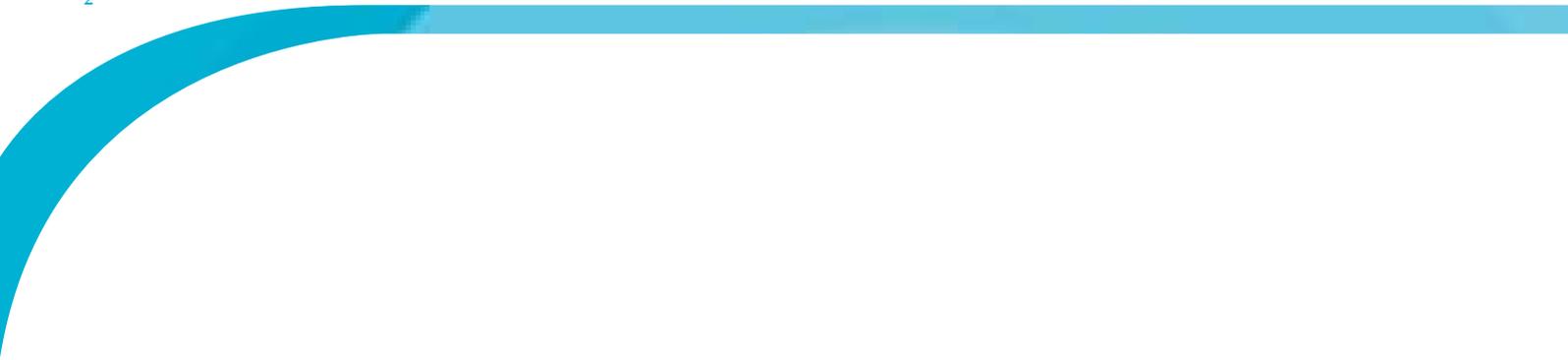


Whistleblowers Protection Act 2001
**Investigation into the alleged improper conduct of
councillors at Brimbank City Council**

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LETTER OF TRANSMITTAL

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to section 103 of the *Whistleblowers Protection Act 2001*, I present to the Parliament the report of an investigation into the alleged improper conduct of councillors at Brimbank City Council.

A handwritten signature in black ink, appearing to read 'G E Brouwer', written in a cursive style.

G E Brouwer
OMBUDSMAN

CONTENTS

EXECUTIVE SUMMARY	8
Dysfunctional council	9
Influence of unelected persons	9
Conflict of interest	10
Improper use of powers	10
Bullying and intimidation	11
Misuse of council funds and equipment	11
Inappropriate release of information	11
Improper use of electoral information	12
Local Government Victoria	12
Next steps	12
RECENT AMENDMENT TO THE WHISTLEBLOWERS PROTECTION ACT	14
DISCLOSURES UNDER THE WHISTLEBLOWERS PROTECTION ACT	16
INVESTIGATION	17
BACKGROUND	18
Local government	18
The role of councillors	19
Brimbank City Council	21
INFLUENCE OF UNELECTED PERSONS	25
The Hon. Theo Theophanous, MLC	26
Mr Hakki Suleyman	36
Mr George Seitz, MP	40
Dr Andrew Theophanous and Mr Craig Otte	43
Conclusions	45
Appointing an administrator	46
Recommendations	46

DECISION-MAKING CONTRARY TO THE COMMUNITY INTEREST	47
I. Keilor Lodge Reserve	48
The direction	56
Conclusions	65
Recommendations	67
Expressions of interest	68
Conclusions	76
Recommendations	76
II. Cairnlea Park	77
Background	78
Conflict of interest	83
Demand for changes to the budget	84
Conclusions	89
Recommendations	91
INAPPROPRIATE RELEASE OF INFORMATION	92
<i>In camera</i> resolution - Cr Eriksson	92
Leak to <i>Brimbank Leader</i> – Cr Capar	96
Conclusions	97
Recommendations	98
BREACH OF THE VICTORIAN ELECTORAL ACT	
Victorian Electoral Commission records	99
Conclusions	103
Recommendations	104
INAPPROPRIATE CONDUCT OF INDIVIDUAL COUNCILLORS	105
Cr Suleyman	107
Cr Capar	126
Cr Abate	140
Other councillor conduct	147

