COUNCIL AGENDA

TUESDAY, 12 DECEMBER 2017

GLENORCHY CITY COUNCIL

* **The Acting General Manager certifies that the reports contained in this Agenda have been written by qualified persons under *Section 65 of the Local Government Act 1993.***

Hour: 2.00 p.m.

Present:

In attendance:

TABLE OF CONTENTS:

1. APOLOGIES

2. CONFIRMATION OF MINUTES

That the minutes of the Council Meeting held on 27 November 2017 be confirmed.

3. ANNOUNCEMENTS BY THE CHAIR

4. PECUNIARY INTEREST NOTIFICATION

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

6. PUBLIC QUESTION TIME (15 MINUTES)

7. PETITIONS/DEPUTATIONS

ENVIRONMENT

8. INTRODUCTION OF BUSHFIRE-PRONE AREAS MAPPING INTO THE PLANNING SCHEME

Author: Strategic Planner (Lyndal Byrne)

Qualified Person: Strategic Planner (Lyndal Byrne)

ECM File Reference: Tasmanian Planning Scheme - Reporting

Community Plan Reference:

Valuing our environment

We will value and enhance our natural and built environment.

Leading our community

The communities of Glenorchy will be confident that Council manages the community's assets soundly for the long term benefit of the community.

Strategic or Annual Plan Reference:

Glenorchy City Council Strategic Plan 2016-2025

Valuing our environment

Objective 3.1: Create a liveable and desirable City.

Strategy 3.1.4: Deliver new and existing services to improve the City's liveability.

Leading our community

Objective 4.2: Prioritise resources to achieve our communities' goals.

Strategy 4.2.1: Deploy the Council's resources effectively to deliver value.

Glenorchy City Council Annual Plan 2016-17 to 2019-20

Action 2.1.1.02: Progress the Interim Planning Scheme to a Single State-wide Planning Scheme.

Action 3.1.4.07 Plan for the sustainable development of the City, ensuring compliance with the planning scheme and community involvement in the planning process.

Reporting Brief:

The purpose of this report is to seek Council's endorsement to the introduction of the Bushfire-Prone Areas Overlay (mapping), and to determine the best approach to introduce the 'overlay' as either to be part of the Local Provisions Schedule (**LPS**) of the new Tasmanian Planning Scheme or as an amendment to the *Glenorchy Interim Planning Scheme 2015* (**GIPS 2015**).

Proposal in Detail:

Background

Under the Bushfire-Prone Areas Code (**the Code**) of the GIPS 2015 there are two ways to identify bushfire-prone areas:

a) land that is within the boundary of a bushfire-prone area shown on an overlay on a planning scheme map, or

b) where there is no overlay on a planning scheme map, land that is within 100m of an area of bushfire-prone vegetation equal to or greater than 1ha.

As the GIPS 2015 does not include a mapped 'overlay', a decision on whether the Code applies is made under option b).

The reference map was originally used to assess applications under the previous planning scheme (the *Glenorchy Planning Scheme 1992*) and was developed in collaboration with the Tasmanian Fire Service (**TFS**).

The reference map was based on the proximity to bushfire-prone vegetation and an assessment of how land is managed in these areas. This reference map is an internal document used as a guide when considering whether or not the Code applies for assessments under the GIPS 2015.

The conversion of the reference map into an overlay will give it statutory weight under the planning scheme. A future council report to introduce the overlay by either initiating an amendment to the GIPS 2015 or endorsing it as part of the Local Provisions Schedule to the new Tasmanian Planning Scheme will be considered by the Glenorchy Planning Authority (**GPA**).

Assessment of the best process to introduce the Bushfire-Prone Areas Overlay

During September and October 2017, officers from the TFS and Council's building, planning, compliance, environment and bushfire management teams undertook a review of the reference map used to identify potential bushfire-prone areas.

The TFS is in favour of an early introduction of the mapping as an overlay into the GIPS 2015 via a planning scheme amendment, and considers that the community would benefit from the improved clarity provided by a publically available overlay. The TFS indicates that there may be a direct financial benefit to the community, as an overlay will clearly define where the Code applies and will determine whether an assessment under the Code and the provisions of the GIPS 2015 is required when a planning permit is sought.

Council officers are currently working on the development of the Local Provisions Schedule (**LPS**) for the new Tasmanian Planning Scheme. The benefit of this approach is that the reference map can be included as an overlay in the planning scheme. This process is more resource efficient, however may take longer.

