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1. Introduction

1. Section 8.3 of the *Local Government Act 1995* (the Act) gives the Director General of the Department of Local Government, Sport and Cultural Industries (the Department) the authority to inquire into all local governments and their operations and affairs.

2. The Director General may, by written authorisation, authorise a person to inquire into and report on any aspect of a local government or its operations or affairs.

3. On 19 January 2017 the former Director General of the Department (which was known at the time as the Department of Local Government and Communities) authorised an inquiry in accordance with section 8.3(2) of the Act. The Terms of Reference directed the inquiry to the following aspects of the Shire of Wiluna (the Shire) and its operations and affairs beginning 1 July 2015 to:
   a. the Council's relationship with, and management of, the Shire's former Chief Executive Officer, Mr Dean Taylor;
   b. the conduct of the Council and employees of the Shire including but not limited to:
      i. tendering, purchasing and procurement and contract management; and
      ii. improper or undue influence;
   c. the appointment of Executive and other employees at the Shire and the appropriateness of the processes used for those appointments;
   d. the manner in which open and accountable policies and procedures are adhered to;
   e. whether the Shire of Wiluna has provided good governance in respect of these matters; and
   f. any other issues that are determined to be of relevance to the above.

4. This report on the outcome of the Department's inquiry has been compiled in accordance with section 8.13 of the Act by three officers of the Department who were authorised to conduct the inquiry (the Authorised Persons).

5. In order to perform their functions, the Authorised Persons issued eleven (11) directions to the Shire under section 8.5 of the Act to provide documents, information or property. The Shire complied with each of those directions.

6. One of the directions, issued to the Shire on 30 June 2017, required one member of Council and two Shire staff to participate in formal records of interview. All required persons complied with this direction and interviews took place on 18 July 2017.

7. Mr Dean Taylor, Cr Jim Quadrio, Cr Graham Harris and other councillors serving their terms during the period of time of the focus of the Department's inquiry were given an opportunity to comment on this report in draft form before it was finalised. Cr Quadrio provided a written submission to the inquiry and that submission was taken into account by the Authorised Persons in finalising this report. No other submissions were received.
2. Statutory framework

8. The Act and associated local government regulations set out the framework for the administration and financial management of local government.

9. The Act and regulations define the roles and responsibilities of the council, president, councillors and employees. Relevantly, the Act provides:

Section 2.7. Role of council

1. The council —
   a. governs the local government’s affairs; and
   b. is responsible for the performance of the local government’s functions.

2. Without limiting subsection (1), the council is to —
   a. oversee the allocation of the local government’s finances and resources; and
   b. determine the local government’s policies.

Section 2.8. Role of mayor or president

1. The mayor or president —
   a. presides at meetings in accordance with this Act; and
   b. provides leadership and guidance to the community in the district; and
   c. carries out civic and ceremonial duties on behalf of the local government; and
   d. speaks on behalf of the local government; and
   e. performs such other functions as are given to the mayor or president by this Act or any other written law; and
   f. liaises with the CEO on the local government’s affairs and the performance of its functions.

2. Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

Section 2.10. Role of councillors

A councillor —
   a. represents the interests of electors, ratepayers and residents of the district; and
   b. provides leadership and guidance to the community in the district; and
   c. facilitates communication between the community and the council; and
   d. participates in the local government’s decision-making processes at council and committee meetings; and
   e. performs such other functions as are given to a councillor by this Act or any other written law.
10. It is important to note that individual elected members have no authority to make decisions or participate in the day-to-day operations of the local government. All authority sits with the council and that authority is exercised by majority decisions at formal council or committee meetings.

11. As the president and councillors are not involved in operational matters, each local government employs a Chief Executive Officer (CEO) and other staff for the purposes of day-to-day running of the local government. The CEO is appointed by council and is the link between Councillors and local government staff. All other local government staff report to the CEO. The Act provides:

Section 5.41 Functions of CEO

The CEO’s functions are to —

a. advise the council in relation to the functions of a local government under this Act and other written laws; and

b. ensure that advice and information is available to the council so that informed decisions can be made; and

c. cause council decisions to be implemented; and

d. manage the day to day operations of the local government; and

e. liaise with the mayor or president on the local government’s affairs and the performance of the local government's functions; and

f. speak on behalf of the local government if the mayor or president agrees; and

g. be responsible for the employment, management, supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and

h. ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and

i. perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

12. Section 5.42 of the Act allows a council to delegate in writing to the CEO the exercise of its powers or the discharge of its duties, subject to some exceptions (e.g. borrowing money, decisions requiring an absolute majority of council members, appointing an auditor).

13. The role of local government staff is determined by the CEO. Section 5.44 of the Act allows the CEO to delegate in writing to any employee of the local government the exercise of any of the CEO’s powers or the discharge of any of the CEO’s duties, other than the power of delegation. With some qualifications, under section 5.44 the CEO is permitted to delegate a power or duty the exercise or discharge of which was delegated to the CEO by the council under section 5.42 of the Act.
3. Key Shire policies

3.1 Shire Policy 2.6 – Purchase of Goods and Services

14. In accordance with regulation 11A(3) of the Local Government (Functions and General Regulations 1996 (Functions and General Regulations), a local government is required to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, $150,000 or less.

15. Shire Policy 2.6 – Purchase of Goods and Services (Shire Policy 2.6) outlines the requirements for the procurement of goods and services by the Shire. Policy 3 provides that a purchase order must be used to procure all goods, services and infrastructure works, except in the case of credit card purchases or petty cash purchases, or goods or services obtained in a recurrent supply situation such as electricity, water, telephones, monthly interim rating valuations and internet connections.

16. In relation to obtaining quotes, Policy 4 generally provides that for transactions valued between:
   
   • $1-5,000: no quotes are required, but the purchasing officer must still satisfy themselves that they have obtained a competitive price for the goods, service and/or infrastructure works (e.g. telephone quotes, internet pricing);
   
   • $5,001-20,000: at least two verbal quotes are required (details of the supplier and quote must be attached to the purchase order);
   
   • $20,001-$50,000: two written quotes are required; and
   
   • $50,001-$149,000: three written quotes are required.

