



# AGENDA AUDIT AND RISK MANAGEMENT COMMITTEE 5 SEPTEMBER 2017

## MEMBERSHIP:

### Core Members (Voting):

Mr M Kneipp, Administrator; Mr A Fletcher (Independent Member) and Mr J Walkom (Independent Member).

### Attendees (Non-Voting):

Mr S Bassett (Community Representative), the General Manager, the Internal Auditor, the Director Corporate Services and the Director Economic Development and Business.

The meeting is scheduled to commence at 11am.

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<b>WELCOME</b>	
<b>AUD17/8 LEAVE OF ABSENCE (ID17/1549)</b>	
<b>AUD17/9 DECLARATIONS OF INTERESTS (ID17/1550)</b>	
<b>AUD17/10 REPORT OF THE AUDIT, RISK AND IMPROVEMENT MANAGEMENT COMMITTEE - MEETING 1 JUNE 2017 (ID17/1551)</b>	4
The Committee had before it the report of the Audit, Risk and Improvement Committee meeting held 1 June 2017.	
<b>FINANCIAL STATEMENTS/EXTERNAL AUDIT REPORT</b>	
<b>Update on Financial Statements</b>	
<b>AUD17/11 2016/2017 FINANCIAL STATEMENTS ARRANGEMENTS (ID17/1525)</b>	9
The Committee had before it the report dated 21 August 2017 from the Director Corporate Services regarding 2016/2017 Financial Statements Arrangements.	

**External Auditor's Management Letters**

No Matters to report at this time.

**Significant Developments in Financial Reporting Framework**

No Matters to report at this time.

**INTERNAL AUDIT**

**AUD17/12 INTERNAL AUDIT PROGRAMME 2017-2019 (ID17/1532) 13**  
The Committee had before it the report dated 21 August 2017 from the Internal Auditor regarding Internal Audit Programme 2017-2019.

**AUD17/13 INTERNAL AUDIT REVIEW REPORT - CASH RECEIPTING PROCESS (ID17/1537) 25**  
The Committee had before it the report dated 21 August 2017 from the Internal Auditor regarding Internal Audit Review Report - Cash Receipting Process.

**COMMITTEE MEMBERS REPORTS**

No Matters to report at this time.

**ACTION LIST**

**AUD17/14 ARMC ACTION LIST AS AT AUGUST 2017 (ID17/1451) 45**  
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**GENERAL BUSINESS**

<b>AUD17/16</b>	<b>AUDIT AND RISK MANAGEMENT COMMITTEE (ARMC) CHARTER (ID17/1546)</b>	70
	The Committee had before it the report dated 29 August 2017 from the General Manager regarding Audit and Risk Management Committee (ARMC) Charter.	
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<b>AUD17/18</b>	<b>ENTERPRISE RISK MANAGEMENT (ID17/1539)</b>	246
	The Committee had before it the report dated 22 August 2017 from the Director Corporate Services regarding Enterprise Risk Management.	
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	The Committee had before it the report dated 21 August 2017 from the Director Corporate Services regarding Contract Payments and Contract Variations 1 July 2016 to 30 June 2017.	
<b>AUD17/20</b>	<b>OPERATION JAREK - UPDATE ON ACTIONS TO DATE (ID17/1536)</b>	325
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DUBBO REGIONAL  
COUNCIL

## **Report of the Audit, Risk and Improvement Management Committee - meeting 1 June 2017**

**AUTHOR:** Administrative Officer - Governance  
**REPORT DATE:** 23 August 2017

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The Committee had before it the report of the Audit, Risk and Improvement Committee meeting held 1 June 2017.

### **RECOMMENDATION**

**That the report of the Audit, Risk and Improvement Committee meeting held on 1 June 2017, be adopted.**



**REPORT  
AUDIT, RISK AND IMPROVEMENT  
COMMITTEE  
1 JUNE 2017**

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**PRESENT:**

**Core Members (Voting):**

Mr M Kneipp (Administrator), Mr A Fletcher (Independent Member) and Mr J Walkom (Independent Member).

**Attendees (Non-Voting):**

The Interim General Manager, the Internal Auditor, the Director Organisational Services, the Manager Governance and Risk Services and the Transition Project Leader.

Mr J Walkom assumed chairmanship of the meeting.

The proceedings of the meeting commenced at 11:02 am.

**ARIC17/9 LEAVE OF ABSENCE (ID17/751)**

A request for leave of absence was received from Mr S Bassett and Mr M Monaco (Audit Office) who were absent from the meeting due to personal reasons and Ms R Meimaroglou (Audit Office) and the Director Corporate Development who were absent from the meeting due to work commitments.

**RECOMMENDATION**

**The Committee recommends that such requests for leave of absence be accepted and Mr S Bassett, Mr M Monaco, Ms R Meimaroglou and the Director Corporate Development be granted leave of absence from this meeting.**

**CARRIED**

**ARIC17/10 DECLARATIONS OF INTERESTS (ID17/752)**

No conflicts of interest were declared.

**ARIC17/11 REPORT OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE - MEETING 17 MARCH 2017 (ID17/753)**

The Committee had before it the report of the Audit, Risk and Improvement Committee meeting held 17 March 2017.

**RECOMMENDATION**

**The Committee recommends that the report of the Audit, Risk and Improvement Committee meeting held on 17 March 2017, be adopted.**

**ARIC17/12 RISK MANAGEMENT FOR THE COUNCIL MERGER ACTIVITIES (ID17/826)**

The Committee had before it the report dated 23 May 2017 from the Transition Project Leader regarding Risk Management for the Council Merger Activities.

**RECOMMENDATION**

**The Committee recommends that the information contained within the report of the Transition Project Leader dated 23 May 2017 be noted.**

**ARIC17/13 PROPOSED INTERNAL AUDIT PROGRAMME 2017 - 2019 (ID17/794)**

The Committee had before it the report dated 15 May 2017 from the Internal Auditor regarding Proposed Internal Audit Programme 2017 - 2019.

**RECOMMENDATION**

**The Committee recommends:**

- 1. That the Interim General Manager and the Audit, Risk and Improvement Committee approve the Internal Audit Programme 2017-2019 noting some identified actions are outside the requirements of existing legislation and will not be pursued until the related legislation comes in effect.**
- 2. That the Interim General Manager be requested to prepare a report to the September 2017 meeting of the Audit, Risk and Improvements Committee regarding a review of the Committee's charter.**
- 3. That the Interim General Manager be requested to prepare a report to the March 2018 meeting of the Audit, Risk and Improvements Committee regarding the updated organisation risk registers.**

**ARIC17/14 ARIC ACTION LIST AS AT MAY 2017 (ID17/811)**

The Committee had before it the report dated 17 May 2017 from the Internal Auditor regarding ARIC Action List as at May 2017.

**RECOMMENDATION**

The Committee recommends:

1. That the information contained within the report of the Internal Auditor dated 17 May 2017 be noted with an amendment to item 2016-513/12/16 (2) to read *“That in addition to an Internal Audit programme, a regular management reporting timetable is established which ensures that the Committee considers information as necessary to accomplish its objectives as stated in the proposed section 428A of the amended legislation with no action to be taken until section 428(A) comes into effect.”*
2. That all items marked as completed be deleted from the list.

**ARIC17/15 RELATED PARTY DISCLOSURE POLICY (ID17/801)**

The Committee had before it the report dated 16 May 2017 from the Manager Governance and Risk Services regarding Related Party Disclosure Policy.

**RECOMMENDATION**

The Committee recommends:

1. That it be noted that the draft Related Party Disclosure Policy has been reviewed by the Audit, Risk and Improvement Committee.
2. That legal advice be sought regarding the content and implementation of this policy.
3. That following receipt of legal advice the reviewed draft policy be forwarded to Council’s Executive Staff Committee for consideration.
4. That following consideration by the Executive Staff Committee, the draft policy be forwarded to Council for consideration and adoption.
5. That members of the Audit, Risk and Improvement Committee be forwarded the Related Party Disclosure Policy following adoption of the policy by Council.

**ARIC17/16 CONTRACT PAYMENTS AND CONTRACT VARIATIONS 1 JULY 2016 TO 31 MARCH 2017 (ID17/805)**

The Committee had before it the report dated 17 May 2017 from the Manager Financial Accounting Services regarding Contract Payments and Contract Variations 1 July 2016 to 31 March 2017.

**RECOMMENDATION**

1. The Committee recommends that the information contained within the report of the Manager Financial Accounting Services dated 17 May 2017 be noted.
2. That future reports to the Committee in respect of contracts where the original contract value has been exceeded contain advice as to whether the necessary variation payment process has been followed.

**ARIC17/17 OPERATION JAREK - UPDATE ON ACTIONS TO DATE (ID17/806)**

The Committee had before it the report dated 17 May 2017 from the Manager Financial Accounting Services regarding Operation Jarek - Update on Actions to Date.

**RECOMMENDATION**

The Committee recommends:

1. That the information contained within the report of the Manager Financial Accounting Services dated 17 May 2017 be noted.
2. That it be noted that Item 15 as contained in ARIC17/6 as considered at the February 2017 meeting of the Committee, was considered as part of the development of the Internal Audit Plan and is accordingly finalised.

The meeting closed at 12.42pm.

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CHAIRMAN





DUBBO REGIONAL  
COUNCIL

## REPORT: 2016/2017 Financial Statements Arrangements

**AUTHOR:** Director Corporate Services  
**REPORT DATE:** 21 August 2017  
**TRIM REFERENCE:** ID17/1525

### REPORT

Dubbo Regional Council has been granted an extension for the lodgement of its 2016/2017 Financial Statements by the Office of Local Government to 31 December 2017 (**Appendix 1**). No extension can be granted for the Council's annual report, which is due by the end of November and in accordance with Section 428 of the Local Government Act, 1993 requires audited financial statements to be included.

The Office of Local Government have advised that Council can use a draft set of financial statements for the annual report so long as clarification is included detailing that they are draft and where the finalised statements can be viewed once they are formally adopted.

The critical dates to ensure that the 2016/2017 Financial Statements are submitted to the Office of Local Government before the now due date of 31 December 2017 are as follows:

- Report to Council on referring financial report to audit on 23 October 2017.
- Audit commences on 30 October 2017.
- Draft 2016/2017 Financial Statements prepared for the Annual Report mid November 2017.
- Annual Financial Reports presented to the Audit and Risk Management Committee on 4 December 2017.
- Council approves the Financial Statements for lodgement to the Office of Local Government on 18 December 2017.
- Council submits the audited financial statements to the Office of Local Government on 19 December 2017.

### ORGANISATIONAL VALUES

Customer Focused: This report ensures transparency surrounding communication of the 2016/2017 Financial Statements.

Integrity: Council's compliance with Section 428 of the Local Government Act and reporting requirements of Council's annual financial statements.

One Team: The implications of the extension of the 2016/2017 Financial Statements affects various Divisions across the organisation.

**FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

**POLICY IMPLICATIONS**

There are no policy implications arising from this report.

**RECOMMENDATION**

**That the information contained within the report of the Director Corporate Services dated 21 August 2017 be noted.**

*Craig Giffin*  
Director Corporate Services

Appendices:

- 1 [↓](#) Response from Office of Local Government to Request for an Extension to Submit 2017 Financial Statements - Approval granted
- 2 [↓](#) Request for Extension - Completion of 2016/2017 Financial States Dubbo Regional Council - Response letter to Office of Local Government

Strengthening local government



Office of Local Government

5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541

Our Reference: A540823  
Your Reference:  
Contact: Margie Laird  
Phone: 02 4428 4221

Mr Mark Riley  
Interim General Manager  
Dubbo Regional Council  
PO Box 81  
DUBBO NSW 2830

Dear Mr Riley

Thank you for your email of 23 March 2017 requesting an extension of time to submit the 30 June 2017 Financial Statements for Dubbo Regional Council until 31 December 2017.

I note from your email that, due to the merging of the former Wellington and Dubbo Councils' financial systems, it will be necessary to produce two sets of statements for each former Council and then consolidate them into a single entity set of statements and that this will require more resources and time to complete.

Under the *Local Government Act 1993* (the Act), I have the authority to grant an extension of time for a council to complete and submit financial statements. The financial statements form part of a council's annual report.

The Act does not allow me to provide an extension of time to complete the annual report and therefore Council will need to consider how to address this issue.

As it is important that financial information is correct for the on-going operations of Dubbo Regional Council, I have approved an extension of time for Council to complete and submit financial statements until 31 December 2017. In granting this extension I ask that Council provide information to the Office of Local Government as to how it will manage the issue of including the financial statements in the annual report.

I trust this information is of assistance.

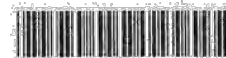
Yours sincerely

Tim Hurst  
Acting Chief Executive  
Office of Local Government

9/6/17

Dubbo City	
Parcel	
Asset	ACM
15 JUN 2017	
File C	17/125

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FILE17/125  
ED17/72376  
CG:ss

22 June 2017

Tim Hurst  
Acting Chief Executive  
Office of Local Government  
Locked Bag 3015  
NOWRA NSW 2541

Dear Sir

**EXTENSION FOR THE 30 JUNE 2017 FINANCIAL STATEMENTS  
YOUR REF: A540823**

Thank you for your correspondence dated 9 June 2017 granting an extension for Council to lodge its 30 June 2017 Financial Statements until 31 December 2017.

As requested it is advised that Council will include a draft set of Financial Statements within the 2017 Annual Report with a clear indication that the statements are draft and the location of where the finalised statements can be viewed once available.

Yours faithfully

*Craig Giffin*  
Director Organisational Services



DUBBO REGIONAL  
COUNCIL

## REPORT: Internal Audit Programme 2017-2019

**AUTHOR:** Internal Auditor  
**REPORT DATE:** 21 August 2017  
**TRIM REFERENCE:** ID17/1532

### EXECUTIVE SUMMARY

The strategic objective of the Council's internal audit function is to provide a consultancy service for management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework.

The attached internal audit programme was prepared based on the former Dubbo City Council risk registers. The programme was also presented to Executive Staff for further input and feedback from Executive Staff was considered. Executive Staff noted that the list of presentations included in the proposed internal audit programme is based on the recent amendments to the Local Government Act (1993) NSW which are not yet in force. During the period under review, an audit of the cash receipting processes at certain selected remote sites was substantially complete. At the time of preparing this report, the Internal Auditor was in the process of consulting with the Financial Services branch of Council regarding the reconciliation of revenue receipts for the Whylandra Waste recovery centre stand-alone receipting system and the main Council accounting system. An audit report for all other sites in the audit test sample is submitted to this meeting. During the period under review, the Internal Auditor was requested to consider whether recommendations of the Independent Commission Against Corruption arising from an investigation into the activities of the former Chief Financial Officer of the City of Botany Bay might require to inform changes to the approved internal audit programme for Dubbo Regional Council. A report on this assessment will be submitted to the next meeting.

### ORGANISATIONAL VALUES

Customer Focused: The strategic objective of the Council's internal audit function is to provide a consultancy service to management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework. Enriched risk management processes improve efficiency and effectiveness in the attainment of service delivery promises to the Council's customers.

Integrity: A robust internal audit function supports the integrity of Council within the community.

One Team: The internal audit function supports cohesion and cooperation to minimise risk and improve the delivery of services to the community.

### FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

**POLICY IMPLICATIONS**

There are no policy implications arising from this report.

**RECOMMENDATION**

**That the information contained within the report of the Internal Auditor dated 21 August 2017 be noted.**

*Shephard Shambira*  
Internal Auditor

## **BACKGROUND**

The BOD (Bathurst Regional Council, Orange City Council and Dubbo Regional Council) Alliance share an internal auditor. The General Managers of the 3 councils indicated that as much as is possible, it is desirable to carry out common audit assignments across the 3 councils in order to facilitate the exchange of best practice. However, it is also acknowledged that in some cases the 3 councils have differing requirements. As such it is not possible to always have a common internal audit programme.

The former Dubbo City Council had a comprehensive suite of operational risks registers and a corporate risks register which were actively monitored by management and utilised by the Internal Auditor to inform the development of a rolling 3 year internal audit programme. The corporate risks and operational risks registers for the Dubbo Regional Council have not yet been prepared. This internal audit programme was partly informed with the operational risks registers for the former Dubbo City Council as it was considered that while the amalgamation with Wellington Shire Council has changed some aspects of the Council's risk profile, the generic risks for most areas remains broadly the same. Consultation with management were carried out to ensure that any knowledge of current issues arising from the amalgamation are incorporated into formulating this internal audit programme.

The strategic objective of the Council's internal audit function is to provide a consultancy service to management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework.

## **REPORT**

### **How the current internal audit programme was established**

The 3 year internal audit programme was established through the following process:

1. The corporate risks register was reviewed to identify high risk areas.
2. The Internal Auditor reviewed the Operational Plan Performance Review reports for the quarter ended September 2016 and related Quarterly Budget Review Statements. Gaining an understanding of the Council's strategic objectives and progress towards attainment of such objectives ensures that the internal audit programme is aligned with the council's strategic objectives. Gaining an understanding of the Council budget and related movements helps to give insight on the significance of various auditable areas to the organisation.
3. Reviewed the Interim General Manager's 6 Monthly review of the Dubbo Regional Council Delivery Program, incorporating the former Dubbo 2036 (2013-2017) and Wellington 2025 (2014-2018) Delivery Programs, as at 31 December 2016.
4. The External Auditor's scope of work as presented to the Audit, Risk and Improvement Committee meeting of March 2017 was also evaluated to determine areas which required no additional detailed coverage. This includes the Internal Auditor's own understanding of typical issues addressed through an external audit as required by the Auditing Standards.

5. The internal auditor considered internal audit programmes for other councils and identified common topics.
6. The internal auditor considered the topics included in the internal audit programmes for the other BOD Alliance member councils and included some of these topics in the Bathurst Regional Council internal audit programme.
7. Requirements of the General Manager. For an example, update to the Internal Auditor position description to include identification of joint process improvement initiatives across BOD Alliance member Councils.
8. Consulted with the Manager Governance and Risk Services, Manager Financial Services and the Manager Management Accounting and obtained commentary on proposed internal audit areas of focus.
9. The internal audit programme was also presented to the Executive Staff Committee for further input. The Executive Staff Committee were requested to suggest specific areas on which they require internal audit input in addition to what has been suggested in this draft programme. Where other substantial process improvement work is planned for some areas, it may not be prudent to commit limited internal audit resources in duplicating effort.
10. The current internal audit programme was then approved by the Interim General Manager and the Audit, Risk and Improvement Committee on 1 June 2017.

### **The internal audit process**

The internal audit process follows one of 3 routes as described below.

1. Carry out preliminary research and prepare a review plan, obtain approval for the plan and carry out relevant enquiries and produce a report of findings.
2. Carry out preliminary research and formulate an opinion and conclude the review on the basis of initial findings. There are various reasons for choosing this option. For an example, issues known at the time of including the topic on the programme have since been resolved and audit evidence to this effect is sighted during the preliminary planning stage. For audits which are included on the programme every year, the key risk indicators may be reviewed and an opinion formulated at the preliminary planning stage that the process is working well and that no further benefit may be derived from investing limited internal audit resources into evaluating more transactions.
3. Some audit reviews are included in the programme as a follow up to previous reports. Audit objectives might already be specified on the ARMC Action List. Preliminary enquiries at the start of the review can highlight audit evidence which clearly shows that the issue is now resolved. In such scenarios, it is desirable to conclude the review on this basis, and apply internal audit resources to other areas.
4. The internal audit programme is designed to ensure that the Internal Auditor is able to provide input and insight on various matters not included in the approved internal audit programme as and when required to do so by management. The process is that where such requests do not take up a significant proportion of internal audit time they are resolved as they arise. However, where it is likely that a request not included in the approved internal audit programme is likely to take up a significant proportion of time with an adverse impact on the delivery of the approved programme, the General



Manager's approval is formally required before the task is added to the internal audit programme.

Where management is aware of specific concerns with a process being audited, a request is made to the internal auditor to provide assurance and/or advice as required if the matter is not adequately covered in the internal audit plan/report. The opportunity for management to request for specific internal audit input occurs at the commencement of each audit when the review plan is prepared and at the end of each audit when the review results are discussed with management.

In the same way, at the commencement of every review, all internal audit review plans are submitted to the Audit Risk Management Committee for consideration. Internal audit review reports are also submitted to the ARMC for their input and consideration. The ARMC utilises these opportunities to highlight specific issues of concern on which they require additional assurance and/or information.

The proposed internal audit programme shows an estimated time allocation to each of the tasks identified. It should be noted that this time estimation is only a guide and that as noted above, depending on the circumstances around each and every audit task, some tasks will be completed in a very short space of time while others may take long to complete. For an example, where an initial test sample indicates an exception, it may be necessary to increase the sample size in order to establish whether the exception is a sign of a general process weakness or just a once off error which may not be recurring.

### Assurance Framework

In order for the ARMC to effectively discharge its duty as defined in the ARMC Charter, appropriate information should be provided on a regular basis. The ARMC gets information through a number of ways. Members of the ARMC receive reports and presentations from management including visits to various Council projects and sites. The Internal Auditor prepares reports which give insight and/or assurance on various matters. In some cases, internal audit reports focus on providing advice aimed at enhancing performance and attainment of organisational objectives. The ARMC also considers the external auditor's management letter and a presentation on the process and outcome of the annual audit of the council's financial statements.

### REGULAR MANAGEMENT REPORTS AND PRESENTATIONS TO THE ARMC

Report Topic	Responsibility	Target Completion Date
<p><b>1) Compliance</b></p> <ul style="list-style-type: none"> <li>▪ Submit an annual management report to the Committee which gives assurance that the Council framework for compliance with major legislative requirements is in place and operating effectively.</li> </ul>	<p>Manager Governance and Risk Services</p>	<ul style="list-style-type: none"> <li>• ARMC Meeting - September Annually</li> </ul>

Report Topic	Responsibility	Target Completion Date
<p>For example, a management report that all items listed on the Office of Local Government Calendar of Compliance were resolved as appropriate.</p> <ul style="list-style-type: none"> <li>▪ A bi-annual exceptions report on any areas of major non-compliance with legislation or policy requirements binding the Council.</li> </ul>		<ul style="list-style-type: none"> <li>• By date required as specified within the Local Government Act.</li> </ul>
<p><b>2) Risk management,</b></p> <ul style="list-style-type: none"> <li>▪ Corporate risks register. This can be a standing item on the agenda for all meetings. Highlight key changes as and when there are significant changes to the corporate risks.</li> <li>▪ Presentations by divisional directors on key risks and related risk mitigation strategies for their divisions. The presentations can be spread throughout the year such that only one director will make a presentation at each meeting.</li> <li>▪ Ad hoc management reports on risk management framework for selected processes based on feedback from the Committee arising from consideration of other information provided to the Committee.</li> </ul>	<p>Manager Governance and Risk Services</p>	<ul style="list-style-type: none"> <li>• Corporate risk register to be presented to all ARMC meetings from 2018 including highlights of any changes to corporate risks.</li> <li>• One annual presentation from each Divisional Director highlighting key risks and risk management framework.</li> </ul>
<p><b>3) Fraud control,</b></p> <ul style="list-style-type: none"> <li>▪ Annual review of the fraud management policy.</li> <li>▪ Bi-annual review of management feedback on fraud risk management framework.</li> <li>▪ Management feedback should highlight any significant incidences.</li> <li>▪ Major changes in risk profile.</li> </ul>	<p>Manager Financial Services/ Manager Governance and Risk Services</p>	<ul style="list-style-type: none"> <li>• ARMC Meeting – November annually.</li> </ul>
<p><b>4) Financial management,</b></p> <ul style="list-style-type: none"> <li>▪ Consider quarterly budget review reports.</li> <li>▪ Consider quarterly investment reports.</li> </ul>	<p>Director Organisational Services</p>	<ul style="list-style-type: none"> <li>• By date required as specified within the Local Government Act.</li> </ul>
<p><b>5) Governance,</b></p> <ul style="list-style-type: none"> <li>▪ Review relevant risk registers and consider risk mitigation strategies in</li> </ul>	<p>Manager Governance and Risk Services</p>	<ul style="list-style-type: none"> <li>• Once every 3 years</li> <li>• Ad hoc as the</li> </ul>

Report Topic	Responsibility	Target Completion Date
place.		governance framework changes.
<b>6) Implementation of strategic plan,</b> <ul style="list-style-type: none"> <li>▪ Quarterly reporting on performance management and key performance indicators.</li> </ul>	Director Planning and Environmental Services	<ul style="list-style-type: none"> <li>• By date required as specified within the Local Government Act.</li> </ul>
<b>7) Delivery program and strategies,</b> <ul style="list-style-type: none"> <li>▪ Quarterly reporting on performance management and key performance indicators.</li> </ul>	Director Planning and Environmental Services	<ul style="list-style-type: none"> <li>• By date required as specified within the Local Government Act.</li> </ul>
<b>8) Service reviews,</b> <ul style="list-style-type: none"> <li>▪ Ad hoc reports on service delivery reviews and related risk mitigation or performance improvement strategies.</li> </ul>	Transition Project Leader	<ul style="list-style-type: none"> <li>• Ad hoc</li> </ul>
<b>9) Collection of performance measurement data by the council,</b> <ul style="list-style-type: none"> <li>▪ Consider performance measurement reports on a bi-annual basis and recommend opportunities for improvement to the framework where necessary.</li> </ul>	Director Organisational Services	<ul style="list-style-type: none"> <li>• By date required as specified within the Local Government Act.</li> </ul>
<b>10) Any other matters prescribed by the regulations.</b>	Ad hoc	On-going

## SUMMARY

The proposed internal audit programme highlights a list of tasks which have been identified based on the council risk profile. The proposed internal audit programme was also considered by the Executive Staff Committee.

The programme also includes a schedule of other information which will be provided to the Audit and Risk Management Committee by management as a part of the broad assurance framework.

At the time of preparing this report work was in progress to confirm the reconciliation of revenue as per the primary receipting system to the corresponding main Council general ledger position. Implementation of a specialised internal audit software system (ACL) was also progressed during the period under review. The Internal Auditor also considered implications of potential process weaknesses noted in a recent ICAC investigation of the City of Botany Bay and at the time of preparing this report consultation were in progress to

identify opportunities for improvement to the Council risk management framework. A report on lessons learnt from this investigation in relation to the risk management framework in place at Dubbo Regional Council will be presented to the next meeting of the ARMC. This evaluation of Dubbo Regional Council processes in relation to key findings of the ICAC investigation into the activities of a former Chief Financial Officer at the City of Botany Bay is not in the approved internal audit programme but it was required by the Interim General Manager. The Interim General Manager identified the findings of ICAC as a source of insight to inform the Council's internal audit and risk management programmes.

Appendices:

- 1 [↓](#) Internal Audit Programme Status July 2016 - July 2019 - Status as at May 2017 pages 1 and 2
- 2 [↓](#) Internal Audit Programme Status July 2016 - July 2019 - Status as at May 2017 - page 3

2017 - 2019 Three Year Internal Audit Programme															
Points of focus	Inherent Level of Risk & Priority	Residual Level of Risk & Priority	Indicative number of audit days	2016/17				2017/18				2018/19			
				Jul-sep	oct-dec	Jan-mar	Apr-Jun	Jul-sep	oct-dec	Jan-mar	Apr-Jun	Jul-sep	oct-dec	Jan-mar	Apr-Jun
Transition project tasks			28		12	8	8								
Cash receipting processes			24				8								
Internal controls questionnaire, completeness and accuracy of receipts															
Special focus on stand alone receipting sites															
Old Dubbo Gaol, Library, Weigh Bridge, Holiday Park, Livestock Markets, Showgrounds, Aquatic Leisure Centres (Swimming Pool), Visitors Information Centre	HIGH 16	MEDIUM 13													
BOD Alliance joint process improvement initiatives			4		2				1				1		
Identify opportunities for joint process improvement across the BOD Councils															
Obtain Directors approval and carry out feasibility study		This process covers a broad cross section of risks													
Obtain General Managers approval for implementation of identified joint initiatives			24				8						8		
Creditors								8							
Data analytics based assessment of creditors payments transactions and static data	HIGH 19	MEDIUM 10													
Review systems of internal control based on a substantive test of data analytics results			6	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	
Risk management framework review															
Identifying emerging risks and evaluating potential impact on Council operations and internal audit programme		This process covers a broad cross section of risks													
Provide internal audit input as required in on-going review of risk registers, policies and procedures															
Reports			35	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	
Internal audit review reports, specific investigations, policy reviews, requests from the ARMC, other request not included in the programme		This process covers a broad cross section of risks													
Project management process review			22						12						
Project management framework, contract management checklists															
Review approval processes for variation to tenders															
Review treatment of contingent amounts built into large contracts															
Testing transaction samples for compliance with policy framework															
Airport, building & construction, Livestock markets, showground, water management, works operations	HIGH 22	MEDIUM 12													
Rates & charges			14					8					6		
Most aspects of this process are well covered through external audit and routine regulatory reporting															
Non-ratable properties, Pensioners rebates, data analytics to identify inconsistent information	HIGH 17	MEDIUM 11													
Budgeting Process			6										6		
Compliance test on approval of budget variations															
Assessment of the quarterly budget accountability reporting process with a view to identify opportunities for streamlining process and enhance efficiency	HIGH 22	MEDIUM 12													
Event management process			13					5					8		
Risk management e.g. public liability insurance															
Completeness and accuracy of revenue collection															
Regional Theatre, Old Dubbo Gaol, Dubbo Aquatic Leisure Centre, Western Plains Cultural Centre	HIGH 11	HIGH 15													
Data integrity			23					6	5				12		
Review controls over integrity of data for selected processes - utilise computerised audit techniques to assess data integrity															
Environmental Services															
- ensuring that fees paid are consistent with set amounts for different types of applications															
Central Supply			4										4		
Inventory management process review, stock count for a selected range of items															
Data analytics to identify unusual trends in inventory movements	HIGH 19	MEDIUM 10													
Internal Audit Programme, ARMC Action List, other administrative tasks e.g. ACL software			7			5	2								
						60								60	

TOTAL DAYS INTERNAL AUDITOR ALLOCATION			
52 weeks in a year			52
less provision for annual and sick leave, carers leave, public holidays			-7
provision for training and professional development			-3
General Managers requests & BOD Alliance joint projects			-3
Support for & Requests from the ARMC, ARMC Action List			-3
weeks available in total			36
weeks per council per annum			12
days per council per annum			60
Total days for the period covered by this programme			180

Nature of Risk	Risk Description	INHERENT RISK		RESIDUAL RISK			ENTERPRISE RISK		
		C/L**	Rating	Existing Controls	C/L**	Current Rating	Accept	C/L**	Current Rating
Public Liability	Air strike by birds and other foreign objects	25/25	Extreme	Aerodrome Manual - section on bird strikes, Inspections for FoD's	25/25	Extreme	Yes	24/25	Extreme
Information Technology	No integrated management system for WHS, HR results in duplication, opportunity for errors, resource of untimely data etc hungry, provision	20/25	High	Currently Investigating solutions (Due December 2015)	20/25	High	No	20/25	High
Business Activities	Development works increasing public open spaces for additional maintenance	23/25	Extreme	Prioritising work External contractors Increased staff levels Reduction in service level Phase up additional funding	23/25	Extreme	Yes	20/25	High
Natural Hazards	Flooding	23/25	Extreme	Business Continuity Plans Infrastructure design to mitigate flooding effects Restricted asset for flooding events	20/25	High	Yes	20/25	High
Public Liability	Insufficient resources to undertake all Statutory obligations (e.g. Awings, Fire Safety Statements, Boarding Houses, Pools, etc.)	25/25	Extreme	Inspection/approvals regime Risk identification Staffing levels Prioritisation of work Insurances Professionalism of staff	21/25	High	No	21/25	High
Business Activities	Documents Council staff producing not recorded and allocated into TRIM (records management system)	23/25	Extreme	Corporate issue Policy & Procedures Training	21/25	High	No	21/25	High
Business Activities	Incorrect operator input into TRIM system	21/25	High	Corporate issue	21/25	High	No	21/25	High
Business Activities	Information that should be in TRIM is not captured or recorded	21/25	High	Corporate issue Escalation processes	21/25	High	No	21/25	High
WHS	Non-compliance of WHS Legislation	25/25	Extreme	Staff Training WHS Advisor Policy procedure External WHS Audit (Completed by December 2014) Internal Audits Safety Systems Development Plan	22/25	High	No	21/25	High
WHS	Lack of commitment by workers to WHS Requirements	25/25	Extreme	Staff Training WHS Advisor Policy procedure External WHS Audit (Completed by December 2014) Internal Audits Safety Systems Development Plan	24/25	Extreme	No	21/25	High
Financial/Infrastructure	Inadequate infrastructure for stormwater management	23/25	Extreme	Insufficient funding - submission for additional funding dependent on Asset Management Plan completion - expected June 2016	23/25	Extreme	No	21/25	High
Financial	Potential financial impact of changing guidelines from the Natural Disaster Relief Funding arrangements	21/25	High	None	21/25	High	Yes	21/25	High
Public Liability	Council staff - incorrect or lack of use of radio frequency by Council staff - leading to collision of aircraft - damage and injury	24/25	Extreme	Monitoring Investigation of breaches and reporting to ATSB	24/25	Extreme	No	22/25	High
WHS	Safety concerns with respect to Caravan Park Swimming Pool	25/25	Extreme	Maintenance programme of pool Signage Inspections and water testing Australian Standards compliance Pool adjacent to office Fencing and anti-slip paving	22/25	High	No	22/25	High
Public Liability	Fires as a result of slashing on road verges/grinders/walders	25/25	Extreme	WHS System SOPS/SWMS PPE	22/25	High	No	22/25	High
WHS	HAZMAT (asbestos) exposures when delivered by customers to Waste Depot	22/25	High	Screening at weigh-bridge Inspections Specific location HAZMAT - specific location Training of staff	22/25	High	No	22/25	High
WHS	Personal Safety - site visits - working within the road network	25/25	Extreme	WHS System PPE SOPS & SWIMS completed by June 2015	22/25	High	No	22/25	High

**Dubbo Regional Council**  
**List of audit topics universe considered in preparing the (2017-2019) 2 Year Internal Audit Programme**

AUDIT UNIVERSE TOPICS
Grants
Governance health check
GST Compliance/ FB Tax
Land purchases, development, sales
Leisure/aquatic centres & Museum/ Art Gallery /Cultural Centre
Library Systems (accounting)
Human resources, Payroll Management, including data integrity, Time Recording, Leave Management, Termination payments
Petty Cash
Procurement/ Purchasing/ contract management
Project Management incl variation authorisations, documentation, recording & reporting
Rates
Regulation / Compliance / Fines/ Parking fines
Risk register including validation of controls
S94 Contributions
Tender Processes / System
Trust account management
Accounts payable data analytics and EFT Payments review
Fixed Assets
Fraud control health check
Fee for service transactions (Local Government Act 1993 Section 608)
Waste Management
Child care centres, cash handling, gifts, follow up on outcomes from statutory audits
Events management
Accounts receivable
General ledger control processes
Investments
Budgetary control process
Performance management process
Development applications process
Section 64 contributions
IT processes & business continuity planning
Occupation and building certificates
Revenue receipting and cash handling processes





DUBBO REGIONAL  
COUNCIL

## **REPORT: Internal Audit Review Report - Cash Receipting Process**

**AUTHOR:** Internal Auditor  
**REPORT DATE:** 21 August 2017  
**TRIM REFERENCE:** ID17/1537

### **EXECUTIVE SUMMARY**

The review focused on remote receipting sites with software systems which are not automatically integrated with the main council accounting system. Opportunities for improvement were identified with respect to processes associated with the processing of refund transactions. The reconciliation of stand-alone sites receipt summaries with the main accounting system is a key control in ensuring that all receipts which have been processed are accounted for properly. This report recommends that management should consider introducing a uniform receipting software systems where possible. At the time of preparing this report work was in progress to confirm the reconciliation of revenue as per the primary receipting system to the corresponding main Council general ledger position. All other receipting sites in the audit test sample are covered in this report.

### **ORGANISATIONAL VALUES**

Customer Focused: The strategic objective of the Council's internal audit function is to provide a consultancy service to management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework. Enriched risk management processes improve efficiency and effectiveness in the attainment of service delivery promises to the Council's customers.

Integrity: A robust internal audit function supports the integrity of Council within the community.

One Team: The internal audit function supports cohesion and cooperation to minimise risk and improve the delivery of services to the community.

### **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

### **POLICY IMPLICATIONS**

There are no policy implications arising from this report.

**RECOMMENDATION**

**That the information contained within the report of the Internal Auditor dated 21 August 2017 and agreed management action plans be noted.**

*Shephard Shambira*  
Internal Auditor

**BACKGROUND**

There are 18 receipting sites across the Council. The main receipting sites are at the Dubbo Civic Administration building and the Wellington Administration building. Cash receipting sites at other locations are generally manned by one or 2 staff and in some cases the sites' receipting systems are not automatically integrated with the main council accounting computer system. Therefore, the regular remittance of takings and reconciliation of the amounts received to amounts banked are key control procedures for stand-alone receipting sites. The table below shows a list of Council's receipting sites and a brief comment about each of the sites.

<b>Receipting Site</b>	<b>Comment</b>	<b>Included in audit test sample?</b>
Dubbo Civic Administration Building	This is the main Council receipting office with a full staff compliment to allow for adequate segregation of incompatible duties.	No. It was deemed that the external audit process covers the key risk areas for this area adequately. A preliminary assessment of the process indicated that no major change has occurred since the previous internal audit review. Therefore it is not expected that including this area in the current audit test sample will yield significant benefits.
Wellington Administration Building	A preliminary assessment of the process at this office indicated that the operations and system has been designed to mirror the processes at the Dubbo Civic Administration building.	Yes. At the time of preparing the review plan for this audit, the Wellington Administration building was processing revenue receipts using 2 separate computer systems. A single software system was implemented with effect from 1 July 2017.
Old Dubbo Gaol	Receipts include sale of souvenirs', hosting events and charges for touring the facility.	No. Previous internal audit review recommended various control systems. A preliminary assessment of key information indicated that these key control mechanisms are in place. The key controls include an independent reconciliation of revenue transactions and banking by the Revenue Accountant.
Visitor Information Centre X 2	Revenue receipts include sale of souvenirs' and tickets.	Yes. The Wellington Visitors Centre only has been included in the test sample. The focus will be on reviewing new procedures and processes being introduced at this site.
Dubbo Regional Theatre and	Receipts include sale of tickets and souvenirs'.	No. Previously reviewed the receipting process. No significant emerging risk issues came to the attention of the

Convention Centre		Internal Auditor on this occasion to justify including this site in the current audit test sample.
Western Plains Cultural Centre	Receipts include sale of souvenirs', hosting events and charges for touring the facility.	No. The cumulative value of receipts for this site is not material.
Whylandra Waste Depot	Receipts include waste charges.	Yes.
Wellington Transfer Station	Receipts include waste charges.	Yes.
Rainbow Cottage and Family Day Care Centre	Receipts include user charges.	No. Receipts generally based on a systematic enrolment register. The risk of incomplete or inaccurate revenue receipts going undetected was not considered to be high on this occasion.
Dubbo Aquatic Leisure Centre	Receipts include pool user charges and hosting special events.	Yes. The processes at the DALC were previously reviewed and the current review proposes to follow up on establishing whether certain key control mechanisms are in place and working properly.
Dubbo Airport	Automated car park takings.	No. The Dubbo Airport revenue collection process was reviewed recently and it was not considered that including this site in the current test sample is likely to yield significant benefits.
Dubbo City Holiday Park	Receipts for accommodation services income. Sale of merchandise.	Yes.
Showground	Sale of merchandise.	No. Very minimal amounts received for this site.
Animal Shelter	Sale of pets, fines and related charges.	No. The Dubbo Animal Shelter revenue collection process was reviewed recently and it was not considered that including this site in the current test sample is likely to yield significant benefits.
Wellington Caves Complex	Receipts include income from souvenir sales, tours, hosting special events and caravan park accommodation.	Yes.
Wellington Pool	Pool user charges.	No. The pool was closed at the time of audit.

Geurie Pool	Pool user charges.	No. The pool was closed at the time of audit.
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### Risk considerations

The key risk considerations in respect of cash receipting include the following:

1. Completeness of revenue receipts. How do you know that all income which must be receipted has been receipted?
2. Accuracy of amounts receipted. Is the revenue amount receipted correct?
3. Completeness of banking. Are all revenue receipts being banked intact?
4. Timing of banking. Are revenue receipts being banked on time?
5. Physical security of cash assets. Are the storage facilities and procedures adequate? Work Health Safety considerations in respect of cash in transit.

### Audit Objectives

To establish that:

1. There are effective procedures in place to ensure that cash receipts are complete
2. There are effective procedures in place to ensure that all revenue receipted is banked intact
3. Revenue receipts are being banked on a timely basis
4. Cash on hand is stored in a safe place as appropriate.
5. There is an effective procedure to ensure that accounts receivable in respect of season tickets and scheduled events are duly recorded in the council accounting system.

### Review Approach, Scope & Sample Size

- Interviewed the Manager Financial Accounting Services, The Revenue Accountant and staff at the receipting sites in the audit test sample.
- Reviewed the *Council cash handling policy*
- Reviewed a sample of receipt records for sites in the test sample.
- Reviewed a sample of statements reconciling revenue receipts to amounts banked.
- Utilised a cash handling questionnaire to gather information as necessary to assess the status of relevant systems of internal control.
- The following cash receipting sites were identified for inclusion in the audit test sample. The year to date value of receipts processed at the sites in the audit test sample represents 43% of the total year to date value of receipts processed across the Council. The year to date value of receipts processed at the various sites as at 31 March 2017 is shown in the table below. The amount for the Wellington Administration Building is the year to date total as at 30 April 2017.

Receiving Site	Year to date receipts as at March 2017	Proportion of grand total
Customer Services - Dubbo	22,642,188	52%
Customer Services - Wellington	16,263,360	37%
Old Dubbo Gaol	251,677	1%
VIC - Dubbo	156,206	0%
VIC - Wellington	6,620	0%
DRTCC	961,485	2%
WPCC	38,133	0%
Whylandra Waste Station	207,753	0%
Wellington Transfer Station	139,272	0%
Rainbow	339,058	1%
Dubbo City Holiday Park	1,465,581	3%
Dubbo Aquatic Leisure Centre	263,872	1%
Geurie Pool	11,994	0%
Wellington Pool	66,964	0%
Airport	155,071	0%
Animal Shelter	71,178	0%
Family Day Care	7,323	0%
Showground	1,930	0%
Wellington Caves Complex	582,214	1%
<b>GRAND TOTAL</b>	<b>43,631,877</b>	<b>100%</b>
<b>Audit test sample</b>	<b>18,928,672</b>	<b>43%</b>

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## REPORT

- 1. Audit Objective:** *To establish that there are effective procedures in place to ensure that cash receipts are complete*

### Comments

The key issue when considering whether revenue receipts are complete is to establish whether all transactions which must be receipted have been receipted. In respect of certain transactions, it can be objectively established whether all transactions have been recorded and accounted for as appropriate. For an example, the value of income receipts in respect of rates due can be objectively verified because the revenue amount expected is known. Therefore, in respect of such predictable income streams, the risk of un-receipted transactions going undetected is insignificant. In respect of transactions where the revenue amount cannot be predicted accurately, the risk of un-receipted transactions going undetected is elevated. In this case it is important that a receipting system with sequentially numbered receipts be effectively applied and monitored on a regular basis.

This review did not focus on processes with predictable income streams because they are generally well covered during the external audit process and the reconciliation statement systems in place are deemed to be adequate risk mitigation strategies. The results and observations arising from the processes in place at the various sites in the audit test sample are summarised below.

Site	Receipting system	Reconciliation statements position	Comments and Recommendations
Whylandra waste depot	<ul style="list-style-type: none"> <li>• Computerised</li> <li>• Sequential receipt numbers</li> </ul>	A review of Council records system indicated that supporting vouchers not attached to revenue summaries submitted to Financial Services	Cumulative revenue receipts for the 2017 financial year compared to the general ledger position. At the time of preparing this report work was in progress to confirm the reconciliation of revenue as per the primary receipting system to the corresponding main Council general ledger position.
Wellington caves	<ul style="list-style-type: none"> <li>• Computerised</li> <li>• 2 separate systems for caravan park (Newbook software system) and another for tours etc (MYOB)</li> </ul>	Supporting records from primary receipting system attached to summaries submitted to financial Services but not at all times especially in respect of the Newbook system (accommodation receipts)	<ul style="list-style-type: none"> <li>• <b>Recommendation 1.</b> Consider eliminating one of the 2 systems and process all transaction using one software system.</li> <li>• Dubbo City Holiday Park Manager indicated that they could assist in providing training and enhancing the use of one of the existing software systems to cover all aspects of the business.</li> </ul>



Site	Receipting system	Reconciliation statements position	Comments and Recommendations
Wellington Administration Building	Electronic receipting system. At the time of audit there were 2 systems in place, but these were subsequently merged and only one system is now in use.	<ul style="list-style-type: none"> <li>Standard reconciliation procedures in place and monitored by the Manager Customer Service and Service Centres</li> <li>Mainly processes rates and charges income and bulk receipting of income from remote sites.</li> </ul>	No information came to the attention of the Internal Auditor indicating any significant weakness with the monitoring process and daily reconciliation statements prepared for this site.
Visitors Information Centre Wellington	<ul style="list-style-type: none"> <li>Computerised software system.</li> </ul>	<ul style="list-style-type: none"> <li>At the time of audit new procedures were being introduced.</li> <li>The Internal Auditor provided feedback to the responsible manager regarding new procedures developed at the time of audit.</li> </ul>	<ul style="list-style-type: none"> <li>The MYOB software system in use at the time of audit is outdated</li> <li><b>Recommendation 2.</b> Consider replacing the system with a more recent version.</li> </ul>
Wellington Transfer Station	<ul style="list-style-type: none"> <li>Computerised software system</li> <li>Manual receipt book which is rarely used. Required just in case there is a power blackout.</li> </ul>	Primary receipting system revenue summaries not submitted to the Financial Services Branch of Council.	<ul style="list-style-type: none"> <li><b>Recommendation 3.</b> Consider attaching a copy of the primary receipting system daily revenue summary report to returns submitted to the Financial Services branch of Council</li> <li>There is no weigh bridge at the site and this means that some transactions which should be based on a measured weight of waste are charged based on estimates</li> </ul>

Site	Receipting system	Reconciliation statements position	Comments and Recommendations
			by staff.
Dubbo Aquatic Leisure Centre (DALC)	<ul style="list-style-type: none"> <li>Electronic receipting system</li> </ul>	<ul style="list-style-type: none"> <li>The financial Services branch of Council carries out a review of all revenue receipts against primary receipting system reports on a weekly basis.</li> </ul>	<ul style="list-style-type: none"> <li>The Internal Auditor previously reviewed this receipting process recently. No adverse information came to the attention of the Internal Auditor on this occasion.</li> </ul>
Dubbo Holiday City Park (DCHP)	<ul style="list-style-type: none"> <li>Electronic receipting system in place – Newbook software system.</li> </ul>	<p>The financial Services branch of Council carries out a review of all revenue receipts against primary receipting system reports on a weekly basis.</p> <p>The Internal Auditor reviewed the year to April 2017 receipts per the primary receipting system against the general ledger position and no anomalies came to the attention of the Internal Auditor.</p>	<p>Timing differences arising from the fact that the system processes online bookings after hours makes it appear as if the daily totals for some days do not match. However, cumulative comparison of receipts processed during 2017 financial year did not reveal any anomalies with the receipting process.</p>

**Management Comments and Agreed Action Plans**

**Recommendation 1 – Wellington Caves**

Refer to comments below.

**Recommendation 2 – Visitor Information Centre Wellington**

<b>Responsibility:</b> Manager Business Support – Corporate Development	<b>Agreed Action Date:</b> 31 March 2018
<b>Management Comments and Agreed Management Action Plans</b> A review of an updated system will be undertaken.	
<b>Priority Rating:</b> LOW	<b>Issue Status:</b>

**Recommendation 3 – Wellington Transfer Station**

Refer to comments below.

**Audit objective:** to establish that there are effective procedures in place to ensure that all revenue receipted is banked intact

**Comments**

The use of sequentially numbered receipts is a system which facilitates the verification of completeness of banking. The preparation of periodical reconciliation statements to match the cumulative total amount receipted to amounts banked is a way to confirm completeness of banking.

The table in (1) above shows the nature of receipting systems in place at the sites in the audit test sample.

**Wellington caves**

**Comments**

A total of 49 days receipt summaries covering the period 1 July 2016 to 26 September 2016 and 1 January 2017 to 30 April 2017 were reviewed. The file with documents for the period October to December 2016 could not be located at the time of audit. So, transactions for this period were excluded from the audit test sample. The cumulative value of the receipt summaries in the audit test sample is \$131,324 which represents 23% of the estimated annual takings for the site.

The sequence of receipt numbers on the revenue summaries in the test sample were reviewed. The review involved establishing whether there was a gap in the sequence of receipt numbers reported on the test sample receipts summary and the receipts summary for the previous day and the receipts summary for the following day. This test highlighted one missing receipt number – 348067 for 4 March 2017. It was therefore concluded that other than the one missing receipt, revenue receipts for transactions in the test sample were properly accounted for and banked intact.

**Observations**

1. It was noted that the revenue summaries submitted to the Financial Services department on a regular basis included a copy of the primary receipting system (MYOB system) report showing the amounts collected for the period.
  - a. The MYOB software system is used to process revenue receipts in respect of the Wellington Caves tours and merchandise/coffee sales.

- b. No copies of the summary of receipts from Newbook software system was sighted on transactions in the audit test sample. The Newbook software system is used to account for Wellington Caves accommodation bookings and payments.
2. The summary of receipts processed using the EFTPOS (Electronic Funds Transfer Point of Sale) system were supported with daily “settlement statements” printed from the EFTPOS Systems.
  - a. A number of “refund” transactions were identified on some settlement statements. It is normal to issue a refund to a customer who may inadvertently pay more than the required amount. In respect of revenue receipts which cannot be predicted accurately in advance, it is possible that incorrectly processed refunds may go undetected.
3. A review of EFTPOS refund transactions highlighted an incorrect refund of \$500 which was processed at the Wellington caves. This amount could not be recovered as the customer could not be located.

**Issues and implications**

- (i) The use of 2 software systems to record revenue receipts and manage bookings for the Wellington Caves and tours is a duplication which increases administration overheads.
- (ii) Incorrect refund transactions can result in revenue leakage.

**Recommendations**

1. Consider utilising only one software system for all the business activities at the Wellington Caves. The Manager at the Dubbo City Holiday Park indicated that she may be able to facilitate the set up and configuration of the Newbook software system and related user training if required.
2. Ensure that all daily revenue receipts summaries submitted to the Financial Services department are supported with a related report from the primary receipting system.
3. Ensure that the staff who check daily revenue summaries certify that they verified the (i) receipt number sequence and (ii) authenticity of any EFTPOS refund transactions.

<p><b>Responsibility:</b> Manager Business Support – Corporate Development</p>	<p><b>Agreed Action Date:</b> 31 October 2017</p>
<p><b>Management Comments and Agreed Management Action Plans</b></p> <p><b>Wellington Caves</b> <u>Recommendation – Software systems</u></p> <ol style="list-style-type: none"> <li>1. I have had discussions with Jodie Anderson, Caves Manager and unfortunately one system will not meet the operational requirements of all aspects of the business (Caves, Caravan Park and Kiosk). Newbook has recently been installed and is currently used for accommodation bookings and group/school bookings for Caves tours. It is expected that a system upgrade in September will allow for Newbook to also be used for all Caves tours/tickets. The kiosk is currently using an outdated version of MYOB. Newbook is not recommended for this purpose due to the time and detail required to input an order and lack of flexibility in</li> </ol>	

- charge set up. We are currently looking at a system called Kounta which is a POS system expected to provide the required flexibility, speed and reporting <https://www.kounta.com/>.
2. A new daily reconciliation sheet has been developed based on the DCHP template. This reconciliation sheet will be submitted daily with supporting documentation from the Newbook system and Kiosk POS system to ensure that it balances and all receipts are accounted for.
  3. Business Services will commence the review of daily receipting in addition to Revenue staff checks. Business Services will also run a weekly report to check the authenticity of refund transactions including sample tests of transactions.

Recommendation – Group bookings

Group tour bookings are currently processed through the Newbook system. Events are currently not held at the Wellington Caves but it has the possibility of holding events such as weddings and it is anticipated that the Newbook system would be utilised for this purpose.

**Priority Rating: LOW**

**Issue Status: OPEN**

**Wellington Waste Transfer Station**

**Comments**

- A total of 28 days revenue receipts covering the period 1 July 2016 to 30 April 2017 were reviewed. The test sample was selected at random based on the internal auditor's judgement.
- The receipts summaries in the audit test sample have a cumulative value of \$16,674 which is 8% of the estimated annual takings for the site.

**Observations**

- (i) All except one EFTPOS settlement reports totals were verified against the revenue summaries. The EFTPOS transactions summary for the period 20/03/2017 to 24/03/2017 as reported on the revenue summary did not match the amount receipted. Settlement dated 20/3/2017 shows a total amount of \$202 and the corresponding receipt #685824 shows an amount of \$165.
- (ii) Copies of the primary receipting system revenue summaries was not sighted. The revenue summary forms submitted to the Financial Accounting Services department were not countersigned by a second official. It appears that no reconciliation statement is prepared on a regular basis to verify that the cumulative revenue amount receipted as per the primary receipting system matches with amounts deposited with the Council.

**Issues and Implications**

- Revenue receipts summaries submitted to the Financial Services department not supported with copies of the primary receipting system reports. Incomplete banking may go undetected.

**Recommendations**

- (i) Ensure that revenue receipts summaries are supported with a copy of the relevant primary receipting system revenue reports.

<b>Responsibility:</b> Manager Business Support – Technical Services	<b>Agreed Action Date:</b> 31 October 2017
<b>Management Comments and Agreed Management Action Plans</b> I agree with the Internal Auditor’s recommendation and new procedures to be in place by 31 October 2017.	
<b>Priority Rating: LOW</b>	<b>Issue Status: OPEN</b>

**Dubbo Aquatic Leisure Centre**

**Comment**

The Internal Auditor previously carried out a number of reviews of the processes at the DALC. This review therefore focused on following up on some of the issues raised in previous internal audit reports. One of the key control system changes implemented previously was that the daily revenue receipts are reviewed by the Financial Accounting services branch of council and that such review would consider whether the primary receipting system revenue reports submitted match with amounts declared and banked. That the frequency of banking of takings was occurring in line with Council procedures.

The Internal Auditor noted that there is a regular reconciliation of revenue receipts reported by the primary receipting system and the amounts banked. The Financial Services branch of Council maintains a spreadsheet which shows the reconciliation of amounts banked to primary receipting system totals. The Internal Auditor was advised that any discrepancies and noted are escalated as appropriate. No potential opportunities for improvement to the processing of DALC revenue transactions came to the attention of the Internal Auditor on this occasion.

**Dubbo City Holiday Park (DCHP)**

**Comment**

- The Financial Services branch of council prepares a daily banking reconciliation statement for the DCHP whereby the amount banked is compared to the amounts reported on the primary receipting system reports submitted to the financial services branch.
- The reconciliation statements for the period 1 July 2016 to April 2017 were reviewed and it was noted that the amounts banked do not always match with the amounts reported on the daily primary receipting system revenue summaries.
- The Internal Auditor’s enquiries with the Manager of the DCHP indicated that the discrepancies are due to timing differences. The primary receipting system allows customers to book accommodation online – after hours. The amounts processed during this time are reported on the date of receipt even though they only reflect on the bank statement for the following day.
- The Internal Auditor therefore reviewed the cumulative amounts banked in relation to the amounts reported through the primary receipting system, for all transactions processed during the period covered by the audit test sample – 1/7/2016 to 30/4/17.
- No anomalies with the completeness of banking came to the attention of the Internal Auditor.

**Other Observations** – *potential for incorrect refunds going undetected.*

**Comments**

- Council procedures do not allow the processing of cash out transactions at cash receipting sites.
- Where a customer payment processed through the EFTPOS system is incorrect it is expected that a refund should be generated as necessary to correct any errors.
- Enquiries with staff who process EFTPOS transactions indicated that refund transactions do not necessarily involve an automatic validation of the details of the card to which a refund is processed. The details of a transaction which may be the subject of a refund are generally based on copies of official receipts.

**Issue**

Incorrect refund transactions may go undetected.

**Recommendations**

1. Establish a process whereby all refund transactions as per the bank statement are reconciled with relevant supporting documents on a regular basis – for all remote receipting sites across Council.

<b>Responsibility:</b> Manager Financial Services	<b>Agreed Action Date:</b> 31 October 2017
<b>Management Comments and Agreed Management Action Plans</b>	
<ol style="list-style-type: none"> <li>1. Revenue Officer currently reconciles all refund transactions as per the bank statement with relevant supporting documents on a regular basis for all remote receipting sites across council</li> <li>2. A review of the automatic card validation process to which a refund is processed and copies of official receipts details of a refund transaction.</li> </ol>	
<b>Priority Rating:</b> MODERATE	<b>Issue Status:</b> OPEN

**2. Audit Objective:** *To establish that revenue receipts are being banked on a timely basis*  
**Comments**

The Internal Auditor noted that there is a Council Management Policy which requires that takings from all sites should be banked based on amounts collected or at least on a weekly basis where the takings are insignificant.

**Observations**

It was noted that in respect of sites where the amounts collected are not significant, takings are deposited with the council branch office on a weekly basis. In respect of the Wellington Caves, the Internal Auditor was advised that the intention is to deposit takings with the council branch office on a daily basis even though this is not consistently achieved at all times.

The Wellington Waste Transfer Centre daily cash takings are generally small amounts and it appears that the takings are deposited with the council branch office on a weekly basis.

The Whylandra Waste depot takings appear to be deposited with the council cashier on a weekly basis.

The Financial Services branch of council reviews all daily takings and monitors the timeliness of banking by different sites. The Internal Auditor's enquiries with Financial Services staff responsible for processing daily revenue receipts summaries indicated that where a particular site does not remit takings as expected, the Financial Services staff follow up with the site and escalate the matter as necessary to ensure that any anomalies are addressed. The Internal Auditor formed a view that this practice is an appropriate augmentation to the systems of internal control. No potential opportunities for improvement came to the attention of the Internal Auditor.

**3. Audit Objective:** *To establish that cash on hand is stored in a safe place as appropriate.*

**Comments**

- No adverse information came to the attention of the Internal Auditor regarding the cash storage conditions for the sites in the audit test sample.
- It was noted that the inherent risk of cash in transit from remote sites is mitigated through the use of a random programme for delivering cash takings to the Council offices.

**4. Audit Objective:** *To establish that there is an effective procedure to ensure that accounts receivable in respect of season tickets and scheduled events are duly recorded in the council accounting system.*

**Comments**

- The seasonal tickets and events are processed through the Council's invoicing system. A range of invoices for seasonal tickets were sighted in the Council records system under File16/1302.
- The takings at the DALC are reported to the Financial Services branch of council showing different methods of payment and a reconciliation statement is prepared by the Financial Services branch of council to ensure that all receivables are accounted for as appropriate.
- As noted above, this report proposes the use of Council's Events management software system for the organised tours at Wellington Caves.
- No information came to the attention of the Internal Auditor indicating weakness in the systems of internal control aimed at ensuring the completeness of revenue transactions recorded in respect of seasonal tickets and scheduled events.

**5. Other Observations – Potential Opportunity to consider using a standard receipting system for stand-alone sites. Various receipting software systems in use at different sites across the council**



**Comments**

The receipting of transactions can be based on specific business requirements. For an example, the waste centre weigh bridge will usually require the use of a receipting system which can be linked to the weigh bridge system such that where the cost of disposing of certain waste is depended on weight, the receipting system will be informed with output from the weigh bridge system. The receipting of transactions for other operations of Council is generic and focused on capturing basic transaction details and no other special information about each and every receipt.

**Observations**

- The nature of receipts for some of the sites across the Council operations appear to be generic.
- The cash receipting sites in the test sample indicated that there are a number of different software systems in use at various sites across the Council.
- Sites such as the Wellington Caves and the Dubbo City Holiday Park both use the Newbook system but the level of use is not the same.
- Some sites use the MYOB software system and the versions in use are different, and generally outdated.
- The table below groups some of the sites across the council.

Site	Nature of receipts	Comments
Whylandra Waste	<ul style="list-style-type: none"> <li>• Weigh bridge</li> <li>• General entry receipts</li> <li>• Accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Specialist weigh bridge</li> <li>• Generic receipting system with link to weigh bridge</li> </ul>
Wellington Waste Transfer Station	<ul style="list-style-type: none"> <li>• Weigh bridge</li> <li>• General entry receipts</li> <li>• Accounts</li> </ul>	
Old Dubbo Gaol	<ul style="list-style-type: none"> <li>• General entry receipts</li> <li>• Special events</li> <li>• Group tours</li> <li>• Accounts</li> <li>• Inventory retail</li> </ul>	<ul style="list-style-type: none"> <li>• Standard receipting system</li> <li>• With inventory management module</li> <li>• Bar sales</li> </ul>
Wellington Pool	<ul style="list-style-type: none"> <li>• General entry receipts</li> <li>• Special events</li> <li>• Special entry e.g. learn to swim</li> </ul>	<ul style="list-style-type: none"> <li>• Standard receipting system</li> <li>• With specialist transactions management</li> </ul>
Geurie Pool	<ul style="list-style-type: none"> <li>• General entry receipts</li> <li>• Special events</li> <li>• Special entry</li> </ul>	

	e.g. learn to swim	
DALC	<ul style="list-style-type: none"> <li>• General entry receipts</li> <li>• Special events</li> <li>• Special entry e.g. learn to swim</li> </ul>	
DCHP	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Accommodation</li> <li>• Retail inventory</li> </ul>	<ul style="list-style-type: none"> <li>• Standard receipting system</li> <li>• With inventory management module</li> <li>• Accommodation bookings</li> <li>• Link to event management system</li> </ul>
Wellington caves	<ul style="list-style-type: none"> <li>• General entry receipts</li> <li>• Special events</li> <li>• Group tours</li> <li>• Accommodation</li> <li>• Inventory retail</li> </ul>	
Animal Shelter	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Sales/inventory receipts</li> </ul>	<ul style="list-style-type: none"> <li>• Standard receipting system with</li> <li>• Inventory management module</li> </ul>
Sale yards	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Special receipts</li> <li>• Retail inventory</li> </ul>	
Western Plains Cultural Centre	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Special events</li> <li>• Inventory retail</li> </ul>	
Showgrounds	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Inventory/bar</li> </ul>	
Rainbow	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Special events e.g. excursions</li> </ul>	<ul style="list-style-type: none"> <li>• Standard receipting system</li> </ul>
DRTCC	<ul style="list-style-type: none"> <li>• General receipts</li> <li>• Inventory/bar</li> <li>• Special events</li> </ul>	<ul style="list-style-type: none"> <li>• Standard receipting system</li> <li>• With inventory management module</li> <li>• Bar sales</li> <li>• Specialist events management system</li> </ul>
Airport car Park	<ul style="list-style-type: none"> <li>• Specialist system general receipts</li> </ul>	<ul style="list-style-type: none"> <li>• Specialist/unique receipting system</li> </ul>

### Issue and Implications

The use of different stand-alone software systems for different sites across the council might increase the operational costs associated with user training, IT support and licencing of different software systems.

**Recommendation**

1. Evaluate the merits of introducing a standard cash receipting software package for use at stand-alone receipting sites across the whole Council.
  - a. A suggested grouping of different receipting sites across the council is shown in the table above.

<b>Responsibility:</b> Director Corporate Services	<b>Agreed Action Date:</b> 31/12/2017
<b>Management Comments and Agreed Management Action Plans</b> Stakeholder meeting to be held to discuss possible actions and synergies.	
<b>Priority Rating:</b> MODERATE	<b>Issue Status:</b> OPEN

**How we Prioritised the Findings & Recommendations**

Rating	Explanation
HIGH	<p>This is a serious internal control and risk management issue which requires immediate management attention. If not mitigated, the issue may, with a high degree of certainty, lead to:</p> <ul style="list-style-type: none"> <li>• Substantial losses, possibly in conjunction with other weaknesses in the control framework or the organisational entity or process being audited.</li> <li>• Serious violation of corporate strategies, policies, or values.</li> <li>• Serious reputation damage, such as negative publicity in national or international media.</li> <li>• Significant adverse regulatory impact, such as loss of operating licenses or material fines.</li> </ul>
MODERATE	<p>This is a medium-priority issue which requires timely management attention. It is a risk management and internal control issue which could lead to:</p> <ul style="list-style-type: none"> <li>• Financial losses</li> <li>• Loss of controls within organisational entity or process being audited.</li> <li>• Reputation damage, such as negative publicity in local or regional media.</li> <li>• Adverse regulatory impact, such as public sanctions or immaterial fines.</li> </ul>
LOW	<p>Considering that this is a low priority issue, routine management attention is warranted. This is a risk management and internal control issue whose resolution can lead to improvement in the quality and/or efficiency of the organisational entity or process being audited. Risks are limited.</p>

**SUMMARY**

The review focused on remote receipting sites with software systems which are not automatically integrated with the main council accounting system. Opportunities for improvement were identified with respect to processes associated with the processing of refund transactions. The reconciliation of stand-alone sites receipt summaries with the main accounting system is a key control in ensuring that all receipts which have been processed are accounted for properly. This report recommends that management should consider introducing a uniform receipting software systems where possible.



DUBBO REGIONAL  
COUNCIL

## REPORT: ARMC Action List as at August 2017

**AUTHOR:** Internal Auditor  
**REPORT DATE:** 10 August 2017  
**TRIM REFERENCE:** ID17/1451

### EXECUTIVE SUMMARY

The Audit and Risk Management Committee (ARMC) of Dubbo Regional Council requires monitoring implementation of its resolutions and agreed action plans. The Committee is required to be updated with details of implementation of recommendations and action plans arising from internal audit reviews and other activities initiated or considered by the Committee. Where action is deferred to a future date, the item is listed on the ARMC Action List until it has been resolved.

The ARMC Action List is in three parts. The first part shows a list of regular reports to the Committee. These are reports which the Committee require on an on-going basis. This can be once a year or once every quarter. There is no fixed completion date for such items. The second class of action items relate to action items which arise from Committee requests which have a set completion date. The third class of items relates to actions arising from internal audit review reports. Agreed management action plans in response to internal audit recommendations and findings are included on the ARMC Action List and deleted once the Committee has been provided with assurance that the issue has been resolved.

### ORGANISATIONAL VALUES

Customer Focused: The strategic objective of the Council's internal audit function is to provide a consultancy service to management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework. Enriched risk management processes improve efficiency and effectiveness in the attainment of service delivery promises to the Council's customers.

Integrity: A robust internal audit function supports the integrity of Council within the community.

One Team: The internal audit function supports cohesion and cooperation to minimise risk and improve the delivery of services to the community.

### FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

### POLICY IMPLICATIONS

There are no policy implications arising from this report.

**RECOMMENDATION**

- 1. That the information contained in the report of the Internal Auditor dated 10 August 2017 be noted.**
- 2. That all items marked as completed be deleted from the list.**

*Shephard Shambira*  
Internal Auditor

## **BACKGROUND**

Where an issue has been raised by the Committee or through findings of the Internal Auditor or other assurance service providers providing information to the ARMC, it is important for the Committee to be advised of the action taken to resolve such matters. The ARMC Action List is a tool which enables the Committee to monitor the progress of implementation of the recommendations and in ensuring that outstanding matters are resolved satisfactorily.

## **REPORT**

The detailed ARMC Action List as at August 2017 is attached (**Appendix 1**) to this report.

## **SUMMARY**

Refer to **Appendix 1** for a summary of the action plans and related progress reports.

Appendices:

**1** [↓](#) Audit Risk and Improvement Committee - ARIC - Action List as at August 2017

**REPORT****Audit, Risk and Improvement Committee (ARIC) Action List as at August 2017.****1. Action/Information/Reports requested by the ARIC - REGULAR REPORTS**

<b>Action item reference number and date initiated</b>	<b>Nature of outstanding action/information/ report</b>	<b>Responsibility</b>	<b>Target Completion Date</b>	<b>Comment/Status report as at August 2017</b>
<i>Action item 2014-317/10/14</i>	That the General Manager be requested liaise with the Chairman Audit, Risk and Improvement Committee in respect of dates for meetings of the Committee in March/ June/ August/ October 2017.	General Manager/ ARIC Chairperson	Correspondence close off 6 March 2017 17 May 2017 22 August 2017	Meeting scheduled for 2017.  Proposed schedule: 17 March 2017 – 11am 1 June 2017 – 11am 5 September 2017 – 11am 4 December 2017 – 11am  Meeting schedules to be redefined as new legislation is enacted.
<i>Action item 2014-05 6/6/14</i>	That the Institute of Internal Auditors of Australia Audit Committee members training course be offered to all members of the BOD Alliance Audit and Risk Management	General Manager	Ongoing	One member attended a workshop held by the Institute of Internal Auditors Australia on 3 November 2016 and the Internal Auditor attended the conference at the same time.



Action item reference number and date initiated	Nature of outstanding action/information/ report	Responsibility	Target Completion Date	Comment/Status report as at August 2017
	Committees.			Future opportunities will be identified and advertised to members.
<i>Action item 2016-513/12/16</i>	<ol style="list-style-type: none"> <li>1. That the committee amend the standing Agenda template for the ARIC to align with the list of key results areas identified in the new legislation.</li> <li>2. That in addition to an Internal Audit programme, a regular management reporting timetable is established which ensures that the Committee considers information as necessary to accomplish its objectives as stated in the proposed section 428A of the amended legislation with no action to be taken until section 428(A) comes into effect.</li> </ol>	ARIC Chair	On-going	<b>Pending assent to new legislation.</b> Key result areas for the ARIC are listed below for the Committee's reference. Related agenda items and expected delivery dates are also listed below. A status report is shown against each agenda item.

