



Department of
**Local Government, Sport
and Cultural Industries**

Report of the Inquiry into the Shire of Carnarvon

Authorised Inquiry under Part 8 Division 1
of the Local Government Act 1995 (WA)



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About DLGSC

The DLGSC works with partners across government and within its diverse sectors to enliven the Western Australian community and economy through support for and provision of sporting, recreational, cultural and artistic policy, programs and activities for locals and visitors to the State.

The department provides regulation and support to local governments and the racing, gaming and liquor industries to maintain quality and compliance with relevant legislation, for the benefit of all Western Australians. This publication is current at October 2019.

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1. Introduction

1. Carnarvon is a coastal town that sits at the mouth of the Gascoyne River with economic activities of mining, fishing, tourism and agriculture, both pastoral and horticulture. The local government area is in the Gascoyne region of Western Australia, about 900 kilometres north of Perth. The Shire of Carnarvon (**Shire**) has an operating budget of \$21,567,176 and a financial health indicator score of 64 on My Council website. The Shire covers an area of 46,562 square kilometres and has a population of 5592 of which 3163 are electors.
2. The council consists of eight members. Councillors are elected by the constituents and serve a two or four year term. The Shire President is elected by popular vote and the incumbent has held the position since 2012.
3. The Chief Executive Officer (**CEO**) position is currently held by Mr David Burton. The Shire also has four (4) Executives positions of Executive Manager Development Services, Executive Manager Infrastructure Services, Executive Manager Corporate Services and Executive Manager Community Services. During the period in question the CEO's position was held by Mr Maurice Battilana (**Mr Battilana**) from September 2010 to July 2013 and was followed by Mr Ian D'Arcy (**Mr D'Arcy**) from October 2013 to December 2018.
4. The Authorised Inquiry was instigated by several complaints from electors and the review of a Probity Audit that was conducted on the Shire in 2013.
5. Section 8.3 of the *Local Government Act 1995* (**the Act**) gives the Director General of the Department of Local Government, Sport and Cultural Industries (**the Department**) the authority to inquire into all local governments and their operations and affairs. This function was delegated to the Deputy Director General as per Regulation 35B of the *Local Government (Functions and General) Regulations 1996* on 8 December 2017.
6. The Deputy Director General may, by written authorisation, authorise a person to inquire into and report on any aspect of a local government or its operations or affairs.
7. On 8 January 2018, the Deputy Director General of the Department authorised an inquiry in accordance with section 8.3(2) of the Act. The Terms of Reference directed the inquiry to the following aspects of the Shire and its operations and affairs beginning 1 January 2011 to:

- *Inquire into and report on the operations and affairs of the Shire of Carnarvon (Shire) for potential breaches of the Act and associated Regulations that will encompass aspects of the Shire and associated business entities that has, has had, may have or may have had dealings with the Shire, and the operations and practices related to tendering, procurement and financial management, from 1 January 2011 to the present day.*
8. This report on the outcome of the Department's inquiry has been compiled in accordance with section 8.13 of the Act by officers of the Department who were authorised to conduct the inquiry (**the Authorised Persons**).
 9. In order to perform their functions, the Authorised Persons issued nineteen (19) directions to the external entities and persons to gain the required information to ascertain the necessary information.
 10. Voluntary records of interview were also conducted with relevant persons during the period in question.
 11. Mr Battilana, Mr Brian Wall (**Mr Wall**), the Shire of Carnarvon Council (**Council**) and In-Situ Construction & Maintenance were given an opportunity to comment on this report in draft form before it was finalised and provide written submissions. Those submissions were considered by the Authorised Persons and form part of this report.

2. Statutory framework

12. The Act and associated local government regulations set out the framework for the administration and financial management of local government.

2.1 Governance

13. The Act and regulations define the roles and responsibilities of the Council, President, Councillors and employees. Relevantly, the Act provides:

2.7. Role of council

- (1) *The council —*
 - (a) *governs the local government's affairs; and*

- (b) *is responsible for the performance of the local government's functions .*
- (2) *Without limiting subsection (1), the council is to —*
 - (a) *oversee the allocation of the local government's finances and resources; and*
 - (b) *determine the local government's policies.*

2.8. Role of mayor or president

- (1) *The mayor or president —*
 - (a) *presides at meetings in accordance with this Act; and*
 - (b) *provides leadership and guidance to the community in the district; and*
 - (c) *carries out civic and ceremonial duties on behalf of the local government; and*
 - (d) *speaks on behalf of the local government; and*
 - (e) *performs such other functions as are given to the mayor or president by this Act or any other written law; and*
 - (f) *liaises with the CEO on the local government's affairs and the performance of its functions.*
- (2) *Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.*

