

# Protecting integrity: Central Goldfields Shire Council investigation



Local Government Investigations and Compliance Inspectorate  
Protecting integrity: Central Goldfields Shire Council investigation  
August 2017

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## Foreword

David Wolf, *Chief Municipal Inspector*



Good governance in councils is critical for shaping community confidence. It helps communities feel safe in the knowledge that their council will act in their overall interest, which leads to better, more transparent and ethical decision making. The pillars of good governance are accountability, transparency, adherence to the rule of law, responsiveness, equitability and inclusiveness. In the management of public assets and the expenditure of public funds, these pillars are fundamental.

*The Local Government Act 1989* is the legislative framework by which councils exist and operate. The legislation enables councils across the state to govern, but also prescribes certain elements or actions to ensure accountability and transparency for their communities. In essence, these are the laws council staff and councillors must adhere to and they are not optional.

In September 2016, my office received allegations relating to activities at council and specifically in relation to the Chief Executive Officer. Those matters have been the subject of a thorough investigation and have since resulted in a criminal prosecution that is currently before the courts.

In accordance with the judicial process, this report does not reference those specific allegations or circumstances.

However, in the course of the investigation, my office received numerous allegations and information raising concerns about the broader management of council.

Those concerns related to the management and sale of public assets, the management and expenditure of public funds, and an apparent apathy for laws and governance requirements at a senior leadership level.

On this basis and separate to the criminal investigation, my office investigated many of the issues raised, which are reflected in this report.

It is important to note that, given resource limitations, it was not possible to investigate every issue that was raised with my office, nor does this report represent a complete review of all council transactions and arrangements. What this report does highlight are the many areas where council has failed the community and disturbingly, did not take advice or act on recommendations when these failings had been identified.

This broad investigation revealed clear evidence of failings within the organisation and oversight arrangements. Important frontline defences against poor governance, fraud or corruption are management oversight, robust policies and strong internal and external controls. Central Goldfields Shire Council failed its community in many of these areas.

I must acknowledge the support of the many staff and councillors who have assisted this investigation, especially given the circumstances. In noting individual support, I must identify that not all interactions with council have been completely satisfactory and whether that was driven by passive or coordinated resistance is up for debate, but the delays and level of missing or incomplete information for many issues was beyond what is reasonably expected.

I also acknowledge the response by council and the interim Chief Executive Officer to the report, which is reproduced in full in this report.

# 1 Background

## 1.1 Introduction

The Local Government Investigations and Compliance Inspectorate (the Inspectorate) has, over time, conducted a number of investigations at Central Goldfields Shire Council. Each case raised concerns with processes and management following the actions of individuals.

In August 2012, following an investigation by the Inspectorate, a now former councillor was found guilty of two conflicts of interest and ordered to pay \$24,000 in fines and costs. The relevant issue is that this was a criminal prosecution under the *Local Government Act 1989* for which the individual (in this case, the councillor) was liable for costs and any penalties.

It was later revealed that council had paid the councillor's personal legal fees and costs totalling approximately \$69,750. This was noted in the council's 2012/2013 budget but the payment was transacted by the administration before 'council' resolved to pay, raising concerns about the decision making process and the management of public funds. A secondary investigation was conducted by the Inspectorate into this process and resulted in a further prosecution case.

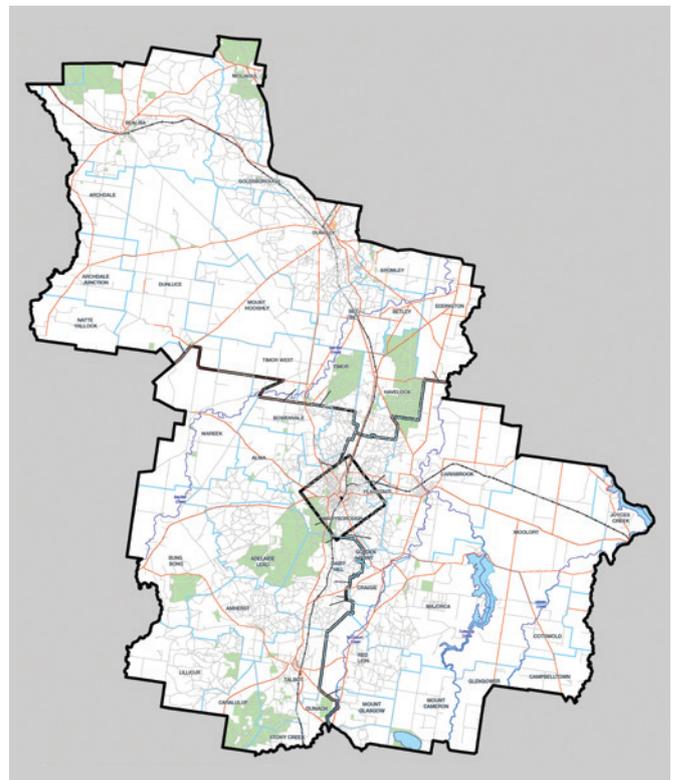
In September 2016, following receipt of various allegations, the Inspectorate commenced a formal investigation into council matters including an alleged conflict of interest relating to the CEO, alleged false claiming of expenses and numerous allegations of poor governance and noncompliance with legislative requirements.

While this report does not relate to all allegations raised, as some remain confidential while being managed within the court system, it will cover many issues that appeared during the period. These include council's lack of internal controls, inadequate policies and procedures, and an overall lack of respect for compliance.

## 1.2 Snapshot of Central Goldfields Shire Council

**The shire:** Central Goldfields Shire covers 1,532 square kilometres and has an estimated residential population of 12,995 people. The municipality is one hour's drive from Ballarat/Bendigo and two hours from Melbourne. Maryborough is the major business centre with a population of approximately 7,500. The council website states:

*"The shire is currently experiencing significant growth with key infrastructure projects and residential developments...The state government's commitment to the shire has seen recent investments in the areas of health, education, and law and order, together with assistance to economic development activities initiated by council."*<sup>1</sup>



Map of Central Goldfields Shire. Image courtesy of VEC (2011)

With total revenue of \$26.4 million and assets of \$282.4 million in 2015-16<sup>2</sup>, Central Goldfields Shire Council is the most socio-economically disadvantaged local government area in regional Victoria, and the second most disadvantaged local government area in the state<sup>3</sup>.

1 Information from [www.centralgoldfields.vic.gov.au](http://www.centralgoldfields.vic.gov.au)

2 As recorded in Central Goldfields Shire Council 2016 Annual Report (financial report). Assets figure includes non-current assets such as property, infrastructure, plant and equipment.

3 Based on the Index of Relative Socio-Economic Disadvantage, one of four Socio-Economic Indexes for Areas (SEIFA) data sets published by the Australian Bureau of Statistics in 2011.

*“Part of council’s strategy is to place both the shire and the broader region into a position whereby it can achieve social and economic change. The organisation is addressing social and economic challenges, with state government support and is further committed to establishing sustainable financial model; to enhancing community engagement; to providing an outstanding range and level of services”.*<sup>4</sup>

**Council’s senior governance:** Councillors are elected for a four-year term at council. There are currently seven councillors in office. The mayor was elected in November 2016 at a special meeting of council. The Chief Executive Officer (CEO) was appointed to the position in 1995 and has been reappointed four times by the elected council. He is currently supported by three general managers.<sup>5</sup>

### 1.3 Investigation powers and scope

The Inspectorate is the dedicated integrity agency for local government in Victoria. The Chief Municipal Inspector (CMI) leads the Inspectorate and has powers as set out in the Act to enable the Inspectorate to examine, investigate and prosecute any matter relating to a Council’s operations and any breaches of the Act.

The formal investigation commenced in September 2016 when the Inspectorate examined initial allegations concerning council governance and possible offences under the Act.

In the course of the investigation, additional matters were raised to broaden the scope and include specific asset, financial, and employment management circumstances. This complexity and breadth of this investigation resulted in the review of over 700 files and documents, contact with many organisations, witnesses and preparation of the prosecution case.

Due to the comprehensive nature of this investigation and the large number of issues identified at council, for the purpose of this report, these have been broken down into the following areas:

- a. **asset mismanagement**
- b. **financial mismanagement**
- c. **human resources mismanagement**
- d. **governance failures.**

## 2 Asset mismanagement

A fundamental role of councils governing for the present day and the future is the responsible management of public assets. Therefore, by planning for the long term and taking into consideration the cumulative effects of all decisions made regarding public assets, responsible asset management by council is essential in ensuring the best outcomes for the community.