Action item reference number and date initiated	Nature of outstanding action/information/ report	Responsibility	Target Completion Date	Comment/Status report as at August 2017
<b>ARIC Purpose (As stated in the ARIC Charter)</b>				
<p><i>The Audit Risk and Improvement Committee (ARIC) is an independent advisory Committee assisting the Council to fulfil its risk management, governance, process improvement and oversight responsibilities. The primary duties and responsibilities of the ARIC are to assist the Council to discharge its responsibilities relating to:</i></p>				
<ul style="list-style-type: none"> <li><i>1.1. Financial reporting process</i></li> <li><i>1.2. Business ethics, policies and practices</i></li> <li><i>1.3. Management and internal controls</i></li> <li><i>1.4. Monitoring the integrity of the Council's financial reporting practices and finance and accounting compliance</i></li> <li><i>1.5. Reviewing internal controls, key corporate risks and all audit related matters</i></li> <li><i>1.6. Encouraging continuous improvement of Council's systems and practices</i></li> <li><i>1.7. Service reviews</i></li> <li><i>1.8. Adoption of the Internal Audit Plan</i></li> <li><i>1.9. The Council's process for monitoring compliance with policies, laws and regulations and the Council code of conduct.</i></li> </ul>				
<p>The Committee will achieve the above purpose by reviewing regular reports from internal audit and external auditors. In addition, the Committee will also consider various reports and presentations from management as stated below.</p>				
<p><b>1) Compliance</b></p> <ul style="list-style-type: none"> <li>▪ Submit an annual management report to the Committee which gives assurance that the Council framework for compliance with major legislative</li> </ul>	<p>Manager Governance &amp; Risk Services</p>	<ul style="list-style-type: none"> <li>• ARIC Meeting - September Annually</li> <li>• ARIC Meeting – March annually</li> </ul>	<p>Initial report scheduled for November 2017.</p>	

Action item reference number and date initiated	Nature of outstanding action/information/ report	Responsibility	Target Completion Date	Comment/Status report as at August 2017
	<p>requirements is in place and operating effectively.</p> <ul style="list-style-type: none"> <li>▪ For an example, a management report that all items listed on the Office of Local Government Calendar of Compliance were resolved as appropriate.</li> <li>▪ A bi-annual exceptions report on any areas of major non-compliance with legislation or policy requirements binding the Council.</li> </ul>			
<b>2) Risk management,</b>	<ul style="list-style-type: none"> <li>▪ Corporate risks register. This can be a standing item on the agenda for all meetings. Highlight key changes as and when there are significant changes to the corporate risks.</li> <li>▪ Presentations by divisional directors on key risks and related risk mitigation strategies for their divisions. The presentations can be spread throughout the year such that only one director will make a presentation at each meeting.</li> <li>▪ Ad hoc management reports on risk management framework for selected processes based on feedback from the Committee arising from consideration of other information provided to the Committee.</li> </ul>	Manager Governance & Risk Services	<ul style="list-style-type: none"> <li>• Corporate risk register to be presented to all ARIC meetings including highlights of any changes to corporate risks.</li> <li>• One annual presentation from each Divisional Director highlighting key risks and risk management framework.</li> </ul>	Council's corporate risk register shall be reviewed following the introduction of Council's revised organisation structure. The target completion date is March 2018. Attached for your information is the top corporate risks of the previous Dubbo City Council. Refer to Annexure A.
<b>3) Fraud control,</b>	<ul style="list-style-type: none"> <li>▪ Annual review of the fraud management policy</li> <li>▪ Bi-annual review of management feedback on fraud risk management framework.</li> </ul>	Manager Financial Operations/ Manager Governance & Risk Services	<ul style="list-style-type: none"> <li>• ARIC Meeting – June annually</li> <li>• ARIC Meeting – November annually</li> </ul>	Fraud Management Policy yet to be developed. Scheduled for submission to the November 2017

Action item reference number and date initiated	Nature of outstanding action/information/ report	Responsibility	Target Completion Date	Comment/Status report as at August 2017
	<ul style="list-style-type: none"> <li>▪ Management feedback should highlight any significant incidences.</li> <li>▪ Major changes in risk profile</li> </ul>			ARIC meeting.
<b>4) Financial management,</b>	<ul style="list-style-type: none"> <li>▪ Consider quarterly budget review reports</li> <li>▪ Consider quarterly investment reports</li> </ul>	Manager Financial Operations	Quarterly at each ARIC meeting	Meeting schedules to be redefined as new legislation is enacted.
<b>5) Governance,</b>	<ul style="list-style-type: none"> <li>▪ Review relevant risk registers and consider risk mitigation strategies in place</li> </ul>	Manager Governance & Risk Services	<ul style="list-style-type: none"> <li>• Once every 3 years</li> <li>• Ad hoc as the governance framework changes.</li> </ul>	Council's corporate risk register shall be reviewed following the introduction of Council's revised organisation structure. The target completion date is March 2018.
<b>6) Implementation of strategic plan,</b>	<ul style="list-style-type: none"> <li>▪ Quarterly reporting on performance management and key performance indicators.</li> </ul>	Manager Financial Operations	<ul style="list-style-type: none"> <li>• Quarterly</li> </ul>	Meeting schedules to be redefined as new legislation is enacted
<b>7) Delivery program and strategies,</b>	<ul style="list-style-type: none"> <li>▪ Quarterly reporting on performance management and key performance indicators.</li> </ul>	Director Economic Development and Business	<ul style="list-style-type: none"> <li>• Quarterly</li> </ul>	<p>Delivery Program Annual Review report submitted to August 2017 Council meeting.</p> <p>Meeting schedules to be redefined as new legislation is enacted.</p>
<b>8) Service reviews,</b>		Transformation Leader	<ul style="list-style-type: none"> <li>• Ad hoc</li> </ul>	The Transformation Leader

Action item reference number and date initiated	Nature of outstanding action/information/ report	Responsibility	Target Completion Date	Comment/Status report as at August 2017
	<ul style="list-style-type: none"> <li>▪ ad hoc reports on service delivery reviews and related risk mitigation or performance improvement strategies</li> </ul>			role is intended to be advertised internally on 31 August 2017, and will be advertised externally if required.
<b>9) Collection of performance measurement data by the council,</b>	<ul style="list-style-type: none"> <li>▪ Consider performance measurement reports on a bi-annual basis and recommend opportunities for improvement to the framework where necessary.</li> </ul>	Manager Financial Operations	<ul style="list-style-type: none"> <li>• Half yearly – March and September</li> </ul>	Meeting schedules to be redefined as new legislation is enacted.
<b>10) Any other matters prescribed by the regulations.</b>		Ad hoc	On-going	

<b>2. Action/Information/Reports requested by the ARIC - FIXED COMPLETION DATE</b>				
Action item reference number and date initiated	Nature of outstanding action/information/ report	Responsibility	Target Completion Date	Comment/Status report as at August 2017
<i>Action item 2013-52 2/03/13</i>	1. That a quarterly report on Council Payments and Contract Variations be provided to subsequent meetings of the Audit, Risk and Improvement Committee	Manager Financial Operations	Quarterly	Report submitted to the September 2017 meeting.

<b>2. Action/Information/Reports requested by the ARIC - FIXED COMPLETION DATE</b>				
<b>Action item reference number and date initiated</b>	<b>Nature of outstanding action/information/report</b>	<b>Responsibility</b>	<b>Target Completion Date</b>	<b>Comment/Status report as at August 2017</b>
	2. <b>With effect from 1/9/2017.</b> That future reports to the Committee in respect of contracts where the original contract value has been exceeded contain advice as to whether the necessary variation payment process has been followed.			
<i>Action Item 2014-1 17/03/14</i>	1. That a status report on The progress of implementation of recommendations of the ICAC's Operation Jarek be submitted to the next meeting of the Audit, Risk and Improvement Committee. 2. That recommendations marked as completed be deleted from future	Manager Financial Operations	On-going	Report submitted to the September 2017 meeting.

<b>2. Action/Information/Reports requested by the ARIC - FIXED COMPLETION DATE</b>				
<b>Action item reference number and date initiated</b>	<b>Nature of outstanding action/information/report</b>	<b>Responsibility</b>	<b>Target Completion Date</b>	<b>Comment/Status report as at August 2017</b>
	reports and a narrative provided for only those items being updated. 3. Resolved on 13/12/16, that Action Items 3,4,5,6,12 13 and 14 as contained in the report, have been completed and can be removed from future reports.			
<i>Action Item 2014-6 17/10/14</i>	<b>Council payments and contracts variations:</b> 1. That future reports with regard to Council payments and contract variations include a breakup by Division of: Number of creditors paid \$150,000 or more for materials. Number of contracts where original contact value was exceeded. 2. That a further report be	Manager Financial Operations	September 2017	Report submitted to the September 2017 meeting.

<b>2. Action/Information/Reports requested by the ARIC - FIXED COMPLETION DATE</b>				
<b>Action item reference number and date initiated</b>	<b>Nature of outstanding action/information/report</b>	<b>Responsibility</b>	<b>Target Completion Date</b>	<b>Comment/Status report as at August 2017</b>
	presented to the Audit, Risk and Improvement Committee including outcomes to address those creditors identified as exceeding \$150,000 in a financial year			
<i>Action item 2016-313/12/16</i>	Council payments and contract variations: That following the acquisition of Data Analytics Software and training, the Internal Auditor be requested to review invoices raised before purchase orders with a view to identifying suppliers who regularly supply without an order for corrective action.	Internal Auditor	30 June 2017	Completed – Report provided to September 2017 meeting.
<i>Action item 2017-011/06/17</i>	<b>ARIC Charter Annual Review</b> That the Interim General Manager be requested to prepare a report to the	Interim General Manager	September 2017	Report submitted to September 2017 meeting.



<b>2. Action/Information/Reports requested by the ARIC - FIXED COMPLETION DATE</b>				
<b>Action item reference number and date initiated</b>	<b>Nature of outstanding action/information/report</b>	<b>Responsibility</b>	<b>Target Completion Date</b>	<b>Comment/Status report as at August 2017</b>
	September 2017 meeting of the Audit, Risk and Improvements Committee regarding a review of the Committee's charter.			
<i>Action item 2017-021/06/17</i>	<b>Risk registers</b> That the Interim General Manager be requested to prepare a report to the March 2018 meeting of the Audit, Risk and Improvements Committee regarding the updated organisation risk registers.	Manager Governance and Risk Services	March 2018	Council's corporate risk register shall be reviewed following the introduction of Council's revised organisation structure. The target completion date is March 2018. Attached for your information is the top corporate risks of the previous Dubbo City Council. Refer to Annexure A.
<i>Action item 2016-031/06/17</i>	<b>Related Party Transactions Policy</b> 1. That legal advice be sought regarding the content and implementation of this policy.	Manager Governance and Risk Services	September 2017	Draft policy currently with Crennan Legal after Booth Brown Legal revised documents and advised they did not have the specialist skills to provide advice on the review of the

<b>2. Action/Information/Reports requested by the ARIC - FIXED COMPLETION DATE</b>				
<b>Action item reference number and date initiated</b>	<b>Nature of outstanding action/information/report</b>	<b>Responsibility</b>	<b>Target Completion Date</b>	<b>Comment/Status report as at August 2017</b>
	<p>2. That following receipt of legal advice the reviewed draft policy be forwarded to Council's Executive Staff Committee for consideration.</p> <p>3. That following consideration by the Executive Staff Committee, the draft policy be forwarded to Council for consideration and adoption.</p> <p>4. That members of the Audit, Risk and Improvement Committee be forwarded the Related Party Disclosure Policy following adoption of the policy by Council.</p>			documents.

Internal Audit Recommendations Pending Implementation					
Action item reference number and date initiated	Issue	Agreed Action	Target Completion Date	Responsibility	Comment/Status report as at August 2017
<b>s.94 Contributions process review</b>					
<i>Action Item</i> 2011-02 5/4/2011	Some developer contribution plans are overdue for a review. PRIORITY: HIGH	Update developer contributions plans.	December 2014 Original target date: June 2012	Director Planning and Environment	<p>Preliminary report adopted by Council at the September 2015 meeting. Legislation not yet resolved. A further report was tabled to Council in September 2016.</p> <p>Section 94 Plan for Urban Roads and Car parking reviewed however development of the new Plan and capital works schedule delayed pending outcome of the RMS consideration of options for a third bridge over the Macquarie River.</p> <p>Revised Section 94 Plan for Open Space and Recreation Facilities adopted by Council on 22 June 2016 and commenced operation on 1 July 2016.</p>

Internal Audit Recommendations Pending Implementation					
Action item reference number and date initiated	Issue	Agreed Action	Target Completion Date	Responsibility	Comment/Status report as at August 2017
					Operational Review of Section 64 Policy for Water and Sewer underway. New Policy will not be commenced until 2018/2019.

**SUMMARY**

The ARMC Action List is as shown in the table above. It is recommended that the information in the report be noted and that the Committee acknowledges that all items marked as completed be deleted from the list.

Nature of Risk	INHERENT RISK			RESIDUAL RISK				ENTERPRISE RISK	
	Risk Description	C/L **	Original Rating	Existing Controls	C/L **	Current Rating	Accept	C/L **	Current Rating
Public Liability	Air strike by birds and other foreign objects	25/25	Extreme	Aerodrome Manual - section on bird strikes Inspections for FoD's	25/25	Extreme	Yes	24/25	Extreme
Information Technology	No integrated management system for WHS, HR results in duplication, opportunity for errors, resource hungry, provision of untimely data etc	20/25	High	Currently investigating solutions (Due December 2015)	20/25	High	No	20/25	High
Business Activities	Development works increasing public open spaces for additional maintenance	23/25	Extreme	Prioritising work External contractors Increased staff levels Reduction in service level Phase up additional funding	23/25	Extreme	Yes	20/25	High
Natural Hazards	Flooding	23/25	Extreme	Business Continuity Plans Infrastructure design to mitigate flooding effects Restricted asset for flooding events	20/25	High	Yes	20/25	High
Public Liability	Insufficient resources to undertake all Statutory obligations (e.g. Awnings, Fire Safety Statements, Boarding Houses, Pools, etc.).	25/25	Extreme	Inspection/approvals regime Risk identification Staffing levels Prioritisation of work Insurances Professionalism of staff	21/25	High	No	21/25	High
Business Activities	Documents Council staff producing not recorded and allocated into TRIM (records management system)	23/25	Extreme	Corporate Issue Policy & Procedures Training	21/25	High	No	21/25	High
Business Activities	Incorrect operator input into TRIM system	21/25	High	Corporate Issue	21/25	High	No	21/25	High
Business Activities	Information that should be in TRIM is not captured or recorded	21/25	High	Corporate Issue Escalation processes	21/25	High	No	21/25	High
WHS	Non-compliance of WHS Legislation	25/25	Extreme	Staff Training WHS Advisor Policy procedure External WHS Audit (Completed by December 2014) Internal Audits Safety Systems Development Plan	22/25	High	No	21/25	High
WHS	Lack of commitment by workers to WHS Requirements	25/25	Extreme	Staff Training WHS Advisor Policy procedure External WHS Audit (Completed by December 2014) Internal Audits Safety Systems Development Plan	24/25	Extreme	No	21/25	High
Financial/infrastructure	Inadequate infrastructure for stormwater management	23/25	Extreme	Insufficient funding - submission for additional funding dependent on Asset Management Plan completion - expected June 2016	23/25	Extreme	No	21/25	High
Financial	Potential financial impact of changing guidelines from the Natural Disaster Relief Funding arrangements	21/25	High	None	21/25	High	Yes	21/25	High
Public Liability	Council staff - Incorrect or lack of use of radio frequency by Council staff - leading to collision of aircraft - damage and injury	24/25	Extreme	Monitoring Investigation of breaches and reporting to ATSB	24/25	Extreme	No	22/25	High

	INHERENT RISK			RESIDUAL RISK				ENTERPRISE RISK	
Nature of Risk	Risk Description	C/L **	Original Rating	Existing Controls	C/L **	Current Rating	Accept	C/L **	Current Rating
WHS	Safety concerns with respect to Caravan Park Swimming Pool	25/25	Extreme	Maintenance programme of pool Signage Inspections and water testing Australian Standards compliance Pool adjacent to office Fencing and anti-slip paving	22/25	High	No	22/25	High
Public Liability	Fires as a result of slashing on road verges/grinders/welders	25/25	Extreme	WHS System SOPS/SWMS PPE Equipment suitable for task Policies and procedures Staff training Fire fighting equipment	22/25	High	No	22/25	High
WHS	HAZMAT (asbestos) exposures when delivered by customers to Waste Depot	22/25	High	Screening at weigh-bridge Inspections Specific location HAZMAT - specific location Training of staff WHS System	22/25	High	No	22/25	High
WHS	Personal Safety - site visits - working within the road network	25/25	Extreme	WHS System PPE SOPS & SWIMS completed by June 2015	22/25	High	No	22/25	High



## REPORT: ARMC Action List - Internal Audit Data Analysis - Invoice date earlier than purchase order date statistics

**AUTHOR:** Internal Auditor  
**REPORT DATE:** 18 August 2017  
**TRIM REFERENCE:** ID17/1512

### EXECUTIVE SUMMARY

The ARMC Action List includes a request that the Internal Auditor utilise a data analytics software system to extract and analyse purchase transactions with a view to identifying suppliers who regularly supply without an order for corrective action. The ARMC request was triggered by a previous internal audit report which highlighted the potential risk of purchases which are approved before a purchase order is issued. The ARMC has therefore been monitoring the trend in changes to the percentage of transactions where the invoice date is earlier than the purchase order date.

An extraction of transactions for the 2 year period ended June 2017 highlighted a total of 910 suppliers with 3,427 invoices with a cumulative value of \$22,230,674.44. The Internal Auditor reviewed a selection of individual supplier accounts for some of the suppliers in the data extraction to establish the nature of transactions. It was noted that a significant proportion of the invoices by value relates to Council approved contracts and that a majority of the invoices relate to certain plumbing and hardware transactions.

The Internal Auditor formed a view that the review of statistics for invoices with dates earlier than related purchase orders dates by management and the Financial Services branch of Council is a useful risk mitigation strategy to detect and trigger corrective action where problematic transactions are identified. At the time of writing this report, this review had not occurred due to teething issues arising from implementation of a new accounting system, introduced in July 2017.

### ORGANISATIONAL VALUES

Customer Focused: The strategic objective of the Council's internal audit function is to provide a consultancy service to management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework. Enriched risk management processes improve efficiency and effectiveness in the attainment of service delivery promises to the Council's customers.

Integrity: A robust internal audit function supports the integrity of Council within the community.

One Team: The internal audit function supports cohesion and cooperation to minimise risk and improve the delivery of services to the community.

**FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

**POLICY IMPLICATIONS**

There are no policy implications arising from this report.

**RECOMMENDATION**

**That the information contained within the report of the Internal Auditor dated 18 August 2017 be noted.**

*Shephard Shambira*  
Internal Auditor



## **BACKGROUND**

The ARMC Action List includes a request that the Internal Auditor utilise a data analytics software system to extract and analyse purchase transactions with a view to identifying suppliers who regularly supply without an order for corrective action. The ARMC request was triggered by a previous internal audit report which highlighted the potential risk of purchases which are approved before a purchase order is issued. The ARMC has therefore been monitoring the trend in changes to the percentage of transactions where the invoice date is earlier than the purchase order date.

## **REPORT**

### **The essence of a purchase order**

A purchase order is a document which is generated in order to confirm authorisation of a purchase transaction.

The Council purchasing policy ascribes purchase transaction approval delegations to various positions.

### **Risk Considerations**

- (a) Where an official authorises a purchase transaction with a value within the approved limit of their delegated authority, the risks associated with such a transaction is not likely to be significantly different whether they give the approval consent before or after a purchase order has been issued. Yet, it is best practice that a purchase order be issued at the appropriate time in all circumstances where this is possible.
- (b) In the event that a Council officer approves a purchase transaction before a purchase order is issued and the value of the transaction is greater than their approved delegation limit, the transaction effectively breaches the purchasing policy.
- (c) In some scenarios it may be difficult to predict some expenses ahead of time so that a purchase order can be issued before an invoice is received. For an example, in the case of an emergency, there is no need to delay taking action simply because there is a requirement to obtain a purchase order before a purchase transaction can be authorised.

### **Comments**

Transactions in which the purchase order date is later than the invoice date for the period 2 years to 2017 were extracted and analysed. The ARMC Action List requested that the Internal Auditor review a range of transactions to identify specific trends and give insight on potential issues with any suppliers or class of transactions.

**Analysis of transactions for 2 years to 2017**

The table below shows an analysis of the statistics for invoice dates earlier than purchase order dates, analysed on the basis of requisitioning officer. For an example, 5 requisitioning officers processed a total of 263 invoices with a cumulative value of \$10,117,226.57 over the 2 year period. The cumulative value of invoices processed by each requisitioning officer for the 2 year period is between \$1 million and \$2.8 million.

A review of the invoices for the 5 officers indicated that

- \$1,901,713.69 out of the \$10,117,226.57 relates to insurance premiums payable to Statewide which is a pre-existing commitment.
- A transaction for \$2,125,180.50 was a replacement purchase order after the original purchase order had been closed off in error. In actual fact, the approval of the transaction was regular. A council tender approved before the transaction is in place.

The table below shows an analysis of the purchase order versus invoice dates transactions for 2 years to June 2017. This table categorises the transactions based on the requisitioning officers.

<b>Distribution of cumulative value</b>	<b>Number of requisitioning officers</b>	<b>number of invoices</b>	<b>share of cumulative value</b>
Cumulative value between \$1m and \$2.8m	5	263	10,117,226.57
Cumulative value between \$500,000 and \$984,000	5	135	3,656,562.56
Cumulative value between \$300,000 and \$445,000	6	398	2,257,887.63
Cumulative value between \$172,000 and \$270,000	12	511	2,680,420.17
Cumulative value between \$101,000 and \$146,000	8	285	960,465.77
Cumulative value between \$50,000 and \$97,000	19	760	1,266,762.70
Cumulative value between \$20,000 and \$48,000	26	548	850,720.31
Cumulative value between \$1 and \$20,000	70	527	440,628.73
<b>Grand totals</b>	<b>151</b>	<b>3427</b>	<b>22,230,674.44</b>

The table below categorises the invoices based on the suppliers and cumulative value of invoices.

**Distribution of invoices based on supplier and cumulative value of invoices**

Distribution of cumulative value	Number of suppliers	number of invoices	share of cumulative value
Cumulative value between \$1m and \$2.8m	4	23	7,323,409.91
Cumulative value between \$500,000 and \$984,000	4	150	2,662,047.42
Cumulative value between \$358,000 and \$390,000	3	21	1,123,874.52
Cumulative value between \$150,000 and \$280,000	16	193	3,469,758.01
Cumulative value between \$101,000 and \$146,000	11	84	1,328,738.83
Cumulative value between \$50,000 and \$97,000	25	409	1,679,650.77
Cumulative value between \$20,000 and \$48,000	65	533	2,041,994.90
Cumulative value between \$1 and \$20,000	782	2,014	2,601,200.08
<b>Grand totals</b>	<b>910</b>	<b>3,427</b>	<b>2,230,674.44</b>

There are 4 suppliers who were paid a total of \$7,323,409.91 based on 23 invoices. 2 of the 23 invoices with a combined value of \$1,899,127 relate to payments to StateCover Mutual Ltd which is Council's insurer. A further 2 invoices with a combined value of \$1,670,552.84 relate to Council's contributions to the Rural Fire Services (NSW Government Department of Justice). The remaining 19 of the 23 invoices relate to 2 separate Council contracts.

**The table below shows an analysis of the statistics regarding 2546 (74%) out of the 3,427 invoices in the data extraction.** The value of the 2,546 invoices is \$4,643,194.98 which represents 21% of the population. The value of each of the 2,546 individual invoices is between \$100 and \$48,000. There are 439 suppliers in the data extraction who were paid for one invoice each, and the cumulative value of such payments is \$1,257,943.89, which represents 27% of \$4,643,194.98.

Simple average invoice value	Number of invoices identified	Count of Suppliers	Sum of value of invoices	
2,865.48	1	439	1,257,943.89	27%
2,636.38	2	154	812,005.22	17%
2,803.12	3	79	664,338.79	14%
1,848.52	4	45	332,732.73	7%
941.28	5	19	89,421.84	2%
1,398.75	6	22	184,635.23	4%
1,284.27	7	15	134,848.58	3%
1,542.95	8	15	185,154.02	4%
1,681.95	9	11	166,512.64	4%
509.04	10	8	40,723.53	1%

1,658.48	11	4	72,973.02	2%
1,499.34	12	8	143,936.35	3%
849.25	13	5	55,201.24	1%
2,343.25	14	2	65,611.08	1%
1,713.85	15	2	51,415.63	1%
448.77	16	1	7,180.24	0%
458.53	17	3	23,385.01	1%
1,330.24	18	2	47,888.75	1%
1,257.81	19	3	71,694.99	2%
198.64	20	1	3,972.79	0%
1,074.17	21	2	45,115.28	1%
1,692.78	22	1	37,241.12	1%
1,595.77	24	1	38,298.36	1%
1,198.49	26	1	31,160.79	1%
716.81	30	1	21,504.34	0%
224.20	33	1	7,398.56	0%
352.46	57	1	20,090.46	0%
410.81	75	1	30,810.50	1%
	<b>2,547</b>	<b>847</b>	<b>4,643,194.98</b>	<b>100%</b>

An analysis of the purchase order descriptions in respect of the one supplier with a total of 75 invoices as noted above shows that the transactions relate to several minor plumbing and gas repair works. This appears to be urgent works which may not be easily predictable.

The top 10 suppliers by count of invoices relate to plumbing and hardware supplies, (9 suppliers), and 1 supplier of stationary on government contract.

### **Conclusion**

It appears that a significant proportion of the transactions, by value, in which invoice dates are earlier than purchase order dates, relate to approved council contracts and certain emergency services transactions such as security alarm response charges. Therefore, to the extent that these transactions are subject of council approved contracts, there is no material risk issue of audit interest.

In respect of the remainder of transactions, the position is that any non-compliance with delegated authority limits will be detected at the time of capturing the transactions to the computer system. The Council's accounting system validates the delegated authority limits of all users at the time of capturing a purchase transaction.

The Internal Auditor established that the report showing transactions where the purchase order date is later than the invoice date is reviewed by the Financial Services branch of Council on a monthly basis; and escalated with the relevant Divisional Directors for action where required.

At the time of preparing this report the position was that this regular review of the report had not been done since commencement of the new financial year. A new software system was

implemented at the start of the 2018 financial year and the system reporting processes are still being refined.

It is expected that providing that the review of statistics for transactions where the invoice dates are earlier than related purchase order dates, is resumed after the new system is fully implemented, the impact of risks associated with this anomaly are likely to be effectively mitigated.

## **SUMMARY**

An extraction of transactions for the 2 year period ended June 2017 highlighted a total of 910 suppliers with 3,427 invoices with a cumulative value of \$22,230,674.44. The Internal Auditor reviewed a selection of individual supplier accounts for some of the suppliers in the data extraction to establish the nature of transactions. It was noted that a significant proportion of the invoices by value relates to Council approved contracts and that a majority of the invoices relate to certain plumbing and hardware transactions.

The Internal Auditor formed a view that the review of statistics for invoices with dates earlier than related purchase orders dates by management and the Financial Services branch of Council is a useful risk mitigation strategy to detect and trigger corrective action where problematic transactions are identified. At the time of writing this report, this review had not occurred due to teething issues arising from implementation of a new accounting system, introduced in July 2017.



DUBBO REGIONAL  
COUNCIL

## **REPORT: Audit and Risk Management Committee (ARMC) Charter**

**AUTHOR:** General Manager  
**REPORT DATE:** 29 August 2017  
**TRIM REFERENCE:** ID17/1546

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### **EXECUTIVE SUMMARY**

This report attaches the draft Charter for Council's Audit and Risk Management Committee and Internal Audit Guidelines as prepared by the Department of Premier and Cabinet, Division of Local Government, for consideration and recommendation to Council.

### **ORGANISATIONAL VALUES**

Customer Focused: The ARMC is an advisory Committee assisting the Council to fulfil its Governance and oversight responsibilities. Good governance assists the community to have confidence in the operations of Council.

Integrity: The ARMC has an oversight role of Council's internal audit program to assist in ensuring the integrity of Council's operations.

One Team: All operations of Council are subject to oversight of the Committee.

### **FINANCIAL IMPLICATIONS**

Costs relating to the Audit and Risk Management Committee are covered by existing budgets.

### **POLICY IMPLICATIONS**

The Audit and Risk Management Committee Charter, once adopted, will be a policy of Council which enhances the Governance and Risk Management Framework.

**RECOMMENDATION**

1. That the draft Audit and Risk Management Committee Charter be adopted.
2. That the Internal Audit Guidelines, as prepared by Premier and Cabinet, Division of Local Government, dated September 2010, be noted.

*Mark Riley*  
General Manager

## BACKGROUND

Dubbo Regional Council, in December 2016, adopted a Charter for its Audit, Risk and Improvement Committee. The name of this Committee and the Charter were both premised on a review of the Local Government Act undertaken by the Government and amended through the Local Government Amendment (Governance and Planning) Bill 2016.

Various changes were introduced in the Amendment including that Council must appoint an Audit, Risk and Improvement Committee. In this regard, it should be noted that although some amendments to the Act have been adopted, the amendments are being introduced in a staged manner by proclamation and not all the various amendment emanating from the Amendment Bill are yet in force. This is the case in respect of the Audit, Risk and Improvement Committee.

Accordingly, it is advised that Council at its meeting held on 28 August 2017, resolved to amend the name of the Committee immediately to Audit and Risk Management Committee and also refer the Audit and Risk Management Charter to the Audit and Risk Management Committee for consideration and recommendation to reflect the Local Government Act as it currently stands.

## REPORT

The attached draft Audit and Risk Management Committee Charter dated August 2017 (**Appendix 1**) is generally consistent with the template suggested by the Office of Local Government in the Internal Audit Guidelines of September 2010.

A copy of Internal Audit Guidelines are also attached (**Appendix 2**).

It will be recommended that these documents be adopted and noted respectively.

It is further advised that Council at its meeting held on 28 August 2017 resolved as follows:

1. *That Mr John Walkom be appointed as an Independent Member to the Audit and Risk Management Committee and Chairman for an initial period of 12 months ending 30 September 2018, pending review during this period.*
2. *That Mr Andrew Fletcher be appointed as an Independent Member to the Audit and Risk Management Committee for an initial period of 12 months ending 30 September 2018, pending review during this period.*
3. *That Mr Steve Bassett be appointed as a Community Representative to the Audit and Risk Management Committee for an initial period of 12 months ending 30 September 2018, pending review during this period.*



This determination was made on the basis of the timelines associated with the review of Council's 2016/2017 Financial Statements, which will occur during the period October to December 2017, the Council Elections and the role of the Audit and Risk Management Committee as per the Charter.

It is further noted that as part of the Extraordinary meeting of Council expected to be held in early October 2017, it is proposed that Council determine the Councillor representatives to the Audit and Risk Management Committee so that the Committee is in a position to operate and review, amongst other matters, the audit of Council's 2016/2017 financial statements as undertaken by Luka Group, on behalf of the NSW Audit Office.

Appendices:

- 1 [↓](#) Audit and Risk Management Committee Charter
- 2 [↓](#) Internal Audit Guidelines



# AUDIT AND RISK MANAGEMENT COMMITTEE CHARTER

Prepared August 2017

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## **Audit and Risk Management Committee (ARMC) Charter**

### **1 ARMC Purpose**

The Audit and Risk Management Committee (ARMC) is an advisory Committee assisting the Council to fulfil its governance and oversight responsibilities. The primary duties and responsibilities of the ARMC are to assist the Council to discharge its responsibilities relating to:

- 1.1. Financial reporting process
- 1.2. Business ethics, policies and practices
- 1.3. Management and internal controls
- 1.4. Monitoring the integrity of the Council's financial reporting practices and finance and accounting compliance
- 1.5. Reviewing internal controls, key corporate risks and all audit related matters
- 1.6. Encouraging continuous improvement of Council's systems and practices
- 1.7. Adoption of the Internal Audit Plan
- 1.8. The Council's process for monitoring compliance with policies, laws and regulations and the Council code of conduct.

### **2 Authority**

- 2.1. The ARMC is delegated authority by Council to carry out its duties and responsibilities as defined in this charter. The ARMC has delegated authority to approve investigations into any matters within its scope of responsibility. It is empowered to:
  - 2.1.(a) Resolve any disagreements between management and the auditor regarding financial reporting (subject to confidentiality considerations).
  - 2.1.(b) Pre-approve all auditing and non-audit services.
  - 2.1.(c) After due consultation with the General Manager, retain independent counsel, accountants, or others to advise the Committee or assist in the conduct of an investigation.
  - 2.1.(d) Meet with Council management, external auditors, or outside counsel, as necessary.
  - 2.1.(e) That Council acknowledges that professional independence and objectivity are key attributes of an efficient and effective ARMC. The Council and General Manager are therefore committed to uphold and guarantee the professional independence and objectivity of the ARMC.

- 2.2. The Committee will also review any other matters as prescribed by the Regulations from time to time.

### **3 Composition**

- 3.1. All appointments to the ARMC shall be made by Council.
- 3.2. The ARMC will consist of:
- 3.2.(a) Core Members (voting)
- Mayor of the day (or a Councillor nominated by the Mayor as his/her representative)
  - One Councillor
  - Two independent external members (not members of Council and one to be Chairperson)
- 3.2.(b) Attendee (non-voting)
- General Manager
  - Internal Auditor
  - Director Corporate Services
  - Director Economic Development and Business
  - One Community Representative
- 3.2.(c) Invitees (non-voting)
- Representatives of the external auditor
  - Manager Financial Operations
  - Manager Governance and Risk
  - Other officers of Council as requested by the ARMC, Mayor and/or by the General Manager
- 3.3. In order to maintain independence, the ARMC shall elect one of the independent members as its chairperson.
- 3.4. The selection of independent members should be undertaken in a transparent and unbiased manner. This could include calling for expressions of interest from interested persons.

### **4 Tenure**

- 4.1. The term of office for an ARMC member shall end on the earlier of:
- 4.1.(a) the day on which the member resigns from the ARMC
- 4.1.(b) in the case of a Councillor, the day on which the Councillor ceases to be a Councillor for the Dubbo Regional Council.
- 4.1.(c) Two years in respect of the independent external members and the community representative or such other term as determined by Council.

- 4.1.(d) the day on which the member's appointment is legally terminated by Council.
- 4.1.(e) the day on which the member is incapacitated by law from holding such office.
- 4.2. Members are encouraged to serve multiple terms and to plan for an orderly rotation of members so that experienced members will always be serving. The ARMC should make recommendations to Council on membership.
- 4.3. In any event, the appointment of each member of the ARMC will be reviewed at the end of the first year and confirmed for the remaining period subject to satisfactory performance as determined by Council. A member may be eligible for re-appointment to the Committee for a continuous period not exceeding eight years.
- 4.4. In considering new independent members for the ARMC, selection shall be influenced by:
  - (a) Industry standards for similar committees, particularly relating to the appointment of independents to ARMC's.
  - (b) Any guidelines issued by the NSW Government concerning Local Government ARMC's.
  - (c) The attributes and experience of candidates who respond to Expressions of Interest advertisements for Independent Members.
- 4.5. The independent members and community representative on the ARMC should be remunerated for attending committee meetings. The remuneration shall be adopted by Council.

## **5 Meetings & Quorum**

- 5.1. The Committee will meet at least four times a year, with authority to convene additional meetings, as circumstances require.
- 5.2. A quorum shall not exist unless at least three voting members are present.
- 5.3. Members of the ARMC are generally expected to attend each meeting, in person or via tele or video-conference, with the approval of the Committee Chairperson.
- 5.4. The ARMC will invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary.
- 5.5. The Committee may hold private meetings with auditors (see below) and executive sessions.
- 5.6. A meeting agenda will be provided in advance to members, along with appropriate briefing materials.
- 5.7. The Chairperson shall determine the agenda for the ARMC in conjunction with Council staff.
- 5.8. Minutes will be prepared and distributed to the ARMC members and to the next Ordinary meeting of the Council.
- 5.9. Meetings are to be rescheduled if there is not a quorum. The Council's Internal Auditor (or if unavailable, another Council officer) will minute proceedings of all meetings.

- 5.10. The chairperson shall endeavour to conduct meetings on a "consensus basis" but formal voting on recommendations shall be required. Each member shall have one vote and a majority of those present shall be required to pass a recommendation. The chairperson shall have a casting vote. The meetings should operate as far as is practical in accordance with the Council's Code of Meeting Practice.

## **6 Confidentiality**

- 6.1 The ARMC will ensure that Committee members comply with all relevant laws and Council's policies regarding confidentiality, privacy and reporting. Committee members shall treat all information received as part of the Committee as confidential and only disclose the content to third parties with the consent of other members of the Committee.

## **7 Responsibilities**

- 7.1 The ARMC has no executive powers, except those expressly provided by Council.
- 7.2 In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and General Manager as defined by the Local Government Act 1993. The Council and General Manager shall ensure that reasonable resources are allocated to providing the ARMC with the information it needs to discharge its responsibilities.
- 7.3 The responsibilities of the ARMC may be revised or expanded by Council from time to time. The Committee will carry out the following responsibilities:

### **7.3.1 Financial Statements**

- Review significant accounting and reporting issues, including complex or unusual transactions and highly judgmental areas, and recent professional and regulatory pronouncements, and understand their impact on the financial statements. The ARMC can add value for Councillors and the process by reviewing the audit objectives, timeline and process, settlement of identified issues and the independence of the External Auditor. This would be done in consultation with the External Auditor, Internal Auditor and management.
- Based on the Audit Objectives, review with management and the External Auditors the results of the audit, timeline and process, settlement of identified issues and the independence of the External Auditor. Review the process of the audit, identify unresolved issues.
- Review the audited annual financial statements and consider whether they are complete, consistent with information known to Committee members, and reflect appropriate accounting principles. Without having conducted its own assessment the ARMC will need to rely on the work Internal Auditor, External Auditor and management representations. Therefore any recommendation to the Council would be based on the external auditor's management letter and made under a disclaimer that identifies things such as the audit process, access to records, auditor

appears to be suitably qualified, had sufficient time to complete, items identified have been resolved to their satisfaction.

- As part of the External Auditor's presentation and management representations, review with management and the external Auditors all matters required to be communicated to the Committee under generally accepted auditing Standards.
- Understand how management develops interim financial information, and the nature and extent of internal and external auditor involvement.

### **7.3.2 Risk Management**

- Review whether management has in place a current and comprehensive risk management framework, and associated procedures for effective identification and management of business and financial risks, including fraud.
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings.
- Review the impact of the risk management framework on its control environment and insurance arrangements.
- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.

### **7.3.3 Internal Control**

- Consider the adequacy and effectiveness of the Council's internal control system, incorporating the:
  - reliability and integrity of financial and operational information systems, including information technology security and control
  - effectiveness and efficiency of operations
  - safeguarding of assets
  - compliance with contracts, laws and regulations
  - governance framework
- Understand the scope of internal auditors' review of internal control over financial reporting, and obtain reports on significant findings and recommendations, together with management's responses.

### **7.3.4 Internal Audit**

- Review and recommend approval of the Internal Audit Activity Charter, activities, and staffing, and organizational structure of the internal audit function; and any subsequent changes.
- Have final authority to review and approve the annual audit plan and all major changes to the plan.
- Ensure there are no unjustified restrictions or limitations to the activities of internal audit.
- Review the effectiveness of the internal audit function and objectives, including compliance with *The Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing*.



### **7.3.5 External Audit**

- Establish that an appropriate process is in place to give assurance that the Council complies with the Local Government Act requirements for financial reporting and auditing.
- Review the external auditors' proposed audit scope and approach, including coordination of audit effort with internal audit.
- In accordance with the provisions of section 422-427 of the Local Government Act 1993, support the General Manager in reviewing the performance of the external auditors.
- Review management's responses to the recommendations in the external auditor's management letter.
- On a regular basis, meet separately with the external auditors to discuss any matters that the Committee or auditors believe should be discussed privately.

### **7.3.6 Compliance**

- Review the effectiveness of the system for monitoring compliance with laws, regulations and contracts and the results of management's investigation and follow-up of any instances of non-compliance.
- Review the findings of any examinations by regulatory agencies, and any auditor observations.
- Review the process for communicating the code of conduct to Council personnel, and for monitoring compliance therewith.
- Liaise with the General Manager to obtain regular updates from management and Council legal counsel regarding compliance matters.
- Review other sections of the annual report and related regulatory filings before release and consider the accuracy and completeness of the information.

### **7.3.7 Reporting Responsibilities**

- Regularly report to the Council about Committee activities, issues, and related recommendations.
- Provide an open avenue of communication between internal audit, the external auditors, and the Council.
- Report annually to the Council, describing the Committee's composition, responsibilities and how they were discharged, and any other information required by law, including non-audit services.
- Review any other reports the Council issues that relate to Committee responsibilities.

### **7.3.8 Other Responsibilities**

- Perform other activities related to this Charter as requested by the Council.
- Institute and oversee special investigations as needed.
- Review and assess the adequacy of the ARMC Charter annually, requesting Council approval for proposed changes, and ensure appropriate disclosure as may be required by law or regulation.
- Confirm annually that all responsibilities outlined in this Charter have been carried out.

- Evaluate the Committee's and individual members' performance on a regular basis.

### 7.3.9 Individual Responsibilities of Members

Members of the ARMC are expected to:

- Understand the relevant legislative and regulatory requirements appropriate to Dubbo Regional Council.
- Contribute the time needed to study and understand the papers provided.
- Apply good analytical skills, objectivity and good judgment.
- Express opinions frankly, ask questions that go to the fundamental core of issues, and pursue independent lines of enquiry.
- Declare any conflicts of interest before participating in deliberations on the issue where the conflict of interest exists.
- Attend an induction meeting at which they receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

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# Internal Audit Guidelines

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## Chief Executive's Foreword

Internal audit is an essential component of a good governance framework for all councils. At both a management and councillor level, councils must strive to ensure there is a risk management culture. Internal audit can assist in this regard.

Internal audit is widely used in corporate Australia as a key mechanism to assist councils to manage risk and improve efficiency and effectiveness. At Federal and State Government levels there are clear requirements for internal audit and risk management.

There is also growing acceptance of the importance of internal audit and risk management in local government. It is pleasing to see that a number of councils in New South Wales are showing leadership in fully embracing this concept. However, a survey of councils conducted in 2009 by the Division of Local Government designed to assess the progress of councils in implementation of the internal audit function highlighted that while progress is being made, there is still opportunity for improvement. Effective internal audit and risk management processes should become part of the 'business as usual' operations of councils.

With the implementation of Integrated Planning and Reporting, internal audit will play a vital role at ensuring that the strategies adopted by council are being followed.

These guidelines propose oversight of council systems and processes through an audit committee. The combination of an effective audit committee and internal audit function provide a formal means by which councillors can obtain assurance that risk management is working effectively. Similarly the internal audit process is an on-going mechanism to ensure that the recommendations of the Promoting Better Practice reviews undertaken by the Division of Local Government have been fully implemented.

This guide has been designed to help councils and county councils develop and implement internal audit and risk management frameworks that will in turn build community confidence in their managerial performance. I encourage all councils to use this guide to assist them in building their own internal audit capability within their organisations.

**Ross Woodward**  
**Chief Executive, Local Government**  
**A Division of the Department of Premier and Cabinet**

## 1. Introduction

The NSW Division of Local Government (DLG) believes that a professional Internal Audit function is one of the key components of the effective governance of any council. In 2001, the Independent Commission Against Corruption (ICAC) found that while 80% of local council General Managers agreed that internal audit is important, only 20% of councils had an internal audit function or audit committee.

These Internal Audit Guidelines, first released in 2008, are aimed at assisting councils put into place effective internal audit practices.

In 2009 the DLG conducted a survey of councils to assess how they were progressing with the implementation of the recommendations of the Guidelines. While the results of the survey revealed that considerable progress has been made toward the implementation of the Guidelines, with more than 50% of councils reporting that they had an internal audit function, it also identified that there were some areas where some councils appeared to be having difficulties and some areas where the Guidelines needed to be clarified.

These revised Guidelines have been developed to address the issues arising from the survey.

The Guidelines are designed to provide councils with assistance to implement internal audit and risk management. There are already a large number of internal audit standards, guidelines and publications in existence, such as the Institute of Internal Auditors' Internal Audit Framework, Better Practice Guidelines – Local Government Entity Audit Committees and Internal Audit (Victoria) and A Guide to Leading Edge Internal Auditing in the Public Sector (Manitoba).

These Guidelines are Director General's Guidelines for the purposes of section 23A of the *Local Government Act 1993*, issued by the Chief Executive, Local Government under delegated authority. They describe internal audit and risk management systems for Local Government in NSW. The Guidelines also include appropriate structures, functions, charter, and membership of audit and risk management committees.

The Division acknowledges the lead role of the Local Government Internal Audit Network (LGIAN) and the Institute of Internal Auditors in the development of these Guidelines.

### Terminology

The following terms are used throughout this guidance paper:

- Council is used in two contexts. Council can refer to the elected body of councillors, the local government administration and staff and/or the entity as a whole. The term also includes county councils.
- The General Manager is the most senior member of management as per section 335 of the Local Government Act. Chief Financial Officer (CFO) refers to the most senior member of staff within the finance and accounts area of the council.
- Internal Audit Activity is used interchangeably with 'internal audit function' in recognition that there are several methods of resourcing an internal audit function, including outsourcing this to a third party provider or sharing resources with other councils.
- Audit Committee is the name used for the committee which provides independent oversight of both the internal audit function and the external audit function. It provides the council with independent oversight and monitoring of the council's audit processes,



including the council's internal controls activities. This oversight includes internal and external reporting, risk management activities, internal and external audit, and compliance. It is not uncommon for the committee charged with these responsibilities to be referred to by other names such as governance and risk management committee; audit and risk management committee; internal audit committee.

- External Audit refers to the review and certification of the financial reports as per section 415 of the *Local Government Act 1993*.
- Enterprise Risk Management is the holistic management of all risks within council, not just insurable risks or Occupational Health and Safety.

### **1.1. What is Internal Audit?**

Internal audit is described as *'an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations.*

*It helps an organisation accomplish its objectives by bringing a systematic disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.'*<sup>1</sup>

Internal audit's role is primarily one of providing independent assurance over the internal controls and risk management framework of the council.

Management has primary day-to-day responsibility for the design, implementation, and operation of internal controls.

Internal audit has no direct involvement in day-to-day operations, but it has a direct functional relationship with the General Manager and the council. An effective internal audit function should evaluate and monitor the adequacy and effectiveness of the internal control framework as a minimum.

Risk management is also an essential part of a council's management and internal control framework. It looks at what risks the council may face and the best way to address these risks. Assessment and management of risk is central to determining internal audit activities.

Internal audit's core competencies are in the area of internal control, risk and governance. Typically, internal audit's scope will include some or all of the following areas:

- Reliability and integrity of financial and operational information
- Effectiveness and efficiency of operations and resource usage
- Safeguarding of assets
- Compliance with laws, regulations, policies, procedures and contracts
- Adequacy and effectiveness of the risk management framework.

### **1.2. Why my council should have an internal audit function.**

All councils should have an internal audit function for the following reasons:

- it supports good internal governance
- to ensure consistency with other levels of government
- to improve the effectiveness of risk management, control and governance processes
- helps to instil public confidence in an organisation's ability to operate effectively.

When considering an internal audit function, councils should consider the following issues:

- The need to extend council's understanding of risk management beyond traditional areas of public liability and occupational health and safety, into areas such as internal governance, fraud risk and broader regulatory risk.
- Whether council should have a uniform approach to assessing and managing risk, regardless of size or location.
- Whether it is feasible for council to pool resources with like councils or arrange through regional organisations of councils for internal audit services.

<sup>1</sup> *International Professional Practice Framework (IPPF) 2009, The Institute of Internal Auditors, [www.iaa.org.au](http://www.iaa.org.au)*

- Whether small management teams can feasibly conduct audits or internal reviews in the absence of an audit function, with an appropriate degree of independence and objectivity.
- How council can properly resource internal audit and internal control programs.

### **1.3. How does internal audit fit in with other governance functions and activities?**

Good governance requires an organisation to have a proper framework in place to ensure excellence in decision making, and that decisions are implemented efficiently and effectively. Key components of good governance include the use of:

- Audit Committees
- Internal and External Audit
- Enterprise Risk Management

#### **1.3.1. The Audit Committee**

An audit committee plays a pivotal role in the governance framework. It provides councils with independent oversight and monitoring of the council's audit processes, including the council's internal controls activities. This oversight includes internal and external reporting, risk management activities, internal and external audit, and compliance<sup>2</sup>. Given the key role of the Audit Committee, for it to be most effective it is important that it is properly constituted of appropriately qualified independent members.

A strong relationship between the audit committee and internal audit enables the committee to meet its responsibilities and carry out its functions. An audit committee establishes the role and direction for internal audit, and maximises the benefits from the internal audit function.

More information on the Division's expectations of audit committees in Local Government is set out in section 4 of this document.

#### **1.3.2. External Audit**

External audit is a statutory function that provides an opinion on the council's annual financial reports, as required under Divisions 2 and 3 of the *Local Government Act 1993*. The primary focus and responsibility is on providing an opinion on the financial report to council and its external stakeholders.

Councils should be aware that the external auditor should not be expected to conduct a deep or thorough review of the adequacy or effectiveness of a council's risk management framework or internal controls. To obtain a deeper understanding of the scope of the external auditor's report it is recommended that you read the disclaimer contained in the external audit report in your council's statutory financial reports. The external auditor may place some reliance on internal audit reviews, monitoring of internal control, including fraud control and risk management as per the Australian Auditing Standards.

An effective internal audit function may contribute to the performance of external audit, as the external auditor may be able to rely on some of the internal audit work performed, and the stronger internal control environment that a strong internal audit function can create. This may have an indirect benefit in reducing audit fees.

<sup>2</sup> *Auditing and Assurance Standards Board, Australian Institute of Company Directors, Institute of Internal Auditors, Audit Committees A guide to good practice 2008*

### **1.3.3. Management**

Management has primary responsibility for the design and operation of the risk management and internal control frameworks of the council. It is separate from the responsibilities of external audit, internal audit and the audit committee. While these functions provide advice and oversight in relation to the risk management and internal controls, they are not responsible for its design or implementation. This responsibility lies solely with management. Good governance in local government relies on a robust independent review of management, finances, risks and operations.

### **1.3.4. Risk Management**

Risk management is an important component of corporate governance. Risk management is the responsibility of management with oversight by council and the audit committee. Internal audit can assist management to identify and evaluate the effectiveness of council's risk management system and contribute to the improvement of risk management and control systems. The annual Internal Audit plan should be developed after consideration of the council's risk registers and those areas that are high risk to the organisation.

Internal audit will usually provide advice and assurance over the risk management and internal control frameworks, but in order to maintain independence, internal audit will not be responsible for its implementation of risk management or making decisions on how risks should be treated. Risk management is an important area that is touched upon in more detail in section 5 of this document.

## 2. Establishing an Internal Audit Function

**Key strategies** aimed at ensuring that internal audit services conform with good practice:<sup>3</sup>

- Establish an audit committee, with a majority of members who are external (independent) to council
- Set up an independent reporting structure for internal audit (i.e report functionally to the audit committee and administratively to the General Manager) and define its functions and responsibilities with an internal audit charter
- Adopt and comply with professional internal auditing standards
- Recruit and retain capable staff
- Establish and communicate a clear internal audit vision and strategy
- Demonstrate the value of internal audit
- Understand council, management and community stakeholder needs
- Focus on risk
- Review internal controls
- Educate management on risks and controls
- Continuously improve the quality of internal audit services.

**Key Attributes** of a good practice internal audit function in local government:<sup>4</sup>

- Maintain independence and objectivity
- Have clear roles and responsibilities
- Comply with the internal auditors International Standards for professional practice of internal auditing in planning and executing work
- Have sufficient and appropriate resources to carry out audit work, as well as the necessary skills, experience and personal attributes to achieve what is expected of internal audit
- Have regular and timely communication of findings and recommendations
- Systematically conduct regular follow-ups on audit recommendations
- Continuously monitor internal audit effectiveness
- Adding value by proactive auditing and advice
- Develop audit plans that are comprehensive and balanced, and are linked to council's management of risks.

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<sup>3</sup> Jeffrey Ridley and Andrew Chambers. *Leading Edge Internal Auditing*. ICSA Publishing, 1998, pgs. xxxiii, and 10 to 17.

<sup>4</sup> Ridley and Chambers: as above

### **2.1. Internal Audit Charter**

An internal audit charter provides a comprehensive statement of the purpose, authority, responsibilities and reporting relationships of the internal audit function. The audit committee or council should approve the internal audit charter.

The content of an internal audit charter should:

- Identify the purpose, authority and responsibility of the internal audit function
- Establish internal audit's position within the organisational structure
- Define reporting relationships of the internal auditor with the General Manager and the audit committee
- Define internal audit's relationship with the council's external auditor
- Have provisions that authorise access to records, personnel, physical property, and attendance at relevant meetings
- Define the scope of internal audit activities, including any restrictions.

The internal auditor should periodically assess whether the purpose, authority and responsibility, as defined in the charter, are still adequate. Results of the assessment should be communicated to the audit committee.

A sample internal audit charter is contained at Appendix 3. Councils should tailor their charters as considered appropriate for their circumstances.

The audit committee should also have a charter that sets out its roles and responsibilities and its oversight of the internal and external audit functions, including any statutory duties. The elected council should approve the audit committee charter (Appendix 2). An external quality assessment every 5 years would assist this process.

### **2.2. Professional Standards**

Internal auditors in NSW local government should comply with appropriate professional standards, such as the Institute of Internal Auditors (IIA) Standards and Code of Ethics. A summary of the standards is shown at Appendix 1. The standards should be the basis of policies, procedures, and plans. Internal audit should be performed with integrity, objectivity, confidentiality and competency.

IIA Standards include the expectation that an internal audit function will establish policies and procedures to guide internal staff in carrying out their work. Policies and procedures should be periodically reviewed to ensure they are up to date with changes in professional practice.

The IIA is thanked for their kind permission to reproduce these standards in this document.

### **2.3. Reporting lines**

Generally, the internal audit function is led by a chief audit executive who is the most senior member of staff in the organisation responsible for the internal audit function. The IIA's Standards for the professional practice of internal auditing state that *"The Chief Audit Executive must report to a level within the organisation that allows the internal audit activity to fulfil its responsibilities. The chief audit executive must confirm to the board, at least annually, the organisational independence of the internal audit activity. The internal audit activity must be free from interference in determining the scope of internal auditing, performing work, and communicating results"*.

For local government, the Internal Auditor should report functionally to the audit committee and administratively to the General Manager. If matters involve the conduct of the General Manager, an alternate reporting chain to the Mayor or a protected disclosure to the ICAC, Ombudsman or the Division of Local Government (about serious and substantial waste in local government) should be in place.

It should be remembered that pursuant to section 335 of the Local Government Act the General Manager is responsible for the day-to-day management of council activities including the direction of staff and implicitly the internal audit function. The General Manager may choose to delegate this responsibility provided always that the delegation does not directly or indirectly interfere with the ability of the Internal Auditor to conduct an internal audit function free from interference as required by the IIA's Standards, referred to above (see section 3.4 below).

A clear and properly defined reporting relationship ensures that the Internal Auditor is empowered to perform their role working with management. The direct reporting line to the Audit Committee also acts as an adequate safeguard in the event of a serious breakdown in internal controls or internal control culture at senior levels in the organisation.

Due to the reporting relationships of this key role, it is important that councils appoint an internal auditor who has credibility, and can build relationships and influence decisions at the most senior levels of council, including the audit committee and the General Manager.

## **2.4. Options for Resourcing Internal Audit**

Regardless of size, councils are encouraged to have an appropriately resourced internal audit function. An internal audit function should have sufficient and appropriate resources to carry out its work, including skilled auditors, appropriate technology tools, budgets and professional development opportunities. Budget allocations should align to the approved audit plans.

While size and complexity of a council's operations will drive the size and overall budget of its internal audit function, a small size of operation does not justify forgoing internal audit altogether. The most efficient and effective means of resourcing the internal audit function depends upon the individual circumstances of the council. It is recognised that smaller councils may not be able to justify a full-time internal auditor. Guidance is provided below on alternative resourcing models that may achieve the required outcomes on a cost effective basis.

### **2.4.1. Appointment of Full-Time or Part-Time Internal Auditor**

Ideally the internal auditor should be an independent position reporting directly to the Audit Committee and administratively to the General Manager, with no other operational or management responsibilities. The role and duties and a sample position description are described in more detail in the appendices.

Depending upon the size and complexity of the organisation, councils may consider appointing an internal auditor or internal audit team. The appointment could be full-time or part-time personnel and may be staffed by more than one auditor if the size of the council demands.

Position descriptions should be set for internal audit staff and should identify required qualifications and competencies, including:

- Proficiency in applying internal audit standards, procedures and techniques
- Proficiency in accounting principles and techniques if working extensively with financial records and reports

- An understanding of management principles required recognising and evaluating the significance of deviations from good business practices
- An appreciation of fundamental concepts in areas such as accounting, economics, commercial law, taxation, finance, quantitative methods and IT
- Effective interpersonal skills
- Skills in oral and written communication
- Ability to identify key issues in any area under review
- Ability to influence senior management as and when required
- Knowledge of key information systems technology risks and controls and available technology-based audit techniques.



### 2.4.2 Outsourced or co-sourced function

Providing that independence requirements are adhered to, councils can contract their internal audit function to private sector accounting firms or internal audit service providers. If this is the preferred option, then councils need to ensure that the service provided is for a professional internal audit service and not an extension of the financial assurance based external audit.

Councils should note that outsourcing or co-sourcing the internal audit function does not abrogate the council's responsibility to oversee and manage the internal audit function.

In monitoring the performance of the internal audit services provided by accounting firms, councils need to ensure that an appropriately qualified auditor is conducting the internal audit. To ensure an effective and comprehensive internal audit program, contracted internal auditors should have authority to independently set an ongoing audit program, which is not constrained by a narrow scope of audit coverage pre-determined by management.

A co-sourced function is one where a staff internal auditor supplements audit services with an outsourced internal audit service provider. An outsourced internal audit function is one where the service provider assumes all the responsibilities of the internal audit function.

Several options are set out below:

- Private sector accounting firms – most large accounting firms have specialist internal audit divisions, which provide a good service. Internal audit is a specialised skill and hence councils are advised to only use firms who have a specialised internal audit division.
- Boutique firms – a number of boutique firms exist that specialise in internal audit services.
- Internal audit contractors – there a range of experienced internal audit contractors available for this sort of work.
- NSW GTE - IAB Services is a State Government agency that provides internal audit services to the public sector.

Each of these options will have their advantages and can be appropriate for different circumstances. The advantages of using external providers include: flexibility; access to a wide range of expertise; ability to access the service as and when required. Disadvantages include loss of corporate knowledge and possible increased costs.

The NSW State Contracts Control Board has compiled a panel of qualified internal audit service providers at competitive rates through a competitive tender process. Councils are able to access this panel to save them time and effort in the procurement process and are encouraged to do so.

### 2.4.3 Regional or Inter-Council Sharing of Internal Audit Resources

Councils are also encouraged to consider resourcing their internal audit function via collaborative arrangements with other councils or through a regional organisation of councils (ROC).

A ROC or some other body (such as a strategic council alliance) could agree to jointly employ or contract an appropriately qualified internal auditor. This may have benefits in terms of cross-council benchmarking, reduction in travel costs and access to a bigger resource pool than would be available to a single council.

Each council should nevertheless establish its own independent audit committee and the internal auditor would need to report separately to each council, maintaining confidentiality. A funding model could be established that shares the costs on a user-pays basis between participating councils, with internal audit costs based on an agreed cost sharing basis.

Under this model, the appointed internal auditor would prepare an audit plan for each council, based on individual council requirements. There will be some common systems and shared knowledge and tools, such as audit planning, risk assessment, audit programs and procedures.

A small team of internal auditors directed by a suitably qualified and experienced auditor could be appropriate for serving several smaller councils in adjacent local government areas. This model should result in lower audit costs compared to councils employing separate internal auditors or consultants at various management levels.

Risk assessments and annual audit plans need to be designed with input from senior management of each of the participating councils. The internal audit team will need to retain a high degree of independence from management in the planning and conduct of audits. The reporting framework will need to ensure the independence of the audits and confidentiality of findings. The internal auditor should report directly to the General Manager and the Audit Committee of each council.

#### **2.4.4 Other Resources**

The Local Government Internal Audit Network (LGIAN) represents internal auditors in NSW local government and adds value to local government by promoting better practice internal audit and sharing of information and resources. This group provides sharing of technical expertise by internal audit professionals who are experienced in local government operations, legislation and governance. Member councils host quarterly meetings. Contact details are available from the Division of Local Government.

### 3. Internal Audit Operations

#### 3.1. *Adding Value*

One of the primary objectives of the internal audit function is to add value to the council operations. Adding value involves taking a proactive approach with a focus on risk, organisational concerns and effective controls at a reasonable cost. By focusing audit work on high risk areas, the organisation will benefit from assessments of their systems and gain independent assurance on whether those systems that are critical to program delivery are operating efficiently and effectively.

This risk approach contributes to preventative auditing, rather than relying on detecting issues and exceptions after they have already eventuated.

#### 3.2. *Roles and Responsibilities*

An internal audit function should have clear roles and responsibilities. This includes complete and unrestricted access to employees, property and records. Roles and responsibilities should be communicated in the internal audit charter and position descriptions.

#### **Policies and Procedures Checklist**

Councils should establish a manual of policies / procedures that guide internal auditors in their work. The content of these policies / procedures should be consistent with relevant standards, such as the IIA Standards, and cover the following topics:

##### *Attribute Standards*

- Purpose, Authority and Responsibility
- Independence
- Proficiency and Due Care
- Quality Assurance

##### *Performance Standards*

- Managing the Internal Audit Activity
- Nature of the Work
- Engagement Planning
- Performing the Engagement
- Communication of Results
- Monitoring Progress
- Resolution of Management's Acceptance of Risk.

#### 3.3. *Independence and Objectivity*

An internal audit function should maintain an appropriate level of independence and objectiveness through sound reporting relationships, and by those involved in internal audit activities avoiding bias and conflicts of interest.

##### 3.3.1 *Avoidance of Bias and Conflict of Interest*

Policies and procedures should be in place to help an internal audit ensure against the risk of bias, particularly arising from perceived familiarity by virtue of long association with persons the subject of internal audit activity.

### The Avoidance of Bias and Conflict of Interest Checklist

An internal auditor or person responsible for internal audit should have a process in place to ensure that:

- An internal auditor does not undertake audit work regarding operations / services for which he / she has held responsibility within the last two (2) years.
- An internal auditor who provides consulting services regarding a particular operation / service is not the same auditor who provides assurance on that same operation / service.
- Internal auditors are rotated periodically whenever it is practical to do so; alternatively, some other method is put in place to address the risks associated with having the same auditors responsible for auditing the same unit / functional area over a prolonged period.

### Position Description Checklist

The internal audit function should have written position descriptions for each level of audit staff. The position descriptions for audit staff should identify required qualifications and competencies, including:

- Proficiency in applying internal audit standards, procedures and techniques
- Proficiency in accounting principles and techniques
- An understanding of management principles required recognising and evaluating the materiality and significance of deviations from good business practices
- An appreciation of fundamental concepts in areas such as accounting, economics, commercial law, taxation, finance, quantitative methods and IT
- Effective interpersonal skills
- Skills in oral and written communication.

#### 3.4. Reporting Relationships

Councils establishing an internal audit function must provide appropriate independence for the internal audit function by establishing some degree of separation of the function from management.

In private companies, the internal auditor is accountable to the Board of Directors through the Chairman of the Audit Committee. This approach cannot be directly reproduced under the provisions of the *Local Government Act 1993*. Internal audit is an operational matter that falls within the responsibility of the General Manager. Under section 335(1) of the *Local Government Act*, the General Manager is responsible for the efficient and effective operation of the council's organisation.

The separation of powers between the General Manager and the elected council is a key element to the Act and accordingly both need to ensure that they do not interfere with or control the exercise of each of these functions. It is therefore not appropriate for an internal auditor to report directly to the mayor and/or councillors.

Internal auditors should be mindful of their obligation under section 11 of the ICAC Act to report suspected areas of corrupt activity. Further, they may wish to report their findings under the provisions of the *Protected Disclosures Act 1994*. This may be necessary if concerns are raised in regard to the General Manager or other senior staff.

Councils have the power to appoint an external audit firm to be the internal auditor. Where possible this firm should not be the same one that provides council's external audit services. This does not change the fact that internal audit remains an operational role. It should be remembered that pursuant to section 335 of the Local Government Act the General Manager is responsible for the day-to-day management of council activities including the direction of staff and implicitly the internal audit function.

While management employs the internal auditor, the internal auditor is also expected to review the conduct of management. Therefore, the internal auditor should be able to report to a person or body with sufficient authority to implement internal audit recommendations.

It is important for the internal auditor to have direct access to the audit committee to monitor the scope of the work of internal audit and to review the reports issued. This is achieved by having the internal auditor attend meetings of the audit committee.

The appointment of an internal auditor does not give council the ability to direct the performance of the internal audit function. However, councils can use the General Manager's employment contract to ensure that relevant internal audit work is being undertaken as a requirement of the General Manager's performance obligations.

The Internal Auditor should maintain independent reporting relationships with the audit committee, General Manager and management. This requires:

- Reporting functionally to the audit committee and administratively to the General Manager
- Reporting to an audit committee with external members
- Internal audit charter to be approved by the audit committee and the audit committee charter to be approved by council
- Audit committee to approve of internal audit plans, and provide a forum for discussion of areas worthy of internal audit attention
- Audit committee to ensure coordination and cooperation of internal and external auditors
- Audit committee to make enquiries of management to determine if the scope or budgetary limitations impede the internal audit's ability to function properly, and ensure that the internal audit function is properly resourced
- Reporting to the General Manager for budgeting and accounting, human resource administration, internal communications, administration of policies and procedures.

Reporting to an audit committee with a majority of members, who are external and independent to the council, ensures that internal audit operates independently from management and can effectively review risk, control, governance processes and management assertions.

### **Reporting Relationships Checklist**

The audit committee should include persons external to the organisation. In the absence of an audit committee, the internal auditor should report to a level within the organisation that ensures that the internal audit is able to have broad audit coverage and to fulfil its responsibilities independently and objectively.

Reporting functionality to an audit committee means the committee:

- Approves the internal audit charter

- Approves short and long term audit plans
- Comments on the performance of the internal auditor
- Makes enquiries of management to determine if there are scope or budgetary limitations that impede internal audit's ability to function properly
- Ensures that the internal audit function is adequately resourced
- Approves the scope of external assessments of the internal audit
- Provides a forum for discussion to identify areas worthy of examination by internal audit
- Recommends to Council who should be the internal audit provider and/or has input into the selection of the Chief Audit Executive.

Reporting administratively to the General Manager relates to day to day operations of internal audit including:

- Budgeting and accounting
- Human resource administration
- Internal communication / information flow
- Administration of internal policies and procedures.

### **3.5. Internal Audit Plans**

Internal audit should prepare an audit plan that identifies internal audit's objectives and strategies, and the audit work they will undertake.

Good practice internal audit plans will be based on a risk assessment of the council's key strategic and operational areas to determine an appropriate timing and frequency of coverage of each of these areas. Best practice will also include audit judgment of areas that should also be reviewed despite not appearing as a high priority in the council's risk profile.

The annual plan will generally be developed with input from the General Manager and senior management and approved by the audit committee. Generally, such a plan will identify:

- The audit projects that will be carried out during the year and rationale for selecting each
- When each audit project is expected to commence and the time allocated for each
- The performance measures that will be used to evaluate the performance in relation to established goals / objectives and strategies
- Any areas that cannot be covered within existing budgets and additional areas, which in the opinion of the internal auditor, should be reviewed
- Whether the audit projects identified require the use of external expertise.

A rolling three year plan of coverage can be proposed so that it can be readily determined what areas will be covered in any given year, and if their area is not covered in a given year, when it is scheduled for review. The ability of the internal auditor to execute this plan over a three year cycle is a useful method to assess whether internal audit is adequately resourced. However the plan should be reviewed at least annually to ensure that it still aligns with the council's risk profile.

## Audit Plans Checklist

The internal auditor should have a long term strategic plan and annual work program to guide their work.

Long term strategic plans that are prepared with input from and approval by the internal audit committee should be risk based. They would generally include:

- A description of the goals / objectives of internal audit
- Key organisational issues and risks of the organisation prepared in consultation with senior management, the audit committee, the external auditor and other relevant parties
- The strategies / priorities in order to address issues and risks.

Mid term operational plans may also be prepared to assist an organisation in the implementation of the key strategies / priorities identified in the strategic plan. Typically these plans would include aspects such as:

- Staffing, competency needs
- Professional development
- Information technology requirements
- Budgeting requirements
- How performance monitoring, measurement, and internal / external assessments will be operationalised.

The annual audit plan is prepared with input from and approval by the audit committee. It should be developed based on the long term strategic plan and the mid term plan. Generally, such a program will identify:

- The audits and other types of projects that will be carried out during the year and the rationale for selecting each
- Staffing for each project, when it is expected to commence and the time allocated for each
- Financial budgets
- The performance measures that will be used to evaluate performance in relation to established goals / objectives and strategies
- As applicable, the plans for internal / external assessments of an internal audit group.

### **3.6. *Performing Internal Audits***

Internal Auditors should perform internal audit reviews in accordance with the accepted Institute of Internal Auditors (IIA) Standards and the IIA Code of Ethics for performance standards, practices and guidelines. An outline is shown in the appendices. This includes:

- planning the audit
- defining the audit scope
- identifying sufficient, reliable, relevant, and useful information to achieve the audit's objectives
- identifying and evaluating the risks
- analysis and evaluation of controls
- maintaining proper records of the audit and evidence collected and analysed
- performing tests

- making recommendations
- discussing audit results with relevant staff and management.

Internal Audit may also perform consulting engagements and investigations of allegations, depending on the roles conferred in the Internal Audit Charter. Professional standards should also be applied when conducting these types of reviews.

### 3.7. **Communication of Audit Results**

Internal audit should regularly communicate its findings and recommendations to the audit committee, General Manager and management of the areas audited. An internal audit report should communicate accurate, objective, clear, concise, constructive, complete and timely information.

Audit reports should normally include background information, the audit objectives, scope, approach, observations/findings, conclusions, recommendations and agreed management actions. Reports should promote better practice options and explain why the recommended changes are necessary and how they add value.

Reports and memos should share internal audit's observations on significant risk exposures, control issues, corporate governance issues, and other related audit matters. By sharing audit criteria, explaining causes and consequences of audit observations, councils can gain an understanding of the implications and impacts of the audit findings.

Depending on the size of the internal audit reports, summaries may be appropriate for the General Manager and the audit committee with full reports available on request.

## Internal Audit Reports Checklist

The following table is based on the IIA Professional Practices Framework.

Background	<ul style="list-style-type: none"> <li>✓ Identifies the organisational units and activities reviewed and provides explanatory information.</li> <li>✓ Indicates why the audit project was conducted, including whether the report covers a scheduled engagement or is responding to a request.</li> <li>✓ Includes the status of observations, conclusions and recommendations from prior audits.</li> </ul>
Objectives	<ul style="list-style-type: none"> <li>✓ Statements that define intended engagement accomplishments.</li> </ul>
Scope	<ul style="list-style-type: none"> <li>✓ Identifies the audited activities.</li> <li>✓ Identifies the time period reviewed.</li> <li>✓ Identifies related activities that are not reviewed.</li> </ul>
Approach	<ul style="list-style-type: none"> <li>✓ Establishes the procedures for identifying, analysing, and evaluating sufficient information to achieve the engagement's objectives.</li> </ul>
Observations / Findings	<ul style="list-style-type: none"> <li>✓ Identifies the standards, measures, or expectations used in making an evaluation and / or verification (criteria).</li> <li>✓ Identifies the factual evidence that the internal auditor found during the examination that supports the conclusions and recommendations (conditions).</li> <li>✓ Identifies the reason for the difference between the expected and actual conditions (causes).</li> </ul>



	<ul style="list-style-type: none"> <li>✓ Identifies the risk or exposure the organisation and / or others encounter because the condition is not consistent with the criteria (effect).</li> </ul>
Conclusions	<ul style="list-style-type: none"> <li>✓ Should be clearly identified.</li> <li>✓ Should be based on appropriate analyses and evaluations.</li> <li>✓ Should encompass the entire scope of an engagement.</li> <li>✓ Should relate directly to objectives.</li> </ul>
Recommendations	<ul style="list-style-type: none"> <li>✓ Should be based on engagement observations and conclusion.</li> <li>✓ Should either be general or specific and call for action to correct existing conditions or improve operations.</li> <li>✓ Should suggest approaches to correct or enhance performance.</li> </ul>
Agreed actions	<ul style="list-style-type: none"> <li>✓ An agreed set of actions proposed by management to address any recommendations. (In some cases the internal audit teams may move straight to agreeing actions and skip recommendations. This is considered good practice.)</li> </ul>

### **3.8. Follow-Up on Audit Reports**

The General Manager and audit committee should systematically review progress against audit recommendations and agreed action plans. This ensures that a clear message is sent to management and staff that these matters are important and are being reviewed at the most senior levels in the organisation.

If management accepts a risk that internal audit believes is unacceptable, then this should normally be discussed at an appropriate level in the organisation, including with the General Manager and the audit committee, as considered appropriate.

### **3.9. Access to Audit Reports**

Internal audit reports are intended for internal use only. Where audit reports have findings that are useful to other areas of council, internal audit may share this information on a limited basis. Internal audit reports should be shared with the council's external auditor to assist them in the course of their work. This permission should be documented in the audit committee charter.

Councillors should also have access to the minutes of the Audit Committee. As the minutes may contain confidential information, broader public access should be controlled. However the council should be mindful of its obligations under the *Government Information (Public Access) Act 2009* to provide greater transparency and accountability.

### **3.10. Annual report from the Audit Committee to Council**

The audit committee should report regularly to the council on the management of risk and internal controls. This may be done following each meeting of the audit committee, but as a minimum, the audit committee should report at least annually to the full council on its oversight role of the internal audit function. The General Manager should also provide an annual report to the audit committee on the performance of the internal audit function.

Council may request the Chairperson of the Audit Committee to address the Council to answer any enquiries about the operation of the Audit Committee.

### **3.11. Performance Measurement**

Internal audit should have performance measures that are based on its specific goals / objectives and performance targets that are derived from the internal audit group's plans / strategies. Quality assurance and review of audit work papers in accordance with Australian Auditing Standards is also an essential requirement to ensure the audit findings are adequately evidenced and documented. The work of internal audit can be used by the external auditors where they are satisfied of its quality as per the Australian Auditing Standards AA610.

#### **Performance Measurement System Checklist**

Performance measures should provide information that enables the internal audit function to determine whether its activities are achieving its charter and planned results (ie, the aims expressed in its various types of plans).

