



**TOWN OF CAMBRIDGE  
RESPONSE TO SHOW CAUSE NOTICE**

**ISSUED BY**

**MINISTER FOR LOCAL GOVERNMENT  
ON 26 MAY 2020**

**21 AUGUST 2020**

## Summary

1. This is the Town's response to the Notice to Show Cause dated 26 May 2020 (Notice) and the further particulars of the Notice provided by letter dated 14 July 2020 (Particulars). It should be read together with the Town's 19 June 2020 response to the Notice.
2. There is no reason articulated in Notice or the Particulars which justifies the immediate suspension of the Council pending the delivery of the report of the inquiry into the Town of Cambridge (Authorised Inquiry), or at all.
3. In particular, there is no indication that the Council has failed to govern the Town's affairs, or to ensure that the Town's statutory functions are properly performed. Other than in respect of paragraph 1 of the Notice, there is no evident link between the allegations raised in the Notice or the Particulars and any failure by the Council as a governing body. The allegations in paragraphs 2 and 3 of the Notice generally relate to either the administration of the Town or to the Mayor alone.
4. Paragraph 1 of the Notice details the obtaining of legal advice by the Council on three occasions in 2018 and once in 2020. The Department of Local Government (Department) and the Minister (attachments 1 and 2) have been aware of and provided with copies of the 2018 advices since 2018, evidently without serious concern. Each time the Council took legal advice directly it did so either because: the matter involved the former CEO or senior staff who reported directly to the CEO, such that the CEO could not directly source the advice; or, in respect of the April 2020 advice, of unique measures being considered during the COVID-19 economic shutdown which resulted from actions taken by the State and Federal governments. In the ordinary course the CEO is responsible for obtaining legal advice. But on each occasion that the Council took advice directly it was dealing with matters which were out of the ordinary. Paragraph 1 of the Notice affords no basis to suspend the Council or require its members to undertake governance training.
5. The basis for paragraphs 2 and 3 of the Notice appears to be unsubstantiated negative statements made by, it seems, up to three Town employees about the culture of the Town and the relationship between (principally) the Mayor and staff. The Town employs 198.3 full time equivalent staff. Allegations from up to three of them represents a sample size of 1.5% of the Town's administration. The Mayor is only one of nine Council members. Having regard to that context, the matters in paragraphs 2 and 3 of the Notice cannot be probative of a concern that the Council as a *whole* has failed to ensure the Town performs its functions properly or that the Council has failed to govern the Town's affairs. The Council has complied with its statutory functions. It has put an appropriate structure for

administering the Town in place. It has set and reviewed all necessary policies. It has engaged a suitably qualified CEO. It reviews his performance and obtains feedback about that performance from relevant staff. Paragraphs 2 and 3 of the Notice do not support the suspension of the Council or a requirement that all Council members undertake governance training.

6. A suspension of the Council will amount to a significant incursion into the democratic foundation of local government against the wishes of the Town's ratepayers. It is not apparent whether and how suspending the Council will address or remediate the allegations in the Notice.
7. The Council remains (since at least February of this year) prepared to undertake governance training in the responsibilities and functions of a Council, in addition to that already undertaken by the Council (see attachment 3 - schedule of governance training undertaken by elected members). The Town has also commenced an organisation wide governance review/audit, which was foreshadowed in the Town's letter to you dated 26 February 2020 and it has at the same time engaged an independent third party to conduct a workplace culture review and to report back to it in September (attachment 4). These are further compelling reasons why there is no basis for the exercise of the discretion under s 8.15C of the Local Government Act 1995 (LG Act) to suspend the Council or require it to undertake governance training.

#### **Relevant factual background**

8. The Town has been the subject of an Authorised Inquiry since April 2018 which inquiry is to imminently report to the Department and to you. The Town has cooperated with the Authorised Inquiry throughout and, while it has been ongoing, has provided the Department from time to time with details of its improvement of various governance arrangements and processes, which improvements have been recognised by the Department.
9. Between 1 January 2019 and 11 November 2019, the Department received only one formal complaint in relation to the Town (in April 2019). On 6 November 2019, the Department indicated its intention to withdraw the Authorised Inquiry, conditional upon the Town agreeing to publish certain information on its website and conducting a governance review at the Town's cost. On 11 November 2019, the Town agreed to publish a consolidated form of the information on its website, but declined to engage in a governance review at its cost on the basis that, in effect, the need for one as at November 2019 had not been demonstrated.
10. In December 2019, the Department decided to continue with the Authorised Inquiry until further notice and despite the Town indicating that it would reconsider conducting a

governance review. The reasons why the Department continued with the Authorised Inquiry in those circumstances are opaque. The only information the Town has is that the Director-General of the Department had “had enough of” the Town’s (alleged yet unidentified) “delaying tactics and disrespect”. The Director-General’s viewpoint is without foundation: the Town has demonstrably neither relevantly delayed nor acted without respect for, it is inferred, the Department, the Authorised Inquiry, or the Director-General. Indeed, the opposite is the case. In any event, the Director-General’s expressed viewpoint was and is neither relevant to, nor a proper basis for, the Department continuing to inquire into a local government and to continue to exercise coercive statutory powers.

