

REPORT OF THE INTEGRITY COMMISSION

No. 2 of 2018

Report of three investigations
relating to Glenorchy City Council



The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

© Integrity Commission 2018

This report and further information about the Commission can be found on the website

www.integrity.tas.gov.au

GPO Box 822,
Hobart
Tasmania 7001

Phone: 1300 720 289

Email: integritycommission@integrity.tas.gov.au

ISSN 2204-5910 online

ISSN 2204-5902 print

President
Legislative Council
Parliament House
HOBART 7000

Speaker
House of Assembly
Parliament House
HOBART 7000

Dear Mr President

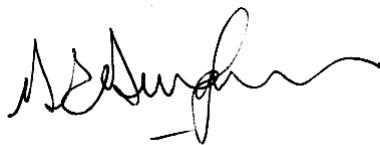
Dear Madam Speaker

Pursuant to section 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents *Report 2 of 2018* to Parliament, arising from three investigations relating to Glenorchy City Council.

Yours sincerely,



Aziz Gregory Melick AO RFD SC
Chief Commissioner
On behalf of the Board



Richard Bingham
Chief Executive Officer

22 May 2018

This page intentionally left blank.



**REPORT OF THREE INVESTIGATIONS RELATING TO
GLENORCHY CITY COUNCIL**

Tabled in the Tasmanian Parliament on 22 May 2018

TABLE OF CONTENTS

Foreword	i
PART A – Investigation Pyramid	1
Executive Summary: Investigation Pyramid	2
1. Introduction	4
2. Administration	5
3. Evidence and analysis	17
4. Findings	98
PART B – Investigation Direction	103
5. Summary report: Investigation Direction	104
PART C – Investigation Junction	106
6. Summary report: Investigation Junction	107

Foreword

In performing its functions under the *Integrity Commission Act 2009* (the IC Act) the Commission is guided by a principal objective: to enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with.

One way in which this objective is achieved is by the public reporting of the Commission's investigations, in accordance with s 11(3) of the *IC Act*. This action is only undertaken when it is in the public interest to do so, giving due consideration to, among other things, the seriousness of the alleged misconduct and the impact such reporting has on affected parties who may be identified in the report.

The Commission has recently completed investigations relating to the ongoing political and governance dysfunction that affected Glenorchy City Council up until its recent election. The issues prevailing within the Council were unsurprisingly the subject of much public concern, and consequently the Commission's Board considered it appropriate that the community be advised of the investigation findings.

This report concerns three separate investigations by the Commission in relation to alleged misconduct at the Council. It is divided into three parts, each relating to a separate investigation. The investigations involved matters connected to, but separate from, those considered as part of the recent Board of Inquiry process.

Part A – Investigation Pyramid

Investigation Pyramid is the most significant of the three investigations and Part A contains the full report. The investigation related to conflicts of interest and attempts to improperly gain pecuniary benefits, potentially up to a value of nearly \$1 million.

The report makes 56 factual findings relating to matters arising from 2013–2016, which the Board of the Commission determined to refer to the Director of Local Government and to the newly re-elected Mayor, Alderman Kristie Johnston. In referring the matter to the Director, the Board recommended that he give consideration to whether or not offences had occurred under the *Local Government Act 1993*.

Part B – Investigation Direction

Investigation Direction resulted from a complaint about the Glenorchy City Council Board of Inquiry (BoI), where it was alleged that the BoI failed to investigate the Council 'in a fair, honest and competent way'.

The investigation considered allegations that the BoI was biased, had ignored relevant evidence and consequently had made findings that were not supported by the evidence received. The investigation found no evidence to suggest that the BoI acted in the manner alleged.

A summary report of the investigation, briefly detailing the allegations and basis for dismissing the matter, is contained in Part B.

Part C – Investigation Junction

Investigation Junction related to the alleged unauthorised disclosure of the BoI's draft report to media outlets in mid-2017. The Commission accepted this matter on the

basis that it was alleged that the disclosure had been made for the purposes of prejudicing the Bol process.

The investigation found no evidence to suggest that disclosure of the draft report affected the Bol process. Furthermore, it noted strong arguments in favour of the public being made aware of such matters, particularly given the timeframes and expense involved in the inquiry.

Part C contains a summary report of the investigation, detailing why the Commission's Board determined to dismiss the matter.

PART A – Investigation Pyramid

Executive Summary: Investigation Pyramid

In December 2016 the Integrity Commission received a complaint from the Glenorchy City Council Mayor, Alderman Kristie Johnston. The complaint alleged misconduct associated with reviews of the General Manager's performance and his contract of employment. The senior officers of Glenorchy City Council who were the subjects of the complaint were the General Manager, Peter Brooks; the Director Corporate Governance and General Counsel, Seva Iskandarli; and Alderman Stuart Slade.

In summary, the complaint stated:

The conduct in issue surrounds the involvement of Ms Iskandarli in the performance review of Mr Brooks and the drafting and review of his Contract of Employment. We allege that her actions were with the consent, encouragement, and support of Mr Brooks and Ald Slade.

Ms Iskandarli was actively involved in the reviews of Mr Brooks' performance and employment contract at a time when the terms, conditions and continuity of her own employment were at the discretion of Mr Brooks (as General Manager). Ms Iskandarli's role in these matters, which could have resulted in pecuniary benefits to Mr Brooks, could not be divorced from her obligations to (and the potential benefits bestowed upon her by) Mr Brooks as her direct supervisor.

In the course of the investigation it became apparent that the close working nature of Mr Brooks and Ms Iskandarli heavily impacted on the matters raised in the complaint. The strength of this working relationship was most apparent in the context of ongoing dysfunction within Council – an environment in which Mr Brooks, Ms Iskandarli and Ald Slade were strong allies.

During Ms Iskandarli's employment with the Council she was involved in the amendment of Mr Brooks' contract of employment on two occasions – each time at the direction or request of Mr Brooks and/or Ald Slade.

Ms Iskandarli also played a key role in the General Manager's Performance Review Committee (GMPRC), which was tasked with conducting Mr Brooks' performance assessments and establishing his Key Performance Indicators (KPIs) each year. The specific nature of Ms Iskandarli's involvement in the GMPRC was a source of contention within Council for several years.

Explanations offered by Ms Iskandarli, Mr Brooks and Ald Slade were that Ms Iskandarli's role was that of a minute-taker, who provided administrative support to the GMPRC. Evidence obtained by the Commission demonstrated that her role was more significant.

In addition to undertaking reviews and amendments of Mr Brooks' contract, Ms Iskandarli was involved in the development and review of Mr Brooks' KPIs, including one occasion when she withheld material from the GMPRC because she did not agree with it.

Evidence spanning 2013-2016 identifies several occasions where Mr Brooks and Ms Iskandarli directly benefitted from the actions of one another:

- In 2013 Mr Brooks (with assistance from Ms Iskandarli) successfully renegotiated a higher salary and an extension to the term of his contract with Council. At the same time, Mr Brooks promoted Ms Iskandarli, then Council Lawyer, to Manager Legal & Governance and Council Lawyer.
- In 2014 Mr Brooks authorised a salary increase for Ms Iskandarli.
- In 2015 Ms Iskandarli liaised directly with an external consultant to develop KPIs for Mr Brooks. In the same year, Mr Brooks appointed Ms Iskandarli as Restructure Coordinator for a process that resulted in her promotion to Director Corporate Governance. Shortly afterwards, Mr Brooks appointed Ms Iskandarli to the position of General Counsel, despite evidence suggesting that at that time Mr Brooks did not know what the role of a General Counsel was.
- In 2016 Ms Iskandarli undertook a review of Mr Brooks' contract and, together with Ald Slade, presented to Council amendments which significantly enhanced the termination of employment entitlements available to Mr Brooks.

Evidence also demonstrates Ald Slade's role in benefitting Mr Brooks, potentially at the expense of Council, including:

- In 2013 as the then Mayor, Ald Slade together with Ms Iskandarli renegotiated Mr Brooks' contract, resulting in (as noted above) a higher salary and extended contractual term for Mr Brooks.
- In 2016 Ald Slade was instrumental in altering the GMPRC's method of assessing Mr Brooks' performance as General Manager, resulting in an \$18,000 performance bonus being paid to Mr Brooks that he would not otherwise have obtained.
- Later in 2016 Ald Slade recommended to Council that it accept the amendments to Mr Brooks' contract and withheld from Council the details of external legal advice which suggested that the amendments were significant and unreasonable.

The degree of loyalty between Mr Brooks, Ms Iskandarli and Ald Slade existed at the expense of objectivity or the interests of the Council. This was particularly evident when Ald Johnston raised conflict of interest concerns in 2015 and when Ald Stevenson attempted the same in 2016. Both incidents resulted in fervent opposition and strong personal criticism, particularly from Ald Slade.

The two incidents demonstrated two concerning points – firstly, a failure to recognise conflict of interest risks, even in the case of them being explicitly raised; and secondly, a seemingly immediate refusal to accept criticism of Mr Brooks and Ms Iskandarli.

A possible conclusion to be drawn from the response to the issues raised by Ald Johnston and Ald Stevenson is that the conflicted culture within Council led to some Aldermen rejecting those concerns due to political biases.

1. Introduction

1.1. Background: the complaint

- [1] *On 6 December 2016 the Integrity Commission received a complaint from the Mayor of Glenorchy City Council (the Council), Alderman Kristie Johnston.*
- [2] The complaint alleges that ‘there is an undisclosed pecuniary conflict of interest, potentially corrupt conduct, and/or an attempt to unlawfully obtain a financial advantage.’
- [3] In particular, the complaint relates to the involvement of the Council’s Director of Corporate Governance and General Counsel, Ms Seva Iskandarli, in the operations of the General Manager’s Performance Review Committee (GMPRC).
- [4] Ms Iskandarli reports directly to the Council General Manager, Mr Peter Brooks. On that basis, the complaint alleges a conflict of interest associated with Ms Iskandarli’s involvement in the GMPRC’s review of Mr Brooks’ performance and his contract of employment with the Council.
- [5] The complaint also alleges that Ms Iskandarli’s involvement in these matters was ‘with the consent, encouragement and support of Mr Brooks and Ald Slade.’
- [6] The complaint was accepted for assessment on 7 December 2016 as it related to conduct by two designated public officers (Ald Slade and Mr Brooks) and did not, on the basis of the material available at that stage, warrant dismissal.
- [7] On 12 January 2017 the complaint was accepted for investigation in accordance with s 38(1)(g) of the *Integrity Commission Act 2009* (the IC Act).

1.2. Persons named in this report

Name	Details
Ald Kristie Johnston	Mayor, Glenorchy City Council Complainant
Ald Stuart Slade	Alderman, Glenorchy City Council Former Mayor, Glenorchy City Council ¹ Chair, General Manager’s Performance Review Committee Subject officer
Mr Peter Brooks	General Manager, Glenorchy City Council Subject officer
Ms Seva Iskandarli	Director of Corporate Governance and General Counsel, Glenorchy City Council Subject officer
Ald Jan Dunsby	Alderman, Glenorchy City Council Member, General Manager’s Performance Review Committee Witness

¹ Ald Slade was Mayor of the Council until the 2014 Local Government elections.

Name	Details
Ald Matthew Stevenson	Alderman, Glenorchy City Council Witness
Ms Sue Smith	Commissioner, Glenorchy City Council
Mr Ian Nelson	Human Resources Consultant Witness
Mr Tony Harrison	Communications Consultant Witness
Ald Jennifer Branch-Allen	Alderman, Glenorchy City Council Member, General Manager's Performance Review Committee Witness
Ald Harry Quick	Deputy Mayor, Glenorchy City Council Witness
Ald Christine Lucas	Alderman, Glenorchy City Council Member, General Manager's Performance Review Committee Witness
Ald Haydyn Nielsen	Alderman, Glenorchy City Council Witness
Ald David Pearce	Alderman, Glenorchy City Council Witness
Ald Steven King	Alderman, Glenorchy City Council Witness
The Hon Peter Gutwein MP	Minister for Planning and Local Government

2. Administration

2.1. Jurisdiction

- [8] The Commission's jurisdiction was invoked on receipt of the complaint about two designated public officers and one public officer on 6 December 2016. Given that the complaint related in part to alleged misconduct by a designated public officer, the complaint could not be referred for action. On the basis of the information provided in the complaint, and the fact that further inquiry by the Commission was necessary in order to determine whether or not misconduct had occurred, the complaint did not warrant dismissal.

2.2. Assessment process

- [9] The assessment comprised of analysis of the material contained in the complaint, conducting of open source checks, including searches of The LIST and ASIC databases, and liaison with the Local Government Division (LGD).

- [10] The assessor exercised the powers of an investigator² once during the assessment.
- [11] A report was submitted by the assessor to the Acting Chief Executive Officer on 23 December 2016, pursuant to s 37(1) of the Act. The Acting Chief Executive Officer subsequently determined that the matter be investigated by the Commission, pursuant to s 38(1)(g) of the Act, on 5 January 2017.

2.3. Investigation process

- [12] Brendan Hofman was appointed to investigate the complaint, in accordance with Part 6 of the Act, on 12 January 2017.
- [13] In accordance with s 38(2) of the *IC Act* Ald Johnston was notified of the determination to conduct an investigation on 16 January 2017.
- [14] On 3 February 2017 Commission staff met with the LGD to discuss the complaint, as the complainant indicated that they had previously raised the same issues with the Director of Local Government in accordance with s 339E of the Local Government Act 1993 (the LG Act).
- [15] The Minister for Planning and Local Government (the Minister) suspended the Council Aldermen for a period of six months on 8 February 2017, and Ms Sue Smith was appointed as Commissioner for the Council for the same period.
- [16] The Commission notified Ms Smith of the investigation in accordance with s 38(2) of the *IC Act* on 20 March 2017.
- [17] On 31 July 2017 the investigator contacted Ald Dunsby to arrange service of a Notice to Attend and Give Evidence on her. Her interview was scheduled for 3 August 2017.
- [18] The investigator liaised with, and sought material under Notice from, the Glenorchy City Council Board of Inquiry (the BoI).³
- [19] Following receipt and analysis of evidence obtained under Notice from the Council it was apparent that some of the relevant material could potentially be covered by legal professional privilege. The material in question related to legal advice provided to the Council.
- [20] The investigator met with Ms Smith on 1 August 2017 to determine whether or not the Council intended to claim privilege over the material.
- [21] On 2 August 2017 the investigator contacted Ald Slade to arrange service of a Notice to Attend and Give Evidence on him. His interview was scheduled for 9 August 2017.
- [22] On 3 August 2017 Ald Dunsby was interviewed.
- [23] On 7 August 2017 Ald Slade's legal representative contacted the investigator seeking a postponement on Ald Slade's interview. It was rescheduled from 9 August 2017 to 17 August 2017.
- [24] On 8 August 2017 Ms Smith advised the Commission that the Council did not intend to claim privilege in relation to the documents.

² Available in accordance with s 35(4) of the Act.

³ The BoI was established by the Minister on 14 October 2015 in accordance with s 215(1)(b) of the *LG Act*.

- [25] On 14 August 2017 the investigator contacted Mr Brooks to arrange service of a Notice to Attend and Give Evidence on him. Mr Brooks attended the Commission to following day to receive the Notice. His interview was scheduled for 22 August 2017.
- [26] On 15 August 2017, the investigator contacted Ms Iskandarli's legal representative to arrange service of a Notice to Attend and Give Evidence on Ms Iskandarli. Ms Iskandarli's legal representative undertook to take instructions and then contact the investigator.
- [27] On 16 August 2017 Mr Brooks requested, and was granted, a postponement of his interview from 22 August 2017 to 23 August 2017.
- [28] On 17 August 2017 Ald Slade was interviewed.
- [29] On 18 August 2017 the investigator contacted Ms Iskandarli's legal representative to follow up on the undertaking to seek instructions from Ms Iskandarli.
- [30] On 21 August 2017 Mr Brooks' legal representative contacted the investigator seeking a further postponement on Mr Brooks' interview. It was rescheduled to 29 August 2017.
- [31] On 23 August 2017 Ms Iskandarli contacted the investigator and service of the Notice was arranged with her. Her interview was scheduled for 31 August 2017, pending her confirmation of availability.
- [32] On 29 August 2017 Mr Brooks was interviewed.
- [33] On 31 August 2017 Ms Iskandarli was interviewed.

2.4. The Board of Inquiry process

- [34] Glenorchy City Council is currently subject to a Board of Inquiry, established by the Minister on 14 October 2015 in accordance with s 215(1)(b) of the Local Government Act 1993.
- [35] The Board's terms of reference are as follows:

The Board is to inquire into and make findings and recommendations with regard to:

The governance arrangements and practices of the Glenorchy City Council since the October 2014 local government elections, in relation to:

- *Section 28 of the Act – compliance by elected members of Council with their functions under the Act;*
- *Section 27 of the Act – compliance by the Mayor with her functions under the Act; Sections 62 and 63 of the Act – compliance by the General Manager with his functions and powers under the Act; and*
- *Compliance with any other sections of the Act relevant to governance arrangements and practices within the Council.*

The Board of Inquiry is also to further examine the governance structures and processes adopted by the Council during that period.

The Board is also to inquire into any claims of non-compliance or breaches of the Local Government Act 1993 and associated regulations, or any other legislation, since

October 2014, brought to its attention during its deliberations and is relevant to the Terms of Reference.

The Board is to provide a report with findings and recommendations, including governance protocols, which the Board may advise to be instigated by the Council, to me [the Minister] once it has completed its investigations and complied with the requirements of His Honour, Chief Justice Blow's judgment in the matter of Branch-Allen v Easter & Ors 507 of 2016.⁴

- [36] The establishment of the Board of Inquiry was on the basis that the Minister was satisfied that:
- a) *following considerable and ongoing public concern and investigation by the Director of Local Government, significant divisions continue to exist within the Glenorchy City Council as well as between elected members and senior staff;*
 - b) *such divisions and poor relationships adversely impact on governance arrangements and are not conducive to good decision making; [and]*
 - c) *all efforts to overcome the divisions within the Council have failed.⁵*
- [37] The complaint received by the Commission makes reference to the Board of Inquiry in the 'Have you reported this matter to another agency?' section.
- [38] On 15 June 2017 the complainant advised that the three subject officers (Ald Slade, Mr Brooks and Ms Iskandarli) had provided evidence to the Board in relation to the allegations contained in her complaint to the Commission.
- [39] It was therefore necessary to liaise directly with the Board of Inquiry in order to determine the extent to which its inquiries covered the matters complained of to the Commission.
- [40] On that basis, the investigator sought and received all material held by the Board in relation to the matters being investigated by the Commission. As described below, the Commission has come to the view that although the Board of Inquiry's draft report makes findings in relation to some of the matters raised in the complaint, those matters are not sufficiently canvassed so as to be a reliable substitute for an investigation by the Integrity Commission. Further, the investigator identified some concerns in relation to the evidence relied upon by the Board in reaching some of its conclusions.
- [41] The draft report also relies heavily on the evidence of Ald Dunsby, in her capacity as a member of the General Manager's Performance Review Committee. Much of that evidence is based on Ald Dunsby's hearings, however given that Ald Dunsby's evidence was general in nature (and not focused on the allegations raised with the Commission), it was necessary for the Commission to conduct its own interview with Ald Dunsby to clarify elements of her evidence.
- [42] On the basis of these concerns, the Commission was not satisfied that the allegations raised by the complainant had been completely addressed by the Board. As a result,

⁴ http://www.dpac.tas.gov.au/_data/assets/pdf_file/0019/301186/Glenorchy_City_Council_Board_of_Inquiry_Terms_of_Reference_Signed_22_August_2016_.pdf

⁵ http://www.dpac.tas.gov.au/divisions/local_government/board_of_inquiry_-_glenorchy_city_council

it was determined that these matters were more appropriately investigated by the Commission.

- [43] Although the findings of the draft report have not been relied upon when forming the conclusions in this report, some of the supporting evidence provided by the Board has been used.

2.5. Standard of proof

- [44] The standard of proof applied in this report to factual findings is the civil standard i.e. 'on the balance of probabilities'. This requires only 'reasonable satisfaction', as opposed to 'satisfaction beyond reasonable doubt' (as is required in criminal matters).
- [45] In considering whether the civil standard of proof has been met, an investigator will bear in mind what was said in *Briginshaw v Briginshaw*:

Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.⁶

2.6. Procedural fairness

- [46] In accordance with s 46(1)(c) of the *IC Act*, the investigator 'must observe the rules of procedural fairness' in undertaking the investigation.
- [47] A draft copy of the investigation report was provided to Ald Slade, Mr Brooks and Ms Iskandarli on 7 November 2017. They were invited to make submissions in response to the draft report by 29 November 2017.
- [48] On 27 November 2017 Ms Iskandarli's legal representative contacted the Commission seeking an extension of six weeks to provide Ms Iskandarli's submission.
- [49] On 28 November 2017 Mr Brooks' legal representative contacted the Commission seeking an extension of two weeks to provide Mr Brooks' submission.
- [50] The deadline for submissions was subsequently extended to 9 January 2018 for all three parties.
- [51] On 22 December 2017 Ms Iskandarli's legal representative requested a further extension to 7 February 2018 to provide Ms Iskandarli's submission.
- [52] On 3 January 2018 Ms Iskandarli's legal representative undertook to take instructions from Ms Iskandarli about the possibility of providing her submission by 25 January 2018.

⁶ (1938) 60 CLR 336, 362 (Dixon J).

- [53] Mr Slade's legal representative provided a submission in response to the draft investigation report on Mr Slade's behalf on 9 January 2018.
- [54] Mr Brooks' legal representative provided a submission on Mr Brooks' behalf on 9 January 2018.
- [55] On 16 January 2018, having not had any further contact from Ms Iskandarli's legal representative, the investigator advised that her submission was to be provided by 25 January 2018.
- [56] On 25 January 2018 a draft version of Ms Iskandarli's submission, with no attachments, was provided.
- [57] On 1 February 2018 the final version of Ms Iskandarli's submission was provided.

2.7. Legislative framework

- [58] As with all councils in Tasmania, Glenorchy City Council is subject to the requirements of the *Local Government Act 1993* and its associated Regulations. Relevant sections are outlined below.

Local Government Act 1993

Section 28 Functions of councillors

- (1) *A councillor, in the capacity of an individual councillor, has the following functions:*
 - (a) *to represent the community;*
 - (b) *to act in the best interests of the community;*
 - (c) *to facilitate communication by the council with the community;*
 - (d) *to participate in the activities of the council;*
 - (e) *to undertake duties and responsibilities as authorised by the council.*
- (2) *The councillors of a council collectively have the following functions:*
 - (a) *to develop and monitor the implementation of strategic plans and budgets;*
 - (b) *to determine and monitor the application of policies, plans and programs for –*
 - (i) *the efficient and effective provision of services and facilities; and*
 - (ii) *the efficient and effective management of assets; and*
 - (iii) *the fair and equitable treatment of employees of the council;*
 - (c) *to facilitate and encourage the planning and development of the municipal area in the best interests of the community;*
 - (d) *to appoint and monitor the performance of the general manager;*
 - (e) *to determine and review the council's resource allocation and expenditure activities;*
 - (f) *to monitor the manner in which services are provided by the council.*
- (3) *In performing any function under this Act or any other Act, a councillor must not –*

- (a) *direct or attempt to direct an employee of the council in relation to the discharge of the employee's duties; or*
- (b) *perform any function of the mayor without the approval of the mayor.*
- (4) *A councillor is to represent accurately the policies and decisions of the council in performing the functions of councillor.*

Section 28U Compliance with code of conduct

In performing the functions and exercising the powers of his or her office with a council, a councillor is to comply with the provisions of the council's code of conduct.

Section 48 Declaration of interest by councillor

- (1) *A councillor must not participate at any meeting of a council, council committee, special committee, controlling authority, single authority or joint authority in any discussion, nor vote on any matter, in respect of which the councillor-*

- (a) *has an interest; or*
- (b) *is aware or ought to be aware that a close associate has an interest.*

Penalty:

Fine not exceeding 20 penalty units.

- (2) *A councillor must declare any interest that the councillor has in a matter before any discussion on that matter commences.*

Penalty:

Fine not exceeding 50 penalty units.

- (3) *On declaring that he or she has an interest, the councillor is to leave the room in which the meeting is being held.*

Penalty:

Fine not exceeding 20 penalty units.

- (4) *The councillor, by notice in writing, is to advise the general manager of the details of any interest that the councillor has declared under this section within 7 days of so declaring.*

Penalty:

Fine not exceeding 20 penalty units.

- (5) *The general manager is to –*
 - (a) *ensure that the declaration of interest is recorded in the minutes of the meeting at which it is made; and*
 - (b) *record the details of any interest declared in the register of interests kept under section 54.*
- (6) *In addition to any penalty imposed under this section, a court may make an order –*
 - (a) *barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; and*

(b) dismissing the councillor from office.

Section 49 Having an interest

(1) A councillor or member has an interest in a matter if the councillor or member or a close associate would, if the matter were decided in a particular manner, receive, have an expectation of receiving or be likely to receive a pecuniary benefit or pecuniary detriment.

Section 54 Register of interests of councillors

- (1) The general manager is to keep a register of interests, of councillors, of which the general manager has been advised under section 48(4).
- (2) A person, by notice in writing to the general manager, may apply to inspect the register of interests.
- (3) On receipt of an application, the general manager is to allow the applicant to inspect the register of interests.

Section 55 Interests of employees and general manager

- (1) An employee of a council must notify the general manager, or in the case of the general manager the mayor, in writing of having an interest as referred to in section 49 in any matter in respect of which he or she-
 - (a) Provides advice to the council or council committee; or
 - (b) Makes a decision or determination; or
 - (c) Makes a recommendation to the council or council committee.

Penalty:

Fine not exceeding 50 penalty units.

(1A) Section 51 applies as if a reference to a councillor were a reference to an employee or a general manager.

- (2) The general manager is to –
 - (a) advise the council of the existence of any interest notified under subsection (1); and
 - (b) keep a register of any such interest.
- (3) Any register kept under subsection (2)(b) is exempt from the provisions of the Right to Information Act 2009.

Section 62 Functions and powers of general manager

- (1) The general manager has the following functions:
 - (a) to implement the policies, plans and programs of the council;
 - (b) to implement the decisions of the council;
 - (c) to be responsible for the day-to-day operations and affairs of the council;
 - (d) to provide advice and reports to the council on the exercise and performance of its powers and functions and any other matter requested by the council;

- (e) *to assist the council in the preparation of the strategic plan, annual plan, annual report and assessment of the council's performance against the plans;*
- (f) *to coordinate proposals for the development of objectives, policies and programs for the consideration of the council;*
- (g) *to liaise with the mayor on the affairs of the council and the performance of its functions;*
- (h) *to manage the resources and assets of the council;*
- (i) *to perform any other function the council decides.*
- (2) *The general manager may do anything necessary or convenient to perform his or her functions under this or any other Act.*

Section 63 Employees

- (1) *The general manager of a council may –*
 - (a) *Appoint persons as employees of the council; and*
 - (b) *Allocate duties to employees; and*
 - (c) *Control and direct employees; and*
 - (d) *Suspend or dismiss employees.*
- (2) *The general manager is to develop human resource practices and procedures in accordance with policies of the council to ensure employees of the council receive fair and equitable treatment without discrimination.*

Section 338A Disclosure of information

- (1) *Except as required, or allowed, by this Act, another Act or any other law, a councillor must not disclose information –*
 - (a) *seen or heard by the councillor at a meeting or part of a meeting of a council or council committee that is closed to the public that is not authorised by the council or council committee to be disclosed; or*
 - (b) *given to the councillor by the mayor, deputy mayor, chairperson of a meeting of the council or council committee or the general manager on the condition that it be kept confidential.*

Penalty:

Fine not exceeding 50 penalty units.

- (2) *In addition to any penalty imposed under subsection (1), a court may make an order –*
 - (a) *barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or*
 - (b) *dismissing the councillor.*
- (3) *Except as required, or allowed, by this Act, another Act or any other law, an employee of a council, single authority or joint authority must not disclose*

information acquired as such an employee on the condition that it be kept confidential.

Penalty:

Fine not exceeding 50 penalty units.

Section 339 Improper use of information

- (1) A councillor or a member must not make improper use of any information acquired as a councillor or member.*

Penalty:

Fine not exceeding 50 penalty units.

- (2) An employee of a council, single authority or joint authority must not make improper use of any information acquired as such an employee.*

Penalty:

Fine not exceeding 50 penalty units.