The performance measurement system should be documented and should be clear on:

- Performance data that is to be collected
- The frequency of data collection
- Who is responsible for data collection
- Data quality control
- Who generates performance data reports
- Who receives such reports.

Performance measures may cover aspects such as:

- Stakeholder satisfaction
- Internal audit processes (eg, risk assessment / audit planning, performing the audits, reporting, and value added)
- Innovation and capabilities (training, technology, knowledge of business)
- Control deficiencies identified and resolved by management
- Cost/benefit analysis of internal audit recommendations.

An internal audit function should regularly report to the General Manager and the audit committee on its progress against the annual internal audit plan.

### **3.12. Independent Quality Review of Internal Audit**

Internal audit should be subject to an external quality assessment of its performance using accepted standards for performance measurement and evaluation at least every five years.

This is to provide assurance to the General Manager and council that internal audit is effective and operating in accordance with the International Standards for the Professional Practice of Internal Auditing.

The Institute of Internal Auditors provides a quality assessment framework for this purpose.

### **3.13. Internal Audit and Protected Disclosures**

Where there is otherwise no designated protected disclosures coordinator for the council, the internal auditor can be appointed to fulfil the requirements of the *Protected Disclosures Act 1994* and the provisions of council's internal reporting policy. Alternatively, the General Manager can appoint the internal auditor to conduct an independent investigation of matters arising from a protected disclosure.

Protected disclosures are an important means by which councils can signal commitment to ethical practice. They also can act as an early warning system for management and to assist staff in making any disclosures of alleged corrupt conduct, maladministration or serious and substantial waste of public money under the *Protected Disclosures Act 1994*.

Every public official has a statutory right to make a disclosure under the Protected Disclosure Act to the following external agencies:

- NSW Ombudsman
- Independent Commission Against Corruption (ICAC)
- Audit Office
- Police Integrity Commission or
- Division of Local Government, Department of Premier and Cabinet (about serious and substantial waste in local government).

Councils should inform their councillors, staff and council delegates of the requirements and protections of the *Protected Disclosures Act 1994* through staff and councillor induction and training programs.

## 4. Establishing an Audit Committee

### 4.1. What is an Audit Committee?

An audit committee plays a pivotal role in the governance framework to provide council with independent oversight and monitoring of the council's audit processes, including the council's internal control activities. This oversight includes internal and external reporting, risk management activities, internal and external audit and compliance.<sup>5</sup> A strong relationship between the audit committee and the internal audit function enables the committee to meet its responsibilities and carry out its functions. An audit committee establishes the importance and executive direction for an internal audit function, and ensures that the council achieves maximum value from the internal audit function. The audit committee sets the appropriate tone at the top. Guidelines for establishment and operations of audit committees in local government are set out below.

No two audit committees will function in exactly the same way, nor should they. A dynamic audit committee process is required for each council to cater for the particular internal and external influences impacting upon them. The size and conduct of council audit committees will also vary depending on a council's size and other circumstances.

**Key characteristics** of good practice audit committees are:

- A thorough understanding of the audit committee's position in the legal and governance framework
- Clearly defined roles and responsibilities
- Members with relevant personal qualities, skills and experience, including at least one member with a strong financial and/or audit background
- The ability to maintain effective relationships with key stakeholders
- The ability and capacity to conduct its affairs efficiently and effectively
- A robust and considered process of assessment and continuous improvement.

### 4.2. Independence and Objectivity

The audit committee will achieve its independence by having a majority of independent members external to council and its operations. In addition, it is highly desirable that all members chosen exhibit an independence of mind in their deliberations and do not act as a representative of a particular area of council, or with conflicts of interests. Regular rotation of some or all members is also desirable to keep a fresh approach.

Ideally the audit committee should consist of at least three and preferably no more than five members comprised of independent external members, who should be in the majority, and councillors other than the Mayor (or an Administrator). Staff should not be members of the audit committee.

When selecting committee members it is important to ensure that they have appropriate qualifications and experience to fulfil their role. The following qualities are desirable when appointing members:

Individuals should have:

- Knowledge of local government
- Strong communication skills

<sup>5</sup> Auditing and Assurance Standards Board, Australian Institute of Company Directors, Institute of Internal Auditors, Audit committees, A Guide to Good Practice 2008

- High levels of personal integrity and ethics
- Sufficient time available to devote to their responsibilities as a committee member
- High levels of financial literacy and, if possible accounting; financial; legal compliance and/or risk management experience or qualifications.

The audit committee as a whole should have:

- At least one member with financial qualifications and experience
- Skills and experience relevant to discharging its responsibilities, including experience in business, financial and legal compliance, risk management

### **Selection and Appointment of Committee Members**

Committee members and the audit committee chair should be appointed by the council. This could be done on the recommendation of a committee which has been convened by council with the power to interview and recommend suitable candidates. It is important that the process used is transparent and accountable.

If the council wishes to use this process then the committee should prepare a written report for the council that provides details of the qualifications and experience of all eligible applicants for the position(s) of independent audit committee member(s) or audit committee chair from which the council can select the most suitable appointees.

Sufficient funds need to be allocated to the audit committee for it to operate effectively. Council should resolve to provide a budget and funds for the audit committee, this should include fees payable to the audit committee members.

### **Independent and councillor members**

Independent and councillor members must be free from any management, business or other relationships that could be perceived to interfere with their ability to act in the best interests of the council.

When considering whether an individual has the necessary independence from council it is common to examine the individual's past and current relationships with the council. Some of the following are relationships that might affect the independent status of an independent and/or councillor:

- Is a substantial shareholder; an owner, officer or employee of a company; or a consultant, that is a material provider of professional advice, or goods, or services to the council;
- Is employed by or has previously been employed by a council and there has not been a period of at least two years between ceasing such employment;

To maximise both the real and perceived independence of the committee individuals currently employed by a council cannot be considered as an independent member of a council audit committee.

This list is not exhaustive and if one or more of the above examples is exhibited by an independent or councillor it is possible that their status as an "independent" member of the committee might be compromised.

Members and potential members of an audit committee need to ensure that they disclose to the council any relationships that could be viewed by other parties as creating conflicts of interests that impair either the individual's or the audit committee's actual or perceived independence.

In order to maximise the effectiveness of the audit committee it is important for members to be both independent and to be seen to be independent.

**Audit committee chair**

The chair of the audit committee is critical to the overall effectiveness of the committee. The chair of the committee should be independent and should not be the mayor or a member of council. The council should select an audit committee chair who:

- Is knowledgeable of the duties and responsibilities of the position as outlined in the audit committee charter; especially about local government, financial reporting and auditing requirements;
- Has the requisite local government, financial and leadership skills;
- Has the ability to build good relationships; and
- Has strong communication skills

The term of appointment of the chair should be specified by the council.

**4.3. Structure and Membership**

The structure and membership of an audit committee in the NSW local government environment will depend on the size of the council. Membership should have a majority of independent members and councillors (excluding the Mayor), with between 3 and 5 members. Good practice in governance is that council staff should not be members of the committee. However, this may not be practical for some councils. The chair should be an independent member. A suggested membership is:

- 1 or 2 councillors (excluding the mayor)
- 2 or 3 independent members, at least one with financial expertise and one of whom should be the chair.

The internal auditor and Chief Financial Officer should be invited to attend all meetings. The external auditor should also be invited to attend as an independent advisor.

To preserve the independence of the Audit Committee the General Manager should not be a voting member of the Audit Committee. In accordance with section 376(2) of the Local Government Act the General Manager is entitled to attend meetings of the Audit Committee. Furthermore pursuant to Section 376(3) of the Local Government Act the General Manager may only be excluded from the meeting while the committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager. However, the General Manager is not automatically entitled to be, nor should the General Manager be, a member of the audit committee.

General Managers are strongly encouraged to enable the audit committee to conduct its activities without undue influence from the General Manager.

It is recommended that, even though, pursuant to the Local Government Act, the General Manager is entitled to attend all meetings, in line with better practice, the General Manager should allow the audit committee to meet separately with each of the internal auditor and the external auditor without the presence of management on at least one occasion per year.

A suggested structure for smaller councils is as follows:

- 1 councillor (excluding the Mayor)
- 2 independents – at least one with financial expertise

A structure for bigger councils could be:

- 1 or 2 councillors (excluding the Mayor)
- 2 or 3 independents – at least one with financial expertise and/or one with financial, legal or business expertise

The audit committee should also have its own charter that sets out the roles and responsibilities of the audit committee and its oversight of the internal and external audit functions, including any statutory duties. The elected council should approve the audit committee charter.

An example charter for audit committees is included in Appendix 2. Councils should not use this example verbatim but should tailor it according to their specific circumstances.

#### **4.4. Audit Committee Operations**

##### **4.4.1. Meetings**

The audit committee should meet with sufficient frequency to meet its responsibilities.

The number of meetings and their duration will vary depending on the range and complexity of the council and the committee's responsibilities. The audit committee should decide the number of meetings needed for the year after taking into consideration:

- The roles and responsibilities of the committee
- Maturity of the committee and audit arrangements
- The level and/or volume of internal and external audit activity
- Key reporting deadlines
- Significant developments or emerging risks for the entity, for example, restructuring, policy initiatives or new programs
- The potential resource implications versus the benefit to the committee and the entity of more frequent meetings.

Generally, the audit committee should meet at least four times a year. It is also appropriate to have meetings dedicated to considering the annual external audit plan, external management letters and council's audited annual financial reports. Where significant issues arise during the year, committees should consider the need to schedule additional meetings.

Where possible, the dates for audit committee meetings should be established 12 months in advance, particularly where the committee has independent members with other commitments. Each year the committee should agree a forward meeting plan, including meeting dates, location and agenda items. When developing the forward meeting plan, the committee should ensure it covers all the responsibilities outlined in its charter.

The audit committee charter should require the chair of the committee to hold a meeting if asked to do so by another committee member or by the council or the General Manager. There should also be provision for both the internal and external auditors to meet privately with the chair of the audit committee if required, and this should be documented in the audit committee charter.

##### **4.4.2. Functions**

Clear roles and responsibilities should be given to an audit committee, and documented in the audit committee charter (see Appendix 2 for a model charter). The broad responsibilities for best practice include the following:

- Risk management
- The control framework
- External accountability (including the council's annual audited financial reports)
- Legislative compliance
- Internal audit

- External audit
- Approving the internal audit charter that will guide the activities of an internal audit group
- Having input into and approving an internal audit's long-term strategic plan and annual audit plan
- Having input into the appointment and remuneration of the internal auditor
- Making enquiries of management and the internal audit to determine if there are scope or budgetary limitations that impede an internal auditor's ability to function properly
- Approving the scope of an external assessment or equivalent internal assessment of internal audit to be undertaken every 5 years; and internal assessments which can be undertaken in intervening years if desired.

An audit committee, as a crucial component of corporate governance, is fundamental to assisting the General Manager and council with their oversight function to:

- Ensure all key controls are operating effectively
- Ensure all key controls are appropriate for achieving corporate goals and objectives
- Meet their statutory and fiduciary duties
- Provide a forum for discussing problems and issues that may affect the operations of the internal audit group and acting as a forum for discussion
- Provide a forum for discussion to identify areas worthy of examination by an internal audit group
- Review the implementation of the annual audit plan and implementation of audit recommendations.

#### **4.4.3. Conflict of Interests**

Councillors, council staff and members of council committees must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the council's code of conduct and regularly review their personal circumstances with this in mind.

There will in all likelihood be times where matters to be considered by the Committee raise a conflict of interests for a member of the committee. To preserve the integrity and independence of the Audit Committee it is of utmost important that any conflict of interests is appropriately managed.

This can be done by Committee members declaring any conflict of interests at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflict of interests should be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interests, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interests may exist. The final arbiter of such a decision is the Chair of the Committee.



## 5. Enterprise Risk Management

### 5.1. What is Risk Management

Internal audit is not responsible for designing or implementing risk management in councils, but is required to consider the risk management framework in planning and conducting audits.

Risk management is an essential part of effective corporate governance. It is defined as “the culture, processes and structures that are directed towards realising potential opportunities whilst managing adverse effects.”<sup>6</sup> Enterprise Risk Management is the holistic management of all risks within council, not just insurable risks or occupational health and safety.

The concept of risk has two elements, the likelihood of something happening and the consequences if it happens. It is recommended that councils refer to the International Standard “*Risk Management – Principles and Guidelines*” ISO 31000:2009(E) for detailed guidance on risk management.

Risk can arise from internal or external sources, and might include exposure to such things as economic or financial loss or gain, physical damage, failure of a project to reach its objectives, ratepayer dissatisfaction, unfavourable publicity, a threat to physical safety or breach of security, mismanagement, failure of equipment, corruption and fraud. Risks should not necessarily be avoided. If managed effectively, they allow us to seize opportunities for improving services and business practices.

Risks can be categorised according to the goals, objectives or outcomes in the council's strategic, management or business plans. At the highest level, these represent risks to the council's ability to implement policy and deliver outcomes to the community. Risks also can be categorised into:

- Strategic risks (risks to the council's direction, external environment and to the achievement of its plans)
- Commercial risks (risks of commercial relationships, such as failed contractual relationships)
- Operational risks (risks to core business activities, such as inadequate human resources, disasters or threats to physical safety)
- Technical risks (risks of managing assets, such as equipment failure or structure collapse)
- Financial and systems risks (risks with financial controls and systems, such as fraud)
- Compliance risks (risks to meeting regulatory obligations).

Risk management is a logical and systematic process that can be used when making decisions and in managing performance. It is a means to an end and should be integrated into everyday work. Good risk management is forward-looking and helps to improve business decisions. It is not just about avoiding or minimising losses, but also about dealing positively with opportunities. It is a powerful tool for local government managers.

Good risk management is based on a well-planned, logical, comprehensive and documented strategy. This strategy provides general policy guidance, and plans and procedures that can be used as part of the organisation's everyday work to manage risk.

Good risk management must be based on a strategy, but a strategy itself doesn't manage risks. Leadership, effort by all levels of management and staff, and careful monitoring by councillors and risk committees, are needed to make the strategy a success.

<sup>6</sup> “*Risk Management – Principles and Guidelines*” ISO 31000:2009(E)

Focus should be on embedding a risk management philosophy into organisational decision making and providing tools to enable this process. Where major risks are identified then managerial effort should be directed to managing those risks. Overly complex approaches to risk management will divert resources from the main objective of better management performance, and hence a common sense approach is encouraged.

## 5.2. Why Implement Risk Management?

Increasingly, risk management is a mainstream activity embedded into good management in both the private and public sectors. Through better understanding of risks, and their likelihood and consequences, councils and their staff will be better prepared to anticipate these risks and take appropriate action.

By utilising risk management principles, councils are able to maximise the likelihood of successfully achieving their goals through proactive treatment of risks resulting in the following outcomes:

- Higher level of service delivery
- Efficient and effective allocation of resources
- Improved responsiveness and flexibility
- Increased accountability and transparency
- Reduced stress to council staff and management.

It is also hoped that effective risk management will result in fewer surprises and unanticipated negative events.

## 5.3. Risk Management in New South Wales Local Government

The *Local Government Act 1993* was enacted in an era before enterprise risk management was a widely accepted element of good governance. The Act nevertheless requires councils, among other things, to:

*“provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively”.*<sup>7</sup>

The Act also requires Councillors:

*“to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council”*<sup>8</sup>

and that the General Manager:

*“is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council”.*<sup>9</sup>

While there is currently no specific reference to risk management in the Act, it is implicit in each of the above broader requirements for efficiency, effectiveness and oversight.

The Division of Local Government's Promoting Better Practice Program reviews have frequently made recommendations to actively encourage councils to undertake a comprehensive risk management plan across all functions of council to proactively identify and manage risk exposures.

<sup>7</sup> Local Government Act 1993 – Section 8

<sup>8</sup> Local government Act 1903 Section 232(1)

<sup>9</sup> Local government Act 1903 Section 335(1)

One of the key roles of the internal auditor is to provide advice and assurance over the risk management and internal control frameworks. To maintain independence, internal audit will not normally be responsible for the implementation of risk management or making decisions on how risks should be treated.

#### **5.4. Risks Inherent Within Local Government**

While each council will have different sizes and complexities in its structure and operations, and these in turn will generate different risks, there are a number of risks that will be common to the sector and be applicable in some form to most councils.

As a first step, councils may wish to identify material risks to the achievement of the council's goals, objectives and desired outcomes of the council's strategic, management and/or business plans. At the highest level, these represent risks to the council's ability to implement policy and deliver outcomes to the community.

A number of common risks for local government are set out in Appendix 5, which may assist in this process.

#### **5.5. Whole-Of-Government Risk Management**

Councils often face risks that significantly influence other risks (such as inadequate staff skills or low morale that influence productivity). These links between risks are important - a risk may not look significant in isolation, but is significant when its flow-on effect is considered.

As whole-of-government approaches become more common, state-sector risks – risks that affect the state as a whole – are becoming better understood and therefore can be better managed.

Councils will increasingly need to understand state-sector risks, and to pay greater attention to identifying and working with other layers of government to manage them. There are 3 types of state-sector risk, each of which calls for a different response:

- Council-level risks (such as the risks above). These can become risks to the State because of their size and significance, because of the wider impact of measures to manage them, or because of poor management by councils.
- Inter-agency risks, which if unmitigated by one agency, become risks for other agencies (such as the link between meeting the educational and social needs of teenagers and anti-social behaviour).
- State-wide risks, which are beyond the boundaries of any one council and call for a response across councils coordinated by a central council (such as bushfires, floods and other emergencies).

There is no such thing as a risk-free environment, but many risks can be avoided, modified or shared through good risk management. Similarly it is not desirable to attempt to create a risk-free environment and not all risks should be reduced. It may be appropriate in some circumstances to retain the risk, or even look at increasing the level of risk taken.

Risk management is an effective tool to identify, evaluate and manage both risks and opportunities at all levels of the organisation. Good risk management also takes advantage of opportunities while analysing and dealing with risks.

Risks should not necessarily be avoided. If managed effectively, they allow councils to seize opportunities for improving services and business practices and avoiding unexpected negative impacts.

## 5.6. Other Guidance

Risk management is a common sense, yet highly evolved discipline. This guide aims to provide grounding on some of the key principles and practices councils should embrace. For those seeking a deeper understanding of risk management principles and practice, the Division recommends:

- International Standard ISO 31000:2009(E) risk management – Principles and guidelines
- ISO Guide 73:2009 Risk Management – Vocabulary
- IS/IEC 31010 Risk Management – Risk Assessment Techniques

These important publications provide detailed and authoritative guidance about risk management practices. They constitute a step-by-step guide for councils wanting to develop and implement risk management frameworks.

Although not all organisations use this approach, public sector risk management continues to expand beyond a financial focus to encompass all parts of an organisation's business and services. The Commonwealth Government based its *Guidelines for Managing Risk in the Australian Public Service* on this standard. See [www.apsc.gov.au/mac/index.htm](http://www.apsc.gov.au/mac/index.htm).

The Australian National Audit Office describes the key components of effective risk management, as well as the importance of developing a risk management culture, in its better practice guide, *Public Sector Governance Volume 16*. See [www.anao.gov.au](http://www.anao.gov.au).

CPA Australia has a number of publications relating to public sector risk management. They include *Case Studies in Public Sector Risk Management: Better Practice Guide*; *Enterprise-wide Risk Management: Better Practice Guide*; *Public Sector Risk Management: A State of Play*; and *Research Report on Public Sector Risk Management*. See [www.cpaaustralia.com.au/20\\_cpastore](http://www.cpaaustralia.com.au/20_cpastore).

## Appendix 1 - Summary of Internal Audit Standards and Professional Practices Framework

### The Institute of Internal Auditors

#### International Standards for the Professional Practice of Internal Auditing

*Reprinted with permission of the Institute of Internal Auditors, Australia. Note that these standards are under continuous development and hence while correct at the time of publication, readers should obtain the latest version of the standards from IIA Australia.*

The purpose of the *Standards* is to:

1. Delineate basic principles that represent the practice of internal auditing, as it should be.
2. Provide a framework for performing and promoting a broad range of value-added internal audit activities.
3. Establish the basis for the evaluation of internal audit performance.
4. Foster improved organisational processes and operations.

The structure of the *Standards* is divided between Attribute and Performance Standards. Attribute Standards address the attributes of organisations and individuals performing internal auditing. The Performance Standards describe the nature of internal auditing and provide quality criteria against which the performance of these services can be measured. The Attribute and Performance Standards are also provided to apply to all internal audit services.

Implementation Standards are also provided to expand upon the Attribute and Performance standards, by providing the requirements applicable to assurance (A) or consulting (C) activities.

The *Standards* are part of the International Professional Practices Framework (IPPF). The IPPF includes the Definition of Internal Auditing, the Code of Ethics, the *Standards*, and other guidance. Guidance regarding how the *Standards* might be applied is included in Practice Advisories that are issued by the Professional Issues Committee.

## Attribute Standards

### **Attribute Standards**

#### **1000 – Purpose, Authority, and Responsibility**

The purpose, authority, and responsibility of the internal audit activity must be formally defined in an internal audit charter, consistent with the Definition of Internal Auditing, the Code of Ethics, and the *Standards*. The chief audit executive must periodically review the internal audit charter and present it to senior management and the board for approval.

#### **Interpretation:**

*The internal audit charter is a formal document that defines the internal audit activity's purpose, authority, and responsibility. The internal audit charter establishes the internal audit activity's position within the organisation; authorizes access to records, personnel, and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities. Final approval of the internal audit charter resides with the board.*

**1000.A1** – The nature of assurance services provided to the organisation must be defined in the internal audit charter. If assurances are to be provided to parties outside the organisation, the nature of these assurances must also be defined in the internal audit charter.

**1000.C1** – The nature of consulting services must be defined in the internal audit charter.

#### **1010 – Recognition of the Definition of Internal Auditing, the Code of Ethics, and the Standards in the Internal Audit Charter**

The mandatory nature of the Definition of Internal Auditing, the Code of Ethics, and the *Standards* must be recognized in the internal audit charter. The chief audit executive should discuss the Definition of Internal Auditing, the Code of Ethics, and the *Standards* with senior management and the board.

#### **1100 – Independence and Objectivity**

The internal audit activity must be independent, and internal auditors must be objective in performing their work.

#### **Interpretation:**

*Independence is the freedom from conditions that threaten the ability of the internal audit activity or the chief audit executive to carry out internal audit responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out the responsibilities of the internal audit activity, the chief audit executive has direct and unrestricted access to senior management and the board. This can be achieved through a dual-reporting relationship. Threats to independence must be managed at the individual auditor, engagement, functional, and organisational levels.*

*Objectivity is an unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made. Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others. Threats to objectivity must be managed at the individual auditor, engagement, functional, and organisational levels.*

**1110 – Organisational Independence**

The chief audit executive must report to a level within the organisation that allows the internal audit activity to fulfil its responsibilities. The chief audit executive must confirm to the board, at least annually, the organisational independence of the internal audit activity.

**1110.A1** – The internal audit activity must be free from interference in determining the scope of internal auditing, performing work, and communicating results.

**1111 – Direct Interaction with the Board**

The chief audit executive must communicate and interact directly with the board.

**1120 – Individual Objectivity**

Internal auditors must have an impartial, unbiased attitude and avoid any conflict of interest.

**Interpretation:**

*Conflict of interest is a situation in which an internal auditor, who is in a position of trust, has a competing professional or personal interest. Such competing interests can make it difficult to fulfil his or her duties impartially. A conflict of interest exists even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in the internal auditor, the internal audit activity, and the profession. A conflict of interest could impair an individual's ability to perform his or her duties and responsibilities objectively.*

**1130 – Impairment to Independence or Objectivity**

If independence or objectivity is impaired in fact or appearance, the details of the impairment must be disclosed to appropriate parties. The nature of the disclosure will depend upon the impairment.

**Interpretation:**

*Impairment to organisational independence and individual objectivity may include, but is not limited to, personal conflict of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations, such as funding.*

*The determination of appropriate parties to which the details of an impairment to independence or objectivity must be disclosed is dependent upon the expectations of the internal audit activity's and the chief audit executive's responsibilities to senior management and the board as described in the internal audit charter, as well as the nature of the impairment.*

**1130.A1** – Internal auditors must refrain from assessing specific operations for which they were previously responsible. Objectivity is presumed to be impaired if an internal auditor provides assurance services for an activity for which the internal auditor had responsibility within the previous year.

**1130.A2** – Assurance engagements for functions over which the chief audit executive has responsibility must be overseen by a party outside the internal audit activity.

**1130.C1** – Internal auditors may provide consulting services relating to operations for which they had previous responsibilities.

**1130.C2** – If internal auditors have potential impairments to independence or objectivity relating to proposed consulting services, disclosure must be made to the engagement client prior to accepting the engagement.

**1200 – Proficiency and Due Professional Care**

Engagements must be performed with proficiency and due professional care.

**1210 – Proficiency**

Internal auditors must possess the knowledge, skills, and other competencies needed to perform their individual responsibilities. The internal audit activity collectively must possess or obtain the knowledge, skills, and other competencies needed to perform its responsibilities.

**Interpretation:**

*Knowledge, skills, and other competencies is a collective term that refers to the professional proficiency required of internal auditors to effectively carry out their professional responsibilities. Internal auditors are encouraged to demonstrate their proficiency by obtaining appropriate professional certifications and qualifications, such as the Certified Internal Auditor designation and other designations offered by The Institute of Internal Auditors and other appropriate professional organisations.*

**1210.A1** – The chief audit executive must obtain competent advice and assistance if the internal auditors lack the knowledge, skills, or other competencies needed to perform all or part of the engagement.

**1210.A2** – Internal auditors must have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organisation, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

**1210.A3** – Internal auditors must have sufficient knowledge of key information technology risks and controls and available technology-based audit techniques to perform their assigned work. However, not all internal auditors are expected to have the expertise of an internal auditor whose primary responsibility is information technology auditing.

**1210.C1** – The chief audit executive must decline the consulting engagement or obtain competent advice and assistance if the internal auditors lack the knowledge, skills, or other competencies needed to perform all or part of the engagement.

**1220 – Due Professional Care**

Internal auditors must apply the care and skill expected of a reasonably prudent and competent internal auditor. Due professional care does not imply infallibility.

**1220.A1** – Internal auditors must exercise due professional care by considering the:

- Extent of work needed to achieve the engagement's objectives;
- Relative complexity, materiality, or significance of matters to which assurance procedures are applied;
- Adequacy and effectiveness of governance, risk management, and control processes;
- Probability of significant errors, fraud, or noncompliance; and
- Cost of assurance in relation to potential benefits.

**1220.A2** – In exercising due professional care internal auditors must consider the use of technology-based audit and other data analysis techniques.

**1220.A3** – Internal auditors must be alert to the significant risks that might affect objectives, operations, or resources. However, assurance procedures alone, even when performed with due professional care, do not guarantee that all significant risks will be identified.



**1220.C1** – Internal auditors must exercise due professional care during a consulting engagement by considering the:

- Needs and expectations of clients, including the nature, timing, and communication of engagement results;
- Relative complexity and extent of work needed to achieve the engagement's objectives; and
- Cost of the consulting engagement in relation to potential benefits.

**1230 – Continuing Professional Development**

Internal auditors must enhance their knowledge, skills, and other competencies through continuing professional development.

**1300 – Quality Assurance and Improvement Program**

The chief audit executive must develop and maintain a quality assurance and improvement program that covers all aspects of the internal audit activity.

**Interpretation:**

*A quality assurance and improvement program is designed to enable an evaluation of the internal audit activity's conformance with the Definition of Internal Auditing and the Standards and an evaluation of whether internal auditors apply the Code of Ethics. The program also assesses the efficiency and effectiveness of the internal audit activity and identifies opportunities for improvement.*

**1310 – Requirements of the Quality Assurance and Improvement Program**

The quality assurance and improvement program must include both internal and external assessments.

**1311 – Internal Assessments**

Internal assessments must include:

- Ongoing monitoring of the performance of the internal audit activity; and
- Periodic reviews performed through self-assessment or by other persons within the organisation with sufficient knowledge of internal audit practices.

**Interpretation:**

*Ongoing monitoring is an integral part of the day-to-day supervision, review, and measurement of the internal audit activity. Ongoing monitoring is incorporated into the routine policies and practices used to manage the internal audit activity and uses processes, tools, and information considered necessary to evaluate conformance with the Definition of Internal Auditing, the Code of Ethics, and the Standards.*

*Periodic reviews are assessments conducted to evaluate conformance with the Definition of Internal Auditing, the Code of Ethics, and the Standards.*

*Sufficient knowledge of internal audit practices requires at least an understanding of all elements of the International Professional Practices Framework.*

**1312 – External Assessments**

External assessments must be conducted at least once every five years by a qualified, independent reviewer or review team from outside the organisation. The chief audit executive must discuss with the board:

- The need for more frequent external assessments; and
- The qualifications and independence of the external reviewer or review team, including any potential conflict of interest.

**Interpretation:**

*A qualified reviewer or review team consists of individuals who are competent in the professional practice of internal auditing and the external assessment process. The evaluation of the competency of the reviewer and review team is a judgment that considers the professional internal audit experience and professional credentials of the individuals selected to perform the review. The evaluation of qualifications also considers the size and complexity of the organisations that the reviewers have been associated with in relation to the organisation for which the internal audit activity is being assessed, as well as the need for particular sector, industry, or technical knowledge.*

*An independent reviewer or review team means not having either a real or an apparent conflict of interest and not being a part of, or under the control of, the organisation to which the internal audit activity belongs.*

**1320 – Reporting on the Quality Assurance and Improvement Program**

The chief audit executive must communicate the results of the quality assurance and improvement program to senior management and the board.

**Interpretation:**

*The form, content, and frequency of communicating the results of the quality assurance and improvement program is established through discussions with senior management and the board and considers the responsibilities of the internal audit activity and chief audit executive as contained in the internal audit charter. To demonstrate conformance with the Definition of Internal Auditing, the Code of Ethics, and the Standards, the results of external and periodic internal assessments are communicated upon completion of such assessments and the results of ongoing monitoring are communicated at least annually. The results include the reviewer's or review team's assessment with respect to the degree of conformance.*

**1321 – Use of “Conforms with the International Standards for the Professional Practice of Internal Auditing”**

The chief audit executive may state that the internal audit activity conforms with the *International Standards for the Professional Practice of Internal Auditing* only if the results of the quality assurance and improvement program support this statement.

**1322 – Disclosure of Nonconformance**

When nonconformance with the Definition of Internal Auditing, the Code of Ethics, or the *Standards* impacts the overall scope or operation of the internal audit activity, the chief audit executive must disclose the nonconformance and the impact to senior management and the board.

## **Performance Standards**

### **2000 – Managing the Internal Audit Activity**

The chief audit executive must effectively manage the internal audit activity to ensure it adds value to the organisation.

#### **Interpretation:**

*The internal audit activity is effectively managed when:*

- *The results of the internal audit activity's work achieve the purpose and responsibility included in the internal audit charter;*
- *The internal audit activity conforms with the Definition of Internal Auditing and the Standards; and*
- *The individuals who are part of the internal audit activity demonstrate conformance with the Code of Ethics and the Standards.*

### **2010 – Planning**

The chief audit executive must establish risk-based plans to determine the priorities of the internal audit activity, consistent with the organisation's goals.

#### **Interpretation:**

*The chief audit executive is responsible for developing a risk-based plan. The chief audit executive takes into account the organisation's risk management framework, including using risk appetite levels set by management for the different activities or parts of the organisation. If a framework does not exist, the chief audit executive uses his/her own judgment of risks after consultation with senior management and the board.*

**2010.A1** – The internal audit activity's plan of engagements must be based on a documented risk assessment, undertaken at least annually. The input of senior management and the board must be considered in this process.

**2010.C1** – The chief audit executive should consider accepting proposed consulting engagements based on the engagement's potential to improve management of risks, add value, and improve the organisation's operations. Accepted engagements must be included in the plan.

### **2020 – Communication and Approval**

The chief audit executive must communicate the internal audit activity's plans and resource requirements, including significant interim changes, to senior management and the board for review and approval. The chief audit executive must also communicate the impact of resource limitations.

### **2030 – Resource Management**

The chief audit executive must ensure that internal audit resources are appropriate, sufficient, and effectively deployed to achieve the approved plan.

#### **Interpretation:**

*Appropriate refers to the mix of knowledge, skills, and other competencies needed to perform the plan. Sufficient refers to the quantity of resources needed to accomplish the plan. Resources are effectively deployed when they are used in a way that optimizes the achievement of the approved plan.*

**2040 – Policies and Procedures**

The chief audit executive must establish policies and procedures to guide the internal audit activity.

**Interpretation:**

*The form and content of policies and procedures are dependent upon the size and structure of the internal audit activity and the complexity of its work.*

**2050 – Coordination**

The chief audit executive should share information and coordinate activities with other internal and external providers of assurance and consulting services to ensure proper coverage and minimize duplication of efforts.

**2060 – Reporting to Senior Management and the Board**

The chief audit executive must report periodically to senior management and the board on the internal audit activity's purpose, authority, responsibility, and performance relative to its plan. Reporting must also include significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by senior management and the board.

**Interpretation:**

*The frequency and content of reporting are determined in discussion with senior management and the board and depend on the importance of the information to be communicated and the urgency of the related actions to be taken by senior management or the board.*

**2100 – Nature of Work**

The internal audit activity must evaluate and contribute to the improvement of governance, risk management, and control processes using a systematic and disciplined approach.

**2110 – Governance**

The internal audit activity must assess and make appropriate recommendations for improving the governance process in its accomplishment of the following objectives:

- Promoting appropriate ethics and values within the organisation;
- Ensuring effective organisational performance management and accountability;
- Communicating risk and control information to appropriate areas of the organisation; and
- Coordinating the activities of and communicating information among the board, external and internal auditors, and management.

**2110.A1** – The internal audit activity must evaluate the design, implementation, and effectiveness of the organisation's ethics-related objectives, programs, and activities.

**2110.A2** – The internal audit activity must assess whether the information technology governance of the organisation sustains and supports the organisation's strategies and objectives.

**2110.C1** – Consulting engagement objectives must be consistent with the overall values and goals of the organisation.

**2120 – Risk Management**

The internal audit activity must evaluate the effectiveness and contribute to the improvement of risk management processes.

**Interpretation:**

*Determining whether risk management processes are effective is a judgment resulting from the internal auditor's assessment that:*

- *Organisational objectives support and align with the organisation's mission;*
- *Significant risks are identified and assessed;*
- *Appropriate risk responses are selected that align risks with the organisation's risk appetite; and*
- *Relevant risk information is captured and communicated in a timely manner across the organisation, enabling staff, management, and the board to carry out their responsibilities.*

*Risk management processes are monitored through ongoing management activities, separate evaluations, or both.*

**2120.A1** – The internal audit activity must evaluate risk exposures relating to the organisation's governance, operations, and information systems regarding the:

- Reliability and integrity of financial and operational information.
- Effectiveness and efficiency of operations.
- Safeguarding of assets; and
- Compliance with laws, regulations, and contracts.

**2120.A2** – The internal audit activity must evaluate the potential for the occurrence of fraud and how the organisation manages fraud risk.

**2120.C1** – During consulting engagements, internal auditors must address risk consistent with the engagement's objectives and be alert to the existence of other significant risks.

**2120.C2** – Internal auditors must incorporate knowledge of risks gained from consulting engagements into their evaluation of the organisation's risk management processes.

**2120.C3** – When assisting management in establishing or improving risk management processes, internal auditors must refrain from assuming any management responsibility by actually managing risks.

**2130 – Control**

The internal audit activity must assist the organisation in maintaining effective controls by evaluating their effectiveness and efficiency and by promoting continuous improvement.

**2130.A1** – The internal audit activity must evaluate the adequacy and effectiveness of controls in responding to risks within the organisation's governance, operations, and information systems regarding the:

- Reliability and integrity of financial and operational information;
- Effectiveness and efficiency of operations;
- Safeguarding of assets; and
- Compliance with laws, regulations, and contracts.

**2130.A2** – Internal auditors should ascertain the extent to which operating and program goals and objectives have been established and conform to those of the organisation.

**2130.A3** – Internal auditors should review operations and programs to ascertain the extent to which results are consistent with established goals and objectives to determine whether operations and programs are being implemented or performed as intended.

**2130.C1** – During consulting engagements, internal auditors must address controls consistent with the engagement's objectives and be alert to significant control issues.

**2130.C2** – Internal auditors must incorporate knowledge of controls gained from consulting engagements into evaluation of the organisation's control processes.

## **2200 – Engagement Planning**

Internal auditors must develop and document a plan for each engagement, including the engagement's objectives, scope, timing, and resource allocations.

### **2201 – Planning Considerations**

In planning the engagement, internal auditors must consider:

- The objectives of the activity being reviewed and the means by which the activity controls its performance;
- The significant risks to the activity, its objectives, resources, and operations and the means by which the potential impact of risk is kept to an acceptable level;
- The adequacy and effectiveness of the activity's risk management and control processes compared to a relevant control framework or model; and
- The opportunities for making significant improvements to the activity's risk management and control processes.

**2201.A1** – When planning an engagement for parties outside the organisation, internal auditors must establish a written understanding with them about objectives, scope, respective responsibilities, and other expectations, including restrictions on distribution of the results of the engagement and access to engagement records.

**2201.C1** – Internal auditors must establish an understanding with consulting engagement clients about objectives, scope, respective responsibilities, and other client expectations. For significant engagements, this understanding must be documented.

### **2210 – Engagement Objectives**

Objectives must be established for each engagement.

**2210.A1** – Internal auditors must conduct a preliminary assessment of the risks relevant to the activity under review. Engagement objectives must reflect the results of this assessment.

**2210.A2** – Internal auditors must consider the probability of significant errors, fraud, noncompliance, and other exposures when developing the engagement objectives.

**2210.A3** – Adequate criteria are needed to evaluate controls. Internal auditors must ascertain the extent to which management has established adequate criteria to determine whether objectives and goals have been accomplished. If adequate, internal auditors must use such criteria in their evaluation. If inadequate, internal auditors must work with management to develop appropriate evaluation criteria.

**2210.C1** – Consulting engagement objectives must address governance, risk management, and control processes to the extent agreed upon with the client.

**2220 – Engagement Scope**

The established scope must be sufficient to satisfy the objectives of the engagement.

**2220.A1** – The scope of the engagement must include consideration of relevant systems, records, personnel, and physical properties, including those under the control of third parties.

**2220.A2** – If significant consulting opportunities arise during an assurance engagement, a specific written understanding as to the objectives, scope, respective responsibilities, and other expectations should be reached and the results of the consulting engagement communicated in accordance with consulting standards.

**2220.C1** – In performing consulting engagements, internal auditors must ensure that the scope of the engagement is sufficient to address the agreed-upon objectives. If internal auditors develop reservations about the scope during the engagement, these reservations must be discussed with the client to determine whether to continue with the engagement.

**2230 – Engagement Resource Allocation**

Internal auditors must determine appropriate and sufficient resources to achieve engagement objectives based on an evaluation of the nature and complexity of each engagement, time constraints, and available resources.

**2240 – Engagement Work Program**

Internal auditors must develop and document work programs that achieve the engagement objectives.

**2240.A1** – Work programs must include the procedures for identifying, analysing, evaluating, and documenting information during the engagement. The work program must be approved prior to its implementation, and any adjustments approved promptly.

**2240.C1** – Work programs for consulting engagements may vary in form and content depending upon the nature of the engagement.

**2300 – Performing the Engagement**

Internal auditors must identify, analyse, evaluate, and document sufficient information to achieve the engagement's objectives.

**2310 – Identifying Information**

Internal auditors must identify sufficient, reliable, relevant, and useful information to achieve the engagement's objectives.

**Interpretation:**

*Sufficient information is factual, adequate, and convincing so that a prudent, informed person would reach the same conclusions as the auditor. Reliable information is the best attainable information through the use of appropriate engagement techniques. Relevant information supports engagement observations and recommendations and is consistent with the objectives for the engagement. Useful information helps the organisation meet its goals.*

**2320 – Analysis and Evaluation**

Internal auditors must base conclusions and engagement results on appropriate analyses and evaluations.

**2330 – Documenting Information**

Internal auditors must document relevant information to support the conclusions and engagement results.

**2330.A1** – The chief audit executive must control access to engagement records. The chief audit executive must obtain the approval of senior management and/or legal counsel prior to releasing such records to external parties, as appropriate.

**2330.A2** – The chief audit executive must develop retention requirements for engagement records, regardless of the medium in which each record is stored. These retention requirements must be consistent with the organisation's guidelines and any pertinent regulatory or other requirements.

**2330.C1** – The chief audit executive must develop policies governing the custody and retention of consulting engagement records, as well as their release to internal and external parties. These policies must be consistent with the organisation's guidelines and any pertinent regulatory or other requirements.

**2340 – Engagement Supervision**

Engagements must be properly supervised to ensure objectives are achieved, quality is assured, and staff is developed.

**Interpretation:**

*The extent of supervision required will depend on the proficiency and experience of internal auditors and the complexity of the engagement. The chief audit executive has overall responsibility for supervising the engagement, whether performed by or for the internal audit activity, but may designate appropriately experienced members of the internal audit activity to perform the review. Appropriate evidence of supervision is documented and retained.*

**2400 – Communicating Results**

Internal auditors must communicate the engagement results.

**2410 – Criteria for Communicating**

Communications must include the engagement's objectives and scope as well as applicable conclusions, recommendations, and action plans.

**2410.A1** – Final communication of engagement results must, where appropriate, contain internal auditors' overall opinion and/or conclusions.

**2410.A2** – Internal auditors are encouraged to acknowledge satisfactory performance in engagement communications.

**2410.A3** – When releasing engagement results to parties outside the organisation, the communication must include limitations on distribution and use of the results.

**2410.C1** – Communication of the progress and results of consulting engagements will vary in form and content depending upon the nature of the engagement and the needs of the client.

**2420 – Quality of Communications**

Communications must be accurate, objective, clear, concise, constructive, complete, and timely.



**Interpretation:**

*Accurate communications are free from errors and distortions and are faithful to the underlying facts. Objective communications are fair, impartial, and unbiased and are the result of a fair-minded and balanced assessment of all relevant facts and circumstances. Clear communications are easily understood and logical, avoiding unnecessary technical language and providing all significant and relevant information. Concise communications are to the point and avoid unnecessary elaboration, superfluous detail, redundancy, and wordiness. Constructive communications are helpful to the engagement client and the organisation and lead to improvements where needed. Complete communications lack nothing that is essential to the target audience and include all significant and relevant information and observations to support recommendations and conclusions. Timely communications are opportune and expedient, depending on the significance of the issue, allowing management to take appropriate corrective action.*

**2421 – Errors and Omissions**

If a final communication contains a significant error or omission, the chief audit executive must communicate corrected information to all parties who received the original communication.

**2430 – Use of “Conducted in Conformance with the *International Standards for the Professional Practice of Internal Auditing*”**

Internal auditors may report that their engagements are “conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*”, only if the results of the quality assurance and improvement program support the statement.

**2431 – Engagement Disclosure of Nonconformance**

When nonconformance with the Definition of Internal Auditing, the Code of Ethics or the *Standards* impacts a specific engagement, communication of the results must disclose the:

- Principle or rule of conduct of the Code of Ethics or *Standard(s)* with which full conformance was not achieved;
- Reason(s) for nonconformance; and
- Impact of nonconformance on the engagement and the communicated engagement results.

**2440 – Disseminating Results**

The chief audit executive must communicate results to the appropriate parties.

**Interpretation:**

*The chief audit executive or designee reviews and approves the final engagement communication before issuance and decides to whom and how it will be disseminated.*

**2440.A1** – The chief audit executive is responsible for communicating the final results to parties who can ensure that the results are given due consideration.

**2440.A2** – If not otherwise mandated by legal, statutory, or regulatory requirements, prior to releasing results to parties outside the organisation the chief audit executive must:

- Assess the potential risk to the organisation;
- Consult with senior management and/or legal counsel as appropriate; and
- Control dissemination by restricting the use of the results.

**2440.C1** – The chief audit executive is responsible for communicating the final results of consulting engagements to clients.

**2440.C2** – During consulting engagements, governance, risk management, and control issues may be identified. Whenever these issues are significant to the organisation, they must be communicated to senior management and the board.

**2500 – Monitoring Progress**

The chief audit executive must establish and maintain a system to monitor the disposition of results communicated to management.

**2500.A1** – The chief audit executive must establish a follow-up process to monitor and ensure that management actions have been effectively implemented or that senior management has accepted the risk of not taking action.

**2500.C1** – The internal audit activity must monitor the disposition of results of consulting engagements to the extent agreed upon with the client.

**2600 – Resolution of Senior Management's Acceptance of Risks**

When the chief audit executive believes that senior management has accepted a level of residual risk that may be unacceptable to the organisation, the chief audit executive must discuss the matter with senior management. If the decision regarding residual risk is not resolved, the chief audit executive must report the matter to the board for resolution.

## **Glossary**

### **Add Value**

Value is provided by improving opportunities to achieve organisational objectives, identifying operational improvement, and/or reducing risk exposure through both assurance and consulting services.

### **Adequate Control**

Present if management has planned and organised (designed) in a manner that provides reasonable assurance that the organisation's risks have been managed effectively and that the organisation's goals and objectives will be achieved efficiently and economically.

### **Assurance Services**

An objective examination of evidence for the purpose of providing an independent assessment on governance, risk management, and control processes for the organisation. Examples may include financial, performance, compliance, system security, and due diligence engagements.

### **Board**

A board is an organisation's governing body, such as a board of directors, supervisory board, head of an agency or legislative body, board of governors or trustees of a non-profit organisation, or any other designated body of the organisation, including the audit committee to whom the chief audit executive may functionally report.

### **Charter**

The internal audit charter is a formal document that defines the internal audit activity's purpose, authority, and responsibility. The internal audit charter establishes the internal audit activity's position within the organisation; authorizes access to records, personnel, and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities.

### **Chief Audit Executive**

Chief audit executive is a senior position within the organisation responsible for internal audit activities. Normally, this would be the internal audit director. In the case where internal audit activities are obtained from external service providers, the chief audit executive is the person responsible for overseeing the service contract and the overall quality assurance of these activities, reporting to senior management and the board regarding internal audit activities, and follow-up of engagement results. The term also includes titles such as general auditor, head of internal audit, chief internal auditor, and inspector general.

### **Code of Ethics**

The Code of Ethics of The Institute of Internal Auditors (IIA) are Principles relevant to the profession and practice of internal auditing, and Rules of Conduct that describe behaviour expected of internal auditors. The Code of Ethics applies to both parties and entities that provide internal audit services. The purpose of the Code of Ethics is to promote an ethical culture in the global profession of internal auditing.

### **Compliance**

Adherence to policies, plans, procedures, laws, regulations, contracts, or other requirements.

### **Conflict of Interest**

Any relationship that is, or appears to be, not in the best interest of the organisation. A conflict of interest would prejudice an individual's ability to perform his or her duties and responsibilities objectively.

**Consulting Services**

Advisory and related client service activities, the nature and scope of which are agreed with the client, are intended to add value and improve an organisation's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation, and training.

**Control**

Any action taken by management, the board, and other parties to manage risk and increase the likelihood that established objectives and goals will be achieved. Management plans, organises, and directs the performance of sufficient actions to provide reasonable assurance that objectives and goals will be achieved.

**Control Environment**

The attitude and actions of the board and management regarding the significance of control within the organisation. The control environment provides the discipline and structure for the achievement of the primary objectives of the system of internal control. The control environment includes the following elements:

- Integrity and ethical values
- Management's philosophy and operating style
- Organisational structure
- Assignment of authority and responsibility
- Human resource policies and practices
- Competence of personnel.

**Control Processes**

The policies, procedures, and activities that are part of a control framework, designed to ensure that risks are contained within the risk tolerances established by the risk management process.

**Engagement**

A specific internal audit assignment, task, or review activity, such as an internal audit, control self-assessment review, fraud examination, or consultancy. An engagement may include multiple tasks or activities designed to accomplish a specific set of related objectives.

**Engagement Objectives**

Broad statements developed by internal auditors that define intended engagement accomplishments.

**Engagement Work Program**

A document that lists the procedures to be followed during an engagement, designed to achieve the engagement plan.

**External Service Provider**

A person or firm outside of the organisation that has special knowledge, skill, and experience in a particular discipline.

**Fraud**

Any illegal act characterized by deceit, concealment, or violation of trust. These acts are not dependent upon the threat of violence or physical force. Frauds are perpetrated by parties and organisations to obtain money, property, or services; to avoid payment or loss of services; or to secure personal or business advantage.

**Governance**

The combination of processes and structures implemented by the board to inform, direct, manage, and monitor the activities of the organisation toward the achievement of its objectives.

**Impairment**

Impairment to organisational independence and individual objectivity may include personal conflict of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations (funding).

**Independence**

The freedom from conditions that threaten objectivity or the appearance of objectivity. Such threats to objectivity must be managed at the individual auditor, engagement, functional, and organisational levels.

**Information Technology Controls**

Controls that support business management and governance as well as provide general and technical controls over information technology infrastructures such as applications, information, infrastructure, and people.

**Information Technology Governance**

Consists of the leadership, organisational structures, and processes that ensure that the enterprise's information technology sustains and supports the organisation's strategies and objectives.

**Internal Audit Activity**

A department, division, team of consultants, or other practitioner(s) that provides independent, objective assurance and consulting services designed to add value and improve an organisation's operations. The internal audit activity helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management and control processes.

**International Professional Practices Framework**

The conceptual framework that organises the authoritative guidance promulgated by The IIA. Authoritative Guidance is comprised of two categories – (1) mandatory and (2) strongly recommended.

**Must**

The *Standards* use the word "must" to specify an unconditional requirement.

**Objectivity**

An unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they have an honest belief in their work product and that no significant quality compromises are made. Objectivity requires internal auditors not to subordinate their judgment on audit matters to others.

**Residual Risk**

The risk remaining after management takes action to reduce the impact and likelihood of an adverse event, including control activities in responding to a risk.

**Risk**

The possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact and likelihood.

**Risk Appetite**

The level of risk that an organisation is willing to accept.

**Risk Management**

A process to identify, assess, manage, and control potential events or situations to provide reasonable assurance regarding the achievement of the organisation's objectives.

**Should**

The *Standards* use the word "should" where conformance is expected unless, when applying professional judgment, circumstances justify deviation.

**Significance**

The relative importance of a matter within the context in which it is being considered, including quantitative and qualitative factors, such as magnitude, nature, effect, relevance, and impact. Professional judgment assists internal auditors when evaluating the significance of matters within the context of the relevant objectives.

**Standard**

A professional pronouncement promulgated by the Internal Audit Standards Board that delineates the requirements for performing a broad range of internal audit activities, and for evaluating internal audit performance.

**Technology-based Audit Techniques**

Any automated audit tool, such as generalized audit software, test data generators, computerized audit programs, specialized audit utilities, and computer-assisted audit techniques (CAATs).

## Appendix 2 - Sample Audit Committee Charter

### AUDIT COMMITTEE CHARTER

#### 1. Objective

The objective of the Audit Committee (Committee) is to provide independent assurance and assistance to the NAME OF COUNCIL on risk management, control, governance, and external accountability responsibilities.

#### 2. Authority

The Council authorises the Committee, within the scope of its role and responsibilities, to:

- Obtain any information it needs from any employee or external party (subject to their legal obligations to protect information).
- Discuss any matters with the external auditor or other external parties (subject to confidentiality considerations).
- Request the attendance of any employee or councillor at Committee meetings.
- Obtain external legal or other professional advice considered necessary to meet its responsibilities.

#### 3. Composition and Tenure

The Committee will consist of:

##### 3.1 Members (voting)

- Councillor
- Independent external member (not a member of the Council).
- Independent external member (not a member of the Council to be the chairperson).

##### 3.2 Attendee (non-voting)

- General Manager
- Head of Internal Audit
- Chief Financial Officer

##### 3.3 Invitees (non-voting) for specific Agenda items

- Representatives of the external auditor.
- Other officers may attend by invitation as requested by the Committee.

The independent external member will be appointed for the term of council, after which they will be eligible for extension or re-appointment following a formal review of their performance.

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to the operations of NAME OF COUNCIL. At least one member of the Committee shall have accounting or related financial management experience, with understanding of accounting and auditing standards in a public sector environment.

#### 4. Role and Responsibilities

The Committee has no executive powers, except those expressly provided by the Council.

In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the Local Government Act.

The responsibilities of the Committee may be revised or expanded by the Council from time to time. The Committee's responsibilities are:

##### 4.1 Risk Management

- Review whether management has in place a current and comprehensive risk management framework, and associated procedures for effective identification and management of business and financial risks, including fraud.
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings;
- Review the impact of the risk management framework on its control environment and insurance arrangements; and
- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.

##### 4.2 Control Framework

- Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors;
- Review whether management has in place relevant policies and procedures, and these are periodically reviewed and updated;
- Progressively review whether appropriate processes are in place to assess whether policies and procedures are complied with;
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations; and
- Review whether management has taken steps to embed a culture which is committed to ethical and lawful behaviour.

##### 4.3 External Accountability

- Satisfy itself the annual financial reports comply with applicable Australian Accounting Standards and supported by appropriate management sign-off on the statements and the adequacy of internal controls.
- Review the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments.
- To consider contentious financial reporting matters in conjunction with council's management and external auditors.
- Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements.
- Satisfy itself there are appropriate mechanisms in place to review and implement, where appropriate, relevant State Government reports and recommendations.
- Satisfy itself there is a performance management framework linked to organisational objectives and outcomes.



4.4 Legislative Compliance

- Determine whether management has appropriately considered legal and compliance risks as part of risk assessment and management arrangements.
- Review the effectiveness of the system for monitoring compliance with relevant laws, regulations and associated government policies.

4.5 Internal Audit

- Act as a forum for communication between the Council, General Manager, senior management, internal audit and external audit.
- Review the internal audit coverage and Internal Audit Plan, ensure the plan has considered the Risk Management Plan, and approve the plan.
- Consider the adequacy of internal audit resources to carry out its responsibilities, including completion of the approved Internal Audit Plan.
- Review all audit reports and consider significant issues identified in audit reports and action taken on issues raised, including identification and dissemination of better practices.
- Monitor the implementation of internal audit recommendations by management.
- Periodically review the Internal Audit Charter to ensure appropriate organisational structures, authority, access and reporting arrangements are in place.
- Periodically review the performance of Internal Audit.

4.6 External Audit

- Act as a forum for communication between the Council, General Manager, senior management, internal audit and external audit.
- Provide input and feedback on the financial statement and performance audit coverage proposed by external audit, and provide feedback on the external audit services provided.
- Review all external plans and reports in respect of planned or completed external audits, and monitor the implementation of audit recommendations by management.
- Consider significant issues raised in relevant external audit reports and better practice guides, and ensure appropriate action is taken.

4.7 Responsibilities of Members

Members of the Committee are expected to:

- Understand the relevant legislative and regulatory requirements appropriate to NAME OF COUNCIL.
- Contribute the time needed to study and understand the papers provided.
- Apply good analytical skills, objectivity and good judgment.
- Express opinions frankly, ask questions that go to the fundamental core of issues, and pursue independent lines of enquiry.

## 5. Reporting

At the first Committee meeting after 30 June each year, Internal Audit will provide a performance report of:

- The performance of Internal Audit for the financial year as measured against agreed key performance indicators.
- The approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.

The Committee may, at any time, consider any other matter it deems of sufficient importance to do so. In addition, at any time an individual Committee member may request a meeting with the Chair of the Committee.

The Committee will report regularly, and at least annually, to the governing body of council on the management of risk and internal controls.

## 6. Administrative arrangements

### 6.1 Meetings

The Committee will meet at least four times per year, with one of these meetings to include review and endorsement of the annual audited financial reports and external audit opinion.

The need for any additional meetings will be decided by the Chair of the Committee, though other Committee members may make requests to the Chair for additional meetings.

A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Audit Committee Charter.

### 6.2 Attendance at Meetings and Quorums

A quorum will consist of a majority of Committee members, including at least one independent member. Meetings can be held in person, by telephone or by video conference.

The Head of Internal Audit will be invited to attend each meeting unless requested not to do so by the Chair of the Committee. The Committee may also request the Chief Finance Officer or any other employees to participate for certain agenda items, as well as the external auditor.

The General Manager may attend each meeting but will permit the Committee to meet separately with each of the Head of Internal Audit and the External Auditor in the absence of management on at least one occasion per year.

### 6.3 Secretariat

The Committee has appointed the Head of Internal Audit to be responsible for ensuring that the Committee has adequate secretariat support. The Secretariat will ensure the agenda for each meeting and supporting papers are circulated, at least one week before the meeting, and ensure minutes of the meetings are prepared and maintained. Minutes shall be approved by the Chair and circulated to each member within three weeks of the meeting being held.

### 6.4 Conflict of Interests

Councillors, council staff and members of council committees must comply with the applicable provisions of Council's code of conduct in carrying out the functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code of conduct and regularly review their personal circumstances with this in mind.

Committee members must declare any conflict of interests at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflicts of interest should be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist. The final arbiter of such a decision is the Chair of the Committee.

#### 6.5 Induction

New members will receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

#### 6.6 Assessment Arrangements

The Chair of the Committee will initiate a review of the performance of the Committee at least once every two years. The review will be conducted on a self-assessment basis (unless otherwise determined by the Chair), with appropriate input from management and any other relevant stakeholders, as determined by the Chair.

#### 6.7 Review of Audit Committee Charter

At least once every two years the Audit Committee will review this Audit Committee Charter.

The Audit Committee will approve any changes to this Audit Committee Charter.

**Approved:**                      Audit Committee Meeting                      Date:

## Appendix 3 - Sample Internal Audit Charter

The mission of internal auditing is to provide an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Internal Audit at NAME OF ORGANISATION is managed by the TITLE OF INTERNAL AUDIT MANAGER who is the designated Head of Internal Audit within the organisation. The Head of Internal Audit is the top position within an organisation for internal audit activities, as defined in The International Standards for the Professional Practice of Internal Auditing (Standards) issued by the Institute of Internal Auditors.

### 1. Introduction

This Internal Audit Charter is a formal statement of purpose, authority and responsibility for an internal auditing function within NAME OF ORGANISATION.

- It establishes Internal Audit within NAME OF ORGANISATION and recognises the importance of such an independent and objective service to the organisation.
- It outlines the legal and operational framework under which Internal Audit will operate.
- It authorises the Head of Internal Audit to promote and direct a broad range of internal audits across NAME OF ORGANISATION and, where permitted, external bodies.

Mandate for Internal Audit THIS WILL VARY FROM ORGANISATION TO ORGANISATION AND MAY INCLUDE LEGISLATIVE OR REGULATORY REQUIREMENTS).

### 2. Role and Authority

The Head of Internal Audit is authorised to direct a comprehensive program of internal audit work in the form of reviews, previews, consultancy advice, evaluations, appraisals, assessments and investigations of functions, processes, controls and governance frameworks in the context of the achievement of business objectives.

For this purpose, all members of Internal Audit are authorised to have full, free and unrestricted access to all functions, property, personnel, records, information, accounts, files, monies and other documentation, as necessary for the conduct of their work.

### 3. Objectivity, Independence and Organisational Status

Objectivity requires an unbiased mental attitude. As such, all Internal Audit staff shall perform internal audit engagements in such a manner that they have an honest belief in their work product and that no significant quality compromises are made. Further, it requires Internal Audit staff not to subordinate their judgment on internal audit matters to that of others.

To facilitate this approach, Internal Audit shall have independent status within NAME OF ORGANISATION, and for this purpose shall be responsible directly through the Head of Internal Audit to the Audit Committee and administratively to the General Manager. Internal Audit shall be independent of the activities reviewed, and therefore shall not undertake any operating responsibilities outside internal audit work. Neither shall Internal Audit staff have any executive or managerial powers, authorities, functions or duties except those relating to the management of Internal Audit. Internal Audit staff and contractors shall report to the Head of Internal Audit any situations where they feel their objectivity may be impaired. Similarly, the Head of Internal Audit should report any such situations to the Audit Committee.

The work of Internal Audit does not relieve the staff of NAME OF ORGANISATION from their accountability to discharge their responsibilities. All NAME OF ORGANISATION staff are responsible for risk management and the operation and enhancement of internal control. This includes responsibility for implementing remedial action endorsed by management following an internal audit.

Internal Audit shall not be responsible for operational activities on a daily basis, or in the detailed development or implementation of new or changed systems, or for internal checking processes.

#### 4. Scope of Work

The scope of services provided by Internal Audit shall encompass:

- The examination and evaluation of the adequacy and effectiveness of systems of internal control, risk management, governance, and the status of ethical behaviour.
- Ascertaining conformity with the goals and objectives of NAME OF ORGANISATION.
- Assessment of the economic and efficient use of resources.
- The examination of compliance with policies, procedures, plans and legislation.
- Assessment of the reliability and integrity of information.
- Assessment of the safeguarding of assets.
- Any special investigations as directed by the Audit Committee.
- All activities of NAME OF ORGANISATION, whether financial or non-financial, manual or computerised.

#### 5. The scope of work may include

- **Assurance services** – objective examination of evidence for the purpose of providing an independent assessment on risk management, control, or governance processes for the organisation. Examples may include financial, performance, operational, compliance, system security, and due diligence engagements.
- **Consulting services** – advisory and related client service activities, the nature and scope of which are agreed with the client and which are intended to add value and improve an organisation's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation and training.

#### 6. Internal Audit Methodology

Internal Audit shall use the most appropriate methodology for each internal audit engagement, depending on the nature of the activity and the pre-determined parameters for the engagement. Generally, internal audits will include:

- Planning.
- Reviewing and assessing risks in the context of the audit objectives.
- Examination and evaluation of information.
- Communicating results.
- Following up on implementation of audit recommendations.

#### 7. Operating Principles

Internal Audit shall conform with:

- The Standards and Code of Ethics issued by the Institute of Internal Auditors.
- Where relevant, the Statement on Information Systems Auditing Standards issued by the Information Systems and Control Association.
- Relevant auditing standards issued by the Auditing and Assurance Standards Board.

#### 8. Internal Audit shall:

- Possess the knowledge, skills, and technical proficiency essential to the performance of internal audits.

- Be skilled in dealing with people and in communicating audit issues effectively.
- Maintain their technical competence through a program of continuing education.
- Exercise due professional care in performing internal audit engagements.

#### **9. Internal Audit staff shall:**

- Conduct themselves in a professional manner.
- Conduct their activities in a manner consistent with the concepts expressed in the Standards and the Code of Ethics.

#### **10. Reporting Arrangements**

The Head of Internal Audit shall at all times report to the Audit Committee. At each Audit Committee meeting the Head of Internal Audit shall submit a report summarising all audit activities undertaken during the period, indicating:

- ✓ Internal audit engagements completed or in progress.
- ✓ Outcomes of each internal audit engagement undertaken.
- ✓ Remedial action taken or in progress.

On completion of each internal audit engagement, Internal Audit shall issue a report to its audit customers detailing the objective and scope of the audit, and resulting issues based on the outcome of the audit. Internal Audit shall seek from the responsible senior executive an agreed and endorsed action plan outlining remedial action to be taken, along with an implementation timetable and person responsible. Responsible officers shall have a maximum of ten working days to provide written management responses and action plans in response to issues and recommendations contained in internal audit reports.

The Head of Internal Audit shall make available all internal audit reports to the Audit Committee. However, the work of Internal Audit is solely for the benefit of NAME OF ORGANISATION and is not to be relied on or provided to any other person or organisation, except where this is formally authorised by the Audit Committee or the Head of Internal Audit.

In addition to the normal process of reporting on work undertaken by Internal Audit, the Head of Internal Audit shall draw to the attention of the Audit Committee all matters that, in the Head of Internal Audit's opinion, warrant reporting in this manner.

#### **11. Planning Requirements**

Internal Audit uses a risk-based rolling program of internal audits to establish an annual Internal Audit Plan to reflect a program of audits over a 12 month period. This approach is designed to be flexible, dynamic and more timely in order to meet the changing needs and priorities of NAME OF ORGANISATION.

The Head of Internal Audit shall prepare an annual Internal Audit Plan for review and approval by the Audit Committee, showing the proposed areas for audit. The annual Internal Audit Plan shall be based on an assessment of the goals, objectives and business risks of NAME OF ORGANISATION, and shall also take into consideration any special requirements of the Audit Committee and senior executives.

The Head of Internal Audit has discretionary authority to adjust the Internal Audit Plan as a result of receiving special requests from management to conduct reviews that are not on the plan, with these to be approved at the next meeting of the Audit Committee.

#### **12. Quality Assurance & Improvement Program**

The Head of Internal Audit shall oversee the development and implementation of a quality assurance and improvement program for Internal Audit, to provide assurance that internal audit work conforms to the Standards and is focused on continuous improvement.

**13. Co-ordination with External Audit**

The Head of Internal Audit shall periodically consult with the external auditor, to discuss matters of mutual interest, to co-ordinate audit activity, and to reduce duplication of audit effort.

**14. Review of the Internal Audit Charter**

The Head of Internal Audit shall periodically review the Internal Audit Charter to ensure it remains up-to-date and reflects the current scope of internal audit work.

**15. Evaluation of Internal Audit**

The Head of Internal Audit shall develop performance measures (key performance indicators) for consideration and endorsement by the Audit Committee, as a means for the performance of Internal Audit to be periodically evaluated.

Internal Audit shall also be subject to an independent quality review at least every five years. Such review shall be in line with the Standards of Professional Practice in Internal Audit and be commissioned by and report to the Audit Committee.

**16. Conflict of Interests**

Internal auditors are not to provide audit services for work for which they may previously have been responsible. Whilst the Standards provide guidance on this point and allow this to occur after 12 months, each instance should be carefully assessed.

When engaging internal audit contractors, the Head of Internal Audit shall take steps to identify, evaluate the significance, and manage any perceived or actual conflicts of interest that may impinge upon internal audit work.

Instances of perceived or actual conflicts of interest by the Head of Internal Audit or Internal Audit staff and contractors are to be immediately reported to the Audit Committee by the Head of Internal Audit.

Any changes to this Internal Audit Charter will be approved by the Audit Committee.

**Approved:**                      Audit Committee Meeting                      Date:

## Appendix 4 - Risk Management Assessment Tool

*This tool is designed to assist the Audit Committee's consideration of risk management, through the review of material, and discussion or presentations from senior management.*

*The Committee's charter will determine the extent to which the Audit Committee needs to consider risk management or whether this is to be overseen by a separate Risk Committee.*

*The tool consists of a series of questions, or high level prompts, which should be tailored to meet the Council's particular circumstances. The extent and nature of the Committee's consideration of risk will largely be dependent on whether or not the Council has in place a formal and structured risk management framework.*

*Some elements, for example, questions on risk strategy and structure, could be addressed on an annual basis while others could be considered on a more regular basis, depending on Council's individual risk management activities, and the Committee charter.*

*A 'no' answer does not necessarily indicate a failure or breakdown in Council's risk management framework but may indicate where more detailed discussion or consideration by the Committee is warranted.*

<b>Risk Strategy</b>	<b>Yes</b>	<b>No</b>
Is Council's risk management framework clearly articulated and communicated to all staff?	<input type="checkbox"/>	<input type="checkbox"/>
Is Council's risk posture clear? (i.e. the amount of risk Council is willing to take)	<input type="checkbox"/>	<input type="checkbox"/>
Has the 'tone at the top' from the General Manager's perspective permeated the risk culture of the Council?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a clear link between risk management, the control environment and business planning?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Risk Structure</b>	<b>Yes</b>	<b>No</b>
Is responsibility and accountability for risk management clearly assigned to individual managers?	<input type="checkbox"/>	<input type="checkbox"/>
Are risk management activities/responsibilities included in job descriptions, where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>
Are the primary risk management activities (for example, business continuity planning, fraud control plan, annual risk assessment, and so on) across Council, clearly defined?	<input type="checkbox"/>	<input type="checkbox"/>
Is responsibility for co-ordinating and reporting risk management activity to the Audit Committee, or other relevant committee clearly defined?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a risk management support capability to assist the development of emerging risk management practices?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a common risk management language/terminology across Council?	<input type="checkbox"/>	<input type="checkbox"/>



Does management have a formal business continuity plan incorporating a disaster recovery plan?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Risk Identification and Assessment</i></b>	<b>Yes</b>	<b>No</b>
Are risk assessments undertaken at both strategic and operational levels?	<input type="checkbox"/>	<input type="checkbox"/>
Have the risks associated with cross-agency governance arrangements been identified?	<input type="checkbox"/>	<input type="checkbox"/>
Does a comprehensive risk profile exist?	<input type="checkbox"/>	<input type="checkbox"/>
Is a risk assessment undertaken for all significant organisational changes/projects?	<input type="checkbox"/>	<input type="checkbox"/>
Does management have effective processes for ensuring risk assessments have been performed in each major business area?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a process in place to identify emerging risks and to incorporate these into the Council's risk management plan?	<input type="checkbox"/>	<input type="checkbox"/>
Do the Council's policies appropriately address relevant operational and financial risks?	<input type="checkbox"/>	<input type="checkbox"/>
Have any frauds, material irregularities or possible illegal acts been identified?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a current fraud control policy and plan in place which identifies all fraud related risks?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Risk Mitigation and Improvement</i></b>	<b>Yes</b>	<b>No</b>
Has management assessed the effectiveness of controls over the highest priority risks?	<input type="checkbox"/>	<input type="checkbox"/>
Does management consider the controls to mitigate risks to within Council's risk tolerance to be adequate?	<input type="checkbox"/>	<input type="checkbox"/>
Have all significant recommendations that impact on risk or the effective operation of controls, made by Council's internal and external auditors, been addressed in a timely manner?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a response plan for prompt and effective action when fraud or an illegal act is discovered?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Monitoring and Assurance</i></b>	<b>Yes</b>	<b>No</b>
Are systems in place for measuring and monitoring risk, including consideration of common risk themes across Council?	<input type="checkbox"/>	<input type="checkbox"/>
Are risks, including suspected improprieties, escalated to the appropriate levels of management within Council?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a formal process by which senior management periodically assure the General Manager/Council that key control strategies are operating effectively?	<input type="checkbox"/>	<input type="checkbox"/>

<b>Continuous Improvement</b>	<b>Yes</b>	<b>No</b>
Do Council's management practices reflect the concept of risk management?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a culture of continuous improvement? (for example does Council 'learn' from past risk exposures)	<input type="checkbox"/>	<input type="checkbox"/>
Does management periodically review its risk profile?	<input type="checkbox"/>	<input type="checkbox"/>
Is risk a priority consideration whenever business processes are improved?	<input type="checkbox"/>	<input type="checkbox"/>

Name		
Position	<i>(To be completed by the most senior executive responsible for risk management within council)</i>	
Signed		Date

## Appendix 5 - Common risks in the council environment

This appendix lists some of the more significant risk exposures which are likely to be faced in the council environment.

*Warning - This list is provide as an aid to check completeness. It should only be used after a thorough risk identification process is conducted and should not be used as a substitute for an effective risk identification process. Not adhering to this advice is likely to result in significant risks which are specific to your council not being identified, which may have significant consequences if that risk were to eventuate.*

### Governance

- Advocacy processes ineffective at State and Federal Government level leading to unwanted results/lack of funding etc.
- Governance training processes (Code of Conduct, Protected Disclosures, Conflict of Interests, councillor interaction with staff, identifying fraud) not undertaken/ineffective leading to higher risk of fraud and corruption.
- Corruption (development applications/rezonings/election funding) leading to loss of reputation of Council.
- Lack of cohesion of Councillors leading to lack of strategic direction/poor decision making.
- Complaints handling processes ineffective leading to legal disputes/lack of transparency.
- Misuse of personal information leading to penalties under Privacy legislation or loss of confidence in Council.
- Poor processes for the disclosure and management of staff conflicts of interest leading to partial decision making.
- Inappropriate delegations or delegations not properly exercised.
- Failure to implement council resolutions leading to breakdown of council/staff relationships.

### Planning and Regulation

- Unanticipated population growth leading to unsustainable natural environment/infrastructure demand.
- Planning strategies not developed in timely manner leading to delayed delayed/inappropriate development/community angst.
- Population decrease leading to community breakdown.
- Planning controls outdated, leading to poor urban design.
- Legislation not complied with leading to legal disputes/penalties
- Poor planning controls leading to poor planning decisions

### Assets and Finance

- Adequate asset management processes not being in place, leading to substantial additional long term financial burdens to council.
- Adequate long term financial management processes not being in place leading to poor decision making by council.
- Limited opportunities to increase rates and user charges, leading to increasing reliance on grants/one off funding.
- Cost of infrastructure to be funded under section 94 contributions underestimated/unaffordable, leading to funding shortfalls/reduced level of infrastructure.
- Limited regional collaboration between councils, leading to on-going inefficiencies and additional costs to regional residents.