Allegations received by the Inspectorate initiated an investigation into the sale of several council properties and landholdings. Specific provisions under the Act exist to ensure the transparency and integrity of the sale of public assets or land and to allow residents an opportunity to make a submission<sup>6</sup> to council. This is particularly significant if council proposes to sell an asset for less than market value, or a net loss. Compliance with the legislation is mandatory and apart from anything else, a failure to meet these requirements may be sufficient to invalidate a sale. While some of the largest land sales detailed below are not recent, they demonstrate a trend of non-transparency of decision making and asset mismanagement resulting in net losses for council and the community.

### 2.1 Sale of land – Madmans Lane

The Inspectorate received allegations of non-compliance regarding the sale of land provisions under the Act particularly for the sale of a property at 7 Madmans Lane, Flagstaff.

The alleged non-compliance was that council had failed to advertise the tendered sale of the property and that no current valuation for the property was obtained.

The Inspectorate’s review involved obtaining all documentation in regard to the purchase, and the subsequent sale of the property, and interviewing staff and councillors regarding the acquisition and sale.

The site closed operation as an abattoir in August 2005 and was purchased by council in December that year. The council acquired the land with the apparent intention of creating an industrial subdivision. There was a public notice placed in the *Maryborough Advertiser* on Tuesday 31 January 2006 stating council’s intention to sell/exchange the properties and inviting submissions in relation to the proposal under section 223 of the Act.

Council received multiple submissions in 2006-2007; however the property did not progress through to sale until 2015.

The 2015 sale was initiated by an expression of interest from a developer to purchase 7 Madmans Lane. The council subsequently obtained a valuation in accordance with the requirements of section 182(2) of the Act<sup>7</sup>. The valuation dated 2 July 2015 was for \$310,000, and following negotiations, council accepted an offer of \$262,500. The contract of sale was signed on 10 July and settlement occurred on 12 August.

<sup>4</sup> Information from [www.centralgoldfields.vic.gov.au](http://www.centralgoldfields.vic.gov.au)

<sup>5</sup> Information from [www.centralgoldfields.vic.gov.au](http://www.centralgoldfields.vic.gov.au)

<sup>6</sup> Section 223 of the Act allows for submissions on a wide range of issues.

<sup>7</sup> Section 182(2) states that a valuation is to be obtained no more than six months prior to the sale/exchange of land.

The sale was made more than nine years after the initial public notice of intention to sell. Although current valuations were obtained, there was no current public notice of an intention to sell the land to the developer and therefore there was no opportunity for submissions to be made under section 223 of the Act. The purpose of these provisions is to ensure the transparency of the sale process of council assets. It is particularly important when assets are sold below current valuations, in this case 15 per cent below, as this is a community asset and any potential losses are ultimately borne by the ratepayer.

## 2.2 Sale of land – 71 Inkerman Street

The Inspectorate received an allegation that a former primary school site at 71 Inkerman Street, Maryborough was sold in November 2011 for considerably less than it was purchased for in November 2008. It was further alleged that council failed to meet all necessary legislative requirements to ensure the transparency and integrity of the sale.

All relevant documentation on the sale of 71 Inkerman Street was reviewed, revealing that on 13 November 2008 council purchased seven parcels of land for a total cost of \$3,380,000. One of the land sites was 71 Inkerman Street which was purchased for \$780,000. Prior to council purchasing the properties, they were independently valued by a registered valuer and 71 Inkerman Street was valued at \$1 million<sup>8</sup>.

A development opportunity not to be missed



Maryborough — a town that is growing in leaps and bounds now offers a fantastic opportunity that demands consideration.

A large property located in the heart of Maryborough is being offered. Just metres from the central business area, the former Maryborough Primary School site is now ready to be developed for a new purpose.

The 1.65 hectare property has excellent street frontages and has a Residential 2 / Business 5 zoning, making it perfect for offices, new homes, medium density housing and a range of community uses.

The property includes a heritage building that is bursting with potential for refurbishment.

Such an opportunity is rarely seen and even more rarely affordable. Proposals can be made for sections of the property or the entire site. This is the chance to make your property development dream a reality.

Tender documents for sale and redevelopment can be downloaded from [www.centralgoldfields.com.au](http://www.centralgoldfields.com.au) or be mailed directly if requested. Tenders must be submitted with all relevant documents before 12 noon on Friday, August 12, 2011.

Further information about the sites can be obtained by visiting [www.centralgoldfields.com.au](http://www.centralgoldfields.com.au) or by calling Central Goldfields Shire Council on 5461-0612.



*Council advertisement for the property at 71 Inkerman St, published in the Maryborough Advertiser on 1 July 2011*

Council then invited tenders for the sale of the property and for public submissions on their proposals to sell the land, stating the sales for each of the properties would be, at a minimum, cost neutral to council, with the aim of facilitating activity, development and employment.

In 2009 following further advertising for tenders, council received purchase enquiries and a preferred tenderer was identified with an offer of \$950,000. Negotiations were entered into, however a satisfactory arrangement could not be reached and the sale did not proceed.

There was no further documented interest in 71 Inkerman Street until 2011, when council advertised again, in July of that year, for the property to be sold via tender. In a document brief on 1 July 2011, council listed the decision guidelines to be used in evaluating the submissions.

Following the advertisement, three bids were received as follows:

- a. **Offer 1 – \$1 million:** purchase the entire site for residential, subdivision/development of the land (32 lots).
- b. **Offer 2 – Peppercorn rent and for purchaser to take the responsibility for all ongoing maintenance of the building:** purchase the building (including outbuildings and car park), business incubator for new businesses, expanding businesses and relocating businesses.
- c. **Offer 3 – \$485,000:** purchase of the entire site for residential sub/division of land (41 lots).

A council report in August 2011 indicated that Offer 1 was the most attractive and that the prospective purchasers were well-known, committed and successful business people. The offer was withdrawn soon after and the sale did not proceed.

The investigation into this allegation revealed that a senior officer then undertook negotiations with the developer who had submitted Offer 3. This proposal was to demolish the school and to develop a 40-lot residential hub on the land. For council to make the final consideration to choose Offer 3, the senior officer had taken into account where the project sat with the Maryborough Urban Prospects (MUP) and that the site had twice been market tested without the sale being completed. The sale was anticipated to facilitate construction and activity in the town and maximise rate revenue for the site.

A report dated 31 August 2011 to a councillor briefing included a 'negotiated position' section stating:

*“The following is an agreed position for council’s consideration.”*

<sup>8</sup> The valuations obtained at that time were significantly different to the values attributed to them upon initial purchase.

This indicated significant discussions had occurred between the senior officer and the parties involved with Offer 3 in the period between the withdrawal of Offer 1 on 25 August 2011 and the councillor briefing session on 31 August. There were no records to confirm the nature of the discussion, or who was involved. The report concluded with the senior officer's recommendation that:

*“Council endorse the proposal as outlined in the negotiated position section of the report.”*

On 1 September 2011, a letter prepared by council accepting their offer was provided to parties associated with Offer 3. The investigation found no evidence to confirm that:

- a. council had formally considered the proposal put forward in Offer 3 between the councillor briefing on 31 August and the acceptance letter provided on 1 September.
- b. a council resolution was passed to confirm endorsement of the proposal at an ordinary council meeting. (The successful tenderer was contacted within 24 hours of the councillor briefing).
- c. a formal evaluation of the Offer 3 submission had been carried out in accordance with the decision guidelines in the tender document brief.

The sale of the property at 71 Inkerman Street occurred in November 2011. This sale represented a capital loss of \$285,000 to council, based on the purchase price in 2008. However, based on the May 2007 valuation of the property at \$1 million, the sale represented a loss of \$505,000.

The fact that the sale of 71 Inkerman Street occurred more than four years after the public notice of intention to sell is contrary to the Act. There was no current public notice of an intention to sell the land to the developer and the community was denied the opportunity to make submissions or even to be aware the sale was taking place. Further, there was no current independent valuation obtained to identify the market value of the property at that time. Compliance with this legislation is mandatory and a failure to comply may be sufficient to set aside a sale.

The purpose of these provisions is to ensure the transparency and integrity of the sale process of council assets. It is particularly important when assets are sold at a significant loss of more than 50 per cent of the land's value. Council therefore clearly failed in its requirement to demonstrate best value for the community and caused unnecessary exposure to legal and financial risks. For an economically disadvantaged council and community, a \$505,000 loss is a significant amount.

## 2.3 Sale of land – 65 Inkerman Street

The property at 65 Inkerman Street was first proposed for sale to council in November 2006 and was independently valued at \$125,000 on 4 May 2007. Council purchased the property for \$275,000 as part of the land parcel sale in November 2008.