17. Where a purchasing officer is unable to comply with the requirements above, a written record of the reasons and circumstances should be recorded and securely fastened behind the order form.

18. The Shire’s policy also expressly acknowledges that:

   “…Wiluna is considered a remote and isolated town, and that, for certain classes of goods and services and/or infrastructure works, there may only be one suitable supplier in the district. This will have an impact on the normal requirement to obtain quotes, but purchasing officers are to remain mindful that the organisation has a legal and moral obligation to ensure value for money in respect of all purchases made.”

3.2 Shire Policy 2.16 – Payment of Accounts

19. Shire Policy 2.16 – Payment of Accounts (Shire Policy 2.16) outlines the payment options available to the Shire and the controls over each type of payment method which include drawing of a Shire cheque, using Electronic Funds Transfer (EFT), using a Shire corporate credit card or by accessing petty cash. The Policy outlines eleven principles in relation to the payment of accounts. Relevantly:

   • Principle 4 provides the following are signatories/authorised persons:

     **Primary Signatory/Authorised Person**
     
     • Chief Executive Officer
     • Finance and Accounting Manager
     • Executive Manager, Corporate Services

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1 The upper limit on this band was amended from $99,999 to $149,999 when the policy was updated on 15 December 2015.
Secondary Signatory/Authorised Person

- Executive Manager, Works
- Executive Manager, Economic and Community Development
- Senior Finance Officer
- Any other officer nominated by the CEO, from time to time as operational requirements may dictate

- Principle 5 states that all EFT or cheque payments are to be signed/authorised by two signatories/authorised persons with at least one of those being a “primary signatory/authorised person”.
- Principle 10 states that a Shire employee cannot authorise a purchase or sign a voucher where that officer receives a personal benefit from the payment or purchase.
- Principle 11 states that a schedule of payments made in each month shall be presented to the ordinary meeting of council held in the subsequent month regardless of the payment system used.

4. Inquiry findings into matters relating to Mr Taylor

20. Mr Taylor was engaged by the Shire between 31 August 2015 and 26 November 2016. During the inquiry period a number of concerns were identified in relation to Mr Taylor’s engagement and subsequently explored in depth with the relevant findings set out below:

4.1 Circumstances surrounding Mr Taylor’s engagement by the Shire

21. At the time of Mr Taylor’s engagement by the Shire, Ms Andrea Nunan was the CEO. Her contract was due to expire on 22 September 2016. However, her employment was terminated on 30 November 2015 pursuant to a deed of settlement and release. Although Ms Nunan was formally employed as CEO until 30 November 2015, she was absent from duty for much of 2015.

22. The confirmed minutes for the Special Council Meeting held on 27 August 2015 record that given the absence of a CEO, the Council appointed Mr Taylor to the position of ‘Contract Project Manager’ for the Administration Building, Interpretive Centre and the Western Australian Natural Disaster Relief and Recovery Arrangements projects. Mr Taylor commenced his position as Contract Project Manager on 31 August 2015 and began performing informal acting CEO duties immediately upon commencement of his engagement with the Shire.

23. It was also advised at the meeting that it would be necessary to formally appoint an Acting CEO as soon as possible to formally act in the position until a permanent CEO could be appointed. The Ordinary Council Meeting (OCM) to appoint an acting CEO occurred on 14 December 2015.

4.2 Purported appointment of Mr Taylor as acting CEO

24. Pursuant to section 5.36(1)(a), a local government is to employ a CEO. Generally, the CEO is to have a written employment contract. In the case of an acting CEO, the written contract cannot be for a term exceeding one year, however, an employee of the local government may act in the CEO position for a term of less than one year without a written contract for the CEO position. In other words, the Act does not permit a non-employee to act in the position of CEO without a written contract.

25. It is also noted that pursuant to section 5.36(4) and regulation 18A of the Local Government (Administration) Regulations 1996, if the position of CEO becomes vacant, the local government must advertise the position in a newspaper circulating generally throughout the State unless, relevantly, it is proposed that an acting CEO is to be appointed (for a term not exceeding one year).
26. During the OCM held on 14 December 2015, the Council was presented with numerous options for appointing an acting CEO. Mr Taylor, in his role as Contract Project Manager, was responsible for compiling this meeting item. The options presented to Council were:

- seek an appropriately qualified and experienced person through WALGA;
- appoint an existing staff member;
- continue with the current arrangement and formally appoint Mr Taylor; or
- appoint someone else.

27. The minutes also note that due to Mr Taylor’s extensive experience as a local government CEO he had been informally “acting” in the role of CEO. The Council was clearly advised that Mr Taylor was not an employee of the local government and would not be undertaking the acting CEO position as an employee but rather as a contractor through his personal business, Red Tail Ridge Consulting, paid an hourly rate (without annual leave, sick leave or entitlement to superannuation or other employee benefits).

28. Notwithstanding, the Council unanimously agreed to appoint Mr Taylor as acting CEO of the Shire until a permanent CEO could be recruited. The Authorised Persons are satisfied that there was no written contract between Mr Taylor and the Shire, and that the Shire was invoiced by Red Tail Ridge Consulting based on a schedule of fees.

29. It was not until 23 November 2016 that Mr Colin Bastow was appointed as acting CEO of the Shire. Until that date, Mr Taylor, through Red Tail Ridge Consulting, purportedly performed the role of acting CEO.

30. The Authorised Persons note that Mr Bastow commenced as deputy CEO on 10 October 2016, but that the position of deputy CEO otherwise remained vacant during Mr Taylor’s time purportedly acting as the CEO.

**Finding 1:** Mr Taylor purported to perform the role of acting CEO through his company, Red Tail Ridge Consulting, without a written employment contract with the Shire. As Mr Taylor was not an employee of the Shire, his appointment by the Council to the position of acting CEO was contrary to sections 5.36(1) and 5.39(1) of the Act.

