



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

**REPORT OF THE INQUIRY INTO
THE SHIRE OF SHARK BAY**
Authorised Inquiry under Division 1 of Part 8
Local Government Act 1995

October 2010

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Local Government Act 1995

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
APPOINTMENT	1
TERMS OF REFERENCE.....	1
THE MANNER IN WHICH OPEN AND ACCOUNTABLE PROCEDURES WERE ADMINISTERED - CEO’S CONTRACT RENEWAL	1
Finding 1.....	3
Finding 2.....	3
Finding 3.....	4
Finding 4.....	4
Finding 5.....	4
Finding 6.....	5
Finding 7.....	6
Finding 8.....	6
APPROPRIATE MEANS OF DEALING WITH ONGOING RELATIONSHIP DIFFICULTIES BETWEEN ELECTED MEMBERS AND STAFF.....	6
Finding 9.....	7
THE APPROPRIATENESS OF THE SHIRE’S PROVISION OF PUBLIC FUNDS TO FORMER SHIRE PRESIDENT, MR LES MOSS FOR DEFENCE OF A PROSECUTION FOR FINANCIAL INTEREST BREACHES	7
Finding 10.....	9
Finding 11.....	9
Finding 12.....	10
THE MANNER IN WHICH OPEN AND ACCOUNTABLE PROCEDURES WERE ADMINISTERED AND OTHER RELEVANT MATTERS:- PUBLICATION OF MISLEADING INFORMATION	10
Finding 13.....	11
Finding 14.....	12
SPECIAL ELECTORS MEETING – COMMUNITY CALLS FOR ACCOUNTABILITY	12
Finding 15.....	13
Finding 16.....	14
Finding 17.....	14
Finding 18.....	14
Finding 19.....	15
Finding 20.....	15
RECOMMENDATIONS	16
CHAPTER 1:	19
INTRODUCTION	19
1.1 APPOINTMENT	19
1.2 TERMS OF REFERENCE	19
1.3 SHIRE OF SHARK BAY ELECTIONS.....	19
CHAPTER 2:	20
INQUIRY PROCESS.....	20
2.1 NATURAL JUSTICE PROCEDURES.....	21
2.1.1 <i>The Manner in Which Open and Accountable Procedures Were Administered - CEO’s Contract Renewal.....</i>	<i>21</i>
2.1.2 <i>Appropriateness of the Provision of Legal Funding to Mr Moss</i>	<i>21</i>
2.1.3 <i>Appropriate Means of Dealing With Ongoing Relationship Difficulties Between Elected Members and Staff.....</i>	<i>23</i>

2.2	PUBLIC SUBMISSIONS	24
2.3	INTERVIEWS	25
2.4	NATURAL JUSTICE SUBMISSIONS.....	25
2.5	REPORTING ON CONCLUSIONS AND FINDINGS	26
CHAPTER 3:		27
OPEN AND ACCOUNTABLE GOVERNANCE.....		27
3.1	CEO’S CONTRACT RENEWAL.....	27
	Finding 1	31
	Finding 2	31
	Finding 3	32
	Finding 4	33
	Finding 5	34
	Finding 6	37
	Finding 7	38
3.2	SPECIAL ELECTORS MEETING – NO CONFIDENCE IN CEO	38
	Finding 8	39
CHAPTER 4:		40
RELATIONSHIP CONFLICTS		40
	Finding 9	41
CHAPTER 5:		43
LEGAL FUNDING TO THE FORMER SHIRE PRESIDENT		43
	Finding 10	45
	Finding 11	48
	Finding 12	50
CHAPTER 6:		51
PUBLICATION OF MISLEADING INFORMATION.....		51
	Finding 13	52
	Finding 14	52
6.1	SPECIAL ELECTORS MEETING – COMMUNITY CALLS FOR ACCOUNTABILITY.....	53
	Finding 15	55
	Finding 16	55
	Finding 17	55
	Finding 18	56
	Finding 19	56
	Finding 20	56
CHAPTER 7:		57
CONCLUSION		57
7.1	CEO’S CONTRACT RENEWAL.....	57
7.2	RELATIONSHIP CONFLICTS	59
7.3	LEGAL FUNDING TO THE FORMER SHIRE PRESIDENT	60
7.4	PUBLICATION OF MISLEADING INFORMATION	60
7.5	SPECIAL ELECTORS MEETING – COMMUNITY CALLS FOR ACCOUNTABILITY.....	61

CHAPTER 8:	63
RECOMMENDATIONS:	63
8.1 LOCAL GOVERNMENT ELECTIONS – COMMUNITY SUPPORT	64
8.2 RECOMMENDATIONS AND FINDINGS –	65
CEO’s Contract Renewal	65
Finding 1	65
Finding 2	65
Finding 3	65
Finding 4	65
Finding 5	66
Finding 6	66
Finding 7	66
Finding 8	66
Relationship Conflicts	67
Finding 9	67
Legal Funding to the Former Shire President	67
Finding 10	67
Finding 11	67
Finding 12	67
Publication of Misleading Information	67
Finding 13	67
Finding 14	68
Special Electors Meeting – Community Calls for Accountability	68
Finding 15	68
Finding 16	68
Finding 17	69
Finding 18	69
Finding 19	69
Finding 20	69

EXECUTIVE SUMMARY

Appointment

By a Notice of Appointment on the 21 May 2009, the Director General of the Department of Local Government and Regional Development (as it was then known) appointed Brendan Peyton and David Morris as Authorised Persons under the *Local Government Act 1995* ("the Act ") to investigate and report on aspects of the Shire of Shark Bay and its operations and affairs as set out in the instrument as follows:

Terms of Reference

- *The manner in which open and accountable procedures were administered;*
- *Appropriate means of dealing with ongoing relationship difficulties between elected members and staff and in particular, Cr Hargreaves, the CEO, Mr Matthews and the Shire President, Cr Eddington;*
- *The appropriateness of the Shire's provision of public funds to former shire President, Mr Les Moss for defence of a prosecution for financial interest breaches;*
- *Any other matters relevant to the above.*

During the course of this Inquiry, on 17 October 2009 local government elections in Shark Bay commenced with 11 candidates nominating for the 4 positions vacated by former councillors Eddington, Hault, Blennerhassett and Cane. This report is about the Council and its elected members that were present and involved in decisions prior to the October elections and no criticism is intended for those newly elected members that commenced their term in the latter part of 2009.

The Manner in Which Open and Accountable Procedures Were Administered - CEO's Contract Renewal

On 24 June 2009, at the Ordinary Council Meeting, the CEO's contract renewal was raised by Mr Matthews (the CEO), without any prior notice. The proposal for renewing the CEO's employment contract was not listed in the Agenda for this meeting. The Officer's Report (authored by the CEO) of 4 June 2009, 3 weeks before the 24 June meeting, meant that there would have been ample opportunity for the CEO to include this item in the agenda for the meeting.

The Minutes of the 24 June 2009 meeting do not shed any light on why the item was introduced as '*Urgent Business Approved by the Person Presiding or by Decision*' on the day of the meeting or why it was accepted at this time as urgent business by the Presiding Member, Cr Hoult.

The CEO announced or, in Cr Cowell's words, "*prompted*" the newly elected President, Cr Hoult, that there was an item that needed to be considered behind closed doors. After enquiring what the item was that needed to be dealt with behind closed doors, Cr Cowell received a copy of the CEO's report referring to the renewal of his contract. Cr Cowell raised her concerns that she had not been provided with a copy of the report prior to the meeting. Cr Hoult and Crawford advised her that they already had a copy of the report.

Crs Hoult and Crawford had more information on this matter having received the CEO's report on the matter the night before. Significantly, Cr Cowell advised she was the only councillor who was handed a copy of the report at the meeting.

The fact that Council intends to consider the renewal of the CEO's contract is not something that should be kept confidential from the public or indeed other councillors. Why was Cr Cowell treated differently?

The Inquiry considered whether the actions of not publishing the CEO contract renewal in the Agenda was deliberately done, with the full knowledge of the majority of councillors, to prevent the community becoming aware it was being considered.

Cr Cowell felt that the main motivation for the CEO seeking to have the matter dealt with now, was that he was aware that 3 councillors had advised that they would be retiring prior to the October 2009 elections. She believed that the CEO wished it to be ratified whilst these councillors were still in office, to be assured of a favourable decision.

The voting for this matter was 3/1, with the Shire president Cr Hoult, Cr Crawford, and Cr Blennerhassett voting in favour of the contract renewal. Cr Cowell voted against the motion.

The unconfirmed minutes of the Council meeting for the 24 June 2009 recorded at page 41 that a decision regarding the renewal or varying of the CEO's contract required an absolute majority.

The unconfirmed minutes of the meeting appeared on the Shire's website stating that the motion had been "carried". An absolute majority for Shark Bay Council requires more than half of the 7 seats on Council to vote and accept the decision. In this case the vote for, was 3 and so the motion was not lawfully carried.

An important decision of this nature was incorrectly reported to the public as "carried" when in fact it should have been immediately apparent to the councillors present that an absolute majority was not achieved.

Finding 1

The inappropriate secrecy in which the proposed renewal of the CEO's contract was dealt with by the former Council, contributes to the conclusion that the Council was not being open and accountable.

Finding 2

The former Council and the CEO Mr Matthews, at the 24 June 2009 Ordinary Council Meeting, failed to acknowledge (until the following meeting on 29 July 2009) that by virtue of section 5.36 *Local Government Act 1995* the motion to extend the CEO's employment contract had not been 'carried'.

The CEO's 4 June 2009 report to Council, titled "*Request for Renewal of Chief Executive Officer Contract Appointment*" contained the recommendation that Council renew the appointment of the current Chief Executive Officer, Mr Kelvin John Matthews for a five (5) year term and that variations to clauses 3, 7.1, 7.2, 7.12 and 8.1 of the Deed of Employment contract as detailed in this report be approved.

The clauses listed in the CEO's recommendation had some effect on the employment conditions of the CEO. At least two clauses were proposed to be changed that had the potential to affect the Shire's interests.

Clause 8.1(d) of the CEO's employment Contract (existing contract) stipulates, in the event the Council terminates the agreement, "*...the council will pay to the Officer the payments that would have been payable to the Officer for the remainder of his employment under this Agreement or one year's salary, whichever is the lesser*".

This was proposed in the CEO's report to be varied by removing the wording of "*or one year's base salary, whichever is the lesser*".

Clause 8.1 could have significant implications if it resulted in an increase in the potential financial liability for the Shire from a maximum of 12 months base salary to the full 5 yr contract period entitlement.

Councillors were unaware at the time that this variation was not in accordance with the prescribed regulatory entitlements.

The CEO's function under section 5.41 LGA (b) is to "*ensure that advice and information is available to the council so that informed decisions can be made*".

Finding 3

The manner in which the CEO, Mr Kelvin Matthews, presented the proposed renewal of his employment contract, as a late urgent item and confidentially, without ensuring adequate advice and information was provided to councillors, demonstrated a significant failing by him to meet the expectations of section 5.41(b) LGA.

Council was aware of a possibility that the CEO's contract could be terminated prior to the expiry date and this knowledge should have affected Council's decision to commit the Shire to a possible payout of up to \$500,000 to protect the tenure of the CEO.

This Inquiry holds the view that the only purpose of Council approving this contract renewal, at this time, was to ensure that prior to the majority of councillors retiring, the CEO received employment terms that secured his appointment for a five year term or, should he be terminated, the equivalent in the resulting pay out.

Finding 4

The urgency with which the former Council dealt with the proposed renewal of the CEO's contract at the 24 June 2009 meeting showed a lack of rational consideration of the ultimate impact this decision would have on the Shire and its services to the ratepayers in the future.

The possible financial ramifications of the CEO's proposed amendments to his contract would not have been known by the councillors present as they are not discussed in the CEO's report. Importantly, these are ramifications that councillors should have ensured they were fully informed of before making any decision and go further in reinforcing the perception that Council was not dealing with this matter in an open and accountable manner.

Finding 5

Notwithstanding that the decision had no effect, in approving the CEO's contract renewal at the 24 June 2009 meeting without exercising careful judgement and seeking legal advice on any possible ramifications of the proposed variations in the contract, the former Council ignored its responsibility to protect the interests of the Shire and appeared only focused on ensuring the interests of the CEO were met.

The item of the CEO's contract renewal was again raised at the next Ordinary Council meeting of the 29 July 2009. The item did not appear on the 'public' agenda and therefore could only be introduced appropriately by the CEO and

accepted by Council as a late urgent item. In this case, not only did it not appear in the agenda for the information of the public, it was dealt with confidentially behind closed doors.

The Ordinary Council meeting of 26 August 2009 again omitted the item from the 'Public Agenda' and dealt with it in the same manner. It had the benefit of the legal advice from McLeods Barristers & Solicitors, the Shire's legal advisor.

The manner in which the CEO's contract renewal item was repeatedly withheld from inclusion in the meeting agendas and presented to and accepted by Council was contrary to the Shire's own Standing Orders Local Law 4.2.1. This required the CEO to identify in the agenda (that was provided to the public) that the matter of the CEO's employment contract renewal was to be discussed and that it would be dealt with as a "confidential" item. Given the repeated times the matter had been presented to Council, there was no justification for excluding this item from the 'Public Agenda' (Note: It is not appropriate for a Local Government to operate a 'public' and 'private' agenda system in this manner).

The Inquiry concluded that there was a planned and deliberate intention to avoid compliance with the Shires Standing Orders in regard to the public's access to information and ultimately a deliberate intention to avoid dealing with the matter in an open and accountable manner.

Finding 6

The manner in which the CEO, Mr Matthews, the Deputy CEO, Mr Tiggeman and the former Council, specifically Crs Hault, Cane, Crawford and Blennerhassett repeatedly dealt with this matter inappropriately, at the 24 June 2009, 29 July 2009 and 26 August 2009 Ordinary Council meetings leads to a conclusion that there was a planned and deliberate attempt to avoid compliance with the Shire's Standing Orders Local Law 4.2.1 in regard to public access to Agenda material and ultimately that the CEO's employment contract renewal was not dealt with in an open and accountable manner.

The Shire's legal advice dealt with whether or not it was appropriate to extend the term of contract when it was anticipated that there would be a significant change in the Council at that year's election, and against a backdrop of an Authorised Inquiry.

The advice confirmed these "...are relevant matters that should be taken into consideration in considering an early renewal of the CEO's contract" [they are] "more issues related to the 'good government' of the Shire" and "Council is elected to make such determinations on behalf of the community".

Finding 7

The decision at the 26 August 2009 meeting by Councillors Houlton, Crawford, Blennerhassett, Cane, Cowell and Hargreaves to 'reconfirm' the decision of 24 June meeting, (to approve the CEO's contract renewal) had no rational basis and was not demonstrably in the interests of the Shire of Shark Bay.

It is evident that in this case the Council at that time operated with unnecessary haste and confidentiality and failed to take into account rational and objective considerations that would have ensured the interests of the local government were protected.

Section 1.3(2) of the Act is important in describing the objective the local government Act is intending to achieve.

"This Act is intended to result in:

- a) better decision making;*
- b) greater community participation in the decision and affairs of local governments;*
- c) greater accountability of local governments to their communities;*
and
- d) more efficient and effective local government"*

In relation to the manner in which it dealt with the decision to renew the CEO's contract, a decision that had significant ramifications for the Shire itself and the community, the former Council of the Shire of Shark Bay did not meet these important principles.

Finding 8

The former Council, specifically Crs Houlton, Cane, Crawford and Blennerhassett, ignored its responsibility to be accountable to the community in relation to its dealings with the CEO contract renewal issue. The manner in which Council dealt with this issue reinforced distrust in the former Council by community members.

Appropriate Means of Dealing with Ongoing Relationship Difficulties Between Elected Members And Staff

It was clear from the outset of this inquiry that there was significant conflict between, on the one hand, Cr Hargreaves and the CEO, and on the other hand, the majority of councillors and Cr Hargreaves.

Cr Hargreaves made it known that he had been voted in by the community on a platform of keeping Council and the Administration honest. Once Councillor Hargreaves became an elected member he set about fulfilling his election promise in a dogmatic, and at times, tactless manner. This approach sometimes created conflicts for Cr Hargreaves in his dealings with other councillors and the CEO.