By agreement in advance of taking ownership, council placed an advertisement in the *Maryborough Advertiser* for a number of council-owned sites to be placed on the open market, including 65 Inkerman Street. The notice invited submissions on the proposal to sell the land and stated the sales for each of the properties would be at a minimum cost neutral to council, with the aim of facilitating activity, development and employment.

The property at 65 Inkerman Street was on-sold in December 2009 for \$85,000. Based on the original council purchase price of the property, the sale represented a loss of \$190,000.

There was no current public notice of an intention to sell the land to the preferred purchaser and current residents were therefore again denied an opportunity under the Act to make a submission on the proposed sale.

Further, in contravention of section 189 of the Act, there was no 'current' independent valuation (not more than six months prior to the sale) obtained. Compliance with this legislation is mandatory, and a failure to comply may be sufficient to set aside a sale.

### Summary

These three examples demonstrate a consistent lack of transparency and disregard by council in breaching the legislative requirements. This resulted in a combined estimated loss of \$732,500 after the sale of only three public assets. The Inspectorate did not investigate the relationship between the purchasers and council but it was clear the legal requirements protecting the community were not followed in each case.

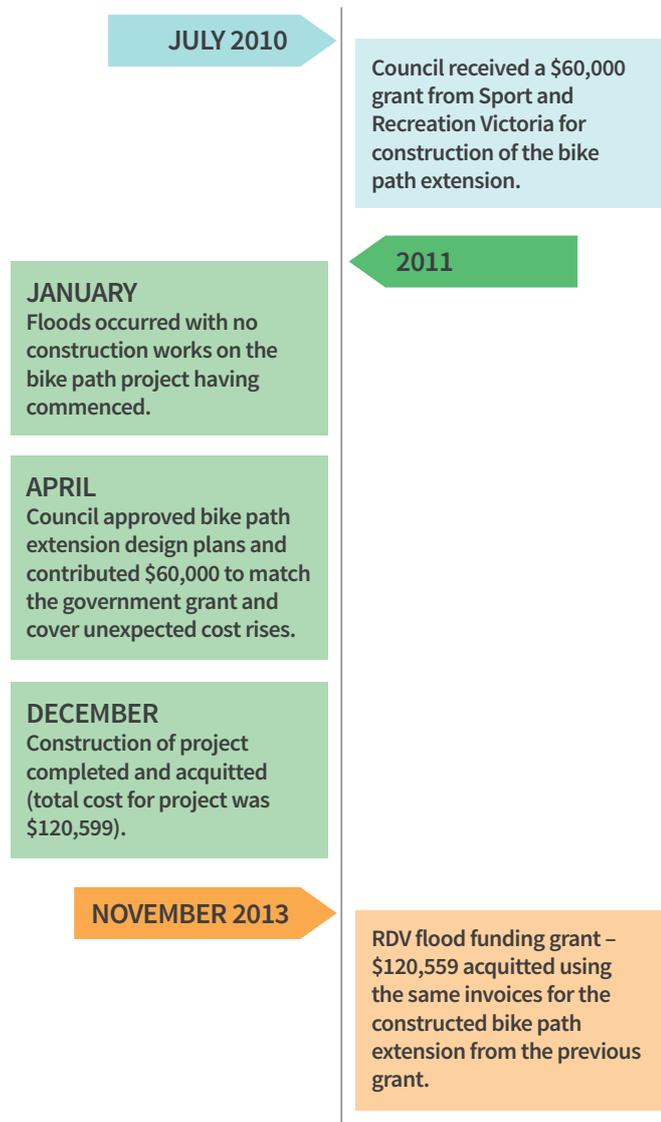
## 3 Financial mismanagement

Councils are responsible for the management of public funds, which includes federal and state government grants and ratepayer contributions. The importance of responsible administration by local government of public finances cannot be overstated.

### 3.1 Misuse of government grant

During this investigation, the Inspectorate found significant grant funding was mismanaged and cannot be accounted for by council. The investigation found council had received a state government grant in 2010 for a bike path extension project from Sport and Recreation Victoria (SRV).

Following a severe flooding event, council received additional state flood funding from Regional Development Victoria (RDV) of which a portion was allocated to the bike path extension project. While the SRV grant was appropriately used and acquitted for, the same invoices were also submitted to RDV to acquit flood recovery funds.



The investigation found that the bike path extension construction had not commenced prior to the January 2011 floods. The original \$90,000 cost estimate had increased prior to construction by \$30,000 due to additional works. The total cost of the project was approximately \$120,000, with half met by the government grant and half funded by council.

In September 2011, RDV received an application under the Flood Recovery Community Infrastructure Fund from council which identified eight recovery projects to the value of \$1,560,887. This application included \$446,113 towards reinstatement of the existing Carisbrook to Maryborough bike path. The flood recovery application was approved in December 2011 and an agreement executed for the eight approved projects in March 2012.

Council's grant application reflected that no other grants were received by council in relation to the bike path, indicating that either this submission was inaccurate, or that the two projects were distinctly separate. Declaration of any co-investment in a project is a requirement of the RDV project application process. The documentation RDV received does not indicate that council made RDV aware of funding being provided by SRV towards any of the eight identified projects.

In July 2012, RDV received a progress report from council which provided an update on progress of the projects in-line with the funding agreement. This progress report stated that the Carisbrook to Maryborough bike path was nearing completion, photos of construction works and details of \$253,743 spent on the project were provided. In January 2014, RDV approved a final payment based on a final report and financial acquittal of funding in-line with the agreement.

Funding from RDV was acquitted against the full \$1,560,887 grant for the eight flood recovery projects. An expenditure of \$463,910 was spent on the Carisbrook to Maryborough bike path, with the report indicating that the additional costs for the bike path project were met by council. The investigation has since identified that \$120,599 of works that had been itemised against the RDV grant had also been acquitted against SRV the grant.

After analysing all provided financial records, the investigation was unable to identify where this significant amount was spent. The only explanation provided by a senior council staff member was that it contributed to the 'bottom line'. What is clear is that more than \$120,000 was acquitted to a capital project when it was not spent on that project.

As a result of a previous investigation, the Inspectorate had expressed concerns with 2013 budget process primarily with funding allocation made at that time. In addition, the Inspectorate notes a 2012/13 Victorian Auditor General's Office report<sup>9</sup> where significant failures in accountability for grant funding at Central Goldfields Shire were also identified and raised with council.

<sup>9</sup> VAGO Interim Management Letter 2012/13 contains analysis of grant funding management processes.

### **3.2 Misuse of corporate credit card**

The Inspectorate received multiple allegations relating to the use of a council corporate credit card by the CEO for personal expenses. The investigation into these matters has resulted in the filing of criminal charges against the CEO with the details and extent of these offences to be detailed as part of the case. Accordingly, while this matter is before the courts, no further details can be included in this report.

## 4 Human resources mismanagement

Councils must responsibly manage employees and external contracting staff and ensure that all relevant human resources procedures and policies are in place and adhered to. Effective human resources management is fundamental to any organisation’s operation and is particularly important for councils as a publicly-funded employer and even more so in regional areas as a major employer.

### 4.1 Mismanagement of contractors

During the investigation, the Inspectorate received allegations that council did not adequately follow processes or policies, nor fulfil legislative requirements when employing contractors. Below are some examples.

#### 4.1.1 Council employees also providing contract services

**Person A:** Person A was employed by council between July 2003 and July 2014 as an authorised officer with delegated enforcement powers. Person A accepted this role on the condition that a pre-existing arrangement with council to conduct private contract work in an enforcement role on the weekends would continue.

Section 95 of the Act includes provisions relating to the conduct of staff specifically in respect to conflicting duties and interests:

“Council staff must in the course of their employment:

- a. act impartially
- b. act with integrity including avoiding conflicts of interest
- c. accept accountability for results
- d. provide responsive service.”

Person A stated that at that time of these arrangements, it was not known that a conflict of interest declaration was required or that a secondary employment form should have been completed with details of weekend contract work. The Inspectorate found that in this case it was inappropriate for council to allow person A as an employee to engage in additional private contracting arrangements as an authorised officer due to the potential conflict of interest and legal risks for both the employer and council.

In 2014, person A resigned as a council employee but continued to provide contract services to council through their private business. Those services require appropriate authorisation and delegation of powers. As indicated later in this report, the Inspectorate found that council’s delegations are in an extremely poor state and it was unable to determine whether person A had the necessary delegations or authorisation when providing contracted services.



Example one

**Council manager A:** In another case, the Inspectorate found that council manager A had submitted private invoices to council for work that was in effect part of their role as a council employee. This demonstrated a lack of internal controls and human resource oversight at council.