- (3) Improper use of information includes using the information –*

- (a) to gain, directly or indirectly, an advantage or to avoid, directly or indirectly, a disadvantage for oneself, a member of one's family or a close associate; or*
- (b) to cause any loss or damage to any council, controlling authority, single authority, joint authority or person.*

- (4) In addition to any penalty imposed under this section, a court may make an order –*

- (a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or*
- (b) dismissing the councillor or member from office.*

Section 339A Misuse of office

- (1) A councillor, an employee or a member must not procure the doing or not doing of anything by the council to gain, directly or indirectly, an advantage or to avoid, directly or indirectly, a disadvantage for –*

- (a) the councillor, employee or member; or*
- (b) a close associate of the councillor, employee or member; or*
- (c) a member of the councillor's, employee's or member's family.*

Penalty:

Fine not exceeding 50 penalty units.

- (2) In addition to any penalty imposed under this section, a court may make an order –*

- (a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or*
- (b) dismissing the councillor or member from office.*

Section 339E Complaints against non-compliance or offence

- (1) *A person may make a complaint to the Director –*
 - (a) *that a council, councillor or general manager has failed to comply with requirements under this or any other Act; or*
 - (b) *that a councillor, general manager or employee of a council may have committed an offence under this Act*

Local Government (Meeting Procedures) Regulations 2015**Regulation 15 Closed meetings**

- (1) *At a meeting, a council by absolute majority, or a council committee by simple majority, may close a part of the meeting to the public for a reason specified in subregulation (2).*
- (2) *A part of a meeting may be closed to the public when any or more of the following matters are being, or are to be, discussed at the meeting:*
 - (a) *personnel matters, including complaints against an employee of a council and industrial relations matters;*
 - (b) *information that, if disclosed, is likely to confer a commercial advantage or impose a commercial disadvantage on a person with whom the council is conducting, or proposes to conduct, business;*
 - (c) *commercial information of a confidential nature that, if disclosed, is likely to –*
 - (i) *prejudice the commercial position of the person who supplied it; or*
 - (ii) *confer a commercial advantage on a competitor of the council; or*
 - (iii) *reveal a trade secret;*
 - (d) *contracts, and tenders, for the supply of goods and services and their terms, conditions, approval and renewal;*
 - (e) *the security of –*
 - (i) *the council, councillors and council staff; or*
 - (ii) *the property of the council;*
 - (f) *proposals for the council to acquire land or an interest in land or for the disposal of land;*
 - (g) *information of a personal and confidential nature or information provided to the council on the condition it is kept confidential;*
 - (h) *applications by councillors for a leave of absence;*
 - (i) *matters relating to actual or possible litigation taken, or to be taken, by or involving the council or an employee of the council;*
 - (j) *the personal hardship of any person who is resident in, or is a ratepayer in, the relevant municipal area.*

...

- (9) *Subject to the Right to Information Act 2009, any discussions, decisions, reports or documents relating to a closed meeting are to be kept confidential unless the council or council committee, after considering privacy and confidentiality issues, authorises their release to the public.*

Glenorchy City Council Recruitment Policy

Policy Statement

1. *We will attract, retain and motivate the highest calibre of employees to promote and develop the Council to a leadership position within Local Government.*
2. *We will attract employees with competence, technical, customer focused and teamwork skills who support the core values and direction of the Council and who have the aptitude for future development.*
3. *Recruitment of employees will be merit based.*
4. *There will be no unjustifiable discrimination.*
5. *Vacant positions will be filled through internal and discretionary external recruiting subject to the suitability of the applicant when measured against the selection criteria.*
6. *An accurate and up-to-date position description and selection criteria will be available at the time of advertising the vacant position.*
7. *To attract and retain skilled employees Glenorchy Council will endeavour to pay salaries competitive with those paid by other employers in our industry and in applicable labour markets. We will monitor our salary rates to ensure that they are in line with local as well as national economic conditions.*
8. *All vacancies (temporary, permanent, part-time, casual) in excess of 20 working days will be advertised internally for a minimum of 5 working days. Internal advertising will ensure that all staff and trainees (indoor and external sites) are advised of the vacancy.*
9. *For temporary positions, consideration will be given to enhancing the experience and career advancement of council staff.*
10. *Advertising will reflect the position of Glenorchy City Council as a leader in Local Government.*
11. *When advertising, we will use the term "Equal Opportunity Employer" in all recruitment advertisements.*
12. *Council will consider relocation expenses for new employees.*
13. *Confidentiality is maintained throughout the recruitment process.*
14. *Communication with applicants will be prompt and informative.*

This policy recognises the responsibilities of the General Manager under section 63(2) of the Local Government Act 1993, and is not intended in any way to limit his or her discretion in determining those responsibilities.

3. Evidence and analysis

3.1. 2013/14

Introduction

- [59] In 2013 Ald Slade and Mr Brooks, with the assistance of Ms Iskandarli, negotiated the terms of a new contract of employment between Mr Brooks and the Council.
- [60] The main results of that negotiation were a longer contractual term and higher salary for Mr Brooks.
- [61] In the same period, Ms Iskandarli was promoted from Council Lawyer to Manager, Legal & Governance in addition to her role as Council Lawyer.
- [62] This process marked the beginning of a trend whereby Ms Iskandarli became intimately involved in matters pertaining to Mr Brooks' performance as General Manager, the terms and conditions of his contract of employment and the assessment by Council of his performance as General Manager.

Timeline of events

17 May 2011	Mr Brooks commences as General Manager of the Council
February 2012	Ms Iskandarli commences as Casual Property Officer of the Council
7 January 2013	Ms Iskandarli appointed as Council Lawyer
5 July 2013	Ms Iskandarli and Mr Brooks discuss issues re superannuation under Mr Brooks' contract of employment
12 July 2013	Ms Iskandarli emails Mr Brooks in relation to her performance review
21 July 2013	Ms Iskandarli provides advice to Mr Brooks re superannuation
27 July 2013	Ms Iskandarli provides further advice to Mr Brooks re superannuation
29 July 2013	Council resolution to negotiate Mr Brooks' contract of employment
20 August 2013	Ald Slade writes to Mr Brooks re contract negotiation
19 September 2013	Mr Brooks requests further advice from Ms Iskandarli re superannuation
24 September 2013	Ms Iskandarli appointed as Manager Legal & Governance, in addition to role as Council Lawyer
22 October 2013	Mr Brooks writes to Ald Slade raising proposed changes to his contract of employment
31 October 2013	Ald Slade, Mr Brooks and Ms Iskandarli meet to discuss changes to Mr Brooks' contract of employment
2 November 2013	Ms Iskandarli emails a table, of 'Agreed negotiation terms' in relation to Mr Brooks' contract of employment, to Ald Slade and Mr Brooks
14 January 2014	Ald Slade and Ms Iskandarli meet in relation to Mr Brooks' contract of employment
15 January 2014	Ms Iskandarli emails 'Salary Package Information' for Mr Brooks' contract of employment to Ald Slade
20 January 2014	Council approves changes to Mr Brooks' contract of employment
9-10 February 2014	Ms Iskandarli makes edits to Mr Brooks' contract of employment, incorporating terms negotiated by Mr Brooks and Ald Slade

24 March 2014	Ald Slade emails a letter (dated 17 March 2014) to Mr Brooks advising that Ms Iskandarli has been instructed to amend Mr Brooks' contract of employment
---------------	---

Evidence

1 Contract Negotiation between Ald Slade and Mr Brooks

- [63] Mr Brooks became General Manager of the Council in 2011. The term of his contract of employment was from 1 July 2011 to 2 January 2015.
- [64] On 7 January 2013 Ms Iskandarli was appointed to the position of Council Lawyer, having previously held the position of Casual Property Officer with the Council since February 2012.
- [65] According to her contract of employment⁷ Ms Iskandarli reported directly to Mr Brooks. Ms Iskandarli's contract also provided for '*A Bonus will be paid at the discretion of the General Manager following the Performance Reviews*'.⁸
- [66] Mr Brooks explained at interview that, although he was only two years into the term of his contract, he requested that Council initiate the negotiation process in 2013 to avoid it becoming an election issue in 2014.
- [67] On 20 August 2013 Ald Stuart Slade, then Mayor of the Council, sent a letter to Mr Brooks in relation to the negotiation of Mr Brooks' contract of employment:
- I am writing to you to advise you that pursuant to the Council Resolution of 29 July 2013 Council has delegated the authority to me to negotiate a new 3 year employment contract with you.*
- In this process I will be instructing the Council Lawyer to advise me on various aspects of your employment contract, including aspects of your current contract and any input you may wish to make.*
- ...
- Please also note that I will be attending all the meetings with the Council Lawyer, and you may wish to bring your lawyer to the meetings.*⁹
- [68] Mr Brooks responded to Ald Slade with a letter dated 22 October 2013. The unsigned letter requests amendments to his contract relating to a number of issues, including the term of the contract, his salary, superannuation and motor vehicle provision.
- [69] The letter also contains a section titled 'Other Matters', which relates to Mr Brooks' reporting line, the termination clause and bonuses. It requests:

⁷ Contract of employment between Glenorchy City Council and Ms Iskandarli (Council Lawyer), Schedule 1, Item 4.

⁸ Ibid, Schedule 2, Item 1.

⁹ Letter from Ald Slade to Mr Brooks, 20 August 2013.

...that [Ald Slade] approach the Manager Legal & Governance-Council Lawyer, Seva, to obtain full details of these “other matters”.¹⁰

- [70] Ms Iskandarli was asked at interview why she was involved in discussing these issues directly with Ald Slade rather than Mr Brooks discussing them directly with Ald Slade. She stated that she was unaware of the intention behind that request.¹¹
- [71] Ald Slade noted at interview that the Council had previously used an external lawyer as the Council Lawyer.¹²
- [72] Mr Brooks stated the following in relation to Ms Iskandarli’s involvement in negotiating terms of the contract:

... I had looked through my contract and had raised some issues and obviously had passed those issues on to Ms Iskandarli, asking her to draft up a letter for me to send back to – with those issues...

...

And then there were some minor issues in relation to that and so I raised those ... other matters, obviously, would have been for Seva to raise with Stuart as they were minor as opposed to a long long letter ...¹³

- [73] On 2 November 2013 Ms Iskandarli sent an email to Ald Slade and Mr Brooks outlining the negotiated terms of Mr Brooks’ contract, following up on a meeting they had on 31 October 2013.¹⁴
- [74] On 14 January 2014 Ms Iskandarli sent an email to Ald Slade with the subject ‘Confidential – Council Report of 20 January – General Manager’s Contract of Employment’. In the email Ms Iskandarli stated:

Dear Stuart,

I refer to our meeting today, 14 January 2014, and as discussed I attach the relevant documents to be sent to the Aldermen and to the General Manager’s Performance Review Committee.

I will get the amended Salary Package information to you by end of tomorrow, 15 January 2014 and the brief for your presentation for Monday Meeting by end of 18 January 2014, (Saturday).

I will see you on Monday 20 January 2014 for a brief discussion before the Council Meeting.¹⁵

- [75] Attached to Ms Iskandarli’s email above were copies of Ald Slade’s letter to Mr Brooks dated 20 August 2013, Mr Brooks’ letter to Ald Slade dated 22 October 2013 (where Mr Brooks requested that Ald Slade deal with Ms Iskandarli in relation to the ‘other matters’) and a table of salary package information.

¹⁰ Letter from Mr Brooks to Ald Slade, 22 October 2013.

¹¹ Interview with Ms Iskandarli, p. 27.

¹² Interview with Ald Slade, p. 9.

¹³ Interview with Mr Brooks, pp. 12-13.

¹⁴ Email from Ms Iskandarli to Ald Slade and Mr Brooks, 2 November 2013.

¹⁵ Email from Ms Iskandarli to Ald Slade, 14 January 2014.

- [76] On the same date, 14 January 2014, Ald Slade sent an email to members of the General Manager's Performance Review Committee (GMPRC), attaching a 'Draft Report to the Council Meeting of 20 January 2014'. The report states:

After a number of meetings with the General Manager to negotiate a new Contract of Employment under the delegated power from Council, I, the Mayor, recommend to Council that Council approves:

- 1) a new 5 year term Contract of Employment with the current General Manager;*
- 2) that the new Contract be effective from 3 January 2015;*
- 3) that the terms of the new Contract of Employment will be updated to reflect current market conditions and certain ambiguous terms in the current Contract will amended [sic] to avoid legal and governance issues;*
- 4) after considering privacy and confidentiality issues the Council resolves that the information contained in this report, decisions, discussions and documents:*
 - i. May be disclosed by the Mayor as the spokesperson of Council.*
 - ii. May not be disclosed by Aldermen.*

- [77] The metadata associated with the draft report indicates that it was authored by Ms Iskandarli. In his procedural fairness response Mr Brooks suggested that Ms Iskandarli likely wrote the draft report on instruction from Ald Slade, however an email from Ms Iskandarli to Ald Slade on 11 January 2014 demonstrates that she authored it on instruction from both Ald Slade and Mr Brooks.¹⁶

- [78] Ald Slade forwarded Ms Iskandarli's email and attachments to the other members of the General Manager's Performance Review Committee (GMPRC). The metadata associated with Mr Brooks' letter indicate that it was authored by Ms Iskandarli. When asked about this at interview Mr Brooks said:

Q. ... in what capacity was Ms Iskandarli acting when she authored this letter for you?

...

A. Ms Iskandarli would have been acting purely as the go-between between myself and Alderman Slade.

...

She's drafted the letter for me –

Q. On your behalf?

A. And I would have gone through it and checked it, so she's provided administrative role ...

...

Q. ... is this letter that she's drafted on your behalf in line with the role she had as the administrator?

¹⁶ Email from Ms Iskandarli to Ald Slade, 11 January 2014.

A. *It's – yeah, administrator ...*

Q. *Okay.*

A. *And it – the reason it was done by her is that obviously she's the go-between and because it's my contract of employment I wouldn't have used any other employee to be able to draft that or draft my comments in relation to that.¹⁷*

[79] Conversely, Ms Iskandarli stated at interview that her involvement in the authoring of that letter extended only to formatting text which had been provided to her by Mr Brooks:

Q. *So the content of this letter, did you prepare this?*

A. *They are general manager's negotiation comments, not mine.*

Q. *So you didn't write it?*

A. *Again I might have style, administrative type of things, but again they are general manager's negotiation comments.¹⁸*

[80] The outcomes of the contract negotiation included an increase in the term of employment from three to five years and an increase in the total remuneration package from a value of \$200,000 to \$268,250.

[81] Ms Iskandarli emailed the amended contract to Ald Slade on 15 March 2014 with the following comments:

Dear Stuart,

As discussed in our meeting on Friday 7 February 2014 and recent meeting on 14 March 2014 I attach two documents with this email:

the proposed letter to be sent to the General Manager in relation to the Council Resolution of 20 January 2014; and

the amended terms and conditions of the Contract of Employment for the General Manager's or his lawyer's consideration. I am suggesting this as I am advising the Council and cannot advise the General Manager.

Please forward the letter together with the attached Contract of Employment to the General Manager so he can review and consider the amended terms and conditions.

Once you receive the General Manager's comments and agreement I will finalise the Contract of Employment to be presented to the Council in its Meeting on 14 April 2014 for their consideration in line with the Council Resolution of 20 January 2014.

I will also discuss the attached letter and the legal document with you very briefly on Monday 17 March 2014.¹⁹

[82] On 24 March 2014 Ald Slade sent an email to Mr Brooks attaching an unsigned letter dated 17 March 2014 which discussed the contract negotiation process:

¹⁷ Interview with Mr Brooks, pp. 13 - 15.

¹⁸ Interview with Ms Iskandarli, pp. 26-27.

¹⁹ Email from Ms Iskandarli to Ald Slade, 15 March 2014.

*As discussed in our recent meetings I am pleased to advise that Council in its Meeting of 20 January 2014 by absolute majority approved a new 5 year term Contract of Employment (**'Contract'**) with you to be effective from 3 January 2015.*

...

I have instructed the Manager Legal & Governance – Council Lawyer to amend the current Contract as negotiated in our meetings. This amended and proposed Contract is enclosed with this letter.*

Also note that, in accordance with the Council Resolution of 20 January 2014, the revised terms and conditions of the new Contract include a term that in the event of termination either by Agreement or by GCC With Notice, Council will at its absolute discretion pay you up to six (6) months of your Base Salary.²⁰

- [83] Also attached to the email is Mr Brooks' contract of employment containing tracked changed amendments undertaken by Ms Iskandarli. Ms Iskandarli's edits insert five additional references to the Mayor²¹ as well as making Mr Brooks report only to the Mayor instead of the Council.²²
- [84] Mr Brooks explained at interview that the additional references to the Mayor were inserted as a result of recommendations from the Tasmanian Audit Office in relation to the approval of expenses.²³
- [85] Ald Slade was asked about this process at interview and stated that he could not recall the negotiation.
- [86] In relation to potential conflict of issues arising during this process, Ald Slade stated the following:
- Q. *So it didn't cross your mind at all in 2013 that – that there may be conflict of interest issues here? And I'm not saying there were, I'm just saying if – if –*
- A. *In relation to?*
- Q. *Probably in relation to the re-negotiation of Mr Brooks' contract –*
- A. *Na, it – never entered my head. Didn't – it really was not on my scale. No.²⁴*
- [87] Ms Iskandarli was also asked whether conflict of interest issues were contemplated at that time:
- Q. *...were you comfortable making these amendments to the contract, did you – did it occur to you that someone might have thought there was a conflict of interest at that point, or did anyone check that you were happy to do that?*

²⁰ Letter from Ald Slade to Mr Brooks, 17 March 2014.

²¹ Relating specifically to authorisation of professional fees (cl 6.3.3), authorisation of conference attendance (cl 6.3.4), approval of reimbursement of expenses (cl 8.1), approval of a 'copy of expenses incurred' (cl 8.2) and approval for professional fees (Schedule 2, Item 6).

²² Schedule 1, Item 3.

²³ Interview with Mr Brooks, pp. 81-82.

²⁴ Interview with Ald Slade, pp. 10-11.

A. *I obviously talked to other lawyers in the profession but informally, not like you know 'give me legal advice' type of things.*

...

And obviously before reviewing this contract I have spoken to one of my colleagues and he said to me that, 'Seva, for you to act as an in-house counsel for council in this matter has no issue because that is your role to review contracts on behalf of the organisation who employs you and provide the relevant officer advice', and it shouldn't be different from me reviewing the big contracts I did ...²⁵

2 Superannuation advice to Mr Brooks

[88] In early July a 'payroll issue' arose in relation to Mr Brooks' superannuation payments. Ms Iskandarli provided Mr Brooks with advice in relation to it.

[89] On 27 July 2013 Ms Iskandarli sent an email to Mr Brooks raising issues about the performance of other Council staff. She followed those initial comments with the following:

Superannuation Matter

Now turning to your superannuation percentage which is of course part of this saga.

After our discussion on Friday and your advice that they have reduced your salary, I have revisited your contract again and I strongly believe that my advice to you still stands.

I believe because of the way they handled your superannuation matter they need to be "roasted" for this because of the following:

It does not actually matter whether the starting point was you asking them about the additional 0.25% or they advised you that as a result of the Government's change your salary will be reduced – the issue is that a question was raised between the General Manager and the Corporate Services Department requiring clarification;

They clearly have received external legal advice;

This advice has not been run past Council Lawyer despite my asking Stuart for a copy. However he advised that it is" [sic] confidential and it is very sensitive"; It needs to be reminded to them that for the Council Lawyer there are no confidential matters and he or she will have a full access to everything;

...

I know how to deal with this type of matter but I need your full authority to do so.

Regards

Seva²⁶

²⁵ Interview with Ms Iskandarli, p. 29.

²⁶ Email from Ms Iskandarli to Mr Brooks, 27 July 2013.

[90] Mr Brooks replied with:

Thanks Seva

*You have my full authority to deal with this matter.*²⁷

3 Manager Legal & Governance

[91] On 12 July 2013 Ms Iskandarli sent an email to Mr Brooks about her pending performance review:

Dear Peter,

My initial 6 months performance review is now due. I am in the process of preparing performance criteria. Although my contract states that I should have developed these criteria with you earlier I felt I needed to understand the intricacies of the job before developing them.

*I believe that I now have a clear understanding of my role within the Council and therefore I am in the process of developing these performance criteria. I will submit the document very shortly for your input and approval.*²⁸

[92] Ms Iskandarli followed this matter up with a further email on 24 August 2013:

Dear Peter,

Further to my last email, could I please have a time with you to discuss my performance review which is now overdue.

*We had a first brief meeting about a month ago but we did not use the “GCC Performance Review 2012-2013”.*²⁹

[93] On 24 September 2013 Mr Brooks sent an email to all staff of the Council announcing that Ms Iskandarli was appointed to the position of Manager Legal & Governance, in addition to her role of Council Lawyer.

[94] Ms Iskandarli sent an email to Mr Brooks on 8 November 2013 attaching a copy of her performance review document, titled ‘2013/14 GCC Performance Review’. The document refers to ‘Meeting 1 – September 2013’. The metadata of the document indicates that it was created on 1 October 2013.

[95] The timing of Ms Iskandarli’s performance review, particularly in relation to the advice she was providing to Mr Brooks about his superannuation entitlements, was discussed at interview with Mr Brooks:

Q. ... so was this around the same time as her performance review?

A. No, so we go back to [the email from Ms Iskandarli to Mr Brooks on 21 July 2013] what’s happening is that we’re drafting a performance appraisal process for her.

²⁷ Email from Mr Brooks to Ms Iskandarli, 29 July 2013.

²⁸ Email from Ms Iskandarli to Mr Brooks, 12 July 2013.

²⁹ Email from Ms Iskandarli to Mr Brooks, 24 August 2013.

...

So we weren't doing her performance appraisal.³⁰

- [96] On 17 August 2014, almost a year after her 2013 performance review, Ms Iskandarli sent an email to Mr Brooks about that review:

Dear Peter,

I am referring to my Letter of Appointment sent to our Payroll in relation to the increase in my salary and the backdating of that increase to take effect from 23 September 2013.

Recently when I checked my payment slip I have identified that the 3% increase you made to my salary after review of my performance early this year, from my memory in January 2014, has not been included in the Payroll calculation.

In writing this email could you please confirm that the \$110,000 increased salary is effective from 23 September 2013, and accordingly the \$110,000 should be increased by 3% from the effective date in October 2013.

My statement is based on the following:

My salary was increased, effectively, from \$85,000 to \$110,000 from 23 September 2013.

As a result of my performance review in January 2014, my salary was increased by 3% effective October 2013.³¹

- [97] Mr Brooks responded with:

Thanks Seva

I confirm that your appointment to Manager Legal & Governance was effective 23 September 2013 – the salary at that point was set at \$110,000 pa.

Your performance review in January 2014 was based on your position as Manager Legal & Governance and back dated to October 2013 and therefore the 3% should be applied to the salary of \$110,000pa effective October 2013.³²

- [98] Mr Brooks stated at interview that the creation of the Manager Legal & Governance position came about due to a need to coordinate legal matters in the Council: In his procedural fairness response Mr Brooks stated that the Manager Legal & Governance position was a new position created after the retirement of two employees. No advertising process was conducted in filling the role:

Q. *And what was...the specific process undertaken to create and fill that position – the position being Manager Legal and Governance?*

A. *... I think it was a direct appointment.*

Q. *Okay.*

A. *Which I'm able to do under the Local Government Act.*

³⁰ Interview with Mr Brooks, pp. 34-35.

³¹ Email from Ms Iskandarli to Mr Brooks, 17 August 2014.

³² Email from Mr Brooks to Ms Iskandarli (cc'ing a staff member from payroll), 18 August 2014.

- Q. *So what is a direct appointment, there's some sort of process I imagine involved, is – what does that involve?*
- A. *... I can just appoint somebody if we have the skills in-house I can appoint somebody to that position.³³*

Analysis

1 Contract Negotiation between Ald Slade and Mr Brooks

- [99] In his procedural fairness submission Mr Brooks outlined a number of reasons for the increase to his salary. It should be noted that no inference is drawn to suggest that the increase was an arbitrary result of favouritism from Ald Slade.
- [100] Ald Slade's letter to Mr Brooks of 20 August 2013 is the earliest identified reference to Ms Iskandarli's role in the process of negotiating Mr Brooks' contract of employment.
- [101] Both Ald Slade and Mr Brooks stated at interview that they could not specifically recall how Ms Iskandarli became involved in the process. Ald Slade's letter suggests that Ms Iskandarli's involvement was at his, Ald Slade's, request.
- [102] Ald Slade's statement that he would instruct the 'Council Lawyer to advise me on various aspects of your employment contract' in his letter of 20 August 2013 appears to suggest that the nature of Ms Iskandarli's involvement was to provide legal advice. This is supported by the content of Ms Iskandarli's email on 15 March 2014.
- [103] In the context of liaising directly with Ald Slade, Ms Iskandarli's role appears to have gone beyond that of a 'go between'.
- [104] So far as the matter relates to Ms Iskandarli having responsibility for providing details of the 'other matters', it is difficult to contemplate how that situation would not necessitate Ms Iskandarli on some level working against the interests of either Council/Ald Slade or Mr Brooks. In his procedural fairness response Mr Brooks disagreed that the request for Ald Slade to liaise directly with Ms Iskandarli (without Mr Brooks) involved her negotiating on his behalf.
- [105] The fact that Mr Brooks specifically requested this to occur, and Ald Slade's statement that conflict of interest issues 'never entered [his] head', suggests that no effort was made by Ald Slade, Mr Brooks or Ms Iskandarli to manage the possibility of a conflict arising.
- [106] Although she disputed the existence of a conflict of interest arising in relation to these matters, Ms Iskandarli stated at interview that she sought informal advice about the issue. This would suggest that she was aware of the potential that her review of Mr Brooks' contract might involve perceptions of a conflict of interest.
- [107] It is noted that Mr Brooks characterised the 'other matters' referenced in his letter of 22 October 2013 as 'minor issues' at interview. Noting that the specific 'other matters' were in fact Mr Brooks' reporting line, the termination clause and Mr Brooks'

³³ Interview with Mr Brooks, pp. 36-37.

performance bonuses, the characterisation of them as ‘minor issues’ cannot be accepted.

- [108] Mr Brooks’ request that Ald Slade liaise directly with Ms Iskandarli was made, according to the date of the letter, in October 2013. It is evident that Ms Iskandarli met with Ald Slade specifically in relation to Mr Brooks’ contract on 14 January 2014, and that Ms Iskandarli authored the report to Council recommending that Council approve the changes to Mr Brooks’ contract.
- [109] Ms Iskandarli making amendments to her direct supervisor’s contract of employment, and purporting to act as Council’s lawyer whilst concurrently negotiating improved conditions of employment for Mr Brooks with Ald Slade, present as circumstances in which a conflict ought to have been identified, declared and managed.

2 Superannuation advice to Mr Brooks

- [110] Ms Iskandarli’s email to Mr Brooks of 27 July 2013 raises possible concerns in relation to her disclosure of information contrary to the interests of the Council.
- [111] That is, Ms Iskandarli’s email appears to demonstrate her view that Council was not complying with its legal obligations in relation to the payment of Mr Brooks’ superannuation. If this was indeed the case, then advising Mr Brooks could potentially have exposed the Council to a legal claim by Mr Brooks.³⁴
- [112] It is possible that this issue has come about due to a degree of confusion as to whether Ms Iskandarli is ‘representing’ Mr Brooks as a council employee, or the Council as a whole, in any given situation.
- [113] The issue is further compounded by the employer/supervisor relationship between Ms Iskandarli and Mr Brooks.
- [114] This matter demonstrates difficulties that could easily be remedied by having all matters pertaining to Mr Brooks’ contract of employment addressed through an external lawyer.

3 Manager Legal & Governance

- [115] Ms Iskandarli’s first performance review (required by cl 4.1a of her contract of employment) was due to be conducted in July 2013. Her first identified reference to it is her email of 12 July 2016 to Mr Brooks.
- [116] Mr Brooks stated at interview that, in relation to Ms Iskandarli’s email to him of 21 July 2013, her performance review had not commenced by that date. However Ms Iskandarli’s email of 24 August 2013 refers to a ‘first brief meeting about a month ago’, suggesting that the process had started sometime in July 2013.

³⁴ In Annexure ‘A1’ to Ms Iskandarli’s procedural fairness submission it is suggested that the likelihood of Ms Iskandarli’s disclosure actually exposing the Council to a claim by Mr Brooks is ‘so remote that...it is non-existent.’ Whilst this view is noted, the investigator remains of the view that the risk did in fact exist, and that consideration of the likelihood of such a claim being made is irrelevant to the point being made.

