

SHOW CAUSE NOTICE [SECTION 8.15B(1)] - LOCAL GOVERNMENT ACT 1995

To: The Chief Executive Officer
Shire of York
1 Joaquina Street
YORK WA 6302

And to: Cr Matthew Reid
President
Shire of York
1 Joaquina Street
YORK WA 6302

This show cause notice is given pursuant to section 8.15B(1) of the *Local Government Act 1995* ('Act').

Whereas:

- 1.0 I, the Minister for Local Government, have received a report and resulting advice from the Department of Local Government and Communities ('Department') on its monitoring of the operations and affairs of the Shire of York ('Shire') and its observations of recent meetings of the Shire's Council ('Council') and a meeting of a Shire committee.
- 2.0 The main areas of concern identified in and by such monitoring and observations are:
 - 2.1 Significant non-compliance with the record keeping requirements of the Act, particularly in regard to the failure of Council to maintain a proper documented record of its decision-making processes including maintaining a copy of key documents which form part of Council's final decision. Such non-compliance includes non-existent or inadequate recording of:
 - 2.1.1 The decisions relating to the appointment of a consultant to undertake inquiries into a code of conduct complaint ('the code of conduct complaint') made against a former Shire Chief Executive Officer ('CEO'), Mr Ray Hooper ('CEO Hooper')
 - 2.1.2 Alleged performance issues raised in relation to CEO Hooper as the Shire's CEO.
 - 2.2 Numerous instances, including matters that are contrary to the Act, where actions by Council, the Shire President and the Shire's Administration ('the Administration') have fallen short of good governance practices. Such instances include, but are not limited to:

2.2.1 The failure of Council:

- (1) to deal with and manage the code of conduct complaint in a properly documented and professional manner;
- (2) to receive reports, including a report known as the 'Fitz Gerald report' and a report dated 24 July 2014 by Macri Partners ('Macri report'), into the conduct of CEO Hooper and his Shire credit card usage;
- (3) to properly manage and control the distribution of the Fitz Gerald report;
- (4) to determine the Shire's position on the Fitz Gerald report, and through a series of motions and resolutions, to ensure that there would be a clear history of decision-making on the matter;
- (5) to seek appropriate advice, prior to engaging a consultant to act on behalf of Council, to enable the Council to address and resolve its concerns in respect of the conduct and performance of CEO Hooper; and
- (6) to seek appropriate advice as to CEO Hooper's contract and the Shire's obligations under it prior to the standing down and termination of CEO Hooper as the Shire's CEO and requiring him to return Council assets in his possession or control.

2.2.2 The failure of the Shire President and Council:

- (1) to control Public Question Time, including by the acceptance of inappropriate questions in relation to staff and human resources matters;
- (2) to conduct a fair and open selection and recruitment process for the appointment of an Acting Shire CEO subsequent to the said standing down and termination; and
- (3) to meet their obligation to administer standing orders in relation to the conduct of debate and proper decision-making on a consistent basis.

2.2.3 The failure of the Shire President:

- (1) to conduct a fair and open selection and recruitment process for the appointment of such an Acting CEO; and
- (2) to act impartially in the matter of dealing with the code of conduct complaint.

- 2.3 Credible evidence of significant ongoing conflicts between Mr Michael Keeble ('CEO Keeble', the Shire's CEO), the Shire President and some other members of Council, as well as evidence of conflict within Council, to an extent that the levels of communication necessary for good decision processes have been compromised. Such evidence includes:
 - 2.3.1 The Shire President's creation of purchase orders for consultants
 - 2.3.2 The Shire President's and, ultimately, Council's inappropriate use of the Shire's Audit Committee to conduct investigations into alleged financial matters
 - 2.3.3 The inappropriate manner in which the Shire President manages debate in Council meetings and his inappropriate behaviour towards other Council members and Council as a body
 - 2.3.4 The inappropriate manner of the Shire President's involvement with and conduct towards CEO Keeble and the Administration staff
 - 2.3.5 The Shire President's conduct towards staff having the potential to cause significant industrial relations and welfare issues for the Administration's staff
 - 2.3.6 The Shire President's conduct in surreptitiously making audio recordings of his meetings with CEO Keeble and his meetings with other Shire Councillors.
- 3.0 By virtue of the matters referred to in recitals 1.0 and 2.0 above, I suspect that:
 - 3.1 Council has not ensured and is not ensuring that the Shire is providing for the good government of persons in its district
 - 3.2 Council currently lacks the capacity to properly address the issues identified in or which arise from the matters referred to in recital 2.0.
- 4.0 By virtue of the matters referred to in recitals 1.0, 2.0, and 3.0, I think that the seriousness of the suspected failure of Council to ensure that the Shire performs its functions properly and my suspicion that the Council currently lacks the capacity to properly address that failure make it inappropriate for Council to act, or to continue to act, without my intervention under section 8.15C of the Act, as the Shire's governing body.

For the reason stated in recital 4.0 above, I hereby give the Shire notice of my intention to make an order under section 8.15C(2) of the Act:

- (a) to suspend Council; and
- (b) to require all members of Council to undertake governance training in the responsibilities and functions of a council under the Act, such training to focus on the statutory compliance duties of local government and to be at a place, for a duration, and of a standard and kind determined by the Department's Director General.

The Shire is advised that, under section 8.15B(2) of the Act, within 21 days of receiving this show cause notice, or within such longer period as I may allow, the Shire is to give me (via my Office) a written response to this show cause notice.

The Shire's Chief Executive Officer (or its Acting Chief Executive Officer, if that is the case), and the Shire President, Cr Matthew Reid, are respectively advised that this show cause notice should be presented by them to Council at the first available opportunity to enable the preparation and submission of the required response within the period advised.



**HON TONY SIMPSON MLA
MINISTER FOR LOCAL GOVERNMENT; COMMUNITY SERVICES;
SENIORS AND VOLUNTEERING; YOUTH**

18 NOV 2014