

Department of Planning, Housing and Infrastructure
Office of Local Government

INTERIM INVESTIGATION REPORT

INTERIM REPORT OF THE
SECTION 430
INVESTIGATION INTO
LIVERPOOL CITY COUNCIL



11 JULY 2024

ACCESS TO SERVICES

The Office of Local Government, Department of Planning, Housing and Infrastructure is located at:

Levels 1 & 2

5 O'Keefe Avenue
NOWRA NSW 2541

Locked Bag 3015
NOWRA NSW 2541

Phone 02 4428 4100

Fax 02 4428 4199

TTY 02 4428 4209

Email olg@olg.nsw.gov.au

Website www.olg.nsw.gov.au

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**INTERIM REPORT OF THE SECTION 430 INVESTIGATION INTO
LIVERPOOL CITY COUNCIL**

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1 EXECUTIVE SUMMARY

This Interim Report details matters of concern identified during an investigation undertaken by the Office of Local Government (OLG) under section 430 of the *Local Government Act 1993* (the Act) into Liverpool City Council (The Council). The focus of the investigation included matters related to:

- Probity and governance issues arising from recruitment and selection practices in the appointment of a number of senior staff
- Management and financial issues identified in relation to the Liverpool Civic Place project
- Work Health and Safety issues affecting the functional operations of the Council

The investigation process included an extensive document discovery and review process, along with oral evidence obtained via interviews with current and former staff and elected councillors. A broad range of matters of concerns were identified in relation to the functions and operations of the council, oversight of these functions and operations by elected members, and the interrelationships between elected members and administrative staff in the performance of their duties.

In addition to matters identified under the Terms of Reference for this investigation, the investigators identified a significant number of matters of concern beyond those related to the Terms of Reference. Based on document review processes and oral evidence obtained through interviews conducted, the investigators believe that there is a strong likelihood that there are additional issues impacting the operations of the council not yet identified in the course of this investigation.

The investigators are of the belief that the matters of concern outlined in this interim report are sufficient in both number and seriousness to warrant an

immediate public inquiry into all aspects of the functions and operations of the elected council for the following reasons:

- The areas of dysfunction appear to be widespread across Council including staffing, financial management, development assessments and regulatory activity.
- It would be an effective means to consider and act on all material gained in the section 430 investigation to date.
- It is considered likely that a public inquiry will reveal further information, consolidating the matters of concern documented in this interim report.
- A public inquiry invites submissions from all interested parties.
- Based on the information obtained during the investigation, it is strongly believed that the calling of a public inquiry will be fully supported by most in the council and the community, leading to additional information as interested parties come forward wishing to provide oral or written submissions outlining their concerns.
- A public inquiry is an open and transparent process and will be an effective means to restore public confidence in future operations of the council, and in local government processes more broadly.

As this is an interim report, the investigators have not attached the evidence obtained in the form of documents or interview transcripts. However, it is emphasised that the account of all matters of concern documented in this report is based on consistent and/or corroborated information provided by the oral evidence of multiple council staff, and on the review of relevant documentation obtained and in the possession of OLG.

2 INTRODUCTION

This is an Interim Report relating to an ongoing investigation under section 430 of the *Local Government Act 1993* ('the Act') into Liverpool City Council (the Council).

It is presented to the Minister for Local Government, the Honourable Ron Hoenig MP (the Minister), for the purpose of informing the Minister of a number of serious concerns that have arisen from the investigation thus far, and to inform decision making regarding the next steps in the investigation or other actions to be taken.

A final report will be presented to the Minister at the conclusion of the investigation.

2.1 Determination to conduct an investigation

On 6 May 2024, following a request from the NSW Minister for Local Government, the Deputy Secretary Local Government, under delegation from the Secretary, Department of Planning, Housing and Infrastructure, determined that an investigation under section 430 of the Act be undertaken into the Council. The Deputy Secretary appointed Director of Investigations Brad Wade to conduct the investigation, with the assistance of Principal Investigators Martin Bass and Roger North.

(Ref. Appendix 1 Notice of Decision to Conduct an Investigation)

2.2 Terms of Reference

The 'Notice of Decision to Conduct an Investigation' determined the Terms of Reference, as follows:

a) Recruitment and Selection Matters

To investigate and report on the recruitment, selection process and appointment of persons into senior positions following the Council's restructure from 2022 through 2023.

In particular:

1. Whether the Council complied with statutory obligations and its Policies and Procedures in recruitment and selection relating to the occupants for the relevant positions
2. Whether the recruitment and selection process for the relevant positions was merit based and/or whether other identifiable factors influenced recruitment and selection processes and if so, what were those factors
3. Whether the Council complied with Council Policies and its obligations under the NSW State Records Act in regard to the maintenance and retention of records relating to recruitment and selection for the relevant positions
4. Whether there were any conflicts of interest which may have influenced recruitment for the relevant positions, and whether any such conflicts may have influenced recruitment and selection processes for those positions
5. Whether Council's finances are being adversely affected as a result of staffing decisions, including but not limited to, termination payouts
6. Whether concerns raised regarding the conduct of staff or councillors have been adequately managed and addressed to ensure a safe and functional operation of Council consistent with WHS obligations, and
7. Any other related matters identified by this Office that may have impacted upon the governance and effective administration of the Council

b) Liverpool Civic Place Project

Review and report on the status and implementation of recommendations made relevant to a Public Interest Disclosure investigation report dated 13 September 2022 into allegations of mismanagement by the Council relating to the Liverpool Civic Place Project.

2.3 Statutory requirements relating to this interim investigation report

During the investigation, a number of serious matters of concern have come to light regarding the operations of the Council. The purpose of this report is to inform the Minister for Local Government of these concerns as a matter of urgency, and to inform decision making regarding immediate next steps in the investigation or other any actions deemed necessary to address these concerns.

As the section 430 investigation is ongoing, the statutory requirements outlined in section 433 and 434 with regards to the final report on the outcome of the section 430 investigation do not apply, but they will apply to any report finalised once the section 430 investigation is completed.

2.4 Background to this investigation

In December 2022, the former Minister for Local Government, the Hon. Wendy Tuckerman MP, received a complaint regarding the recruitment process for the Council's Chief Executive Officer (CEO) that resulted in Mr John Ajaka (Mr Ajaka) being appointed to the position.

The Office of Local Government (OLG) undertook preliminary enquiries into the matter by writing to the Council on 7 March 2023.

The scope of these enquiries was subsequently expanded following media reports concerning the appointment of several other people who had also previously been actively involved in a political party, as an elected official or political advisor. The media reports also referred specifically to Mr Shayne Mallard, alleging his prior political affiliation and activities.