- [117] This evidence indicates that Mr Brooks was conducting Ms Iskandarli's performance review from approximately July – September 2013, resulting in her appointment to the position of Manager Legal & Governance on 24 September 2013.
- [118] This means that Ms Iskandarli's performance review (conducted by Mr Brooks) occurred concurrently to her involvement in the negotiation of Mr Brooks' contract of employment.
- [119] It is unknown whether Ms Iskandarli's appointment to the position of Manager Legal & Governance was influenced, directly or indirectly, by her involvement in negotiating Mr Brooks' contract or as a result of her advice to him about the operation of his contract.
- [120] The appointment was associated with a \$25,000 pa salary increase. The fact that Mr Brooks made a direct appointment in relation to the position meant that it was not advertised, and no interviews were conducted for it.
- [121] Ms Iskandarli's new contract of employment, as noted, also provided for a bonus payment, which was solely at the discretion of Mr Brooks.
- [122] It is not possible to determine whether Ms Iskandarli's appointment to the position of Manager Legal & Governance was the result of a conflict or not. However it is conceivable that the timing of her appointment, associated with her first performance review and during a period in which Mr Brooks' own contract was being negotiated, could give rise to a perception of conflict.
- [123] Such perceptions may be all the more likely to arise given that the Council's recruitment policy does not appear to have been followed. In particular, the following policy statements are relevant:
5. *Vacant positions will be filled through internal and discretionary external recruiting subject to the suitability of the applicant when measured against the selection criteria.*
 6. *An accurate and up-to-date position description and selection criteria will be available at the time of advertising the vacant position.*
 8. *All vacancies (temporary, permanent, part-time, casual) in excess of 20 working days will be advertised internally for a minimum of 5 working days. Internal advertising will ensure that all staff and trainees (indoor and external sites) are advised of the vacancy.*
 10. *Advertising will reflect the position of Glenorchy City Council as a leader in Local Government.*
 11. *When advertising, we will use the term "Equal Opportunity Employer" in all recruitment advertisements.*
- [124] It is particularly relevant to note that no advertising, either internal or external, appears to have been conducted for this role despite the explicit requirement of paragraph 8 (above) to do so.
- [125] A process of advertising the newly created position in accordance with the recruitment policy – either internally or externally, could have easily avoided such a perception from arising.

Conclusion

- [126] General Manager Mr Brooks is in a position of power; one that enables him to make decisions in relation to Ms Iskandarli's employment conditions (including whether or not she is given a performance bonus payment). Given that context, Ms Iskandarli's involvement in negotiating Mr Brooks' contract potentially creates a situation where she would have an incentive to benefit Mr Brooks, on the basis of her then receiving similar treatment from Mr Brooks.
- [127] During the period in which Mr Brooks' contract negotiation occurred, Ms Iskandarli did in fact receive a benefit from Mr Brooks in the form of a direct appointment to the newly created position of Manager Legal & Governance.
- [128] By virtue of holding a position that reported directly to Mr Brooks as General Manager, Ms Iskandarli had a conflict of interest associated with her involvement in the negotiation of Mr Brooks' contract of employment, particularly in relation to negotiating terms with Ald Slade on Mr Brooks' behalf.
- [129] By directing Ms Iskandarli to instruct him in the process of negotiating Mr Brooks' contract of employment, Ald Slade put Ms Iskandarli in a position of conflict.
- [130] By requesting that Ms Iskandarli liaise with Ald Slade in relation to the terms of his contract of employment, Mr Brooks put Ms Iskandarli in a position of conflict.

3.2. 2015

Timeline of events

8 October 2014	Mr Courtney, Managing Director CT Management Group, writes to Mr Brooks re 'Review of Organisation Development project'
15 December 2014	Ms Iskandarli emails 'Proposal for Restructure Communication' document to Ms Taylor, Executive Director CT Management Group
3 February 2015	Ms Iskandarli emails a copy of draft position description for Director Corporate Governance to herself
4 February 2015	Mr Brooks emails a memo to staff, noting appointment of Ms Iskandarli as 'Restructure Co-Ordinator'
9 February 2015	Mr Blackadder emails Mr Brooks in relation to potential dates of interview for Director positions
10 February 2015	Mr Brooks emails a copy of draft position descriptions for three Director positions to Ms Iskandarli, requests she seek external advice
12 February 2015	Mr Brooks emails position descriptions for three Director positions to ELT and Managers
20 February 2015	Ms Iskandarli applies for position of Director Corporate Governance
2 March 2015	Mr Brooks emails Ms Iskandarli confirming receipt of her application, advising date of interview with himself, Ms Taylor and Mr Blackadder
5 March 2015	Ms Iskandarli interviewed for position of Director Corporate Governance
8 April 2015	Ms Iskandarli appointed as Director Corporate Governance

Evidence

1 Council restructure

[131] In 2014/15 the Council began implementing a number of structure changes associated with its 'Improvement Plan'. The plan itself was initiated in approximately 2012/13, and arising from it Council wanted its finances to reach a 'break-even' point.

[132] Mr Brooks explained at interview that his Key Performance Indicators (KPIs) included the requirement that he demonstrate how the break-even position would be achieved by the 2016/17 financial year.³⁵

[133] As part of this process, the Council contracted with CT Management Group to plan and assist in implementing the restructuring process. The services of CT Management appear to have been engaged through several separate stages, as described in an email from Ms Iskandarli to Mr Brooks on 19 May 2013:

As you would appreciate I, as a "late comer", was not involved in stage 1 of the CT Management process (interviews and research), but I can make comments on:

- *stage 2 (recommendations and findings),*
- *I look forward to contributing to stage 3 (implementation) and*
- *stage 4 (post-completion audit)*³⁶

[134] It appears that the restructuring process that occurred through late 2014 and early 2015 relates to stage 3 of the process.

[135] On 5 September 2014 Ms Iskandarli sent an email to Mr Brooks stating:

Dear Peter,

As stated in our telephone discussion I had a call from Diana and we agreed that it will be better for us to have a face to face meeting, namely Diana, Michael, you and me rather than dealing with the matters on the phone. Diana suggested to meet early October but I proposed the middle of September.

We agreed to meet one of the following dates subject to Michael and your agreement:

Friday 19 September or

Monday 22 September or

Tuesday 23 September

I suggest we meet on Monday 22 September and not in Council Chambers.

Regards

*Seva*³⁷

[136] Documentary material received by the Council from CT Management refers to Ms Diana Taylor, Executive Director of CT Management and Mr Michael Courtney,

³⁵ The deadline for this, according to Mr Brooks, was initially 2024 but was brought forward by Council.

³⁶ Email from Ms Iskandarli to Mr Brooks, 19 May 2013.

³⁷ Email from Ms Iskandarli to Mr Brooks, 5 September 2014.

Managing Director of CT Management. On that basis it is apparent that Ms Iskandarli's reference to 'Diana' in her email to Mr Brooks is a reference to Ms Taylor, and similarly her reference to 'Michael' is a reference to Mr Courtney.

- [137] Mr Brooks and Ms Iskandarli subsequently travelled to Melbourne on 23 September 2014 to meet with Ms Taylor and Mr Michael Courtney
- [138] The process of contracting with CT Management has been the subject of an investigation by the Tasmanian Audit Office.³⁸ In its report published on 17 October 2017, it notes the following in relation to the restructure process (described as 'Project 6' and 'Project 7'):

In October 2014, Council engaged CT Management to update the strategic and operational review project in the context of ongoing financial sustainability (Project 6). Council subsequently engaged CT Management to provide management restructure services (Project 7) in February 2015. In assessing Projects 6 and 7, which we considered to be components of the Strategic and Operational Review being conducted by CT Management, we concluded the individual engagements could have been classified as a single project. Expenditure for these projects totalled \$112 734 and should have, in our assessment, been subject to a public tender.³⁹

- [139] Ms Iskandarli emailed Mr Courtney and Ms Taylor on 6 October 2014:

Dear Diana and Michael,

It was nice to see you again in Melbourne and thank you for forwarding the amended document to Peter.

On Friday 3 October 2014 Peter and I had a discussion about the latest proposal we have received from you and also the interview process you will be conducting on 13 October 2014 and 14 October 2014.

We thank you for your letter of 30 September 2014, however, we would appreciate it if you would make the following amendments to the proposal. I advise that I am sending this email on behalf of Peter.

We would like added to 1.2.1 Status of Strategic and Operational Review an additional point: "areas that have not been successfully implemented to date, identifying the causes".

A separate objective is needed, which will be 1.2.2 Identification of Capability, as follows "During the course of the interviews with ELT and managers, establish the capabilities, namely cultural, behavioural, strategic and operations, and also individually and collectively, of those interviewed, to implement the Improvement Plan, and more importantly, any amendments to it that result from this project to develop an updated Improvement Plan."

...

The whole Project must be completed no later than Friday 31 October 2014.

³⁸ On that basis the CT Management contract has only been explored in this investigation to the extent that it relates to the alleged conflict of interest issues raised in the complaint.

³⁹ Report of the Auditor-General No. 1 of 2017-18, p. 17.

*Peter and I are looking forward to receiving the final amended document as soon as possible and are looking forward to seeing you in Hobart on Monday 13 October 2014.*⁴⁰

- [140] The Minutes of the Special Council Meeting for 13 October 2014 note the following as part of a resolution which was carried:

Council adopts the following recommendations of the General Manager's Performance Review Committee:

...

*(d) That Council adopts the new Key Performance Indicators and Critical Leadership Behaviours for the General Manager for the period 1 July 2014 to 31 December 2014, noting that the formal position of Council is to break even by 2016-17.*⁴¹

- [141] On 14 October 2014, Ms Iskandarli received an email from Ms Taylor. Ms Taylor's email attached a proposal document from CT Management, and stated:

Dear Seva

*Further to our recent discussions, please find attached the revised Strategic and Operational Review Proposal.*⁴²

- [142] The proposal document has a covering letter from Mr Courtney, addressed to Mr Brooks, dated 8 October 2014. The letter states, in part:

Dear Peter

Review of Organisation Development project in the context of ongoing financial sustainability

Thank you for your request to undertake a review of the Organisation Review within the context of the long term financial sustainability of Council.

Our company has an extensive background in organisation development and financial management. We believe our methodology to be sound and we have the consultancy skills to complete this project to achieve your desired outcomes.

We would welcome the opportunity to discuss our proposal with you at your convenience and would be pleased to provide any additional information you require.

*Attached please find our detailed proposal, Associates' brief profiles and company background for your information.*⁴³

2 Director Corporate Governance

- [143] The restructure process which ultimately occurred as a result of the CT Management review involved the creation of three Director positions and the removal of several management positions.

⁴⁰ Email from Ms Iskandarli to Mr Courtney and Ms Taylor (cc'd Mr Brooks), 6 October 2014.

⁴¹ Minutes of 13 October 2014 Glenorchy City Council Special Meeting, Item 8 – General Manager's Performance Review, p. 7.

⁴² Email from Ms Taylor to Ms Iskandarli, 14 October 2014.

⁴³ Letter from Mr Courtney to Mr Brooks, 8 October 2014.

- [144] One new position was Director Corporate Governance, which reported directly to the General Manager.
- [145] On 3 February 2015 Ms Iskandarli sent an email to herself attaching the position description for the Director Corporate Governance role. The attachment contains tracked changes by Ms Taylor inserted on 27 and 28 January 2015, as well as tracked changes inserted by Ms Iskandarli on 2 February 2015.
- [146] Some of Ms Iskandarli's changes to the position description include amendments and additions to the selection criteria, and the insertion of 'Graduation from the Company Director's Course of the Australian Institute of Company Directors (GAICD)' and Post Graduate qualification in Law as requirements.⁴⁴
- [147] Ms Iskandarli undertook the Company Director's Course in late 2013.
- [148] On 6 February Mr Brooks sent an email to all Council staff in relation to the restructure process. Attached to the email is a 'Memo to Staff – Restructure process – Feb 2015', which states in part:
- I will be controlling and implementing the process and to assist me in the process I have today, 6th February 2015 appointed an internal Restructure Co-Ordinator – Seva Iskandarli. I have also appointed an external HR company to assist me in the interview process.*
- Please continue to do your jobs as usual as we implement the above process.*
- As always if you have any questions please contact myself or Seva, my door is always open.*
- Regards*
- Peter.*⁴⁵
- [149] On the same date Mr Brooks sent an email to Ms Iskandarli, Ms Taylor and Mr Courtney, linking to a news story about the engagement of CT Management by the Council and the comment 'Unbelievable'. The media article, titled 'Kennett hired to cut council costs' also commented on Ald Johnston's adjournment of the 5 February 2015 Council Meeting.⁴⁶
- [150] The following day Ms Taylor emailed Ms Iskandarli a further media article, titled 'Mayor calls for investigation into Glenorchy council governance issues'.⁴⁷ Shortly afterwards Ms Taylor sent Ms Iskandarli a further media article titled 'Kennett hired to cut council costs'.⁴⁸ That article stated that 'Glenorchy City Council has employed CT Management Group, of which Mr Kennett is the director, to do an operational review of the council's functions in a move that has already caused major internal friction'.
- [151] On 10 February 2015 Mr Brooks sent the three Director position descriptions to Ms Iskandarli requesting that she forward them to an external lawyer to 'check that they

⁴⁴ Email from Ms Iskandarli to herself, attaching amended Director Corporate Governance position description (includes associated metadata).

⁴⁵ 'Memo to Staff – Restructure process' attached to email from Mr Brooks to all Council staff, 6 February 2015.

⁴⁶ Email from Mr Brooks to Ms Iskandarli, cc'd Ms Taylor and Mr Courtney, 6 February 2015.

⁴⁷ Email from Ms Taylor to Ms Iskandarli, 7 February 2015.

⁴⁸ Second email from Ms Taylor to Ms Iskandarli, 7 February 2015.

are all OK from an IR law point of view.’ The attached version of the Director Corporate Governance position description lists a Bachelor degree in law and Graduate of Australian Institute of Company Directors among the essential requirements.

- [152] Mr Brooks circulated all three Director position descriptions to senior staff on 12 February 2015.
- [153] On 2 March 2015 Mr Brooks emailed Ms Iskandarli acknowledging receipt of her application for the position of Director Corporate Governance. The interview for the position was conducted on 5 March 2015 by Mr Brooks, Ms Taylor and Mr Stephen Blackadder. Despite noting some issues, Mr Blackadder and Ms Taylor supported Ms Iskandarli’s appointment.
- [154] Mr Brooks stated at interview that Ms Iskandarli was the only applicant for the Director Corporate Governance position.
- [155] On 9 March 2015 Mr Blackadder emailed Mr Brooks about the recruitment process, stating in part:

***Seva Iskandarli** – very impressed with Seva’s undoubted enthusiasm for the role but you need to be careful not to be too seduced by her energy. On the up side she is a highly driven leader and will bring significant change and contribution to the team and organization. She has 8 drivers and you can be assured of a major contribution from her. On the downside she has a number of warning signs – a significant issue with trust and with authority figures. You need to ensure as GM you maintain her trust and respect. She can hold grudges and she can show some hostility. She is also an impulsive person and her overconfidence may lead to some decisions which can get you into trouble. Having regard for the upside I support her appointment but as a new Director you should make as a condition of appointment that she undertake some leadership training. I’m not looking for more work but would be happy to work with you and the Executive Team when appointed to see how you can best blend together. Like the comments on [redacted] both Director roles are so important to your future success that you have to be absolutely guaranteed that you cannot find a Director from external recruitment that can do a better job than Seva. If you have any doubt I suggest you externally recruit.⁴⁹*

- [156] Ms Taylor made the following comments in relation to Ms Iskandarli’s performance at interview:

***Strengths:** A very strong candidate with demonstrate[d] leadership, integrity and excellent understanding of the issues affecting Council. Her demonstrated capability at building a team since her initial appointment to Council has confirmed her credentials, in addition to an outstanding academic and qualification record. Passionate about Local Government and serving the Community.*

***Weaknesses:** Seva’s challenge in this role will be to ‘lead rather than do’ and to ensure that she is appropriately delegating work to Managers and empowering them to carry out their responsibilities without micro management. Most significant area for development will be People & Safety, but her capacity indicates that with experience*

⁴⁹ Email from Mr Blackadder to Mr Brooks, 9 March 2015.

she will master this area. Seva will also need to make ‘calls’ for Council that are in a Director rather than a Legal capacity, and she will need to trust in her own abilities and take advice from those around her to appoint.

Overall Recommendation: *Recommend appointment, subject to discussion and agreement regarding matters set out above.⁵⁰*

[157] The other two Director positions were filled externally.

[158] Mr Brooks stated at interview that the purpose of filling the positions in this manner was to ensure transparency:

Now, bearing in mind what I said earlier on that I could directly appoint, I did not, I wanted to make sure that the process was transparent and there were no perceptions out there...So we interviewed, and when I’m talking about “we” it – I had an independent lawyer from Melbourne, CT Management lawyer, I had Stephen Blackadder from New South Wales Recruitment and myself were the interview panel, and Seva went through the whole interview process.⁵¹

[159] Mr Brooks did not appear to have been aware of Ms Iskandarli’s involvement in amending the position description for the Director Corporate Governance:

Q. *So did Seva have any role in creating that position description?*

A. *Not that I’m aware of, I – I got mine from Diana [Taylor].*

Q. *And would Seva have – have seen that position description before it was opened up for advertising, or opened up to the internal applicants?*

A. *My recollection, no.⁵²*

[160] On 2 April 2015 Mr Brooks announced to Council staff that Ms Iskandarli was to be appointed as Director Corporate Governance:

Afternoon All Again

I think it important to provide additional information on the newly appointed staff following the internal advertising process. As we recruit externally I will do the same so Aldermen & staff can get to know the successful applicants better and what their backgrounds have been.

I am pleased to announce the appointment of Ms Seva Iskandarli as Director Corporate Governance.

This appointment takes effect from 8th April 2015. I delayed this announcement until Seva had returned from overseas following an urgent family matter.

In this role Seva will have overall responsibility for Legal & Property, Governance & Risk and People & Safety.

Seva will have a dual role, namely as a Director and lawyer. In her lawyer role she will be ultimately responsible for Council’s legal matters and will be directly responsible for providing legal advice to myself and the Aldermen.

⁵⁰ Letter from Ms Taylor ‘Glenorchy City Council Interview Analysis & Commentary 5 & 6 March 2015’.

⁵¹ Interview with Mr Brooks, pp. 41-42.

⁵² Ibid, p. 47.

Seva is ideally suited to this role:

- *she has a Bachelor of Laws degree from Moscow University;*
- *she holds Bachelor of Business and Bachelor of Laws from the University of Tasmania;*
- *she is currently studying for a Master of Laws at Melbourne University Law School;*
- *she has a Graduate Diploma of Legal Practice from the University of Tasmania;*
- *she is a Graduate of the Australian Institute of Company Directors;*
- *she has TAFE qualifications namely an advanced diploma in business management, an advanced diploma in logistics management and a diploma in business – human resources;*
- *she is admitted as a Barrister and Solicitor in both the Supreme Court of Tasmania and the High Court of Australia;*

Seva has previously worked as a criminal and corporate lawyer in Europe and in Australia.

She has experience working as a Supreme Court Judge's Associate, in law firms, in commercial organisations and local government.

Seva has been involved with Glenorchy City Council since 2011, initially on a university internship, then as casual Property Officer, Council Lawyer and Manager Legal & Governance – Council Lawyer.

During her 4 years with Council Seva has successfully undertaken a number of major tasks including:

- *revising Council's Tenders and Contracts Manual;*
- *introducing Tenderlink to Council;*
- *reviewing and revising our standard contract terms and conditions;*
- *co-ordinating the first joint multi-council tender in Tasmania (for recyclable materials) requiring extensive negotiations with the ACCC;*
- *introducing and centralising Council's legal services for more focused and efficient legal advice;*
- *successfully negotiating a number of difficult contracts and improving Council's position in the face of some tough positions;*
- *redeveloping Council's Audit Panel and its Charter following the introduction of mandatory Audit Panels by the State Government;*
- *raising the awareness of, and standards of, governance within Council;*
- *developing the Terms of Reference for, and overseeing the development of, Council's Strategic Procurement Strategy.*

She has recently assisted as the Restructure Coordinator and advised me in relation to a number of matters concerning the very difficult and complicated process of the restructure.

Seva's enthusiastic and committed approach to her role is a major asset for Council and I congratulate her on her appointment to this crucial function, and ask that all staff assist and support her in it.

Regards

Peter⁵³

[161] On the same date a council staff member emailed Ms Iskandarli with:

Wow – GM had to sit and copy paste for 2 hours I guess your education and experiences glad he did it and I hope that will shut many people who don't know much about your background.⁵⁴

3 General Counsel

[162] Ms Iskandarli was appointed to the position of General Counsel shortly after her appointment as Director Corporate Governance.

[163] On 18 April 2015 she sent an email to Mr Brooks stating:

Good afternoon Peter,

In our recent meeting you have requested me to send you an email explaining to you what is a General Counsel.

I appreciate that you have asked me to give you some dot points in simple English but considering the role of the General Counsel is so complicated I have decided to send you "copy and paste" quotations from three different organisations (company and local government) describing and explaining the role of a General Counsel.

As stated it in our meeting I am not worried about the title, but clarity about the role and responsibilities, not in MY MIND but in other people's minds, especially external.

However, you have also stated that you would like to have a couple of points "handy" to answer any questions that might be raised about the title.

The following points have been taken from a number of organisations' websites which include local government as well. In addition, I attach with this email quote from three organisations which include City of Sydney Council.

The General Counsel or Chief Legal Officer:

- 1) Reports directly to the CEO;*
- 2) Is the second person after the CEO in the organisation;*
- 3) Is adviser to the CEO (not only legal advice);*

⁵³ Email from Mr Brooks to all Council staff and all Aldermen, 2 April 2015.

⁵⁴ Email from council staff member to Ms Iskandarli, 2 April 2015.

- 4) *Gives high level advice to the CEO, the Chair and the Board and its committees;*
- 5) *Manages at a high level all legal, compliance, internal audit, risk, governance, human resources, strategic, safety, procurement matters;*
- 6) *Manages all sensitive and complex issues;*
- 7) *Negotiates and settles high level business deals and infrastructure projects for the organisation;*
- 8) *Deals with external regulatory bodies and bodies which affect the governance and business of the organisation;*
- 9) *Advises the CEO, Board on strategic matters for the organisation;*
- 10) *Is a member of committees such as Compliance, Governance, Work Health and Safety, Nomination and Remuneration for CEO and Executive management/Directors, Audit and Risk, Procurement;*
- 11) *Is the Company Secretary in many organisations, in our case making sure that Agendas, Reports, Minutes, Annual Report, AGM, proper operation of the Council meetings, committees, reporting processes to regulatory bodies such as DPAC, Auditor – General etc. are managed properly;*
- 12) *Is a “shaper” of organisation’s activities and policies;*
- 13) *And so on.*

As you know I am already doing almost of all [sic] of the above.

I trust the above dot points and attached document will be useful for your consideration.⁵⁵

- [164] Attached to Ms Iskandarli’s email is an attachment with information relating to the role and functions of a General Counsel. Most of the content is taken from the Wikipedia entry for ‘General Counsel’ and a consultancy webpage linked to in the Wikipedia page.
- [165] A week later Ms Iskandarli sent an email to members of the General Manager’s Performance Review Committee and Mr Brooks in relation to Mr Brooks’ KPI’s. Her signature on that email reads ‘Director Corporate Governance and General Counsel’.
- [166] On 9 April 2015 Mr Brooks wrote to Ms Iskandarli formally appointing her to the role of Director Corporate Governance.
- [167] On 25 May 2015 Mr Brooks sent Ms Iskandarli a further letter terminating her previous role of Manager Legal & Governance. That letter stated that her appointment as Director Corporate Governance and General Counsel had an effective start date of 8 April 2015.
- [168] Ms Iskandarli’s new contract of employment refers to her role as Director Corporate Governance and General Counsel, and was signed on 26 May 2015. The contract

⁵⁵ Email from Ms Iskandarli to Mr Brooks, 18 April 2015.

provides for a bonus of ‘Up to 15% of Base Salary at the discretion of the General Manager acting reasonably’.⁵⁶ A full bonus payment would amount to \$24,750.

- [169] The Minutes for Council’s Meeting of 26 September 2016 contain the following Question on Notice from Ald Johnston:

Given the extensive interaction, which the General Manager sanctions, between the elected body and the General Counsel on a range of issues, governance related and otherwise, it would be prudent for Aldermen to be provided with a duty statement for the General Counsel showing the scope of responsibilities.

May the General Manager provide Council with the duty statement for the position of General Counsel?

- [170] The recorded answer to this question is as follows:

The functions of the Director of Corporate Governance and General Counsel require contact and discussions with, and advice to be given to, all parts of Council, including Aldermen.

That the Director of Corporate Governance is responsible for all aspects of governance related matters and Aldermanic related matters such as administrative, governance and Council Agenda and Minutes. Accordingly, the Director of Corporate Governance is naturally required to interact with Aldermen on a day-to-day basis.

The role of the General Counsel is to provide high-level legal advice to Aldermen, the General Manager and Council, and to oversee general legal advice given to Glenorchy City Council.

No “duty statement” is required.⁵⁷

- [171] Ald Johnston raised a further Question on Notice in relation to this matter in the Council Meeting of 24 October 2016:

At the 26 September Council meeting the Director of Corporate Governance and General Counsel advised Council that she had an additional and special role over and above that of Director. She also confirmed that she had and continues to have extensive interaction with the aldermanic body as part of the role of General Counsel, particularly in relation to the provision of qualified legal advice to Council. May the General Manager please advise Council if the role/position of General Counsel was advertised either internally or externally, and if so what were the required qualifications and experience for such a position? If it was not advertised, may the General Manager please advise why not?

- [172] The response to this question is as follows:

Council has a legal team which comprises a number of highly qualified lawyers in a number of legal fields, such as property, commercial, procurement, governance, right to information and so on. Council’s legal team is providing a number of legal services and support to Council employees and co-ordinates Council’s external legal matters to

⁵⁶ Contract of employment between Glenorchy City Council and Ms Iskandarli (Director Corporate Governance and General Counsel), Schedule 1, Item 9.

⁵⁷ Minutes of 26 September 2016 Glenorchy City Council Meeting, Item 19.2 – Question on Notice – Alderman K. Johnston – 5, pp. 18-19.

ensure that Council's activities are in compliance with legislative requirements and good governance principles.

It is common in every organisation that the legal team's activities are overseen and monitored by either the Chief Legal Advisor or General Counsel. It is the role of the Chief Legal Advisor or General Counsel to also provide high level legal, governance and business advice to the Aldermanic body or the Board of Directors and the organisation.

Managing, overseeing and co-ordinating the legal team and legal services of Council is in the portfolio of the Director Corporate Governance who centralised Council's decentralised legal services in 2013 when she was appointed the Council Lawyer.

It is common that the Directors who manage the legal services of the organisation also have a second role and act as the General Counsel or Company Secretary.

Accordingly, the role of the General Counsel was not advertised as this position was offered to the Director Corporate Governance who had the legal services in her portfolio, and she was appointed to the General Counsel role under section 63 of the Local Government Act 1993 (Tas) which gives the General Manager the power to appoint persons as employees of Council.

The Director Corporate Governance has high level experience, high level educational background and credentials and is well suited with her skills and knowledge to undertake this role, and is undertaking this role very successfully. This success has been well recognised by a number of external and internal parties.⁵⁸

4 General Manager's Performance Review Committee

[173] In its meeting of 16 March 2015 the Council resolved:

That the establishment of the new Key Performance Indicators and Critical Leadership Behaviours for the period 3 January 2015 to 2 January 2016 under the new Contract of Employment [for Mr Brooks] must be finalised and presented to Council in its April 2015 Meeting.⁵⁹

[174] On 14 April 2015 Ms Iskandarli, Mr Brooks and Ald Slade met with Mr Ian Nelson, of Ian Nelson Consulting. Following that meeting Mr Nelson was contracted to perform a review of Mr Brooks' Key Performance Indicators (KPIs).

[175] Mr Nelson emailed Ms Iskandarli a draft KPI document on 24 April 2015, with some commentary in relation to several aspects of the work he had undertaken by that stage:

... Of particular note – there should be no requirement to 'assess' the 'objective' measures – they either happen or they don't.

⁵⁸ Minutes of 24 October 2016 Glenorchy City Council Meeting, Item 21.1 – Question on Notice – Alderman K. Johnston – 3, pp. 18-19.

⁵⁹ Minutes of 16 March 2015 Glenorchy City Council Meeting, Item 21 – General Manager Performance Review KPI, p. 19.

...