11. Between January and March 2020, the Authorised Inquiry conducted interviews with the Mayor, four other Council members and six employees of the Town. Two further formal complaints were received in March 2020.
12. On 8 July 2020, the Town was provided with the Draft Report of the Authorised Persons. The Draft Report contains allegations reflecting those in the Notice and the Particulars. The Town requested better particulars of the Draft Report and more time to respond. On 10 August 2020 the particulars were provided, and the time for a response was extended to 1 September 2020.
13. In the meantime, on 26 May 2020 the Notice was issued. A response was due from the Town by 16 June 2020. A request by the Town on 8 June 2020 for further particulars of and more time to respond to the Notice was declined on 9 June 2020. On 15 June 2020, the Town commenced proceedings CIV 1673 of 2020 (the proceedings) and on 16 June 2020 the time for any response was extended to 19 June 2020, with which timeframe the Town complied.
14. The Particulars were provided on 14 July 2020 and gave the Town until 4 August 2020 to respond. That time has subsequently been extended to 21 August 2020.
15. An undertaking has been given to the Supreme Court not to exercise power under s 8.15C of the LG Act until after the Hon. Justice Tottle delivers his reserved judgment in the proceedings.

#### **Collective responsibility of Council**

16. As a general comment, the complaints set out in the Notice and the Particulars are principally about the Mayor. In that respect, none of the functions conferred on the Council by the LG Act, nor any of the statutory rules of conduct imposed on Council members, require or authorise the Council to manage, alter or restrain the individual actions of its

members, nor is it evident how practically it might do so. Ultimately, as democratically elected members, each member is responsible to her or his constituents, not each other.

17. As a further general comment, Council's statutory role is set out in s 2.7 of the LG Act. No connection is drawn in the Notice and the Particulars between their contents and that role. In particular, there is no connection drawn between the matters referred to in the Notice and the Particulars and either an actual deficiency in the Council's governance of the Town's affairs or an actual impairment in the performance of a function of the Town.
18. A failure of management and administration may, depending upon the circumstances, affect the proper performance of a local government's functions, but that is not inevitable and would, in any event, need to be identified. Without one or both of the connections between the Council's statutory role as described in s 2.7 of the LG Act and the matters in the Notice and the Particulars, it cannot be appropriate to exercise the power in s 8.15C.
19. To the extent that the Notice and Particulars allege concerns about the workplace culture of the Town and the treatment of employees, the premise of the intended action under s 8.15C is that the Council has responsibility for these matters beyond the general governance and oversight it has pursuant to s 2.7 of the LG Act. That is directly inconsistent with the emphatic position taken by the Department and Minister to date that such matters lie exclusively within the responsibility and power of the CEO and are matters into which Council members should never trespass.
20. As to paragraph 1 of the Particulars:
  - 20.1 The Town agrees that the role of the Council includes ensuring there is an appropriate structure for administering the Town (s 5.2 of the LG Act) and employing, and ensuring the review of, a CEO (ss 5.36 and 5.38 of the LG Act). However, nothing in the Notice or the Particulars indicates that the Council has failed to ensure there is an appropriate structure or that it has failed to employ a CEO or have his performance reviewed.
  - 20.2 The Town accepts that a hypothetical set of circumstances could exist in which a local government's functions are impaired by the breakdown of relationships between council members and employees. However, nothing in the Notice or the Particulars indicates that the relationship between the Town's Council (as a whole) and employees has broken down, or that any local government function performed by the Town has in fact been impaired.

21. As to paragraph 2 of the Particulars, and without engaging as to whether the propositions in the chapeau to that paragraph are correct:
  - 21.1 nothing in the Notice or the Particulars suggests that the functions in paragraphs 2(a) and 2(b) of the Particulars have not been performed; and
  - 21.2 nothing in the Notice or the Particulars identifies or suggests a failure of “appropriate oversight and governance” (the meaning of which is unclear and is not explained in the Particulars).
22. As to paragraph 3 of the Particulars, and without engaging as to whether the propositions in the chapeau to that paragraph are correct:
  - 22.1 nothing in the Notice or the Particulars suggests that the principle in s 5.40(e) of the LG Act has not been adhered to; and
  - 22.2 nothing in the Notice or the Particulars identifies or suggests a failure of “appropriate oversight and governance” (the meaning of which is unclear and is not explained in the Particulars).

