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REPORT
FOR
IPSWICH CITY COUNCIL

“GOVERNANCE REVIEW”

31 July 2017

DISCLAIMER AS TO LEGAL ADVICE

The observations and advice contained in this report do not purport nor claim to represent formal legal advice. The content of the report is formulated from the experience of the consultants as practising local government CEOs over many years and from more recent experience in consulting to the local government industry in Queensland.

Commentary and advice on the interpretation of the legislation referenced in the report is presented in this context and from the perspective of professional administrators applying good governance principles to the implementation of systems, processes and procedures to secure effective, transparent and accountable responses to that legislation.

Although developed in good faith and with due diligence the recommendations for action arising from the report should be considered in the context of Council's own formal legal advice.

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1. EXECUTIVE SUMMARY

In anticipation of a change of political leadership owing to a mayoral by-election to be held on 19 August 2017 the Chief Executive Officer of the Council engaged the consultants to conduct a governance review, focusing on the interaction of elected members with the administrative organisation.

The scope of the review was contained to systems, processes and procedures considered necessary to support an effective standard of governance consistent with the Local Government Principles contained in Section 4 of the Local Government Act 2009.

The review revealed a reasonably good structure of formal policies and procedures intended to guide Councillors and employees in the conduct of their respective roles. However it also identified a number of vulnerabilities occasioned by methods of implementation that raise questions about complete adherence to relevant legislation. In particular, several elements of the governance framework reveal practices that might not be considered consistent with the local government principle relating to “*transparent and effective processes and decision making in the public interest*”.

There were sufficient areas identified in this respect to raise concern as to the vulnerability of the Council to external intervention should the matters not be addressed.

A number of opportunities for improvement and closer alignment to the local government principles were identified, especially in relation to the concepts of transparency and visible accountability. These included:

- Councillor interaction with employees in accessing information and assistance;
- Openness of disclosure of Interests;
- Transparency of Council decision making processes and publication of Minutes;
- Processes for authorising expenditure involving Councillors’ expenses;
- Transparency of the City Wide and Divisional Allocations;
- Frameworks for managing risks generally;
- Management of corporate information and Public Records;
- Follow up of Audit reviews and recommendations.

In other governance areas, whilst the formal policies and procedures were found to be adequate on the face of the documentation, risk scenarios were apparent in the implementation framework.

A number of recommendations are made to progress the suggested improvements. In most cases the recommended actions are administrative and do not require substantive changes to Council policy. To provide for an orderly implementation of any improvements endorsed by Council a recommendation is made to convene working parties to manage the change.

2. SUMMARY OF RECOMMENDATIONS

Recommendation 1: Council consider the re-introduction of a Code of Conduct for Councillors as a public expression of its commitment to ethical governance.

Recommendation 2: The CEO consult with the executive team to review the extent of councillor/staff contact contained in the “red box” lists to ensure nominated contacts within the organisation have sufficient level of responsibility and accountability to advise and inform Councillors accurately and reliably in a manner consistent with management policy. Following the review the CEO advise Council on changes desirable to the Reasonable Requests Guidelines.

Recommendation 3: The CEO ensure that effective guidelines are promulgated to Councillors and employees (including relevant training) outlining their respective responsibilities in recognising, avoiding and responding to inappropriate approaches under the Reasonable Request Policy.

Recommendation 4: The CEO take action to achieve more effective compliance with Section 295 of the Local Government Regulation 2012 by publishing identifiable and consolidated Registers of Interest for Councillors with clear links from the Councillor information page of the Council’s website.

Recommendation 5: The CEO instruct Minute Clerks when recording Councillors’ declaration of conflicts of interest to record the Committee Report Item number and the topic or subject heading to fairly identify the context of the declared conflict of interest.

Recommendation 6:

- a. Council consider restructuring its City Management, Finance and Community Engagement Committee to eliminate the use of Boards, by incorporating the items usually compiled into the Border agendas into the Committee agenda;
- b. Council partition the Committee agenda into matters to be dealt with in open session and matters to be dealt with in closed session, subject to listing the topic headings in the publicly available Committee agenda;
- c. When reaching the items on the Committee agenda that are to be dealt with in closed session, a motion should be moved that the Committee move into closed session to consider the nominated items on the agenda;
- d. Having returned from closed session a motion should be moved specifying the actual recommendations from the closed session in respect of each matter considered and for those recommendations to be voted on, individually or collectively;
- e. The motions, commending those recommendations to the Council, having been carried, the reports considered in closed session should be committed to the public record of the Committee meeting for public disclosure, except in circumstances where the Committee recommends the report be deemed confidential in keeping with the definitions in Section 275 of the Local Government Act 2009;
- f. This procedure for dealing with matters in closed session be also applied to the Council’s other Committees as and when required.

Recommendation 7: Council adopt the practice of publishing on its website all reports considered by Committees and all Committee reports submitted to Council including officers’ recommendations, Committee recommendations as well as Council’s formal resolutions, in order to provide full transparency of its decision making.

Recommendation 8: Council improve public information on its website by incorporating a page containing a list of all adopted and current policies together with links to the actual documents for accessible inspection by inquirers.

Recommendation 9:

- (a) The CEO review the conditions of the delegated power to decide applications under the Planning Act to avoid any risk of consultation with Councillors being interpreted as directing employees or exercising undue influence.
- (b) The CEO prepare a program to incorporate in Council induction and CPD programs including awareness training in relation to workplace behaviour including preventing undue influence of delegated authority decisions, bullying and harassment.

Recommendation 10: Council revisit the recommendations of the QAO and Internal Audit in relation to the Procurement function and reconcile those recommendations with the implementation plan for the new Procurement Framework.

Recommendation 11: The Audit Plan element for examination of the Council's Procurement function be retained in the 3 year plan and continue to monitor the implementation of the new Procurement Framework, to provide ongoing review of its effectiveness.

Recommendation 12: The CEO review the Claim Form for use by Councillors in submitting expenditure for reimbursement to include declarations as to the compliance of the claim with Council policy and to provide for notations concerning the deduction of disallowed items.

Recommendation 13: Council review its arrangements for the City Wide and Divisional Allocations particularly in relation to funding for community purposes to align more closely with the transparency and accountability requirements of Section 109 of the Local Government Act 2009 and Section 202 of the Local Government Regulation 2012.

Recommendation 14: The CEO extract relevant matters from this report to include in the executive office risk register and develop appropriate risk mitigation strategies to deal with them.

Recommendation 15: The CEO formulate guidelines for the assessment of correspondence likely to be regarded as a public record and provide Councillors and their administrative assistants with a convenient process to enable a capture of relevant material.

Recommendation 16: Council proceed to implement the recommendations of the Internal Audit unit in relation to controlled entities.

Recommendation 17: The charter of Council's Audit Committee be expanded to include risk management and the committee's name be altered to the Audit and Risk Management Committee.

Recommendation 18: The CEO arrange for procedures concerning the reception of the Observation Report to include a procedure for the Mayor to present the report to the next ordinary meeting of the local government after being received and the staff of the Mayor's office be alerted to this requirement.

Recommendation 19: The CEO consult with the Mayor to convene working parties to develop the approved implementation plan for any changes endorsed from this review and a formal project plan be compiled to manage the implementation.

3. INTRODUCTION

In anticipation of a change of political leadership owing to a mayoral by-election to be held on 19 August 2017 the Chief Executive Officer of the Council engaged the consultants to conduct a governance review, focusing on those aspects of the Council's governance framework as relate to the interaction of elected members with the administrative organisation, to provide assurance that the policies, processes and procedures supporting that framework reflect appropriate standards of integrity and operational effectiveness.

The focused nature of the review contained its scope to the examination of systems, processes and procedures considered necessary to support an effective framework to deliver a standard of governance consistent with the Local Government Principles contained in Section 4 of the Local Government Act 2009.

The conduct of the review included the following broad areas of activity:

- Examination of documents, systems and procedures bearing upon the areas of enquiry;
- Interview of relevant staff with responsibilities associated with managing or maintaining related systems and procedures;
- Analysis of the effectiveness of controls in place to mitigate risks of non-compliance with Council policy and procedures in the areas of interest;
- Identification of issues, risks including potential external intervention and areas for improvement;
- Compilation of recommendations for action and associated implementation.

Relevant sections of the Local Government Act 2009 and the Local Government Regulation 2012 are quoted in the body of the report for ease of reference. In addition, where appropriate reference is also made to the Local Government Association of Queensland's Commentary on the legislation, prepared for the Association by Stephen Fynes-Clinton, B.Econ. LLB(Hons), Barrister at Law, as a recognised industry interpretation of those provisions.

4. A GOVERNANCE FRAMEWORK FOR LOCAL GOVERNMENT

The principal sources of authority and legislative constraint concerning the governance of local councils in Queensland are the Local Government Act 2009 and the Local Government Regulation 2012. As instruments of the Queensland Parliament these laws prescribe the bounds of power and the obligations by which local government elected members and employees are to carry out their responsibilities to the communities they serve.

The overarching responsibilities relating to governance are set out in the founding principles contained in Section 4 of the Local Government Act 2009.

4 Local government principles underpin this Act

(1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—

(a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and

(b) any action that is taken under this Act to be taken in a way that—

(i) is consistent with the local government principles;
and

(ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.

(2) The *local government principles* are—

(a) transparent and effective processes, and decision-making in the public interest; and

(b) sustainable development and management of assets and infrastructure, and delivery of effective services; and

(c) democratic representation, social inclusion and meaningful community engagement; and

(d) good governance of, and by, local government; and

(e) ethical and legal behaviour of councillors and local government employees.

[Bold text is the author's emphasis]

Whilst recognising that these principles are high level expectations, the intent of the Legislature in expecting local governments to observe them is clear in that the Minister has powers under the Act:-

- to suspend or revoke a local law which is “inconsistent” with the principles (Section 38AB);
- to overturn a Council decision which is “inconsistent” with the principles (Section 121);
- to remove a councillor who has “seriously or continuously” breached the principles (Section 122); and
- to dissolve a Council that has “seriously or continuously” breached the principles (Section 123).

Consequently in examining a local government's governance framework one would expect to see a number of clear indicators that the council is committed to these principles. Such indicators include:

- A public affirmation by both elected members and employees of their commitment to acting only in the best interests of the communities they serve, usually through subscribing to a Code of Conduct outlining the values of dedicated and selfless public service;
- A system of transparency and accountability involving the publication of registers of personal and commercial interests of Councillors and recording of declarations of conflict of interest to ensure the integrity of the local government's decision making processes;
- An open and transparent decision making forum for the debate, deliberation and recording of the resolution of policy and business coming before the Council;
- Appropriate separation of executive and administrative power through delegations, processes and procedures that ensure objective and impartial implementation of policy, prevent undue influence and favoured treatment and assure equitable application of regulatory and enforcement functions;
- Effective systems for authorising the use of the local governments assets (physical, financial, information and personnel) according to law, in keeping with approved policies and the adopted budget and using practices that ensure the prevention of misappropriation, waste and fraud;
- Effective systems to manage risks of all types (physical, financial, legal, reputational) and to monitor and measure the performance of the organisation in implementing the strategic and operational plans of the local government;
- Effective systems of Internal and External Audit and regular review of quality control through the oversight of an effective Audit and Risk Committee.
- Transparent and Accountable public disclosure through regular community engagement and communication culminating in a legislatively compliant and informative Annual Report.

