

Protecting integrity: Yarriambiack Shire Council Investigation



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Design by Jenny Bullock

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Contents

Foreword	2
1. Scope of the examination	3
2. Snapshot of Yarriambiack Shire Council	4
3. Overview	4
3.1 Council governance	4
3.2 Allegations	5
3.3 Previous audits and examinations.....	5
4. Asset and resource management	7
4.1 Private works	7
4.2 Sale of consumables or resources from council depot	8
4.3 Staff usage of council equipment	8
4.4 Council leasing private assets from staff.....	9
4.5 Unauthorised sale of plant and equipment.....	10
4.6 Sale of land	10
4.7 Planning for capital expenditure	11
5. Financial management	12
5.1 Procurement	12
5.2 Recovery of outstanding rates	13
5.3 Corporate credit cards	14
5.4 Community grant programs.....	14
5.5 Government grants	15
6. Human Resources management	16
6.1 CEO/Senior Officer contract and performance reviews.....	16
6.2 Secondary employment	16
7. General governance	17
7.1 Governance schedule	17
7.2 Policy framework	18
7.3 Record keeping	19
7.4 Audit committee	20
7.5 Special committees	21
7.6 Delegations	22
7.7 Local laws	22
8. Conclusion	23
Appendix	24

Foreword

David Wolf, *Chief Municipal Inspector*



This report represents a significant body of work from the initial receipt of information to the investigation of allegations and an examination of Yarriambiack Shire Council's governance arrangements.

Our work focussed on specific allegations where community assets and resources had either not been properly managed or were used to the benefit of individuals, not the community as a whole. Importantly, our focus was also on the prevailing management, oversight and governance arrangements that should ensure community assets and funds are used equitably and responsibly. In many instances, this was found to be deficient.

I must acknowledge the significant improvements and change the council has implemented in the 12 months since the involvement of the Inspectorate.

Many of the issues raised in this report have since been addressed or are in the process of rectification. However, broader concerns revolve around the effectiveness of council in monitoring organisational performance, accountable and responsible use of resources and adherence to legislated governance arrangements.

What we found in the course of this investigation unfortunately is not unique to Yarriambiack. Similar issues or themes have been present at all recent regional council examinations conducted by this office. With the increasing complexity of council organisations as a service delivery business, our work has shown healthy involvement of councillors in the function of democratic representation but identified gaps in the required skills and capacity to provide the necessary governance oversight. This is an issue my office will continue to provide information and guidance on across the local government sector.

The council and individuals that may be identified due to their current or former position were provided a copy of this report in advance and invited to provide comment. One formal response was received from the council which is reproduced in this report.

Our investigation has presented challenges for Yarriambiack Shire Council but we have been encouraged by the willingness to improve and a cohesive councillor group. I also wish to acknowledge the administrative and operational staff who willingly participated in this investigation.



Hopetoun gateway signage

1. Scope of the examination

The Inspectorate is the dedicated integrity agency for local government in Victoria. The Chief Municipal Inspector (CMI) leads the Inspectorate and has powers as set out in the Local Government Act 1989 (Act) to enable the Inspectorate to examine, investigate and prosecute any matter relating to a Council's operations and any breaches of the Act.

An anonymous complaint was received in June 2018, making a series of allegations that related to possible offences and breaches of the Act and governance and operational failings at the shire. Inspectorate staff attended council offices in September 2018, April 2019 and May 2019 to request documents and interview council staff, culminating in a coordinated interview of 20 staff from the Hopetoun depot in August 2019.

The Inspectorate conducted a comprehensive investigation into the specific allegations related to the council, which focused on the key topics of staff use of plant and equipment, and mismanagement of council assets including the unauthorised use or sale of council equipment, sale of land, rates recovery and corporate credit cards.

Alongside the investigation, the Inspectorate also examined governance and operational matters including asset, financial and employment management arrangements. The examination took into account findings from a 2012 review, relevant audits by other government agencies, internal audits and the actions subsequently taken by the council.

The Inspectorate did not examine all areas of council activity but concentrated on a number of risk areas or where particular allegations were made.

of your spade and twice as wide. This allows the root system to spread without much difficulty. Tease the roots of the plant to encourage root growth, place the plant in the created hole making sure that the top of the soil from the pot sits level with the top of the soil in the ground. Back fill the hole and firm the soil down around the plant.

Indigenous plants have evolved on the local un-amended soils. No soil improvement should be necessary if the correct plants have been chosen. Improving the soils will, however, give your new plants an easier time of it. For example, if you are planting into sand the addition of bentonite clay, mushroom mulch, potting mix, and compost will help to retain water around the plants root system.

Planting should preferably be done in the cooler months of the year: autumn, winter, when frosts are over or early spring. There is usually a higher rainfall in these months which will reduce the need for watering.

When planting, form a dish and plant in the middle of the dish. Remove the mulch from within the dish so that it does not absorb water that is needed by the plant. Either hand water into the dish, or make sure the irrigation water goes directly into the dish. This will ensure that the water reaches the centre of the dish, then penetrates the soil around the trunk of the plant and goes down into the roots. Water your new plants in well. For the first summer, after planting in the cooler months, your new plants may require some irrigation. It is better to water 2-3 times a week till established, then seldom and well. If you continue watering using a sprinkler or dripper, once the plants are established, move the sprinkler or dripper away from the plants so that you are watering into the newly expanded root zone of the plants.

Many Australian native plants benefit from regular pruning, especially tip-pruning (pinching off the growing tips). It helps to promote healthy new growth giving your plants a nice shape and a fresh look, it increases the amount of flowers and helps control pests and diseases. It also helps keep them compact and dense, which is very important for attracting small birds. In the wild, Australian native plants are pruned constantly by animals and weather. By regularly pruning your native plants you are imitating the natural process of fauna eating the tips off trees and shrubs. The best time to prune depends on the plant and why you are growing it. If it is providing nectar, tip-prune after flowering has ceased, if seeds or fruit are the benefit, prune after these have finished.

Mulching your garden beds is very beneficial as it helps to conserve water by reducing evaporation, it protects the soil from erosion and limits the growth of weeds. It also helps to shade the soil keeping it cooler and moister, which helps plants survive in summer. The best mulch is the pea straw, Lucerne hay. When applied, it should be 7.5-10cm deep and should be kept away from the plant stems, as this can cause rot. Do not spread plastic over the soil, either by itself or as a base for mulch. It will not allow water to penetrate the soil, and will upset the environment of insects, lizards and other small animals that live in the soil.

Joke of the month.
Why is Hulk such a good gardener?
He's got green fingers.



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when they are needed, often says panel discussions like

Funding boost for service volunteers

STATE Government is giving volunteer emergency service groups the opportunity to apply for grants of up to \$150,000 to help buy operational equipment and fund minor facility upgrades.

Minister for Police and Emergency Services Lisa Neville announced last week that applications were open for the 2019-20 round of Volunteer Emergency Services Equipment Program funding.

Under the program, the government matches every \$1 paid by volunteer groups with a \$2 co-contribution up to \$150,000.

The grants can be used to help fund operational equipment, including the purchase of new vehicles, trucks, tankers, watercraft and trailers.

Volunteer groups can also put the money towards minor facility improvements.

Almost \$13.9 million in government contributions are available to volunteer organisations across the state in this round of grants.

These include: more than \$10 million for volunteer CFA brigades; more than \$2.3 million for Victoria State Emergency Service units; more than \$330,000 for Marine Search and Rescue, including the Australian Volunteer Coast Guard Association; almost \$800,000 for Life Saving Victoria clubs; and more than \$360,000 for other volunteer agencies.