Finding 9

It is concluded that whilst Cr Hargreaves had ongoing relationship conflicts with the CEO, Kelvin Matthews, and also with Crs Eddington, Hault, Cane, Blennerhassett, and Crawford, it was understandable that conflict existed given the findings made about the former Council and the CEO elsewhere in this report.

With the benefit of hindsight the Inquiry acknowledges that the serious conclusions reached by this Inquiry in relation to the lack of openness and accountability by the Council makes the examination of the conflicts on Council that existed prior to the 2009 elections, to be largely overtaken by events. In the circumstances it is concluded that it was understandable that conflict existed during this time.

The Appropriateness of the Shire's Provision of Public Funds to Former Shire President, Mr Les Moss For Defence of a Prosecution For Financial Interest Breaches

The Department's first letter dated 17 January 2006 to the Shire concerning this matter was a routine request to the CEO, advising that the Department was investigating allegations against the then Shire President, Mr Les Moss, and seeking the CEO's (Mr Kelvin Matthews) cooperation in providing copies of relevant Minutes to assist with the investigation of the allegations. There was no requirement for the Council (or the CEO) to respond to the actual allegations concerning the Shire President, merely provide the requested information. The CEO responded by providing the requested information in a letter dated 10 February 2006.

Following the receipt of this information the Department sent a letter to then Shire President, Councillor Les Moss (Mr Moss), dated 3 March 2006, identifying the allegations in detail and seeking a response from Mr Moss.

On 15 March 2006, a Special Council Meeting was called, by Mr Moss, the then Shire President, to discuss matters regarding the Shark Bay Interpretive Centre. Whilst the purpose of the meeting was identified in the 15 March Minutes as "... to discuss matters regarding the Shark Bay Interpretive Centre" it is evident the meeting was called to deal with allegations that Mr Moss breached the financial interest provisions of the Act as a result of him voting on items related to the Shark Bay Interpretive Centre.

Mr Moss declared an interest in the agenda item as it related to him, however, Council voted to allow him to remain in the chamber to participate in the discussion in accordance with the provisions of section 5.68 of the Act.

Council carried a motion approving the Shire President and the Chief Executive Officer obtaining appropriate legal advice regarding its response to the assessment of proximity and financial interests raised by the Department of Local Government and Regional Development.

The motion approved of the CEO and Mr Moss obtaining legal advice only in relation to **Council's response** to the allegations. As the allegations related to Mr Moss personally, there was no requirement for Council to respond. It is evident from this motion and subsequent statements from the Council, that in wishing to show its support for Mr Moss, Council lost sight of its obligation to primarily act in the interests of the ratepayers and residents of the district.

At an Ordinary Council Meeting on 26 September 2007, the matter was 'reconsidered' and Council reconfirmed its motion of 15 March 2006 to obtain and pay for legal advice for Mr Moss in accordance with Council policy Division 7.

The Shire of Shark Bay Policy, Division 7, clause 7.4 is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in **civil legal proceedings** (emphasis added).

Clause 7.4 (2) General Principles

*The Local Government may provide financial assistance to members and employees in connection with the performance of their duties provided that the member or employee has acted reasonably and has **not acted illegally, dishonestly, against the interests of the Local Government or otherwise in bad faith.*** (emphasis added).

The Department's letter of 13 September 2007 related to criminal allegations that led to criminal proceedings, therefore providing funding was contrary to the limitation in the policy to civil legal proceedings only. Funding under Division 7 also required that an application is made for funding under this policy. There was no application by Mr Moss. Therefore the funding was not, as Council advised the public and the Department, in accordance with its policy.

On or about 21 January 2008, a prosecution notice was served on Mr Moss (no longer an elected member at this time) for alleged breaches of the proximity interest provisions of the *Local Government Act 1995*. The first appearance was scheduled for 15 February 2008.

At an Ordinary Council Meeting on 25 June 2008, the matter was again 'reconsidered' and Council "... *reconfirm its motion(s) of 15 March 2006 and 26 September 2007 to continue to obtain and pay for legal advice that now includes representation regarding the matter between the previous Shire*

President, (Cr Les Moss) and the Department of Local Government and Regional Development in accordance with council policy 7.4.

Amendment to 23.1

That the words "with regular monthly reports to council regarding progress of the matter" be inserted after "council policy 7.4".

This motion extended the Shire's commitment to pay for legal advice to include legal representation for Mr Moss and included a requirement for monthly reports to Council on the matter. These reports were not provided by the CEO and no reason was given in the minutes for their absence.

Finding 10

The CEO, Mr Matthews failed to implement a Council decision to provide monthly reports to Council on the progress of the matter concerning the payment for legal advice and representation regarding the matter between the previous Shire President, (Cr Les Moss) and the Department of Local Government and Regional Development in accordance with council policy 7.4

The Department raised with the Shire President of the time, Cr Eddington, that under provisions of the Local Government Act a Council can provide funds for legal representation for council members as long as it believes that the expenditure falls within the scope of the local government's functions and Council is satisfied it is for the good government of persons in its district.

It was pointed out that application of the Policy under the 'good government' test would require the careful balancing of the need to assist individual Councillors and employees in the discharge of their functions, with adequate safeguards to protect the Shire's funds.

It was drawn to Council's attention that in contrast, it appeared that none of these safeguards had been applied to the Council's resolution to reconfirm its previous motions to continue to obtain and pay for ongoing legal advice and representation for former councillor Les Moss.

Finding 11

Contrary to the advice provided to the Department by Cr Eddington, the Shire President that "Councils (sic) decision(s) have been consistent with its Policy in clause 7.4 Division 7." Council decisions did not accord with this policy.

On 2 April 2009, Mr Moss was found guilty of failing to declare a proximity interest on 6 occasions in breach of section 5.65(1)(b) of the *Local Government Act 1995*. At a sentencing Hearing on 1 May 2009, Mr Moss was

ordered to pay legal costs and serve a 12 month conditional release order. A spent Conviction Order was granted and the disqualification from membership of a council that follows conviction of a serious local government offence under s2.22(1)(b) was waived by the Court under Section 2.22(2)(a).

In the face of repeated attempts to draw Council's attention to the need to be accountable in its deliberations on this matter, it is difficult to accept that Council acted naively or in ignorance of its responsibility. The actions of the Council displayed a wilful intent to achieve the outcome of providing legal funding to Mr Moss, in the absence of any rational and accountable reason for doing so.

Despite attempts by the Department to draw to Council's attention appropriate processes and considerations, no accountable process was followed. This demonstrated that Council recklessly excluded any measures that the Shire of Shark Bay would be able to use to recover any funds that were later found to be inappropriately provided.

Finding 12

The Shire's provision of public funds to former Shire President, Mr Les Moss, for the defence of a prosecution for financial interest breaches, was improper in the manner and the grounds on which it was provided.

The Manner in Which Open and Accountable Procedures Were Administered and Other Relevant Matters:- Publication of Misleading Information

The Shire published their views on the conviction and sentencing of Mr Moss by providing a statement in the Shire's June 2009 edition of the Community magazine "*Inscription Post*". The article entitled "*STATEMENT OF EXPLANATION*" misrepresented the facts of Mr Moss' prosecution and conviction to the public, and contradicted the Shire's Minutes and the information the Shire provided to this Inquiry and the Department.

The article claimed "*the [Council] decision was based on the clear policy of the Shire of Shark Bay in regard to providing financial support to elected members and staff in regard to legal matters*". This was not the case, the Shire's policy did not support the provision of legal funds for anything other than civil legal matters, there was no formal application, requesting the provision of legal funding from Mr Moss as required by this policy.

The article also claimed the Magistrate went to great lengths to criticise and question the motives and intent of the Department in pursuing the prosecution of Mr Moss.

...the magistrate was extremely critical of the process by which the department pursued the matter. The magistrate's subsequent sentence regarding the matter on 1 May 2009 clearly diluted the outcome of the hearing whereby the magistrate went to great lengths to criticise and question the motives and intent of the department in pursuing the matter

(Inscription Post - "STATEMENT OF EXPLANATION")

The sentencing transcript does not support the assertion that the Magistrate questioned, "at great length" or at all, the propriety of the Department's motives in undertaking the prosecution. Indeed, the selected quotes from the transcript used in the article, omit the Magistrate's additional comments that he "would not for my own part accept that this is a trivial offence having regard to the purpose of the legislation and the importance that attaches to provisions of this kind to ensure that there are disclosures of interest in local government."

The article also claimed the Department did not pursue the disqualification of Mr Moss from holding office as an elected member. The article states that "It was also recognised in the sentencing submission by the State Solicitor on behalf of the Department of Local Government that they did not pursue any disqualification of Mr Moss from further standing for local government in the future. This in itself is an admission that the Department themselves did not interpret the matter as serious but merely a minor breach of the Act."

The sentencing submission referred to was filed with the Court and with Mr Moss' Defence lawyer on 30 April 2009 and called for the Court not to exercise its discretion under section 2.22(2) to waive the Act's otherwise automatic disqualification of Mr Moss from membership of Council. Clearly the Department was calling on the magistrate to disqualify Mr Moss and this would have been clearly evident from the submission which had been copied and included in correspondence from the Shire.

Considering the Magistrate issued a "Spent Conviction Order" preventing access to information concerning Mr Moss' prosecution, the community had no other avenue for information in relation to this matter and would have relied on this publication as an official source of information on local government business.

Finding 13

The statements in the Shire's Community magazine "Inscription Post" that relate to Mr Moss' prosecution and the Council's approval of legal funding to Mr Moss are so clearly false that Crs Hout, Crawford, Blennerhassett, and Cane, who endorsed the comments, and the CEO Mr Matthews, who edited and published this edition of the magazine, must have known that the statements within it were incorrect. These statements provide a misleading interpretation of the facts surrounding the Shire's funding of Mr Moss' legal defence and the subsequent prosecution and sentencing.

Finding 14

The actions of Crs Hoult, Crawford, Blennerhassett, Cane and the CEO, Mr Matthews, was improper in using the Shire's Community magazine "Inscription Post" to distribute misleading information to the community of Shark Bay about the Shire's funding of Mr Les Moss' legal defence and the subsequent prosecution and sentencing of Mr Moss.

Special Electors Meeting – Community Calls for Accountability

The population of the Shire of Shark Bay is approximately 863 with Australian Bureau of Statistics (ABS) showing a proportion of the population are temporary residents, owning holiday accommodation. There are a total of 646 registered electors with 540 in the Denham Ward (Town of Denham), 38 in Pastoral Ward and 68 in the locality of Useless Loop (2009 Election Returns).

Section 5.28 of the Act stipulates that 100 or 5% (whichever is the lesser) of the electors of the district, can call a Special Electors Meeting.

On 17 March 2009 a Special Electors Meeting was called by electors of the district to deal with a number of issues. The Minutes of this meeting record that 136 electors attended this meeting. Given the small total number of electors in the district it is considered that it is reasonable to take the views of the electors that attended this meeting as a significant representation of the views of the community.

The Special Electors meeting dealt with a motion of "*No confidence in the CEO*". The motion was lost. However, it is considered of relevance that the motion was lost by a narrow margin

This Special Elector's meeting provided a significant indicator of the level of public interest and feelings in relation to the confidence held by the community in the Shire's CEO. Without considering whether there was any justification for raising the motion of no confidence in the CEO, the fact the motion was raised at a meeting called and attended by a significant number of electors of Shark Bay, provided another factor that would have alerted Council to the significance of this issue and reinforced that they needed to be accountable to the community in relation to any desire to renew the CEO's contract prior to its expiry for a further full 5 year term.

The manner in which the former Council not only ignored community concerns but continued to deliberately deal with the renewal of the CEO's contract confidentially, without public scrutiny, reinforces the view that the former Council was not protecting the interests of the Shire and were more focused on ensuring the interests of the CEO were met.

The Special Electors Meeting also carried a motion calling on the Shire to make no further payment of legal fees and costs to Mr Moss until such time that the Shire's solicitors instruct the Shire that all necessary instruments are in place to enable recovery of all Mr Moss's legal expenses if he loses the case. The elector's motion also called on the Shire to provide, at the next General meeting, a full account of all legal fees already paid.

This motion received significant majority support at the meeting and presented an opportunity for the Council to see first hand the views of the electors of the district on this subject.

On 29 April 2009, at its Ordinary Council Meeting, the Council carried a motion that the Shire not accede to the resolutions of the Special Electors Meeting.

A fair reading of the Special Elector meeting resolution was that a significant representation of the electors of the district called on the Council to adopt a number of measures to introduce an open and accountable manner of dealing with this matter. The response from the Council did not address any of the electors concerns, the response simply ignored the request for Council to ensure it put in place the necessary instruments to protect the interests of the Shire, ignored the request for a complete statement of the legal fees to be presented and more seriously, Council's response at the 29 May meeting misled the electors when it stated the matter had been finalised in regard to any further legal proceedings. On 29 April 2009, Council was aware that Mr Moss was due to appear in Court the next day. Invoices show after this date, between 1 and 20 May 2009 the Shire paid further fees totalling \$8,462.53.

On 19 May 2009 the Shire also paid the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs could not be characterised as the cost of legal "advice" or "representation", so that the payment, on any view, was not authorised by the Council's resolutions regarding legal representation. Under the heading "Financial Implications" the Minutes of the 29 April record "*Nil at this stage pending outcome of insurance claim noted in Item 3.3 of above*". At this time the Shire had outlaid approximately \$73,000 in legal costs associated with Mr Moss' defence.

Finding 15

The CEO, Mr Matthews acted improperly when on 19 May 2009 he used Shire funds to pay the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs could not be characterised as the cost of legal "advice" or "representation", so that the payment, on any view, was not authorised by the Council's resolutions regarding legal representation.

Finding 16

The former Council's refusal, (specifically those councillors that voted not to accede to item 3.3 from the 17 March 2009 Special Electors Meeting, being Crs Hoult, Cane, Crawford and Blennerhassett) to implement the Community's request for accountability processes to be introduced lacks any rational basis and when considered in conjunction with the Department's attempts to draw to the former Council's attention the significant accountability concerns that existed, it raises serious concerns that the former Council was not acting in the interest of the electors of the district.

Finding 17

The motion under item 3.3 from the 17 March 2009 Special Electors Meeting was a reasonable and justifiable request from the electors of the district calling for Council to act accountably. The former Council, specifically those councillors that voted not to accede to the motion, being Crs Hoult, Cane, Crawford and Blennerhassett, ignored the requirement to give this motion due consideration and falsely stated to the electors of the district on 29 April 2009 that the reason they did not accede to the Electors request was because "*the matter is now finalised in regard to any further legal proceedings*". At the time this statement was made the Council was aware, or should have been aware, that Mr Moss was due to appear in Court the next day and further outstanding payments were still to be made by the Shire.

The Inquiry confirmed the Shire had failed to take adequate steps to protect its interests in this matter after calling on the CEO to produce documents related to Council's decisions to fund Mr Moss' defence. In a letter dated 3 July 2009, the CEO, Mr Matthews responded by advising that -

- Nil legal or other agreement specifically entered into between Mr Moss and the Shire of Shark Bay.
- Nil (independent) documents relating to application for legal assistance by Mr Moss on Shire of Shark Bay records.

Finding 18

It is concluded that the references in Mr Matthew's reports to the former Council that the legal funding had been provided to Mr Moss in accordance with the Shire's policy on legal representation funding, was false and misleading, as he was aware no application for legal assistance funding under this policy had been made by Mr Moss.

Finding 19

It is concluded that the repeated references in the former Council's motions to the legal assistance funding to Mr Moss being provided in accordance with its policy on legal representation funding was false and misleading as no application for legal assistance funding under this policy had been made by Mr Moss.

Finding 20

The disturbing manner in which the former Council (specifically Crs Eddington, Hoult, Cane, Crawford and Blennerhassett) have consistently ignored advice and concerns raised by the Department and electors (see Department letters and Special Electors Meeting) and continued to deal with legal assistance funding to Mr Moss without adequate controls or any provisions that protect the interests of the Shire, indicates the Council did not deal with this matter in an appropriate way and did not give adequate consideration as to whether, in providing these funds, Council met the criteria of providing good governance to its electors.