The following sections of this report seek to assess the Ipswich City Council's governance framework against these indicators

5. IPSWICH CITY COUNCIL'S RESPONSE TO GOOD GOVERNANCE

5.1. COUNCILLORS AND EMPLOYEES

5.1.1. Roles and Responsibilities

The Local Government Act 2009 sets out some specific and general responsibilities of Councillors and employees.

Section 12 provides that Councillors have responsibilities to:

- represent the current and future interests of the residents of the local government area;
- ensure the local government
 - (i) discharges its responsibilities under this Act; and
 - (ii) achieves its corporate plan; and
 - (iii) complies with all laws that apply to local governments.
- provide high quality leadership to the local government and the community;
- participate in council meetings, policy development, and decision-making, for the benefit of the local government area;
- be accountable to the community for the local government's performance.

Subsection (6) of Section 12 also provides *“When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.”*

Section 12 also sets out more specific powers and responsibilities for the Mayor, including presiding at meetings, presenting the Budget and providing strategic and policy direction to the CEO and senior executive employees.

Section 13 sets out the responsibilities of council employees, which include:

- implementing the policies and priorities of the local government in a way that promotes the effective, efficient and economical management of public resources;
- carrying out their duties in a way that ensures the local government complies with relevant legislation and achieves the Council's corporate plan;
- providing sound and impartial advice to the local government and carrying out their duties impartially and with integrity;
- ensuring the employee's personal conduct does not reflect adversely on the reputation of the local government.

In particular this section also provides that all council employees have the responsibilities of:

- observing the ethics principles under the Public Sector Ethics Act 1994, section 4 as follows:

Part 2 Ethics principles

4 Declaration of ethics principles

1) *The ethics principles mentioned in subsection (2) are declared to be fundamental to good public administration.*

(2) *The ethics principles are—*

- *integrity and impartiality*
- *promoting the public good*
- *commitment to the system of government*
- *accountability and transparency*¹

and

- complying with a code of conduct under the Public Sector Ethics Act 1994.

Ipswich City Council has implemented a Code of Conduct for employees, however although in previous terms a Code of Conduct also existed applying to Councillors, that expired in 2012 and has not been subsequently replaced. The enactment of the Local Government Act 2009 removed the previous mandate for a Code of Conduct for Councillors.

The recent review of the Councillor Complaints process by a Queensland government appointed Panel noted this absence and commented in its report:

*“Codes of conduct are increasingly being used to set standards of ethical behaviour for public and governmental organisations. Such codes have been adopted in Queensland, for example, by the parliament, the cabinet and the public service. The Panel considers that there should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting practice; the latter setting minimum standards and capable of being modified by individual councils.”*²

The Panel recommended the Code be prepared by the Department of Local Government in consultation with the LGAQ and LGMA. The Queensland Government has expressed support for the introduction of a new Code of Conduct for councillors, saying:

*“The government supports the development of a Code of Conduct and model meeting procedures, but will determine, during the development of the Code, whether it can be uniform across all councils. The government also supports continued breaches (i.e. three breaches within a 12 month period) of the Code being defined as misconduct, which will be referred by the Independent Assessor to the CCT [Councillor Conduct Tribunal] to deal with and impose potentially more serious penalties.”*³

¹ The Public Sector Ethics Act 1994

² “Councillor Complaints Review – A Fair, Effective and Efficient Framework”, January 2017, P 42.

³ Queensland Government response to the report of the Councillor Complaints Review Panel, tabled by the Minister in Parliament July 2017.

The preamble to the Ipswich City Council employee Code of Conduct states:

“The Code of Conduct for Employees seeks to set standards which the public has a right to expect are the minimum standards which should apply to all employees of Council. Accordingly, Council recognises that not only must the actions of employees be above reproach, they must also be seen to be above reproach. Such a situation leads to public confidence in the system of local government.”

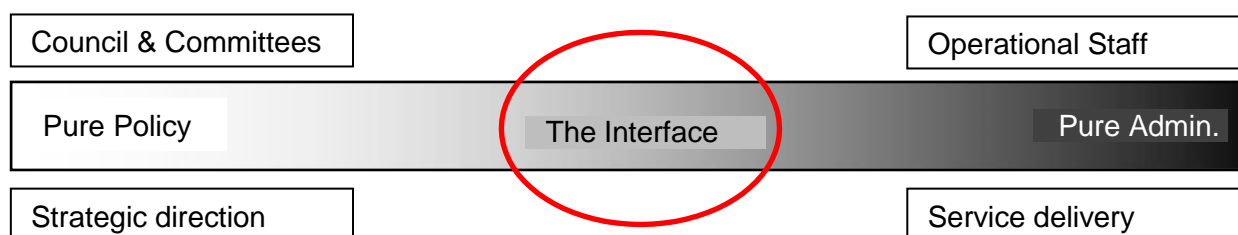
Similar sentiments should also apply to the role of Councillor and embracing a similar Code would allow Councillors to equally demonstrate publicly their commitment to integrity in office.

Recommendation 1: Council consider the re-introduction of a Code of Conduct for Councillors as a public expression of its commitment to ethical governance.

5.1.2. The Political /Administrative Interface

Local Government, unlike other levels of government in our Federation, prides itself on being “closest to the people”. This occurs as a result of the tradition at this level of both councillors and key staff being accessible and receptive to individual members of the community. That situation has forged a close working relationship between councillors and council staff, which in its best form promotes highly responsive policy development and service delivery. Misunderstanding as to the appropriate extent of interaction between councillors and employees however can create an environment where undue influence is exerted from either end of the political /administrative continuum.

The Separation of Powers principle cannot be applied to local government as literally as it might in other jurisdictions and there are good reasons why councillors and council officers need to work effectively in the grey areas between the extremes of the continuum.



(Where councillors and senior staff work)

Appropriately qualified Council officers regularly provide advice and input to strategic direction and policy decisions and equally councillors observe aspects of the council's operations (from their interaction with the community) on which they can validly offer suggestions for service delivery improvement.

However just as elected members in their legitimate role as decision makers may not be directed by council employees, individual councillors (other than the Mayor) may not direct employees. As the Local Government Act 2009 provides –

S. 170 Giving directions to local government staff

(1) The mayor may give a direction to the chief executive officer or senior executive employees.

(2) No councillor, including the mayor, may give a direction to any other local government employee.

The LGAQ commentary on the Local Government Act explores the provisions of this Section as follows:

“This section reinforces the distinction between the governing and operational arms of a local government. Individual councillors, other than the Mayor, have no legal power to assume any executive or operational role by directing a Council employee to implement a Council decision or take any other action...

In this regard, it is considered that it is a breach of subsection (2) for a councillor to make a “strong suggestion” to an officer as to what should be contained in his or her report...

If a councillor attempts to act in contravention of subsection (2), the employee should not act on the request. ..., and a councillor who approaches an employee contrary to subsection (2) places the employee in a potentially uncomfortable and stressful situation. An employee who responds to a councillor’s request to carry out particular work (rather than the work which that employee would be carrying out under his or her normal duties), is potentially subject to disciplinary action.

For these reasons, it is most important that councillors understand the significance of subsection (2) and do not act in contravention of it.”⁴

5.1.3. Councillors obtaining assistance and information

While there are areas where the Council as the “Legislature” and council management as the “Administration” must be free to exercise full responsibility according to their own judgement, there remain significant areas where a respectful partnership of collaboration must exist in order for the best results to be achieved.

This means that both Councillors and senior management must recognise reasonable boundaries across which assistance and information must flow, but in a regulated manner.

The Local Government Act 2009 creates the opportunity to delineate these boundaries by virtue of Section 170A – Requests for Assistance and Information.

“170A Requests for assistance or information

(1) A councillor may ask a local government employee provide advice to assist the councillor carry out his or her responsibilities under this Act.

(2) A councillor may, subject to any limits prescribed under a regulation, ask the chief executive officer to provide information, that the local government has access to, relating to the local government.”

The Section goes on to exempt certain material that is judicially protected.

⁴ Local Government Act 2009 commentary, LGAQ

Importantly the Act provides a means by which the extent of such requests can be moderated to accommodate the needs of councillors without creating unnecessary intrusion into administrative process.

Section 170A (6) makes provision for Acceptable Request Guidelines.

(6) The acceptable requests guidelines are guidelines, adopted by resolution of the local government, about—

(a) the way in which a councillor may ask a local government employee for advice to help the councillor carry out his or her responsibilities under this Act; and

(b) reasonable limits on requests that a councillor may make.

The purpose of these guidelines is to clarify for both councillors and staff the authorised procedure for councillors accessing staff in order to make their enquiry. Typically, rather than attempt to list every type of allowed or prohibited enquiry local governments tend to reach agreement with the CEO as to particular officers within the organisation who may be approached for assistance or information. These will usually be senior managers or specialist personnel who may have access to the type of information required and permitted.

In the case of Ipswich City Council the adopted Acceptable Requests Policy has been developed for Councillor and staff guidance and is illustrated by the use of an organisational chart to nominate by means of a “red box”, officers to whom Councillors may refer for assistance or information – within that officer’s scope of responsibility.

The number of accessible employees across the organisation totals 226

Executive – 10
Works, Parks & Rec – 32
Planning & Development – 49
Infrastructure services -20
Health, Security & Regulation – 27
Finance & Corporate Services – 38
Economic Development & Marketing – 24
Arts, Social development & Community - 26

The Reasonable Requests Policy was adopted 2013 and last amended on 3rd June 2016.

Whilst there are no documented reports of mis-use of this procedure the fact that so many employees at relatively low levels of management are authorised to provide assistance and information raises the prospect of risks associated with the quality of any advice given without the benefit of senior management perspective.

The larger the number and spread of staff empowered to inform and advise Crs – the higher a risk of error or inconsistency. Conversely there is also a higher risk of undue influence on lower order administrative decisions.

Notwithstanding the adequacy of the content of the guidelines for Councillors an important deficiency has been noted in terms of the absence of direction on the manner in which Councillors should approach staff. This should be addressed in two parts:

1. Guidelines should be prepared for Councillors raising awareness of their obligations to avoid making inappropriate requests to staff (either in terms of the level of authority of the employee to respond; or the nature of the assistance or information sought; or the manner in which the request is made.)
2. Guidelines should be prepared for employees who are approached by a Councillor for assistance or information raising their awareness of what might constitute an inappropriate approach and how to deal with it.

In both cases relevant training should be provided to prevent misinterpretation of the guidelines.