More than \$77 million has been allocated to the Volunteer Emergency Services Equipment Program over the last five years.

Minister for Police and Emergency Services Lisa Neville said, "The Volunteer Emergency Services Equipment Program provides our hard-working and dedicated volunteers with the equipment they need to respond to emergencies and keep Victorians safe."

"Last year, we increased the grant's maximum co-contribution to \$150,000 to ensure volunteer agencies will continue to have access to the life-saving equipment they need, and I encourage them all to apply," she said.

"These grants were estab-

lished almost two decades ago and are a proud legacy of the Labor Government supporting our state's selfless volunteers," she said.



The Local Government Inspectorate is the dedicated integrity agency for local government in Victoria and is currently reviewing the practices of Yarriambiack Shire Council.

If you have hired or borrowed machinery or been provided with any services from Yarriambiack Shire depots in recent years, either for personal or business purposes, we would like to speak with you by 25 July 2019.

If you have used the above council services, or have any queries, please contact us on 1800 469 359, by email at inspectorate@lgici.vic.gov.au or visit our website www.lgici.vic.gov.au.

Should you wish to respond anonymously, you can do so through the website.

Advertisements were placed in local newspapers appealing for public assistance with the Inspectorate's examination

2. Snapshot of Yarriambiack Shire Council

Yarriambiack Shire Council covers 7158 km² and at the 2016 Census, had a population of 6,674. The Shire is divided into three wards, split between seven councillors. Hopetoun Ward includes Patchewollock, Tempy, Speed, Lascelles, Woomelang, Hopetoun, Yaapeet and Beulah. Warracknabeal Ward includes Brim and Warracknabeal. Dunmunkle Ward includes Minyip, Murtoa and Rupanyup.

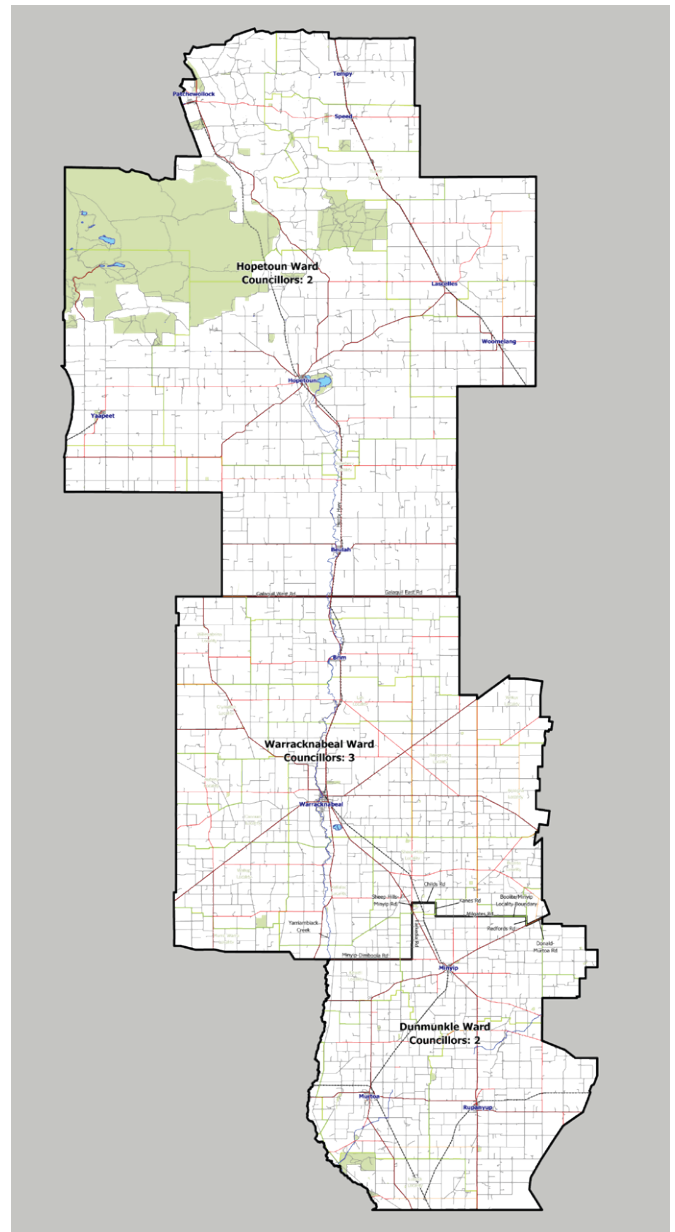
The population is concentrated in a number of small towns which service the surrounding broad-hectare farming properties. Yarriambiack Shire is the heartland of grain production and handling in the Wimmera and Mallee. The main industry is agriculture which accounts for almost half the workforce.¹ Many other residents depend indirectly on farming as they are employed in services used by the farming population.² On the Index of Socioeconomic Disability, Yarriambiack ranked 73rd out of 79 councils.³

3. Overview

3.1 Council governance

Good governance is important for several reasons. It not only gives the local community confidence in its council but it improves the faith that elected members and officers have in their own local government, and its decision making processes. It also leads to better decisions, helps local government meet its legislative responsibilities and importantly provides an ethical basis for governing.

Councillors, under the Victorian local government system, are elected to serve the community in positions clearly defined under the Act. They have, amongst other responsibilities, the objective of ensuring the best outcomes for the community, demonstrating transparency in their decision making, providing leadership for the good governance of the municipality and ensuring council facilities and services are used fairly and equitably. They also need to ensure that resources are used efficiently and effectively and that services are provided in accordance with best value principles. In order for council to achieve that goal, they employ a CEO and are responsible for ensuring CEO performance, and thus that of senior management employed by the CEO, meets community expectations.



Yarriambiack Shire. Image courtesy of VEC (2005)

The greatest enablers of the poor practices identified in this report were staff in senior management positions. The former CEO and senior managers allowed poor behaviours and practices to go unchallenged and did not commit to implementing performance development strategies for themselves or their staff. The examination identified that the council had not improved its governance capability or expertise since the previous Inspectorate examination in August 2012 despite assurances these matters would be addressed.

¹ <https://knowyourcouncil.vic.gov.au/councils/yarriambiack>

² Source: Yarriambiack Shire Council Annual Report 2017/18 <https://yarriambiack.vic.gov.au/wp-content/uploads/AnnualReport2018v2-1.pdf>

³ Source: Census 2016, 20330, Socio Economic Index of Areas (SEIFA) (Australia)

3.2 Allegations

Council depots are repositories of a considerable amount of plant, equipment and consumables which are used by employees to undertake civil works, parks and recreation works and other duties. Poor management of physical resources held by councils presents a risk of fraud and corruption.

A number of allegations were raised with the Inspectorate in relation to the use and procurement of resources at the Hopetoun depot. The allegations include private works,

inappropriate use of council equipment, unauthorised sale of plant equipment and consumables and leasing of staff vehicles by council.

The integrity of local government and protection of community interests are key aspects in determining the importance and veracity of these allegations. To achieve this, the Inspectorate investigated the allegations and conducted an examination of risk issues related to council operations. It should be noted in undertaking this work, the Inspectorate received willing cooperation from council staff.



Hopetoun depot

3.3 Previous audits and examinations

The Inspectorate conducted a governance examination at the shire in 2012. The outcome of that examination was that a significant percentage of items reviewed were considered not to be compliant with the legislation and the council fell well short of meeting accepted best practice through its operational policies and procedures. A report was provided at the conclusion of the examination and council committed to implementing the action plan provided at the time. In a follow-up visit, the council confirmed that actions to improve their procedures and policies were underway.