RECOMMENDATIONS

Local authorities are independently elected autonomous bodies. This means they are largely independent of State government, predominantly being directly accountable to their electorates. The founding principle of local government is that citizens have the right to influence the decisions that affect their lives and their communities. A key way in which local citizens are able to exercise that right is their ability to elect a strong local council which can lead and shape their area. That is why the role of the community is critical. Citizens have a right to have their voices heard, and to expect those delivering services to care what they think.

It is therefore equally important that a State government appointed Inquiry also recognise the importance of the views of the community when considering appropriate recommendations to be made to the Minister and specifically, whether he exercise his powers to call a Panel Inquiry and suspend this Council.

The Inquiry considers the recent election of a majority of new councillors at the Shire of Shark Bay and the appointment of a new CEO to be significant in considering the future of the Shire. The replacement of Councillors Eddington, Crawford, Hault, Blennerhassett and Cane means the opportunity for real change is likely and supported by the majority of the electorate. To ignore the results of the election is to ignore the wishes of the citizens of Shark Bay and the fundamental principle that they have a right to influence the decisions that affect their lives and their community.

The new Council should not be tarnished with the actions of the previous Council. With appropriate advice and support it is considered the new Council and its new CEO have the capacity to accept the challenge of overcoming the shortfalls of the past.

Recommendation 1

Council should ensure it is capable of managing the requirement for a CEO to provide adequate and appropriate advice to allow councillors to make informed decisions. This should be demonstrated in Council's management of the Annual Performance Review of its CEO, including setting appropriate key performance indicators that are measurable and achievable.

Recommendation 2

The Council of the Shire of Shark Bay consider forming a Committee, including community members, to manage and approve the content of the Shire's Community magazine "*Inscription Post*".

Recommendation 3

An external auditor(s) be appointed, approved by the Department, to conduct a full financial and compliance audit with parameters for the audit set by the Department.

This audit, as a matter of priority, identify all costs associated with the Shire's provision of legal funding to Mr Moss.

The outcome of this audit is to be reported directly to the Department and Council.

Recommendation 4

The Council review its policies on payments to councillors and staff and ensure appropriate accountability process accompany any decision to provide these payments.

Recommendation 5

The Council obtain advice from a legal practitioner, reporting directly to Council, on whether the Shire can recover monies paid in relation to Mr Moss' legal representation, from Mr Moss and/or any other party.

Recommendation 6

The Local Government of the Shire of Shark Bay develop a clear vision and strategic objectives, utilising a process that allows for full engagement of elected members and all stakeholders, (local, regional and State)

The Council of the Shire seek advice and support from the Department of Local Government to assist it to implement an over-riding good governance framework.

Chapter 1:

INTRODUCTION

1.1 Appointment

By a Notice of Appointment on the 21 May 2009, the Director General of the Department of Local Government and Regional Development (as it was then known) appointed Brendan Peyton and David Morris as Authorised Persons under the *Local Government Act 1995* ("the Act ") to investigate and report on aspects of the Shire of Shark Bay and its operations and affairs as set out in the instrument as follows:

1.2 Terms of Reference

- *The manner in which open and accountable procedures were administered;*
- *Appropriate means of dealing with ongoing relationship difficulties between elected members and staff and in particular, Cr Hargreaves, the CEO, Mr Matthews and the Shire President, Cr Eddington;*
- *The appropriateness of the Shire's provision of public funds to former shire President, Mr Les Moss for defence of a prosecution for financial interest breaches;*
- *Any other matters relevant to the above.*

1.3 Shire of Shark Bay Elections

During the course of this Inquiry, on 17 October 2009 local government elections in Shark Bay commenced with 11 candidates nominating for the 4 positions vacated by former councillors Eddington, Hault, Blennerhassett and Cane. This report is about the Council and its elected members that were present and involved in decisions prior to the October elections and no criticism is intended for those newly elected members that commenced their term in the latter part of 2009.

Chapter 2:

INQUIRY PROCESS

This is an administrative Inquiry to which the rules of natural justice or procedural fairness apply. In general terms, procedural fairness requires that the Inquiry be free of bias or prejudgment and that those against whom there might be adverse findings or comments have an opportunity to be heard in relation to such findings or comments and to know what is being taken into account in arriving at any such conclusion.

The Inquiry proceeded on the basis, which is common to administrative inquiries of this kind, (see, for example, the Douglas Report into the City of Cockburn, 2000) that the standard of proof which should be applied is proof on the balance of probabilities, and that the strength of the evidence necessary to establish a fact on the balance of probabilities may vary according to the nature of what is to be proved: see **Neat Holding Pty Ltd v Karajan Holdings Pty Ltd** (1992) 110 ALR 449 at 450.

The Inquiry took into account the following statement of Dixon J in **Briginshaw v Briginshaw** (1938) 60 CLR 336 at 362:

"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."

Another dictum which provides some guidance as to the application of the appropriate standard of proof is that of Morris LJ in **Hornal v Neuberger Products Ltd** [1957] 1 QB 257 at 266:

"Though no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity become a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities."

Owen J in **Edwards v Kyle** (1995) 15 WAR 302 at 318, having set out seven general propositions relating to the scope of content to the duty of procedural fairness in relation to that inquiry, stated the seventh proposition at paragraph 7 as:

"The investigator must decide what is required so as to afford to the affected party a real and meaningful opportunity to be heard. The

particularity with which the adverse material is to be identified, whether the party is entitled to adduce further evidence and whether he or she may insist on cross-examining witnesses are all decisions to be taken in the context of the particular fact situation.

No general rule can be enunciated but the gravity of the possible consequences for the party may well dictate the extent of the duty in a particular case."

2.1 Natural Justice Procedures

2.1.1 The Manner in Which Open and Accountable Procedures Were Administered - CEO's Contract Renewal

In a letter dated 30 June 2009 the Inquiry drew to the attention of Crs Hoult, Crawford and Blennerhassatt (and Cr Cowell who voted against the motion) that there were some concerns with the manner in which they dealt with renewal of the CEO's contract. The Authorised Person's letter pointed out those concerns, and called on the recipients of the letter to provide comments and reasoning for their decision.

Cr Hoult responded via a fax dated 4 July 2009, Cr Crawford responded via email dated 3 July 2009, Cr Blennerhassett responded via email dated 30 June 2009 and Cr Cowell responded via email dated 1 July 2009.

These same councillors were also formally interviewed and again provided with an opportunity to explain their actions in relation to the renewal of the CEO's contract. Their responses were taken under oath and recorded, with copies of the recording provided to each councillor.

The responses from Crs Hoult, Crawford, Blennerhassatt and Cowell, along with documentary evidence, such as minutes and agendas (referred to in this report), have been taken into consideration in forming the conclusions as they relate to the manner in which Council dealt with the CEO's contract renewal at the Ordinary Council Meeting on 24 June 2009 and subsequent meetings.

2.1.2 Appropriateness of the Provision of Legal Funding to Mr Moss

In a letter dated 4 August 2008 the Department raised with Cr Eddington who was the Shire President at that time, that the Council's provision of legal funding to Mr Moss should be in accordance with the scope of the local government's functions and that the expenditure authorised by the Council must be for the good government of persons in its district.

It was drawn to Council's attention (through the Shire President) that the application of the Shire's Legal Representation Costs Indemnification

Policy using good governance criteria, required Council's careful balancing of the need to assist individual Councillors and employees in the discharge of their functions, with adequate safeguards to protect the Shire's funds. The Department's letter listed the safeguards that should be applied by the Shire when providing legal funding.

The Department's letter advised the Council it had not met these safeguards in its previous resolution (item 23.1 - Legal Advice at the Ordinary Council Meeting of 25 June 2008,) specifically identifying where the resolution did not meet the safeguards.

The Department's letter sought advice from the Shire on what measures the Shire had put in place for controlling the expenditure and what safeguards existed in relation to any future recovery of those funds, should a finding be made which was detrimental to Mr Moss in the manner as described in the Shire's legal representation policy.

Division 7 of the Shire of Shark Bay Policy Manual, clause 7.4 "*Legal Representation Costs Indemnification*", the introduction states;

Clause 7.4 (2) General Principles

- a. The Local Government may provide financial assistance to members and employees in connection with the performance of their duties provided that the member or employee has acted reasonably and has **not acted illegally, dishonestly, against the interests of the Local Government or otherwise in bad faith.***

The Council responded by letter dated 26 August 2008 detailing the actions it had implemented and advised "*Council considers the above process (see Council's letter dated 26 August 2008 for details of process) more than adequate and justifiable in addressing the safeguards referred to in your correspondence dated 4 August 2008*".

In January 2009, the Department again wrote to the Shire President, Cr Eddington, to remind the Council it needed to address whether financial assistance for Mr Moss represented good governance. The Department brought to the Council's attention several concerning issues in relation to the matter:

- *While there is reference in the resolution of 25 June 2008 to the council's Policy on Legal Representation Costs Indemnification, it is not clear that the legal advice being obtained and paid for is to be provided to the Shire or to Mr Moss;*
- *To the extent that the intention was that the resolution was intended to fall within the Policy and to assist Mr Moss, no significance is attached to the proceedings being criminal in character (though their being criminal proceedings is acknowledged);*

- *There is no suggestion that the council formed the view that the alleged actions by Mr Moss were not illegal or otherwise inappropriate;*
- *In so far as the intention was to make legal assistance available to Mr Moss, there is no discussion of who would give instructions to the lawyers;*
- *No indication of the amount of legal fees which could be incurred;*
- *No suggestion that any fees incurred would have to be paid or repaid by Mr Moss in the event that the advice provided was inconsistent with what is taken to be Mr Moss maintaining his innocence of the charge; and*
- *There is no clarity as to whether McLeods, the solicitors appointed, are instructed by the Shire or by Mr Moss.*

The Council did not provide a response to this letter.

Councillors Hault, Crawford, Blennerhassett, and Cane, (Cr Cowell and Cr Hargreaves not elected members during the period Council initially dealt with the granting of legal funding) were also formally interviewed and again provided with an opportunity to explain their ongoing actions in relation to the decision to provide legal funding to Mr Moss. Their responses were taken under oath and recorded, with copies of the recording provided to each councillor.

The authorised persons contacted Cr Eddington and advised him that due to his personal circumstances at the time, he was released from his subpoena and it was not a requirement that he attend an interview.

Senior staff members, Kelvin Matthews (CEO) and Peter Tiggerman (Deputy CEO) were also formally interviewed in relation to their knowledge of the procedures followed in providing legal funding to Mr Moss. Their responses were taken under oath and recorded, with copies of the recording provided to each.

The Department's letters and the response from councillors and staff have been taken into consideration, along with documentary evidence, such as minutes and agendas (referred to in this report), in forming the conclusions as they relate to the manner in which Council dealt with the provision of legal funding to Mr Moss.

2.1.3 Appropriate Means of Dealing With Ongoing Relationship Difficulties Between Elected Members and Staff

The Authorised Persons inquired into this aspect of the Terms of Reference by conducting recorded interviews with councillors and staff seeking information on the extent of conflict between councillors and the perceived reasons for this conflict. The inquiry also sought information from the Department's files on the complaints it had dealt with concerning the Shire of Shark Bay.

2.2 Public Submissions

The Inquiry called for public submissions by placing a public notice in the two local newspapers covering the Shire of Shark Bay (the Northern Guardian and the Midwest Times). The public notice sought submissions from the public by 3 August 2009.

Northern Guardian. Publication:
8/07/2009 **Northern Guardian**
Publication: 1/07/2009

Midwest Times (Geraldton) Publication:
2/07/2009

The notice was also placed on the Department's website under News items.

INQUIRY SHIRE OF SHARK BAY PUBLIC SUBMISSIONS

The Director General of the Department of Local Government and Regional Development, Jennifer Mathews, authorised an inquiry under Part 8 Division 1 of the *Local Government Act 1995*, into the Shire of Shark Bay.

The Inquiry will investigate and report on:

the manner in which open and accountable procedures are administered within the shire;
appropriate means of dealing with relationship difficulties between elected members and staff;
the appropriateness of the Shire's provision of public funds for defence of a prosecution for financial interest breaches;
any other matter relevant to the above.

The Department of Local Government seeks submissions by 5.00pm, Monday 3 August 2009 from individuals and/or organisations interested in making submissions to the Inquiry.

Submissions should be marked "Confidential - Shark Bay Inquiry" and be addressed to:

Mr Brendan Peyton
Department of Local Government and Regional Development
GPO Box R1250
Perth WA 6844
Or by email to sharkbayinquiry@dlgrd.wa.gov.au
Telephone (08) 9217 1427

Table 1: Showing Public Submissions Received

Date received	Summary
8-Jul-09	Complaint, lack of action by council re dogs
8-Jul-09	Strong disapproval of Ward System
14-Jul-09	Complaint lack of action by Council re flood waters
29-Jul-09	Discrimination & Bias evident in Council Proceedings
3/08/2009	Concerns re conduct of Councillors
3-Aug-09	Concerns re conduct of CEO and Councillors
3-Aug-09	Complaint re handling of sexual harassment claim
4-Aug-09	complaint of conduct by Council
5-Aug-09	Concerns with CEO and Councillors
6-Aug-09	Complaint against conduct of shire
7-Aug-09	Conduct of Council members and CEO
10-Aug-09	Complaint against CEO and ex-president Mr Moss
10-Aug-09	Actions of employees and Council
10-Aug-09	Concerns with Council
10-Aug-09	Helpful and efficient staff and Council
10-Aug-09	Concerns re Question Time down to 15 Minutes
6-Aug-09	Allegations of corruption

6-Aug-09	Concerns re electors not having a say in Shire matters
13-Jul-09	Concerns re contract of CEO
11-Aug-09	Complaint against Council
10-Aug-09	Complaint against Council
11-Aug-09	Red Cross articles taken from Paper
10-Aug-09	Actions of Council members towards public at meetings
12-Aug-09	Disapproval of actions of Council
10-Aug-09	Helpful manner of staff and Council
28-Jul-09	Petition - Complaint re conduct of Council and CEO

2.3 Interviews

Name	Dates interviewed	Position
Kelvin John Matthews	9 September 2009	Chief Executive Officer
Harold James Crawford	9 September 2009	Councillor
Robert Garth Blennerhassett	9 September 2009	Councillor
Dennis Owen Hout	9 September 2009	Councillor
Peter John Tiggemann	10 September 2009	Deputy Chief Executive Officer
Bryan William Cane	10 September 2009	Councillor
Timothy Wynn Hargreaves	10 September 2009	Councillor
Cheryl Lorraine Cowell	10 September 2009	Councillor

2.4 Natural Justice Submissions

On 20 May 2010 persons who were the subject of possible adverse comments were provided with relevant sections of the draft Inquiry report to allow them the opportunity to respond to these comments. The initial closing date for submissions to be submitted was 11 June 2010. Those submissions that were received were taken into consideration prior to the finalisation of the Inquiry report.

Name	To be Submitted by	Extension Requested to:-	Granted to:-	Submission Received
Kelvin John Matthews	11 June 2010	11 August 2010 11 August 2010	28 June 2010 19 July 2010	no submission received
Harold James Crawford	11 June 2010			11 June 2010
Robert Garth Blennerhassett	11 June 2010			no submission received
Dennis Owen Houtt	11 June 2010	Extension request time not specified	28 June 2010	no submission received
Peter John Tiggemann	11 June 2010			no submission received
Bryan William Cane	11 June 2010			11 June 2010
Timothy Wynn Hargreaves	11 June 2010			9 July 2010
Cheryl Lorraine Cowell	11 June 2010			no submission received
Les Moss	11 June 2010	8 June 2010	21 June 2010	25 May 2010 3 June 2010 21 June 2010
Robert Eddington	11 June 2010	11 August 2010	28 June 2010	1 July 2010 (dated 21 June 2010)

2.5 Reporting on Conclusions and Findings

The conclusions and findings reached in this report have largely focused on the provision by the former Council of open and accountable governance. The Council rationale for making a decision has been examined from the perspective of 'accountable' governance and therefore significant reliance has been placed on Council's public demonstration of its rational decision making. In this regard, a high degree of relevance has been placed on the information the Council provided (or did not provide) to the community and the Department in rationalising its decision making.