- Operational unit business plans not effectively in place, leading to poor decision making/performance monitoring.
- Inadequate disaster/crisis management processes, leading poor response in real situation.
- Community assets under-utilised leading to closure in longer term.
- Quasi commercial operations of Council (child care/tourist parks/airports/cultural centres etc) not operated effectively leading to higher than appropriate council subsidisation.
- Project management practices not effectively in place, leading to cost over run/quality issues.
- Appropriate procurement processes not undertaken, leading to value for money issues/questions of probity.
- Council assets under insured leading to financial exposure to Council
- Plant fleet under utilised leading to additional costs to Council.
- Minor road condition unable to be maintained at satisfactory level leading to community dissatisfaction.
- Mismanagement of Council supported community entities leading additional financial burden to Council/cessation of service.
- Knowledge management processes not effectively in place leading to poor decision making.
- Inadequate information security leading to issues of confidentiality or legal/financial penalties to Council.

#### **Community and Consultation**

- Inability to maintain/increase employment base leading to adverse socio/economic consequences.
- Poor issues management, leading to sustained loss of public support for council in media and/or public.
- Unnecessary bureaucratic processes/red tape leading to additional costs to those dealing with Council.

#### **Workforce Relations**

- Productivity levels of council below industry/commercial benchmarks or not measured, leading to additional costs/perpetuation of inefficiencies.
- Skill shortages in professional areas, leading to inability to maintain standards/deliver services.
- Loss of trained staff with specific knowledge, leading to loss of knowledge, ability and experience.
- Inadequate/insufficient staff training leading to reduced skills, currency of knowledge, errors and omissions, turnover of staff.
- Information technology systems outdated leading to on-going inefficiencies..
- OHS not appropriately embedded in operational processes leading to major injury/death or penalty against Council or Council staff.



## REPORT: ICAC Report - Investigation into the conduct of the former City of Botany Bay Chief Financial Officer and others

**AUTHOR:** Internal Auditor  
**REPORT DATE:** 23 August 2017  
**TRIM REFERENCE:** ID17/1547

### EXECUTIVE SUMMARY

The Independent Commission Against Corruption (ICAC) recently released a report following its investigation into the conduct of the former City of Botany Bay Chief Financial Officer and other Council employees. The Commission made findings of corruption against the former Chief Financial Officer, other council employees and certain suppliers. The investigation highlighted transactions where invoice processing and approval procedures were either inadequate or disregarded. Superannuation payments to a senior Council employee were not properly documented and relevant tax was not withheld as required. The safeguarding of Council assets was not effective as some cars purchased were given away improperly and certain invoices paid did not relate to legitimate Council business.

The General Manager has requested the Internal Auditor to prepare a report in relation to ICAC recommendations to the now Bayside Council and how they relate to Dubbo Regional Council. This report will be submitted to the next meeting of the Audit and Risk Management Committee.

### ORGANISATIONAL VALUES

Customer Focused: The strategic objective of the Council's internal audit function is to provide a consultancy service to management which focuses on providing insight on key risk issues and generating effective solutions to enhance the risk management framework. Enriched risk management processes improve efficiency and effectiveness in the attainment of service delivery promises to the Council's customers.

Integrity: A robust internal audit function supports the integrity of Council within the community.

One Team: The internal audit function supports cohesion and cooperation to minimise risk and improve the delivery of services to the community.

### FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

### POLICY IMPLICATIONS

There are no policy implications arising from this report.

**RECOMMENDATIONS**

1. That the information contained within the report of the Internal Auditor dated 23 August 2017 be noted.
2. That the Internal Auditor present a report to the next scheduled meeting of the Audit and Risk Management Committee regarding the eight ICAC recommendations and how they relate to Dubbo Regional Council.

*Shephard Shambira*  
Internal Auditor

## **BACKGROUND**

The results of ICAC investigations are a source of useful information on assessing Council's risk management framework. The ICAC recommendations give insight on potential strategies aimed at strengthening the risk management framework for Councils.

## **REPORT**

A copy of the ICAC report on Operation Ricco is attached. At the time of preparing this report work was in progress to complete the analysis of ICAC recommendations and how they relate to Dubbo Regional Council, as requested by the General Manager.

## **SUMMARY**

A copy of the ICAC report on Operation Ricco is attached. An internal Audit commentary in relation to how the eight ICAC recommendations relate to Dubbo Regional Council will be submitted to the next meeting.

Appendices:

- 1 [Investigation-into-the-conduct-of-the-former-city-of-botany-bay-council-chief-financial-officer-and-others\\_Operation-Ricco\\_26July2017](#)
- 2 [Independent Commission Against Corruption - Report into former City of Botany Bay Council - Recommend Councils to reflect on the learnings and outcomes](#)



**ICAC**

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

**INVESTIGATION INTO THE  
CONDUCT OF THE FORMER  
CITY OF BOTANY BAY  
COUNCIL CHIEF FINANCIAL  
OFFICER AND OTHERS**

**ICAC REPORT  
JULY 2017**





**ICAC**

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NEW SOUTH WALES

**INVESTIGATION INTO THE  
CONDUCT OF THE FORMER  
CITY OF BOTANY BAY  
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JULY 2017**



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This publication is available on the  
Commission's website [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
and is available in other formats for the  
vision-impaired upon request. Please advise of format  
needed, for example large print or as an ASCII file.

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Speaker  
Legislative Assembly  
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Mr President  
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of the former chief financial officer of the City of Botany Bay Council and others.

Commissioner, the Hon Megan Latham, presided at the public inquiry held in aid of the investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

The Hon Reginald Blanch AM QC  
Acting Commissioner



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## Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that Gary Goodman, while chief financial officer (CFO) of City of Botany Bay Council (“the Council”) misused his position to financially benefit himself and others. The allegations included that he approved or caused the payment by the Council of over \$5 million for invoices that he knew were either entirely false or for inflated amounts, that he knowingly misused Council corporate credit cards to incur over \$600,000 in personal expenditure, and that he solicited and received payments as an inducement or reward for showing favourable treatment to Council contractors.

The Commission also examined allegations that Marny Baccam, a Council clerical assistant, and Malcolm Foo, a Council team leader, facilitated the payment of invoices they knew to be false for their own benefit and the benefit of others. Ms Baccam was also alleged to have approved the payment by Council of invoices that she knew to be false.

The Commission examined allegations that Suman Mishra, a Council senior accounting officer, and Lorraine Cullinane, the Council’s deputy general manager, were aware of certain aspects of Mr Goodman’s misconduct.

The Commission also examined the circumstances in which Ms Cullinane came to receive ex gratia payments from the Council totalling around \$800,000, two Lexus motor vehicles, and an alarm and security system.

### Corrupt conduct findings

The Commission found that Mr Goodman engaged in serious corrupt conduct by:

- between 1997 and October 2015, dishonestly exercising his official functions as Council CFO by approving, or causing the payment by the Council of, invoices totalling over \$5 million, which he knew to be either entirely false or

for inflated amounts, and did so in each case to obtain money from the Council for his own benefit and the benefit of others. The invoices were from, or purported to be from (chapter 2):

- Emu Alarms Pty Ltd (\$300,073.64)
- CND Computers Pty Ltd (\$2,097,021.74)
- On Q Installations (\$34,540)
- Truck Service Centre (\$536,474.95)
- Computer Intersection (amount not established)
- Australian Landscape Creations (\$55,495)
- Jovane Pty Ltd (\$1.85 million)
- Green Thumb Landscaping & Gardening Pty Ltd (\$132,682)
- Highland Profiles Pty Ltd and Cube Design and Construction Pty Ltd (amounts not established)
- Teletec (amount not established)
- Elias & Son Smash Repairs (amount not established)
- soliciting and receiving \$2,000 from Zoran Gajic of Cube Design and Construction and Highland Profiles as an inducement or reward for Mr Goodman exercising his public official functions to favour, or not to show disfavour to, Mr Gajic’s businesses in relation to their work for the Council (chapter 2)
- between December 2003 and January 2012, wilfully and intentionally using the Council’s corporate credit cards issued in the name of Peter Fitzgerald, the Council’s then general manager, to incur personal expenditure of \$620,091.77, knowing that he was not entitled to do so, and then authorising the payment by the Council



of the credit card accounts relating to that expenditure (chapter 6).

The Commission also found that the following persons engaged in serious corrupt conduct:

- Keith Mark by, between 1997 and 2005, in agreement with Mr Goodman, creating false Computer Intersection invoices, which he submitted to the Council for payment knowing that either he had not done the work claimed or that the amounts claimed had been inflated, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Goodman (chapter 2)
- Mr Mark by, between 16 September and 7 October 2015, in agreement with Mr Goodman, creating false Australian Landscape Creations invoices totalling \$55,495, which he submitted to the Council for payment knowing that the work claimed had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Mark (chapter 2)
- Aleksa Subeski by, between 20 November 2014 and 7 October 2015, in agreement with Mr Goodman, creating false Jovane and Green Thumb Landscaping and Gardening invoices totalling \$1,982,000, which he submitted to the Council for payment knowing that the work for which payment was claimed, had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Subeski (chapter 2)
- Mr Gajic by, on or about 20 July 2015, paying \$2,000 to Mr Goodman as an inducement or reward for Mr Goodman exercising his public official functions to favour, or not to show

disfavour, to Mr Gajic's businesses in relation to their work for the Council (chapter 2)

- Joe Freitas by, in agreement with Mr Goodman, submitting to the Council for payment false Elias & Son Smash Repairs invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Freitas (chapter 2)
- Sam Alexander by, in agreement with Mr Goodman, submitting to the Council for payment false Teletec invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices in order to benefit Mr Goodman (chapter 2)
- Ms Baccam by, between around 2013 and October 2015, dishonestly exercising her public official functions as a Council clerical assistant to obtain money from the Council for her own benefit and the benefit of others, by arranging for the payment by the Council of invoices she knew to be false. The false invoices were from, or purported to be from, Ari Landscape Solutions (\$245,751), Al-Furat Pty Ltd, and Gardens2NV (chapter 3)
- Mr Foo by, between around 2012 to 2013 and October 2015, dishonestly exercising his public official functions as a Council officer by arranging for the payment by the Council of Gardens2NV invoices, which he knew to be false, in order to obtain the invoiced amounts for his own benefit and the benefit of the contractor Gardens2NV (chapter 3)
- Lyndal Marshall by, between 2013 and October 2015, in agreement with Ms Baccam and Mr Foo, creating and submitting to the Council for payment false Gardens2NV invoices totalling



Summary of investigation and results

- approximately between \$200,000 and \$220,000 for work she knew had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices in order to obtain money from Council to recoup money paid to Ms Baccam or Mr Foo (chapter 3)
- Robert Floudas by, between 2013 and October 2015, being party to an agreement between Ms Marshall, Ms Baccam and Mr Foo whereby false Gardens2NV invoices, totalling approximately between \$200,000 and \$220,000, were submitted to the Council for payment for work that had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices in order to obtain money from the Council to recoup money paid to Ms Baccam and Mr Foo (chapter 3)
  - Siddik Hussein by collaborating with Ms Baccam to create false Al-Furat invoices to be paid by the Council for work he knew had not been done, knowing that Ms Baccam would use her position at the Council to dishonestly arrange for payment of the invoices (chapter 3)
  - Ms Cullinane for wilfully and dishonestly failing, in her duty as the Council's deputy general manager, to cause the taking of disciplinary proceedings against Mr Goodman or to report his misconduct to the NSW Police Force (chapter 4).
  - Mr Alexander for an offence of fraud pursuant to s 192E of the Crimes Act and an offence of giving false or misleading evidence to the Commission contrary to s 87(1) of the ICAC Act, when he denied involvement in false invoicing
  - Ms Baccam for offences of fraud pursuant to s 192E of the Crimes Act and an offence of giving false or misleading evidence to the Commission contrary to s 87(1) of the ICAC Act, when she denied submitting false invoices to the Council other than the false invoices submitted through Ari Landscape Solutions
  - Mr Foo for offences of fraud pursuant to s 192E of the Crimes Act, soliciting and receiving a corrupt commission or reward pursuant to s 249B(1)(a) of the Crimes Act, and an offence of giving false or misleading evidence to the Commission contrary to s 87(1) of the ICAC Act, when he denied involvement in or knowledge of false invoicing
  - Mr Hussein for offences of fraud pursuant to s 192E of the Crimes Act
  - Ms Mishra for giving false evidence to the Commission contrary to s 87(1) of the ICAC Act, when she denied knowledge of Mr Goodman's involvement in false invoicing
  - Ms Cullinane for an offence of misconduct in public office.

**Section 74A(2) statements**

Statements are made in the report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:

- Mr Goodman for fraud pursuant to s 192E and s 178BB of the *Crimes Act 1900* ("the Crimes Act") and soliciting and receiving a corrupt commission or reward pursuant to s 249B(1)(a) of the Crimes Act
- Mr Mark for offences of fraud pursuant to s 192E of the Crimes Act
- Mr Subeski for offences of fraud pursuant to s 192E of the Crimes Act
- Mr Gajic for offences of fraud pursuant to s 192E of the Crimes Act and an offence under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Goodman

**Corruption prevention**

Chapter 7 of this report sets out the Commission's review of the corruption risks identified during the course of the investigation. The Commission has made the following corruption prevention recommendations:

**Recommendation 1**

That Bayside Council reviews its financial processes and makes any necessary changes to ensure that:

- its vendor master file is subject to appropriate segregation and review-based controls
- sufficient segregations exist in its invoice payment processes (including the introduction of a three-way match arrangement) to manage the risks associated with fraudulent payments
- operational managers have visibility over, and involvement in, setting budgets and monitoring expenditure against these budgets
- adequate segregations exist across different financial processes.

## Recommendation 2

That Bayside Council undertakes a review of the control frameworks governing processes that are vulnerable to corruption (including those related to procurement, invoice payment, fleet management and charge-card usage) and implements any recommendations arising from the review.

## Recommendation 3

That Bayside Council reviews the position descriptions of key operational and financial roles to ensure that they include the required skill sets and qualifications.

## Recommendation 4

That Bayside Council ensures that the implementation of both internal and external audit recommendations is considered by the elected body when evaluating the performance of the general manager.

## Recommendation 5

That Bayside Council undertakes a risk assessment (including an assessment of fraud and corruption risks) to inform its internal audit plan.

## Recommendation 6

That Bayside Council ensures that its internal audit function operates independently from management by reporting functionally to its audit committee.

## Recommendation 7

That Bayside Council ensures it has a robust system in place to monitor and report on the implementation of internal audit recommendations that is independent from management.

## Recommendation 8

That the general manager of Bayside Council conducts a review of the audit committee's effectiveness and the adequacy of its arrangements to ensure that it fulfils the responsibilities of its charter and provides sufficient assistance to Bayside Council's governing body on governance processes.

## Recommendation 9

That the NSW Government considers adopting a model of local council oversight that is comparable to that applicable to state government agencies. This model could include:

- mandatory administration and governance directives similar to those that apply to state government agencies

- requirements concerning the composition and operation of audit committees that are similar to those that apply to state government agencies
- the requirement for council general managers to attest that audit committees are operating in accordance with requirements.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to Bayside Council, the Office of Local Government (OLG) and the responsible minister.

As required by s 111E(2) of the ICAC Act, Bayside Council and the OLG must inform the Commission in writing within three months (or such longer period as the Commission may agree in writing) after receiving the recommendations, whether they propose to implement any plans of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the agency is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au), for public viewing.

## Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.



## Chapter 1: Background

This chapter sets out some background information concerning the investigation conducted by the NSW Independent Commission Against Corruption ("the Commission"), City of Botany Bay Council ("the Council") and Gary Goodman, former chief financial officer (CFO) of the Council.

### How the investigation came about

In December 2014, the Commission received an anonymous complaint that Mr Goodman had misused between \$500,000 and \$1 million of Council funds and resources. The allegations included that he had misused \$50,000 worth of the Council's Cabcharge cards, misused Council fuel cards for his personal use and retained from three- to four Council vehicles for his personal use.

### Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- (i) corrupt conduct, or
- (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- (iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct

within the meaning of the ICAC Act. The Commission commenced a preliminary investigation in February 2015. The evidence gathered during the preliminary investigation corroborated some of the allegations made by the anonymous complainant. The Commission therefore decided to undertake a fuller investigation.

### Conduct of the investigation

During the course of the investigation, the Commission:

- interviewed and/or obtained statements from a number of persons, including Council employees and Council contractors
- obtained documents from various sources by issuing five notices under s 21 of the ICAC Act and 209 notices under s 22 of the ICAC Act
- obtained one warrant under the *Telecommunications (Interception and Access) Act 1979* to allow the interception of a telecommunications service
- undertook physical surveillance of certain persons suspected of being involved in corrupt conduct
- conducted 32 compulsory examinations
- executed five search warrants.

The Commission's investigation revealed serious allegations of false invoicing of the Council by Mr Goodman and others involving millions of dollars, the solicitation and receipt of a payment from a Council contractor and extensive misuse of Council resources. It also identified serious weaknesses in the Council's internal financial controls and governance mechanisms that needed to be addressed.



## The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following considerations:

- the allegations were serious, involved a significant amount of money, took place over a number of years and involved a senior public official in a significant position of trust
- there was a legitimate public interest in exposing corrupt conduct that affects public authorities
- public exposure of the matter might serve as a deterrent to others or might cause other instances of similar conduct to be reported
- while there was a risk to the reputation of Mr Goodman and other witnesses called before the public inquiry, the prejudice was not undue in light of the seriousness of the allegations, the strength of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- it was in the public interest to examine inadequacies in the Council's processes and assist in the promotion of best practices.

The public inquiry was conducted over 16 days, between 29 February and 17 March 2016, and then between 3 and 8 June 2016. Twenty-nine witnesses gave evidence at the public inquiry. The Hon Megan Latham, Commissioner, presided at the public inquiry and Murugan Thangaraj SC acted as Counsel Assisting the Commission.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence upon which it was proposed the Commission should

rely for this report, and also addressing the findings and recommendations that could be made based on the available evidence. The Commission's Corruption Prevention Division also prepared submissions. These were provided to all relevant parties and submissions were invited in response. In addition, parties were given the opportunity to respond to the submissions in response filed by other parties.

In April 2017, supplementary submissions were prepared by Counsel Assisting and the Corruption Prevention Division. Counsel Assisting's supplementary submissions dealt with further evidence that came to light after, and as a result of, the public inquiry concerning Mr Goodman's conduct in relation to CND Computers Pty Ltd (chapter 2) and the use of the Council's credit cards (chapter 6).

The Corruption Prevention Division's supplementary submissions addressed further issues about internal controls and governance processes. Submissions in response to the supplementary submissions were invited from all relevant parties. The final submission in response was received on 17 May 2017. All relevant parties were also invited to request that a summary of their response to the adverse findings contended for by Counsel Assisting in their submissions be included in the Commission's report in the event the Commission made such findings. That summary is at Appendix 3 to this report.

On 1 June 2017, further submissions were provided to Ms Cullinane relating to whether there was sufficient evidence to support a finding of serious corrupt conduct by failing to act on her knowledge of Mr Goodman's misconduct. Submissions in response to those submissions were received on 23 June 2017.

## City of Botany Bay Council

In September 2016, the Council and Rockdale City Council merged to form Bayside Council.

Prior to its amalgamation, the Council provided



community services to 46,000 residents in the suburbs of Banksmeadow, Botany, Daceyville, Eastgardens, Eastlakes, Hillsdale, Mascot, Pagewood and part of Rosebery. Sydney Airport was located within the Council's area.

The Council was constituted under the *Local Government Act 1993* ("the LGA"). The governing body of the Council was made up of seven elected councillors. The powers and responsibilities of local councils, councillors and other persons and bodies are largely set out in the LGA. Section 334 of the LGA provides for the appointment of a general manager and s 335 of the LGA sets out the functions of the general manager, which include the day-to-day management of a council.

From 1997, until his retirement from the Council in 2011, Peter Fitzgerald was the general manager of the Council. In June 2011, Lara Kirchner became the general manager of the Council. From 1997 until her employment was terminated in March 2016, Lorraine Cullinane was the deputy general manager and the director of corporate and community services at the Council.

The two areas of the Council involved in the Commission's investigation were the finance division and the Airport Business Unit ("the Business Unit"). Mr Goodman was the CFO and the head of the finance division. He reported to Ms Cullinane.

The Business Unit was based at Sydney Airport. The Council and Sydney Airport Corporation Limited (SACL) had a contractual arrangement whereby the Business Unit provided services to SACL. The most recent contract was awarded to the Council in 2015 following an open tender process.

The Business Unit was managed by the business unit manager. The business unit manager reported to the manager of special projects, who, in turn, reported to the general manager.

In 2014, Mark Goodman, Mr Goodman's brother, became the acting manager of the Business Unit after holding various positions at the Council. He left the Council in December 2015, when his contract was not renewed.

### Mr Goodman

Mr Goodman had a career in local government spanning over 40 years. He started his career at Leichhardt Council in 1975 and worked at various councils, including Ryde Council, Ku-ring-gai Council, Marrickville Council and Drummoyne Council. In 1994, Mr Goodman became the Council's CFO. Mr Goodman held no formal qualifications. In October 2015, Mr Goodman's employment at the Council was terminated as a result of the Commission's investigation.

Mr Goodman is the sole director of two companies, Gas Motorsport Pty Ltd and Performance Service Centre Pty Ltd. Mr Goodman's operation of those companies reflected his interest in car racing.

### Mr Goodman's relationships

At various times, Mr Goodman was involved in intimate relationships with fellow Council officers Marny Baccam, Suman Mishra and Ms Cullinane.

Mr Goodman gave evidence that he had known Ms Cullinane for about 35 years. Between about 1996 and 2002, Mr Goodman and Ms Cullinane were involved in an intimate relationship. Between 1993 and 1997, they were joint owners of a video store business.

Between 2006 and 2009, Mr Goodman and Ms Baccam were involved in an intimate relationship. At the time of the public inquiry, they remained close friends. Ms Baccam met Mr Goodman at a gambling venue. In October 2010, she started work at the Council as a clerical assistant at the Business Unit. Her employment with the Council was terminated as a result of the Commission's inquiry.



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Ms Mishra started work in the Council's finance division in 1994. She held various positions at the Council before becoming a senior accounting officer, a position she held until her employment from the Council was terminated in December 2015. In 2009, Mr Goodman and Ms Mishra became involved in an intimate relationship. Ms Mishra described it as an "on and off" relationship that was continuing at the time of the public inquiry

### **Mr Goodman's credit as a witness**

While Mr Goodman made admissions to extensive misconduct, including involvement in false invoicing schemes and misuse of Council corporate credit cards, his evidence was often inconsistent, unreliable and self-serving. He was not a credible witness. Consequently, the Commission has not accepted his evidence unless it is against his interest or is corroborated by other independent, objective evidence.

## Chapter 2: Mr Goodman – false invoicing and soliciting a payment

This chapter examines allegations that, while CFO of the Council, Mr Goodman dishonestly exercised his official functions to obtain financial benefits for himself and others by approving or causing the payment of false invoices to obtain money from the Council. This chapter also examines allegations that he solicited and received money as an inducement or reward for showing favourable treatment to Council contractor, Zoran Gajic of Cube Design and Construction Pty Ltd and Highland Profiles Pty Ltd.

Mr Goodman used two methods to obtain money from the Council through the submission of false invoices. The first method involved Mr Goodman arranging for Council contractors to submit false invoices to the Council. The second method involved Mr Goodman using the company details of Council contractors to create and submit false invoices without the knowledge of those contractors.

Mr Goodman's conduct was brazen and long-term. He admitted to engaging in false invoicing since the late 1990s or early 2000s. As CFO, he understood the weaknesses in the Council's systems and successfully exploited, created or perpetuated those weaknesses for his own benefit. Significant parts of the Council's business were under his control. These factors contributed to his conduct going undetected for many years. Mr Goodman agreed that, but for the Commission's investigation, his conduct would have continued.

Mr Goodman admitted that he forged his brother's signature in order to authorise the payment of false invoices, which were submitted through the Business Unit. He said that his brother had no knowledge of his conduct.

### False invoicing with the knowledge of the contractors

The contractors involved in this type of conduct were:

- Keith Mark of Computer Intersection, who used

the fictitious business name Australian Landscape Creations

- Aleksa Subeski of Jovane Pty Ltd, Green Thumb Landscaping & Gardening Pty Ltd, Iced Air MKD Pty Ltd and Alex Electrical and Air Conditioning Suppliers & Services Pty Ltd
- Zoran Gajic of Cube Design and Construction Pty Ltd and Highland Profiles Pty Ltd
- Joe Freitas of Elias & Son Smash Repairs
- Sam Alexander of Teletec.

The contractors involved were owed money by Mr Goodman and many gave evidence that they agreed to participate in the scheme as a means of recouping the money owed to them. Most of the contractors also worked for the Council and it was evident that some of the contractors feared that their employment with the Council would be terminated if they failed to comply with Mr Goodman's requests.

### Mr Mark

Keith Mark and Mr Goodman have known one another for about 40 years. They lived together as flatmates for several years and had a shared interest in car racing. In 1992, Mr Mark started his own business, Computer Intersection, and at some point after that, Mr Goodman arranged for him to be a contractor who provided services for Drummoyne Council. He later worked as a contractor for the Council.

### Computer Intersection

According to Mr Mark, in about 1997, he started to produce inflated and false invoices through Computer Intersection. Some of the invoices produced by Mr Mark were completely false, while others were for legitimate work but inflated amounts. This was done at Mr Goodman's request. Mr Mark told the Commission



that Mr Goodman retained all the proceeds from the false invoices and the amount above the legitimate amount from the inflated invoices. Mr Mark said he kept only the money he was entitled for legitimate work that he had undertaken for the Council. This practice continued until 2005, when Mr Mark and his wife moved away from Sydney to Queensland. The Commission accepts this evidence.

Mr Mark estimated that he had given approximately \$1.3 million to Mr Goodman through this scheme.

Mr Mark said that, when Mr Goodman wanted money, he instructed Mr Mark what amount to put on the invoice and between them they decided the description of work to put on the invoice. Mr Mark said that, after being paid by the Council, he would give Mr Goodman a cheque or, on some occasions, Mr Goodman came with him to the bank to collect cash. Mr Mark said that, although he did not share in the proceeds obtained through this arrangement, he did secure his employment as a contractor at the Council because he believed that "[i]f I refuse then I might be on shaky ground with my association with the Council".

Mr Goodman gave different evidence. He accepted that he did authorise the payment of false Computer Intersection invoices but claimed that he and Mr Mark divided between them the money improperly obtained from the Council and that Mr Mark kept the lion's share of the cash. Mr Goodman estimated that he received between \$150,000 and \$200,000. He then said he was not able to accurately estimate how much he received. He said that Mr Mark gave him the proceeds from the false invoicing by cash or cheque payments or by paying bills on his behalf.

The Commission does not accept Mr Goodman's evidence about the cash-sharing arrangement. Mr Mark's evidence is preferred. The Commission is satisfied that Mr Mark's only motivation to engage in this scheme was to secure and continue receiving work from the Council.

Although Mr Mark estimated that Mr Goodman had been paid \$1.3 million during this period, the Commission is not satisfied that the amount paid to Mr Goodman can be calculated with any degree of accuracy. This is because of the historic nature of these matters and because of the limited recollection by both Mr Goodman and Mr Mark.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Mark whereby Mr Mark issued false and inflated Computer Intersection invoices to the Council, which Mr Goodman approved for payment knowing that they were false and with the intention of obtaining a financial benefit for himself.

#### **Australian Landscape Creations**

In September 2015, while living in Queensland, Mr Mark spoke with Mr Goodman about money that Mr Mark claimed was owed to him by Mr Goodman. The amount involved was around \$161,000. On 5 September 2015, Mr Mark sent Mr Goodman an email to his Council email address demanding payment and threatening to inform the general manager and the deputy general manager about their prior conduct if Mr Goodman did not repay the money owed to him. Mr Mark gave evidence that, at the time he sent the email, he was "angry and annoyed I suppose, through being ignored [by Mr Goodman]".

Mr Goodman eventually suggested that Mr Mark provide him with false invoices in the name of a fictitious landscaping business as a way of recouping the money. The evidence establishes that the entity used was Australian Landscape Creations. Mr Mark does not own a landscaping company and has never carried out landscaping work for the Council.

The agreement to use a fictitious business was captured in telephone calls between Mr Goodman and Mr Mark that were lawfully intercepted by the Commission. The Commission is satisfied that these telephone calls establish that Mr Goodman provided directions to Mr Mark about the content of the invoices in the four ways indicated below.



CHAPTER 2: Mr Goodman – false invoicing and soliciting a payment

- Using email addresses that would not identify Mr Mark.

*GOODMAN: Um I need you to find a landscaping company for me.*

*MARK: A landscaping company?*

*GOODMAN: Yeah don't worry about it. Just do what I'm saying. I need you to get an email address ... Um, bank accounts don't matter, that's fine. Um, hang on let me start this again. The brain's not working. Okay genuine email address, genuine.*

- Fabricating an ABN.

*GOODMAN: It has to be genuine. Name don't matter, make it up. ABN don't matter, make it up.*

*MARK: Yeah. Oh so it needs an ABN.*

*GOODMAN: Yep. Just make one up.*

*MARK: Yep, yep.*

- Designing false invoice templates that would look legitimate to Council employees.

*GOODMAN: ... Yeah so um, now you got invoice, I need you to design one for me. Um, you got a pen there?*

*MARK: Yeah I've got a pen; I've just been writing down email.*

...

*GOODMAN: It's gonna supply labour and materials as required, Sydney Domestic Terminal.*

*MARK: Labour and materials.*

*GOODMAN: And add a few different words you know on each one. Each invoice is gonna be for around the eight, eight and a half thousand. I need them by Tuesday afternoon.*

*MARK: Yep.*

- Taking active steps to ensure their arrangement would not be detected.

*GOODMAN: This is between me and you by the way, nobody else.*

*MARK: Yeah, yeah, yeah.*

*GOODMAN: That's very important. Um -*

*MARK: You don't know what's a, what stress it put me under to send that email.*

...

*GOODMAN: Ah tomorrow, and when you get there make sure, make sure you delete after you've done it.*

Mr Mark used the ABN of a legitimate paving business in North Queensland and created a false email address. Mr Mark used the Post Office box address of one of his friends as the business address of the fictitious business. Mr Mark understood that the arrangement would continue until the debt was repaid. The Commission's investigation meant that the arrangement came to a sudden end.

The false invoices submitted by Mr Mark on behalf of Australian Landscape Creations and paid by the Council between 16 September and 7 October 2015 totalled \$55,495. This money was paid by the Council to a bank account associated with Mr Mark.

Mr Goodman admitted that Australian Landscape Creations did not do any work for the Council. He accepted that he authorised the payment of the false Australian Landscape Creations invoices or caused the payment of false Australian Landscape Creations invoices by arranging for others at the Council to authorise or pay those invoices.

The Commission is satisfied that Australian Landscape Creations was created by Mr Mark at the direction of Mr Goodman for the sole purpose of Mr Mark receiving money from the Council to which he was not entitled and that the arrangement was intended by both men to remain in place until such time as Mr Mark had received from the Council an amount equivalent to the debt owed to him by Mr Goodman.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Mark to issue false Australian Landscape Creations invoices to the Council, which Mr Goodman would approve, or arrange to be approved, knowing that those invoices were false.

### Mr Subeski

Mr Subeski is the director of Iced Air MKD, Alex Electrical and Air Conditioning Suppliers & Services, and Green Thumb Landscaping & Gardening. Jovan Gligorov, Mr Subeski's son-in-law, is the director of Jovane.

Mr Subeski began performing work for the Council through Alex Electrical and Air Conditioning Suppliers & Services and Iced Air MKD around 2011.

In his evidence to the Commission, Mr Subeski stated that Mr Goodman was indebted to him in the sum of around \$50,000 or \$60,000. In order to discharge the debt, Mr Goodman suggested that Mr Subeski falsely invoice the Council for work not performed. Mr Subeski agreed

to do so. Two companies – Jovane and Green Thumb Landscaping & Gardening – were used by Mr Subeski as the vehicles for providing false invoices to the Council. Mr Subeski gave evidence that his son-in-law, Mr Oligorov, had no knowledge of the false invoicing. The Commission accepts this evidence.

There was no dispute that, between 20 November 2014 and 7 October 2015, Mr Subeski submitted Jovane invoices totalling \$1.85 million to the Council for work neither he nor the company had performed. There was also no dispute that, between 23 September and 7 October 2015, Mr Subeski submitted Green Thumb Landscaping & Gardening invoices totalling \$132,682 to the Council for work neither he nor the company had performed. Both Mr Goodman and Mr Subeski admitted that Jovane and Green Thumb Landscaping & Gardening did not carry out any work for the Council. Mr Goodman admitted that he authorised Council payment of all false Jovane and Green Thumb Landscaping & Gardening invoices by forging his brother's signature.

There is a dispute as to who received the greater share of money obtained through this arrangement.

Mr Subeski said that the major share of the money went to Mr Goodman. Between 19 December 2014 and 6 October 2015, the total cheque payments made to Mr Goodman from accounts operated by Mr Subeski (or his family members) was \$499,271.04, and the total of electronic payments to Mr Goodman from accounts operated by Mr Subeski (or his family members) was \$453,986. Mr Subeski gave uncontested evidence, which the Commission accepts, that Mr Goodman or his associates were given more money than these amounts, including cash payments totalling between \$400,000 and \$500,000. Mr Subeski also gave evidence of electronic transfers to other bank accounts, at Mr Goodman's direction, payment of bills as directed by Mr Goodman, and wire transfers of money overseas.

Mr Subeski told the Commission that the money he kept from the false invoicing scheme was used to defray his GST and income tax obligations and for the work he did in private homes at Mr Goodman's instruction (the latter is discussed further below).

Mr Goodman admitted that he had obtained money from Mr Subeski on numerous occasions and, at the time of the public inquiry, he still owed Mr Subeski money. Mr Goodman maintained that Mr Subeski benefited from the false invoicing scheme and retained some of the money. His evidence on this issue, however, was inconsistent and generally unreliable. At one point in his evidence, he stated that he (Mr Goodman) received \$700,000. At another point in his evidence, he said most if not all of the funds he received from Mr Subeski were

transferred overseas. At another point, he claimed that Mr Subeski had retained "a substantial amount".

The Commission is satisfied that Mr Goodman was the primary beneficiary of the scheme. Mr Subeski gave clear and consistent evidence about this issue. This was largely corroborated by other evidence, including lawfully intercepted telephone calls between Mr Goodman and Mr Subeski revealing Mr Goodman's demands for more money, and financial records, which show that, between 19 December 2014 and 6 October 2015, around \$1 million was transferred from accounts operated by Mr Subeski or his family members to Mr Goodman through cheques and electronic transfers.

The Commission is satisfied that, between 20 November 2014 and 7 October 2015, the Council paid approximately \$1,982,000 to Jovane and Green Thumb Landscaping & Gardening in respect of work that had not been performed. The Commission is satisfied that there was an agreement between Mr Goodman and Mr Subeski to issue false Jovane and Green Thumb Landscaping & Gardening invoices to the Council, which Mr Goodman would arrange to have approved, knowing that those invoices were false.

Mr Subeski also admitted that he did work in private homes at Mr Goodman's instruction, including at the homes of Ms Mishra, Ms Baccam and Ms Baccam's mother, and issued invoices for payment by the Council through Alex Electrical and Air Conditioning Suppliers & Services, Iced Air and Jovane. Mr Goodman admitted that Iced Air MKD did private work at the home of various people, including Ms Mishra and Ms Baccam. Notations on a number of the Iced Air MKD invoices, which were submitted to the Council, indicate that work was carried out at the homes of Ms Baccam and Mr Goodman.

In light of this evidence, the Commission is satisfied that Mr Goodman and Mr Subeski caused the Council to pay for private work carried out by Mr Subeski at various homes, including those of Ms Mishra and Ms Baccam, knowing that this work was not related to Council business.

### Mr Gajic

Mr Gajic met Mr Goodman through car racing. Mr Goodman introduced him to the Council. Mr Gajic told the Commission that two of his companies, Highland Profiles and Cube Design and Construction, carried out work for the Council at the Business Unit, Centennial Park and the Council itself.

Mr Gajic agreed that he submitted false and inflated invoices to the Council. He said he agreed with Mr Goodman to submit false invoices because he was attempting to recover money that he was owed

CHAPTER 2: Mr Goodman – false invoicing and soliciting a payment

by Mr Goodman. According to Mr Gajic, it was Mr Goodman's idea to submit false invoices. Mr Gajic said that he was "chasing him [Mr Goodman] for some money and he goes, oh, just send me an invoice to cover it". He said that this happened a "few times" and that Mr Goodman told him the amount to be written on the invoice. Some of the invoices that were submitted were entirely false. Others were for services provided to the Council but were inflated so that the Council would pay more than the work was actually worth.

Mr Goodman admitted that he and Mr Gajic arranged to issue false invoices to the Council for payment and that false invoices had been submitted by Mr Gajic and authorised for payment by the Council by Mr Goodman.

There is some evidence that Mr Gajic did legitimate work for the Council and, consequently, it is not possible for the Commission to quantify the amount of money improperly obtained through this scheme. The Commission is satisfied, however, that there was an agreement between Mr Goodman and Mr Gajic to issue false and inflated invoices to the Council, which Mr Goodman would approve, knowing that those invoices were either false or for inflated amounts. Mr Gajic kept the proceeds of the money from this scheme by way of payment of the debt owed to him by Mr Goodman.

During a lawfully intercepted telephone conversation on 20 July 2015 between Mr Goodman and Mr Gajic, Mr Goodman solicited a payment from Mr Gajic in return for the promise of Council work. Mr Gajic agreed to give him \$2,000. Both Mr Goodman and Mr Gajic admitted to the Commission that Mr Gajic paid Mr Goodman \$2,000 in return for the promise of Council work.

### Mr Freitas

Mr Freitas runs a panel beating company that trades under the name Elias & Son Smash Repairs. The company is based in Wetherill Park, near the workshop Mr Goodman used for his personal businesses. He has known Mr Goodman for about 14 years. Between 10 and 12 years ago, Mr Goodman suggested that Mr Freitas work for the Council.

In his evidence to the Commission, Mr Freitas initially denied submitting false invoices to the Council and claimed that all invoices submitted by him were genuine. A lawfully intercepted telephone conversation of 4 September 2015 was played at the public inquiry in which Mr Goodman urged Mr Freitas to submit a false invoice purportedly for cleaning a Council tar truck because Mr Goodman wanted to repay some of the money he owed to Mr Freitas. After hearing this telephone conversation, Mr Freitas changed his evidence and admitted that the invoice dated 4 September 2015

for cleaning a Council tar truck was false. Mr Goodman's signature appears on this invoice authorising payment by the Council.

Mr Freitas said Mr Goodman owed him money and admitted to submitting false invoices for the purpose of Mr Goodman reducing his debt. Mr Freitas said that he gave Mr Goodman cash and also paid bills for him from the proceeds of the false invoicing. He told the Commission that the general practice was that Mr Goodman would contact him and specify the description of works and the amount that should be written on the invoice in order to avoid detection and suspicion. Mr Freitas said that he agreed to engage in this practice because, "[w]ell, if I didn't do it I didn't get the work pretty much". He described Mr Goodman as a "very demanding person" and himself as "basically weak".

The Commission accepts Mr Freitas' evidence that he felt pressured by Mr Goodman. During a lawfully intercepted telephone call between Mr Goodman and Mr Freitas, when Mr Freitas expressed reluctance to submit further invoices and discomfort about their arrangement, Mr Goodman threatened to cease providing Mr Freitas with all work, including Council work. Mr Goodman questioned Mr Freitas as to why he had not added a further 40 per cent to the false invoices as profit. Mr Freitas said that he did not add extra to the invoices as profit for himself.

In his evidence to the Commission, Mr Goodman agreed that this telephone conversation showed that, unless Mr Freitas cooperated with him, Mr Freitas would lose all the work that came through Mr Goodman or the Council. He admitted that false invoices issued by Mr Freitas were submitted to the Council and agreed that he either received the proceeds of the false invoices directly or received them indirectly through the use of the proceeds to reduce his debt to Mr Freitas or that Mr Freitas used the proceeds to pay bills for Mr Goodman.

The Commission is satisfied that Mr Goodman exploited Mr Freitas and threatened to cease providing Mr Freitas with work if he did not submit false invoices. There is evidence that Elias & Son Smash Repairs did legitimate work for the Council and, consequently, it is not possible to quantify the amount of money improperly obtained through the false invoicing arrangement.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Freitas to issue false Elias & Son Smash Repairs invoices, which Mr Goodman would arrange for payment, knowing that those invoices were false. The Commission is satisfied that Mr Freitas received some of the proceeds from the false invoicing to reduce the debt owed to him by Mr Goodman and also provided Mr Goodman with cash and paid bills on Mr Goodman's behalf with proceeds from the scheme.

### Mr Alexander

Mr Alexander is a telecommunications consultant who has operated his own business, Teletec, since 1986. He met Mr Goodman in 2011 and has since provided services to Mr Goodman's company, Gas Motorsport. He was also a contractor to the Council. Over a period of between about 18 to 24 months, Mr Alexander lent Mr Goodman about \$35,000, of which about \$10,000 was repaid to him. Mr Alexander also acted as a courier for Mr Goodman by collecting cash and cheques intended for Mr Goodman from Mr Subeski.

When first questioned at the public inquiry, Mr Alexander largely denied involvement in false invoicing. Mr Alexander made the implausible claim that the only false invoices he submitted to the Council were submitted in order to repay Council staff who had paid Council's legitimate Telstra bills with their own credit cards. The Council staff he nominated as having paid Telstra bills on behalf of the Council at various times were Barry Byrnes, Mark Thompson, Mr Goodman and Ms Cullinane. He claimed that these people would receive reimbursement much more quickly if he submitted a false invoice so that the money paid by the Council on the invoice could be given to them. He denied involvement in any other false invoicing.

During the public inquiry, Mr Alexander was confronted with a number of lawfully intercepted telephone calls, which suggested that he had been involved in false invoicing with Mr Goodman in a much more significant way. Mr Alexander, however, continued to deny involvement in false invoicing, other than as a means of reimbursing Council staff for the payment of Council's Telstra bill. Mr Alexander's position became increasingly untenable.

After a break in his evidence to the public inquiry, Mr Alexander eventually admitted to involvement in submitting false invoices to the Council. Specifically, he admitted that a Teletec invoice for four car kits, dated 30 September 2015, was false and that those car kits had not been supplied to the Council. This was abundantly clear from a lawfully intercepted telephone conversation with Mr Goodman, during which Mr Alexander proposed to claim to have provided four car kits to the Council. The purpose of the invoice was to secure funds, totalling \$2,000, for Mr Goodman's girlfriend, who resided in the Philippines. The Teletec invoice submitted to the Council is dated 30 September 2015 and is for \$2,178. Mr Goodman's signature appears on the invoice authorising payment by the Council. Mr Alexander had initially denied that this was a false invoice.

Mr Alexander also admitted that an email, dated 1 October 2015, in which he requested payment of \$6,673.22 for an outstanding "Telstra account" purportedly "under threat of disconnection", was false.

Mr Goodman and Mr Alexander discussed submitting this false invoice in a telephone call lawfully intercepted by the Commission. The payment was made to Mr Alexander on 1 October 2015 by the Council and the telephone call reveals that Mr Goodman facilitated the making of the payment. Mr Alexander had initially denied that this was a false invoice.

Mr Alexander ultimately admitted to deliberately submitting false invoices to the Council for goods or services that were not performed by him for a period of about 12 months, although he later said, "...I can't know if it was nine months, 15 months, it could've been 15 months". He told the Commission that the false invoicing arrangement predominantly involved him submitting false invoices to the Council for goods he had not provided and fabricating invoices claiming reimbursement for payment of the Council's bills. He estimated that approximately \$90,000 was improperly obtained from the Council over a period of between about 12 to 15 months.

Mr Alexander said the arrangement to submit false invoices was initiated by Mr Goodman and all the proceeds were remitted to Mr Goodman either in cash or by making payments on his behalf.

Mr Goodman gave evidence that false invoices had been submitted by Mr Alexander and he instructed Mr Alexander about what should be written on the false invoices. He said that most of the money received by Mr Alexander was sent overseas on his instructions and he agreed that Mr Alexander did not keep any of the proceeds. Mr Goodman said he was not able to determine which Teletec invoices were false and which were genuine.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Alexander to issue false Teletec invoices to the Council, which Mr Goodman would approve, knowing that those invoices were false. Teletec carried out legitimate work for the Council and so it is not possible to quantify the amount obtained through the false invoicing scheme. The Commission is satisfied that the financial beneficiary of the false invoicing through Teletec was solely Mr Goodman.

### False invoicing without the knowledge of the contractors

The second method to obtain money through the submission of false invoices to the Council involved Mr Goodman using the company details of Council contractors, without the knowledge of those contractors, to create false invoices. These contractors were Raj Haria of CND Computers Pty Ltd, Jovance Veljanovski of Wetherill Park Metalwork Pty Ltd and Wetherill Park

CHAPTER 2: Mr Goodman – false invoicing and soliciting a payment

Metal Fabrications Pty Ltd, Khim Leong Seng of On Q Installations and Kevin Maton of Emu Alarms Pty Ltd.

### CND Computers

CND Computers was established in 2005. It also used a number of trading names, including 360 Vision and CND IT. Mr Haria worked for CND Computers from 2004, and became a partner of the company in 2007. He stopped working for CND Computers in 2011, when the business closed. For a period of time, CND Computers provided technical services to the Council; namely, installing and maintaining closed-circuit television (CCTV) camera equipment. Mr Haria's main contact person at the Council was Mr Goodman.

There is no dispute that Mr Goodman created false CND Computers invoices. He put his own bank account details on the invoices so that payments made by the Council would be made directly into his bank account. He authorised Council payment of the invoices. Between 18 October 2007 and 15 June 2011, Mr Goodman, by misrepresenting these CND Computers invoices as genuine, caused \$2,097,021.74, to be paid into bank accounts associated with him.

In his evidence to the Commission, Mr Haria said his company did not issue these invoices, that he did not receive any payments for them, and had no knowledge of Mr Goodman's misuse of CND Computer invoices. The Commission accepts this evidence. Mr Haria gave evidence that the invoices submitted by CND Computers to the Council were not locked PDF files and could be edited. Mr Goodman admitted that he had used CND Computers invoices to submit false invoices using his own bank account details and Mr Haria did not have knowledge of this conduct.

The Commission is satisfied that, between 18 October 2007 and 15 June 2011, Mr Goodman created false CND Computers invoices, submitted them to the Council and authorised their payment by the Council. As a result, \$2,097,021.74 was paid by the Council into accounts associated with Mr Goodman. The Commission is satisfied that Mr Haria had no knowledge of Mr Goodman's conduct.

Mr Haria told the Commission that CND Computers had done work for Mr Goodman's company, Gas Motorsports. This involved providing a CCTV camera system and carrying out computer maintenance. Mr Haria told the Commission that the cost of this work was about \$22,000 and, after requesting the payment of this invoice for about one month, Mr Goodman instructed him to re-issue the invoice to the Council. Mr Haria received payment for this work from the Council.

Between 2007 and 2011, further work was carried out by CND Computers for Gas Motorsports, which cost approximately \$8,000. CND Computers also received payment for this work from the Council. Mr Haria said that Mr Goodman directed him to send all invoices to the Council with the same description; namely, "[s]upply and installation of CCTV camera equipment as per quotation". When Mr Haria tried to put more details on the invoice, Mr Goodman instructed him to submit less detailed invoices. Clearly, this instruction was given by Mr Goodman to avoid detection.

Mr Goodman was not asked whether work carried out by CND Computers for Gas Motorsports was paid through false invoicing.

Counsel Assisting submitted that Mr Haria's evidence on this issue be accepted by the Commission. Mr Goodman's legal representatives did not object to this submission in their submissions in response. On this basis, the Commission accepts Mr Haria's evidence about this matter. His evidence was against his own interest and is consistent with other evidence that Mr Goodman arranged for contractors to submit false invoices to the Council to pay for his private work. In the light of Mr Haria's evidence, the Commission is satisfied that, on Mr Goodman's instructions, Mr Haria created and submitted invoices to the Council in order to obtain payment from the Council for private work that he performed for the benefit of Mr Goodman.

### Truck Service Centre

Between 21 June 2011 and 5 July 2013, \$536,474.95 was paid into a bank account associated with Mr Goodman for work purportedly carried out for the Council by an entity called Truck Service Centre. Most of the Truck Service Centre invoices submitted to the Council stated that Truck Service Centre was the trading name of either "Wetherill Park Metal Works" or "Wetherill Park Fabrications".

Mr Veljanovski was the director of Wetherill Park Metalwork and is currently the director of Wetherill Park Metal Fabrications. Mr Veljanovski knew Mr Goodman because his company was based in the same industrial complex as Mr Goodman's businesses.

Mr Veljanovski told the Commission that he had carried out only limited work for the Council over a five- or six-year period. He carried out maintenance on the Council's two sweepers and also worked on the Council's main entrance. Any payments for Council work were made directly by the Council into his company bank accounts. Mr Veljanovski had no knowledge of, or connection with, Truck Service Centre. Truck Service Centre was not a nominated trading name for either of his companies. He told the Commission that he did not carry

out work for Truck Service Centre and he did not receive any of the money paid to that business by the Council.

Mr Veljanovski's evidence, that he did not receive money from Truck Service Centre invoices submitted to the Council, is accepted by the Commission. Truck Service Centre is not a trading name for either of his companies. More importantly, the invoices bore the bank account details of an account associated with, and controlled by, Mr Goodman rather than the bank account details for either of Mr Veljanovski's companies.

Notwithstanding, Mr Goodman's initial suggestions in his evidence to the Commission that the Truck Service Centre invoices may have been genuine, he eventually agreed that they were false. Mr Goodman accepted that he created and submitted to the Council for payment false Truck Service Centre invoices containing a bank account controlled by him. He admitted that he authorised Council payment of the false Truck Service Centre invoices.

The Commission is satisfied that, between 21 June 2011 and 5 July 2013, Mr Goodman created and submitted false Truck Service Centre invoices to the Council, which resulted in \$536,474.95 being paid to an account controlled by him. The Commission is satisfied that Mr Goodman approved payment of those invoices knowing that they were false.

### On Q Installations

Between 2004 and 2012, Mr Seng was the proprietor of On Q Installations, a business that mainly supplied mobile telephones, car trackers, car alarms, car audios, computers and toner cartridges to the Council.

For a period of time, On Q Installations was on a retainer with the Council. On 6 January 2009, a payment from the Council in an amount of \$34,540 appeared in a bank account associated with Mr Goodman with the reference "On Q Installations". The Council was not able to locate an invoice relating to this payment.

Mr Seng said he knew nothing about this payment and there was never an arrangement between him and Mr Goodman whereby money owed to On Q Installations by the Council would be paid into Mr Goodman's bank account.

Mr Goodman gave confused evidence about why funds with the reference "On Q Installations" were deposited into his bank account. The effect of Mr Goodman's evidence was that, without an invoice, he could not say why the funds were deposited into his account.

Mr Seng's evidence about this issue is accepted. The Commission is satisfied that Mr Goodman arranged for \$34,540 to be paid into a bank account associated with,

and controlled by, Mr Goodman by submitting a false invoice to the Council in the name of "On Q Installations". Notwithstanding that no invoice was located by the Council in relation to the transaction, the Commission is satisfied that this is consistent with other evidence that Mr Goodman arranged for payments to be made to his bank accounts without the knowledge of various contractors and that Mr Goodman authorised the payment of the invoice, knowing that the invoice was false.

The Commission is satisfied that Mr Seng had no knowledge or involvement in Mr Goodman's conduct.

### Emu Alarms

According to Australian Securities and Investments Commission documentation, Emu Alarms traded from 15 June 1998 to 14 January 2007. Mr Maton was the director of the company. Emu Alarms mainly sold and serviced security cameras, alarms and intercoms. Emu Alarms carried out work for the Council and Mr Goodman's business, Gas Motorsports. The services carried out for the Council included work in relation to garbage depots, maintenance depots, cameras and alarm repairs. The Council paid him directly for this work. Mr Maton said he stopped working for the Council between 2006 and 2007. In January 2007, Mr Maton sold the company and was subject to a trade restraint clause.

Relevant banking and other records show that, between 11 August 2006 and 30 April 2009, \$300,073.64 was paid into accounts associated with Mr Goodman as a result of the payment by the Council of invoices submitted in the name of Emu Alarms. Mr Goodman admitted that he had created and submitted false invoices in the name of Emu Alarms and had used his own bank account details on those invoices. He admitted that he was the sole person responsible for doing so and that Mr Maton had no knowledge of what he did. The Council was not able to produce all relevant Emu Alarms invoices. Those which were produced, were approved for payment by Mr Goodman.

The Commission is satisfied that Mr Goodman created, submitted and authorised the payment of false Emu Alarms invoices and thereby caused the Council to make payments into his bank accounts totalling \$300,073.64 to which he was not entitled. This conduct is consistent with other evidence that Mr Goodman arranged for payments to be made to his bank accounts without the knowledge of various contractors by authorising the payment of false invoices and that the money was paid into his bank account, and Mr Goodman's own admissions about his conduct relating to Emu Alarms.

The Commission is satisfied that Mr Maton had no knowledge of Mr Goodman's conduct.

## Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in full in Appendix 2 of this report.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission considers s 9 and the jurisdictional requirements of s 13(3A) of the ICAC Act. The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

### Gary Goodman

Between 1997 and October 2015, Mr Goodman dishonestly exercised his official functions as Council CFO by approving or causing the payment by the Council of invoices totalling over \$5 million, which he knew to be either entirely false or for inflated amounts. The invoices were from, or purported to be from:

- Emu Alarms (\$300,073.64)
- CND Computers Pty Ltd (\$2,097,021.74)
- On Q Installations (\$34,540)
- Truck Service Centre (\$536,474.95)
- Computer Intersection (amount not established)
- Australian Landscape Creations (\$55,495)
- Jovane Pty Ltd (\$1.85 million)
- Green Thumb Landscaping & Gardening Pty Ltd (\$132,682)
- Highland Profiles Pty Ltd and Cube Design and Construction Pty Ltd (amounts not established)
- Teletec (amount not established)
- Elias & Son Smash Repairs (amount not established).

Mr Goodman did so in each case to obtain the invoiced amounts from the Council for his own benefit and the benefit of others.

This conduct on the part of Mr Goodman is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of his official functions.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E(1) of the *Crimes Act 1900* ("the Crimes Act") for conduct that took place from 22 February 2010:

- (1) A person who, by any deception, dishonestly:*
- (a) obtains property belonging to another, or*
  - (b) obtains any financial advantage or causes any financial disadvantage,*
- is guilty of the offence of fraud.*

*Maximum penalty: Imprisonment for 10 years.*

Section 192C of the Crimes Act provides that a person obtains property if the person obtains ownership, possession or control of the property for himself or herself or for another person.

For conduct that took place before 22 February 2010, it is also relevant to consider s 178BB(1) of the Crimes Act:

*Whosoever, with intent to obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever, makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) which he or she knows to be false or misleading in a material particular or which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular shall be liable to imprisonment for 5 years.*

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Goodman's conduct would constitute or involve offences of fraud pursuant to s 192E(1) of the Crimes Act or offences of obtaining money by false or misleading statement pursuant to s 178BB(1) of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time, between 1997 and October 2015, and involved millions of dollars. Mr Goodman was clearly motivated by greed and self-interest. As CFO, he held a position of trust within the Council and his conduct involved a significant breach of that trust. The conduct was pre-meditated and involved a significant level of planning. Given that Mr Goodman was a senior public official, his

conduct could have impaired public confidence in public administration. Furthermore, the conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, or offences pursuant to s 178BB of the Crimes Act for offences that occurred before 22 February 2010, which have a maximum penalty of five years imprisonment, meaning they are serious indictable offences.

Mr Goodman solicited and received \$2,000 on or about 20 July 2015 from Mr Gajic, as an inducement or reward for Mr Goodman exercising his public official functions, to favour, or not to show disfavour, to Mr Gajic's businesses in relation to their work for the Council.

This conduct on the part of Mr Goodman is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act, as it is conduct of a public official that constitutes or involves the dishonest or partial exercise of his official functions.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B of the Crimes Act. Section 249B(1)(a) of the Crimes Act provides:

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
- (a) *as an inducement or reward for or otherwise on account of:*
- (i) *doing or not doing something, or having done or not having done something, or*
- (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
- in relation to the affairs or business of the agent's principal, or*
- (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
- the agent is liable to imprisonment for 7 years.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Goodman committed an offence under s 249B(1)(a) of the Crimes Act of corruptly soliciting and receiving benefits as an inducement or reward for showing favour, or not showing disfavour, in relation to the affairs or business of the Council.

Accordingly, the Commission is satisfied that the requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because Mr Goodman, as CFO, held a position of trust within the Council and his conduct involved a significant breach of that trust. Mr Goodman was clearly motivated by greed and, given he was a senior public official, this conduct could have impaired public confidence in public administration. The conduct was premeditated. Further, the conduct could involve an offence under s 249B(1)(a) of the Crimes Act, which has a maximum penalty of seven years imprisonment and is a serious indictable offence.

### Keith Mark

Between 1997 and 2005, Mr Mark, in agreement with Mr Goodman, created false Computer Intersection invoices, which he submitted to the Council for payment knowing that either he had not done the work claimed or that the amounts claimed had been inflated, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Mark's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Mark's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mark committed criminal offences of fraud under s 178BB(1) of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

Between 16 September and 7 October 2015, Mr Mark, in agreement with Mr Goodman created false Australian Landscape Creations invoices totalling \$55,495, which he submitted to the Council for payment knowing that the work claimed had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Mark.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Mark's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Mark's conduct also comes within s 9(1)(a) of the



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ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mark committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

In each case, Mr Mark's conduct is serious because it involved a significant amount of money. The conduct was premeditated and involved a significant level of planning. The conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Aleksa Subeski

Between 20 November 2014 and 7 October 2015, Mr Subeski, in agreement with Mr Goodman, created false Jovane and Green Thumb Landscaping & Gardening invoices totalling \$1,982,000, which he submitted to the Council for payment knowing that the work for which payment was claimed, had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Subeski.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Subeski's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Subeski's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Subeski committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time and involved a significant amount of money. The conduct was premeditated and involved a significant level of planning. It could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Zoran Gajic

On about 20 July 2015, Mr Gajic paid \$2,000 to Mr Goodman as an inducement or reward for

Mr Goodman exercising his public official functions to favour, or not to show disfavour, to Mr Gajic's businesses in relation to their work for the Council.

This conduct on the part of Mr Gajic is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because it is conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Goodman's official functions.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(2)(a) of the Crimes Act, which provides:

(2) *If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:*

(a) *as an inducement or reward for or otherwise on account of the agent's:*

(i) *doing or not doing something, or having done or not having done something, or*

(ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*

*in relation to the affairs or business of the agent's principal, or*

(b) *the receipt or any expectation or which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the first mentioned person is liable to imprisonment for 7 years.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Gajic committed an offence under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Goodman as an inducement or reward for Mr Goodman showing favour, or not showing disfavour, in relation to the affairs or business of the Council.

Accordingly, the Commission is satisfied that the requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the payment was made to Mr Goodman with the intention of influencing Mr Goodman, a public official, to use his position at the Council to favour Mr Gajic's companies, Highland Profiles and Cube Design and Construction, in its dealings with the Council.

The conduct was premeditated and involved a significant level of planning. The conduct could involve an offence under s 249B(2)(a) of the Crimes Act, which has a maximum penalty of seven years imprisonment, meaning it is a serious indictable offence.

Counsel Assisting did not submit that a corrupt conduct finding should be made in respect of Mr Gajic's involvement in false invoicing. In these circumstances, the Commission has not made a corrupt conduct finding with respect to this aspect of his conduct.

### Joe Freitas

Mr Freitas, in agreement with Mr Goodman, submitted to the Council for payment false Elias & Son Smash Repairs invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Freitas.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Freitas' conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Freitas' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Freitas committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time. The conduct was premeditated and involved a significant level of planning. It could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Sam Alexander

Mr Alexander, in agreement with Mr Goodman, submitted to the Council for payment false Teletec invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices in order to benefit Mr Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Alexander's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Alexander's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Alexander committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

Mr Alexander's legal representatives submitted that Mr Alexander's conduct could not be classified as "serious corrupt conduct" for a number of reasons.

It was submitted that a finding that the conduct was serious because it took place over a significant period of time should not be made because the evidence is unclear as to the duration of the arrangement to create false invoices. The submission is rejected. Mr Alexander gave evidence that the conduct took place over a period between 12 and 15 months. In the Commission's view, this is a significant period of time.

It was submitted that a finding that the conduct was serious because it involved a significant amount of money should not be made because the evidence is unclear as to the amount of money involved. It was submitted that Counsel Assisting conceded that the total amount of the false invoices is "not possible to accurately quantify the amount of false invoicing carried out by Mr Alexander". Counsel Assisting conceded that it was not possible to quantify the total amount of false invoicing carried out by Mr Alexander because Mr Alexander's company, Teletec, also carried out legitimate work for the Council. In any event, Mr Alexander admitted that approximately \$90,000 was improperly obtained from the Council and, in the Commission's view, that is a significant amount of money.

It was submitted that a finding that the conduct was serious because the conduct was premeditated and involved a significant level of planning should not be made because there is no evidence of Mr Alexander's premeditation, that the arrangement was initiated and directed by Mr Goodman and that Mr Alexander was a participant in the arrangement. The submission is rejected. The lawfully intercepted telephone calls in evidence before the Commission demonstrate that Mr Alexander's conduct was premeditated and involved a significant level of planning. One such conversation took place between Mr Goodman and Mr Alexander on 30 September 2015 in relation to an invoice dated 30 September 2015, which Mr Alexander ultimately admitted was false. The conversation is set out below:

*GOODMAN: Put an invoice in.*

*ALEXANDER: um, I'm just trying to think aloud, I know, I sent you an invoice—two invoices yesterday afternoon.*

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GOODMAN: Send me another one.

ALEXANDER: Send you another one? Rightio, what do I say two iphones or?

GOODMAN: Yeah, whatever it is. No don't make them iphones -

ALEXANDER: Oh okay.

GOODMAN: make them for the airport -

ALEXANDER: Yeah.

GOODMAN: Those, those numbers you put in.

ALEXANDER: Um, I'm just trying to think, ah, do you want car kits?

GOODMAN: Um, yeah, that'll do yeah, yeah, for those blokes?

ALEXANDER: Okay I'll send you an invoice for four car kits.

GOODMAN: Yeah.

ALEXANDER: So -

GOODMAN: Airport, airport, airport.

ALEXANDER: Okay now where do you want me to put the \$2,000?

GOODMAN: Just, ah, send them to Cheryl.

It was submitted that Counsel Assisting's submission – that the conduct was serious because, if proved on admissible evidence to the criminal standard by an appropriate tribunal it could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years, meaning they are serious indictable offences – should not be made because maximum penalties address the worst conduct by the worst offender and are not always a reliable indicator of "seriousness". This submission is not an accurate summary of Counsel Assisting's submission, which was that an offence under s 192E of the Crimes Act is a serious indictable offence. It was not a submission that the maximum penalty was an indicator of seriousness.

The conduct is serious because the conduct took place over a significant period of time. The conduct was premeditated and involved a significant level of planning. It could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Section 74A(2) statement

In making a public report, the Commission is required by s 74A(2) of the ICAC Act to include, in respect of each

"affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- a. obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b. the taking of action against the person for a specified disciplinary offence
- c. the taking of action against the person as a public official on specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Mr Goodman, Mr Mark, Mr Subeski, Mr Gajic, Mr Freitas and Mr Alexander are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Goodman

The evidence Mr Goodman gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records. There is also admissible evidence in relation to Mr Goodman's position at the Council and the fact that he was in a position to authorise false invoices himself or arrange for the payment of false invoices. As CFO, Mr Goodman was also in a position to show, or not to show, favour to particular contractors. The evidence of Mr Mark, Mr Subeski, Mr Gajic, Mr Freitas and Mr Alexander could also potentially be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goodman for offences of fraud pursuant to s 192E of the Crimes Act and s 178BB of the Crimes Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goodman for an offence of soliciting and receiving a corrupt commission or reward totalling \$2,000 from Mr Gajic pursuant to s 249B(1)(a) of the Crimes Act.

Mr Goodman resigned from his position at the Council prior to disciplinary action being taken. The Commission, therefore, makes no recommendation in relation to the consideration of disciplinary or dismissal action.

### Mr Mark

The evidence Mr Mark gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Mark for offences of fraud pursuant to s 192E of the Crimes Act.

### Mr Subeski

The evidence Mr Subeski gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Subeski for offences of fraud pursuant to s 192E of the Crimes Act.

### Mr Gajic

The evidence Mr Gajic gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Gajic for offences of fraud pursuant to s 192E of the Crimes Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Gajic for an offence under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Goodman as an inducement or reward for Mr Goodman showing favour, or not showing favour, in relation to the affairs or business of the Council.

### Mr Freitas

The Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Mr Freitas. The Commission has taken into account Mr Freitas' personal circumstances in making this determination and the significant admissions that Mr Freitas made to the Commission.

### Mr Alexander

The evidence Mr Alexander gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

Mr Alexander's legal representatives submitted that there is insufficient evidence for consideration to be given for prosecution in relation to an offence under s 192E of the Crimes Act. This submission is rejected because there is admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alexander for offences of fraud pursuant to s 192E of the Crimes Act.

It was submitted on behalf of Mr Alexander that he voluntarily made numerous admissions against interests after "the penny dropped" and "as a result of a revelation into his involvement with Mr Goodman" and therefore no recommendation should be made that consideration be given to obtaining the advice of the DPP with respect to his prosecution for an offence under s 87 of the ICAC Act of giving false or misleading evidence. This submission is rejected because it does not accurately reflect Mr Alexander's evidence, an extract of which is set out below:

*[Counsel Assisting]: Mr Alexander, I took you through a number of phone calls yesterday and I put a number of propositions to you?*

*[Mr Alexander]: Yes.*

*[Q]: You've had overnight to consider that evidence?*

*[A]: Yes, I do.*

*[Q]: Alright. It's the case, isn't it, that you and Mr Goodman deliberately put in false invoices for work not performed by you?*



[A]: Yes.

[Q]: So you and Mr Goodman had an arrangement whereby at various times the two of you would put in an invoice that you were not entitled to and you got the benefit of that from Council?

[A]: Yes.

[Q]: Alright. So how long did this continue, how long did this go on for?

[A]: I'm not sure, perhaps a period of twelve months.

[Q]: And how much do you think was stolen from Botany Bay Council by you and Mr Goodman in that period?

[A]: I would say a figure of perhaps \$90,000.

[Q]: Alright. Now how did it come about?

[A]: It came about originally as I said, that I was told to reimburse some money but very quickly it turned out that it wasn't, you know the penny dropped. And approached Mr Goodman and he said he was using the funds for a separate matter that he'd be reimbursed and then he would repay the Telstra accounts.

[Q]: Alright. But then after that you knew full well that the invoices you were – let's be clear, however it started from very early on for some considerable time over a considerable amount of dollars you knew full well that you

were putting in invoices that you were not entitled to?

[A]: Yes.

[Q]: And you were paid money you were not entitled to?

[A]: Yes.

The transcript of evidence makes clear that Mr Alexander did not experience a sudden and unexpected revelation in the witness box that resulted in him making numerous admissions against interest. His evidence was that "the penny dropped" at an early stage in his arrangement with Mr Goodman and he was aware from that point that he was involved in false invoicing.

It was further submitted that it is in the interests of the Commission to encourage witnesses to be truthful and forthcoming and the Commission should exercise its discretion not to refer Mr Alexander to the DPP for consideration to be given to his prosecution for an offence under s 87 of the ICAC Act. Even after Mr Alexander was confronted with the evidence from the lawfully intercepted telephone conversations, he continued to deny involvement in false invoicing with Mr Goodman. He eventually admitted to involvement in false invoicing after a break in the proceedings. The Commission accepts Counsel Assisting's submission that Mr Alexander gave flagrantly false evidence and took the approach of denial until that stance became untenable. In the circumstances, the Commission does not consider it is appropriate to exercise its discretion to not seek the advice of the DPP.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alexander for an offence of giving false or misleading evidence at the public inquiry on 3 March 2016, contrary to s 87(1) of the ICAC Act, when Mr Alexander denied involvement in false invoicing.



## Chapter 3: False invoicing at the Council's Airport Business Unit

This chapter examines allegations that Ms Baccam and Malcolm Foo, while employees of the Council's Airport Business Unit, dishonestly obtained financial benefits for themselves and others by causing fraudulent payments to be made by the Council to various entities. This chapter also examines an allegation that Mark Goodman, while an employee of the Business Unit, accepted between \$8,000 and \$10,000 from Council contractor, Gardens2NV.

From 2010, Ms Baccam was employed as a clerical assistant at the Business Unit. Her employment was terminated as a result of the Commission's investigation. She was previously romantically involved with Mr Goodman and had an ongoing close friendship with him. Mr Foo was employed at the Business Unit for 19 years; most recently as a team leader until his employment was terminated by the Council in March 2016. In 2014, Mark Goodman became the acting manager of the Business Unit. He is also Mr Goodman's brother. His contract with the Council was not renewed in December 2015.

The evidence of Ms Baccam was inconsistent, unreliable and changed throughout the course of the public inquiry when she was confronted with further evidence. She was not a credible witness.

The evidence of Mr Foo was confusing, contradictory and unreliable. He attempted to minimise his role in any misconduct. He was not a credible witness.

### Ari Landscape Solutions

On 9 September 2014, Ms Baccam and Mr Goodman established Ari Landscape Solutions Pty Ltd. Although the company did not carry out any work for the Council, it was paid by the Council on the basis of false invoices submitted by Ms Baccam. The first false invoice submitted to the Council was dated 18 September 2014. Between 24 September 2014 and 7 October 2015, Ari Landscape Solutions was paid \$245,751 by the Council. Ms Baccam admitted to the Commission that all

Ari Landscape Solutions invoices submitted to the Council were false.

Ms Baccam said that she prepared the Ari Landscape Solutions invoices. She either emailed or hand-delivered the invoices to Mr Goodman. Ms Baccam said that sometimes the description of works on the invoices was decided by her and, at other times, by Mr Goodman. She said that sometimes they deleted the emails to the Council that attached the invoices after sending them, in an attempt to cover up their conduct. She said that both she and Mr Goodman signed the invoices to authorise their payment.

Ms Baccam told the Commission that the money that was paid into the Ari Landscape Solutions bank account was shared between her and Mr Goodman. Ms Baccam said that she usually received 40 per cent of the invoiced amount and Mr Goodman received 60 per cent. On other occasions, however, she received more than Mr Goodman or Mr Goodman received the whole amount. She estimated that she received about \$90,000 through this scheme.

In his evidence to the Commission, Mr Goodman agreed that Ari Landscape Solutions did not do any work for the Council and that false invoices had been submitted by Ms Baccam. He was not asked whether he received any of the money the Council paid on the invoices and he was not asked whether he authorised payment of the false Ari Landscape Solutions invoices.

In his submissions to the Commission, Counsel Assisting submitted that Mr Goodman collaborated with Ms Baccam to submit false Ari Landscape Solutions invoices to the Council and that they shared the money obtained from the Council through the payment of those invoices. Mr Goodman's legal representatives made submissions in response to Counsel Assisting's submissions in which no objection was made to Counsel Assisting's submission on this issue. In these circumstances, and taking into account other evidence that Mr Goodman was involved in several other schemes to obtain money from the Council through

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the submission of false invoices, the Commission is satisfied that Mr Goodman collaborated with Ms Baccam in the submission of false Ari Landscape Solutions invoices to the Council and shared in the money obtained from the Council through the Council's payment of the invoices.

At a compulsory examination on 10 December 2015, Ms Baccam denied submitting false invoices to the Council other than the false invoices submitted through Ari Landscape Solutions. At the public inquiry, Ms Baccam was confronted with evidence and admitted her involvement in false invoicing through two other companies, Al-Furat Pty Ltd and Gardens2NV.

### Al-Furat

Siddik Hussein is the owner of the printing and Arabic-language newspaper company, Al-Furat. Mr Hussein gave evidence that he met Ms Baccam at a gambling establishment that they both frequented and, while he was gambling, he borrowed money from her.