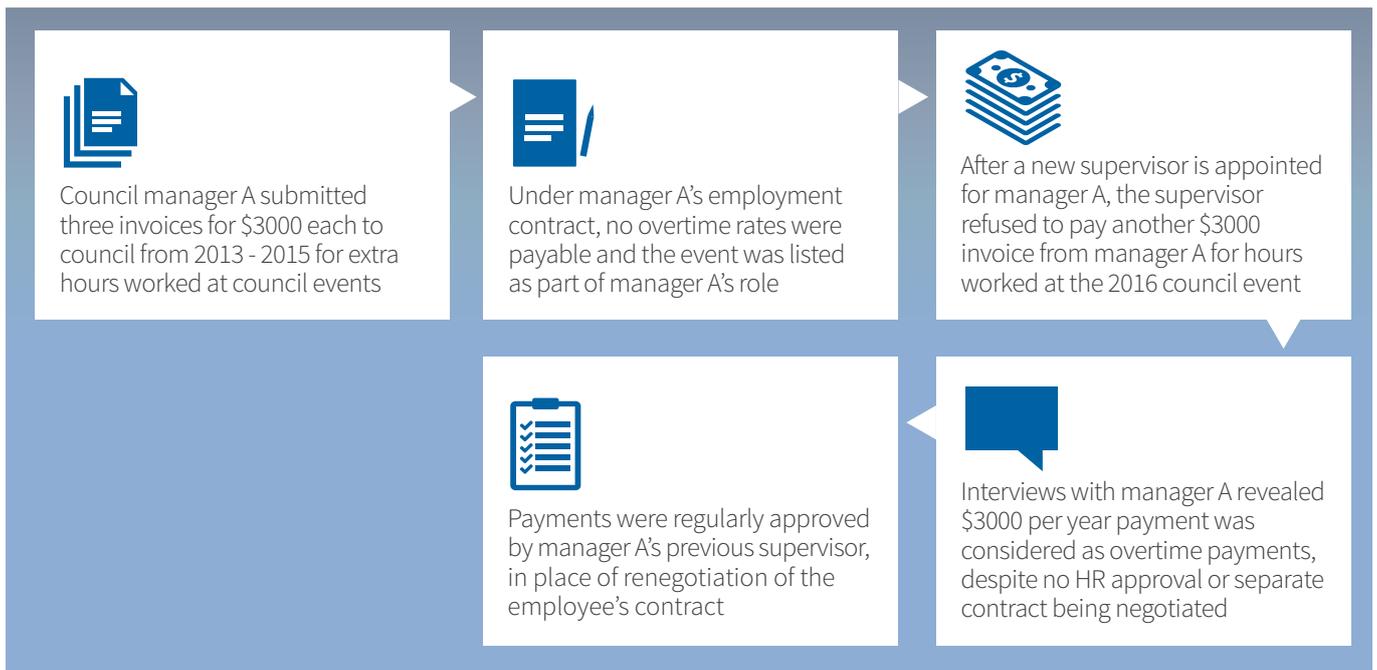
Council manager A submitted three tax invoices that were approved for \$3,000 each (from 2013 to 2015) for 'additional work hours' worked at a council event. However, council manager A's position description included the council event within the list of responsibilities for the council role. Further, council manager A's employment contract explicitly stated that overtime/penalty rates and time off in lieu did not apply to the role.

When council manager A sought compensation for the extra hours worked during the council event period, their line supervisor suggested council manager A prepare an invoice for \$3,000 which was subsequently approved. Both believed the increase was related to the long hours worked during the council event.

Further, it is worth noting that none of these discussions were raised with the human resources department when renegotiating council manager A's employment contract or increasing pay, and the line supervisor stated that they believed it was within their power to grant council manager A the extra \$3,000 per year.

This process ceased in 2016 when considered by another manager and found to be inappropriate.

This example represents poor management practices around employment contracts and employee payment authorisation processes and demonstrates a culture of taking short cuts at the expense of transparent and ethical management practices.



Example two

**Person B:** The investigation received information relating to a further employee who, while working for council, was also providing contract services to council.

The investigation found that between 2004 and 2016, person B was employed by council on a part-time basis but was also providing contract services through a private company to the same council business unit. It was also revealed that person B had access to the procurement system, the same system that managed purchase orders and invoices for contracted services.

In mid-2015, a manager alerted their supervisor that person B was an employee and as such had access to the procurement system while submitting invoices to the council through their own company. The investigation found the organisational response to be largely ambivalent, however shortly after, council arranged for the employee to prepare and submit a secondary employment form.

The investigation did not reveal any impropriety by person B however, this incident demonstrated deficiencies in the engagement process and transparency of employees also performing contract at services. Moreover, this example highlights the lack of understanding or management of conflicts of interest.

#### 4.1.2 Minor contractor examples

Six other contractors performing minor services to council were also found to be employed via ad-hoc arrangements without:

- a. clear and transparent employment contracts.
- b. clear and transparent management direction from senior council staff.
- c. council adhering to the necessary legislative requirements and its procurement processes.

#### 4.1.3 Conflict of interest when authorising contractor invoices

**Council manager B:** Council manager B approved invoices for their spouse for work carried out at a council facility overseen by a committee of management. The Inspectorate found this case to be a further example of the lack of internal controls within the council.

Council manager B's spouse was requested by the committee of management to be a provider of services at the council facility. The investigation found that council manager B prepared invoices on behalf of their spouse and also then approved the payment. This was clearly a conflict of interest. Council manager B stated that their role in the approval was a procedural step and that the committee of management checked the payments and other information. The invoices were paid by council and subsequently recouped from the committee.

The dollar amount is not significant in this case and the Inspectorate was satisfied that the invoice approvals by council manager B did not exceed the amount their spouse was contracted to receive. This case did, however, demonstrate a lack of clear processes, separation of roles and lack of internal controls within the council administration. It also demonstrated inadequate training of council staff to identify conflicts of interest.

## 4.2 Mismanagement of staff performance reviews process

The successful management of human resources is one of the key pillars of councils supporting a harmonious and productive workforce. A key element is the provision of consistent and timely staff performance reviews.

The Inspectorate received allegations that council's senior staff had failed to conduct annual staff performance reviews with some taking up to two years to complete without reasonable justification.

It was found that despite council using an automated system advising managers when a review falls due, a large number of performance reviews were still not carried out within the required timeframes. The Inspectorate found a lack of urgency for relevant staff to complete the task, which resulted in delayed salary increases and significant back pay of wages.

While this item is not covered under the Act, the Inspectorate noted that under the *Fair Work Act 2009* there are other provisions that must be adhered to for employee agreements and collective bargaining. Importantly, an inadequate performance management process can negatively impact a council's work culture, staff morale and its management of public finances.

## 5 Governance failures

It is imperative that councils as public institutions responsibly manage public assets, exercise financial responsibility and good governance, and comply with all legislative requirements.

During the Inspectorate's investigation numerous issues were examined relating to the overall governance arrangements at council. The number and breadth of issues identified raised serious concerns about the effectiveness of council to govern the municipality.

### 5.1 Mismanagement of corporate information and public records

A key action of councils is to manage public records and information in accordance with:

- a. *Privacy and Data Protection Act 1973*
- b. *Freedom of Information Act 1982*
- c. *Local Government Act 1989*
- d. *Health Records Act 2001*
- e. associated Acts and Regulations.

Achieving best practice record keeping processes and making them readily accessible to the public and other government entities is an important function of councils.

In 2012/13, the Victorian Auditor-General's Office (VAGO) completed a review of council's record management and sent the council a comprehensive Internal Management Letter highlighting numerous governance failings. This was followed by annual VAGO reports from 2013/14 to 2015/16 that identified a lack of attention to policies and procedures and risks to the organisation that were not addressed.

In April 2013, council engaged an external consultant to perform an assessment to address its anomalies in record keeping. A detailed report was issued by the consultant indicating that of the 252 items tested, council had only been compliant in nine with numerous gaps existing in operating practices.

The investigation found that numerous key statutory documents and policies were lost or misplaced, or simply did not exist at council. These included:

- a. Primary and Ordinary Returns by councillors, members of special committees, senior staff and nominated officers – lost documents
- b. Freedom of Information (FOI) processes – limited
- c. *Records Management Policy* – none
- d. *Protected Disclosures Policy* – none
- e. data for the community grant acquittal audits – hard copies only
- f. sale of land documentation – not on electronic document management system.

Although council had, in 2015, committed to addressing the gaps in record keeping practices, it was found that many of the issues had not been rectified with little or no progress made with:

- a. transferring of hardcopy records to digital and storing on the EDMS
- b. IT security issues
- c. governance records management framework
- d. completing documented procedures/policies guiding compliance of relevant legislation for:
  - i. FOI
  - ii. Protected disclosures
  - iii. information privacy.