Recommendation 2: The CEO consult with the executive team to review the extent of councillor/staff contact contained in the “red box” lists to ensure nominated contacts within the organisation have sufficient level of responsibility and accountability to advise and inform Councillors accurately and reliably in a manner consistent with management policy. Following the review the CEO should advise Council on changes desirable to the Reasonable Requests Guidelines.

Recommendation 3: The CEO ensure that effective guidelines are promulgated to Councillors and employees (including relevant training) outlining their respective responsibilities in recognising, avoiding and responding to inappropriate approaches under the Reasonable Request Policy.

5.2. INTEGRITY SYSTEMS

5.2.1. Registers of Interest

The principal tool employed by the Local Government Regulation 2012 to ensure the integrity of decision making in local governments is the requirement for councillors and senior staff to maintain Registers of Interest. The requirements as to these registers are set out in Part 5 Sections 289 to 297.

As well as setting out details of how the registers are to be kept and the content that should appear, the Regulation also prescribes matters concerning access to the information in the registers including publication of the registers on the Council's website.

“295 Publication of register of interests of councillors

(1) The local government must ensure a copy of the register of interests of councillors may be inspected by the public—

(a) at the local government's public office; and

(b) on its website.

(2) The copy of the register of interests must—

(a) include a change to the register of interests as soon as practicable, but no later than 5 business days, after the change is made; and

(b) be in a form that is reasonably accessible and transparent.

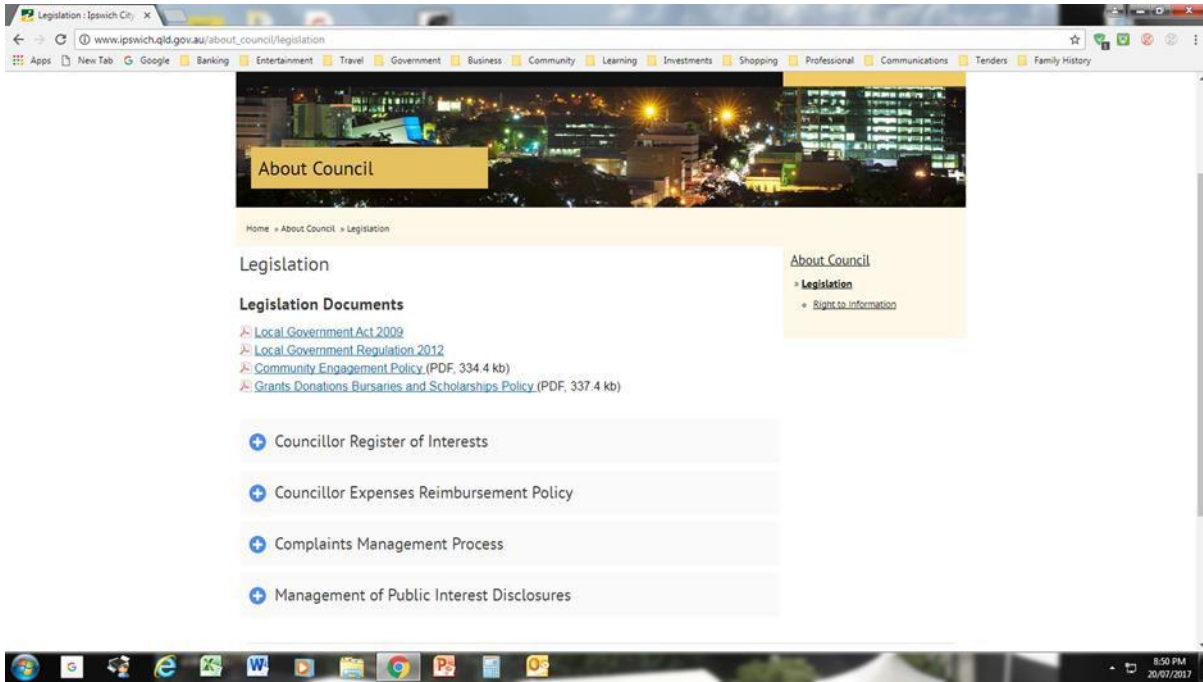
*Example for paragraph (b)—
a consolidated version of the register of interests”*

An examination of the Ipswich City Council's website reveals that the webpage dedicated to the information about and profiles of Mayor and Councillors does not include any reference to or a link to their respective Registers of Interest. An extensive search was required in order to locate the registers on the page headed “Legislation”. This page contained downloadable documents (PDF) for:

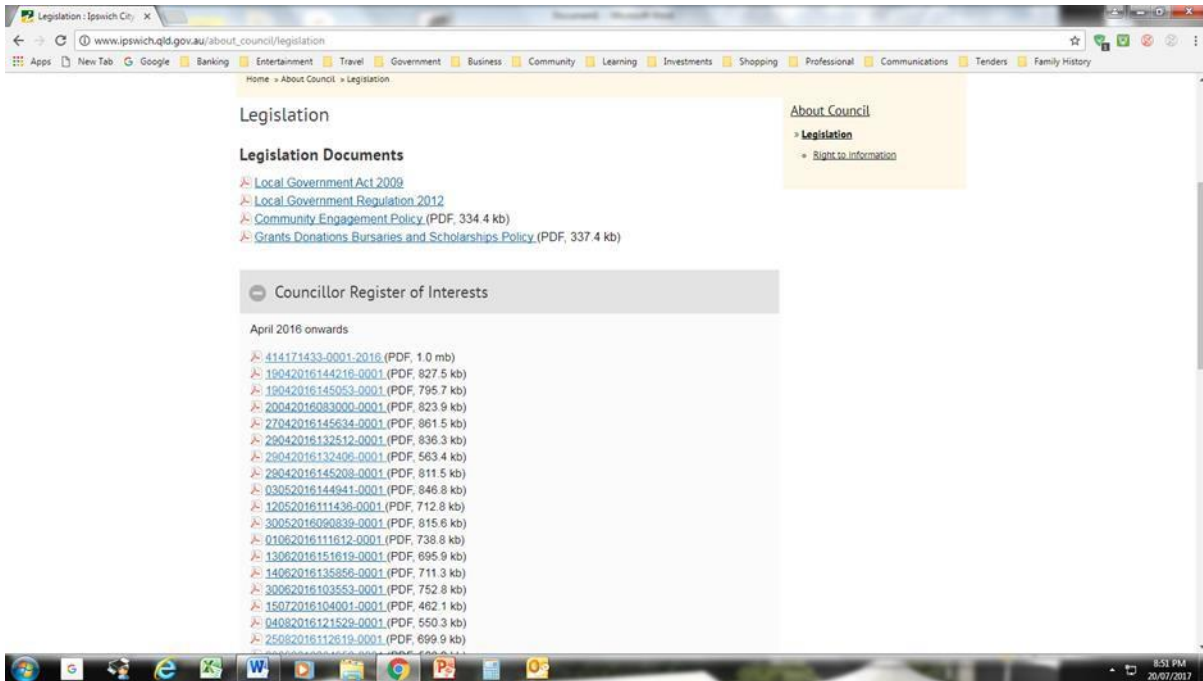
- The Local Government Act 2009
- The Local Government Regulation 2012
- Council's Community Engagement Policy
- Council's Grants, Donations, Bursaries and Scholarships Policy

And links to access:

- Councillor Register of Interest
- Councillor Expense Remuneration Policy
- Complaints Management Process
- Management of Public Interest Disclosures



Upon opening the Councillor Register of Interest link a long list of PDF documents appears. Each document is named with a “de-identified code” i.e. it is not possible to identify the subject of the document from its title. An enquirer must open each individual document in order to discover the identity of the Councillor to whom it relates. Furthermore the documents contain numerous versions of the registers including amendments to registers.



Consequently it is very difficult to search for a given Councillor's Register of Interest and be certain that the full Register with all amendments has been accessed. The combination of the placement of these documents on the Legislation page with no link from the Councillor page, in addition to the confusing publication of multiple de-identified documents, would suggest clear non-compliance with Section 295 of the Local Government Regulation 2012 which requires that the Registers

“(b) be in a form that is reasonably accessible and transparent.”

Note that the Regulation provides a specific example of what is considered to be accessible and transparent –

Example for paragraph (b)— a consolidated version of the register of interests”

The current form of the Council's Registers of Interest presents a high risk of being seen as concealed rather than transparent.

Recommendation 4: The CEO take action to achieve more effective compliance with Section 295 of the Local Government Regulation 2012 by publishing identifiable and consolidated Registers of Interest for Councillors with clear links from the Councillor information page of the Council's website.

5.3. DECISION MAKING FRAMEWORK

The Ipswich City Council follows the traditional model of local government decision formulation which comprises:

- An initial report prepared by a Council officer outlining the background to the particular issue being submitted for Council's consideration, together with a recommendation from that author as to appropriate action to address the issue;
- Submission of that report (after appropriate review by senior management for alignment with relevant legislation, policy and conformity with manner and form requirements of Council's administrative procedures) to a Council Committee for initial review and development of recommendations for consideration by the full Council.
- Submission of a report from the relevant Committee together with its recommendations to the Ordinary meeting of Council, for formal resolution.

The Council has appointed the following Standing Committees –

- Library and Youth and Seniors Committee
- Art and Social Development Committee
- City Infrastructure and Emergency Management Committee
- City Works, Parks, Sport and Environment Committee
- Health, Security and Regulatory Services Committee
- Planning, Development and Heritage Committee
- Economic Development, Tourism and Digital City Committee
- City Management, Finance and Community Engagement Committee

In this case however the Council has adopted a variant of the usual framework by introducing an intermediate step in the process involving the business conducted by the City Management, Finance and Community Engagement Committee.

This variant invokes the creation of three forums referred to as Boards:

- The City Management, Finance and Community Engagement Board;
- The Policy and Administration Board;
- The Employee Development Board.

These Boards have all the characteristics of Council Standing Committees but because they are not named as such the Council accords them confidentiality privileges not otherwise permitted to Standing Committees under Division 3 of the Local Government Regulation 2012. That is the Agendas of the Boards are held to be confidential and not published prior to the meeting; the Board meetings are held in closed session without disclosing publicly the nature of the business to be considered in that closed session; and the recommendations are adopted by the City Management, Finance and Community Engagement Committee without disclosing publicly the effect of those recommendations.

This practice raises two issues related to the risk of non-compliance with legislative requirements concerning Council conducting its deliberations in public.

5.3.1. When is a Board not a Standing, Special or Advisory Committee?

Section 264 of the Local Government Regulation provides for the appointment of Committees of Council.

“264 Appointment of committees

(1) A local government may—

(a) appoint, from its councillors, standing committees or special committees; and

(b) appoint advisory committees.”

The Local Government Act 2009 provides the definition –

“standing committee, of a local government, means a committee of its councillors that meets to discuss the topic decided by the local government when establishing the committee.”

Section 265 relates to Advisory Committees.

“265 Advisory committees

(1) An advisory committee—

(a) must not be appointed as a standing committee; and

(b) may include in its members persons who are not councillors.