Ms Baccam gave evidence that she entered into an arrangement with Mr Hussein whereby he agreed to submit false Al-Furat invoices to the Council to finance her own and Mr Goodman's private printing needs. She claimed that Al-Furat also carried out legitimate work for the Council. Ms Baccam approved the Al-Furat invoices for payment. The money was shared between her and Mr Hussein. She had no idea how much she received as a result of this scheme.

Mr Hussein told the Commission that he did work for the Council and also did private work for Ms Baccam and Mr Goodman. The private work included printing business cards for various ventures and posters for a concert. He admitted that some of the Al-Furat invoices that he submitted and were paid by the Council were for private work he performed for Mr Goodman and Ms Baccam. Mr Hussein also admitted that he submitted inflated invoices to Ms Baccam for payment by the Council.

On more than one occasion, he provided cheques to Ms Baccam reflecting her share of the proceeds from the false invoicing. He said he agreed with Ms Baccam to submit false invoices to the Council because he owed her money and felt he could not refuse her demand to submit false invoices. He told the Commission that he could not, by examining the Al-Furat invoices, say which were false. Although he initially claimed that he only kept money that was owed to him for work carried out for Ms Baccam, Mr Goodman or the Council, he later agreed he kept additional proceeds from the false invoices for himself. The Commission accepts his evidence that, in effect, he and Ms Baccam shared in the proceeds of the false invoicing.

The Commission is satisfied that Mr Hussein submitted false Al-Furat invoices to the Council for payment. These invoices were authorised for payment by Ms Baccam, and both Mr Hussein and Ms Baccam shared in the proceeds of the false invoicing. It is not possible to estimate the extent to which they financially benefitted from the proceeds of the false invoicing because the evidence was that Al-Furat also did legitimate work for the Council. Furthermore, it cannot be established with any degree of accuracy how the money Ms Baccam and Mr Hussein improperly obtained from the Council was shared between them.

### Gardens2NV

Lyndal Marshall and Robert Floudas are owners of the business Gardens2NV. Ms Marshall and Mr Floudas gave evidence of payments and other benefits provided to Ms Baccam, Mr Foo and Mark Goodman between approximately 2013 and October 2015. During the period, the Council was Gardens2NV's major client. Ms Marshall kept records of some of the payments made, including in a 2014 diary and a 2015 cash payment log. Her records indicate that the payments started in 2013. She said: "to be quite honest I felt like I was treated like an ATM machine". Ms Marshall said that she understood Ms Baccam, Mr Foo and Mark Goodman could authorise payment of Gardens2NV invoices and she received "very explicit instructions on what invoices went where and how". Ms Marshall's evidence was that Ms Baccam and Mr Foo had knowledge of, and involvement in, the submission of false Gardens2NV invoices to the Council.

### Mark Goodman

During the course of the public inquiry, Mark Goodman volunteered to the Commission that, for a period of about two months, he received cash payments via Mr Foo totalling between \$8,000 and \$10,000 from Gardens2NV.

He told the Commission that, in June 2015, he commenced borrowing money from Mr Foo when his wife required a series of operations and he was in a financially dire situation. He said he repaid this money to Mr Foo. After borrowing more money at a later stage, he was told by Mr Foo that the money came from Council contractor, Gardens2NV. Mark Goodman continued to take money from Mr Foo even after he was aware that the money was obtained by Mr Foo from Gardens2NV.

Mark Goodman said that he believed all Gardens2NV invoices he approved for payment by the Council were legitimate because he checked with the relevant Council worker responsible for supervising the work carried out by Gardens2NV or, on occasion, he personally checked that the works had been done or the goods provided.

He denied authorising the payment of any invoices knowing that they were false or favouring Gardens2NV in the provision of Council work.

Mark Goodman understood that receiving payments from a contractor for personal use was a conflict of interest. He chose not to disclose the receipt of payments from Gardens2NV to anyone in Council management.

Ms Marshall said that Mr Foo asked her directly for money on behalf of Mark Goodman but she had also been told by Mr Floudas that he had been asked for money for Mark Goodman by Mr Foo. She was not sure how much money had been provided to Mark Goodman. Ms Marshall said that Gardens2NV was reimbursed that money through false Gardens2NV invoices, which were discussed with Mr Foo.

Mr Floudas gave evidence that Mr Foo asked him for money for Mark Goodman. He was told by Mr Foo: "[i]t will look good for us too, to look after them because then we get more work and if we don't we're not going to get anymore work because, you know, there's other people that can do your job and can come here and do the work". Mr Floudas was responsible for providing Mr Foo with the cash payments intended for Mark Goodman. He believed that this money had been repaid to Gardens2NV through false invoices submitted to the Council but gave evidence that Ms Marshall was responsible for dealing with invoicing.

Mr Foo told the Commission that he lent Mark Goodman money but, when he could no longer lend him money, Mark Goodman suggested that they approach a contractor. Mr Foo approached Gardens2NV because Mr Foo dealt with them directly and said that Mr Floudas did not mind "helping out" and that Mr Floudas told him, "[s]ince Mark [Goodman] is giving us some work we have to look after him". Mr Foo delivered fortnightly cash payments of \$500 to \$1,000 in envelopes to Mark Goodman. Mr Foo told the Commission that he realised it was not a loan when it was not repaid.

Mr Foo initially stated that the payments started in late 2014 but later accepted that they started in about mid-2015, after Mark Goodman's wife required an operation. He estimated that he provided Mark Goodman with around \$20,000 to \$30,000 but he did not explain how he came to that figure. Mr Foo eventually accepted that the payments made to Mark Goodman by Gardens2NV were recouped through false invoicing, and Mr Foo accepted that he and Ms Marshall sat down and worked out how to inflate Gardens2NV invoices to cover the debt.

The Commission accepts the evidence of Mark Goodman that, over a few months from mid-2015, he received cash payments totalling between \$8,000 and \$10,000

from Gardens2NV through Mr Foo. Mark Goodman's evidence was an admission against interest. His evidence was consistent and credible. There is no evidence that Mark Goodman did anything in return for these payments or that he knowingly authorised the payment of false Gardens2NV invoices.

Mr Foo's evidence, that it was Mark Goodman's idea to seek money from Gardens2NV, is rejected. Mr Foo was a generally unreliable witness and the evidence before the Commission (which is detailed below) was that he and Ms Baccam initiated another scheme involving Gardens2NV receiving payment from the Council as a result of false invoices.

The Commission accepts the evidence of Ms Marshall and Mr Floudas that Mr Floudas provided cash payments to Mr Foo, which they understood were intended for Mark Goodman. The Commission accepts Ms Marshall's evidence, that this money was recouped through false invoicing, which she arranged with Mr Foo. Both Ms Marshall and Mr Floudas were credible witnesses.

The Commission is satisfied that Mr Foo instigated the plan to obtain money from Gardens2NV for Mark Goodman.

### Ms Baccam

It was common ground that Gardens2NV undertook private landscaping and gardening work for Ms Baccam at her home and that Ms Baccam failed to pay Gardens2NV for that work.

Mr Floudas gave evidence that he reached an agreement with Ms Baccam and Mr Foo to the effect that Gardens2NV would recover the money owed to it by Ms Baccam for this work by issuing false invoices to the Council, which would then be paid by the Council. He said that Ms Marshall was responsible for issuing the false invoices to the Council.

Ms Marshall told the Commission that she was told by Mr Floudas that it was proposed that Gardens2NV should recover the money owed to it by Ms Baccam through false invoices submitted to the Council. She said the money for the work undertaken by Gardens2NV for Ms Baccam was ultimately paid by the Council.

Ms Marshall also told the Commission that Mr Floudas asked her to provide cash payments to Ms Baccam. She usually gave the cash to Mr Floudas to give to Ms Baccam but, on a few occasions, she gave it directly to Ms Baccam. Mr Floudas said he received cash from Ms Marshall to provide to Ms Baccam. Ms Marshall and Mr Floudas did not dispute that Gardens2NV recovered these payments to Ms Baccam by issuing false Gardens2NV invoices to the Council. Ms Marshall inserted the reference "M" or



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"MB" on the false invoices to distinguish them from genuine invoices. The use of these letters is explained by the fact that "M" is the first letter of Ms Baccam's first name and "B" is the first letter of her surname.

Ms Marshall kept some contemporaneous notes reflecting some of the payments to Ms Baccam. Ms Marshall's 2014 diary noted payments totalling \$65,400 made to Ms Baccam and her 2015 cash payment log noted payments totalling \$14,560 made to Ms Baccam. Ms Marshall estimated that between about 2013 and October 2015, Ms Baccam was provided with cash payments totalling between \$100,000 and \$110,000.

Ms Marshall said that she tried to resist making payments to Ms Baccam but "[w]e'd be bullied, they'd [sic] be indications that we wouldn't be able to continue work at the Council, a lot of repercussions" and Gardens2NV invoices for legitimate work would not be paid. She told the Commission that she was told this by Mr Foo and that conversations of this nature were also reported to her by Mr Floudas.

Ms Baccam gave evidence on two occasions at the public inquiry. On the first occasion, she admitted to creating and submitting false Gardens2NV invoices for gardening products that were purchased by the Council for her own personal use and for Mr Goodman's use. She also admitted that false invoices were also submitted to the Council by Ms Marshall for work that was carried out at her house that was not related to Council work. These invoices had her initials "MB" in the invoice number. She approved all these false Gardens2NV invoices for payment by the Council. She said that sometimes Mr Foo was aware that the Council was paying for work carried out at her house and that, on other occasions, he was not aware. She initially denied receiving any money directly from Gardens2NV.

On the second occasion, Ms Baccam admitted to producing false Gardens2NV invoices herself and receiving the cash proceeds of those invoices. She also admitted to receiving cash payments from Gardens2NV but claimed that Mr Floudas kept 40 per cent of the proceeds for himself. Mr Floudas' evidence was that all cash payments went to Ms Baccam.

Mr Foo's evidence about his knowledge of and involvement in false invoicing changed considerably throughout the public inquiry. At first, he denied having any knowledge of or involvement in false invoices submitted by Gardens2NV. He also denied knowledge of or involvement in Ms Baccam receiving cash from Gardens2NV.

Later in his evidence, Mr Foo admitted that he had lied about his knowledge of false invoicing through Gardens2NV. He admitted that he knew that Ms Baccam received cash payments from Gardens2NV and that Gardens2NV did work at her house that was paid for by the Council through

false invoicing. He accepted that he was involved in the preparation of false invoices to the Council and that he assisted Ms Marshall to draft the false invoices to cover the work carried out by Gardens2NV at Ms Baccam's house. Mr Foo, however, denied that he threatened to take work from Gardens2NV if payments were not made.

The evidence of Ms Marshall and Mr Floudas is accepted. Ms Marshall's evidence in particular was clear, consistent and was supported by contemporaneous records.

Ms Baccam changed her evidence significantly throughout the course of the public inquiry. The Commission accepts her admissions that she:

- created and submitted false Gardens2NV invoices for gardening products for her own personal use that were paid for by the Council
- approved Council payment of false Gardens2NV invoices to cover the cost of landscaping work carried out by Gardens2NV at her house
- produced false Gardens2NV invoices, which she used to obtain money from the Council.

These were admissions against interest. Her evidence, that she shared the proceeds of the cash payments she received from Gardens2NV with Mr Floudas, is rejected. She was not a credible witness and her evidence on this point is not supported by any other objective evidence.

Mr Foo was not a credible witness. The Commission does not accept his denial of threatening to remove work from Gardens2NV if that business refused to make cash payments. The Commission does accept his admission that he collaborated with Ms Marshall to draft the false invoices to recoup the money for works carried out by Gardens2NV at Ms Baccam's house.

The Commission is satisfied that, between 2013 and October 2015, Ms Baccam received cash payments of up to \$110,000 from Ms Marshall and Mr Floudas, and that false Gardens2NV invoices were submitted to the Council for the purpose of recouping these cash payments made to Ms Baccam.

### Mr Foo

Ms Marshall gave evidence that, between around 2012 to 2013 and October 2015, cash payments totalling between \$100,000 and \$110,000 were paid to Mr Foo, and in addition, Mr Foo received further weekly payments of between \$200 and \$500 a week. According to Ms Marshall, "[w]ell, you could be paying him for last week and he'd be talking about next week in the same breath". Ms Marshall said that cash payments to Mr Foo were provided to him in an envelope by either herself or Mr Floudas. She said that Gardens2NV was reimbursed

for these payments through issuing false invoices to the Council, which were paid by the Council.

Ms Marshall gave evidence that she used the code "BB-GC" in the invoice number for some of the false invoices submitted to the Council from the proceeds of which it was intended to pay Mr Foo. Ms Marshall said those initials represented "Botany Bay Gary Council" because Mr Foo told her that the money was intended for Mr Goodman and others. Ms Marshall noted, however, that "you could never believe what he [Mr Foo] was actually saying". She did not know what happened to the money after it was provided to Mr Foo.

Ms Marshall kept contemporaneous notes of some of the payments made to Mr Foo. Her 2014 diary reflected payments to Mr Foo totalling \$15,810 and her 2015 cash payment log reflected payments totalling \$93,190 to Mr Foo and contained notes such as, "Malcolm-Mark", "Malcolm (Mark/Somebody...)" and "Malcolm-Gift Vouchers". These notes are consistent with Mr Foo's representations to Ms Marshall that some of the payments were intended for others.

According to Ms Marshall, Mr Foo told her that if Gardens2NV did not "comply", then it would lose its contract with the Council. She understood compliance to mean providing Mr Foo with cash payments.

Ms Marshall told the Commission that Gardens2NV was asked by Mr Foo to purchase white goods, electronic goods, gift cards and flowers for special occasions. Ms Marshall was told by Mr Foo that these items were for various people.

Mr Floudas told the Commission that cash payments were made to Mr Foo and that Ms Marshall had an arrangement whereby false invoices would be submitted to the Council to cover the payments. He said that Ms Marshall made the decision about what money to give Mr Foo. He said that Ms Marshall was responsible for invoicing and he "didn't deal with the financial side of it".

Mr Foo gave evidence on two occasions at the public inquiry. On the first occasion, he told the Commission that he was responsible for dealing with Gardens2NV. He accepted that he had the ability to control whether Gardens2NV received Council work. He denied threatening anyone at Gardens2NV that it would lose Council work if cash payments were not made.

Mr Foo initially told the Commission that he approved the payment of invoices, including Gardens2NV invoices, after he had checked that the work had been done. He said that all Gardens2NV invoices came to him and that each Gardens2NV invoice accurately reflected work that Gardens2NV had completed for the Council. Mr Foo said that he sat down with Ms Marshall every Saturday

to ensure that invoices submitted by Gardens2NV were correct. Notwithstanding this evidence, he accepted he assisted Ms Marshall to draft false Gardens2NV invoices.

After discussing in detail the process he would undertake to approve invoices, Mr Foo then claimed that he did not have authority to authorise the payment of invoices and that all Gardens2NV invoices needed to go to Mark Goodman for approval of payment. Mr Foo said that, after he had checked the work had been completed, he sent the invoice to Mark Goodman to satisfy himself that the work had been done before approving the invoice for payment. The Commission notes, however, that the Gardens2NV invoices with the code "BB-GC", which were identified by Ms Marshall as false Gardens2NV invoices, were approved for payment by Mr Foo.

After initial denials, Mr Foo admitted he was aware that Ms Baccam received cash payments from Gardens2NV and that Gardens2NV was doing work at her house that was being paid for by the Council through false invoicing.

On the second occasion that he gave evidence before the public inquiry, Mr Foo was confronted with Ms Marshall's evidence that cash payments were made to him. He said that he received cash in envelopes from Ms Marshall for about two years but that he kept only one payment of \$400 from Gardens2NV and that the rest of the money went to Mark Goodman. He denied receiving any further payments. He said that the gift cards were purchased for Council staff for Christmas presents.

For the reasons set out above, the Commission is satisfied that Mark Goodman received between \$8,000 and \$10,000 from Gardens2NV through Mr Foo.

The Commission accepts Mr Foo's evidence that he assisted Ms Marshall to draft false Gardens2NV invoices for submission to the Council. Mr Foo's evidence, that he only retained a payment of \$400 from Gardens2NV on one occasion, is rejected. He was an unreliable witness. He gave inconsistent evidence and admitted that he had lied about his knowledge of false invoicing through Gardens2NV. The Commission does not accept his evidence that all the remaining money went to Mark Goodman. Ms Marshall's contemporaneous notes reflect payments totalling around \$109,000 to Mr Foo for 2014 and 2015. Even in his evidence, Mr Foo claimed that only between \$20,000 and \$30,000 of the money he received from Gardens2NV was given to Mark Goodman.

The Commission is satisfied that, other than Mark Goodman, the only beneficiary of the cash payments by Gardens2NV to Mr Foo was Mr Foo himself. There is insufficient evidence to support a finding that any other person received money from Mr Foo. Indeed, Mr Foo did not advance that evidence at the public inquiry and claimed the only other beneficiary was Mark Goodman.

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The Commission accepts the evidence of Ms Marshall and Mr Floudas, both of whom were credible witnesses. The Commission is satisfied that, between around 2012 to 2013 and October 2015, Mr Foo received cash payments in excess of \$109,000 from Gardens2NV. While Mr Foo gave between \$8,000 and \$10,000 of this money to Mark Goodman, the rest was retained by him for his own use.

The evidence of Ms Marshall and Mr Floudas, which the Commission accepts, was that Ms Baccam and Mr Foo were the Council employees involved in the scheme to obtain cash payments and other benefits from Gardens2NV, and also had knowledge of, and involvement in, the submission of false Gardens2NV invoices to the Council. Ms Marshall said she understood that Mark Goodman, Mr Foo and Ms Baccam could authorise the payment of Gardens2NV invoices.

Ms Baccam made admissions to authorising the payment of false Gardens2NV invoices that she knew to be false.

Mr Foo admitted to drafting false Gardens2NV invoices with Ms Marshall but did not admit to authorising the payment of false Gardens2NV invoices. The evidence of Mark Goodman, which the Commission accepts, was that he approved Gardens2NV invoices, only when he had received the advice of the supervisor responsible for dealing with Gardens2NV; that person being Mr Foo.

On this basis, the Commission is satisfied that Mr Foo, by representing to Mark Goodman that work had been done or goods had been provided to the Council when it had not, facilitated the payment of false Gardens2NV invoices by the Council.

## Corrupt conduct

### Marny Baccam

Between around 2013 and October 2015, Ms Baccam dishonestly exercised her public official functions as a Council clerical assistant by arranging for the payment of invoices by the Council that she knew to be false. The false invoices were from, or purported to be from, Ari Landscape Solutions (for \$245,751), Al-Furat and Gardens2NV. She did so in order to obtain the invoiced amounts from the Council for her own benefit and the benefit of others.

This conduct on the part of Ms Baccam is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of Ms Baccam's official functions.

Ms Baccam's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt

and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Baccam committed criminal offences of fraud under s 92E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time and involved a significant amount of money. Ms Baccam was motivated by greed. As an administrative officer responsible for processing the payment of invoices, Ms Baccam held a position of trust within the Council and her conduct involved a significant breach of that trust. The conduct was premeditated and involved a significant level of planning. Furthermore, the conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Malcolm Foo

Between around 2012 to 2013 and October 2015, Mr Foo dishonestly exercised his public official functions as a Council officer by arranging for the payment by Council of false Gardens2NV invoices, which he knew to be false, in order to obtain the invoiced amounts for his own benefit and the benefit of others, including Gardens2NV.

This conduct on the part of Mr Foo is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of Mr Foo's official functions.

Mr Foo's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Foo committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time and involved a significant amount of money. Mr Foo was motivated by greed. As a Council officer with authority to approve the payment of invoices, Mr Foo held a position of trust within the Council and his conduct involved a significant breach of that trust. The conduct was premeditated and involved a significant level of planning. Furthermore, the conduct could involve

offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Mark Goodman

The only reliable evidence implicating Mark Goodman in any wrongdoing is his evidence that, over a few months in 2015, he received money from Gardens2NV and failed to declare to anyone at the Council that he had done so. There was no evidence that he engaged in any other impropriety. It is in the public interest to encourage witnesses to tell the truth about matters that the Commission investigates. In the circumstances, the Commission does not make a finding of corrupt conduct against Mark Goodman.

### Lyndal Marshall

Between 2013 and October 2015, Ms Marshall, in agreement with Ms Baccam and Mr Foo, created and submitted to the Council for payment false Gardens2NV invoices totalling approximately between \$200,000 and \$220,000 for work she knew had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices. Ms Marshall participated in this agreement in order to obtain money from the Council to recoup money paid to Ms Baccam and Mr Foo, including money given to Mr Foo for Mark Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Ms Marshall's conduct adversely affected the honest exercise of Ms Baccam and Mr Foo's official functions.

Ms Marshall's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Marshall committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time and involved a significant amount of money. The conduct was premeditated and involved a significant level of planning. If proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Robert Floudas

Between 2013 and October 2015, Mr Floudas was party to an agreement between Ms Marshall, Ms Baccam and Mr Foo whereby false Gardens2NV invoices, totalling approximately between \$200,000 and \$220,000, were submitted to the Council for payment for work that had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices. Mr Floudas participated in this agreement in order to obtain money from the Council to recoup money paid to Ms Baccam and Mr Foo, including money given to Mr Foo for Mark Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Floudas' conduct adversely affected the honest exercise of Ms Baccam and Mr Foo's official functions.

Mr Floudas' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Floudas committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time and involved a significant amount of money. Furthermore, the conduct was premeditated and involved a significant level of planning. If proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Siddik Hussein

Mr Hussein collaborated with Ms Baccam to create false Al-Furat invoices to be paid by the Council for work he knew had not been done, knowing that Ms Baccam would use her position at the Council to dishonestly arrange for payment of the invoices. He submitted the false invoices to the Council so that he could share the proceeds of the payment with Ms Baccam.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Hussein's conduct adversely affected the honest exercise of Ms Baccam's official functions.

Mr Hussein's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts

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it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hussein committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because it was premeditated and involved a significant level of planning. If proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Section 74A(2) statement

The Commission is satisfied that Ms Baccam, Mr Foo, Mark Goodman, Ms Marshall, Mr Floudas and Mr Hussein are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Ms Baccam

The evidence Ms Baccam gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against her in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, financial records and bank statements. There is also admissible evidence in relation to Ms Baccam's position at the Council and the fact that she was in a position to show, or not to show, disfavour to particular companies. The evidence of Ms Marshall and Mr Floudas would also potentially be available to the DPP.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Baccam for offences of fraud pursuant to s 192E of the Crimes Act.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Ms Baccam for an offence of giving false or misleading evidence at a compulsory examination on 10 December 2015, contrary to s 87(1) of the ICAC Act, when she denied submitting false invoices to the Council other than the false invoices submitted through Ari Landscape Solutions.

Ms Baccam resigned from her position at the Council prior to disciplinary action being taken. The Commission, therefore, makes no recommendation in relation to the consideration of disciplinary or dismissal action.

### Mr Foo

The evidence Mr Foo gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including the Gardens2NV records and potentially the evidence of Ms Marshall and Mr Floudas. There is also admissible evidence in relation to Mr Foo's position at the Council and the fact that he was in a position to show, or not to show, disfavour to particular companies.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Foo for offences of fraud pursuant to s 192E of the Crimes Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Foo for offences of soliciting and receiving a corrupt commission or reward from Gardens2NV pursuant to s 249B(1)(a) of the Crimes Act.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Mr Foo for an offence of giving false or misleading evidence at the public inquiry on 7 March 2016, contrary to s 87(1) of the ICAC Act, when he denied involvement in, or knowledge of, false invoicing by Gardens2NV.

Mr Foo's employment at the Council was terminated prior to disciplinary action being taken. The Commission, therefore, makes no recommendation in relation to the consideration of disciplinary or dismissal action.

### Mark Goodman

The evidence Mark Goodman gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act.

The Commission is of the opinion that there is insufficient evidence to consider obtaining the advice of the DPP with respect to the prosecution of Mark Goodman for any criminal offence.

### Mr Hussein

The evidence Mr Hussein gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, financial records and bank statements.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hussein for offences of fraud pursuant to s 192E of the Crimes Act for his role in drafting, submitting and authorising the payment of false invoices by the Council.

### **Ms Marshall**

Ms Marshall gave full and frank evidence with respect to her dealings with Ms Baccam and Mr Foo, even though it implicated her in potential criminal and corrupt conduct. It is in the public interest to encourage witnesses to tell the truth about matters that the Commission investigates. In the circumstances, the Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Ms Marshall.

### **Mr Floudas**

Mr Floudas gave full and frank evidence with respect to his involvement in the arrangement, even though it implicated him in potential criminal and corrupt conduct. It is in the public interest to encourage witnesses to tell the truth about matters that the Commission investigates. In the circumstances, the Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Mr Floudas.

## Chapter 4: Awareness of Mr Goodman's misconduct by others

This chapter examines allegations that Ms Mishra, while a senior accounting officer at the Council, and Ms Cullinane, while the deputy general manager at the Council, were aware of certain aspects of Mr Goodman's misconduct.

### What did Ms Mishra know?

Ms Mishra commenced employment with the Council in 1994 as a clerk in the finance division. She held various positions in this division before becoming a senior accounting officer. Her employment with the Council was terminated in December 2015. She was responsible for dealing with the Council's assets, and for distributing Cabcharge cards and vouchers and fuel cards.

In about 2009, she became romantically involved with Mr Goodman. She told the Commission that the relationship had been "on and off" since then. Ms Mishra's and Mr Goodman's assets were intertwined. They held a joint bank account until the end of 2015.

In around 2012, Ms Mishra was given a Mercedes-Benz vehicle by Mr Goodman. Mr Goodman was responsible for making repayments on the vehicle until late 2015, at which time Ms Mishra took over responsibility for making the payments. Ms Mishra gave evidence that Mr Goodman had contributed the deposit of \$123,000 for an off-the-plan apartment they were to purchase together.

She said that Mr Goodman gave her \$200 every week as a contribution to living expenses, paid her telephone bills, and arranged for work to be carried out at her home by both Mr Gajic and Mr Subeski. She understood Mr Goodman was going to pay for that work. She estimated that the value of Mr Subeski's work was about \$10,000 and Mr Gajic's work was about \$50,000. Ms Mishra claimed that she did not have an understanding of Mr Goodman's financial situation but that she was aware that his credit cards were exhausted and he had asked her to lend him money.

Mr Goodman agreed that he gave Ms Mishra \$200 a week to assist with her living expenses and that he had also recently assisted her to purchase an apartment. He also paid her mobile telephone account. Mr Goodman gave evidence that Ms Mishra did not know about the false invoicing schemes at the Council in which he was involved.

A number of lawfully intercepted telephone conversations were played during the course of the public inquiry, which reveal that Ms Mishra confronted Mr Goodman on a number of occasions concerning misuse of Council funds. One such conversation took place on 8 September 2015:

*MISHRA: When I want Alex [Subeski] he's not, you can't see him, you can't find him. But you and Marry [Baccam] when you people need money you can find Jovane invoices. Huh? Huh?*

*GOODMAN: I was just. I was just talking I was just talking to him one minute ago.*

*MISHRA: Huh? And then and then you and Marry rip the Council off in thousands.*

*GOODMAN: Oh bullshit Suman stop that.*

*MISHRA: And when I want money it's in \$50?*

*GOODMAN: Yeah we'll see.*

*MISHRA: We'll see how long this will go for. Okay we'll see.*

*GOODMAN: Bye.*

When questioned about this telephone call, Ms Mishra told the Commission that she threatened Mr Goodman on a number of occasions. She agreed that she threatened him because she believed that he and Ms Baccam were stealing money from the Council through false invoices. She denied that her statement, "[a]nd when I want money it's in \$50?", reflected a complaint that she was not receiving enough money from Mr Goodman.



In another lawfully intercepted telephone conversation of 15 September 2015, Ms Mishra tells Mr Goodman:

*MISHRA: If you want four women look after them then you (unintelligible) do you think I'm dumb?*

*GOODMAN: Suman, I don't know what you're talking about.*

*MISHRA: What is that invoice sitting on your desk for \$7,000 (unintelligible)?*

*GOODMAN: I've gotta get Malcolm [Foo] to come up and sign them I got about three of them here to sign the fucking things.*

*MISHRA: Why is it there, why you? It shouldn't come to you to begin with, it should go to Steven.*

*GOODMAN: I'm a nobody. Who?*

*MISHRA: You're not the boss of the business unit.*

*GOODMAN: Stuart [Dutton] doesn't sign them Malcolm does.*

*MISHRA: You've got nothing to do with that but you've got all your fingers and all your toes in it ... Because you are a safe haven, because you make so much money out of the place.*

*GOODMAN: I can't help if your super is not done.*

*MISHRA: You and Marny.*

*GOODMAN: Bullshit.*

*MISHRA: That's why she's still in your life and you know why.*

In her evidence to the Commission, Ms Mishra said that she had seen a \$7,000 invoice on Mr Goodman's desk that she was concerned was a false invoice and that was the invoice to which she was referring in her telephone conversation with Mr Goodman. She said that she told

Mr Goodman, "you make so much money out of the place", because Mr Goodman was stealing so much money from the Council through false invoicing.

In another telephone conversation, Ms Mishra told Mr Goodman: "You make enough money from Sam [Alexander], Telstra [Teletec invoices] and Joe [Freitas]". Ms Mishra said that she had heard rumours within the Council that Mr Goodman benefitted through false invoices submitted to the Council by Mr Alexander's company, Teletec, and Mr Freitas' company, Elias & Son Smash Repairs.

Ms Mishra agreed that she stood to lose a significant financial benefit if Mr Goodman's involvement in obtaining money through false invoicing was exposed. She said that, despite this, she had complained to Ms Cullinane about Mr Goodman's conduct but nothing was done and she was scared that she would lose her job if she complained to the general manager, Ms Kirchner. She accepted that she knew from code of conduct training that, if internal reporting did not garner an appropriate response, then a complaint should be escalated to an outside body. She accepted that she did not do this.

Ms Mishra's evidence about raising Mr Goodman's conduct with Ms Cullinane was uncorroborated. Ms Cullinane was not asked about this at the public inquiry. In these circumstances, the Commission does not consider there is sufficient reliable evidence to find that Ms Mishra did report the matter to Ms Cullinane.

The Commission is satisfied that Ms Mishra knew that Mr Goodman was obtaining money through the submission of false invoices to the Council. During the lawfully intercepted telephone conversations recorded by the Commission, she was able to identify to Mr Goodman specific companies such as Elias & Son Smash Repairs, Jovane and Teletec as companies with whom Mr Goodman was engaging in false invoicing. She told Mr Goodman that he and Ms Baccam submitted false invoices to the



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Council. These allegations by Ms Mishra were correct. The evidence before the Commission establishes that Mr Frietas through Elias & Son Smash Repairs, Mr Subeski through Jovane, Mr Alexander through Teletec, and Ms Baccam through Ari Landscape Solutions, all submitted false invoices to the Council as part of their arrangements with Mr Goodman. Ms Mishra ultimately admitted she knew Mr Goodman and Ms Baccam were obtaining money from the Council through the submission of false invoices. The Commission is satisfied that, in her initial evidence to the Commission, Ms Mishra lied about her knowledge of Mr Goodman's false invoicing schemes when she told the Commission that she only had suspicions and no first-hand knowledge of his involvement in false invoicing.

### What did Ms Cullinane know?

From 1997, Ms Cullinane was the deputy general manager of the Council. Mr Goodman reported directly to her. She was involved in a relationship with Mr Goodman between approximately 1996 and 2002.

Mr Byrnes, former financial accountant at the Council, gave evidence about concerns he had raised with Ms Cullinane on a number of occasions about Mr Goodman's conduct. These are dealt with below. Mr Byrnes was the second-in-charge of the finance division. Mr Byrnes told the Commission that he struggled with the need to report issues about Mr Goodman as he had some concerns about his health and was also concerned about possible reprisal action against him. Mr Byrnes did not make any file notes of the conversations he told the Commission he had with Ms Cullinane.

### The cheques

Mr Byrnes told the Commission that, in about May or June 2007, Mr Thompson, the Council's system administrator, told him that Mr Goodman had been asking him to sign blank Council cheques. Mr Thompson told him that Mr Goodman completed the cheques and countersigned them. Mr Byrnes said that Mr Thompson advised him that the details on the cheques were different from the details on the invoices or the vouchers provided by Mr Goodman.

In his evidence to the Commission, Mr Thompson confirmed that he had spoken with Mr Byrnes about Mr Goodman demanding he sign blank Council cheques without supporting documentation justifying the issuing of the cheques. Mr Byrnes told him he could raise the matters with Ms Cullinane.

Mr Byrnes said he told Ms Cullinane that Mr Goodman had asked Mr Thompson to sign blank Council cheques and that the details on the cheques were different from the details on the invoices or the vouchers provided

by Mr Goodman. The same day or the following day, Mr Byrnes met with Ms Cullinane and Mr Goodman. He could not recall what was said by Mr Goodman but, in his view, Mr Goodman did not deny the allegation but also did not provide an adequate explanation. Mr Byrnes said that, at some time later, Ms Cullinane sent an email stating that Mr Thompson and Mr Goodman were not to co-sign cheques. In his evidence to the Commission, Mr Thompson confirmed that such an email was sent by Ms Cullinane.

In a statement tendered in evidence, Mr Byrnes states that, "[i]t wasn't easy to go to Ms Cullinane because I knew Ms Cullinane and Gary Goodman were friends, and because I knew Goodman was friendly with the Council's [then] general manager Peter Fitzgerald. I thought I was taking a risk by reporting potentially improper conduct by Goodman".

In his evidence to the Commission, Mr Goodman agreed that he asked Mr Thompson to sign blank Council cheques and some of those were used by him to improperly obtain money from the Council. He also agreed that he asked Mr Thompson to countersign cheques with false supporting documentation. He was not asked whether he met with Ms Cullinane and Mr Byrnes.

Ms Cullinane denied that the issue of Mr Goodman asking Council staff to sign blank cheques was brought to her attention by Mr Byrnes. She said that, if the issue had been raised with her, she would have taken it to Mr Fitzgerald. She said that she issued a direction that cheques should be co-signed by Mr Goodman and Mr Byrnes, and only in their absence should cheques be signed by her and Mr Thompson. She told the Commission that the reason for this instruction was not because of any misconduct alleged by Mr Byrnes or Mr Thompson, but because Mr Goodman and Mr Byrnes were the two most senior employees in the finance division and it was appropriate that they were responsible for co-signing cheques.

### Bank account details

Mr Byrnes gave evidence that, in about March or May 2009 or 2010, Mr Thompson told him that the CND Computers bank account number, into which the Council deposited money in payment of CND Computers invoices, was the same as the bank account number used by Mr Goodman to receive his pay from the Council. Mr Byrnes told the Commission that Mr Thompson produced a document with details of the relevant transactions and told him the amount involved was over \$1 million. Mr Byrnes said he and Mr Thompson met with Ms Cullinane to discuss this issue and provided her with the document. According to Mr Byrnes, Ms Cullinane

was "shocked and wondered why this was happening ... she didn't say anything more than that". Mr Byrnes did not have any further discussions with Ms Cullinane about this matter.

In his evidence to the Commission, Mr Thompson agreed that he raised this matter with Mr Byrnes, that they both met with Ms Cullinane to discuss the matter, and that he provided Ms Cullinane with a document setting out details of the relevant transactions. He did not hear anything further about the matter.

Ms Cullinane denied that she was ever told that the CND Computers bank account, into which the Council deposited money in payment of CND Computers invoices, was the same bank account used by Mr Goodman to receive his pay from the Council. She said that the issue of excessive expenditure in relation to camera and security systems was discussed at a meeting with Mr Goodman and Mr Fitzgerald and that Mr Byrnes had brought that issue to her attention. CND Computers was one of the companies discussed at this meeting.

As dealt with in chapter 2, Mr Goodman received payments totalling approximately \$2,097,022 through false CND Computers invoices submitted to the Council. Mr Goodman received the last payment from false invoices related to CND Computers in June 2011.

### The credit cards

Mr Byrnes gave evidence that, in late 2011 or early 2012, Mr Thompson spoke to him about certain entries on Mr Fitzgerald's corporate credit card statements that appeared to be associated with Mr Goodman's company, Gas Motorsports. Mr Byrnes said he then brought this matter to Ms Cullinane's attention. He told her that some of the transactions on the credit cards appeared to be connected to Mr Goodman. Mr Byrnes could not recall Ms Cullinane's response, but said he left it with her to investigate further.

Mr Thompson confirmed that he raised this matter with Mr Byrnes. Mr Byrnes told him he would speak to Ms Cullinane about the matter.

Ms Cullinane denied that she knew about expenditure by Mr Goodman on Mr Fitzgerald's credit card, including expenses relating to Mr Goodman's company, Gas Motorsports.

Mr Goodman told the Commission that, in about 2011, Ms Cullinane had identified a number of transactions on Mr Fitzgerald's corporate credit cards, which Mr Goodman had made, that were personal in nature. He said she told him he had to repay the money but he had not done so. He said this occurred at the time Ms Cullinane was taking steps to acquit Mr Fitzgerald's

credit card accounts upon his retirement. Mr Goodman gave this evidence after Ms Cullinane had given her evidence and she was not questioned about his evidence on this issue.

The Commission notes that Mr Byrnes and Mr Thompson gave evidence about this issue prior to the Commission undertaking any analysis in relation to expenditure on the corporate credit card. A subsequent analysis undertaken by the Commission showed that, between 30 December 2011 and 16 January 2012, transactions for Gas Motorsports totalling \$28,300 were made on Mr Fitzgerald's credit cards. Mr Goodman accepted that he was responsible for these transactions.

### The Cabcharge and fuel cards

Mr Byrnes told the Commission that, in August 2014, an issue was raised with him about Mr Goodman's use of a Council Cabcharge card. He said there were large amounts charged to Mr Goodman's Cabcharge card for single trips. He said that Ms Mishra, Mr Thompson or Sharon Dale, the creditor's clerk, may have raised the issue with him. He could not recall what he specifically said to Ms Cullinane, but believed he had the invoice for Mr Goodman's Cabcharge card and showed that to her. He believed that Ms Cullinane took the issue up with Ms Kirchner. Mr Byrnes understood that, as a result, Mr Goodman had been asked to repay money to the Council.

Mr Thompson gave evidence that he believed that Ms Mishra raised the issue with him and he took the issue to Mr Byrnes because the charges appeared irregular. He believed that Mr Goodman may have been asked to repay about \$20,000 to the Council.

Ms Cullinane said that she could not recall how she found out about the Cabcharge card issue but believed that Mr Byrnes brought it to her attention. Ms Cullinane accepted that she was the person who advised Mr Goodman that the Cabcharge expenses needed to be paid back, but denied that she was aware of the amount that needed to be paid back to the Council. She said that she asked Mr Byrnes to extract all the Cabcharge records and provide those to Mr Goodman. She told the Commission that Mr Goodman also told her that he had used the Council fuel cards for purposes he was not entitled to, and agreed to pay back that money to the Council as well.

Ms Kirchner provided a statement to the Commission in which she recalled that, in 2014, Ms Cullinane raised an issue with her concerning Mr Goodman's misuse of Cabcharge cards over the previous month. She recalled that the amount involved was approximately \$3,000 and she instructed Ms Cullinane to ask Mr Goodman to repay the amount owed.

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Mr Goodman gave evidence that he was instructed to pay back \$20,000 for misuse of his Council Cabcharge card. He believed that the instruction came from Ms Cullinane and Ms Kirchner. He never paid any money back to the Council for misusing his Cabcharge card. Mr Goodman also said that he was required by Ms Cullinane to pay back money to the Council for expenditure on a Council fuel card, for items such as cigarettes, for which he was not entitled to use the fuel card. Mr Goodman claimed that he started to pay this money back to the Council on a monthly basis.

### Paying invoices without supporting documentation

Mr Byrnes told the Commission that he saw that an amount had been paid by the Council to Teletec for a "reimbursement" but he could not locate any evidence that Teletec had paid anything on behalf of the Council. He said he showed the Teletec invoice to Ms Cullinane and told her that there was no supporting documentation to indicate that Teletec had paid anything on behalf of the Council. Mr Byrnes said that this occurred in August or September 2015; although, he later conceded it could have been after that time.

Mr Thompson recalled that a payment had been made to Teletec without supporting documentation. He believed that he spoke to Mr Byrnes and was "pretty sure" that Mr Byrnes took up the issue with Ms Cullinane.

Ms Cullinane was not asked specifically about this Teletec invoice but generally denied that Mr Byrnes and Mr Thompson raised specific concerns with her about Mr Goodman's conduct. She gave evidence that, "There was a couple of issues I'd raised in relation to Gary in terms of some conduct issues but they were addressed, but if you're asking me was there any fraudulent or anything of that nature, the answer is no, I was never aware".

Mr Goodman gave evidence that Ms Cullinane had told him that she had reviewed a couple of Teletec invoices and told him the details provided for the Teletec invoices were poor. He was unable to recall the details of the conversation.

### Ms Cullinane's submissions

If accepted by the Commission, the evidence of Mr Byrnes and Mr Thompson would establish that a number of complaints were made to Ms Cullinane about the conduct of Mr Goodman.

Ms Cullinane's legal representatives provided lengthy submissions in relation to the issue of her knowledge of the allegations made by Mr Byrnes and Mr Thompson. In summary, the submissions seek to impugn the credibility

of both Mr Thompson and Mr Byrnes, with particular focus on Mr Thompson's credibility. It was submitted that Ms Cullinane's evidence should be preferred to that of Mr Byrnes and Mr Thompson on a number of bases.

It was submitted that Mr Thompson's evidence should be approached with caution because he processed invoices he knew were fraudulent. The Commission rejects this submission. A finding that Mr Thompson was knowingly involved in processing false invoices was not contended by Counsel Assisting and such a finding is not available on the evidence. Furthermore, Mr Goodman gave evidence that he did not believe that Mr Thompson was aware of any of his "illegal activity".

It was submitted that Mr Thompson abrogated specific management directives from Ms Cullinane not to co-sign cheques and knowingly facilitated the payment of service providers in cash (in relation to MB Consulting cheques which is dealt with in chapter 6), flouted processes for co-authorisation of electronic funds transfer payments by entering codes for himself and Mr Goodman, and made entries into the payroll system for the payouts of leave without the authority of the payroll department.

Mr Thompson accepts that he continued to co-sign cheques with Mr Goodman after Ms Cullinane issued a direction that this should only be done in the absence of Mr Byrnes and that he facilitated the payment of service providers in cash. The submission, that Mr Thompson did not always comply with proper processes, is accepted but does not provide a reasonable basis for rejecting his evidence about complaints made to Mr Byrnes and/or Ms Cullinane about Mr Goodman's conduct. It also ignores Mr Thompson's evidence, which the Commission accepts, that Mr Goodman was overbearing and demanded Mr Thompson comply with his directions.

The submissions made on behalf of Ms Cullinane also noted that Mr Thompson was counselled about a disciplinary matter involving Ms Mishra in 2010. The Commission understands the submission to suggest that Mr Thompson's credit is impugned because he was questioned about a disciplinary matter involving Ms Mishra several years beforehand. The Commission rejects any such imputation. Ms Mishra's conduct was the focus of the disciplinary matter and not the conduct of Mr Thompson.

It was submitted that Mr Thompson's evidence was inconsistent, implausible and untrue because, in his statement to the Council's internal investigators, he did not mention any concern about CND Computers invoices. The Commission accepts that Mr Thompson did not mention such concerns. The Commission does not accept that this renders Mr Thompson's evidence inconsistent, implausible or untrue. Mr Thompson gave consistent and credible evidence at the public inquiry.

It was also submitted that Mr Thompson's evidence was inconsistent, implausible and untrue because his evidence that there had been approximately \$1 million of fraudulent payments made to Mr Goodman through CND Computers invoices in 2009 is not supported by the evidence. The evidence before the Commission has established that the following amounts were credited to bank accounts associated with Mr Goodman for invoices associated with CND Computers (and its trading name CND 360 Vision) for the period between 18 October 2007 and 15 June 2011:

- 18 October 2007 – 19 May 2010: CND Computers (Creditor No 302547) – \$1,120,789.60
- 31 January 2008 – 15 April 2009: CND 360 Vision (Creditor No 302750) – \$399,441.34
- 26 May 2010 – 15 June 2011: CND Computers (Creditor No 986) – \$576,790.80.

These figures corroborate Mr Thompson's evidence and show that the fraud commenced in 2007, well before the complaint was made to Ms Cullinane in 2009 or 2010 by Mr Byrnes.

It was submitted that Mr Thompson's evidence, that false CND Computers invoices had the same bank account number as that used by Mr Goodman to receive his pay, was not supported by the documentary evidence. That submission is contrary to the evidence before the Commission. The Council's general ledger tendered in evidence shows that false CND 360 Vision invoices were paid into the same bank account into which Mr Goodman's pay was deposited by Council.

It was submitted that Mr Byrnes was not a credible witness because he did not disclose in his statement to the Commission that he had the Council pay for the cost of the repairs to his son's car in 2009. This submission is not an accurate reflection of the evidence. The statement prepared by Mr Byrnes, and tendered in evidence, did disclose this incident to the Commission. In his evidence, Mr Byrnes said his son was involved in an accident and he spoke with Council contractor Mr Freitas about repairing his son's car. Mr Byrnes said it was not until he was collating Elias & Son Smash Repairs invoices to be supplied to the Commission that he became aware that the Council had paid for the repairs to his son's vehicle when he noticed the registration number of his son's vehicle on an Elias & Son Smash Repairs invoice. He sought legal advice and ultimately volunteered this information to the Commission at the public inquiry. The evidence does not establish that Mr Byrnes was aware, at the time the repairs were undertaken, that the Council had paid for the repairs.

The evidence of Mr Byrnes and Mr Thompson corroborated one another and was clear and consistent. They were both credible witnesses. On the basis of the evidence of Mr Byrnes and Mr Thompson, the Commission is satisfied that there is sufficient evidence to support the following findings:

- In about May or June 2007, Mr Byrnes told Ms Cullinane that Mr Goodman had asked Mr Thompson to sign blank Council cheques and that the details on the cheques were different from the details on the invoices or the vouchers provided by Mr Goodman.
- In about March or May 2009 or 2010, Mr Byrnes and Mr Thompson met with Ms Cullinane and told her that the bank account details used by Mr Goodman in the payroll system matched the bank account number used by Council contractor, CND Computers, and into which the Council deposited payment on account of CND Computers invoices.
- In late 2011 or early 2012, Mr Byrnes told Ms Cullinane that there were transactions on Mr Fitzgerald's corporate credit card statements relating to Mr Goodman's company, Gas Motorsports.
- In or about late August or September 2015, Mr Byrnes told Ms Cullinane that a Teletec invoice had been paid without appropriate documentation.

### **Mr Goodman and Ms Cullinane**

During a lawfully intercepted telephone conversation between Ms Cullinane and Mr Goodman on 2 October 2015, Mr Goodman told Ms Cullinane that he was intending to leave the Council. The following exchange between them took place, during which Mr Goodman referred to Ms Cullinane by the nickname of "Bambi":

*CULLINANE: Yeah, yeah, yeah, yeah that's alright, but that's fine right, but seriously like do you honestly think that somebody's not going to look at some of the financial stuff here over the last (unintelligible).*

*GOODMAN: Oh Bambi I, I don't know, I don't know, I don't know.*

*CULLINANE: But Gary how would –*

*GOODMAN: We try to do everything fucking right.*

*CULLINANE: But Gary how would you explain the cabcharge. Like how do you explain-*

*GOODMAN: No I'm paying that back hopefully on Tuesday. I'm gonna give you a bundle of money.*

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....

*CULLINANE: But, but Gary you know I'm not being – I'm not trying to be mean when I say this, but at the end of the day and that's fine, say it's all paid back, but if somebody went through that, like somebody may make a different judgment call than you.*

*GOODMAN: Yep no doubt.*

*CULLINANE: You know at the end of the day seriously you can't afford to leave.*

*GOODMAN: Fuck don't say that.*

*CULLINANE: No, honestly you cannot afford to leave!*

*GOODMAN: Anyway talk to me Tuesday Barn please, please Bambi, please.*

*CULLINANE: Like seriously you might leave but you'll end up in gaol Gary.*

*GOODMAN: Yeah alright I won't leave, I won't leave.*

Ms Cullinane was asked about this conversation at the public inquiry. She said that when she said, "seriously like do you honestly think that somebody's not going to look at some of the financial stuff here", she was referring only to Mr Goodman's misuse of the Cabcharge card. She said that when she said, "Honestly, you can't afford to leave", she was referring to Mr Goodman's conduct in relation to the Cabcharge card and fuel card being discovered. She claimed that she said "Like seriously you might leave but you'll end up in gaol Gary" because Mr Goodman had not paid the Council the money he owed in relation to the Cabcharge card and she was trying to encourage Mr Goodman to pay that money back. She claimed, however, that she did not know how much he needed to repay for misusing his Council Cabcharge card. She denied knowledge of other serious misconduct engaged in by Mr Goodman.

The Commission does not accept that Ms Cullinane's awareness of Mr Goodman's misconduct was limited to his misuse of his Council Cabcharge card and Council fuel card. According to her evidence, the misuse of Mr Goodman's Cabcharge card and fuel card had been dealt with by her, and Mr Goodman had been instructed to repay the Council for any misuse of those cards. Based on the evidence of Mr Byrnes and Ms Kirchner, it is clear that this occurred in about August 2014, and that at least the issue of Mr Goodman's misuse of his Cabcharge cards, if not necessarily the extent of that misuse, had been brought to Ms Kirchner's attention and dealt with by her. That being the case, there was no reason, in September 2015, for Ms Cullinane to be concerned that

Mr Goodman might "end up in gaol" over that issue. Her telephone discussion with Mr Goodman indicates a greater comprehension of Mr Goodman's misuse of Council resources and that his misuse of those resources was to such a degree and of such seriousness that, if convicted of an offence relating to that misuse, he would receive a custodial sentence.

At the public inquiry, Ms Cullinane accepted there had been no internal disciplinary proceedings undertaken against Mr Goodman, nothing noted on his personnel file, nothing reported to the police in relation to the Cabcharge card issue, and the Council did not consider garnishing his wages to repay the money. She claimed to not know the figure that Mr Goodman was required to repay and told the Commission that she asked Mr Byrnes to advise Mr Goodman how much needed to be paid back. She accepted that she was not in a position to classify the level of misconduct engaged in by Mr Goodman because she claimed that she did not know the total amount owed to the Council by Mr Goodman. Ms Cullinane claimed that she used the word "gaol" to encourage him to pay the money back to the Council.

### The "shit file" meeting

As set out in chapter 2, Mr Goodman and Mr Mark were involved in providing false invoices to the Council. On 13 September 2015, the Commission lawfully intercepted a telephone discussion between them, in which Mr Goodman discussed a meeting with Ms Cullinane. Mr Goodman told Mr Mark that Ms Cullinane had prepared what he referred to as a "shit file" on him and Mr Mark:

*GOODMAN: I, I went through this. You don't know what I went through with [Ms Cullinane]. Fuck me dead. She had everything Keith [Mark], she fucking proved to me time—oh fuck it was disastrous. Like I just sat there looking—Peter's [Fitzgerald] just looking at me, I'm thinking oh fucking hell he knew (laughs). Oh shit. Ohhh god.*

*MARK: Some of the old ones I was gonna um, from Tuesday I was gonna, gonna get together a dossier um, and some of the things I've already just looked at. Um, I, I was thinking I don't know how they got through. Like the 60 grand for microwave upgrades -*

*GOODMAN: Yep, yep, yep, yep.*

*MARK: - one of the things, I thought Jesus how, how did that get through. You got to appreciate -*

*GOODMAN: She had, she had the lot. She had fucking everything.*

*MARK: Yeah.*

*GOODMAN: I was gone six ways and Sunday.  
Anyway.*

*MARK: Well you don't want to give her any more  
ammunition for Christ's sake.*

Mr Goodman told the Commission that what he had said to Mr Mark about Ms Cullinane may not have been entirely accurate but he maintained that, in about 2009 or 2010, he had admitted to her and others that he knew some false invoices were submitted to the Council by Mr Mark. Mr Goodman said that he made no record of the meeting and the issue of who benefitted from the false invoicing was not discussed and no further investigation took place.

He said that this meeting, at which he had told Ms Cullinane about the submission of false invoices, she had a folder full of documents, including CND Computers and Truck Service Centre invoices, and expenses such as credit card expenditure. Mr Goodman said that the meeting was about spending too much money in these areas and also the legitimacy of the invoices. He also said that he could not be sure which companies were discussed at this meeting. He later said that a number of issues were raised at this meeting, including excessive expenditure on fuel cards, cameras, computers, expenses at the Business Unit, refreshments, tools, and payments to Officeworks and Bunnings.

Ms Cullinane said that, several years ago, she told Mr Goodman to stop using Computer Intersections for commercial reasons; namely, that she did not see a need to change from the Council's current suppliers to deal with a company in Queensland to purchase printer cartridges or computers. Ms Cullinane denied that she was aware that Mr Goodman was involved in the false invoicing of the Council. Ms Cullinane denied that she ever attended a meeting in relation to excessive expenditure or false invoicing at which Mr Goodman had apologised and cried.

While the extent of Ms Cullinane's knowledge of Mr Goodman's misconduct remains unclear, the Commission is satisfied that Ms Cullinane's warning to Mr Goodman – "but seriously like do you honestly think that somebody's not going to look at some of the financial stuff here over the last (unintelligible)" – reflects that she knew of misconduct on the part of Mr Goodman beyond his use of the Cabcharge and fuel cards and that his departure from the Council would expose the misconduct he had engaged in. This finding is supported by the evidence of Mr Byrnes and Mr Thompson of various complaints made to Ms Cullinane over a number of years (as set out above).

Ms Cullinane's legal representatives submitted that the Commission did not examine the involvement of other employees, including Mr Thompson and Mr Byrnes, in

facilitating the payment of false CND Computers invoices to Mr Goodman. It was submitted that logs from the Council's authority system would reveal the identity of the persons involved in inputting Mr Goodman's bank account details into the system and "the logs may also reveal whether those involved in entering this information were knowingly involved in facilitating Mr Goodman's fraud". The basis for the submission appears to be that Mr Goodman was not computer literate and therefore needed assistance to perpetuate the payment of false CND Computers invoices to him by the Council. Again, it is difficult to understand this submission, which ignores the evidence tendered in the public inquiry, of the telephone interception between Mr Goodman and Ms Baccam of 1 September 2015:

*BACCAM: Hello.*

*GOODMAN: Yeah. Tell Sharon [Dale], make sure Sharon knows about the new bank account.*

*BACCAM: Yeah, yeah I already put it, I will ring her yeah. Hmm.*

*GOODMAN: Tell her now because she's processing them now.*

*BACCAM: Yeah okay. I know, I know.*

*GOODMAN: Just say Malcolm, just say Malcolm brought some invoices up to Gary. New bank account. I just rang you and told you. Okay?*

*BACCAM: Yeah Hmm. Yep okay. Um you want me to do another one or no that's enough for today (unintelligible).*

*GOODMAN: Bye.*

Ms Dale was a creditor's clerk at the Council. There is no suggestion of impropriety on her part. This telephone interception clearly shows that Mr Goodman could easily arrange for bank account numbers in Council's system to be changed.

Furthermore, it is difficult to understand the submission, that evidence showing who inputted the bank account numbers, would reveal whether those involved in entering this information were "knowingly involved in facilitating Mr Goodman's fraud". This jump in logic is not explained in Ms Cullinane's submission. Yet, Ms Cullinane's representatives submit that:

*Given the fact that further evidence might bear upon the assessment of the legitimacy of an arrangement or a state of affairs or the credibility of witnesses and those are matters not explored, the Commission should identify the limits of the inquiry undertaken and Ms Cullinane given the benefit of any doubt*

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*or gaps in the evidence. If the Commission does not propose to do so, then Ms Cullinane should be afforded procedural fairness by providing to her an opportunity to have those matters further explored and examined by the Commission.*

The Commission rejects this submission. Ms Cullinane's representatives failed to demonstrate the nexus between the identity of the person who enters the bank account numbers and their purported involvement in Mr Goodman's fraud.

## Corrupt conduct

### Suman Mishra

Counsel Assisting did not make any submissions to the Commission that Ms Mishra should be found to have engaged in corrupt conduct in relation to her knowledge of Mr Goodman's misconduct. In these circumstances, the Commission has not considered whether it would be open to make any such findings.

### Lorraine Cullinane

Ms Cullinane was generally aware that Mr Goodman misused his position as Council's CFO to financially benefit himself to such a degree and of such seriousness that, if his conduct was exposed, he would receive a custodial sentence. Her knowledge included, but was not limited to, his misuse of the Council's Cabcharge cards and fuel card. Ms Cullinane wilfully and dishonestly failed in her duty as the Council's deputy general manager to cause the taking of disciplinary proceedings against Mr Goodman or to report his misconduct to the NSW Police Force.

This conduct is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that constitutes or involves the dishonest or partial exercise of Ms Cullinane's official functions.

In considering s 9(1)(a) of the ICAC Act, it is relevant to have regard to the common law offence of misconduct in public office. The elements of this offence have been considered in *R v Quach* (2010) 201 A Crim R 522. Redlich JA (with whom Ashley JA and Hansen AJA agreed) said at 535 that the elements were as follows:

- 1) *a public official;*
- 2) *in the course of or connected to his public office;*
- 3) *wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his or her duty;*
- 4) *without reasonable excuse or justification; and*

- 5) *where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

The offence is made out if the public official is reckless as to whether their conduct was a breach of their duties as a public official or where the public official knows their conduct was such a breach (see *R v Obeid (No. 11)* [2016] NSWSC 974).

Ms Cullinane's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Cullinane committed a criminal offence of misconduct in public office.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because Ms Cullinane held a position of trust within the Council and the conduct identified involved a significant breach of that trust. Furthermore, Ms Cullinane's conduct could have impaired public confidence in public administration given that, as the deputy general manager, she was a senior public official. Her conduct could involve the common law offence of misconduct in public office and the penalty for this offence is at large. Finally, she was aware that Mr Goodman's misconduct involved the misuse of public monies.

## Section 74A(2) statement

The Commission is satisfied that Ms Mishra and Ms Cullinane are "affected" persons.

### Ms Mishra

The evidence Ms Mishra gave was the subject of a direction under s 38 of the ICAC Act and, therefore, cannot be used against her in criminal proceedings, except for offences under the ICAC Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Mishra for giving false evidence at the public inquiry contrary to s 87(1) of the ICAC Act, when she denied knowledge of Mr Goodman's involvement in false invoicing.

Given that Ms Mishra no longer works for the Council, the issue of whether consideration should be given to the taking of action against her for a disciplinary offence or the taking of action with a view to her dismissal, does not arise.

### **Ms Cullinane**

The evidence Ms Cullinane gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against her in criminal proceedings, except for offences under the ICAC Act. There is, however, admissible evidence available, including a lawfully intercepted telephone call. There is also admissible evidence in relation to Ms Cullinane's position at the Council. The evidence of Mr Byrnes and Mr Thompson would also potentially be available to the DPP.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Cullinane for an offence of misconduct in public office.

Given that Ms Cullinane no longer works for the Council, the issue of whether consideration should be given to the taking of action against her for a disciplinary offence or the taking of action with a view to her dismissal, does not arise.





## Chapter 5: The ex gratia payments and other benefits received by Ms Cullinane

This chapter examines an allegation that, while the deputy general manager at the Council, Ms Cullinane received ex gratia payments totalling around \$800,000 to which she knew she was not entitled. This chapter also examines allegations that the Council paid for two Lexus vehicles and an alarm and security system for Ms Cullinane to which she was not entitled.

In 1993, Ms Cullinane commenced working for the Council in a contract position. In about 1995, she acted in the role of director of corporate services, and, in 1996 or 1997, she was permanently appointed to the role of director of corporate and community services. In late 1997, she became the deputy general manager. Mr Goodman reported directly to Ms Cullinane.

Ms Cullinane and Mr Goodman were involved in a relationship between approximately 1996 and 2002. They had also previously shared business interests, including owning video store businesses between about 1993 and 1997.

### The ex gratia payments

Between 1997 and 2015, Ms Cullinane was paid over \$800,000 through the Council's creditor system. That system was used by the Council to facilitate the payment of invoices and accounts. Payments made through this system did not have tax deducted by the Council.

Mr Goodman gave evidence that Ms Cullinane negotiated with Mr Fitzgerald to be paid the same superannuation as a former Council employee, John Maree, on a similar wage and the payments made to her through the creditor system were intended to compensate her for not being in the more lucrative superannuation scheme enjoyed by Mr Maree. Mr Goodman believed that Ms Cullinane was not eligible for that superannuation scheme through Council bungling. He explained that, "because the general manager or the deputy did not put a report up to Council she missed out going into that lucrative scheme through

no fault of her own". He calculated that, in order to be appropriately compensated, she would need to receive additional payments of between \$38,000 and \$47,000 every year. The exact amount would depend on her salary. Mr Goodman said the payments were made directly to Ms Cullinane from the Council's general account and were not paid into her superannuation account or through the Council's payroll system. Mr Goodman said he was responsible for calculating and making the payments to Ms Cullinane on behalf of the Council. Mr Goodman gave evidence that he "probably" made the decision to make the payments through the creditor system and the effect of the payments being made through that system was that tax would not be deducted by the Council.

During her evidence to the Commission, Ms Cullinane described the payments as "an ex-gratia payment(s) based on a superannuation calculation". She said Mr Fitzgerald approved an arrangement whereby she received these payments because she was ineligible for the defined benefits superannuation scheme. A defined benefits superannuation scheme is a type of superannuation scheme that guarantees a specified income upon retirement. The income is based on the employee's salary as at the time of retirement. Ms Cullinane agreed that she had received the ex gratia payments on an annual basis for about 20 years. The amounts she received ranged from \$38,000 to \$45,000 each year. Ms Cullinane gave evidence that, "[y]ou know, in my view and has always been my view that that payment was a legitimate payment to be made. It was offered to me by the general manager. I accepted it by the general manager and it's been paid ever since". She assumed that details of the arrangement had been placed on her personnel file.

The Council's financial records variously described these payments as "superannuation", "supplementary superannuation", "sup payment" and "superannuation contribution". For the sake of clarity, in this chapter, the payments will be described as "ex gratia payments".



The main issue for determination is whether Ms Cullinane, with the assistance of Mr Goodman, received the ex gratia payments knowing that she was not entitled to them. The Commission considered the following issues:

- How much did Ms Cullinane receive?
- Were the ex gratia payments subject to an approved arrangement between Ms Cullinane and the Council?
- Did the external auditors approve the ex gratia payments?
- Did Ms Cullinane receive payments to which she knew she was not entitled?
- Did Ms Cullinane deliberately avoid paying tax on the ex gratia payments?

#### How much did Ms Cullinane receive?

The evidence of Mr Goodman is that Ms Cullinane received the ex gratia payments from 1997 for a period of about 20 years. The Council's records tendered during the public inquiry only reflect payments made through the creditor system for between 2003 and 2014. These records are set out below.

On most occasions, the payments were made directly to Ms Cullinane's bank account by way of electronic transfer; although, on a few occasions the payments were made by cheque. Between 5 September 2003 and 22 October 2014, payments totalling \$652,785.54 were made to Ms Cullinane.

PER BOTANY BAY CITY COUNCIL RECORDS				
CREDITOR	INVOICE DATE	AMOUNT	METHOD OF PAYMENT	DESCRIPTION
I10016-Lorraine CULLINANE	05-Sep-03	\$ 43,391.92	Cheque no. 66532	Superannuation
I10016-Lorraine CULLINANE	09-Jul-04	\$ 45,591.62	Cheque no. 74729	Supp Payment
I10016-Lorraine CULLINANE	13-May-06	\$ 46,933.95	Cheque no. 85202	Supplementary Superannuation
I10016-Lorraine CULLINANE	30-Jun-07	\$ 48,352.50	Electronic transfer	Supplementary Superannuation
I10016-Lorraine CULLINANE	10-Mar-08	\$ 50,397.80	Cheque no. 96761	Supplementary Super
I10016-Lorraine CULLINANE	16-Oct-08	\$ 50,397.80	Electronic transfer	Supplementary Super
I10016-Lorraine CULLINANE	17-Mar-09	\$ 54,917.61	Electronic transfer	Supplementary Super
I10016-Lorraine CULLINANE	30-Jul-09	\$ 56,196.00	Electronic transfer	Supplementary Super
I10016-Lorraine CULLINANE	08-Dec-09	\$ 18,892.16	Cheque no. 103555	Superannuation
I10016-Lorraine CULLINANE	09-Apr-10	\$ 41,895.00	Electronic transfer	Superannuation
I619-Lorraine CULLINANE	17-Mar-11	\$ 60,180.75	Electronic transfer	Superannuation
I619-Lorraine CULLINANE	30-Jun-12	\$ 44,162.05	Electronic transfer	Superannuation
I619-Lorraine CULLINANE	22-Oct-14	\$ 91,476.38	Electronic transfer	Superannuation Contribution

CHAPTER 5: The ex gratia payments and other benefits received by Ms Cullinane

Only one of the cheques listed in the Council's records as paid to Ms Cullinane was in evidence before the Commission; namely, the cheque dated 8 December 2009 in an amount of \$18,892.16. The cheque is made payable to Ms Cullinane but is endorsed "Please pay cash". It is signed by Mr Goodman and Mr Thompson. There is no evidence before the Commission as to who cashed the cheque.

In her evidence to the Commission, Ms Cullinane accepted that some of the earlier payments to her were made by cash cheque. She said that she did not question the method of payment because she believed tax had been taken out. She was not questioned about later payments purportedly made by cheque.

Ms Cullinane's banking records only record the electronic transfer payments totalling \$447,578.09. The other payments, totalling \$205,207.45, are not recorded as deposits in her banking records.

The Commission cannot be satisfied that Ms Cullinane received any of the cheque payments. Mr Goodman gave evidence that he was able to cash cheques that were marked non-negotiable and made out to an entity called MB Consulting (these payments are dealt with in chapter 6). The Commission cannot discount the possibility that he cashed some or all of the cheques recorded in the Council's records as paid to Ms Cullinane; particularly given the evidence that at least one of these cheques was endorsed for cash payment.

On the basis of the Council's records and banking records, the Commission is satisfied that, between 2007 and 2015, Ms Cullinane received ex gratia payments totalling at least \$447,578.09. Given her estimate that she received between \$38,000 and \$45,000 a year over about 20 years, the actual amount she received would have been considerably higher than the \$447,578.09 indicated by the relevant records.

The electronic transfer amounts received by Ms Cullinane vary from \$48,000 in June 2007 to \$91,000 in October 2014. In 2009, Ms Cullinane received more than one electronic payment. Ms Cullinane said that the ex gratia payments were not always made on an annual basis and, on some occasions, what she received represented two years of the ex gratia payments. There is evidence before the Commission that the payment of \$91,476.38 on 22 October 2014 represented the ex gratia payments for 2012 and 2013 (this payment is dealt with below). Ms Cullinane accepted that she had received creditor remittance advices by email when an ex gratia payment was made through the creditor system by the Council; although, she could not recall how long that system had been in place.

A creditor remittance advice is a notification reflecting the payment made. Ms Cullinane further stated that she

did not notice that she had received some of the ex gratia payments because she did not check her bank balance and did not realise that money had gone into her account. She gave evidence that she was financially comfortable and had no need to check her bank balance. She said that she did not use internet banking. At the time of the public inquiry, she had approximately \$1.9 million in her bank account. The extracts of Ms Cullinane's bank statements in evidence before the Commission show that, in October 2014, she had approximately \$1.1 million in one account. Ms Cullinane said that she could not tell from the Council records which transactions related to which period.

**Were the ex gratia payments subject to an approved arrangement between Ms Cullinane and the Council?**

The Commission sought to establish the nature of the arrangement between Ms Cullinane and the Council. This proved difficult because of the lack of paperwork held by the Council and because the purported arrangement had commenced almost 20 years before the public inquiry.

The only relevant documents located by the Commission appear on Ms Cullinane's personnel file and are copies of two emails from February 1997, written by Mr Goodman to Mr Fitzgerald, then general manager. Ms Cullinane is neither the author nor a recipient of these emails.

The first email from Mr Goodman to Mr Fitzgerald was sent at 4.07 pm on 3 February 1997 and was titled "L. Cullinane Superannuation Contribution":

*Following a request from L. Cullinane the following amount has been calculated in leiu [sic] of superannuation contributions on her behalf by Council. It is understood that Lorraine was to be employed on the same terms and conditions as that applicable to the Director of Operational Services. On this basis her maximum superannuation contribution at the 9% level would be \$121.50 per week. This would effectively require Council to contribute a weekly amount of \$303.75 or 2.5 times her own contribution. Deducted from this is the superannuation [sic] levy that Council must pay for all employees irrespective of their non-membership of any superannuation scheme, at present this rate is 6% of gross earnings, or \$81.00 per week.*

*Maximum amount of Council Contribution...\$303.75  
Less Superannuation Levy.....\$81.00  
Amount in leiu [sic] of superannuation.....\$222.75*

*Regards*

*G Goodman*

Mr Maree was the director of operational services referred to in the email.

On 28 February 1997, Mr Goodman sent an email to Mr Fitzgerald containing details of Ms Cullinane's salary package:

*The following information is supplied regarding the salary package for L. Cullinane*

*Salary...Same as J Maree.....1350.00*  
*Car Allowance.....175.08*  
*Superannuation as per memo.....222.75*  
*Total.....1747.83*

*For Your Approval*

*Regards*

*G Goodman*

It was accepted by Mr Fitzgerald that his signature appears on the copy of the email of 28 February 1997 in Ms Cullinane's personnel file, with a handwritten note, "Agreed and approved. 28/2/97". A number of other handwritten notations appear on this email by unidentified authors such as: "Paid through the payroll from 31/1/1997. Previously paid through creditors week ending 28/2/1997" and "Pay office please commence pay from 31/1/97. Start date effective 23/10/1996".

The email of 28 February 1997 represents a breakdown of the salary package to be paid to Ms Cullinane and includes the additional \$222.75 "Superannuation as per memo". The memo referred to is the email from Mr Goodman to Mr Fitzgerald of 3 February 1997. The email of 28 February 1997 shows that it was intended that the additional \$222.75 was to be paid to Ms Cullinane as part of her salary package. The email itself does not explicitly state how the amounts were to be paid to Ms Cullinane but the Commission accepts that, because the \$222.75 per week was to be paid as part of the salary package, it was intended that this amount be paid to Ms Cullinane through the Council's payroll system. This is consistent with the handwritten notes on the 28 February 1997 email. The effect of paying the amount through the payroll system was that tax would be deducted before payment was made to Ms Cullinane.

A document on Ms Cullinane's personnel file titled "Employee Details" indicates that, at least for the period between 23 October 1996 and 9 November 1997, she did in fact receive the ex gratia payments through the payroll system. The "Employee Details" document includes a breakdown of Ms Cullinane's gross salary of \$1,572.75 for that period: "Sal. 1350 + Super 222.75 + Car Allowce 175.08". The amount of \$222.75 is consistent

with the amount noted in Mr Goodman's emails of 3 and 28 February 1997. The document shows that between 23 October 1996 and 9 November 1997, Ms Cullinane received a payment of \$222.75 as part of her gross salary.

Ms Cullinane gave evidence that she was not party to the email correspondence between Mr Goodman and Mr Fitzgerald and said she had no knowledge of it. The emails of 3 February and 28 February 1997 appear on her personnel file to which she did not have access until shortly before the public inquiry. She gave evidence that:

*My belief was that the ex-gratia payments were being paid through the creditors [system], I left those calculations to Mr Goodman to make, I trusted they were right, I received them but I never checked them, but I wasn't aware of the earlier emails or notes that you showed me on my file and I never at any stage understood they were being paid through payroll. I thought those payments were always being paid through creditors.*

She denied that she was aware that she was not entitled to the ex gratia payments paid to her through the creditors system.

Ms Cullinane said that, when Mr Fitzgerald retired from the Council in 2011, she asked him to make sure that all of her conditions of employment had been documented and he assured her that they had been. She did not ask Mr Fitzgerald for a copy of the relevant documents for her own records. She did not inform the new general manager, Ms Kirchner, about the ex gratia payments because she believed it was Mr Fitzgerald's responsibility to do so. When the issue was raised by the Council's human resources manager in July 2015, Ms Cullinane advised this person that the payment was an annual payment approved by Mr Fitzgerald and the details of the arrangement would be located on her personnel file.