To avoid a duplicated exhibition process, the Minister for Planning can approve transition of some provisions from the GIPS 2015 directly into the LPS. However, the State Government's Planning Policy Unit has advised that a new amendment to the GIPS 2015 to introduce the Bushfire-Prone Areas Overlay would not meet the transition test. In this instance the development of the LPS would be still subject to a formal exhibition process which would effectively duplicate the process.

The advantages and disadvantages for each process are summarised in the Table 1.

Table 1 Assessment of approaches to introduce Bushfire-Prone Areas Overlay

	GIPS 2015 Amendment	As part of the LPS	Best approach?
Timing:	Request Council initiate the amendment: GPA meeting 15 January 2018 Exhibition: February 2018 Potential approval: mid 2018 Will delay the preparation of the LPS	LPS considered by Council: April 2018 Exhibition: mid to late 2018 Potential approval: early 2019	GIPS 2015 amendment
Costs	Mail out to all affected property owners (about 2,000 properties which could cost up to $2,000 plus staff time) Potential panel hearing	No mail out required Costs absorbed into LPS process	LPS process
Community engagement	All affected property owners would receive a letter on this matter and this matter only. May cause frustration if property owners object to the mapping in the second round of exhibition under LPS	No direct mail-out (other forms used) Bushfire Prone Area one element in whole of the Scheme	GIPS 2015 Amendment
Resourcing	Officers will need to spend some time on this – rather than on preparing the LPS	Focus of resources on LPS	LPS Process

	GIPS 2015 Amendment	As part of the LPS	Best approach?
Demand	Limited planning applications are received and assessed under the Bushfire-Prone Areas Code The existing reference mapping is currently used by planning and informally by other Council departments	Required to be prepared under the LPS	LPS Process
Risk	GIPS 2015 does not require the map to be included as an overlay	LPS requires the map to be included as an overlay	LPS Process

Conclusion

Even if all factors being considered are weighted equally, a primary consideration must be to focus Council resources on the preparation of the LPS, and that the suggested amendment approach to the GIPS 2015, with its associated duplication of process, is a major concern.

In reviewing each element of the assessment process, Planning Services recommends that the most efficient way to introduce the Bushfire-Prone Area overlay is via the LPS process.

The LPS will be subject to a formal public notification process. Any representations received will be considered by the TPC as part of their assessment of the provisions.

Consultations:

Coordinator Planning Services
Senior Statutory Planner

Human Resource / Financial and Risk Management Implications:

The Planning Scheme Review project is now managed within the Planning Services program budget.

The major risks relate to the complexity associated with the number of processes the community are invited to engage in which has the potential to cause confusion during the process and results in 'consultation fatigue'.

The preparation and assessment of an amendment to the GIPS 2015 to introduce the Bushfire-Prone Areas Overlay will detract and delay the preparation of the Local Provisions Schedule.

Community Consultation and Public Relations Implications:

Exhibition of either the amendment to the GIPS 2015 or to the LPS, will be undertaken in accordance with the statutory requirements of the *Land Use Planning and Approvals Act 1993*.

Recommendation:

That Council:

ENDORSE the approach of introducing a Bushfire-Prone Areas Overlay as part of the Local Provisions Schedule to the new Tasmanian Planning Scheme.

GOVERNANCE

9. PROCUREMENT EXEMPTIONS - MONTHLY REPORT

Author: Acting Manager, Governance and Risk (Bryn Hannan)

Qualified Person: Acting Director, Corporate Governance (Simon Scott)

ECM File Reference: Procurement

Community Plan Reference:

Leading our Community

The communities of Glenorchy will be confident that Council manages the community's assets soundly for the long term benefit of the community.

Strategic or Annual Plan Reference:

Leading our Community

4.1 Govern in the best interests of our community

4.1.1 Manage Council for maximum efficiency, accountability and transparency

4.1.2 Manage the City's assets soundly for the long term benefit of the community

4.1.3 Maximise regulatory compliance in Council and the community through our systems and processes

Reporting Brief:

This report provides a monthly update to Council on exemptions that have been applied to the procurement requirements under Council's Code for Tenders and Contracts.

Proposal in Detail:

Council's Code for Tenders and Contracts (**Code**) has been made and adopted by Council as required under section 333B of the *Local Government Act 1993*.