OLG's preliminary enquiries identified and analysed a large volume of documentary material relating to the CEO recruitment process and the recruitment and appointment of a number of other persons to various senior positions within the Council.

Issues surrounding staff recruitment and termination processes, inadequate controls regarding statutory compliance in certain areas which were identified as part of the preliminary enquiries, raised the need to complete a more formal investigation into these concerns, and the broader management of the Council.

In addition, an article published in the Sydney Morning Herald on 25 April 2024, reported that during a meeting of Liverpool Council held on 24 April 2024, NSW Police were called as union members refused to vacate the public gallery following the calling of a closed session to discuss the future of the Council's CEO Mr Ajaka. The article raised concerns regarding staffing, budgetary oversights, and operational management of the Council.

A Mayoral Minute presented at the meeting indicated that the Council recognised the need for an investigation into the Council's management and expressed the need for an independent investigation.

As a result of these issues and concerns, the Minister for Local Government asked the Departmental Chief Executive to initiate an investigation under section 430 of the Act into Liverpool City Council. The final Terms of Reference of the investigation are listed in full in Section 1.2 of this interim report, and were uploaded onto the public facing OLG website, and copies were provided to the Mayor of Liverpool City Council Mr Ned Mannoun (the Mayor) and Acting Chief Executive Mr Jason Breton (Mr Breton).

2.5 The investigative process

On 10 May 2024, OLG's Director of Investigations Brad Wade and Principal Investigators Roger North and Martin Bass met with representatives of the Council at the Council's main administration building located at 50 Scott St Liverpool. The Council representatives who attended the meeting were Mr Breton, Director Corporate Support Farooq Portelli, and Chief People Officer Craig Knappick. The purpose of the meeting was to introduce the OLG investigators assigned to this

investigation and to determine logistics for the efficient running of the investigation, including access to the Council premises and staff, and a location on-site for the investigators to undertake their work.

The investigators were provided with a secure room in Liverpool Library located at 52 Scott St Liverpool, as a location for all on-site activities. The investigators were also provided with laptop computers by the Council to access Council records, along with access passes for the main council offices.

On commencement of the investigation, the investigators requested a range of recruitment documents from the Council's People and Culture Department, which were subsequently provided in hard copy form.

The investigators collated a large volume of documents for review. These included documents provided by the Council's People and Culture Department, and those provided by the Council previously in response to preliminary and other enquiries undertaken by OLG.

On 29 May 2024, Mr Breton issued an email to all staff of the Council, inviting them to make direct contact with the investigators to contribute any information they believed to be relevant to the investigation. The Terms of Reference for the investigation were attached to that email.

The investigators undertook a thorough review and assessment of all documents provided by the Council at that time and identified all information relevant to the investigation according to the Terms of Reference. In addition, the investigators identified a range of issues and concerns relating to the administration and operations of the Council beyond the terms of reference of this investigation that are recommended for consideration separate to this section 430 process.

Concurrent to the document review process, the investigators conducted interviews with elected councillors, and council staff where relevant oral evidence was obtained. A number of current and former council staff and councillors

contacted the investigators and voluntarily participated in interviews. Several staff also provided written material to the investigators relevant to the terms of reference for the investigation.

At the time of their interviews, current and former staff provided documents and/or oral evidence by way of interviews to the investigators to support the information and perspectives they shared. All documents and interviews were assessed during the document review process and formed the basis of the supportive evidence to the concerns being raised.

The investigators assessed all interviews conducted in reference to the relevant provisions under the *Public Interest Disclosures Act 2022* and completed the necessary documentation in each case. Protections for staff who participated in this process are provided under this legislation.

The investigators reviewed all material obtained from interviews and identified the information relevant to the investigation.

On 4 June 2024 the investigators interviewed Mr John Ajaka about matters related to the investigation.

On 19 June 2024 and on 27 June 2024, Mayor Ned Mannoun was interviewed about matters related to the investigation.

The investigators cross-referenced all information obtained through document review and interview processes that led to the identification of the matters of concern arising from this investigation.

The investigation is ongoing.

3 INTERIM FINDINGS – Matters of concern

Through the information obtained from document review and interview processes, the investigators have, for the purpose of this Interim Report, rather than making final findings, identified significant and serious matters of concern that fall within

the scope of the Terms of Reference for this investigation, and which can be supported by available documentary or oral evidence.

Additionally, through the interviews conducted and documents obtained, a significant number of matters of concern beyond the scope of the Terms of Reference were identified. These matters relate to potential maladministration and/or corruption and can also be supported by available documentary or oral evidence.

As a result, it is recommended that a public inquiry under section 438U of the Act be established to further investigate all matters. Final findings of this investigation will be made at a later stage and will also consider additional relevant information that may be raised through the public inquiry, should one occur.

The following provides an account of these interim matters of concern according to each of the Terms of Reference (ToR):

Recruitment and Selection Matters

3.1 ToR 1. Whether the Council complied with statutory obligations and its Policies and Procedures in recruitment and selection relating to the occupants for the relevant positions.

Identified Matters of Concern:

- Identified patterns in Liverpool Council's staff appointment and employment practices.

In analysing documents provided by the Council, oral evidence of various witnesses, and documents provided by witnesses during the course of this investigation, there is supporting evidence to suggest that there has been a frequent and repetitive pattern of employment of staff in various Council directorates whom it is alleged have external links with senior Council staff. Typically, these links have been based on political affiliations and/or previous employment roles.

It is also evident from the oral evidence of witnesses and provided documents, that there has been a frequent and repetitive pattern of direct appointment of staff with such links to fixed term positions in various Council directorates, rather than the Council undertaking competitive recruitment processes to fill positions.

At the time of this investigation, positions identified where such links were evident include, but may not be limited to, the following:

- CEO
- Director, City Futures
- Director, City Presentation
- Director, Corporate Support
- Senior Advisor (two positions)
- Senior Officer, Government Relations
- Communications Lead
- Austral Delivery Co-ordinator
- Senior Planning Advisory Officer / Senior Planner

There is evidence to suggest that on numerous occasions, staff directly engaged for a fixed term were ultimately employed on a permanent basis in the same or other positions where there were limited documented competitive recruitment processes or through recruitment that lacked a merit-based process.

The above analysis of these aspects of the Council's employment practices is supported by documents obtained in the course of this investigation, and/or independently corroborated by oral evidence provided by numerous staff with direct knowledge and/or involvement with the concerns.