As part of the current examination, the Inspectorate requested recent audits undertaken on behalf of the council. Fifteen reports were provided to the Inspectorate and a sample of relevant findings are included below. The types of issues identified by the various audits are consistent with those identified during this governance examination and the previous review undertaken by the Inspectorate in 2012.

A **records management audit in 2017** indicated that there was significant scope for improvement to ensure compliance with legislative and Public Records Office Victoria requirements. A **disaster recovery and business**

continuity review in 2017 identified that the business continuity plans and IT disaster recovery plan would not have been effective in the event of a significant disruption or outage. The plans were considered generic and not adequately specific to the council's needs. Significantly, it was identified that the plans had not been tested and that there was minimal staff training or staff awareness.

A **contract management audit in 2017** identified areas of improvement as being the implementation of a centralised approach to monitoring and managing individual contracts, the retention of quotes, creation of a standard contract file checklist and the monitoring of aggregate supplier spend.

A **depot site review in 2014** identified a number of issues in regard to the management of the sites. These included a lack of signage, inadequate chemical management, lack of work orders and outdated policies. A **follow up review conducted in 2019** highlighted that less than half of the recommendations made were considered to have been satisfactorily addressed. The key register, chemical storage, plant and equipment management policies and procedures and reporting obligations all remained as outstanding matters four years after the original review.

A **human resource audit in 2014** concluded that council had a significant wage spend increase without sufficient control, demonstrable efficiency savings, increased service levels or an ultimate demonstration of value to ratepayers. It also listed deficiencies such as: new employee request approval forms not being completed (no oversight of new employees), non-inclusion of key performance indicators in staff performance plans, no formal HR framework, and the accumulation of excessive leave not being managed by senior staff.

An **audit into risk management in 2013** recorded that council fell well short of aligning to best practice. Issues highlighted included failure to implement a risk framework, failure to review the risk policy since 2007 and failure to record potential fraud risks as opposed to only recording events that have occurred.

A **further risk management review was completed in 2015** and most recently a follow up review was completed in 2019. Of the 12 recommendations previously made, only one was considered to have been addressed satisfactorily. A key recommendation for a software solution for managing policy reviews and other tasks had not been implemented.

The **review in 2018 of enforcement of Local Laws** highlighted there were no documented procedures for issuing and managing notices and infringement notices, not meeting reporting obligations, no tracking of infringement notices, a lack of audit trail, inefficient monitoring of paid/unpaid infringements and customer requests bypassing the customer request management system.

A **grants management audit in 2019** identified that there was no policy in place, no centrally managed grants register and no reporting on aggregate co-contributions, leading to a general lack of consistency across the organisation.

The **VAGO final management letters from 2016-2018** highlighted deficiencies in the design and implementation of controls and significant matters relevant to the financial reporting and employment processes. These included policies not being in place for EFT transactions or invoicing, five employees terminated by council remaining on the payroll system; purchase orders not showing prices or quantities, and inflating or discounting of long service leave liability.



Audit reports

4. Asset and resource management

A fundamental role of councils governing for the present day and the future is the responsible management of public assets. To ensure the best outcomes for the community, councils must plan for the long term and consider the cumulative effects of all decisions made regarding public assets.

4.1 Private works

Allegations were raised in an anonymous complaint and separately during the Inspectorate's visit to council that private works were being undertaken by council staff using council equipment.

The following allegations were also raised in the initial complaint:

- Some private works were being done during work hours with staff receiving cash payments or payments in kind for the work such as slabs of beer.
- Plant and equipment such as graders and rollers were seen working on farm properties, with cash in hand or gifts being given to operator of equipment or depot manager.
- Plant and equipment being used on weekends for private use by staff to clean up blocks of land or transport privately-owned goods.

Depot employees interviewed in August 2019 confirmed private works had been regularly conducted for many years and any payments or gifts received were donated to the depot social club for social functions. The Inspectorate requested records or financial statements from the social club. The social club was not formally constructed, had no constitution and no records were provided to the Inspectorate, however the Inspectorate is still in the process of pursuing bank records to confirm relevant transactions.

The Inspectorate can confirm an unknown number of private works were conducted and cash or in-kind payment was received for the works. This appears to be an accepted and long-running practice by depot staff. Limited members of the community benefit from these private works, while the wider community subsidised the practice. Several staff also confirmed that, ahead of their interview by the Inspectorate, they had been told not to accept any more payments for private works.

According to the Public Administration Act 2004, misconduct in public office includes 'an employee making improper use of his or her position for personal gain'. Staff accepting cash or other forms of payment, all of which went to the depot social club, for conducting private works using council equipment is an unacceptable practice. More generally, misconduct in public office can be conduct by a public sector employee which is not just unlawful but that fails to meet the ethical or professional standards required in the performance or exercise of duties.

Recommendations

- Private works by council staff should cease immediately, noting this has been implemented as of September 2019.
 - Council must draft and implement a policy in relation to any works outside of council's normal scope of operations.
 - Council must provide guidance to staff about why such works are not appropriate.
-

4.2 Sale of consumables or resources from council depot

Councils purchase resources and consumables to deliver best value services to their residents. The purpose is to provide services for whole community, not to just benefit individuals.

An allegation was made that a large amount of gravel from a depot stockpile had been sold by council employees to three local residents. Council also delivered the gravel and provided grading services to at least two residents. A review of the documents provided indicate that residents were invoiced for the work undertaken at their properties and that they paid for the works that were undertaken by council and for the gravel supplied.

Further allegations were made that staff had sold consumables such as fuel to local residents. The investigation substantiated that on a number of occasions, resources and consumables such as fuel and gravel were on-sold to some residents but no offences were established as the sales were conducted at or near market rate and proceeds went to council.

The Inspectorate also found that council had no policy or guidelines governing such sales and therefore the staff involved did not breach any internal rules.

The question remains whether council should be involved in the business of selling consumables or resources. If a council on-sells consumables, this may leave it open to corruption or equipment being unavailable for use when required. It may also leave council in the position where it is competing against local private businesses.

Recommendations

- Council to create and enforce guidelines on the sale of consumables.
 - Council to ensure tight controls are in place to ensure any sales undertaken do not prove anti-competitive for local businesses.
-

4.3 Staff usage of council equipment

The following allegations were raised with the Inspectorate and discussed in interviews with council staff:

- Plant and equipment such as tractors or chainsaws were being used on weekends for private use by staff to clean up blocks of land and for doing other work that was not council related.
- Depot stock, plant and equipment is never audited and according to the responsible director, this was not required.
- A general manager stated that staff regularly use council equipment for private work and this appears to have been a systemic practice.

The Inspectorate substantiated that prior to July 2017, staff regularly used council equipment but it was unregulated and not recorded. At Warracknabeal depot in July 2017 and Hopetoun depot in March 2018, a register for use of plant and equipment was instigated to ensure staff paid for equipment used. There was a process to recoup these amounts but record keeping was poorly maintained.

Evidence from workers indicate the equipment usage book started earlier in Hopetoun than the records provided to the Inspectorate. It appears that staff using council equipment after hours was a long-standing and ongoing cultural practice.

A number of questions must be answered by the council including: is this an effective use of council assets; is this an appropriate use of assets by staff to do private works; whether council or the individual staff member should pay for the insurance, consumables, depreciation, damage and maintenance of plant and equipment. Contemporary public organisations do not permit this type of activity.

The Inspectorate raises additional concerns with these practices including: the possibility that council equipment could be used for secondary employment; fringe benefit and insurance issues; legal risk; and the possibility that equipment may not be available during emergencies. Some members of the community may benefit from these practices but the balance of ratepayers are ultimately worse off.