Under clause 10.2 of the Code, the General Manager is required to provide a regular report to Council on exemptions that have been authorised to the procurement requirements under the Code. Clause 10.2 relevantly provides:

> "*In accordance with Regulation 28(j), the General Manager will establish and maintain procedures for reporting to Council* ***at the first ordinary meeting of Council after the event*** *in relation to the procurement of goods and/or services* ***in circumstances where a public tender or quotation process is not used****. Such report will include the following details of each procurement:*
>
> *a) a brief description of the reason for not inviting public tenders or quotations (as applicable);*
>
> *b) a brief description of the goods or services acquired;*

> c) *the approximate value of the goods or services acquired; and*
>
> d) *the name of the supplier."*

A copy of an extract from Council's Purchasing Exemption Register (**Exemption Report**), which is delivered to Council as required under clause 10.2 is Attachment 1.

The Exemption Report covers the period from **22 November 2017** to **7 December 2017**.

Consultations:

Executive Leadership Team
Manager, Business and Finance
Strategic Procurement Coordinator

Human Resource / Financial and Risk Management Implications:

Nil

Community Consultation and Public Relations Implications:

Nil

Recommendation:

That Council:

> RECEIVE and NOTE the monthly Procurement Exemptions Report for the period 22 November 2017 to 7 December 2017

Attachments/Annexures

1 Procurement Exemption Register

10. GLENORCHY CITY COUNCIL BOARD OF INQUIRY REPORT

Author: Acting General Manager (Tony McMullen)

Qualified Person: Acting General Manager (Tony McMullen)

ECM File Reference: Board of Inquiry

Community Plan Reference:

Leading Our Community

We will be a progressive, positive community with strong council leadership, striving to make Our Community's Vision a reality.

Strategic or Annual Plan Reference:

Leading our Community

Objective 4.1 Govern in the best interests of our community.

Objective 4.2 Prioritise resources to achieve our communities' goals.

Objective 4.3 Build strong relationships to deliver our communities' goals.

Reporting Brief:

To report to Council on the public release by the Minister for Planning and Local Government of the Glenorchy City Council Board of Inquiry Report, November 2017.

Proposal in Detail:

Handing Down of Report

On Tuesday 28 November 2017, the Minister for Planning and Local Government publicly released the Glenorchy City Council Board of Inquiry (**BOI**) Report, November 2017 (**the Report**).

The Report may be found at:
http://www.dpac.tas.gov.au/__data/assets/pdf_file/0007/357973/Glenorchy_City_Council_Board_of_Inquiry_Final_Report_-_15_November_2017.pdf

Terms of Reference

The Minister established a BOI on 14 October 2015 with terms of reference (in summary) as follows:

> to make findings and recommendations about the governance arrangements and practices of the Glenorchy City Council since the October 2014 local government elections, in relation to:
>
> - compliance by elected members of Council, Mayor and General Manager with their functions under the Act;
> - compliance with any other sections of the Act relevant to governance arrangements and practices within the Council.

> The BOI was to further examine the governance structures and processes adopted by the council during that period, and also to inquire into any claims of non-compliance or breaches of the Act and associated regulations, or any other legislation, since October 2014.

Conduct of the Board Process

The Minister appointed former Mayors and LGAT Presidents, Ms Lyn Mason and Mr Barry Easther to the BOI.

The BOI conducted its inquiry over an extended period from October 2015 to October 2017. The inquiry period extended well beyond its initially-anticipated duration of approximately 6 months because of the significant public interest that it generated, the volume of information gathered and a number of court actions from parties to the process who sought to challenge its basis on natural justice grounds.

The last of these court proceedings, an appeal to the Full Bench of the Supreme Court by the former General Manager, was dismissed on 15 November 2017.

On the same day, the Tasmanian Parliament passed the *Glenorchy City Council (Dismissal of Councillors) Act 2017*. The Act received royal assent from the Governor of Tasmania on 22 November 2017. The Act dismissed the suspended Aldermen and empowered the Minister to take action arising out of the BOI without further need for consultation with affected parties. The Act also allowed the Minister to consult with and direct the Commissioner in relation to actions arising out of the BOI.

Board Findings and Recommendations

Ultimately the purpose of the BOI is not only to identify what went wrong, but also to propose a way forward to fix it.

The focus for Council and management team must now be on the way forward.

The Summary of Findings and Recommendations is found in Section Four of the Report (pp. 204 – 224).

