



Department of
**Local Government, Sport
and Cultural Industries**

Report of the Inquiry into the Shire of Perenjori

Authorised Inquiry under Part 8 Division 1
of the Local Government Act 1995 (WA)



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**Department of Local Government,
Sport and Cultural Industries**

Perth office

Gordon Stephenson House
140 William Street
Perth WA 6000

Leederville office

246 Vincent Street
Leederville WA 6007

GPO Box 8349 Perth Business Centre WA 6849

Email: info@dlgsc.wa.gov.au

Website: www.dlgsc.wa.gov.au

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1. Introduction

1. Prior to this report being finalised, the Minister for Local Government issued a 'Show Cause' notice to the council. The resultant effect was that five councillors offered their resignation leaving the council without a quorum. The Governor declared the remaining seats vacant and a Commissioner has now been appointed to stand in as council until elections are held in May 2020.
2. Perenjori is a small farming and mining local government area in the Mid-West region of Western Australia, about 360 kilometres north of Perth. The Shire of Perenjori (**Shire**) covers an area of 8,300 square kilometres and has a population of 608, of which 294 are electors. The Shire has an operating budget of \$7,920,210 and a financial health indicator score of 71 on the My Council website.¹
3. The Shire's Council (**Council**) consists of nine members. Councillors are elected by the constituents and serve a two or four year term. The Shire President (currently Mr Laurie Butler) is elected by Council and the incumbent has held the position since 2015.
4. On 31 January 2019, Mr Paul Bawden commenced as the Shire's Chief Executive Officer (**CEO**). Immediately prior to this, an Acting CEO occupied the role. During the entire period of time to which this Authorised Inquiry relates, the Shire's substantive CEO was Ms Alison Mills, who held that position from 15 October 2012 until her resignation in July 2018. Before her involvement with the Shire, Ms Mills held a Senior Executive position at the Shire of Carnarvon.
5. In addition to the position of CEO, the Shire has two Senior Executive positions: Manager Corporate Development and Manager Infrastructure Services.
6. Section 8.3 of the *Local Government Act 1995* (**Act**) gives the Director General of the Department of Local Government, Sport and Cultural Industries (**Department**) the authority to inquire into local governments and their operations and affairs. Pursuant to section 8.3(2) of the Act, 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.

¹ My Council: Shire of Perenjori: <https://www.mycouncil.wa.gov.au/Council/ViewCouncil/103>

7. On 10 January 2018, the Acting Director General of the Department authorised an inquiry into the operation and affairs of the Shire.²
8. The Authorised Inquiry was prompted by several complaints received from electors and by the results of a Probity Audit which was conducted by the Department in 2017.
9. The Terms of Reference of the inquiry are as follows:

... to inquire into and report on the operations and affairs of the Shire of Perenjori (Shire) for potential breaches of the Act and associated Regulations.

The nature of the inquiry will encompass aspects of the Shire and associated business entities that have, have had, may have or may have had dealings with the Shire, and the operations and practices related to tendering, procurement and financial management, from 1 January 2013 to the present day.
10. This report on the outcomes 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 (**Authorised Persons**).
11. In order to perform their functions, the Authorised Persons issued three (3) directions under section 8.5 of the Act, including one direction requiring the Shire President to participate in a formal record of interview. The required persons complied with the directions. Interviews took place on 17 April 2018 and 1 May 2018.
12. A voluntary record of interview was also conducted with the Shire's then CEO, Ms Mills, on 3 May 2018.³
13. Various persons and members of the Council serving their terms during the period of this inquiry were given an opportunity to comment on this report in draft form before it was finalised and provided written submissions. Those submissions were considered by the Authorised Persons and form part of this report.⁴

² Authorisation of Local Government Inquiry

³ Invitation to attend voluntary record of interview

⁴ Submissions

2. Matters not considered

14. This report does not consider matters that are currently being considered or investigated by other bodies, which includes a complaint lodged with the Western Australian Industrial Relations Commission.

3. Statutory framework

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

3.1 Governance

16. The Act and regulations define the roles and responsibilities of the Council, President, Councillors and employees. Relevantly, the Act provides:

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.*

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.*

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.*

17. 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 decisions at formal council or committee meetings.

18. As the President and councillors are not involved in operational matters, each local government employs a 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:

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.*

19. 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, or appointing an auditor).
20. The role of local government staff is determined by the CEO and endorsed by Council. 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.

3.2 Disclosure of financial interests

21. Part 5, Division 6 of the Act sets out the requirements of all local councils regarding disclosure of "interests". Relevantly:

Section 5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

- (a) the relevant person; or*
- (b) a person with whom the relevant person is closely associated, has —*
- (c) a direct or indirect financial interest in the matter; or*
- (d) a proximity interest in the matter.*

Section 5.60A. Financial interest

For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

Section 5.60B. Proximity interest

- (1) *For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —*
 - (a) *a proposed change to a planning scheme affecting land that adjoins the person's land; or*
 - (b) *a proposed change to the zoning or use of land that adjoins the person's land; or*
 - (c) *a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.*
- (2) *In this section, land (the proposal land) adjoins a person's land if —*
 - (a) *the proposal land, not being a thoroughfare, has a common boundary with the person's land; or*
 - (b) *the proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or*
 - (c) *the proposal land is that part of a thoroughfare that has a common boundary with the person's land.*
- (3) *In this section, a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.*

5.62. Closely associated persons

- (1) *For the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if —*
 - (a) *the person is in partnership with the relevant person;*
or
 - (b) *the person is an employer of the relevant person; or*
 - (c) *the person is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee; or*
 - (ca) *the person belongs to a class of persons that is prescribed; or*
 - (d) *the person is a body corporate —*

- (i) *of which the relevant person is a director, secretary or executive officer; or*
- (ii) *in which the relevant person holds shares having a total value exceeding —*
 - (I) *the prescribed amount; or*
 - (II) *the prescribed percentage of the total value of the issued share capital of the company, whichever is less; or*
- (e) *the person is the spouse, de facto partner or child of the relevant person and is living with the relevant person; or*
- (ea) *the relevant person is a council member and the person —*
 - (i) *gave a notifiable gift to the relevant person in relation to the election at which the relevant person was last elected; or*
 - (ii) *has given a notifiable gift to the relevant person since the relevant person was last elected; or*
- (eb) *the relevant person is a council member and since the relevant person was last elected the person —*
 - (i) *gave to the relevant person a gift that section 5.82 requires the relevant person to disclose; or*
 - (ii) *made a contribution to travel undertaken by the relevant person that section 5.83 requires the relevant person to disclose; or*
- (f) *the person has a relationship specified in any of paragraphs (a) to (d) in respect of the relevant person's spouse or de facto partner if the spouse or de facto partner is living with the relevant person.*

22. Pursuant to section 5.68(1) of the Act, if a member has disclosed an interest in a matter, the members present at the meeting who are entitled to vote on the matter:

- (a) *may allow the disclosing member to be present during any discussion or decision-making procedure relating to the matter; and*
- (b) *may allow ... the disclosing member ... to participate in discussions and the decision-making procedures relating to the matter if —*
 - (i) *the disclosing member also discloses the extent of the interest; and*
 - (ii) *those members decide that the interest —*
 - (I) *is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct in relation to the matter; or*
 - (II) *is common to a significant number of electors or ratepayers.*

23. Pursuant to section 5.68(2), a decision under section 5.68(1) is to be recorded in the minutes of the meeting relating to the matter together with the extent of any participation allowed by the council or committee.