(2) A member of an advisory committee (whether or not they are a councillor) may vote on business before the committee.

The LGAQ commentary on the Local Government Act offers the following observation:

“264 Appointment of committees

A “standing committee” is a committee constituted to deal with a particular area of the Council’s jurisdiction on an ongoing basis. A “special” committee is one constituted to examine and/or deal with a particular specific subject or issue.

Accordingly standing committees exist indefinitely to deal with matters arising from time to time that fall within their jurisdiction, whereas special committees are ordinarily dissolved once they have done the specific job assigned to them.”

...

Standing committees and special committees conventionally have an advisory role only, though executive powers can be delegated to a standing committee under s 257 of the Act. The term “advisory committee” in subsection (1)(b) does not refer to standing or special committees in an advisory role, but refers to the separate species of committee dealt with in s 265...

The requirement that such committees not be appointed as standing committees was apparently intended by the draftsman to indicate no more than that an advisory committee is a different “species” from a standing committee, and could not have powers delegated to it.”⁵

Consequently, it is necessary to try to differentiate the Ipswich City Council Committees from its Boards by comparing their attributes and how they operate. See Table 1 below:

⁵ Commentary on the Local Government Act 2009, LGAQ

Table 1 –Comparison of attributes of ICC Committees and Boards

Attribute or characteristic	Committee	Board
Are certain elected members appointed as members of the forum and are other Crs invited to attend the meetings?	Yes	Yes
Are business papers /reports prepared by officers for meetings including issue background and recommendations for action?	Yes	Yes
Are meeting notices issued to Crs inviting them to attend and giving notice of the business coming before the meeting?	Yes	Yes
Is the agenda or business paper for the meeting published or otherwise made available for inspection by the public?	Yes	No
Does the meeting convene in public and then resolve into closed session if necessary?	Yes	No
Is there a “permanent” meeting Chair who presides over the conduct of meeting business?	Yes	Yes
Do members move motions, debate and vote on business before the meeting?	Yes	Yes
Does the meeting formulate recommendations for respective council committees?	Yes	Yes
Are Minutes maintained for meetings?	Yes	Yes
Is there a written report prepared from the deliberations of the meeting for submission to a relevant Committee or Council?	Yes	Yes
Does the adoption of the meeting’s recommendations by the relevant committee and then Council result in substantive policy, regulatory, commercial, or financial commitment by the local government?	Yes	Yes
Are the substantive reports which are the basis of the recommendations adopted by Council available for public inspection or published on the Council’s website	No	No

From the above the only difference between the Council’s Committees and its Boards is that the latter are convened in closed session and their proceedings are maintained as confidential from the Public. In all other respects they act and transact deliberations (in an advisory capacity) in the same way that Standing Committees do.

There would be a strong argument then that these Boards should be subjected to the same public scrutiny as Standing Committees. That is, their proceedings should be convened in open session accessible by the Public and that any closed session should be subject to the same prerequisite conditions as apply to Standing Committees.

5.3.2. Is the practice of convening meetings in Closed Session contrary to the Regulation?

The Local Government Act 2009 does not preclude closing Council or committee meetings to the public in order to deliberate upon confidential matters. However the nature of such matters should be restricted to those that have legal and commercial sensitivities only. Section 275 of the Act defines a range of purposes for which meetings may be closed.

Division 3 Common provisions for local government and committee meetings

274 Meetings in public unless otherwise resolved

A meeting is open to the public unless the local government or committee has resolved that the meeting is to be closed under section 275.

275 Closed meetings

(1) A local government or committee may resolve that a meeting be closed to the public if its councillors or members consider it necessary to close the meeting to discuss—

(a) the appointment, dismissal or discipline of employees;

or

(b) industrial matters affecting employees; or

(c) the local government's budget; or

(d) rating concessions; or

(e) contracts proposed to be made by it; or

(f) starting or defending legal proceedings involving the local government; or

(g) any action to be taken by the local government under the Planning Act, including deciding applications made to it under that Act; or

(h) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

(2) A resolution that a meeting be closed must state the nature of the matters to be considered while the meeting is closed. [Bold text is the author's emphasis]

(3) A local government or committee must not make a resolution (other than a procedural resolution) in a closed meeting.⁶

Having established that a particular matter falls within these classifications the Council or Standing Committee may consider them in closed session but still has an obligation to declare the nature of the matters that are to be considered while the public are excluded.

The current practice of the Ipswich City Council's City Management, Finance and Community Engagement Committee and that of its Boards would appear to be inconsistent with these provisions of the Act.

In particular the Committee regularly adjourns its meeting to consider an alternative agenda as the City Management, Finance and Community Engagement Board, in closed session, reconvening to then consider as Committee the recommendations of the Board. Moreover Committee minutes indicate that the recommendations of the Board are endorsed in globo without further reference to the individual agenda items in the Committee report to Council.

⁶ Local Government Act 2009

Even considering that the Boards may have been established as vehicles to circumvent the provisions of Section 275, the comparisons shown in table 1 above indicate that the Boards are acting, for all intents and purposes, as Standing Committees of the Council despite their alternative nomenclature. Accordingly their proceedings should be subject to the requirements of Sections 274 and 275 of the Local Government Act 2009. That is, each meeting should be opened in public session and then if required moved into closed session, by resolution stating the nature of the matters to be discussed in closed session. The Board should then reopen in public to move the resolutions comprising a statement of its recommendations to the Committee.

An examination of a recent City Management, Finance and Community Engagement Board agenda indicates that a number of the matters dealt with in the closed session may well not pass the test of Section 275.

If the Council believes there is good and proper substantiation for dealing with certain matters in closed session, the closure should be approached on the basis of maintaining the transparency prescribed by Sections 274 and 275 of the Act. In other words both transparency and confidentiality can be achieved without the intricate devices of the various Boards, by arranging the agenda of the City Management, Finance and Community Engagement Committee in a more open fashion.

Recommendation 6:

- a. Council consider restructuring its City Management, Finance and Community Engagement Committee to eliminate the use of Boards, by incorporating the items usually compiled into the Board agendas into the Committee agenda;**
- b. Council partition the Committee agenda into matters to be dealt with in open session and matters to be dealt with in closed session, subject to listing the topic headings in the publicly available Committee agenda;**
- c. When reaching the items on the Committee agenda that are to be dealt with in closed session, a motion should be moved that the Committee move into closed session to consider the nominated items on the agenda;**
- d. Having returned from closed session a motion should be moved specifying the actual recommendations from the closed session in respect of each matter considered and for those recommendations to be voted on, individually or collectively;**
- e. The motions, commending those recommendations to the Council, having been carried, the reports considered in closed session should be committed to the public record of the Committee meeting for public disclosure, except in circumstances where the Committee recommends the report be deemed confidential in keeping with the definitions in Section 275 of the Local Government Act 2009;**
- f. This procedure for dealing with matters in closed session be also applied to the Council's other Committees as and when required.**

5.3.3. Conflict of Interest

Examination of the Minutes of Council's meetings indicates that there is a regular and disciplined approach to Councillors rising to declare conflicts of interest in business before the Council. However these declarations as recorded are less than transparent as the declarations are made in respect of item numbers on Committee Agendas the subject matter of which is not made apparent on the face of the Minutes.

Although these Minutes are open to inspection, an enquirer would not be able to decipher the object or extent of a Councillor's conflict of interest without further enquiry into the Minutes of the Committee which may in turn refer only to an officer's report, the detail of which is not disclosed in the Minutes.

A more detailed exposition of the Council's practice in reporting its decision making is contained in the following section of this report.

At this point it is sufficient to say that the current mode of recording conflicts of interest in Council Minutes does not meet reasonable standards of transparency.

Recommendation 5: The CEO instruct Minute Clerks when recording Councillors' declaration of conflicts of interest to record the Committee Report Item number and the topic or subject heading to fairly identify the context of the declared conflict of interest.

5.3.4. Transparency of Council decisions

Associated with the issues raised in the previous sub-section is the general question of transparent disclosure of Council's decisions. As mentioned in the earlier section the current practice of Ipswich City Council is to compile agenda and business papers that are not fully published or disclosed during the Council's decision making process. Although an enquirer is entitled to approach the Council administration and request access to Minutes of Council and Committee meetings, the documentation to which the enquiry will be provided access may vary according to the forum through which the material was presented to Council.

The vast majority of local governments follow the practice of publishing on their websites the full range of reports and minutes required to substantiate the relevant Council resolution. In other words -

- the report prepared by Council offices explaining the background to the issue and the officer's recommendation to resolve it.
- the report from the committee which initially consider the officer's report and the committee recommendation to Council.
- the minutes of the Council meeting with the committee report was considered and the Council resolution in relation to it.

In this way there is a clear line of sight from the original exposition of the issue through the committee's deliberations to the Council resolution. An enquirer searching the Council's website need not look further to find all the necessary information supporting the Council's decision.

Provision is made for circumstances where elements of the reporting need to be retained as truly confidential for good reasons, but these occasions should be limited. Information on which Council bases its decisions should not be suppressed from public scrutiny merely because it is politically sensitive.

A survey of larger local governments in Queensland was undertaken to determine the extent of disclosure on their websites. Refer Table 2 below.

Table 2 – Comparison of Decision Making Disclosure by local governments

Comparison of Decision Making Disclosure on Local Government Websites			
COUNCIL	TRANSPARENT REPORTS		NOTES
	YES	NO	
Brisbane	<input checked="" type="checkbox"/>		Full transcript of proceedings including officers reports and recommendations
Gold Coast	<input checked="" type="checkbox"/>		Minutes contain full resolution. Committee reports in separate document but fully accessible including officers' recommendations – Live streaming of meetings.
Logan	<input checked="" type="checkbox"/>		Minutes contain full committee reports including officers' recommendations.
Moreton Bay	<input checked="" type="checkbox"/>		Minutes call up recommendations from the Coordination Committee report which is accessible through the Committee Agenda including officers' recommendations.
Redland	<input checked="" type="checkbox"/>		Minutes contain full report and recommendations. Audio recording of proceedings available.
Scenic Rim	<input checked="" type="checkbox"/>		Minutes call up Committee reports which contain full reports including officers' recommendations
Toowoomba	<input checked="" type="checkbox"/>		Minutes contain full report and recommendations.
Lockyer Valley	<input checked="" type="checkbox"/>		Minutes contain full report and recommendations.
Noosa	<input checked="" type="checkbox"/>		Minutes call up recommendations from the Coordination Committee report which is accessible through the Committee Agenda including officers' recommendations.
Sunshine Coast	<input checked="" type="checkbox"/>		Minutes contain resolutions only but detail contained in published Agenda available online, including officers' recommendations
Townsville	<input checked="" type="checkbox"/> Partial		Minutes contain topic heading and Executive Summary plus officers' recommendation. Detail of reports is held separately and not available on website.
Rockhampton	<input checked="" type="checkbox"/> Partial		Minutes contain topic heading, a short summary and Council resolution. Committees Minutes are available but are variable in their disclosure. No detail is accessible on the website of some of the officers' reports or recommendations.
Cairns		<input checked="" type="checkbox"/> Limited	Minutes contain topic heading and Council resolution. Committees Minutes are available which only disclose topic heading and recommendation. No detail is accessible on the website of the officers' reports or recommendations.
Ipswich		<input checked="" type="checkbox"/>	Minutes allude to Committee recommendations that are not accessible on the website. Substantive decisions are not discernible from the majority of resolutions.