**Paragraph 1 of the Notice and paragraphs 4-14 of the Particulars**

23. Paragraph 1 of the Notice and paragraphs 4-14 of the Particulars do not identify a local government function that is not being properly performed by the Town; nor do they connect any deficient performance to a failure of the Council.
24. The apparent concern is that the Council has obtained legal advice on four occasions over a 30 month period when that is a “function ordinarily performed by the CEO” (paragraph 11 of the Particulars). As set out below, the advice the Council has taken has on each occasion been obtained in unique circumstances. There is nothing in the Notice nor the Particulars to indicate that the ordinary course of the CEO obtaining legal advice is not the course ordinarily. By its very nature, the taking of legal advice by the Council in the circumstances identified in the Notice and the Particulars is out of the ordinary. It would seem plain that, whatever view is taken of the appropriateness of the Council’s actions, any concerns ought be addressed through the processes of the Authorised Inquiry. There is no reasonable basis for immediate action under s 8.15C in relation to this conduct.
25. By 6 November 2019, the Department had determined that the Authorised Inquiry should be withdrawn (see paragraph 9 above). Evidently the Department did not consider the Council obtaining legal advice on 7 February 2018, 15 May 2018 and 28 August 2018 as conduct of such a serious type that it then warranted any responsive action by the Department. This reinforces that there is no reasonable basis for immediate action under s 8.15C.

26. In any event, the advice obtained by Council in 2018 and the subject of paragraph 1(a) of the Notice was advice taken by the Council in relation to issues which involved the conduct and performance of the then CEO and senior staff including the manager of governance. That advice, bearing on the role of the CEO and his relationship with the Council and the Town, is self-evidently advice that the CEO himself could not have been involved in procuring.
27. As to the advice taken on 9 April 2020, that resolution was passed in the context of the extraordinary circumstances of having to respond to the effect on the Town (and the governance of its affairs, and the allocation of its finances, by the Council) of the COVID-19 global pandemic. Again, by its very nature that was advice taken in anything but ordinary circumstances. Taking that advice in such circumstances does not reflect the Council or Council members not understanding or adhering to their roles.
28. In each case, the Council was conscious that its actions in procuring advice itself was appropriate and it took and had regard to advice about that including from Senior Counsel and directly from Departmental officers. The Minister was also notified of and acknowledged the actions of Council in 2018 (attachment 5)
29. As to paragraph 1(a)(ii) of the Notice, it is not apparent how any failure by the Council to abide “a procurement process consistent with the terms of” the policy binding on the Town’s employees, “or any other procurement process” (paragraph 12 of the Particulars), could give rise to the suspicion set out in paragraph 1 of the Notice, that Council and Council members do not understand and observe their roles. The former does not inform the latter. In any event, the Council relied on the then CEO and senior employees to provide advice or recommendations in relation to the application of Town policies, including procurement.
30. Paragraph 1(b) of the Notice is addressed in paragraphs 21—26 of the Town’s letter to you dated 19 June 2020 and the resolution of 9 April 2020 has been revoked (see attachment 6).

**Paragraph 2 of the Notice and paragraphs 15-17 of the Particulars**

31. Paragraph 2 of the Notice concerns an alleged failure by the Council to ensure the “working environment and relationship between Council, the CEO and the employees of the Town” enables the CEO and employees to carry out their functions. However, the only Council member referred to in paragraphs 15-17 of the Particulars is the Mayor, and the CEO is mentioned only in passing in paragraph 15(e).
32. Against that background, there is nothing in the Notice or the Particulars to indicate that the Council has failed in the manner alleged. The highest it is put by the Particulars is

that some employees have made allegations about the Mayor. Allegations are not evidence and, even if they were, they do not evidence an impairment of the working environment and relationship between Council (as a whole) and the Town's employees, or a failure by the Council (as a whole) to ensure a productive working environment and relationship, for the simple fact that the Mayor is not the Council.

33. As to paragraph 16 of the Particulars, the requirement to keep a log of contact with developers is a requirement made pursuant to a planning policy adopted by Council in a resolution passed 25 July 2017 (see attachment 7), and which relates only to proposals of \$3.5 million or more. Its purpose, which is self-evidently a proper one, is to improve transparency in large land dealings. A similar policy applies to Council members (see attachment 8).
34. The particular at paragraph 16(c) is too vague for the Town to meaningfully respond. On the face of the particular it is not evident how one Council member asking questions about the impartiality of a report provided to Council, in pursuit of the Council member's role conferred by s 2.10(d) of the LG Act, gives rise to a concern that Council has failed to ensure a productive working environment and relationship between the Council, the CEO and employees. Interrogating reports proffered by employees is an integral part of a Council member's function. It is necessary for good decision-making in the interests of the community, and it reflects a proper, robust relationship between the Town's Council members and its employees.
35. The particulars at paragraph 17 reflect the Mayor taking an interest in, and interrogating, the basis for recommendations made by an officer for planning decisions. That is a proper function of a Council member. It is apparent from paragraph 17 that the Mayor and some of the Town's employees disagree on planning matters. That is to be expected, but it does not indicate a dysfunctional working environment or relationship. The use of emotive language like "continually sought to show that planning officers have made a mistake", "illogical views" and "until she obtains the response she wants" in the allegations does not take matters any further or add weight. To the contrary, language of that type is language of characterisation not identification, which tends to diminish the weight that might be accorded to the allegations.
36. Notwithstanding the above, the CEO has employed a Manager of People and Development to implement and oversee all required usual workplace policies. There have been no complaints made to the Manager of People and Development which relate to the allegations set out in paragraph 2 of the Notice.