3.3 Tendering

24. Pursuant to section 3.57 of the Act and regulation 11 of the *Local Government (Functions and General) Regulations 1996 (Functions and General Regulations)*, tenders are generally required to be publicly invited before a local government enters into a contract for the supply of goods or services worth more, or expected to be worth more, than \$150,000:

Regulation 11. When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$150 000 unless sub regulation (2) states otherwise [e.g. goods or services obtained through the WALGA Preferred Supplier Program, or where the unique nature of the goods or services means it is unlikely that there is more than one potential supplier].*

25. Further, regulation 12 of the Functions and General Regulations prohibits contracts being split for the purposes of avoiding the tender threshold:

12. *Anti-avoidance provision for r. 11(1)*

(1) *This regulation applies if a local government intends to enter into 2 or more contracts (the contracts) in circumstances such that the desire to avoid the requirements of regulation 11(1) is a significant reason for not dealing with the matter in a single contract.*

(2) *If this regulation applies, tenders are to be publicly invited according to the requirements of this Division before the local government enters into any of the contracts regardless of the consideration.*

4. **Key Shire policies**

26. The Shire, as a public authority, must be able to demonstrate to suppliers and the community that it conducts its procurement activities with a high standard of probity and accountability.

4.1 **Shire Delegation Schedule**

27. The Shire's Schedule of Delegations – 3014 Council Purchasing Authority provides:

The Chief Executive Officer is authorised to carry out authorised purchasing on behalf of the Shire and within budgetary constraints and in accordance with the Shire of Perenjori Purchasing Policy 4009.⁵

28. The Authorised Persons note that the correct title of the Purchasing Policy is Purchasing Policy 4007 (not 4009).

⁵ Shire of Perenjori Delegation Schedule

4.2 Shire Policy 4007 – Purchasing Policy

29. In accordance with regulation 11A of the 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.
30. The Shire adopted Purchasing Policy 4007 on 17 April 2014 (**Policy 4007**). That Policy outlines the requirements for the procurement of goods and services by the Shire. Policy 4007 states the following under the heading of “Ethnics and Integrity” (sic):
- *All officers and employees of the Shire shall observe the highest standards of ethics and integrity in undertaking purchasing activity and act in an honest and professional manner that supports the standing of the Shire.*
 - *The following principles, standards and behaviours shall be observed and enforced through all stages of the purchasing process to ensure the fair and equitable treatment of all parties:*
 - *Full accountability shall be taken for all purchasing decisions and the efficient, effective and proper expenditure of public monies based on achieving value for money;*
 - *All purchasing practices shall comply with relevant legislation, regulations and requirements consistent with the Shire policies and code of conduct;*
 - *Purchasing is to be undertaken on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently;*
 - *All processes, evaluations and decisions shall be transparent, free from bias and documented in accordance with applicable policies and audit requirements;*
 - *Any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed; and*
 - *Any information provided to the Shire by a supplier shall be treated as commercial-in-confidence.*

31. Under the heading "Value for Money", Policy 4007 states the following:

An assessment of the best value for money outcome for any purchase should consider:

- *all relevant whole-of-life costs and benefits, whole of life cycle costs (for goods) and whole of contract life costs (for services) including transaction costs associated with acquisition, delivery, distribution, as well as other costs such as but not limited to holding costs, consumables, deployment, maintenance and disposal;*
- *the technical merits of goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality;*
- *financial viability and capacity to supply without risk of default. (Competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history); and*
- *a strong element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable.*

Where a higher priced conforming offer is recommended, there should be clear and demonstrable benefits over and above lower total priced, conforming offers.

32. Policy 4007 further provides that all purchases of goods and services with a value of \$150,000 and over shall be by public tender unless an exemption applies (see regulation 11(2) discussed above).

33. In relation to all purchases under \$150,000, Policy 4007 states:

The CEO will demonstrate due diligence seeking quotes and to [sic] comply with any record keeping and audit requirements.

34. The following requirements are provided for the following transaction thresholds:

- Up to \$3,000: good and services may be purchased with a single satisfactory quotation, and staff should ensure that local suppliers are considered first and that value for money is being obtained;

- Over \$3000 and up to \$10,000: staff must obtain verbal quotes from three (3) alternative suppliers and if staff are unable to obtain three (3) quotes, this should be documented;
- Over \$10,000 and up to \$50,000: staff must obtain three (3) written quotes from alternative suppliers, if staff are unable to obtain three (3) written quotes, this should be documented and the purchase approved by the CEO; and
- Over \$50,000 and less than \$150,000: staff must obtain a minimum of three (3) written quotes from alternative suppliers and if staff are unable to obtain three (3) written quotes, this should be documented.

4.3 Shire Policy 1014 – Records Management Policy

35. The Shire maintains Shire Policy 1014 – Records Management Policy (**Policy 1014**), which was adopted on 21 September 2017. The objectives of Policy 1014 are to ensure the statutory requirements of the *State Records Act 2000 (WA)* (**State Records Act**) and associated legislation are met, and to provide record keeping principles and processes that identify, capture and protect the Shire's corporate records of continuing value for legal, financial, administrative accountability and historical purposes.
36. For present purposes, relevant requirements of Policy 1014 include:
- *The Shire's corporate records are to be managed in accordance with the Shire's Record Keeping Plan. All elected members, officers and contractors are responsible for maintaining complete, accurate and reliable records as evidence of the actions, decisions and transactions they make or undertake whilst performing their duties on behalf of the Shire; and*
 - *The CEO is to ensure that an organisational system for capture and management of corporate records is maintained by the Shire which is compliant with current legislative requirements and best practice standards.*

5. Inquiry findings

5.1 Findings on record keeping

37. As a preliminary matter, the Authorised Persons note that during the course of the inquiry, it became clear that the state of files relevant to the inquiry, tender registers and electronic records of the Shire was, at best, haphazard. In some cases, poor record keeping severely hampered the ability of the Authorised Persons to fully inquire into the operations and affairs of the Shire.

Records management

38. Section 19 of the State Records Act provides that *"every government organisation must have a record keeping plan that has been approved by the [State Records] Commission"*. The Shire is a "government organisation" for the purposes of the State Records Act.
39. Section 17 of the State Records Act provides that a government organisation's record keeping plan must be complied with by *"(a) the government organisation; and (b) every government organisation employee of the organisation."*
40. Section 78(1) of the State Records Act provides that *"a government organisation employee who does not keep a government record in accordance with the record keeping plan of the organisation commits an offence."*
41. A "government organisation employee" includes a person who, whether or not an employee, alone or with others governs, controls or manages a government organisation, and in this case, would include the CEO and Shire Councillors.
42. Investigators were unable to locate any documentation that would support the Shire's Recordkeeping Plan 2010 (**Plan**) having been approved by the State Records Commission, pursuant to section 23 of the State Records Act.
43. The Plan reiterates that, *"in accordance with section 17 of the [State Records] Act, the Shire of Perenjori and all its employees are legally required to comply with the contents of this Plan"*.
44. The Plan states that it applies to *"all of the Shire of Perenjori's employees, contractors, organisations performing outsourced services on behalf of the Shire of Perenjori, and elected members"*.