It will be seen from these results that for Ipswich City Council the issue of transparency of Council decision making is one which deserves closer attention.

Recommendation 7: Council adopt the practice of publishing on its website all reports considered by Committees and all Committee reports submitted to Council including officers' recommendations, Committee recommendations as well as Council's formal resolutions, in order to provide full transparency of its decision making.

5.3.5. Council policies

Another issue of transparency and availability of information for the public which is observable from an examination of Council's website is the absence of a page providing access to Council policies. A number of policies associated with Council's complaints management process are published in that context but an enquirer would not be able to identify the full range or the content of policies adopted by Council.

Whilst these are open to inspection upon request at the Council Office, an enquirer needs to know that there is a policy on a particular subject in order to ask for it. A preferred approach is to publish a list of all current policies on the Council's website with links to the actual policy document for ready access by the public.

Recommendation 8: Council improve public information on its website by incorporating a page containing a list of all adopted and current policies together with links to the actual documents for accessible inspection by inquirers.

5.4. DELEGATIONS

Efficient administration of local government business requires that decision-making on operational matters not be burdened by referring all matters to a Council meeting for determination. Councils delegate decision-making authority to the CEO and appropriately authorised officers to enable not only efficient process of business but also to provide a measure of objectivity and independence from the policy-making aspect of local government. In this respect the delegation process relates to the principle of “Separation of Powers” which seeks to keep operational decision-making at arm’s length from the political forum.

Like other local governments the Ipswich City Council has adopted a two phase structure of delegations. The first phase is to delegate the widest range of powers to the CEO. The second phase is for the CEO to then delegate various specialities of delegation to other employees. The Council’s delegation register is well documented in this respect. The general focus of its delegations include:

- power to authorise expenditure -different employees with different levels of responsibility are given different limits of authority.
- power to exercise decision-making as authorised officers under council local laws.
- power to make decisions approving or rejecting applications for approvals, permits, licenses, consents et cetera in accordance with Council policies and legal instruments (such as Planning and Building approvals).
- power to purchase materials and supplies and enter into contracts for the performance of work on behalf of the Council.

Many of these delegations are supported by administrative procedures detailing any conditions the delegates must observe in exercising the delegated power. The majority of these procedures set out processes to be followed to ensure that the Council’s policies are complied with and that due diligence is observed to prevent unintended consequences from the exercise of the power. In some cases this involves protection from misuse of the power, inequitable treatment of applicants, and so on. In other cases conditions are imposed to ensure appropriate consultation with elected members.

This is particularly so in the delegation of power to planning staff to approve various classes of planning applications. A typical procedure in this respect is contained in clause 5 of the delegation to the CEO to exercise powers under the Planning Act 2016 in relation to Development Assessments:

“Consultation process

Prior to the exercise of a delegated power to determine a Development Assessment Decision the Delegate must:

- (a) consult with and seek the views of the Chairperson of the Planning, Development and Heritage Committee and the relevant divisional Councillor about the Development Assessment Decision;*
- (b) forward a copy of the consultation to the Mayor for information; and*

- (c) *forward a copy of the consultation to the relevant adjoining divisional Councillor where a Development Assessment Decision relates to land within 50 metres of a divisional boundary line.*⁷

The delegation also sets out detailed procedures of when the delegate may and may not exercise the delegation in particular circumstances involving responses from the Councillors being consulted. A copy of the delegation document is appended to this report as **Appendix “A”**.

Whilst this appears completely reasonable on the face of the procedure care should be taken to avoid creating situations where the “consultation” crosses the line to become “direction”, “undue influence” or “frustration of the approval process”. The current procedures assist in this latter respect by including timeframes in which the consultation must conclude.

Referring back to the previous section of the report concerning directions to staff, councillors need to exercise caution in interacting with officers in the exercise of their delegations. Undue influence or pressure on a delegate to exercise the delegation in a particular way can be seen as seeking to direct the officer and consequently a breach of Section 170 (2) of the Local Government Act 2009.

In exercising the powers delegated to them officers must be mindful of their obligations to comply with Council policies, their code of conduct and the principles of the Public Sector Ethics Act concerning transparency, accountability and integrity. Any delegate permitting themselves to be influenced in the manner in which the delegated power should be exercised is committing an offence for which they could be disciplined.

A further risk scenario to be considered in this context is the prospect of approaches by Councillors to employees being interpreted as bullying or harassment. There are currently organisational policies supported by training and awareness for employees of Ipswich City Council to guard against improper workplace behaviour. However no record could be found of similar procedures and training being provided to Councillors to protect them from straying into such behaviour even unwittingly.

Recommendation 9:

- (a) The CEO review the conditions of the delegated power to decide applications under the Planning Act to avoid any risk of consultation with Councillors being interpreted as directing employees or exercising undue influence.**
- (b) The CEO prepare a program to incorporate in Council induction and CPD programs including awareness training in relation to workplace behaviour including preventing undue influence of delegated authority decisions, bullying and harassment.**

⁷ Council delegation to CEO dated 30 May 2017

5.5. PROCUREMENT

The Council's procurement procedures have only recently been the subject of a review by external consultants resulting in recommended changes in the relevant framework. Both the Procurement Probity Charter and the Procurement Framework appear to be sound documents outlining procurement concepts, requirements and process. They are overarching guidelines for staff and Councillors to understand the legislative, honesty, fairness, ethical and integrity requirements of the Council's procurement process. The 2016/17 Procurement Policy is typical of those adopted by many other councils.

Like many other control frameworks however, this model is dependent on the effectiveness of its implementation, and thereafter the diligence and integrity of its users. Despite its adoption as a management imperative the success of the new framework implementation also relies on ongoing monitoring and audit.

In the case of Ipswich City Council this is provided by including a regular review of Procurement procedures as part of the Council's Internal Audit Program. During 2016/17 the Council's Internal Audit unit allocated 22 days to such a review. A report was prepared in May 2017 and was still in draft form when examined by the consultant in July.

It pointed out that the Internal Audit review was unable to be completed because the new framework was still being implemented and training in some areas of procedure had not been commenced. The draft report concluded *"Audit cannot make a conclusion as to whether the revised framework is operating effectively and with appropriate controls as the revised framework and associated platform were still being implemented during the audit."*⁸

The draft report however identified a number of concerns relating to the implementation of the new framework, some of which it rated as high and moderate risks.

In particular the Internal Audit review remarks on the failure to incorporate in the new framework several recommendations contained in Queensland Audit Office (QAO) reports of 2014 and 2015. The detail of various other identified shortcomings may be referenced in the draft report but the following key issues are the high risk factors:

- **Framework implementation and training** - To date there are 2 documents, 12 guides, 35 templates, and 22 contract documents that have been prepared, approved and published on the Council's intranet. Mandatory training in probity began near the end of the audit and further training on the procurement framework is to be rolled out in the coming months. The Internal Audit draft report comments –

Risks/Opportunities:

RISK FACTOR High

- *The revised templates may need to be modified for some forms of procurement;*
- *The guides may not cover all procurements and extra guides may need to be prepared; Some staff may not fully understand the revised framework leading to non-compliance with approved procedures;*
- *Changes to the framework may be required as the implementation of the revised framework proceeds;*
- *Training may be incomplete and some staff may be assigned to procurement activities without fully understanding their role.*

⁸ Draft report on the Procurement function by Council's Internal Audit unit July 2017

- **The absence of a risk register** – This is related to the corporate Risk Management Framework mentioned elsewhere in this governance review which is yet to make any substantive progress in the creation of Risk Registers. The Internal Audit draft report comments –

“Risks/Opportunities:

RISK FACTOR **High**

- *Without a full risk analysis of the new procurement framework, council is unaware of the risks and the impact of those risks on its finances and reputation;*
- *Mitigation plans cannot be developed that can assist in limiting Council’s exposure until a risk analysis is completed;*
- *QAO’s audit recommendation will remain outstanding until the risk analysis is completed.*

- **Variation reporting** – The QAO report of 2014 made several recommendations to overcome shortcomings in the procedures for reporting variations to purchase orders and contracts. The Internal Audit draft report comments –

“Although a reporting approach was made available by corporate procurement it seems it was not implemented by the various procurement teams... Audit is concerned that no formal approved procedure is available to document and report variations and the reasoning to allow variations.”...

Risks/Opportunities:

RISK FACTOR **High**

- *The QAO recommendation has not been included in the revised framework although Council has agreed with the recommendation;*
 - *Variation documentation and reporting can ensure Council receives value for money in its procurement decisions;*
 - *Variation reporting can assist senior management in their decision making process by advising them early of significant changes to procurement orders.*
- **Previous Audit recommendations** – The QAO and Internal Audit have made a number of recommendations concerning the procurement function over the last few years. Many of these recommendations were implemented under the previous operating procedures, particularly in regard to the procurement handbook. Internal Audit is concerned that some of these changes are not being captured during the implementation of the revised procurement framework and may be lost. The Internal Audit draft report comments –

Risks/Opportunities:

RISK FACTOR **High**

- *Numerous recommendations regarding the procurement function have been implemented by way of the procurement handbook and need to be included in the revised framework;*
- *The Corporate Procurement Team needs to ensure all previous recommendations are included in the revised procurement framework*

Recommendation 10: Council revisit the recommendations of the QAO and Internal Audit in relation to the Procurement function and reconcile those recommendations with the implementation plan for the new Procurement Framework.

Recommendation 11: The Audit Plan element for examination of the Council’s Procurement function be retained in the 3 year plan and continue to monitor the implementation of the new Procurement Framework, to provide ongoing review of its effectiveness.

5.6. AUTHORISING EXPENDITURE

As mentioned in Section 5.4 above the Ipswich City Council maintains a framework of delegated authority for, amongst other things, the authorisation of expenditure. General purchasing and operational expenditure are governed by relevant administrative procedures and internal controls referred to elsewhere.

Matters related to the authorisation of expenditure involving Councillors are covered by a number of related policies.

- *Gifts and Floral Tributes Policy*
- *Reimbursement of Expenses Policy and Procedure*
- *Citywide and Divisional Allocation Policy & Procedure*

5.6.1. Gifts and Floral Tributes Policy

Under this policy Councillors (and staff) may access small corporately labelled gifts and floral tributes to present on special and memorial occasions. The purchasing and supply of the respective items is the responsibility of Council's Events Team and is subject to normal Council budgetary and procurement procedures.

The policy provides guidelines as to the occasions when it is appropriate for Councillors to make such presentations and the value of the gift/tribute is capped at \$70.