Recommendations

- The practice of allowing depot employees to utilise plant and equipment for personal use or private works should cease immediately.
 - Make it mandatory for all depot staff to be familiar with the policies and have each depot staff member sign off to confirm reading and understanding on a regular basis.
 - Council should provide training and guidance on why the use of public resources after hours is not appropriate.
-



Depot chemical stock

4.4 Council leasing private assets from staff

Allegations were raised in the initial complaint to the Inspectorate that council staff at the Hopetoun Depot were encouraged to personally purchase plant and equipment and then hire that equipment back to council. This would allow them to draw a salary from the council as well as receive a rental payment for the use of the plant and equipment.

What are the key issues or challenges?

- Equipment owned by council employees hired back to council without a tender process
- No policy or guidelines were created to dictate correct procedures for renting or hiring staff-owned equipment

It was confirmed that Employee A hired out their privately-owned truck and trailer to the council on an ongoing monthly basis between November 2011 and September 2013. During this period, payments totalling approximately \$174,500 were made to Employee A.

It was also confirmed that Employee B had hired a water truck to the council on an ongoing monthly basis from August 2011 until the time of the examination (April 2019). Payments varied according to the usage of the vehicle. During this period, payments totalling approximately \$457,000 were made to Employee B.

While the Inspectorate requested details of the respective formal contractual arrangements, it was advised that formal

contracts did not exist in either case. It was also confirmed that no formal tender process had been entered into to ensure that best value was achieved.

Despite allowing the practice to continue for an extended period of time, council did not develop and implement a policy to provide the necessary guidelines to staff. It appears the practice was considered to be business as usual, as opposed to a practice that required special consideration and formal senior management approval.

The General Manager of Infrastructure and Services explained that he was not really aware of these types of hiring arrangements as they typically emanated directly from the Hopetoun depot. The general manager did not have a clear explanation for why this practice occurred but conceded the “perception was poor”.

Whilst the payments to Employee B were over a period of eight years, the council did not have any systems in place to identify that the payments were of such regularity and scale that the arrangement should have been facilitated by an open tender process.

It was confirmed that following this examination, the ongoing arrangement with Employee B has ceased.

Allowing council to lease plant and equipment from staff is considered by the Inspectorate to be poor practice due to the various risks it presents. These include contractual, financial and legal risks and acting contrary to the Local Government Act procurement requirements. A primary consideration ought also be the perception of a conflict of interest.

Recommendations

- Council should cease leasing private assets from staff.

4.5 Unauthorised sale of plant and equipment

Allegations were raised that staff at the Hopetoun Depot had sold plant equipment to unknown people without the authorisation or knowledge of council.

In one allegation, it was claimed that a council-owned cherry picker had been sold and the proceeds distributed to depot staff.

The Investigation substantiated that council owned a cherry picker in the mid-1990s and also that this cherry picker is not presently in the possession of council. What is not clear is how this equipment was disposed of.

Up until recently, the council had continued paying registration and insurance for the same cherry picker.

There were similar allegations (discussed earlier in this report) that depot staff may have kept or distributed chemicals, fuel and gravel from the depot but this was unable to be substantiated due to poor record keeping and lack of evidence.

In discussions with senior staff and depot workers, issues that emerged included:

- while an asset register existed, it was poorly-maintained
- location and condition of plant and equipment were not regularly recorded and there were no restrictions on staff accessing and altering equipment records

Recommendations

- Develop and implement a policy for recording of assets, their purchase, locations, status and disposal and provide this policy to the Inspectorate.
- Undertake a thorough reconciliation of all council equipment and other assets and record in a register that is updated each time plant and equipment is purchased or sold.
- Asset register must be updated regularly and access to the register restricted to appropriate staff.

4.6 Sale of land

Compliance with the respective legislation is mandatory and a failure to meet these requirements may be sufficient to invalidate a sale. Transparency to the community is an essential part of the advertising and sale process.

When the Inspectorate examined the council in 2012, it was substantiated that a parcel of land had been sold. It was found at the time no public notices had been published, no current valuation had been obtained, and the sale occurred without authorisation by a formal resolution of council. These were all breaches of legislative requirements. An action plan drafted by the Inspectorate and agreed to by the council made recommendations to correct land sale procedures at the time.

During the current investigation, it was established that neither a policy nor a process document had been adopted for the sale of council-owned land. Not having a policy or documented process leaves the council at risk of breaching the Act and being at heightened risk of fraud and corruption.

To examine recent council land sales, the Inspectorate requested supporting documentation. Details were provided for the sales of Lots 2 and 3 at 158 Lascelles St Hopetoun. Lots 2 and 3 were both sold in 2018 for \$16,500 each and both sites were independently valued before the sales at \$15,000 each. The review of the documents identified that the council had acted appropriately by advertising that both lots were to be sold by private treaty, by commissioning current valuations and having the sales approved by council.

The Inspectorate then requested details for the sale of Lot 1, 158 Lascelles St.

The land at 158 Lascelles St, Hopetoun was originally bought in February 2014 for \$5400 with the council planning to subdivide it into four lots at a cost of \$194,000. The council received a grant from the State Government for \$81,400 but no details on the particulars of this grant, or limitations on its use, were available. An agreement had been made prior to the council purchasing the land for Lot 1 of the sub division to be on-sold to a local panel beater at the valuation price for the purpose of stimulating local business growth. Despite the council engaging with a potential purchaser throughout the subdivision process, and council approving the sale on 11 December 2013, the sale did not proceed and the property was sold to a development corporation.

Council minutes from 28 October 2015 indicate that a valuation for Lot 1 was obtained, valuing the property at \$35,000, however council passed a motion to accept only \$16,500. One explanation offered was that the motion was passed after relying on a valuation from October 2013 that valued the property at \$14,000. This explanation is contrary to the legislative requirements. The property was settled on 25 November 2015.

What are the key issues or challenges?

- Confusion surrounded the sale of Lot 1, 158 Lascelles St, Hopetoun in regard to the prospective and eventual purchaser and the arranged sale price.
- Council failed to document the end-to-end sales process.
- Lack of detail in the sale file opens up the council to scrutiny and hinders transparency and accountability.

Council staff were unable to provide clarity as to why the council did not fulfil its obligation to sell the land to the panel beater and whether council met its obligation of achieving best value through the land sale.



Recommendations

- Develop a sale of land policy and formally document the sale of land process to assist with adherence to the Act, promote uniformity across the organisation, and mitigate key person risk.
- Maintain all relevant sale of land correspondence and documentation on file.
- Maintain a written record of all key decision making rationale.

4.7 Planning for capital expenditure

A council must ensure that the budget contains, amongst other things, a description of the services and initiatives to be funded in the budget. In the course of the investigation the issue of the Capital Works Program in the Budget was raised. In the 2017/18 budget document in the capital works section, allocations were adopted for resheet, reseal, road to recovery categories.

There was no list of what road works were to be carried out specifically. A reseal program was adopted by Council later in September with the specific road list. This occurred again in the 2018/19 Budget document and subsequent September adoption of the works program.

This meant that the community was effectively denied adequate transparency, in the roads program, for appropriate consultation to take place. One of the key objectives of a council is to ensure transparency and accountability in council decision making.

It is noted that the current CEO required that the full costed program be adopted with the budget for 2019/20, to allow for public consultation to be undertaken on a full transparent list of roadworks.

Recommendation

- A full program of works should be adopted for the capital works program in the annual budget.

5. Financial management

Councils are responsible for the management of public funds, which includes federal and state government grants and ratepayer contributions. The Act requires a council to ensure that resources are used efficiently and effectively and services are provided in accordance with best value principles to meet the needs of the community. The importance of responsible administration by local government of public finances cannot be overstated.