Chapter 3:

OPEN AND ACCOUNTABLE GOVERNANCE

The manner in which open and accountable procedures were administered and other relevant matters.

3.1 CEO's Contract Renewal

On 24 June 2009, at the Ordinary Council Meeting, a matter of the CEO's contract renewal was raised by Mr Matthews (the CEO), without any prior notice. Present at the meeting were Councillors Hoult, Blennerhassett, Crawford and Cowell. The proposal for renewing the CEO's employment contract was not listed in the Agenda for this meeting. It would appear from the date on the Officer's Report (authored by the CEO) of 4 June 2009, 3 weeks before the 24 June meeting, that there would have been ample opportunity for the CEO to include this item in the agenda for the meeting.

The Minutes of the 24 June 2009 meeting do not shed any light on why the item was introduced as '*Urgent Business Approved by the Person Presiding or by Decision*' on the day of the meeting or on why it was accepted at this time as urgent business by the Presiding Member, Cr Hoult.

Cr Cowell's statement to the inquiry advised that she was unaware the matter was to be discussed and only learnt about it at the meeting when the CEO announced or, in Cr Cowell's words, "*prompted*" the newly elected President, Cr Hoult, that there was an item that needed to be considered behind closed doors. After enquiring what the item was that needed to be dealt with behind closed doors, Cr Cowell received a copy of the CEO's report referring to the renewal of his contract. Cr Cowell raised her concerns that she had not been provided with a copy of the report prior to the meeting. Cr Hoult and Crawford advised her that they already had a copy of the report, which they had received at the Works Committee Meeting the previous evening. No copy was requested by, or provided to, Cr Blennerhassett at this time. Therefore it is concluded Cr Blennerhassett was either provided with a copy prior to the meeting or he dealt with the matter without the benefit of the report.

Cr Hoult explained in his written response to the Inquiry's questions that the reason the matter was not listed in the Agenda that was released to the public, was that it was a "*matter that was held behind closed doors and due to the fact that confidential matters have been released to the public by Cr Hargreaves in the past...*" Cr Hoult went on to explain that advice had been received from the Minister for Local Government to the then Shire president that all documents relating to confidential matters be given to councillors on the day of the meeting.

It can be taken from Cr Hoult's response that the absence of the item dealing with the proposal to extend the CEO's contract from the *"Agenda that was released to the public"* was acceptable in his view. Cr Hoult's understanding that this was justified because the matter was to be dealt with behind closed doors is flawed. The listing of an item in the Agenda of a proposal to extend or renew a CEO's contract is not of such a confidential nature in itself that it should not be listed for the information of the public. It is accepted that certain information contained in the officer's report on the matter may fall under section 5.23(2) of the Act and therefore Council may resolve to deal with the matter *"behind closed doors"*. However, the fact that Council intends to consider the renewal of the CEO's contract is not something that should be kept confidential from the public or indeed other councillors.

Cr Crawford's response was that the matter of the CEO's contract renewal did not appear in the Agenda for the 24 June 2009 Ordinary Council Meeting, *"as it was not completed in time for the closing date for the Ordinary Council Agenda"*. Cr Crawford went on to explain that the matter was introduced under item 19 of the Agenda *"Urgent Business Approved by the Person Presiding or by Decision"* and *"Council voted to accept the matter and it was discussed under item 20.1 Matters Behind Closed Doors as it was a matter of financial and sensitive nature"*. Cr Crawford also went on to raise a previous incident in which the Council had problems with a matter *"Behind Closed Doors"* in which *"all information included in the Agenda papers... was discussed openly"*.

Cr Blennerhassett raised concerns in his response that the discussion which took place *'behind closed doors'* was leaked to the members of the community immediately after the meeting was completed. It is accepted that upon a matter being dealt with *"behind Closed Doors"* aspects of the *'discussion'* could be confidential and should not be leaked to the public. However, a number of telephone calls and a formal complaint were received by the Inquiry from members of the Shark Bay community following this meeting. All related to concerns with the actual renewal of the CEO's contract, which was not a confidential matter and none indicated they were aware of any detail of Council discussions.

Cr Blennerhassett advised in his recorded interview that he was aware that Council dealing with the CEO's contract was definitely not a confidential matter (Blennerhassett 47:53) and he did not know of the reason why it had been presented as a late urgent item (Blennerhassett 46:25).

Enquiries by the Authorised persons reveal that it has become common practice for the Shire of Shark Bay to produce two Agendas for its meetings. One is termed the *"Public Agenda"* and the other, containing confidential items, is only available to councillors. (Note: It is not appropriate for a Local Government to operate a *'public'* and *'private'* agenda system in this manner.) Whilst this is not a practice supported by the Inquiry, it is relevant to examine this practice within the context of Cr Cowell's comments, that she was unaware the item was to be dealt with until it was actually raised by the CEO at the Ordinary Council meeting of the 24 June 2009. The CEO's request for his contract to be renewed was dealt with in a confidential manner and did not

appear on the Agenda that was provided to the public or Cr Cowell. One of the concerning aspects of this is the lack of information provided to Cr Cowell. Cr Hoult's response indicates that he had some prior knowledge that the item would not appear in the Agenda. Similarly, Cr Crawford's response also indicates he knew the matter would not appear in the Agenda. Even if this prior knowledge is not accepted, it is clear they were in possession of more knowledge concerning its absence from the Agenda than Cr Cowell. There is further support for the view that Crs Hoult and Crawford had more information on this matter when they acknowledged to Cr Cowell they received the CEO's report on the matter the night before. Significantly, Cr Cowell advised she was the only councillor who was handed a copy of the report at the meeting.

Even if Cr Hoult's reason for supporting the practice of only providing confidential documents on the day is accepted because "*confidential matters have been released to the public by Cr Hargreaves in the past...*" Cr Hargreaves was in Europe on Council approved leave and Cr Hoult and Crawford told Cr Cowell they had received their reports on the matter the evening before. This raises the question, why was Cr Cowell treated differently? It also needs to be restated that the renewal of the CEO's contract is not a confidential matter. There were no grounds at this time to support this item being dealt with in such a manner.

One issue that needs to be considered is whether the actions of not placing the CEO contract renewal request on the Agenda was deliberately done, with the full knowledge of the majority of councillors, to prevent the community becoming aware it was being considered. Evidence material to this issue is -

- the different manner in which Cr Cowell was treated (Cr Cowell believes she is not trusted because of her close links to the local community);
- the concerns raised by Cr Hoult that the item was confidential and a similar item had been released to the public previously;
- Cr Blennerhassett's concern that the fact that the discussion took place behind closed doors was leaked to the public;
- Cr Blennerhassett's acknowledgment that he knew the item was definitely not confidential;
- Cr Crawford's apparent acceptance that the matter of the CEO's contract renewal was not included in the Agenda because the CEO's report was not ready in time (even though the 24 June 2009 Minutes record the CEO's report on the matter was dated 4 June 2009);
- none of the responses from councillors addressed why it was so urgent and necessary to deal with the matter at this time, considering it was introduced as a late item, without any notice.

The CEO's Report to Council cited the following reasons for requesting the renewal of his contract 18 months before expiry:

- He sought security of tenure in his position as CEO due to:
 - The recent debate regarding local government reform;
 - The Inquiry by the Department of Local Government and its possible implications for the reform process; and
 - The impending retirement of Crs Eddington, Hoult, Cane, Crawford and Blennerhassett in October 2009.

Cr Cowell's recollection of the meeting was that the other 3 Councillors, Crs Hoult, Crawford and Blennerhassett, supported the extension of the CEO's employment contract, at this time, because, given the above reasons, the CEO should be given security of tenure.

Cr Cowell felt that the main motivation for the CEO seeking to have the matter dealt with now, was that he was aware that 3 councillors had advised that they would be retiring prior to the October 2009 elections. She believed that the CEO wished it to be ratified whilst these councillors were still in office, to be assured of a favourable decision.

As it was, Cr Cowell argued against the recommended renewal pointing out that it may commit the ratepayers of the community to a \$500,000 plus payout. She suggested delaying the decision for a further 6 or 12 months until they had a better idea of the direction of the local government reform strategy and the outcome of the Inquiry.

Cr Cowell recalls that Cr Crawford argued that any payout as a result of reform, would be met by the State Government and not the Shire. Cr Cowell stated that she pointed out the CEO's contract was with the Shire and not the State.

The voting for this matter was 3/1, with the Shire president Cr Hoult, Cr Crawford, and Cr Blennerhassett voting in favour of the contract renewal. Cr Cowell voted against the motion.

The unconfirmed minutes of the Council meeting for the 24 June 2009 record at page 41 that a decision regarding the renewal or varying of the CEO's contract required an absolute majority. The document entitled "Urgent Business Late Item – Matters Behind Closed Doors" also includes the statement "Voting Requirements, Absolute Majority Required".

The unconfirmed minutes of the meeting appeared on the Shire's website stating that the motion had been "carried". The Local Government Act makes it a requirement that an absolute majority is required to support a decision in these circumstances (s5.36 *Local Government Act 1995*). An absolute majority for Shark Bay Council requires more than half of the 7 seats on Council to vote and accept the decision. In this case the vote for, was 3 and so the motion was not lawfully carried.

It does not sit well that an important decision of this nature is incorrectly reported to the public as “carried” when in fact it should have been immediately apparent to the councillors present that an absolute majority was not achieved.

The Authorised Persons are aware that there was some distrust of Council actions at this time by some members of the community (see *Special Electors meeting*).

Finding 1

The inappropriate secrecy in which the proposed renewal of the CEO’s contract was dealt with by the former Council, contributes to the conclusion that the Council was not being open and accountable.

Finding 2

The former Council and the CEO Mr Matthews, at the 24 June 2009 Ordinary Council Meeting, failed to acknowledge (until the following meeting on 29 July 2009) that by virtue of section 5.36 *Local Government Act 1995* the motion to extend the CEO’s employment contract had not been ‘carried’.

Note: Crs Hault, Crawford and Blennerhassett Voted for the Motion, Cr Cowell voted against.

The CEO’s report to Council, titled “*Request for Renewal of Chief Executive Officer Contract Appointment*” contained the following recommendation:

That Council renew the appointment of the current Chief Executive Officer, Mr Kelvin John Matthews for a five (5) year term in accordance with section 5.39 of the Local Government Act 1995 to expire on 23 June 2014 and that variations to clauses 3, 7.1, 7.2, 7.12 and 8.1 of the Deed of Employment contract as detailed in this report be approved.

The clauses listed in the recommendation had some effect on the employment conditions of the CEO:

- *Clause 3 to expire on the 23 June 2014 being the full five year term allowable in accordance with section 5.39(2)(b) of the Local Government Act 1995.*
- *Clause 7.2 to reflect the current vehicle standard from that of a Ford Fairmont (or equivalent) to that of the current luxury 4WD Nissan Patrol or equivalent*
- *Clause 7.1 the commencing salary in the renewed Deed of Employment contract to be at the approved rate as resolved by Council following the successful performance review of the CEO in February 2009 and applicable 1 July 2009.*

- *Clause 7.12 to amend the Council's Workers Compensation Policy to that of Councils(sic) Injury Management Policy and include at the end of this sentence and the applicable workers compensation legislation following the Chief Executive Officer will be covered by the provisions of the Council's injury Management Policy.*
- *Clause 8.1 deletion of wording or one year's base salary, whichever is the lesser.*

At least two clauses were proposed to be changed that had the potential to affect the Shire's interests. The variation to clause 7.12 indicates that the CEO is now covered under the Council's Injury Management Policy as compared with the previous contract with coverage under the Council's Worker's Compensation Policy. The ramification of this are unknown and are not discussed in the CEO's report.

Clause 8.1(d) of the CEO's employment Contract (existing contract) stipulates, in the event the Council terminates the agreement, "*...the council will pay to the Officer the payments that would have been payable to the Officer for the remainder of his employment under this Agreement or one year's salary, whichever is the lesser*".

This was proposed in the CEO's report to be varied by removing the wording of "*or one year's base salary, whichever is the lesser*".

For the purposes of councillors being fully informed to allow them to make a decision, they needed to consider that changing Clause 8.1 could have significant implications if it resulted in an increase in the potential financial liability for the Shire from a maximum of 12 months base salary to the full 5 yr contract period entitlement.

Councillors were unaware at the time that this variation was not in accordance with the prescribed regulatory entitlements. Regulation 18B of the *Local Government (Administration) Regulations 1996* states that the maximum payout entitlement is the lesser of either: the value of one year's remuneration under the contract; or the value of the remuneration that the person would have been entitled to had the contract not been terminated.

The CEO's function under section 5.41 LGA (b) is to "*ensure that advice and information is available to the council so that informed decisions can be made*".

Finding 3

The manner in which the CEO, Mr Kelvin Matthews, presented the proposed renewal of his employment contract, as a late urgent item and confidentially, without ensuring adequate advice and information was provided to councillors, demonstrated a significant failing by him to meet the expectations of section 5.41(b) LGA.

The CEO's proposal to amend Clause 8.1 seeks to persuade Council to accept a change in the contract that would, on the face of it, increase the CEO's payout should he be terminated. The reasons, given in the CEO's report and by the councillors who supported the contract renewal, were to secure the tenure of

the CEO immediately, because of circumstances that place at risk any certainty that his contract would be renewed in the future. The purported comments by Cr Crawford at the meeting that the State would pay any termination liabilities and the reasons given by the CEO in his report would support the view that the only purpose of Council approving this contract renewal, at this time, was to ensure that prior to the majority of councillors retiring, the CEO received employment terms that secured his appointment for a five year term or, should he be terminated, the equivalent in the resulting pay out.

Clearly, Council was aware that there existed a possibility that the CEO's contract may not be renewed by a newly elected Council prior to its 18 month expiry.

The advantage for the CEO is obvious in Council deciding to renew his contract under these terms. What is unclear is what, if any, consideration was given by the Council to the ramifications for the Shire of Shark Bay. After all, the present contract had 18 months until expiry, and if, as the CEO and councillors acknowledged, there was a possibility that circumstances could develop that meant the Shire had no option but to terminate the CEO's contract prior to the 5 year expiry, why would this 5 year commitment be in the interests of the Shire.

Written responses from Cr Hoult and Blennerhassett gave the CEO's successful performance and his desire to remain in Shark Bay as reasons for their decision. Cr Hoult added that the decision was in the best interests of the community as the CEO would help develop the community further and make sure that incoming councillors get the benefit of his experience.

These reasons are not accepted as they do not acknowledge that the CEO's contract still had 18 months to expiry and therefore his performance and contribution to the community were not reasonable considerations for the decision to renew the contract at this time. These reasons also do not offer any clarity on the decision to deal with the item confidentially and as a late urgent item at this meeting.

If it is accepted that Council was aware of a possibility that the CEO's contract could be terminated prior to the expiry date, then this knowledge should have affected Council's deliberations. Any decision to commit the Shire to a possible payout of up to \$500,000 to protect the tenure of the CEO would be expected to be accompanied by a deliberation process clearly demonstrating Council's careful consideration of all the relevant ramifications.

Finding 4

The urgency with which the former Council dealt with the proposed renewal of the CEO's contract at the 24 June 2009 meeting showed a lack of rational consideration of the ultimate impact this decision would have on the Shire and its services to the ratepayers in the future.

The CEO's report under the heading "Financial Implications" identifies only:-

The renewed contract to reflect the commencing salary for the CEO at the present level of 1 July 2009 in accordance with Councils (sic)

resolution following the performance review of the CEO in February 2009.

This reference to the financial implications for the Shire of entering into this new contract is limited to identifying the salary increase from \$100,000 to \$103,000.

Again the possible financial ramifications for the proposed amendments would not have been known by the councillors present as they are not discussed in the CEO's report. Importantly, these are ramifications that councillors should have ensured they were fully informed of before making any decision and go further in reinforcing the perception that Council was not dealing with this matter in an open and accountable manner.

Finding 5

Notwithstanding that the decision had no effect, in approving the CEO's contract renewal at the 24 June 2009 meeting without exercising careful judgement and seeking legal advice on any possible ramifications of the proposed variations in the contract, the former Council ignored its responsibility to protect the interests of the Shire and appeared only focused on ensuring the interests of the CEO were met.