2.10. Role of councillors

A councillor —

- (a) *represents the interests of electors, ratepayers and residents of the district; and*
- (b) *provides leadership and guidance to the community in the district; and*
- (c) *facilitates communication between the community and the council; and*
- (d) *participates in the local government's decision-making processes at council and committee meetings; and*
- (e) *performs such other functions as are given to a councillor by this Act or any other written law.*

- 13. It is important to note that individual elected members have no authority to make decisions or participate in the day-to-day operations of the local government. All

authority sits with the Council as a group and that authority is exercised by decisions at formal council or committee meetings.

14. As the President and councillors are not involved in operational matters, each local government employs a CEO who employs other staff for the purposes of day-to-day running of the local government. The CEO is appointed by Council and is the link between Councillors and local government staff. All local government staff report to the CEO. The Act provides:

5.41 Functions of CEO

The CEO's function are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and*
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and*
- (c) cause council decisions to be implemented; and*
- (d) manage the day to day operations of the local government; and*
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and*
- (f) speak on behalf of the local government if the mayor or president agrees; and*
- (g) be responsible for the employment, management, supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

15. Section 5.42 of the Act allows a council to delegate in writing to the CEO the exercise of its powers or the discharge of its duties, subject to some exceptions (e.g. borrowing money, decisions requiring an absolute majority of council members, appointing an auditor).
16. The role of local government staff is determined by the CEO and endorsed by Council. Section 5.44 of the Act allows the CEO to delegate in writing to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties, other than the power of delegation. With some qualifications, under section 5.44 the CEO is permitted to delegate a power or duty the exercise or discharge of which was delegated to the CEO by the Council under section 5.42 of the Act.

2.2 Disclosure of interests

17. Upon considering any matter before council and administration, Division 6 of the Act sets out the requirements of all local councils regarding disclosure of interests and is further clarified in the Administration Regulations. There is a considerable amount of clarification provided in the regulations and Guidelines and Circulars provided by the department involving this subject. The Act specifies the two most significant “interests” that an elected member or administration must declare when dealing with matters in section 5.60, 5.60A and 5.60B;

5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

- (a) *the relevant person; or*
- (b) *a person with whom the relevant person is closely associated,*
has —
- (c) *a direct or indirect financial interest in the matter; or*
- (d) *a proximity interest in the matter.*

5.60A. Financial interest

For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

5.60B. Proximity interest

- (1) *For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —*
- (a) *a proposed change to a planning scheme affecting land that adjoins the person's land; or*
 - (b) *a proposed change to the zoning or use of land that adjoins the person's land; or*
 - (c) *a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.*
- (2) *In this section, land (the proposal land) adjoins a person's land if —*
- (a) *the proposal land, not being a thoroughfare, has a common boundary with the person's land; or*
 - (b) *the proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or*
 - (c) *the proposal land is that part of a thoroughfare that has a common boundary with the person's land.*
- (3) *In this section a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.*

2.3 Tendering

18. When the requirements of the Shire necessitate the invitation of tenders for providing goods or services there is a statutory obligation the Shire will adhere to the requirements of *Local Government (Functions and General) Regulations 1996 (Function & General Regulations)*, Part 4 Provision of goods and services. More specifically;

Regulation 11. When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$150 000 unless sub regulation (2) states otherwise.*
- (2) *Tenders do not have to be publicly invited according to the requirements of this Division if —*
- (a) *the supply of the goods or services is to be obtained from expenditure authorised in an emergency under section 6.8(1)(c) of the Act; or*

- (b) *the supply of the goods or services is to be obtained through the WALGA Preferred Supplier Program; or*
- (c) *within the last 6 months —*
 - (i) *the local government has, according to the requirements of this Division, publicly invited tenders for the supply of the goods or services but no tender was submitted that met the tender specifications or satisfied the value for money assessment; or*
 - (ii) *the local government has, under regulation 21(1), sought expressions of interest with respect to the supply of the goods or services but no person was, as a result, listed as an acceptable tenderer; or*
- (d) *the contract is to be entered into by auction after being expressly authorised by a resolution of the council of the local government; or*
- (e) *the goods or services are to be supplied by or obtained through the government of the State or the Commonwealth or any of its agencies, or by a local government or a regional local government; or*
- (ea) *the goods or services are to be supplied —*
 - (i) *in respect of an area of land that has been incorporated in a district as a result of an order made under section 2.1 of the Act changing the boundaries of the district; and*
 - (ii) *by a person who, on the commencement of the order referred to in subparagraph (i), has a contract to supply the same kind of goods or services to the local government of the district referred to in that subparagraph; or*
- (f) *the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier; or*
- (g) *the goods to be supplied under the contract are —*
 - (i) *petrol or oil; or*
 - (ii) *any other liquid, or any gas, used for internal combustion engines; or*
- (h) *the following apply —*
 - (i) *the goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA published by the Small Business Development Corporation established under the Small Business Development Corporation Act 1983; and*
 - (ii) *the consideration under the contract is \$250 000 or less, or worth \$250 000 or less; and*

