, and monitoring the performance, of the general manager.

(2.2) The performance by councillors of their individual and collective functions under section 28 of the Act, including monitoring the performance of the general manager and monitoring the manner in which services are provided by the Council.

Issue

A number of submissions and evidence presented to the Board of Inquiry made reference to, or expressed concern, in relation to the process of appointing the current general manager, John Marik.

Background

At a Special Council Meeting held on 28 October 2022, Council accepted the resignation of the then general manager, Tim Watson, effective from 6 December 2022.

Subsequently, at a Special Council Meeting held on 6 December 2022, the Council resolved to appoint Mr John Marik to the role of general manager. This meeting was only the second meeting of the newly elected Council following the recent local government elections at which three councillors had been elected for the first time.

Immediately prior to his appointment, Mr Marik served as Council's Director Corporate Services and had worked closely with a number of the councillors during the term of the previous Council. He had at the time been appointed acting general manager.

The appointment of Mr Marik to the role of general manager was by way of direct appointment, without Council undertaking any form of public or open recruitment.

At the time of Mr Marik's appointment, section 61(3) of the Act provided (Board's emphasis):

> If there is a vacancy in the position of general manager **and the council chooses to invite applications for that vacancy**, the council is to place, in a daily newspaper circulating in the municipal area, a public notice inviting such applications.

Evidence and matters considered by the Board of Inquiry

The proposed appointment of a new general manager was initially discussed at a Council Briefing Workshop on 8 November 2022. This took place on the same day and following the Special Meeting at which the three newly elected councillors were sworn in. In evidence presented directly to the Board, a number of witnesses expressed concern at the inadequate and rushed process in the appointment.

Evidence was given that some councillors felt inadequately prepared to make such an important decision at that time, did not have the benefit of interviewing John Marik and were unclear on what the precise role and duties of the general manager were.

In October 2021, well prior to Council appointing the new general manager, the Tasmanian Auditor-General presented a report to Parliament titled “Council General Manager recruitment, appointment and performance assessment”.

This report was widely distributed throughout all Local Government Authorities in Tasmania. Among other matters the Auditor-General recommended as follows:

> … Councils review and, where appropriate, improve the recruitment and appointment process by:
> - managing potential conflicts of interest once applicants for the position become known
> - requiring all participants to declare and document perceived, potential or actual conflicts of interest prior to shortlisting applicants to be interviewed
> - retaining documentation that demonstrates how applicants were compared against each other to determine applicants to be interviewed and the preferred applicant
> - ratifying shortlisting to ensure all applicants were considered equitably
> - undertaking interviews that are consistent and equitable for each applicant interviewed and follow contemporary HR practice.

The Board received evidence that the Auditor-General’s report was available to Council prior to their decision to undertake a direct appointment without a public call for applications or formal interview process. This was confirmed by Mayor Greg Howard in his evidence given to the Board on 1 February 2024.

He expressed the view that the report was advisory, not mandatory, and that there was no compulsion for Council to undertake any formal appointment or interview process for the recruitment of the general manager.

Other evidence to the Board was that Council at the time required stability and loyalty and that this was best achieved by the internal appointment of Mr Marik without the expense or time issues associated with a publicly advertised formal recruitment process which may have cost in the vicinity of $25,000.

An Options Paper was prepared by the mayor and presented during the first Council

Briefing Workshop, immediately following Council's first meeting on 8 November 2022. The issue was not an agenda item for the workshop. The paper included two options for appointing a new general manager: Option 1, outlining the direct appointment of John Marik, which the mayor was in favour of, and Option 2, the alternative of a merit recruitment process.

Following the meeting, Mayor Greg Howard, emailed councillors on 25 November 2022, with a draft contract from a firm of employment specialist lawyers for the appointment of John Marik, requesting councillors review the contract by the following Monday so a complete version would be available for the Special Council Meeting scheduled for 6 December 2022.

At the Special Council Meeting on 6 December 2022, the recommendation to appoint John Marik was agreed by Council by a majority decision 5-4. The councillors who opposed the resolution were Councillor Powell and the three newly elected councillors. At that meeting an amendment had first been proposed that there be a delay to allow a panel to address selection criteria, and if they were successfully addressed, a contract be offered and a media statement issued outlining the process undertaken. This amendment was defeated 4-5.

The evidence to the Board was that Mr Marik was appointed without Council undertaking any formal or indeed informal interview process, or without the preparation of a detailed position description or statement of duties.

In his evidence before the Board, Mr Marik said that he was well aware of the Auditor-General's report, and he said to Mayor Howard:

> I know others have direct appointed; it's not best practice to direct appoint.

He also told Mayor Howard to:

> …make sure its lawful under the Act, make sure you can direct appoint.

Mr Marik also gave evidence that prior to the 6 December 2022 meeting he had been contacted by councillors who were concerned at the process and told him that they would not support it at the meeting saying:

> It's got nothing to do with you; it's just about the process.

He said:

> …with the benefit of hindsight, like when you look at the process and all that and that it can, I suppose, tarnish your appointment, I suppose, publicly…I suppose that I took it on good faith that [they] got advice and that they went through a correct process.

Mayor Howard was asked by the Board what the urgency was to appoint a general manager, when an acting general manager (Mr Marik) had been appointed, and under the Act that could continue for six months.

Mr Howard replied with:

> I guess we just thought it was time.

When pressed by the Board about the fact that three councillors were newly elected, and whether it was therefore more appropriate to have gone through an interview process with Council where they could test the water and determine whether he was the right person for the job, Mayor Howard replied:

> I'm not sure that the new councillors would have even understood at that point in time what was required of them and what was required of the general manager.

This evidence rather emphasises the Board's concern.

In November 2023, amendments to the Act were proclaimed requiring the appointment of a council general manager to be undertaken through a publicly advertised process. Obviously, this post-dates the appointment of Mr Marik, and the establishment of the Board. The Board would have recommended such an amendment had it not in fact now been made.

Consideration

The appointment of a general manager is one of the most important strategic decisions a council is required to make.

John Marik was appointed to the general manager role on the same date that the former general manager's resignation came into effect. It was not necessary for a new general manager to be appointed at that time. An acting general manager had been appointed, and that could continue for some months.

The concern expressed by new councillors, including Councillor Coxen, was well-founded and demonstrates they had appreciated the serious nature of the decision being asked of them.

The Board considers that it was improper for them to be asked to make a decision about this appointment so soon after their election. Mayor Howard's comments about his view of their understanding at that time makes this perfectly clear. The Board can readily understand the frustration they may have felt.

It is common prudent practice for senior appointments to be put to a public expression of interest process, whether in the public or private sector. As at the time of this report, it is the law, so far as general managers are concerned.

The failure of Council to even go through a rudimentary interview process was poor governance. To schedule the appointment decision for when three councillors were newly elected was poor governance. This is particularly so when it is considered that at the time there had been much public questioning of the appropriateness of the appointment of a general manager in another municipal area in Tasmania.

It cannot be known if John Marik was the best person for the position because the market was not even tested. Indeed, Mayor Howard gave evidence that he offered the position to another Council officer first, so John Marik was not even his 'first choice'. If a direct appointment were to be made, a formal process should have been followed, ensuring transparency of Council's decision-making process. That was not done. That was poor governance.

As identified by Mr Marik himself in evidence before the Board, the process adopted could tarnish the appointment so far as the public is concerned. The Board agrees that there may always be a question mark over the appointment, which is unfair to Mr Marik.

The manner in which this appointment was made, and many other issues that the Board has considered, compels it to conclude that there is insufficient training and education of people who are elected to Council concerning the exercise of their duties and obligations.

That should, in the Board's view, be addressed by a system of compulsory continuing development for councillors. This could be along the lines of the continuing professional development requirements of many professions, or the director development requirements now put in place by the Australian Institute of Company Directors.

The Board notes that many of the councillors who appeared before it, including Mayor Howard, considered that further education was necessary, and not just for newly elected councillors.

Findings

13.1. By directly appointing Mr Marik to the role of general manager, Council have met the minimum requirements of the *Local Government Act 1993* as it was in force on 6 December 2022.

13.2. In relation to the appointment of the general manager, Council did not demonstrate good governance or contemporary human resources practice by:

- not inviting applications publicly for this important role;
- not undertaking a formal interview or assessment process to ensure that the appointee was the correct strategic fit for Council;
- not preparing a detailed role description and statement of expectations for the general manager role; and
- not ensuring that all councillors were adequately trained or experienced to assess the requirements of the general manager role in relation to Dorset Council or were supported by an external recruitment adviser before proceeding to make a decision about the appointment.

NOTE: The Board wishes specifically to note that the findings of the Board in relation to the appointment of the general manager should not be read or construed in any way that John Marik was not a suitable appointment to the role. Indeed, Mr Marik may well be the best person for the role. However, without the Council undertaking a transparent appointment process that exhibited good governance and contemporary best human resources practice, there will continue to be public conjecture in regard to the appointment.

Recommendations

13. That a compulsory and enforceable ongoing development and training program for all councillors include training on general manager recruitment, appointment and performance assessment.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions, the Board determined not to make any change to its findings or recommendations.

The Board received submissions from Dorset Council, which included that in making the appointment it prioritised 'loyalty, stability, strategic fit and financial prudence'. That

may be so, but in the Board's view each of those issues should have been addressed within a public application and subsequent interview process.

The Board received submissions from Dorset Council to the effect that it would be inappropriate for any more rigorous requirements to be placed on Dorset Council than on other councils. The Board's recommendation is one directed to the whole local government sector, and in making that recommendation the Board acknowledges that the issues identified in this report may be present in other councils throughout the State.

After carefully considering Dorset Council's submissions, the Board determined not to change its findings or recommendations.

14. Workshops

Terms of reference

(1.5) That the council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

(2.2) The performance by councillors of their individual and collective functions under section 28 of the Act, including monitoring the performance of the general manager and monitoring the manner in which services are provided by the Council.

Issue

The Board received a number of submissions in relation to the conduct of Council workshops. Additionally, in direct evidence given at Board appearances significant concern was raised that the Council workshops were often used as a de facto decision-making forum.

Consideration

The Board heard that workshops were an opportunity for briefings from Council officers on matters of importance and as a forum for discussing Councils options in relation to particular matters. Further, several people gave evidence in submissions or at appearances that while no formal decisions were made at workshops there was a strong perception that the workshop was the forum to ask questions and debate matters rather than when the matter may be listed on an open Council agenda.

Some recorded informal notes from workshops were kept by Council, but these were not provided to the Board. In addition, several councillors stated that the proceedings at workshops were required to be confidential.

Evidence given was that frequently when a workshop matter was subsequently listed on a Council agenda, debate at the public Council meeting was often curtailed and questions were discouraged or refused on the basis that these had already been canvassed at the workshop. The perception, rightly or wrongly, was that the Council meeting was merely a means of ratifying matters that had been considered behind closed doors.