On 30 June 2009 the Inquiry sent a letter to the relevant councillors advising of a number of issues of concern with the Council's 24 June 'decision' to renew the CEO's contract. These concerns included:

Considering the Council is facing an election in October of this year, it is considered that a decision of this nature is inappropriate given the length of time the current [CEO] contract has to run. The decision taken by Council could effectively commit the incoming Council to retain the CEO for their entire four-year term. It would have been more appropriate for the incoming Council to determine whether the reappointment of the CEO was warranted.

This may lead to the perception that Council may not have acted transparently or appropriately in renewing a contract of this nature two years prior to its expiry and four months prior to the local government elections.

On 8 July 2009 a special Council meeting was called for 13 July 2009 to "...deal with items from 24 June 2009 Ordinary Council Meeting that required Absolute Majority".

The public notice referring to the agenda for meeting did not identify the CEO's contract extension as an item that would be dealt with and it was unclear whether it was intended to be discussed at this meeting. The Inquiry received an email from Cr Cowell concerned with the appropriateness of revisiting the decisions of 24 June Council Meeting.

"It appears to me that the items on the agenda are an attempt to have issues endorsed which have already been through council and decided

upon. These items which were considered and voted upon at the June Council meeting have already been voted on and lost. It is not the vote that is incorrect, but rather the recording of the vote i.e. that the motions were successful”.

On the 10 July the Director General of the Department of Local Government wrote to the relevant councillors.

“The Department notes that, pursuant to section 5.36 of the Local Government Act 1995, a decision to enter into an employment contract with a CEO requires determination by an absolute majority of the Council that the provisions of the proposed employment contract are satisfactory. However, only 3 councillors voted for the new contract renewal, so that the decision is ineffective.

The Department is aware that a Special Council Meeting has been called for Monday 13 July 2009 to address previous decisions of Council which required but did not receive an absolute majority. It is anticipated by the Department that, although the matter of the CEO's employment contract has not been listed as an agenda item, the Shire will seek to rectify its previous Invalid decision.

As you would appreciate, councillors fall under an obligation to act in good faith solely in the interests of their local government and to discharge, and to be seen as discharging, their functions strictly in accordance with the Local Government Act and applicable administrative law principles. Plainly, in the present case, a heavy onus falls upon each councillor properly to consider the lawfulness and appropriateness of any contemplated contractual arrangements with the CEO, and to take all reasonable steps to ensure that all councillors are given the information and time required properly to consider any relevant motion. Anything less will expose any decision to be set aside in legal proceedings, with obvious potential legal and financial consequences for the Shire and, possibly, for its councillors.

In the circumstances, and in view of the level of public interest and the Department's Authorised Inquiry relating to the Shire, I urge Council to seek independent legal advice prior to any further Council deliberation on the matter.

The item of the CEO's contract renewal was not dealt with at this meeting however, was again raised at the next Ordinary Council meeting of 29 July 2009. The item did not appear on the 'public' agenda and therefore could only be introduced appropriately by the CEO and accepted by Council as a late urgent item. In this case, not only did it not appear in the agenda for the information of the public, it was dealt with confidentially behind closed doors.

Attempts by Crs Cowell and Hargreaves to have the matter reopened to be dealt with as a public item were defeated by a majority vote of Crs Houlst, Cane, Crawford and Blennerhassett.

The Minutes of this meeting record that the Council decided to seek legal advice on the renewal of the CEO's contract.

The Ordinary Council meeting of 26 August 2009 again omitted the item from the 'Public Agenda' and dealt with it in the same manner as the 29 July meeting. It had the benefit of the legal advice from McLeods Barristers & Solicitors, the Shire's legal advisor.

The Shire of Shark Bay Standing Orders Local Law, in Part 4 – Public Access To Agenda material, contains the following:

4.1 Inspection Entitlement

Members of the public have access to agenda material in the terms set out in Regulation 14 of the Regulations.

4.2 Confidentiality of Information Withheld

1. Information withheld by the Chief Executive Officer from members of the public under Regulation 14.2 of the Regulations, is to be – identified in the agenda of a Council or Committee meeting under the item "Matters for which meeting may be closed", and marked "confidential" in the agenda.

2. A member of the Council or Committee or an employee of the Council in receipt of confidential information is not to disclose such information to any person other than a member of the Council or the Committee or an employee of the Council to the extent necessary for the purpose of carrying out her or his duties.

Penalty \$5,000

The manner in which the CEO's contract renewal item was repeatedly withheld from inclusion in the meeting agendas and presented to and accepted by Council, was contrary to the Shire's own Standing Orders Local Law 4.2.1. This required the CEO to identify in the Agenda the fact that the matter of the CEO's employment contract renewal was to be discussed and that it would be dealt with as a "confidential" item. Given the repeated times the matter had been presented to Council there was no justification for excluding this item from the Agenda that was provided to the public, especially in the later meetings.

This leads to the conclusion that there was a planned and deliberate intention to avoid compliance with the Shires Standing Orders in regard to the public's access to information and ultimately a deliberate intention to avoid dealing with the matter in an open and accountable manner.

Finding 6

The manner in which the CEO, Mr Matthews, the Deputy CEO, Mr Tiggeman and the former Council, specifically Crs Hoult, Cane, Crawford and Blennerhassett repeatedly dealt with this matter inappropriately at the 24 June 2009, 29 July 2009 and 26 August 2009 Ordinary Council meetings leads to a conclusion that there was a planned and deliberate attempt to avoid compliance with the Shire's Standing Orders Local Law 4.2.1 in regard to public access to Agenda material and ultimately that the CEO's employment contract renewal was not dealt with in an open and accountable manner

The legal advice confirmed that the issues raised by the DLGRD (Department of Local Government and Regional Development) in regard to whether or not it is appropriate to extend the term of contract *"...when it is anticipated that there will be a significant change in the Council at this year's election, and against the backdrop of the current inquiry, are relevant matters that should be taken into consideration in considering an early renewal of the CEO's contract"*. Whilst the legal advice explained that these issues were no legal barrier to renewing the contract, they are *"more issues related to the 'good government' of the Shire"* and *"Council is elected to make such determinations on behalf of the community"*.

Importantly, the legal advice that was dated 4 August 2009, identified the variation to the contract of removing the words *'or one years salary, whichever is the lesser'* could be viewed as a significant variation to the contract, and also that the removal of this limitation on the maximum amount of money that can be paid out on termination of a CEO's contract, was contrary to regulation 18B of *Local Government (Administration) Regulations 1996*. The conflict caused by the inclusion of this variation meant the decision of 24 June Meeting to renew the contract would have no effect, because the proposed contract did not conform to the legislative requirements.

The motion to Council at the 26 August Ordinary Council Meeting sought to "reconfirm" the decision of 24 June 2009 and the variations to the contract, which included the clause *'or one years salary, whichever is the lesser'*. This motion was amended to include the words *"or one years salary, whichever is the lesser in accordance with prescribed legislation..."* The amended recommendation was carried unanimously.

It is clear that at the 26 August Meeting, Council's deliberations on this matter became focused on the legality of the contents of the contract rather than the requirement to give genuine consideration to the merits of the proposal. In the Inquiry's opinion, no evidence has been presented that demonstrated councillors had genuinely taken into consideration all of the information available before coming to a decision that was demonstrably in the interests of the good government of the Shire.

Finding 7

The decision at the 26 August 2009 meeting by Councillors Hault, Crawford, Blennerhassett, Cane, Cowell and Hargreaves to 'reconfirm' the decision of 24 June meeting, (to approve the CEO's contract renewal) had no rational basis and was not demonstrably in the interests of the Shire of Shark Bay

3.2 Special Electors Meeting – No Confidence in CEO

The Special Electors meeting of 17 March 2009 dealt with a motion of "No confidence in the CEO". The motion was lost. However, it is considered of relevance that the motion was lost by a narrow margin. If it is accepted that 126 electors from a total of 646 electors (2009 election returns) are a fair representation of the views of the community, it would logically follow that Council would ensure that any decision relating to the renewal of the CEO's contract would be dealt with in a manner that clearly demonstrated the Council were being accountable to the community.

3.1. NO CONFIDENCE IN THE CEO.

Moved Harvey Raven

Seconded Cr Tim Hargreaves

New Motion

That this Shire of Shark Bays Special Electors meeting record a vote of No Confidence in the Shire of Shark Bay CEO Kelvin John Matthews and that the West Australian Department of Local Government and Regional Development be immediately requested to conduct a complete investigation into Mr. Matthews background and a full investigative audit of the finances of the Shire of Shark Bay with particular regard to expenses and allowances claimed by the CEO since the beginning of his employment in Shark Bay and further that Mr Matthews be stood down pending a decision of the Shire of Shark Bay of his suitability to remain in the position of CEO based on the outcome of the investigations.

The motion was put forward and declared

For 57

Against 69

MOTION LOST

The Special Elector's meeting provided a significant indicator of the level of public interest and feelings in relation to the confidence held by the community in the Shire's CEO. Without considering whether there was any justification for raising the motions, the fact the motions were raised at a meeting called and attended by a significant number of electors of Shark Bay, provided another factor that would have alerted Council to the significance of this issue and reinforced that they needed to be accountable to the community in relation to their dealings with the CEO, especially any desire to extend his contract prior to its expiry for a full 5 year term.

Given the narrow margin by which this motion was lost, it would have been possible to predict with ease, that had the community been aware that at the 24 June 2009 meeting an attempt to renew the CEO's contract would be made, this would have met with some community protest. The manner in which the former Council not only ignored community concerns but continued to deliberately deal with the matter confidentially, without public scrutiny, reinforces the view that the former Council was not protecting the interests of the Shire and were more focused on ensuring the interests of the CEO were met.

This distrust by members of the community manifested itself when following the meeting of 24 June 2009 the CEO called a Special Council meeting for the 13 July 2009, for the purpose of dealing with "*items from the 24 June 2009 Ordinary Council Meeting that required an absolute majority*". The Inquiry received a number of calls from community members concerned that the Council would use the 13 July 2009 meeting to secretly address the mistake in not having an absolute majority to approve the CEO's contract.

Finding 8

The former Council, specifically Crs Hault, Cane, Crawford and Blennerhassett, ignored its responsibility to be accountable to the community in relation to its dealings with the CEO contract renewal issue. The manner in which Council dealt with this issue reinforced distrust in the former Council by community members.

Chapter 4:

RELATIONSHIP CONFLICTS

Appropriate Means of Dealing with Ongoing Relationship Difficulties Between Elected Members And Staff

It was clear from the outset of this inquiry that there was significant conflict between, on the one hand, Cr Hargreaves and the CEO, and on the other hand, the majority of councillors and Cr Hargreaves.

Cr Hargreaves made it known that he had been voted in by the community on a platform of keeping Council and the Administration honest. Once Councillor Hargreaves became an elected member he set about fulfilling his election promise in a dogmatic, and at times, tactless manner. This approach sometimes created conflicts for Cr Hargreaves in his dealings with other councillors and the CEO.

Departmental records show 41 complaints were received from Cr Hargreaves about Kelvin Matthews, the CEO and Councillors Hoult, Cane, Blennerhassett, Crawford and Eddington. The majority of these related to the operation of the Council or the administration with some complaints identifying serious allegations against the CEO. Generally speaking, Cr Hargreaves' complaints revolved around his dissatisfaction with the integrity of the Council and CEO.

One of these complaints resulted in a process improvement recommendation with the rest not substantiated. A high number were made under the 'Official Conduct' legislation as 'Serious Breaches' and these were dismissed as non-conforming complaints because they did not fall within the jurisdiction of this legislation. It is acknowledged that the legislation was newly introduced and during this period interpretations and understandings of its operation were still being formed.

The Department records also show that 26 complaints were made against Mr Hargreaves. The significant majority of these complaints were made by Mr Matthews, the CEO. It was determined by the Standards Panel (Local Government Disciplinary Panel) that only one of these complaints contained sufficient grounds to make an Order that Cr Hargreaves make a public apology for making adverse comments about a Shire employee (not the CEO).

The Department's view at that time became centred, not on the substance of the numerous complaints it was receiving, as it was clear there was little evidence to substantiate particular breaches, (as defined under the Local Government Act and associated regulation), but more relevantly, it was interpreted that the number of complaints evidence a significant conflict

existing between Cr Hargreaves and some councillors and the CEO. This was dealt with by the Department adopting and offering a support role to the Council in managing the conflicts and relationship issues. The Inquiry was advised this offer was refused. During the Inquiry much comment was received from some councillors that criticised the Department for not doing more.

Whilst the formal complaints were largely unsubstantiated, it is relevant that the Department had identified other serious breaches of the Act and had taken action by prosecuting the former Shire President Mr Les Moss for these offences. A number of visits had been undertaken in which Council was addressed and advice provided on ways in which the difficult issues they were facing could be managed. This report contains examples of correspondence detailing Department concerns and providing advice on how these matters should be dealt with. This report demonstrates the departmental warnings and advice were largely, if not entirely, ignored.

With the benefit of hindsight the Inquiry acknowledges that the serious matters uncovered by this Inquiry in relation to a lack of openness and accountability by the former Council, suggests the Department's previous attempts at managing the situation would always have been ineffectual. The circumstances, as they unfolded, show that it was inevitable a formal inquiry would be necessary. It is for this reason the Inquiry considers the examination of the conflicts on Council that existed prior to the 2009 elections, to be largely overtaken by events. In the circumstances it is concluded that it was understandable that conflict existed during this time, demonstrating at least some opposition to the actions and conduct of the former Council.

Finding 9

<p>It is concluded that whilst Cr Hargreaves had ongoing relationship conflicts with the CEO, Kelvin Matthews, and also with Crs Eddington, Hoult, Cane, Blennerhassett, and Crawford, it was understandable that conflict existed given the findings made about the former Council and the CEO elsewhere in this report.</p>

A comment does need to be made in relation to the appropriateness of Cr Hargreaves actions in conducting public campaigns to harm the reputation of individuals and in particular, the CEO. These campaigns involved publicly raising extremely serious allegations against the CEO without Cr Hargreaves' having any certainty about the truth of these allegations. It is the opinion of this Inquiry that these campaigns that were conducted by Cr Hargreaves were not an appropriate use of his position as a councillor and were not necessary to meet his election commitments to bring about change at the Shire of Shark Bay.

It is acknowledged that prior to embarking on these campaigns Cr Hargreaves did attempt to raise his issues with various government agencies. However, when such avenues failed he took matters into his own hands. This is not a practice that the Inquiry can condone. There is a conflict in adopting such tactics to support a moral stance against perceived improper behaviour, yet ignoring the application of those same standards to ones own behaviour.

Chapter 5:

LEGAL FUNDING TO THE FORMER SHIRE PRESIDENT

The Appropriateness of The Shire's Provision of Public Funds to Former Shire President, Mr Les Moss For Defence of a Prosecution For Financial Interest Breaches

The Department's first letter dated 17 January 2006 to the Shire concerning this matter was a routine request to the CEO, advising that the Department was investigating allegations against the then Shire President, Mr Moss, and seeking the CEO's cooperation in providing copies of relevant Minutes to assist with the investigation of the allegations. The letter was marked 'confidential' and addressed to the CEO. There was no requirement for the Council (or the CEO) to respond to the actual allegations concerning the Shire President, merely provide the requested information. The CEO responded by providing the requested information in a letter dated 10 February 2006.

Following the receipt of this information the Department sent a letter to then Shire President, Councillor Les Moss (Mr Moss), dated 3 March 2006, identifying the allegations in detail and seeking a response from Mr Moss.

On 15 March 2006, a Special Council Meeting was called, by the then Shire President, Councillor Moss (Mr Moss), to discuss matters regarding the Shark Bay Interpretive Centre. Whilst the purpose of the meeting was identified in the 15 March Minutes as "*In accordance with section 5.4 of the Local Government Act 1995, to discuss matters regarding the Shark Bay Interpretive Centre*" it is evident the meeting was called to deal with allegations that Mr Moss breached the financial interest provisions of the Act as a result of him voting on items related to the Shark Bay Interpretive Centre.

The meeting was closed to the public. However, a reason for closing the meeting was not given nor recorded in the meeting minutes as required under section 5.23(3) of the Act.