(iii) *the local government is satisfied that the contract represents value for money;*

or

(i) *the goods or services are to be supplied by an Australian Disability Enterprise; or*

(j) *the contract is a renewal or extension of the term of a contract (the original contract) where —*

(i) *the original contract was entered into after the local government, according to the requirements of this Division, publicly invited tenders for the supply of goods or services; and*

(ii) *the invitation for tenders contained provision for the renewal or extension of a contract entered into with a successful tenderer; and*

(iii) *the original contract contains an option to renew or extend its term; and*

(iv) *the supplier's tender included a requirement for such an option and specified the consideration payable, or the method by which the consideration is to be calculated, if the option were exercised; or*

(k) *the goods or services are to be supplied by a pre qualified supplier under Division 3.*

19. The *State Records Act 2000* requires a government organisation to have a plan. Section 19 states:

Government organisations to have plans

Every government organisation must have a record keeping plan that has been approved by the Commission under section 23.

20. The *State Records Principles and Standards 2002* further provides:

Principle 2—Policies and Procedures

Government organisations ensure that record keeping programs are supported by policy and procedures.

Minimum Compliance Requirements

The record keeping plan must provide evidence to adduce that—

1. *Policies and standard operating procedures governing record keeping in the organization are established, authorized at an appropriate senior level, and are available to all employees.*

2. *The policies and procedures define the roles and responsibilities of all employees who manage or perform record keeping processes.*
3. *The policies take into account relevant government policy and endorsed standards for the making and keeping of proper and adequate records.*
4. *The policies and procedures cover records in all formats and all aspects of their management, including—*
 - *creation of records;*
 - *capture and control of records;*
 - *security and protection of records;*
 - *access to records; and*
 - *appraisal, retention and disposal of records.*
5. *The organizational scope of the policies and procedures has been addressed, i.e. whether they are applicable to the entire organization, including divisions, regional branches and offices, and outsourced contractors.*
6. *The custodianship and management of government records has been addressed in regard to organizational restructures, the transfer of an organization's functions, the creation of new business units or the devolution of authority for managing government records.*

3. Key Shire policies

3.1 Shire of Carnarvon Policy F003 – Purchasing Policy

21. In accordance with regulation 11A(3) of the Functions and General Regulations, a local government is required to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$150,000 or less.
22. Purchasing Policy F003 (**Policy F003**) was adopted 27 March 2007 and then amended and endorsed on 8 March 2010. This policy outlines the requirements for the procurement of goods and services by the Shire. Policy statement annotates the following under heading of “Ethics and Integrity”:

All officers and employees of the Shire of Carnarvon shall observe the highest standards of ethics and integrity in undertaking purchasing activity and act in an honest and professional manner that supports the standing of the Local Government.

Levels of expenditure restrictions imposed upon individual staff with sub-delegated purchasing authority are to be at the discretion of the Chief Executive Officer.

The following principles, standards and behaviours must be observed and enforced through all stages of the purchasing process to ensure the fair and equitable treatment of all parties:

- full accountability shall be taken for all purchasing decisions and the efficient, effective and proper expenditure of public monies based on achieving value for money;*
- all purchasing practices shall comply with relevant legislation, regulations, and requirements consistent with the Local Government policies and code of conduct;*
- purchasing is to be undertaken on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently;*
- all processes, evaluations and decisions shall be transparent, free from bias and fully documented in accordance with applicable policies and audit requirements;*
- any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed; and*
- any information provided to the Shire of Carnarvon by a supplier shall be treated as commercial-in-confidence and should not be released unless authorised by the supplier or relevant legislation.*

23. Policy statement annotates the following under heading of Value for Money;

- Value for money is an overarching principle governing purchasing that allows the best possible outcome to be achieved for the Shire of Carnarvon. It is important to note that compliance with the specification is more important than obtaining the lowest price, particularly taking into account user requirements, quality standards, sustainability, life cycle costing, and service benchmarks.*

An assessment of the best value for money outcome for any purchasing should consider:

- all relevant whole-of-life costs and benefits whole of life cycle costs (for goods) and whole of contract life costs (for services) including transaction costs associated with acquisition, delivery, distribution, as well as other costs such as but not limited to holding costs, consumables, deployment, maintenance and disposal.*

- *the technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality;*
- *financial viability and capacity to supply without risk of default. (Competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history);*
- *a strong element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable.*

Where a higher priced conforming offer is recommended, there should be clear and demonstrable benefits over and above the lowest total priced, conforming offer.