The Board is satisfied from a review of the evidence that, on occasions, questions or further information sought at Council meetings were met with hostility or were merely glossed over on the basis that the matter and questions had been canvassed previously at a workshop. One example was a councillor who, when she asked questions on a resolution at Council meeting, was admonished by another councillor for ‘grandstanding’. The Board’s view is that in that circumstance she was doing what

members of the public who may have been in attendance would expect, and what she was entitled to do under regulation 22 of the *Local Government (Meeting Procedures) Regulations 2015*. Another councillor submitted to the Board that Dorset Council meetings were generally short meetings with little debate, consensus having been established at the workshop held before.

This would clearly be contrary to the statutory functions of Council to represent and promote the interests of the community and to provide for the peace, order and good government of the municipal area. Also, because there appears to be no record kept of the conduct of workshops, it raises a significant question about a councillor's ability to recall accurately what transpired at a workshop.

Another councillor gave evidence that they preferred to listen at workshops, and then take time before the subsequent council meeting to consider the matter discussed and would then debate the issue at the meeting. Debate over resolutions at Council meetings at which the public attend is a fundamental aspect of those functions, as is the requirement for the public notification of meetings, and the requirement to make available to members of the public the agenda and any associated reports and documents at least four days prior to an ordinary Council meeting.

The Board recognises the importance of a workshop program in enabling Council to receive detailed briefings and discussion in regard to often complex matters. However, workshops should not be used as a substitute decision making forum or as a forum from which the public is excluded from listening to and observing the questioning and consideration of an issue by their elected representatives. These functions should properly occur at an open Council meeting.

Findings

14.1 The manner in which workshops were conducted raised the prospect that debate at a subsequent council meeting on the same resolution might be curtailed, contrary to the statutory functions of Council.

Recommendations

14. That the *Local Government (Meeting Procedures) Regulations 2015* be amended to clarify that workshops must not be used by Councils as a determinative forum for matters that should rightly be considered in open Council meetings.

15. That the *Local Government (Meeting Procedures) Regulations 2015* be

amended to require Councils to keep a record of the proceedings of a Council workshop.

Submissions on draft findings

The Board makes no findings concerning any particular person in relation to this matter.

The Board received submissions from Dorset Council, which included that some record of workshop proceedings was kept, called Briefing Workshop outcome notes. These had not been provided to the Board with the other workshop papers it requested. The Board also relied on oral evidence given by Mayor Howard, which was that workshops were not recorded, that oral updates were given but "there's no minutes or anything like that".

After carefully considering Dorset Council's submissions, the Board determined to change a finding concerning the record of proceedings at workshops held by Dorset Council, but otherwise not to change its findings or recommendations.

Bias and/or improper use of legislative authority

15. Federal Tavern – Derby

Terms of reference
(1.1) Council officers have used legislative authority improperly and/or with bias.

(3.1) Council failed to implement a policy or process for preparation of dilapidated building reports that ensured the preparation and consequences of the reports were lawful.

Issue
Submissions were made concerning the owner and licensee of the Federal Tavern in Derby. A number of submissions received by the Board contend that the owner was the recipient of unfair treatment or misuse of authority by council officers, and in particular by former general manager, Tim Watson.

Dilapidated building report

In 2019, action was taken under the *Building Act 2016* (the Building Act) concerning the alleged physical condition of the Federal Tavern. The then general manager, Tim Watson, commissioned a dilapidated building report. He engaged Barry Magnus, who was at the time the building surveyor at West Tamar Council, with whom Dorset Council occasionally shared resources.

Mr Magnus gave evidence that he had been a building surveyor for over 40 years, working privately and in local government. He had been in Tasmania for about 15 years. He was asked how many dilapidated building reports he had prepared, to which his answer was that he had "probably done three".

He said his recollection concerning the Federal Tavern was that he was probably contacted to "ask if I could actually look at a building, I was informed there had been some complaints about". He could not recall if that contact was Tim Watson, or the Director of Community and Development, Rohan Willis. Such contact was normally by phone. He had no record of any email. He said he had made enquiries of both West Tamar Council and Dorset Council for documentation concerning his engagement, and there were none. He later said that he did not believe he was specifically told there had been a complaint about the tavern or what it was about.

Mr Magnus gave evidence that, when he went to Dorset, he would usually drop into Council chambers in Scottsdale to discuss what work was to be done. He said that he

told the council officer that with respect to dilapidated buildings he would normally go to the building on a complaint, which would explain the reason for going out to look at it. In this case there was no complaint given to him, and he undertook an external inspection only.

Mr Magnus was required by the Board to produce any notes he made during his inspection. He stated that he would have made some “very, very brief” notes on the inspection sheet, but he didn’t normally keep them. He prepared a report which is undated but records that the ‘inspection’ was carried out on 21 February 2019.

The Board considers the use of the term ‘inspection’ is generous. Mr Magnus simply took photos of the outside of the building. He did not attempt to use powers under the Building Act to inspect the inside. He said that the council officer he spoke to had told him to “just do a visual inspection”. The Board observes that almost every inspection of a building will be ‘visual’.

His report can best be described as ‘vanilla’. It contains little of substance. The entirety of its analysis is as follows:

> The inspection has revealed that movement is evident in the external views of the building it [sic] can be seen in deflection in the roof areas, walls, decks and stairs. As this building is used as a public building it is consider [sic] that the source of the movement needs to be identified, and any repair or rectification should be carried out to ensure the ongoing safety and use of the building.
>
> It is considered that the building is considered [sic] a Dilapidated Building from reference to Director’s Guideline – Guideline No 2 issued 29 May 2018, for the following reasons:
>
> - Damage to roofs and roof coverings;
> - Damage to the exterior of the building;
> - Movement within the building structure surfaces.

The report goes on that it recommended that the owner be required to have the building inspected by a structural engineer and a report be provided recommending the work that was required to ensure the building is structurally adequate.

The Director’s Guideline contains basic information about the process surrounding dilapidation contained in sections 241-244 of the Building Act. A dilapidated building is defined in section 4 of that Act to be a building that, because of neglect, disrepair, defacement or damage, is of an appearance that is unsightly, particularly in comparison with its surroundings. Mr Magnus’ report does not address, or even refer to, this definition.

The Guideline gives some dot-point examples of “specific conditions that may cause a building to be considered dilapidated” including:

- significant damage to roofs, roof coverings or guttering; and
- significant damage to exterior building surfaces.

Mr Magnus’ report refers to this type of damage, but does not say it is ‘significant’. In his evidence before the Board, he did not expand on this. Significant damage is not apparent to the Board from the photos.

So far as concerns movement within the building structure surfaces, Mr Magnus said in his evidence that from the photos he took it was not:

> …super, super clear but you would actually see from the photos on the front that the fire escape and that [sic] is a bit out of level.

There are no photos of the front in the report.

In his evidence he also said that:

> When you actually look – you probably can’t pick it up from the photo, but when you looked along the roofline, there was a fairly significant deflection in the ridge, which tended to indicate maybe that there was some movement in the building that...should be inspected by a properly qualified engineer.

The Board agrees that you cannot pick it up from the photos.

Rohan Willis appeared before the Board and confirmed that it was he who spoke to Mr Magnus. Mr Willis said that the then general manager, Tim Watson, told him he had received ‘numerous complaints’, and that the general manager thought there were potential issues with the structural integrity of the building. Mr Magnus’ opinion was that a dilapidated building report ought to be prepared that “gives consideration to the building”. Mr Willis was also of the view, incorrectly, that a dilapidated building report is to be prepared by a building surveyor.

No written complaints, even by email, were produced by Mr Willis. Mr Willis said that he received a verbal complaint once every six months such as:

> …that’s a bloody eyesore. Look at it. The condition of it. It’s a shithole.

When pressed about why Mr Willis didn’t act on those complaints at the time, his response was that he:

> …probably didn’t understand how to go about it.

He did mention that the *Building Act 2016* introduced the concept of dilapidation and gave an alternative process of enforcement. Mr Willis is mistaken about that because the dilapidation report process was introduced into the *Building Act 2000* in November 2013, over five years before.

Mr Willis said that the general manager, Tim Watson, accompanied Mr Magnus when he performed the drive-by inspection. When asked why the general manager would go himself, Mr Willis said:

> …he's passionate about Derby. Like, perhaps a bit too passionate and how it appeared to the outside world.

Mr Willis was asked why, if in the general manager's view, it was such an urgent matter, it had not been progressed and that all of a sudden it did not appear urgent. Mr Willis replied:

> …that it was probably just that other priorities came up and this fell by the wayside…

And:

> …an unwelcome interruption came in, in the form of the Derby depot.

Mr Willis also said that, for what it was worth, he wasn't overly passionate about the whole thing.

The Board has difficulty in accepting that, from the fleeting 'inspection' of the building on 21 February 2019, there was a proper basis to issue a dilapidated building report. The Board accepts that it was appropriate for Mr Magnus to recommend to the general manager that there be a structural inspection by a qualified engineer, but this should have been done before any dilapidated building report was issued.

In any event, Mr Magnus was not authorised to issue any dilapidated building report. Under section 241 of the Building Act, if the general manager believes that a building may be dilapidated, the general manager may inspect the building and is to prepare a dilapidated building report.

Mr Magnus accepted, in his evidence before the Board, that he was acting as the agent for the general manager, who was responsible for preparing the report. This is expressly provided for in section 241(3) of the Building Act.

Mr Watson in his evidence before the Board said he was unaware that the general manager is the person authorised to produce a dilapidated building report.

Further, section 241(2) of the Building Act provides that a dilapidated building report is to state the building work, or other work, that the general manager considers is required in order for the building to cease to be a dilapidated building. The undated report does not state any building work, or other work, that is required. All it does is recommend that the building be inspected by a suitably qualified structural engineer for a report on what work is required.

Mr Watson gave evidence that it was not brought to his attention that further investigations were necessary, and that he relied on Rohan Willis to give him that advice. He went further and said that he thought "Rohan didn't handle it well…he didn't follow through." This seems consistent with Mr Willis' evidence that he wasn't overly passionate about the whole thing.

In evidence before the Board, the owner stated that Rohan Willis had rung and asked what the owner was going to do, and he also said "well you shouldn't even be there…"

The Board is firmly of the view that a general manager should be aware of the authority given to them under any legislation. The Board notes that Council does not appear to have been advised about this whole process, and that council officers also appear to have been unaware of the proper process.

Dilapidated building notice

Despite the fundamental omission from the report of the work that is required, on 3 April 2019, Dorset Council purported to issue a Dilapidated Building Notice which was signed by Rohan Willis (under delegation from the general manager).

This notice states that it is issued under section 237 of the *Building Act 2016* and stated that the relevant work, or other work, was:

> Building must be inspected by a suitable qualified engineer; and
> Report to be provided to General Manager and the owner recommending work that is required to be undertaken to ensure that the building is structurally adequate for use.

Noting that a dilapidated building notice is in fact to be issued under section 242 of the Building Act, the Board considers that this notice was not lawfully issued because it did not state the work that was required. Instead, it identified further inspections that were necessary to be undertaken (in fact by the general manager) in order to identify what work, if any, was actually required.

Had the notice been properly issued, the permit authority could issue a building order under section 249 of the Building Act directing the owner to perform the building work, or other work, that is required. Of course, that work had not yet been identified.