MISUSE OF ELECTRONIC EQUIPMENT: PORNOGRAPHIC AND INAPPROPRIATE MATERIAL	152
Conclusions	155
Recommendation	156
INAPPROPRIATE USE OF COUNCIL FUNDS AND PROPERTY	157
Excessive councillor telephone expenditure	158
Conclusions	166
Recommendations	167
Mayoral and councillor gifts	169
Conclusions	173
Recommendations	173
Former CEO's remuneration package	175
Conclusions	180
Recommendation	180
THE CULTURE OF BRIMBANK	181
Training for councillors	182
The role of the mayor	184
The 2007-08 faction	185
Conclusions	187
LOCAL GOVERNMENT VICTORIA	188
Brimbank	188
Conclusions	195
Recommendations	196
SUMMARY OF RECOMMENDATIONS	197

ATTACHMENT 1:	
Email from Cr Suleyman to Dr A. Theophanous, 18 April 2008	200
ATTACHMENT 2:	
Email from Dr A. Theophanous to Cr David, 19 April 2008	201
ATTACHMENT 3:	
Email from Cr David to Dr A. Theophanous, 19 April 200	202
ATTACHMENT 4:	
Email from Dr A. Theophanous to Cr Suleyman, 14 July 2008	203
ATTACHMENT 5:	
Emails between Cr Eriksson and Cr Suleyman, 15-16 July 2008	204
ATTACHMENT 6:	
The direction	205
ATTACHMENT 7:	
Councillor Code of Governance	206
ATTACHMENT 8:	
Email from Cr Capar to Petech Minh Chau, 16 September 2007	217
ATTACHMENT 9:	
Email from Cr Capar to Petech Minh Chau, 7 October 2007	218
ATTACHMENT 10:	
Analysis of telephone / fax, mobile and broadband over last council term	219

EXECUTIVE SUMMARY

1. In Victoria, councillors are elected to make decisions on a wide range of matters that directly affect the way people live, work and conduct business in a municipality. The *Local Government Act 1989* provides the framework within which councils operate.
2. Councillors are mandated to represent the interests of the community and to faithfully and impartially carry out their functions to the best of their skill and judgment. They are required to act honestly and to exercise reasonable care and diligence; and must not make improper use of their position, or information acquired because of their position, to advantage themselves or any other person, or to cause detriment to the council.
3. Sadly, my investigation into the conduct of councillors at Brimbank City Council (Brimbank) identified that the behaviour of many councillors failed to meet these standards.
4. My investigation was triggered by disclosures made under the *Whistleblowers Protection Act 2001* alleging that:
 - councillors placed Brimbank at financial risk by directing that the Chief Executive Officer (CEO) remove funds from a project in retaliation for a councillor's failure to gain Australian Labor Party (ALP) pre-selection for the Kororoit by-election
 - a councillor knowingly released a confidential resolution to the media
 - a councillor threatened staff, late in the budget process, that the budget would not be carried if approximately \$680,000 was not allocated to a sporting ground connected to the councillor's family.
5. As a result of the disclosures, I decided to investigate whether Brimbank councillors had:
 - a) performed their functions as public officers dishonestly or with inappropriate partiality
 - b) breached public trust
 - c) misused information or material acquired in the performance of their duties
 - d) mismanaged public resources
 - e) conspired with each other to engage in conduct referred to in paragraphs (a), (b), (c) and (d).