Overall the Inspectorate found council's management of public information and record-keeping was very poor, not at the level that the legislation requires, and its commitments to rectify these issues had simply not been fulfilled.

### 5.2 Freedom of information

In relation to FOI, the relevant legislation imposes requirements on agencies (including councils) to ensure that FOI applications are responded to within 45 days where possible. An FOI system, whether using software or not, requires as a minimum:

- a. compliance with the legislation<sup>10</sup>
- b. delegations under the *Freedom of Information Act 1982*
- c. application form
- d. fees and charges (indexed annually)
- e. standard letters
- f. invoices
- g. ability to redact material being released to the applicant if there are grounds which apply under the Act (for example, privacy, legal proceedings).

The investigation found that there was no capability to make an FOI application online and significant deficiencies in FOI record keeping, most likely due to the fact that council had no designated FOI officer.

The lack of a structured framework raises concern that council is not well placed to deal with the pending:

- a. outcomes of the review of the *Freedom of Information Act 1982*
- b. closure of the Freedom of Information Commission and Privacy and Data Protection Commission on 1 September 2017
- c. the creation of the Office of the Victorian Information Commissioner (OVIC) who will oversee both FOI and privacy.

<sup>10</sup> *The Freedom of Information Act 1982 and the Freedom of Information Regulations (Access Charges) Regulations 2014.*

## 5.3 Mismanagement of special committees

Councils create special committees to assist in the management of specific projects, initiatives and the municipality's assets.

Council currently has 13 special committees. During the investigation the Inspectorate reviewed the following for each special committee:

- a. Instruments Of Delegation (IOD)
- b. Primary and Ordinary Returns process<sup>11</sup>
- c. meeting minutes
- d. conflict of interest disclosure arrangements
- e. financial records between July 2012 and 2016.

The findings are summarised below.

**5.3.1 Delegations:** Most of the delegations were issued around 1995 and had not been updated since that time<sup>12</sup>.

**5.3.2 Audit Committee**<sup>13</sup>: The Audit Committee had been incorrectly appointed as a section 86 special committee under the Act rather than an advisory committee in accordance with section 139 of the Act.

Council's website included an *Audit Advisory Committee Charter* (Charter), which confirmed the Inspectorate's view that there is confusion at council and with the CEO as to whether the Audit Committee was an advisory committee (which, under the Act, it is) or a special committee (which it cannot be).

The Charter dated 27 June 2007 also claimed to be an Instrument of Delegation; however advisory committees cannot be given delegated powers.

**5.3.3 Interest returns for special committee members:** Primary and Ordinary Returns are a key legislative requirement for all special committee and Audit Committee members as they ensure accountability and transparency. For the June 2012 to June 2016 periods it was found that council had just over 70 individual special committee members across the 13 committees.

Across the entire review period, less than 20% of returns were submitted in accordance with legislative requirements. Compounding this was the fact that the record keeping of council in regard to special committees was quite poor, with relevant staff having difficulty locating specific documentation/information upon request.

To assist with the administration of special committees, and reduce the burden on committee members, section 81(2A) provides councils with the option to exempt members of special committees from being required to submit interest returns, however council did not exercise this option.

**5.3.4 Minutes of meetings:** The IOD for each special committee outlines the minimum number of meetings to be held annually; only four committees met these requirements, submitted minutes and held annual general meetings in each of the years reviewed.

**5.3.5 Financial reports:** Several special committees held active bank accounts without significant balances. While bank accounts are notionally managed by the committees themselves, the funds belong to council and are required to be reported annually at a minimum. This helps to alleviate the potential risks of the misappropriation of funds.

The majority of special committees had not provided financial statements to council on an annual basis.

## 5.4 Mismanagement of primary and ordinary interest returns

Councillors, members of special committees, audit committee members, senior officers and nominated officers (if any) are required to submit interest returns twice yearly to the CEO as stated under the Act. Councils are expected to manage this process. This function is fundamental as it reinforces the integrity of local government decision making. Moreover, the law makers also consider this process as integral to transparent governance by establishing potential offences for non-compliance.

The Inspectorate reviewed the interest returns, submitted by councillors, members of special committees, Audit Committee members, senior officers and nominated officers, for a four-year period (July 2012 to June 2016) and found that in only one year were the requirements of section 81 under the Act met.

**5.4.1 Primary and Ordinary Returns for councillors:** The June 2012 and June 2013 return period were the only two whereby the submission process was correctly followed. For the other return periods, the returns did not satisfy the legal requirements with many not submitted at all, submitted late, or not completed correctly. For the June 2015 and December 2015 return periods all submitted returns were lost.

**5.4.2 Interest returns for nominated officers:** During the return periods (June 2012 to June 2016) each of the 16 nominated officers at council individually breached the requirements of the Act at least once.

Post-June 2013, only 18 of a possible 72 returns fully complied with the Act. From December 2013 to June 2015 no returns were fully compliant. Of most concern, during the June 2014 to June 2015 periods, of the 36 returns due, three were not submitted and 33 were lost.

<sup>11</sup> Returns are required for special committee members unless the member, other than a councillor, has been given an exemption under section 81(2A) of the Act.

<sup>12</sup> See section 5.9 for details on mismanagement of delegations.

<sup>13</sup> Refer to section 5.12.4 for detailed analysis of the Audit Committee.

**5.4.3 Key non-compliance issues in primary and ordinary returns:** These reveal significant failings and serious concerns in regard to probity standards of council as follows:

**5.4.3.1 Pre-witnessing interest returns:** The investigation found on a number of occasions, interest returns provided to councillors already contained the signature of a council senior staff member as witness to the document prior to it being completed by the councillor. The Inspectorate found this to be contrary to the intention and integrity of the process.

**5.4.3.2 Pre-populated interest return forms:** In some instances the initial notification sent to councillors contained return forms that had been pre-populated with the information contained in the previous return. This practice did not ensure current accuracy of the return, as it could not be confirmed that councillors had considered any changes to their circumstances, nor did it meet the intent of the legislation.

**5.4.3.3 Failure to document the process:** Council had not developed or documented a formal process for interest returns. There were no provisions in place to ensure the submission process in the event of the responsible officer being absent. A consistent and documented approach mitigates the risk of the entire return process being bypassed without notification as was found in the review.

**5.4.3.4 Failure to notify councillors of requirements:** While the submission of interest returns is the responsibility of the individual, usual and good practice by council is to send out initial notification in early January/July to each individual notifying them of their legislative requirement. In this case on at least two occasions, notification was provided to councillors after the expiry of the submission period resulting in all returns submitted after the required date and in breach of the law.

**5.4.3.5 Failure to maintain records:** Inadequate record keeping was previously found to be a significant governance issue, where council staff members failed to first check submitted returns for completeness and were not protecting key data by scanning and recording returns electronically. Of greatest concern to the Inspectorate is the unexplained loss of important public records.

## 5.5 Mismanagement of community grants scheme

Councils are required to ensure that robust processes are in place to facilitate the appropriate management of public money for the full benefit of the community.

The Inspectorate reviewed council's compliance of its community grants scheme process as stated in sections 3C(2) (b), 3 D(2)(c) 140 under the Act and found three main issues with the scheme.

**5.5.1 Governance issues:** Contrary to the published grant guidelines, it was found that there was only one point of decision making at council when assessing submissions against the relevant criteria. The process allowed for one person to assess submissions and provide recommendations for approval to council where the guidelines state a panel of council officers are required to carry out this task. Moreover there was no formal policy identified.

**5.5.2 Acquittals:** Of broader concern was the inadequate acquittals process. There was no evidence to demonstrate that on all occasions grants had been used for the correct purposes, and that recipients had been followed up for acquittal details. Where the information had been adequately provided, it had not been recorded properly, and while minutes contained notations of approved applications there was no written evidence or rationale to support the decision making process.

**5.5.3 Outdated information:** Of the grant information published on council's website a significant proportion was, at the time of the review, out of date including no details of previously successful applicants published.

**5.5.4 Summary:** While council had formal guidelines and an application form for community grants in place, the assessment of the applications was not consistent with the guidelines. Moreover, while grant applications had been referred to full council for consideration and approval, the initial assessment and recommendations emanated from a single point. This raised concerns for the Inspectorate around the impartiality of the management of the community grant scheme.

## 5.6 Breach of procurement processes

Governance in procurement refers to the systems and processes in place to ensure the practice has suitable levels of control and probity. Therefore, it is a requirement that councils implement structured and robust procurement policies that facilitate engagement processes that are consistent, fair and transparent. The procurement framework provides assurance that council can withstand both internal and external scrutiny.