**Finding 2:** as the purported appointment of Mr Taylor as acting CEO was contrary to sections 5.36(1) and 5.39(1) of the Act, there was no CEO or acting CEO employed by the Shire between 14 December 2015 and 22 November 2016.

### 4.3 No delegation of powers to Mr Taylor during the inquiry period

31. There is no evidence that the Council delegated or attempted to delegate its powers to Mr Taylor while he was informally “acting” in the acting CEO role, nor at any other time during the inquiry period. In any event, the Authorised Persons are satisfied that Mr Taylor was not eligible to be delegated any powers by the local government during the inquiry period as he never formally acted in the position of acting CEO or CEO.

**Finding 3:** Mr Taylor was not delegated any powers of the local government or CEO at any time during the inquiry period.

### 4.4 Payments to Red Tail Ridge Consulting purportedly approved by local government staff

32. A total of seventy-five (75) invoices were submitted to the Shire by Mr Taylor through his company, Red Tail Ridge Consulting. The Authorised Persons reviewed these invoices and are satisfied that all payments relating to these invoices failed to comply with Shire Policy 2.16. On all occasions, the payments appear to have not complied with Principle 5 as they were signed by at least one unauthorised person.

33. Authorised Persons also identified a number of other defects with payments, including:

a. two (2) payments being “authorised” by only one person (being the unauthorised signatory);
b. two (2) payments “authorised” by two unauthorised signatories; and

c. five (5) payments “authorised” by Mr Taylor himself.

34. Total payments to Red Tail Ridge Consulting were $375,258.11.

**Finding 4:** payments made to Red Tail Ridge Consulting did not comply with Shire Policy 2.16 (Principle 5) as they were approved by at least one unauthorised person (including, in some instances, elected members of Council – see section 4.5 below).

### 4.5 Payments to Red Tail Ridge Consulting purportedly approved by elected members of Council

35. Authorised persons also observed twenty-one instances of payments to Red Tail Ridge Consulting being approved by, or on behalf of, elected members of Council, being Cr Quadrio and Cr Harris. As individuals, the President and councillors did not have authority to approve the payments.

36. Pursuant to section 5.104 of the Act, the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (Conduct Regulations) prescribe “rules of conduct” that council members are required to observe. Section 5.105(1) of the Act provides that a council member commits a minor breach if he or she contravenes a Rule of Conduct. A minor breach is a recurrent breach if it has been committed two (2) or more times.

37. Regulation 9(1) of the Conduct Regulations prohibits council members from involvement in the administration of the local government:

> A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.

38. The Authorised Persons are satisfied that the council members authorising payments to Mr Taylor and/or Red Tail Ridge Consulting were not authorised by council or the CEO to perform those tasks.

**Finding 5:** Cr Jim Quadrio and Cr Graham Harris, as elected council members, by authorising payments by the Shire may have contravened the prohibition against involvement in administration of local government in regulation 9 of the Conduct Regulations.

### 4.6 Payments for goods and services by Mr Taylor while acting CEO during ‘unofficial period’

39. During Mr Taylor’s time purportedly in the role of acting CEO, as well as during the short informal “acting” period between 1 December 2015 and 14 December 2015, he raised purchase orders and authorised payments for the purchase of goods and services.

40. As Mr Taylor was not validly appointed as acting CEO, nor an employee of the Shire, he was not authorised to approve payments on behalf of the Shire.

**Finding 6:** any payments authorised by Mr Taylor during the inquiry period did not comply with Shire Policy 2.6 and/or Shire Policy 2.16.
5. General inquiry findings relating to the Shire of Wiluna

5.1 Delegations

41. On 2 April 2015, 22 April 2015 and 22 June 2015, pursuant to section 5.44 of the Act, former CEO Ms Nunan delegated in writing the exercise of certain council functions to provide for the expedient exercise and performance of council’s powers and duties and the efficient management of council’s business.

Delegations were made to the following positions:

- Executive Manager, Corporate Services
- Art Gallery Manager
- Contract Environmental Health Officer/Building Surveyor
- Administration Officer (Reception)
- Acting Deputy Chief Executive Officer
- Works Administration Assistant
- Swimming Pool Manager
- Executive Manager, Technical Services
- Contract Shire Ranger

42. The delegations related to the authority to sign purchase orders up to specified amounts, make purchases on a corporate credit card and sign outwards correspondence. Notably, purchases were only to be for goods and services for duties relating to the delegate’s role and for which provision had been made in the adopted budget. Purchases also had to comply with the Council’s adopted policy relating to purchasing.

43. The Authorised Persons came across many instances of staff signing purchase orders and authorising payments without the appropriate delegation to do so. For example:

- staff authorised payments exceeding their delegated limit;
- the Administration Officer and Works Administration Assistant changed positions within the local government and authorised payments in their new roles despite those positions not being a delegated position; and
- purchase orders were often signed by the “Works Manager” despite no staff holding that position and that position not being a delegated position. There were also instances where staff crossed-out the position title of Works Manager, however did not write their position title to confirm they had the correct delegation to create a purchase order.

- Finding 7: staff regularly raised purchase orders and authorised payments in excess of their delegated power.
- Finding 8: delegations were not appropriately updated in response to movement of staff and changes to role titles.

5.2 Failure to comply with purchasing policies – overpayments on purchase orders and payments approved by unauthorised persons

44. Authorised Persons reviewed numerous tenders for the procurement of goods and services, awarded tender contracts and subsequent authorised payments to relevant contractors during 2015-2016 and identified significant issues, as detailed below.

5.2.1 Tender 2015-01 – Supply of hired road construction plant with operators

45. Four (4) suppliers were awarded separate contracts to enable the completion of four works packages for the repair of specific roads arising from flood damage.
Lacy Contracting
a. The Council awarded a works package for the amount of $1,878,970.00 to Lacy Contracting.
b. Purchase Order 1277 was raised in accordance with the Shire’s Purchasing Policy 2.6 for the full tendered amount.
c. Five (5) invoices were issued to the Shire resulting in EFT payments of $1,873,830.10.
d. All payments were approved by an unauthorised signatory.