Dysfunctional council

6. The evidence revealed a council that was generally dysfunctional and marked by in-fighting and interpersonal conflicts. It was clear that the council had split into two groups, the 'ruling faction' and the minority councillors, and that the council was unable to govern as a whole. One councillor referred to there being a 'cold war impasse' between the factions since May 2007. This impeded the council's ability to function effectively.

Influence of unelected persons

7. It became evident early in my investigation that the operation and governance of the council was influenced by individuals who held no elected local government office, including individuals who would be, or were in the past, precluded from holding office because of criminal convictions. Such individuals have not taken an oath of office to act in the best interests of the community serviced by the council and are not subject to the conduct rules of the Local Government Act. Their influence was exerted behind closed doors and at times for their own personal or political motivations.
8. Where undue influence is exerted it can impede councillors' ability to make objective and independent decisions in the interests of their community. Where councillors allow such influence to be exercised over them, they place themselves at risk of not being able to exercise their functions in accordance with their statutory obligations.
9. Decisions about Keilor Lodge Reserve and the Sydenham Park Soccer Club were significantly influenced behind the scenes by individuals who held no elected local government office.
10. If this culture at Brimbank persists, there is a risk that those charged with the responsibility of representing Brimbank will make decisions based on factional or political alliances, and not in the best interests of the community.
11. I therefore consider that the Minister should closely monitor the activities of the council. Should the Minister determine that practices similar to those that occurred prior to the 2008 election are occurring, or that outside influences continue to be similarly exercised, he should consider taking action. Such action may include suspending or dismissing the council, with a view to enabling Brimbank to be properly and effectively governed.

Conflict of interest

12. My investigation also highlighted that conflict of interest continues to be an issue pervading local government. I concluded that members of the 'ruling faction' failed to identify and address conflicts between their public duties and private interests. However, the broader issue of conflict of interest was not solely confined to the 'ruling faction'.
13. While some of the problems related to conflict of interest resulted from a lack of understanding of conflict of interest principles, others reflected deliberate misconduct on the part of the councillors involved. This included placing their private interests first and using their positions to obtain confidential information.
14. My investigation also identified concerns with councillors working in the offices of Members of Parliament. In my view, this creates a clear conflict of 'duty' and 'duty'. I identified two instances where a councillor's duty to a Member of Parliament impacted upon the performance of the councillor's public functions.
15. I was concerned that some individuals failed to recognise the broader ethical obligations of public officers to avoid conflicts of interest, preferring instead to rely on a narrow interpretation of conflict of interest and limited legislative provisions.

Improper use of powers

16. My investigation also identified that the behaviour of the 'ruling faction' and others was often not concerned with 'peace, order or good government', as is required under the Local Government Act. The evidence points to councillors in the 'ruling faction' voting in a block to support the faction, even when those decisions were not necessarily in the best interests of the community.
17. Some decisions appear to have been made for personal gain; to cause detriment to the council; or in retaliation for broken promises. In my view, some decisions represent a misuse of position by councillors elected to represent the community and give rise to likely breaches of the Local Government Act.
18. The 'ruling faction' demonstrated that it was willing to place the council at financial risk for a personal vendetta. The six majority councillors issued a written direction to the CEO, instructing him to withdraw budget funding for works at the Keilor Lodge Reserve, in spite of the fact that such action could cost the council in excess of \$100,000 for breach of contract.

Bullying and intimidation

19. My investigation also revealed a culture in which the overbearing attitude of a councillor was allowed to substantially modify how a budget should be developed without the matter going to a full council meeting. This involved a councillor demanding that \$680,000 be allocated to works at Cairnlea Park (which is allocated to a club linked to the councillor's family) or the budget would not be adopted. Items were subsequently deleted, deferred, changed in scope or reduced in the budget to accommodate the councillor's demand.
20. I also established that some councillors bullied, pressured and harassed Brimbank staff to the point where one officer left Brimbank and another went on leave. Councillors also interfered in staffing issues, including instructing both the current and former CEOs to terminate the employment of senior staff.