5.1 Procurement

Procurement is an important function for council, as it involves the expenditure of public funds and the attainment of best value for its community, through strategic and well-developed policies and processes. It is also an acknowledged high risk area for fraud and corruption.

A detailed procurement policy is one of the main pillars of good governance for a council. It should balance the need for rigorous process, value for money and efficiency in decision making to ensure council continues to function in accordance with community expectations. In order to address these requirements, the procurement policy must be reviewed at least once in each financial year.

In 2012, the council was found to be not compliant and many of the same issues are present in this examination.

Prior to the examination, the Inspectorate reviewed the most recent procurement policy, which was adopted by council on 12 March 2014. It was confirmed this policy was more than four years out of date due to a lack of resources and not being given a high priority.

The Inspectorate notes that an updated procurement policy was adopted at the 22 May 2019 council meeting. It is important that councils review their policy annually, not just to satisfy the legislation but to ensure current practice is continually evaluated to remain best practice and minimise the risk of fraud and corruption.

As part of the review, the Inspectorate examined relevant procurement files, including those relating to the provision of home maintenance services; supply and delivery of a grader; Warracknabeal Golf Club irrigation; provision of cleaning services; and supply and delivery of a road maintenance unit.

The issues identified include:

- Lack of control over the opening of tenders prior to the closing date, contrary to council policy.
- No consistency of process and documentation. Written evaluations were not completed, demonstrating a lack of integrity of process, and a failure to provide adequate transparency.
- Instances where tender evaluation panels were not created or when members' names were not recorded in evaluation reports.
- Tender scoring matrices not completed.
- Lack of separation of duties whereby one staff member has multiple roles in, or controlled every aspect of, the tender process.
- No evidence that reference checks were routinely undertaken.



Poor procurement controls and contracting processes were involved in issues such as this substandard bin being used for electronic waste, by a company that had no formal contract with the council for waste management.

- The inclusion of a councillor on a tender evaluation panel, a highly unusual situation with no explanation of why it occurred.
- Panel recommendation sign-off was not obtained.
- Decision making was not supported by sufficiently detailed information.
- A staff member approving a recommendation and signing a contract outside of their delegated authority.
- Failure to have panel members complete conflict of interest declarations, exposing the council to possible fraudulent or corrupt activity.

There were also numerous breaches of council policy including: failure to adequately detail evaluation practices contrary to best value principles; lack of accountability for procurement processes; lack of internal controls; insufficient documentation to provide an audit trail; authorisations not obtained or completed inappropriately; and no systems or framework in place for performance monitoring.

There was also a failure to conduct quality assurance reviews and, contrary to policy, there was no aggregated supplier

payment reviews conducted annually. Council systems were also shown to be incapable of producing such data to the Inspectorate's satisfaction.

The following issues were raised by staff in regard to general procurement practices:

- There was no line of sight of procurement projects below the threshold of \$25,000
- In a majority of instances, the staff member responsible for signing off on tender evaluation panel recommendations (prior to going to council) was also a scoring member of the panel
- Tender evaluation panel members are not provided with training/instruction in regard to their respective roles and responsibilities
- No independent review of completed procurement files is routinely undertaken to ensure that probity standards and independence of decision making are upheld
- Tender evaluation panel members have not received specific ongoing training on the subjects of conflict of interest or confidentiality
- It was advised that no procurement specific complaints policy had been considered or implemented.

Recommendations

- Council review its procurement policy in accordance with legislation and adhere to it.
 - Procurement staff should use the Local Government Victoria best practice procurement guidelines to assist in developing their processes.
 - Timeline established for delivery of training and education to all procurement staff and evaluation panel members.
-

5.2 Recovery of outstanding rates

Council rates are a necessary impost on the community to help fund services and asset purchase and renewal. It is important that councils apply an equitable imposition of rates and charges across the municipality. Failure to recover outstanding rates means it fails this objective and provides a disadvantage to ratepayers.

Issues were raised with the Inspectorate regarding the large amount of outstanding rates and the lack of action taken to collect these debts.

As of September 2018, council was owed more than \$1.5 million in outstanding rates. There is no evidence that

council has attempted to collect these outstanding debts. Rate revenue for 2018-19 was \$12.3 million, with an amount worth more than 12% of rates revenue outstanding. Other outstanding rates for similar sized councils only average 4% of their total rate revenue.

Councils with a higher outstanding rate burden have set processes in place to address outstanding rate debtors. The Inspectorate acknowledges that many instances of failure to pay rates may be instances of hardship but council requires a process to manage such circumstances.

It is of concern that due to the passage of time and poor record keeping, some of the debt may be unrecoverable.

Recommendations

- Council must develop a policy to govern the management and recovery of outstanding rates.
 - Take immediate action to recover outstanding rates or where appropriate, write off any unrecoverable debts.
-

5.3 Corporate credit cards

The use of corporate credit cards can expose councils to potential financial and reputational risks as well as fraud and corruption, therefore it is important that internal controls are embedded to mitigate these risks.

The Inspectorate received specific allegations relating to the misuse of a corporate credit card. In the course of the investigation, it was identified that the council now has only one active corporate credit card, to which all relevant corporate council expenses are charged. While the previous CEO was allocated a credit card for his use, the current CEO did not exercise that option.

What are the key issues or challenges?

- Currently there is a gap in controls that may allow for collusion between the person incurring the expense and the cardholder
- The requirement that transactions be checked by an authorised person was raised in a card activities audit in 2010 but the practice was not adopted.

The current Corporate Credit Card policy was adopted on 27 June 2018. The principles of the policy are to ensure transparency in council operations concerning the use of cards and to ensure council resources are managed with integrity and diligence.

Despite maintaining a limited number of cards, probity protocols did not appear sufficient to identify or restrict fraudulent or corrupt activity. Section 8 of the Corporate Credit Card policy states that the monthly statement, with all invoices attached, is to be authorised by an appropriate person.

When queried on the process, it was explained that the cardholder would sign off on the statement (with the invoices attached) and it would be processed in the finance system. There was no requirement to have the statement authorised or approved by senior management.

Section 11 requires that monthly statements are to be periodically checked by the internal auditor. Council advised that the internal auditor did not carry out this function and there were no instances where staff had been questioned in regard to expenditure.

A review was undertaken of the previous two years' statements for the senior officer and former CEO. It was found that: not all statements were authorised by senior management; a description of purchases were not recorded; and not all monthly statements were signed by the cardholder. No instances of fraud were substantiated.

The senior manager responsible for drafting and managing the policy did not appear to understand the reconciliation and approval process.

Recommendations

- Council must adhere to its own policy on credit card use.

5.4 Community grant programs

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

The Inspectorate found that council operates the 'Share Grants Program' with two annual rounds of grants of \$30,000. At the time of this examination, the council website contained a one-page document outlining the relevant application details including the opening and closing dates and eligibility criteria.

Council advised that there is no Share Grants Program policy in place and until recently there was no structure or process document to provide operational guidance to relevant staff. Once applications are received, a committee of councillors and council managers is formed to conduct roundtable discussions. There is no criteria to determine the membership of the panel or rationale for councillors undertaking operational roles within the council.



Community garden

What are the key issues or challenges?

While there was a structured application process, the council:

- allocated public funds through an evaluation process that had very little rigour.
- did not promote transparency.
- allowed no independent oversight of the process.
- did not keep records detailing the reasons applications were approved or declined.

The examination of the current community grants process identified:

- a lack of transparency to the community.
- a failure to document the evaluation process which may result in inconsistent outcomes.
- no separation of duties in the decision making process.
- councillors involved in the evaluation and approval process.