### **Paragraph 3 of the Notice and paragraphs 18-22 of the Particulars**

37. The concerns described in paragraph 3 of the Notice and particularised by paragraphs 18-22 of the Particulars appear to be principally concerned with alleged conduct of the Mayor and, to a lesser degree, the CEO and the “workplace culture” at the Town.
38. As observed above, none of the functions conferred on the Council by the LG Act, nor any of the statutory rules of conduct imposed on councillors, require or authorise the Council to manage, alter or restrain the individual conduct of its members. Council members are responsible to the community, not each other.
39. Council has ensured that there is a Code of Conduct which applies to both employees and elected members. Council has also ensured that the Town has all necessary and relevant additional policies in place to enable the CEO to manage employee relations. Transgressions of the policies by employees (other than the CEO) is a matter for the CEO. Transgression of the policies by Council members is a matter for that member’s constituents and, subject to the nature of the transgression, the Local Government Standards Panel. Employees can make complaints regarding transgressions by elected members to the Town’s Complaints Officer.
40. There is no connection between the matters in paragraph 3 of the Notice and the Council’s statutory role to govern the Town’s affairs and to be responsible for the performance of the Town’s functions. This is because ultimately, beyond setting matters of policy and governing codes of conduct and the like, day to day issues which arise to inform a matter like “workplace culture” are operational issues for the operational head of the Town – the CEO – not the Council. In the absence of a connection to the Council’s statutory role and an identified failure in that statutory role, paragraph 3 of the Notice does not support the exercise of the power in s 8.15C of the LG Act.
41. As to paragraph 3(a) of the Notice and paragraph 18 of the Particulars, the alleged conduct is that of the Mayor only. For reasons given above, that does not warrant action against the Council and all of its members. Particular 18(a) is not sufficiently precise so as to enable the Town to respond; particular 18(b) does not on its face evidence the Mayor actually “belittling” (to dismiss as unimportant) or “denigrating” (to criticise unfairly or disparage) any employees; and particular 18(c) has been the subject of a State Administrative Tribunal decision (*Shannon v Local Government Standards Panel* [2020] WASAT 50) in which the conduct is described as “careless” rather than “deliberate” (paragraph 147) and at the “lower end of the scale in respect of minor breaches” (paragraph 164, emphasis added), for which an apology was ordered. None of these particulars support the suspension of the Council or an order requiring its members to undertake governance training.

42. As to paragraph 3(b) of the Notice and paragraph 19 of the Particulars, the Town disputes that there is any evidence that the CEO told the Mayor he would report her to Worksafe. Even if there were evidence to this effect, then this is an indication that the governance structures at the Town are functioning properly.
43. As to paragraph 3(c) of the Notice and paragraph 20 of the Particulars, the Town repeats paragraph 37 of its letter to you dated 19 June 2020.
44. As to paragraph 3(d) of the Notice and paragraph 21 of the Particulars, it appears that the concerns are connected with alleged conduct of the Mayor (paragraph 21(a) of the Particulars) and “the Town’s reputation as a workplace” (paragraph 21(b) of the Particulars). As to the former, the Town repeats paragraph 16 above and as to the latter (whatever it means), that is a responsibility of the CEO, not the Council.
45. As to paragraph 3(e) of the Notice and paragraph 22 of the Particulars:
  - 45.1 the allegations relate almost exclusively to the Mayor (plus, in one instance described at paragraph 22(d)(ii) of the Particulars, one other Council member);
  - 45.2 the allegations fall within areas of the CEO’s responsibility under the LG Act;
  - 45.3 none of the allegations allege a failure by the Town to perform one of its functions properly; and
  - 45.4 none of the allegations allege a failure by the Council to govern the Town’s affairs.
46. The concerns in paragraph 3 of the Notice do not support the suspension of Council or a requirement that all of its members undertake governance training. Further, and notwithstanding the above, the Town has (as foreshadowed to you previously) commenced a review of organisational workplace culture, being undertaken by an independent third party (attachment 4).