Misuse of council funds and equipment

21. My investigation identified inappropriate use of council funds and property by councillors. Councillors failed to identify and reimburse Brimbank for private use of council telephones, with some councillors owing Brimbank hundreds, if not thousands, of dollars. I was concerned that Brimbank had never audited councillors' mobile telephone bills, despite Brimbank spending \$63,757 (after reimbursement from councillors) on mobile telephone bills for 2005-08.
22. In addition, councillors made improper use of council provided laptops. For example, I found pornographic material and inappropriate software on the laptops of two councillors.
23. I also identified concerns about gifts purchased by Brimbank for the outgoing mayor each year. Some councillors chose their own gifts, spending up to \$1,000. I was concerned to find that Brimbank had no policy to govern the purchasing of what appeared to be lavish gifts.
24. My investigation identified concerns with the former CEO's remuneration package. I identified that Brimbank provided the former CEO with a motor vehicle, purchased six months prior for \$38,833, and subsequently paid an additional \$35,523 Fringe Benefits Tax.

Inappropriate release of information

25. I identified that some councillors inappropriately leaked information to the media for their personal benefit or to tarnish the reputation of Brimbank officers or other fellow councillors.

26. One councillor also provided several confidential council documents to an international company, and to others, for his own advantage in an attempt to start a private business competing with a local government supplier. He also misused his position and information obtained through Brimbank to seek an advantage for a family member.

Improper use of electoral information

27. My investigation also revealed that a councillor obtained electoral information for tens of thousands of Victorian citizens from a political party, in contravention of the Victorian *Electoral Act 2002*.

Local Government Victoria

28. My investigation identified concerns about the way in which Local Government Victoria discharged its statutory responsibility to investigate potential breaches of the Local Government Act in relation to Brimbank. In my view, Local Government Victoria's response to complaints about Brimbank did not deal adequately with them.
29. I note that amendments to the Local Government Act in November 2008 included the introduction of the Councillor Conduct Panel (CCP), which may suspend or dismiss councillors for misconduct. I welcome the Councillor Conduct Panel as a means of addressing councillor misconduct, such as that identified by my investigation.

Next steps

30. What emerged from this investigation was that a great deal of councillors' attention, if not most, was devoted to accommodating factional and personal agendas, and not to performing their functions in accordance with the best interests of the community.
31. The factionalism that existed within the last elected council (2005-08), and the risk that this may be continuing within the new council, raises the issue of whether the council is capable of governing in accordance with its statutory objectives.
32. In light of this, I have recommended that the Minister closely monitor the activities of the council and, should the poor practices that occurred prior to the 2008 election continue, that he consider suspending or dismissing the council with a view to enabling Brimbank to be properly and effectively governed.

33. I have made a number of recommendations, including:
- Local Government Victoria investigate possible breaches of the Local Government Act by several councillors, with a view to determining whether action should be taken against them
 - the Victorian Electoral Commission investigate possible breaches of the Electoral Act by a political party
 - the Local Government Act be amended to prohibit elected councillors from being employed by Federal and State Members of Parliament during their term on council
 - Brimbank review its policies in relation to councillor mobile telephone use, regularly audit councillor mobile telephone bills and publish each individual's total mobile telephone usage on the Brimbank website quarterly
 - measures be taken to ensure Local Government Victoria is sufficiently resourced to meet its statutory requirements in relation to investigating breaches of the Local Government Act
 - Local Government Victoria introduce a dedicated investigative team to investigate complaints under the Local Government Act.