45. The Plan goes on to state that it *"applies to all records created or received by any of the above parties, regardless of physical format, storage location, or date created"*.
46. A "record" for the purposes of the State Records Act *includes "anything on which information has been stored or received either mechanically, magnetically or electronically"*. It is accepted that electronic mail constitutes "records".
47. Clause 2.2 of the Plan provides that *"the creation and management of the Shire of Perenjori electronic records, including electronic mail, are carried out by all staff"*.
48. Appendix 5 to the Plan, entitled "Shire of Perenjori Records Management Policies and Procedures", states, under the heading "Electronic Records", that all electronic documents constituting a record must be captured within a "corporate approved system" which meets the State Records Act record keeping requirements.
49. Under the heading "Email Management: Emails", Appendix 5 also provides
Emails sent / received by staff that has [sic] continuing value to the Shire of Perenjori and considered Local Government Records are to be printed and assigned a file number and captured into the Records Registration. Each individual staff member is responsible for registering their own emails.
50. Appendix 5 also provides as follows, under the heading "Elected Members [sic] Records Capture and Control":
Correspondence received for Elected Members will be entered as per incoming mail procedure and entered into Councillors Correspondence Register.

The Shire will ensure records will be created which properly and adequately record the performance of member functions arising from their participation in the decision-making process of council and the various committees of council.

This requirement will be met through the creation and retention of records of meetings of the Council and the Committees of Council and the discharge of Council Business.

All elected members are required to ensure any documents meeting the above criteria are passed to council to be registered as part of Council's correspondence registration process into the current registration system."

51. The Shire relies upon the *General Disposal Authority for State Government Information* with respect to the period for which records must be retained. The value of the records' subject matter determines the retention period of a record. On average, however, records are generally required to be retained for at least 5 years after their creation.
52. Under the heading "Migration Strategy", Appendix 5 of the Plan states:
On replacement or upgrade of any Shire of Perenjori's system containing corporate information or records, all legacy data, information and records which constitute corporate records will be migrated into the replacement system. Where no replacement system exists, the Shire will ensure all legacy data, information and records which constitute corporate records will migrate to a system which will ensure the data, information and records may be accessed as long as required under an approved General Disposal Schedule by the State Records Commission.
53. The investigation identified that no emails were sent, received or retained for months at a time for some Shire accounts; notably those of the CEO and the Manager Corporate Development, which would seem improbable. It appears that when the Shire's IT service provider was changed, not all emails were correctly transferred. There is no indication that this problem had been identified or addressed by Ms Mills as the CEO (or by any other staff).

Finding 01: Ms Mills, as CEO, breached section 78(1) of the *State Records Act 2000* by not ensuring government records were being kept in accordance with the Shire's record keeping plan

Tenders register

54. Under regulation 17 of the Functions and General Regulations, the CEO is responsible for keeping the tenders register and making it available for public inspection. According to regulation 17(2), the tenders register is required to include certain information for each invitation to tender, including:
- a brief description of the good or services required;
 - particulars of any person who submitted an expression of interest and any list of acceptable tenderers that was prepared;
 - a copy of the notice of the invitation to tender;
 - the name of each tenderer whose tender has been opened; and
 - the name of any successful tenderer.
55. At the times during which the Probity Audit was undertaken by the Department in 2017, and again during the Authorised Inquiry in 2018, all entries on the Shire's tenders register were incomplete. By way of example, entries on the tenders register often did not include a list or details of any tenderers let alone the name of the successful tenderer.

Finding 02 – Ms Mills, as CEO, has repeatedly failed to comply with obligations under regulation 17(2) of the *Local Government (Functions and General) Regulations 1996* by not including prescribed details on the tender register.

Minutes of council and committee meetings

56. Section 5.22 of the Act requires minutes of a council or committee meeting to be kept. That section provides:
- (1) *The person presiding at a meeting of a council or a committee is to cause minutes to be kept of the meeting's proceedings.*
 - (2) *The minutes of a meeting of a council or a committee are to be submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.*
 - (3) *The person presiding at the meeting at which the minutes are confirmed is to sign the minutes and certify the confirmation.*

57. Regulation 11 of the *Local Government (Administration) Regulations 1996 (Administration Regulations)* provides that the content of minutes of a meeting of a council or a committee must include certain information, including:
- the names of the members present at the meeting;
 - where a member enters or leaves the meeting during the course of the meeting, the time of entry or departure, as the case requires, in the chronological sequence of the business of the meeting;
 - details of each motion moved at the meeting, the mover and the outcome of the motion;
 - details of each discussion at the meeting;
 - written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee; and
 - the extent of certain interest disclosures.
58. A review of the minutes of the Shire's Council meetings during the period from January 2013 to January 2018 identified that they were often incomplete or otherwise did not include the prescribed information (namely, matters in relation to disclosure of financial interests, as discussed in further detail below). This demonstrates that the Shire President, as the person presiding over Council meetings and responsible for causing minutes of the meetings to be kept (pursuant to sections 5.6(1) and 5.22(1) of the Act), repeatedly confirmed minutes of meetings that were incorrect and/or otherwise did not include the prescribed information, in non-compliance with section 5.22 of the Act and regulations 11(b) and (c) of the Administration Regulations.

Finding 03 – During the period January 2013 to January 2018, the Shire President has repeatedly failed to comply with the requirements of section 5.22 of the *Local Government Act 1995* and regulation 11(b) and (c) of the *Local Government (Administration) Regulations 1996* by confirming minutes of Council meetings that were incorrect and/or otherwise did not include the prescribed information.

5.2 Findings on Disclosure of Interests

59. Part 5 Division 6 of the Act requires the disclosure of financial interests in matters affecting local government decisions.
60. Between March 2013 and March 2018, a total of ten (10) separate agenda items have been identified as including an incorrect declaration of interest, as required under section 5.68 of the Act, and/or, in the Authorised Persons' view, minutes of the consideration of those agenda items insufficiently record the Council's decision to allow member/s to stay and/or vote as required (by not identifying whether paragraph (1)(b)(ii)(I) or (1)(b)(ii)(II) of section 5.68 of the Act applied).

Finding 04 – Councillor King may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.1.

Finding 05 – Councillor Cunningham may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.1.

Finding 06 – Councillor Butler may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.1.

Finding 07 – Councillor King may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.2.

Finding 08 – Councillor Reid may have breached section 5.65 of the *Local Government Act 1995* for not disclosing financial interest to the council for agenda item 14042.3.

Finding 09 – Councillor Smith may have breached section 5.65 of the *Local Government Act 1995* for not disclosing financial interest to the council for agenda item 17042.9.