24. Policy F003 also provides that all purchases \$100 000 and over shall be by public tender unless goods or services are available; the CEO shall investigate whether the goods or services requested are available by;

- *An emergency situation as defined by the Local Government Act 1995;*
- *The purchase is under a contract of WALGA (Preferred Supplier Arrangements), Department of Treasury and Finance (permitted Common Use Arrangements), Regional Council, or another Local Government;*
- *The purchase is under auction which has been authorised by Council;*
- *The contract is for petrol, oil, or other liquid or gas used for internal combustion engines;*
- *Any of the other exclusions under Regulation 11 of the Functions and General Regulations apply.*

25. Policy F003 provides that the Shire is committed to maximising opportunities for local industry by means that are consistent with achieving value for money by;

- *identifying the benefits of purchasing goods and services from the local, Western Australian and Australian suppliers;*
- *improved risk identification and risk management;*
- *improved relationships with suppliers and after sales service; and*
- *Better purchasing decisions*

This is maximised by:

- *considering local industry capabilities in the development of procurement plans and tender/quotation specifications;*
- *providing local industry with early notice of major opportunities, thereby enabling suppliers to form consortia bids and/or explore subcontracting arrangements;*
- *recognising the benefits of purchasing from local industry and considering this as part of whole of life costing and value for money decisions;*
- *avoiding purchases that are structured in a way that excludes local industry;*
- *encouraging prime contractors to give local suppliers every opportunity to participate in major projects;*
- *making an effort to ensure that regionally based public authorities consider the capabilities of industry based within their region;*
- *providing adequate feedback to unsuccessful suppliers that highlight how bids can be improved.*

The Shire of Carnarvon shall adopt a 'buy local first' philosophy to ensure that Local and Western Australian industry has every opportunity to, where competitive, supply the required needs, having due regard to the quality of the product, availability of after sales service, supply date, freight costs, degree of urgency and any other factors that could be included in the phrase "all things being equal:"

In addition to this, the Shire shall consider this as part of any value for money decision, the benefits of purchasing goods and services from local suppliers.

These considerations could include:

- *more timely delivery with shorter supply lines;*
- *the opportunity for local product demonstrations and references, with consequentially reduced risk in the decision making process;*
- *local backup, spare parts, warranty and servicing support;*
- *more convenient communications and liaison;*
- *better knowledge of local conditions, Australian design standards and quality requirements;*
- *benefits to the Shire from local employment and economic spin-offs.*

3.2 Records Management Plan

26. Shire of Carnarvon Record Keeping Plan (**RKP**) was adopted by Council in October 2009 and reviewed in February 2015 and furthermore approved by the State Record Commission (**SRC**) that same year. Record Keeping Policy C005 was adopted on 27 May 2014, amended in April 2016 and approved by SRC in 2015. A Records Management (Data Migration) Policy C014 was adopted by Council in February 2015 and later reviewed in April 2016.

4. Inquiry findings

4.1 Record keeping requirements

27. All local governments must keep records relating to all activities but in particular, the procurement activities in accordance with;

- the *State Records Act 2000 (WA)*
- the local government record keeping plan
- the local government's record keeping policy and process
- associated procurement procedures.

28. The Shire is required to have an approved RKP as well as associated policies and procedures which were approved by Council in October 2009 and Policy C005 that was approved in May 2014. The State Records Commission approved the RKP in October 2009 and the review of the RKP was sent to the Commission in October 2014.

29. The state of files relevant to the inquiry and electronic records of the Shire is disorganised and a significant amount of relevant documentation has not been filed appropriately or in some cases has not been retained. Many documents regarding the management and verification of tenders and project management could not be located by the Shire staff.