RECENT AMENDMENT TO THE WHISTLEBLOWERS PROTECTION ACT

34. This report is made pursuant to section 103 of the Whistleblowers Protection Act and the names of the persons against whom protected disclosures were made have been included.
35. Section 22A of the Whistleblowers Protection Act provides I may disclose, in a report referred to in section 103 of that Act, particulars likely to lead to the identification of a person against whom a protected disclosure has been made if I determine it is in the public interest to do so and if I set out in the report the reasons why I have reached that determination.
36. Having considered the four matters referred to in section 22A(2), I have determined it is in the public interest to identify the subjects of the public interest disclosures in this matter by disclosing the following particulars: the subjects' names, occupations and personal details. I have made this determination for a number of reasons.
37. I consider that it is in the public interest for the subjects of a public interest disclosure to be identified in a report to Parliament when the report and the disclosure concern allegations of improper conduct by persons holding public offices of certain significance, such as the office of councillor. This is particularly so when the report indicates that there is merit in the allegations against the public officer.
38. This public interest is derived from the nature of such public offices. In this instance, the public interest arises from the role and duties of the office of councillor; the democratic nature of the selection process for that office; the control that councillors jointly exercise over a significant amount of public assets and infrastructure, and over public spending; as well as from the obligations of councillors to the people of their municipality, and to the State of Victoria.
39. The public interest, in this instance, is also derived from:
 - the Constitutional significance of the office of councillor and of local government, as recognised by Part IIA of the *Constitution Act 1975* (Victoria)
 - the essential role that councillors play in the good governance of local areas, as recognised by section 74A(1A)(b)(ii) of the *Constitution Act*
 - the conduct obligations imposed on councillors by Division 1A, Part 4 of the *Local Government Act*.

40. I do not believe that the public interest identified above can be satisfied by any means other than by identifying the subjects of the disclosure. In this matter, I consider that confidentiality is not appropriate as it runs counter to the public interest.
41. This report concerns an investigation into public interest disclosures about persons who were councillors when the alleged misconduct occurred and concludes that there is merit in a number of those allegations. As such, I consider the public interest necessitates that the identities of those councillors or former councillors be disclosed in my report.

DISCLOSURES UNDER THE WHISTLEBLOWERS PROTECTION ACT

42. On 1 August 2008, I received a complaint under the *Ombudsman Act 1973* concerning matters raised by Mr George Seitz, MP in the Legislative Assembly of Parliament on 30 July 2008. Mr Seitz had made allegations of 'threats, bribery, intimidation, misuse of council funds, mismanagement, improper behaviour and council's failure to govern effectively'. As a result of the complaint, I decided to conduct a formal investigation under section 14 of the Ombudsman Act.
43. Early in my investigation, I received two independent disclosures under the Whistleblowers Protection Act in relation to the alleged improper conduct of councillors of Brimbank City Council (Brimbank)¹. The whistleblowers alleged:
- councillors directed the CEO of Brimbank to remove funds from a project, placing Brimbank at financial risk, in retaliation for Cr Suleyman's failure to gain ALP pre-selection for the Kororoit by-election
 - a councillor knowingly released a confidential resolution to the media
 - late in the budget process, a councillor demanded that staff include \$680,000 of funding for a sporting ground connected to her family, or the budget would not be carried.

¹ 'Brimbank' refers to the Chief Executive Officer and his administrative staff; and the municipal district. 'Council' refers to the 11 councillors as a whole.

INVESTIGATION

44. In light of the disclosures, I decided to investigate the conduct of Brimbank councillors.
45. During the investigation, my office interviewed over 50 individuals; inspected numerous Brimbank files; forensically examined electronic data from email accounts and council-owned Blackberries (electronic devices) and laptops; viewed files from Local Government Victoria; viewed copies of complaints made to the Victorian Auditor-General's Office; met with, and obtained documentation from, the Municipal Association of Victoria; and obtained information from the Australian Securities and Investment Corporation, Victoria Police, Centrelink, the Victorian Electoral Commission, the Department of Immigration and Citizenship, and VicRoads.
46. I also received over 15 complaints from Brimbank residents, councillors and Brimbank staff. This included a letter from Cr Eriksson requesting that I investigate concerns raised in her press statement, dated 17 July 2008, about the 'actions and behaviour of Mr George Seitz'.
47. I would like to acknowledge the co-operation received from the CEO and officers within Brimbank to requests for information by my staff during my investigation.