Finding 9: Payments to Lacy Contracting did not comply with Shire Policy 2.16 (Principle 5) as they were approved by an unauthorised signatory.

Roadtech Constructions
a. Roadtech Constructions was awarded a works package for the amount of $1,990,300.00.
b. Purchase Order 1276 was raised in accordance with the Shire Policy 2.6 for the full tendered amount.
c. Nine (9) invoices were issued to the Shire resulting in the EFT payments of $2,246,137.90.
d. All payments were approved by an unauthorised signatory.
e. Two payments were only signed by the unauthorised signatory.

Finding 10: Payments to Roadtech Constructions exceeded the contract amount by $255,837.90. There was no evidence that additional purchase orders were approved or raised in relation to this amount, and it is likely the payments did not comply with Shire Policy 2.6 (Policy 3).

Finding 11: Payments to Roadtech Constructions did not comply with Policy 2.16 (Principle 5) as they were approved by an unauthorised signatory and, in two instances, were only signed by this unauthorised signatory.

Quadrio Earthmoving
a. Quadrio Earthmoving was awarded a works package for the amount of $3,528,540.00.
b. Purchase Order 1275 was raised in accordance with the Shire Policy 2.6 for the full tendered amount.
c. Twenty (20) invoices were issued to the Shire resulting in the EFT payments of $4,533,606.90.
d. All twenty (20) payments were approved by an unauthorised signatory.
e. On two (2) occasions, Mr Taylor approved payment.

Finding 12: Payments to Quadrio Earthmoving exceeded the awarded contract amount by $942,066.90. There was no evidence that additional purchase orders were approved or raised in relation to this amount, and it is likely the payments did not comply with Shire Policy 2.6 (Policy 3).

Finding 13: Payments to Quadrio Earthmoving did not comply with Policy 2.16 (Principle 5) as they were approved by at least one unauthorised signatory (including, on two occasions, by Mr Taylor).
Northern Goldfields Earthmoving

a. Northern Goldfields Earthmoving was awarded a works package for the amount of $3,495,000.00.

b. Purchase Order 1278 was raised in accordance with the Shire Policy 2.6 for the full tendered amount.

c. Seventy-four (74) invoices were issued to the Shire.

d. Sixty-one (61) EFT payments were made against Purchase Order 1278 amounting to $3,332,485.70.

e. The remaining thirteen (13) invoices amounting to $509,817.00 were paid by EFT from a Shire account referenced as ‘F0027’.

f. Sixty-eight (68) payments were approved by an unauthorised signatory.

g. One (1) payment was only signed by the unauthorised signatory.

h. Fourteen (14) payments were approved by the then CEO, Ms Nunan, only.

**Finding 14:** Total payments to Northern Goldfields Earthmoving pursuant to Purchase Order 1278 exceeded the awarded contract amount by $347,302.70. There was no evidence that additional purchase orders were approved or raised in relation to this amount, and it is likely the payments did not comply with Shire Policy 2.6 (Policy 3).

**Finding 15:** The $509,817.00 paid by EFT from Shire account F0027 was paid without a purchase order in contravention of the Shire Policy 2.6 (Policy 3).

**Finding 16:** Sixty-eight (68) payments to Northern Goldfields Earthmoving did not comply with Shire Policy 2.16 (Principle 5) because they were approved by an unauthorised signatory.

**Finding 17:** One (1) payment to Northern Goldfields Earthmoving did not comply with Shire Policy 2.16 (Principle 5) because it was not signed.

**Finding 18:** Fourteen (14) payments to Northern Goldfields Earthmoving did not comply with Shire Policy 2.16 (Principle 5) because they were only approved by one authorised signatory.

5.2.2 Tender 2015-02 – Contract Flood Damage Supervisors x2

a. Remote Roads was awarded Tender 2015-02 for the estimated sum of $540,876.00 (ex. GST). This tender amount was based on a schedule of rates contract, whereby the final contract sum would be based on the hours worked and kilometres travelled over a 12 month period.

b. Two (2) Purchase Orders were raised in accordance with the Shire Policy 2.6, being:

   i. PO 1268 for $15,488.83; and

   ii. PO 1269 for $16,671.89.

   The amount of these Purchase Orders was the same as the first two invoices issued to the Shire by Remote Roads.

c. In total, Remote Roads issued twenty-nine (29) invoices to the Shire resulting in EFT payments of $725,948.04.

d. All twenty-nine (29) payments were approved by an unauthorised signatory.

e. Two (2) payments were only signed by the unauthorised signatory.

**Finding 19:** Purchase orders were only raised in relation to $32,160.72 of the contract awarded. Therefore $693,787.32 was paid by the Shire in excess of the purchase orders raised and in contravention of Shire Policy 2.6 (Policy 3). Even if purchase orders had been
raised to the full amount approved by Council ($594,963.60, incl GST), total payments to Remote Roads would have still exceeded that amount by $130,984.44.

Finding 20: Twenty-nine (29) payments to Remote Roads did not comply with Shire Policy 2.16 (Principle 5) as they were only approved by one authorised signatory.
Finding 21: Two (2) payments to Remote Roads did not comply with Shire Policy 2.16 (Principle 5) because they were not signed by an authorised signatory.

5.2.3 Tender 2015-03 – Construct, Develop and Test Pump Water Bores (various locations)
   a. On 4 February 2015, Acqua Drill Resources was awarded Tender 2015-03 for the tender price of $620,360.00 (ex GST).
   b. Purchase Order 1072 (PO 1072) was raised for the amount of $682,396.00 inclusive of GST costs.
   c. PO 1072 was raised by an employee whose delegation did not allow him to raise purchase orders over $50,000. Ms Nunan, the then CEO, co-signed the order on 3 March 2015.
   d. Four (4) invoices were issued to the Shire resulting in EFT payments against PO 1072 amounting to $772,528.00.
   e. All four (4) payments were approved by an unauthorised signatory.