Mr Goodman told the Commission that he believed the arrangement was originally documented on the "Council file" but that the relevant documentation was no longer on the file. He believed that the documentation did exist because he gave it to the late external auditor, Norm Mah Chut of Spencer Steer (now Hill Rogers Spencer Steer). Mr Goodman said that, although the external auditor and others had approved the payments, there was nothing on the Council's file to reflect that approval. Mr Goodman gave evidence that he assumed that Ms Kirchner had been informed of the payments by Mr Fitzgerald when he retired.

Mr Fitzgerald accepted that the email of 28 February 1997 represented his approval of the ex gratia payments to be made as part of Ms Cullinane's salary package. He said it was within his authority to reach such an agreement with Ms Cullinane. Mr Fitzgerald agreed that Ms Cullinane

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asked him to check on her personnel file that there was a document that related to the payments and "the document that I checked that was there was one that had Mr [John] Maree paid the same salary and it went line by line and then there was an amount which I presume it was derived from this document". Mr Fitzgerald agreed that he was referring to the email of 28 February 1997. Mr Fitzgerald said that Ms Cullinane's personnel file was kept in his office.

Mr Fitzgerald gave evidence that, to the best of his knowledge, he did not approve the making of the ex gratia payments through the creditor system. Mr Fitzgerald agreed that there was no basis for him to approve an employee receiving an annual payment through the creditor system. He agreed that approval of such a payment through that system would have been outside of his authority.

The Commission is satisfied that the emails of 3 and 28 February 1997 represent Mr Fitzgerald's approval of ex gratia payments to Ms Cullinane through the Council's payroll system. The Commission was unable to locate any documentation that represented authorisation of the payments of the ex gratia payments to Ms Cullinane through the creditor system.

The evidence, however, does not support a finding that Ms Cullinane was aware that the approval required payments to be made through the payroll system or that she was aware that the payments were indeed made through the payroll system for a period of time. The relevant documents appear on Ms Cullinane's personnel file to which she did not have access.

The Commission accepts Mr Goodman's evidence that he "probably" made the decision to process the payments through the creditor system for tax purposes. This evidence is supported by the objective evidence available to the Commission (outlined in further detail below) that Mr Goodman was responsible for calculating and processing the payments. There is no evidence that Mr Fitzgerald, Ms Cullinane or anybody else played a role in the decision to process the payment through the creditor system.

The arrangement purportedly took place some 20 years ago. Given the passage of time and the Council's generally poor recordkeeping, the Commission cannot be satisfied to the requisite standard that the agreement relating to the payments of the ex gratia payments made through the creditor system was undocumented at the time it was made.

However, there is also insufficient evidence to support a finding that Mr Fitzgerald provided authorisation for the ex gratia payments to be made through the creditor system. He could not recall doing so and there is no objective evidence to support such a finding.

Mr Fitzgerald's evidence was that he would not have the authority to make such a payment.

**Did the external auditors approve the ex gratia payments?**

Ms Cullinane said that Mr Chut, who worked for Spencer Steer, the Council's external auditor, had approved the ex gratia payments on two occasions and that he had described the payment as "generous but legal".

Mr Goodman gave evidence that the payments had been approved by Mr Chut and agreed that Mr Chut had described the payments as "generous but legal".

After this evidence was given at the public inquiry, records were obtained from the external auditors now known as Hill Rogers Spencer Steer.

One of these records, a note addressed to "Botany Council" regarding the "Lump Sum Payment to LC", and dated 23 December 2004, was produced to the Commission. The author of the file note is not noted on the document. It is set out below:

*An amount of \$45,591.92 was paid to LC by cheque during the 2004 financial year. As per the memo from the General Manager, this is the net amount with the Council bearing the tax consequences. No amount was included on LC's group certificate and no tax was accounted for or paid to the ATO.*

*Reconciliation:*

<i>Amount paid by cheque to LC</i>	<i>45,591.92</i>
<i>Grossed-up amount</i>	<i>88,528.00</i>
<i>Tax at 47%</i>	<i>42,936.08</i>
<i>Net amount</i>	<i>45,591.92</i>

*As this amount was paid in cash, it would ordinarily be classified as wages. Therefore, gross amount should have been included in the group certificate and taxed accordingly.*

*As per our discussions, you have to [sic] decided to account for the tax payable by amending the 2004 FBT return. This can be achieved by treating the amount paid as an expense payment benefit, whereby the payment is treated as a reimbursement of expenses incurred by the employee. In this case, substantiation of the specific expenses is not required, but some form of letter or memo should be obtained from the employee stating the payment represented an expense payment benefit.*

*Recommended action:*

1. Have the 2004 FBT return amended per our calculations. A completed amendment request has been sent to you that can be faxed directly to the ATO.
2. Request LC to prepare a memo that can be filed with the FBT calculations. As a guide, the memo should include the following:
  - as per discussions with XXXXXXXX, I request to be reimbursed for various expenses I have incurred such as (as example, interest on mortgage, telephone bills, etc)
  - the amount of the reimbursement-\$45,591.92
  - a statement that the amount is to be treated as an expense payment fringe benefit for taxation purposes.
3. LC's group certificate should be amended, whereby the reportable fringe benefits amount should be increased by \$88,525.

Another Spencer Steer document shows that the payment to Ms Cullinane of \$45,591.92 was paid by cheque number 665532. It will be recalled that the Council's records show that a payment of \$45,591.62 was made to Ms Cullinane by way of cheque number 74729 in 2004. That amount and cheque number are different from those recorded in the Spencer Steer document.

Ms Cullinane's legal representatives submitted that the 2004 Spencer Steer file note objectively demonstrates that the ex gratia arrangement was disclosed to, considered and approved by, the Council's external auditor.

The submission is rejected for the following reasons. First, there is nothing in the file note that refers to the payment as an ex gratia payment or that it had been made to compensate her for not having been included in a superannuation scheme. There is nothing in the file note to show an agreement that the Council would pay tax on large cash payments to Ms Cullinane from 1997 onwards. The 2004 memorandum makes clear that cash payments to employees, unless for reimbursements, must be made through payroll and taxed accordingly. There is nothing in the file note that confirms that there was an agreement for payments to be made on an ongoing basis and outside the payroll system. Finally, Ms Cullinane's submission fails to point to compliance with the directives outlined in the memo. No letter was obtained from Ms Cullinane stating the payment was an "expense payment benefit", nor is there evidence that her group certificate was amended.

The Commission is satisfied that the file note dated 23 December 2004 establishes only that the external auditors were aware of one cash payment that was made to Ms Cullinane and that the payment, based on

discussions with Mr Fitzgerald, was to be treated as a reimbursement of expenses.

The Commission is satisfied that there are no contemporaneous records in evidence before the Commission that the external auditor approved the payment of ex gratia payments to Ms Cullinane. The evidence of Ms Cullinane and Mr Goodman was that they believed that the ex gratia payments had been approved by the external auditor. The basis on which the payments were purportedly approved cannot be established because of the lack of relevant contemporaneous records. Again, given the passage of time, the Commission is not able to make a finding that the external auditor did not, at some time, consider the ex gratia payments made to Ms Cullinane.

### **Did Ms Cullinane receive payments to which she was not entitled?**

By July 2015, enquiries were being made at the Council about the nature of the ex gratia payments to Ms Cullinane.

#### **Mr Goodman contacts Mr Fitzgerald**

At 4.45 pm on 27 July 2015, Mr Goodman contacted Mr Fitzgerald by telephone. The conversation was lawfully intercepted and reveals that questions were being asked about the nature of the ex gratia payments by the human resources manager and Ms Kirchner, the general manager:

*GOODMAN: We might need to get a letter from you about Lorraine's super.*

*FITZGERALD: Righto what's happening?*

*GOODMAN: She was gonna ring you.*

*FITZGERALD: Right.*

*GOODMAN: And we had the Personnel Manager kicking up a stink that there's nothing on the file. I said hang on we've been paying this for 20 years. Ah, no, no, no...*

*GOODMAN: ...I can't remember, I think I might've charged Lorraine's super wrong. I charged the wrong account.*

*FITZGERALD: Right okay.*

*GOODMAN: And the new [human resources manager] said, what's this? I said it's an arrangement, you know, I just told them the story and anyway doesn't matter. Ah, there is, there's very scant details on file so -*

*FITZGERALD: Yeah.*

*GOODMAN: I was talking to Lorraine I said*

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*probably better to see [Mr Fitzgerald], get a proper letter from when it all started and say this is what it's about, this is how we're doing it and it's allowable. Rather than you know, having nothing you know what I mean even though. As I said, the auditor who signed it off is dead now so we're totally fucked. Remember Norm [Mah Chut] went through all that shit and said yeah, all fine but now he's fucking dead.*

**FITZGERALD:** *Yeah, but his signature must be somewhere.*

**GOODMAN:** *Oh, we can't find it.*

**FITZGERALD:** *Oh okay righto.*

**GOODMAN:** *It's not on the file that's the main thing.*

**FITZGERALD:** *Righto, yeah*

**GOODMAN:** *It doesn't matter it's (unintelligible) or a handwritten thing saying yes this is what – and the process is there if anyone looks at it in the future. I spoke to Lara [Kirchner] about it, but Lara didn't know what it was I said this is what it is blah, blah, blah. I said it was based on what a previous Director – John Maree was getting and we pay it to her, we've been paying it for 20 years.*

**FITZGERALD:** *Yeah.*

**GOODMAN:** *Oh, have we, I didn't know about it. It doesn't matter whether she knew or not, um, that's between you and [Mr Fitzgerald], not me.*

**FITZGERALD:** *But, but more importantly she doesn't have to know.*

**GOODMAN:** *That's right exactly.*

**FITZGERALD:** *Yeah, yeah.*

**GOODMAN:** *But I said look Lorraine the easiest way is ring [Mr Fitzgerald], Lara [Kirchner] said I think he's in Queensland ... And um, you can get a letter off him, and fucking, you know.*

**FITZGERALD:** *And you know that's going to be on my bill –*

**GOODMAN:** *Yeah that's fine.*

The telephone call is difficult to understand because Mr Goodman refers both to what he was saying to Ms Kirchner and what Ms Kirchner was saying to him without identifying the speaker. Nevertheless, the telephone call represents Mr Goodman seeking confirmation from Mr Fitzgerald of what he refers to as the 20-year arrangement in relation to the ex gratia payments to Ms Cullinane. Mr Goodman requests that Mr Fitzgerald provide a letter about the payments. For his part,

Mr Fitzgerald does not expressly agree to provide a letter for Ms Cullinane. In his evidence, Mr Goodman agreed that Mr Fitzgerald never provided the letter he sought.

Mr Fitzgerald's evidence was that, in August 2015, in a meeting which Ms Kirchner requested with him, she raised Ms Cullinane's superannuation payments and he advised her that she should check what was on the file.

Ms Kirchner provided a statement to the Commission in which she states that, in around July to September 2015, Ms Cullinane advised her that the ex gratia payments had been approved by Mr Fitzgerald. Ms Kirchner states that, in about late August or early September 2015, Mr Fitzgerald verified that he had approved the payments to Ms Cullinane and that he would try to find any relevant documentation. Mr Fitzgerald did not produce any documentation to her.

**Mr Goodman contacts Ms Cullinane**

Mr Goodman prepared a memorandum addressed to Ms Kirchner, dated 27 July 2015, and titled "Confidential report on Equivalent Superannuation Payments".

The memorandum is set out below:

*Lara,*

*I provide the following report in relation to Superannuation equivalent payments made to Councils [sic] Deputy General Manager.*

*Following the employment of Councils [sic] Deputy General Manager, it was determined that as a condition of her employment she be paid an amount equivalent to a superannuation calculation. This amount was based on a similar calculation to the General Managers [sic] package.*

*The General Managers [sic] Supplementary Superannuation package was prepared by an external salary consultant and both calculations were subject to separate audit by Councils [sic] signing Audit Partner.*

*I now provide details of the payment made on 22 October 2014 with the calculation. This calculation is 9% of the annual salary multiplied by 2.5 times. This is the nett payment.*

*2011 salary \$203,177 x 9% = \$44,275.73  
2013 salary \$209,780 x 9% = \$47,200.50*

*TOTAL DUE \$91,475.72*

*Voucher payment \$91,476.00*

*Regards*

*Gary Goodman  
Chief Financial Officer  
City of Botany Bay Council*

The "voucher payment" of \$91,476 identified in this memorandum is the same as the amount paid into Ms Cullinane's bank account by way of electronic transfer on 22 October 2014. Mr Goodman agreed that he wrote this memorandum and said that he did not believe that he received any assistance when drafting it. It appears that Mr Goodman made an error in the memorandum as the evidence before the Commission is that Ms Cullinane's salary of \$203,177 reflects her 2012 salary and not her 2011 salary as stated in the memorandum. The Commission is satisfied that the two payments totalling \$91,476 represented the ex gratia payments for 2012 and 2013, and not for 2011 and 2013 as stated in Mr Goodman's memorandum.

Ms Cullinane agreed that Ms Kirchner and the human resources manager were making enquiries about the ex gratia payments with Mr Goodman. She denied speaking to Mr Goodman about Ms Kirchner's enquiries. She denied that she was aware that Mr Goodman had to prepare a memorandum for Ms Kirchner and stated that she was not involved in its preparation and was not aware of its existence until Ms Kirchner showed it to her. She agreed that it would have been highly improper for her to be involved in the preparation of this document given she was the beneficiary of the arrangement.

A lawfully intercepted telephone call made at 2.49 pm on 28 July 2015 revealed that Ms Cullinane and Mr Goodman did in fact discuss the memorandum and that Ms Cullinane made suggestions to Mr Goodman as to the contents. Mr Goodman can be heard typing the memorandum as they speak. During the telephone conversation, Mr Goodman described the document he was preparing as an email. It is clear from the contents of the conversation set out below that he was preparing the memorandum dated 27 July 2015. It is necessary to set out a large extract of the conversation in order to show the context of certain comments made by Ms Cullinane. The extract is set out below:

CULLINANE: *Darl.*

GOODMAN: *Yeah, you there?*

CULLINANE: *Yep.*

GOODMAN: *Um, I'm just doing an email to Lara -*

CULLINANE: *To Lara?*

GOODMAN: *Yeah, she rang me this morning about your super.*

CULLINANE: *Oh, yeah.*

GOODMAN: *She wants, she wants it all fixed up today and put to bed. I said okay I can do that. Um,*

*I've reworked out your calculation, your calculation was spot on to the dollar.*

CULLINANE: *Yep.*

GOODMAN: *Um, now I'm just writing an email now I just want to run it by you before I send anything. I said I'm providing the following report in relation to superannuation equivalent payments made to Council's Deputy General Manager. Following the employment of Council's, I haven't used your name here, Council's Deputy General Manager, it was determined that she had suffered a loss of superannuation benefits due to inaction on her employment by Council's Mayor. The Deputy -*

CULLINANE: *No, no don't don't put that.*

GOODMAN: *But I thought it was though. He, he, he, Peter had to get approval from the Mayor, I know that, for any employment, and we eventually did it by resolution of Council.*

CULLINANE: *No, no but I don't, I don't think we want to say that, because see the Mayor was very-the, the, the Mayor-I think the Mayor appointed me, um, I, I can't remember but I think all you need really to say is, um, you know -*

GOODMAN: *Due to inaction on her permanent employment, that's what I'm saying.*

CULLINANE: *No but, but why can't we say it was just a condition of employment.*

GOODMAN: *I can do that, yeah.*

CULLINANE: *You know like at the end of the day you-can't we just say it was-if it was negotiated as part of her -*

GOODMAN: *Okay, okay following of the employment of the Deputy General Manager it was determined that as a condition of her employment -*

CULLINANE: *- she would receive -*

GOODMAN: *- I'm going to make this short.*

CULLINANE: *Yeah, because don't give 'em too much information,*

GOODMAN: *No, I know, I know.*

CULLINANE: *because then something comes back and somebody says well that's -*

...

*- just listen to me for a minute though. Somebody comes back and goes through all the dates and then*



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says, well no that's not true the defined benefits system ended a year earlier, so how did that come into it. Just, just say it was, it was -

GOODMAN: No, no you're right, you're right, you're right; a condition of her employment.

CULLINANE: Just say this was, this was negoti- this, this was approved as part of her condition of employment.

GOODMAN: - so the condition of her employment (unintelligible) she be paid, paid an amount, an amount equivalent to a superannuation -

CULLINANE: Calculation.

GOODMAN: - calculation. Superannuation calculation.

CULLINANE: And I think all you have to say then is, this amount was based -

GOODMAN: Yep.

CULLINANE: - on a similar calculation, or the same calculation or similar calculation.

GOODMAN: This amount was based-yep.

CULLINANE: - on a similar calculation to the General Manager's -

GOODMAN: - calculation to the General Manager's, Manager's package.

CULLINANE: Yeah, um, yeah, um, which, which, which, um, which was, um, which you understand or which was, um, prepared by an external -

GOODMAN: Visitor.

CULLINANE: - external, um consultant.

GOODMAN: - the General Manager's superannuation-ah, what did they call Peter's, they called Peter's, um, supplementary superannuation, supplementary.

CULLINANE: Yeah, and I think, and I think we just say that it was, um prepared by an external consultant and audited by, audited and, um, um -

GOODMAN: The General Manager's supplementary superannuation package was -

CULLINANE: No, yeah, yeah, but but I think at the end of the day you've got to be clear that, that's not actually true because Norm audited mine as well.

GOODMAN: No, no that's what I'm gonna say no, no, because I said the amount was based on

a similar calculation to the General Manager's package. The General Manager's supplementary superannuation package was prepared by an external auditor, an external consultant, salary consultant -

CULLINANE: And both, and and both calculations.

GOODMAN: And both calculations were audited by Council's, both calculations -

CULLINANE: Were audited -

GOODMAN: - were audited -

CULLINANE: - and deemed, um, um, I don't want to put legal but I don't want to put appropriate either and was-oh, just put audited that's it.

GOODMAN: Audited -

CULLINANE: By the, by the external auditor.

GOODMAN: And audited, and were audited and approved.

CULLINANE: No I don't know if approved is right. Um, it was audit, subject to audit by the external auditor.

GOODMAN: It was subject to audit -

CULLINANE: By Council's external auditor.

GOODMAN: Fuck! Subject to-I just put subject to audit that's it.

CULLINANE: Yeah, audit yeah.

GOODMAN: This was completed by Council's, um -

CULLINANE: Well just put, by, by audit, by, well, by, by, yeah. Um audit, audit, yeah, um -

GOODMAN: The General Manager commenced officially on the-when did you start here?

CULLINANE: I don't know. But I don't, but, but see I know the date on my record is different than the date I started (unintelligible).

GOODMAN: We know, we know.

CULLINANE: But, but, but is that all she needs? I mean all she needs is to say that the audit was done, that, that it was approved payment -

GOODMAN: Okay, well, how, how about this, this is what I'm gonna say. I provide the following report in relation to superannuation equivalent payments made to Council's Deputy General Manager. Following employment of Council's Deputy General Manager it was determined that as a condition of

her employment, she be paid an amount equivalent to a superannuation calculation. This calculation this amount was based on a similar calculations [sic] in the General Manager's Supplementary superannuation package. The General Manager's supplementary superannuation package was prepared by an external consultant, and both calculations were subject to audit. That's it.

CULLINANE: Yeah.

GOODMAN: I now provide details of the, of the calculation that's it.

CULLINANE: Yeah, and just leave it quite simple, because sometimes you can put more information in and it and it hangs us.

GOODMAN: No I understand it raises, it raises more questions.

CULLINANE: That's right.

GOODMAN: So the General Manager's supplementary superannuation was prepared by an external salary consultant and both calculations were subject to full -

CULLINANE: Yeah, and then put the thing these payments, payment, payments have been made in accordance with the approval, the approvals granted. Yep I don't know why she's so hot to trot to do it today, but if she wants to get it—she might just want to get it out of the road.

GOODMAN: She's going away she just wants it finished.

During her evidence at the public inquiry, Ms Cullinane said that she could not recall this conversation or that she had been involved in the preparation of the memorandum. She agreed that Mr Goodman was preparing a memorandum for Ms Kirchner during the conversation and she accepted that she should not have had any involvement in the preparation of the document. After some questioning, she agreed that her conduct in relation to the preparation of the memorandum was highly improper because the memorandum related directly to a significant ongoing payment she had been receiving from the Council. She accepted that it was a joint effort between her and Mr Goodman to prepare the memorandum.

Ms Cullinane said she told Mr Goodman "don't give 'em too much information" because he had a tendency to add too much information. She denied that her use of the term "and it hangs us" was an expression of concern that further enquiries might be problematic for her. She said that her use of the words "hangs us" was simply "a poor

choice of words". She denied that she was concerned about enquiries being made about the ex gratia payments and stated that:

*It wasn't something that I was in collusion with Mr Goodman over, it was none of that. I received a payment for those periods of time what [sic] I genuinely believed I was entitled to. I believe it was approved by the general manager, I believe it was subject to a fringe benefits tax and I didn't believe that I had to declare it.*

She said that she wanted to make sure that Mr Goodman put accurate information in the memorandum.

There are aspects of the telephone call that are concerning to the Commission. Equally, there are parts of the telephone call that corroborate the evidence given by Ms Cullinane and Mr Goodman. There is no doubt that Ms Cullinane and Mr Goodman are speaking candidly to one another during this conversation. The aspects that corroborate the evidence given by Ms Cullinane and Mr Goodman are that they believe the payments were a condition of Ms Cullinane's employment and that the payments were audited by Mr Chut.

There are, however, parts of the conversation that raise questions about the arrangement. Ms Cullinane encourages Mr Goodman to not "give 'em too much information because then something comes back and somebody says, well no that's not true the defined benefits system ended a year earlier, so how did that come into it", and tells Mr Goodman to, "just leave it quite simple, because sometimes you can put more information in and it and it hangs us".

The Commission does not accept that Ms Cullinane's use of the words "and it hangs us" simply represented a poor choice of words on her part. The Commission is satisfied that she used those words because she had concerns about further enquiries being made about the ex gratia payments. The nature of those concerns is not clear to the Commission given the evidence advanced by both Ms Cullinane and Mr Goodman at the public inquiry was that she was entitled to these payments because she had missed out on a more lucrative superannuation scheme, known as the defined benefits scheme. Ms Cullinane was, of course, aware by the time of this conversation that there were no documents on her personnel file to support the receipt of the ex gratia payments through the creditor system.

Ms Cullinane's legal representatives submitted that Mr Goodman called Ms Cullinane and that there was no evidence of premeditation by Ms Cullinane. It was submitted in the context of the telephone conversation that Ms Cullinane appeared to want Mr Goodman to

CHAPTER 5: The ex gratia payments and other benefits received by Ms Cullinane

record the exact terms of the agreement and ensure that he was confined to the actual events as they had been agreed at the time.

The Commission is satisfied that Mr Goodman did contact Ms Cullinane and asked to "run it [the memorandum] by" Ms Cullinane before he sent it to Ms Kirchner, and Ms Cullinane did not initiate the conversation. The Commission is satisfied, however, that Ms Cullinane effectively dictated to Mr Goodman what details should be included and those that should be excluded in the memorandum. Ms Cullinane was concerned about Mr Goodman's original proposed wording that Ms Cullinane had "suffered a loss of superannuation benefits due to inaction on her employment by Council's Mayor", and told Mr Goodman to not "give 'em too much information" because somebody could ask questions about when the defined benefits scheme had closed.

The Commission is satisfied that Ms Cullinane's contributions to the memorandum were deliberate and careful. The Commission, however, is not satisfied that the evidence, including the telephone call of 28 July 2015, provides sufficient evidence to support a finding that Ms Cullinane received payments to which she was not entitled.

### Did Ms Cullinane deliberately avoid paying tax on the payments?

Ms Cullinane said that Mr Goodman had told her the tax on the ex gratia payments had been paid by the Council through fringe benefits tax. She therefore assumed the payments she received were net payments in relation to which she did not have to pay tax. She was not aware of any written document that stated that tax would be paid by the Council and agreed that she had never seen evidence that tax had been paid by the Council. She said she did not believe that she had a duty to disclose the receipt of the ex gratia payments to the Australian Taxation Office because she believed that the Council was paying tax on those payments on her behalf through fringe benefits tax. She denied being aware that tax returns included a provision for fringe benefits tax, stating, "I don't do my own tax".

Mr Goodman said he believed that he "probably" made the decision not to pay the amounts through the Council's payroll system and in effect this meant that tax was not paid on these amounts by the Council except for one occasion in 2014. In relation to the payment of \$91,476.38 of 22 October 2014, which represented two ex gratia payments, Mr Goodman arranged for the Council to pay tax on Ms Cullinane's behalf through fringe benefits tax. He told Ms Cullinane he had paid the tax on her behalf on this occasion. Mr Goodman said that on more than

one occasion he told Ms Cullinane that tax had been paid in relation to the ex gratia payments but then said that this conversation was in relation to the 2014 payment of fringe benefits tax. Mr Goodman also said that he never told her that tax should be paid by her in relation to the payments but he did assert that he told Ms Cullinane that the payments should be paid into an approved superannuation fund.

The Commission is not satisfied that Ms Cullinane intentionally avoided paying tax.

### The ex gratia payments – conclusion

From the outset, the Commission's efforts to establish the facts about the arrangement in relation to the ex gratia payments were hampered by the passage of time and the lack of documentation held by the Council. These factors inevitably made the Commission's task considerably more difficult.

The objective evidence available to the Commission, namely the emails of 3 and 28 February 1997 and the lawfully intercepted telephone call of 28 July 2015, show that:

- Mr Fitzgerald approved an arrangement for additional payments to Ms Cullinane to be made as part of her salary package
- Mr Goodman and Ms Cullinane believed the payments were a condition of her employment and they had been approved by Mr Chut.

The Commission is not satisfied to the requisite standard that Ms Cullinane did not believe she was not entitled to receive the ex gratia payments.

### The Lexus vehicles

Mr Goodman gave evidence that a black Lexus IS250 motor vehicle was purchased for Ms Cullinane by the Council and registered in her name. He said that Mr Fitzgerald authorised the purchase. Mr Goodman believed the car cost around \$60,000. Mr Goodman said that Ms Cullinane already had a Council car and was not entitled to have the Lexus vehicle purchased for her by the Council. He believed that this happened in about 2009, a few years prior to Mr Fitzgerald's retirement from the Council in 2011, but could not be sure of the date.

Ms Cullinane agreed that she had received one car purchased by the Council using Council funds in 2009 or 2010. She initially said that the 2010 Lexus vehicle was purchased in lieu of an ex gratia payment and an adjustment to a salary increase. Ms Cullinane said she and Mr Fitzgerald had agreed that, instead of a salary increase and an ex gratia payment for the relevant year, she would receive a car. She did not know whether this agreement

had been documented. She said that she did not recall the value of the vehicle. When she first gave evidence, she said that she only had one Lexus vehicle registered in her name, which was a vehicle purchased in April 2010.

After a break in proceedings, Ms Cullinane gave evidence that she had in fact owned two Lexus vehicles. One purchased in 2007 and one purchased in 2010. She then said that the 2007 Lexus had been purchased partly in lieu of an ex gratia payment from the Council and partly in lieu of a salary increase. She said that she assumed that she traded in the 2007 Lexus for the 2010 Lexus and she did not know if she or the Council paid the balance of the purchase price for the new car. She could not explain why she was entitled to such an ex gratia payment in 2007.

Mr Fitzgerald could not recall approving the purchase of a Lexus vehicle for Ms Cullinane using Council funds. His evidence was that to approve such use of Council funds "you'd have to have a very good reason as to why you'd do it" and documentation to support the decision to approve such a purchase, such as an invoice or quotation. He could not recall Ms Cullinane ever coming to him and asking to receive a car rather than an ex gratia payment.

Records obtained by the Commission from Roads and Maritime Services (RMS) establish that two Lexus vehicles were registered in Ms Cullinane's name. On 21 December 2007, a Lexus vehicle was purchased in her name for \$76,000 from Lexus of Chatswood. On 10 April 2010, a Lexus IS250 was purchased in her name for \$71,400 from Lexus of Chatswood. The available records from the RMS do not show who paid for the vehicles.

Lexus of Chatswood produced a contract for the purchase of a Lexus IS250 dated 17 March 2010. The contract shows that a 2007 Lexus IS250 was traded in for \$50,000 and the purchaser paid \$25,000 for the new vehicle. Ms Cullinane is named as the purchaser. Ms Cullinane gave evidence about the trade-in of the 2007 Lexus for the 2010 Lexus before the Lexus of Chatswood records were available. Her evidence about the trade in is corroborated by these records.

There are no other records in evidence before the Commission in relation to the two vehicles.

The only evidence before the Commission that the Council paid for a Lexus vehicle for Ms Cullinane comes from Mr Goodman and Ms Cullinane.

Mr Goodman claimed that the Lexus vehicle was purchased in 2009 for \$60,000 with Mr Fitzgerald's approval. Ms Cullinane claimed that the 2007 Lexus vehicle was purchased by the Council in lieu of a salary

adjustment and an ex gratia payment and this was approved by Mr Fitzgerald.

There is a lack of objective, independent evidence about the circumstances surrounding the purchase of the 2007 Lexus vehicle. Ms Cullinane's evidence about the purchase of this vehicle was vague. She claimed to have forgotten that she owned two Lexus vehicles. Mr Goodman's evidence was typically unreliable in relation to the year of purchase and the amount for which it was purchased. Ms Cullinane gave evidence that she received the 2007 Lexus vehicle in lieu of an ex gratia payment and a salary increase. Ms Cullinane received an ex gratia payment on 11 July 2007, which was paid by the Council on 30 June 2007, but again it is not possible for the Commission to establish which payments correspond with which years without supporting documentation.

There is insufficient evidence to establish that Mr Fitzgerald approved the purchase of any Lexus vehicle for Ms Cullinane.

The Commission is satisfied that the provision of the 2007 Lexus vehicle to Ms Cullinane reflects the culture of entitlement that was pervasive at the Council and also reveals a lack of appropriate or adequate internal procedures surrounding the use of Council funds.

## The security and alarm system

Mr Goodman told the Commission that in the mid-2000s, Ms Cullinane had concerns about security at her home. He said that someone had tried to break into her home and he was concerned about her safety. Mr Goodman said he arranged for the installation of a top-of-the-range security and camera system at her home for about \$50,000. He initially stated that he believed that this was paid for by the Council through false invoicing but then said that he was not sure whether this was the case. He claimed that Mr Fitzgerald had approved the work. Mr Goodman had no knowledge of Ms Cullinane contributing any money towards the bill. Mr Goodman believed that he told her that the Council would pay for the work. He was not sure whether Ms Cullinane's security concerns were related to her work. Mr Goodman said that he had not seen a policy called the security of servant's policy.

Ms Cullinane said that she had a security system installed in her house in around 2003 and this was paid for by the Council. There were about seven cameras and an alarm system installed by Kevin Maton of Emu Alarms. Ms Cullinane said that the Council's security of servant's policy effectively said that, if a member or senior officer of the Council raised concerns about their safety, then the

CHAPTER 5: The ex gratia payments and other benefits received by Ms Cullinane

general manager could authorise a review of that security and incur the necessary expenditure to reduce the risk to that member or officer of the Council. She said that while it was not written in the policy "there would have to be some element of concern that was work related or could be work related" to enliven the discretion and expenditure under the policy.

She believed the policy had been used to the benefit of other people at the Council. She presumed the policy was still in force at the time of the public inquiry but she had not had reason to look at it for a long time. She maintained that she would not have accepted the benefit unless she believed it met the criteria of the policy. She had not seen the policy for a number of years, probably since 2003. She accessed the policy through the policy register that was kept in the administration area.

She said that she discussed her security concerns with Mr Goodman and Mr Fitzgerald and sought their advice about the issue. Ms Cullinane said that she felt she was being followed and somebody had been around her home. She did not know whether there was a direct link with her Council work. She did not report the matter to the police.

There was no written record reflecting her discussions with Mr Fitzgerald about her personal welfare and any purported link with work. Ms Cullinane presumed that the Emu Alarms invoice for the work undertaken in relation to the installation of the security and alarm system recorded that the Council had paid for works done at her house. She assumed that the Emu Alarms invoice would have been approved by Mr Fitzgerald pursuant to the Council's security of servant's policy. She also said the Council may have kept the documentation regarding the purchase of the security system on the security of servant's file. She did not fill out any documentation herself and was not aware if Mr Fitzgerald had made any notes of the conversations with her. She did not consider that this was an inappropriate use of Council money.

Mr Fitzgerald gave evidence that he "would have approved it [the alarm system] but I don't know if I did". Mr Fitzgerald said that Ms Cullinane had come to see him on a number of occasions about being "followed from work and followed from home, somebody sitting outside her house, and generally she believed entering her house while it was under construction". This was occurring when her house was being renovated. Mr Fitzgerald said that Ms Cullinane reported that she was followed from work by a man and later saw the same man at her home. He said that Ms Cullinane told him that she observed someone following her out of the Council property and she saw the same person at her house on more than one occasion. He did not advise her to tell the police.

He did not make a record of his concern for the safety of Ms Cullinane.

Mr Fitzgerald said that the Council had a written policy that related to the security of servants. He said this policy was kept with the rest of what was then known as the corporate plan and there were many copies throughout the whole of the Council. At the public inquiry, he said he had not seen the policy for over a decade but believed it gave him the authority to approve a reasonable alarm system or security system. He agreed that the policy only authorised expenditure when the risk to the employee was work-related "or arises out of their work".

Mr Fitzgerald could not recall whether he had approved the installation of the security or payment for the system by the Council. There is no documentary evidence available that assists in establishing one way or the other.

Mr Maton told the Commission that an alarm system and a camera system were installed at Ms Cullinane's home. Mr Maton recalled: "I believe she was having issues being harassed". He believed that the work was carried out in around 2003 and the value of the total work was \$20,000. He invoiced the Council for the work and was paid by the Council. He could not recall what details he wrote on the invoice but said it would most probably have recorded: "supply and installation of camera and alarm system at Lorraine's place or that address". He received instructions from Mr Goodman to install the system.

No documents authorising the payment and no invoices have been located. This is not particularly surprising given the transaction took place in 2003.

The Council was unable to locate a security of servant's policy. The Commission does not consider that this necessarily leads to a conclusion that the policy did not exist. The policy was an historical one and it is clear to the Commission that the Council did not have a robust system of recordkeeping.

However, even if a policy existed, there needed to be a connection between any security issue and work in order to justify the Council incurring any expense. Ms Cullinane was unable to assert that there was such a connection. Mr Fitzgerald could not recall approving the security and alarm system but did think there had been some security concerns involving Ms Cullinane and the effect of his evidence was that, in his view, there was a sufficient connection to work.

Given the lack of objective evidence, the Commission is not satisfied that Ms Cullinane improperly arranged for the Council to pay for the installation of an alarm and security system at her home.

### **Section 74A(2) statement**

The Commission is satisfied that Ms Cullinane, Mr Goodman and Mr Fitzgerald are "affected" persons. The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with regard to the prosecution of any of Mr Goodman, Ms Cullinane or Mr Fitzgerald for any offence in relation to the matters canvassed in this chapter.

## Chapter 6: Use of the Council's credit cards and other issues

This chapter examines allegations that Mr Goodman and Mr Fitzgerald misused Council corporate credit cards for their own personal benefit, that Mr Fitzgerald authorised the purchase of a Lexus vehicle using Council funds for Ms Baccam, and that Mr Fitzgerald received cash payments from the Council to which he was not entitled through either MB Consulting or Bloggs Consulting.

Mr Fitzgerald commenced working for the Council in 1988 as the director of personnel. In 1993, he was appointed to the role of deputy general manager. From 1997 to 2011, he was the general manager of the Council. Prior to commencing at the Council, Mr Fitzgerald was the mayor of Drummoyne Council.

### Mr Fitzgerald's Council credit cards

Mr Fitzgerald was issued with three Council corporate credit cards: namely, one Diners Club credit card and two Commonwealth Bank MasterCard credit cards.

In his evidence to the Commission, Mr Goodman accepted that the statements for these cards were not seen by Mr Fitzgerald. He told the Commission that the Diners Club statements were sent to him (Mr Goodman) and he placed them in the bottom drawer of his desk. They stayed there until it came time to conduct an audit at which time he would arrange for someone to put the statements in order and reconcile them and then transfer the money from a suspense account to the correct costing areas. Mr Goodman said that Mr Byrnes received the MasterCard statements. Mr Goodman said that he approved the payment of all the corporate credit card expenses.

Based on the Council's review of the credit card statements, the Council's legal representatives submitted that, between 2002 and 2012, the total amount of expenditure on the three credit cards totalled over \$2.4 million.

### Mr Goodman's use of Council credit cards

During the public inquiry, Mr Goodman admitted that he used the Council credit cards issued to Mr Fitzgerald for his personal expenditure. This included transactions at Abruzzo Ceramics, Australian Native Landscapes, Balmain Rentals, Davidsons Nurseries, Gas Motorsport, Go Fast Bits, Haltech and Mabuzi. Although he did not have possession of the credit cards, he was able to use the card numbers for these transactions. He also authorised the payment by the Council of the credit card accounts.

The Commission obtained available records, including invoices and receipts from merchants, in relation to transactions that were connected to Mr Goodman and were not related to Council business.

Mr Goodman was provided with an opportunity to review the relevant records and to respond to the supplementary submissions of Counsel Assisting, which set out the transactions identified as personal expenditure by Mr Goodman. The submissions in reply from Mr Goodman's legal representatives do not provide a detailed response to Counsel Assisting's supplementary submissions but accept that the transactions set out in the supplementary submissions were personal expenses incurred by Mr Goodman. His legal representatives submitted that:

*Mr Goodman has decided not to engage in preparing a detailed account of the funds misappropriated from Council and instead, remits same back to the Commission and the Botany Bay Council ... Mr Goodman submits that, albeit at the Commission [sic] Inquiry he conceded that he has engaged in corrupt activities involving the Council credit card issued to Mr Fitzgerald, such activities were not possible nor took place without the knowledge and the direction of his superior, Mr Peter Fitzgerald. This, it is submitted, does not exonerate Mr Goodman's behaviour.*



On the basis of Mr Goodman's admissions at the public inquiry, the Commission is satisfied that the transactions listed below were personal expenditure by Mr Goodman.

MERCHANT	PERIOD	AMOUNT
Abruzzo Ceramics	8/5/10 – 6/10/10	\$10,896.00
Australian Native Landscapes	1/7/09 – 22/12/10	\$45,853.51
Balmam Rentals	31/9/09 – 14/10/10	\$131,298.99
Davidson's Nurseries	19/9/09 – 18/12/10	\$97,938.19
Gas Motorsport	30/12/11 – 16/1/12	\$28,300.00
Go Fast Bits	28/5/09 – 31/5/10	\$30,501.00
Haltech	15/1/10 – 13/12/11	\$64,727.23
Mabuzi	3/12/07 – 7/9/11	\$39,545.08
<b>TOTAL</b>		<b>\$449,060</b>

The Commission is also satisfied that Mr Goodman used Mr Fitzgerald's corporate credit cards for personal expenditure in relation to the following transactions.

- Relevant credit card statements record payments to Elegant Garden World totalling \$11,507.09. The invoices for Elegant Garden World were directed to Garden Extra, a business associated with Mr Goodman's relatives and the items purchased were garden supplies and equipment, which clearly related to that gardening business. Mr Goodman made admissions to using the credit cards to assist Garden Extra because it was in financial trouble.
- The statements record payments to Hypertune totalling \$16,574.03. The Hypertune invoices were directed to Mr Goodman's business, Gas Motorsport, and the items purchased were related to Mr Goodman's interest in car racing.

- The statements record payments to Kennards Self Storage Wetherill Park totalling \$33,654.25. Mr Goodman admitted that this storage facility had been used to store a personal vehicle for three months. He claimed that the storage facility was otherwise used for Council purposes to store furniture. This evidence is rejected on the basis that the documents produced by Kennards show that, in December 2015, two months after Mr Goodman's departure from the Council, the storage unit was found to be unlocked and empty. In other words, no Council property was located in the storage unit. Furthermore, Wetherill Park is not proximate to the Council but is to Mr Goodman's other business interests.
- The statements record payments to Link International for \$25,947.25. The Link International invoices were directed to Mr Goodman's business, Gas Motorsport, and the items purchased relate to his interest in car racing and not Council business.
- The statements record payments to Midel totalling \$14,090. The Midel invoices were directed to Gas Motorsport and not to the Council and clearly relate to Mr Goodman's interest in car racing and not Council business.
- The statements record payments to Mr Fothergill's Seeds totalling \$4,492.25. The invoices for Mr Fothergill's Seeds were directed to Garden Extra, a business associated with Mr Goodman's relatives and the items purchased were garden supplies and equipment that clearly related to the gardening business and not Council business.
- The statements record payments to Plantmark totalling \$6,188.98. The Plantmark invoices were directed to Garden Extra and the items purchased were garden supplies and equipment



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that clearly related to the gardening business and not Council business.

- The statements record a payment to Sutto's Motorcycle Supply of \$11,995. The Sutto's Motorcycle Supply invoice for this transaction relates to the purchase of a Polaris Sportsman four-wheel bike. The invoice is addressed to Mr Goodman at his workshop address and clearly has no relation to Council business.
- The statements record payments to Terracotta Trading Company totalling \$7,996.48. The Terracotta Trading Company invoices for these transactions are addressed to Garden Extra and are not related to Council business.
- The statements record payments to Western Clutch Service totalling \$14,256. The Western Clutch Service invoices for these transactions are addressed to Gas Motorsport and are not related to Council business.
- The statements record payments to Wurth Australia totalling \$24,330.44. The Wurth Australia invoices were directed to Mr Goodman's Gas Motorsport and the items purchased were related to Mr Goodman's interest in car racing. The transactions did not relate to Council business.

These transactions are set out in the table below.

MERCHANT	PERIOD	AMOUNT
Elegant Garden World	21/12/09 – 28/9/10	\$11,507.09
Hyvetime	10/10/09 – 24/3/10	\$16,574.03
Kennards Self Storage Wetherill Park	3/12/03 – 6/10/10	\$23,654.25
Link International	1/5/09 – 12/1/12	\$25,947.25
Middel	2/3/10 – 9/6/10	\$14,090
Mr Forbergil's Seeds	10/11/09 – 21/9/10	\$4,192.25
Plantmark	4/11/09 – 21/11/09	\$6,188.98
Sutto's Motorcycle Supply	20/12/11	\$11,995
Terracotta Trading Company	25/3/10 – 15/10/10	\$7,996.48
Western Clutch Service	4/5/09 – 6/1/12	\$14,256
Wurth Australia	15/4/09 – 15/12/11	\$24,330.44
<b>TOTAL</b>		<b>\$171,031.77</b>

Mr Goodman's evidence, about whether Mr Fitzgerald was aware that he used the Council credit cards issued in Mr Fitzgerald's name for personal purposes, was inconsistent and unreliable. He initially stated that he did not know if Mr Fitzgerald was aware of his misuse of the corporate credit cards. Later in his evidence, he said that he had an unspoken understanding with Mr Fitzgerald that Council credit cards could be used for personal purposes. At yet another point in his evidence, Mr Goodman claimed that Mr Fitzgerald was aware that he was using the Council's credit cards for non-Council purposes and claimed that on one occasion Mr Fitzgerald told him, "I don't care what you do, just cover it up".

Mr Fitzgerald denied allowing Mr Goodman to use the Council's corporate credit cards to pay for his personal expenses. Mr Fitzgerald claimed that he did not have access to the credit card statements. Mr Goodman confirmed that Mr Fitzgerald did not have access to the credit card statements. In those circumstances, it is unlikely that Mr Fitzgerald would have become aware of unauthorised use of the credit cards through reading the statements. Apart from Mr Goodman's evidence, there is no evidence that Mr Fitzgerald was aware of Mr Goodman's misuse of his credit cards.

The Commission is not satisfied, on the basis only of Mr Goodman's evidence, that Mr Fitzgerald was aware that Mr Goodman used the Council's credit cards to pay his personal expenses.

The Commission is satisfied that between December 2003 and January 2012, Mr Goodman misused the Council's credit cards to incur personal expenditure of \$620,091.77.

**Mr Fitzgerald's use of Council credit cards**

Mr Goodman alleged that there was unusually high expenditure, totalling more than \$400,000 a year, on the Council credit cards issued in Mr Fitzgerald's name. He also alleged that a Sydney city GPO Box was used to receive some of the credit card statements so that they would not be seen by other Council officers.

Mr Fitzgerald said that the GPO Box in the city was used for confidential documents such as legal documents as well as credit card statements. It was a box held by the Council. Mr Fitzgerald did not know why the statements were sent to a GPO Box in the city and Mr Fitzgerald gave evidence it was not a decision made by him.

The evidence does not establish that the GPO Box was used by Mr Fitzgerald for the purpose of concealing the credit card expenditure from the Council. The statements were addressed to accounts payable and were not addressed to Mr Fitzgerald. There was no evidence that

Mr Fitzgerald was responsible for arranging to have the credit card statements forwarded to the GPO Box in the city. In any event, it was Mr Goodman's evidence that he took possession of the Diners Club statements and none of the credit card statements were provided to Mr Fitzgerald.

**How much did Mr Fitzgerald incur in personal expenditure on the credit cards?**

The Commission undertook an analysis of the credit card expenditure and obtained available records, which revealed that it was likely that Mr Fitzgerald had also used the corporate credit cards for personal expenditure. Mr Fitzgerald retired from the Council in 2011 and there were only limited available records. The Council could not provide any records, such as invoices or requests for payments, relating to these transactions.

At the public inquiry, Mr Fitzgerald was questioned about a number of transactions on the credit cards. He was unable to indicate whether some of the expenditure was personal in nature or related to Council business without access to the relevant documents. The Commission decided to deal with the issue of credit card expenditure through the submission process and allowed Mr Fitzgerald to provide a statement to the Commission dealing with the transactions on the credit card statements that appeared to be personal expenditure.

Mr Fitzgerald provided a statement to the Commission in which he accepted the following transactions were personal expenditure:

MERCHANT	PERIOD	AMOUNT
Hout Marie	22/12/08	\$4,000
Bridge Mowers & Chainsaw Centre	24/2/06 - 17/10/07	19,011
Sydney City Motorcycles	25/1/07	\$6,525
Discovery Parks (formerly Aspen Parks)	4/5/11	\$3,339.63
Mercedes-Benz	11/11/07 - 6/4/11	\$5,067.65
Balmian Motorcycles	21/8/10 - 30/5/11	\$819.25
<b>TOTAL</b>		<b>\$28,765.53</b>

The credit card statements also recorded payments totalling \$6,510.90 to Virgin Australia between 26 June 2009 and 8 January 2011. In his statement, Mr Fitzgerald asserted that there was insufficient material relating to the transactions for Virgin Australia and he was unable to state whether the transactions were personal in nature

or Council-related. A breakdown of the flights taken and the passengers booked on the flights was provided to Mr Fitzgerald in Counsel Assisting's supplementary submissions. The flights relied upon by the Commission were not taken by Mr Fitzgerald but by his wife and other relatives. Mr Fitzgerald's submissions in reply to the supplementary submissions did not shed any light on whether he accepted the flights taken with Virgin Australia were personal in nature. Given that Mr Fitzgerald's wife and relatives did not work for the Council or have any Council function, the Commission is satisfied that the Virgin Australia payments were not related to Council work.

The records also recorded a payment of \$942 to Viatour on 23 November 2004. The payment was for a trip for Mr Fitzgerald's relations. For the same reasons as given above, the Commission is satisfied this transaction was not work-related.

The Commission is satisfied that the evidence before the Commission establishes that between November 2004 and May 2011, Mr Fitzgerald used the Council's corporate credit cards for personal expenditure totalling approximately \$36,200.00. In making this finding, the Commission notes that Mr Fitzgerald was only asked to examine the credit card expenditure for which the Commission had been able to obtain vendor receipts.

**Mr Fitzgerald's justification**

Mr Fitzgerald claimed that his use of the Council's credit cards to incur non-work related expenses was not improper because he was contractually entitled to charge Council up to \$20,000 of personal expenses each year. He said this entitlement arose from clause 3.5 of schedule F of his 2006 contract, which he claimed provided for a \$20,000 allowance to be used entirely at his discretion. Mr Fitzgerald's 2006 employment contract with the Council was for the period from 1 June 2006 to 18 September 2011. It contained generous entitlements, some of which were broad in scope. Clause 3.5 provides:

Loyalty Retention Clause

*Further to the Council's resolution to appoint the General Manager on a fixed term contract, Council recognises the benefit of long-term employees. Council is mindful of the external roles a long-term General Manager will be involved within both the local community/business groups as well as state and national organisations.*

*Council seeks to retain effective staff. An annual allowance of \$20,000 is to be available to the General Manager to use as he determines from time to time. Council recognises the benefits of travel and study to help compare our City to others and to drive the best outcomes for the City by introducing the best available.*

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*In addition to his normal Local Government responsibilities, the General Manager is also responsible for profitably operating business units which compete in a commercial environment.*

Clause 3.1 of schedule F deals with travel expenses. It provides:

*All reasonable expenses, including out of pocket, accommodation and travelling expenses, incurred in connection with the General Manager's duties or approved professional development, shall be paid by the Council. Council may require the employee to provide an itemised account, invoices, receipts or a declaration in relation to claims upon Council under this Clause. A senior officer will from time to time, and at least annually, review the amounts paid and acquitted against these expenses and allowances.*

Clause 3.2 of schedule F also deals with travel expenses. It provides:

*In relation to travel, the General Manager shall have access to Cabcharge or to a Council vehicle or Council vehicle and driver where circumstances deem it expedient to do so.*

*With regard to airline or other travel, the standard of entitlement shall be that comparable with business class or Mayoral entitlement save where accompanying the Mayor or Councillor/s when standard of travel shall be commensurate.*

*The General Manager will determine the use of cards, advances and pre-payments.*

Mr Fitzgerald gave evidence that he could use the \$20,000 annual allowance for personal expenditure provided it was "within reason". When questioned about what he meant by "within reason" and what parameters existed, Mr Fitzgerald said, "Well, I don't know what, what limits it would put on me but at every time you must act reasonably", and then clarified that provided he did not exceed \$20,000 limit then this would be considered "within reason". His evidence was that clause 3.5 was a retention allowance to ensure that he did not move to another place of employment.

Mr Fitzgerald acknowledged that he was responsible for three corporate credit cards and that Council money was being used to pay for them. Despite this, he did not keep a record of what he spent on the credit cards for personal use. He told the Commission that, "to the best of my knowledge", he did not incur more than \$20,000 in personal expenditure on his Council-issued credit cards in any one year. Mr Fitzgerald said that he did not know whether there was a tally kept of how much was spent in relation to his \$20,000 allowance and stated, "I would have expected that the accounting function would have

done that". When asked to identify who was going through his credit card account to do that, he said, "Well, there was a number of people in the accounting function doing that". Mr Fitzgerald gave evidence that:

*It was my expectation that the credit card – all of, all of the debits on the credit card would have been acquitted to a cost centre each month and I was also told by Mr Goodman that the external auditors every year or every second year did a check of the credit cards and not once did he raise with me any problems with those cards.*

He said that, at the end of his tenure at the Council, a reconciliation took place when Ms Cullinane provided him with recent credit card statements and allocated them to cost centres.

Mr Fitzgerald gave evidence that he believed that the Council did not have a credit card policy in place. His evidence was confirmed in the May 2010 audit management letter addressed to him. The letter recommended that the Council develop a comprehensive policy regarding the use of credit cards, including the circumstances in which cards may and may not be used including credit limits and reconciliation procedures which provide for maintenance of a register of cards and card limits. Ms Kirchner introduced a credit card policy at the Council in June 2012.

**Did Mr Fitzgerald misuse his corporate credits cards?**

The available records before the Commission do not establish that Mr Fitzgerald exceeded the \$20,000 annual limit he believed he was entitled to use for discretionary expenditure under the terms of his contract. The issue for determination is whether Mr Fitzgerald reasonably believed that clause 3.5 entitled him to charge personal expenditure on his Council credit cards.

Counsel Assisting submitted that a reasonable person, when reading the loyalty retention clause, would understand that it was designed for work-related travel and study and, if the clause was designed to facilitate purely discretionary expenditure, there is no reasonable explanation for the inclusion of the sentence, "Council recognises the benefits of travel and study to help compare our City to others and to drive the best outcomes for the City by introducing the best available". Counsel Assisting submitted that clause 3.5 permitted Mr Fitzgerald to spend an amount of money up to \$20,000 in relation to travel and study, which was connected to his work with the Council, and it did not allow him to spend the money as he saw fit on purely discretionary expenditure.

Mr Fitzgerald's legal representatives submitted that clause 3.5 should be interpreted broadly and that the loyalty retention clause was not limited by subsequent wording

to travel or study. Mr Fitzgerald's legal representatives submitted that Mr Fitzgerald was entitled to spend up to \$20,000 per annum on what he saw fit. In support of this, it was submitted that, given clauses 3.1 and 3.2 deal with travel expenses, there is no need for travelling expenses to be dealt with again under clause 3.5, and an interpretation that did so would require the Commission to assume that the parties had agreed to add a further clause to deal with travelling expenses.

In the Commission's view, clause 3.5 of Mr Fitzgerald's 2006 contract of employment is ambiguous, poorly worded and can be interpreted in more than one way. The Commission is not satisfied that the first two sentences of the clause – "Council seeks to retain effective staff. An annual allowance of \$20,000 is to be available to the General Manager to use as he determines from time to time" – are limited to travel- and study-related expenditure by the inclusion of the third sentence: "Council recognises the benefits of travel and study to help compare our City to others and to drive the best outcomes for the City by introducing the best available". In the circumstances, the Commission is satisfied that Mr Fitzgerald's interpretation of clause 3.5, namely, that it allowed him to spend an annual allowance of \$20,000 on discretionary expenditure, was reasonable.

Furthermore, there is other evidence before the Commission that supports the conclusion that Mr Fitzgerald's understanding of clause 3.5 was reasonable. In reaching this conclusion, the Commission has taken into account a memorandum dated 23 December 2004 from the Council's auditors addressed to "Botany Council". It provides:

*As part of his remuneration package, the General Manager receives the following amounts:*

*Superannuation supplement 20,000.00  
Paid directly to a superannuation fund—no tax issues*

*Allowances*

<i>Motor vehicle</i>	<i>12,000.00</i>
<i>Civic</i>	<i>6,000.00</i>
<i>General (as per Council resolution)</i>	<i><u>20,000.00</u></i>
	<i>38,000.00</i>

*These amounts were not paid during the 2004 financial year. The GM incurred private expenditure on his Council credits [sic] cards. In the 2005 financial year, this private expenditure was deducted from the allowances due to him. The balance of the allowance was paid to the GM.*

*The three allowances listed above should be taxed (as per PAYG schedules) and included on the group certificate in the year they are paid.*

*Although, the GM incurred private expenditure on the Council's credit card, this is NOT subject to FB as the use of the credit cards is merely a method of payment of the allowances.*

*Although the allowances related to the 2004 financial year, the actual setting off of the credit card expenditure did not incur [sic] until the 2005 financial year. Therefore, the payment of the allowances was not considered paid until the 2005 financial year.*

<i>Reconciliation</i>	
<i>Allowances due (per above)</i>	<i>38,000.00</i>
<i>Tax at 48.5%</i>	<i><u>18,430.00</u></i>
<i>After tax amount due</i>	<i>19,570.00</i>
<i>Credit card expenditure</i>	
<i>Diners Club</i>	<i>4,593.70</i>
<i>Master Card #1</i>	<i>15,386.83</i>
<i>Master Card #2</i>	<i><u>12,694.18</u></i>
	<i>32,674.71</i>
<i>Net amount due</i>	<i>19,570.00</i>
<i>Less credit card expenditure</i>	<i><u>32,674.71</u></i>
<i>Net amount overpaid</i>	<i>13,104.71</i>

*Recommended action:*

*1. Include the following amounts on GM's 2005 group certificate:*

<i>Salaries and wages</i>	<i>38,000.00</i>
<i>PAYG Tax deducted</i>	<i>18,430.00</i>

*2. Make arrangements with the GM to recover the overpayment and ensure the appropriate amount of tax is deducted.*

*3. Pay the PAYG relating to the allowances to the ATO on the next BAS.*

This memorandum provides evidence that, in 2004, the Council's external auditor was aware that Mr Fitzgerald used the corporate credit cards for personal expenditure because allowances payable under the terms of his remuneration package had not been paid to him. In the Commission's view, the 2004 memorandum provides limited corroboration of Mr Fitzgerald's evidence that he believed he was entitled to charge the Council up to \$20,000 in personal expenses each year.

It is unclear why Mr Fitzgerald, as the general manager, did not take steps to check that the credit card statements were acquitted and the expenditure audited. It is not clear how Mr Fitzgerald expected that the credit card statements should be acquitted, particularly when he gave evidence that he did not keep a record of personal expenditure on

CHAPTER 6: Use of the Council's credit cards and other issues

the credit cards and there is no evidence of any relevant receipts or supporting documentation being provided to the accounts section. Mr Fitzgerald's submissions in reply do not cast any light on that point. Rather, Mr Fitzgerald's legal representatives submitted that Mr Fitzgerald provided a statement in relation to particular transactions on the credit card statements without reference to the original Council records. It is unclear to the Commission what records Mr Fitzgerald expected the Council to retain when his evidence was that he did not keep a record of personal expenditure and did not take steps to ensure the credit cards were properly acquitted.

Mr Goodman gave evidence, however, that Mr Fitzgerald did not see the credit card statements and that he – rather than Mr Fitzgerald – approved them for payment. There is also no evidence before the Commission that Mr Fitzgerald was contacted by any member of the accounting staff in relation to any aspect of his credit card expenditure. Further, there was no Council corporate credit card policy in force at the time that set out the proper procedure in relation to the use of the corporate credit cards.

**Payments recorded on the Fujitsu system**

On the last day of the public inquiry, the Council produced a spreadsheet located in its Fujitsu financial system, the previous financial system of the Council. The spreadsheet shows that, between November 2005 and July 2009, the Council drew a number of cheques for \$20,000 payable to the St George bank for "Travel Expenses" or "Travelling Expenses". The cheques total \$160,000.

It is not evident from the face of the document that the payments were received by Mr Fitzgerald. The payments appear to be made to the St George bank. The figure of \$20,000 for "Travel Expenses" or "Travelling Expenses" corresponded with the figure under the loyalty retention clause at clause 3.5 of Mr Fitzgerald's 2006 contract. The spreadsheet also reflected payments of \$20,000 for "Supplementary Superannuation" and "Superannuation" and payments of \$12,000 for "Car Allowance". These figures were also consistent with the amounts allowed under Mr Fitzgerald's remuneration package. The descriptions given for some of the payments were "GM Supplementary Super" and "GM Car Allowance". The letters "GM" are likely to represent "General Manager".

Mr Fitzgerald said he did not know what "travel expenses" meant and that he wanted an opportunity to reconcile the payments set out in the spreadsheet against his bank statements. He reiterated that, "I wouldn't use the [corporate credit] card unless I believe I had the entitlement".

The Commission sought to obtain available records from financial institutions to establish whether the payments identified in the spreadsheet were received by Mr Fitzgerald. One cheque (cheque number

102559) for "Travel Expenses" dated 30 July 2009 in an amount of \$20,000 was produced to the Commission. This cheque was paid into Mr Fitzgerald's bank account on 16 November 2009. The Commission was not able to obtain any other cheques. In these circumstances, the Commission is not satisfied that Mr Fitzgerald received the other payments between November 2005 and July 2009 for "Travel Expenses" and "Travelling Expenses" set out in the spreadsheet.

The Commission is not satisfied that the payment by cheque dated 30 July 2009 for "Travel Expenses" relates to Mr Fitzgerald's entitlements under clause 3.5 of his 2006 contract. Beyond the amount paid to Mr Fitzgerald, being \$20,000, there is no evidence before the Commission that this payment was connected with that entitlement.

**Payments to Bloggs Consulting or MB Consulting**

Mr Goodman gave evidence that he provided cash payments to Mr Fitzgerald, totalling \$8,400 a month over a period of 10 years, purportedly for consulting work carried out for an entity called Bloggs Consulting. Mr Goodman did not know of any legitimate work carried out by Bloggs Consulting but he said, on one occasion, Mr Fitzgerald introduced him to a person called "Mr Bloggs". Mr Goodman suspected that Mr Fitzgerald kept the payments himself but was never directly told this by Mr Fitzgerald. Mr Goodman claimed that Mr Fitzgerald gave him blank invoices and told him: "[I]f you need one you can fill it out ... to justify a payment". According to Mr Goodman, the payments were made every month for about 10 years. Mr Goodman denied that he was the recipient of the payments.

Mr Goodman said that, each month, after receiving instructions from Mr Fitzgerald to arrange payment to Bloggs Consulting, he approached either Mr Thompson or Mr Byrnes to countersign two cheques. The cheques were cashed at the bank. Mr Goodman said he arranged for two cheques, each of \$4,200, to be cashed and would generally place \$4,200 cash in two separate envelopes. He gave the cash to Mr Fitzgerald in his office or to Mr Fitzgerald's secretary in an envelope marked "Confidential".

During the public inquiry, the Council produced records relating to payments to an entity called MB Consulting. Between 11 August 2003 and 12 November 2010, MB Consulting received around \$300,000 from the Council for consultancy services. Each payment to MB Consulting was for an amount of \$4,200.

Mr Goodman initially told the Commission that he did not recognise the name MB Consulting. At a later stage in his evidence, he said that Bloggs Consulting may have been called MB Consulting.

Each cheque made out to MB Consulting in evidence before the Commission, was co-signed by Mr Goodman and Mr Thompson. Mr Thompson worked in the finance division as the systems administrator. The cheques were marked "non-negotiable", which signified that they were not supposed to be cashed. However, each cheque was noted, "Please pay cash". Mr Goodman said that the Council employees from the finance division were able to cash those cheques, "as we did with any petty cash cheque, any travelling allowance cheques that were paid to the general manager, any other cheques, we could cash them. We had an arrangement with the bank". Mr Goodman agreed that this was because it was a local bank and the bank knew the Council representatives.

Mr Thompson accepted that, between 2003 and 2010, he co-signed cheques made out to MB Consulting. Mr Thompson said that he or Mr Goodman wrote "Please pay cash" on the cheque. Mr Thompson then provided the cheques to Mr Goodman and Mr Goodman arranged for someone to cash the cheques. At the time, Mr Goodman told him that he gave the cash to Mr Fitzgerald. Mr Thompson said he did not know anything about MB Consulting but was told by Mr Goodman that MB Consulting provided consultancy services for the Council.

Mr Byrnes, the finance division's financial accountant, could not recall preparing cheques, at the request of Mr Goodman, for MB Consulting. Mr Byrnes said that he could recall the entity MB Consulting and was aware that cheques were drawn for MB Consulting or Bloggs Consulting and paid as cash to Mr Goodman. He understood from Mr Goodman that the cash was given to Mr Fitzgerald.

Mr Fitzgerald did not know of an entity called Bloggs Consulting or MB Consulting. He denied receiving cash payments of around \$8,000 from Mr Goodman. He denied providing Mr Goodman with blank invoices for Mr Goodman to use as he saw fit. He denied asking Mr Goodman to draw cheques for MB Consulting or Bloggs Consulting.

Mr Goodman was not a credible witness. There is no independent, objective evidence to corroborate the allegation that the cash payments made by the Council to MB Consulting or Bloggs Consulting were provided to Mr Fitzgerald. In the circumstances, there is insufficient reliable evidence to support such a finding.

## A Lexus for Ms Baccam

Mr Goodman alleged that Mr Fitzgerald instructed him to use Council funds to pay for a Lexus vehicle intended for Ms Baccam. He claimed that he received a telephone call from Mr Fitzgerald instructing him to take Ms Baccam to a car auction house, either Pickles Auctions or Auto Auctions. Mr Goodman claimed that Mr Fitzgerald walked Ms Baccam through the cars and told her to pick

one. She chose a silver Lexus vehicle, which was paid for with Council funds. Mr Goodman believed that the car was registered in the Council's name. Mr Goodman authorised the payment. He estimated that Ms Baccam had the vehicle for about four years until Mr Fitzgerald instructed him to sell it, and the proceeds of the sale went to the Council. He later said that Ms Baccam only had the car for about 12 months. According to Mr Goodman, Leong Seng, former Council contractor, was present when the Lexus vehicle was purchased for Ms Baccam.

Ms Baccam gave evidence that she did have possession of a Lexus vehicle that was purchased by the Council. She said that she met Mr Fitzgerald at an auction house and Mr Fitzgerald asked her to pick out the car she wanted. She picked a Lexus vehicle, which was then purchased. She claimed that Mr Goodman, Mr Fitzgerald's son and Mr Seng were also at the auction house. She said that Mr Goodman told her that Mr Fitzgerald had approved the purchase of the vehicle by the Council. She said that she drove the car for almost a year.

Mr Fitzgerald denied that he authorised the purchase of a Lexus vehicle for Ms Baccam or that he instructed Mr Goodman to sell the Lexus vehicle.

Mr Fitzgerald said that he did attend Pickles Auctions in Belmore eight or nine years ago because his son wanted to purchase a car. He gave evidence that he telephoned Mr Freitas of Elias & Son Smash Repairs to seek his professional opinion about a car. Mr Fitzgerald said that Mr Freitas, Mr Goodman, Mr Seng and Ms Baccam all attended the auction house. He stated:

*My only conversation and discussion were about the cars that I was interested in my son to buy. And my son subsequently bought one of those cars. There was nothing in any conversation I had with anybody that could be construed that I gave any person permission to buy Marny Baccam a car with Council funds.*

Mr Freitas did not recall anything about a Lexus vehicle purchased for Ms Baccam. Mr Seng told the Commission he was aware that Ms Baccam had possession of a Lexus vehicle but he was not present when the Lexus vehicle was purchased.

There are no records in evidence before the Commission relating to a Lexus vehicle held in the Council's name.

Mr Goodman and Ms Baccam were not credible witnesses. They both admitted to involvement in serious misconduct through false invoicing schemes. Mr Fitzgerald denied that he authorised the purchase of a Lexus vehicle for Ms Baccam. In the absence of any independent objective corroboration of their evidence, the Commission is not satisfied that Mr Fitzgerald authorised the purchase of a Lexus vehicle for Ms Baccam using Council funds.



## Corrupt conduct

### Gary Goodman

Between December 2003 and January 2012, Mr Goodman wilfully and intentionally used Council corporate credit cards, issued in Mr Fitzgerald's name, to incur personal expenditure of \$620,091.77, knowing that he was not entitled to do so, and then authorised the payment by the Council of the credit card accounts relating to that expenditure.

This conduct on the part of Mr Goodman is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of his official functions as CFO of the Council.

Mr Goodman's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Goodman committed criminal offences of fraud under s 192E of the Crimes Act (for offences that occurred from 22 February 2010) and s 178BB of the Crimes Act (for offences that occurred before 22 February 2010).

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time, between December 2003 and January 2012. The conduct involved a significant amount of money and the Council's credit cards were used as a source of funds as and when Mr Goodman wanted. As CFO, Mr Goodman held a position of trust within the Council and his conduct involved a significant breach of that trust. The conduct was premeditated and involved a significant level of planning. Given that Mr Goodman

was a senior public official, Mr Goodman's conduct could have impaired public confidence in public administration. Furthermore, the conduct could involve offences pursuant to s 192E of the Crimes Act (for offences that occurred from 22 February 2010), which have a maximum penalty of 10 years imprisonment and are serious indictable offences, and s 178BB of the Crimes Act (for offences that occurred before 22 February 2010), which have a maximum penalty of five years imprisonment, meaning they are serious indictable offences.

### Section 74A(2) statement

The Commission is satisfied that Mr Goodman and Mr Fitzgerald are "affected" persons.

### Mr Goodman

The evidence Mr Goodman gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is other admissible evidence, however, that would be available, including Council records, invoices and credit card statements. There is also admissible evidence in relation to Mr Goodman's position at the Council and the fact that he was in a position to access the credit card numbers and authorise the payment of the credit card accounts by the Council.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goodman for offences of fraud pursuant to s 192E of the Crimes Act (for offences that occurred from 22 February 2010) and s 178BB of the Crimes Act (for offences that occurred before 22 February 2010).

### Mr Fitzgerald

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with regard to the prosecution of Mr Fitzgerald for any offence.



## Chapter 7: Corruption prevention

The scale, breadth and duration of corruption at the Council cannot be attributed to a few rogue individuals alone. Overwhelming failures in the Council's procedures and governance framework created significant opportunities for corruption, and Mr Goodman and others took full advantage.

Mr Goodman exercised extraordinary, and often exclusive, control over many of the Council's high-risk financial functions. These functions were characterised by an almost total lack of formal processes. Procurement was ad hoc, with little oversight, payment procedures were poorly controlled, the accounts management system was accessible only by a few key staff within the finance division, the use of valuable Council resources (such as vehicles) was effectively unmonitored, and there were no independent checks on the use of credit, taxi and other charge cards. Mr Goodman's influence over such poorly controlled processes created an environment that was exceptionally vulnerable to the scale of corruption that occurred.

Such obvious and serious control failures were able to persist for as long as they did because the Council's governance mechanisms were not functioning effectively. Key financial and operational staff lacked the necessary capabilities to perform their roles. The internal audit function was prevented from examining many of the areas exploited by Mr Goodman and the significant issues it did discover were ignored. The Council's external auditor identified numerous serious control failures, but did not report them to either the Council's audit committee or elected body, leaving many to persist for years. The audit committee members themselves did not actively seek any information on the effectiveness of the Council's control framework. In short, the Council's governance mechanisms did not function effectively, thereby allowing the control failures exploited by Mr Goodman to persist unabated.

In NSW, the elected body of a council is primarily responsible for overseeing the governance of their administrations; similar to how corporate boards oversee

corporations. Unlike corporate boards, however, elected bodies have limited access to their administrations, may lack the skills and experience to provide effective oversight, and are not incentivised to ensure good governance. Furthermore, despite persistent and overwhelming control failings and the failure of the Council's governance mechanisms to resolve them, the Council was not subject to sufficient external regulatory intervention. While the minister for local government ("the Minister") may intervene in local councils to rectify maladministration, his or her capacity for detecting and investigating via the Office of Local Government (OLG) was limited. Consequently, the governance model for local government at the time of the corrupt conduct did not facilitate effective oversight by elected bodies or intervention by the Minister to ensure good quality governance and administrative practice within local councils.

This chapter articulates the systemic failures, both within and beyond the Council, which allowed or facilitated the corrupt conduct of Mr Goodman and others. Since the Council has recently been amalgamated, recommendations relating to Council processes and governance arrangements are made to Bayside Council. Recommendations concerning the local council governance framework are made to the NSW Government.

### Mr Goodman's extraordinary control of Council processes

Transparency and efficiency are natural antidotes to corruption. Transparency is the antithesis of corruption's secrecy, subterfuge and privacy; when actions can be hidden, corruption can flourish undetected. Likewise, efficiency is the counter to the organisational waste from which the corrupt can profit without arousing suspicion by affecting the organisation's bottom line. To prevent corruption, systems and controls are best designed to ensure that an organisation's financial operations



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and its decision-making are transparent and efficient. The Council's systems and controls ensured neither.

Mr Goodman's corruption was possible because he exercised extraordinary influence over the Council's financial operations, with few controls and little oversight. He controlled budgets and expenditure, had effective end-to-end control of vulnerable financial processes, and was uninhibited by what was a poor and ineffective set of organisational controls. He was able to easily conceal the majority of his conduct and exploit the inefficiency created by the lack of effective organisational controls.

**The finance division had overwhelming control over expenditure**

To a great extent, Mr Goodman's corruption was possible because his actions were concealed. He had almost complete control and visibility of the Council's finances and related processes. This status quo meant few others could view the Council's accounts and detect missing funds or flag Mr Goodman's unauthorised expenditure, thereby leaving Mr Goodman to continue his conduct largely unchallenged.

**Budgets and expenditure**

The Council's finance division managed all aspects of the Council's finances. It had absolute control of a range of Council processes; from the development of budgets to the monitoring of expenditure. No managers outside this division had direct access to their budgets. While these managers were able to request this information from Mr Goodman or Mr Thompson, requests were sometimes denied or ignored, and at least one manager was content never to request it at all.

This domination allowed Mr Goodman to use his position as head of the finance division to unilaterally set excessive budgets that allowed his misappropriation of funds. The lack of access to budget or expenditure information by other Council officers prevented anyone from outside the finance division from detecting that funds were missing.