The Inspectorate received an allegation that council did not comply with its *Procurement Policy*, and sections 186(1) (a & b) of the Act, upon engaging consultants to work with council over an extended period. It was found that the process was flawed as the engagement was not suitably documented, was primarily managed by a senior officer and the services provided were not market tested before the appointment of the consultancy.

In 2012 the council engaged an external consultancy to assist in a major economic development project. The original engagement was to take in the period from June 2012 to December 2013. It was confirmed at this point that there was no formal agreement/contract entered into between council and the consultants, with negotiations carried out between the senior officer and consultants.

In the course of the investigation, it was revealed the engagement was essentially managed by the senior officer, which contravened council's procurement policy. To support this ongoing work, council retained the consultancy on a month-by-month basis while applying to the State Government for financial support for the work.

In June 2013 a state government grant was received by council in support of the program. Council then allocated \$80,000 of funding for the consultants which was paid over 16 months at \$5,000 per month. With no formal agreement in place, \$5,000pm was paid to the consultancy to provide 'ongoing referrals'. However at no time during this period was any evidence provided demonstrating that the consultants were required to meet performance levels to facilitate payment. The Inspectorate was not provided any evidence that this arrangement was the subject of review or that consideration was given to entering into a formal agreement to provide a level of security for council and a level of accountability on the consultants.

While this arrangement covered a 16-month period, a council financial report confirmed the broader engagement period was between July 2012 and September 2015 with payments totalling \$174,000.

While the total payments could not have been ascertained from the outset as the engagement had been extended month-by-month, the total value paid between 2012 and 2015 exceeded the threshold to facilitate a public tender as stated in section 186(1) of the Act.

Further, it was confirmed that council did not undertake a formal evaluation in accordance with its *Procurement Policy* prior to engaging the consultants in 2012 and an exemption to the policy was not sought or signed off by the appropriate authority.

This clearly demonstrates that council and the senior officer did not meet the standards of supplier engagement, which are legislated to ensure that council's provide the best financial outcome for the community.

## 5.7 Mismanagement of the councillor code of conduct process

In August 2016 the Inspectorate conducted a statewide review of the Councillor Code of Conduct process required to be undertaken by councils across the state. As a result of this review, Central Goldfields Shire Council was found to be non-compliant with the legislative requirements.

In October 2015, the *Local Government (Improved Governance) Act 2015* amended the Act to provide the additional requirement that all incoming councillors must read their Councillor Code of Conduct and make a declaration to abide by it.

Specifically, the newly-amended section 76C of the Act required that each council make amendments to the current Councillor Code of Conduct within four months of 1 March 2016, at the latest by 1 July 2016. This was to be actioned during a special meeting for the purpose of reviewing the code.

Additionally, within one month of any amendment made to the code, all councillors were required to make a written declaration that they would abide by the 'revised' code. The declaration was to be witnessed by the CEO. The need for all councillors to abide by the code was reinforced by changes to the Act legislating that a failure to do this within the time period would lead to a disqualification.

During this review, the Inspectorate identified that council adopted its Councillor Code of Conduct at an ordinary council meeting, which contravened the requirement to do so at a special meeting. The failure to adhere to the legislation did not necessarily invalidate the code; however it demonstrated council's inability to implement legislative amendments.

Furthermore, in the course of this review it became apparent that the councillors had also not met the legislative requirements to make the required declaration within one month after the amendments to their code of conduct. The council on becoming aware of this error sought to have all councillors sign the declaration and in at least two examples this was facilitated by a council officer visiting councillors to seek their signature. This did not and does not equate to the CEO witnessing the declaration.

Council subsequently wrote to the Inspectorate and provided copies of the signed declarations. On review it was noted the declarations were undated and contained a CEO witness signature in what could be considered, in the best light, as a further administrative oversight. Ultimately, the councillors are responsible for their declarations and the legislative requirements in respect to the office of councillor.

Interviews with councillors provided insight as to the circumstances of the code of conduct declarations.

*“We’d done our code of conduct back in May, and I didn’t worry about it anymore. It had been voted unanimously. It was only when I started getting phone calls from the news agencies that I took notice. Then we heard what the problem was; that each councillor had not signed the code individually in front of the CEO. I subsequently signed the declaration in front of the manager. I’ve got a feeling that I signed it at the Community Hub, and the CEO was not present.”*

Councillor A

*“We discussed it in council and it wasn’t a huge discussion and we all agreed. I just presumed that was it and that we didn’t think we had to sign anything else. When the media rang me, I became aware. The (governance) manager at council called 10 minutes after that, and told me I had to come in and read the code of conduct again and sign it in front of them. I attended the office and just the girl at the front desk was present with the manager. I signed it at the front desk, but the CEO wasn’t there.”*

Councillor B

The result of council’s non-compliance with section 76C of the Act meant that council, along with a number of other councils, would have faced disqualification on 1 September 2016. This outcome was averted with an amendment to the legislation. However, in the case of Central Goldfields Shire Council this process demonstrated clear governance failings on the part of the administration and council.

## 5.8 Mismanagement of delegations

Under the Act and a wide range of other Acts and Regulations, council, the CEO and the municipal building surveyor can delegate powers, duties and functions to special committees and council staff. The delegation process is essential to ensure actions and functions are lawfully exercised.

A complete set of delegations would comprise:

1. delegations to special committees
2. a delegation from council to staff under specific Acts and Regulations (particularly the *Planning and Environment Act 1987*)
3. a delegation to the CEO
4. a sub-delegation from the CEO to staff
5. a delegation from the municipal building surveyor to building staff
6. a delegation from the CEO to staff of powers, duties and functions vested in the CEO
7. a delegation from the CEO to staff in relation to VicSmart planning applications.

The investigation did not extend to a forensic review of all the delegations, but a limited review indicated numerous problems which are outlined below.

**5.8.1 Delegations to special committees:** Council appears to have established 13 special committees, each of which has a delegation. The investigation identified that more than half of the committees were relying on Instruments of Delegations (IODs) that had not been updated for more than 20 years, and in most instances had been signed by the then commissioners of council post-amalgamation.

There was no evidence to suggest that they had been ‘formally’ reviewed by previous or existing elected councillors. Failure to update the IODs, and subsequently failing to reinforce the roles and responsibilities of special committee members, appears to have played a role in the committees not routinely meeting their legislative requirements.

While the IODs were not routinely reviewed in a formal sense, at council’s 22 October 2013 ordinary meeting, it was noted that the organisation had decided it would adopt the existing delegations. This was done to satisfy section 86(6) of the Act, which states council must review any delegations to a special committee in force within 12 months of a general election.

It was recommended at this meeting that no changes be made to the existing delegations, despite (as previously mentioned) a number of the delegations not being amended for more than 20 years.

**5.8.2 Delegation from council to staff:** Under several Acts, delegations must come from council directly to staff members. This applies particularly in relation to the *Planning and Environment Act 1987*.

The Inspectorate was provided with a copy of a delegation dated 23 February 2016, which had been approved at a council meeting on that date. However the delegation referred to an Act of legislation by the wrong title<sup>14</sup>, did not refer to any relevant regulations and was incomplete and out of date.

Based on the information provided, the only conclusions possible were that:

- a. the delegations from council to staff were inadequate and out of date, which is a clear breach of section 98(6) of the Act
- b. council staff members were exercising powers, duties and functions without the required delegation therefore exposing council to legal, financial and reputational risks.

**5.8.3 Delegation to the CEO:** The Inspectorate was provided with copies of:

- a. A delegation dated 2 April 2003 that had:
  - i. one restriction that the CEO could not execute contracts for the sale and purchase of land without a prior resolution from council
  - ii. no restriction in terms of a money threshold, on the power of the CEO to award contracts
  - iii. a delegation which contemplates ‘in house bids’ for tenders, a practice that ended around 1999.
- b. A delegation dated 28 October 2009 that did:
  - i. not revoke the earlier delegation
  - ii. not include the previous limitation in relation to the sale or purchase of land
  - iii. not include a restriction in terms of a money threshold, on the power of the CEO to award contracts.

The information was obtained by the Inspectorate only after repeated requests. Based on the information provided, the only conclusions possible are that the delegation:

- a. had not been comprehensively reviewed
- b. did not contain a money threshold on the CEO’s power to award contracts
- c. was unclear on the power to sell or buy land.