30. Electronic records include electronic communication and the storage and transfer from one service provider to another. As an example of misplaced or lost documents the mailbox of Mr Brian Wall (**Mr Wall**), the Director of Infrastructure Services during the period of his employment for the Shire has no originating emails and there are limited emails of Wall's considerations of the significant projects that he was involved in whilst at the Shire. The majority of the emails that are on record for Mr Wall is when they form part of an email chain. It is acknowledged the Shire sustained a virus attack in 2016 and the system had

to be reloaded from a backup. Since that time, the situation has been further compounded by the Shire's moving to another service provider, thus this set of circumstances has eliminated any chance of recovering the deleted emails that are relevant to the inquiry.

31. The Fascine Development Working Group was formed in 2009 to address the issue of the deteriorating fascine wall. The Robinson Street Revitalisation Working Group was formed in early 2012 and it would appear from limited records that the two groups amalgamated to the Robinson/Fascine Working Group from December 2012. The purpose, function and standing of the working groups is unclear even though it would seem to have some reporting function back to the Shire. There are limited minutes for these working groups even though there are clear indications they met on a regular basis.
32. An allegation was made regarding the lack of tiebacks on any part on the newly installed fascine wall. Whilst requesting confirmation from the Shire regarding this issue, it has been identified that there are no records of the positioning of any tiebacks kept at the Shire for any part of the fascine wall. It has been confirmed through In-Situ Construction & Maintenance (**In-Situ**) the engineered drawings of the positioning and variances relating to the tiebacks that they have, in fact, been constructed. In-Situ was awarded the contract for the second stage of the fascine wall construction. Again, this shows the lack of adherence to the Shires own plan on record keeping.

Finding 01: The CEO has failed to discharge the duty imposed on him by section 10 of the State Records Act 2000 (SRA) by not ensuring that provision(s) 1.2 and 2.2 of the Record Keeping Plan 2009 was complied with in these respects to retention of vital infrastructure documents of the fascine wall and ensuring electronic mail, of importance was retained, which was contrary to the duty imposed by section 17 of the State Records Act.

Finding 02: The CEO has failed in his duties imposed by section 10(2) of the State Records Act 2000 by ensuring the records of the local government are properly kept under s5.41(h) of the Local Government Act 1995 in accordance with the Record Keeping Plan.

4.2 Conflict of Interests and gifts

33. Division 6 of the *Local Government Act 1995* explains the requirements of disclosure of financial interests in detail which is further explained in Local Government Operational Guidelines 01 – Disclosure of Interests Affecting Impartiality and Local Government

Operational Guidelines 20 – Disclosure of Financial Interests at Meetings. This shows that there is a significant amount of information available to councillors and executive staff to understand the concept and obligations regarding interests.

34. Further allegations have been made by members of the public regarding the use of Councillors businesses for Shire purposes to the detriment of the Shire. Carnarvon Hardrock and Limestone Quarry (**Carnarvon Hardrock**) is owned by the then and current Shire President Karl Brandenburg (**Mr Brandenburg**) with invoices valued at over \$159,643 were paid to Carnarvon Hardrock and Limestone Quarry by the Shire during the period of inquiry.
35. Upon examination of all documentation provided by the Shire there is no evidence to support the allegations of impropriety by Mr Brandenburg as a member of council.
36. Several serious allegations have been made against Mr Wall regarding receiving gifts by co-workers, sitting councillors and members of the public. The alleged gifts received include but not limited to a holiday, a boat and a vehicle. A comprehensive investigation into these allegations was conducted which included scrutinising registration details for boats and vehicles, bank accounts and in-depth questioning through a formal record of interview process.
37. Due to the length of time, some bank records were unavailable and relevant business were no longer in existence. Extensive efforts were made to obtain their business records with no success.
38. There is no substantial evidence to support those allegations against Wall.
39. Further allegations have been made against Mr Wall regarding personal relationships with members of Curnow prior to Mr Wall's employment at the Shire. There is circumstantial evidence that supports this allegation. There is a request from Mr Wall to Curnow in April 2011 for a concept drawing of the airport refurbishment and then a concept drawing of Robinson Street revitalisation concept in June 2011. It is inconsistent for a civil construction company to be asked to supply concept drawing when the company didn't have the required qualifications to do so.
40. This is followed on by an email sent by Mr Wall to an employee at Curnow, four days prior to the closing of the tender for stage one of Robinson Street and Fascine Revitalisation tender (**Stage One**). The email was originally received by Mr Wall from a steel supplier

with suggestions of types of sea walls they could supply, this email was forwarded immediately onto a Curnow employee. There is no evidence that this email was forwarded to any other company that had expressed an interest in the tender.

Finding 03: The perception of bias toward Curnow Group Pty Ltd by Mr Wall regarding the affording of information to them which was not readily available to all tenderers is significantly high.