**Use of charge cards**

One obvious example of how Mr Goodman's unilateral control over the Council's finances facilitated his corruption was his misuse of Council credit and charge cards. In under 17 months, Mr Goodman incurred Cabcharge expenditure in excess of \$49,000, and in nine years, he misused Mr Fitzgerald's credit card to a sum in excess of \$620,000. Furthermore, Mr Goodman misused fuel cards for unauthorised private expenditure.

The misuse of these cards was made possible by Mr Goodman's sole role in approving charge card expenditure. Charges on the Council's credit, taxi and fuel cards were all approved by Mr Goodman alone and

not subject to scrutiny. Combined with his exclusive role in overseeing the Council's accounts, there was little chance any inappropriate expenditure on the cards would be detected, regardless of the amounts spent. With the exception of his misuse of taxi charges, detected incidentally, the Council detected none of the inappropriate card expenditure, despite its size.

**Critical financial segregations were absent**

Some financial processes involving the transfer of money from an agency into private hands are so risky that they should not be under the exclusive control of any one individual. In most agencies, these payment processes are subject to segregation of duties as a means of preventing the misappropriation. Examples of processes that ought to be segregated include modifying the vendor master file (VMF), procure-to-pay arrangements, and developing budgets and monitoring expenditure against budgets.

The Council had minimal segregations in place to manage the risks associated with these processes. Additions and changes to the VMF could be performed by individual officers without oversight. Council officers sometimes solely determined need, selected a supplier, certified delivery and approved payment in relation to the same procurement transaction. As discussed, Mr Goodman had complete control over developing budgets and monitoring expenditure against them. Furthermore, additional corruption opportunities arose from a lack of segregation across many of the Council's financial processes.

**Vendor master file**

The VMF is a list of an organisation's suppliers, usually linked with the accounts payable system. The VMF represents a significant control on the payment of invoices because a vendor and its bank accounts details must be on the VMF before it can be paid. In order to benefit from a false invoice, a corrupt official therefore needs to either cause a (possibly fictitious) supplier to be added to the VMF or to manipulate the bank account details of an existing supplier on the VMF.

Since a poorly controlled VMF creates serious corruption opportunities, a variety of segregation and review-based controls should be employed to ensure its integrity. For instance, the process of adding new vendors to the VMF is best segregated across multiple individuals, as is the process of modifying vendor details within the VMF to create counter-checks to ensure that vendors listed are genuine and their details are correct. Additionally, changes to the VMF may be periodically reviewed and dormant vendors deleted to prevent them being used as a vehicle for making corrupt payments.

Until at least mid-2015, the Council's VMF was not subject to any segregation or review-based controls.

In practice, accounts payable clerks would add vendors without any review by others and without checking that key details, such as vendors' ABNs, were genuine.

The lack of safeguards surrounding the VMF facilitated some of the corrupt conduct exposed by the Commission. Non-genuine vendors were added to the file and bank details of dormant vendors were changed to those of Mr Goodman. Since there was no periodic review of changes to the VMF and dormant vendors were not deleted, this allowed payments made to Mr Goodman and others to appear legitimate.

Authorising invoices for payment is also an area for which segregation of duties is critical. For instance, it is better practice to prevent one individual from both approving a payment to a supplier and certifying that that supplier has delivered the relevant goods or services. Similarly, a three-way match process – that is, matching the purchase order, invoice and delivery verification – was not in operation at the Council.

At the Council, the same official responsible for approving the purchase of the goods or service in question often certified their delivery. Indeed, for a given supplier engagement, a whole series of processes was often performed by one individual. For instance, in relation to a specific engagement, the acting manager of the Business Unit typically allowed his supervisors to determine need, procure the contractor, sign off on the contractor's work, and then authorise the invoice for payment, often without oversight.

The effect of this lack of segregation was to create opportunities for corrupt invoicing that were ultimately exploited. For instance, Ms Baccam was able to create and authorise false invoices without needing other officers' involvement.

#### **Segregation across financial processes**

While each of the above examples of the lack of segregation within a process creates control weaknesses, the effect is amplified where one individual has control over several processes. End-to-end control over either procure-to-pay or budgeting can create corruption opportunities, but having simultaneous end-to-end control over both processes creates further opportunities and substantially reduces the threat of detection. Such an arrangement allows a person to engage easily in corrupt schemes without needing to collude with others. As such, Mr Goodman was able to fatten budgets to cover his misappropriation, as well as approve fraudulent invoices, thereby concealing fraudulent payments.

The Council's financial management was typified by a lack of segregation across its financial processes. Mr Thompson's responsibilities sometimes included

creating purchase orders, processing invoices, authorising invoices for payment, performing account and bank reconciliations, performing the electronic transfer of funds to Council suppliers and producing all reports on the financial accounts. He could also make changes to the accounting system, including the VMF, without oversight. Having end-to-end control over such a large number of high-risk processes created enormous corruption opportunities that were exploited by Mr Goodman.

#### **RECOMMENDATION 1**

**That Bayside Council reviews its financial processes and makes any necessary changes to ensure that:**

- its vendor master file is subject to appropriate segregation and review-based controls
- sufficient segregations exist in its invoice payment processes (including the introduction of a three-way match arrangement) to manage the risks associated with fraudulent payments
- operational managers have visibility over, and involvement in, setting budgets and monitoring expenditure against these budgets
- adequate segregations exist across different financial processes.

#### **Loose processes that were vulnerable to corruption**

Corruption is difficult to perpetrate where an organisation's processes are efficient and well controlled. In such an environment, improper conduct, such as misappropriation of funds or misuse of assets, is either prevented from happening or quickly detected. By contrast, processes that are loose create opportunities for corruption and make detection difficult.

The Council processes relevant to this investigation were characterised by inadequate controls, which greatly facilitated Mr Goodman's corruption. High-risk functions such as procurement and invoice payment were performed in an ad hoc and uncontrolled manner, often relying entirely on the discretion of single officers, even when relevant policy documents existed. The situation allowed Mr Goodman to determine how many of these processes were performed, thereby amplifying his influence over the Council's finances. With few safeguards governing vulnerable processes, it is unsurprising that many were repeatedly subverted to corrupt ends.

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**Procure-to-pay**

The vast majority of funds misappropriated from the Council were corruptly obtained via invoice payment fraud. The Council's lack of controls over its procurement function afforded Mr Goodman and others ample opportunity for this corruption. Such conduct was only possible because Mr Goodman had the ability to engage particular suppliers, with whom he had a pre-existing relationship, without question.

The procure-to-pay system at the Council was, in practice, loose and ad hoc. As a matter of course, market testing did not occur, financial delegations were breached, and invoices were approved either without purchase orders or via purchase orders that lacked supporting documentation. In effect, standard controls designed to prevent corruption were frequently ignored, leaving a high-risk function extremely vulnerable to corruption.

The Council had no formal processes in place to ensure that staff tested the market when engaging suppliers. While a procurement policy was introduced in 2012, and the Council had a list of preferred suppliers, in practice nothing prevented staff from engaging whichever supplier they saw fit. Suppliers could be paid when they submitted an invoice, regardless of whether a purchase order had been raised or goods and services delivered. For example, Mr Goodman authorised the payment of millions of dollars of fraudulent invoices to companies operated by Mr Mark, Mr Subeski, Mr Freitas, Mr Alexander and Mr Gajic. Similarly, Ms Baccam was able to establish a company, have it added to the VMEF, then create, submit and authorise false invoices for the company, and receive payment.

The Council did have a list of financial delegations but it was either ignored, not made available, or unknown. Instead, staff relied on the verbal direction of Mr Goodman to know who could approve what level of expenditure. The situation meant that, while invoices were usually checked to ensure they had been appropriately authorised, it was Mr Goodman alone who determined who held such authorisation. The result was that numerous invoices were paid despite the authorising officers lacking sufficient official delegation. This included Ms Baccam (who had no financial delegation but approved thousands of dollars in false invoices), Mr Thompson (who also had no written financial delegation), and Mark Goodman (who authorised purchases with what he believed to be a \$50,000 delegation, despite having no delegation specified on the Council's list of delegations).

There were also few controls on the verification and payment of invoices to ensure their authenticity. In practice, purchase orders were created on the basis of a telephone call from a staff member without checking that the purchase was justified or that an appropriate procurement process had been followed.

Moreover, numerous invoices were approved without any purchase order first being raised.

**Fleet management**

The Commission's investigation also revealed that Council-owned vehicles were commonly used for private purposes, including by people not employed by the Council. On occasion, the Council was required to pay traffic infringements relating to Council vehicles because the driver could not be identified. This was possible because the finance division exclusively managed the Council's vehicle fleet and there was, in practice, no policy governing, or system for monitoring, vehicle use.

Similarly, the Council lacked a robust system to ensure that vehicles were disposed of appropriately or within appropriate timeframes. Such freedom and lack of oversight provided clear opportunity to misuse a valuable resource.

**Credit cards**

The Council's lack of specific policies or procedures governing credit card use gave Mr Goodman exceptional discretion over their use.

The Council's credit card policy was not introduced until 2012 and no policies existed for the other charge cards at least until the time of the Commission's public inquiry. While the Council's code of conduct required staff to act properly and ethically and to not use Council resources for private benefit, this was inadequate to specify what was, or was not, appropriate card use, leaving this to Mr Goodman alone to determine.

**RECOMMENDATION 2**

**That Bayside Council undertakes a review of the control frameworks governing processes that are vulnerable to corruption (including those related to procurement, invoice payment, fleet management and charge-card usage) and implements any recommendations arising from the review.**

**The recruitment and capabilities of key Council staff**

Mr Goodman was able to establish and control ad hoc processes that facilitated his corrupt conduct in part because Council staff lacked the requisite skills and experience to perform their roles effectively. This lack of skills and experience allowed Mr Goodman to determine the nature of many of the Council's financial processes without question.

The lack of relevant skills among Council staff who had financial responsibilities was striking. Mr Byrnes, the Council's financial accountant, had no accounting

qualifications. Mr Thompson, who administered the Council's financial system, had no formal computing qualifications. Mark Goodman headed the Business Unit despite having had no managerial, financial, or other relevant skills or experience. Indeed, Mr Goodman himself was appointed CFO despite having no accounting qualifications and only limited accounts payable experience.

Unskilled and unqualified staff are less likely to identify and question deficient processes. At the Council, a number of such staff stated that they simply followed the status quo, rather than seeking any formal guidance. They were also unaware of standard, robust methods of financial management. For instance, Mr Thompson acquiesced to many of Mr Goodman's highly unusual requests surrounding the approval of payments and signing of cheques. Comparatively, the Council's qualified financial coordinator, who was employed in February 2015, immediately developed serious concerns about the lack of adequate controls across processes within the finance division.

Under-skilled staff were able to obtain their positions at the Council because recruitment processes were informal and often subject to influence by senior Council staff. A number of Council staff involved in the investigation had been hired and/or promoted without a robust, competitive process having taken place. Indeed, Mr Goodman, Mr Thompson, Mr Byrnes, Ms Baccam and Mark Goodman all had a prior association with either Mr Fitzgerald or Mr Goodman before commencing employment at the Council, and appear to have been engaged without a genuine competitive, merit-based selection process. Mr Foo also noted that there was "no formal recruitment process for staff at the Business Unit" and, with no roles advertised, "staff just bring their mates to work".

A stand out example of how poor recruitment processes facilitated Mr Goodman's corruption was the promotion of Mark Goodman to the acting manager of the Business Unit. Initially employed as a gardener and labourer without a competitive selection process, Mark Goodman was promoted to acting head of the Business Unit without any further interview, selection process or additional training, and despite his lack of management or financial training or experience. Once appointed, he did not ask to see budgets for the Business Unit, admitted to being unable to read or understand financial statements, did not read consultant or audit reports about the Business Unit, and believed that Business Unit operations were generally good and in no need of improvement. He also referred all financial matters back to the finance division to deal with. His lack of understanding of robust controls, basic financial management and unquestioning acceptance of the status quo contributed to the enormous

freedom Mr Goodman had to misappropriate millions of dollars from the Business Unit without detection.

### RECOMMENDATION 3

**That Bayside Council reviews the position descriptions of key operational and financial roles to ensure that they include the required skill sets and qualifications.**

### The Council's governance mechanisms were ineffective

The Commission's findings concerning the serious and extensive control failures at the Council call into question the efficacy of the Council's governance mechanisms. That Mr Goodman could exploit them since at least 1997 without being detected, or the failures remedied, indicates that the Council's governance framework failed comprehensively.

At the Council, there were weaknesses across a wide variety of governance processes and functions, including those involving the general manager, the internal audit function, external audit, and the operation of the audit committee. Each of these had a role in detecting and remediating poor internal controls and each was ultimately unsuccessful.

### The role of the general manager

General managers are responsible for ensuring that effective controls are in place to ensure sound financial management. More specifically, clause 209 of the Local Government (General) Regulation 2005 requires council general managers to ensure that:

*(b) effective measures are taken to secure the effective, efficient and economical management of financial operations within each division of the council's administration, and*

*(c) authorising and recording procedures are established to provide effective control over the council's assets, liabilities, revenue and expenditure and secure the accuracy of the accounting records, including a proper division of accounting responsibilities among the council's staff;*

Also, the Standard Contract of Employment for General Managers, enforced by the *Local Government Act 1993* ("the LGA"), states that general managers must maintain satisfactory operation of a council's internal controls, reporting systems including public interest disclosures, grievance procedures, the documentation of decision-making, and sound financial management.

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While Mr Fitzgerald introduced the Council's procurement policy in 2010 and Ms Kirchner introduced a number of policies (such as credit card, cash-handling, payment of expenses, assets and materials disposal, and a fraud and corruption prevention policy), the pervasive corrupt conduct of Mr Goodman and others continued. Audit reports also continually highlighted that some policies were not being followed and that fundamental control failings remained.

Introducing these policies did not prevent the corrupt conduct of Mr Goodman and others because these policies were, in some cases, inadequate and not enforced or supported by a sound control framework. The Council's procurement policy contained no requirement for independent sign-off on procurement decisions, making it easy to ignore the policy's requirements for obtaining quotes or conducting tenders. Mr Goodman and others also ignored the Council's assets and materials disposal policy, code of conduct, and fraud and corruption prevention policy; all with little consequence.

The Commission's investigation demonstrates that the introduction of policies and, in Ms Kirchner's case, the provision of related training, is not sufficient to ensure an adequate control framework is in place and operating effectively. General managers, and the elected bodies that oversee them, must also obtain independent assurance that such controls are both adequate and working as intended. Where they are operating effectively, internal and external audit may provide such assurance,

**RECOMMENDATION 4**

**That Bayside Council ensures that the implementation of both internal and external audit recommendations is considered by the elected body when evaluating the performance of the general manager.**

**Internal audit**

One key element of the Council's governance framework was its internal audit function. The function's role in providing independent assurance on the effectiveness of internal controls and the risk management framework was, however, severely curtailed. The internal audit function lacked independence from the Council's management and was largely ignored by the Council's audit committee.

**Lack of independence**

The independence of an internal audit is a critical feature in ensuring its effectiveness. Any audit function must be independent of the areas it audits to prevent management interference in the scope, conduct and/or reporting of relevant audits.

In local government, the independence of the internal audit function is achieved by having the head of the internal audit report administratively to a council's general manager but functionally to its audit committee. In practice, this means that the audit function is directed by, and reports to, the council's audit committee while the general manager is responsible for the internal auditor's day-to-day operations. Although general managers may delegate this responsibility, this should only occur where the internal auditor's ability to act without interference is not impaired.

The internal audit function at the Council was not sufficiently independent of the Council's management. Both functionally and administratively, the internal auditor reported to Ms Cullinane, the deputy general manager. This created a conflict of interest, since Ms Cullinane was responsible for both the internal auditor's employment and a number of business areas under the internal auditor's remit, and had the ability to influence how the internal audit function was performed.

Ms Cullinane influenced the target of internal audits, independently of the audit committee, by selecting which of the business areas listed on the Council's audit plan were to be audited. She also directed the internal auditor to conduct audits that were not listed on the audit plan. Ms Cullinane was able to do this because the Council's audit plan contained no risk ratings and did not specify an order for audits. This was despite the Internal Audit Guidelines of the OLG recommending that, "internal audit plans ... be based on a risk assessment of the council's key ... areas to determine an appropriate timing and frequency of [audits]" .

Ms Cullinane also restricted the scope of these audits by directing the internal auditor not to examine the financial aspects of the business areas being audited. With financial transactions and associated financial loss representing one of the predominant risks faced by a council, this direction significantly impaired the effectiveness of the internal audit function. Notably, the fact that these audit reports did not examine financial aspects was not considered by the Council's audit committee.

Ms Cullinane also exercised substantial control over the flow of information between the internal auditor and the audit committee. She both received and reviewed internal audit reports before they were sent to the audit committee and presented report results to the audit committee. While the internal auditor attended meetings, she never did so without having Ms Cullinane present and rarely directly addressed meetings. Tellingly, despite having concerns about this arrangement based on her previous experience, the internal auditor told the Commission that she did not feel sufficiently comfortable to raise her concerns since she did not have direct access to the audit committee and Ms Cullinane was always present at meetings.

The result of Ms Cullinane's influence was that the Council's audits were neither systematic nor independent. The target, scope and reporting of audits were all controlled by Ms Cullinane, who had a vested interest in their outcomes due to her responsibility for areas under the remit of the internal audit function. These limitations meant that the internal audit function was severely curtailed in its ability to provide independent assurance of the adequacy of, and compliance with, the Council's internal control systems.

#### RECOMMENDATION 5

**That Bayside Council undertakes a risk assessment (including an assessment of fraud and corruption risks) to inform its internal audit plan.**

#### RECOMMENDATION 6

**That Bayside Council ensures that its internal audit function operates independently from management by reporting functionally to its audit committee.**

#### Failure to implement recommendations

Even when the Council's internal auditor was able to make recommendations to the audit committee, these recommendations were often not implemented. While the audit committee was responsible for monitoring the implementation of audit recommendations, it did not have any system for doing so. This, essentially, allowed recommendations to be ignored.

A salient example was provided by a 2013 internal audit report to the Business Unit. This report identified serious failings in the Business Unit's procurement processes, noting that, "the ... issues show non-compliance with the purchasing process and suggest an overall breakdown in the purchasing process ... This gives rise to a risk of fraudulent behaviour". The report made various recommendations, including clearly segregating individuals raising purchase requisitions and those approving purchase orders, formally documenting procedures in respect of the purchase process, and embedding a management verification control to review the accuracy of pricing calculations. Although these issues were rated of highest importance, weaknesses in the relevant procurement processes persisted until at least October 2015. Moreover, neither the internal auditor nor Councillor George Glinatsis, who both served on the audit committee and chaired the Council's subcommittee to which it reported, could confirm whether the recommendations had been implemented when they appeared at the Commission's public inquiry nearly eight months later.

As a result of a failure to implement internal audit recommendations, the control weaknesses from which Mr Goodman profited persisted – some, for many years

– despite being identified and reported by the Council's internal audit function.

#### RECOMMENDATION 7

**That Bayside Council ensures it has a robust system in place to monitor and report on the implementation of internal audit recommendations that is independent from management.**

#### External audit

While controls and risk management are the focus of an organisation's internal audit, an external audit provides independent assurance that an organisation's annual financial reports are free from material misstatement (significant error). To achieve this, the external auditors examine not only the financial accounts but also conduct analyses of an organisation's financial processes and transactions. This is to ensure that the organisation has appropriate financial controls in place and that it is operating effectively.

The analyses of financial processes and transactions are performed as part of interim audits, which focus on evaluating the organisation's accounting systems and internal controls. Such audits are conducted at a number of points throughout the financial year, and the identified control deficiencies are summarised in an annual "management letter", together with recommendations on how to remedy these deficiencies.

Prior to issuing a final management letter, auditors typically issue a draft to the organisation's CFO for comment. This allows the CFO to rectify issues identified or ask that some issues are removed if identified in error by the auditor. The CFO's comments are added to the management letter before the auditor issues a final version. Responsibility for addressing the control failures then falls to the organisation (although Australian Auditing Standards require auditors to conduct more detailed analyses if significant control deficiencies are detected) if fraud is suspected or if significant deficiencies identified in previous letters have not been addressed.

Management letters produced by the external audit firm engaged by the Council from 2009 to 2015 identified numerous, serious and recurrent failures in the Council's accounting systems. Despite this, the auditor did not consider it necessary to conduct more thorough examinations of areas associated with the conduct of Mr Goodman and others, including:

- the lack of a procurement policy (2009 and 2010)
- the procurement policy not being followed and staff failing to adequately understand it (2012 and 2013)
- payments being authorised beyond delegations,

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and without the conduct of a legally required tender process (2012, 2013, 2014 and 2015)

- inadequate documentation to support the payment of invoices and a lack of independent review of such payments (2009, 2010, 2011, 2012, 2014 and 2015)
- a failure to independently review allocations of costs between the Council's various accounts (2009, 2010, 2011, 2012, 2013, 2014 and 2015)
- bank reconciliations not being done on a timely basis, not being independently reviewed, and not reconciling by substantial amounts (2009, 2010, 2011, 2012, 2013, 2014 and 2015)
- a lack of independent review of the VMF's integrity and no regular reports of changes made to it (2009, 2010, 2011, 2012, 2014 and 2015)
- a lack of role segregations in the finance division with one officer having responsibility for numerous financial tasks as well as having systems administrator privileges (2014 and 2015)
- a lack of a credit card policy (2009, 2010, 2013 and 2014).

From 2009 to 2013, management letters were issued only to the general manager, and in 2014 and 2015, draft letters were issued only to Mr Goodman (and copied to Ms Cullinane). Neither the Council's audit committee nor its elected body ever received the letters. This was a significant oversight and substantially reduced the possibility that the issues identified in the letters would be addressed.

Australian Auditing Standards ("the Standards") require auditors to report significant internal control deficiencies identified during audits to those in the agency charged with governance. "Those charged with governance" are considered "person(s) or organisation(s) ... with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity" and, further, that they differ from those charged with management that the Standards consider as "person(s) with executive responsibility for the conduct of the entity's operations". While this would seem to require auditors to report management letters, or information to their effect, to councils' elected bodies, the Standards also allow auditors to "determine the appropriate person(s) within the entity's governance structure with whom to communicate".

The Council's external auditor considered Mr Goodman to be "charged with governance" and that communicating the control deficiencies identified during interim audits to him alone satisfied the auditor's obligations under the Standards. This was notwithstanding Mr Goodman's failure to respond to draft letters in both 2014 and 2015, and both letters noting a number of serious issues

considered by the auditor to be "fraud risk(s)" and "particularly concerning". The auditor had a number of opportunities to raise the issues with both the audit committee and the elected body of the Council, since he met with both annually and issued reports to them that made reference to the letters, but he did not consider it his responsibility or obligation to do so.

Despite knowing of their existence, senior members of the Council (such as the elected body and senior staff members) also failed to seek management letters. And, despite it being explicitly recommended in the Internal Audit Guidelines, the audit committee never sought management letters or enquired as to their contents. Mr Glinatsis, an experienced auditor and member of both the elected body and audit committee, told the Commission that he felt that, if issues of concern were identified in audits, then they should have been brought to the audit committee's attention by either the auditor or any of the management representatives present at meetings. Similarly, Ms Kirchner told the Commission she felt that, if audits identified issues of concern, that they should have been brought to her attention by Mr Goodman, Ms Cullinane or the auditor. Ms Kirchner did not query the failure to issue management letters in 2014 and 2015, as she assumed they were being dealt with by Ms Cullinane and Mr Goodman, and assumed that, since no serious issues were brought to her attention, that none had been identified.

The failure of the elected body and audit committee to consider external audit reports concerning systemic weaknesses in financial processes exposed a critical failure in the Council's governance framework. The Commission is of the view that stronger measures are required to ensure that elected bodies and audit committees are made aware of any issues facing their councils that are identified in audits.

The *Local Government Amendment (Governance and Planning) Act 2016* was assented to on 30 August 2016. From 1 October 2016, the principal Act provides that the Auditor-General of the Audit Office of NSW is the auditor for a council and may appoint a person or firm to be a council's auditor. In practice, the Auditor-General will be overseeing a number of vetted commercial firms to undertake this work. This change should bring about an increase in both the quality and consistency of council audits. In particular, the Audit Office will ensure that governance and control weaknesses identified during audits are reported to those charged with both governance and management, including elected bodies, audit committees, general managers, and the CFOs of councils. Furthermore, where issues are considered sufficiently significant, the Auditor-General will report them to the Minister.

The Commission fully supports the Auditor-General taking responsibility for council audits. Had the present system been in place prior to the period that is the subject of this investigation, it is likely that the elected body and audit committee would have at least been aware of the systemic weaknesses from which Mr Goodman and others profited.

### The Council's audit committee

The Council's audit committee was established in May 2011 in response to the release of the OLG's Internal Audit Guidelines in September 2010. The guidelines state that an audit committee is a "crucial component of corporate governance [and] is fundamental to assisting the General Manager and council with their oversight function to: ensure all key controls are operating effectively".

In establishing its audit committee, it was the Council's intention to adhere to the guidelines, but in practice it operated in a manner that vastly deviated from them. The audit committee's charter stated that its objective was to "provide independent assurance and assistance to the City of Botany Bay on risk management, control, governance, and external accountability responsibilities". Mr Glinatsis, the Council representative on the audit committee, told the Commission that the audit committee discharged its responsibilities under its charter by "agreeing to a triennial Audit Plan ... reviewing the progress of audits underway and any follow up to completed audits and reviewing financial information". He also told the Commission that he believed that the committee had discharged its duties according to the charter.

Contrary to the explicit advice of the Internal Audit Guidelines, the Council's audit committee never examined management letters, did not ensure that the internal audit function was independent, never met with internal and external auditors independently of management, and did not monitor the implementation of internal audit recommendations. It also had never met four times a year despite being explicitly required to do so by its charter. The result was that it could not fulfil its responsibilities; in particular (as mentioned above), the responsibility of reviewing internal audit reports to ensure that timely responses were made to the issues they identified.

More broadly, the Internal Audit Guidelines state that the "audit committee should report regularly to the council on the management of risk and internal controls"; a requirement echoed in the charter of the Council's audit committee. Despite being the chair of the Council subcommittee to which the audit committee reported, Mr Glinatsis told the Commission that the audit committee had never reported anything concerning the management of risk or the operation of internal controls to

the Council's subcommittee because there were no risks of which the audit committee was aware. The Commission is of the view that this lack of reporting does not satisfy the charter's requirement to report to the governing body "on the management of risk and internal controls".

A properly functioning audit committee is a key mechanism to ensuring that an organisation can detect and remedy the control failings that were exploited by Mr Goodman and others. The operations of the Council's audit committee were manifestly inadequate in this regard. Indeed, the main responsibilities that the audit committee did fulfil were ratifying the Council's audit plan and reviewing the Council's annual financial statement; neither of which were adequate to remedy the overwhelming systemic control deficiencies from which Mr Goodman and others so easily profited.

### RECOMMENDATION 8

**That the general manager of Bayside Council conducts a review of the audit committee's effectiveness and the adequacy of its arrangements to ensure that it fulfils the responsibilities of its charter and provides sufficient assistance to Bayside Council's governing body on governance processes.**

### Governance framework of local government did not improve the Council's resistance to corruption

The overwhelming failure of the Council's governance mechanisms to detect and remedy its myriad of control failings raises serious questions about the effectiveness of council oversight more generally. The failure of the local government oversight framework at the time of the corrupt conduct to detect or remedy the Council's control and governance weaknesses suggests that the system could not provide adequate assurance that the Council was meeting its legislated standards of governance and administration.

The Commission is of the view that there were two key areas affecting oversight of the Council and NSW councils in general. First, while elected bodies are primarily responsible for council governance, it is questionable whether they are, in practice, able to do so. Secondly, while the OLG can take compliance actions to enforce governance standards, its ability to detect control and governance deficiencies within councils was limited at the time of the corrupt conduct that is the subject of this investigation.

This part of the chapter outlines the limitations of both elected bodies and the OLG at the time of the corrupt conduct to effectively oversee and enforce good



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governance in council administrations. It concludes that, despite recent changes, the framework currently in place provides less assurance than that provided by the corresponding framework for state government agencies.

**The effectiveness of elected bodies to oversee council administrations**

Notwithstanding a general manager's responsibility for ensuring effective operation of a council's internal controls, ultimate responsibility for ensuring good governance practices in a council lies with the governing body. The role is similar, although not directly comparable, to directors of a corporate board who have responsibility for both the strategic direction of the organisation and for ensuring that the organisation has appropriate controls and risk oversight mechanisms.

Despite having similar responsibilities to corporate board members, councillors are generally not able to oversee their administrations to the same extent that corporate board members are able to oversee the operation of their companies. This reduced capacity for oversight arises from several sources; namely, that councillors generally:

- have limited visibility over council operations
- have limited ability to obtain relevant information from council staff
- may be less incentivised to ensure good governance within their council
- may not have demonstrated skills and experience in management and corporate governance given that they are elected rather than appointed.

Elected bodies are restricted in their visibility of their administration's governance arrangements, particularly in terms of financial controls and risk management practices, because there are few requirements that they be provided with such information. In fact, the only reports elected bodies *must* receive on financial governance are the annual external audit reports on the financial statements and conduct of the audit; neither of which necessarily convey control or risk management evaluations.

At the time of the conduct that is the subject of this investigation, whatever additional information each governing body received on its financial or risk governance, such as internal audit reports or external audit management letters, was largely left to each council to determine (albeit with guidance provided by the OLG). Furthermore, some councillors may not believe that they are even entitled to receive such information, as one councillor claimed during the public inquiry. The result is that elected bodies can easily be ignorant of serious control failings within council.

Elected bodies are also limited in their ability to obtain information not routinely provided to them. To prevent undue interference in council administrations, councillors can only contact staff in accordance with the policy and procedure of their council, and this is sometimes limited to just the general manager. With some elected bodies unable to directly contact other administrative staff, they are often heavily reliant on general managers to inform them of the operation of the council's internal controls and overseeing mechanisms. However, since one of the general manager's standard contract provisions is to maintain satisfactory operation of internal controls, documentation of decision-making and sound financial management, they may be motivated not to report negative information about organisational controls. Councillors are therefore sometimes reliant on a single source of information about governance controls that can, potentially, be biased or incomplete.

Even when elected bodies do receive comprehensive operational and risk-related information regarding their councils, they may not be sufficiently incentivised to exercise their governance responsibilities. Councillors do not receive financial remuneration commensurate with their councils' performance. Instead, councillors are likely to be primarily motivated to serve their constituents and achieve re-election; an end more likely achieved by delivering services and improving amenities rather than diligently overseeing their council's governance.

Furthermore, councillors do not necessarily possess the skills and experience required to effectively oversee controls and risk management. Corporate board directors are appointed by peers based on a prior track record of success in a related field. As a consequence, they usually possess relevant business administration skills, including the knowledge and ability to seek and interpret independent information on the effectiveness of controls. In contrast, councillors are elected by the general public based on considerations that are often different from their skills or experience in overseeing organisational operations. The process for appointing local councillors therefore may not attract individuals skilled in corporate governance.

The result of these limitations is that elected bodies could easily be unaware of serious administrative failings affecting their councils and lack either the competence or incentive to respond effectively. For example, Mr Glinatsis was unaware of the failures at the Council, and believed, despite his auditing background, that actively seeking information on the Council's governance practices was inappropriate. He and the governing body could therefore not act on what they did not know or suspect; that this was possible raises serious questions about whether elected bodies are well-placed to fulfil the oversight role with which they are charged under the LGA.

### **The effectiveness of the Minister and OLG to oversee council administrations**

While the Minister is broadly responsible for overseeing local government in NSW, including the administration of the LGA and associated regulation, the OLG is the administrative body that gives effect to the Minister's responsibilities. This means that, although responsibility for ensuring good governance lies with the elected body of a council and the general manager, the Minister, via the OLG, may intervene to force councils to comply with their legislative obligations.

Despite these powers, the OLG's ability to detect a council's non-compliance with its legislative obligations has been limited. Previously, the OLG conducted occasional reviews of councils to evaluate their governance controls and operations. The purpose of these "Better Practice Reviews" was to provide recommendations to councils to assist them to improve their governance controls and operations, but the reviews were not in-depth audits of council operations.

In its May 2013 report, the OLG identified some governance failures at the Council as part of its Better Practice Review program, including that the Council "broaden the role of the audit committee/internal auditor to include organisational audits", but referred the issues back to the Council for action. In any event, OLG has now ceased the Better Practice Review program.

To date, audited financial statements are the main periodic source of financial and governance information that the OLG receives from councils. As has been demonstrated by the Commission's investigation, these may not facilitate the detection of abject control failures or serious corruption. The OLG does receive other sources of information that could prompt investigation, such as complaints about councils, but the receipt of such information is, necessarily, ad hoc. While the OLG will now have access to a wider source of information about financial control failures at a council as a result of recent reforms, at the time of the corrupt conduct it could not reliably detect significant failings.

Although the OLG does have extensive powers to intervene in local councils, its capacity to conduct the requisite investigations is curtailed due to limited resources. The OLG can investigate councils and issue mandatory directives for improvement (known as "performance improvement orders"), suspend or disqualify councillors, or conduct public inquiries. Given the intensive nature of investigations, however, the OLG's capacity to investigate all matters of which it is aware, and therefore its ability to exercise these powers, is restricted. Consequently, the use of investigations and formal powers to detect and remedy severe governance failings across the sector cannot be relied on as the sole answer.

As a result of the limitations associated with the effectiveness of elected bodies and the OLG in overseeing local councils, the Commission believes that further reform is required (see below).

### **Comparison between local and state government**

Compared with state government agencies, local councils in NSW are subject to less rigorous governance requirements. Since the state government is ultimately financially liable for local councils, it is reasonable that the direction of local councils be of comparable sophistication to that which applies to state government agencies.

One key difference between state government agencies and local councils is the extent to which each is subject to direction regarding administrative practices and governance requirements. State government agencies are subject to mandatory directives on their administration and governance by the NSW Department of Premier and Cabinet and NSW Treasury. In contrast, local councils are more often subject to "guidelines" that are mandatory to consider but not mandatory to follow.

Another key difference is state government agencies have much more stringent requirements for audit committees than local councils. With regard to state government agencies, audit committees are mandatory and their composition and operation are governed by strict requirements, with agency heads required to attest each year that these requirements have been met. Committee members are also selected from prequalified skill-based panels overseen by the NSW Government.

The Commission notes that the NSW Government has recently introduced a number of changes to improve the oversight of local councils. As mentioned above, the Auditor-General has been made responsible for the external audits of local councils. This means, inter alia, that the Audit Office will ensure that elected bodies, general managers and audit committees are informed of governance and control weaknesses that are identified in audits. Where councils do not respond to draft letters, final letters will be issued regardless, and, where councils do not remedy issues identified without showing cause, the Auditor-General has the ability to escalate the matter to the Minister. The Auditor-General also has a specific requirement to communicate to the Minister any matters he or she considers sufficiently significant. Finally, the Auditor-General now also has the power to conduct performance audits of the local government sector and report findings to the NSW Parliament.

Moreover, it will also be compulsory for local councils to establish an audit, risk and improvement committee, which will be responsible for reviewing a number of



aspects of a council's operations, including fraud control, financial management and governance.

Despite these improvements, however, as a general proposition, local councils are still subject to less direction than state government agencies. Key differences remain, such as specific requirements around the operation of audit committees and the lack of mandatory administration and governance directives.

#### **RECOMMENDATION 9**

**That the NSW Government considers adopting a model of local council oversight that is comparable to that applicable to state government agencies. This model could include:**

- **mandatory administration and governance directives similar to those that apply to state government agencies**
- **requirements concerning the composition and operation of audit committees that are similar to those that apply to state government agencies**
- **the requirement for council general managers to attest that audit committees are operating in accordance with requirements.**

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to Bayside Council, the OLG and the responsible minister.

As required by s 111E(2) of the ICAC Act, Bayside Council and the OLG must inform the Commission in writing within three months (or such longer period as the Commission may agree in writing) after receiving the recommendations, whether they propose to implement any plans of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the agency is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au), for public viewing.



## Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
- ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- iii. conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

## Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded



by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite

standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:



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*...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

*...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also *Rejfeek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.

## Appendix 3: Summary of responses to proposed findings

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings it was contended were open to the Commission to make against various parties. These were provided to relevant legal representatives on 12 July 2016, 30 September 2016 and 13 April 2017, and submissions in reply were received from a number of parties.

In addition, further submissions were provided to Ms Cullinane's legal representatives on 1 June 2017. The submissions concerned whether there was sufficient evidence to make a finding that Ms Cullinane engaged in serious corrupt conduct by failing to act on her knowledge of Mr Goodman's misconduct. Submissions in response to those submissions were received on 23 June 2017.

Mr Alexander and Ms Cullinane requested that the Commission include in this report a summary of the substance of their responses.

Mr Alexander's submissions in response were received on 4 August 2016.

Ms Cullinane's submissions in response were received on 22 August 2016, 5 September 2016 and 23 June 2017.

The Commission considers that, in the circumstances, Mr Alexander and Ms Cullinane had a reasonable opportunity to respond to proposed adverse findings.

The Commission did not accept all of the adverse findings contended for by Counsel Assisting. It is not necessary to summarise the substance of responses in relation to those adverse findings. The substance of the responses of Mr Alexander and Ms Cullinane in relation to adverse findings made by the Commission in this report is summarised below.

### Mr Alexander

Mr Alexander's legal representatives submitted that:

- the evidence is unclear as to the duration of the arrangement to create false invoices between Mr Goodman and Mr Alexander and therefore there can be no finding that Mr Alexander's conduct took place over a significant period of time and no conclusion that Mr Alexander engaged in serious corrupt conduct in relation to false invoicing
- as the evidence is unclear as to the amount of money involved and insufficient to show that a significant amount of money was involved, there can be no finding that Mr Alexander engaged in serious corrupt conduct
- there is no evidence of premeditation in Mr Alexander's conduct and therefore there can be no conclusion that Mr Alexander engaged in serious corrupt conduct in relation to false invoicing
- there was no evidence that Mr Alexander's conduct was premeditated and involved a significant level of planning and there can be no conclusion that Mr Alexander engaged in serious corrupt conduct in relation to false invoicing
- a finding that Mr Alexander's conduct was sufficiently serious to warrant a finding of corrupt conduct because, if proved on admissible evidence to the criminal standard by an appropriate tribunal, it could involve offences pursuant to s 192E of the Crimes Act that have a maximum penalty of 10 years, meaning they are serious indictable offences, should not be made because maximum penalties address the worst conduct by the worst offender and are not always a reliable indicator of "seriousness". Furthermore, it was submitted that any offence under s 192E of the Crimes Act would likely be dealt with summarily and therefore the conduct in which Mr Alexander engaged is not "serious corrupt conduct".



APPENDIX 3: Summary of responses to proposed findings

These submissions are set out in more detail and dealt with in chapter 2 of the report.

In the alternative, Mr Alexander's representatives submitted that there is insufficient evidence for consideration to be given for prosecution in relation to an offence under s 192E of the Crimes Act. This submission is set out in more detail and dealt with in chapter 2 of the report.

Mr Alexander's legal representatives submitted that Mr Alexander voluntarily made numerous admissions against his interests after "the penny dropped" and as a result of a revelation of his involvement with Mr Goodman rather than his position becoming untenable. Furthermore, it was submitted that it is in the interests of the Commission to encourage witnesses to be truthful and forthcoming and the Commission should therefore exercise its discretion not to refer Mr Alexander to the DPP for consideration to be given for prosecution in relation to an offence under s 87 of the ICAC Act of giving false and misleading evidence. This submission is set out in more detail and dealt with in chapter 2 of the report.

### Ms Cullinane

The substance of the response in relation to the adverse findings made by the Commission in relation to Ms Cullinane in chapter 4 is summarised below.

Ms Cullinane's response disputed any finding of corrupt conduct that she knew of Mr Goodman's misconduct and failed to act on that knowledge for the following reasons:

- it would be a denial of procedural fairness if a finding of corrupt conduct were made because it was not until 1 June 2017 that Ms Cullinane was given notice of any such proposed adverse finding
- making such a finding would involve jurisdictional error because the submissions of Counsel Assisting of 12 July 2016, 30 September 2016 and 13 April 2017 had not recommended any such finding or that her conduct could constitute a common law offence of misconduct in public office and it would be:
  - irrational and illogical and in excess of jurisdiction for the Commission, led by a new Commissioner with no personal knowledge of the demeanour and credit of the witness or first-hand familiarity with the material, to not adhere to the ruling of the previous Commissioner, and ignore the actual submission of Counsel Assisting, to proceed on an entirely different basis*
- the Commission has no jurisdiction to make a finding of corrupt conduct because there were no

matters identified as, or submitted to be, serious corrupt conduct in respect of Ms Cullinane

- there were inadequacies in the Commission's investigation, particularly in the examination of the allegations against her and the reliability and cogency of the evidence of Mr Byrnes and Mr Thompson.

### Procedural fairness

Ms Cullinane's legal representatives submitted that there had been no notion that the Commission was considering an adverse finding against Ms Cullinane based on the common law offence of misconduct in public office in the "terms of reference" for the public inquiry, the opening of Counsel Assisting, the scope and conduct of and nature of the questioning in the public inquiry, and the submissions previous to those of 1 June 2017. It was submitted that she did not have an adequate opportunity to consider and respond to the proposed adverse finding because, without proper notice, she was not in a position to identify all further relevant evidence that she may have sought leave to call.

The Commission rejects that submission. The rules of procedural fairness require that notice be provided of possible adverse findings. The Commission considers that the further submissions of 1 June 2017 provided reasonable notice of the relevant proposed adverse finding.

It was also submitted that no assurance had been given that the Commission had provided all material capable of being exculpatory of Ms Cullinane. Ms Cullinane had not been given access to transcripts of any compulsory examinations (including her own), and that a relevant witness, Ms Kirchner, had not been called.

The Commission rejects these submissions. Material relevant to the Commission's findings, and which was subsequently relied upon by the Commission, was made available during the course of the public inquiry and the legal representatives for Ms Cullinane had access to that material. Ms Kirchner's statement was tendered in evidence during the public inquiry. She was not called as a witness because no person had a positive case to advance with respect to her. In any event, the only evidence of Ms Kirchner's relied upon in chapter 4 is that Ms Cullinane spoke to her in 2014 about Mr Goodman's misuse of Cabcharge cards. Ms Cullinane admitted that she knew Mr Goodman had misused his Cabcharge cards and said that she had asked him to repay the money to the Council.

It was submitted that the Commissioner who presided at the public inquiry had given an assurance that no finding of corrupt conduct would be made against Ms Cullinane. That submission is based on the following response from then Commissioner, the Hon Megan Latham, to a question from counsel for Ms Cullinane as

to what approach Counsel Assisting might take "as to Ms Cullinane's culpability for the offending of others":

*[Commissioner]: Well I don't think anyone is going to sheet it all home to her. I mean the fact is that as I understand it, I mean—Ms Gerace, can I just—*

*[Ms Gerace]: Commissioner, can I just develop that point—*

*[Commissioner]: Look can I just say this. As you well know, I mean this Commission is in the business of making appropriate corrupt conduct findings if we get to the requisite level of proof. There might be a degree of negligence here but that's not our remit. I mean, it's just not. I mean to the extent that people can be criticised for things failing on their watch well so be it. But I don't understand anybody to suggest, now Counsel Assisting might want to correct me, but I don't understand anybody to suggest that the mere fact that these corrupt practices continued under the watch of Ms Cullinane and for that matter, Mr Fitzgerald, justifies any kind of finding of corrupt conduct against either of them. So I'm just wondering what the point is?*

It is clear from this exchange that Ms Latham was referring to a situation where, at its highest, the evidence pointed to negligence on the part of Ms Cullinane. The finding of serious corrupt conduct against Ms Cullinane is not based on negligence but her awareness that Mr Goodman misused his position to financially benefit himself and her wilful failure to take appropriate action.

### **Jurisdictional error**

To the extent this submission relied upon the absence in the submissions of Counsel Assisting of 12 July 2016, 30 September 2016 and 13 April 2017 that a finding of serious corrupt conduct should be made against Ms Cullinane, the argument is addressed above.

The Commission rejects the submission that it would be "irrational and illogical and in excess of jurisdiction" for a new Commissioner to make an adverse finding. As demonstrated in chapter 4, the findings are based on an assessment of the available evidence, including admissions made by Ms Cullinane and the objective evidence of the relevant telephone interceptions.

### **Inadequacies in the Commission's investigation**

It was submitted that the Commission's investigation was deficient, including in its examination of the allegations against Ms Cullinane and the reliability and cogency of the evidence of Mr Byrnes and Mr Thompson about their raising of matters with Ms Cullinane. It was submitted that significant conversations were not examined or identified in detail as to when they might have occurred or what was actually said, and that there were no relevant contemporaneous emails and business records adduced or examined that might have been corroborative. Submissions were made that Mr Thompson's evidence should be approached with caution and was inconsistent or implausible, and that Mr Byrnes was not a credible witness.

The Commission rejects these submissions. The reliability of Mr Byrnes and Mr Thompson as witnesses is addressed in chapter 4 of the report.

Ms Cullinane's legal representatives submitted that a telephone call between her and Mr Goodman on 2 October 2015 did not support any proposed finding in relation to Ms Cullinane's knowledge of Mr Goodman's conduct beyond the misuse of his Cabcharge and fuel cards, and noted that the only creditor mentioned was Cabcharge. It was submitted that it was Ms Cullinane, on becoming aware of these issues, that reported these matters to Ms Kirchner and that Ms Kirchner was not examined about what she was told or what investigations had occurred. It was submitted that this telephone call showed Ms Cullinane seeking to compel Mr Goodman to repay those monies, which was entirely inconsistent with any conclusion of misconduct in public office.

The Commission rejects these submissions and is satisfied that the conversation indicates that Ms Cullinane's knowledge of Mr Goodman's misconduct was not as limited as submitted on behalf of Ms Cullinane. This is addressed in chapter 4 of the report.

Ms Cullinane's legal representatives submitted that there were critical omissions in the consideration given to how the elements of the offence of misconduct in public office were satisfied as they related to Ms Cullinane. It was submitted that there was no evidence that Ms Cullinane held a "public office", and no delegation of any relevant function to Ms Cullinane by Council's general manager. In particular, it was submitted that Ms Cullinane had no responsibility for "policing" Mr Goodman's actions, and whose conduct in the management of Council's finances was overseen and supervised by others.

The Commission rejects these submissions. There is no doubt that Ms Cullinane is or was a public officer at the material time by reason of her employment

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APPENDIX 3: Summary of responses to proposed findings

by the Council. The Commission is satisfied that Ms Cullinane's duty as a public officer, given her position as Council's deputy general manager, included considering and taking appropriate action in relation to corrupt and criminal conduct by other Council officers that she was aware of or which was reported to her. As deputy general manager, that public duty was not confined by what was explicitly defined or delegated to her as her day-to-day or operational management responsibilities. It is also the duty of any person to report known criminality and not to give comfort or advice to the perpetrator.



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4 August 2017

Dear Mr Kneipp

**Independent Commission Against Corruption  
Report into the former City of Botany Bay Council**

The purpose of this letter is to draw your attention to the Independent Commission Against Corruption (ICAC) recent report titled "Investigation into the conduct of the former City of Botany Bay Council Chief Financial Officer and Others". The investigation highlighted that material frauds can happen when serious weaknesses in controls and governance exist. The report contains lessons for Councils, Council management, and auditors.

I would like to encourage Councils to reflect on the learnings and recommendations from this investigation in order to satisfy yourselves that appropriate controls and governance arrangements are in place. Further assurance could be gained from having those arrangements reviewed by your Audit, Risk and Improvement Committee where one is in place.

The ICAC report also alludes to areas where the external audit could have been more effective. As the incoming auditor of the Local Government sector we have taken action to ensure that the concerns raised in the report will receive due attention in all our audits.

My Report to Parliament on the Local Government sector (expected to be published in March 2018) will share better practice approaches to control and governance arrangements.

The ICAC report is available on their website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

If you require any further information in relation to this matter, please contact Renee Meimaroglou, Director of Audit on 02 9275 7389.

Yours sincerely

A handwritten signature in black ink, appearing to read "Margaret Crawford".

Margaret Crawford  
Auditor-General

Cc: Mr Mark Riley, Interim General Manager

Parcel	Dubbo City
Asset	ADHH
10 AUG 2017	
File C	D/25



## REPORT: Enterprise Risk Management

**AUTHOR:** Director Corporate Services  
**REPORT DATE:** 22 August 2017  
**TRIM REFERENCE:** ID17/1539

### EXECUTIVE SUMMARY

At its Ordinary meeting held June 2015, the former Dubbo City Council adopted the Enterprise Risk Management Policy and a suite of related documents including the Enterprise Risk Management Plan. Following the merger of the former Dubbo City and Wellington councils in May 2016, Council engaged Echelon to assist with the review of Enterprise Risk associated documents to develop a new policy that consists of the best components of each policy and plan.

The former Wellington Council did not have an adopted Enterprise Risk Management Policy and accordingly staff of the former Wellington Council were consulted to ensure that the resulting policy would accommodate the requirements of the entire Local Government Area.

### ORGANISATIONAL VALUES

Customer Focused: Adoption of an Enterprise Risk Management Policy and Plan will provide confidence to Council's customers that Council has addressed its risks and has an adopted methodology to identify and manage its risks.

Integrity: This policy has been developed through consultation with staff of the former Dubbo City and Wellington Council's, Council's Executive Leadership Team and Council's Audit and Risk Management Committee.

One Team: Staff from the former Dubbo City and Wellington councils participated in the review of documentation and development of the policy now considered for adoption.

### FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

### POLICY IMPLICATIONS

With the adoption of the Enterprise Risk Management Policy, this will become a Council Policy.

**RECOMMENDATION**

- 1. That the policy titled “Enterprise Risk Management” as attached as Appendix 1 to the report of the Director Corporate Services dated 8 August 2017 be adopted.**
- 2. That the “Enterprise Risk Management Plan” as attached as Appendix 2 to the report of the Director Corporate Services dated 8 August 2017 be noted.**

*Craig Giffin*  
Director Corporate Services

**REPORT**

At its Ordinary meeting held June 2015, the former Dubbo City Council adopted the Enterprise Risk Management Policy and a suite of related documents including the Enterprise Risk Management Plan. Following the merger of the former Dubbo City and Wellington councils in May 2016, Council engaged Echelon to assist with the review of Enterprise Risk associated documents to develop a new policy that consists of the best components of each policy and plan. Eddie Stewart of Echelon attended Council’s Executive Leadership Team meeting on 17 August 2017 to present the revised Policy and Plan.

Upon review of each of the former Councils’ Enterprise Risk Management environments, each Council had progressed at different rates for the implementation of Enterprise Risk Management frameworks which are summarised in the following table:

<b>Former Dubbo City Council</b>	<b>Former Wellington Council</b>
<p><b>Current Documents</b> ERM Policy – Adopted July 2015 ERM Plan – Adopted July 2015 ERM Framework – Adopted July 2015 ERM Communication Strategy – Adopted July 2015 ERM Implementation Action Plan – Adopted July 2015 Executive Staff Committee Risk Charter Risk Assessment Template form</p>	<p><b>Current Documents</b> Risk Policy – Adopted 2014/2015 Risk Management Plan – Draft – Not adopted Risk Management Guidelines – Draft – Not adopted Other associated documents not adopted or implemented eg risk matrix, how to perform a risk assessment, Risk category guidelines Risk Assessment Template form</p>
<p><b>Risk Profiles and Systems</b> Strategic Risk Profile – 2015 71 Operational Service Area profiles – 2014/2015 All profile data loaded in JRS electronic risk management system Events team uploaded risk assessments into a Word template DAMP – management standards for all assets</p>	<p><b>Risk Profiles and Systems</b> No strategic Risk Profile No operational service area risk profiles Project risk management template – used for major engineering projects Events Risk Assessment template Profiles loaded into Excel spreadsheets, no electronic risk profiling management system</p>

The former Wellington Council did not have an adopted Enterprise Risk Management Policy and accordingly staff of the former Wellington Council were consulted to ensure that the resulting policy would accommodate the requirements of the entire Local Government Area.

The Enterprise Risk Management Policy and Plan are now provided for adoption and notation accordingly. It is recommended to adopt the Policy titled “Enterprise Risk Management” as a Council policy. The Enterprise Risk Management Plan, being operational and dynamic, is recommended for notation to allow regular updating of these documents without the need to bring back to Council for adoption for minor changes.



Council will also be required to update its corporate enterprise risk registers in the coming months following the adoption and population of a new organisation structure. It is expected that these risk registers will be updated by March 2018 as requested by the Audit and Risk Management Committee.

Appendices:

- 1 [↓](#) Dubbo Regional Council Revised Enterprise Risk Management Policy
- 2 [↓](#) Dubbo Regional Council Revised Enterprise Risk Management Plan



DUBBO  
REGIONAL  
COUNCIL

## COUNCIL POLICY

# ENTERPRISE RISK MANAGEMENT

**Date** 8 August 2017

**Council Resolution Date**

**Clause Number**

**Responsible Position** Manager Governance and Risk  
**Branch** Governance and Risk  
**Division** Corporate Services  
**Version** 2.0  
**TRIM Reference Number**  
**Review Period** 2 years  
**Review Date** September 2019  
**Consultation** Staff of the former Dubbo City and Wellington councils have cooperated to undertake this review and develop this policy

Document Revision History	
Description	Date
Adopted by former Dubbo City Council	June 2015
Review facilitated by Echelon following merger of former Dubbo City and Wellington councils	December 2016
Review considered by Executive Leadership Team	August 2017
<b>Notes</b>	

## **POLICY**

### **PURPOSE**

The effective implementation of this policy will ensure that the management of risk is seen as good business sense and provide a way to confidently know which risks to take for the benefit of a greater opportunity, which risks to avoid in order to prevent significant impact on the organisation and managing the outcomes for success in order to achieve the organisation's key objectives.

### **BACKGROUND AND RELATED LEGISLATION**

Risks exist in all aspects of Council's undertakings. AS/NZS ISO 31000:2009 defines risk as the 'effect of uncertainty on objectives'. An effect is a deviation from the expected, whether it be a negative or positive (realising opportunities) deviation.

It is essential that risks are managed to ensure that Council achieves its objectives; and in turn be recognised for the excellence of its services and for the strength of its partnerships with the community, customers, employees and stakeholders. Enterprise Risk Management plays a key role in ensuring that Council achieves that objective.

### **SCOPE**

This policy applies throughout the organisation to be followed by staff, consultants and contractors.

### **POLICY**

Council is committed to taking a structured and innovative approach to the management of risk throughout the organisation in order to promote and demonstrate good corporate governance, to minimise loss and maximise opportunities to improve service provision.

The Enterprise Risk Management approach utilised by Council in the development of the Enterprise Risk Management Plan is AS/NZS ISO 31000:2009 together with the requirements of the NSW Work Health and Safety Act, 2011, and will be incorporated into the Planning, Governance, Asset Management, and Operational Processes of Council.

### **POLICY OBJECTIVES**

1. To provide direction and commitment to Enterprise Risk Management principles as part of Council's management planning, decision making and the undertaking of operational activities.
2. To effectively integrate the management of risk into Council's high level management planning activities to ensure the achievement of its strategic objectives as outlined in the Community Strategic Plan and associated documents. The Enterprise Risk Management (ERM) Framework (incorporated into the Enterprise Risk Management Plan) includes ERM being integrated with Council's Integrated Planning and Reporting Structure.
3. To apply and incorporate the Enterprise Risk Management Framework into Council's operational activities and business planning processes.

4. To promote an environment of risk awareness and willingness to manage risk at all levels of the organisation.
5. To provide opportunities that encourages continuous improvement of the ERM Program and at all levels of the organisation.
6. To ensure, through the application of this Policy:
  - a) That the Council, General Manager and the Executive Staff are in a position to confidently make informed strategic, project and operational decisions based on Enterprise Risk Management Principles;
  - b) That the requirements of the Office of Local Government's Promoting Better Practice, in relation to the management of risk, are satisfied;
  - c) That all reasonably foreseeable risks are systematically identified, assessed, analysed, prioritised and considered for appropriate treatment with all information documented in Council's electronic risk system;
  - d) The correct assigning of ownership of risks through appropriate delegation of risk management responsibilities to all Council officers across all functional areas of Council;
  - e) That all relevant legislation is complied with and relevant risk management standards (currently AS/NZS ISO 31000:2009) are used to provide guidance in best risk management practices;
  - f) The effective management and allocation of resources through more targeted and effective controls;
  - g) Improved protection of the community, Council's employees and volunteers, Council's assets and Council's financial integrity and sustainability;
  - h) The effective communication of this policy through the development of an Enterprise Risk Management Communication and Reporting Framework.

## RESPONSIBILITIES

The Council, General Manager, Directors, Managers, Supervisors and Employees, Contractors and Consultants are to be familiar with, and competent in, the application of the Enterprise Risk Management Policy, and are respectively accountable for the delivery of the Policy within their areas of influence and responsibility. These are outlined in Council's Enterprise Risk Management Plan.

### **ENTERPRISE RISK MANAGEMENT PLAN**

Council's Enterprise Risk Management Plan is the document that articulates how the intent of the ERM Policy (this policy) is to be communicated and implemented throughout the organisation. It provides clear guidance and the associated processes, procedures and standards that are to be observed.

Effective communication is critical to the successful implementation of the policy. Council is to develop and implement a Communication Strategy that will ensure the policy and its intent is known, clearly understood and applied by all staff within the organisation.

Similarly, a Reporting Strategy will provide effective channels for information, decision making and instructions to be relayed efficiently and effectively in order to successfully manage any potential risk that may impact on Council's achievement of objectives. Council personnel will follow these protocols.

Council is committed to the proactive approach to risk management, to continually review its effectiveness and to be flexible enough to adapt to the changing needs of the organisation. A performance review of the effective implementation of the ERM Plan and activities will be conducted by the Audit, Risk and Improvement Committee. This review will serve to further enhance Council's performance that will see Council as a proactive and resilient leader by the community.

### **RISK TOLERANCE/APPETITE**

How much risk council is willing to accept will vary with each circumstance? Staff must be aware that there are risks Council will NOT be prepared to accept and as such, it is important to identify these and follow appropriate protocol.

Risk levels that are NOT ACCEPTABLE by Council are those risks where:

- Any reasonably preventable accident/incident resulting in the loss of life or serious injury
- Any reasonably preventable incident that will threaten the provision of critical services and the well-being of the community.
- Any reasonably preventable activity that will cause extensive endangerment or will cause long term or permanent damage to the Environment.
- Any reasonably preventable activity that will disrupt normal business activities and/or cause major damage to reputation.
- Any reasonable activity that will cause Council significant financial loss.

### **RECORD REQUIREMENTS**

All documents associated with the risk management system and procedures will be kept in the appropriate Dubbo Regional Council electronic records management system.

All Dubbo Regional Council workers are responsible for the formal retention of any risk management documents.

**CONFLICTS OF INTEREST**

It is all employees' responsibility to ensure that there are no conflict of interest situations existing in undertaking their respective Council role. All conflicts of interest will be managed in accordance with Council's Code of Conduct Policy and procedures.



# **ENTERPRISE RISK MANAGEMENT PLAN**

**Dubbo Regional Council**

August 2017

## Foreword / Introduction

Dubbo Regional Council has endorsed and is committed to the implementation of the Enterprise Risk Management (ERM) Plan.

Council's Executive Staff Committee has set the direction for the management of risk across all service areas operating within the organisation. The management of risk, in conjunction with other management direction, is integral to achieving excellent, sustainable governance and corporate support in the Council's Operational Plan.

Council recognises that as a large and very diverse organisation that it must have a robust system for managing risks. Council is committed to safeguard its position as a resilient and dynamic organisation by becoming a proactive organisation that embraces the knowledge and management of its risks.

It is important that Council is proactive in the implementation of this plan at all levels, commencing with the clear communication from Executive Staff to all areas of the organisation that this process is to be embraced by all. This is to be followed by the setting down of the rules and standards to be applied and providing the appropriate level of training and education to ensure they are clearly understood.

The implementation of this Plan will require that each Division/Function examine their activities, identify, assess, and rank risks and develop control strategies to manage the highest priority activities that may potentially hinder the achievement of organisational objectives.

This risk management plan encapsulates the requirements of all staff and I require the continued and ongoing commitment of all staff to the plan.

*Mark Riley*  
General Manager



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## 1. ERM PLAN STATEMENT

Council is committed to taking a structured and innovative approach to the management of risk throughout the organisation in order to promote and demonstrate good corporate governance, to minimise loss and maximise opportunities to improve service provision.

The Enterprise Risk Management approach utilised by Council in the formulation of this Enterprise Risk Management Plan is consistent with AS/NZS ISO 31000:2009 Risk Management Principles and Guidelines and the requirements of the NSW Work Health and Safety Act, 2011, and will be incorporated into the planning, governance, asset management, and operational processes of Council.

The Enterprise Risk Management Framework and Program will take into consideration and be integrated with Council's DAMP. The objectives of DAMP is to create and establish management standards for all assets under the management and control of Council to a reasonably safe standard and condition that is, in fact, the highest standard and condition that Council has determined it can reasonably afford in all of its circumstances and having regard to all of its statutory functions including the following factors or constraints:

- financial and economic limitations;
- environmental and aesthetic considerations;
- social and community expectations;
- political considerations; and
- any other factors or constraints, that impact on Council's ability to distribute its wealth and allocate risk across the whole of its ratepayer and resident, and visitor population.

## 2. ERM PLAN

The ERM Plan details the total processes that the organisation will be undertaking in the implementation of the ERM Program. It is also the organisational document that provides the detail of the methodologies/processes involved that will ensure compliance with the requirements of the International Standard for Risk Management, AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines.

The plan includes the following components:

- **Risk Management Policy** - Sets out the principles underpinning the Council's:
  - o Commitment and approach to Risk Management,
  - o Risk Management Policy objectives, and
  - o Responsibilities of management and staff.
- **Accountabilities and Responsibilities** – Details the accountabilities and responsibilities for:
  - o Elected Members of Council
  - o General Manager
  - o Directors
  - o Managers, Coordinators, Supervisors and Team Leaders
  - o Employees and Volunteers and Other Third Parties
  - o Contractors/Consultants
  - o Manager Governance and Risk
  - o Executive Staff Committee
- **Risk Management Framework** – The Risk Management Framework diagrammatically indicates how Risk Management will be integrated within/across the organisation, and identifies the methodologies, tools and processes to be utilised to support the integrated approach.
- **Risk Management Process** - The process adopted by Council to identify, analyse and manage risks in the organisation is in accordance with AS/NZS ISO 31000:2009.Risk Management – Principles and guidelines.
- **Application of the Risk Management Process** – Provides the detail of how the Risk Management Process will be implemented throughout the organisation. This process is comprised of:

- Communicate and Consult – essential part of the process. ‘The Communication Strategy’ provides direction and guidance for the effective communication of the Risk Management suite of documentation and processes that will be implemented throughout the organisation.
  - Risk Reporting Strategy – Diagrammatically indicates the requirements for reporting and what is reported within the organisation and externally.
  - Establish the Context – details the context in which a risk assessment is to be undertaken.
  - Identification of Risks – Risk definition (per AS/NZS ISO 31000:2009) – ‘The effect of uncertainty on objectives’.
  - Analyse and Evaluate Risks – Involves the determination of the likelihood and consequence of each respective risk and the resulting level of risk (i.e. Extreme, High, Medium or Low) with using the Council’s Risk Matrix.
  - Treat Risks – For risks that cannot be eliminated a treatment or control plan needs to be determined. This plan may involve treatment strategies to ‘Avoid’, ‘Accept’, ‘Reduce’ or ‘Transfer’ the risk. The treatment of risks also involves determining what corrective actions may be required.
  - Monitor and Review – This stage involves establishing a process to monitor and review the performance of the risk management system implemented.
- **Risk Management Implementation Action Plan** - The Risk Management Implementation Action Plan details the implementation phases of the overall ERM Program (including full action plan detail including: What; How; Who and When). The Action Plan needs to be in accordance with the strategies and objectives of the Risk Management Policy and Plan.
  - **Appendices** – The appendices include the templates and detail required to assist staff in the application of Risk Management Process.

### 3. ERM PLAN OBJECTIVES

- To provide direction and commitment to Enterprise Risk Management principles as part of Council's management planning, decision making and the undertaking of operational activities.
- To effectively integrate the management of risk into Council's high-level management planning activities to ensure the achievement of its strategic objectives as outlined in the Community Strategic Plan and associated documents. The Enterprise Risk Management (ERM) Framework involves ERM being integrated with Council's Integrated Planning and Reporting Structure.
- To apply and incorporate the Enterprise Risk Management Framework into Council's operational activities and business planning processes.
- To promote an environment of risk awareness and willingness to manage risk at all levels of the organisation.
- To provide opportunities that encourages continuous improvement of the ERM Program and at all levels of the organisation.

To ensure, through the application of this Plan:

- That the Council (elected members), General Manager and the Executive Staff Committee are in a position to confidently make informed strategic, project and operational decisions based on Enterprise Risk Management Principles;
- That the requirements of the Office of Local Government's Promoting Better Practice, in relation to the management of risk, are satisfied;
- That all reasonably foreseeable risks are systematically identified, assessed, analysed, prioritised and considered for appropriate treatment with all information documented in Council's electronic risk system;
- The correct assigning of ownership of risks through appropriate delegation of risk management responsibilities to all Council officers across all functional areas of Council;
- That all relevant legislation is complied with and relevant risk management standards (currently AS/NZS ISO 31000:2009 Risk Management Principles and Guidelines) are used to provide guidance in best risk management practices;

- The effective management and allocation of resources through more targeted and effective controls;
- Improved protection of the community, Council's employees, volunteers, contractors/consultants, Council's assets and Council's financial integrity and sustainability;
- The effective communication of this plan through the development of an Enterprise Risk Management Communication and Reporting Framework.

#### 4. SCOPE

This plan applies to all Councillors, Council employees, Contractors, Consultants and Third parties such as Committee Members of Council, operations and activities.

The management of risk is an essential element of good management and impacts on every facet of Council activity.

Risk Management will be applied through the management processes of Council.

The Enterprise Risk Management Plan shall cover, but not be limited to, the following areas of Council activity:

- Corporate governance
- General and Legal compliance
- Assets and operations
- Planning and Development
- Human resources
- Information systems
- Financial management
- Project Management
- Contractual Management
- Environmental Management
- Disaster and Emergency Planning

The risks associated with these areas of activity will be identified, analysed and managed by the responsible managers in each of the operational areas of Council, however some major projects or activities may require the allocation of specific resources to the risk management process. Budget considerations may necessitate the allocation of funds in order of risk priority.

The Enterprise Risk Management Plan comprises the Enterprise Risk Management Policy, supported by various Policy Statements that have been adopted by Executive Staff, and is further supported by documented Procedures, Work Instructions and Checklists and any other documentation necessary for the effective implementation, training, operation and monitoring of the Enterprise Risk Management Plan within Council.

## 5. ACCOUNTABILITY AND RESPONSIBILITIES

### 5.1. Elected Members of Council

- Adopt Enterprise Risk Management as a strategic goal in Council's operating and decision making processes and monitor the ERM Program's performance in accordance with its quarterly and annual reporting requirements.
- Recognise their responsibilities for making informed decisions that take into consideration the associated risks and opportunities.
- Recognise the need to manage risks in order to achieve Council's strategic objectives.
- Support the adoption of the Enterprise Risk Management Policy and Plan by the consideration and allocation of appropriate resources for the implementation and maintenance of the plan.

### 5.2. General Manager

- Is responsible for the establishment of the Enterprise Risk Management system throughout the organisation.
- Provide a safe and healthy work environment, in accordance with the Work Health and Safety Act 2011, its amendments, Regulations and related Codes of Practice and Australian Standards.
- Assigns appropriate responsibilities and accountabilities to the Directors.
- Monitor and evaluate the performance of Directors against their Risk Management responsibilities.
- Ensure that Council meets its "duty of care" to all staff and the general public and protects its assets and operations through education, adequate loss control programs and measures with appropriate risk financing.
- Implement risk management as a strategic goal at all levels of Council's organisational structure.
- Establishes performance measures and drives the organisation's Enterprise Risk Management objectives.



### 5.3. Directors

- Are responsible for the effective implementation of the Enterprise Risk Management Plan within their respective Divisions for their area of responsibility.
- Provide a safe and healthy work environment, in accordance with the Work Health and Safety Act 2011, its amendments, Regulations and related Codes of Practice and Australian Standards.
- Take responsibility for their division's Risk Management performance, including implementation of the Risk Management Strategy, ensuring appropriate resources for Risk Management actions are made available and ensuring effective monitoring, reviews and reporting are undertaken.
- Assign appropriate responsibilities and accountabilities to Managers and individual positions within their directorate and monitor individual performance against their respective risk management responsibilities and the Enterprise Risk Management objectives.
- Continuously encourage and develop a culture where identifying and treating risks is seen as a significant benefit to the organisation and a measure of good performance.
- Ensure that significant risks identified are reported to the appropriate management level in accordance with Council's ERM Reporting Strategy.
- Create an environment where managing risk is an accepted and expected part of the day-to-day operations.

### 5.4. Managers, Coordinators, Supervisors and Team Leaders

- Provide a safe and healthy work environment, in accordance with the Work Health and Safety Act 2011, its amendments, Regulations and related Codes of Practice and Australian Standards.
- Are accountable for managing risk within their area of responsibility.
- Ensure that staff are applying the appropriate risk management tools and templates in the correct manner.
- Are responsible for providing assistance and advice to staff in relation to the management of risks but not to take on the responsibility of another individual.
- Monitor the respective operational risk profile assessments, determine control measures for risks identified and ELT alate any significant risks up to management in accordance with the risk matrix guidelines.

#### 5.5. Employees, Volunteers and Other Third Parties

- Employees and volunteers are responsible for managing risk within their area of responsibility.
- Are responsible to ensure that documentation is completed correctly, risk assessments are conducted and appropriate control measures implemented to minimise risk.
- Are to ensure that identified high level risks are ELTated as required to Managers, Supervisors and Team Leaders.

#### 5.6. Contractors/Consultants

- Contractors/Consultants are responsible for managing risk within their contract boundaries.
- Contractors/Consultants are to provide risk management documentation to the respective responsible Council Contract/Project Manager including identified control measures.
- Council's Project Manager is to ensure risks associated with the engagement of contractors/consultants are appropriately identified and managed.
- Council's Project Manager is to ensure the responsibilities and accountabilities vested in the contractor are clearly documented and communicated to the Contractor/Consultant.
- Identified significant risks are reported to the Council Contract/Project Manager.

#### 5.7. Manager Governance and Risk

- Is responsible for maintenance and upkeep of the Enterprise Risk Management Policy and Management Plan and other associated Enterprise Risk Management Program documentation.
- Is responsible for providing assistance and advice to all areas of Council in relation to the management of risks but not to take on the responsibility of another individual.

### 5.8. The Executive Staff Committee (ELT)

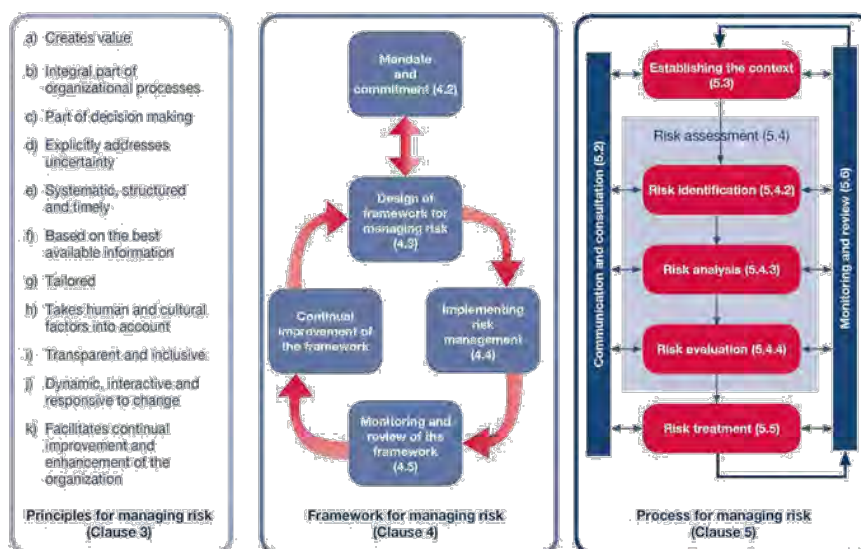
Council's Executive Staff Committee has determined that the Executive Staff Committee will fulfill the requirements of an Enterprise Risk Committee without the creation of an additional committee. Accordingly, Council's Executive Staff Committee will:

- Drive the implementation of Council's Enterprise Risk Management Policy and associated documents.
- Provide a safe and healthy work environment, in accordance with the Work Health and Safety Act 2011, its amendments, Regulations and related Codes of Practice and Australian Standards.
- Monitor the implementation of the Enterprise Risk Management Plan and make recommendations for continuous improvement of the Plan.
- Ensure the Enterprise Risk Management Plan objectives align with the organisation's objectives and values.
- Continually monitor the Enterprise Risk Management Plan and associated document for improvement.
- Make recommendations to Council, and provide advice and assistance to all departments and the Executive on issues related to the Enterprise Risk Management program implementation, compliance and performance.
- To make recommendations to Council for recurrent and discretionary allocation of funding for the purpose of managing risks identified as priority in accordance with the Enterprise Risk Management Plan.