#### **5.8.4 Sub-delegation from the CEO to staff:**

A comprehensive sub-delegation from the CEO to staff should refer to all the relevant Acts and Regulations.<sup>15</sup>

The sub-delegations provided to the Inspectorate mostly made no reference to Acts and Regulations and, in the few cases where a delegation had been issued, it was incorrect, incomplete and/or out of date, for example:

- a. a delegation dated 1 July 2011 to the Environmental Health Officer (EHO):
  - i. referred to the Food Act 1984, but not to the Public Health and Wellbeing Act 2008 or any relevant Regulations

- ii. was not up to date in relation to the relevant sections of the Food Act 1984
- iii. did not appear to have been comprehensively reviewed within 12 months of the October 2012 elections as required.

b. a delegation dated 29 June 2010 to the General Manager, Corporate and Community Services:

- i. delegated the power to waive rates, charges and interest “in accordance with council policy”. However, the associated policy provided to the Inspectorate was undated and it was unclear who had approved it
- ii. did not appear to have been comprehensively reviewed within 12 months of the October 2012 elections, which was a clear breach of section 98(6) of the Act.

Based on the information provided, the only conclusions possible are that:

- a. the sub-delegations from the CEO to council staff are grossly inadequate, out of date and a clear breach of section 98(6) of the Act
- b. council staff members were exercising powers, duties and functions without the required delegation and that this exposes council to legal, financial and reputational risks.

**5.8.5 Delegation from the municipal building surveyor to building staff and/or contractors:** A delegation was requested but not provided to the Inspectorate.

**5.8.6 Delegation from the CEO to staff of powers, duties and functions vested in the CEO:** A delegation was requested but not provided to the Inspectorate.

**5.8.7 Delegation from the CEO to planning staff in relation to VicSmart planning applications:** A delegation was requested but not provided to the Inspectorate.

**5.8.8 Format of the delegations:** Council appeared to have used, in part, delegation templates common to many councils but did not follow best practice in updating these twice yearly.

**5.8.9 Reviews of delegations:** Section 98(6) of the Act requires that all delegations are reviewed within 12 months of a general election.

The Inspectorate was provided with a council report dated 22 October 2013. The report recommended minor changes to some delegations, but suggested that the remainder “remain valid as there were no changes required”.

However, given the need to update delegations when there are legislative amendments and the need to review delegations when organisational structures, roles and responsibilities were varied, it is inconceivable that more extensive changes were not required.

<sup>14</sup> Referred to *Marine Act 1988* which, in 2010, was renamed *Marine Safety Act 2010*.

<sup>15</sup> See Appendix 2.

Appendix 1 is a list of the Acts and Regulations which enable powers, duties and functions to be delegated. The Inspectorate was unable to determine in many cases whether the council, CEO and municipal building surveyor had appropriately issued delegations.

In addition, all existing delegations needed to be reviewed by October 2017, but the minutes of the eight ordinary council meetings held since the October 2016 elections indicated that (to 9 June 2017) no delegations had been referred to council for review.

Updating delegations is a substantial task and the Inspectorate is of the view that to meet the statutory requirements, a suitably comprehensive review is required to ensure that the various special committees and staff were exercising powers, duties and functions with the required delegation, mitigating the exposure of council to legal, financial and reputational risks.

## 5.9 Mismanagement of authorisations

Section 224 of the Act and various other Acts and Regulations allow for council staff and contractors to be appointed as authorised officers. Authorisations enable staff, particularly those with enforcement responsibilities, to undertake their roles. The authorisations allow for powers of entry and the institution of proceedings

The Inspectorate was provided with copies of some documents purporting to be appointments of authorised officers. A brief review of these revealed:

- a. some were not designated as an authorisation
- b. many were generic and referred to the authorisation as under ‘any Acts, Regulations or local laws’
- c. one was issued under the *Freedom of Information Act 1982*, which did not allow for or require, an authorised officer
- d. there was no evidence of authorisation under the *Planning and Environment Act 1987* being issued, as required, by council rather than the CEO
- e. there were no specific authorisations under the:
  - i. *Building Act 1993*
  - ii. *Fire Services Property Levy Act 2012*
  - iii. *Graffiti Prevention Act 2007*
  - iv. *Housing Act 1983*
  - v. *Impounding of Livestock Act 1994*
  - vi. *Local Government Act 1989*
  - vii. *Road Safety Act 1986*
  - viii. *Sex Work Act 1994*
  - ix. *Summary Offences Act 1966*
  - x. *Valuation of Land Act 1960*.

The Inspectorate could only conclude that the authorisations issued were incomplete, generic rather than specific and that council were at risk of acting without the required authority.

## 6 Ineffective policy framework

To facilitate good governance it is expected that a council logically and appropriately develop, adopt and ensure all of its policies are up-to-date and reviewed consistently. Achieving this provides assurance that the first level of oversight is carried out by council when governing the municipality. Legislation requires council to implement a ‘regime’ whereby all policies are subject to regular review, possibly four yearly, to coincide with the electoral cycle and the review of the Council Plan and other strategic plans.

In the course of this investigation, the Inspectorate reviewed many council policies (in line with changes to the Act) and found that a large number of those policies (at the time of review) were outdated with some having not been reviewed for a considerable time.

It was also found that the Council Plan contained a deliverable to review and update all policies and address anomalies to ensure compliance with current legislation. However when individual policies were requested, in a majority of instances, the documents could not be located immediately, or were held in draft format pending formal adoption.

### Example 1

The Inspectorate noted that the *Procurement Policy*:

- a. states that the council’s “deed of delegation” to the CEO will include a reference to the CEO’s power to award a contract. As indicated elsewhere in this report, there is no such limitation in the CEO’s delegation.
- b. makes reference to social procurement and local purchasing as potential evaluation criteria but does not contain reference to any other criteria.
- c. refers to a “*Tendering and Contracts Policy*” which was found to be undated, unclear on who approved it and referenced repealed legislation.

### Example 2

Another council policy reviewed was the *Disposal of Motor Vehicles to Staff Policy*. The policy was undated, on plain paper and there was no indication of who approved the document.

In summary, the policy states that when a council vehicle is seen to be surplus, or otherwise ready for disposal, the council operates an internal tendering process whereby staff can bid for the vehicle and the bids are then compared with quotations, *if any*, received from a State Government fleet program dealer.

The Inspectorate considers this approach to expose council to significant risk of conflict of interest or corrupt activity whereby the council asset is not realised for full market value to the detriment of the community.

## 7 The audit committee

An Audit Committee is an important function of every council as an independent oversight mechanism. The administration is responsible for implementing the objectives as set out in the Council Plan.

The Inspectorate conducted a review of the constitution and effectiveness of council's Audit Committee for the period of 2012 to 2016. It was identified that the Audit Committee (at the time of the review) did not meet with the requirements of the Act and had not operated effectively for some years.

The Inspectorate has noted that at its meeting on 23 May 2017, council appointed three new independent members in what is a positive step forward for council and the community but the failure of the audit committee preceding these appointment is of significant concern.

**7.1 Audit Committee Charter:** A copy of the current *Audit Committee Charter* (dated 27 June 2007) was provided to the Inspectorate. Council established an Audit Committee pursuant section 139(1) of the Act with councillors on the committee not remunerated outside of their allowances. Independent members received payment as set by council under section 139(7) of the Act.

The Charter indicates there have been revisions to the document in March 2011, November 2013, June 2015 and March 2017, however there is no summary of the revisions or whether or not they were approved by council.

The March 2017 revision resulted in a report to council meeting of 28 March 2017 which, in part, still incorrectly refers to the Audit Committee as a special committee with delegated powers.

**7.2 Audit Committee membership:** For the review period the membership requirement was three (later increased to four) members, comprising a minimum of two independent (recently amended to three) and a minimum of one councillor. The Charter provided for three advisors (non-voting). Non-voting advisers may be required at audit committee meetings, but should not be regarded as 'members'.

The Inspectorate requested an Audit Committee membership listing on several occasions. A version was provided in February 2017 and was found to be incorrect with a further version provided on 14 March 2017. Both documents showed the independent members tenures commencing in 2012.

Since 24 November 2015, the Audit Committee had been operating with only one independent member as the other independent member had stepped down. However, the Charter states that a quorum required a minimum of two independent voting members present at meetings, failing which the meeting could not be held, or, if commenced, would lapse for the want of a quorum.

The failure to fill the vacancy which occurred in 2015 resulted in the committee's inability to hold a properly convened meeting since 24 November 2015.

The Inspectorate also found through meeting records that the Audit Committee chairperson had been a member of the committee and held this position for more than ten years. This is contrary to the Audit Committee Charter which states:

*"Independent members shall be appointed for a term of three years. At the conclusion of the first three-year term, existing members will be eligible to apply to be reappointed at the discretion of council for a second three-year term. Independent members can only serve for a maximum period of six years."*

### 7.3 Audit Committee's independent member interest

**returns:** An amendment to section 139(4A) of the Act, which came into effect 1 July 2013, which requires independent members to submit both primary and ordinary interest returns under section 81 of the Act. Both independent members submitted a Primary Interest Return as required in 2013. However in the subsequent periods until June 2016, only two Ordinary Interest Returns have been submitted in accordance with the requirements of the Act.