Mr Magnus provided the Board with an email from an administration officer at Dorset Council dated 27 May 2019 in which the officer makes this very point, when she asked Mr Magnus to help her out "…as to the work needed to be completed to get it up to standard."

Apart from what was in the dilapidated building report, which the Board notes does not in fact identify any work, she asked:

> Is there any other work that needs to be done?... Also, at what stage can occupancy be taken away from the building?

A draft building order was provided to Mr Magnus which required the recipient to replace/fix damage to the roof and exterior of the building and to "movement within the building structure surfaces" [sic].

Mr Magnus was asked about his reply to that email. Unhelpfully, there was no email reply. He gave evidence to the Board [transcript 556]:

> …I would have said to him, this movement within the building structure surfaces is probably not the correct thing they should be investigating - you know should require investigation of the movement by a suitable, qualified person.

He agreed that the best process would have been to have a structural engineering report before any building order was issued.

He had no further involvement.

Council issued a building order on 27 September 2019, which was five months after the notice.

The Board considers this delay does not reflect any genuine concern by Council about the condition of this building. Mayor, Greg Howard, and Deputy Mayor, Dale Jessup, were expressly advised of the intended building order by email from Tim Watson dated 27 September 2019. The Board is not satisfied that either the mayor or the deputy mayor had any prior knowledge of this issue.

In that email Tim Watson stated that if [the owner] ignored the order and continued to operate as a commercial building then

> …she will incur a fine... [the owner] has caused an enormous amount of grief for Council and others regarding Blue Derby so it is only fair that she has her own house in order…

Tim Watson also referred to “obvious structural defects”, which it is noted had not at that time in fact been identified.

Indeed, any structural defects with the Federal Tavern have still not been identified. Council has not taken any action since the issue of the building order in September 2019. No report from a structural engineer has been prepared. No works have been identified. This also strongly suggests to the Board that there was not any proper basis for issuing the dilapidated building notice in the first place.

At no stage did any officer or agent of the Council go inside the building to inspect it. The Board considers that such an inspection was necessary before there could be a proper basis for preparing a dilapidated building report. Without knowing what work, if any, was required, the report could not lawfully be prepared.

The Board issued a formal requirement to Dorset Council to produce all documents it held relating to the structural stability of the Federal Tavern. Council advised that there were none.

The Board considers that the tone of the email from Tim Watson reflects that the process was more about retribution for the “grief”, rather than any justifiable reason under the Building Act. It is fortified in its consideration by the fact that Mr Watson himself attended with Mr Magnus for the remote inspection, something which the Board readily determines was unnecessary, and critically by the fact that nothing has been done following the issue of the building order.

Findings

15.1. The ‘dilapidation report’ concerning the Federal Tavern, which is undated but refers to an inspection undertaken on 21 February 2019, was not lawfully prepared. It was not prepared by the general manager, and it did not state the works that were required to be done.

15.2. The Dilapidation Building Notice issued on 3 April 2019 by Rohan Willis was not lawfully issued.

15.3. The Building Order issued on 27 September 2019 by Rohan Willis was not lawfully issued.

15.4. There was no proper basis for preparing the dilapidation report as at 21 February 2019.

15.5. The process starting and following the dilapidation report was an act of

retribution by Tim Watson against the owner of the Federal Tavern for perceived "enormous grief" the owner caused regarding the Blue Derby Mountain Bike Trails. Accordingly, it was an improper use of statutory authority.

Recommendations

16. That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* to implement a procedure to ensure that any actions taken by Council under Part 18 of the *Building Act 2016* are undertaken lawfully.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined not to make any change.

The Board received submissions from Dorset Council including that a Ministerial direction is not necessary where its effect is to require compliance with the law. The Board does not agree, and the circumstances considered in this section demonstrate such a lack of compliance that a Ministerial direction, which carries with it additional consequences, is appropriate.

Nuisance abatement notices

Another issue concerning the Federal Tavern was the issue of abatement notices concerning a nuisance alleged to be an accumulation of rubbish on the premises. The owner gave evidence that this was recyclables that she retained for recycling. These recyclables were stored in large bags in the Federal Tavern garage, which fronted Main Street and did not have a door. The Board also received evidence that there was other rubbish, including soft plastics and traces of vermin, within the recyclables, which were publicly visible.

The owner attempted to conceal the large bags with a blue tarpaulin but that was not overly effective. Mr Willis gave evidence that he received reports from Council's Environmental Health Officer, following the receipt of complaints, that satisfied him that an abatement notice should issue. That occurred but was not complied with.

The Board considers that the retention of recyclables in the garage of the Federal Tavern may have been appropriate as a short-term measure and should have been dealt with by appropriate disposal on a regular basis. That did not occur, and it was reasonable in those circumstances for an abatement notice to issue.

The owner should have complied with that notice but did not. As a consequence, council officers attended to remove the material. It was described by Rohan Willis as being waste that was 'putrid'. The Board has seen some photos of the removal process. It is satisfied that Council was justified in taking the action to remove that material.

Under section 204A of the *Local Government Act 1993*, where a person does not comply with an abatement notice, Council may issue and serve an infringement notice with a penalty of three penalty units. Infringement notices in this sum were issued to the owner, and the Board is satisfied that Council's actions in doing so were not inappropriate.

Indeed, there was evidence given from a number of witnesses that the owner simply ignored correspondence from Council and notices. Unfortunately, it appears that the owner of the Federal Tavern found it difficult to contact and speak with anyone at Council, which has exacerbated otherwise apparently straightforward issues.

Findings

15.6. The issue by Council of abatement notices and infringement notices concerning the storage of recyclables in the garage at the Federal Tavern was not inappropriate.

Recommendations

Nil.

Parking notices

Another issue that was raised concerns on-street car parking at Derby, in particular in the vicinity of the Federal Tavern. The Board has received evidence from many people and has visited Derby to view the location.

The Board is satisfied that there is a significant issue with parking on the narrow Main Street at Derby, which is a consequence of the success of the bike trails attracting visitors. While it may have been the case that many log trucks in years past have traversed this section of road, without issues with parking, the Board is satisfied that the circumstances have changed remarkably in recent years. The Board heard evidence from many witnesses about the substantial increase in traffic, which is almost exclusively from out of the area. This has resulted in an increase in parking requirements, and in parking movements, including manoeuvring in Main Street.

The Board is satisfied that the creation of restricted parking zones, and some no parking zones, is a proper response by Council to this developing issue. A resident whose property is on a main road in a township does not have a right to park in front of their premises. Whether they can depend on what restrictions may be in place.

In the case of the Federal Tavern, the owner had off street parking in the garage, but that was used for the storage of recyclables. Without the ability to park in that garage, the owner could park in accordance with any restrictions in place.

It appears to the Board that the owner adopted an attitude that the imposition of the parking restrictions was improper, or in some way to harass her. The Board is not satisfied that is the case.

The owner gave evidence that the then general manager, Tim Watson, on occasion was in Derby taking photos of the Federal Tavern and her vehicle, and making notes, and afterwards she received a further parking infringement. The Board also heard evidence from a number of witnesses that the general manager took on responsibility for the operations at Derby and spent a lot of his time there. If there were apparent breaches of parking restrictions, it is unsurprising that action was taken to address them.

That said, the evidence before the Board was that six infringement notices were issued to the owner between 3 May 2022 and 22 June 2022 in respect of two vehicles. The allegation in each was parking for longer than permitted in the zone in Main Street. The Board noted that these infringement notices were numbered 191, 194, 195, 196, 198 and 199. This demonstrates that most infringements issued by Council in this period were to the owner. Parking infringements do not appear to be a common action at Dorset. Further, the infringements 195 and 196 were issued on the same day. This was of concern to the Board.

The Board also has evidence of an email from Tim Watson to a Grant Kearney, who operated a business in the Main Street. That email, dated 10 May 2022, said:

> Hey Grant,
>
> I'm getting feedback that some of your staff are parking all day in Main St. We are fining [the owner] on a number of fronts so not good if we are seen to be singling her out. If you could talk to your people that would be helpful. Tell them they can park to the rear of the town hall on the edge of the road. There is heaps of room there.
>
> Cheers

The Board notes the familiar tone of this email and is satisfied that Mr Watson and Mr Kearney were well known to each other. The Board also notes that if Mr Kearney's staff were "parking all day" in Main Street, then they should have been issued with infringement notices. This evidence suggests that there is an element of harassment towards the owner of the Federal Tavern, notwithstanding her multiple breaches of the parking zones.

When taken into consideration with an earlier email in 2019 from Tim Watson to Rohan Willis and Dwaine Griffin about gardening rubbish placed by the tavern owner which he concluded "I really want to fine this woman", the Board is comfortably satisfied that Tim Watson was motivated to use the parking infringement process to harass the owner of the Federal Tavern.

The non-payment of these notices was reported to the Monetary Penalties Enforcement Service, which increased the amount claimed from the owner.

The Board has seen correspondence dated 27 March 2023 from Council's lawyers to lawyers acting for the owner, in which it is stated that Council became aware of an error regarding the penalty amounts in these infringement notices, and that they were all withdrawn. Further, the Council conveyed its sincere apology to the owner.

Impounding of a vehicle

Submissions raised the issue of Council impounding a vehicle belonging to the owner of the Federal Tavern, and which has remained impounded.

The Board heard evidence of ongoing contact between the Council and the owner, including that parking was available for the vehicle approximately 100 metres along the road at the Town Hall. However, the owner continued to park the vehicle in restricted zones. The issue of infringement notices and the subsequent impounding appeared to the Board to be justified.

The owner has been advised of where the vehicle is impounded and how it may be recovered but had not done so at the time of the Inquiry.

Findings

15.7. The then general manager, Tim Watson, used, or directed other council officers to use, the parking infringement process to harass the owner of the Federal Tavern.

Recommendations

Nil.

NOTE: the Board did not consider whether Tim Watson's actions in these findings may have been in breach of his employment agreement. His employment ceased in December 2022.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined not to make any change.

After carefully considering Dorset Council's submissions, the Board determined not to change its findings or recommendations.

16. Treatment of Lawrence Archer

Terms of reference
(1.1) council officers have used legislative authority improperly and/or with bias.

(1.4) The general manager has tolerated retributive action against people that disagreed with council, the mayor or the general manager.

Issues
Submissions were received that actions taken by council officers against Lawrence Archer were retributive.

Background
Mr Archer is a resident in the municipality and owns a house in Bridport with his wife. He was for many years a councillor in the neighbouring George Town municipality. For a number of years, he was mayor. He subsequently became a councillor in the Dorset Municipality in 2014, for one four-year term.

Evidence received by the Board indicates that there developed a level of conflict between Mr Archer and Mayor Greg Howard and the then general manager, Tim Watson.

It appears that this may have begun through Mr Archer raising, at council meetings, various questions about process and reporting. Mayor Howard was first elected to Dorset Council as deputy mayor in October 2014, and in July 2015 was elected as mayor following the death of Mayor Barry Jarvis. He therefore became mayor only nine months after being first elected to Council.

In hearing evidence from a number of witnesses, the Board gained the impression that Mayor Howard may have found it somewhat challenging dealing with Mr Archer's level of questioning in meetings.