The Board's findings are summarised more concisely here from the Executive Summary on p. 9 of the Report:

- Failure of the majority of Aldermen to support or show due respect to the popularly-elected Mayor as leader of the community
- Partisanship displayed by the General Manager towards the faction opposed to the Mayor
- Persistent provision of poor and/or inaccurate advice on governance and operational matters, particularly that provided by the Director of Corporate Governance and General Counsel (**DCG&GC**)
- The factionalisation of Aldermen contributed to the majority of aldermen opposed regular and consistent monitoring of the organisation's functions

- Examples of this failure of governance oversight were:
    - Agreement to a restructure resulting in senior level redundancies without knowing that this would occur
    - Ignoring or dismissing policy or statutory compliance failures
    - Adopting the 2016-17 budget without up-to-date budget to actual financial or Annual Plan progress information
    - Refusal to require reports for the KGV project, and
    - Refusal to required regular reports on the progress of the Productivity Dividend
- Lack of reporting from Committees to Council
- The governance practices of the General Manager Performance Review Committee (**GMPRC**) were ad hoc, and the committee, or its chairman acting unilaterally, assumed responsibility for tasks beyond its terms of reference and beyond its capabilities, unchecked by the full council
- In December 2016 the GMPRC, acting complicitly with the general manager and the DCG&GC, brought to council proposed changes to the general manager's contract of employment which far exceeded council's resolution to consider changes to only one clause of his contract; changes which, had they been approved by council, would potentially have resulted in significant monetary and personal benefit to the general manager
- Failure to address relationships between the Mayor/Aldermen and senior staff
- Lack of challenge to the general manager by the majority of Aldermen despite his apparent inability to provide answers to fundamental questions about the operations of the council, and despite his apparent inability to bring overdue tasks to a satisfactory conclusion
- Failure of the majority faction to put the interests of the community ahead of their apparent intention to destabilize the office of the mayor, and denigrate her, leading to community dissatisfaction, including hostile attendance at council meetings, and rejection of the council's annual report at the 2016 Annual General Meeting
- The majority faction of council continued to accept the DCG&GC's advice on governance and legal issues without question, despite it being found to be incorrect on occasion
- The DCG&GC exhibited barely restrained antagonism to the mayor in council meetings, and failed to accept direction from the mayor when called upon to desist. During attendance at council meetings the Board did not see any occasion when the general manager intervened to support the mayor as chairperson of the meeting

- Council's lack of appropriate oversight of its operations contributed to:
  - loss of experienced and valuable senior managers through termination, redundancy, and resignation
  - Council's failure to finish the KGV redevelopment, despite having an original finishing date of December 2014 and inability to reach amicable agreements with the three major tenants of the redeveloped KGV site
  - Council's failure to address key development issues on the Berriedale Peninsula
  - Council's failure to progress the development of Wilkinson's Point, and
  - Council's failure to progress the CBD revitalisation project.

The BOI concluded:

> *In summary, council failed to perform many of its functions, which seriously affected the operation of the council. The irregularity of the conduct of the council seriously affected the council's operations. Council failed to provide leadership and good governance to the city, and is in need of major reforms in governance and management. The Board is strongly of the view that this cannot be achieved by the council elected in October 2014, and a management structure which includes the current general manager and the current DCG&GC.*

Responding to the Board's Recommendations

Ultimately, the purpose of the BOI has been to find out what went wrong and to propose a way forward to fix it.

The BOI's Summary of Findings and Recommendations may be found in Section Four of the Report at pp. 204 to 224.

The Recommendations are in three sections. There are 4 high level recommendations followed by 42 more detailed recommendations about the governance of the Council and 9 recommendations about its management and operations.

It is clear from the recommendations that responsibility for considering and implementing them individually will fall to a number of parties, namely the Minister, the Commissioner, the Director of Local Government, the Auditor-General, the incoming Council and management.

Council and management must now focus on the way forward. As part of this, it will need to consider and respond to the recommendations for which it is responsible.

It is anticipated that this will be an ongoing process for some time, involving dialogue with the parties named above. Some recommendations will need to be addressed immediately and some will await the election of a new Council.

Each recommendation will need to be investigated by Council as to its practicality and utility. It is anticipated that the vast majority of recommendations will be adopted and implemented. No recommendation will be abandoned without full and transparent consideration.