It is likely that you, Peter and Stuart will have items that you may wish to amend, delete or include in the KPI document. Please regard the attached document as a starting point that we can fine tune on or after our meeting on Tuesday.⁶⁰

[176] On 26 April 2015 Ms Iskandarli sent the following email to Mr Brooks:

Dear Peter,

Please see my suggested revised KPIs with track changes and comments in the "Balloons". I have made these comments in addition to what Mr Ian Nelson comments on, and/or in response to his comments.

As stated in our meeting on Friday 24 April 2015, I had a meeting with Jenny and one of the issues I have discussed with her was the clear understanding of the roles and responsibilities of the members of the GMPRC and the major changes we need to make about the GMPRC ('the Committee').

As a minute taker and adviser to the Committee for a year I have identified that the Committee need a major change. This in some ways has started by ensuring that the minutes of the meeting have been taken, the Agenda has been sent to the members beforehand and so on. However, I am going to do more than that. I do not know how it operates in other Councils but in our Council this Committee should operate in line with the good governance principles.

This is what I am proposing to implement and I will be discussing this with you:

- 1) I will redraft the Terms of the Reference of the Committee and get the Council to approve them;*
- 2) My role will be made very explicit in the TORs as the minute taker and adviser and my attendance at the Council meeting will be necessary when the performance of the GM will be discussed, in relation to IR and the GM's contract as well as governance issues;*
- 3) The roles and responsibilities of the members will be made clear as well in order to avoid the issue of Council interfering in the details of what the Committee has done. Otherwise I do not see any point in delegating this task to the Committee if Council will ask for every detail about what the Committee has done. This needs to be stopped as it is inefficient and bad governance;*
- 4) When the Committee reviews your performance from the good governance point of view the Committee needs to invite the Mayor and ask for her input as well as she is the one who liaises with you in weekly meetings;*
- 5) Once the evaluation is finalised the Chair has to discuss this with the Mayor before taking the recommendations of the Committee to the Council from the good governance point of view;*
- 6) There should be monthly written reporting from you to the Aldermen about the functions undertaken in that month;*

⁶⁰ Email from Mr Nelson to Ms Iskandarli, 24 April 2015.

- 7) *The style and the content of your reporting to the Committee must change as some aspects in your reporting create some unnecessary questions and misunderstandings;*
- 8) *Apart from the written reporting you need to attend the Committee meeting to advise them verbally and answer their questions. This did not occur in any Committee meetings I have attended so far. It is in your interest to ensure that what you have done has been communicated to, and acknowledged by, the Committee and your message gets to the Committee clearly;*
- 9) *When your performance is discussed by the Council they need to invite you to answer questions, if any. I will talk to you about this;*
- 10) *The Committee must evaluate your performance every 6 months but the first must be informal;*
- 11) *The Committee must give you formal written feedback, not just “10 minutes talking” and telling you what they want you to do. In the last meeting they told you where you are lacking but they have not told you what they want you to do, and by when. There are no clear set goals or decisions for you to implement;*
- 12) *The Committee must offer you “help” about how they can help you to achieve the issues they have identified concerning your performance. For example, the comments from the Committee in your last performance review were that you are lacking in community engagement but you have not been told what they want you to do about that. They also need to offer you some guidance or help to implement a positive relationship with the community. Your job is to implement the Council decisions not to be in the front line with the community as that is the Aldermen’s responsibility. I have a lot to add here;*
- 13) *My proposal for you to build a good working relationship with the community is:*
 - (a) *Attend the precinct meetings to engage and communicate with them, this can be done monthly, or as required;*
 - (b) *Respond to the inquiries you receive from the community directly or indirectly in a timely and positive manner; you are already doing it but not “advertising”;*
 - (c) *Use the Glenorchy Gazette to “talk” to the community about the work you are doing, i.e. a “General Manager’s Report”: you are lacking in this area and you are very silent. “Some person” is getting the credit for what you are doing. Don’t forget about the old saying that “GMs do the work, the Mayors get the credit. When everything is good it is the mayor who gets the credit, but when things go wrong it is the GM’s fault”. Break this rule !!*

I have more suggestions to discuss with you.

In relation to your KPIs and in addition to the comments marked as “S1” etc in the “Balloons” in the attached document (25 comments), I make the following comments:

- 1) *I believe we should be considering the possibility of having a target “return on assets” because we have many millions of dollars of assets and it could be beneficial if we tried to operate in some way more as “a company”. We might need to engage Deloitte to investigate this for us and advise. I have a proposal for you about this, just give me a chance. However, I do not think that at this stage it should be included in your KPIs;*
- 2) *Mr Nelson’s suggested “outputs” might create some issues in terms of assessment. Namely, they are still subjective and not based on the quality of your performance but rather the completion of “something”. This can be unfair to you and the Council. Unfair to you because there will not be full acknowledgement and recognition of what you have done and therefore less “bonus”. Unfair to Council as it will create some disagreements among the Aldermen about your performance;*
- 3) *You have noticed that I have not circulated the email from Mr Nelson as there are some points in the email I disagree with. I will talk to you about this;*
- 4) *You will note that I have added community relationship aspect to your “CLBs” as this aspect was not covered and quite correctly the Aldermen will raise this issue with Mr Nelson and you, and you need to be ready to respond, but not to have something that you will not be able to achieve.*

I have invited Stuart and Jenny to attend a meeting on Monday after the Council Workshop and before the Tuesday meeting but it is your decision whether you want to have a meeting with me first to discuss the above and then to attend the meeting with Jenny, Stuart and me or just to come to the meeting with Jenny, Stuart and me.

Please let me know about your decision.⁶¹

[177] Attached to Ms Iskandarli’s email above is a document containing Mr Brooks’ KPIs with comments from Mr Nelson, and extensive commentary and some edits by Ms Iskandarli.

[178] Ms Iskandarli’s amendments to Mr Nelson’s work were discussed at interview with Ald Slade:

Q. *Were you aware that this has occurred, that comments and indeed suggested track changes had been made by – by Seva?*

A. *I said – I got – I have – I got no recollection that that happened.*

Q. *Yeah*

A. *I just find it a little bit strange when I asked for, once he was agreed to, for him to do those and also that the other part that was in consultation with the general manager and his legal counsel which is an outside person, right, but –*

Q. *Yeah*

A. *- as for these changes, I mean, I think my memory would’ve recalled these, crikey. I can’t recall these.⁶²*

⁶¹ Email from Ms Iskandarli to Mr Brooks, 26 April 2015.

⁶² Interview with Ald Slade, p. 19.

[179] Neither Mr Brooks nor Ald Slade could recall asking or instructing Ms Iskandarli to make the changes to Mr Nelson's advice. Mr Brooks stated at interview:

Q. *Do you know at whose request Seva undertook the review of Ian Nelson's advice...?*

A. *I can't remember, but obviously, I – the process is that I prepared a draft – draft KPI's together –*

Q. *You do – sorry?*

A. *I do*

Q. *Yeah*

A. *As the first stage, here this is what I'm thinking – and that's based on obviously strategic plans and work that's been done and what the council have signed off on, an annual plan point of view.*

And that then goes to Ian, it probably goes to [GMPRC] first and then to Ian and Seva's obviously made some comments and – interesting – trying to tighten up the process which – I see that's – so that's her, obviously her response. I don't know – I honestly can't remember whether I had asked her or whether – reading the first – the first line, I think it's – she's received it from Ian and then she's put some comments in relation to what Ian's put and sent it through to me.⁶³

[180] In relation to Ms Iskandarli's comments about the manner in which the GMPRC was performing its functions, Mr Brooks stated the following:

Q. *... it seems to me that [Ms Iskandarli's email] was done off her own initiative and I guess I'm just interested if – if that's actually correct or if you know that there's – that someone else has directed her or asked her to – to provide these proposals?*

A. *Yeah, I'm not sure on that.⁶⁴*

[181] Mr Brooks did suggest that Ms Iskandarli's comments would have been made in the context of a review of the GMPRC's terms of reference.⁶⁵

[182] At interview Ms Iskandarli also stated that her email was sent for the purposes of the review of the committee's terms of reference.⁶⁶

[183] On 26 April 2015 Ms Iskandarli sent an email to Mr Brooks containing a link to an online article titled 'Big bucks for lawyers in management' with the comment:

Just thought you might like to see this article before we finalise my contract . . .!!!!⁶⁷

[184] The GMPRC members, Ms Iskandarli and Mr Brooks met with Mr Nelson on 28 April 2015. Following that meeting Mr Nelson followed up the issue with Ms Iskandarli by email on 30 April 2015:

⁶³ Interview with Mr Brooks, pp. 54-55.

⁶⁴ Ibid, pp. 57.

⁶⁵ Ibid, p. 59.

⁶⁶ Interview with Ms Iskandarli, p. 52.

⁶⁷ Email from Ms Iskandarli to Mr Brooks, 26 April 2015.

Hi Seva,

Please find **attached** a revised version of the KPI document that includes amendments arising from our discussion. You will notice there is quite a bit of change.

...

There may be a number of items that review [sic] further review. There are some comment boxes identifying specific issues for you to consider. Additionally, I suggest that you review the document with Peter first and then with the Review Committee. It is important that Peter is clear on the KPIs and the measurement system, plus content about who is involved in providing feedback – especially the subjective feedback.

I am available to discuss at any time that suits you.⁶⁸

[185] Ms Iskandarli then forwarded Mr Nelson's email to Mr Brooks commenting:

Good evening Peter.

Please see the email below from Ian Nelson. We need to discuss this please as I need to finalise the Report and this for Council Agenda.⁶⁹

[186] The KPI review was finalised at Council's meeting of 11 May 2015, where it resolved:

- (a) Council approves the Performance Appraisal Process and Key Performance Indicators (KPIs) for the General Manager for 12 months period 3rd January 2015 to 2nd January 2016.
- (b) Council acknowledges that the Performance Appraisal Process and Key Performance Indicators (KPIs) for the General Manager will be reviewed again to develop a new set of KPIs to reflect the strategic actions Council is undertaking.⁷⁰

5 Conflict of Interest Concerns Raised by the Mayor

[187] On 18 February 2015 Ald Johnston, Mayor of the Council, sent the following email to all Aldermen:

Dear Aldermen,

I wish to confirm, and reiterate, my concerns that I raised at the Council Meeting 16 February regarding the conflict of interest that I believe Council Solicitor has in relation to her role with the General Manager's Performance Review Committee. I have raised these concerns on a number of occasions in the past. I am seeking further advice on this matter.⁷¹

[188] Ald Slade responded to Ald Johnston's email with:

Dear Mayor

I note the contents of your email.

⁶⁸ Email from Ms Nelson to Ms Iskandarli, 30 April 2015.

⁶⁹ Email from Ms Iskandarli to Mr Brooks, 30 April 2015.

⁷⁰ Minutes of 11 May 2015 Glenorchy City Council Meeting, Item 21 – General Manager Performance Review KPI, p. 19.

⁷¹ Email from Ald Johnston to all Aldermen, 18 February 2015.

Council's lawyer, Ms Seva Iskandarli does not have a conflict of interest in her role with the General Manager's Performance Review Committee.

Ms Iskandarli is there in a capacity of providing secretarial support and some legal support to members of the GMPRC.

Yes, she is an employee of the GCC, but being a competent lawyer and governance professional she clearly understands this role and the importance of mitigating any possible conflict of interest in relation to the GMPRC. Her role is very similar to that of a company secretary in the public and private sectors, a sound corporate governance model used throughout Australia for many years.

Aldermen should be reminded that in relation to the GM's contract he uses his own private lawyer to check such document and to advance any changes or recommendations on his behalf and not Council's lawyer. This important point should be noted.

I trust I have clarified the matter.⁷²

[189] Ald Johnston replied to Ald Slade with:

Dear Stuart,

I'm sorry but you have not clarified the matter – if anything you have confirmed my concerns. I reiterate that the GMPRC should seek external, independent legal advice (should they require it) and that secretarial support should be provided by one of the aldermanic committee members.⁷³

[190] Ald Branch-Allen also responded to Ald Johnston's initial email:

Dear Kristie

What is the alternative you are offering for consideration?

Jenny⁷⁴

[191] Ald Johnston responded to Ald Branch-Allen's question with:

Dear Jenny,

I would suggest that at the very least, if the GMPRC required legal advice that it is sought from an external, independent legal practitioner. Furthermore, that any secretarial support to the GMPRC could be provided by one of the aldermanic Committee members.⁷⁵

[192] Ald Branch-Allen responded with:

Happy to consider this⁷⁶

[193] No evidence has been identified to show that Ald Johnston's suggestions were acted on after this conversation.

⁷² Email from Ald Slade to Ald Johnston, cc'd all Aldermen, Mr Brooks and Ms Iskandarli, 18 February 2015.

⁷³ Email from Ald Johnston to Ald Slade, cc'd all Aldermen, Mr Brooks and Ms Iskandarli, 18 February 2015.

⁷⁴ Email from Ald Branch-Allen to Ald Johnston, cc'd to Mr Brooks, Ms Iskandarli, Ald Lucas, Ald Slade, Ald Dunsby, Ald Stevenson and Ald Quick, 18 February 2015.

⁷⁵ Email from Ald Johnston to Ald Branch-Allen, 18 February 2015.

⁷⁶ Email from Ald Branch-Allen to Ald Johnston, cc'd Mr Brooks and all Aldermen, 18 February 2015.

[194] On 19 February 2015 Ald Pearce replied to Ald Johnston's email as well:

Mayor

I write to express my deep concern regards your recent email relating to the alleged conflict of interest.

As an individual Alderman I am of the opinion that you have called into question the professional work and attitude of both Council's Solicitor and General Manager, I consider this to be unacceptable and yet another example of your unwillingness or inability to work with senior management and fellow aldermen

I have every faith in Council Solicitor's ability to separate her roles when and if necessary. As far as I am aware you are the only Alderman who does not.⁷⁷

[195] It is not clear from the content of the email if Ald Johnston actually received this email, as she is not included in the list of recipients.

[196] Ald Johnston's comments appear to have led to a period of conflict between several Aldermen, Mr Brooks and Ms Iskandarli. In particular, Ald Johnston's working relationships with Mr Brooks and Ms Iskandarli appear to have deteriorated significantly as a result of these issues being raised.

[197] Ms Iskandarli wrote to Ald Pearce on 21 February 2015 in reference to the email above:

Dear David,

The email below [Ald Pearce's email of 19 February 2015] has been forwarded to me.

I would like to thank you for your support and the comments you have made in your email.

I am very pleased and very appreciative to read and hear the comments I have received from a number of Aldermen in response to the Mayor's email below. Those comments mean a lot to me.⁷⁸

[198] At the Council's meeting of 16 March 2015, Ald Pearce moved the following motion:

1. *That the Aldermen of the Glenorchy City Council reaffirm their commitment to Council's long-term financial strategy.*
2. *That the Aldermen of the Glenorchy City Council acknowledge the skills and commitment of the General Manager in working towards its long-term strategy as directed by the elected members.*
3. *That the Aldermen of the Glenorchy City Council acknowledge the skills and ability of the General Manager in his continued strength and ability to manage and maintain the outstanding service capacity and commitment to the citizens who live and work in this City and express full confidence in the General Manager.*

⁷⁷ Email from Ald Pearce to Ald Slade, Ald Nielsen, Ald Branch-Allen, Ald Lucas, Ald King, Ald Dunsby, Ald Quick and Ald Stevenson, 19 February 2015.

⁷⁸ Email from Ms Iskandarli to Ald Pearce, cc'd Ald Slade and Mr Brooks, 21 February 2015.

4. *That the Aldermen of the Glenorchy City Council takes this opportunity to acknowledge the skills and abilities of senior management and staff, both past and present in not only working towards its current financial strategy, but also in their commitment to delivering and maintaining an outstanding level of service delivery to the citizens who live and work in this City.*⁷⁹

[199] A copy of Ald Pearce's Notice of Motion document was emailed by Ms Iskandarli to the Council's media consultant Mr Tony Harrison before the Council meeting.⁸⁰

[200] Shortly afterwards Mr Harrison emailed a draft media statement to Mr Brooks and Ms Iskandarli. Ms Iskandarli then forwarded the draft statement to Ald Slade and Ald Branch-Allen. The statement is as follows:

Glenorchy Council expresses full support for General Manager

THE Glenorchy City Council has expressed its full confidence in, and support for, its General Manager Peter Brooks.

The Council today passed a motion, moved by Alderman David Pearce, supporting the General Manager and his management of the long-term strategy to achieve financial sustainability.

Mr Brooks' enjoys the confidence of the Council as evidenced by the majority support of Alderman Pearce's motion.

...

Aldermen said under Mr Brooks' leadership the Council administration was moving forward, and effectively serving and looking after the Glenorchy community.

It was disappointing that the Mayor Ald Kristie Johnston had prematurely and selectively quoted from the Director of Local Government's report on the Glenorchy Council's special meeting of 4 February 2015.

The Mayor claimed the Director had vindicated her actions yet the Director had actually pointed to anomalies in the Local Government Act that needed to be rectified to clarify the situation. The Director also reported that it was appropriate for the General Manager to withhold private and confidential material in the CTMG consultants report, however the Mayor chose to ignore this.

The Aldermen said the Mayor saying that she did not have confidence in the General Manager represented the opinion of only one person and not that of the Council.

In fact, the opposite was the case with the General Manager enjoying majority support, as evidenced by today's decision. On this issue, Ald Johnston was not speaking on behalf of the Council.

The Aldermen said they wanted to work together with the Mayor in the best interests of the Council and the Glenorchy community. They had expressed that sentiment to Ald Johnston on numerous occasions.

⁷⁹ Minutes of 16 March 2015 Glenorchy City Council Meeting, Item 18.1 Notice of Motion – Alderman D. Pearce, pp. 12-13.

⁸⁰ Email from Ms Iskandarli to Mr Harrison, cc'd Mr Brooks, 16 March 2015.

However, rather than providing leadership and cooperation, the Mayor appeared intent on a vendetta to destabilise the Council and its administration, and frustrate the restructure program.

If she is successful in this, the outcome will be a poorer Glenorchy, an unsustainable Council budget, a loss of Council jobs, with either reduced services or higher rates.

The majority of Aldermen did not want this and they are urging the Mayor to work with them in a proper and cooperative manner.

*Ends...*⁸¹

- [201] In response to Ms Iskandarli's email, Ald Slade stated '*I have no problems at all with [this] draft media release.*'⁸² Ald Branch-Allen replied with '*Happy with that*'.⁸³
- [202] The Board of Inquiry's draft report makes reference to the release of confidential information, relating to advice received by the Council from the Director of Local Government. That report was discussed in the closed portion of the Council Meeting of 16 March 2015.
- [203] It is noted that, on 12 March 2015, Ms Iskandarli emailed a copy of the agenda for the Council Meeting of 16 March 2015 to the Director of Local Government. The agenda includes 'Director of Local Government Response' in the Closed Council section.
- [204] Ms Iskandarli's email to Ald Slade and Ald Branch-Allen, attaching the media statement, was sent approximately one hour before the Council Meeting began.
- [205] The Minutes for the GMPRC Meeting of 26 August 2015 contain the following statement:

The Director Corporate Governance & General Counsel advised the Committee that she attends the GMPRC Meetings:

- 1) under the delegation from the General Manager to prepare the Agenda for the Committee Meetings and ensure that the minutes of the Committee have been taken, the discussion and decisions of the Committee have been recorded; and*
- 2) at the request of the Chair to provide advice or information about the process or any questions that might be asked about the terms and conditions of the COE between the General Manager and Council, on behalf of the Council; and*
- 3) does not participate in, nor comment on, the deliberations and determination of the performance of the of the [sic] General Manager.*

- [206] Ms Iskandarli was asked at interview what had prompted the insertion of this statement, which is repeated in the minutes for every subsequent GMPRC meeting:

In the council meetings the suspended Mayor made a couple of comments that Seva shouldn't be in the committee meetings because she has conflict of interest in the matter and I asked the Mayor that, "Could you please describe to me what do you

⁸¹ Draft media release authored by Mr Tony Harrison, Bright Company Pty Ltd.

⁸² Email from Ald Slade to Ms Iskandarli, cc'd Ald Branch-Allen, 16 March 2015.

⁸³ Email from Ald Branch-Allen to Ms Iskandarli, cc'd Ald Slade, 16 March 2015.

mean by that because it's just a sweeping comment to say that, yes, Seva has conflict of interest, but can you tell me what do you mean and what is my interest and you are reporting to the General Manager", and I said that while General Manager has sent me four – sorry, three other direct reports, does it mean that they shouldn't be doing their jobs either because they will be having conflict of interest because they're reporting to the General Manager, and the other – the rest of the council accepted the comment that we don't think that there is a conflict of interest, the person being asked and instructed to act on behalf of the council and just because she is reporting to the General Manager it doesn't create any conflict of interest. And I was making these comments before, during the committee meetings, our committee meetings they are not recorded – only the council meeting and recently we've started last July 2016, we've started to record them. Committee meetings I was making exactly the same comments verbally before, all the time, and I was actually going well beyond that what is actually written there and I actually once – when a committee member made like this – excuse my – you know, I'm saying what she said, "Yeah, yeah, yeah, we know all that stuff, let's start the – the actual agenda, the matters in the agenda", so they heard it all the time from me that no questions should be asked from me except about the agenda and, you know, about the meeting dates.⁸⁴

[207] The same was asked of Mr Brooks at interview:

- Q. *Do you know what prompted the insertion of these reasons at this time, I notice that this is the first one and then it's on every single minutes' document after that?*
- A. *Yeah. Well I think this has also been an issue for the board of inquiry – where the mayor, I think, in her allegations said that there was a conflict of interest by Seva being at the meetings.*
- And we got advice and that advice, and I think that that's what they wanted from thereon in, that's what – basically that's the advice, and that's what the role was some clarification on –*
- Q. *So that was a response to allegation from the mayor, essentially?*
- A. *It was, yeah.*
- Q. *So sorry, who wanted this inserted?*
- A. *Nobody wanted it inserted – well, I'm only guessing but my – my thoughts would be that probably the chair wanted it inserted because of the mayor's allegations.⁸⁵*

[208] Ald Slade described Ms Iskandarli's involvement in the GMPRC meetings as:

Well Ms Iskandarli's position was one of providing secretariat.

- Q. *And what involvement did she have in the conduct of the performance reviews [of Mr Brooks]?*

⁸⁴ Interview with Ms Iskandarli, pp. 42-43.

⁸⁵ Interview with Mr Brooks, pp. 49-50.

A. *Performance reviews as secretariat of the GMPRC, the General Manager Performance Review Committee, she did the necessary secretariat matters like agendas, sending out minutes and those – those types of things.*

...

Q. *Did she have any more involvement other than that or was that pretty much the extent?*

A. *If there was a question perhaps around interpretation, or a legal thing, a member of the committee or I might just ask her a question.*

Q. *So would that be legal advice or would that be –*

A. *No, no, just interpretations. She – it was – she was not there for legal advice, she was there as a secretariat.*

Q. *So the questions that were asked of her were of – were they the sort of questions you would ask of a secretariat?*

A. *Yeah*

Q. *Could you give us an example?*

A. *When did the minutes go out? Or if there's something like – oh, the minutes might have been two days late, why they were two days late. A very simple secretariat sort of – question like that.*

Q. *So administrative kind of stuff?*

A. *Well she was administrator, yeah.⁸⁶*

[209] Ald Dunsby was asked about the Ms Iskandarli's attendance at the GMPRC meetings:

Seva would sit in on all the meetings. She would sit in on our discussions around the general manager's actual review. Because she was the minute taker. So from time to time she would add input but many times she would claim she was just there as a secretariat and wouldn't – and said – you know – I give you this advice in a different context...⁸⁷

...

Q. *So in those instances where Mr Brooks left while you're deliberating on that KPI or whatever it might be, would Seva stay in for that portion?*

A. *She would stay and she would be taking notes – as the note taker she would be there.⁸⁸*

...

Q. *Do you consider that [Ms Iskandarli] has a conflict of interest associated with her involvement in the GMPRC?*

⁸⁶ Interview with Ald Slade, p. 5.

⁸⁷ Interview with Ald Dunsby, p. 8.

⁸⁸ Ibid, p 20.

A. *I do. Given that she directly reports to him. You know, I don't believe that she should be privy to his reviews and things like that. I think it should sit with the members of the committee and an independent minute taker if – if that has to be the case, but my belief is it should be the committee themselves taking the minutes.*

It was of great concern to me that the chair would report straight back to the General Manager once he had a review done. He wouldn't wait for it to go to council and then brief him, he would call him in and tell him straight away how he'd done. And I found that very strange too. And Seva would sit in on all that.⁸⁹

[210] Ald Dunsby's evidence that Ms Iskandarli would remain with the committee during its deliberations on Mr Brooks' performance is corroborated by the minutes for the committee's meeting of 8 October 2014.⁹⁰ The minutes record the committee's assessment of Mr Brooks' KPI's, and make no mention of Ms Iskandarli leaving the room (as it does in the case of Mr Brooks leaving the room). This would suggest that Ms Iskandarli remained in the room for the duration of the meeting.

[211] On 14 October 2015 Mr Harrison sent an email to Ms Iskandarli and Mr Brooks attaching a draft media statement:

Seva / Peter,

I suggest something along the lines of the attached. As discussed with Seva, I have kept it to the administration and not entered into the politics on Council.

Please let me know what you want to do from here.⁹¹

[212] The metadata of the attached media statement, titled 'Glenorchy citizens well-served by Council' indicates that it was authored by Ms Ingrid Harrison, Director at Bright Company Pty Ltd.

[213] On 15 October 2015 Ald Johnston emailed Mr Brooks with:

Peter,

You clearly indicated in your comments in the Mercury today that you were making a personal comment in relation to the board of inquiry. Why then did you use Bright Communications (Tony Harrison), the Council's media contractor, to prepare that statement?

Kristie⁹²

[214] Mr Brooks replied with:

Kristie

I did not use Bright Communications in making the comments

The comments were put together by myself

⁸⁹ Ibid, pp. 23-24.

⁹⁰ Minutes of the General Manager's Performance Review Committee, 8 October 2014.

⁹¹ Email from Mr Harrison to Ms Iskandarli and Mr Brooks, 14 October 2015.

⁹² Email from Ald Johnston to Mr Brooks, 15 October 2015.

*Peter*⁹³

[215] Mr Brooks forwarded his response to Ms Iskandarli, who responded with:

*Wrong answer. You should be careful with this type of answer, she will hold you accountable for this.*⁹⁴

[216] Ald Johnston replied to Mr Brooks' email with:

*I had been advised that you had. Thanks for clarifying that.*⁹⁵

[217] Mr Brooks also forwarded his response to Mr Harrison, who replied with:

Peter,

*Given that my advice only went to you and Seva, I can only conclude that Matt Smith may have told her that I had been in contact with the Mercury. As well, I find it interesting that she now describes Bright Communications (me) as the Council's media contractor, yet, in her email to you re the KAB award that she doesn't want me releasing GCC media statements. It's all a bit irrational.*⁹⁶

[218] The timing of this interaction appears to coincide with continued difficulties in the working relationships between Ald Johnston, Mr Brooks and Ms Iskandarli. This was further exemplified in an exchange relating to the draft minutes of the Special Council Meeting of 19 October 2015.

[219] In response to Ms Iskandarli's email of 21 October 2015, Ald Johnston replied with:

Seva,

This was supposed to be provided to me yesterday. I am currently in Launceston (Having travelled up this morning) & will be in a meeting until 2:00pm and then travelling after.

Yet again I need to correct the draft minutes. I am unable to edit the original document from my iPad so I will list the changes below.

...

*This unfortunate situation would not have occurred if you had provided me with the draft minutes yesterday as promised. This is not good enough.*⁹⁷

[220] Ms Iskandarli responded with:

Dear Kristie,

I note your email and comments in your email.

I will make some changes to the draft Minutes, however, I did NOT say that I will send you the draft minutes yesterday, I said that I will be typing the handwritten notes I took

⁹³ Email from Mr Brooks to Ald Johnston, 15 October 2015.

⁹⁴ Email from Ms Iskandarli to Mr Brooks, 15 October 2015.

⁹⁵ Email from Ald Johnston to Mr Brooks, 15 October 2015.

⁹⁶ Email from Mr Harrison to Mr Brooks and Ms Iskandarli, 15 October 2015.

⁹⁷ Email from Ald Johnston to Ms Iskandarli, 21 October 2015.

from the meeting today, namely “yesterday” and once I finished I will send them to you for comment.

I would have also expected that you would have advised me that you will be out of the office today and you would like to have received the draft minutes yesterday.

...