With no exemptions in place, it is incumbent on Audit Committee members to file interest returns as required by legislation. It is concerning that the council's governance and oversight body failed in itself to meet mandatory statutory requirements.

**7.4 Reporting issues:** In 2012/13 a VAGO review highlighted a number of deficiencies in relation to the Audit Committee's performance reporting. These were rated 'high' in the 2012/13 VAGO Management Letters and mentioned in follow-up letters 2013/14 and 2014/15. The reports stated the absence of policies, processes and the inability to link measures and performance to manage governance and oversight. This correspondence was highlighted to the Audit Committee and council, however at the time of the review no action to address the issues has been carried out.

In summary, an independent Audit Committee is considered a fundamental component of a fully functioning corporate governance structure and, in this case, council could not demonstrate that the Audit Committee fully adhered to its Charter or the relevant legislation. Indeed, it appears that, for a considerable period of time, the Committee has been ineffective and failed to provide any safeguard for the community.

# Appendices

## Appendix 1

### Relevant legislation and policies

#### *Local Government Act 1989*<sup>16</sup>

The principal legislation in Victoria governing councils is the *Local Government Act 1989*. This Act provides the aims and functions of local government as well as providing the legal framework for establishing and managing councils. The Act gives the Victorian Parliament the power to make laws for local government, including laws relating to the constitution of councils, council elections and the powers and duties of councillors and council staff. The Act includes a preamble to reflect the recognition given to local government in the Victorian Constitution.

The mayor and councillors at council abide by the Councillor Code of Conduct. The document dated May 2016 states: “The purpose of local government is to provide a system under which councils perform the functions and exercise the powers conferred by or under the Act and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a council being able to perform its purpose. Good governance relies on good working relations between councillors. This code:

- a. sets out the standards of conduct expected of elected representatives;
- b. endeavours to foster good working relations between councillors;
- c. to enable councillors to work constructively together in the best interests of the local community; and
- d. mandates councillor conduct designed to build public confidence in the integrity of local government.”

#### **Council’s Code of Conduct for Staff**<sup>17</sup>

Council abides by its Code of Conduct for Staff, which states:

“The *Local Government Act 1989* requires the CEO to develop and implement a code of conduct for council staff. The Act also requires council staff must, in the course of their employment with council:

1. act impartially
2. act with integrity including avoiding conflicts of interest
3. accept accountability for results
4. provide responsive service.”

## Appendix 2

### Acts under which powers, duties and functions can be delegated

1. *Aboriginal Heritage Act 2006*
2. *Associations Incorporate Reform Act 2012*
3. *Building Act 1993*
4. *Catchment and Land Protection Act 1994*
5. *Children Youth and Families Act 2005*
6. *Climate Change Act 2010*
8. *Conservation, Forests and Land Act 1987*
8. *Cultural and Recreational Lands Act 1963*
9. *Dangerous Goods Act 1985*
10. *Disability Act 2006*
11. *Domestic Animal Act 1994*
12. *Education and Care Services National Law Act 2010*
13. *Education and Training Reform Act 2006*
14. *Electricity Safety Act 1998*
15. *Emergency Management Act 1986*
16. *Environment Protection Act 1970*
17. *Estate Agents Act 1980*
18. *Fences Act 1968*
19. *Filming Approval Act 2014*
20. *Fines Reform Act 2014*
21. *Fire Services Property Levy Act 2012*
22. *Flora and Fauna Guarantee Act 1988*
23. *Food Act 1984*
24. *Freedom of Information Act 1982*
25. *Gambling Regulation Act 2003*
26. *Graffiti Prevention Act 2007*
27. *Health Records Act 2001*
28. *Heavy Vehicle National Law 2012*
29. *Heavy Vehicle National Law Application Act 2013*
30. *Heritage Act 1995*
31. *Housing Act 1983*
32. *Impounding of livestock Act 1994*
33. *Independent Broad-Based Anti-Corruption Act 2011*
34. *Infringements Act 2006*
35. *Land Act 1958*
36. *Land Acquisition and Compensation Act 1986*
37. *Liquor Control Reform Act 1998*
38. *Local Government Act 1989*
39. *Magistrates’ Courts Act 1989*
40. *Major Transport Projects Facilitation Act 2009*
41. *Mineral Resources (Sustainable Development) Act 1990*
42. *National Parks Act 1975*
43. *Pipelines Act 2005*

<sup>16</sup> Information from [www.knowyourcouncil.vic.gov.au/guide-to-councils/how-councils-work/acts-and-regulations](http://www.knowyourcouncil.vic.gov.au/guide-to-councils/how-councils-work/acts-and-regulations).

<sup>17</sup> Information from folder of policies given to the Inspectorate by council during the investigation. This Code of Conduct for Staff policy had no version number or date.

44. *Privacy and Data Protection Act 2014*
45. *Protected Disclosure Act 2012*
46. *Public Health and Wellbeing Act 2008*
47. *Public Records Act 1973*
48. *Road Management Act 2004*
49. *Road Safety Act 1986*
50. *Second Hand Dealers and Pawnbrokers Act 1986*
51. *Sex Work Act 1994*
52. *Sheriff Act 2009*
53. *Sport and Recreation Act 1972*
54. *Subdivision Act 1988*
55. *Summary Offences Act 1966*
56. *Transfer of Land Act RANSFER OF LAND ACT 1958*
57. *Transport Integration Act 2010*
58. *Transport (Safety Schemes and Compliance and Enforcement) Act 2014*
59. *Urban Renewal Authority Victoria Act 2003*
60. *Valuation of Land Act 1960*
61. *Victorian Grants Commission Act 1976*
62. *Victoria State Emergency Service Act 2005*
63. *Victorian inspectorate Act 2011*
64. *Water Act 1989*
65. *Relevant Regulations*

## Appendix 3

### Legislation under which authorisations can be issued

1. *Building Act 1993*
2. *Domestic Animals Act 1994*
3. *Emergency Management Act 1986*
4. *Environment Protection Act 1970*
5. *Fire Services Property Levy Act 2012*
6. *Food Act 1984*
7. *Graffiti Prevention Act 2007*
8. *Housing Act 1983*
9. *Impounding of Livestock Act 1994*
10. *Local Government Act 1989*
11. *Local Laws Made Under the Local Government Act 1989*
12. *Public Health and Wellbeing Act 2008*
13. *Regulations made under the Acts*
14. *Residential Tenancies Act 1997*
15. *Road Management Act 2004*
16. *Road Safety Act 1986*
17. *Sex Work Act 1994*
18. *Summary Offences Act 1966*
19. *Valuation of Land Act 1960*

## Appendix 4

### Central Goldfields Shire Council – response to draft report



PLEASE QUOTE REFERENCE  
ENQUIRIES

vh : sg

11 August, 2017

Mr David Wolf  
Chief Municipal Inspector  
[inspectorate@lgici.vic.gov.au](mailto:inspectorate@lgici.vic.gov.au)

Dear David

**RE: DRAFT INSPECTORATE REPORT – CENTRAL GOLDFIELDS**

Further to our meeting of 1 August I advise as follows in respect to the above Report.

Councillors were made aware of the Draft Report at the Council Briefing Meeting held on 1 August. The Draft was circulated as a confidential matter under the Act and feedback sought on any matters of perceived factual error within the document. At the Council Briefing Meeting of 8 August I sought any final comments from the Councillors on this Report.

Whilst there were some explanations of why certain matters had occurred the facts of the Report are not disputed.

Consistent with our discussions I have advised Councillors that the Report will likely become public in the next short period. In addition, I have advised staff of the receipt of the draft report along the lines that we discussed.

I would also like to let you know that I have commenced work on a comprehensive Action Plan to address all the matters raised in the Inspectorates Report, as well as the Monitors Report which is already a public document. I am also consulting with the Chair of the Audit Committee, Mr J. Watson on the content of this. I will provide the Inspectorate with a copy of this Plan once finalised and endorsed by the Council.

Lastly I wanted to offer my thanks on behalf of Council and the community of Central Goldfields to you and your team for their thorough and comprehensive work.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vince Haining', written in a cursive style.

Vince Haining  
**INTERIM CHIEF EXECUTIVE OFFICER**

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P.O Box 194, Maryborough 3465. DX 46504. Phone: (03) 5461 0610 Fax: (03) 5461 0666





Local Government Investigations and Compliance Inspectorate  
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