Finding 22: total payments to Acqua Drill Resources exceeded the awarded contract amount by $152,168.00. There was no evidence that additional purchase orders were approved or raised in relation to this amount, and it is likely the payments did not comply with Shire Policy 2.6 (Policy 3).
Finding 23: All four (4) payments to Acqua Drill Resources did not comply with Shire Policy 2.16 (Principle 5) because they were approved by an unauthorised signatory.

5.2.4 Tenders 2015-04, 2015-05 and 2015-06 – Unsealed Road Maintenance Grading and Minor Works
   a. At the OCM held on 14 December 2015, tenders 2015-04, 2015-05 and 2015-06 were awarded to Goodwork Holdings Pty Ltd in accordance with a submitted schedule of rates and based on the following estimates:
      • Tender 2015-04 – Western Package: $261,404.00
      • Tender 2015-05 – Southern Package: $99,005.86
      • Tender 2015-06 – Central Package: sum $682,330.00
      • Total - $1,042,739.86
   b. The confirmed minutes for the OCM stated that the Shire's allocated budget for grading and other minor works to unsealed roads for 2015-2016 was $506,200.00.
   c. Twenty-one (21) Purchase Orders were raised in relation to tenders 2015-04 2015-05 and 2015-06.

47. Payment records in relation to Goodwork Holdings are unclear. The Authorised Persons reviewed sixty-three (63) invoices issued by Goodwork Holdings to the Shire. However it was not clear which invoices and payments related to Tenders 2015-04, 2015-05 and 2015-06 and which related to non-tender work.
48. The Authorised Persons have established that all sixty-three (63) payments to Goodwork Holdings, whether in relation to a tender or not, were approved by an unauthorised signatory.
49. The Authorised Persons also note regulation 13 of the Local Government (Financial Management) Regulations 1996 (WA) (Financial Management Regulations) which sets
out requirements in relation to local government payments. In particular, where the power to make payments from the municipal fund or trust fund has been delegated to the CEO (which is the case here), a list of accounts paid is to be prepared each month showing, for each account paid, the payee's name, the amount of the payment, the date of the payment and sufficient information to identify the transaction. As the Authorised Persons were unable to determine which payments to Goodwork Holdings related to tender work and non-tender work, the Authorised Persons are satisfied that there may have been a failure by the CEO and Shire staff to comply with regulation 13 (i.e. failure to record sufficient information to identify the transaction as per regulation 13(1)(d)).

50. The Authorised Persons note that Cr Caroline Thomas and her husband are the directors and shareholders of Goodwork Holdings Pty Ltd. The Authorised Persons are satisfied that the appropriate disclosures were made and procedures followed as part of the Council approval process.

**Finding 24:** all payments to Goodwork Holdings in relation to Tenders 2015-04, 2015-05 and 2015-06 did not comply with Shire Policy 2.16 because they were approved by an unauthorised signatory.

**Finding 25:** there was insufficient budgetary allocation in the relevant financial year for the grading and other minor works to unsealed roads and the tender was awarded in breach of item 8 of Shire Policy 2.6.

**Finding 26:** the CEO and Shire staff may not have complied with regulation 13(1)(d) of the Financial Management Regulations requiring them to prepare a list of accounts paid by the CEO showing sufficient information to identify each transaction.

### 5.3 Failure to obtain quotes

51. Authorised Persons assessed a selection of Shire payments and identified many instances where the Shire failed to comply with Shire Policy 2.6 (Policy 4) in relation to obtaining quotes. A number of examples are described below:

a. Contractor A was engaged to provide services under a contract valued at more than $20,001, meaning that two (2) written quotes were required to be obtained. Only one written quote was obtained and no reason was provided for not obtaining two.

b. Contractor B was engaged to provide services under a contract valued at more than $20,001, meaning that two written quotes were required to be obtained. Only one (1) written quote was obtained. The reason provided for only obtaining one quote was: “Given their previous work and the fact that they are already well aware of the system and its deficiencies, I believe it to be counter productive [sic] to seek quotations for such remedial actions over the two financial years”.

c. Contractor C was engaged to provide services under a contract valued at more than $50,000, meaning that three written quotes were required to be obtained. Only two (2) written quotes were obtained. The reason provided for only obtaining two quotes was: “Limited number of consultants undertake this work. Limited timeframes.”

d. Contractor D was engaged to provide services under a contract valued at more than $20,001, meaning that two written quotes were required to be obtained. Only one (1) written quote was obtained. The reason provided for only obtaining one quote was: “[Contractor] has been engaged by the Shire as a financial/accounting consultant since 2002 and has a very good intimate knowledge of the Shire’s financial management procedures, processes, position etc. I did not seek quotes on this basis and believe that I could engage with him without the need for obtaining further quotes”.

**Finding 27:** While acknowledging the remoteness of the Shire may make it more difficult to obtain quotes in some cases, the Authorised Persons consider that, in the majority of instances, the reasons provided by Shire staff for not complying with Shire Policy 2.6 (Policy 4) requirements regarding obtaining quotes were not adequate or, at best, not adequately recorded.
5.4 Failure to monitor purchases – poor contract management

52. Authorised Persons identified that the Shire regularly paid more for goods and services received than was approved by Council and/or raised on the purchase orders.

5.4.1 Tenders

53. As set out in part [5.2] above, the Shire made payments in relation to certain tenders in excess of the amounts approved by Council and raised in purchase orders by the following amounts:

Tender 2015-01 –
- Roadtech: $255,837.90
- Quadrio: $942,066.90
- Northern Goldfields: $347,302.70

Tender 2015-02 – $693,787.32 (and even if purchase orders had been raised to the amount approved by Council, $130,984).

Tender 2015-03 – $152,168.00.

54. On the basis of the above tenders, it is also likely that payments in relation to Tenders 2015-04, 2015-05 and 2015-06 also exceeded the amounts approved by Council and raised in purchase orders. However this could not be confirmed due to the state of records kept by the Shire.