Mr Archer described the workshop process that was followed by Dorset Council, and that what was discussed at workshops was required to be kept confidential. He described how, on many occasions when a resolution was put up at a council meeting following an earlier workshop, debate at the council meeting was curtailed on the basis that the outcome "had been agreed" at the workshop and that the resolution should be decided accordingly. Mr Archer described how his practice was generally not to 'show his hand' at workshops, but to consider the information provided at them and debate the issue at the council meeting.

He gave evidence that he considered that, many times, the level of information provided to councillors was only the level which management considered would be necessary to obtain the resolution desired by management, and was not necessarily complete. He gave some examples of information he sought concerning TasWater, the general manager's contract, and the credit card statements for the account used by the general manager and the mayor. He said that in 2018 the general manager brought Code of Conduct proceedings against him, alleging harassment by making repeated requests for information.

Those Code of Conduct proceedings were dismissed, and the Panel found that Mr Archer's requests were not improper. The Board finds this outcome not to be surprising. Further, so far as requests for information concerning the general manager's contract were concerned, given that section 28(2) of the Act provides that one function of a councillor is to appoint and monitor the performance of the general manager, requests for further information appear entirely appropriate.

Mr Archer gave evidence that, at those Code of Conduct proceedings, the general manager was represented by the mayor as his advocate. The Board was surprised to hear this evidence. The relationship between a mayor and a general manager is necessarily one which involves a great deal of contact and discussion, but should always reflect the distinction between governance and management/operations. It is the most important 'relationship' within a council and is crucial to a council functioning effectively.

But if such a relationship becomes too close, so that there may be a perception that the general manager does what the mayor wants or vice versa, that effective functioning may be compromised.

Further, under section 27 of the Act the mayor has the function to lead the monitoring of the performance of the general manager, and a 'too close' relationship may well compromise the proper exercise of that function as well. Under the same section, the mayor has the function of promoting good governance by, and within, Council. By 'going in to bat' for the general manager against another councillor, in the Board's view the mayor placed himself in a position of conflict of interest. It seems clear that his interest was to use the opportunity to maintain his ongoing conflict with Mr Archer, which was plainly conflicted with his statutory role.

In the Board's view, by representing the general manager at a Code of Conduct hearing against Mr Archer, Mayor Howard demonstrated a significant lapse in judgement and placed himself in that position of conflict.

That complaint was determined in September 2018. The substance was that Tim Watson complained that Mr Archer requested a meeting with the Director of Corporate Services without seeking authorisation from the general manager. That would be in breach of then part 7 clause 5 of the code of conduct.

The complaint was upheld, but no sanction was applied. That was because at all material times, Tim Watson had been on leave between 4 April 2018 and 10 May 2018, and had travelled overseas to the United States. No acting general manager had been appointed by Mayor Greg Howard, who it will be remembered, represented Tim Watson at the hearing of the complaint.

Mr Watson had emailed all councillors before going on leave saying that he *"had put in place specific delegations to deal with any decisions that would ordinarily require my approval. Whist I don't want to get involved in the day to day minutiae whilst I am away I will of course be staying in touch with the guys."*

Mr Archer subsequently requested a meeting with, and met with, the Director Corporate Services. He did not seek approval from the general manager before doing so, because he was away, and because of the terms of the email sent to councillors.

On his return Tim Watson made a complaint. The Code of Conduct Panel made it clear that the breach was "so minor that it does not even merit a caution". It referred to the circumstances of Tim Watson's absence and the terms of his email. It observed that a reasonable person would consider that Mr Archer's requirement to seek permission to talk to a staff member could constitute one of the minor matters referred to in the email.

In the Board's view, this decision demonstrates more unreasonable action by Tim Watson and Mayor Howard concerning Mr Archer. Indeed, the making of this complaint demonstrates a level of pettiness that in the Board's view reflects poorly on both Mr Watson and Mr Howard.

Mr Archer did not stand for Council in the 2018 elections, but he continued to attend council meetings as a member of the public, which was his right, and to ask specific questions directed to council decisions. Council's response to this, primarily through General Manager Tim Watson and Mayor Greg Howard, was reflective of their animosity towards him. The Board has considered comments made by the Ombudsman in his decision on a review of another of Council's refusals to provide documentation to Mr Archer under the *Right to Information Act 2009* in the following terms:

> Almost all public bodies deal with individuals who may question their integrity and publicly criticise their actions or the use of public money. Public bodies maintain obligations of professionalism and to ensure an appropriate level of access to legal processes (such as the Right to Information process), even to individuals with whom they may be in dispute. Refusal of access to information should not be used as punishment for an applicant's behaviour which Council perceives as inappropriate in other fora or used to supress critical commentary of a public authority's actions in print or online.

The Board observes that these comments are plainly correct and similarly apply to participation in "other fora", such as council meetings conducted in public.

The Board received evidence that Mr Archer at times asked multiple questions about certain issues, one example being the construction/approval of the Derby depot. Mr Archer was not satisfied with some of the information provided and made a separate RTI request, which of course was his right.

The Board has considered information given to councillors by Tim Watson about the Derby depot when it first became a public issue, and has noted that information was far from complete, because it failed to refer to the very significant matter of multiple demands to stop work which had been received, and ignored, by Mr Watson.

It is not necessary to review further the type of questioning or requests raised by Mr Archer.

Ban

In the context of the background set out above, a great deal of material was placed before the Board which showed a developing animosity between the general manager and Mr Archer, and the mayor and Mr Archer. This included numerous emails which contained language that the Board considers to have been 'unhelpful' in dealing with various issues. The Board does not consider it necessary to set out any further correspondence.

This animosity appears to have come to a head on 4 March 2022 when the general manager sent a letter to Mr Archer to inform him that the general manager had "decided to ban yourself from all Council buildings and facilities, and attendance at any Council meeting effectively immediately." It also purported to require Mr Archer not to approach or make any contact with any council employee, contractor engaged by Council or elected member.

The letter asserted that the decision was made pursuant to section 19 of the *Workplace Health and Safety Act 2012* (the WHS Act) which required Council "to ensure employees and other persons are provided with a healthy and safe workplace".

It identified the basis of the ‘ban’ was “your behaviour over an extended period of time in both Council meeting and in Council’s reception area [was] negatively impacting on the health and wellbeing of elected members and staff.” Significantly, it did not attempt to identify what that behaviour was.

Following Tim Watson’s resignation from Council in December 2022, the ‘ban’ was subsequently removed in 2023.

A number of things must be said about the ‘ban’. First, so far as it purports to apply to persons other than employees, it appears to be outside the scope of section 19 of the WHS Act.

Second, and significantly, Council has no power, under section 19 of the WHS Act or otherwise, to restrain Mr Archer from approaching or making contact with either employees or council members or other persons at any place, which is the purported effect of the ‘ban’.

Third, the Board questioned Mr Watson about the asserted ‘behaviour’. His answers were less than illuminating. He gave three examples.

The first was that Mr Archer was ‘eyeballing staff members in council meetings’. When asked why ‘eyeballing’ anyone could be conduct warranting such a complete ‘ban’, he responded:

> Well there was a range of behaviours which Lawrence did. I saw him accost John Marik in a council meeting, which was totally inappropriate…I reckon Lawrence was challenging the information that John was providing.

Secondly, Mr Watson referred to Mr Archer sneering and interjecting at meetings. And thirdly, Mr Watson also referred to an occasion when Mr Archer would walk back and forth in front of another councillor’s business ‘just to aggravate her’.

The Board heard evidence from a council employee who attended most meetings. When asked about Mr Archer’s behaviour the employee said:

> I’ve got no problems with Lawrence…He doesn’t worry me. He doesn’t threaten me. I had a pretty decent relationship I thought when he was a councillor…sometimes at council meetings a question would be answered and he’d mumble …So I feel that sort of probably grated on a few nerves…

This employee couldn’t tell the Board why Mr Archer was banned.

Another councillor stated to the Board that at meetings and when visiting the council office, Mr Archer took on a very angry and aggressive tone.

None of these matters provide, in the Board's view, any sufficient basis for issuing what purports to be a ban from attending any Council premises, and from approaching or contacting a range of persons (not only employees) anywhere in Tasmania. The Board considers the 'ban' to be one made without lawful authority in part, and to the extent that there may have been lawful authority pursuant to section 19 of the WHS Act, it is entirely disproportionate to the 'behaviour' alleged.

First and foremost, the behaviour at council meetings, if it was such as to warrant intervention, should have been addressed by the mayor as chair of the meeting. Mr Watson explained:

> I couldn't get the Mayor over the line in that respect.

Not getting the mayor 'over the line' could also indicate that the mayor did not consider the conduct warranted intervention at the time it occurred.

Second, there was no correspondence to Mr Archer concerning his behaviour and providing a warning that a ban such as contemplated might result if his identified behaviour did not improve. Nor has there been any correspondence identifying what the 'behaviour' was. That would be an obvious first response, rather than imposing such a serious restriction on Mr Archer's rights as a resident of the municipal area.

The Board finds that there was not any proper basis for this purported extensive 'ban', including purporting to restrict Mr Archer's conduct away from any Council building and, potentially, anywhere in Tasmania.

Further, given the background matters, including the Code of Conduct Panel issues, the Board is comfortably satisfied that the 'ban' dated 4 March 2022 was retributive action by Tim Watson against Lawrence Archer for his persistent questioning of Council actions and Tim Watson's actions, and persistent requests for information.

The Board is reinforced in this satisfaction by considering two reports prepared by Tim Watson for council meetings held on 20 December 2021 and 21 February 2022, which was shortly before the ban. Those reports were titled "Community Disrupters", one of which was identified to be Mr Archer, and focused on "constant disruption" and "resultant diversion of Council resources that is occurring as Officers prepare responses". The reports set out analysis of questions asked at public question time and noted "with these democratic freedoms there is mutual obligation that these

freedoms and access to information are not abused for the sole purpose of being disruptive."

The February 2022 paper identifies that, since December 2021, Mr Archer had lodged representations against development applications. Mr Watson stated that in doing so, Mr Archer:

> …clearly has no discernible interest in the development.

The paper goes on to make observations on Mr Watson's views about other representations and appeals, the relevance of which is not apparent.

There are two matters that arise from these reports. First, they demonstrate that Mr Watson had a fundamental lack of understanding about the statutory right to make a representation against a proposed development. Section 57(5) of the *Land Use Planning and Approvals Act 1993* (the LUPA Act) provides that any person may make a representation relating to notified development applications. 'Discernible interest' has nothing to do with it.

Second, and more importantly for this issue, these reports contain no identification of any behaviour by Mr Archer, apart from his lodging of objections and the resources that have been applied to his questions. It is to the Board inconceivable that if there were matters of behaviour of such seriousness to warrant the extraordinary ban that was issued 10 days later, there would have been some reference to the behaviour in the February 2022 report. There was nothing at all.

Infringement notices

Mr and Mrs Archer purchased their dwelling in Bridport many years before he was elected to Dorset Council. At the time of the purchase, he undertook all of the conventional searches, and obtained the certificate issued by Council under section 337 of the Act.