Recommendations

- Develop and document the process, clearly outlining who has responsibility for the assessment/evaluation of applications, who is to prepare the report to council and who is to sign off on the report prior to going to council.
 - Written assessments to be made for each application, outlining the reasons for approval or decline and why applications did not receive their full allocation.
 - Councillors to receive full report for both recommended and not recommended applications.
 - Councillors should be removed from the evaluation process.
-

5.5 Government grants

In February 2019, a chartered accountancy firm completed a review of the reliability and effectiveness of the internal controls over the management of grant funding. The scope included: a review of policies or procedures; a review of the management process (including the seeking and pursuing of funding opportunities, acquittals, activity, milestones and reporting); the adequacy and use of records management; and testing a sample of federal and state government grants received.

The Inspectorate found there was scope to improve the management of grants through the development and

implementation of a grants management policy and procedure document. Improved practices would include creating a centrally managed grants register, reporting on aggregate co-contribution obligations across all grants, ensuring the finance department is involved in the application stage, and documenting current processes as part of an overall grants management policy and procedures.

While it is too early to conduct an assessment of council's implementation of the review recommendations, it appears the council has committed to act, particularly in regard to developing a policy and register.

Recommendations

- Adopt a Grant Management Policy.
 - Create a comprehensive grants register.
 - Council to act on the recommendations of its accountancy consultant.
-

6. Human Resources management

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

6.1 CEO/Senior Officer contract and performance reviews

The successful management of human resources is key to supporting a harmonious and productive workforce. Successful management includes adherence to legislative requirements when contracting senior staff, providing staff with suitable employment arrangements and the provision of consistent and timely staff performance reviews.

At the time of this examination, council had five senior officers. One officer is employed on an acting basis for a fixed term of 12 months. The other four have been employed on a fixed term contract for a period not exceeding five years. However, the role and duties of one senior officer did not meet the definition of a senior officer under the Act.

A very concerning feature of the contracts involved the terms relating to separation payments provided to four senior officers. Each of these contracts provided for six months' notice or in the absence of notice, payment in lieu.

If the contract expired before the six month notice period, employees would receive the balance of the contract period unless a dismissible offence occurred. Where terminated in this manner or upon expiry without the CEO offering a new contract or redundancy, senior officers are also entitled to three weeks' pay for each year of service with the council plus \$10,000 tax free – an unprecedented concession in Victorian local government. The potential termination payments to the four senior officers ranged from \$166,000 up to \$416,000.

These conditions are far in excess of what are considered reasonable industry employment separation conditions. The potential financial risk for council is considerable: if all four employees had been terminated, the estimated payout (as of 1 June 2019) would have been \$1.28 million or 10.49% of council's rate revenue (which totals \$12.18 million). In addition to this separation payment, the departing senior officer would receive a payout for other entitlements such as any remaining long service leave and annual leave.

There was no documentation provided as to how these arrangements were created but the former CEO was responsible for ensuring senior officer contracts followed the legislation and met industry standards and community expectations. When the former CEO was asked about the senior officer contract terms, he did not offer an explanation for the terms and believed he may have "inherited them" from previous contracts. He could not recollect whether he had questioned the provisions.

Recommendations

- Review all senior officer contracts with immediate effect in accordance with relevant legislation.
 - Align all future senior officer contracts with legislative requirements and industry standards.
-

6.2 Secondary employment

The Inspectorate received initial allegations related to staff and secondary employment practices and found further evidence in the course of the investigation.

The key allegations included:

- a staff member having a private business and conducting work for council
- a staff member contracted to clean a council facility in addition to their main role

- staff members undertaking other work outside their council duties and using council equipment.

The Inspectorate established that these secondary employment practices were occurring.

While staff members engaging in secondary employment is an acceptable practice, there is a potential risk to council and a lack of accountability if there is no secondary employment policy governing these matters. The examples highlighted also demonstrate the potential for conflicts of interest to occur.

Recommendation

- Develop and implement a secondary employment policy to ensure accountability and transparency.
-

7. General governance

Governance arrangements are the necessary procedures and monitoring systems to ensure that council is performing all of its functions to the required standard and in accordance with its legal obligations.

As part of the examination, the Inspectorate identified governance areas where improvement is recommended. It was flagged by council that improvement is required across the organisation in regard to engaging staff at all levels to ensure they are aware of their legislative requirements and responsibilities.

7.1 Governance schedule

As a method of meeting governance obligations and facilitating accountability, many councils maintain governance schedules for key dates throughout the year such as interest return deadlines, mayoral election periods, budgets, annual reports and delegation reviews, amongst a host of other relevant time-critical legislative requirements.

Council confirmed that it does not maintain a formal governance schedule that captures the statutory obligations placed upon the council. Despite best efforts, legislative requirements have historically been treated in an ad-hoc manner, resulting in a number of requirements not being met.

What are the key issues or challenges?

- Council did not have any form of governance schedule to ensure key statutory requirements are met
- Council failed to meet time-critical statutory obligations such as reviewing delegations and local laws
- Inexperienced and unskilled staff are not provided with an appropriate level of guidance to undertake their duties
- Resourcing is inadequate to ensure that staff deliver successful governance outcomes

The failure to develop an adequate schedule has led to staff not completing critical tasks, senior management not having clear oversight of what tasks had or hadn't been undertaken, and no structured follow up process in place that promotes accountability.

As a result, it was identified that important, time-critical governance tasks had not been completed within legislated timeframes. These included the Meeting Procedure local law which had been out of date for more than two years and the review of officer and special committee instruments of delegations. Failure to review these documents in accordance with the legislation may have resulted in persons acting under a delegation that was not current, presenting a significant risk to council.

Along with not maintaining a governance schedule, failure to document key governance processes was also identified as a major legal and financial risk to council. The council is heavily reliant on individuals to carry out tasks based on knowledge/experience, as opposed to following a well-documented process that is readily available to relevant persons within the organisation. Should the council lose key staff at short notice, it is likely to result in time-critical tasks not being completed as required by legislation.

A copy of a recently-developed governance schedule by Hobsons Bay City Council was made available to governance staff to assist in the development of a Yarriambiack-specific template.

Recommendations

- Develop a whole of organisation governance schedule that captures each of the council's statutory obligations and that clearly details the responsible staff member and function to be carried out.
- Information on progress against governance schedule milestones provided to management and council.

7.2 Policy framework

Every council requires up to date policies and procedures to function efficiently and effectively. They are particularly important for a local government as they facilitate consistency and transparency across the organisation.

A register containing 66 policies was examined by the Inspectorate and it was identified that only 22 of the policies listed were current (as of June 2019).

What are the key issues or challenges?

- Lack of a comprehensive up to date policy framework is a significant failing of council
- Process for updating policies is now better managed, however staff are still failing to accept responsibility to review and amend policies within due dates
- Approximately two thirds of existing policies were out of date, which potentially exposed the council to the risk of fraud and/or corruption

Council staff confirmed that ensuring that all council policies were up to date was problematic. Despite being requested to, policy owners had historically not displayed a willingness to review them, even when approaching expiry.

The leadership team was routinely notified as to which policies were outstanding, however no remedial action was taken to rectify the situation and no consequences were placed upon staff not meeting their obligations.

Examples of expired policies included the procurement policy, which had not been reviewed since 2014. When queried, it was advised that despite constant reminders, a lack of accountability in the procurement department was the reason for non-compliance with section 186A of the Act that requires the policy to be reviewed annually.