55. The Authorised Persons are satisfied that the over payments in relation to the reviewed tenders are representative of a systemic failure on the part of Shire staff to adequately manage tender contracts and ensure that payments did not exceed what was approved by Council and raised in purchase orders.

56. The Authorised Persons also note regulation 13(1) of the Financial Management Regulations, under which a list of accounts paid by the CEO is presented to the Council at the ordinary council meeting after the list is prepared and recorded in the minutes of that meeting. The Authorised Persons are concerned that the payments in excess of the approved tender amounts were not detected by the Council.

57. It is acknowledged that the Council may have been assisted by additional or contextual information (e.g. the list of payments being clearly tracked against project budgets). The Authorised Persons further acknowledge the submission of Cr Quadrio that Council was given a verbal assurance that certain projects were under budget. However, the Authorised Persons consider that there was sufficient information in the payment lists to detect the budget overruns, particularly given the significant amounts in question and the extended period of time over which payments were made. The Council’s failure to detect the excessive overpayments in relation to Tenders 2015-01, 2015-02 and 2015-03 suggests that Council did not adequately consider the lists presented to it at ordinary meetings.

Finding 28: there was a systemic failure by Shire staff to adequately manage tender contracts and monitor payments. This resulted in payments being made in excess of amounts approved by the Council and/or raised in purchase orders.

Finding 29: Council failed to adequately consider the monthly list of payments made by the CEO presented to it at ordinary meetings, likely leading to the failure to detect payments in excess of Council approval in relation to Tenders 2015-01, 2015-02 and 2015-03.

5.4.2 Other examples

58. In 2015, the Shire contracted a Supervisor for Works through LO-GO Appointments. The Shire raised Purchase Order 1094 (PO 1094) amounting to $20,000 on 6 March 2015 with the following description, ‘Provision of Temp Supervisor for Works March 2015’.

59. A contractor was appointed to the position of Executive Manager Technical Services,
however, appears to be named on numerous documents under the unofficial title of ‘Supervisor for Works’.

60. On numerous occasions, LO-GO Appointments invoiced the Shire for the work conducted by the contractor. The Shire staff used PO 1094 as authorisation for payment of all invoices. In total, payments totalling $166,442.59 were made against PO 1094 between March and December 2015.

61. Similarly, the Shire raised Purchase Order 1102 for LO-GO Appointments totalling $8,695 for a labourer. This purchase order was used as authorisation for payment of invoices totalling $15,776.97.

62. Finally, Purchase Order 894 (PO 894) was raised for $25,000 dated 1 November 2011\(^2\) in relation to engineering technical support and management provided by Greenfields Technical Services. PO 894 was used for payment of three invoices totalling $41,207.28.

63. The Authorised Persons are satisfied that the examples above are representative of a systemic failure by Shire staff to adequately monitor purchases to ensure that payments did not exceed the amounts raised in purchase orders and otherwise comply with the Shire’s policies on purchase of goods and services.

**Finding 30:** there was a systemic failure by Shire staff to adequately manage contracts and monitor payments generally. This resulted in payments being made in excess of amounts approved by the Council and/or raised in purchase orders.

### 6. Dealings with Michael Gooch Contracting

#### 6.1 Tender 2016-01 – Maintenance and Building Works Panel Tender

64. Pursuant to regulations 24AB and 24AC of the Functions and General Regulations, a local government may establish a panel of pre-qualified suppliers to supply particular goods or services to the local government if it has a written policy regarding such matters and there is a continuing need for the particular goods or services to be supplied by pre-qualified suppliers. Shire Policy 2.26 (Panels of Pre-qualified Suppliers) sets out the Shire’s policy for establishing a panel of pre-qualified suppliers.

65. Regulation 24AH of the Functions and General Regulations provides that an application to join a panel of pre-qualified suppliers must be rejected unless it is submitted at a place, and within the time specified in the invitation for applications to join the panel. Additionally, an application that is submitted at a place and time specified in the invitation but fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the application.

66. Tender 2016-01 invited interested parties to join a panel of pre-qualified suppliers for a range of maintenance and buildings works (e.g. air-conditioning, building, cleaning, electrical, telecommunications etc).

Tenders were to include, among other things, completed tender forms, including:

- a statement of conformity;
- a schedule of types of works, availability, rates, accreditations plant/equipment list, occupational health and safety and statement of intent;
- details of insurances;
- referees; and
- details of current commitments and legal instrument.

67. Tenders were to be submitted either electronically to a specified email address, by fax or delivered in person. The assessment of tender submissions was commenced by Mr Taylor.

\(^2\) The year 2011 is believed to be a typographical error by Ms Nunan as she was not associated with the Shire in 2011.
However, due to time constraints he requested the assessment be completed by another member of staff (the Senior Administration Officer). The tender process, save as discussed below, appears to have otherwise complied with the Functions and General Regulations and Shire Policy 2.26.

68. At the OCM held on Wednesday 24 August 2016, Council voted to approve ten tenders, including a tender by Michael Gooch Contracting.

69. The purported tender submission for Michael Gooch Contracting did not satisfy the tender requirements. It consisted of a one-page letter addressed to Mr Taylor as CEO expressing interest in the Shire’s request for suitable personnel to carry out contractual and maintenance work. The letter advised of Mr Gooch’s rates and charges, and attached copies of a series of certificates and qualifications. The letter was undated and it is not known when it was received or how it was submitted (or even if it was submitted as part of the tender process).

70. It is not clear to the Authorised Persons how and when Mr Gooch’s letter came to be included in the list of potential panel suppliers as part of Tender 2016-01. Mr Gooch claims that he did not submit a tender application for Tender 2016-01.

71. Tender 2016-01 was cancelled by then acting CEO Mr Bastow on 9 February 2017 when he was informed of the discrepancy relating to the tender assessment process.

**Finding 31:** Michael Gooch Contracting should not have been considered for the pre-approved panel as part of Tender 2016-01 because he had not submitted a tender in compliance with the tender requirements (if at all).