Further evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal recruitment and selection policies, and may also be inconsistent with the guiding principles outlined in section 8A of the Act, and in relation to the appointment of the CEO, (sections 223, 226, 232 and 233A of the Act).

It has also been verified that it has been common practice in a number of Council directorates, to commence new employees before employment letters of offer were issued, prior to the completion of pre-employment medical assessments, and before or in the absence of criminal records checks. It was reported, and independently corroborated by other interviewees, that such practices have occurred as a result of pressure applied by senior staff to fill vacant positions with specific candidates.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

3.2 ToR 2. Whether the recruitment and selection process for the relevant positions was merit based and/or whether other identifiable factors influenced recruitment and selection processes and if so, what were those factors.

Identified Matters of Concern:

- Non-merit-based selection of staff

Document review and the oral evidence of witnesses have highlighted a significant number of positions, at all levels and in various directorates within the Council, in which it is apparent that current and previous incumbents have been employed based on factors other than merit.

Such factors include the employment of undeclared family members, close associates, and politically affiliated persons.

This is supported by the frequent and repetitive pattern of direct appointment and/or employment of people who have had political, and/or prior employment links with senior Council staff. OLG does not have the legislative power or authority to inquire into whether personal gain was received as a result of such appointments.

Concerns raised by a number of staff interviewed for this investigation, along with an examination of the curriculum vitae of the successful candidates and other background information, provides supporting evidence that the selection of a number of people for senior positions within the Council was, on the balance of the information available, likely to have been influenced by factors other than merit.

Analysis of interview feedback, curricula vitae, and other information, revealed issues in relation to senior Council staff that suggested on the balance of information available, that such staff had:

- Limited or no experience in local government
- Limited or no experience relating to the roles in which they were employed, and
- Qualifications of little or no relevance to the position(s) held.

Positions in which these issues are apparent in relation to current and former incumbents include, but are not limited to, the following:

- CEO
- Director, City Futures
- Director, City Presentation
- Director, Corporate Support

- Senior Advisor (two positions)
- Senior Officer, Government Relations
- Austral Delivery Co-ordinator

In all instances listed above, the prevalence of one or more of these issues coincides with the existence of prior external links between the selected candidates for those roles, and senior Council staff and/or the Mayor. In this regard, possible motivations underlying the appointment of staff based on prior external links has not been assessed as part of this investigation. However, such motivations may be appropriate for further investigation at a later stage.

Staff further reported by way of their oral evidence, that the lack of knowledge, skills and experience in senior management is impacting the organisation and local communities through:

- inadequate strategy
- inadequate planning
- inadequate financial management
- inadequate co-ordination in the actions and decision-making of the Executive Leadership Team (ELT).

Staff interviewed also reported that such actions and decision-making has led to poor outcomes for Council staff and the organisation, which includes the wasting of public money.

By way of a specific example, the investigators obtained documents recording payouts to staff under deeds of release totalling over \$700,000 since April 2021. Such payouts were not made on the basis of redundancy, and the positions in question were subsequently filled with new staff.

Evidence obtained by the investigators suggests that such practices in the non-merit-based selection of staff may have failed to comply with the Council’s internal recruitment and selection policies, and may also be inconsistent with the guiding principles outlined in section 8A of the Act, and in the case of the CEO sections 223, 226, 232 and 233A of the Act. It is also important to identify that the Act specifically at section 349, identifies the need for staff appointments to be made on merit.

- **CEO performance review**

Minutes of the Council meeting held on 6 December 2022 indicate the elected council’s resolutions to:

- Enter into a five-year performance-based contract with the incoming CEO
- Appoint a panel of elected councillors to conduct the CEO’s performance review
- Appoint an independent facilitator to manage processes for the CEO’s performance review
- Undertake performance reviews for the CEO against agreed criteria on a six-monthly basis as required according to the CEO’s contract of employment

Further to the contractual obligations of a performance review of the CEO, section 226(n) of the Act requires the Mayor to ensure performance appraisals of the general manager. The obligation is placed on the Mayor as the leader of the governing body. In this regard, staff with direct knowledge independently reported to the investigators that since his appointment to the CEO’s position in December 2022, Mr Ajaka had not been subject to a performance review prior to his termination in June 2024.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A of the Act and be in direct contravention of the responsibilities of the Mayor under section 226(n) of the Act.

- **Direct appointment and employment of family members**

During voluntary interviews with Council staff, oral evidence was provided setting out a number of instances where it is alleged that family members of senior Council staff have been permanently appointed to, or directly engaged on a contract basis to, positions within various directorates of the Council.

Staff interviewed reported that the Director Corporate Support, Farook Portelli, allegedly instructed the direct appointment of two immediate family members to positions in the Council, while another director, Lina Kakish, also allegedly instructed that staff select a close family member who had participated in a competitive employment process. In addition, one senior manager, Noelle Warwar, was allegedly directly involved in the selection of a close family member for a permanent position within the Council.

Documents obtained by the investigators show that a family member of the Director Community and Lifestyles, Tina Bono, was permanently employed in the Events department of the Council, which operates within her directorate. The family member’s position was made redundant in March 2022 and the incumbent was awarded a redundancy payment of \$40,507.89.

Information available to the investigators during the course of this investigation, suggested that it had not been a consistent practice for selection committee members to disclose or declare any conflicts of

interest regarding recruitment that may involve a family member or ‘close associate’.

The evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

3.3 ToR 3. Whether the Council complied with Council policies and its obligations under the NSW State Records Act in regard to the maintenance and retention of records relating to recruitment and selection for the relevant positions.

Matters of Concern

- **Inadequacies in the Council’s record-keeping**

A number of Council staff provided oral evidence reporting instances and examples of departure from proper process requiring accurate and complete record keeping. This included, but was not limited to, recruitment and appointment of staff, including pre-employment reference checking, staff disciplinary actions and outcomes, and lodgement and management of grievances.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal records management policies and the NSW State Records Act and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

- **Record keeping for recruitment and selection processes**

Initial preliminary enquiries undertaken by OLG into Liverpool City Council prior to this investigation assisted to inform the direction of this investigation. Evidence was obtained during the preliminary enquiries that showed the Council prepared a recruitment spreadsheet identifying

seven (7) positions within the Council with details of the recruitment process for each position. All but one of those positions were filled by direct appointment.

The recruitment spreadsheet indicated that for all seven appointments, no Conflict of Interest declaration forms could be located. In one instance, the appointee's references and reference check information could not be located. In a further instance, the selection committee's report on the interview and selection process could not be located.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council's internal records management policies and the NSW State Records Act and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

- **Allegations of potential destruction or removal of records**

During the course of the investigation allegations were raised by staff members with the investigators that documents and emails that had been within the Council's records system were no longer in the system. The destruction or deletion of Council records in a manner not contemplated by the State Records Act is an offence.