BACKGROUND

Local government

48. The role of local government is set out in section 74A of the Constitution Act, which states:

Local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

49. Councils are established and regulated by the Local Government Act. This Act is administered by Local Government Victoria, part of the Department of Planning and Community Development. The Local Government Act contains a set of provisions to guide the administration of councils and the conduct of councillors and Brimbank employees.

50. Each of the 79 local councils in Victoria has between five and 12 democratically elected councillors, with responsibility for the governance of the municipal district, and an administration to give effect to the decisions of council. Under this structure, elected councillors are primarily responsible for providing strategic leadership in the determination of policies and programs at the local level of government. The council appoints a CEO to head the administration, who in turn appoints staff. The role of the CEO and the administration is to perform administrative functions in accordance with the decisions of the elected councillors.

51. In November 2008, the Local Government Act was amended. Local Government Victoria's Senior Governance and Legislation Analyst summarised the amendments as follows:

Changes made to the Local Government Act, in November 2008, included significant reforms to conflict of interest and Councillor conduct. Conflict of interest has been substantially redefined in the Act and its application broadened to include a wider range of Council meetings and to also apply to Council staff. New standards of conduct have been prescribed for elected Councillors and arrangements to support good conduct have been established. Councils are now able to apply for a Councillor Conduct Panel to discipline a Councillor who breaches the Code of Conduct and serious misconduct can result in a VCAT [Victorian Civil and Administrative Tribunal] hearing and the possible suspension or dismissal of an offending Councillor.

52. My investigation into the alleged improper conduct of Brimbank councillors commenced in September 2008. The conduct investigated by my office, in all but one instance, was subject to the provisions of the Local Government Act as it stood prior to the amendments in November 2008. As such, I have referred to the Local Government Act as it was at the time of the alleged conduct.
53. The amended legislation is, however, applicable to my discussion about election campaign donation returns submitted in 2009 as this conduct occurred after the amendments in November 2008.
54. I consider that a number of the councillors subject to disclosures investigated by my office may have been subject to suspension or dismissal from the council had the Councillor Conduct Panel been in place earlier. I welcome the Councillor Conduct Panel as a means of addressing councillor misconduct.

The role of councillors

55. The success of local government is dependent upon those who represent the community, that is, local councillors. Councillors are essential to the operation of local councils and their constitutional role, as described by section 74A(1A) of the Constitution Act, is that they are jointly:
- (i) accountable for the decisions and actions of councils; and
 - (ii) responsible for ensuring good governance of the council.
56. In view of this significant role, section 63 of the Local Government Act requires councillors to take an oath of office before acting as councillors. The oath requires a councillor to 'undertake the duties of the office of Councillor in the best interests of the people' and to 'faithfully and impartially' carry out their functions to the best of their skill and judgment.
57. During the period that this report covers, section 76B of the Local Government Act also provided rules of conduct for councillors. Section 76C established the requirements for establishing codes of conduct.
58. Section 76B of the Local Government Act required councillors to 'act honestly' and to 'exercise reasonable care and diligence'. It also provided that a councillor must not make improper use of their position or information acquired because of their position —
- (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
 - (ii) to cause, or attempt to cause, detriment to the Council

Failure to comply with these obligations was an offence against the Local Government Act.