**Finding 32:** As Michael Gooch Contracting did not properly submit a compliant tender for Tender 2016-01, the Authorised Persons are satisfied that it should not have been approved by the Council as a pre-qualified supplier when assessed against other tenderers.

### 6.2 Payments to Michael Gooch Contracting

72. Given the circumstances in which Michael Gooch Contracting was included as a pre-approved supplier following Tender 2016-01, Authorised Persons closely examined other payments to Mr Gooch.

#### 6.2.1 Heritage Interpretive Centre #C132157

73. On 11 May 2016 (approximately three months before Tender 2016-01), Purchase Order 1919 (PO 1919) for the sum of $50,000.00 was authorised by Mr Taylor for the payment of Michael Gooch Contracting relating to work on the Heritage/Interpretive Centre.

74. Attached to PO 1919 was a Purchasing Checklist for Shire Policy 2.6. Due to the value of the services to be obtained, at least two (2) written quotes from alternative suppliers was required by the Shire Policy 2.6. No quotes were obtained. The checklist was signed by Mr Taylor and dated 11 May 2016.

   a. Seventeen (17) invoices were issued by Michael Gooch Contracting in relation to ‘Heritage Interpretive Centre #C132157’, resulting in ETF payments of $74,723.98.

   b. All seventeen (17) payments were approved by at least one unauthorised signatory.

   c. Six (6) payments were approved by Mr Taylor.

**Finding 33:** the purchase order did not comply with item 4 of Shire Policy 2.6, because no quotes appear to have been obtained

**Finding 34:** All seventeen (17) payments to Michael Gooch Contracting did not comply with Shire Policy 2.16 (Principle 5) because they were approved by an unauthorised signatory.
6.2.2 Invoice 950308 and 950310
   a. Following cancellation of Tender 2016-01, Michael Gooch Contracting issued invoices 950308 and 950310 to the Shire, each for services priced above $5,000 and therefore requiring two (2) verbal quotes from alternative suppliers to be obtained pursuant to Shire Policy 2.16.
   b. Two Purchase Orders were raised by the then Executive Manager, Engineering and Development Services.
   c. Attached to each Purchase Order was a note that stated “Michael Gooch has been appointed as an independent contractor by previous CEO Mr Dean Taylor for the duration of works”.

**Finding 35:** the purchase order did not comply with item 4 of Shire Policy 2.6, because no quotes appear to have been obtained.

7. Dealings with Elite Electrical Contracting Pty Ltd

75. As part of the inquiry, the Authorised Persons focused on payments made to Elite Electrical Contracting (Elite) due to the significant total amount of such payments and the volume of transactions involved over an approximately two (2) year period.

76. Payments dating back to May 2015 were reviewed and the Authorised Persons identified that in most instances, payments to Elite did not comply with Shire Policy 2.6 for one or more of the following reasons:
    - non-compliance with quoting process;
    - purchase orders raised by unauthorised persons or in excess of delegated power; and
    - payments exceeding purchase order amounts.

77. The Authorised Persons established that the total amount paid to Elite between May 2015 and July 2017 was approximately $623,348.23, although note that approximately $25,139.66 of that amount was made during the active period of the pre-approved panel of suppliers in relation to Tender 2016-01. Elite was a panel member.

78. The Authorised Persons also note that, excluding the approximately five (5) month active period of the pre-approved panel of suppliers, Elite provided the Shire with $598,208.57 worth of services in less than two (2) years without evidence of inviting for tenders in relation to these contracts. This may indicate non-compliance with regulation 11 of the Functions and General Regulations, which require a local government to publicly invite tenders where the consideration for the services under the contract is expected to be more than $150,000 (or $100,000 before 1 October 2015) unless the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier.

Alternatively, if the Shire entered into two (2) or more contracts to avoid having to publicly invite tenders, this may also constitute a breach of the anti-avoidance provision (regulation 12) if a significant reason for not dealing with the matter in one contract was the desire to avoid regulation 11. Such contraventions may also constitute a breach of section 3.57 of the Act.

**Finding 36:** contracts and payments with Elite repeatedly failed to comply with the Shire Policy 2.6 (Policy 3 and 4) and Shire Policy 2.16 (Principle 5).

**Finding 37:** the Shire may have breached section 3.57 of the Act by not publicly inviting tenders if consideration under a contract with Elite was, or was expected to be, worth more than $150,000 (or $100,000 before 1 October 2015).
8. Department’s role in the Shire’s engagement of Mr Taylor

79. The Authorised Persons understand that the Shire’s decision to appoint Mr Taylor as acting CEO was made having regard to informal advice from a Departmental officer to the effect that if there was no suitable internal candidate, a council may appoint an external contractor for a short period of time, such as one month. That advice was provided in August 2015.

80. Ultimately, it was the responsibility of the Shire to ensure that it understood and complied with its statutory obligations. Obligations as significant as the appointment of the CEO (whether on an acting basis or otherwise) required more than the taking of informal advice. If the Shire had obtained appropriate advice, it should have been clear to the Shire that appointing an external contractor based on a schedule of fees as acting CEO is contrary to the Act.

81. The Authorised Persons also note that Mr Taylor’s appointment by the Shire in August 2015 was as ‘Contract Project Manager’. The minutes of the Special Council Meeting on 27 August 2015 appointing Mr Taylor do not record discussion of appointing him as acting CEO. Mr Taylor was not purportedly appointed as acting CEO until 14 December 2015, illustrating the fact that there was sufficient time for the Shire to obtain appropriate advice.

9. Summary of key findings

9.1 Mr Taylor was not validly appointed as acting CEO

82. The inquiry examined the circumstances surrounding the engagement of Mr Taylor as acting Chief Executive Officer. Authorised Persons note that Mr Taylor was ineligible to be appointed as acting Chief Executive Officer and therefore the Council did not appoint an acting CEO at the OCM on 14 December 2015.