As the allegations related to Mr Moss, he appropriately declared an interest in the agenda item. However, Council voted to allow him to remain in the chamber to participate in the discussion in accordance with the provisions of section 5.68 of the Act.

A motion was carried at this meeting "*That Council approve the Shire President and the Chief Executive Officer to obtain appropriate legal advice regarding its response to the assessment of proximity and financial interests raised by the Department of Local Government and Regional Development in its*

correspondence to the Chief Executive Officer and the Shire President" (Mr Moss).

Some significance is attached to the wording of this motion. Council has approved the CEO and Mr Moss "... to obtain appropriate legal advice regarding **its**[emphasis added] response to the assessment of proximity and financial interests...". On a fair reading the Council have approved of the CEO and Mr Moss obtaining legal advice only in relation to **Council's response** to the allegations. As the allegations related to Mr Moss personally, there was no requirement for Council to respond. It is evident from this motion and subsequent statements from the Council, that in wishing to show its support for Mr Moss, Council lost sight of its obligation to primarily act in the interests of the ratepayers and residents of the district.

The Department received a response from Mr Moss, on Shire of Shark Bay letterhead, dated 30 March 2006, providing a response to the allegations detailed in the Department's letter of 3 March 2006 to Mr Moss.

In a letter dated 13 September 2007, the Department again wrote to Mr Moss raising a further two allegations for his comments.

At an Ordinary Council Meeting on 26 September 2007, the matter was 'reconsidered'.

That council reconfirm its motion of 15 March 2006 to obtain and pay for legal advice re the letter of 13 September 2007 to Cr Les Moss from the Department of Local Government and Regional Development in accordance with Council policy Division 7.

Relevantly, under Division 7 of the Shire of Shark Bay Policy Manual, clause 7.4 "Legal Representation Costs Indemnification" the introduction states;

*This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in **civil legal proceedings** (emphasis added) because of their official functions. In most situations the Local Government may assist the individual in meeting reasonable expenses and any liabilities in relation to those proceedings.*

Clause 7.4 (2) General Principles

- b. The Local Government may provide financial assistance to members and employees in connection with the performance of their duties provided that the member or employee has acted reasonably and has **not acted illegally, dishonestly, against the interests of the Local Government or otherwise in bad faith.***

There was no application by Mr Moss for any funding under *Council policy Division 7*, therefore the funding was not in accordance with this policy. In addition the letter of 13 September 2007 related to criminal allegations; therefore the approval of funding was not in accordance with the limitation in the policy to funding for civil legal proceedings.

On or about 21 January 2008, a prosecution notice was served on Mr Moss (no longer an elected member at this time) for alleged breaches of the proximity interest provisions of the *Local Government Act 1995*. The first appearance was scheduled for 15 February 2008.

At an Ordinary Council Meeting on 25 June 2008, the matter was again 'reconsidered'.

That Council reconfirm its motion(s) of 15 March 2006 and 26 September 2007 to continue to obtain and pay for legal advice that now includes representation regarding the matter between the previous Shire President, (Cr Les Moss) and the Department of Local Government and Regional Development in accordance with council policy 7.4.

Amendment to 23.1

That the words "with regular monthly reports to council regarding progress of the matter" be inserted after "council policy 7.4".

This motion extended the Shire's commitment to pay for legal advice to include legal representation for Mr Moss and included a requirement for monthly reports to Council on the matter. These reports were not provided by the CEO and no reason was given in the minutes for their absence.

Finding 10

<p>The CEO, Mr Matthews failed to implement a Council decision to provide monthly reports to Council on the progress of the matter concerning the payment for legal advice and representation regarding the matter between the previous Shire President, (Cr Les Moss) and the Department of Local Government and Regional Development in accordance with council policy 7.4</p>
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In a letter dated 4 August 2008 the Department raised with the Shire President of the time, Cr Eddington, that the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7 (2) of the Act provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions a Council can expend funds to provide legal representation for council members as long as it believes that the expenditure falls within the scope of the local government's functions and that the expenditure authorised by the Council must be for the good government of persons in its district.

It was pointed out that the Shire's Legal Representation Costs Indemnification Policy is based closely on the model Legal Representation Policy of the Department's (Local Government Operational Guidelines - No. 14, April 2006). The application of the Policy under the 'good government' test would require the careful balancing of the need to assist individual Councillors and employees in the discharge of their functions, with adequate safeguards to protect the Shire's funds.

The Department's 4 August letter went on to list the safeguards that should be applied by the Shire in providing legal funding. They should include:

- 1). *the limited circumstances in which reimbursement of legal expenses would apply;*
- 2). *the Shire's control of the process, particularly the details required for each application for funding, such as:*
 - (a) *the matter for which legal representation is sought;*
 - (b) *how that matter relates to the functions of the member or employee making the application;*
 - (c) *the nature of the legal representation being sought (such as advice, representation in court, preparation of documents etc);*
 - (d) *the lawyer (or law firm) who is to be requested to provide the legal representation;*
 - (e) *an estimate of the cost of the legal representation; and*
 - (f) *why it is in the interests of the Shire for payment to be made;*
- 3). *the exclusion of payments, or the requirement to repay money already advanced, where the relevant Councillor or employee has not acted in good faith, has acted unlawfully or in a way that constitutes improper conduct;*
- 4). *the exclusion of any payment that relates to a personal or private matter; and*
- 5). *the limit on the amount of legal representation costs that are payable – the Shire's potential financial exposure.*

Having pointed out the safeguards that should apply, the Department's letter went on to draw to Council's attention that in contrast, it appeared that none of these safeguards had been applied to the Council's Resolution of item 23.1 - Legal Advice at the Ordinary Council Meeting of 25 June 2008, in which Council reconfirmed its previous motions to continue to obtain and pay for ongoing legal advice and representation for former councillor Les Moss for alleged breaches of the financial/proximity interest provisions of the *Local Government*

Act 1995. The letter identified where the resolution did not meet the safeguards:-

- *it sets no limits on the amount to which the Shire will or may be liable either in a particular case or generally;*
- *it contains no limits on the number, seniority or charge out rate of the lawyers that a Councillor may engage, at the Shire's cost, to advise or act on his or her behalf;*
- *it is not limited to payments for legal advice but extends to legal expenses incurred in acting for the Councillor - which is wide enough to include Supreme Court proceedings taken by the Councillor (for example, against the Shire, other Councillors, employees of the Shire, the Department etc.);*
- *it is also wide enough to require the Shire to pay for legal representation in an appeal, or in multiple appeals, by the Councillor who was unsuccessful in his initial legal proceedings;*

The Department's letter requested advice from the Shire on what measures the Shire have put in place to control the expenditure and what safeguards existed in relation to any future recovery of those funds should a finding be made that he has "*acted illegally, dishonestly, against the interests of the Local Government or otherwise in bad faith*" being the criteria described in the Shire's legal representation policy.

The Department received the following reply from the Shire President dated 26 August 2008.

1. Councils resolution of 25 June 2008 from its ordinary meeting reconfirmed its previous resolutions of March 2006 and September 2007 to provide financial assistance for legal advice and representation to (ex councillor and Shire President) Les Moss.

2. Councils decision(s) have been consistent with its Policy in clause 7.4 Division 7.

3. Budget provision for legal expenses has been made in the 2008/09 Shire of Shark Bay Annual Budget (as was in the 2007/08 budget). No irregularities by Councils auditors have been detected and/or noted for the 2007/08 year (interim audit) in the process of expenditure in accordance with the relevant legislation (ie Local Government Act 1995 and the Local Government (Financial Management) Regulations 1996). In this regard Council believes it has complied with, and not contravened section 6.7 (2) of the Local Government Act 1995.

4. The resolution by the Shire of Shark Bay dated 25 June 2008 relates to the payment of the costs associated with legal representation due to the Department initiating prosecution proceedings in the matter. Council has engaged Mr David Nadebaum from McLeods Barristers and Solicitors (Councils solicitors) to act on behalf of Mr Moss. The resolution from 25 June 2008 relates to only ongoing advice and representation regarding the prosecution proceedings and not to any further action/representation that may occur and referred to in your

correspondence (last dot point second page). In this regard the matter would be subject to Councils consideration to pay for legal representation should the matter be subject to appeal, or multiple appeals.

Council considers the above process more than adequate and justifiable in addressing the safeguards referred to in your correspondence dated 4 August 2008. Furthermore your advice/request appears to be based on the presumption that Mr Moss will/should receive an adverse finding that is detrimental (refer last paragraph page 2 of your correspondence).

In this context Council subscribes (as it always has done) to the principle of "innocent until proven guilty" and therefore cannot concur with the comments you have made in the suggestion that Council should reconsider its position regarding its resolutions because your department infers a possibility of a detrimental finding against Mr Moss.

The question of "good government" as referred to in your correspondence, and Councils subsequent decision to provide support to Mr Moss in accordance with its stated Policy (Division 7) is predicated on Council being confident that when Shire President, Mr Moss discharged his duties with integrity and honesty, in this regard, Council believes any such inference as to that made in your correspondence (last paragraph page 2) is at best premature and, at worst seeks to influence Councils ongoing support for Mr Moss in the legal proceedings still underway.

Accordingly, Council is uncomfortable in discussing such matters while your Department is still undertaking prosecution proceedings against Mr Moss, and subsequently believes that until such proceedings have been finalised your Department has a conflict of interest in requesting Council to reconsider its ongoing financial assistance to Mr Moss that was duly resolved by this Council in the correct and proper manner on three occasions. That is, on all occasions by majority vote when resolving to support Mr Moss in the said legal proceedings.

I trust the above clarifies Councils position in regard to the matter and as noted above, Council would prefer not to be inadvertently involved in the current legal proceedings until the matter is finalised.

Finding 11

Contrary to the advice provided to the Department by Cr Eddington, the Shire President that "Councils (sic) decision(s) have been consistent with its Policy in clause 7.4 Division 7." Council decisions did not accord with this policy.
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Legal Representation Costs Indemnification Policy Clause 7.4 Division 7.

"This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in **civil legal proceedings** (emphasis added) because

of their official functions. In most situations the Local Government may assist the individual in meeting reasonable expenses and any liabilities in relation to those proceedings.

Clause 7.4 (2) General Principles

*c. The Local Government may provide financial assistance to members and employees in connection with the performance of their duties provided that the member or employee has acted reasonably and has **not acted illegally, dishonestly, against the interests of the Local Government or otherwise in bad faith.**"*

In January 2009, the Department again wrote to the Shire President, Cr Eddington to remind the Council to address whether financial assistance for Mr Moss represented good governance. The Department brought to the Council's attention several concerning issues in relation to the matter:

- *While there is reference in the resolution of 25 June 2008 to the council's Policy on Legal Representation Costs Indemnification, it is not clear that the legal advice being obtained and paid for is to be provided to the Shire or to Mr Moss;*
- *To the extent that the intention was that the resolution was intended to fall within the Policy and to assist Mr Moss, no significance is attached to the proceedings being criminal in character (though their being criminal proceedings is acknowledged);*
- *There is no suggestion that the council formed the view that the alleged actions by Mr Moss were not illegal or otherwise inappropriate;*
- *In so far as the intention was to make legal assistance available to Mr Moss, there is no discussion of who would give instructions to the lawyers;*
- *No indication of the amount of legal fees which could be incurred;*
- *No suggestion that any fees incurred would have to be paid or repaid by Mr Moss in the event that the advice provided was inconsistent with what is taken to be Mr Moss maintaining his innocence of the charge; and*
- *There is no clarity as to whether McLeods, the solicitors appointed, are instructed by the Shire or by Mr Moss.*

The Department's letter concluded by informing the Shire that it did not intend to take any position at this stage that may be seen to impact on the ability of the former councillor concerned to avail himself of a proper and unencumbered defence of this most serious matter. Accordingly, the Department did not intend to pursue this matter at that time and would defer any further action until the impending court proceedings had been concluded.

On 2 April 2009, Mr Moss was found guilty of failing to declare a proximity interest on 6 occasions in breach of section 5.65(1)(b) of the *Local*

Government Act 1995. At a sentencing Hearing on 1 May 2009, Mr Moss was ordered to pay legal costs and serve a 12 month conditional release order. A spent Conviction Order was granted and the disqualification from membership of a council that follows conviction of a serious local government offence under s2.22(1)(b) was waived by the Court under Section 2.22(2)(a).

Despite attempts by the Department to draw to Council's attention appropriate processes and considerations, no accountable process was followed. This demonstrated that Council recklessly excluded any measures that the Shire of Shark Bay could use to recover any funds that were later found to be inappropriately provided.

Finding 12

The Shire's provision of public funds to former Shire President, Mr Les Moss, for the defence of a prosecution for financial interest breaches, was improper in the manner and the grounds on which it was provided.

Chapter 6:

PUBLICATION OF MISLEADING INFORMATION

The manner in which open and accountable procedures were administered and other relevant matters.

The Shire published their views on the conviction and sentencing of Mr Moss by providing a statement in the Shire's June 2009 edition of the Community magazine "*Inscription Post*". The article entitled "*STATEMENT OF EXPLANATION*" signed by "*The majority of councillors of the Shire of Shark Bay and the CEO*" not only misrepresents the facts of Mr Moss' prosecution and conviction to the public, but actually contradicts the Shire's Minutes and the information the Shire provided to this Inquiry and the Department.

In relation to the approval for "*the financial support for advice and representation to Mr Moss*" the article claimed "*the decision was based on the clear policy of the Shire of Shark Bay in regard to providing financial support to elected members and staff in regard to legal matters*". This was not the case and this statement is untrue.

An examination of the documents provided by the Shire identified that not only did the Shire's policy not support the provision of legal funds for anything other than civil legal matters, there was no formal application, requesting the provision of legal funding from Mr Moss as required by this policy.

In relation to the statement that "*the Shire of Shark Bay resolved on three occasions [March 2006, September 2007 and June 2008] to provide financial support for advice and representation to Mr Moss in defending the matter*", the actual wording of the three motions did not support this general assertion and this statement is misleading.

This published article appears to be endorsed by councillors in their capacity as elected members of the Shire. This statement is misleading in implying that Council itself had made a formal decision in support of this article. There is no record of any Council resolution in regard to the acceptance of this article.

Disturbingly, the article also claims the Magistrate went to great lengths to criticise and question the motives and intent of the Department in pursuing the prosecution of Mr Moss.

...the magistrate was extremely critical of the process by which the department pursued the matter. The magistrate's subsequent sentence regarding the matter on 1 May 2009 clearly diluted the outcome of the hearing whereby the magistrate went to great lengths to criticise and question the motives and intent of the department in pursuing the matter

(Inscription Post - "STATEMENT OF EXPLANATION")

The sentencing transcript does not support the assertion that the Magistrate questioned, "at great length" or at all, the propriety of the Department's motives in undertaking the prosecution. Indeed, the selected quotes from the transcript used in the article, omit the Magistrate's additional comments that he "would not for my own part accept that this is a trivial offence having regard to the purpose of the legislation and the importance that attaches to provisions of this kind to ensure that there are disclosures of interest in local government."

The article also claimed the Department did not pursue the disqualification of Mr Moss from holding office as an elected member. The article states that "It was also recognised in the sentencing submission by the State Solicitor on behalf of the Department of Local Government that they did not pursue any disqualification of Mr Moss from further standing for local government in the future. This in itself is an admission that the Department themselves did not interpret the matter as serious but merely a minor breach of the Act."

The sentencing submission referred to was filed with the Court and with Mr Moss' Defence lawyer on 30 April 2009 and called for the Court not to exercise its discretion under section 2.22(2) to waive the Act's otherwise automatic disqualification of Mr Moss from membership of Council. Clearly the Department was calling on the magistrate to disqualify Mr Moss and this would have been clearly evident from the submission which had been copied and included in correspondence from the Shire.

Considering the Magistrate issued a "Spent Conviction Order" preventing access to information concerning Mr Moss' prosecution, the community had no other avenue of information in relation to this matter and would have relied on this publication as an official source of information on local government business.