The as yet proven allegation was the records related to emails and documents recording councillor-staff interactions.

The investigators were so concerned about these potential breaches that steps were immediately taken to inform the Council's Acting General Manager and to ask him to remind council staff of the importance of maintaining records. A letter was sent to the Council on 3 July 2024 as a precautionary measure to ensure all were aware of the consequences of removing records and the obligations of the State Records Act.

3.4 ToR 4. Whether there were any conflicts of interest which may have influenced recruitment for the relevant positions, and whether any such conflicts may have influenced recruitment and selection processes for those positions.

Matters of Concern:

- Conflicts of interest in recruitment processes

The matters of concern listed in detail above against ToR 1 and ToR 2, may be assessed as conflicts of interest in reference to senior staff within the Council. As described in ToR 1 and ToR 2, such conflicts of interest may be seen to apply in the following circumstances:

- A frequent and repetitive pattern of employment of staff in various Council directorates who have had external links with senior Council staff including political affiliations and/or previous employment roles.
- A frequent and repetitive pattern of direct appointment of staff with such links, to fixed term positions in various Council directorates, in the absence of a competitive recruitment processes to fill positions.
- Creation of positions shortly prior to the appointment of people with such links to senior staff within the Council.
- Instances where family members of senior Council staff have been permanently appointed to, or directly engaged on a contract basis to, positions within various directorates.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council's internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A and the merit appointment

requirements in section 349 of the Act. The pattern of behaviour also suggests elected officials not exercising their oversight functions according to sections 223, 226, 232 and 233A of the Act.

- **Senior Advisor links with the Mayor**

During voluntary interviews undertaken in the course of this investigation, a number of witnesses with apparent direct knowledge, informed the investigators that Ms Betty Boustani had been directly appointed to the role of Senior Advisor to Mayor Ned Mannoun.

It was further alleged that as a practicing solicitor with a background in commercial and property law, Ms Boustani had acted as Mr Mannoun's solicitor during his work in the private sector prior to his being elected in 2021. In addition, the investigation was further informed that while Ms Boustani is employed within the City Futures directorate, she works permanently in the Mayor's office and reports directly to the Mayor. It was identified by the investigators that Ms Boustani's letter of offer for employment states that the position reports directly to the CEO Mr Ajaka.

The investigators noted in this regard, that Ms Boustani is identified as a Partner in a law firm, Mason Parkes, which has an office in Liverpool, and was appointed to the Council on a remuneration rate which was directly determined by Mr Ajaka as CEO.

It is also noted that the Council has a position of General Counsel within the organisation structure to provide legal advice on all aspects of the Council's operations.

In addition, a number of Council staff confirmed to the investigators that the other senior advisor directly appointed to the role, Mr Shayne Mallard, had pre-existing links with the CEO, Mr Ajaka. These links were

alleged to be through common partisan affiliations and as members of Parliament. Mr Mallard was later appointed to the permanent role of Director City Futures through a competitive employment process.

The evidence obtained by the investigators suggests that such practices may have failed to comply with the Council's internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A, the merit selection requirements in section 349 of the Act and sections 223, 226, 232 and 233A of the Act.

- **Gender bias in staff recruitment and selection processes**

A number of female staff members interviewed in the course of this investigation provided oral evidence forming independent, detailed accounts of occasions during their employment with Liverpool Council, where they alleged that internal recruitment and selection decisions were made on the basis of gender. These staff all provided accounts of senior male staff denying them opportunities to act in, or move permanently into, more senior roles, with male colleagues being 'preferred' for such opportunities. Most female staff interviewed for this investigation reported a broad awareness across the Council's workforce of gender bias that favours male staff, particularly in career advancement opportunities.

The evidence obtained by the investigators suggests that if such practices exist within the Council, they may fail to comply with their internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A and the merit selection requirements in section 349 of the Act.

3.5 ToR 5. Whether Council’s finances are being adversely affected as a result of staffing decisions, including but not limited to, termination payouts.

Matters of concern:

- **Directors’ remuneration**

During this investigation, oral evidence provided by numerous witnesses alleged that during the organisation restructure of the Council that occurred in early 2023, the CEO Mr Ajaka issued a directive that all director positions be subject to a standard remuneration package of \$380,000 per annum.

This decision made by Mr Ajaka is alleged to be contrary to advice provided to him by a number of appropriate staff, who recommended that the remuneration package for director positions be limited to a maximum of \$340,000 per annum, and that director positions be subject to individual job evaluations to determine appropriate remuneration levels. At this time, the investigation has not considered the impact, if any, previously reported relationships may have had on this decision.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

- **Remuneration packages for directly appointed staff**

Documents provided by the Council regarding staff recruitment indicates that a significant number of key positions within the Council have been filled through direct appointment by individuals with prior external links between senior Council staff. These positions include, but are not limited to, the following:

- Senior Advisor (two positions)
- Senior Officer, Government Relations
- Communications Lead
- Austral Delivery Co-ordinator
- Senior Planning Advisory Officer / Senior Planner
- Manager, Commercial Development

The documents also indicate that as senior advisor located in the Mayor's office, Ms Boustani is currently provided a remuneration package of \$250,000 per annum, notably without evidence as to how that remuneration level was determined or any process by which that role was subject to any job evaluation.

A member of staff with knowledge and involvement in recruitment processes, informed the investigators that this remuneration package was set by a directive from the CEO Mr Ajaka, without market testing, merit-based recruitment processes, or consideration of other candidates for the role.

The remuneration package for the other senior advisor position, awarded to Mr Mallard in April 2023, was set at \$180,000 per annum. There is no evidence to suggest whether the remuneration level was market tested, that any other candidates were considered, or that the role was subjected to a merit-based selection process.

In addition, the investigators obtained a copy of a memo from Julie Scott, as the Acting Director City Futures, to CEO Mr Ajaka, dated 14 August 2023 regarding the direct appointment of Mimi Curran to the position of Manager Commercial Development. The memo stated that while Ms Curran was an unsuccessful applicant for the position of Director

Business Performance, Ms Scott recommended her engagement for a fixed term of 12 months, to the role of Manager Commercial Development, with a remuneration package of up to \$250,000. Mr Ajaka subsequently approved the appointment.

Similar to other direct appointments as described, there is no evidence to suggest that the remuneration level in this case was market tested, that any other candidates were considered for the role, or that the role was subjected to a merit-based selection process.