Finding 10 - The Council has breached regulation 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13035.3.

Finding 11 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13056.7.

Finding 12 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13096.3.1.

Finding 13 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13114.1.

Finding 14 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13114.2.

Finding 15 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 14042.3.

Finding 16 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 14128.6.

Finding 17 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 15062.3.

Finding 18 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 17042.9.

5.3 Findings on building contract for Business Incubator Toilets

61. At the December 2017 Ordinary Council Meeting (**OCM**), a Councillor raised a query regarding the awarding of a contract to Geraldton Building Services & Cabinets (**GBSC**) for the Business Incubator Toilets. As a result of the query, Ms Mills obtained the relevant records from storage and compiled a report.

The report states that a quote was obtained in July 2014 by the Building Maintenance Officer (**BMO**) for the construction of the Business Incubator Toilet by Cannon Carpentry (**Cannon**) for \$48,500 including GST with the exclusion of

painting, concreting, plumbing and electrical work.⁶ However, when questioned by the Authorised Persons about this report, Ms Mills stated that she had no recollection or knowledge of the quote obtained by the Business Maintenance Officer.

62. On 8 October 2014, Ms Mills requested a quote from GBSC for construction of the Business Incubator Toilets and a quote was received on 14 October 2014 titled "Construct Disabled Ablutions at Business Park" for the amount of \$60,202.15 excluding GST⁷.
63. The contract for building the Business Incubator Toilets was awarded by Ms Mills to GBSC on 3 November 2014 for \$62,202.15 (it is unknown why there was a \$2000 price difference between the quoted and contract prices)⁸.
64. GBSC Invoice 00056452 dated 30 January 2015 was received for \$66,222.37 including GST and paid on 2 April 2015.
65. This process of awarding the Business Incubator Toilets tender does not appear to have complied with Policy 4007 (as in force at the time) as there is no justification provided for not obtaining three (3) written quotations from alternative suppliers.
66. The Authorised Persons note that Purchase Order (**PO**) 39343 was dated 2 February 2015, which is after the date of the signed contract and signed by Ms Mills only. By signing the PO, Ms Mills acknowledged that the "Council Purchasing Policy" had been adhered to. Ms Mills would not comment during the Record of Interview when directly asked if the Purchasing Policy had been adhered to in this instance.

Finding 19 – Ms Mills, as CEO, failed to comply with Policy 4007 by failing to document why three (3) written quotes were not obtained for the purchase of goods or services relating to the tender to build the Business Incubator Toilets.

Finding 20 – Ms Mills, as CEO, has breached regulation 12(1) of the *Local Government (Functions and General) Regulations 1996* in regard to separating the purchase of three

⁶ Quote from Cannon Carpentry

⁷ Quote from GBSC

⁸ Contract for GBSC

transportable units and furniture for staff quarters that would otherwise be put to public tender as the contract to supply was more or likely to be more than \$150000.

Finding 21 – The Council has breached regulation 12(1) of the *Local Government (Functions and General) Regulations 1996* by approving the separation of the purchase of three transportable units and furniture for staff quarters that would otherwise be put to public tender as the contract to supply was more or likely to be more than \$150000.

5.4 Independent Living Units

The original tender

67. On 23 June 2015, an email was received by Ms Mills from Mr Taylor, then a sales consultant for Shane Crothers Homes (**SCH**)⁹. The email was of an informal nature and advised Ms Mills of Mr Taylor's new work email address. This email appears to have been followed up on 15 September 2015 by Mr Taylor, which ended with the line "If you need anything please let me know." Ms Mills' reply was "we are getting close with Department of Housing, and then will go to tender. Will let you know when this happens."¹⁰ The reference to "getting close with the Department of Housing" appears to allude to the then proposed Independent Living Units Project for the Shire.
68. The Shire then sought tenders for design and construction of two (2) independent living units to accommodate Shire staff within the town site. The tenders funding was from the Midwest Development Commissions Regional Grant Scheme with a maximum budget of \$550,000. The tender was advertised in the Midwest Times and Geraldton Guardian from 4 December to 9 December 2015, with closing date of 18 January 2016¹¹.
69. Ms Mills received an email on Monday 7 December 2015 from Mr Taylor asking for further information on the survey and soil test results that could not be located on the Shire's website. The soil test results were sent directly to Mr Taylor by Ms Mills on 8 December 2015. There is no evidence that this same information was sent to any of the other interested parties at that time or made available on

⁹ Email dated 23 June 2015 from Taylor to CEO

¹⁰ Email chain dated 15 September 2015 between Taylor and CEO

¹¹Tender 01/2016 specifications

the tender's page of the Shire's website¹². On 21 December 2015 Ms Mills sent the Landgate survey to Mr Taylor. A further period had elapsed before other tenderers had the same access to this survey as Mr Taylor had hence giving him an advantage over others when tendering for the project.

70. On 5 January 2016, Ms Mills sent an email to Mr Taylor stating that she might be going to Geraldton on the Friday and would let him know if it was to go ahead¹³. This email attached a further site survey. Ms Mills received an email from Mr Taylor on 8 January 2016 stating "Hi Ali, Thanks for the catch up today, it helped me a lot"¹⁴.
71. Eight (8) submissions were received for the tender and were assessed by three panel members from the Shire's administration, including Ms Mills, on the following criteria:
 - a. Compliance Criteria
 - i. Tenderer Profile
 - ii. Tenderer Declaration
 - iii. Financial Position
 - iv. Conflict of Interest
 - v. Insurance Details
 - vi. Contract Conditions
 - vii. Critical Elements
 - viii. Pricing
 - b. Qualitative Assessment
 - i. Experience and Capacity
 - ii. Personal and Resources
 - iii. Design Process
 - iv. Construction Process
 - v. Local Content
 - c. Tenderer's Price Summary
 - d. Contractors Safety & Health Questionnaire
 - e. Tenderer's Safety Record
 - f. Project Reference Sheet

¹² Email chain dated 7-8 December 2015 between Taylor and CEO

¹³ Email dated 5 January 2016 to Taylor

¹⁴ Email dated 8 January 2016 from Taylor to CEO

- g. Renderer's Resource Schedule
72. Within the report the Compliance Criteria ranked:
- a. McGrath Homes 5
 - b. Fleetwood 5
 - c. TR Homes 5
 - d. Shane Crothers Homes 4 (due to lack of financial information provided.)
73. The Qualitative Assessment ranked:
- a. Shane Crothers Homes 21
 - b. TR Homes 18
 - c. Thermal Comfort Homes 16
 - d. McGrath Homes 14
74. The Price Comparison ranking from lowest was:
- a. McGrath Homes
 - b. Thermal Comfort Homes
 - c. Eco Constructions
 - d. Fleetwood.
75. The overall ranking stated in the report was:
- a. Shane Crothers Homes
 - b. TR Homes
 - c. Thermal Comfort Homes
 - d. McGrath Homes
76. It is noted that, in the summary, a comment by the panel for McGrath Homes states "No storeroom included which is a requirement". The Request for Tender (**RFT**) document RFT 01/2016 does not state that a storeroom is a requirement of the tender. The comment is likely to have reduced the ranking of the McGrath Homes tender.
77. The tender panel's report¹⁵ was submitted to the Council at its 18 February 2016 Ordinary Council Meeting (**OCM**) and Council Resolution 16028.4.1 was carried 8/0 with Cr Spencer declaring an impartiality interest in the item¹⁶.