The Acting General Manager will be meeting with the Director of Local Government on 11 December 2017 to ensure a co-ordinated response to the recommendations.

The Interim Executive Leadership Team (**ELT**) has prepared a preliminary plan for consideration of recommendations, a copy of which is Attachment 1.

High Level Recommendations

The high level recommendations are:

1. The Minister recommended that the Governor by order dismiss the Aldermen.

   This occurred on 28 November 2017 as a result of the coming into effect of the *Glenorchy City Council (Dismissal of Councillors) Act 2017*.

2. A Commissioner be appointed.

   The Minister has reappointed the Commissioner until the conclusion of the Glenorchy local government election in January 2018.

3. The Commissioner immediately implement an extensive review of management practices at Glenorchy City Council, with reference to its responsibilities for good governance, organisational health, and effective, efficient and compliant operational management.

   To a certain degree, the BOI process has inquired into the state of the Council at a particular point in time. The Commissioner has been in place at Glenorchy City Council since February 2018 and has been reviewing the organisation for some months now, in anticipation, of the outcome of the BOI process.

   With some senior staff on leave over that period, the Acting General Manager and Interim Executive Leadership Team have been working to a "Priority Work Plan" to address matters they have assessed to be of priority.

   The Commissioner's review of management practices is ongoing and will, no doubt, involve dialogue with the Minister which may lead to Ministerial Directions to the Council.

   It is not clear from the Report whether or not the detailed recommendations in the Report are intended to comprise the full scope of the review of management practices. However, it is considered sensible that the Commissioner would have the scope to respond to or supplement those recommendations based on her own first hand appraisal of the organisation.

4. The Glenorchy City Council BOI Report be released to inform the Tasmanian community and particularly residents and ratepayers of Glenorchy of the findings and recommendations of the Board, and to facilitate greater community involvement in the election and monitoring of the next Glenorchy City Council.

The Minister released the report on 28 November 2017.

Detailed Governance Recommendations

The governance recommendations are (in summary):

- The incoming Council to prepare a Statement of Expectations to establish agreed protocols for compliance with statutory and governance obligations;
- Training and induction for Aldermen in local government procedures, Code of Conduct and meeting procedures;
- Council to undertake an annual review of its own performance; and use this to inform its aldermanic professional development program;
- Changes to the Act and regulations to provide additional powers for mayors;
- Strengthen mayoral powers in relation to oversight of the performance of the General Manager, representation on external committees;
- Establish protocols around media statements;
- Tighter controls around General Manager (GM) Contracts including full Council oversight, removal of performance bonus provisions and use of standard remuneration provisions from the LGAT template;
- Mayoral approval of Council agendas prior to their release;
- The Mayor and GM prepare a Statement of expectations about their mutual obligations;
- Stringent compliance with a Code for Tenders and Contracts vetted by the Auditor-General;
- Auditor-General’s investigation into tendering exemptions and reporting obligations;
- Review of the process for nominating and appointing Aldermen to committees and their reporting obligations back to Council;
- An amended Grievance Policy to provide proper, safe channels for reporting complaints against senior staff;
- Audio recording of Council meetings;
- Provision of draft minutes to the Mayor;
- Training for staff in meeting procedure and proper recording of minutes;
- Review staff attendance at Council meetings;
- Establish a policy on Council workshops; prepare a calendar of workshops and provide aldermen with information in advance of workshops; and
- Improve clarity in the Act and the GM’s contract around appointment of Acting GMs.

<u>Management and Operational Recommendations</u>

The Management and Operations Recommendations are (in summary):

- Change the Act to provide for Ministerial power to direct a Council to terminate the employment of a GM;
- GM consultation with the Mayor and Aldermen on senior executive appointments and remuneration;
- Ensure Aldermen receive update end of year financial projections that are updated during the budget process to enable Aldermen to make an informed decision on the budget;
- Restrict access to credit cards to senior staff and improve monitoring of credit card use to ensure greater transparency and accountability;
- Adoption of a policy on use of external legal advisors, including recourse to Council approval if expenditure exceeds a pre-determined limit;
- Specific allocation of legal expenses within each management section to ensure Aldermen to monitor resource allocation; and
- External legal advice be required in relation to matters pertaining to the GM's contract.

Consultations:

Commissioner
Director of Local Government
Interim Executive Leadership Team

Human Resource / Financial and Risk Management Implications:

It is too soon to fully realise the human resource, financial and risk management implications of the release of the BOI Report.