A witness with broad knowledge of, and involvement in, the Council's recruitment processes, informed the investigators during interview, that they believed such direct appointments through executive management directive to be unorthodox and problematic in a number of respects.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council's internal recruitment and selection policies and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

- **Payments to staff for voluntary resignations**

During interviews conducted for this investigation, a number of Council staff provided oral evidence of independent versions of payouts being made to staff as an incentive or to encourage their resignations.

Interviewees providing this information were specific in detailing that such payments were not made on a basis of redundancy.

Staff interviewed independently confirmed that there were specific instances where employees were offered 'financial incentives' to resign accompanied by non-disclosure agreements (NDAs).

Instances reported to the investigators included such employees pursuing issues of complaint, disciplinary action, and failing to comply

with their employment obligations, including failing to follow management instructions.

The investigators noted such actions were a departure from proper processes established under the Council's own policies.

Instances were also brought to the attention of the investigators which suggested that individual staff had been made 'redundant' and received appropriate financial settlements where the position they had vacated remained in the organisation and was subsequently staffed by another employee. This suggested that such 'redundancy' action was questionable.

- **Senior staff secondary employment**

The investigators identified two senior staff in the Council, including one director, Mr Jason Breton, who is currently acting as the Council's CEO, and the senior advisor working in the Mayor's office, Betty Boustani, who were referred to in websites that indicate their ownership of and direct ongoing involvement in, private businesses separate to their Council positions.

Mr Breton's website indicated that his company 'Bretons', provided services in areas including industrial relations, business development, risk management and strategy. The site specified local government as a sector in which the company operates. In the course of this investigation, Mr Breton's website was deactivated. However, the investigators obtained dated copies of pages of the site prior to its deactivation.

The websites operated by Ms Boustani indicate her direct involvement as a solicitor in two separate legal practices, one as a sole practitioner and another as a Partner in a law firm, Mason Parkes, located in Liverpool. Documents obtained indicate that Ms Boustani has received the CEO's

approval to engage in secondary employment for up to three (3) hours per week.

The curriculum vitae provided to the Council by Ms Boustani indicated that her partnership in the legal practice ceased in 2022. However, the law firm website still lists her as a Partner and discreet enquiries with Mason Parkes confirmed her continuing role with that law practice. The investigators obtained dated copies of pages of both websites.

Evidence obtained by the investigators suggests that such practices may have failed to comply with section 353 of the Act and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

3.6 ToR 6. Whether concerns raised regarding the conduct of staff or councillors have been adequately managed and addressed to ensure a safe and functional operation of the Council consistent with WHS obligations.

Matters of concern:

A range of matters of concern regarding the culture within the Council were brought to the attention of the investigators during the course of their inquiries.

Such matters included multiple staff interviewed describing a ‘toxic culture’ within the Council, where bullying, intimidation and sexual harassment occur without such matters being appropriately addressed in a timely manner.

There were consistent views expressed to the investigators that selection and promotion of staff is rarely merit based, with selection decisions and career opportunities frequently being made on a basis of being ‘liked’ by management, without regard to job skills assessments, relevant experience, and proper and unbiased selection processes.

The investigators noted that staff who raised complaints for such matters as inappropriate actions and decision-making by managers and others, favouritism, bullying, and sexual harassment, were seen variously as ‘troublesome’, ‘difficult to work with’ and ‘not fitting in’. Many of those people so labelled were likely to be the recipients of ‘offers of resignation’ with a suitable monetary package to guide their departure.

In a number of instances, interviewees reported to the investigators that Liverpool City Council had a poor reputation as a prospective employer in the local and broader local government communities, posing difficulties for the Council in attracting new employees.

It was also reported that as a job candidate, one had better prospects of gaining employment if they are friends with existing Council employees.

It was reported during several interviews with staff that requests for details of the reasons for termination of employment, made under the *Government Information Public Access (GIPA) Act 2009*, had been declined or had never been responded to.

Instances were also brought to the attention of the investigators via oral evidence from witnesses, that identified instances in which disciplinary action had occurred without apparent process or justification, including providing procedural fairness to the employee subject to the action.

While all these matters are relevant in the context and content of details provided to the investigators, they remain open to further analysis and identification relating to the specific instances.

The above issues give rise to concerns that the Council may be failing to comply with its internal Human Resources policies and procedures, and relevant WHS legislation, and may also be inconsistent with the guiding principles of the Act outlined in section 8A of the Act.

3.7 ToR 7. Any other related matters identified by this Office that may have impacted upon the governance and effective administration of the Council.

Matters of concern:

- Suspension of CEO John Ajaka, and council resolution to investigate issues impacting the Council

On 16 April 2024, a meeting was held between the Mayor Mannoun, Deputy Mayor Fiona McNaught, the CEO Mr Ajaka, and the Director Corporate Support. During the meeting a verbal exchange occurred between the Mayor Mannoun and the CEO Mr Ajaka, during which the CEO is alleged to have told the Mayor to “shut the f**k up.”

During a closed session in a Council meeting held on 24 April 2024, following concerns raised by Mayor Mannoun, the elected council resolved to grant the CEO, John Ajaka, special leave pending the conduct of an investigation into workplace health and safety concerns. During the closed session, the scope of the investigation was determined by Council resolution as follows:

Investigate Liverpool City Council Workplace Health and Safety concerns that are advised to be impacting organisation culture including:

- a. Issues raised and feedback provided by USU representatives with Mayor and other Councillors on Tuesday April 23 2024, regarding safe, acceptable and appropriate workplace culture.*
- b. Offensive chants made by attendees participating in the public gathering on Wednesday 24 April 2024, that included Council employees in the Civic Place Public Domain, specifically chanting racist religious comments.*
- c. Report back to Council on this matter.*

A conduct reviewer was appointed by the Acting CEO Mr Breton, on 9 May 2024, to conduct a fact-finding investigation.

The investigators obtained a copy of the conduct reviewer’s report, dated June 2024.