As a minor area of misappropriation risk the policy and procedure are adequate to their purpose.

5.6.2. Reimbursement of Councillor Expenses

There is currently an adopted policy and administrative procedures to govern the making and processing of claims by Councillors for reimbursement of expenses. The policy and procedures are brought to the attention of Councillors as part of their post-election induction and generally follow good practice prescription of the steps to be taken to ensure probity and transparency as well as compliance with relevant law.

The most recent update of the Councillor Expense Reimbursement and Administrative Support Procedure is dated 1 July 2016.

Procedures are provided for various types of expenses including Travel, Accommodation and Conference Registration Expenses as well as expenses associated with the provision of electorate office facilities and administrative support for Councillors. Standard Forms are prescribed for use in documenting claims. An important statement contained in the procedure relates to the provision of evidence of expenditure:

*"Councillors, when submitting a Reimbursement of Expenses Claim Form, must provide original tax invoices and/or other documentation acceptable to the Australian Taxation Office, to enable the determination of any FBT liability in accordance with Australian Taxation Office requirements and associated rulings."*⁹

⁹ Councillors Expense Reimbursement and Administrative Support Procedure, effective from 1 July 2016, p7

Responsibility for the administration of the Procedure rests, unless otherwise stated, with the CEO and the Chief Financial Officer (CFO) and as a matter of practice only these two officers deal with the examination of claims and authorisation of reimbursement.

A sample of recent claims examined indicated the nature of the reimbursements claimed to be generally in keeping with the scope of expenditure defined in the policy and procedures and involving relatively small monetary amounts. In the majority of claims viewed Councillors were diligent in attaching receipts and other evidence of the expenditure claimed.

In one case the authorising officer had exercised their discretion in deducting from the claim an amount deemed not to meet the guidelines, before authorising the remainder of the claim. Whilst the current authorisation procedure appears satisfactory the Claim Form documentation could be improved. It is noted that there is no declaration on the Form whereby the claimant declares the claim to be in accordance with the Policy and neither is there a certification by the authorising officer that the expenditure claimed is compliant with the terms of the policy and procedure.

The design on the Form could also be improved by making provision for a column or box where the authorising officer may make notations about any parts of the claim that are disallowed.

Recommendation 12: The CEO review the Claim Form for use by Councillors in submitting expenditure for reimbursement to include declarations as to the compliance of the claim with Council policy and to provide for notations concerning the deduction of disallowed items.

5.6.3. Councillor Office Expenses and Support

Separate from the Expense Reimbursement procedures, the costs associated with providing Councillors with office accommodation, office furniture and equipment and supplies and administrative support are dealt with by direct purchasing by authorised Council officers under corporate procurement and purchasing procedures.

Records are maintained of “portable and attractive assets” and low value items of equipment issued to Councillors and procedures are in place for the replacement or upgrade of electronic communication devices through authorised officers. Councillor’s entitlements to office amenities and communications equipment are set out in the relevant Policy and Procedure. No issues requiring attention to these procedures were raised during this review.

5.7. CITY WIDE and DIVISIONAL ALLOCATIONS

Related to the issue of expenditure authorisation is the question raised in an earlier section of this report concerning the grey area between mere consultation with Councillors and active direction of employees. The Ipswich City Council's policy and procedure for the approval and funding of programs of expenditure under the Council's "Citywide and Divisional Allocations" practice raises a similar question – this time the question is, "*When does this practice cross the line and become a Councillors' Discretionary Fund under Section 109 of the Local Government Act 2009 and therefore subject to the reporting requirements of Section 202 of the Local Government Regulation 2012.*"

Those provisions are shown as follows:

Local Government Act 2009

"S109 Councillor's discretionary funds

- (1) *A councillor must ensure that the councillor's discretionary funds are used in accordance with the requirements prescribed under a regulation.*
- (2) **Discretionary funds** are funds in the local government's operating fund that are—
 - (a) budgeted for community purposes; and
 - (b) allocated by a councillor at the councillor's discretion."

Local Government Regulation 2012

"Division 2 Discretionary funds

S202 Requirements about discretionary funds—Act, s 109

- (1) *This section prescribes requirements for—*
 - (a) *a local government for making discretionary funds available; and*
 - (b) *a councillor for using discretionary funds.*
- (2) *A local government must, within 20 business days after adopting its budget for a financial year, publish a notice (the **availability notice**) stating—*
 - (a) *the amount in the local government's discretionary funds budgeted for use by each councillor for the financial year; and*
 - (b) *that community organisations may apply for allocation of the funds; and*
 - (c) *how to apply for allocation of the funds.*
- (3) *The availability notice must be—*
 - (a) *published on the local government's website; and*
 - (b) *displayed in a conspicuous place in the local government's public office.*
- (4) *A councillor may use the councillor's discretionary funds in any of the following ways—*
 - (a) *to spend for a community purpose;*
 - (b) *to allocate for capital works of the local government that are for a community purpose, but only with the approval of—*
 - (i) *if the councillor is the mayor—the deputy mayor and the chief executive officer; or*
 - (ii) *otherwise—the mayor and the chief executive officer;*
 - (c) *to allocate to a community organisation for a community purpose.*
- (5) *The mayor, the deputy mayor or the chief executive officer must have regard to the local government's 5-year corporate plan, long-term asset management plan and annual budget when deciding whether to approve the allocation of a councillor's discretionary funds under subsection (4)(b).*

(6) For subsection (4)(c), a councillor—

(a) may allocate funds only to community organisations that have applied for the funds in the way stated in the availability notice; and

(b) must allocate the funds in a way that is consistent with the local government's community grants policy.

(7) As soon as practicable after an amount has been allocated from a councillor's discretionary funds, the local government must publish a notice stating—

(a) the amount and purpose of the allocation; and

(b) where an amount has been allocated to a community organisation, the name of that community organisation.

(8) The notice under subsection (7) must be published under subsection (3)(a) and displayed under subsection (3)(b)."

The relevant Council policy establishes the following parameters:

- Citywide and individual Divisional allocations are proposed by the Mayor and relevant Divisional Councillors respectively, as a result of due consideration of the strategic and operational plans.
- A "Citywide and Divisional Allocations Internal Cash Restriction" will be used to manage the allocations during the financial year. Each Citywide and Divisional allocation has its own respective account within this cash restriction and all expenditure made from the respective allocation is funded from the cash restriction.
- As required by the Local Government Act 2009 and the Local Government Regulation 2012, all spending must be appropriately authorised and must clearly facilitate the corporate and operational plans.
- The Divisional allocation may be allocated to any program of Council for capital related activities/projects. A maximum of 14% of the total allocation for a particular Division may be applied to operational expenditure in any program of Council, including a limit of 3.5% of the total allocation for community donations and also including a limit of 5% of the total allocation which may be used for contributions to community infrastructure, not owned by Council.
- The Citywide allocation may be committed to capital works in any program of Council. Up to 45% of the Citywide allocation may be committed to operational expenditure. A further 36% of the Citywide allocation may be used for contributions to community infrastructure, not owned by Council.
- Guidelines are provided for disbursements to external non-profit organisations. Disbursements may be made to any other external organisation provided the project has been approved by the Mayor, after consultation with the Deputy Mayor.
- The process for the receipt, assessment, distribution, acquittal and recording of the Citywide and Divisional Community Donation and Community Infrastructure allocations will be in accordance with the Community Donations Policy (however so named at the time).
- Organisations must make a written request i.e. letter or email to the Mayor or Councillor for funding.

The supporting administrative procedure sets out details of which Council department manages the processing and programming of requests for particular types of expenditure and from which segment of Council's budget the funding is to be allocated.

Although there is no explicit empowerment in the policy or procedure for Councillors to determine the priority of these expenditures their prerequisite approval is implied, as illustrated by the procedure for allocating funds between components.

*"Any movement of funds between components will be managed by Finance and Information Technology Branch in consultation with component managers and the relevant Councillor/Mayor. For example, Councillor A wants to spend only 2.5% of the allocation on Community Infrastructure and 6.5% on operational programs of Council. This will necessitate an increase in the operational component and a corresponding reduction in the community infrastructure component."*¹⁰

In addition, because the policy requires applications to be directed by the Public to the Mayor or Councillor in the first instance it can be implied that it is intended for the Councillors to assess the applications and form a view about their priority prior to submitting them to the relevant Council officer.

The fact that the ultimate approval of the expenditure must conform to Council budgetary and financial guidelines does not preclude the notion that the expenditure for specific purposes or to a specific community organisation follows the preferred distribution of the Mayor or Councillor, to which extent it can be considered "discretionary". Subsections (5) and (6) of Section 202 of the Local Government Regulation 2012 contain similar requirements.

The Council's Grants, Donations, Bursaries and Scholarships Policy read in conjunction with the City Wide and Divisional Allocations Policy and Procedure would be regarded as equivalent to the "community grants policy" referred to in subsection (6), and made under Section 195 of the Regulation.

The Policy and Procedure confirm that key elements of the allocations are directed to "community purposes" for which funds are budgeted as referred to in Section 109 (2) (a) of the Local Government Act 2009. Furthermore the overall allocation is divided between Divisions which are represented by individual Councillors who, as mentioned before, are designated by the policy explicitly to be the gate-keepers of the funding applications and implicitly to determine the priority of funding allocations.

The Policy and Procedure effectively provide a similar framework for controlling the allocation of funds to community purposes envisaged in the Regulation and establish a structure to ensure consistency with Council's strategic planning and financial management policies. They also provide Councillors with significant influence over the allocation of the funding and align to the requirements of Section 202(2)(a) of the Regulation by virtue of separate Divisional accounts being maintained with "cash restrictions" or budgets imposed.

¹⁰ ICC City Wide and Divisional Allocation Procedure, "Approval process", 3.9.2013

Where the Council's framework departs from that envisaged by the Act and Regulation is in the transparency and disclosure of the funding available, the process for inviting applications and the reporting on the outcome of the allocation decisions. That is, the Council does not,

- publicly advertise an Availability Notice concerning the amount of funds budgeted for each Divisional Allocation and calling for applications in accordance with subsections (2) and (3) of the Regulation.
- allocate funds only to community organisations who applied in response to the Availability Notice in accordance with subsections (4)(c) and (6) of the Regulation.
- publish a notice advising of the allocation of funds to community organisations- the amount and name of organisation in accordance with subsections (7) and (8) of the Regulation.

The LGAQ commentary on the Local Government Act 2009 offers the following opinion concerning Section 202 of the Local Government Regulation 2012:

“Section 109 of the Act introduced the new concept (as compared to the LGA1993) of giving statutory recognition to the previously well established practice in many Councils of allocating a pool of funds to each councillor which, while its expenditure still needed to be authorised by the Council or an appropriate delegate (because individual councillors have no executive power to spend money), was nevertheless authorised based on the wishes of a particular councillor.

Neither the Act nor this section confer direct expenditure power on a councillor, but s 109(2) of the Act makes it clear that these discretionary funds can be created, and that they can be spent at the councillor's discretion.