Recommendations

- Ensure updated policies are in place for key operational issues.
 - Policy review should form part of the governance schedule.
 - Senior management and council need to be accountable for the policy review process.
-

7.3 Record keeping

Accurate record keeping at local government level is a fundamental aspect of council business. The keeping, handling, storing and eventual disposal of council records is governed by the *Public Records Act 1973*.

The Public Records Act requires the proper maintenance of records. Delivering record keeping practices that meet legislative requirements ensures that records are kept secure and allows for them to be made readily available to the public and other government entities, which is an important function of councils.

“A Public Record is all information created, sent and received by a Victorian public sector employee in the course of carrying out the business of the agency including electronic documents, emails, websites, audio-visual records, databases and system-generated records, as well as physical documents and files.”

Public Records Office Victoria website: <https://prov.vic.gov.au/recordkeeping-government/getting-started>

Yarriambiack Shire Council receives, creates, handles and stores thousands of records annually and as such is required to ensure they are stored and documented in the correct manner.

The council does not currently operate an electronic document storage system, as all government and local government entities should. The council uses a manual record filing system which requires staff members to store records in a designated area consisting of two rooms with compactuses at the council’s Warracknabeal offices. Staff also store records within cupboards, drawers and on desks in their work areas.

The examination found a number of staff have developed their own databases or programs to record their work but it is not widespread and is not accessible by all parts of council and not accountable in any manner.

The archives for council records are held in three shipping containers that are located at one of the council depots. They are secured by padlock but are not compliant with the storage guidelines as set out by the Public Records Office.

This current system is totally inadequate for a council to run its business.

The Inspectorate found there were no back-ups of council computer records prior to March 2019.

This highlighted that digital records prior to that date may be unavailable. In an emergency, records may be lost if the servers are damaged or destroyed. It was confirmed that from March 2019 all digital records were safely secured and a back-up process is in place.



Several shipping containers have been used for records storage in the council depots.

Recommendations

- Records are to be kept in accordance with the Public Records Act.
 - All records should be converted to electronic format.
 - Training should be provided to staff on record storage and their responsibilities under the Public Records Act as a high priority.
-

7.4 Audit committee

One of the key legislative requirements is that council establish an effective audit committee to assist in ensuring the integrity of council operations and provide a safeguard for the community.

In the context of local government, the audit committee acts in an advisory capacity that typically:

- 1) focuses on issues relevant to the integrity of financial reporting
- 2) monitors risk management systems, internal control framework, compliance and audit activities
- 3) liaises between internal and external auditors and management.

While the audit committee is fulfilling its requirements currently, throughout 2014 and 2015, there was only one independent member of the committee, which did not meet the requirements of its charter and was in breach of the Act. Given the elected councillors have direct representation on the audit committee, the elected council should have been well aware that the lack of a properly-constituted audit committee is a breach of the Act. The failure to fill the vacancies occurring in these two years would have effectively inhibited the audit committee from holding a properly-convened meeting.

An ineffective audit committee exposed the council to significant risk due to the failure to have independent oversight of the council's financial reporting, internal control framework, risk management systems, compliance and internal audit activities.

What are the key issues or challenges?

- The failure to have a functioning Audit Committee reflects council's inadequacy in meeting its governance obligations
- Council must ensure ongoing audit committee viability

While not prescribed by legislation, it is good practice for councils to adopt and regularly review the audit committee charter by which the committee are governed. As part of this examination, council provided their audit committee charter, however the document was significantly out of date, having most recently been adopted by council on 4 October 2007.

An independent gap analysis undertaken in July 2014 by internal auditors of the audit committee made reference to the need for periodic reviews of the charter, however this recommendation, along with a number of others, were never acted upon.

The current committee is made up of three independent members and two councillors, which equates with industry standard and best practice. The independent members are considered to be well qualified to perform their role, having accounting and government agency backgrounds. The members are considered to be proactive in terms of seeking/clarifying information, and work in a cohesive manner.

Minutes were provided for the previous 12 month period to June 2019, which confirmed adherence to the requirement of meeting on a quarterly basis and a uniform, structured approach to carrying out meetings.

It was identified that the tenure of the current independent members is to expire on the same date. Council should give consideration to staggering the expiry dates to ensure that the combined experience and knowledge of members does not depart the organisation simultaneously, which would leave a significant governance gap.

Recommendations

- Conduct an immediate review of the charter, referencing *Audit Committees – A guide to good practice for local government* and the July 2014 gap analysis in conjunction with publicly available charters of similar councils.
- Restructure the expiry dates for each of the independent members.
- Develop a set of performance objectives for the committee and have them conduct an annual self-assessment against the objectives.
- Ensure that at all times the quota and membership of independent members are in accordance with the requirements set out in the charter.

7.5 Special committees

Councils establish section 86 special committees to assist in the management of specific projects, initiatives and select municipality assets. Special committees are required to have current, authorised Instruments of Delegation to ensure they act within their regulated powers, are properly constituted and limited to their purpose.

Special committees play a specific role in the management of community assets on behalf of council but the council retains an important governance oversight role of their activities and reporting to ensure their ongoing value to the community.

What are the key issues or challenges?

- Failure to review delegations of all committees in accordance with the Act
- Failure to manage interest returns of committee members in accordance with the Act
- Inadequate oversight of the special committees

Council currently has four special committees overseeing Hopetoun Swimming Pool, Tempy Swimming Pool, Murtoa Housing Units and Woomelang Community Units. Responsibility for managing the committees is split between the Infrastructure Services Manager and the General Manager Community Development. It was confirmed that there is no structured internal oversight of the committee management.

Each of the special committees were reviewed and the following key issues were identified:

- No interest returns were submitted and no instruments of delegation were reviewed in the 12 month period post 2016 election
- For the Murtoa and Woomelang committees, the meeting minutes from 12 June 2013 did not provide sufficient authority to execute the instrument of delegation
- For Woomelang, the number of committee members could not be established.

Issues identified

The examination found that each of the committees are reliant on expired instruments of delegation, representing a risk to council of decisions made under delegation being subject to challenge.

In addition, the examination found in the minutes dated 12 June 2013 and 12 February 2014 that exemptions to members of each committee from submitting interest returns were made specifically to the committee members of the day as opposed to providing a blanket exemption for all members current and future, until the next review, as per section 81(2A) of the Act. This has resulted in a large number of existing committee members being in breach of the interest return requirements of section 81(2) and 81(5) of the Act.

It was identified that at the time of their most recent financial statements, the committees were responsible for managing funds totalling approximately \$480,000. Given the significant value of the funds, combined with the lack of structured oversight, the security of the funds is considered to present a significant financial risk to the council.

The council was rated as not compliant in the Inspectorate's 2012 examination in regard to special committees. Despite assurances from the council to the Inspectorate at the time, it is evident that these issues were never adequately addressed.



Recommendations

- Immediate review of committee instruments of delegations to ensure compliance with the Act.
- Review of interest return exemptions for current committee members.
- Appropriate and effective management oversight of all special committees to ensure financial accountability and compliance with legislation.

7.6 Delegations

Under the Local Government Act and a wide range of other Acts and Regulations, council, the CEO and other council employees can delegate powers, duties and functions to special committees and council staff. The delegation process is essential to ensure actions and functions are lawfully exercised and council is not exposed to risk.

The examination found that until recently, responsible officers were unfamiliar with the proper delegations process, including the manner with which delegations are reviewed and the powers provided to them. Council has subsequently adopted and accepted a delegation model to ensure the council remains up to date with legislative requirements and any legislative amendments.

Section 98(6) of the Act states that a council must, within the period of 12 months after a general election, review all delegations which are in force and have been made by the council. It was identified that the required reviews were not undertaken in that period. As the CEO delegation was not adopted by council until 22 August 2018, any decisions made by the CEO under delegation between the period of October 2017 and August 2018 are at risk of being invalid. There are similar concerns with the delegations to council staff.