The scope of the investigation was described in the report as follows:

*“The scope of this fact-finding investigation was to consider the alleged comments made by the CEO, Mr Ajaka to the Mayor, Ned Mannoun in a meeting held on 16 April 2024, specifically that Mr Ajaka told the Mayor to “shut the f**k (sic) up”.*

Following the interview with Mayor Mannoun, it became apparent that his complaint also related to matters that occurred post the meeting of 16 April 2024. Specifically, the Mayor’s complaint included:

Concerns that Mr Ajaka:

- *did not actively take steps to resolve the conflict that occurred at the meeting, specifically he did not apologise to the Mayor.*
- *may have exacerbated tensions with the Mayor by not clarifying or officially communicating with the Union or staff that the reported planned job losses were not correct.*
- *spoke to others about what occurred in the meeting of 16 April 2024 where it is reported that he boasted that he stood up to the Mayor.*
- *acted in a manner that the Mayor felt was insubordinate.”*

The following concerns arise in relation to the above events:

- The conduct reviewer does not appear to have been provided with the resolution that the Council passed on 24 April 2024

- regarding matters to be investigated, as the scope of the investigation described in the conduct reviewer’s report does not reflect the matters to be investigated as outlined in the resolution.
 - The scope of the conduct reviewer’s investigation appears to have been focused solely on comments made by the CEO during the verbal exchange in the meeting of 16 April 2024, and additional matters of complaint identified by the conduct reviewer in discussion with the Mayor.
 - The scope of the investigation, not reflecting the Council’s resolution, appears to have been set by the Acting CEO and other Council staff. In their report, the conduct reviewer noted that those personnel had approved the inclusion of the additional complaint matters raised by the Mayor in the investigation.
- Termination of CEO John Ajaka

During a closed session of the Council meeting held on 29 May 2024, Mayor Mannoun tabled a Mayoral Minute recommending termination of the CEO Mr Ajaka, citing the following reasons for the recommendation:

“In addition to the CEO’s actions during the meeting of 16 April 2024, his actions and inactions in advance of that meeting and which followed the meeting are of concern.”

The recommendations in the Minute were as follows:

“That Council

- 1. Pursuant to clause 10.4 Of the employment contract, the Council terminate the employment of John Ajaka as Chief Executive Office of the Council without notice and with immediate effect.*
- 2. The Council writes to Mr Ajaka and informs him of the Council’s decision and issues him with the attached letter without delay.”*

Of relevance in this regard, the conduct reviewer’s report stated the following as an outcome of his investigation:

“The fact-finding investigation did not find any prima facie evidence to support allegations of misconduct being put to Mr Ajaka. The investigation concluded that the comment, while unprofessional, was in of itself trivial and could and should have been managed at the time through Council’s existing policy processes, which most likely would have prevented the matter from escalating.”

Voting on the resolutions in the Mayoral Minute was evenly split and the Mayor used his casting vote to pass both recommendations regarding Mr Ajaka’s termination.

A Notice to Rescind the Resolution, signed by four councillors, was lodged immediately following the vote on the Mayoral Minute. However, immediately following the Council meeting and despite the rescission motion, a media release was issued by the Acting CEO, Mr Breton, and Mr Ajaka was informed of his termination in writing. Following issuing of the Media release, action to summarily terminate Mr Ajaka as CEO was suspended by the Council.

Following a subsequent meeting on 26 June Mr Ajaka was formally terminated.

Issues of particular concern in regard to the above are as follows:

- The conduct reviewer’s final report had not been provided to the Council prior to the meeting of 29 May. However, an interim report had been provided on 27 May, two days prior to the Council meeting in which the Council passed the resolution to terminate Mr Ajaka’s employment. It is not able to be demonstrated that all elected members received a copy of the interim report.
- In tabling the Mayoral Minute recommending the termination of Mr Ajaka’s employment prior to the final report of investigation being received, Mr Ajaka was denied procedural fairness as the decision to terminate his employment was not informed by the conduct reviewer’s findings.
- In light of the fact that the scope of the investigation focused on matters relating directly to the dispute between the Mayor and the CEO, the Mayor’s use of his casting vote to pass both recommendations may be regarded as a conflict of interest.
- **Mayor’s intervention in compliance activities and operations**

A number of staff interviewed for this investigation independently reported to the investigators by way of oral evidence, that Mayor Mannoun has intervened in the Council’s compliance activities and operations on a number of occasions.

One member of staff reported that Mayor Mannoun has been open with staff and councillors in his desire to see the Council’s compliance operations outsourced to the private sector.

Another member of staff provided an account of the Mayor’s intervention in compliance actions that were initiated by the Council against the owners of two properties on which illegal earth and other works had commenced. Emails have been provided to the

investigators in support of the oral evidence, documenting a request from Mayor Mannoun to cease legal action against the owners of the property in question.

The investigators obtained a number of public social media posts in which the owners of the same properties made multiple positive comments about Mayor Mannoun.

No further investigation has been undertaken in relation to these raised concerns at this stage, apart from the identification and supporting evidence provided. Evidence obtained by the investigators may suggest that such actions could show a failure to comply with the Council's Code of Conduct in that it implies actions taken to ask for compliance issues to be ceased would lead to political support for the Mayor and may also be inconsistent with the guiding principles outlined in section 8A of the Act.

- **Mayor and councillor intervention in council's development assessment operations**

Multiple staff interviewed for this investigation reported that councillors and Mayor Mannoun in particular, have made frequent inquiries directly to assessment staff regarding the status and progress of specific development applications lodged with the Council. These inquiries have been based on representations made to councillors and the Mayor by applicants ranging from private domestic dwelling owners to large scale property developers.

The effect of these representations to elected representatives, and their subsequent inquiries to assessment staff, is that those making such representations are frequently advocated for by elected representatives, in particular the Mayor. As a result of such advocacy

and representations by elected members and senior staff in the Planning and Compliance directorate, applications are brought forward in the queue for assessment.

All staff interviewed in this regard reported that senior staff overseeing the Council's development assessment operations, including the director, participate in and sanction this direct contact between elected representatives and assessment staff, and the bringing forward of these applications for assessment.

The investigators obtained multiple examples of email correspondence between the Mayor and assessment staff containing such inquiries.

At this stage, the investigation has not made any further inquiries to ascertain whether the actions as described by the witnesses is in contravention of any internal code or the Act, but are included in this interim report as they are concerns raised by staff within the Council dealing with these situations.

- **Council acting contrary to its own policies**

The investigators obtained a copy of an email from the Council's Manager Community Standards, Noelle Warwar, dated 31 October

2023, instructing compliance staff that the Council will use its discretion to apply the draft policy to its full extent, starting forthwith, despite the elected council not having adopted the policy.

The email cites a further example of such discretionary implementation action in relation to the Council's draft Parking Enforcement Policy.

Implementation of such policies on a discretionary basis, prior to their adoption by the elected council, may leave the Council open to legal challenge and liability for compliance and enforcement actions taken by staff under the provisions of a policy not yet adopted by the Council. Such discretionary action also has legal risks as reliance on a draft policy which had not been adopted by the elected council, and may therefore be subject to change, does not have the certainty and imminence to allow it to be reliably applied in legal challenges.