As sold to Mr and Mrs Archer, the dwelling had a garage area which had been converted to living space by the vendors. That was done by the former owners. Mr Archer gave evidence that none of the searches of certificates he obtained at the time of purchase referred to this or identified that planning or building permits were outstanding. Neither were any 'as constructed plans' provided.

Mayor Greg Howard in his evidence referred to the section 337 certificate and claimed that Mr Archer must have known about the issue. The Board notes that a section 337 certificate has no provision for disclosing plans and does not accept Mayor Howard's contention on this point.

As a result of an ‘anonymous complaint’ by a member of the public in 2022, Council investigated whether the garage was being used as a habitable room without approval.

On 12 July 2022, the Council’s Director Development and Community, Mr Willis, and Council Planner Mr Wagenacht attended Mr Archer’s premises to inspect them. Mr Archer refused them entry, pointing out that he was under a ban from contacting any council staff.

Mr Archer sent an email to the Office of Local Government complaining about this, describing it as “Council’s harassment”. He also stated that the matter concerns a room at his house ‘which now appears on Council original plans as an internal garage.’ This comment clearly implies that he considered the plans had been changed.

The Board is satisfied that there was no change. It has seen plans prepared for Mr and Mrs Archer after they purchased the property, for the purpose of obtaining approval for a new, separate garage. These plans clearly note on them that the area of the internal garage is a garage. The draftsperson plainly has referred to council records in preparing those plans.

The Board is satisfied that when Mr and Mrs Archer purchased their house, they honestly believed that the internal garage area was a habitable room. However, it was not approved for that use. Council documents (not provided by way of conventional searches) showed it as a garage.

This situation was of no concern to Council for over 10 years until the ‘anonymous’ complaint in 2022.

The Board notes that all that would be required in these circumstances is for the owner to seek retrospective planning and/or building approval. Unfortunately, the existing animosity between Mr Archer and the former general manager Tim Watson intervened.

Mr Watson subsequently emailed Mr Archer on 13 July 2022 informing him that council officers would be attending over the next few weeks to inspect the property, and to request entry for the purpose of determining if the use of the relevant room was in accordance with the approved use.

The email confirmed that it was a notice under section 20A of the LUPA Act which empowered the general manager to authorise other council officers to enter property.

At this time, the Council’s ‘ban’ on Mr Archer was in place. The general manager addressed this in the email, advising that the ban does not preclude council officers

from contacting Mr Archer to carry out their statutory functions. The Board notes that this email should have been sent before the first attempted inspection.

The following day, Council issued infringement notices purportedly under section 308 of the Building Act, to each of Mr Archer and Mrs Archer. This section concerns habiting a building that is not built as a dwelling. Acknowledging that 'building' is defined as including part of a building, the Board considers that the issue of these infringements was not a proper exercise of the infringement notices process and was done to antagonise Mr Archer. That is evident from the fact that two notices were issued, and there was no prior correspondence mentioning section 308 of the Building Act, nor mentioning the possibility of an infringement notice.

Further correspondence ensued, and Mr and Mrs Archer requested the infringements be withdrawn.

Instead, Mr Watson wrote on 29 July 2022 saying that he had instructed officers to issue additional infringement notices under section 216 of the Building Act. They purported to be for 'use of a garage for non-approved purposes'. The letter also contained further combative language, including:

> I have instructed Officers to issue further infringement notices for non-compliance with the Building Order that requires the ceasing of the use of the garage as a habitable room.

A further four infringement notices were issued on 23 August 2022 allegedly based on two instances of denial of entry on 12 July 2022, the day the council officers arrived unannounced. There were two alleged breaches – one at 2.50 pm and a further one at 3.15 pm.

In circumstances where there was a 'ban' placed on Mr Archer contacting council staff, and where Council's position on the effect of that ban had not been advised to Mr Archer, the Board is firmly of the view that the issue of these notices, six weeks after the event, was improper, and was retributive conduct. This conclusion is readily drawn in the context of the issue of the 'ban' itself, and the issue of two infringements claiming the same breach on the same day within a period of 25 minutes.

Evidence before the Board, including from Rohan Willis who was the officer responsible for enforcement, was that very few infringement notices under the Building Act had ever been issued by Dorset Council. Other than the eight issued to the Archers, Mr Willis could produce only four others issued in 2020, 2021 and 2022. This demonstrates to the Board that council officers had little experience in the issue of such infringements, and further the Board is satisfied that the Council did not have any procedure in place to assess whether the issue of infringements was satisfied.

Ultimately, and perhaps unsurprisingly, Mr Archer and Mrs Archer applied to have the infringements determined by a court, pursuant to the *Monetary Penalties Enforcement Act 2005.* Mr Archer's evidence was that, eventually, the new general manager, John Marik, withdrew the notices. He also gave evidence that he eventually obtained the necessary retrospective approvals and it "didn't even require a paint brush or a hammer and nail."

The Board observes that Mr Archer should have done that at the very beginning. There was no approval for the habitation of that garage. The animosity existing between him and Mr Watson no doubt inflamed the issue; however, Mr Archer was wrong to claim that approvals were not necessary.

The Board considers that the severity of the alleged breaches here are minor, given that the room had been occupied for over a decade, and the circumstances of the sale. The Board questioned Mr Watson about the severity of the breach, and why multiple infringements were issued. He replied:

> …well it was in the context of how they conducted themselves…we felt it was appropriate, given how dishonest Lawrence was and the fact that he refused entry on two occasions.

The underlaying purpose of an infringement notice is to enforce compliance with the Building Act. Mr Watson's actions, in directing the issue of multiple infringement notices for what on any reasonable view is a minor breach, were not directed to that purpose. It was directed as punishment for the Archer's conduct. It was retributive conduct.

Findings

16.1. There was not any proper basis for the purported extensive 'ban' imposed by Tim Watson's letter dated 4 March 2022, including purporting to restrict Mr Archer's conduct away from any Council building and, potentially, anywhere in Tasmania.

16.2. The 'ban' dated 4 March 2022 was retributive action by Tim Watson against Mr Archer for his persistent questioning of Council actions and persistent requests for information.

16.3. The direction to issue eight infringement notices over six weeks was retributive action by Tim Watson against Mr and Mrs Archer as punishment for their conduct. Accordingly, it was an improper use of statutory authority.

16.4. Mayor Greg Howard acted inappropriately in representing the general manager at a Code of Conduct hearing into a complaint made by the general manager

against a councillor.

Recommendations

17. That the Minister direct the Council under section 225(2)(d) of the *Local Government Act 1993* to implement a procedure to ensure that the requirements for the issue of infringement notices under the *Building Act 2016* are satisfied.

18. That the Director of Local Government write to all mayors informing them that it is inappropriate for the mayor to appear as advocate for another person in Code of Conduct proceedings against another councillor.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board made a change to its findings but determined not to make any change to its recommendations.

The Board received submissions from Dorset Council which included that a Ministerial direction is not necessary where it concerns compliance with the law. The Board does not agree as a Ministerial direction carries additional consequences if it is not complied with.

After carefully considering Dorset Councils submissions, the Board determined not to change its findings or recommendations.

Inappropriate behaviour/communications

17. Culture of intimidation at council meetings

Terms of reference

(1.4) The mayor, councillors or general manager has tolerated retributive action against people that disagreed with the council, the mayor or the general manager through, for example, inappropriate and offensive forms of communication.

(2.2) The performance by councillors of their individual and collective functions under section 28 of the Act, including monitoring the performance of the general manager and monitoring the manner in which services are provided by the Council.

Issue

A common theme in submissions received and in evidence heard by the Board related to allegations of poor behaviour by the mayor and councillors at meetings, bullying behaviour at meetings, and generally disrespectful behaviour to each other and members of the public and gallery. This is alleged to have included questions at council meetings being unreasonably refused, councillors being publicly ridiculed or debate on matters being unreasonably restricted.

Consideration

The Board has reviewed minutes and recordings of many dozens of meetings. It accepts that at times these behaviours have gone beyond what would normally be expected as robust political debate, and that bullying and inappropriate language may have been used. This behaviour is undesirable and tends to interfere with the proper conduct of public council meetings. Further, it reflects poorly on those councillors who engage in that behaviour.

The Board spent considerable time considering the conduct of council workshops, and in particular whether they operated in effect as rehearsals for council meetings. Decisions of Council cannot be made at workshops, and while there were several instances where evidence suggested that an outcome of a workshop discussion came close to being a decision, the Board is not able to make any such finding.

The Board was satisfied, however, that on occasion outcomes from previous discussions at a workshop may have been used to limit debate on a particular resolution at the following public council meeting. This practice is inappropriate and deprives members of the public from hearing reasoned debate on resolutions which may concern important or contentious issues. It also may be a cause of the types of behaviour at council meetings that have been referred to.

This, together with appropriate behaviour generally, should be one of the subjects covered in the recommended compulsory development program.

While the Board accepts that many of the behaviours reported were inappropriate, it also accepts that the nature of a council meeting invites differing views, and differing ways of expressing those views. It is also accepted that a manner of expressing views or participation in a meeting may be considered by some members of the meeting or the public to be appropriate, but not appropriate to others.

After giving this issue a great deal of consideration, the Board is unable to conclude that this behaviour has, at any particular time, reached the stage where it has affected the operation of Dorset Council. That said, the Board accepts that some of the behaviour which was described during the inquiry did cause some members of the public to be concerned and disappointed at the behaviour of their local representatives.

The Board notes that the Code of Conduct complaints process contained in the Act provides an appropriate mechanism to deal with such matters.

Findings

17.1 There were instances where the outcome from previous workshops tended to limit debate at subsequent Council meetings.

17.2 While the behaviour of some councillors at meetings was on occasion inappropriate, it did not reach the stage where it affected the operation of Dorset Council.

Recommendations

Nil.

Submissions on draft findings

Nil. The Board makes no findings concerning any particular person in relation to this matter.

After carefully considering Dorset Council's submissions, the Board determined not to change its findings or recommendations.

18. General manager – Inappropriate communications

Terms of reference

(1.4) The mayor, councillors or general manager has tolerated retributive action against people that disagreed with the council, the mayor or the general manager through, for example, inappropriate and offensive forms of communication.

(2.1) The performance by the mayor of his functions under section 27 of the Act, including promoting good governance by, and within, the Council and leading and participating in the appointment, and monitoring the performance, of the general manager.

(2.2) The performance by councillors of their individual and collective functions under section 28 of the Act, including monitoring the performance of the general manager and monitoring the manner in which services are provided by the Council.

(2.3) The performance by the current and former general manager of the functions under section 62 of the Act, including to implement the policies, plans and programs of the council, to be responsible for the day-to-day operations and affairs of the council, to liaise with the mayor on the affairs of the council and the performance of its functions, and to manage the resources and assets of the council.

Issue

Alleged inappropriate or offensive communications from the former general manager.

Background

Many submissions made to the Inquiry raised concerns about inappropriate, threatening and offensive communications from the general manager, either to them personally or targeted at sections of the community collectively.