4.3 Project Management

41. The management of contractors throughout the project is to keep the conflicting priorities to a minimum and ensure the best outcome for the end users. It can be shown on several occasions where the residents of Carnarvon were disadvantaged for the gain of the contractor.
42. There is evidence of Curnow Group Pty Ltd (**Curnow**), the contractor during stage one of the project successfully putting pressure on the Shire representative to “sign off” on road base without the required testing due to delays costing the contractor. The road base alleged to have failed after being sealed in Robinson Street. It is alleged the road base provided, was not supplied to the specifications requested. This would lead to the conclusion that if testing had been completed as required, the substandard road base would be identified, thus saving the shire a significant cost of repairs. The subsequent testing did occur but after the area was redone with the correct road base. When questioning Mr Wall regarding the failure to test the road base before sealing, he stated that he could not recall why.
43. The recommended sheet pile in the geotechnical report supplied by Coffey Geotechnics (**Coffey**) is AU26 but the sheet pile that was purchased and installed is AZ 14-770. The engineer approved construction for the fascine wall was the 10 metre long, 15mm thick, AU26 U shaped sheet pile that is driven into place incorporating metal rod tiebacks to a wall anchor every three metres. The construction that was used in stage one of the fascine wall of 100 metres, was 11 metre long, 9mm thick, AZ 14-770 Z shaped sheet pile that is driven into place and rocks to be placed in front of the wall to the scour level which was called the cantilever method.



Photograph of tiebacks and wall anchors on section of the fascine wall completed by In-Situ Construction and Maintenance.

44. As a result of a recommendation of the contractor the change of sheet pile from AU26 to AZ 14-770 during stage one was to give approximately \$79,000 savings in the purchase of the sheet pile. The change in the construction of the wall to the cantilever with no tiebacks, provided significant savings to the contractor. No consultation was made to Coffey to assess the change in sheet pile despite the consultation being recommended by Cardno and the supplier of the sheet pile.



Photograph of northern section of the fascine wall with no tiebacks or wall anchors, completed by Curnow.

45. The Shire obtained most of its funding of just over \$19,000,000 through Royalty for Regions funding (**RfR**) and was aware of the enormity of the project and the significant engineering behind a structure in a marine environment that was to protect the businesses and infrastructure of Carnarvon. With this in mind, it seems incomprehensible that an experienced engineering project manager was not engaged to manage the whole project however the project was left to be managed by a person with no existing qualifications in this field.



The entire length of the fascine wall before landscaping



The completed project of the Carnarvon fascine wall

46. The employment of Wall into the role of Manager, Infrastructure Services by the CEO was questioned by the Authorised Persons during a formal record of interview. He stated he was comfortable with Walls job experience in lieu of engineering

qualifications. Mr Walls' qualifications at the time of his appointment as the Project Manager were in horticulture and his experience in engineering was limited to assisting the Director of Engineering at his previous employment. When questioned regarding the supervision of Wall during the period of employment and particularly with the project management of the Revitalisation of Robinson Street and the Fascine Wall, he stated he thought Wall did a "good job considering the circumstances".

47. The lack of experience by Mr Wall to the required standard indicates the greater need for CEO management, supervision and direction. If a properly qualified person had been employed, then the CEO could have had more confidence in the employee performing their duties to the correct standard which is to be expected having regard to the circumstances.
48. This lack of accountability was further exacerbated by the CEO stating it was "all too hard" when requested by Cardno in April 2013 to approve an investigation and report from Coffey Geotechnic regarding the use of AZ 14-770 sheet pile instead of the recommended AU 26 sheet pile.

Finding 04: The lack of proper oversight and monitoring of the contractor or the contract has led to a likely cost to the State of Western Australia and the Shire of Carnarvon of a significant amount of money, during and since the completion of the project.

Finding 05: The CEO did not adequately discharge the responsibility he had under the s5.41(g) of the *Local Government Act 1995* for the management, supervision and direction of employees (including Mr Wall), and this failure by the CEO has caused, or contributed to the potential costs due to employees' actions and inactions.

4.4 Contractor Selection

49. Tender 9/2011 – Robinson St & Fascine North Upgrade was advertised on 2 November 2011, closed on 25 November 2011, approved by council at an Ordinary Council meeting on 13 December 2011 and was to commence on 3 January 2012. The assessment for the contract was done by a panel of two persons from Cardno and Mr Wall. The report was compiled by Mr Wall and submitted to council with a recommendation.