- **End of year development application statistics**

A number of staff interviewed by the investigators provided oral evidence of situations whereas the end of the annual reporting period for DA determinations approaches, senior staff in the development assessment department place increasing pressure on assessment staff to determine applications in order to boost the number of determinations reported to the state government.

Frequently in such circumstances, the assessment process is rushed and applications that are likely to be approved subject to further information being provided by applicants and other agencies, are unnecessarily refused to enable those matters to be included in annual determinations reporting.

In many cases, applicants seek redress for the determination of the refusal in the NSW Land and Environment Court. While the bulk of matters are resolved out of session, the Council appoints barristers for representation in each matter, resulting in high annual costs for the legal representation.

Staff who provided these insights during interview provided email correspondence and other documentation to support their assertions.

- **Contracting of consultants**

It was reported to the investigators that it was a frequent practice of the Council, across a number of directorates, to bypass procurement processes in issuing contracts to consultants.

In this regard, instances were reported by way of oral evidence where consultants known to senior Council staff had allegedly been awarded contracts worth hundreds of thousands of dollars without appropriate procurement process being undertaken, or with sanctioned exemptions from procurement processes. They also provided examples of other instances where consultants, by agreement with Council staff, had submitted progressive invoices for payment that are under the minimum amount requiring the application of more stringent procurement processes.

The investigators were provided with a range of documents that support the information provided, including a spreadsheet of purchase orders paid to one consultant between February and August 2023, many on the basis of back order (where the purchase order is raised after the contract for services and not before as is custom), to the ultimate value of \$1.44 million. Documents indicate multiple approvals by the CEO Mr Ajaka for exemptions from procurement processes.

Documents also provided indicate multiple instances where another consulting agency had been subject to multiple procurement exemptions to a total value in excess of \$375,000. In both cases the rationale for the exemptions was that the consulting agency was already engaged by the Council and their services were sought for additional projects.

Evidence obtained by the investigators suggests that such practices may have failed to comply with the Council’s internal procurement policies and may also be inconsistent with the guiding principles outlined in section 8A of the Act. The lack of monitoring and oversight also indicates elected officials not exercising their functions according to sections 223, 226, 232 and 233A of the Act.

Liverpool Civic Place Project

3.8 ToR 8. Review and report on the status and implementation of recommendations made relevant to a Public Interest Disclosure investigation report dated 13 September 2022 into allegations of mismanagement by the Council relating to the Liverpool Civic Place Project.

Matters of concern:

Council had commissioned its own investigation report on the procurement and project management for the Civic Place Project, which was provided in September 2022. This report identified a substantial number of concerns relating to the Liverpool Civic Place Project that appear to be valid. However, a comprehensive assessment of the concerns identified in the report require expert analysis to test and/or confirm the validity of those concerns.

The investigators believe that, given the time and nature of the expertise required, such a comprehensive assessment would more appropriately fall within the scope of a broader public inquiry into the functions and operations of the Council.

4 ANALYSIS

4.1 Concerns identified that fall within the Terms of Reference

In the course of this investigation, the investigators identified numerous matters of concern, that were supported by oral and/or documentary evidence, that fall within the Terms of Reference addressing recruitment and selection. These include, but are not limited to, the following:

- The frequent and repetitive pattern of employment of staff to positions in various Council directorates who have had prior external links with senior Council staff.
- Non-merit-based selection of people for appointment to senior staff positions, contrary to section 349 of the Act which requires senior staff appointments to be made on merit
- Inappropriate appointment of family members to temporary and permanent roles in the Council
- Lack of adequate record-keeping of decisions and a failure to properly document council processes
- Multiple matters of concern in relation to the Council's Civic Place project

4.2 Concerns identified that fall outside the Terms of Reference

It is notable that, while Terms of Reference a) 1 to 6 for this investigation focus on recruitment and selection matters in Liverpool City Council, the matters of concern identified by the investigators, listed in Section 2 of this report, are considerably broader in their scope than those Terms of Reference suggested.

This is primarily due to the large volume of relevant documents obtained by the investigators, and the number of current and former council staff who contacted the investigators and voluntarily provided oral evidence into a

broad array of information about the operations of the Council. Some staff interviewed also provided relevant documentation in support of their oral evidence.

The matters of concern identified in the course of this investigation are wide ranging and go considerably beyond the scope of recruitment and selection matters that are the central focus of Part a) of the Terms of Reference.

It is strongly emphasised that the account of all matters of concern is based on:

- Consistent and/or corroborated information provided by multiple council staff by way of oral evidence
- Review of relevant documentation obtained and in the possession of OLG.

It is also notable that, based on interviews with current and former staff of the council, and analysis of documents obtained, the investigators strongly believe that it is likely that there are additional prevailing issues impacting the operations of the council not yet identified in the course of this investigation.

The matters of concern documented in this report build a compelling argument that the Council is dysfunctional, that there is maladministration evident in many aspects of the Council's operations, including management of finances, that councillors and the Mayor are allegedly inappropriately lobbying staff on development and compliance matters and that many of the Council's policies are intentionally bypassed, ignored, or only partially applied.

4.3 Oversight by the elected council

In light of the broad array of matters of concern identified in Section 2 of this report, it is notable that most of these have occurred throughout the tenure of multiple General Managers appointed to the Council. However, all matters

of concern have occurred, and continue to occur, within the tenure and oversight of the current elected council.

Based on an analysis of documents obtained and interviews conducted in the course of this investigation, it is apparent that the Council's elected members may be failing in their duties under section 226 and 232 of the Act. In addition, it is apparent that, in their oversight of the Council's functions and operations, the elected council is failing to observe many points within the Guiding Principles for Councils under section 8A of the Act. Aspects of this section of the Act of particular relevance include:

(1) *Exercise of functions generally*

The following general principles apply to the exercise of functions by councils -

(a) Councils should provide strong and effective representation, leadership, planning and decision-making.

(b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

(h) Councils should act fairly, ethically and without bias in the interests of the local community.

(i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

4.4 Concerns identified during the investigation

The investigation has identified the following concerns, supported by oral and/or documentary evidence, regarding the elected council during the current term of office:

- The elected council has presided over the departure of four temporary and permanent General Managers

- The elected council has appeared to have demonstrated a detrimental lack of effective oversight of the council’s operations and expenditure
- The elected council has appeared to have demonstrated a lack of capacity to take appropriate action regarding increasing levels of dysfunction in council meetings and proceedings, industrial tensions affecting the Council’s workforce, and public disquiet about the organisation as a whole.