Acting professionally I do not accept your final sentence, namely “This is not good enough”.⁹⁸

[221] Ald Johnston replied with:

Seva,

You did say you would provide them to me yesterday, along with the other two agenda items.

I do not have to advise you when I am out of the office. I do not report to you.⁹⁹

[222] Ms Iskandarli forwarded Ald Johnston’s email to Mr Brooks with the comment:

Now do you understand why I always ask you to have somebody with you in the meetings with her? Her email is very good example how she deliberately interprets the things in her own way.¹⁰⁰

6 External Advice – Conflict of Interest

[223] Mr Brooks explained at interview that, as a result of Ald Johnston raising her concerns about a conflict of interest, he sought external advice about this issue:

Q. *What prompted you to seek that advice?*

A. *Oh, I think I answered that previously is that there were – once the mayor was not, through the decision of council in November 2014, when the committees were setup – the mayor was very critical of the GMPRC because she was not on the GMPRC. And she was making comments, quite regularly, about conflict of interest.*

So I sought this advice in relation to that.

...

Q. *And what did you do with the advice once you’d received it – so was it disseminated?*

A. *I can’t remember whether it disseminated or not, I’m not sure.*

Quite obviously, items from this were then relayed in each of the minutes of the GMPRC, which were those three items that were in each document...the table at the top.

⁹⁸ Email from Ms Iskandarli to Ald Johnston, 21 October 2015.

⁹⁹ Email from Ald Johnston to Ms Iskandarli, cc’d Mr Brooks, 21 October 2015.

¹⁰⁰ Email from Ms Iskandarli to Mr Brooks, 21 October 2015.

Q. *Although that table predates this so it must have come – that table wouldn't have been specifically drawn from this letter –*

A. *No, no. But ... the table was probably put there because of the constant – issues that came up.*¹⁰¹

[224] The advice in question was received by Mr Brooks on 18 January 2016, and states in part:

There is no prohibition on [Ms Iskandarli] performing the role of minute secretary and legal adviser. [She] may act in the role as part of the normal (delegated) administrative function of the GM or as a person invited by the chairperson to advise or provide information.

...

In our opinion, it would be highly unusual to have any person who reports directly to a GM either observe or participate in a committee's deliberations over the GM's performance. In fact we have not found an example of such a situation.

...

The review of the GM's performance raises issues of accountability and requires that the GM personally remain independent of the process. Other good governance requirements may be undermined if [Ms Iskandarli] is privy to any information or discussions to which the GM himself should not be.

...

However, there are other governance principles such as keeping clarity and distinction between various roles, and maintaining effective relationships amongst senior staff, which militate against putting [Ms Iskandarli] in a situation which would involve such a potential conflict of interest.

...

*The participation of [Ms Iskandarli] raises potential conflict of interest issues. That conflict raises concerns about independence, clarity and transparency which should be address by Council in the terms under which the Performance Review Committee is established.*¹⁰²

[225] The advice was also discussed with Ms Iskandarli at interview:

Q. *Do you know if council has ever sought external legal advice in relation to that particular issue or not?*

A. *Oh yes, yes, we have.*

Q. *And who sought that advice?*

A. *What happened is that – I can't remember which council meeting it was, that again issue was raised – by the Mayor and after the meeting I approached the GM and I said that I would suggest that we seek external legal advice and to,*

¹⁰¹ Interview with Mr Brooks, pp. 60-62.

¹⁰² Letter to Mr Brooks from Mr Roger Curtis, Abetz Curtis Lawyers, 18 January 2016.

you know, get information from that person – or advice from that external independent person.

...

I think it has been circulated to committee members or council, but I'm not a hundred per cent sure about that – but the General Manager instructed me to seek an independent legal advice which I did and that advice has been given to the General Manager.¹⁰³

[226] At interview Ald Slade was also asked about the advice:

Q. *...so it's advice from Abetz Curtis Lawyers, dated the 18h of January 2016 and it's addressed to Mr Brooks, in his capacity as GM and it relates, from what I can gather, to addressing some of the – some conflict of interest issues, the same issues that are the subject of this complaint...Have you seen that advice?*

A. *I have never seen this document.¹⁰⁴*

[227] On the basis of the above evidence it would appear that the external advice was never distributed to Council.

7 Board of Inquiry Submission

[228] On 14 October 2015 the Minister for Planning and Local Government established the Board of Inquiry to investigate the Council.

[229] In the early stages of its process the Board invited a number of people to make submissions to it in relation to the matters noted in its terms of reference.

[230] On 8 November 2015 Ms Iskandarli sent an email to Mr Brooks about his submission:

Good afternoon Peter,

I refer to our meeting on Friday 6 November where I advised you that I will be sending you the draft submission on Sunday for your review.

My apologies I am still working on it as I have not finished polishing it and also including the evidentiary documents. It takes longer than I expected and I will explain to you the reason in our meeting.

With your approval I would like to stay at home tomorrow and finish it from home as it will allow me to concentrate on the document without any interruption.

I am preparing your submission in a way that you will only need to read and approve the content and there will be not much work for you to do.

... I will do my best to finish your submission and other documentation before...6pm.

Could I book with you for Tuesday 8:30am for an hour and take you through your submission?¹⁰⁵

¹⁰³ Interview with Ms Iskandarli, pp 59-60.

¹⁰⁴ Interview with Ald Slade, p. 22.

¹⁰⁵ Email from Ms Iskandarli to Mr Brooks, 8 November 2015.

- [231] Ms Iskandarli sent a further email to Mr Brooks attaching the relevant documents on 10 November 2015:

Dear Peter,

As requested please see attached the copies of three documents:

A draft copy of the cover letter;

A draft copy of the “List of Attachments”; and

A draft copy of your submission.

I only had one proof read so please excuse any typo or grammatical errors.¹⁰⁶

- [232] All three attachments were authored by Ms Iskandarli. Mr Brooks’ submission makes reference to an invitation to make the submission dated 21 October 2015.
- [233] On 13 November 2015 Ms Iskandarli provided her own submission to the Board of Inquiry. Ms Iskandarli’s submission refers to an invitation sent to Council staff to make submissions, provided to staff on 3 November 2015.

Analysis

1 Council restructure

- [234] Ms Iskandarli played a key role in the development of a new governance structure which ultimately resulted in her being promoted to the role of Director Corporate Governance. This involvement involved her travelling to Melbourne with Mr Brooks to meet with CT Management, her input into the CT Management proposal and her involvement in developing the position descriptions (including Director Corporate Governance) created through the process. This role was formalised in her appointment to the role of Restructure Coordinator, which gave her the additional responsibility of being the contact officer in relation to the restructure.
- [235] Hers was the only Director position that was filled through a process that only involved internal advertising. The remaining Director positions were externally advertised and filled.
- [236] The Auditor-General’s report suggests¹⁰⁷ that the work undertaken by CT Management from October 2014 to February 2015 was a distinct project, commencing from October 2014 and concluding in 2015. This suggests that Mr Courtney’s letter of 8 October 2014 was intended to form the basis for the engagement of CT Management for that project. The report notes ‘we concluded the

¹⁰⁶ Email from Ms Iskandarli to Mr Brooks, 10 November 2015.

¹⁰⁷ At p. 4 – ‘In October 2014, Council engaged CT Management to update the strategic and operational review project in the context of ongoing financial sustainability (Project 6). Council subsequently engaged CT Management to provide management restructure services (Project 7) in February 2015. In assessing Projects 6 and 7, which we considered components of the Strategic and Operational Review being conducted by CT Management, we conclude the individual engagements could have been classified as a single project. Expenditure for these projects totalled \$112 734 and should have, in our assessment, been subject to a public tender.’

individual engagements could have been classified as a single project.¹⁰⁸ This infers that Council treated this work as a distinct project commencing in October 2014, which then indicates that Mr Courtney's letter formed the proposal for that separate project.

- [237] The terminology suggests that the letter was intended to provide a basis on which Mr Brooks could justify the decision to contract with CT Management for that particular stage.
- [238] By the time Mr Courtney's letter was provided to Ms Iskandarli, however, she and Mr Brooks had already travelled to meet with Mr Courtney and Ms Taylor, and had discussed how the project would be undertaken.
- [239] Further, Ms Iskandarli's email of 6 October 2014 to Ms Taylor, in which she states '*we would appreciate it if you would make the following amendments to the proposal*' suggests that Ms Iskandarli and Mr Brooks were involved in developing aspects of the proposal.
- [240] If Mr Courtney's letter was intended to form the basis for the council to engage the services of CT Management, then there could be no appropriate basis for Ms Iskandarli or Mr Brooks to have input into its content.
- [241] It is possible that Mr Brooks' and Ms Iskandarli's input in compiling the CT Management proposal is evidence of an attempt to manufacture a 'paper trail' to retrospectively justify the engagement of CT Management when that decision had already been made.¹⁰⁹
- [242] This conclusion is further informed by the findings of the Auditor-General's report into the tendering processes of the Council, and its concerns as to the probity of those processes.

2 Director Corporate Governance

- [243] Ms Iskandarli's appointment to the position of Director Corporate Governance followed her involvement in engaging CT Management to undertake a restructure, her appointment as 'Restructure Coordinator' and her amendment of the relevant position description.
- [244] The advantages arising from Ms Iskandarli's role in the restructure process would not have been shared by any other staff member.
- [245] Mr Brooks claimed that, although he had the capacity to directly appoint Ms Iskandarli to the position in accordance with his power under s 63(1)(a) of the *Local Government Act 1993*, he sought to internally advertise the Director Corporate Governance position '*to make sure that the process was transparent and there were no perceptions out there.*'
- [246] Mr Brooks' statement is at odds with his previous reliance on s 63 to promote Ms Iskandarli to the position of Manager Legal & Governance.

¹⁰⁸ *Report of the Auditor-General No. 1 of 2017-18*, p. 17.

¹⁰⁹ A decision which, according to the Auditor-General's report, breached the Council's tendering requirements.

- [247] Ms Iskandarli's edits to the position description, which involve her creating essential requirements of specific qualifications that she had recently acquired, present as an effort on her part to ensure that no other internal applicant would be able to compete with her.
- [248] This situation was compounded by the fact that the position was only advertised internally. Given that the Director Corporate Governance role essentially replaced the Manager Legal & Governance role which Ms Iskandarli held at that time, it is highly unlikely that any other internal applicant would be able to compete with Ms Iskandarli.
- [249] Additionally, Mr Blackadder's email to Mr Brooks of 9 March 2015 where he demonstrates reservations about Ms Iskandarli's attitude does not appear to have had any impact on Mr Brooks' decision to make the appointment. This is despite Mr Blackadder emphasising that '*...you have to be absolutely guaranteed that you cannot find a Director from external recruitment that can do a better job than Seva. If you have any doubt I suggest you externally recruit.*'
- [250] It is also noted that the makeup of the relevant interview panel included Mr Brooks, Ms Taylor with whom Ms Iskandarli had been liaising closely with through the restructure process, and Mr Blackadder. This could be perceived as a panel that would lack the necessary independence from the process it was conducting with Ms Iskandarli. This is further supported by the nature of correspondence between Mr Brooks, Ms Iskandarli, Ms Taylor and Mr Courtney about the media articles reporting on the engagement of CT Management. In particular, the tone of Mr Brooks' email where he describes an article (and presumably its implicit criticism of the engagement) as 'Unbelievable' demonstrates a degree of informality between him and the CT Management staff.
- [251] These factors created a situation where the process of advertising and interviewing for the position could give the appearance of an open and transparent process when it would appear to have been anything but.
- [252] Mr Brooks' lengthy email to staff of 2 April 2015 reads as a justification for the appointment of Ms Iskandarli. Considering the issues above, it is perhaps unsurprising that the need to justify the appointment arose.
- [253] The tone of the email sent by a council staff member to Ms Iskandarli on 2 April 2015 further suggests that her appointment to the Director Corporate Governance role had caused some concern among council staff.

3 General Counsel

- [254] Ms Iskandarli's email of 18 April 2015 to Mr Brooks provides a lengthy explanation of the roles and responsibilities of a General Counsel. It is noted that the attachment to Ms Iskandarli's email, purportedly containing information sourced from a 'Company website' is in fact a direct quote from a Wikipedia entry. This may suggest that Ms Iskandarli attempted to make the information appear more reliable than it really was.
- [255] Ms Iskandarli's comment that Mr Brooks had asked her to provide the information suggests that he did not have an understanding of the role or the functions performed by a General Counsel.

- [256] The effective date of this appointment, 8 April 2015, precedes Mr Brooks' request for an explanation of what the role was.
- [257] The fact that Mr Brooks required Ms Iskandarli to provide information on the functions of a General Counsel makes it difficult to accept a suggestion that the role was created due to the genuine needs of council.
- [258] Rather, the circumstances surrounding this direct appointment suggest that the position was created in order to facilitate a benefit to Ms Iskandarli.
- [259] In responding to Ald Johnston's Question on Notice about this appointment, Mr Brooks stated that he had made the appointment under s 63 of the *Local Government Act*.
- [260] This appointment was made very shortly after Ms Iskandarli's promotion to Director Corporate Governance – through a process which Mr Brooks claimed to have undertaken '*to make sure that the process was transparent and there were no perceptions out there*'.
- [261] Mr Brooks' subsequent reliance on s 63 to enable the appointment of Ms Iskandarli as General Counsel is therefore at odds with the statement above, and the concerns Mr Brooks claimed to have had at that time.
- [262] This may suggest that the discretion provided by s 63 provided the means for Mr Brooks to dispense with an accountable recruitment process in order to continue the promotions of Ms Iskandarli.

4 General Manager's Performance Review Committee

- [263] These views are corroborated by the statement at the beginning of the GMPRC meeting minutes, to the effect that Ms Iskandarli attends the meetings 'to prepare the Agenda' and to 'ensure that the minutes of the Committee have been taken'.
- [264] The other documentary evidence obtained in relation to the GMPRC, however, indicates that Ms Iskandarli had far greater involvement – particularly in relation to the review of Mr Brooks' KPIs where she appears to have taken a leading role in liaising with Mr Nelson.
- [265] Mr Nelson's email of 30 April 2015 to Ms Iskandarli, where he states '*I suggest that you review the document with Peter first and then with the Review Committee*' would appear to demonstrate that Mr Nelson treated Ms Iskandarli as the primary contact and 'leader' of the KPI review process.
- [266] In this context the evidence suggests that, rather than simply acting as a minute taker, Ms Iskandarli essentially performed the function of the GMPRC in assessing the KPI's with Mr Brooks before the GMPRC was able to see the advice.
- [267] Ms Iskandarli's email of 26 April 2015 provides some insight as to the role that she played in relation to the committee's work. Her input extended to reviewing the advice provided by Mr Nelson, to the point where she states in her email to Mr Brooks that '*You have noticed that I have not circulated the email from Mr Nelson as there are some points in the email I disagree with. I will talk to you about this*'.

- [268] The fact that Ms Iskandarli took it upon herself to determine whether or not Mr Nelson's advice ought to be provided to the GMPRC indicates that her actions exceeded those of a secretariat.
- [269] Further, Ms Iskandarli's suggestion that *'My role will be made very explicit in the TORs as the minute taker and adviser and my attendance at the Council meeting will be necessary when the performance of the GM will be discussed, in relation to IR and the GM's contract as well as governance issues'* is in contrast to her stated role in the minutes that she *'does not participate in, nor comment on, the deliberations and determination of the performance of the...General Manager'*.
- [270] Ald Dunsby's evidence at interview is also that Ms Iskandarli would *'sit in on our discussions around the general manager's actual performance'*. Again, this evidence (supported by the minutes of the GMPRC Meeting on 8 October 2014) is contrary to the comments made by Ald Slade, Mr Brooks and Ms Iskandarli at interview, and the content of the GMPRC minutes.

5 Conflict of Interest Concerns Raised by the Mayor

- [271] Ald Johnston's comments about the alleged conflict of interest arising as a result of Ms Iskandarli's involvement in the GMPRC appear to have prompted a forceful response, particularly from Ald Slade and Ald Pearce.
- [272] Ald Slade's email in response to Ald Johnston, where he states *'Ms Iskandarli is there in a capacity of providing secretarial support and some legal support to members of the GMPRC'* repeats the abovementioned assertion that Ms Iskandarli had a limited role in the GMPRC. As discussed above, this was not the case.
- [273] Ald Slade's further assertion that *'Aldermen should be reminded that in relation to the GM's contract he uses his own private lawyer to check such document and to advance any changes or recommendations on his behalf and not Council's lawyer'* is directly contradicted by Ms Iskandarli's involvement in negotiating Mr Brooks' contract in 2014 – a process that she engaged in with Ald Slade at the request of Mr Brooks.
- [274] Ald Pearce's comment that *'I am of the opinion that you have called into question the professional work and attitude of both Council's Solicitor and General Manager, I consider this to be unacceptable and yet another example of your unwillingness or inability to work with senior management and fellow aldermen'* presents as an emotive response to a genuine issue. Ald Pearce's email demonstrates either a lack of understanding of conflict of interest issues, or a political view based on the source and subject of the concerns raised. Neither possibility presents as an objective view as to the appropriateness of raising concerns about conflict of interest issues.
- [275] Ald Pearce's statement that *'I have every faith in Council Solicitor's ability to separate her roles when and if necessary'* echoes the view expressed by Ms Iskandarli; that she performed her functions in different contexts.
- [276] Aside from the obvious confusion that such an approach creates, this claim raises further concerns about the understanding that Aldermen and council staff had in relation to perceived conflicts of interest.

[277] Given the timing and context in which it arose, Ald Pearce's motion in the 16 March 2015 Council Meeting appears to have been an attempt to further discredit the allegations raised by Ald Johnston. In particular, the following motions are considered relevant:

2. That the Aldermen of the Glenorchy City Council acknowledge the skills and commitment of the General Manager in working towards its long-term strategy as directed by the elected members.

3. That the Aldermen of the Glenorchy City Council acknowledge the skills and ability of the General Manager in his continued strength and ability to manage and maintain the outstanding service capacity and commitment to the citizens who live and work in this City and express full confidence in the General Manager.

4. That the Aldermen of the Glenorchy City Council takes this opportunity to acknowledge the skills and abilities of senior management and staff, both past and present in not only working towards its current financial strategy, but also in their commitment to delivering and maintaining and [sic] outstanding level of service delivery to the citizens who live and work in this City.

[278] It is noted that, in the case of each of the above motions, the only Aldermen who voted against them were Ald Dunsby, Ald Johnston and Ald Stevenson.

[279] The suspicion that these motions were aimed at discrediting Ald Johnston and the matters she raised is further supported by the content of the associated media release, particularly given the following passages:

The Aldermen said the Mayor saying that she did not have confidence in the General Manager represented the opinion of only one person and not that of the Council.

In fact, the opposite was the case with the General Manager enjoying majority support, as evidenced by today's decision.

...

However, rather than providing leadership and cooperation, the Mayor appeared intent on a vendetta to destabilise the Council and its administration, and frustrate the restructure program.

If she is successful in this, the outcome will be a poorer Glenorchy, an unsustainable Council budget, a loss of Council jobs, with either reduced services or higher rates.

[280] It is clear that, by raising concerns about the conflict of interest issues, Ald Johnston reinforced the rift between two disparate factions within the Council.

[281] These events, particularly given the content of the media release, also appear to have entrenched several Aldermen in their unwavering support of Mr Brooks.

[282] Noting the claim in the Board of Inquiry's draft report – that all Aldermen, Mr Brooks and Ms Iskandarli denied releasing or having any knowledge of the release of information about the 16 March 2015 Council Meeting to Mr Harrison – it is clear that Ms Iskandarli, Mr Brooks, Ald Slade and Ald Branch-Allen were all aware of, and endorsed, it. In his procedural fairness response, Mr Brooks denied having read the email from Mr Harrison and thus denies being aware that it contained confidential

information or that he endorsed its release. In her procedural fairness response, Ms Iskandarli denied endorsing the release of the media release.

- [283] The evidence does not identify who was responsible for giving the information about the report from the Director of Local Government to Mr Harrison. The information released by Ms Iskandarli related to Ald Pearce's motion, which was combined with the confidential information in the media release.
- [284] The dispute between Ald Johnston and Ms Iskandarli in relation to the draft minutes of the Special Council Meeting of 19 October 2015 demonstrates the degree of animosity between Ald Johnston and Ms Iskandarli.
- [285] Ms Iskandarli's comments to Mr Brooks following the dispute also evidence the level of distrust existing between Ald Johnston on the one hand, and Mr Brooks and Ms Iskandarli on the other. This situation appears to demonstrate the entrenched loyalty Ms Iskandarli had for Mr Brooks in relation to his dealings with Ald Johnston.

6 External Advice – Conflict of Interest

- [286] Mr Brooks noted in his evidence that the decision to seek external legal advice in relation to Ms Iskandarli's involvement in the GMPRC came about due to Ald Johnston's allegations.
- [287] The advice which was ultimately provided to Mr Brooks raises quite serious concerns about the appropriateness of Ms Iskandarli's involvement, noting particularly that it '...raises potential conflict of interest issues. That conflict raises concerns about independence, clarity and transparency'.
- [288] Given the nature of Mr Curtis' advice, it would be reasonable to expect that action would have been taken in relation to it – including disseminating it to all Aldermen and giving consideration to the GMPRC not utilising Ms Iskandarli for its meetings.
- [289] It is pertinent to note Ald Slade's evidence that, prior to Ms Iskandarli becoming involved with the GMPRC, legal advice had been obtained externally and minutes were taken by members of the committee.
- [290] Further, Ms Iskandarli stated at interview that when she was absent from meetings (or for parts of them), Ald Branch-Allen would take minutes and later provide them to Ms Iskandarli.
- [291] Given the existence of such arrangements, it would be very simple to adjust the operation of the GMPRC to address the issues raised by Mr Curtis.
- [292] Mr Brooks' evidence in relation to Mr Curtis' advice was that 'From my point of view it confirmed what we had in place.' It is understood that Mr Brooks' reference to 'what we had in place' means the process of Ms Iskandarli leaving the GMPRC meetings at certain times – noting that this practice did not occur according to the evidence of Ald Dunsby.

7 Board of Inquiry submission

- [293] The introduction to Mr Brooks' submission states, 'In a letter dated 21 October 2015 the Board of Inquiry encouraged me, the General Manager of Glenorchy City Council, [to] make a submission for the Board's consideration about the matters raised in the TORs'.
- [294] Ms Iskandarli's submission states 'I refer to your undated letter which was circulated by the General Manager of Glenorchy City Council on 3 November 2015 where you encouraged the members of Glenorchy City Council's staff to provide a submission for the Board of Inquiry's consideration'.
- [295] The statement in Mr Brooks' submission tends to suggest that he was subject to an individual invitation to provide a submission, and a more general invitation was later sent to all Council staff.
- [296] In such circumstances it would be reasonable to expect Mr Brooks to compile his own submission, given that Ms Iskandarli's had her own opportunity to voice her views to the Board.
- [297] There is not however any specific prohibition on Ms Iskandarli preparing Mr Brooks' submission. This matter is noted only as a further example of the extent to which Ms Iskandarli was involved in Mr Brooks' performance as General Manager and the wider political issues arising within the Council.

Conclusion

- [298] Ms Iskandarli's involvement in the council restructure process, including her appointment as 'Restructure Coordinator', may have invited a perception of a conflict of interest. This is particularly the case given that her position at that time was directly impacted by the restructure process, and the fact that she ultimately secured a significant promotion as a result of it.
- [299] Ms Iskandarli amended the position description for the Director Corporate Governance role, to include qualifications which she had recently acquired. The content of the position description was such that it was likely no other internal applicant would have been able to compete with Ms Iskandarli.
- [300] The decision to internally advertise, and conduct an interview for, the Director Corporate Governance position created the appearance of a transparent recruitment process. The actual process did not involve any opportunity for anyone other than Ms Iskandarli to win the position.
- [301] Mr Blackadder appears to have had concerns about Ms Iskandarli's suitability for the position, and his email to Mr Brooks reads as an attempt to suggest that the position be externally advertised. Mr Blackadder's comments do not appear to have been heeded.
- [302] Given that Mr Brooks appears to have been unaware of the roles and functions of a General Counsel, his decision to directly appoint Ms Iskandarli to that role – without any accompanying position description or statement of duties – presents as having been made solely to benefit Ms Iskandarli.

- [303] Ms Iskandarli's role in the General Manager's Performance Review Committee exceeded that of a secretariat, or that of a minute taker. She performed a key role in the review and amendment of Mr Brooks' KPI's, and in doing so essentially performed the role of the committee.
- [304] The evidence of Ald Slade, Mr Brooks and Ms Iskandarli as to the nature of Ms Iskandarli's involvement in the GMPRC, sought to play down her role in the committee. Their evidence is contradicted by contemporaneous documentary evidence, and the evidence of Ald Dunsby, which demonstrates the significance of her roles in the GMPRC.
- [305] Ald Slade's statements to Ald Johnston do not accurately describe the nature of Ms Iskandarli's involvement in the GMPRC.
- [306] Ms Iskandarli and Mr Brooks likely facilitated the disclosure of closed council information by Mr Harrison for the purpose of releasing a media statement criticising Ald Johnston.
- [307] Mr Brooks misled Ald Johnston as to the author of a media statement in his email to her of 15 October 2015.
- [308] The pre-existing divisions between certain Aldermen, Mr Brooks and Ms Iskandarli were exacerbated by Ald Johnston legitimately raising conflict of interest concerns.
- [309] External legal advice received by Mr Brooks from Mr Curtis, which identified conflict of interest risks associated with Ms Iskandarli's involvement in the GMPRC, does not appear to have been disclosed to Council, and does not appear to have been acted upon.

3.3. 2016

Timeline of events

16 February 2016	GMPRC Meeting
26 February 2016	GMPRC Meeting – Assessment of General Manager's performance for the period 3 January 2015 – 2 January 2016 commenced
29 July 2016	GMPRC Meeting – Committee notes difficulty with timing of performance reviews
16 September 2016	GMPRC Meeting – Assessment of General Manager's performance for the period 3 January 2015 – 2 January 2016 finalised
26 September 2016	Council Meeting – Council resolves to review Clause 5.3 of the General Manager's Contract of Employment
Unknown date	Mr Brooks provides his contract of employment to his legal representative, Mr Justin Zeeman
15 November 2016	Huon Valley Council General Manager Ms Simone Watson has her employment terminated by the Commissioner for Huon Valley Council, Ms Adriana Taylor
17 November 2016	Mr Brooks makes amendments to his contract of employment
21 November 2016	GMPRC Meeting – Committee resolves to request that the Mayor convene a Special Council Meeting
22 November 2016	Mr Zeeman makes amendments to Mr Brooks' contract of employment

23 November 2016	Mr Zeeman makes further amendments to Mr Brooks' contract of employment
27 November 2016	Ms Iskandarli makes amendments to Mr Brooks' contract of employment
29 November 2016	Mr Brooks makes further amendments to his contract of employment
1 December 2016	Mr Zeeman makes further amendments to Mr Brooks' contract of employment
1 December 2016	Special Council Meeting Agenda is distributed to all Aldermen, recommending that Council ' <i>ACCEPT and APPROVE the amendments</i> ' to Mr Brooks' contract of employment
1 December 2016	Ms Iskandarli emails Ald Slade with an attached copy of a draft report for the Special Council Meeting, recommending ' <i>That amended clauses of [Mr Brooks' contract of employment] be accepted and approved</i> '
2 December 2016	Then Acting Director of Local Government advises Ms Iskandarli of a complaint made against her
3 December 2016	Ms Iskandarli makes further amendments to Mr Brooks' contract of employment
3 December 2016	Ms Iskandarli emails all Aldermen, attaching the GMPRC Chair Report
3 December 2016	Ald Slade requests Ms Iskandarli to retain an external legal representative to review Mr Brooks' contract of employment (and amendments)
4 December 2016	Mr Dilger emails Ald Slade, attaching Mr Brooks' contract of employment containing comments on amendments
5 December 2016	Ald Slade instructs Mr Dilger to reduce his comments on Mr Brooks' contract of employment
5 December 2016	Ms Iskandarli emails all Aldermen, attaching Mr Brooks' contract of employment with reduced comments by Mr Dilger
5 December 2016	Ald Johnston adjourns the Special Council Meeting
8 February 2017	Minister for Planning and Local Government suspends Aldermen for a period of six months
8 February 2017	Minister appoints Ms Sue Smith as Commissioner for Glenorchy City Council

Evidence

1 **Performance Review 3 January 2015 – 2 January 2016**

- [310] The process for undertaking reviews of Mr Brooks' performance as General Manager is set out in his contract of employment.¹¹⁰
- [311] In its current form Mr Brooks' contract provides for three types of review each year – two six monthly reviews and an annual review.
- [312] The GMPRC commenced the review of Mr Brooks' performance for the period 3 January 2015 – 2 January 2016 in its meeting of 26 February 2016. This involved assigning a score against each of Mr Brooks' Key Performance Indicators.