Finding 13

The statements in the Shire's Community magazine "Inscription Post" that relate to Mr Moss' prosecution and the Council's approval of legal funding to Mr Moss are so clearly false that Crs Hoult, Crawford, Blennerhassett, and Cane, who endorsed the comments, and the CEO Mr Matthews, who edited and published this edition of the magazine, must have known that the statements within it were incorrect. These statements provide a misleading interpretation of the facts surrounding the Shire's funding of Mr Moss' legal defence and the subsequent prosecution and sentencing.

Finding 14

The actions of Crs Hoult, Crawford, Blennerhassett, Cane and the CEO, Mr Matthews, was improper in using the Shire's Community magazine "Inscription Post" to distribute misleading information to the community of Shark Bay about the Shire's funding of Mr Les Moss' legal defence and the subsequent prosecution and sentencing of Mr Moss.

6.1 Special Electors Meeting – Community Calls for Accountability

The population of the Shire of Shark Bay is approximately 863 with Australian Bureau of Statistics (ABS) showing a proportion of the population are temporary residents, owning holiday accommodation. There are a total of 646 registered electors with 540 in the Denham Ward (Town of Denham), 38 in Pastoral Ward and 68 in the locality of Useless Loop (2009 Election Returns).

Section 5.28 of the Act stipulates that 100 or 5% (whichever is the lesser) of the electors of the district, can call a Special Electors Meeting.

On 17 March 2009 a Special Electors Meeting was called by electors of the district to deal with a number of issues. The Minutes of this meeting record that 136 electors attended this meeting. Given the small total number of electors in the district it is considered that it is reasonable to take the views of the electors that attended this meeting as a significant representation of the views of the community.

Section 5.28(2) requires the Notice calling for the meeting to specify the matters to be discussed. Item 3 of the Notice stated "*Shire Council to cease payments for all Mr Moss' legal bills.*"

The Minutes of the 17 March 2009 Special Electors Meeting reflect the following-

3.3. SHIRE COUNCIL TO CEASE PAYMENTS FOR ALL MR MOSS' LEGAL BILLS

Moved Helen Morgan

Seconded Harvey Raven

New Motion

That the Shire of Shark Bay Council make no further payment of legal fees and costs incurred by L.R. Moss until such time as the Shire Council's solicitors instruct the Shire Council that all necessary instruments are in place to enable recover(sic) of all Mr Moss's legal expenses if he loses the case further at the next General Meeting of the Shire of Shark Bay Council, a complete statement of all legal fees already paid, or due and payable associated for L.R. Moss be presented to the meeting as a separate agenda item.

The motion was put forward and declared

For 90

Against 31

CARRIED

This item received significant majority support and presented an opportunity for the Council to obtain first hand feedback of the views of the electors of the district on this subject. On 29 April 2009, at its Ordinary Council Meeting, the Council dealt with the resolutions of the Special Electors Meeting. The Minutes of the Ordinary Council Meeting of the 29 April 2009 record the Council's response.

3. Not accede to the resolution of Item 3.3 of the Agenda/Minutes of the Special Electors Meeting where the Motion was carried with the decision being that

(a) the matter is now finalised in regard to any further legal proceedings and

(b) council had resolved on three separate occasions (March 2006, September 2007 and June 2008) to provide for the cost of obtaining legal advice and representation in regard to the matter.

The Minutes of the 29 April 2009 go on to explain –

The above recommendation(s) provide reasons for the decision by council to accede to, or not accede to the resolutions made at the Special Electors Meeting in accordance with the requirements of section 5.33 (2) Local Government 1995. Further explanation to the above recommendations is provided chronologically in this section of the report as follows –

3.3 – The Motion was carried thereby requiring council to provide an explanation and/or reason for its decision to disagree with the resolution. This decision being that the matter is now finalised in regard to any further legal proceedings and council had resolved on three separate occasions at its Ordinary Council Meetings of September 2007 and June 2008, and its Special Meeting of March 2006 to provide for the cost of obtaining legal advice and representation in regard to the matter. The CEO will now submit the applicable insurance claim for recovery of legal costs incurred during the period in question.

The Special electors meeting contained two resolutions for the Council;

- make no further payment of legal fees and costs incurred by L.R. Moss until such time as the Shire Council's solicitors instruct the Shire Council that all necessary instruments are in place to enable recover of all Mr Moss's legal expenses if he loses the case*
- further at the next General Meeting of the Shire of Shark Bay Council, a complete statement of all legal fees already paid, or due and payable associated for L.R. Moss be presented to the meeting as a separate agenda item.*

A fair reading of this resolution is that a significant representation of the electors of the district are calling on the Council to adopt a number of

measures to introduce an open and accountable manner of dealing with this matter. The response from the Council does not in fact address any of the electors concerns, the response simply ignored the request for Council to ensure it put in place the necessary instruments to protect the interests of the Shire, ignored the request for a complete statement of the legal fees to be presented and more seriously, it misled the electors when it intimated the matter had been finalised. On 29 April 2009, Council was aware that Mr Moss was due to appear in Court the next day. As invoices provided to this Inquiry show, between 1 and 20 May 2009 the Shire paid invoices totalling \$8,462.53, in addition on 19 May 2009 the Shire paid the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs could not be characterised as the cost of legal "advice" or "representation", so that the payment, on any view, was not authorised by the Council's resolutions regarding legal representation. Under the heading "Financial Implications" the Minutes of the 29 April record "*Nil at this stage pending outcome of insurance claim noted in Item 3.3 of above*". At this time the Shire had outlaid approximately \$73,000 in legal costs associated with Mr Moss' defence.

Finding 15

The CEO, Mr Matthews acted improperly when on 19 May 2009 he used Shire funds to pay the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs could not be characterised as the cost of legal "advice" or "representation", so that the payment, on any view, was not authorised by the Council's resolutions regarding legal representation.

Finding 16

The former Council's refusal, (specifically those councillors that voted not to accede to item 3.3 from the 17 March 2009 Special Electors Meeting, being Crs Hoult, Cane, Crawford and Blennerhassett) to implement the Community's request for accountability processes to be introduced lacks any rational basis and when considered in conjunction with the Department's attempts to draw to the former Council's attention the significant accountability concerns that existed, it raises serious concerns that the former Council was not acting in the interest of the electors of the district.

Finding 17

The motion under item 3.3 from the 17 March 2009 Special Electors Meeting was a reasonable and justifiable request from the electors of the district calling for Council to act accountably. The former Council, specifically those councillors that voted not to accede to the motion, being Crs Hoult, Cane, Crawford and Blennerhassett, ignored the requirement to give this motion due consideration and falsely stated to the electors of the district on 29 April 2009 that the reason they did not accede to the Electors request was because "*the matter is now finalised in regard to any further legal proceedings*". At the time this statement was made the Council was aware, or should have been aware, that Mr Moss was due to appear in Court the next day and further outstanding payments were still to be made by the Shire.

Confirmation that the Shire had failed to take adequate steps to protect its interests in this matter was received after a *Direction Notice* dated 16 June 2009, under section 8.5(1) of the Act was issued by this Inquiry to the Shire to produce documents related to Council's decisions to fund Mr Moss' defence. In a letter dated 3 July 2009, the CEO, Mr Matthews responded by advising that -

- Nil legal or other agreement specifically entered into between Mr Moss and the Shire of Shark Bay.
- Nil (independent) documents relating to application for legal assistance by Mr Moss on Shire of Shark Bay records.

Finding 18

It is concluded that the references in Mr Matthew's reports to the former Council that the legal funding had been provided to Mr Moss in accordance with the Shire's policy on legal representation funding, was false and misleading, as he was aware no application for legal assistance funding under this policy had been made by Mr Moss.

Finding 19

It is concluded that the repeated references in the former Council's motions to the legal assistance funding to Mr Moss being provided in accordance with its policy on legal representation funding was false and misleading as no application for legal assistance funding under this policy had been made by Mr Moss.

Finding 20

The disturbing manner in which the former Council (specifically Crs Eddington, Hoult, Cane, Crawford and Blennerhassett) have consistently ignored advice and concerns raised by the Department and electors (*see Department letters and Special Electors Meeting*) and continued to deal with legal assistance funding to Mr Moss without adequate controls or any provisions that protect the interests of the Shire, indicates the Council did not deal with this matter in an appropriate way and did not give adequate consideration as to whether, in providing these funds, Council met the criteria of providing good governance to its electors.

Chapter 7:

CONCLUSION

7.1 CEO's Contract Renewal

The manner in which the Council dealt with the request by the CEO to renew his contract at the 24 June 2009 meeting did not meet acceptable standards of openness and accountability. The CEO's report to Council was dated 4 June 2009 indicating that the CEO knew well in advance of the meeting that he intended to raise this matter with Council. The CEO has the responsibility to prepare and distribute the Agenda for Council meetings. The Agenda provides an opportunity for councillors and members of the public to be made aware of matters that will be discussed at a forthcoming meeting, and importantly, provides notice so councillors can decide whether they need to seek further information to ensure they are fully informed. Importantly, the public are limited to asking questions only relating to items on the Agenda of a public meeting. Obviously, if an item is missing from the Agenda, the public cannot use public questions at the beginning of a meeting to raise any relevant questions.

In this case, the request by the CEO to renew his contract was raised during the meeting of 24 June 2009 as "*Urgent Business Approved by the Person Presiding or by Decision*". This part of the meeting is provided to allow urgent matters to be raised that are considered of such high importance and urgency that they cannot wait to be placed on the Agenda for the next meeting or alternatively, be dealt with by calling a Special Council meeting. By its very nature, the need to raise items under the urgent business part of a meeting should only occur in exceptional circumstances and usually when there is good reason for not providing councillors with prior notice and sufficient time to properly consider the matter.

The Minutes of 24 June 2009 meeting confirm "*that the urgent business approved by the person presiding be deferred to matters behind closed doors*". In other words, the Minutes indicate Cr Hoults, the Presiding Member, accepted the CEO's late submission of this item as an urgent matter and Council voted to deal with the matter "*behind closed doors*". At the time, the CEO, submitted his request for his contract to be renewed, no information had been provided to the Presiding Member or the Council that revealed any urgency that supported the matter being dealt with at this time and in this manner.

The CEO's function under section 5.41 LGA (b) is to "*ensure that advice and information is available to the council so that informed decisions can be made*".

Prior to dealing with the matter, Cr Cowell had informed the Council the item was not listed on the agenda and she had not been provided with a report on the matter. Clearly Council was aware that Cr Cowell had been treated differently in the provision of information on this item. At least two councillors knew they had been provided with a report on the matter the evening before the meeting. The CEO had a responsibility to ensure all councillors were fully and equally informed and, when it became evident this had not occurred, Council had a duty to act to address the situation. It did not.

These grounds alone are sufficient to support the conclusion that Council did not deal with this matter in an open and accountable manner.

Prior to this meeting, on 17 March 2009 the electors of the district had sent a clear message to Council that there was some public dissatisfaction with the CEO. This was an obvious indication that any Council decision to renew the CEO's contract, at this time, would be an item of significant public interest. Not only was the public interest ignored in dealing with the matter as a late item without any public notice, the process that Council followed ensured the community would not become aware the CEO's contract had been renewed until after the Council had approved it. It was Council's responsibility to ensure it was open and accountable in the way it dealt with this matter and it was obvious that allowing this matter to be introduced and dealt with in this manner would damage the local government's reputation in the community. Council showed no recognition of their responsibility to ensure greater participation in decisions and affairs of the local government and the need to be accountable to the community.

The decision to renew the CEO's contract was initially recorded as "Carried" at the 24 June 2009 Council meeting. However, doubts were later raised as to the effectiveness of the vote as an absolute majority was not achieved and the contract contained significant variations that were contrary to the legislative requirements.

At its 29 July 2009 meeting Council, due to the uncertainty of the legality of its decision to renew the CEO's contract at the 24 June meeting, again dealt with the matter. The item did not appear on the 'public' agenda and therefore could only be introduced appropriately by the CEO and accepted by Council as a late urgent item. In this case, not only did it not appear in the agenda for the information of the public, it was dealt with confidentially behind closed doors.

The Ordinary Council meeting of 26 August 2009 again omitted the item from the 'Public Agenda' and dealt with it in the same manner as the 29 July meeting.

These repeated actions occurred in the face of advice from the Department and objection from Crs Cowell and Hargreaves.

This, and other actions of the Council discussed in this report, reinforce the conclusion that the Council was not open and accountable in the manner in which it dealt with matters of significant importance to the interests of the electors of the district.

It is evident that in this case the Council at that time operated with unnecessary haste and confidentiality and failed to take into account rational and objective considerations that would have ensured the interests of the local government were protected.

Section 1.3(2) of the Act is important in describing the objective the local government Act is intending to achieve.

"This Act is intended to result in:

- a) better decision making;*
- b) greater community participation in the decision and affairs of local governments;*
- c) greater accountability of local governments to their communities;*
and
- d) more efficient and effective local government"*

In relation to the manner in which it dealt with the decision to renew the CEO's contract, a decision that had significant ramifications for the Shire itself and the community, the former Council of the Shire of Shark Bay did not meet these important principles.

7.2 Relationship Conflicts

It is clear that prior to the 2009 local government elections there was significant conflict between Cr Hargreaves and the majority of councillors and the CEO.

Cr Hargreaves made it known that he had been voted in by the community on a platform of keeping Council and the Administration honest.

Department records show a total of 66 complaints were received predominantly from Councillor Hargreaves and the CEO after Councillor Hargreaves was elected.

The overwhelming majority of these complaints were unsubstantiated for various reasons and the Department adopted a view that they were an indication of significant conflict between Cr Hargreaves and some councillors and the CEO. This transpired into the Department adopting a strategy of offering a support role to the Council in managing the conflicts and relationship issues.

With the benefit of hindsight the Inquiry acknowledges that the serious conclusions reached by this Inquiry in relation to the lack of openness and

accountability by the Council makes the examination of the conflicts on Council that existed prior to the 2009 elections, to be largely overtaken by events. In the circumstances it is concluded that it was understandable that conflict existed during this time.

7.3 Legal Funding to the Former Shire President

Council made a number of decisions that led to the provision of funding to former Shire President Mr Les Moss to seek advice and be provided with legal representation as a result of a prosecution for breaches of the *Local Government Act 1995*.

The Shire of Shark Bay's minutes of 25 June 2008 refer to the Council's policy 7.4 entitled "*Legal Representation Costs Indemnification*". The policy in clause 1, addresses the involvement of council members only in "*civil legal proceedings*", i.e. does not address legal expenses relating to **criminal proceedings** such as the proceedings brought against Mr Moss for failure to declare a proximity interest.

In addition, in purporting to be applying existing policy, the Council motion is misleading. In clause 7.4 (2) of the policy a precondition is set for financial assistance that the councillor "*has not acted illegally, dishonestly, against the interests of the local government or otherwise in bad faith*". While the Shire in its letter of 26 August 2008 refers to the presumption of innocence, clause 2 contemplates the grant of financial assistance only where the local government has positively formed the view that the applicant for the financial assistance has not acted illegally **or** otherwise inappropriately in the manner described. This is a view that Council should have had some difficulty reaching, considering a number of charges had been laid against Mr Moss at this time. However, the consideration of whether the funds were appropriately provided under the policy is further affected by the fact that no application for funding under the policy had ever been received from Mr Moss. This meant Mr Moss was not required to sign an indemnification undertaking to return the money should an adverse finding be made against him. By ignoring this process the Shire's interest was not protected. The Council's and the CEO's repeated claims to be applying the policy were misleading and untrue.

In the face of repeated attempts to draw Council's attention to the need to be accountable in its deliberations on this matter, (see *Special Electors Meeting*) it is difficult to accept that Council acted naively or in ignorance of its responsibility. The actions of the Council displayed a wilful intent to achieve the outcome of providing legal funding to Mr Moss, in the absence of any rational and accountable reason for doing so.

7.4 Publication of Misleading Information

The Shire published their views on the conviction and sentencing of Mr Moss by providing a statement in the Shire's June 2009 edition of the Community magazine "*Inscription Post*". The article entitled "*STATEMENT OF*

EXPLANATION" misrepresented the facts of Mr Moss' prosecution and conviction to the public, and contradicted the Shire's Minutes and the information the Shire provided to this Inquiry and the Department.

Considering the Magistrate issued a "Spent Conviction Order" preventing access to information concerning Mr Moss' prosecution, the community had no other avenue for information in relation to this matter and would have relied on this publication as an official source of information on local government business.