¹⁵ Report for Tender 01/2016 dated 12 February 2016

¹⁶ Minutes of OCM 18 February 2016 Council Resolution 16028.4.1

78. SCH was informed of its successful tender on 23 February 2016. It is noted that SCH supplied a Financial Report for the year ended 30 June 2015 to the Shire *after* its tender was deemed successful, under cover of a letter dated 25 February 2016 from RSM Australia Pty Ltd, Geraldton, stating SCH had been its client for 11 years¹⁷.
79. The RFT 01/2016 document paragraph 1.18 (Risk Assessment), identifies the need to give consideration to and assess that the tenderers are financially viable and have the financial capability to provide the services for which they are submitting and to otherwise meet their obligations under the proposed contract. The Authorised Persons are of the view that the tender panel's report did not adequately justify the selection of SCH tender over McGrath Homes, TR Homes or Thermal Comfort Homes, particularly as it did not address the omission of SCH's financial information, which was required in the Compliance Criteria – the information was not available until after SCH was awarded the tender.
80. Further, it is noted in the SCH's late submitted financial information reports that the company has twice the liability obligations than assets with not enough equity to cover the liabilities. This should at least have raised concerns and instigated further investigation to mitigate the risk to the Shire.
81. Policy 4007 provides that purchasing is to be "undertaken on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently". The Authorised Persons consider that SCH's tender was assessed more favourably compared to the other tenderers and that McGrath Homes may have been assessed less favourably than, at least, SCH.

Finding 22 – The Tender Panel failed to comply with Policy 4007 by not undertaking the evaluation of potential suppliers for the Independent Living Units contract impartially, honestly and consistently.

82. The Shire Purchasing Policy also provides that purchasing decisions must be transparent, free from bias and appropriately documented, and "any actual or perceived conflict of interest must be identified, disclosed and appropriately managed".

¹⁷ Financial information supplied by Shane Crothers Homes

83. Whilst the evidence available does not on its face indicate a financial interest, nor that Ms Mills and Mr Taylor are closely associated (as defined in section 5.62 of the Act), the Authorised Persons consider on the preponderance of evidence that there exists a personal or casual friendship or, at the very least, a more than purely professional working relationship between the two.
84. The Authorised Persons consider it reasonable to form this view on the basis of:
- the repeated assistance and favourable treatment provided by Ms Mills to Mr Taylor and his company (discussed throughout this Report);
 - the favourable treatment afforded by Ms Mills to Mr Taylor, his former employer, SCH, and ultimately Mr Taylor's business (see below);
 - the numerous meetings or "catch-ups" between the two that did not occur with other individuals and businesses; and
 - an email from Ms Mills to Mr Taylor in September 2017 seeking a recommendation for a roofing person to attend to her private residence (and Mr Taylor's response which included a personalised quote).
85. The Authorised Persons also note that, under regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007*, an "interest" of a council member means "*an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from ... friendship*". Whilst the regulation does not apply to a CEO, the definition is nonetheless a useful guide for identifying potential conflicts within local government.
86. Therefore, overall, the Authorised Persons are satisfied that there was at least a perceived conflict of interest for Ms Mills where the Shire purchasing decisions involved Mr Taylor.

Finding 23 – There is a perceived, if not actual, conflict of interest for Ms Mills in relation to the Shire's original tender process for the Independent Living Units contract.

Finding 24 – Ms Mills, as CEO, did not comply with Policy 4007 by failing to disclose an actual or perceived conflict of interest in relation to the Shire's original tender process for the Independent Living Units contract.

87. Due to Ms Mills' conflict of interest, the tender panel's assessment of tenders for the Independent Living Units contract has brought into question the objectivity and impartiality of the tender process (further supporting Finding 23 above).

The subsequent tender

88. Ms Mills received an email on 2 May 2016 from SCH with an attached letter stating the company was going into Voluntary Administration, effective immediately. At that point, no contract had been signed with SCH and the only outlay was for the design of the buildings¹⁸. Ms Mills also received an email from a competing tenderer, stating it would be willing to be reconsidered in the process since the news of SCH's fate¹⁹.
89. On 9 May 2016, SCH contacted Ms Mills with details of the company that was taking over the builder's contracts²⁰.
90. Also, on 9 May 2016, Mr Taylor, now ex-sales consultant for SCH, contacted Ms Mills from his personal email account:²¹

Hi Ali,

This is my personal email address.

I have just spoken to the Building Commission and they have advised me that once he goes into Liquidation we should be ok to take over any of his jobs. Because you haven't signed a building contract but have paid a deposit you still should be ok.

I will keep in contact with you and let you know of any further developments.

Cheers,

Warren

91. On 23 May 2016, Ms Mills sent SCH's entire tender document to Mr Taylor with the comment: "*Hi Warren application attached. If you could re-submit with new information that would be great.*"²²

¹⁸ 2 May 2016, email and letter stating Shane Crothers Homes Pty Ltd going into Voluntary Administration

¹⁹ Email from Plunkett Homes

²⁰ 9 May 2016, email from Shane Crothers Homes

²¹ 9 May 2016, email from Warren Taylor

²² 23 May 2016, email to Warren Taylor

92. Section 5.93 of the Act provides that an employee must not make improper use of any information acquired in the performance by the person of any of his or her functions to gain directly or indirectly an advantage for the person or any other person. Ms Mills' actions, that is, providing feedback to Mr Taylor on his original tender, and disclosing another company's confidential tender documents to Mr Taylor, clearly demonstrate improper use of information acquired in the performance of her functions.

Finding 25 – Ms Mills, as CEO, may have breached section 5.93 of the *Local Government Act 1995* by improperly disclosing SCH's confidential tender documents to Mr Taylor.

93. On 27 May 2016, four (4) days after Ms Mills invited Mr Taylor to "re-submit with new information", Warren Taylor Homes (**WTH**) submitted an application to the Building Commission for a Building Contractor Licence. WTH was subsequently registered on 15 July 2016²³.
94. Also on 27 May 2016, Ms Mills sent emails to two (2) other builders stating they had until 7 June 2016 to submit a tender for the Independent Living Units²⁴.
95. On 7 June 2016 two further tenders were received by the Shire from Central West Services (**CWS**) and TR Homes.
96. On 8 July 2016, Ms Mills sent an email to Mr Taylor which stated:

Hi Warren,

We are about to commence more detailed assessing and your application is lacking the following:

Qualitative Criteria

Experience and Capacity

Whilst your Company is new you could list the projects you all have been involved in through other work situations, at the moment you would score very low here because it is not clear.

²³ Email from Building Commission Licencing Branch

²⁴ Email to mick@nwbg.com.au and crothersgeoff@gmail.com

Design process – need attention to point 1. Do paragraph up responding, showing your understanding of the site, our needs, the fact that we have agreed on a design.