These will be worked through as the response to the Report progresses and will be the subject of further reports to Council.

It is noted that two senior managers named in the Report are no longer employed by Glenorchy City Council.

The direct cost of the BOI process to the Glenorchy community is not yet fully known as the BOI Secretariat is still calculating the final figure. As at the end of the 2016/17 financial year, the cost for the Board of Inquiry was approximately $791,000 payable over a three year period.

The indirect cost of the BOI process has been significant as well. It has absorbed a huge amount of staff time, including responding to an estimated 80 BOI information requirements, many of which have required extensive research. Legal costs associated with the process have also been considerable.

Community Consultation and Public Relations Implications:

The Minister has publicly released the BOI Report.

The Report highlights serious concerns with the governance and management of the Council.

Many, though not all, of the issues documented in the Report have played out in the public domain over the last couple of years. This has been at great cost to the reputation of the Council, the image of the City of Glenorchy and our community.

The Minister has now publicly released the Report and its contents have been extensively covered in The Mercury.

Council now has the challenging task of rebuilding community trust in its elected body and management. This will take concerted effort over a significant period of time. The task is complicated by a range of legacy issues which will need to be addressed in addition to the implementation of BOI recommendations or any Ministerial Directions.

Recommendation:

That Council:

1. NOTE the release by the Minister for Planning and Local Government of the Glenorchy City Council Board of Inquiry Report, November 2017 and, in particular, its findings and recommendations
2. NOTE the Board of Inquiry's recommendation that the Commissioner immediately implement an extensive review of management practices at Glenorchy City Council, with reference to its responsibilities for good governance, organisational health, and effective, efficient and compliant operational management, and
3. CONTINUE dialogue with the Minister for Planning and Local Government in relation to the framing of Ministerial Directions relevant to the outcomes of the Board of Inquiry Report.

Attachments/Annexures

1 Board of Inquiry Recommendations

11. LEGAL SERVICES POLICY

Author: Acting Manager, Governance and Risk (Bryn Hannan)

Qualified Person: Acting Director, Corporate Governance (Simon Scott)

ECM File Reference: Council Policy

Community Plan Reference:

Leading our Community

The communities of Glenorchy will be confident that Council managed the community's assets soundly for the long term benefit of the community.

Strategic or Annual Plan Reference:

Leading our Community

4.1 Govern in the best interests of our community

4.1.1 Manage Council for maximum efficiency, accountability and transparency

4.2 Prioritise resources to achieve our communities' goals

4.2.1 Deploy Council's resources effectively to deliver value

Reporting Brief:

The purpose of this report is to present a proposed Legal Services Policy to Council for consideration.

Proposal in Detail:

Background

Council provides a diverse range of local government services and performs numerous regulatory functions. An inevitable consequence of Council's activities, Council regularly requires legal advice and the provision of legal support services.

As a public body utilising public funds, Council must ensure that its use and procurement of legal services is consistent with both its statutory functions and obligations, and the expectations of the Glenorchy community and in efficiently and effectively protecting Council's interests and assets.

To facilitate this, the Council has developed a proposed Legal Services Policy (**Policy**), the purpose of which is to provide a framework for the delivery of internal legal services by Council's in-house legal practitioners and the engagement and use of external legal services by Council.

The draft Policy is presented to Council for consideration as Attachment 1 to this report.

Structure of Policy

The policy is based around six (6) objectives, which are aimed at ensuring Council receives timely, effective and appropriate legal services which deliver value for money and service outcomes, and appropriately manage the risk to the organisation and the Glenorchy community from matters with legal and regulatory implications.

The six objectives are:

1. to ensure that Council has access to legal advice to support appropriate decision making over the short, medium and long terms
2. to use legal services appropriately to manage and balance the risks involved with providing local government service outcomes for the community
3. to actively manage Council's use of legal services to achieve the minimum cost to the community that is consistent with effective Council service provision and community expectations
4. to protect the integrity of Council's legal advice from conflicts of interest, loss of privilege and by ensuring the confidentiality of legal advice
5. to minimise the impact of avoidable disputation by promoting, where appropriate, early dialogue and alternative dispute resolution as an alternative to formal legal action, and
6. to comply with Council's obligation to act as a model litigant.

Each objective is supported by a number of actions which set out how the objective will be achieved.

Legal Services Directive

The Legal Services Policy is a high level strategic document which puts in place a framework for the achievement of the objectives.