The statements in the Shire's Community magazine "Inscription Post" relating to Mr Moss' prosecution and the Council's approval of legal funding were so clearly false that Crs Hault, Crawford, Blennerhassett, and Cane, who endorsed the comments, and the CEO Mr Matthews, who edited and published this edition of the magazine, must have known that the statements within it were incorrect. These statements provide a misleading interpretation of the facts surrounding the Shire's funding of Mr Moss' legal defence and the subsequent prosecution and sentencing.

The actions of Crs Hault, Crawford, Blennerhassett, Cane and the CEO, Mr Matthews, were improper in using the Shire's Community magazine to distribute misleading information to the community of Shark Bay.

7.5 Special Electors Meeting – Community Calls for Accountability

The 17 March 2009, Special Electors Meeting, provided an important illustration of the views of the community.

The motion of "*No confidence in the CEO*" provided a significant indicator of the level of public interest and the level of confidence held by the community in the Shire's CEO. The fact the motion was raised at a meeting called and attended by a significant number of electors of Shark Bay, provided another factor that would have alerted Council to the importance of this issue. The manner in which the former Council not only ignored community concerns but continued to deliberately deal with the renewal of the CEO's contract confidentially, without public scrutiny, reinforces the view that the former Council ignored its responsibility to be accountable to its community.

The Special Electors Meeting also carried a motion calling on the Shire to implement accountability measures in relation to payments and recovery of legal fees associated with Mr Moss' prosecution, including calling on the Shire to provide, at the next General meeting, a full account of all legal fees already paid.

This motion received significant majority support and again presented an opportunity for the Council to experience first hand the views of the electors of the district.

On 29 April 2009, Council carried a motion that the Shire not accede to the electors resolutions of the Special Electors Meeting.

The electors motions from the 17 March 2009 Special Electors Meeting were a reasonable and justifiable request from the electors of the district calling for Council to act accountably. Council ignored the requirement to give this motion due consideration and falsely stated to the electors of the district that the reason they did not accede to the Electors request was because "*the matter is now finalised in regard to any further legal proceedings*". The Council's response did not address any of the electors concerns, it simply ignored the request for Council to ensure the necessary instruments were put in place to protect the interests of the Shire, ignored the request for a complete statement of the legal fees to be presented and more seriously, Council's response at the 29 April Meeting misled the electors when it stated the matter had been finalised in regard to any further legal proceedings. After this statement was made, Mr Moss appeared in Court the next day and the Shire paid further fees totalling \$8,462.53.

On 19 May 2009 the Shire also paid the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs were not authorised by the Council's resolutions regarding legal representation.

The CEO, Mr Matthews acted improperly when on 19 May 2009 he used Shire funds to pay the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs could not be characterised as the cost of legal "advice" or "representation", so that the payment, on any view, was not authorised by the Council's resolutions regarding legal representation.

The Inquiry confirmed the Shire had failed to take adequate steps to protect its interests in this matter after calling on the CEO to produce documents related to Council's decisions to fund Mr Moss' legal representation. In a letter dated 3 July 2009, the CEO, Mr Matthews responded by advising that -

- Nil legal or other agreement specifically entered into between Mr Moss and the Shire of Shark Bay.
- Nil (independent) documents relating to application for legal assistance by Mr Moss on Shire of Shark Bay records.

It is concluded that the references in Mr Matthew's reports to the former Council and Council motions, that the legal funding had been provided to Mr Moss in accordance with the Shire's policy on legal representation funding, was false and misleading, as no application for legal assistance funding under this policy had been made by Mr Moss.

The disturbing manner in which the former Council have consistently ignored advice and concerns raised by the Department and electors and continued to deal with legal assistance funding to Mr Moss without adequate controls or any provisions that protect the interests of the Shire, indicates the Council did not deal with this matter in an appropriate way and did not give adequate consideration as to whether, in providing these funds, Council met the criteria of providing good governance to its electors.

Chapter 8:

RECOMMENDATIONS:

Section 1.3(2) of the Act stipulates that

"This Act is intended to result in:

- a) better decision making*
- b) greater community participation in the decision and affairs of local governments;*
- c) greater accountability of local governments to their communities;*
and
- d) more efficient and effective local government"*

This provision indicates that the attitude of the community to its Council, and community reactions to perceived failings of the Council, are relevant considerations in judging the benchmark for 'good governance' under the scope of the *Local Government Act*. The evidence presented in this report shows there are clear grounds to conclude that the former Council of the Shire of Shark Bay was making decisions that fall far short of an acceptable standard for providing open and accountable governance to the electors of its district.

The number of decisions that were made in the face of clear advice or expressed community concerns, demonstrated that these failings were not mere naïve decisions borne of ignorance or misunderstandings of fact, but more likely that the former Council had deliberately embarked on a course of action to arrive at their intended outcome. In the circumstances shown in this report, the former Council had, on occasions, needed to consciously disregard professional advice (from the Department) to arrive at a decision that did not meet an acceptable standard of rational and objective decision making. The concerning aspect of the manner in which the former Council was shown to be performing its function, is the number of times that the final decisions did not have an obvious benefit for the Shire or community and were more readily interpreted as being adverse to the interests of the Shire and the community.

The evidence supports the view that the former Council acted in a manner that showed a wilful determination to deliver particular outcomes, with a reckless disregard for protecting the interests of the Shire. The manner in which Council arrived at these decisions lacked any consideration of the need to be accountable for their actions to the community.

8.1 Local Government Elections – Community Support

During the first visits to Shark Bay (Denham) by the Inquiry Officers it was apparent from community members that there was dissatisfaction with the performance of the Council. A number of residents openly commented on their concerns and distrust of the Council. This level of dissatisfaction was confirmed in conversations with Cr Eddington and Hoult. Both complained that they could not walk down the street without being accosted and challenged on their work for the Council.

During the course of the Inquiry, Inquiry officers developed the view that public interest in the operations of the Shire was growing and a number of community members saw the attention generated by the Inquiry and the impending local government elections as an opportunity to challenge the status quo of the former Shark Bay Council.

On 17 October 2009 local government elections in Shark Bay commenced with 11 candidates nominating for the 4 positions vacated by former councillors Hoult, Crawford, Blennerhassett and Cane. A number of these candidates had become known to the Inquiry Officers as vocal members of the community who had felt so motivated by the manner in which the Council had been operating that they felt obligated to commit their time and energy to effect change by standing as candidates and pursuing a place on Council.

The voter turnout is some indication of the level of community interest with Electoral Commission (2009) figures showing a voter turnout of 62.59% for the Shark Bay election compared with the average turn out for all local governments of 34% for 2007 (2009 data not available at time of writing). This demonstrated to the Inquiry that during the 2009 Shark Bay elections, as in previous elections, the community was interested in expressing its preference for who should represent them on Council. The turnout figure is a strong indication that the community was well represented in exercising its democratic preference.

This is significant because local authorities are independently elected autonomous bodies. This means they are largely independent of State government, predominantly being directly accountable to their electorates. The founding principle of local government is that citizens have the right to influence the decisions that affect their lives and their communities. A key way in which local citizens are able to exercise that right is their ability to elect a strong local council which can lead and shape their area. That is why the role of the community is critical. Citizens have a right to have their voices heard, and to expect those delivering services to care what they think.

It is therefore equally important that a State government appointed Inquiry also recognise the importance of the views of the community when considering appropriate recommends to be made to the Minister and specifically, whether he exercise his powers to call a Panel Inquiry and suspend this Council.

The Inquiry considers the recent election of a majority of new councillors at the Shire of Shark Bay and the appointment of a new CEO to be significant in considering the future of the Shire. The replacement of Councillors Eddington, Crawford, Hoult, Blennerhassett and Cane means the opportunity for real change is likely and supported by the majority of the electorate. To ignore the results of the election is to ignore the wishes of the citizens of Shark Bay and the fundamental principle that they have a right to influence the decisions that affect their lives and their community.

The new Council should not be tarnished with the actions of the previous Council. With appropriate advice and support it is considered the new Council and its new CEO have the capacity to accept the challenge of overcoming the shortfalls of the past.

8.2 Recommendations and Findings –

CEO's Contract Renewal

Finding 1

The inappropriate secrecy in which the proposed renewal of the CEO's contract was dealt with by the former Council, contributes to the conclusion that the Council was not being open and accountable.

Finding 2

The former Council and the CEO Mr Matthews, at the 24 June 2009 Ordinary Council Meeting, failed to acknowledge (until the following meeting on 29 July 2009) that by virtue of section 5.36 *Local Government Act 1995* the motion to extend the CEO's employment contract had not been 'carried'.

Finding 3

The manner in which the CEO, Mr Kelvin Matthews, presented the proposed renewal of his employment contract, as a late urgent item and confidentially, without ensuring adequate advice and information was provided to councillors, demonstrated a significant failing by him to meet the expectations of section 5.41(b) LGA.

Finding 4

The urgency with which the former Council dealt with the proposed renewal of the CEO's contract at the 24 June 2009 meeting showed a lack of rational consideration of the ultimate impact this decision would have on the Shire and its services to the ratepayers in the future.

Finding 5

Notwithstanding that the decision had no effect, in approving the CEO's contract renewal at the 24 June 2009 meeting without exercising careful judgement and seeking legal advice on any possible ramifications of the proposed variations in the contract, the former Council ignored its responsibility to protect the interests of the Shire and appeared only focused on ensuring the interests of the CEO were met

Finding 6

The manner in which the CEO, Mr Matthews, the Deputy CEO, Mr Tiggeman and the former Council, specifically Crs Hoult, Cane, Crawford and Blennerhassett repeatedly dealt with this matter inappropriately, at the 24 June 2009, 29 July 2009 and 26 August 2009 Ordinary Council meetings leads to a conclusion that there was a planned and deliberate attempt to avoid compliance with the Shire's Standing Orders Local Law 4.2.1 in regard to public access to Agenda material and ultimately that the CEO's employment contract renewal was not dealt with in an open and accountable manner

Finding 7

The decision at the 26 August 2009 meeting by Councillors Hoult, Crawford, Blennerhassett, Cane, Cowell and Hargreaves to 'reconfirm' the decision of 24 June meeting, (to approve the CEO's contract renewal) had no rational basis and was not demonstrably in the interests of the Shire of Shark Bay

Finding 8

The former Council, specifically Crs Hoult, Cane, Crawford and Blennerhassett, ignored its responsibility to be accountable to the community in relation to its dealings with the CEO contract renewal issue. The manner in which Council dealt with this issue reinforced distrust in the former Council by community members.

Recommendation 1

Council should ensure it is capable of managing the requirement for a CEO to provide adequate and appropriate advice to allow councillors to make informed decisions. This should be demonstrated in Council's management of the Annual Performance Review of its CEO, including setting appropriate key performance indicators that are measurable and achievable.

Relationship Conflicts

Finding 9

It is concluded that whilst Cr Hargreaves had ongoing relationship conflicts with the CEO, Kelvin Matthews, and also with Crs Eddington, Hoult, Cane, Blennerhassett, and Crawford, it was understandable that conflict existed given the findings made about the former Council and the CEO elsewhere in this report.

Legal Funding to the Former Shire President

Finding 10

The CEO, Mr Matthews failed to implement a Council decision to provide monthly reports to Council on the progress of the matter concerning the payment for legal advice and representation regarding the matter between the previous Shire President, (Cr Les Moss) and the Department of Local Government and Regional Development in accordance with council policy 7.4

Finding 11

Contrary to the advice provided to the Department by Cr Eddington, the Shire President that "*Councils (sic) decision(s) have been consistent with its Policy in clause 7.4 Division 7.*" Council decisions did not accord with this policy.

Finding 12

The Shire's provision of public funds to former Shire President, Mr Les Moss, for the defence of a prosecution for financial interest breaches, was improper in the manner and the grounds on which it was provided.

Publication of Misleading Information

Finding 13

The statements in the Shire's Community magazine "Inscription Post" that relate to Mr Moss' prosecution and the Council's approval of legal funding to Mr Moss are so clearly false that Crs Hoult, Crawford, Blennerhassett, and Cane, who endorsed the comments, and the CEO Mr Matthews, who edited and published this edition of the magazine, must have known that the statements within it were incorrect. These statements provide a misleading interpretation of the facts surrounding the Shire's funding of Mr Moss' legal defence and the subsequent prosecution and sentencing.

Finding 14

The actions of Crs Hoult, Crawford, Blennerhassett, Cane and the CEO, Mr Matthews, was improper in using the Shire's Community magazine "*Inscription Post*" to distribute misleading information to the community of Shark Bay about the Shire's funding of Mr Les Moss' legal defence and the subsequent prosecution and sentencing of Mr Moss.

Recommendation 2

The Council of the Shire of Shark Bay consider forming a Committee, including community members, to manage and approve the content of the Shire's Community magazine "*Inscription Post*".

Special Electors Meeting – Community Calls for Accountability

Finding 15

The CEO, Mr Matthews acted improperly when on 19 May 2009 he used Shire funds to pay the \$5,000 prosecution costs awarded against Mr Moss. These prosecution costs could not be characterised as the cost of legal "advice" or "representation", so that the payment, on any view, was not authorised by the Council's resolutions regarding legal representation.

Finding 16

The former Council's refusal, (specifically those councillors that voted not to accede to item 3.3 from the 17 March 2009 Special Electors Meeting, being Crs Hoult, Cane, Crawford and Blennerhassett) to implement the Community's request for accountability processes to be introduced lacks any rational basis and when considered in conjunction with the Department's attempts to draw to the former Council's attention the significant accountability concerns that existed, it raises serious concerns that the former Council was not acting in the interest of the electors of the district.

Finding 17

The motion under item 3.3 from the 17 March 2009 Special Electors Meeting was a reasonable and justifiable request from the electors of the district calling for Council to act accountably. The former Council, specifically those councillors that voted not to accede to the motion, being Crs Hoult, Cane, Crawford and Blennerhassett, ignored the requirement to give this motion due consideration and falsely stated to the electors of the district on 29 April 2009 that the reason they did not accede to the Electors request was because "*the matter is now finalised in regard to any further legal proceedings*". At the time this statement was made the Council was aware, or should have been aware, that Mr Moss was due to appear in Court the next day and further outstanding payments were still to be made by the Shire.

Finding 18

It is concluded that the references in Mr Matthew's reports to the former Council that the legal funding had been provided to Mr Moss in accordance with the Shire's policy on legal representation funding, was false and misleading, as he was aware no application for legal assistance funding under this policy had been made by Mr Moss.

Finding 19

It is concluded that the repeated references in the former Council's motions to the legal assistance funding to Mr Moss being provided in accordance with its policy on legal representation funding was false and misleading as no application for legal assistance funding under this policy had been made by Mr Moss.

Finding 20

The disturbing manner in which the former Council (specifically Crs Eddington, Hoult, Cane, Crawford and Blennerhassett) have consistently ignored advice and concerns raised by the Department and electors (*see Department letters and Special Electors Meeting*) and continued to deal with legal assistance funding to Mr Moss without adequate controls or any provisions that protect the interests of the Shire, indicates the Council did not deal with this matter in an appropriate way and did not give adequate consideration as to whether, in providing these funds, Council met the criteria of providing good governance to its electors.

Recommendation 3

An external auditor(s) be appointed, approved by the Department, to conduct a full financial and compliance audit with parameters for the audit set by the Department.

This audit, as a matter of priority, identify all costs associated with the Shire's provision of legal funding to Mr Moss.

The outcome of this audit is to be reported directly to the Department and Council.

Recommendation 4

The Council review its policies on payments to councillors and staff and ensure appropriate accountability process accompany any decision to provide these payments.

Recommendation 5

The Council obtain advice from a legal practitioner, reporting directly to Council, on whether the Shire can recover monies paid in relation to Mr Moss' legal representation, from Mr Moss and/or any other party.

Recommendation 6

The Local Government of the Shire of Shark Bay develop a clear vision and strategic objectives, utilising a process that allows for full engagement of elected members and all stakeholders, (local, regional and State)

The Council of the Shire seek advice and support from the Department of Local Government to assist it to implement an over-riding good governance framework.

If you would like more information
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