Construction Process – we need a timeline from start to finish for the project, and who the key contacts would be for what.

Local Content – need to highlight use of local contractors – list them, and commit to supporting local business.

Hope this helps – can you get to me asap – not really supposed to do this – but without these additions your application is not strong enough.

Kind regards

Ali Mills²⁵

97. On 11 July 2016, Ms Mills sent a follow up email to Mr Taylor again asking for the additional information:

“Sorry to nag Warren but I need to prepare a council report ready this Thursday so will need any additions to your application asap.”

98. The requested information for the tender was sent through by Mr Taylor on 13 July 2016.

99. On 15 July 2016, Ms Mills sent a further email to Mr Taylor requesting further information:

Hi Warren

Financial security is important, and no financial information has been provided. Would you agree to a bank guarantee? Or some surety from your own properties even that there is sufficient funds to cover this project?

100. The tender report, dated 15 July 2016 (the same day WTH was granted a Building Contractor Licence), considered the tenders of CWS, TR Homes and WTH and recommended WTH's tender of \$541,054.²⁶ The tender report was considered at

²⁵ Email dated 8 July 2016 to Taylor

²⁶ Report for RFT 01/2016 Independent Living Units dated 15 July 2016

the 21 July 2016 OCM and Council Resolution item 16028.4.2 was carried 9/0, with Cr Spencer not declaring an impartiality interest as she had previously declared.²⁷

101. At no time did the CEO declare the communications she had with Mr Taylor, nor the broader context of their relationship (discussed above). There is no record of Ms Mills communicating with other tenderers let alone assisting them in the preparation of their tender documents in the way that she assisted WTH. In Ms Mills' own words, she was *"not ... supposed to do this"*. There is no record of personal emails or conversations or admissions by Ms Mills with any other tenderers for RTF 01/2016. This, and Ms Mills' perceived conflict of interest, clearly brings into question the objectivity and impartiality of the tender process and if indeed the Shire received best value for money.
102. Following the award of the subsequent tender, on 23 August 2016, a builder who submitted an original tender contacted Ms Mills and questioned how the tender could be awarded to a builder who hadn't submitted a tender originally. The tenderer also questioned how WTH could have meet several criteria given the company was formed after the closing date of the original tender.²⁸
103. The final payment for this contract was made to WTH on 31 May 2017 for a total of \$602,873.74.

Finding 26 – Ms Mills, as CEO, did not comply with Policy 4007 by failing to disclose an actual or perceived conflict of interest in relation to the Shire's subsequent tender process for the Independent Living Units contract.

Finding 27 – Ms Mills, as CEO, has failed to act in accordance with Policy 4007 by not evaluating tenders in relation to the Independent Living Units Project impartially, honestly and consistently.

5.5. Pavilion redevelopment

104. The Shire sought tenders for the redevelopment of the Perenjori Pavilion based on concept drawings provided by the Shire which included renovating the frontage (oval facing) to include concertina doors and new external decking. Also

²⁷ Minutes for OCM 21 July 2016

²⁸ Email from Plunkett Homes

included was the upgrade of the existing kitchen to the standard that would meet health requirements, and to modernise and improve aesthetics and functionality. The Shire had allocated \$220,000 to the project in the 2015/16 budget. The tender RFT 03/2015 was advertised from 24 October to 23 November 2015 with closing date of 23 November 2015²⁹.

105. At the closing date, there had been one submission received, which was assessed by the Manager Corporate Development Services, the Building Officer and Ms Mills on the following criteria:

- a. Compliance Criteria
 - i. Tenderer Profile
 - ii. Tenderer Declaration
 - iii. Financial Position
 - iv. Conflict of Interest
 - v. Insurance Details
 - vi. Contract Conditions
 - vii. Critical Elements
 - viii. Pricing
- b. Qualitative Assessment
 - i. Experience and Capacity
 - ii. Personal and Resources
 - iii. Design Process
 - iv. Construction Process
 - v. Local Content
- c. Tenderer's Price Summary
- d. Contractors Safety & Health Questionnaire
- e. Tenderer's Safety Record
- f. Project Reference Sheet
- g. Tenderer's Resource Schedule

106. Due to the poor response to the RFT, the inadequacy of the one submitted tender and the total price of \$354,398 including GST (\$260,579 for building upgrade and \$93,819 for kitchen upgrade) being significantly over the budgeted amount, the tender panel concluded the request for tender was too broad with minimal detail

²⁹ Pavilion redevelopment specification RFT 03/2015

to attract tenderers. It was recommended that quotes be sought from architectural firms to provide detailed designs of an overall redevelopment.

107. The report was submitted to the Council at 17 December 2015 OCM and Council Resolution 15128.4.1 was carried 9/0 that Council;

i. Not accept the tender submission from GBSC at this time due to the lack of tenders received and the lack of information in the tender to ascertain value for money.

ii. Request quotes through a public process for architectural firms to provide a detailed design for the redevelopment of the Perenjori Recreational Centre which will meet the Council and community needs.³⁰

108. On 12 January 2016, Ms Mills sent an email to Mr Taylor's SCH email address, thanking him for a visit to the Shire and attaching the original RFT documents for the pavilion redevelopment, including the concept drawings³¹:

Hi Warren

Many thanks again for your visit. Much appreciated. I have attached the concepts for the Pavilion – not set in concrete just concepts. We have a load of photos if needed.

If you and your team would like to present concept and costs we can consider outside of tender process as Council has already been down that track with little response. I have attached the original tender do [sic] so you can see what the brief was.

109. Authorised Persons note that the email states that SCH's response would be considered "outside of tender process". Regulation 11(2) of the Functions and General Regulations outlines when a local government does not need to publicly invite tenders. For present purposes, regulation 11(2)(c)(i) is most relevant as it provides that no public invitation for tender is necessary where there has been a tender process within the last six months that failed to identify a tender that satisfied the value for money assessment.

110. In the Authorised Persons' view, this does not mean that the tender process can be circumvented altogether. It simply means that a further public invitation for

³⁰ Minutes for OCM 17 December 2015

³¹ Email dated 12 January 2016 to Shane Crothers Homes

tender for the same project is not required. That is, it allows the local government to directly target firms to submit a quote or tender for the project. In this case, no other firms outside of SCH were approached to provide a quote/tender for this project.

111. On 15 March 2016, Mr Dominic Iaria from SCH sent an email to Ms Mills titled "Perenjori Pavilion Redevelopment" with an attached quotation and a sketch drawing, stating that Mr Taylor was away and had requested the documents be sent to Ms Mills in his absence³².
112. On 15 April 2016, the agenda and confidential items were sent to all councillors for the OCM on 21 April 2016³³. The confidential items consisted of a one-page letter from SCH and two pages of plans for the pavilion redevelopment. The quoted price was \$241,780.00 including GST, excluding the kitchen upgrade.
113. The information provided was considered at the 21 April 2016 OCM where Council Resolution item 16048.4.1 was carried 9/0 to accept the quote from SCH for the Perenjori Recreation Centre as stage 1 with the price of \$219,800 excluding GST, as it was considered to provide value for money³⁴. It is noted the amount given in this report is *excluding* GST which brings the amount to below the budgeted amount.
114. The Council's rejection of the tender from GBSC due to lack of information and the inability to ascertain value for money would seem to be appropriate. It is therefore questionable as to how the quote from SCH could be considered as appropriate considering its lack of information, the lack of a report by administration to the Council to consider all relevant issues, and most importantly, the exclusion of the kitchen upgrade which is a major deviation from the original tender.