Submissions and evidence

The Board has received a number of submissions from members of the community, Council and senior State Government officers alleging inappropriate or offensive communications from the former general manager, Tim Watson.

In evidence submitted to the Inquiry by the Department of Natural Resources and Environment, on 8 March 2022 Mr Watson emailed the former State Valuer-General (VG) about valuations for the township of Derby in the following terms (in part):

> You told me you would call me to discuss where you and your people landed on Derby. You have not done that. Quite frankly this is an exercise in gross ineptitude…I question whether you are competent to remain in the role and should be put out to pasture as a matter of urgency.

In a further SMS message to the VG on 8 March 2022, Mr Watson wrote:

> I am expecting you to call me tomorrow morning to explain the abrogation of your responsibilities as the VG. Make no make [sic] mistake I will make you accountable if you continue to refuse to do your job. The email today is just the beginning. Underestimate my persistence and perseverance to your detriment...

In April 2022, a former councillor and long-term resident of Dorset wrote to Council's Director Community and Development, Rohan Willis, about the Dorset Local Provisions Schedule of the Dorset Planning Scheme.

Eventually the resident received the following response from Mr Watson:

> Stop wasting Rohan's time on these issues. We recently consulted with the Bridport community re the Local Provisions of the new Planning Scheme and the height issue simply didn't surface. On that basis we will not be wasting any more time on the issue.
>
> …
>
> Further I have instructed Rohan and his team not to waste their time indulging your neuroses.
>
> Regards
> Tim

In a letter dated 22 June 2022 to a resident about a stormwater matter, Mr Watson made the following comment:

> My observation is that the Right to Information request is nefarious in nature and seeks to apportion blame on Council for what is clearly an illegal treatment of stormwater.

The Oxford dictionary defines 'nefarious' as "criminal, extremely bad".

In an email to a Bridport resident in relation to the clearing of the Bridport foreshore, Mr Watson wrote:

> I suggest that you would be better served badgering others with your negativity and ignorance as I have limited tolerance for such a narrow mindset.

In an email to a Bridport resident Mr Watson made the following comments in relation to another resident:

> With regard to xxxx her comments about effluent were unsophisticated and crass and completely untrue… What xxxx failed to mention on the night is just how well she has done out of Derby off the back of the efforts of Council and the small businesses that have put up their capital and taken the risk of setting up businesses in Derby. At this point in time, she is comfortably sitting on a capital gain of 600k all made within a period of 5 years… further she doesn't even live in

> Tasmania and is just one of the many interstate investors who have capitalised on Councils efforts.

Numerous other like examples were submitted to the Board. The Board accepts that the language and communication style of the former general manager was at times offensive, inappropriate and bullying in nature.

Section 27 of the Act provides that:

> (1) The functions of the mayor are:
>
> (g) to lead and participate in the appointment, and the monitoring of the performance, of the general manager; and
> (h) to liaise with the general manager on –
>
> (i) the activities of the council and the performance and exercise of its functions and powers; and
>
> (ii) the activities of the general manager and the performance and exercise of his or her functions and powers in supporting the council.

Mayor Howard in evidence given to the Inquiry advised that (line 4853):

> There were a small number of occasions where in correspondence that I did see that I thought he'd gone a bit hard, and we had some minor discussions about it.

The Board has seen no evidence to support the view that Mayor Howard took any other action or communicated his concerns in writing to the general manager. The Board does not agree that there were "a small number of occasions."

Findings

18.1. That language used in communications from the then general manager, Tim Watson, was often combative, inappropriate, and offensive in nature and content.

18.2. That Mayor Greg Howard failed to adequately exercise his function in monitoring the performance of the general manager and liaising with the general manager in the exercise of his functions in supporting the Council.

Recommendations

19. That the Director of Local Government write to all mayors reminding them of their obligations under section 27 of the *Local Government Act 1993*, in particular in regard to their function to liaise with and monitor the performance of the general manager on an ongoing basis.

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined not to make any change.

The Board received no submissions from Dorset Council.

19. Mayor – Inappropriate communications

Terms of reference

(1.4) That the mayor, councillors or general manager has tolerated retributive action against people that disagreed with the council, the mayor or general manager through for example, inappropriate and offensive forms of communication.

(2.1) The performance by the mayor of his functions under section 27 of the Act, including promoting good governance by, and within, the Council and leading and participating in the appointment, and monitoring the performance, of the general manager.

Issue

Many submissions made to the Inquiry raised concerns about alleged inappropriate and offensive communications from the mayor, either to them personally or targeted at sections of the community collectively.

Submissions and evidence

The Board has received a number of submissions from members of the community, Council and associated government entities alleging inappropriate or offensive communications from the suspended Mayor, Greg Howard. It is not necessary to set out every instance of communication contained in the submissions.

An example is a submission forwarded to the Inquiry by a Code of Conduct panel member, which included copies of correspondence from Mayor Howard. The submission alleges that the correspondence is rude, vitriolic and bullying in nature. The letter includes:

> …I will be contending that you are so biased and incompetent that you should be removed from the code of conduct panel altogether.

The letter further goes on:

> You are considered by the Local Government sector to be extremely biased against Councillors in general and some individual Councillors (including myself) in particular. Many of your decisions to elevate complaints and subsequently find against Councillors have been derided at LGAT meetings as a joke and there is a general feeling amongst Councillors who have been forced to deal with you that you are so lacking in objectivity that it is a waste of time even defending a complaint.
>
> I find you to be extremely biased, totally incompetent in your role, completely lacking in objectivity and unfit to sit on the panel.

This letter from the mayor, which the Board considers to be extraordinary in its terms, prompted a response from the Director of Local Government to Mayor Howard which in part stated:

> I acknowledge that it is your right to object to the appointment of [member] as Chairperson and to raise any concerns you have with decisions by individual code of conduct panels and with the broader code of conduct framework.
>
> However, as a councillor and Mayor, it is reasonable to expect that you would do so in a professional and respectful manner without resorting to derogatory comments and personal attacks.

The letter further adds:

> While you are entitled to disagree with her views on whether she should recuse herself from the Panel, to put your case strongly, and ultimately to appeal the determination of the complaint should you wish, you should be able to do this respectfully and without recourse to attempts to belittle and bully her.

The Board considers that highly disrespectful, indeed rude, correspondence such as this to a person appointed to a statutory position is conduct that falls far below that which the public reasonably expects of its elected members, especially the mayor. This appears to be an attempt by Mayor Howard to influence the outcome of an inquiry into his conduct. While it was never going to do so, the fact that Mayor Howard sent it demonstrates, in the Board's view, a fundamental and serious lack of judgement.

Numerous other documents and emails from the mayor have been made available to the Inquiry that reflect what can only be characterised as a 'combative' style in their common use of offensive language. Some are simply rude. Of particular note are many internal emails from the mayor that use language as follows:

> "Please find attached my answers to that cockheads questions"
>
> "This cockhead is back"
>
> "Answers to dickheads questions"
>
> "Answer to dickhead...You have either deliberatively and vindictively made this up or you are engaging in a world of fantasy."

There are also many instances of correspondence responding to queries or criticisms which demonstrated an apparent inability in Mr Howard to tolerate criticism.

At his appearance before the Board of Inquiry, Mayor Howard was questioned about

the language he used in emails, particularly in emails sent to council employees.

The following question was put to Mayor Howard:

> Our understanding is on many occasions she said to you, 'We can't send it out like that; how about I temper it a little bit?'

Mayor Howard responded:

> Yes, absolutely. Yes, don't have an issue with that. I'm just one of those people who tell it how it is and openly and honestly and if people don't like it, I'm not too concerned about that.

When asked:

> Because we have seen quite a number of emails and draft letters and whatever where you refer to people by fairly colourful names.

Mayor Howard responded:

> Yes, well I think that – but once again, that is a private communication between [employee] and I, right, it's not the intention of those emails would've gone beyond that two-person communication.

It was then proposed to Mayor Howard:

> But that's not the point of the question. [employee] was an employee of Council. Do you consider it appropriate to use language like that in a communication to an employee of Council?

Mayor Howard responded:

> I think if you look at people who work in country councils, I think that would be commonplace.

When asked again*:*

> Was that acceptable?

Mayor Howard responded*:*

> Don't really have a – haven't given it any thought, don't really have an opinion on it.

The council employee concerned appeared before the Board and was asked about this type of communication and whether they considered it to be professional.

The employee's response was:

> I just shake my head all the time at some of the things that occur with that gentleman.

The Board's view is that communication in these terms has no place in any workplace, but particularly not in a local council. It is not simply "telling it how it is." It is highly inappropriate.

The primary function of a mayor, under section 27(1) of the Act is to act as a leader of the community. In conducting communications in the manner described in these examples, Mayor Howard, in the Board's view, demonstrated poor leadership.

The council employee also said in evidence that the mayor had asked the employee to give him information about a code of conduct proceeding that was underway. The employee told the mayor that the information would not be provided because it was private and confidential.

The mayor then asked the general manager for the information. He too refused to provide it.

The attempt by the mayor to obtain this information in this manner was improper.

The employee also described an incident at an audit panel meeting. The audit panel consisted of an independent chairperson, who was an accountant, the deputy mayor and Councillor Stein. The general manager, Director Corporate Services and the mayor were, it seems, invited by the chair to attend. They were not members of the panel.

The incident described by the employee, who was also present to record minutes, is that there was a discussion about rates, and the general manager had proposed an increase above that which had apparently been discussed some months earlier. The mayor didn't agree. The incident was described as follows:

> …Tim was talking over the top of Greg, Greg was trying to explain. I could understand Greg's frustration because that can annoy me as well, however the professionalism of it, of how he handled the situation in front of a member of the community, let alone actual officers from council was atrocious…
>
> During presentation discussion the mayor yelled at Tim Watson 'for fuck's sake Tim I am sick of you interrupting me'.

The employee also said that the chairperson was quite taken aback by this and was very unhappy after the meeting.

John Marik, who was at the time Director Corporate Services, described the audit

panel operation. He gave evidence that the mayor had several discussions with him about the budget, which caused him some concern, and he raised this with the audit panel chair. At about the same time he also told the audit chair that the relationship between the mayor and the general manager had been "flaring up," and that Tim Watson was saying that the mayor was "encroaching on the operational space."

Mr Marik said the audit panel chair found it a bit odd that the mayor was invited to these meetings, and eventually the invite was discontinued.

Mr Marik explained that the mayor "wanted to be everywhere and know everything" and he could be quite dominant in meetings.

Mr Marik described the audit panel incident as:

> Greg being Greg, he just snapped and he said 'shut the F up'.

The Board accepts that in the course of conducting the operations of any organisation there may be differing views about certain issues. However, there are processes for dealing with those views, including meeting procedure, separating issues to committees for consideration, and common courtesy.

The Board is unclear why Mayor Howard was attending audit meetings in the first place. That said, in the Board's view, his interruption of that audit panel meeting was obviously inappropriate, was disrespectful of the members of the panel, and was indeed "atrocious".