¹¹⁰ Specifically, Part 5 of the Contract of Employment.

- [313] Ald Dunsby's evidence is that the Committee's assessment of Mr Brooks' performance during that meeting was such that he had failed to achieve many of his KPI's:

... the KPI achievement was a yes/no. So if it was a yes, it got 20 per cent, if it was a no, it should've been zero. There was no other, so he – he started to kick back the first two and then we started getting no, no, no, no and so they were looking and they've got panicky and they said "No this isn't looking right, this isn't right, we'll adjourn this meeting and we'll come back". So the meeting was adjourned.

...

So they could see that he was going to fail that, so when we came back they were – I call it the 50 shades of no, so we had to do a rating. Stuart Slade had come through and said we'll do a rating of 1 to 5, you know, so if you think he's got it nearly all there and it's only because of a staff member well we'll give him a rating, so we'll give him 4 out of 5, you know, they would all rate them. So I went through and where he had met it, I said yes, agreed with that, but every other one – and they asked me to give him a rating, I'd rated him zero, because the KPI was very clear, it was yes/no, if he didn't meet it, it was a no, so there was no – yeah, so – I called it 50 shades of no.

- Q. *So why were they in a panic about it, like what –?*
- A. *When they started to see all the no's happening, they realised he wasn't going to make any performance bonus, that he wasn't going to -*
- Q. *But why – why is that their problem, why are they worried about that?*
- A. *Because they wanted him to get his performance bonus obviously.*
- Q. *Why would they want that?*
- A. *Because he's their mate.¹¹¹*

- [314] No records of the 'no' scores by the committee, as referenced by Ald Dunsby above, have been located.

- [315] The KPI Document¹¹² notes the following in relation to the measurement of the KPI's:

Measurement

A percentage weighting is provided for each Key Result Area. Key Performance Indicators under each Key Result Area are weighted equally.

Objective Key Performance Indicators are measured as absolute measures. A 'Yes' outcome means that the requirement of the KPI has been achieved.

Subjective Key Performance Indicators are measured by aggregating the results of all feedbacks for each KPI. The points for each KPI response are added together and compared against the total points available for from all respondents to produce a

¹¹¹ Interview with Ald Dunsby, pp. 25-30.

¹¹² General Manager KPIs – for the 12 months to 2 January 2016.

percentage. All KPI results are then added together and averaged to provide an overall rating for the Key Result Area. 'Don't know' / '9' ratings are ignored.

- [316] The document contains a table listing each Objective KPI, its timeframe and a Yes/No section for the 'KPI Achievement'. An additional table, listing the Subjective KPI's, provide for a range of six responses – Strongly Disagree, Disagree, Neither Agree nor Disagree, Agree, Strongly Agree or Don't Know.
- [317] On 26 September 2016 Ms Iskandarli sent an email to Mr Brooks and all Aldermen attaching the 'Report of the Outcome of the General Manager's Annual Performance Review'. The report states in part:

As a result of the review of the General Manager's Annual Performance the GMPRC made recommendations to Council to pay the General Manager 60% out of the \$30,000 "at risk" component (Performance Bonus) under the COE. This was calculated as follows:

The overall score against the Objective KPIs out of 80% was 60.75%

The overall score against the Subjective KPIs out of 20% was 16.21 which in total is 76.96%. The overall calculations table is attached to the report.

- [318] Ms Iskandarli explained at interview that the table attached to the report was compiled by a council staff member. The figures in the table are derived from scores given by the committee members against each KPI. In her email providing the table to Mr Brooks and the GMPRC members, Ms Iskandarli states:

Dear all,

I refer to our meeting today 16 September 2016 and as requested I now send you the revised calculated figures of the "At Risk" component of the General Manager's Salary Package that I have just received from [staff member].¹¹³

- [319] For example, KPI 1 is assigned a weighting of 20%, and is broken into three sections, worth 10%, 5% and 5% respectively. If a committee member had scored Mr Brooks as having fully achieved this KPI, the table would show scores of 10, 5 and 5 against the three parts of KPI 1, which would total to the full 20% for that KPI.
- [320] The KPI document states that the Objective KPI's '*are measured as absolute measures*'. This would mean, for instance, that in relation to the first part of KPI 1, which is weighted at 10%, the committee members could score Mr Brooks at 0 if he did not achieve it, or 10 if he did. The scoring methodology as described on the KPI document does not provide for any score in between. Similarly for the second part of KPI weighed at 5%, the only possible scores would be 0 or 5.
- [321] This methodology does not appear to have been applied in compiling the table however. For example, KPI 5, weighted at 10% is divided into two 5% sections. The first section, rather than comprising of scores of either 0 or 5, shows 5, 0, 4, 3 and 3.
- [322] It is noted that on 9 October 2016 Ms Iskandarli emailed a copy of the amended minutes for the GMPRC Meeting of 29 July 2016. Those minutes record Mr Brooks' KPI scores for the period 3 January 2015 – 2 January 2016 as 61% for the Objective

¹¹³ Email from Ms Iskandarli to Mr Brooks, Ald Lucas, Ald Slade, Ald Branch-Allen and Ald Dunsby, 16 September 2016.

KPI's and 16.59% for the Subjective KPI's. These do not match the figures of the report emailed by Ms Iskandarli to Mr Brooks and all Aldermen on 26 September 2016, which related to the same performance review.

- [323] The Board of Inquiry's draft report makes reference to Ald Dunsby's evidence that the methodology in measuring the KPI's was changed in order to ensure Mr Brooks received a performance bonus:
- [324] In relation to this issue the report cites Ald Slade's second hearing (among other sources). The notes of Ald Slade's second hearing contain the following:

In terms of not meeting the threshold that would trigger the GMs bonus, Ald. Slade said that at the February 2016 meeting the issue was that some documents that were due to be delivered by the GM were not produced on time. One alderman would not give a graduated score because of this so they altered the methodology for assessment. They did this after running the KPIs by Ian Neilson [sic] who recommended the changes.

- [325] The report also cites Ms Iskandarli's evidence, and states that the report provided to Council for its meeting of 26 September 2016 contradicts Ms Iskandarli's evidence.
- [326] The document relied upon by the Board in making the above statement is the agenda for the Council Meeting of 26 September 2016. The agenda includes Item 26 – Annual Performance Review of the General Manager', however it does not appear to make any reference to the methodology applied in assessing Mr Brooks' performance beyond the recommendation that he receive the payment of 60% of his 'at risk' performance bonus.
- [327] It is likely that the reference in the draft report is in relation to the report that Ms Iskandarli emailed to Mr Brooks and all Aldermen on 26 September 2016 – the 'Report of the Outcome of the General Manager's Annual Performance Review'. That document contains the following:

After review of the General Manager's KPIs for the period 3 January 2015 to 2 January 2016 the GMPRC agreed to make amendments to the KPIs to be applied for next KPI Review. The amended KPIs for the period 3 January 2016 to 2 January 2017 were agreed after consultation between the General Manager and the GMPRC and were approved by the Council at its meeting on 29 August 2016. The amendment was the word "Partial" has been added to "Yes/No" in the "KPI Achievement" column in Objective KPIs. A 'Partial' outcome means that the requirement of the KPI has been substantially progressed but not completed within the agreed timeframe for the reasons beyond the General Manager's control. 'Substantially progressed' means that there is evidence that progress has been made and the extent of that progress is sufficient to establish that the KPI will be completed in accordance with a revised timeframe.¹¹⁴

- [328] This passage however, clearly states that the amended assessment methodology is to be applied to the following annual performance review, for the period 3 January 2016 to 2 January 2017.

¹¹⁴Report of the Outcome of the General Manager's Annual Performance Review.

[329] Further, the relevant section of Ald Slade's hearing before the Board of Inquiry was reviewed, and contains the following discussion:

- Q. *The Board has heard that the General Manager's performance against the original KPI's set by the GMPRC for 2015 did not meet the threshold that would trigger his bonus. Is this correct?*
- A. *Would not meet the threshold, I don't understand.*
- Q. *Well we believe that the General Manager has to achieve a certain percentage amongst his KPI's before his performance bonus is able to be initiated.*
- A. *Oh I see, like a risk component. That's correct.*
- Q. *The risk component, yeah. So they didn't – his KPI's for 2015 did not meet that trigger?*
- A. *No, back in the February meeting the issue there was, was the fact that for whatever reason the documents would have something like a date – might be 'September/October Strategic Plan concludes by' or something of that nature. And it might of only been 90% done or something like that. I had no issue, I felt that you could make a judgement call on that but one Alderman had an issue that that should be zero, and you – because of the fact that it wasn't 100% completed.*
- Q. *So you changed the KPI's so that you could assess it on –*
- A. *They're KPI's, but that's in accordance to the General Manager going to his own solicitor and then us agreeing to that and then we [ran] that by a independent HR person, Mr Ian Nelson, a HR consultant in Hobart it's not like I just pulled them out of the sky.*
- Q. *So Mr Nelson recommended some changes to the methodology?*
- A. *That's correct.*
- Q. *So the methodology was changed, was that taken to Council to get the whole of Council approval to change the KPI's – the methodology?*
- A. *I believe it was.¹¹⁵*

[330] Consideration of the documentary evidence, particularly email correspondence occurring around the time of the annual performance review being completed, suggests that Ald Slade may have confused a number of issues in his evidence to the Board. In particular, his reference to Mr Nelson appears to relate to advice the GMPRC sought from Mr Nelson about the measurement of Mr Brooks' KPI's for the period 3 January 2016 to 2 January 2017. Mr Nelson's advice in relation to that matter did result in a new assessment methodology, however this did not relate to the period that the Board asked Ald Slade about.

¹¹⁵ Ald Slade hearing before the Board of Inquiry, 5 September 2016.

[331] Ald Slade's evidence that 'one Alderman had an issue that that should be zero' appears to refer to the relevant period, and Ald Dunsby's issue that the relevant KPI's could only be answered in absolute terms.

[332] Finally, the Board cites a passage contained in the Minutes of the GMPRC Meeting of 29 July 2016 which states:

Some of the outputs in the KPIs did not meet the target dates as the Committee acknowledged that those items have been partially completed because of the matters that the General Manager was dealing with and heavily involved in which prevented him or delayed him from completing them 100%, such as Board of Inquiry.

The Committee agreed that it would be unfair and unreasonable for the Committee not to take into account these external factors and penalise the General Manager in the review of his performance.¹¹⁶

[333] During his hearing before the Board of Inquiry Ald Slade was asked whether or not Mr Brooks would have obtained a performance bonus had the methodology applied in the assessment of the KPI's not been changed:

Q. *If [the KPI assessment] hadn't have changed the General Manager would not have made the grade and would not have achieved any performance bonus dollars at all?*

A. *There's a fair chance that that would've been the case.¹¹⁷*

[334] The move from measuring the Objective KPI's as 'absolute' to 'partial' ultimately resulted in Mr Brooks being paid a bonus of \$18,000.

2 Review of Contract of Employment

[335] In its meeting of 29 July 2016 the GMPRC noted concerns in relation to the operation of Clause 5 (relating to the various performance reviews) of Mr Brooks' contract of employment. The minutes for that meeting state:

The Director [Ms Iskandarli] briefed the Committee about the confusion and unfortunate construction of Clause 5 of the CoE (Performance) and advised that interpretation of Clause 5 is that there needs to be 3 performance reviews of the General Manager, 1 performance reviews [sic] every 6 months, and one performance review annually.

The Director also explained that the timeframe of the annual performance review under the CoE is creating issues in relation to the General Manager's KPIs timeframe as the CoE refers to the financial year but the KPIs to calendar year, and this miscommunication between 2 key instruments must be resolved by way of amending Clause 5 or clarifying Clause 5 in the CoE.¹¹⁸

[336] This issue was subsequently raised in the Council Meeting of 26 September 2016, where Council resolved:

¹¹⁶ Minutes of the General Manager's Performance Review Committee Meeting, Friday 29 July 2016, p. 6.

¹¹⁷ Ald Slade hearing before the Board of Inquiry, 5 September 2016.

¹¹⁸ Minutes of the General Manager's Performance Review Committee Meeting, Friday 29 July 2016, p. 4.

That Council and the General Manager seek their own legal advice in the clarification and amendment, if necessary, of clause 5 of the Contract of Employment between Glenorchy City Council and the General Manager with the agreement of both parties.¹¹⁹

- [337] Sometime after the resolution Mr Brooks provided a copy of his contract of employment to his personal lawyer, Mr Justin Zeeman.
- [338] Throughout November and early December 2016 Mr Brooks, Mr Zeeman and Ms Iskandarli individually made amendments to the contract of employment.
- [339] On 15 November 2016 Mr Harrison sent an email to Mr Brooks and Ms Iskandarli:

Hi Peter / Seva,

I see that Adriana Taylor have [sic] moved to sack Simone Watson as GM of the Huon Valley Council. So we know who's [sic] side she is taking.¹²⁰

- [340] The Minister appointed Ms Taylor as Commissioner of Huon Valley Council in October 2016. Ms Taylor's appointment followed a Board of Inquiry process and subsequently the dismissal of all Huon Valley councillors.
- [341] Mr Zeeman's amendments cover clauses 1, 2, 3, 4, 5, 6, 8 and 11. The most substantial of Mr Zeeman's amendments relate to clauses 5 (Performance) and 11 (Termination).
- [342] Mr Zeeman's most significant amendment was the insertion of clause 11.1(d), which replicates the existing content of clause 11.6(a). Clause 11.6 relates to 'Termination Due to Local Government Restructure' and provides for Mr Brooks to receive additional termination payments should his employment with the council end due to things such as the adjustment of municipal boundaries or the amalgamation of Glenorchy City Council.
- [343] Clause 11.1 relates to 'Termination by GCC with Notice'. The effect of Mr Zeeman's creation of clause 11.1(d) would be that if Mr Brooks' employment was terminated under clause 11.1 he would be entitled to a payment covering the remaining term of his contract, or twelve months salary, whichever is greater in addition to a possible payment by the Council in lieu of 12 months' notice.
- [344] Mr Brooks made a similar edit to the contract by creating clause 11.3(d), which also replicates the existing content of clause 11.6(a).
- [345] The effect of Mr Brooks' amendment would be that he would be entitled to the same payments as noted above in respect of Mr Zeeman's amendment, should Mr Brooks' employment be terminated for poor performance.
- [346] In total, the contract appears to have been edited by:
 - Mr Brooks on 17 November 2016;
 - Mr Zeeman on 22 November 2016;

¹¹⁹ Minutes of the (Closed) Meeting of Glenorchy City Council, Monday 26 September 2016, p. 21.

¹²⁰ Email from Mr Harrison to Mr Brooks and Ms Iskandarli, 15 November 2016.

- Mr Zeeman on 23 November 2016;
- Ms Iskandarli on 27 November 2016;
- Mr Brooks on 29 November 2016
- Mr Zeeman on 1 December 2016; and
- Ms Iskandarli on 3 December 2016

[347] In addition to the 'Performance' and 'Termination' sections of the contract, the remaining amendments predominantly relate to 'General Manager's Duties', 'Remuneration' (relating specifically to professional fees, conference attendance and professional development), 'Leave' and 'Expenses'.

[348] When Mr Brooks' contract was amended in 2014 by Ms Iskandarli, one of her changes was to Item 3 of Schedule 1. The item originally stated that Mr Brooks reported to the Council, and was changed at that time to make Mr Brooks report to the Mayor (who was Ald Slade at that time).

[349] Ms Iskandarli was asked at interview why the review of Mr Brooks had extended beyond the Council resolution of 26 September 2016:

Q. ...[Could you] provide any insight as to why the review went beyond clause 5 ... certainly the council resolution [was] that they'd review clause 5 only, and then the resulting version of this contract, which has got reviews all the way through, particularly clause 5 and clause 11 seem to have been amended quite heavily. Do you know anything about why that was done?

A. I'm glad that you reminded – reminded me about that – those changes. To answer your question no, I don't know why the General Manager went beyond clause 5.

*Obviously it is the General Manager's decision that after talking to his lawyer they felt whatever they felt at the time to review the other clauses.*¹²¹

[350] Ald Slade was also asked about the expanded review of the contract:

I – this is just roughly my mind – I feel that Mr Brooks' lawyer wanted some changes on his behalf. That's all I can really add to that.

...

*I certainly drew the inference that there may've been other parts there that Mr Brooks may've wanted to put up but of course that will have to come back to the committee.*¹²²

[351] When asked at interview why the review went beyond clause 5, Mr Brooks claimed privilege in that the issue related to communication between he and his legal representative.

¹²¹ Interview with Ms Iskandarli, p. 67.

¹²² Interview with Ald Slade, pp. 33-34.

- [352] Mr Brooks was also asked why he inserted clause 11.3(d) into his contract, however he refused to answer, claiming privilege against self incrimination.
- [353] Mr Brooks emailed the amended copy of his contract to Ms Iskandarli on 1 December 2016.
- [354] Also on 1 December 2016 Ms Iskandarli emailed Ald Slade attaching a draft report from the GMPRC to Council for its Special Meeting of 5 December 2016:

Dear Stuart,

As requested, please see attached a proposed draft Report to the Special Council Meeting of 5 December 2016 about the outcome of the GMPRC meeting on 21 November 2016.

As requested I have prepared this report on your behalf and subject to your review, changes and approval this report will be published with the Agenda today 1 December 2016.

*I await your advice and approval on the **proposed draft Report**.*¹²³

- [355] The attached draft report contains the following:

*At the 21 November 2016 GMPRC meeting GMPRC has been advised that to implement the Council's decision the COE has been reviewed by the General Manager's personal lawyer and a review was undertaken by the Director Corporate Governance & General Counsel on behalf of Council. At the time of publishing the Agenda for the 5 December 2016 Special Council Meeting the review of the COE was in the process of being finalised.*¹²⁴

- [356] Also contained in the draft report is the following recommendation:

Council adopts the following recommendations from the General Manager's Performance Review Committee:

*(b) That amended clauses of the Contract of Employment between Glenorchy City Council and General Manager, Mr Peter Brooks, be accepted and approved.*¹²⁵

- [357] Later on the same date (1 December 2016), Aldermen were provided with Notice of the Special Meeting, the Agenda for the meeting and its associated attachments, via the Council's 'Docs on Tap' software.
- [358] The Agenda for the Special Meeting contains a similar passage in relation to the review of Mr Brooks' contract of employment:

At the 21 November 2016 GMPRC meeting, the GMPRC was advised that in accordance with Council's resolution of 26 September 2016, the COE has been reviewed by the General Manager's personal lawyer. A review has also been undertaken by the Director, Corporate Governance and General Counsel on behalf of Council.

¹²³ Email from Ms Iskandarli to Ald Slade, cc'd Mr Brooks, 1 December 2016.

¹²⁴ Report to the Special Council Meeting – 6 monthly performance appraisal, attached to email from Ms Iskandarli to Ald Slade, cc'd Mr Brooks, 1 December 2016.

¹²⁵ Ibid.

At the time of publishing the Agenda for the 5 December 2016 Special Council Meeting, the review of the COE was in the process of being finalised.

...

Recommendation:

That Council:

...

(b) ACCEPT and APPROVE the amendments to the Contract of Employment between Glenorchy City Council and General Manager, Mr Peter Brooks¹²⁶

- [359] On 2 December 2016 then Acting Director of Local Government, Mr Greg Brown, emailed Ms Iskandarli to advise that he had received a complaint about her:

Dear Ms Iskandarli

I am writing to advise that I have today received a formal complaint made against you under section 339E of the Local Government Act 1993 (the Act). The allegation is that you may have breached section 55 of the Act by failing to notify the general manager, in writing of having an interest as referred to in section 49 in the matter of the general manager's 6 monthly KPI review.

My preliminary view is that it is likely that I will accept the complaint for formal investigation.

As this is a matter that is on the agenda for the special Council meeting that is to be held in closed session on Monday, 5 December 2016, and you are the author of the reporting brief to the Council and potentially the recommendations to Council, I strongly recommend that you carefully consider whether you have an interest in the matter, as defined in sections 55, 49 and 51 of the Act. If you have an interest in the matter, you must notify the general manager, in writing of having an interest. The general manager is to advise the Council of the existence of any interest and keep a register of any such interest.

You may wish to seek legal advice regarding the allegation. I will continue to consider the complaint and I will advise you in writing if I decide to accept the complaint for formal investigation.¹²⁷

- [360] Shortly after Mr Brown's email to Ms Iskandarli, Ald Stevenson sent an email to Ald Slade:

Dear Stuart,

I note the content of the report (except some attachments which have not yet been provided) for the special council meeting next Monday.

I have concern about two items, however both relate to the clear conflict of interest I see that the Director of Corporate Governance and General Counsel has in providing advice on the GMPRC, and the General Manager CoE.

¹²⁶ 5 December 2016 Special Council meeting Agenda.

¹²⁷ Email from Mr Brown to Ms Iskandarli, 2 December 2016.

My suggestion is that until this conflict is rectified, and independent advice provided, the item for the Council meeting be withdrawn.

*I hope you consider my concern seriously, and withdraw the item.*¹²⁸

- [361] Ald Slade forwarded Ald Stevenson's email to Mr Brooks and Ms Iskandarli with the comment:

*Unbelievable, any suggestions regarding response.*¹²⁹

- [362] On the evening of 2 December 2016, Ms Iskandarli forwarded Mr Brown's email to Ald Slade with the comment:

Dear Stuart,

*Please see the email below and I would like to bring this to your attention as the Chair of the GMPRC who requested me to write the report and authorised the Report to Council.*¹³⁰

- [363] On 3 December 2016 Ald Slade emailed Ms Iskandarli with:

Good morning Seva

*As the Chair of the General Manager's Performance Review Committee (GMPRC), could you please engage an independent lawyer to undertake a review of the Contract of Employment (COE) between the Glenorchy City Council (GCC) and the General Manager on behalf of GCC.*¹³¹

- [364] Ms Iskandarli then emailed Mr David Dilger of Page Seager Lawyers:

In order to implement Council's decision [of 26 September 2016 to review clause 5 of Mr Brooks' contract of employment] Mr Peter Brooks, the General Manager, has engaged his own personal lawyer, Mr Justin Zeeman, to review the CoE. I have received the revised CoE on Thursday 1 December 2016

As requested by the GMPRC, on behalf of the Council as the General Counsel, I have reviewed the CoE. However, unfortunately yesterday 2 December 2016, Alderman Slade has received an email from Alderman Stevenson alleging that as the Director Corporate Governance & General Counsel I have an interest in the matter and that Alderman Slade should refer the matter to an independent lawyer, this was also raised by the Mayor, Alderman Johnston.

Although the alleged conflict of interest matter has been considered and discussed at the Council Meetings previously, and I have provided Council legal advice, including from an external lawyer, the Mayor is declining to accept the advice including from the independent lawyer. I do not want to speculate but the reason for this is the current unfortunate political circumstances and nothing else. It is useful to advise that the majority of the Council has accepted the advice in relation to the alleged conflict of interest.

¹²⁸ Email from Ald Stevenson to Ald Slade, cc'd Ald Johnston, 2 December 2016.

¹²⁹ Email from Ald Slade to Mr Brooks and Ms Iskandarli, 2 December 2016.

¹³⁰ Email from Ms Iskandarli to Ald Slade, cc'd Mr Brooks, 2 December 2016.

¹³¹ Email from Ald Slade to Ms Iskandarli, 3 December 2016.

From the good governance point of view and as a professional lawyer I have advised the Chair of the GMPRC to refer the matter to an independent lawyer to avoid this bizarre situation which was created by a couple of Aldermen.¹³²

- [365] Also on 3 December 2016 Ms Iskandarli emailed all Aldermen attaching a copy of the ‘GMPRC Chair’s Report – (6) monthly GM’s KPI Review’. The report also contains material relating to the review of Mr Brooks’ contract of employment:

At the 26th September 2016 Council Meeting, Council decided to review the COE between the GCC and the GM. The GMPRC received advice from the GM that he had engaged his own lawyer to start the process. The GCC’s Director Corporate Governance & General Counsel advised Council that she has reviewed clause 5, but she will undertake a further review once she received the revised COE from the GM’s lawyer.

...

The GMPRC recommends to Council:

...

2. To present the revised COE to Council for Council’s decision.¹³³

- [366] Also attached to Ms Iskandarli’s email are two versions of Mr Brooks’ contract of employment. The ‘track changes’ version shows the amendments by Mr Brooks, Mr Zeeman and Ms Iskandarli as tracked changes. It does not identify the author of the changes. The ‘cleaned version’ shows the contract with all of the amendments accepted.

- [367] Ald Slade was asked about the slight difference in recommendations between Ms Iskandarli’s draft (*‘ACCEPT and APPROVE the amendments to the Contract of Employment...’*) and his report (*‘To present the revised COE to Council for Council’s decision.’*):

Q. *So I note that you haven’t actually said in your report that you’re recommending that Council actually approve the contract?*

A. *Well I have by the introduction at the top there.*

...

Q. *... the GMPRC was recommending that Council adopts that new version of the contract?*

A. *In my words I’m saying that the GMC recommends to the Council, one, two and three and I’ve – and I’ve put it in that terminology.¹³⁴*

- [368] The following day, 4 December 2016, Mr Dilger – acting on behalf of the Council - emailed Ald Slade attaching a reviewed copy of Mr Brooks’ contract. Mr Dilger’s review involved adding comments to relevant parts of the contract.¹³⁵

¹³² Email from Ms Iskandarli to Mr Dilger, cc’d Ald Slade, 3 December 2016.

¹³³ GMPRC Chair’s Report – (6) monthly GM’s KPI Review.

¹³⁴ Interview with Ald Slade, pp. 46-47.

¹³⁵ Email from Mr Dilger to Ald Slade, 4 December 2016 attaching comments on amended contract of employment.

- [369] Mr Dilger’s review recommended the removal of Clause 11.1(d), which had been inserted by Mr Zeeman, and Clause 11.3(d) which Mr Brooks had inserted. Mr Dilger added comments against each clause. In relation to Clause 11.1(d), Mr Dilger stated:

I will need further instructions from you. The clause is [sic] currently proposed provides for an additional payment to the proposed 12 months notice already provided for. This could be quite significant in terms of payments for the remainder of the term of the GM's contract (ie up to 5 years). This would require some significant consideration because as currently written it significantly increases the payment to be made to the GM in light of termination. The termination provisions by the GM are a lot less in comparison to the obligations as they are seeking against GCC.

- [370] In relation to Clause 11.3(d) Mr Dilger stated:

Recommendation – reject. I consider these to be a significant extension and unreasonable. Where an employee has been terminated via a performance review process that they have requested it is unreasonable that they receive a payment which effectively could be up to 5 years (ie to the end of a term). There is some inconsistency in them seeking protection via a more formalised performance review process but then at the same time seeking considerable extensions of payment to the GM for any termination.

- [371] On the morning of 5 December 2016 Ald Slade and Ms Iskandarli attended a teleconference with Mr Dilger in relation to his review of the contract.¹³⁶

- [372] Following the teleconference, Ald Slade replied to Ald Stevenson’s email of 2 December 2016:

Dear Matt,

I note your email sent on 02/12/2016 and I am at a loss to understand your comments.

I will not be withdrawing the recommendations from the Council Agenda for a number of reasons:

Conflict of Interest

Firstly, your so called “conflict of interest” has already been dealt with at a Council Meeting as part of a Question on Notice and based on internal and external legal advice. We must have respect for qualified people’s advice and move on.

If you disagree with that you should seek your own legal advice or vote against the recommendations as this is the correct way of dealing with the matter.

Your disagreement about the GMPRC recommendations does not require me to withdraw them.

Secondly, it is the role of GCC’s General Counsel to provide advice to Council at Aldermanic or organisational levels about any legal or governance related matters. This is a well accepted and normal process in many organisations. The Director of Corporate Governance and General Counsel is a well qualified lawyer with a number of years experience in the legal and governance fields. It is her role under her CoE

¹³⁶ See email from Ms Iskandarli to Mr Dilger, 5 December 2016.

and Position Description to provide legal advice and governance advice to Aldermen and Council. As part of this role she will provide advice to the GMPRC about legal matters on behalf of Council.