It will be necessary for Council to further develop an internal Legal Services Directive (**Directive**) (to be approved by the General Manager) which will set out the prescriptive procedures and other requirements which will be necessary to ensure that the actions set out in the policy are properly discharged.

The Legal Services Directive is being developed as a matter of priority.

Independence Statement

The draft Policy adopts a detailed *Glenorchy City Council In-House Legal Services Independence Statement* (which is Attachment 1 to the policy).

The Independence Statement is a critical component of the Policy, and highlights the characteristics of the independence of Council's employed lawyers to the rest of the organisation, including the elected Aldermen. It is intended to clearly define the role of Council's employed lawyers, to protect them from being placed in a position where their professional duties and obligations may be compromised or a conflict of interest situation.

Perhaps most critically, the independence statement clearly identifies that the overarching fiduciary duty of a Council employed lawyer is to the Council as a whole. Additionally, a Council employed lawyer does not owe a duty of confidentiality on an individual basis to any individual, including an Alderman or a member of management or staff where might prejudice or jeopardise the interests of Council as a whole or could be misleading, deceptive, unethical or unlawful. This will address issues that were raised in the recent Board of Inquiry report (discussed further below) in which Aldermen and decision makers were deprived of key information on the basis of a perceived duty of confidentiality.

The adoption of similar independence statements is common practice amongst most organisations that employ in-house lawyers.

Board of Inquiry Recommendations

Council's use of and expenditure on legal services justifiably received attention in the report of the Board of Inquiry (**BOI**) into Glenorchy City Council, which was released on 28 November 2018 (**Report**).

Recommendation 3.B.9.2 of the Report is in relation to Legal Expenses. The recommendations made are as follows:

- that council adopts a policy to govern the use of external legal advisors. The policy should include guidance on the circumstances in which the general manager may seek external advice, and direction on the maximum expense which can be incurred on any matter before the matter needs to be brought to council for approval. Council approval of such expense should be sought even if the amount is less than the total amount budgeted for that management section (**External Advice Recommendation**)
- that council budgets include specific allocation of legal expenses within each management section, to enable aldermen to monitor resource allocation and delivery of efficient service (**Legal Budget Recommendation**)

Recommendation 3.B.11.1 concerns the proposed revision of the general manager's contract. The recommendation provides:

- that any advice required to assist council in matters pertaining to the general manager's contract of employment be obtained from independent external lawyers (**GM's Contract Recommendation**)

The Policy was already in an advanced stage of development at the time the Report was released. Nevertheless, it includes several actions that have been added as a direct response to the BOI's recommendations. Further actions to address the recommendations will be included in the Directive (discussed above). It is also expected that the policy, and actions taken in respect of it, will be examined in the context of a wider examination of Council's response to the Report's recommendations.

Comments on the policy's treatment of the above recommendations are provided below.

<u>External Advice Recommendation</u>

The recommendation is addressed in Actions 2.1 and 3.2 of the Policy, which sets out the circumstances under which it is appropriate to seek external legal advice.

Further guidelines and procedures around referrals to external firms is likely to be included in the Directive.

It should be noted that the recommendation regarding the approval of legal expenditure over a certain amount being sought by Council has not been adopted at this stage. The imposition of arbitrary controls in relation to legal expenditure has the potential to lead to decisions being made that are not in Council's best interests. Whilst it is acknowledged that the recommendation responds to genuine and valid concerns about a number of inappropriate decisions made in relation to external legal advice obtained by Council (specifically in relation to the BOI), the vast majority of legal advice that Council commissions is necessary to effect Council business, and was not subject to criticism in the Report.

It is also noted that legal expenditure by Council is subject to the same procurement procedures and requirements as for the other services procured by Council.

<u>Legal Budget Recommendation</u>

Council currently allocates budget amounts for legal services to different departments, although the legal services budget is managed centrally by the legal services department. In view of the Board's recommendation, it is anticipated that budgetary arrangements will be considered as part of the development of the Directive

Action 3.3 of the Policy requires that Council actively monitor Council's expenditure on external legal services and ensure that appropriate corporate reporting data is available to the elected body of Aldermen and internal decision makers. Council is currently developing a revised corporate reporting framework which will include specific information (to be provided to aldermen) about legal expenditure.