Finding 28 – Ms Mills, as CEO has breached section 5.93 of the *Local Government Act 1995* by making improper use of confidential information that was known to her by way of her position as CEO (i.e. the original tender documents) and has advantaged Mr Taylor over and above other tenderers of RFT 03/2015.

³² Email dated 15 March 2016 from Shane Crothers Homes

³³ Email dated 15 April 2016 to all Councillors

³⁴ Minutes of OCM on 21 April 2016

5.6. Staff Quarters

115. A Customer Service Officer at the Shire received an email on 28 June 2016 from StratX Pty Ltd (**StratX**) titled *2 Bedroom Accommodation reduced to **\$65k*. This email was forwarded onto the CEO on the same day³⁵. The email detailed information about fully furnished two-bedroom and kitchen transportable accommodation for \$65,000 excluding GST and installation costs.
116. The total amount of this purchase is unclear as the documentation relating to it sometimes provides a figure below \$150,000 and in other cases above \$150,000. In either case, it does not appear that appropriate procedures for purchase have been followed.
117. Policy 4007 states that for purchases valued at over \$50,000 but less than \$150,000, staff must obtain written quotes from three (3) alternative suppliers and if staff are unable to obtain three (3) quotes, this should be documented. There is no evidence that this occurred.
118. Regulation 11(1) of the Functions and General Regulations also states that when a contract is entered by the local government for a good or service that is or expected to be over \$150,000, a tender must be publicly invited. There is no evidence that this occurred.
119. A Special Council Meeting (**SCM**) was held on 4 July 2016 for the purpose of discussing, amongst other things, a new staff housing opportunity. The report requested Council to consider the purchase of three, two bedroom, two bathroom with full sized kitchen, transportable accommodation units to assist with low cost worker housing to help attract and retain staff.
120. The Authorised Persons note that the quoting of the actual cost of the units in the report is somewhat confusing as several different prices were quoted and it was not always clear what was included in and excluded from the quoted price.
121. The report stated the housing was available for \$50,000 **each** (unfurnished), excluding GST and included:
- i. Total square meterage of each being 50 m²*
 - ii. 2 Queen sized bedrooms both with fully tiled ensuite with frameless glass screen*

³⁵ Email dated 28 June 2018 to CEO

- iii. Full sized kitchen
- iv. Gyprock finished internal walls
- v. Quality ceramic tiles throughout
- vi. Fully furnished including – washer/dryer, fridge, oven. 3 air-conditioner per unit, built-in bedroom furniture, lounge, dining table, two queen size beds and televisions
- vii. Six-star energy rating
- viii. 26m2 awning cover levered off the main building

122. It is noted item *viii* was not included in the \$50,000 price for each unit and was invoiced separately for \$48,500 for the three (3) units. It is unclear whether the presentation of information in this way was intentional or an oversight.
123. Elsewhere, the report stated that the price for purchasing the units to be ready on site would be \$75,800 per unit, or \$227,400 for the three units. The recommendation by the CEO was:
- “That Council offer to purchase the three units from Stratx eggrock Australia Pty Ltd [sic] (exclusive of all costs associated with bringing to site, furniture and sewage connections) for a total of \$150,000 utilising funds within the Staff Housing Reserve account.”*
124. The report also stated that the units had been viewed and they were as the photos stated and were of *“good quality and have been built well”*.
125. When asked by the Authorised Persons who had viewed the units, Ms Mills stated that it was her brother and that he had no building experience or qualifications.
126. Further, the report stated that quotes had been received from two building companies to allow for a comparison with prices coming in around \$120,000 for each completed unit, and that this demonstrated value for money.
127. The Council passed the motion 16074.4.1³⁶ by an absolute majority on 4 July 2016.
128. On 5 July 2016 two (2) invoices were received, one from StratX for \$49,500 including GST (invoice number SX0007) and one from Eggrock Australia Pty Ltd (**Eggrock**) for \$165,000 including GST (invoice number 2017/001). On 6 July 2016, purchase order (**PO**) 512 was raised for the amount of \$49,500 to StratX

³⁶ Minutes of 4 July 2016 meeting

Pty Ltd and PO 513 was raised for the amount of \$165,000 to Eggrock, in both instances by Ms Mills.

129. A payment of \$16,500 for PO 513 was authorised by Ms Mills and made on 7 July 2016 as a deposit to a bank account of Eggrock. A further \$198,000 was authorised by Ms Mills and paid to the same account on the 21 July 2016, being the remaining \$148,500 of PO 513 and the full amount of PO 512.³⁷ All monies transferred for PO 512 and PO 513 were paid into the same account number but under different names. An ASIC search reveals that both companies have the same registered address and principal place of business address, and have the same director.³⁸
130. The Authorised Persons conclude that the splitting of the cost of the accommodation units and transport demonstrates the desire of Ms Mills to avoid the Shire entering into a single contract exceeding the tender threshold of \$150,000. We conclude that a significant reason for entering into two contracts was to avoid the requirements of regulation 11(1), noting that Ms Mills' report to Council states:
- The regulations do limit purchases outside of the tender process to \$150,000 per transaction, which this opportunity would meet as presented.*
131. Although the quoting of the cost of the transaction was somewhat confusing in Ms Mills' report to Council, the Authorised Persons are of the view that Council should have recognised that the total was above the tender threshold, or alternatively, that considering the different figures quoted, Council should have confirmed the total transaction costs following which it would have become clear that a tender for the transaction would be required.
132. The units were transported to Perenjori before they were fully assessed and found to be damaged, and the quality of workmanship to be non-compliant with Australian Standards. It was also found that \$320 of steel for the awnings was missing. On 12 August 2016, a further invoice for \$1320 was received from StratX for storage whilst the units were stored in the yard awaiting pickup.

³⁷ PO, Invoices, general ledger printout, banking slip and remittance advice for 3 payments

³⁸ ASIC certificates and information on Eggrock Australia Pty Ltd and Stratx Pty Ltd

133. Ms Mills sent an email to all Councillors on 30 January 2017³⁹ stating that an extra \$102,344 was spent on the units to ensure occupancy standard was reached. This expenditure was not budgeted or approved by Council, and performed outside the requirements of Policy 4007.

Finding 29 – The Shire has failed to comply with regulation 11(1) of the *Local Government (Functions and General) Regulations 1996* by failing to publicly invite tenders for the purchase of staff quarters valued at more than \$150,000.

Finding 30 – The Shire has failed to comply with regulation 12 of the *Local Government (Functions and General) Regulations 1996* by entering into two (2) contracts for the supply of staff quarters in circumstances such that the desire to avoid the requirements of regulation 11(1) was a significant reason for not dealing with the matter in a single contract.