Once again I remind you of the DCGGC's role for the GMPRC:

1. Prepare the Agenda for the GMPRC, for when it meets,
2. Set up the Meeting dates,
3. Record the Minutes of the GMPRC meetings,
4. Prepare other administrative duties, and
5. Sometimes provide advice about legal matters to the GMPRC, such as the 21/11/2016 GPRMC [sic] meeting when the GMPRC asked for legal advice about how to convene a Special Council Meeting and the DCGGC provided the advice.

I trust you are not inferring that the GMPRC should involve a Council administrative officer to carry out this important role which is clearly the role of the DCGGC.

She does not participate in and in fact does not remain in the meeting room when the GMPRC is deliberating or having discussions about the General Manager's performance. This is clearly the role of the GMPRC who are hard working members. I am at a loss to understand how preparing the Agenda and taking Minutes will create a COI. I once again remind you that DCGGC is in fact complying with the requirements of the LGA and its Regulations.

Contract of Employment between GCC and the General Manager

It has also been discussed a number of times that the GM has his own personal legal adviser to review CoE on his behalf or advise him any other legal issues. The DCGGC is reviewing the CoE on Council's behalf. She worked on this CoE in 2014 on behalf of Council as well. How would the review of the CoE on Council's behalf, and at the request of GMPRC, create a COI when the GM has his own lawyer acting for him? Nevertheless, as always the DCGGC acts professionally and advised me to refer the review of the CoE on Council's behalf to an independent lawyer. I congratulate the DCGGC for this professional advice. On my request the DCGGC engaged Mr David Dilger of Page Seager Lawyers, a very experienced employment lawyer, to review the CoE on behalf of Council. I also had a further teleconference with Mr Dilger this morning giving him instructions as the Chair of the GMPRC. I am expecting Mr Dilger's advice very shortly and will forward it to Council as soon as I receive it. On 3/12/2016 the DCGGC has circulated to you the comments from the GM's lawyer, Mr Justin Zeeman of Malthouse Chambers.

The Report in the Agenda for the 5/12/2016

This report was prepared by me and I asked the DCGGC to assist me by putting it into the InfoCouncil format and refer to the correct clauses of the CoE as mentioned in the report. The comments in the report are detailed discussion and deliberations of the GMPRC at the 21/11/2016 meeting. The recommendations are the GMPRC's, not the DCGGC's recommendations. The fact that the DCGGC's name appeared in the report as author is an administrative error.

The GMPRC has met on 21/11/2016 to review the GM's (6) monthly performance. We had members who were sick but nevertheless committed to attend the meeting to review the GM's performance and make their deliberations. Due process has been followed under the CoE and from the good governance point of view in this whole process to review the GM's performance. Even though it is not required under the CoE, the GMPRC agreed to bring the outcome of the review to Council. I note that on 3/12/2016 at my request the DCGGC has circulated to Council my, the Chair's report, about the outcome of the (6) monthly KPI Review. Therefore, I am very disappointed with the criticisms from you every time despite the hard work of the good people on the GMPRC.

...

I invite you to reconsider your comments and show respect to hard working Council's employees the way they respect you and let us move on from these nonsensical comments.¹³⁷

- [373] Having received further instructions, Mr Dilger emailed Ald Slade and Ms Iskandarli with:

Dear Alderman Slade

Thank you for your time this morning.

Please find attached my tracked changed review of the contract of employment for your review and consideration.

Following your further and additional instructions I have amended the document in the following manner:

- a) Reduced the commentary (in the main) to either recommendations of accept or reject. Where you are seeking additional advice or commentary please refer to the earlier documents for initial advice or provide a request for further advice;¹³⁸*

- [374] The attached version of Mr Brooks' contract of employment contains amended comments from Mr Dilger, in accordance with the instructions from Ald Slade referenced in the email above. In relation to Clause 11.1(d), Mr Dilger's amended comment reads:

Recommendation – Reject subject to further instructions.

- [375] In relation to Clause 11.3(d) Mr Dilger states:

Recommendation – Reject.

- [376] Ms Iskandarli emailed all Aldermen afterwards, attaching the copy of Mr Brooks' contract of employment containing Mr Dilger's reduced commentary. In her email Ms Iskandarli states:

¹³⁷ Email from Ald Slade to Ald Stevenson, cc'd all Aldermen, Mr Brooks and Ms Iskandarli, 5 December 2016.

¹³⁸ Email from Mr Dilger to Ald Slade, cc'd Ms Iskandarli, 5 December 2016.

I have advised the Chair to refer the review of the CoE to an independent lawyer who agreed with the advice. At the request of the Chair I have engaged Mr David Dilger of Page Seager Lawyers to review the CoE on Council's behalf.¹³⁹

- [377] Shortly before the Special Council Meeting, Ms Iskandarli sent a further email to Mr Brooks and all Aldermen:

Aldermen,

I am formally advising you that I am withdrawing myself from today's Special Council Meeting, 5 December 2016.

I am taking this action because on Friday 2 December 2016 I have been advised by DPAC that they have received a complaint under section 339E of the Local Government Act 1993 alleging that I have a conflict of interest in relation to the "the general manager's 6 monthly KPI review".

This matter has been discussed and dealt with a number of times in Council Meetings and in GMPRC Meetings, and I once again absolutely deny any conflict of interest in relation to my functions for the GMPRC as the Director Corporate Governance & General Counsel.

I hereby categorically state that my withdrawal from today's Special Council Meeting does NOT constitute any admission by conduct that I have such alleged conflict of interest. I am taking this action as a professional lawyer in view of the complaint made to DPAC.¹⁴⁰

- [378] Ms Iskandarli forwarded her email above to Mr Brown on 6 December 2016 with the comment:

Dear Greg

I refer to your email of 2 December 2016.

I acknowledge receipt of your email and advise as follows:

- 1. I have already declared a perceived interest, and denied, with the General Manager as required under section 55 of the Local Government Act 1993 a number of months ago.*
- 2. I withdrew my attendance from the 5 December 2016 Special Council Meeting, a copy of the email is attached.*
- 3. I absolutely deny any conflict of interest in my function for the General Manager's Performance Review Committee.*
- 4. My name in the report as an author was an administrative error as the reports to Council is [sic] prepared by the Chair of the GMPRC, Alderman Slade.*

I have engaged my lawyers to address your so called conflict of interest complaint and in the meantime from the procedural fairness and natural justice points of view I

¹³⁹ Email from Ms Iskandarli to all Aldermen, 5 December 2016.

¹⁴⁰ Email from Ms Iskandarli to Mr Brooks and all Aldermen, 5 December 2016.

request that the particulars of claim in detail be sent to me so my lawyers can respond to the alleged conflict of interest from Mayor Johnston.

*I request those particulars of claim be sent to me as a matter of urgency.*¹⁴¹

[379] Ms Iskandarli also stated at interview that she had declared a conflict of interest as required by the *Local Government Act 1993*.¹⁴²

[380] The register of interests maintained by the Council in accordance with ss 54 and 55 of the *Local Government Act 1993*, so far as they relate to declarations by Mr Brooks, Ms Iskandarli and Ald Slade, were provided to the Commission. They contain no reference to the declaration which Ms Iskandarli claims to have made.

3 Adjournment of Special Council Meeting

[381] The Special Council Meeting of 5 December 2016 was ultimately adjourned by Ald Johnston. Ald Johnston provided her reasons for adjournment, which include:

That there is an apparent and serious conflict of interest on the part of the Director of Corporate Governance and General Counsel that has not been disclosed and has tainted the entire agenda including the attachments.

This conflict of interest is a pecuniary conflict of interest.

The Director of Corporate Governance and General Counsel by her own admission in Council documentation has provided advice on the performance review of the General Manager and the review of the General Manager's Contract of Employment.

Furthermore the Director of Corporate Governance and General Counsel has authored the report to Council.

The Director of Corporate Governance and General Counsel is an employee of Glenorchy City Council and reports directly to the General Manager. Her performance review and continuing employment is at the discretion of the General Manager.

The Terms of Reference for the General Manager's Performance Review Committee are explicit that staff should not be involved in the activities of the Committee.

With respect to Part (a) of the recommendation I am advised at least one member of the General Manager's Performance Review Committee had not seen the Chair's Report before it was circulated to all aldermen. The Chair's Report can therefore not be said to have the endorsement of the Committee. Furthermore it is also tainted by the conflict of interest relating to the Director of Corporate Governance and General Counsel.

With respect to Part (b) of the recommendation it is recommended that Council accepts and approves the amendments.

[382] In her reasons for the adjournment Ald Johnston also articulates the effect of some of the proposed changes to Mr Brooks' contract of employment:

The variations proposed are significant and include:

¹⁴¹ Email from Ms Iskandarli to Mr Brown, cc'd Mr Brooks, 6 December 2016.

¹⁴² Interview with Ms Iskandarli, p. 76.

- *More generous notification periods for the General Manager for extension of term under Clause 2.3.*
- *The removal of the General Manager's requirement to "Comply with all lawful and reasonable directions given by GCC" under his duties specified in Clause 4.2. This effectively means that the General Manager does not have to follow any instruction given to him by Council nor implement any of its decisions.*
- *The review of Clause 5 in relation to the conduct of the performance review creates [sic] further ambiguity rather than resolves it and also provides for the General Manager more favourable notification periods.*
- *Under Clause 6.3.3, 6.3.4 and 6.3.5 the variation removes the Council's discretion to approve, or conversely not approve, the General Manager's professional fees, conference attendance, and professional development. In the variation removes references to the Mayor.*
- *Significantly more generous provisions for the General Manager in relation to his leave entitlements under Clause 8 are proposed, including the General Manager's ability to take leave at his sole discretion.*
- *Under Clause 9.1 the variation removes the Council's discretion to approve, or conversely not approve, the General Manager's reimbursement of expenses.*
- *Under Clause 11.1 the proposed variation are enormously favourable to the General Manager:*
 - *Under the existing Contract the General Manager's employment may be terminated with notice of six months or payment in lieu of notice.*
 - *Under the proposed Contract General Manager's employment may be terminated with notice of twelve months or payment in lieu AND the payment of his base salary until the expiration of his contract or twelve month equivalent which ever is greater.*
 - *In effect this means that he currently would be paid out a maximum of \$112,500.*
 - *Under the variation he would be paid out a minimum of \$450,000 or a maximum (depending on the date of termination) of \$900,000.*
 - *This gives an effective increase in payout of \$787,500.*
- *Under Clause 11.3 the proposed variation are enormously favourable to the General Manager:*
 - *Under the existing Contract the General Manager's employment may be terminated for poor performance with notice of one month or payment in lieu of notice.*
 - *Under the proposed Contract General Manager's employment may be terminated for poor performance with one month notice or payment in lieu AND the payment of his base salary until the expiration of his contract or twelve month equivalent which ever is greater.*

- *In effect this means that he currently would be paid out a minimum of \$243,750 or a maximum (depending on the date of termination) of \$693,750.*
- *This gives an effective increase in payout of \$675,000.*
- *The General Manager no longer reports to the Mayor, and has no reporting obligations to Council.*
- *The Mayor is no longer required to execute the Contract of Employment under the Council's Common Seal.*

[383] Comparison of the original contract with the proposed changes noted above confirm that Ald Johnston's calculations of the possible pecuniary benefits are accurate.

[384] After the adjournment Mr Brooks cancelled his regular meeting with Ald Johnston with the following email:

Kristie

Following your actions at the special council meeting today – I am cancelling this meeting

Peter¹⁴³

[385] Ald Johnston's adjournment of the Special Meeting appears to have predominantly arisen due to her belief that Council would accept the recommendations noted in the Agenda to approve the changes to Mr Brooks' contract of employment.

[386] The prospect of the changes being accepted was discussed with Mr Brooks at interview:

- Q. *Did you have any expectation – this probably thinking around the time of December last year – that the Council was going to approve the review of your contract?*
- A. *I had been provided with some feedback that they were not going to approve the termination clause.*
- Q. *Okay.*
- A. *Before the meeting.*
- Q. *Who gave that feedback?*
- A. *A number of Aldermen and obviously at that stage I hadn't seen the external lawyer's recommendations. So my response to them was "Well that's for you to debate and discuss, I'm comfortable if you want to change it"*
- Q. *Yeah. Which Aldermen were they, do you remember?*
- A. *I can't remember.*
- Q. *That's alright, and do you remember how they provided you with that feedback, was that –*

¹⁴³ Email from Mr Brooks to Ald Johnston, 5 December 2016.

A. *Some face-to-face and some over the telephone.*¹⁴⁴

[387] In relation to the same issue, Ald Slade stated:

Q. *Did you think it was likely to pass or hadn't thought about it?*

A. *Sorry?*

Q. *You hadn't thought about it or you didn't think it would pass, or?*

A. *Well no I didn't give much thought in relation to – I – always concerned about my thinking processes and not other people's thinking processes.*¹⁴⁵

[388] On 12 December 2016 Ald King sent the following email to Mr Brooks and Ms Iskandarli:

Peter and Seva,

It would appear to me that the Mayor and Matt [Ald Stevenson] are hellbent on saying that the both of you are corrupt!

I am prepared to offer to the Mayor in open Council, if you are found to have done the wrong thing that I will offer my resignation as long as they are prepared to do the same if you are found in the right.

This is not a stunt as I have total confidence in the both of you.

I doubt she would take the offer up.

It seems to me that she is suggesting that the auditor general is corrupt or a fool also and he should be let know.

We must not give up!

*Hope your are ok Pete. [sic]*¹⁴⁶

4 21 November 2016 GMPRC Meeting – Decision to Convene Special Council Meeting

[389] The GMPRC's meeting of 21 November 2016 resulted in a decision to request that Ald Johnston convene the Special Council Meeting discussed above.

[390] On 24 November 2016 Ms Iskandarli emailed Ald Johnston making the request:

Dear Kristie,

I am sending this email on behalf of the Chair of the GMPRC.

The GMPRC at its meeting on 21 November 2016 has unanimously agreed to request you convene a Special Meeting of Council on Monday 5 December 2016 at 12:00noon under Regulation 4 of the Local Government (Meeting Procedures) Regulations 2015.

¹⁴⁴ Interview with Mr Brooks, pp. 82-83.

¹⁴⁵ Interview with Ald Slade, p. 43.

¹⁴⁶ Email from Ald King to Mr Brooks and Ms Iskandarli, 12 December 2016.

The details of the subject matter and motion to be dealt with by the meeting are as follows:

- 1) GMPRC has reviewed the General Manager's 6 monthly performance against his KPIs and agreed to present the outcome of that to the Council;*
- 2) At the 29 September 2016 Council Meeting Council resolved to review and if necessary to amend clause 5.3 of the Contract of Employment between the General Manager and Council and GMPRC agreed that this must be presented Council for its decision;*
- 3) Due to Alderman Slade's heavy workload and other external commitments Alderman Slade has decided to step down from the Chair position and he would like to bring this to Council's attention for Council to make a decision who will be the next Chair of GMPRC.¹⁴⁷*

As these matters need urgent attention GMPRC unanimously agreed that the Chair requests a Special Meeting of Council for 5 December 2016 at 12:00noon to consider them.

On behalf of the Chair of the GMPRC could you please convene the Special Meeting of Council under Regulation 4 and request the General Manager to undertake all the necessary actions.¹⁴⁸

[391] Ald Johnston replied to Ms Iskandarli with:

Seva,

Before I agree to call a special council meeting can I please receive some clarification on the resolution of the GMPRC?

As I understand it from the detail in your email, the GMPRC met on Monday 21 November to consider the GM's 6 month performance review (January-June 2016) and specifically requested that I call a special council meeting on Monday 5 December at 12 noon. I am concerned about the accuracy of that representation you have made to me as I believe that on the 21 November all members of the GMPRC (including yourself and the GM) would have been of the view that the KGV official opening was scheduled for the same time and therefore would have been highly unlikely to request a special council meeting at that time. What I believe is more likely to have occurred is that a request was made for a special council meeting without specifying a date.

Your apparent misrepresentation of the decision of GMPRC concerns me and raises my concerns about the accuracy of other statements made on behalf of the GMPRC. Can you please confirm their accuracy?

*However, the GMPRC has already delayed the GM's performance review significantly (as well as his annual review and setting of KPIs) and it would be unfair to the GM for me to delay it any further. I am prepared to call a special council meeting on **Monday 5 December at 1pm** for the purpose of considering the matters you have outlined below (should they be accurately represented). I will ask the General Manager to*

¹⁴⁷ Ald Slade ultimately withdrew his decision to step down as Chair of the GMPRC.

¹⁴⁸ Email from Ms Iskandarli to Ald Johnston, cc'd Mr Brooks and Ald Slade, 24 November 2016.

undertake all necessary action but request that I be provided a copy of the agenda before it is published.

*I look forward to receiving your prompt clarification.*¹⁴⁹

[392] Ms Iskandarli responded to Ald Johnston with:

Kristie,

The points 1,2 and 3 in my email of 24 November 2016 very clearly articulate what was agreed at the GMPRC Meeting on 21 November 2016.

I will not be entering into any debate about your comments concerning the accuracy of my statements about the GMPRC as those comments are your opinion and I will ignore them.

In relation to the 5 December 2016 matter, the GMPRC considered the possibility of having a Special Council Meeting on 28 November 2016 subject to the Chair's clarification with the General Manager who was absent from the meeting at the time when the GMPRC considered points 1,2 and 3.

*The fact that you, without anybody's knowledge or consulting with anybody, called the Federal Minister's office and cancelled the opening of the KGV on 5 December 2016, made 5 December 2016 free, and the Chair, after discussion with the General Manager, agreed to have the Special Council Meeting on 5 December 2016.*¹⁵⁰

[393] On 4 December 2016 Ald Dunsby sent the following email to Ald Johnston:

Dear Kristie

As a member of the GMPRC, I wish to raise some concerns I have in relation to recommendations and actions proposed at the Special meeting scheduled for 5 December.

Firstly, the motion from the GMPRC, moved by Alderman Branch-Allen and seconded by Alderman Lucas, was for this meeting to be held at 12 noon on 28 November. As a member of the committee, the change of date and time was never communicated to me.

I refer to the last paragraph on page 7 of the agenda. It mentions that the contract of employment is still to be finalised, yet at the meeting of the GMPRC on 21 November, the Director of Corporate Governance and General Counsel advised that the work was already completed.

Of course it is obvious that the document to be put before Council tomorrow contains many more changes than to that of just item 5.3 that was recommended by the GMPRC, which is also clearly my recollection of actions to be taken, and also defined by Council resolution of 26 September.

...

In relation to the report to Council by chair Ald Slade, I refer to recommendation 3 under clause 5.3 (e)(iv) (end of page 2). It was the direction of the GMPRC that the

¹⁴⁹ Email from Ald Johnston to Ms Iskandarli, cc's Mr Brooks and Ald Slade, 25 November 2016.

¹⁵⁰ Email from Ms Iskandarli to Ald Johnston, cc'd Mr Brooks and Ald Slade, 27 November 2016.

chair undertake engagement with 2-3 external stakeholders and bring that feedback to the committee and all Aldermen. This has not happened.

Ald Slade also undertook to circulate his report to GMPRC members prior to its deliberation by Council and again this did not happen.

Under the item other business on page 3, it mentions that the DGCGC [sic] would undertake a further review of the contract of engagement once she received the revised COE from the GM's lawyer. The GMPRC did not authorise any such action. It is my opinion that Council, as the employer, should draft the report and the GM then has the option of a review by his lawyers, not in the manner that it has appeared to have occurred. Again the extended review is without my knowledge as a member of the GMPRC.

I submit to you that Alderman Slade has been operating autonomously and without full consultation with all members of the GMPRC, as outlined in just some of the matters listed above.

As you are aware, it was at his sole direction that the GMPRC was put on hold for some months and the committee did not undertake its duties in a relevant and timely manner. It disappoints me that these actions appear to be continuing.¹⁵¹

5 21 November 2016 GMPRC Meeting – Content of Minutes

[394] In the course of the investigation concerns were raised¹⁵² as to the accuracy of the minutes for the GMPRC Meeting of 21 November 2016. Relevant to this issue is that date on which they were compiled.

[395] On 1 December 2016 the Board of Inquiry wrote to Mr Brooks requiring him to produce documents under s 222 of the *Local Government Act 1993*. One of the documents required was 'A copy of the most recent GMPRC meeting minutes (*The Board believes this meeting occurred on or around 21 November 2016*)'. The Board required the documents to be produced by 6 December 2016.¹⁵³

[396] Later that day Ms Iskandarli emailed the Board requesting clarification on the request, namely whether or not a certain reference to 2014 was a typographical error. Following her email to the Board, Ms Iskandarli sent an email to a council staff member in relation to the request:

Could you please gather the copies of the docs under dot points 2,3,4 and 6 and I will provide you 1 and 5.¹⁵⁴

[397] Ms Iskandarli's reference to dot point 5 is a reference to the GMPRC Minutes for the 21 November 2016 meeting.

[398] On 5 December 2016 the Board responded to Ms Iskandarli. The Board granted an extension in relation to the production of some of the materials requested in its letter

¹⁵¹ Email from Ald Dunsby to Ald Johnston, 4 December 2016.

¹⁵² By the complainant and Ald Dunsby.

¹⁵³ Letter from the Board of Inquiry to Mr Brooks, 1 December 2016.

¹⁵⁴ Email from Ms Iskandarli to council staff member, 1 December 2016.

of 1 December 2016, but retained the 6 December 2016 deadline for the 21 November 2016 meeting minutes.

- [399] On 6 December 2016 Ms Iskandarli asked that the Board allow for all requested documents (including materials requested in separate correspondence) to be produced via courier on 7 December 2016. This requested was granted, and the Board ultimately received the documents on that date.
- [400] Given that the documents appear to have been provided to the Board in hard copy form, the date when the GMPRC minutes were created cannot be ascertained. The metadata associated with the copy provided to the Board indicates that it was created at 4:01PM on 7 December 2016. However the Board confirmed receipt of the documents by 3:02pm of the same date, suggesting that this creation date relates to the time at which the hard copy version was scanned.
- [401] An electronic copy of the minutes was provided to GMPRC members by Ms Iskandarli on 13 January 2017. The metadata associated with that version suggests a creation date of 13 January 2016. Again, given that a copy was produced to the Board on 7 December 2016, the document clearly existed before 13 January 2017.
- [402] The creation date of the minutes is particularly important given that they include the following passage:

***Contract of Employment** – the Chair reminded the Committee about the 26 September 2016 Council decision concerning the review of the Contract of Employment between Glenorchy City Council and the General Manager and asked the General Counsel whether she has started this review. The General Counsel advised that she has been advised by the General Manager that he has engaged his personal lawyer to undertake this review on his behalf of him [sic] and once the General Counsel received the advice from the General Manager's lawyer she will send it to an independent lawyer for review.¹⁵⁵*

- [403] The reference to seeking an independent lawyer to review Mr Brooks' contract of employment does not accord with any other evidence relating to the issue.
- [404] Following her interview Ald Dunsby provided the investigator with her personal notes from the meeting. The notes contain no reference to the seeking of an external lawyer to conduct the review.

Analysis

1 Performance Review 3 January 2015 – 2 January 2016

- [405] The KPI document associated with the assessment of Mr Brooks' 2015 performance provides only for an absolute measurement of the Objective KPI's. This is in accordance with Mr Nelson's advice of 24 April 2015 (when the measures were formed) – *'there should be no requirement to 'assess' the 'objective' measures – they either happen or they don't'*.

¹⁵⁵ Minutes of the GMPRC Meeting 21 November 2016, p. 6.

- [406] The minutes of the GMPRC Meeting of 29 July 2016 clearly demonstrate that an alternative assessment process was undertaken.
- [407] Further, during his hearing before the Board of Inquiry Ald Slade accepted that the change occurred. His suggestion that '*one Alderman had an issue that [the Objective KPI scores] should be zero*' indicates that Ald Dunsby must have been the only member of the GMPRC who did not agree with the change in methodology.
- [408] Ald Slade's comment that '*I felt that you could make a judgement call*', together with his apparent control as to when GMPRC meetings would be convened,¹⁵⁶ suggests that he took responsibility for determining the manner in which Mr Brooks' performance was assessed.
- [409] Whilst the complaint focuses on Ms Iskandarli's role in the performance review of Mr Brooks, in this instance the \$18,000 pecuniary benefit obtained by Mr Brooks appears to have been the result of actions by Ald Slade as Chair of the GMPRC rather than Ms Iskandarli.
- [410] It is noted that the Board of Inquiry's findings in relation to this issue rely on additional evidence – namely the report presented to Council in its meeting of 26 September 2016 and other parts of Ald Slade's hearing.¹⁵⁷ Given the noted discrepancies between the evidence cited and the findings made (in particular see [324] to [330]) it is the investigator's view that these additional pieces of evidence do not support the findings made by the Board in its draft report.
- [411] Ald Dunsby's evidence is quite critical of the attitude that the other GMPRC members brought to bear on their consideration of Mr Brooks' performance; particularly in relation to his eligibility for a performance bonus.
- [412] Ald Dunsby's statement that '*they wanted him to get his performance bonus...[b]ecause he's their mate*', so far as it relates to *what* was done as opposed to *why* it was done, is somewhat supported by the commentary in the minutes of the 29 July 2016 GMPRC Meeting:
- The Committee agreed that it would be unfair and unreasonable for the Committee not to take into account these external factors and penalise the General Manager in the review of his performance.*
- [413] This statements may be read to support the suggestion that the committee was predominantly concerned with how the performance bonus could be paid to Mr Brooks, rather than whether or not it should be.
- [414] It is also considered that the nature of a performance 'bonus' is such that it should not be considered an automatic right – rather it is the reward for exceptional performance. The allowance for external factors (the accuracy and relevance of which are disputed in the Board of Inquiry draft report) suggests that Ald Dunsby's evidence of the committee 'wanting' to give Mr Brooks the bonus may be well founded.

¹⁵⁶ Noting the fact that, following Ald Johnston's allegation that Ald Slade may have committed a criminal offence, Ald Slade would not allow for a GMPRC meeting to be convened for several months.

¹⁵⁷ In particular, the discussing between the Board members and Ald Slade as to the involvement of Mr Nelson in the process and the decision to alter the methodology of assessing Mr Brooks' performance.

2 Review of Contract of Employment

- [415] At its 26 September 2016 Meeting Council resolved only to review and, if necessary, amend clause 5 of Mr Brooks' contract of employment.
- [416] Quite clearly the review and amendments which were ultimately presented to Council in the 5 December 2016 Special Meeting went far beyond the scope of the original resolution.
- [417] Given that Mr Brooks claimed privilege in relation to questions about the amendment of his contract, it was not possible to determine precisely what his instructions to Mr Zeeman were. However, it is considered highly unlikely that Mr Zeeman would have made any changes to the contract without the specific instructions of Mr Brooks to do so. In forming that view, the investigator has given consideration to the usual process to be expected from obtaining legal advice, rather than drawing any inference from Mr Brooks' exercising his right to claim privilege.
- [418] It is noted that the extended amendments to Mr Brooks' contract, including the enhancements to the termination clauses, occurred shortly after the dismissal of the General Manager of Huon Valley Council. That incident was the result of a process similar to that occurring in Glenorchy City Council with the appointment of a Board of Inquiry, the dismissal of councillors and the appointment of a Commissioner to '*restore stability and good governance to the municipality*'.¹⁵⁸
- [419] The suggestion that Mr Brooks instructed Mr Zeeman to enhance the termination clauses is further supported by the fact that Mr Brooks did so himself in relation to the insertion of clause 11.3(d).
- [420] Ms Iskandarli's amendments to the contract are quite minor in nature. They predominantly correct typographical errors and insert references to relevant legislation.
- [421] Ms Iskandarli did however receive a copy of the contract containing Mr Brooks' and Mr Zeeman's edits on 1 December 2016, and after making changes to the contract herself on that date forwarded it to Aldermen on 3 December 2016.
- [422] Given her role as General Counsel it is reasonable to expect that Ms Iskandarli, in providing the document to Aldermen, would have noted to Alderman; a) the fact that the review (including her minor amendments) far exceeded the scope of the 26 September 2016 Council resolution; and b) the significant extension of Council's obligations (particularly those relating to termination) that would result if the changes were accepted.
- [423] Given his role as Chair of the GMPRC, it is also reasonable to expect that Ald Slade would have done the same in his report to the Council.
- [424] Ald Slade's statement at interview that '*I certainly drew the inference that there may've been other parts there that Mr Brooks may've wanted to put up but of course that will have to come back to the committee*' indicates that he was aware, at the time of the contract review, that it was to exceed the scope of the Council resolution.