What are the key issues or challenges?

- Failure by senior staff to adhere to key legislative requirements
- Failure to review delegations to the CEO and council staff between October 2016 and October 2017 exposed the council to significant risk

During the previous Inspectorate examination in August 2012, delegations were assessed as non-compliant and despite assurances this would be addressed, recommended changes to follow legislative requirements and best practice procedures were not followed.

This examination confirmed that the delegations from council to the CEO and from the council to council staff are currently in accordance with legislative requirements. The delegation to the CEO was most recently adopted at the 22 August 2018 meeting. The delegation to council staff was most recently adopted at the 27 February 2019 meeting.

Recommendations

- Ensure that all delegations made by council are reviewed within the period of 12 months after a general election in accordance with section 98(6) of the Act.
- Ensure that all staff holding a delegated authority are trained in regard to their obligations under the delegations.

7.7 Local laws

Councils use local laws to respond to issues and community needs within a municipality. These local laws complement council's powers and responsibilities under both state and federal laws. The local law, once passed, has up to a ten year lifespan unless revoked sooner or renewed to remain valid. This ensures that local laws remain current and suitable for the purpose for which they were made.

As part of the examination, the Inspectorate reviewed local laws and assessed two as being compliant, however the existing Meeting Procedure Local Law expired in March 2017. The Inspectorate was advised that an updated draft version was completed in mid-2018 and presented to a councillor briefing session. Due to the expected introduction of the Local Government Bill, formal adoption of the revised Local Law was not undertaken.

What are the key issues or challenges?

- The correct implementation of local laws is a legislated responsibility of a council
- Council's decision not to remake the meeting procedure local law due to the potential introduction of a new Local Government Act is a breach of the legislation
- An expired local law being enforced for more than two years exposes the council to potential challenge in respect of relevant decisions made at council meetings during that time
- Senior management, who are ultimately accountable, did not query the decision to let the local law remain expired

Council has committed to ensuring the updated version proceeds to adoption. The former CEO noted that the Meeting Procedure Local Law expiration had not been brought to his attention. He believed that it may have been an oversight as "other areas required attention" and he "didn't like to overload the staff".

Council's failure to review the meeting procedure local law since March 2017 has resulted in subsequent council meetings being administered under an expired local law, leaving council decisions vulnerable to challenge. The elected councillors were clearly not aware of their

responsibilities and exposed the council to legal and financial risk.

It is noted that following the identification of this issue, council adopted the new local law on 4 October 2019.

Recommendations

- Develop a process whereby local laws reviews commence at least 12 months prior to the expiry date and are adopted before local law sunset dates.
 - Include the local laws review as part of the governance schedule.
 - Publish all local laws on the council website.
-

8. Conclusion

The overall governance culture of the organisation prior to late 2018 was described as being generally poor and one where individuals relied on others to do the right thing, rather than accept the responsibility themselves.

Across key facets of the organisation the focus was predominantly on 'getting the job done', which was often done at any cost with little regard to following policies, processes and legislation. There was little focus on good governance.

Leadership from the top is an essential element in creating a positive organisational culture. The council leadership team must communicate expectations to staff and demonstrate appropriate values. For example, in works depots, given their sometimes isolated nature, management needs to be visible and to effectively communicate desirable organisational behaviours.

The Inspectorate acknowledges the steps taken by council since mid-2018 but notes this report contains many recommendations for issues that need to be addressed as a matter of priority. Importantly, it is incumbent on the elected council to maintain oversight on governance arrangements for the organisation they represent. This is achieved through: a strategy and policy framework that councillors drive; proper management of the CEO; and effective management reports that provide overarching insight into the operations of the organisation.

Appendix



File: L80-10

JH: 133-19

5th November 2019

Mr David Wolf
Local Government Inspectorate
GPO Box 2392
Melbourne VIC 3001

CONFIDENTIAL

Dear Mr Wolf,

Protecting integrity: Yarriambiack Shire Council Investigation

I refer to your investigation into Yarriambiack Shire Council and the comments made in relation to the performance of Council in a range of areas.

Thank you for the opportunity to provide a response to the draft report.

General comments:

Yarriambiack Shire Council accepts the scope and outcomes of the investigation and wishes to take this opportunity to assure the Inspectorate Office that raising the standard of asset and resource management, of financial management, of human resources management and of general governance is our number one priority.

We note that the report raises a number of matters over an extended period of time, across a range of Council responsibilities and makes recommendations for how Council can improve. Council intends to produce a public facing action plan by December 18, 2019 that will be put to Audit Committee and Council quarterly over the coming two years to ensure continuous improvement and accountability against the recommendations.

Together with the Chief Executive Officer, Leadership team and Staff, Yarriambiack Shire Council is committed to rectifying the deficiencies identified and demonstrating a stronger commitment to management of the critical areas of Council that the community expects.

Asset and Resource Management:

As the report states, Council has ceased providing private works, staff usage of resources outside of work operations and the leasing of private assets. A policy which details how community works are undertaken will be developed and this will reiterate that no private works are to be undertaken. An additional policy will also outline the sale and usage of council resources and disposal of assets and land.



Financial management:

Council has already taken a number of steps to improve the financial literacy of Councillors and staff including Core Financial Skills Training and four modules of Procurement rolled out to Councillors and key staff. A Procurement Officer has been employed and an updated Procurement Policy adopted by Council in June 2019. In addition a Contracts Manual has been developed and templates are underway to assist with ensuring the policy is met to a high standard.

A Community Grants Policy and Guidelines and a Grant Management Policy and Guidelines were adopted at Councils August 2019 Ordinary Meeting and were used in the most recent round of SHARE grants.

Council is committed to pursuing unpaid rates in an efficient and effective manner and will prepare a policy and program for the recovery of outstanding rates.

Human Resources Management:

Council acknowledges that the current Senior Officer contracts are not in accordance with contemporary legislation or community expectations and will realign them at renewal opportunities.

Council will also develop a secondary employment policy to ensure conflicts of interest are better managed.

General Governance:

Good Governance training was undertaken by all staff in mid July 2019 and will be followed up in August 2020 with a refresher course and further training on Governance and Probity.

A new Meeting Local Law was adopted by Council and Gazetted in October 2019 and a Draft Performance Reporting Framework will be put to Council at their November 2019 Ordinary meeting.

In addition, Council purchased six modules of RelianSys software in June 2019 and has implemented Authorisations, Delegations, Compliance and Monitoring with Risk and Audit to follow. This will allow for greater accountability as it has provision for assigning responsibilities and tracking progress on the dashboard

Council is also part of the six Council groups successful in obtaining five million dollars in funding through the Rural Council Transformation Program to implement a new Finance, Payroll and Records Management System. There is a timeframe of five years for implementation but as Records Management training will require significant cultural change at Council this will need to commence prior to the implementation of an Electronic Document Records Management System (EDRMS).



As demonstrated in this letter a large number of changes and improvements are already underway within Council and there is a strong commitment to seeing them embedded in practice and a maturing of the overall management and governance culture.

I request that consideration be given to the incorporation of this letter into the investigation report as an Appendix and if you require any additional information please do not hesitate to contact our Chief Executive Office Ms Jessie Holmes.

Yours sincerely,

A handwritten signature in black ink that reads "Graeme Massey".

Cr Graeme Massey
Mayor


A handwritten signature in black ink that reads "Jessie Holmes".


Ms Jessie Holmes
Chief Executive Officer


Local Government Inspectorate

Encouraging higher standards of integrity, accountability and transparency in local government

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