<u>GM's Contract Recommendation</u>

This recommendation has been adopted in full in the policy (see actions 4.2 and 2.1)

Consultations:

Commissioner
Acting General Manager
Acting Director, Corporate Governance
Manager, Legal and Property

Human Resource / Financial and Risk Management Implications:

The introduction of the policy will provide a framework to ensuring that legal services are adequately resourced and that risks associated with legal matters are managed effectively.

The precise financial impact (if any) of the adoption of the policy is not presently known, however is expected to result in internal procedural improvements rather than on any additional expenditure.

The risk management implications are assessed below:

Risk Identification	Consequence	Probability	Rating	Risk Mitigation Treatment
If a Legal Services Policy is not adopted, governance control effectiveness is less optimal due to issues identified in the BOI report	Minor	Almost Certain	Medium	Council adopts the Legal Services Policy as recommended.

Community Consultation and Public Relations Implications:

Community consultation was not undertaken in respect of the policy.

The findings of the BOI Report (and the events which preceded its release) have led to a loss of confidence in Council in some sections of the community. The implementation of this policy is one of a raft of measures intended to address the BOI's recommendations and restore public faith in the organisation.

Recommendation:

That Council:

ADOPT the Legal Services Policy in the form set out in Attachment 1.

Attachments/Annexures

1 Draft Legal Services Policy

12. ACTIONS LIST (OPEN COUNCIL MEETING): UPDATE REPORT

Author:	Acting Manager, Governance and Risk (Bryn Hannan)
Qualified Person:	Acting Director, Corporate Governance (Simon Scott)
ECM File Reference:	Actions List - Council Meetings

Community Plan Reference:

Under the City of Glenorchy Community Plan 2015 – 2040, the Community has prioritised 'transparent and accountable government'.

Strategic or Annual Plan Reference:

Leading our Community

4.1 Govern in the best interests of our community
4.1.1 Manage Council for maximum efficiency, accountability and transparency

4.2 Prioritise resources to achieve our communities' goals
4.2.1 Deploy Council's resources effectively to deliver value

Reporting Brief:

To provide Council with the Actions List (Open Council Meeting), updated following the Council meeting on 27 November 2017.

Proposal in Detail:

Key actions arising out of Council resolutions and/or throughout the general business of Council meetings are captured and distributed throughout Council for completion and update by departmental staff on a monthly basis.

The Actions List (Open Council Meeting), which is Attachment 1, reports on the progress of the items on the list following the 27 November 2017 Council meeting.

Consultations:

Relevant Council officers

Human Resource / Financial and Risk Management Implications:

None.

Community Consultation and Public Relations Implications:

None.

Recommendation:

That Council:

NOTE the progress of the items on the Actions List (Open Council Meeting), as updated following the 27 November 2017 Council meeting.

Attachments/Annexures

1 Outstanding Action List - Open Council Meeting

13. NOTICES OF MOTIONS – QUESTIONS ON NOTICE / WITHOUT NOTICE

CLOSED TO MEMBERS OF THE PUBLIC

14. APPLICATIONS FOR LEAVE OF ABSENCE

GOVERNANCE

15. RESIGNATION OF DIRECTOR CORPORATE GOVERNANCE AND GENERAL COUNSEL

This item is to be considered at a closed meeting of the Council by authority of the Local Government (Meeting Procedures) Regulations 2015 Regulation 15(2)(a) (Personnel matters, including complaints against an employee of the Council and industrial relations matters), 15(2)(g) (Information of a personal and confidential nature or information provided to the Council on the condition it is kept confidential) and 15(2)(i) (Matters relating to actual or possible litigation taken, or to be taken, by or involving the Council or an employee of the Council.)

16. REVIEW OF DIRECTOR CITY SERVICES AND INFRASTRUCTURE POSITION

This item is to be considered at a closed meeting of the Council by authority of the Local Government (Meeting Procedures) Regulations 2015 Regulation 15(2)(a) (Personnel matters, including complaints against an employee of the Council and industrial relations matters).

17. ACTIONS LIST (CLOSED COUNCIL MEETING): UPDATE REPORT

This item is to be considered at a closed meeting of the Council by authority of the Local Government (Meeting Procedures) Regulations 2015 Regulation 15(2)(g) (Information of a personal and confidential nature or information provided to the Council on the condition it is kept confidential).

18. NOTICES OF MOTIONS – QUESTIONS ON NOTICE / WITHOUT NOTICE (CLOSED)