¹⁵⁸ <http://www.huonvalley.tas.gov.au/council/your-commissioner/>

- [425] It is of additional concern that Aldermen were not advised of these details in the situation where the relevant agenda and GMPRC Chair's report not only presented the revised contract, but recommended the approval of it.
- [426] Ald Slade's hostile response to Ald Stevenson's email of 2 December 2016 does not present as the response of an objective party. Ald Slade's comments perpetuate a false representation of the nature of Ms Iskandarli's role within the committee.
- [427] Ald Slade's comment that '*She does not participate in and in fact does not remain in the meeting room when the GMPRC is deliberating or having discussions about the General Manager's performance*' is at odds with the evidence of Ald Dunsby, who stated that Ms Iskandarli remained in the room at such times.¹⁵⁹ It is also noted that in her email to Mr Brooks of 26 April 2015 Ms Iskandarli stated '*my attendance at the Council meeting will be necessary when the performance of the GM will be discussed*' demonstrates her view that her presence was necessary during such deliberations.¹⁶⁰
- [428] Ald Slade states that '*The DCGGC is reviewing the CoE on Council's behalf*' which quite obviously contradicts the earlier statement that '*I am at a loss to understand how preparing the Agenda and taking Minutes will create a COI*'.
- [429] Additionally, Ald Slade comments that '*Nevertheless, as always the DCGGC acts professionally and advised me to refer the review of the CoE on Council's behalf to an independent lawyer. I congratulate the DCGGC for this professional advice.*'
- [430] Noting the contents of Ms Iskandarli's email to Mr Dilger:

As requested by the GMPRC, on behalf of the Council as the General Counsel, I have reviewed the CoE. However, unfortunately yesterday 2 December 2016, Alderman Slade has received an email from Alderman Stevenson alleging that as the Director Corporate Governance & General Counsel I have an interest in the matter and that Alderman Slade should refer the matter to an independent lawyer, this was also raised by the Mayor, Alderman Johnston.

Although the alleged conflict of interest matter has been considered and discussed at the Council Meetings previously, and I have provided Council legal advice, including from an external lawyer, the Mayor is declining to accept the advice including from the independent lawyer. I do not want to speculate but the reason for this is the current unfortunate political circumstances and nothing else.

- [431] It is arguable that Ald Slade has misrepresented the basis on which Mr Dilger's advice was sought. That is, Ald Slade's email suggests that the decision to seek external advice was made for Ms Iskandarli solely on the basis of professionalism, rather than a reaction to Mr Brown's email about the complaint made about her. Ms Iskandarli confirmed at interview that the engagement of Mr Dilger was the result of the complaint.¹⁶¹
- [432] Ald Slade's decision to immediately forward Ald Stevenson's email to Mr Brooks and Ms Iskandarli with the comment '*Unbelievable, any suggestions regarding response*'

¹⁵⁹ See [209]

¹⁶⁰ It should be noted that it is unknown whether or not the views expressed by Ms Iskandarli in her email of 26 April 2015 were actioned.

¹⁶¹ Interview with Ms Iskandarli, p. 18.

appears to demonstrate poor judgement; particularly given the nature of the concerns expressed by Ald Stevenson.

- [433] It is not known what level of input Mr Brooks or Ms Iskandarli had in drafting Ald Slade's response, however it is noted that on numerous occasions Ms Iskandarli describes the issue as a 'so called conflict of interest'. She does so in her email of 6 December 2016 to Mr Brown, in correspondence about the Board of Inquiry and on four occasions during her interview with the investigator. Whilst acknowledging the possibility of a coincidence, the common style of phrasing responses to the alleged conflict of interest issues may indicate that Ms Iskandarli had some input into Ald Slade's email, where the same phrase is used again. In his procedural fairness response Mr Brooks denied having any involvement in drafting Ald Slade's response.
- [434] Given what prompted Ms Iskandarli and Ald Slade to seek Mr Dilger's advice, it is of significant concern that Mr Dilger was later instructed by Ald Slade to reduce his commentary in relation to the amendments to the contract of employment.
- [435] Further issues arise as to why Mr Dilger's expanded advice, which is strongly critical of the, in Mr Dilger's view, 'significant' and 'unreasonable' amendments was never communicated to Aldermen. This, together with the fact that only Mr Dilger's reduced advice (without reference to the fact that it even was reduced) was provided by Ms Iskandarli, leads to a possible conclusion that Ald Slade, with the assistance of Ms Iskandarli, attempted to conceal the nature of the amendments from Aldermen because the advice was contrary to his intended outcome.
- [436] The failure to highlight these issues, as previously noted, is compounded by the relevant recommendation being to accept the changes.
- [437] The fact that Council's register of interests contains no reference to the declaration Ms Iskandarli claims to have made, can mean either no such declaration was made, or it was not recorded.
- [438] No evidence making reference to such a declaration has been identified, other than the claims arising from Ms Iskandarli's email to Mr Brown's and her statement at interview.

3 Adjournment of Special Meeting

- [439] It is not possible to determine with complete confidence whether or not Council would have voted to accept the changes to Mr Brooks' contract or not.
- [440] Mr Brooks claimed at interview that a number of Aldermen had expressed to him that they were not intending to vote for the changes. When pressed for further detail, Mr Brooks was unable to identify any of the Aldermen who had told him that.¹⁶²
- [441] Mr Brooks further stated that those conversations were face to face and by telephone, meaning that his claims cannot be verified.

¹⁶² In his procedural fairness response Mr Brooks named Ald Slade, Ald Quick, Ald Branch-Allen and Ald King. Concerns as to the veracity of this claim are raised in the investigator's response to that part of Mr Brooks' submission.

- [442] Given that he recommended to Council that the changes be approved, it can be assumed that Ald Slade intended to vote in favour of his own recommendation.
- [443] The factional divisions amongst the aldermanic body often appear to manifest in matters pertaining to the Mayor and Mr Brooks. This was particularly evident in 2015 when Ald Johnston raised her concerns about Ms Iskandarli's conflict of interest – with the majority of Aldermen subsequently announcing their support of Mr Brooks after Ald Johnston had commented on her lack of confidence in him.
- [444] Ald King's email of 12 December 2016 further demonstrates the partiality of some Aldermen towards the interests of Mr Brooks, and what may be perceived as a default opposition to Ald Johnston.
- [445] So far as the likelihood exists that the amendments to Mr Brooks' contract would have been approved had Council been given the opportunity to vote on it, it is important to note the numerous instances of support demonstrated by Aldermen in relation to Mr Brooks' performance as General Manager.
- [446] These include, but are certainly not limited to, the media release made by Council supporting Mr Brooks of 16 March 2015 (discussed at [277]), Ald Pearce's comments in relation to Ms Iskandarli and Mr Brooks (see [274]), Ald King's comments about Ms Iskandarli and Mr Brooks (see [388]) and Ald Slade's evidence before the Board of Inquiry where he is alleged to have noted in an Open Council Meeting that 'You couldn't find a better GM anywhere'.
- [447] Additionally, the manner in which the contract was presented to the Council should be taken into account. Ald Slade stated at interview (see p. 47 of the transcript of interview) that his recommendation was that Council approve the contract as amended. The relevant agenda recommended approval of the contract. There was therefore no capacity for Council to accept portions of the amendments and not accept others.
- [448] Further, unless Aldermen examined the contract themselves (noting that the 'final' version was provided to them approximately one hour before the meeting commenced – potentially in breach of r 8(1)(b)(i) of the Local Government (Meeting Procedures) Regulations 2015)¹⁶³ they would not have even been aware of Mr Dilger's advice, let alone the basis on which it was made. That is, they would have only seen comments of 'Accept' or 'Reject' without any reasoning behind those suggestions.
- [449] Given that Ald Slade's recommendation was made in his capacity as Chair of the GMPRC, it is possible that other Aldermen would have thought that the amendments had been considered by the committee and thus may not have even checked the specific amendments before the meeting – relying instead on the committee's consideration and recommendation.

¹⁶³ This regulation requires a general manager to provide each councillor with the agenda and any associated reports and documents at least 2 days before a special council meeting. The investigator interprets the reference to 'any associated...documents' as covering the provision of the amended contract.

[450] Finally, given that the original council resolution of 26 September 2016 related only to Clause 5 of the contract, some Aldermen may not have even realised that the amendments had far exceeded that scope.

[451] In these circumstances:

- the demonstrated support for Mr Brooks from the majority of Aldermen;
- the lack of adequate opportunity provided to Aldermen to consider the contract amendments;
- the possible lack of inclination or perceived need to consider the contract amendments closely;
- the lack of information pertaining to the amendments should anyone choose to check them; and
- the nature of the recommendations presented to Council

it was quite likely the contract would have been approved had Ald Johnston not taken the action of adjourning the special meeting.

[452] On the basis of the political landscape as it was at the time, and the lack of indication provided to Alderman as to the financial impacts of the amendments, it is likely that the changes to Mr Brooks' contract of employment would have been approved by Council but for the actions of Ald Johnston in adjourning the Special Meeting of 5 December 2016.

4 21 November 2016 GMPRC Meeting – Decision to Convene Special Council Meeting

[453] The conversation between Ald Johnston and Ms Iskandarli in relation to the GMPRC decision of 21 November 2016 appears to exemplify the nature of the relationship between the two.

[454] It is noted that Ms Iskandarli's statement '*The GMPRC at its meeting on 21 November 2016 has unanimously agreed to request you convene a Special Meeting of Council on Monday 5 December 2016*' is clearly not an accurate summation of the GMPRC decision. This much is noted in Ms Iskandarli's further email to Ald Johnston, where she states that the committee had initially considered the possibility of a 28 November 2016 special meeting.

[455] However this is not considered a serious matter, given that Ms Iskandarli appears only to have paraphrased the decision in light of 5 December 2016 becoming available.

[456] Ald Dunsby's email to Ald Johnston contains some criticisms of the manner in which Ald Slade had administered the GMPRC. In particular she notes that the GMPRC Chair's report to council was not distributed to GMPRC members (or at least not to Ald Dunsby) and that the report recommends changes which the committee had not agreed to.

- [457] No evidence has been identified to suggest that Ald Slade's report was distributed to GMPRC members before its release to Council by Ms Iskandarli on 3 December 2016. Given that, at the time of the last GMPRC Meeting on 21 November 2016, the review of Mr Brooks' contract had not been finalised, there does not appear to have been any opportunity for the GMPRC to collectively agree to the recommendations in the report. In this respect, therefore, Ald Dunsby's statements regarding the autonomy of Ald Slade would appear to have some substance.
- [458] Whether or not Ald Slade's actions were the result of a lack of willingness to collaborate with GMPRC meetings or simply the result of a short period of time available between 21 November 2016 and 5 December 2016 is uncertain.

5 21 November 2016 GMPRC Meeting – Content of Minutes

- [459] No reference is made in any email correspondence to the minutes for the 21 November 2016 GMPRC Meeting until they were requested by the Board of Inquiry on 1 December 2016.
- [460] The minutes were not produced to the Board until 7 December 2016, and as noted the metadata associated with that copy is not helpful in determining when they were created.
- [461] In her email of 1 December 2016 to a council staff member, Ms Iskandarli requested that the employee gather the material requested by the Board. The fact that Ms Iskandarli stated that she would provide the GMPRC Minutes might suggest that they did not yet exist at that point. If they did, presumably the staff member would have been able to retrieve them and similarly there would have been no need for the delay in providing the material to the Board.
- [462] In her procedural fairness response Ms Iskandarli stated that the staff member would not have been able to retrieve the minutes because access to GMPRC meeting minutes is restricted. However the point remains that, if the minutes existed at the time of Ms Iskandarli's email, she could have attached them to her email.
- [463] It is noted however that the provision of the minutes occurred some days after Ms Iskandarli was advised of the complaint made about her to the Local Government Division.
- [464] The reference in the minutes to Mr Brooks' contract being reviewed by an independent lawyer is not corroborated by any other material of that time. As noted Ald Dunsby's contemporaneous notes make no mention of it, no correspondence between Ms Iskandarli and either Ald Slade or Mr Brooks makes any mention of it, and most convincingly Ms Iskandarli specifically told Mr Dilger (and the investigator at interview) that the engagement of Mr Dilger was the result of the complaint.
- [465] On the basis of the evidence, it is considered highly likely that the minutes as provided to the Board are not an accurate summary of the GMPRC Meeting of 21 November 2016.
- [466] A possible conclusion to draw from this evidence is that Ms Iskandarli retrospectively inserted the reference to obtaining external legal advice in order to create the appearance that it had been the intended course of action all along.

Conclusion

- [467] The GMPRC, predominantly at the direction of Ald Slade as Chair, revised the process of assessing Mr Brooks' performance for the period 3 January 2015 to 2 January 2016.
- [468] The result of the revised assessment process was the payment of an \$18,000 performance bonus to Mr Brooks.
- [469] Mr Nelson's advice, relating to a partial attainment of certain KPI's, did not relate to the assessment of Mr Brooks' performance for the period 3 January 2015 to 2 January 2016.
- [470] The review of Mr Brooks' contract of employment in late 2016 exceeded the scope of the associated Council resolution of 26 September 2016.
- [471] Mr Brooks, personally and likely through instruction to his legal representative, sought to significantly enhance his entitlements under his contract of employment, particularly in relation to payments for termination.
- [472] On balance, it is more likely than not that the proposed changes would have been accepted by Council had Ald Johnston not adjourned the Special Council Meeting of 5 December 2016.
- [473] Ms Iskandarli's amendments to Mr Brooks' contract of employment had no significant effect on Mr Brooks' contractual entitlements.
- [474] Ms Iskandarli failed to advise Council of the significance of the proposed changes to Mr Brooks' contract of employment.
- [475] Ald Slade failed to advise Council of the significance of the proposed changes to Mr Brooks' contract of employment.
- [476] Ald Slade's response to Ald Stevenson's email contained misleading information as to the nature of Ms Iskandarli's role within the GMPRC.
- [477] Ald Slade's response to Ald Stevenson's email contained misleading information as to the basis on which Mr Dilger's advice was sought on the proposed changes to Mr Brooks' contract of employment.
- [478] Mr Dilger's advice in relation to the proposed changes to Mr Brooks' contract of employment was sought as a result of Mr Brown advising Ms Iskandarli of the complaint made against under s 339E of the *Local Government Act 1993*.
- [479] Mr Dilger's initial advice in relation to the proposed changes to Mr Brooks' contract of employment described the enhancements of the termination entitlements as 'Significant' and 'Unreasonable'.
- [480] Ald Slade instructed Mr Dilger to reduce his commentary on the proposed changes to Mr Brooks' contract of employment.
- [481] Ms Iskandarli failed to advise Council of the extent to Mr Dilger's initial advice.
- [482] Ald Slade failed to advise Council of the extent to Mr Dilger's initial advice.
- [483] No declarations of interest by Ms Iskandarli are recorded on Council's register of interests maintained in accordance with s 55 of the *Local Government Act 1993*.

[484] The Minutes of the 21 November 2016 GMPRC Meeting, provided to the Board of Inquiry on 7 December 2016, likely do not represent an accurate summary of the meeting so far as they relate to the external review of Mr Brooks' contract of employment.

4. Findings

4.1. In relation to the negotiation of Mr Brooks' contract of employment with the Council in 2013

[485] On the basis of the evidence obtained by the Commission:

- Ms Iskandarli's initial involvement in the process – to advise Council - was at the instigation of Ald Slade.
- Ms Iskandarli was further involved in the process on request from Mr Brooks to liaise with Ald Slade on his behalf.
- Ald Slade failed to identify, or take steps to avoid or manage, Ms Iskandarli's conflict of interest.
- Mr Brooks failed to identify, or take steps to avoid or manage, Ms Iskandarli's conflict of interest.

[486] It is open to conclude that:

- Ms Iskandarli had a conflict of interest associated with her role in the negotiation process whilst concurrently reporting to Mr Brooks and acting for the Council.
- Ms Iskandarli liaised directly with Ald Slade on the request of Mr Brooks, in a contract negotiation process that resulted in improved contractual terms for Mr Brooks.
- Ms Iskandarli recognised the possibility of a conflict of interest arising in relation to her involvement in the negotiation, but failed to take steps to avoid or manage it.

4.2. In relation to the Council restructure process in 2014/15

[487] On the basis of the evidence obtained by the Commission:

- Ms Iskandarli amended the position description for the role of Director Corporate Governance, which she subsequently applied for and won.
- Ms Iskandarli's amendments to the Director Corporate Governance position description inserted essential requirements of qualifications she had recently attained.
- The Director Corporate Governance position was the only Director role filled internally.

- Mr Brooks asked Ms Iskandarli to explain what the functions of a General Counsel were, before appointing her to that position shortly afterwards.
- The position of General Counsel was not advertised internally or externally, and no position description for it was created.

[488] It is open to conclude that:

- Mr Brooks disregarded advice from Mr Blackadder suggesting that the position of Director Corporate Governance be advertised externally.
- The amendments by Ms Iskandarli to the position description for the Director Corporate Governance were made to ensure that no other internal applicants could compete with her.
- The position of General Counsel was created and filled by Mr Brooks for the purpose of benefitting Ms Iskandarli.
- There was no legitimate need for the Council to have the position of General Counsel.

4.3. In relation to Ms Iskandarli's involvement in the GMPRC

[489] On the basis of the evidence obtained by the Commission:

- The description of Ms Iskandarli's role within the GMPRC, as set out in the GMPRC Minutes since August 2015, does not accurately reflect the nature of her involvement in the committee.
- Ms Iskandarli performed some of the functions of the GMPRC by reviewing the advice provided by Mr Nelson in developing Mr Brooks' KPI's.

[490] It is open to conclude that:

- Ald Slade was aware that Ms Iskandarli's role in the GMPRC exceeded the extent that he claimed, in correspondence to Ald Johnston.
- Mr Brooks was aware that Ms Iskandarli's role in the GMPRC exceeded the extent claimed by Ald Slade.

4.4. In relation to the conflict of interest concerns raised by Ald Johnston in early 2015

[491] On the basis of the evidence obtained by the Commission:

- Ald Slade responded by providing misleading information as to the nature of Ms Iskandarli's role in the GMPRC.
- Mr Brooks failed to disseminate legal advice obtained from Abetz Curtis Lawyers that raised concerns about conflict of interest issues arising due to Ms Iskandarli's role in the GMPRC.

[492] It is open to conclude that:

- Confidential information relating to items for discussion in the Closed Council Meeting of 16 March 2015 was disclosed by either Mr Brooks or Ms Iskandarli to Mr Harrison.
- Ald Slade, Mr Brooks and Ms Iskandarli were aware of the disclosure of confidential information to Mr Harrison.

4.5. In relation to the media release of 15 October 2015

[493] On the basis of the evidence obtained by the Commission:

- The media release was authored by Bright Pty Ltd.
- Mr Brooks gave false information to Ald Johnston as to the author of the media release.
- Ms Iskandarli was aware that Mr Brooks had provided false information to Ald Johnston as to the author of the media release.

4.6. In relation to the assessment by the GMPRC of Mr Brooks' performance as General Manager for the period 3 January 2015 to 2 January 2016

[494] On the basis of the evidence obtained by the Commission:

- Mr Brooks received a performance bonus payment of \$18,000.
- The methodology applied in assessing Mr Brooks' performance for the relevant period was changed.
- Ald Slade was responsible for changing the methodology applied in assessing Mr Brooks' performance for the relevant period.
- The revised methodology did not comply with the agreed measures for assessing Mr Brooks' performance for the relevant period, or the advice provided by Mr Nelson on 24 April 2015.
- Mr Nelson's advice of 24 April 2015, which related to Mr Brooks' KPI's for the period 3 January 2015 to 2 January 2016, stated that the objective KPI's should be measured in absolute terms.

[495] It is open to conclude that:

- Without the change in methodology, Mr Brooks would not have received a performance bonus for the relevant period.
- Ald Slade's evidence to the Board of Inquiry as to Mr Nelson's advice about the changing methodology was unintentionally incorrect.

4.7. In relation to the review of Mr Brooks' contract of employment with the Council in 2016

[496] On the basis of the evidence obtained by the Commission:

- The scope of Council's resolution of 26 September 2016 in relation to the review of Mr Brooks' contract extended only to clause 5.
- The review exceeded the scope of Council's resolution of 26 September 2016.
- Mr Brooks' legal representative inserted clause 11.1(d) into Mr Brooks' contract, extending Mr Brooks' entitlements should his performance be terminated by the Council.
- Mr Brooks inserted clause 11.3(d) into his contract, extending his entitlements should his performance be terminated by the Council for poor performance.
- Ms Iskandarli made minor changes to Mr Brooks' contract of employment which did not substantially alter Mr Brooks' entitlements.
- In his response to Ald Stevenson, Ald Slade provided misleading information in relation to Ms Iskandarli's role in the GMPRC.
- Mr Brown's email to Ms Iskandarli prompted her to suggest to Ald Slade that they seek an independent review of Mr Brooks' contract.
- Mr Dilger described the amendments to Mr Brooks' termination clauses as 'Significant' and 'Unreasonable'.
- Ald Slade instructed Mr Dilger to reduce his commentary in relation to the amendments to Mr Brooks' contract.
- Ms Iskandarli drafted the GMPRC Chair's Report to Council for the Special Council Meeting of 5 December 2016, which recommended that the amendments to Mr Brooks' contract be accepted and approved.
- Ald Slade's GMPRC Chair's Report to Council recommended that the amendments to Mr Brooks' contract be accepted and approved.
- Ms Iskandarli, in providing Mr Brooks' amended contract to Aldermen, failed to advise Aldermen of the significance of the proposed changes.
- Ald Slade failed to advise Aldermen of the significance of the proposed changes to Mr Brooks' contract.
- Ms Iskandarli failed to advise Aldermen of Mr Dilger's comments in relation to the inserted clauses 11.1(d) and 11.3(d).
- Ald Slade failed to advise Council of Mr Dilger's comments in relation to the inserted clauses 11.1(d) and 11.3(d).

[497] It is open to conclude that:

- The changes to Mr Brooks' contract of employment would have been approved by Council had Ald Johnston not adjourned the Special Council Meeting of 5 December 2016.
- Mr Brooks instructed his legal representative to amend his contract of employment by increasing his entitlements should his employment be terminated.
- Mr Brooks sought to increase his termination entitlements due to his concern that his employment would be terminated as a result of the Board of Inquiry process.
- In his response to Ald Stevenson, Ald Slade misrepresented the basis on which Mr Dilger's advice was initially sought.

4.8. In relation to the Minutes for the GMPRC Meeting of 21 November 2016

[498] It is open to conclude that:

- Ms Iskandarli authored the minutes after becoming aware of the complaint made to the Director of Local Government about her.
- Ms Iskandarli inserted false information into the minutes, relating to a decision to seek an independent review of Mr Brooks' contract of employment.

4.9. In relation to Ms Iskandarli's claim that she had declared a conflict of interest in accordance with the requirements of the *Local Government Act 1993*

[499] On the basis of the evidence obtained by the Commission:

- No record exists of any such declaration by Ms Iskandarli.

PART B – Investigation Direction

5. Summary report: Investigation Direction

- [1] In June 2017 the Commission received a complaint in relation to the Glenorchy City Council Board of Inquiry (the Bol). The Bol had been undertaking a wide-ranging investigation into the governance and statutory functions of the Council since October 2015.
- [2] The complaint alleged that the Bol had failed to conduct itself ‘in a fair, honest and competent way’. The complaint also raised concerns in relation to the manner in which the Bol obtained evidence and the conclusions it drew from that evidence.
- [3] A recurring theme throughout the complaint is that the Bol provided preferential treatment to Mayor Kristie Johnston by liaising directly with her, obtaining material from her instead of the General Manager, preferring her evidence when it conflicted with that from other affected parties and disregarding evidence that she had breached her duties under the *Local Government Act 1993*.
- [4] Given the importance of the Bol process and the level of public concern associated with the matters that it was investigating, it was considered that an investigation of the complaint would be appropriate. Furthermore, at the time of receipt of the complaint Investigation Pyramid was already under way. As part of that investigation, the Bol draft report and all evidence obtained by the Bol had been acquired. This placed the Commission in a position where inquiries into this new complaint were pertinent and easily undertaken.
- [5] Some of the issues raised in the complaint were similar to, or replicated, matters raised in the Supreme Court case *Branch-Allen v Easther*.¹⁶⁴ Consequently, the decision of Chief Justice Blow, where relevant, was taken into account as part of the investigation.
- [6] As a result of the wealth of relevant evidence already obtained in Investigation Pyramid, it was unnecessary for the investigator to exercise any further coercive powers, including interviews, as part of Investigation Direction.
- [7] This matter did not involve a ‘re-investigation’ of the issues addressed by the Bol. Rather, the investigation focused on the way in which evidence was obtained, including interactions with the various affected parties, and the evidentiary basis on which the Bol’s conclusions were made.
- [8] The investigation found no evidence to suggest that the Bol was biased or unfair in the conduct of its inquiry. The perception of such a bias likely arose from the unavoidable fact that it was impossible, given the extent of political divisions within the Council, for all affected parties to be satisfied with the Bol’s findings.
- [9] Although the investigation noted some minor issues where evidence could have been better recorded, such matters fell well short of what could be characterised as misconduct.

¹⁶⁴ [2016] TASSC 29.

- [10] Contrary to the suggestions made in the complaint, the investigation found that the Bol's draft and final reports outlined a predominantly sound evidentiary basis for the conclusions and findings made.
- [11] So far as the complaint related to the Bol's interactions with Ald Johnston, the investigation found that a significant aspect of that situation resulted from ongoing difficulty the Bol experienced in its liaison with the General Manager, Peter Brooks, and the Director Corporate Governance and General Counsel, Seva Iskandarli. The failure of Mr Brooks and Ms Iskandarli to provide appropriate assistance to the Bol was itself the subject of criticism by Chief Justice Blow in his decision.
- [12] Given the above considerations, it was the investigator's view that the allegations raised against the Bol and its support staff lacked substance.
- [13] The Commission's Board consequently determined to dismiss the complaint in accordance with s 58(2)(a) of the *Integrity Commission Act 2009*.

PART C – Investigation Junction

6. Summary report: Investigation Junction

[1] In June 2017 the Commission received a complaint relating to the Board of Inquiry's (BoI) draft report being leaked to media outlets. It was alleged that the draft report, disseminated by the BoI to affected parties in April 2017, was leaked by an unknown party resulting in the public reporting of the draft report's contents on 27 June 2017.

[2] The complaint stated:

The release of the confidential second report has now corrupted the inquiry process. It is clear that this action has been taken by one of the [parties named in the complaint], whether it be with the intention to corrupt the process or for political purposes.

[3] Fifteen people were nominated as potentially having disclosed the draft report to the media, with a further two being identified during the initial assessment of the complaint. Of that total, twelve people were 'designated public officers' (DPOs) as defined by s 6 of the *Integrity Commission Act 2009* (the IC Act).¹⁶⁵

[4] Although the Commission is, in principle, supportive of the notions of transparency and public awareness of matters such as the BoI process, it was considered appropriate to investigate this matter to the extent that it potentially involved a deliberate attempt to obstruct the important work of the BoI.

[5] However, the investigation was unable to identify any evidence to suggest that the BoI process had in fact been 'corrupted' as a result of media reporting of the draft report's contents.

[6] Additionally, the investigator considered whether the disclosure of the draft report would actually amount to misconduct. This ultimately depended on who disclosed it, and in what capacity they had obtained the draft report. At the relevant time all Glenorchy City Council Aldermen were suspended and thus it was considered unlikely that (if any of them were responsible) their applicable Aldermanic Code of Conduct or relevant provisions of the *Local Government Act 1993* (the LG Act) would prevent such disclosure.

[7] Similarly, the *LG Act* provides protection for a person who discloses a Board of Inquiry report in good faith and for the information of the public.¹⁶⁶

[8] In the circumstances it was noted that the BoI process had been ongoing for approximately 2½ yrs at the time of the disclosure, and there was therefore a reasonable argument that the public deserved to know how the matter was progressing.

¹⁶⁵ The *IC Act* requires the Commission to focus its investigative efforts on matters that involve serious or systemic misconduct, and misconduct by DPOs – senior officers within the Tasmanian public sector who are more appropriately subject to the independent scrutiny of the Commission. For this reason the *IC Act* prevents the Commission from referring complaints about DPOs elsewhere and as such, the Commission may only dismiss or assess (and potentially investigate) such complaints.

¹⁶⁶ *Local Government Act* s 227.

- [9] In this instance, it was the Commission's view that the publication of the draft report, relating to a matter that involved significant public concern and expense, outweighed any potential disadvantage to affected parties. This view was reinforced by the fact that the process did not appear to have been negatively impacted by the release.
- [10] The Commission's Board consequently determined to dismiss the complaint in accordance with s 58(2)(a) of the *IC Act*.

INTEGRITY
COMMISSION