This failure resulted in:

a. the Shire not having a formal CEO or acting CEO between 1 December 2015 and 23 November 2016; and

b. payments authorised by Mr Taylor (totalling $345,816.82) not complying with Shire Policy 2.6 (no valid purchase order) and/or Shire Policy 2.16 (no payment approval from two authorised signatories).

9.2 Unauthorised payments to Red Tail Ridge Consulting

83. Authorised Persons found that a total of seventy-five (75) invoices were submitted to the Shire by Mr Taylor for his purported role as acting CEO and other services provided through his Company Red Tail Ridge Consulting.

84. All payments made to Red Tail Ridge Consulting did not comply with Shire Policy 2.16 as they were approved by at least one unauthorised person.

85. Additionally, elected members Cr Quadrio and Cr Harris authorised payments by the Shire to Red Tail Ridge Consulting. There does not appear to have been an authorisation by the Council or a CEO for them to do so, possibly resulting in contravention of regulation 9 of the Conduct Regulations (minor and recurrent breach).

9.3 Delegations

86. Staff regularly raised purchase orders and authorised payments either without or in excess of their delegated power.

9.4 Overpayments on purchase orders and failure to monitor purchases

87. The Shire made payments in relation to certain tenders in excess of the amounts approved by Council and raised in purchase orders by the following amounts:
Tender 2015-01 –
- Roadtech: $255,837.90
- Quadrio: $942,066.90
- Northern Goldfields: $347,302.70

Tender 2015-02 – $693,787.32 (and even if purchase orders had been raised to the amount approved by Council, $130,984).

Tender 2015-03 – $152,168.00

88. It is also likely that payments in relation to Tenders 2015-04, 2015-05 and 2015-06 also exceeded the amounts approved by Council and raised in purchase orders, however this could not be confirmed due to the records kept by the Shire.

89. The Authorised Persons consider that the significant amounts by which payments were made in excess of amounts approved by Council indicate a systemic failure by staff to adequately manage contracts and monitor payments.

90. Further, the failure by staff was likely compounded by the Council's failure to adequately consider the monthly list of payments made by the CEO and presented to the Council at each OCM.

9.5 Failure to obtain quotes

91. On many occasions local government staff failed to comply with Shire Policy 2.6 by not obtaining the necessary number of quotes before purchasing goods and services. While the remoteness of the Shire may make it more difficult to obtain quotes in some cases, the Authorised Persons consider that in the majority of cases, inadequate reasons were provide by staff for non-compliance.

92. This failure was particularly pronounced in relation to Elite Electrical Contracting, which received payments of approximately $623,348 between May 2015 and July 2017.

9.6 Dealings with Michael Gooch Contracting

93. Michael Gooch Contracting should not have been considered for the pre-approved panel as part of Tender 2016-01 because he did not submit a compliant tender and, therefore, should not have been approved by the Council as a pre-qualified supplier.

9.7 Dealings with Elite Electrical Contracting

94. Elite provided the Shire with more than half a million dollars worth of services over an approximately two-year period. There was no evidence of quotes obtained nor inviting for tenders with these contracts despite their size.

95. Not inviting for tenders where the consideration for the services under the contract are expected to be more than $150,000 (or $100,000 before 1 October 2015) may be a breach of section 3.57 of the Act. Further, if the Shire entered into multiple smaller contracts with Elite to avoid having to publicly invite tenders, this may constitute a breach of anti-avoidance regulations.

10. Considerations relevant to recommendations

96. The Authorised Persons are responsible for recommending the most suitable action to be taken against the Shire as a result of the findings of this inquiry. Serious consideration has been given surrounding the appropriateness of the recommendations to ensure the utmost benefit is afforded to the Shire.

97. The Authorised Persons are of the view that the systemic mismanagement issues identified at the Shire in this report were a result of a lack of understanding by elected members and local government staff of their obligations under the Local Government Act, relevant regulations and Shire policies.
10.1 **Challenging role of elected members in regional areas**

98. In determining the appropriate recommendations, Authorised Persons are acutely aware of the unique and challenging role that elected members have, and that sometimes they have limited support available to them, especially in regional areas. This situation was exacerbated in the current circumstances by the departure of Ms Nunan as CEO and subsequent issues with the position of the CEO, including significant reliance on Mr Taylor for advice.

99. This raises the separate issue, beyond the scope of this inquiry, of whether elected members should undertake minimum training or induction before commencing their roles, which the Authorised Persons note is an issue currently the subject of the *Local Government Act 1995 Review*, being undertaken by the Department of Local Government, Sport and Cultural Industries (and has been the subject of recommendations in Corruption and Crime Commission reports and previous inquiries under the Local Government Act).

10.2 **Updated policies and delegations**

100. The Authorised Persons understand that the Shire has already taken steps to improve its governance arrangements by updating its policies and delegations (on 23 October 2017), and also undertaken numerous training modules relating to policy and governance.

10.3 **Staff turnover at the Shire**

101. The Authorised Persons note that the majority of administration staff who were deemed to be responsible are no longer associated with the Shire.

11. **Recommendations**

102. It is recommended that:

1. The elected members and Shire staff undertake governance and accountability training, and any other such training, as determined appropriate by the Director General.

2. Following completion of the training referred to in Recommendation 1, (or if the Director General determines that no further training is required in light of the training which the Authorised Persons understand has already been undertaken, following the Director General notifying the Shire CEO), and by such time as to be determined by the Director General, the Shire CEO is to deliver to the Director General a comprehensive report to be endorsed by Council:
   a. demonstrating the knowledge and understanding gained by the Shire from the training; and
   b. outlining the steps taken by the Shire to implement such knowledge and understanding.

3. The Shire undergo an independent governance review as determined appropriate by the Director General.

4. The Director General terminate the Shire’s audit contract by giving a notice to the local government specifying the date on which the audit contract is to terminate in accordance with section 51(3) of Schedule 9.3 of the Act.

5. That a qualified independent project manager be employed for any project with external funding of $1million or more. It is considered prudent to do so given the expectations from members of the public regarding the accountability of expenditure of public monies.