Subsection (2) [of Section 202 of the Local Government Regulation 2012] recognises that the Council (as a whole) will determine the extent (if any) of discretionary funds made available to councillors.

Subsections (2)(b) and (4) make it clear that the funds are to be applied only to local community purposes. However, this section is materially broader than its predecessor, which provided only for the allocation of funds to community organisations. The councillor can now also direct spending by the Council for a community purpose without giving the money to any organisation, and can spend it on local capital works subject to the limits in subsections (4)(b) and (5), which appear designed to ensure that individual councillors do not materially change the Council's overall capital works program, or head off in a capital works direction inconsistent with the Council's long term planning. That is, capital works “pork-barrelling”, is not intended to occur.

Note subsection (6) which emphasises the concern for transparency about this issue by requiring details of grants made to be published on the web site as soon as practicable after a grant is made, even though a summary of all funding decisions under this section must be included in the annual report (s 189).”¹¹

Consequently the Council's City Wide and Divisional Allocations framework – as far as it relates to availability of funding for community purposes - could be seen to be in all but name a framework providing for Councillor Discretionary Funds, in a form that seeks to circumvent the transparency provisions of the Local Government Act and Regulation. In that respect the current arrangements create a risk of legislative non-compliance.

Recommendation 13: Council review its arrangements for the City Wide and Divisional Allocations particularly in relation to funding for community purposes to align more closely with the transparency and accountability requirements of Section 109 of the Local Government Act 2009 and Section 202 of the Local Government Regulation 2012.

¹¹ Commentary on the Local Government Act 2009, LGAQ

5.8. MANAGING RISKS

An important aspect of local government in the modern context is risk management.

This responsibility covers almost every aspect of the Council's operations and requires both councillors and employees to accept responsibility to identify and mitigate risks of all kinds. Ipswich City Council has recently conducted a review of its risk management obligations and found the need to implement a new improved risk management framework. A significant finding has been the lack of effective risk registers across the organisation and consequently the absence of structured processes of risk prevention and mitigation. The limitation of the new framework should remedy this.

In the meantime those aspects of Council's governance framework which generate risk scenarios should be addressed. A number have already been highlighted in this report, particularly those relating to risks of legislative non-compliance.

Recommendation 14: The CEO extract relevant matters from this report to include in the executive office risk register and develop appropriate risk mitigation strategies to deal with them.

5.8.1. Information Management

An identified risk related to the issue of Councillors' access to information is the question of their access and use of Information Systems. In the modern age local government elected members are engaged with their organisation and with the community by ubiquitous electronic communication systems including email, Facebook, Twitter as well as traditional telephone and fax methods. This has expanded the scope by which councillors may receive and send information but it has not diminished their responsibilities and the risks of being exposed to the prospect of breaching statutory requirements concerning the recording and preservation of public records.

Recent publicity has been given to the exposure to legislative breach of elected members who use private email systems to transact the business of the public office. Although the recent issues related to the Queensland Government members, the same principle applies to local government councillors. Through these matters attention has been drawn to the general requirement for local government officials to ensure that communications they receive or send (whether involving the Council organisation, organisations with business links to the local government or involving their constituents), are captured as part of the corporate record.

Whilst elected members are entitled to keep communications about private issues confidential to themselves any correspondence electronic or hard copy that pertains to the business of the Council is defined as a public record under the Public Records Act 2002. This opinion is supported by legal advice from the Local Government Association of Queensland and recent independent legal opinion sought by Ipswich City Council. The importance of securing public records has also been emphasised in a recent circular issued by the Queensland Crime and Corruption Commission. A copy of the circular "Management of public records: Advice for all employees of a public authority" can be found on the Commission's website, as follows:

<http://www.ccc.qld.gov.au/research-and-publications/publications/prevention/public-records-cmc/cmc-advisory-management-of-public-records.pdf>

The responsibility of determining what is a public record, amongst the various communications received and sent by councillors, often rests with the person initially accessing that communication. This could be:

- the Councillor themselves
- the Councillors administrative assistant
- the Council's corporate records section

Merely because a letter or email is addressed personally to a councillor does not preclude the contents of the communication from being classified as a public record.

In many local governments the assessment of public record status of incoming postal mail addressed to councillors is made by the council's central record section. The mail is opened in confidence, assessed and if deemed to be a public record is captured in the Council's document management system before being referred on to the Councillor. This however only deals with postal items and not with the bulk of correspondence received directly by councillors through email.

Consequently a more holistic approach is to require the Councillor themselves to take responsibility for determining the need to submit items for public record capture. In this task they can be assisted by their administrative assistant or secretary. This means however that the councillor remains liable for any breach of the Public Records Act by virtue of their failing to refer a public record for corporate capture or alternatively for destroying that record if it is in any way deleted or destroyed. To assist Councillors in these matters the CEO can compile guidelines for the assessment of correspondence likely to be regarded as a public record and to provide Councillors and their administrative assistants with a convenient process to enable a capture of relevant material. This could include initial opening an assessment by Council's Central Records Section.

Desirably these guidelines should form part of an adopted policy of the Council accepting this responsibility as part of the Councillors' role and fulfilling their obligations under the Public Records Act. The policy should be supported by a suitable procedure informing Councillors and/or their administrative assistants of the most convenient way to submit public records to the corporate system.

An example of such a policy is that adopted by the Moreton Bay Regional Council to be found on that Council's website, as follows:

<https://www.moretonbay.qld.gov.au/uploadedFiles/common/policies/Recording-Mayor-Councillor-Correspondence.pdf>

Recommendation 15: The CEO formulate guidelines for the assessment of correspondence likely to be regarded as a public record and provide Councillors and their administrative assistants with a convenient process to enable a capture of relevant material.

5.9. CONTROLLED ENTITIES

The QAO Final Management Report for the 2015/16 year included the following reference to the management of controlled entities by the Council, under the risk rating of “medium”.

The controlled entities referred to were:

- Ipswich Arts Foundation
- Ipswich Arts Foundation Trust
- Ipswich City Developments Pty Ltd
- Ipswich City Enterprises Investments Pty Ltd
- Ipswich City Enterprises Pty Ltd
- Ipswich City Properties Pty Ltd

“Management of controlled entities No formal policy framework for the management of council's controlled entities. Periodic management reports and audited financial statements of the controlled entities are not formally submitted to council meetings for review.

Implication: Without a clear policy framework that dictates the governance of the controlled entities, it opens up council to the perception that it is operating improperly using the controlled entities.

QAO recommendation - Council:

- adopts a formal policy framework around the governance of the controlled entities
- submits periodic management reports and audited financial statements of the controlled entities to formal council minutes for review.

Noted Action plan: The audited financial statements for the controlled entities will be tabled at a Council meeting.

Proposed action date: 31 December 2016”

In addition the QAO also identified the following entities as having “audits by arrangement” which refers to the fact that while these bodies are not controlled entities the Council maintains an administrative relationship with them through the provision of audit services.

- Ipswich Mayor’s Carols by Candlelight Fund Inc
- Ipswich Mayor’s Community Fund Inc
- City of Ipswich Community Fund Trust.

As a result of the QAO report the Council’s Internal Audit unit undertook an examination of these and similar bodies with which the Council is involved. The unit identified thirteen entities “*which are significantly influenced by Council*” and recommended these be reviewed to determine the extent of benefit they deliver to the local government area. If any are found to be of no justifiable benefit the unit recommended they be wound up.

It is understood this evaluation is ongoing and targets for separation from Council influence are already being identified.

As for the controlled entities that are to remain the Internal Audit report of February 2017 made recommendations for improvement of their governance, as follows:

“GOVERNANCE OF CONTROLLED ENTITIES (201608)

Based on the results of our audit it seems the companies are well managed and targeted in achieving their goals, but that consideration be given towards improving arrangements in demonstrating good governance allowing for increased transparency to make appropriate review possible in achieving stakeholders demands...

Priority: 3 Moderate

That the decisions made at these meetings should be clearly recorded and included in Council information systems. Commercial in confidence matters need to be separated from those where transparency decisions are of lower concern.

Priority: 3 Moderate

While acknowledging that full disclosure of the controlled entities activities would be likely to breach confidentiality in some instances, in the spirit of increased community engagement with Council, it is recommended that a communication strategy should be developed which balances stakeholder needs with Council’s objectives.

Priority: 2 Low

The normal practices regarding conflicts of interest should be followed in the companies, being to define each conflict; conflicted parties to abstain from discussion and voting.

Priority: 2 Low

These policies be reviewed, retaining their commercial focus, but addressing sensitive practices rather than omitting reference.”

Recommendation 16: Council proceed to implement the recommendations of the Internal Audit unit in relation to controlled entities.

5.10. AUDIT & INTERNAL AUDIT

5.10.1. Audit Committee

Examination of the reports and Minutes of Council's Audit Committee indicate that the business coming before the committee and the programming of activity of Council's Internal Audit unit are well aligned and that there is an active internal audit function aimed at continual improvement of these aspects of Council governance framework.

There is a three year Internal Audit program adopted to guide review activities and regular reports are prepared by the unit on those elements of the audit plan in respect of which reviews are completed. From a broad scan of status reports however there is an impression that although recommendations for remedial action are endorsed and adopted by Council, progress on their implementation is slow. This includes implementation of recommendations of the QAO made in the annual Audit Report or Management Letter.

No recommendation is made in this respect as it is noted that the Audit Committee receives outstanding action reports from time to time.

There is however a growing trend amongst Queensland local governments to entrust audit committees with a wider charter encompassing risk management. Given the current status of Ipswich City Council's corporate risk management framework and the extent of exposure presented by the lack of structured strategic and operational risk assessment and mitigation, it may be desirable for Council to consider expanding the brief of its Audit Committee to monitor the implementation of the new Risk Management Framework and oversee this area of governance in future.

Recommendation 17: The charter of Council's Audit Committee be expanded to include risk management and the committee's name be altered to the Audit and Risk Management Committee.

5.10.2. Auditor-General's Observation Report

Otherwise referred to as the Final Management Report from the QAO this document advises the Mayor and the CEO of the outcome of the annual audit and includes observations and suggestions about matters arising from the audit. It is the practice at Ipswich City Council, like many other local governments, to refer that report to the Audit Committee for consideration of its content before submitting it formally to Council.

However, the Observation Report is addressed to the Mayor of the Council for a particular reason. Section 213 of the Local Government Regulation 2012 provides as follows:

"S 213 Presentation of auditor-general's observation report

(1) This section applies if the auditor-general gives the mayor of a local government a copy of the auditor-general's observation report about an audit of the local government's financial statements.

*(2) An **auditor-general's observation report**, about an audit of a local government's financial statements, is a report about the audit prepared under section 54 of the Auditor-General Act 2009 that includes observations and suggestions made by the auditor-general about anything arising out of the audit.*

(3) The mayor must present a copy of the report at the next ordinary meeting of the local government."¹²

¹² Local Government Regulation 2012

Subsection (3) is a mandatory (must) provision and is commonly overlooked by councils who typically follow the same practice as Ipswich. Nevertheless, it is a legislative responsibility of the Mayor to present a copy of the report “*at the next ordinary meeting of the local government*” following its receipt by the Mayor.