6. Considerations relevant to recommendations

6.1 Councillors

134. Although there has been a degree of deception on the part of the CEO, it is also noted that the Councillors of the Shire of Perenjori appear to have been willingly misled and not performed due diligence in all cases.

6.2 Change of policy

135. It is noted that the Shire of Perenjori has updated the purchase policy (Policy 4007) as of 19 October 2017 to require the obtaining of two (2) written quotes for purchases over \$10,000 and up to \$50,000. It is noted that if the new policy had been in place at the time the subject of this inquiry, the CEO's actions would still have been contrary to the regulations and policy. It is also noted the Delegation Schedule is still incorrect in the numbering of the Purchase Policy.

³⁹ Email dated 30 January 2017 to all Councillors from the CEO

6.3 Record keeping upgrade

136. The Shire of Perenjori, with the assistance of the City of Greater Geraldton, have commenced but are yet to complete the upskilling of staff as to their responsibilities regarding record keeping.

7. Recommendations

137. As a result of councillor resignations and positions being vacated by the Minister, all but recommendation 3 is redundant. The Authorised Persons still recommend that the CEO reviews the Shires Record Keeping Plan and have said plan endorsed by the Commissioner and approved by the State Records Commission.
138. It is recommended that:
1. **The elected members and Senior Shire staff undertake training as determined appropriate by the Director General within six months of the receipt of the final report.**
 2. **The Shire of Perenjori undergo an independent governance review for both the elected members and administration staff as determined appropriate by the Director General within six months of the receipt of the final report.**
 3. The Shire's Record Keeping Plan is reviewed and endorsed by council and is approved by the State Records Commission under section 19 of the *State Records Act 2000* within six months of the receipt of the final report.
 4. **Recommendations 1, 2 and 3 are to be arranged by the Shire CEO,**
 5. Following completion of Recommendations 1, 2 and 3, the Shire CEO is to deliver to the Director General a report:
 - i. **determining the knowledge and understanding gained by the elected members and administration staff from the training;**
 - ii. **identifying the persons who have attended the training and reasons for non-attendance;**
 - iii. **outlining the steps taken by the Shire to implement such knowledge and understanding; and**
 - iv. **advising the shire's record keeping plan has been approved by the State Records Commission.**

Schedule of Findings

Finding 01: Ms Mills, as CEO, breached section 78(1) of the *State Records Act 2000* by not ensuring government records were being kept in accordance with the Shire's record keeping plan

Finding 02 – Ms Mills, as CEO, has repeatedly failed to comply with obligations under regulation 17(2) of the *Local Government (Functions and General) Regulations 1996* by not including prescribed details on the tender register.

Finding 03 – During the period January 2013 to January 2018, the Shire President has repeatedly failed to comply with the requirements of section 5.22 of the *Local Government Act 1995* and regulation 11(b) and (c) of the *Local Government (Administration) Regulations 1996* by confirming minutes of Council meetings that were incorrect and/or otherwise did not include the prescribed information.

Finding 04 – Councillor King may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.1.

Finding 05 – Councillor Cunningham may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.1.

Finding 06 – Councillor Butler may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.1.

Finding 07 – Councillor King may have breached section 5.65 of the *Local Government Act 1995* for not disclosing proximity interest to the council for agenda item 13114.2.

Finding 08 – Councillor Reid may have breached section 5.65 of the *Local Government Act 1995* for not disclosing financial interest to the council for agenda item 14042.3.

Finding 09 – Councillor Smith may have breached section 5.65 of the *Local Government Act 1995* for not disclosing financial interest to the council for agenda item 17042.9.

Finding 10 - The Council has breached regulation 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13035.3.

Finding 11 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13056.7.

Finding 12 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13096.3.1.

Finding 13 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13114.1.

Finding 14 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 13114.2.

Finding 15 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 14042.3.

Finding 16 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 14128.6.

Finding 17 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 15062.3.

Finding 18 - The Council has breached 11(f) of the *Local Government (Administration) Regulations 1996* for not ensuring the minutes of a council or committee meeting included the information as required for agenda items 17042.9.

Finding 19 – Ms Mills, as CEO, failed to comply with Policy 4007 by failing to document why three (3) written quotes were not obtained for the purchase of goods or services relating to the tender to build the Business Incubator Toilets.

Finding 20 – Ms Mills, as CEO has breached regulation 12(1) of the *Local Government (Functions and General) Regulations 1996* in regard to separating the purchase of three transportable units and furniture for staff quarters that would otherwise be put to public tender as the contract to supply was more or likely to be more than \$150000.

Finding 21 – The Council has breached regulation 12(1) of the *Local Government (Functions and General) Regulations 1996* by approving the separation of the purchase of three transportable units and furniture for staff quarters that would otherwise be put to public tender as the contract to supply was more or likely to be more than \$150000.

Finding 22 – The Tender Panel failed to comply with Policy 4007 by not undertaking the evaluation of potential suppliers for the Independent Living Units contract impartially, honestly and consistently.

Finding 23 – There is a perceived, if not actual, conflict of interest for Ms Mills in relation to the Shire's original tender process for the Independent Living Units contract.

Finding 24 – Ms Mills, as CEO, did not comply with Policy 4007 by failing to disclose an actual or perceived conflict of interest in relation to the Shire's original tender process for the Independent Living Units contract.

Finding 25 – Ms Mills, as CEO, may have breached section 5.93 of the *Local Government Act 1995* by improperly disclosing SCH's confidential tender documents to Mr Taylor.

Finding 26 – Ms Mills, as CEO, did not comply with Policy 4007 by failing to disclose an actual or perceived conflict of interest in relation to the Shire's subsequent tender process for the Independent Living Units contract.

Finding 27 – Ms Mills, as CEO, has failed to act in accordance with Policy 4007 by not evaluating tenders in relation to the Independent Living Units Project impartially, honestly and consistently.

Finding 28 – Ms Mills, as CEO has breached section 5.93 of the *Local Government Act 1995* by making improper use of confidential information that was known to her by way of her position as CEO (i.e. the original tender documents) and has advantaged Mr Taylor over and above other tenderers of RFT 03/2015.

Finding 29 – The Shire has failed to comply with regulation 11(1) of the *Local Government (Functions and General) Regulations 1996* by failing to publicly invite tenders for the purchase of staff quarters valued at more than \$150,000.

Finding 30 – The Shire has failed to comply with regulation 12 of the *Local Government (Functions and General) Regulations 1996* by entering into two (2) contracts for the supply of staff quarters in circumstances such that the desire to avoid the requirements of regulation 11(1) was a significant reason for not dealing with the matter in a single contract.

**Department of Local Government,
Sport and Cultural Industries**

Perth office

Gordon Stephenson House
140 William Street
Perth WA 6000

Leederville office

246 Vincent Street
Leederville WA 6007

Postal address: GPO BOX 8349,
Perth Business Centre WA 6849

Email: info@dlgsc.wa.gov.au
Website: www.dlgsc.wa.gov.au