50. In the report by Cardno and Mr Wall it came to light that Curnow was the lowest tender by over \$2,000,000 which was still in excess of the budgeted amount by over \$1,000,000 and the other two tenders were noncompliant. In the assessment of the experience Curnow was rated as 16 out of 20. The evidence that was provided by Curnow in the tender documents for Tender 9/2011, was that the company did not have previous experience for construction in the marine environment and predominantly landscaping and civil works.
51. Considering the harsh marine environment and the financial stress the entire project was costing the Shire another alternative could have been considered, other than proceeding with a contractor that had limited experience in a major construction of high importance to the town,

4.5 Procurement of sheet pile

52. On the 23 February 2012 Coffey released the technical report on the fascine wall and the recommendation of material to be used which was AU 26 sheet pile. At that time the construction was “wished into place.” There was no instructions regarding how to construct the wall. On 14 March 2012 Coffey provided construction methodology for the fascine wall which included sheet pile at 9 metres and driven into the ground with tie back to ground anchors every three to five metres for stability. Between 23 February 2012 and 6 April 2012 Curnow sourced an alternative sheet pile of AZ 14-770 of which Mr Wall was kept apprised of during that time.
53. On the 16 March 2012 Cardno informed Mr Wall, the alternate sheet pile would not be Australian Standards compliant, which may be non-compliant with funding requirements, but a full assessment was required. Recommendations were made to Mr Wall to obtain an independent engineers’ assessment of the AZ 14-770 sheet pile by the company representative that imported the sheet pile. Sometime before 6 April 2012 Mr Wall approved the purchase of sheet pile AZ 14-770 for the 90 lineal metres of fascine wall directly inline of Robinson Street for 11 metres long and 118 pieces in total. This was purchased through Curnow as it was part of the tender 09/2011.
54. The sheet pile was to be driven into the ground to a height of 3 metres and rock pile to be placed in front of the sheet pile to above scour height which would act as canter lever and negate the requirement for tie backs. The additional height of the wall was to be made up by the limestone wall which is setback from the seawall. This was another

cost saving measure put in place by the Shire to reduce the overall cost of the project. This method of construction was not assessed by Coffey for stability or longevity.

55. The sheet pile procured for stage five of the Revitalisation project or remaining 700 metres of the fascine wall also purchased through Curnow. Curnow was the sole distributor for J Steel products in the Gascoyne region of WA for a period of 12 months as of 27 March 2012. From the evidence available, there were only two inquiries Mr Wall made regarding the availability of other suppliers of the sheet pile and one of those inquiries was to an employee of Curnow. It is questionable if sufficient due diligence was done to ensure correct procedures were followed but ultimately, the CEO signed off on the purchase of AZ 14-770 sheet pile at a cost of \$2,648,992.50 for 700 metres on the 6 July 2012¹.
56. Cardno had recommended in April 2012 to have the AZ 14-770 sheet pile assessed for suitability, which was before the order for the first stage was done. Further queries arose when the sheet piles refused to be pushed down further than the recommended depth. It was at this stage the CEO was informed of the approximate cost and time frame for the completion of a report by Coffey. Cardno wrote to the CEO dated 16 April 2013 informing the CEO of the below circumstances;
- ‘The Moment capacity of the AZ 14-770 is approximately half that of the AU 26. The section properties of both piles are attached. Due to this deviation from the original design, the current installation has not been reviewed or approved by Cardno or Coffey’.*
57. An email response from the CEO on the same day stated;
- ‘This is all appearing to too difficult (sic).
Please discontinue this request until further notice’*
58. Due to a lack of experience it would appear structural decisions were being made by unqualified persons resulting in unknown consequences.

Finding 06: Mr Wall has failed to undergo any due diligence regarding the purchase of stage two sheet pile.

Finding 07: The CEO did not adequately discharge the responsibility he had under s5.41 (g) of the Local Government Act for the management supervision and direction

¹ Purchase Order for south fascine wall

of other employees (including Mr Wall), and this failure by the CEO has caused, or contributed to the lack of due diligence by Mr Wall as identified in Finding 6.

4.6 Robinson street repair

59. The new road base in Robinson Street failed after a significant rainstorm occurred in July 2012 and the alleged causal factor was the substandard road base that was supplied. Evidence has been provided to support that the road base contractor was given the required specifications, so it leaves the question as the oversight of the contractor to ensure the material was meeting the required specifications.
60. It is also noted that the required testing wasn't completed before the road base failure due to time constraints and approval by a Shire representative to continue without testing.
61. To remedy the road failure caused significant delays in the project and a substantial cost all parties involved. As there was no technical or causal report compiled any answers are a matter of conjecture.