In the Ipswich case, the 2015/16 letter was committed to the Council’s corporate record on 14th November 2016. The “next ordinary meeting of the local government” was its Ordinary meeting of 6th December 2016. The Minutes of that meeting do not indicate that the Mayor presented a copy of the report to that meeting.

Subsequently, a report by the Council’s Finance Manager, dated 16th December 2016, to the Audit Committee meeting of 15th February was received and noted at the Council’s Ordinary meeting of 28th February 2017, as part of the City Management Finance and Community Engagement Committee report. As such, the Observation Report/Management Letter is not visible in the Minutes of that meeting, owing to the practice of the Council of not publishing reports supporting the formal resolutions.

Consequently there would seem to have been a breach of Section 213 of the Local Government Regulation 2012 by the Mayor, although a Mayor might be excused from awareness of that requirement unless informed by the CEO or other senior officer of the Council. Also, it is noted that the QAO letter conveying the report does not in its preamble refer to the requirements of Section 213.

Recommendation 18: The CEO arrange for procedures concerning the reception of the Observation Report to include a procedure for the Mayor to present the report to the next ordinary meeting of the local government after being received and the staff of the Mayor’s office be alerted to this requirement.

6. CONCLUSION

6.1. Summing up the review

The review of Council's governance framework has revealed a reasonably good structure of formal policies and procedures intended to guide Councillors and employees in the conduct of their respective roles. However it has also identified a number of vulnerabilities occasioned by methods of implementation that raise questions about complete adherence to relevant legislation. In particular, examination of several elements of the governance framework revealed practices that might not be considered consistent with the local government principle relating to "*transparent and effective processes and decision making in the public interest*".

There is a common theme across these areas of a lack of transparency in the conduct of Council business which prevents effective public scrutiny. In a number of cases these practices not only prevent convenient discovery of documents and decisions that should have high public visibility, but actively discourage enquirers by the circuitous nature of the searches required to obtain information. Particular examples include:

- The manner in which Minutes of Council and Committee meetings are recorded which does not meet expected standards of openness and accessibility to public scrutiny;
- The manner in which conflicts of interests declared by Councillors are recorded in the published Minutes by reference to item numbers only when the nature of business related to those item numbers is not disclosed;
- Use of closed session and non-statutory forums to deal with business in a manner that does not meet expected standards of adequate disclosure of the deliberations or the decisions;
- Publication of Councillors' Registers of Interest on the Council website in a manner that prevents ready access and identification of those interests;
- The manner in which the Council's City Wide and Divisional Allocations program is structured and administered which appears to circumvent the disclosure standards established by the Councillor Discretionary Funds provisions of the Local Government Act and Regulation;
- The manner in which correspondence received by Councillors is dealt with which raises risks of failure to capture public records and protect them from unauthorised destruction.

These areas were examined in detail and recommendations are made for changes to the processes and procedures to bring about improvement to the transparency of Council's decision making and more visible compliance with the integrity standards required by the relevant legislation.

In other governance areas, whilst the formal policies and procedures were found to be adequate on the face of the documentation, further enquiry established that risk scenarios were apparent in the implementation framework. For example, although the new Procurement framework has recently been redesigned to strengthen its control features, Internal Audit has identified certain implementation issues of concern.

Overall the recommendations focus on more closely aligning the Council's governance practices with standards that demonstrate commitment to the local government principles, especially in relation to transparency and accountability.

6.2. Implementation of recommendations

In most cases the recommended actions are administrative and do not require substantive changes to Council policy. Some aspects such as the Reasonable Requests Guidelines, Committee structures, City Wide and Divisional Allocations and dealing with Councillors' correspondence will require consultation with Councillors and the adoption of new processes by resolution of the Council.

To provide for an orderly implementation of any changes endorsed by Council it would be useful to convene two working parties to prepare relevant initiatives for consideration by senior management and Council. The CEO should provide advice and direction to both forums in developing proposals for consideration.

Working Party #1 – Comprising the Council's Chief Finance Officer; City Solicitor; relevant staff with responsibility for servicing Council and committee meetings; and staff associated with maintaining Council's website.

The task of this working party would be to develop an implementation plan and schedule to address the recommendations in this report. In particular the working group would compile two segments to the plan – Part A: Actions implementable as administrative under the authority of the CEO; Part B: Actions requiring resolution of the Council to authorise changes to current policies.

This working party would also be responsible for drafting any new policies, procedures, guidelines, manuals, instructions to staff and training plans to assist the implementation. The work required should be compiled into a project plan to enable monitoring and management of progress.

Working Party #2 – Comprising the Mayor, Deputy Mayor and Chair of the Audit Committee.

The role of this working party would be to consider initially the proposed implementation plan Part B, prepared by Working Party #1 and develop recommendations to Council for any changes to policy required to be made by resolution of the Council.

Recommendation 19: The CEO consult with the Mayor to convene working parties to develop the approved implementation plan for any changes endorsed from this review and a formal project plan be compiled to manage the implementation.

Appendix “A” – Delegation to exercise powers under the Planning Act 2016

PLANNING ACT 2016

Date of Council Resolution: 30 May 2017

No. of Resolution: 5

Committee Reference and Date: Planning and Development Heritage Committee No. 2017(05) of 23 May 2017 – Council Ordinary Meeting 30 May 2017

Relevant Legislation:

Section 257(1) of the *Local Government Act 2009*

Planning Act 2016

Delegated to: Chief Executive Officer

Power Delegated:

The power to exercise any and all of Council's powers and functions, or a power or function that Council may elect to exercise, however described (e.g, “applicant”, “assessing authority”, “assessment manager”, “building advisory agency”, “decision-maker”, “designator”, “enforcement authority”, “local government”, “public sector entity”, “referral agency” (including as any “concurrence agency” or “advice agency”), “responsible entity” or “submitter”) under the *Planning Act 2016* and any subordinate legislation and statutory instrument made under that Act.

Delegation requirements

1. The Delegate must:
 - (a) keep a record of, and give notice of, all decisions made by the exercise of a delegated power required by paragraphs 2 to 4 below;
 - (b) where applicable, undertake the consultation process identified in paragraphs 0 to 14 below for the exercise of any delegated power;
 - (c) in the event of any inconsistency between a condition or requirement of this delegation and another delegation, exercise any delegated power as required

by this delegation to the extent of the inconsistency and the application of this delegation.

Record keeping and notice of decision

2. The following paragraphs apply to the Delegate in addition to requirements to give or otherwise deal with decision notices or related documents in the *Planning Act 2016*.
3. A written record of each delegated decision must be made by the Delegate at the time of decision in such format as, and be kept on record as, determined by the Chief Executive Officer from time to time.
4. The Mayor, the Chairperson of the Planning, Development and Heritage Committee and the relevant divisional Councillor must be notified of the Delegate exercising any power to issue a Show Cause Notice or an Enforcement Notice within one (1) business day of the date the relevant notice is given.

Consultation process

5. Prior to the exercise of a delegated power to determine a Development Assessment Decision the Delegate must:
 - (d) consult with and seek the views of the Chairperson of the Planning, Development and Heritage Committee and the relevant divisional Councillor about the Development Assessment Decision;
 - (e) forward a copy of the consultation to the Mayor for information; and
 - (f) forward a copy of the consultation to the relevant adjoining divisional Councillor where a Development Assessment Decision relates to land within 50 metres of a divisional boundary line.
6. All consultation shall be generally in accordance with any established consultation procedure.
7. The Delegate is authorised to exercise the delegated power to determine a development application if the Chairperson of the Planning, Development and Heritage Committee and the relevant divisional Councillor:
 - (a) responds to the effect that he or she has noted the proposed exercise of the delegated power; or
 - (b) does not respond within the time specified in any established procedure adopted to deal with the determination of a Development Assessment Decision; or
 - (c) responds to the effect that he or she declares a material personal interest in the matter; or

- (d) responds to the effect that he or she declares a conflict of interest in the matter; or
 - (e) responds, but not in accordance with any established procedure adopted to deal with the determination of development applications.
8. The Delegate must:
- (a) not exercise a delegated power if the Chairperson of the Planning, Development and Heritage Committee or the relevant divisional Councillor gives the Delegate notice that the matter must be referred to the Planning, Development and Heritage Committee for its consideration and recommendation to Council for the making of the decision by Council.
 - (b) if paragraph 8(a) applies, refer the matter to the Planning, Development and Heritage Committee as soon as practicable.
9. Paragraphs 7 and 8 above are subject to or modified by (as the circumstances may require) paragraphs 10 to 14 below.
10. Despite paragraph 8, the Delegate may exercise the delegated power if at any time prior to a Council decision on the matter any notice given pursuant to paragraph 8(a) is withdrawn by the person who gave the notice and the Chairperson of the Planning, Development and Heritage Committee and the relevant divisional Councillor have provided a response that satisfies paragraph 7(a).
11. Where the Chairperson of the Planning, Development and Heritage Committee is also the relevant divisional Councillor, the delegate shall consult with the Deputy Chairperson of the Planning, Development and Heritage Committee in place of the Chairperson of the Planning, Development and Heritage Committee.
12. In the event that the relevant divisional Councillor is absent or is temporarily incapacitated he or she may nominate an alternative Councillor for the delegate to consult with, or elect not to be consulted during this time. The delegate shall consult with any alternative nominated Councillor in place of the relevant divisional Councillor.
13. Where a divisional Councillor vacates office the delegate must consult with the Deputy Chairperson of the Planning, Development and Heritage Committee in his or her place until a new Divisional Councillor's term starts in accordance with section 159 of the *Local Government Act 2009*.
14. Where an Development Assessment Decision may become a deemed approval prior to the next Council meeting, and despite any other paragraph, the Delegate shall consult with the Chairperson of the Planning, Development and Heritage Committee, the Deputy Chairperson of the Planning, Development and Heritage Committee, the Mayor and the relevant Divisional Councillor to seek their views about the matter.

Where the Chairperson and at least one other Councillor notes the proposed exercise of the delegated power, it may be exercised.

Definitions

15. **Development Assessment Decision** means any decision relating to a matter under Chapter 3 of the *Planning Act 2016* and excludes a decision about a Minor Development Matter.
16. **Minor Development Matter** means:
 - (a) assessable development that is operational work, building work, plumbing or drainage work or any combination of such development;
 - (b) any application which is unlikely to cause a substantial impact on the amenity of nearby land, and which involves building work not associated with a material change of use, such as a minor boundary setback variations and minor alterations or additions to character places or the erection of carports or outbuildings;
 - (c) minor building work; or
 - (d) a minor amendment, variation or alteration to a development approval which is unlikely to cause a substantial impact on the amenity of nearby land.