4.5 The need for a Public Inquiry

The investigators are of the belief that the matters of concern documented in this interim report are sufficient in both number and seriousness to warrant an immediate public inquiry into the operations of the council. It is advised that such an inquiry should address all aspects of the functions of the elected council and the Council’s administration, and the interrelationships between them.

While the holding of a public inquiry is one of a number of options that may be considered in addressing the matters of concern, it is recommended as the preferred course of action based on the following considerations:

- It is an open and transparent process and invites submissions from any interested parties
- It tests the validity of all evidence in the public arena and generates a set of appropriate recommendations from a legally trained commissioner
- It would be an effective means to consider and act on all material gained in documents and interviews during the course of the section 430 investigation
- It is likely to reveal further information, consolidating on the matters of concern documented in this interim report

- It is likely to be an effective means to restore public confidence in future operations of the Council, the capacities of future elected councils, and in local government processes more broadly.

4.6 The importance of a functional council from a planning perspective

It is broadly recognised the strategic importance of Liverpool to delivering on the broader social, employment and housing outcomes of Western Sydney and the State. Liverpool, through its major health precinct, its CBD and employment lands (both existing and planned), is a major contributor to the future jobs, housing and services to Western Sydney and requires effective and functional leadership within Council.

The section 430 investigation shows that due to organisational dysfunction, the success of these outcomes may be jeopardised. One factor that shows the declining capability of the Council is increasing timeframe for development approvals in the council area. This can be demonstrated by observing Liverpool's average DA assessment timeframes which were 155 days (above the 111 day state-wide average) in 2021/22 but have since increased to 210 days currently. There are also planning proposals that remain unresolved despite extensive effort by both Council and Departmental staff to resolve.

These delays and issues with the planning process jeopardise significant projects such as:

- Delivering on the commitments around the aerotropolis precinct
- New release areas and additional dwellings around Austral, Leppington and Bringelly
- Urban renewal and uplift of Liverpool's CBD
- Delivery of strategic employment lands across the LGA

Given the importance of these projects to the economic, social and cultural wellbeing of Western Sydney as a whole, it is pivotal that improvements in Liverpool’s operations are obtained.

4.7 The consequences of not acting

The investigators are of the strong belief that failure to act on the matters of concern documented in this report is likely to have the following consequences:

- Increased levels of dysfunction in the Council’s administration, operations, and service delivery
- Increased dysfunction in the activities and decision-making of the elected council
- Reduced levels of performance by the Council in areas including financial management, service planning and delivery, and workforce management
- Loss of confidence amongst Council staff and local communities, in the capacity of the elected council and the Executive Leadership Team to oversee and manage the functions and operations of the Council.
- Continued negative impact on council staff in the workplace

5 RECOMMENDATIONS

5.1 Recommendation

That under section 438 U of the Local Government Act 1993, a public inquiry be held into the functions and operations of the elected council and the Council’s administration, and the interrelationships between them. The Public Inquiry should consider whether the Council is exercising its functions under sections 21, 22, 23 and 24 of the Act in a manner consistent with the guiding principles set out in sections 8A, 8B and 8C of the Act; and if the elected officials have been exercising their functions according to sections 223, 226,

232 and 233A It is further recommended that concerns identified in relation to the Liverpool Civic Place Project be included in the scope of the public inquiry.

5.2 Recommendation

That this interim report be provided to the NSW Independent Commission Against Corruption to facilitate an assessment of issues identified thus far in this investigation.

6 RELEVANT LEGISLATIVE REQUIREMENTS

6.1 Role of councillors

Section 232 of the Act requires that councillors as a group direct and control the Council's affairs, allocate resources, determine policy, and monitor the Council's performance. Sections 226, 223 and 233A are also relevant for the functions and duties of the elected officials.

As individuals, councillors communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council.

The Act requires councillors, as the governing body, to appoint a person to be general manager (section 334). Having done so, the role of the governing body is to oversee the general manager's performance.

The governing body must review the performance of the general manager at least annually against the agreed performance criteria for the position. The failure to do so contravenes section 226(n) of the Act.

6.2 Functions of the General Manager

Section 335 of the Act provides that a council's general manager is generally responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation, without undue delay, of

decisions of the Council. It further stipulates that the general manager has the following particular functions:

- *to assist the Council in connection with the development and implementation of the community strategic plan and the Council's resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report*
- *the day-to-day management of the Council*
- *to exercise such of the functions of the Council as are delegated by the Council to the general manager*
- *to appoint staff in accordance with an organisation structure and resources approved by the Council*
- *to direct and dismiss staff*
- *to implement the Council's equal employment opportunity management plan; and*
such other functions as may be conferred or imposed on the general manager by or under this or any other Act.

6.3 Conduct of councillors and staff

Section 439 of the Act provides that councillors, members of staff and delegates of councils must act honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act or any other Act.

The conduct of all council officials (councillors and staff) is subject to the provision of the Council's adopted Code of Conduct, which in turn is required to be consistent with the Model Code of Conduct for Local Councils in NSW.

The conduct of council staff is also subject to any applicable contract of employment and/or industrial instrument and their common law duties as an employee.

7 COUNCIL POLICIES AND PROCEDURES

7.1 Code of Conduct

Council's code of conduct is the key instrument that regulates the conduct of staff and councillors. All councils are required to adopt a code of conduct that meets at least the minimum standards set out in the Model Code of Conduct for Local Councils in NSW prescribed by the Local Government Act 1993. All council officials (councillors, staff and delegates) must comply with the code of conduct. It guides them on a range of matters including the need to act with care and diligence.

7.2 Relevant Council Policies and Strategies

In addition to the code of conduct, the investigators considered the following council policies and strategies in the course of this investigation:

- Recruitment and Appointment Policy (2012)
- Pre-employment Medical Assessment Policy (2006)
- People Achieving Policy (2018)
- Dignity and Respect in the Workplace Policy (2015)
- Developing Talented People Policy (2017)
- Job Evaluation Policy (2019)
- Ethical Governance: Conflicts of Interest Policy (2015)
- Secondary employment policy (2020)
- Redeployment and Redundancy Policy (2007)
- Workforce Management Strategy 2022-2026

- Councillor Access to Information and Interaction with Staff Policy (2023)

8 SUBMISSION OF THE INTERIM REPORT TO THE MINISTER

I hereby make this interim report to the Minister for Local Government, the Hon Ron Hoenig MP.



Brett Whitworth
Deputy Secretary, Local Government
Department of Planning, Housing and Infrastructure

Dated this 11 day of July 2024