In his response submission, Mayor Howard suggested that his manner of communication may be somehow justified by his "implied Constitutional freedom" to make them. Presumably, this is intended to be a reference to the implied freedom of political communication. None of the matters considered by the Board concerned any statements that could in any way be considered 'political'. They were simply communications. The implied freedom has no relevance to them at all.

Findings

19.1. That Mayor Howard had an aggressive and forthright communication style.

19.2. That Mayor Howard commonly used offensive and inappropriate language in communication with both internal and external parties.

Recommendations

20. That the Minister give a direction under section 225(2)(d) of the *Local Government Act 1993* to Mayor Greg Howard concerning his aggressive, offensive and inappropriate language in written and verbal communication with parties internal and external to council

Submissions on draft findings

The Board received submissions from persons affected by its draft intended findings and recommendations in this section. After considering those submissions the Board determined to make changes to its consideration and change its findings.

The Board received no submissions from Dorset Council.

Other matters raised during the Inquiry

The Board received submissions from 59 individuals, many of which contained information about multiple matters. Many matters raised occurred many years before the date on which the Board was established. The Director of Local Government's report contained multiple matters to be inquired into. The Board read every submission that was made to it.

The Board is required to conduct its inquiry into the matters set out in its Terms of Reference. It is not able, given time and resource constraints, to inquire into every single matter that was included in submissions made to it. The Board was not established to look in detail at every decision made by the Council, or by a council employee, over many years.

The Board determined not to inquire into decisions made by council employees on routine matters like ordinary development applications, building and plumbing permits and the like. There is a statutory process for review of those applications, and no finding or recommendation that the Board could make would have any effect on such decisions. Neither the Board nor the Minister has any power to change such decisions.

The Board also determined not to inquire into issues raised concerning what are properly described as operational matters of council, such as responses to complaints about wood smoke, or campground rubbish, or use of council vehicles.

These determinations do not mean that the issues raised which are not the subject of inquiry did not have merit, or were not properly raised, or were lacking in significance.

The Board notes that the Council, which was suspended on 2 August 2023, had been elected in October 2022. Three of the nine councillors were newly elected at that time.

The Board concluded that, generally speaking, issues involving conduct that occurred prior to the 2018 election would likely not form any reasonable or proper basis for recommendations to the Minister concerning the currently suspended councillors. The make-up of the various councils was substantially different.

Without mentioning every issue raised in submissions, the Board does wish to make brief mention of some of the matters it did not inquire into or make findings about. For some of these matters, the Board has made recommendations of a general nature.

Old pier at Bridport

One matter referred to in submissions was the announcement of State Government funding towards the proposed construction of a pier near the old Bridport pier which burned down in the 1930s. The submission was that the independent consultant's report provided to Marine and Safety Tasmania (MAST) was biased because the consultant had previously reported to a committee which was in favour of a pier on that site.

The Board determined not to inquire into this issue. The Board has no power to review a consultant's report which was prepared for and provided to MAST or to undertake a detailed comparison with another consultant's report. While the submission contended that an earlier Pitt & Sherry report in 2001 determined that the old pier site was the least appropriate of three nominated sites, the proposal it considered seems to have had significant differences.

It proposed destruction of the old pier and replacement (which certain parts of the community thought was "totally unacceptable"), whereas the report to MAST proposed preserving the remains of the old pier and constructing a new pier to the east of it, extending from an existing boat ramp and including low-level platforms for recreational boats.

The Board notes that it is not uncommon at all for two consultants to have different opinions.

The Board also notes that an announcement of a possible government grant concerning a pier does not mean that the proposal will be constructed, for reasons such as listed below.

- A new pier would require the grant of a Crown lease (the seabed being Crown land), which would have to go through the application process in the *Crown Lands Act 1976*.

- Separately, the development itself may require approval from the Director-General of Lands.

- A development application would need to be made, and a permit granted. This process is subject to rights of appeal in the Tasmanian Civil and Administrative Tribunal (TASCAT). Relevantly, the pier would be located in the Environmental Management Zone, which has many performance criteria directed to environmental issues. Also, the State Coastal Policy will apply to any such application.

- Because of the zoning it may be necessary to apply for an amendment to the Tasmanian Planning Scheme – Dorset, which would be subject to an entirely separate process in the Tasmanian Planning Commission.

The Board considers that because any new pier proposal would have to proceed through these separate assessment processes, which enable public participation, it would be inappropriate to inquire into this issue.

There is one issue which the Board did inquire into that might touch on this submission, being where Council as a developer applies for approval from Council as the planning authority.

North East Rail Trail

The Board determined not to inquire into this issue. The rail trail has been the subject of decisions in the Resource Management and Planning Appeals Tribunal and TASCAT. The Board has no power to review such decisions. There is a statutory process that is being used.

Further, the Board notes that pursuant to the *Strategic Infrastructure Corridors (Strategic and Recreational Use) Act 2016* the Dorset Council was appointed as the rail corridor manager. That appointment provides that the Dorset Council is to manage the rail corridor and may develop it for certain recreational purposes, including walking and bike riding. Given this appointment, it is not very useful to inquire into Council's decision to undertake that development.

However, two matters raised within the rail trail submissions were the subject of inquiry – councillors voting on resolutions where they had declared interests, and Council as a developer applying for approval from Council as the planning authority.

Planning issues

The Board determined not to inquire into the content of or amendment to the Tasmanian Planning Scheme – Dorset, or its predecessor. The Board has no power to review the Scheme, and that is the responsibility of the Tasmanian Planning Commission. The Board also determined not to inquire into any determination by Dorset Council as a planning authority, because those decisions are generally amenable to appeal in TASCAT, and the Board has no power to review them.

The Board did, however, inquire into determinations made when the Dorset Council was also the developer applicant.

Pioneer water supply

The Board received a comprehensive submission about the drinking water supply to the township of Pioneer.

The matters raised principally related to the presence of lead in the Pioneer water supply and the alleged inadequate response of Government and TasWater in responding to and supplying an adequate quality of drinking water to the Pioneer township. TasWater and their predecessor entities are the statewide supplier of reticulated and domestic water.

The matter was the subject of a 2021 Parliamentary inquiry. The findings of the Parliamentary inquiry and the examination of TasWater actions in relation to this matter are outside the Terms of Reference of this Board of Inquiry. The Board determined not to inquire further into the matters raised.

Bridport caravan park

Submissions were received by the Board in relation to the management and operation of the Bridport caravan park. Matters raised principally related to the management of the park and differential treatment of site holders by council management. While the Board accepts that persons may hold valid concerns, but the matters raised did not warrant further investigation by the Board.

Derby Tin Centre

Submissions were received expressing concern in relation to the sale of the Tin Dragon Centre in Derby. The Board has not seen or identified any evidence to warrant any further investigation of this matter.

Additionally, other submissions raised concerns in relation to the planning applications sought for the site in 2022 to provide for an extensive redevelopment of the facility. While the initial approval by Council was refused by TASCAT by way of a consent agreement, Council subsequently issued an approval for a modified development. The Board is satisfied that the Development Approvals process followed was appropriate under the *Land Use Planning and Approvals Act 1993.* Further the Board has no powers to amend or intervene in a statutory planning process.

The Board makes no findings or recommendations in regard to this matter.

Derby camping

A number of submissions received by the Board expressed concern about the camping activities in and around the Derby township. The Board notes that Council has

undertaken a range of works and measures in an endeavour to control the location, impact and behaviour of campers within and around the parks in Derby. These are, in the Board's view, operational matters of Council which do not fall within its Terms of Reference.

Eligibility of councillor to remain on Council

A submission received by the Board questioned the eligibility of former Councillor Max Hall to remain on Council, expressing the view that for part of 2019 he no longer met the eligibility requirements under section 270 of the Act.

The Board is satisfied that evidence presented to the Board indicated that Mr Hall was eligible to remain as a councillor at that time and was on the roll as nominee of KC & KN Hall Pty Ltd. The Board further notes that Mr Hall resigned from Council in 2019.

'Crack' house

The 'crack' house was a locally known 'party house' in the main street of Derby. A number of submissions made reference to activities and parties taking place at this venue. The venue was privately owned, unlicensed and, on evidence heard by the Board, a regular 'party' venue for some of the mountain biking fraternity.

As the venue ceased operating a number of years ago following the death of the then owner of the premises, the Board determined not to undertake any further inquiries into the operations of this premises.

Derby tunnel

A number of submissions were about the development of the Derby tunnel as a bike track without the requisite approvals from CLS. Given the extent of similar matters raised and reported elsewhere in this report, the Board determined not to inquire further about this particular matter. The Board has identified several other instances of the Council undertaking works on Crown and other lands without seeking the requisite approvals and has made recommendations concerning them.

Credit card usage

Submissions received by the Board raised concerns in relation to inappropriate or excessive use of council credit cards by the former general manager. Specific reference was made to lunches attended by the mayor and general manager. The Board did not further examine these matters, as they had been appropriately raised with Council's internal Audit Panel. However, the Board considers that this issue does raise a general concern about the use and monitoring of credit cards.

Firstly, all councils should have (and formally adopt) a detailed policy about the issue and use of council credit cards.

Secondly, all councils should have (and formally adopt) a detailed procedure for the authorisation and approval of all credit card use within the Council.

Specifically in regard to the mayor and general manager, where credit cards are issued, the Council should have in place an authorisation process whereby expenditure is reviewed and signed off, ideally by the council Audit Panel.

Recommendation – Credit card usage

21. That the Minister consider amendments to the *Local Government Act 1993* to require councils to adopt a policy regarding the issue and use of credit cards, and that the policy must have procedures for the authorisation and approval of all credit card usage within the Council.

Shuttle bus operations

One submission received by the Inquiry related to alleged inconsistent and unfair treatment of a prospective shuttle bus operator by the former general manager and mayor, specifically in relation to delays in obtaining a letter of support to obtain a licence to operate a shuttle service within the designated forest area.

The licence to operate itself seems to be issued by STT, because the relevant roads extend into forest areas. The rationale for STT requiring a 'letter of support' from Council is not clear.

It is clear from a review of the document trail that this matter has a long and protracted history. Essentially the decision by the general manager and the Council not to provide a letter of support to the particular operator appears to be based on a view that there were already a sufficient number of shuttle bus operators and that no further letters of support should be provided. Unfortunately, this view does not appear to be supported by any policy or process to determine who should have the right to operate a shuttle bus service within the forest area.

The Commissioner for the Dorset Council, Mr Wardlaw, and the current general manager, John Marik are putting in place a policy and process to clarify and manage the licensing of shuttle bus operations. The Board is satisfied that appropriate guidelines and policy are being addressed. As such the Board has determined to make no findings in regard to this matter.

Buildings encroaching boundaries

A resident made submissions about a number of incidents of 'unfair treatment' by council officers. The major issue for that resident is that several buildings on his property at Allan Street, Derby, have been constructed over the boundary with the adjoining property. This is a matter of private property law as between the property owners. However, the resident had made planning and building applications which were made on the premise that all buildings were on his property. That raised a compliance issue, and the Board is satisfied that matter was properly addressed by Council.