## 6 THE RISK MANAGEMENT PROCESS

The process adopted by Dubbo Regional Council to manage risks in the organisation is in accordance with the International Standard for Risk Management, AS/NZS ISO 31000:2009. Risk Management – Principles and guidelines

AS/NZS ISO 31000:2009 PROCESS



Source: AS/NZS ISO 31000 2009: Risk Management – Principles and guidelines

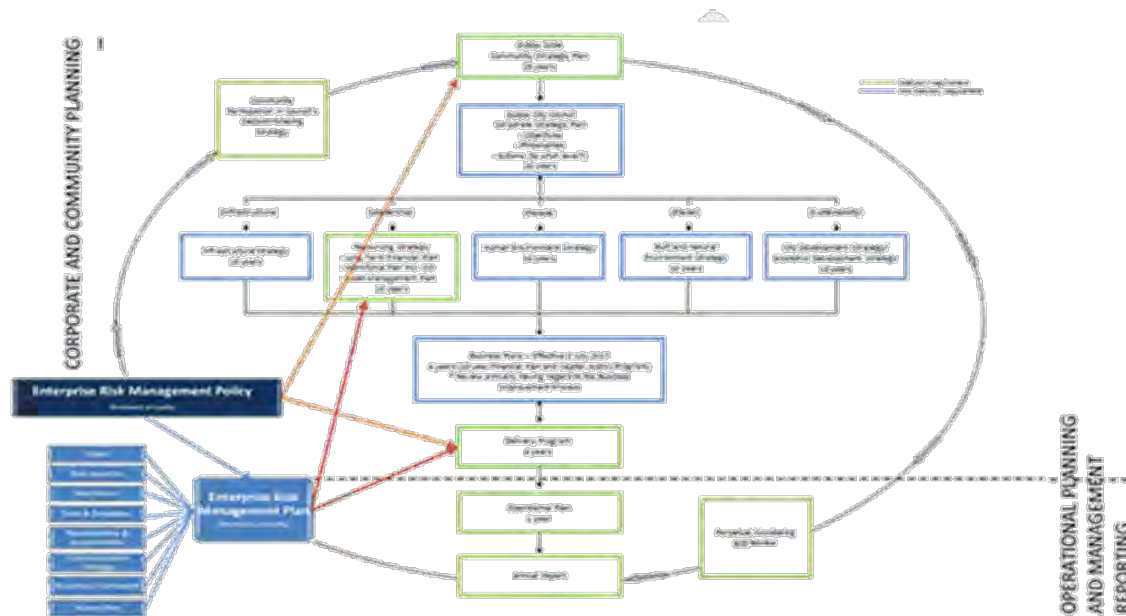
The main elements of the risk management process are the following:

- Communicate and Consult
- Establish the Context
- Identify Risks
- Analyse Risks
- Evaluate Risks
- Treat Risks
- Monitor and Review

## 7 COUNCIL – CONTEXT AND FRAMEWORK

### The Framework

Dubbo Regional Council has adopted a risk management framework that works in concert with and makes reference to the Office of Local Government’s Integrated Planning and Reporting in applying informed decision making to ensure the achievement of the set objectives.



## 8 APPLICATION OF THE RISK MANAGEMENT PROCESS

Council has determined that a whole of organisation approach to risk management (i.e. Enterprise Risk Management Program) is required to effectively and efficiently manage the potential risks faced by Council due to the nature of its operations. This approach will also encourage a better appreciation of the opportunities identified via this process that will assist in the achievement of objectives and sustainability for the future of Council.

This strategic approach is supported by Council and Executive Staff whose commitment will drive the implementation.

Council is to develop a strategic, project and operational risk profile for the whole organisation to identify the current levels of risk facing Council. The risks will then be assessed in accordance with the established methodology detailed in this Plan.

Council's aim is to:

- Identify those risks that can potentially impact on the achievement of Strategic objectives;
- Identify those key Operational risks that are inherent in the main functions performed by the organisation;
- Develop and maintain a (common) Risk Register for risk identified for specific, one-off or new projects;
- Establish a culture where individual activities are risk assessed as part of every function performed.

To initiate the development of a risk profile for the whole organisation a workshop has been facilitated by Echelon to identify the key strategic risks that may potentially impact Council achieving its overall strategic objectives.

Risk assessments have been conducted to identify the organisations operational risks and where required for particular activities and projects that Council or groups on behalf of Council undertake. This includes such activities as public events, contractual arrangements and any function where the conditions or situation or nature of that task may introduce different risks.

*Risk assessments shall become commonplace in all activities of Council as a powerful aid in the decision making process.*

This Plan will drive the integration of the risk management process throughout the organisation.

### 8.1 Risk Tolerance/Appetite

How much risk council is willing to accept will vary with each circumstance. Staff must be aware that there are risks Council will NOT be prepared to accept and as such, it is important to identify these and follow appropriate protocol.

Risk levels that are NOT ACCEPTABLE by Council are those risks where:

- Any reasonably preventable accident/incident resulting in the loss of life or serious injury
- Any reasonably preventable incident that will threaten the provision of critical services and the well-being of the community.
- Any reasonably preventable activity that will cause extensive endangerment or will cause long term or permanent damage to the Environment.
- Any reasonably preventable activity that will disrupt normal business activities and/or cause major damage to reputation.
- Any reasonable activity that will cause Council significant financial loss.

## 8.2 Implementing the Plan

The successful implementation of this Plan is crucial to the success of the Enterprise Risk Management Program initiative.

A specific risk assessment has been conducted to identify all potential issues that may affect its implementation. Subsequently appropriate controls will be implemented to achieve a successful integration.

The method for identifying and analysing risks will be in accordance with AS/NZS ISO 31000 2009 for Risk Management, using the qualitative method (ie for determining the respective likelihood and consequence of each identified risk).

## 8.3 Communication and Consultation

Communication and consultation is crucial to the management of risk. Being able to effectively communicate and know when to consult is essential not only to avoid negative outcomes later in the process but also because it can bring a wealth of information not previously considered.

8.3.1 Communication Strategy

Council communicates internally and externally with a variety of stakeholders. It is important to consider and apply the appropriate method of communication and consultation during the development and implementation of any Council project.

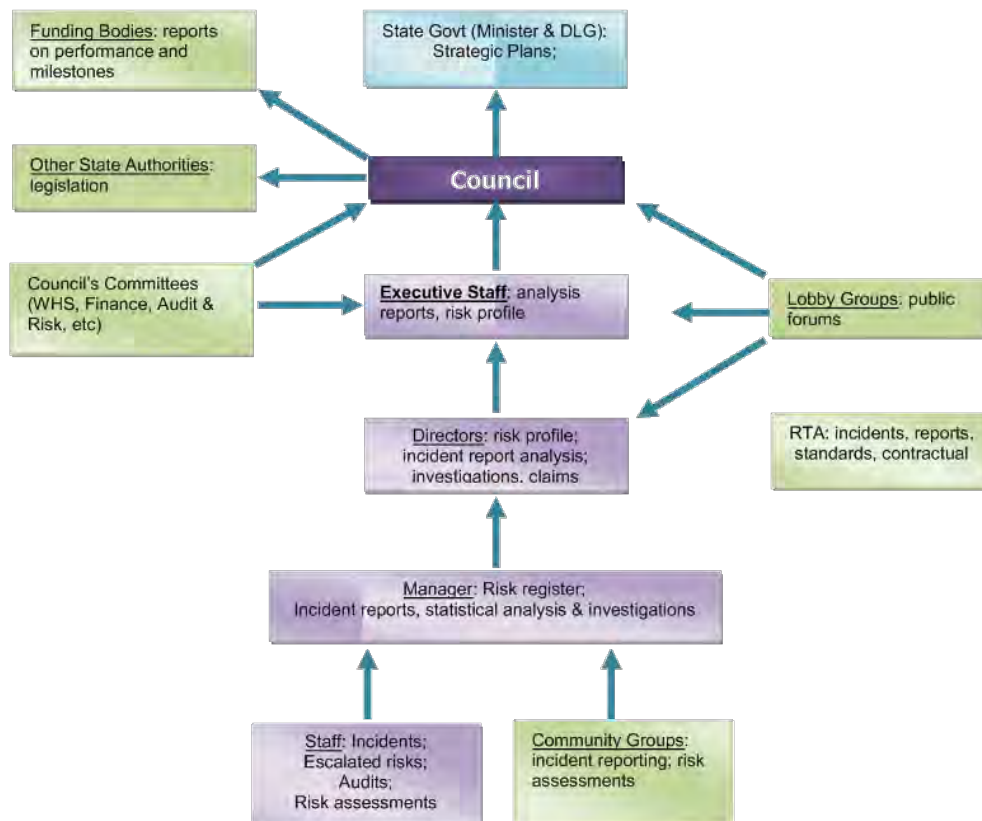
A Communication strategy identifies the various stakeholders and outlines the required communication methods to be applied when communicating risk management initiatives at any level.

The Communication strategy is included at **Appendix 8**.

8.3.2 Risk Reporting Strategy

Effective management of risk within an organisation also depends on the effectiveness of its reporting mechanisms.

Various stakeholders may influence or may be directly or indirectly affected by risk management decisions made by Council. Similarly, Council may be affected, be influenced, or have the ability to influence directly or indirectly decisions and or actions taken by these stakeholders. The requirements for reporting, both internally and externally is illustrated in the following diagram:





#### 8.4 Risk Identification and Assessment

Identification and assessment of risks will be conducted by using the risk assessment template and guidance documentation provided as part of this Plan. It outlines the parameters and the how-to of the process.

Guidance/ training will also be provided by the Manager Governance and Risk to all staff.

To achieve this, Council will apply the following parameters established by the organisation:

- Identify risks in accordance with the scope set out in the adopted Enterprise Risk Management Policy;
- Collect risk data using the agreed Risk Assessment template (or JRS Profiler Tool);
- Assess identified risks
- Evaluate identified risks;
- Determine appropriate treatment strategies where necessary;
- Develop a treatment / action plan to implement treatment options.

##### 8.4.1 Consequence Descriptors

The types of risk exposures faced by Council established in the scope of this plan and the Council's Risk Management Policy, context and structure.

The descriptors include such risk exposures as:

- Environment;
- Financial
- Workplace Health & Safety (WHS)
- Professional Indemnity;
- Public Liability;
- Property & Infrastructure;
- Information Technology;
- Industrial Relations;
- Natural Hazards;
- Political and Governance
- Contractual and Legal
- Reputation
- Positive Consequences

Further descriptors to assist in the assessment process are included at **Appendix 5** of this document.

#### 8.4.2 Likelihood Descriptors

The table below assists in determining the likelihood or probability of a risk manifesting, given the right conditions.

The descriptors for 'Likelihood' relate to any of the above exposures and are designed to be a generic descriptor to assist in determining the likelihood of a risk event occurring:

Likelihood	Description	Indicative Frequency
Almost Certain	The event will occur on an annual basis	Once an year or more frequent
Likely	The event has occurred several times in your career	Once every three years
Possible	The event might occur once in your career	Once every ten years
Unlikely	Event does occur somewhere from time to time	Once every 30 years
Rare	Heard of it occurring elsewhere	Once every 100 years

(as per PWC agreed descriptors)

#### 8.4.3 Risk Matrix

The method for identifying and analysing risks will be in accordance with AS/NZS ISO 31000 2009 for Risk Management, using the qualitative method of likelihood and consequence.

The Level of Risk for each respective risk will be determined by using the adopted risk matrix utilising the likelihood and consequence for each risk. The types of risk exposures have been selected and adopted by Council and these sit behind the consequence levels shown on the matrix table. A more detailed descriptor for the respective likelihood and consequence is included at **Appendix 5** of this document.

The risk matrix adopted by Council is as follows:

		Consequences				
		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood	Almost Certain	Medium	Medium	High	Extreme	Extreme
	Likely	Medium	Medium	High	High	Extreme
	Possible	Low	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium	High
	Rare	Low	Low	Medium	Medium	Medium

#### 8.4.4 Risk Evaluation

This stage is achieved by establishing the Level of Risk rating that results from the selected Likelihood and Consequence level for that particular risk.

The result will be; LOW, MEDIUM, HIGH or EXTREME in line with Council’s adopted risk matrix illustrated above.

#### 8.5 Treatment Strategies

Depending on the severity of the risk/s, Council will decide appropriate treatment strategies or control measures which will be in accordance with the agreed level of corrective actions as stated in the following table.

8.5.1 Corrective Action

Corrective action for the different Level of Risk ratings has been agreed as follows:

Risk Level	Action Required
<b>Extreme</b>	<ul style="list-style-type: none"> <li>This risk level is <b>Unacceptable</b></li> <li>Develop specific Treatment Plan for immediate implementation to address the Extreme risks</li> <li>Allocate actions and appropriate resources as determined by management for implementation within one month</li> <li>Report immediately to Executive Staff; regular internal reporting required</li> </ul>
<b>High</b>	<ul style="list-style-type: none"> <li>Develop and implement a specific Treatment Plan for high risks</li> <li>Allocate actions and appropriate resources as determined by management to minimise risk; monitor implementation</li> <li>Report to Executive Staff within one month; regular internal reporting required</li> </ul>
<b>Medium</b>	<ul style="list-style-type: none"> <li>Develop and implement a specific Treatment Plan for medium risks</li> <li>Allocate actions and appropriate resources as determined by management to minimise risk where existing controls deemed inadequate; monitor implementation</li> <li>Report to Executive Staff within the quarter (three monthly);</li> <li>Management to consider additional controls; report within the quarter</li> </ul>
<b>Low</b>	<ul style="list-style-type: none"> <li>Accept and Monitor low-priority risks</li> <li>Manage via routine procedures where possible; Monitor via normal internal reporting mechanisms</li> </ul>

Council staff must ensure that risks that are rated High or Extreme are referred to the appropriate management level to determine the appropriate treatments/controls required to manage control or mitigate the risk.

For the day-to-day functions of Council, when looking at treatments/controls staff should always consider:

- Conducting a fault analysis to determine the core or root cause of the issue that has led or can lead to a risk;
- The review of existing processes and procedures;
- The development of procedures where none exist;
- Educating staff that are affected by the procedures

#### 8.5.2 Risk Transference/Sharing

Council acknowledges that some risks are outside the control of Council and as such, one of the strategies adopted is that of Risk Transference through:

- Obtaining adequate levels of insurance against;
- Contractual agreements with joint venture partners.

#### 8.5.3 Emergency Preparedness and Business Interruption Arrangements

Council's emergency procedures and Business Continuity Plans should be regularly reviewed and updated.

### 8.6 Treatment/Action Plan

Any required treatment will have a plan that outlines:

- The required action;
- The activities to achieve that action if various required;
- The person accountable for implementing the action;
- The timeframe for implementing the action;
- A reporting requirements on the progress of the implementation

A template for the action plan is included at **Appendix 4** of this document.

## 9 IMPLEMENTATION OF THE ENTERPRISE RISK MANAGEMENT PLAN

The methodology adopted within the Enterprise Risk Management plan will be applied to all areas of council, both operational and strategic levels.

The plan itself and its implementation will be coordinated and monitored by the Executive Staff Committee.

The Executive Staff Committee has the authority to implement the plan and will seek the cooperation of all staff and support of all team leaders, managers and directors to effectively achieve this.

The Manager Governance and Risk Services will provide initial and ongoing training and support to all staff and comments during and after the implementation process are encouraged and will be sought. To achieve this, a Risk Management Implementation (Action) Plan has been developed.

The ERM Implementation Action Plan is included at **Appendix 9** of this document.



## 10 MONITOR AND REVIEW

As part of continuous improvement, this Plan shall be reviewed annually by the Executive Staff Committee to ensure that it is meeting the requirements and achieving its intended objective. This is a living document that will continually evolve in accordance with the changing needs of Council and its strategy for managing risk.

There are various areas that will require monitoring during the implementation process and ongoing as the management of risk becomes embedded in the Council's culture, management planning, decision-making and overall processes.

Monitoring in respect of this project relates not only to meeting deadlines but also more importantly, to ensuring the processes implemented are:

- effective,
- being implemented by all staff;
- addressing, managing and controlling potential risks;
- achieving the objectives of this plan; and
- Ensuring Council can meet its strategic objectives.

Monitoring in respect of general activities of council will be done two ways:

- through the implementation of risk management related documentation in processes and the reporting framework established for risks identified; and
- The Executive Staff Committee developing a monitoring tool/process to ensure the required risk management activities are taking place. Outcomes are discussed at meetings

### 10.1 Monitoring of the Implementation of the Risk Management Action Plan

This is the actual integration of ERM within the organisation. This Action Plan involves key actions to be undertaken in order to embed the processes into the organisation to become part of the way things are done.

The Action Plan implementation will be monitored by the Executive Staff Committee for:

- Timely implementation;
- The effectiveness of the prescribed actions;
- Active support and participation by Management within their areas of responsibilities;
- Any delays and associated reason;
- Any improvement required.

The Manager Governance and Risk Services will carry out this review and regularly report to the Executive Staff Committee on the progress.

### 10.2 Key Risk Indicators

These Key Risk Indicators (KRI's) will be used to measure the performance of the organisations risk management activities and in the monitoring of risk exposures.

The risk management KRI's will be reported to Executive Staff Committee (at least on a quarterly basis) in assisting Council to maximise the Enterprise Risk Management Program outcomes.

- The number of Enterprise Risk Management Plans conducted for high risk activities or projects.
- Integrity risk culture – number of fraud and corruption activities and the number of integrity related disciplinary matters handled and reported.
- The number and % of major (Extreme and High) level of risks having had further treatment and the level of risk having been reduced to a lower residual level of risk.
- The number and % of Enterprise Risk Management Plans having 'Self Assurance Certification' completed by managers.



- The number and % of operational service areas involved in the Enterprise Risk Management process.
- The number of insurance claims submitted to Council – and the areas to which the claims relate to.
- The number and \$ value of insurance claims paid by Council – and the areas to which the claims relate to.
- The number and % of staff trained/educated in Enterprise Risk Management related topics.
- The risk maturity level of Council – level of awareness and understanding throughout the organisation of the Enterprise Risk Management Framework, Policy and associated processes and procedures. Normally to be undertaken bi-annually.

## 11 APPENDICES

Appendix No.	Name
1	Definitions/Glossary of Risk Management Terms
2	Risk Assessment Template Form
3	How to complete the Risk Assessment Form
4	Template for the Treatment/Action Plan
5	Consequence and Likelihood Descriptors
6	Risk Assessment Matrix and Corrective Action Table
7	ERM Framework
8	ERM Communication Strategy
9	ERM Implementation Action Plan
10	Associated Council Policies and Documents

## **Appendix 1 Definitions/Glossary of Risk Management Terms**

### **Consequence**

Outcome of a risk event affecting objectives.

### **Enterprise Risk Management Implementation Action Plan**

Is the plan that will guide the implementation process of the overall ERM Program. It is in accordance with the strategies and objectives of an organisation Enterprise Risk Management Manual. The Action Plan involves key actions to be undertaken in order to embed the ERM processes into the organisations operations and to create a culture of risk management being 'the way things are done'.

### **Enterprise Risk Management**

Risk management is the culture, processes and structures that are directed towards the effective management of potential opportunities and adverse effects that may occur within an organisation. The word 'Enterprise' denotes that the program will include the whole organisation, therefore all risks within all areas of an organisations operation will be included.

### **Enterprise Risk Management Framework**

A set of components that provide the foundations, framework and organisational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management throughout the organisation. It will also indicate how risk management will be integrated within/across the organisation.

### **Enterprise Risk Management (ERM) Manual**

Document that details the total process that an organisation will be undertaking in the implementation of the risk management system/program. The word 'Enterprise' denotes that the program will include the whole organisation, therefore all areas of an organisations operation will be included.

### **Enterprise Risk Management Policy**

Affirms an organisations commitment to risk management and reflects the value it places on the management of risk throughout the organisation.

### **Enterprise Risk Management Process**

The systematic application of management policies, procedures and practices to the activities of communicating, consulting, establishing the context, identifying, analysing, evaluating, treating, monitoring and reviewing risk.

### **Inherent Level of Risk**

The true or real level of risk to the organisation. It is the level of risk prior to taking into consideration the treatment/controls that are currently in place to address the risk.

### **Key Performance Indicators**

Are used to measure the performance of the organisation's risk management activities and in the monitoring of risk exposures.

### **Level of Risk**

Is the level of risk (ie. extreme, high medium or low) that is determined by utilising a risk matrix during a risk assessment process after taking into consideration the likelihood and consequence of a risk or opportunity event.

### **Likelihood**

Chance of a risk event occurring

### **Operational Risk**

Risks or opportunities that may impact on an organisation's core operational activities. These are risks that the organisation may be exposed to or opportunities that may be available whilst undertaking the day to day operational services.

### **Others**

People who are present at a Dubbo Regional Council worksite or otherwise affected by work carried out by Council and who are not carrying out work for Council. Includes visitors to Dubbo Regional Council's workplaces.

### **Project Risk**

Risks or opportunities that could endanger or enhance the planned course or goals of an approved project or one that is under consideration.

### **Residual Level of Risk**

The remaining level of risk after current risk treatment/control measures have been taken into consideration.

### **Risk**

The effect of uncertainty on objectives. An effect is a deviation from the expected – positive and/or negative. Risk is often expressed in terms of a combination of the consequences of an event (including changes in circumstances or knowledge) and the associated likelihood of the occurrence.

**Risk Acceptance**

An informed decision to accept the consequences and the likelihood of a particular risk.

**Risk Analysis**

A systematic use of available information to determine how often specified events may occur and the magnitude of their consequences.

**Risk Appetite**

The amount of risk an entity is willing to accept or retain in order to achieve its objectives. It is a statement or series of statements that describe the entity's attitude towards risk taking.

**Risk Assessment**

The overall process of risk analysis and risk evaluation.

**Risk Attitude**

The organisation's approach to assess and eventually pursue, retain, take or turn away from risk.

**Risk Category**

Refers to the type of risk or opportunity that exists within Council's operations eg Liability, financial, reputational, WHS, economic etc.

**Risk Control**

That part of risk management which involves the implementation of policies, standards, procedures and physical changes to eliminate or minimise adverse risks or to ensure an opportunity is realised.

**Risk Criteria/Context**

Terms of reference against which the significance of a risk is identified and evaluated. Will include the defining of the internal and external parameters to be taken into account.

**Risk Evaluation**

The process used to determine risk management priorities by comparing the level of risk against predetermined standards, target risk levels or other criteria.

### **Risk Identification**

The process of determining what can happen, why and how.

### **Risk Matrix**

A matrix that is used during a risk assessment process. The matrix is used to determine the level of risk (extreme, high medium or low) after taking into consideration the likelihood and consequence of the risk or opportunity event.

### **Risk Oversight**

The supervision of the risk management framework and associated risk management processes.

### **Risk Profile**

A description of any set of identified risks. The set of risks can contain those that relate to the whole organisation, part of the organisation or as otherwise defined.

### **Risk Register**

A register (electronic or manual) that records Council's enterprise risk profile data whether it be Strategic, Project or Operational risks.

### **Risk Tolerance**

The levels of risk taking that are acceptable in order to achieve a specific objective or manage a category of risk.

### **Risk Treatment**

Is a risk modification process. It involves selecting and implementing one or more treatment options. Once a treatment has been implemented, it becomes a control or it modifies existing controls.

### **Strategic Risk**

Risks or opportunities that may impact on the Council's direction, external environment and to the achievement of its strategic plans. These risks or opportunities will inhibit or enhance Council's ability to achieve its corporate strategy and strategic objectives with the ultimate goal of creating and protecting community and stakeholder value.

**Stakeholder**

Person or organisation that can affect, be affected by, or perceive themselves to be affected by a decision or activity of the organisation.

**Worker**

Person who carries out work for Dubbo Regional Council, whether paid or unpaid, or directly or indirectly engaged. Includes an employee, labour hire staff, volunteer, apprentice, work experience student, subcontractor and contractor.

**Appendix 2 Risk Assessment Template form**

Enterprise Risk Management - Risk Assessment Template										
Division/Group:					Date of Risk Assessment:					
Function:					Activity:					
Section:					Prepared By:					
Risk Type:										
Ref No	What can Happen	Likelihood of risk incident/event occurring	Consequence of risk incident/event occurring	Inherent Level of Risk	What controls can be implemented	Adjusted Likelihood rating with new controls	Adjusted Consequence rating with new controls	Adjusted (Residual) Level of Risk	Person or Dept responsible for implementing controls	How will it be monitored



### Appendix 3 How to Complete the Risk Assessment Form

The information that is needed to be entered into each section of the Risk Assessment Form is detailed below:

**Ref No:** Number each activity (from 1, 2, 3, etc.)

**Activity:** List the activity to take place. In most cases you will be organising an **event** or developing a project that will have a number of activities/tasks. For example, at an official opening you may have speakers on a stage, possibly giving a Power Point presentation, people seated in the audience, catering, etc. Each of these would be listed separately.

**What can happen:** Now that you have the activity list, you can start asking the questions “what can happen, what can go wrong?” These will be things that will have an impact on the event if they do occur. For example, the speaker may trip on his way on or off the stage, the presentation may not work due to a faulty PC or electrical wiring, an audience chair may collapse, the catering may contain nuts which may cause an allergic reaction.

**Consequences of an incident happening:** Now you need to refer to the Risk Rating Matrix attached to the form.

**Consequence** – look at the “Consequences” columns on the Matrix. There are multiple categories that could apply to each activity. The most important to pay attention to are the Health and Safety consequences. However, other consequence categories may also be relevant, e.g. Financial Loss, Reputation, Legal, etc. You need to determine the possible consequences of the activity you are analysing. Once you have decided on the consequences, go down the column and select the matching rating from **A** (most severe) to **E** (least impact). Write the letter in the Consequence box. An activity may fit into several categories of consequences, e.g. it may have Health and Safety consequences as well as Legal consequences. Each will need to be listed and rated separately.

**Likelihood** – What are the chances of the consequence identified above happening? It could be **A** (almost certain) through to **E** (rare). Write the letter in the Likelihood box.

**Rating** – To calculate the rating, place your finger on the Matrix and where the Consequence and Likelihood ratings meet, this will be the rating. For example, a

Consequence of **B** and a Likelihood of **C** will give a **Medium** rating. Write the rating in the Rating box.

**What controls can be implemented to manage the situation:** A “control” or “treatment” is what you will do to reduce or eliminate the risk you have identified. For example, have someone ready to assist the speaker on/off the stage, have a competent person check the PC and electrical wiring prior to the presentation, check all the chairs for visible faults when setting them up, advise the caterers not to include nuts in the menu or put up signs advising that nuts may be contained in the food.

As a rule, you must ensure that any High risk is treated so that the consequence and likelihood of it happening are reduced. The effectiveness of your controls is determined by how much risk is reduced or eliminated. After the controls are in place, there should not be any risks that are still rated High. If there are, you must bring in this to the attention of your Manager/Event Organiser to confirm that it is still OK to proceed with the activity.

**Adjusted rating with new controls:** Once you have determined the controls to be implemented, you need to reassess the activities. Has there been an acceptable reduction in risk? If yes, great. If not, in respect of High ratings, follow this up with your Manager/Event Organiser.

**Person or Department responsible for implementing control:** Name the Person or Department responsible. This creates accountability and ensures that someone is responsible for implementing that control. For an “event”, you are required to have a Site Controller who will oversee the whole event, but it is “useful” to designate other people to be responsible for individual activities in order to share the workload.

**How will it be monitored:** Most “events” as a whole will be monitored on the day by the designated Site Controller? You will need to determine and detail a timeframe and a system of monitoring for each activity listed.



**Appendix 5 Consequence and Likelihood Descriptors**

**Consequence Descriptors as adopted by Dubbo Regional Council**

**Consequence:**

Category	Insignificant	Minor	Moderate	Major	Catastrophic
Business Activities	None or minimal disruption or impact to business activities	Minor disruption or impact to business activities	Moderate to significant disruption or impact to business activities	Major disruption to business activities	Severe and catastrophic disruption to business activities
Business Continuity / Operational	Negligible impact to Council services; brief service interruption	Temporary and recoverable failure of Council services causing intermittent service interruption; up to 24 hours	Temporary and recoverable failure of Council services causing intermittent service interruption; up to 1 week	Failure of Council services causing lengthy service interruption; up to 1 week	The continuing failure of Council to deliver essential services; the removal of key revenue generation services; substantial loss of operating capacity for a period of a period greater than 1 week

Community and Social	None to minimal complaints; primarily acceptance and approval exists	Some inconvenience to the community	Considerable disruption or inconvenience to sectors of the community and negative press coverage	Public protests and dislocation. Potential for significant psychological or physical harm to sectors of the community. Damage to relationships and loss of support	Civil commotion and riot
Economic	None to minimal impact or inconvenience to single business	Inconvenience to a group of businesses in one sector or locally within the region	Group of businesses in one sector or locally within the region put at risk	A minor industry or whole sector of the region put at risk	One or more major industries (eg Tourism, Agriculture, Education, Construction, Manufacturing, Retail, Fishing etc) within the region threatened
Environmental and Public Health	Minimal environmental impact; isolated release only	Minor environmental impact; on-site release immediately controlled	Significant environmental impact; on-site release contained with assistance	Major environmental impact; release spreading off-site; contained with external assistance	Fatalities occur; extensive release off-site; requires long term remediation
Financial	Negligible financial loss (\$10,000 or < 2.5% of annual budget); no impact on program or business operation	Minor financial loss (\$10,000- \$50,000 or > 2.5% or <10% of annual budget); minimal impact on program or business operation	Significant financial loss (\$50,000- \$500,000 or >10% or < 20% of annual budget); considerable impact on program or business operations	Major financial loss (\$500,000- \$1M or > 20% or < 25% of annual budget); severe impact on program or business operation	Extensive financial loss (>\$1M or > 25% of annual budget); loss of program or business operation

HR/ Employees	Staff issues cause negligible impact of day to day service delivery	Staff issues cause several days interruption of day to day service delivery	Staff issues cause failure to service delivery; up to 1 week	Staff issues cause failure to service delivery; 1 to 4 weeks	Staff issues cause continuing failure to deliver essential services; in excess of 1 month
Industrial Relations	Isolated, internal or minimal impact on staff morale or performance; minimal loss to organisation	Contained impact on staff morale or performance of short term significance; medium loss to organisation	Significant impact on staff morale or performance of medium term significance; significant loss to organisation	Major impact on staff morale or performance with long term significance; very high loss to organisation	Extensive impact on organisational morale or performance; threat to viability of program or service
Information Technology	No measurable operational impact to organisation	Minor downtime or outage in single area of organisation; addressed with local management and resources	Significant downtime or outage in multiple areas of organisation; ; substantial management required and local resources	Loss of critical functions across multiple areas of organisation; long term outage; extensive management required and extensive resources	Extensive and total loss of functions across organisation; disaster management required

Legal; Compliance; Governance and Contractual	Isolated non-compliance or breach; minimal failure of internal controls managed by normal operations; negligible financial impact	Contained non-compliance or breach with short term significance with minor financial impact; some impact on normal operations	Serious breach involving statutory authorities or investigation; significant failure of internal controls; prosecution possible with significant financial impact	Major breach with fines and litigation; critical failure of internal controls; long term significance and major financial impact	Extensive breach involving multiple individuals; Extensive fines and litigation with possible class action; viability of program, service or organisation threatened
Legislative/Regulatory	Insignificant breach with no fine or litigation; No OLG involvement; Insignificant impact of legislation/regulations	Minor breach with no fine or litigation; OLG notified; Minor impact of legislation/regulations	Serious breach with possible fine or litigation; Possible OLG involvement; Moderate impact of legislation/regulations	Major breach with fine or litigation; OLG involvement; Administrator may be appointed; Major impact of legislation/regulations	Extensive breaches with fines and litigation; OLG review of organisation; Administrator appointed Severe impact of legislation/regulations
Natural Hazards	Minimal physical or environmental impact; isolated hazard only; dealt with through normal operations	Minor physical or environmental impact, hazards immediately controlled with local resources	Significant physical or environmental impact; hazards contained with assistance of external resources	Major physical or environmental impact; hazard extending off-site; external services required to manage	Extensive physical or environmental impact extending off-site; managed by external services; long term remediation required
Other	An isolated event, the impact of which can be absorbed during normal operations	A minor event, the impact of which can be absorbed with specific management	A significant event, the impact of which can be managed but has medium term implications	A critical event, the impact of which may be endured with proper management but has long term implications	A disaster or event with extensive impact across multiple areas of the organisation, threatening the viability of the organisation

Outsourcing	Insignificant impacts of outsourcing on the organisation; Wide range of alternative suppliers of service;	Minor impacts of outsourcing on the organisation; Fines and litigation; Potential for service to be threatened; Several alternative suppliers of service; Employee unrest	Serious impacts of outsourcing on the organisation; Fines and litigation; Community unrest; Service threatened; Limited no alternative suppliers of service; Potential for employee industrial action	Major impacts of outsourcing on the organisation; Major fines and litigation; Widespread Community unrest; Service or organisation threatened; Only a couple of alternative suppliers of service; Disruption to services due to employee industrial action	Severe impacts of outsourcing on the organisation; Extensive fines and litigation; Widespread community backlash; Service and organisation threatened; No alternative supplier of service; Disruption to services due to severe employee industrial action
Political	Negligible impact on other stakeholders	Minor local community concern manageable through good public relations; adverse impact on other stakeholders	Significant regional concern/exposure and short to mid term loss of support from community; adverse impact and involvement of DLG	State media and public concern/exposure with adverse attention and long term loss of support from community; adverse impact and intervention by State Government	Loss of State Government support with scathing criticism and removal of the Council; national media exposure; loss of power and influence restricting decision making and capabilities
Professional Indemnity	Isolated, internal or minimal complaint; minimal loss to organisation	Contain complaint or action with short term significance; medium loss to organisation	Significant complaint involving statutory authority or investigation; prosecution possible with significant loss to organisation	Major complaint with litigation and long term significance; very high loss to organisation	Extensive litigation with possible class action; worst case loss to organisation; threat to viability of organisation, program or service.



Property and Infrastructure	Isolated or minimal loss; short term impact; repairable through normal operations; facility still operational	Minor loss with limited downtime; short term impact; mostly repairable through normal operations	Significant loss with temporary disruption of key facility and services; medium term impact on organisation	Critical loss or event requiring replacement of key property or infrastructure; medium to long term impact on organisation	Disaster with extensive loss of key assets and infrastructure with long term consequences; threat to viability of services or operation
Public Liability	First aid only required; minimal loss to organisation	Some medical treatment required; medium loss to organisation	Significant injury involving medical treatment or hospitalisation; high loss to organisation	Sever injuries or fatalities to individual; very high loss to organisation	Multiple fatalities or extensive long term injuries; worst case loss to organisation
Reputation	Isolated, internal or minimal adverse attention or complaint	Heightened local community concern or criticism	Significant public criticism with or without media attention	Serious public or media outcry, broad media attention	Extensive public outcry,; potential national media attention
Sales & Marketing	Insignificant impact on Product/Service; Insignificant financial impacts.	Minor impact on Product/Service; Minor financial impact.	Significant impact on Product/Service; Significant financial impacts.	Major impact on Product/Service; Major financial impacts and organisations viability and sustainability could be threatened.	Severe impact on Product/Service; Severe financial impacts and organisations viability and sustainability threatened.

WHS	No injury	First aid or Minor medical treatment only; No loss of time.	Significant injury involving medical treatment or hospitalisation and loss of time	Extreme injury; serious long term illness	Fatality; permanent disability or disease
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**Likelihood Descriptors**

Likelihood	Description	Indicative Frequency
<b>Almost Certain</b>	The event will occur on an annual basis	Once an year or more frequent
<b>Likely</b>	The event has occurred several times in your career	Once every three years
<b>Possible</b>	The event might occur once in your career	Once every ten years
<b>Unlikely</b>	Event does occur somewhere from time to time	Once every 30 years
<b>Rare</b>	Heard of it occurring elsewhere	Once every 100 years

**Appendix 6 Risk Assessment Matrix and Corrective Action Table**

**Risk Matrix:**

		Consequences				
		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood	Almost Certain	Medium	Medium	High	Extreme	Extreme
	Likely	Medium	Medium	High	High	Extreme
	Possible	Low	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium	High
	Rare	Low	Low	Medium	Medium	Medium

**Corrective Action:**

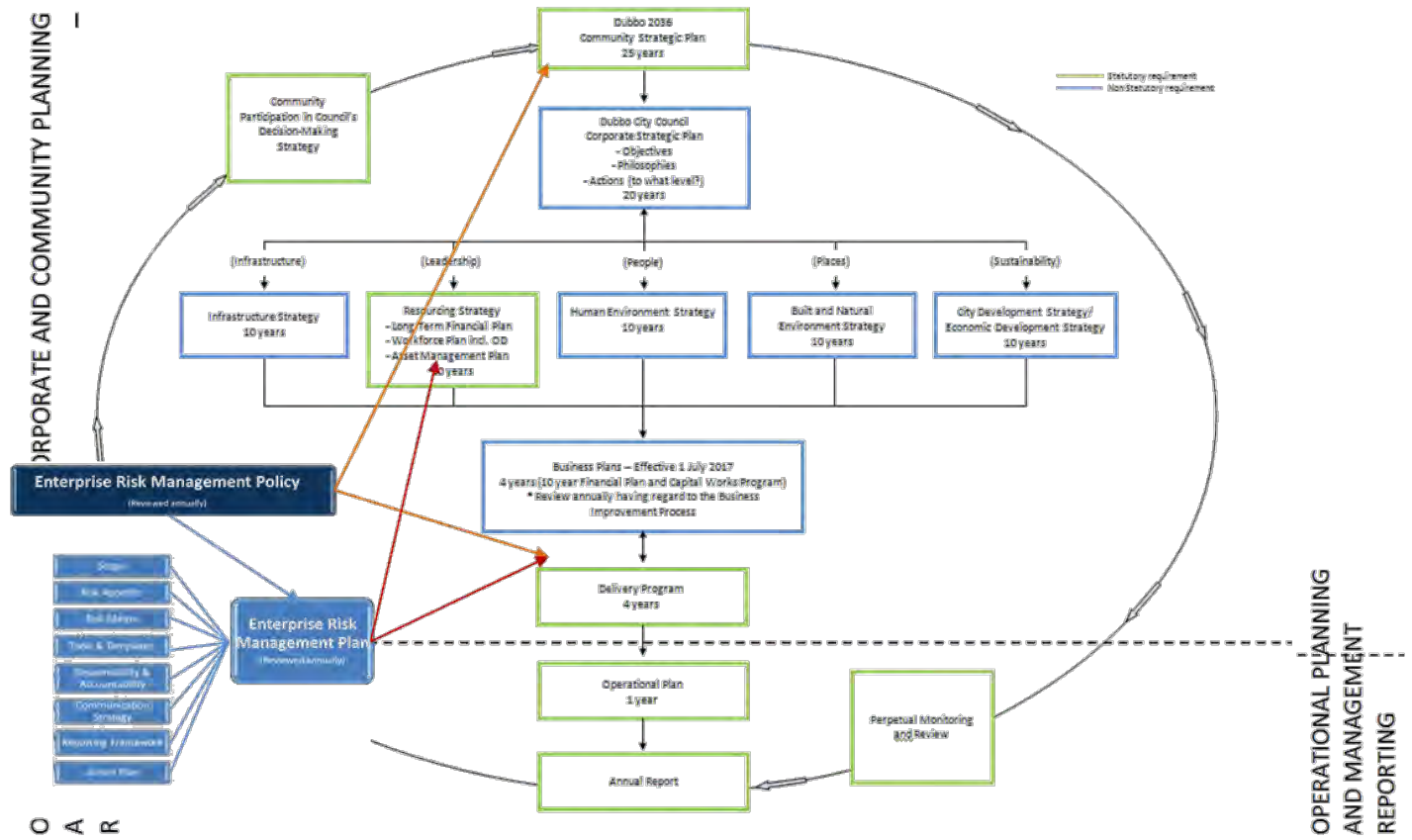
Risk Level	Action Required
<b>Extreme</b>	<ul style="list-style-type: none"> <li>This risk level is Unacceptable</li> <li>Develop specific Treatment Plan for immediate implementation to address extreme risks</li> <li>Allocate actions and appropriate resources as determined by management for implementation within one month</li> <li>Report immediately to Senior Management; regular internal reporting required</li> </ul>
<b>High</b>	<ul style="list-style-type: none"> <li>Develop and implement a specific Treatment Plan for high risks</li> <li>Allocate actions and appropriate resources as determined by management to minimise risk; monitor implementation</li> <li>Report to Senior Management within one month; regular internal reporting required</li> </ul>
<b>Medium</b>	<ul style="list-style-type: none"> <li>Develop and implement a specific Treatment Plan for medium risks</li> <li>Allocate actions and appropriate resources as determined by management to minimise risk where existing controls deemed inadequate; monitor implementation</li> <li>Report to Senior Management within the quarter;</li> <li>Management to consider additional controls; report within the quarter</li> </ul>
<b>Low</b>	<ul style="list-style-type: none"> <li>Accept and Monitor low-priority risks</li> <li>Manage via routine procedures where possible; Monitor via normal internal reporting mechanisms</li> </ul>

## Appendix 7 ERM Framework

### Enterprise Risk Management Framework

The following diagrams depict the framework on which Dubbo Regional Council's ERM has been built. It shows the relationship with the Dubbo Regional Council's Integrated Planning and Reporting framework and confirms how intrinsically related both this and the ERM are and how necessary it is for Council to embrace risk management principles and practices in order to achieve its objectives.

### Dubbo Regional Council ERM Framework



### Implementation of the ERM Framework



## **Appendix 8      Communication Strategy**

### **COMMUNICATION STRATEGY**

The Communication strategy provides direction and guidance for the effective communication of the Enterprise Risk Management suite of documentation and processes that will be implemented throughout the organisation as part of Council's commitment to the effective management of risk in pursuit of its key objectives



**COMMUNICATION STRATEGY AND PLAN FOR COUNCIL'S ENTERPRISE RISK MANAGEMENT PROGRAM**

Communicate with whom?	Communicate what?	Communicate how?	Communicate when?	Responsible Officer
<b>Staff</b>	Implementation of the Enterprise Risk Management Policy	<ul style="list-style-type: none"> <li>Information forums. Intranet after information forums</li> </ul>	When released adopted or updated	GM/ Directors/ Managers/ MGR
	Implementation of the Enterprise Risk Management Plan	<ul style="list-style-type: none"> <li>Communication and support expressed by Senior Management involvement Information forums for all Departments. Training program to be developed and delivered by 31 December 2015</li> </ul>	When released and prior to the implementation of any new processes	GM/ Directors/ Managers/ MGR
	Introduction of tools and templates to implement the Enterprise Risk Management Plan	<ul style="list-style-type: none"> <li>Information forums for all Divisions.</li> <li>* Training program to be developed and delivered by 31 December 2015</li> <li>Notification of where tools and templates are available</li> </ul>	On release of the Enterprise Risk Management Plan and prior to the implementation of any new process. Regular review that they are being applied as part of normal process	Directors/Managers MGR
	Any changes to policies, procedures and other relevant documentation. Identified problems and solutions. Identified control measures and any improvements to be implemented	<ul style="list-style-type: none"> <li>Staff consultation and involvement</li> </ul>	During development and implementation	Supervisors and Team leaders
		<ul style="list-style-type: none"> <li>Inform Managers and Supervisors in awareness sessions through Business Support meetings</li> </ul>	As required	MGR
		<ul style="list-style-type: none"> <li>Toolbox meetings</li> </ul>	Weekly on worksites	Supervisors and team leaders
		<ul style="list-style-type: none"> <li>Newsletters to reinforce</li> </ul>	Regular updates in staff newsletters	MGR
		<ul style="list-style-type: none"> <li>Councilpedia</li> </ul>	Post regular information updates	MGR

Communicate with whom?	Communicate what?	Communicate how?	Communicate when?	Responsible Officer
<b>Inter-Departmental</b>	Higher level issues affecting more than one department/ business unit	<ul style="list-style-type: none"> <li>Organised forums with relevant staff and management</li> </ul>	As required	Directors/ Managers/MGR
	New policies procedures and protocols affecting more than one area of Council	<ul style="list-style-type: none"> <li>Organised forums with relevant staff and management</li> </ul>	As required	Directors/ Managers/MGR
<b>Senior Management</b>	High level strategic risk matters eg those matters affecting IP&R Framework	<ul style="list-style-type: none"> <li>Executive Staff Monthly meetings</li> </ul>	As required	General Manager/ Directors/Managers
<b>Other Councils</b>	High level issues affecting more than one LGA	<ul style="list-style-type: none"> <li>Meeting forums at appropriate level, ie OROC, Inland Forum, etc</li> </ul>	As required	General Manager/ Directors/ Managers
	Risk management initiatives, updates on issues affecting all Councils or neighbouring Councils	<ul style="list-style-type: none"> <li>Regional Risk Management Groups or via OROC</li> </ul>	As required	General Manager/ Directors/ Managers/ MGR/ HR
<b>External (Government) Authorities</b>	Relevant/ specific risk matters/ information	<ul style="list-style-type: none"> <li>Regular reporting</li> <li>Meeting forums</li> </ul>	As required	General Manager/ Directors
<b>Statewide Mutual</b>	Risk Management networking as a valuable resource of knowledge and processes adopted by other councils that could benefit Council	<ul style="list-style-type: none"> <li>State Annual Risk Management Conference</li> </ul>	As required	General Manager/ Directors/ Managers/ MGR
	Consultation	<ul style="list-style-type: none"> <li>Regional Risk Group meetings</li> </ul>	Scheduled through the year	MGR
	Public Liability and OHS Annual Audit exercises, which should involve those relevant managers of the various elements of the Audit.	<ul style="list-style-type: none"> <li>Completion of audit and verification conducted</li> </ul>	Annually	All Managers and MGR

Communicate with whom?	Communicate what?	Communicate how?	Communicate when?	Responsible Officer
	Consultation through give and take (Networking)	<ul style="list-style-type: none"> <li>Onsite visits</li> </ul>	As required	MGR
<b>JLT</b>	Incident reporting; claims notification; insurance matters	<ul style="list-style-type: none"> <li>Through assigned Account Manager and Claims Manager</li> </ul>	As required	MGR
<b>Public</b>	General information about risk management initiatives within Council control;	<ul style="list-style-type: none"> <li>Website, social media, press</li> </ul>	As required	MGR
	Invitation for feedback/comments on a specific project that attract anticipate controversy	<ul style="list-style-type: none"> <li>Website, social media, press</li> </ul>	As required	MGR
	Any proposed changes or new processes that may impact in their area	<ul style="list-style-type: none"> <li>Present proposal and seek feedback/endorsement</li> </ul>	As required	Responsible Officer
<b>Community Committees (where applicable)</b>	Any new policy, processes and documentation required for them to implement	<ul style="list-style-type: none"> <li>Present and induct at their meetings and explain purpose and process</li> </ul>	As required	Relevant Managers/ MGR
		<ul style="list-style-type: none"> <li>correspondence</li> </ul>	As required	
		<ul style="list-style-type: none"> <li>through Council's responsible officer</li> </ul>	As required	

Communicate with whom?	Communicate what?	Communicate how?	Communicate when?	Responsible Officer
<b>Audit &amp; Risk Committee</b>	Minutes of the Audit and Risk Committee meetings. Any changes to documentation and procedures relating to risk matters. Identified problems and proposed solutions. Identified control measures and any improvements.	<ul style="list-style-type: none"> <li>through Committee’s meetings</li> </ul>	As required	MGR

## **Appendix 9      Enterprise Risk Management Implementation Action Plan**

### **Integrating Risk Management within the Organisation**

The Enterprise Risk Management (ERM) Implementation Action Plan is a plan that will guide the implementation process of the overall ERM program. Successful delivery of the plan will ensure that a robust, sustainable and resilient program is achieved and maintained within Council's operations. It is in accordance with the strategies and objectives of Dubbo Regional Council's Enterprise Risk Management Policy and Plan.

**IMPLEMENTATION OF THE ENTERPRISE RISK MANAGEMENT PLAN**

To effectively implement this plan the following actions have been identified:

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable.	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
1.	EXECUTIVE LEADERSHIP TEAM (ELT) to set up a Audit, Risk and Improvement Committee (ARIC)	<ul style="list-style-type: none"> <li>• ARIC formally set up by Council</li> <li>• ARIC Terms of Reference developed and approved by Council</li> <li>• ARIC training conducted re the Committees risk management role and responsibility per the Terms of Reference</li> <li>• Role to include overview of Councils ERM Program and Extreme/High Level Strategic and Operational risks</li> <li>• Commencement of Committees role</li> </ul>	GM		Annually	
2.	Enterprise Risk Management (ERM) Policy adopted by Council	<ul style="list-style-type: none"> <li>• Development of ERM Policy</li> <li>• ERM Policy approved by ELT</li> <li>• ERM Policy adopted by Council</li> </ul>	EST/MGRS	Currently being developed	Annually	ELT
3.	Develop Council's Risk Appetite and Statements	<ul style="list-style-type: none"> <li>• Workshop to be conducted with ELT to develop</li> </ul>			Ongoing/Annually	
4.	Development and adoption of the ERM Plan	<ul style="list-style-type: none"> <li>• Development of ERM Plan</li> <li>• ERM Plan approved by ELT</li> </ul>	EST/MGRS	Currently being developed	Bi Annual	ELT

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
5.	Actively introduce/ communicate the ERM Policy and Plan to all staff	<ul style="list-style-type: none"> <li>• ELT to present to staff at a gathering and emphasise commitment</li> <li>• Inform staff of what it means to them, to Dubbo Regional Council and the need for their cooperation, and that assistance will be provided</li> </ul>	MGRS to organise ELT and Managers to make presentations			
6.	Develop, confirm and approve templates and other tools associated with the ERM program that staff will be required to use. TO BE DEVELOPED PRIOR TO FINALISATION OF ERM PLAN IF THEY ARE TO BE INCLUDED IN THE PLAN	<ul style="list-style-type: none"> <li>• Develop layout setup and determine format (Word, XL, hard copy) format, online systems, etc.</li> </ul>	EST/MGRS	Currently being developed		
		<ul style="list-style-type: none"> <li>• ELT to endorse templates</li> </ul>	EST/MGRS			
		<ul style="list-style-type: none"> <li>• Ensure templates are control documents and include review date</li> </ul>	EST/MGRS			
		<ul style="list-style-type: none"> <li>• Determine an effective way in which they will be rolled out to all staff</li> </ul>	MGRS			
		<ul style="list-style-type: none"> <li>• Determine how and where templates will be accessed and inform staff</li> </ul>	MGRS			
		<ul style="list-style-type: none"> <li>• Discourage all staff from saving individual electronic copies or hard copies that may become outdated. Make it easy to be accessed</li> </ul>	ELT/Managers		Ongoing	
		<ul style="list-style-type: none"> <li>• Ensure that risk management templates/ forms become part of each procedural function, not a separate activity (this may require for existing</li> </ul>	MGRS/Managers		Ongoing	

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		procedures to be reviewed or new ones developed)				
7.	Develop and implement the ERM Communication Strategy.	<ul style="list-style-type: none"> <li>ERM Communication Strategy to be developed and implemented throughout the organisation.</li> <li>Review ERM Communication Strategy for effectiveness</li> </ul>	MGRS/other Managers per the Strategy	Currently being developed	Quarterly	
8.	Develop and Implement the Risk Reporting framework.	<ul style="list-style-type: none"> <li>Review existing reporting mechanisms( if any) and develop a formal Reporting framework as outlined in the ERM Plan</li> </ul>	MGRS	Currently being developed		
		<ul style="list-style-type: none"> <li>Determine the who, where and how of the reporting requirements for:                             <ul style="list-style-type: none"> <li>Incidents/hazards</li> <li>risk profile reviews</li> <li>risk assessments</li> <li>risk register</li> </ul> </li> <li>Ensure the reporting of Extreme and High risks to appropriate Management level</li> </ul>	MGRS		Ongoing	
9.	Consideration and review of integrating Risk Management Roles and Responsibility statements into the staff Job Descriptions in line with those approved in the ERM Policy	<ul style="list-style-type: none"> <li>Consideration and review of integrating specific roles and responsibilities into the job descriptions</li> </ul>				
		<ul style="list-style-type: none"> <li>IF REQUIRED - Review the performance appraisal system to measure effective management of risk in line with the new role and responsibilities</li> </ul>	ELT/HR/MGRS		Quarterly	



Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
	and Plan	<ul style="list-style-type: none"> <li>IF REQUIRED - Communicate with all respective staff their specific ERM role and responsibility</li> </ul>	HR/MGRS/Managers		Quarterly	
10.	Provision of training on ERM and risk information analysis to Managers	<ul style="list-style-type: none"> <li>Training for managers in the analysis of risk assessment register and other documentation providing relevant information on risk and appropriate control strategies for appropriate use and action where required.</li> </ul>	MGRS		Ongoing/Annually	
11.	ERM Strategic Risk Profile to be developed for the organisation	<ul style="list-style-type: none"> <li>Strategic risk profile developed and respective treatment plans identified and implemented</li> </ul>	GM/ELT/MGRS	Current strategic risk profile data to be reviewed	In quarterly management plan reviews	GM/COUNCIL/ELT
		<ul style="list-style-type: none"> <li>To be reviewed quarterly and during the Strategic Planning Review process</li> </ul>	GM/ELT/MGRS	Quarterly	Annually	GM/COUNCIL/ELT/ARIC
12.	Provision of risk management Training/Education/Awareness sessions to all staff	<ul style="list-style-type: none"> <li>Education sessions would cover the ERM Program Framework documentation and associated processes including:                             <ul style="list-style-type: none"> <li>Council's ERM Program</li> <li>Risk Management Philosophy</li> <li>Risk Management Policy</li> <li>Risk Management Plan</li> <li>Roles and Responsibilities</li> <li>Risk Management Reporting</li> <li>Risk Management Templates</li> </ul> </li> </ul>	MGRS		Annually	ELT/MGRS

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		<ul style="list-style-type: none"> <li>- Communication Strategy/Plan</li> <li>- Location of documents in Councils Intranet/RMS</li> <li>- Ongoing reviews</li> <li>- Other ERM Program detail as required</li> </ul>				
		<ul style="list-style-type: none"> <li>• Establish Training/Education/Awareness sessions and one on one where necessary to introduce ERM Plan in more detail (i.e.: when to conduct risk assessments, how to report)</li> </ul>	MGRS		Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>• Develop training plan and ensure attendance to training is documented</li> </ul>	MGRS		Annually	ELT/MGRS
		<ul style="list-style-type: none"> <li>• Develop induction training session on risk management for all new staff as part of general induction.</li> </ul>	HR/MGRS		Ongoing at inductions	HR/MGRS
13.	Management level major Operational Risk Profiles to be developed for the organisation	<ul style="list-style-type: none"> <li>• Management level major Operational risk profiles to be developed and identified treatment plans/controls implemented for all management units</li> </ul>	MGRS/Managers	Current risk data to be reviewed		ELT/Managers
		<ul style="list-style-type: none"> <li>• Develop a plan for the ERM Management Operational workshops with the individual</li> </ul>		Current risk data to be		ELT/MGRS

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		<p>Managers of the operational areas to review current processes and how risk management activities will be integrated.</p> <ul style="list-style-type: none"> <li>Determine priority order for introduction of ERM to respective service areas</li> </ul>	MGRS/Managers	reviewed		/Managers
		<ul style="list-style-type: none"> <li>Managers to review identified risks and assess proposed treatment/control strategies</li> </ul>	Managers	Current risk data to be reviewed	Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Managers to discuss risk profile and treatment/control strategies with staff to develop sense of ownership and familiarity with process</li> </ul>	Managers		Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Where treatment/control strategies require approval or additional resources at higher level, seek this through reviewed reporting mechanism and follow up.</li> </ul>	Managers		Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Action any additional controls identified</li> </ul>	Managers		Ongoing	ELT/MGRS
14.	Operational Service Unit Risk Profiles to be developed for the organisation	<ul style="list-style-type: none"> <li>Operational risk profiles to be developed and identified treatment plans/controls implemented for all operational service units</li> </ul>	MGRS/Managers	Current risk data to be reviewed	Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Develop a plan for the ERM Operational workshops with the individual Managers of the operational areas to review current processes and how risk management activities will be integrated.</li> <li>Determine priority order for introduction of ERM to respective service areas</li> </ul>	MGRS/Managers	Current risk data to be reviewed	Ongoing	ELT/MGRS

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		<ul style="list-style-type: none"> <li>Managers to review identified risks and assess proposed treatment/control strategies</li> </ul>	Managers	Current risk data to be reviewed	Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Managers to discuss risk profile and treatment/control strategies with staff to develop sense of ownership and familiarity with process</li> </ul>	Managers		Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Where treatment/control strategies require approval or additional resources at higher level, seek this through reviewed reporting mechanism and follow up.</li> </ul>	Managers		Ongoing	ELT/MGRS
		<ul style="list-style-type: none"> <li>Action any additional controls identified</li> </ul>	Managers		Ongoing	ELT/MGRS
15.	Ongoing Risk Assessments and development/ implementation of an Electronic Risk Profiling System	<ul style="list-style-type: none"> <li>Determine at what stage and for what activities/ functions it would be required to conduct a risk assessment and by whom.</li> <li>Agree on what will constitute the official Risk Register, what assessments will be included in the register and how this information will be used within the reporting framework for appropriate action</li> <li>Determine what electronic system will be utilised and who will be granted access to enter data and how its use will be monitored and reviewed</li> </ul>	<p>MGRS</p> <p>MGRS</p>	Current JRS Risk System and data being reviewed	<p>Monthly</p> <p>Ongoing</p>	<p>ELT</p> <p>ELT</p>

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
16..	Review of Strategic Management Planning and Decision Making processes to integrate ERM approach  Ongoing monitoring and review of ERM integration process	<ul style="list-style-type: none"> <li>Review current process and determine at what stage of the process the risk profile is to be reviewed or a new one developed in line with new objectives</li> </ul>	ELT	Prior to preparation of management plan	Annually	ELT
		<ul style="list-style-type: none"> <li>Refer to OLG's management planning process guidelines to ensure compliance</li> <li>Ensure ERM processes are integrated with Dubbo Regional Council's IP&amp;R system as per requirements of the ERM Policy and Plan</li> </ul>				
		<ul style="list-style-type: none"> <li>Review process of resource allocation to consider risk priorities</li> </ul>	ELT	Prior to preparation of management plan	Annually	ELT
		<ul style="list-style-type: none"> <li>Review the preparation of Dubbo Regional Council reports to include ERM consideration on the topic as well as the application of risk management in the preparation of the report itself</li> </ul>	ELT/MGRS/Managers		Each meeting	ELT
		<ul style="list-style-type: none"> <li>Review current reporting process to include reporting of risks from operational level in line with adopted ELTation procedure.</li> </ul>	ELT/MGRS/Managers		Each meeting	ELT/MGRS
	<ul style="list-style-type: none"> <li>Clearly include as part of the strategic objectives</li> </ul>	ELT/MGRS		Annually	ELT/MGRS	

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		(in governance) that Dubbo Regional Council actively seeks to continuously improve its performance through the application of effective risk management principles and practices.				
		<ul style="list-style-type: none"> <li>DF&amp;BD to monitor ongoing process of integration</li> </ul>	MGRS		Monthly	ELT
17.	Review of All Management level operational risks with a Residual Extreme or High Level of Risk (LOR)	<ul style="list-style-type: none"> <li>Review all Extreme and High risks to ensure:                             <ul style="list-style-type: none"> <li>Risk still exists</li> <li>Accuracy of assessment</li> <li>All current controls are identified</li> <li>Identify further controls that could be implemented to reduce LOR</li> <li>Executive Management report if required</li> </ul> </li> </ul>	MGRS/ARIC	ASAP	Annually	ELT/MGRS /ARIC
18.	Review of All Strategic risks with a Residual Extreme or High Level of Risk (LOR)	<ul style="list-style-type: none"> <li>Review all Extreme and High risks to ensure:                             <ul style="list-style-type: none"> <li>Risk still exists</li> <li>Accuracy of assessment</li> <li>All current controls are identified</li> <li>Identify further controls that could</li> </ul> </li> </ul>	ELT/MGRS/ARIC	ASAP	Annually	ELT/ARIC

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		<ul style="list-style-type: none"> <li>be implemented to reduce LOR</li> <li>o ELT action if required</li> </ul>				
19.	Review of all risks with a n Extreme or High Residual Level of Risk and reassess them from an 'Enterprise' perspective	<ul style="list-style-type: none"> <li>• RMC to review all risks with a n Extreme or High Residual Level of Risk and reassess from an 'Enterprise' perspective</li> <li>• Prepare report to ELT re risks that have been assessed with an Enterprise Extreme or High LOR detailing current treatment plan/controls and any further action required</li> </ul>	MGRS/Managers/ ARIC		Quarterly	Council/EL T/ARIC
20.	Monitoring and Review of all Risk Profiles	<ul style="list-style-type: none"> <li>• Annual Review of all risk profiles to ensure:                             <ul style="list-style-type: none"> <li>o Risk still exists</li> <li>o Accuracy of assessment</li> <li>o All current controls are identified</li> <li>o Identify further controls that could be implemented to reduce LOR</li> </ul> </li> <li>• <b>OR when the following occurs:</b> <ul style="list-style-type: none"> <li>o Controls identified as being no longer effective</li> <li>o Macro factors change</li> <li>o When change to processes occur within operational areas</li> <li>o When there has been a change of</li> </ul> </li> </ul>	Managers       Managers/MGRS	Current risk data to be reviewed	Annually with Management Plan Process       Ongoing	ELT       ELT

Ref No.	WHAT needs to be done	HOW will this be done	WHO is accountable	WHEN does it need to be done by	MONITOR and REVIEW:	REPORT to:
		key operational staff ○ When new or additional services/functions/equipment/locations etc. are introduced				
21.	Ongoing monitoring and review of ERM Program and integration process	<ul style="list-style-type: none"> <li>Monitor and review ERM Program and report to ELT on progress. Ensure continuous improvement measures are included.</li> </ul>	ARIC/MGRS		Quarter	ELT
		<ul style="list-style-type: none"> <li>Develop ERM Performance Indicators</li> </ul>	MGRS		Monthly	ELT
		<ul style="list-style-type: none"> <li>Actively seek feedback from staff regarding the ERM Program via surveys, suggestion box etc.</li> </ul>	MGRS		Ongoing	MGRS
		<ul style="list-style-type: none"> <li>Determine integration effectiveness and further review as required</li> </ul>	ARIC/MGRS		Ongoing	MGRS
		<ul style="list-style-type: none"> <li>Review of all ERM Program documentation</li> </ul>	ARIC/MGRS	Currently being reviewed	Annually	ELT
		<ul style="list-style-type: none"> <li>Review and update of the ERM Implementation Action Plan</li> </ul>	MGRS	Currently being reviewed	Half Yearly	ELT/MGRS
		<ul style="list-style-type: none"> <li>Review of the Audit, Risk and Improvement Committee's risk management role in their Terms of Reference and the committee's risk management role effectiveness</li> </ul>	ELT/MGRS/ARIC		Annually	ELT/MGRS



## **Appendix 10 Associated Council Policies and Documents**

This document is relevant and related to the following council documents:

- Enterprise Risk Management Policy
- Enterprise Risk Management Implementation Risk Assessment
- Enterprise Risk Management Implementation Action Plan
- Risk Management Tools and templates
- Risk Profiles – both strategic and operational
- Risk Register/s
- DAMP
- Specific Risk Management Procedures
- WHS policy and procedures

This document and any of the abovementioned documents when reviewed should be cross-referenced to ensure all relevant details are updated concurrently.



DUBBO REGIONAL  
COUNCIL

## **REPORT: Contract Payments and Contract Variations 1 July 2016 to 30 June 2017**

**AUTHOR:** Director Corporate Services  
**REPORT DATE:** 21 August 2017  
**TRIM REFERENCE:** ID17/1531

### **EXECUTIVE SUMMARY**

Included in this report is information regarding the number of creditors paid more than \$150,000 in the 2017 Financial Year 1 July 2016 to 30 June 2017 with no written contract, statistics on the number and value of invoices where the invoice date was before the order creation date and also the number of contracts where the original contract value was exceeded.

### **ORGANISATIONAL VALUES**

Customer Focused: The report highlights where orders are not being issued to Council's suppliers, which can delay payment to the supplier.

Integrity: This report directly addresses internal controls over purchasing, and potentially highlights deficiencies in Council's processes.

One Team: This report provides detail across all of Council's operations.

### **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

### **POLICY IMPLICATIONS**

There are no policy implications arising from this report.

### **RECOMMENDATION**

**That the information contained within the report be noted.**

*Craig Giffin*  
Director Corporate Services

## BACKGROUND

At the former Dubbo City Council's Audit and Risk Management Committee Meeting of 22 March 2013, it was resolved that a report be provided to the Committee on a quarterly basis setting out:

- (a) The number of creditors who are paid \$150,000 or more for materials year to date (excluding payments for loan funding, superannuation and other statutory payments) reported by Division.
- (b) The number of orders and percentage of total orders where creation date was later than the invoice date for the last financial year reported by Division.
- (c) The number of contracts where the original contract value was exceeded for the last financial year by Division.

It was further resolved at the former Dubbo City Council's Audit and Risk Management Committee Meeting of 16 March 2015, that information be provided to the Committee relating to breakup by Division of:

- Number of creditors paid \$150,000 or more for materials with no written contract.
- Number of contracts where original contact value was exceeded.

The information requested is provided below for the 2017 financial year 1 July 2016 to 30 June 2017.

## REPORT

The following report details the statistics to 30 June 2017.

- (a) **Number of creditors who were paid \$150,000 or more for materials and services in the financial year to 30 June 2017 with no written contract:**

There were 5 suppliers paid a total of over \$150,000 for materials and services in the 2017 financial year to date that had no contract in place.

(b) The number of orders and percentage of total orders where the creation date was later than the invoice date for the 2017 financial year, by Division was:

	Number of Orders Raised After Invoice Date	Total Number of Orders Raised by Division	% of Orders After Invoice to Total Orders - By Division
Division	YTD 30 June 2017	YTD 30 June 2017	YTD 30 June 2017
Community Services	209	1317	16%
Corporate Development	381	1925	20%
Environmental Services	41	242	17%
Organisational Services	364	1670	22%
Parks & Landcare	277	2531	11%
Technical Services	572	5660	10%
<b>Total</b>	<b>1844</b>	<b>13345</b>	<b>14%</b>

These figures show a significant improvement in terms of the percentage of orders written after the invoice date when compared to previous financial years. In this regard, the 2012/2013 figure was 35.3%, 2013/2014 the figure was 29%, the 2014/2015 figure was 20%, and the 2015/2016 figure was 11%. The 14% of orders written after the invoice date for the 2016/2017 financial year is slightly higher than the 2015/2016 financial year, this issue continues to be a work in progress.

It should be noted that there is no Wellington Branch detail included in the above report. It has been discovered that the processing methods used in Wellington do not facilitate extraction of the required information. This will be possible in the 2017/2018 financial year due to the completion of the data migration into the one instance of Authority.

(c) The number of contracts where the original contract value was exceeded for the current financial year, by Division.

For the 2017 financial year here were 10 contracts that have been finalised. There were 7 contracts where the original contract value was exceeded.

A breakup by Division for the 2017 financial year to date is as follows:

Division	Number of Contracts with Variation	Variation Process Adhered To
Community Services	1	Yes
Technical Services	6	Yes all

Submitted for the information of the Audit, Risk and Improvement Committee.



DUBBO REGIONAL  
COUNCIL

## REPORT: Operation Jarek - Update on Actions to Date

**AUTHOR:** Director Corporate Services  
**REPORT DATE:** 21 August 2017  
**TRIM REFERENCE:** ID17/1536

### EXECUTIVE SUMMARY

This report provides an update to the Audit and Risk Management Committee on items that have been addressed from the initial Operation Jarek report that was adopted at the former Dubbo City Council Audit and Risk Management Committee meeting, held on 17 March 2014.

### ORGANISATIONAL VALUES

Customer Focused: This report addresses risks identified by Operation Jarek that potentially could cost Council in the form of perpetration of fraud.

Integrity: This report covers actions to improve the integrity of the procurement systems, processes and alert staff to situations that can place Council in a compromised position due to relational selling techniques employed by suppliers.

One Team: The implications of the Operation Jarek require a united response across the entire organisation.

### FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

### POLICY IMPLICATIONS

There are no policy implications arising from this report.

### RECOMMENDATION

**That the information contained within the report be noted.**

*Craig Giffin*  
Director Corporate Services

## BACKGROUND

Following the Independent Commission Against Corruption's (ICAC) investigation into Local Government procurement processes, a report was produced on the review, named Operation Jarek. This report included 15 recommendations on how councils could improve their operations to reduce the risk of fraud and corruption in the area of purchasing and procurement. A report was presented to the former Dubbo City Council's Audit and Risk Management Committee held on 17 March 2014 on Council's proposed response to the ICAC recommendations.

This report omits previously completed action items, and only reports on actions taken since last report and outstanding items.

## REPORT

Set out below are the recommendations in relation to the ICAC Report and recommended actions in response to the issues raised.

### **ICAC Recommendation 2 – That Council develop a proactive and comprehensive supplier engagement framework.**

Actions completed – Strategy and timeframe for the implementation of the Risk Treatment Plans for identified risks. Part of the risk management strategy around procurement is identified as Item 10 on the Procurement Roadmap – Define System Requirements to Support Procurement Process, which involves development of the Online Requisitioning system which has now been implemented as part of the Civica Authority Enterprise Reporting System merger of the Dubbo and Wellington systems project and went live on 9 June 2017.

Actions still to be completed – Accounts Payable staff are currently planning the implementation of Accounts Payable workflows with the setup of a trail group.

Actions still to be completed – Online registration of potential suppliers. This is identified in the Procurement Roadmap as part of Item 18 Development of a Procurement Intranet site. It is anticipated that work in regards to this action will commence in early 2018.

### **Recommendation 7 – That Council analyse their procurement processes to identify points of corruption risk and take steps to improve the design of their procurement processes.**

Actions Completed: A review of risks has been completed as part of the Enterprise Risk Management Review. The soon to be employed Corporate Procurement Specialist will be taking the necessary actions to improve the design of Councils procurement processes.

Actions completed – Strategy and timeframe for the implementation of the Risk Treatment Plans for identified risks. Part of the risk management strategy around procurement is identified as Item 10 on the Procurement Roadmap – Define System Requirements to Support Procurement Process, which involves development of the Online Requisitioning system which has been implemented as part of the Civica Authority Enterprise Reporting System merger of the Dubbo and Wellington systems project and went live on 9 June 2017.

Actions still to be completed – Accounts Payable staff are currently planning the implementation of Accounts Payable workflows with the setup of a trail group.

Target date: December 2017

**Recommendation 8 – That Council consider introducing e-procurement as an efficient method of controlling possible vulnerabilities in their system.**

Actions completed – Implement Online Requisitioning System implemented, see comments in Recommendation 7. Implement automatic email of Purchase Order to supplier. This has now been delivered in conjunction with the Authority financial system merger.

Actions still to be completed – implement Procedure to Pay within the Authority purchasing Accounts Payable system to streamline payment processing will be reviewed with the recruitment of the Corporate Procurement Specialist.

Target Date: February 2018

**Recommendation 9 – That Council review which reports are available to the managers of stores and ensure they can generate a report showing the orders placed by any individual across all cost centres.**

Actions still to be completed – A report containing this information is being developed as part of the ongoing implementation of the Online Requisitioning system and will be reviewed with the recruitment of the Corporate Procurement Specialist.

Target Date: February 2018

**Recommendation 10 – That Council analyse inventory management systems with a view to improving controls and reducing waste.**

Actions still to be completed – Implementation of management of stock through reports on stock usage and minimum and maximum order levels will be reviewed with the recruitment of the Corporate Procurement Specialist.

Target Date: February 2018