4.7. Carnarvon Hardrock and Limestone Quarry

62. Carnarvon Hardrock is owned by the then and current Shire President Mr Brandenburg and over \$45675 worth of invoices were paid to Carnarvon Hardrock and Limestone Quarry connection with the Robinson Street Revitalisation and Fascine Wall which is included in the \$159643 paid to Carnarvon Hardrock during the period of inquiry.
63. Upon examination of all documentation provided by the Shire there is no evidence to support the allegations of impropriety by Mr Brandenburg by undue influence as a councillor. There is however, evidence to show the Shire failed to follow Purchase Policy requirements regarding three purchases that required checklist to be completed to justify not obtaining three separate quotes for purchases over \$5000 and under \$50000. The Administration has failed to adhere to Purchasing Policy F003 in the use of Carnarvon Hardrock in 2012.

Finding 08: The Administration of the Shire of Carnarvon failed to adhere to their own Purchasing Policy F003 when engaging in use of the company Carnarvon Hardrock.

5. Considerations relevant to recommendations

- 64. To instil confidence in the community that the administration and elected members are, as a collective body, providing good governance which is in the best interests of the community, the Authorised Persons have made recommendations that could assist the shire to become more open and accountable.
- 65. It is incumbent upon elected members to keep themselves informed in an ever-changing environment. Elected members are given an opportunity by their peers to represent the interests of the entire community. The ability to be able to make informed decisions as a collective group that ensures the community is receiving the benefits of good decision making is of the utmost importance.
- 66. A cultural change is clearly needed which will ensure all parties are better informed, have a better understanding and ultimately more effective and provide positive governance.

6. Challenging circumstances

- 67. The lack of accountability coupled with very poor record keeping has severely hampered the fullness of the investigation into many aspects of the identified issues surrounding the Shire and its activities.
- 68. Equally, the passage of time has made it difficult to investigate the matters fully with people's recollections of events fading, companies going into liquidation and some persons who may have been able to provide relevant information unable to be located.

7. Recommendations

- 69. It is recommended that:
 - 1. The elected members and Shire staff undertake governance and accountability training, and any other such training, as determined appropriate by the Director General within 6 months of the report becoming final.
 - 2. Following completion of the training referred to in Recommendation 1, and within 6 months of this report becoming final, the Shire CEO is to deliver to the Director General a comprehensive report;
 - a. demonstrating the knowledge and understanding gained by the Shire from the training; and

- b. outlining the steps taken by the Shire to implement such knowledge and understanding,
 - c. such report to be endorsed by Council.
- 3. The Shire of Carnarvon undertake a Governance Review as approved by the Director General within 6 months of the report becoming final and the report is to be made available to the Director General.
- 4. The Shire engage a suitably qualified person to manage any project over \$1,000,000.

Summary of key findings

Finding 01: The CEO has failed to discharge the duty imposed on him by section 10 of the State Records Act 2000 (SRA) by not ensuring that provision(s) 1.2 and 2.2 of the Record Keeping Plan was complied with in these respects to retention of vital infrastructure documents of the fascine wall and ensuring electronic mail, of importance was retained, which was contrary to the duty imposed by section 17 of the State Records Act.

Finding 02: The CEO has failed in his duties imposed by section 10(2) of the State Records Act 2000 by ensuring the records of the local government are properly kept under s5.41(h) of the Local Government Act 1995 in accordance with the Record Keeping Plan.

Finding 03: The perception of bias toward Curnow Group Pty Ltd by Mr Wall regarding the affording of information to them which was not readily available to all tenderers is significantly high.

Finding 04: The lack of proper oversight and monitoring of the contractor or the contract has led to a likely cost to the State of Western Australia and the Shire of Carnarvon of a significant amount of money, during and since the completion of the project.

Finding 05: The CEO did not adequately discharge the responsibility he had under the s5.41(g) of the *Local Government Act 1995* for the management, supervision and direction of employees (including Mr Wall), and this failure by the CEO has caused, or contributed to the potential costs due to employees' actions and inactions.

Finding 06: Mr Wall has failed to undergo any due diligence regarding the purchase of stage two sheet pile.

Finding 07: The CEO did not adequately discharge the responsibility he had under s5.41 (g) of the Local Government Act for the management supervision and direction of other

employees (including Mr Wall), and this failure by the CEO has caused, or contributed to the lack of due diligence by Mr Wall as identified in Finding 6.

Finding 08: The Administration of the Shire of Carnarvon failed to adhere to their own Purchasing Policy F003 when engaging in use of the company Carnarvon Hardrock.

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