A second, related issue with that property is that the resident required an occupancy permit, and his property had no method of waste water treatment. He specifically complained that Tim Watson, when attending his property to check on boundaries, asked him where his grey water went, and the resident replied that he did not produce grey water 'as such'. This made no sense to the Board, and when questioned, the resident replied that you have to be living in a house and wash dishes, that he had no toilet at the premises, and he would use a bucket. Plainly that fails to comply with the *Building Act 2016*, and in the Board's view the Council's actions were appropriate.

The resident further complained that when Tim Watson spoke to him at the Allan Street property, he insisted that the resident lived at Albert Street, Branxholm. The Board notes that one of the statutory declarations provided by the resident gives his address at Albert Street Branxholm.

The resident complained about fines that had been imposed concerning his non-compliance at Derby, and that the matter escalated to the Monetary Penalties Enforcement Service. The Board notes that is what commonly happens when penalties are overdue, and no criticism should be made of Council in this regard.

Finally, the resident claimed that Tim Watson used 'insider information' concerning a claim over a piece of property – 'a sheep paddock' – apparently being made by the resident based on adverse possession, and that Tim Watson interfered 'because of his knowledge of the law'. The resident claimed to have 'bought' the land off the executor of the previous owner 'for cash', but that was never registered with the Land Titles Office, no doubt because the executor was not registered as the proprietor.

The Board cannot see what possible 'insider information' could be held concerning what is a private property law issue, where the relevant details are available by public search. When pressed by the Board about what this information was, he was not able to say.

Main Street altercation

A resident of Main Street, Derby, raised an allegation of improper conduct by former General Manager Tim Watson concerning the removal of two fences. The resident had constructed one fence on what was in fact a council road reserve. The other was across the rear of the owner's property along the river. The Board is satisfied from the material it has seen that the fences were not constructed on the property boundary, and that they impeded, to a certain degree, access to the council reserve by the river.

Accordingly, it was appropriate that action be taken to have them removed. The Board has evidence that a council employee spoke with the owner in early 2022, saying that Council was intending to remove the fences within a couple of weeks. The owner expressed some dissatisfaction with this but acknowledged that the fences were not on his property. That would require him to construct replacement fences on his boundary.

There was clearly some pre-existing animosity between Tim Watson and the owner, and this culminated shortly afterwards in an altercation on site when the fence was being removed by a council employee. It is not necessary to detail the events, but it is sufficient to say that following the incident a report was made to Police, but that no prosecution was progressed.

Tim Watson and the owner each appeared before the Board. the Board's assessment is that they both were strong personalities, and that it is unsurprising that they clashed in the circumstances. The Board has heard evidence from many witnesses about Tim Watson's manner of communicating, which at times lacked moderation. In the circumstances where the issue has been the subject of another investigation, where there is no evidence that any councillor was aware of the incident, and where the Board is not able to make any recommendation about council employees, it determined not to inquire into this matter further.

Council ban on communication

A submission was made concerning conduct towards a resident who was a frequent participant in council meetings and a persistent correspondent. The submission referred to conduct of former general manager Tim Watson and Mayor Greg Howard.

The Board has evidence that the resident used 10 different email addresses to communicate with Council from around 2019, and that at times he would send an average of an email each day. It also had evidence that the resident either asked or attempted to ask questions at many council meetings. This persistence led to animosity between the resident, Tim Watson and Greg Howard, who were generally the subject of the questions and correspondence.

This led to complaints by the resident to Equal Opportunity Tasmania, and to the Ombudsman, and multiple Code of Conduct complaints. The Board has seen evidence that some of the Code of Conduct complaints were not progressed by Council, in particular Tim Watson, in the time frame required by the statutory process, and no doubt that further exacerbated the animosity. It also involved the Director of Local Government. It appears that the Code of Conduct Panel eventually determined that the resident not make any similar complaints for a period of 12 months.

The resident also attended council meetings and council offices on a regular basis. He has been described as intimidating. The Board had evidence that many council employees, mostly female, were frightened by him. One witness stated:

> He's very tall and he's got a very loud voice…he used to approach like he wasn't going to stop every time he'd come and he'd stand very close and he was very fidgety and …it's a vibe that I get off him that really makes me uncomfortable.
>
> …To be honest, he scares the crap out of me.

The Board accepts that the resident's conduct in his personal behaviour and his manner of communication was intimidating and concerning to many employees and, for that matter, some councillors. It also accepts that Council has the right to control who may access its property, and that in certain circumstances may take action to prevent a person from contacting council employees where there is genuine concern about their wellbeing.

In early 2022, the resident was banned from communicating with Council or attending council premises.

Unlike another example which has been discussed elsewhere in this report, the Board is satisfied that it was not unreasonable for Council, through Tim Watson, to implement a ban against the resident from communicating with councillors and staff, including blocking the multiple email addresses he used.

The Board has evidence that in late 2023, new general manager John Marik has largely revoked the ban on the resident.

The nature of communication is necessarily two-way, and having regard to the totality of the events that occurred between 2019 and 2022, the Board formed the view that each of the resident, Tim Watson and Greg Howard contributed to varying degrees to the events which transpired. The Board was not satisfied that any further inquiry should be made concerning this issue.

Sale of council land

One submission received by the Board related to the sale of council land in the township of Scottsdale.

Council land at King Street, Scottsdale, was offered for sale by public auction. Only one bidder was present, and the property was passed in at $250,000. The announced reserve sale price was $300,000.

Subsequently the property was sold by private treaty to a third party for the reserve price of $300,000. The losing bidder maintains that they should have been offered the opportunity to match or to place a subsequent bid to purchase the property.

While the process undertaken for the sale of the land may not have been ‘best practice’, the Board determined that there was no basis to take any action or make any findings in relation to the sale process.

Gladstone matters

A number of submissions were received in relation to a planning matter, liquor licensing and the operations of the ‘Future Links’ association.

Specific matters concerning development applications are beyond the scope of this Inquiry and are subject to a statutory planning and appeals process.

The application for a licence to operate a bottle shop is subject to the statutory scheme in the *Liquor Licensing Act 1990.* The Board has no power to review the granting of a liquor licence. As such, the Board did not make further investigation in relation to these matters and makes no findings.

In relation to the Future Links association, the Board did not find any necessity to investigate the matters raised.

Canada trip

In mid-2022, the then general manager, Tim Watson, undertook a trip to Whistler in Canada, ostensibly to see first-hand what were considered the world’s best mountain biking trails. The trip was planned and initiated by the general manager without the prior approval of Council. While overseas Mr Watson continued to act as general manager.

Evidence given to the Board was that the trip was funded jointly by Council and Mr Watson.

The Board heard evidence from a number of the suspended Dorset councillors that they were unhappy with the general manager undertaking the trip and that they felt Council would not derive any benefit from it. The Board has evidence of a presentation made by Tim Watson to Council on his return, and notes that Mr Watson shortly thereafter was on a period of extended sick leave and in late 2022 resigned as Council's general manager.

The Board notes that the undertaking of the trip without prior council approval was highly unusual but makes no specific findings in relation to this matter.

In relation to Mr Watson continuing to act as general manager while overseas, the Board is of the view that this is highly inappropriate. In evidence to the Board, Mr Watson expressed the view that he was still working while in Whistler and saw it no differently than if he was working from home.

The Board's view differs in that if something occurs that required the general manager's immediate attention on site, it can be readily actioned by travelling by car from home. This cannot be done from the other side of the world.

Section 61B of the Act provides (in part):

> (1) For the purposes of this section, a general manager is absent if –
>
> a) he or she is absent from duty for any reason; or
> b) he or she is otherwise unavailable or unable to perform the functions of the office of general manager;
>
> (2) The mayor may appoint a person to act in the office of general manager if –
>
> a) the general manager is absent and no person holds an appointment under subsection (4); or
> b) the general manager is absent and the person appointed under subsection (4) is absent from duty or otherwise unavailable or unable to act in the office of general manager.

The Board acknowledges that it may be arguable that the actions of Mr Watson to continue to act as general manager while overseas were in accordance with the Act. However, they were impractical and an example of poor governance, and in the Board's view the mayor should clearly have appointed an acting general manager.

The Board notes that this was not the only occasion on which Tim Watson continued to act as general manager while overseas. In its reasons for upholding a complaint made in 2018 by Tim Watson against another councillor, the code of conduct panel noted the 'unusual situation' where Tim Watson had taken 5 weeks annual leave during which he

travelled overseas without an acting general manager being appointed.

Recommendation – Acting general managers

22. That the Director of Local Government provide guidance to all mayors and general managers in relation to the operation of section 61B of the *Local Government Act 1993.*

The Board received a submission from Dorset Council which welcomed this recommendation.

Appendices

Appendix 1 – Dorset Council Board of Inquiry Establishment and Terms of Reference

ESTABLISHMENT & TERMS OF REFERENCE

BOARD OF INQUIRY INTO THE DORSET COUNCIL

Part 13, Division 1 of the *Local Government Act 1993*

Pursuant to section 215(1) of the *Local Government Act 1993* (the Act), I, Nicholas Adam Street, Minister for Local Government, herby establish a Board of Inquiry to investigate the Dorset Council in accordance with the Terms of Reference set out below.

Terms of Reference

1. The Board is to inquire into and make findings and recommendations with regard to the matters referred to in the Director of Local Government's *Investigation Report - Investigation into concerns regarding statutory non-compliance, conflicted interests, governance of decision-making and improper use of statutory authority in Dorset Council*, in particular:

   1.1. that council officers have used legislative authority improperly and/or with bias;

   1.2. that the council has allowed, with intent or through inadequate oversight, the general manager to operate without due regard for the law;

   1.3. that conflicts of interest have not been adequately managed by senior council officials;

   1.4. that the mayor, councillors or general manager has tolerated retributive action against people that disagreed with the council, the mayor or the general manager through, for example, inappropriate and offensive forms of communication; and

   1.5. that the council has failed to implement policies and processes that support, at all times, transparent and effective decision-making.

2. In considering the matters referred to in 1 above, the Board is to have regard to:

   2.1. The performance by the Mayor of his functions under section 27 of the Act, including promoting good governance by, and within, the Council and leading and participating in the appointment, and monitoring the performance, of the General Manager;

2.2. The performance by councillors of their individual and collective functions under section 28 of the Act, including monitoring the performance of the General Manager and monitoring the manner in which services are provided by the Council;

2.3. The performance by the current and former General Manager of the functions under section 62 of the Act, including to implement the policies, plans and programs of the council, to be responsible for the day-to-day operations and affairs of the council, to liaise with the mayor on the affairs of the council and the performance of its functions, and to manage the resources and assets of the council; and

2.4. The compliance by Council, councillors, the general manager and council employees with relevant laws relating to the performance of their duties and functions.

3. The Board may inquire into any further complaints, claims of non-compliance or breaches of the Act and associated regulations, or any other legislation, that are germane to the matters referred to in 1 above and are:

3.1. brought to its attention during its inquiry; or

3.2. lodged with the Director of Local Government; or

3.3. lodged with the Minister for Local Government.

The Board is to submit a report on its findings and recommendations to the Minister for Local Government no later than 30 April 2024.

Hon Nicholas Adam Street MP
Minister for Local Government

Dated: 15 January 2024