59. In accordance with the obligation to establish a code of conduct, Brimbank adopted a Councillor Code of Governance in 2006. This Code requires councillors to show 'respect and consideration of fellow Councillors, staff and the community.' It also requires councillors to treat others honestly, fairly and in a manner that is non-discriminatory; to communicate openly and honestly; to recognise team work; and to adhere to the principles of good governance. It refers to the community expectation of impartiality, efficiency and the highest standards of honesty and integrity, and notes that duties are to be performed in the best interests of the community and are not to be influenced by fear, favour or adverse publicity.
60. The Code also requires councillors to work together; to be honest, responsive, courteous and prompt in their dealings with each other; and to behave ethically and with respect for one another in public forums, as well as in private discussions. It also requires councillors to work cooperatively with the CEO and other members of staff.
61. In addition, the Code provides that the role of councillors is to provide leadership for the good governance of Brimbank, which reinforces the obligation found in section 3D of the Local Government Act, which states:
 - (1) A Council is elected to provide leadership for the good governance of the municipal district and the local community.
 - (2) The role of a Council includes—
 - (a) acting as a representative government by taking into account the diverse needs of the local community in decision making;
 - (b) providing leadership by establishing strategic objectives and monitoring their achievement;
 - (c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
 - (d) advocating the interests of the local community to other communities and governments;
 - (e) acting as a responsible partner in government by taking into account the needs of other communities;
 - (f) fostering community cohesion and encouraging active participation in civic life.

62. It is apparent from these obligations that the role and functions of councillors are vital to the good governance of Victoria and of each municipality. It is also apparent that councillors are to exercise functions and perform duties in accordance with their individual assessments of what is best for the municipality, not for any personal or private interest or to benefit or damage others. Furthermore, it is apparent that these functions cannot be exercised at the express or implied direction or inappropriate influence of others.
63. Moreover, councillors when exercising decision making functions which potentially impact on the legitimate rights and expectations of particular individuals or groups of individuals, such as planning decisions, must do so in accordance with the requirements of natural justice. Accordingly, councillors must not prejudge the matter and must consider the matter with an 'open mind'. This principle was recently made clear by the Supreme Court in the decision *Winky Pop Pty Ltd & Anor v. Hobsons Bay City Council* [2007] VSC 468.
64. It is also important to note that councillors have power only when sitting with the whole council in session, or when sitting on a special committee to which the full council has delegated power.

Brimbank City Council

65. Brimbank was established on 15 December 1994, following the amalgamation of the former cities of Sunshine and Keilor.² It is the second largest municipality in Melbourne and the largest in the western region.³ Brimbank states it is also Victoria's most multicultural municipality, with residents from 53 culturally and linguistically diverse communities. Brimbank is home to approximately 174,000 residents, over half of whom speak a language other than English at home.⁴
66. The current CEO of Brimbank is Mr Nick Foa, who commenced at Brimbank on 27 May 2007. Mr Foa replaced Ms Marilyn Duncan, who was the CEO from 1998-2007. Mr Foa is supported by four general managers, two managers, a personal assistant and approximately 630 equivalent full-time staff, the minority of whom are administrative. The council's budget for 2008-09 is \$133,159,000.⁵ The council is also responsible for the management of \$1 billion worth of infrastructure.
67. Brimbank is divided into four multi-member wards and represented by 11 councillors. Table 1 shows the councillors elected for 2005-08. It also shows the year in which the councillors were first elected to council; and

2 Brimbank City Council, *Draft Annual Report 2007/2008*, p4.

3 Brimbank City Council, *2008/2009 Budget*, p19.

4 Ibid, p19.

5 Ibid, p22.

the year/s in which they were elected as Mayor or Deputy Mayor. Table 2 provides the same information for those councillors elected for 2008-12.

68. The practice in the council since at least 2005, was for councillors to make arrangements between themselves as to which councillors would form a majority and for that group of councillors to uniformly vote as a block. Although the composition of that group changed three times between the council elections, the practice did not. The majority group is known locally as the 'ruling faction', a term that will be used in this report. The 'ruling faction' at the time I conducted my investigation in 2008 was made up of Crs David (Mayor), Eriksson (Deputy Mayor), Abate, Capar, Suleyman and Zukalski.
69. Cr David acknowledged being a member of the 'ruling faction'. Members of the 'ruling faction' also acknowledged that they regularly caucused together.
70. Cr Abate stated the suggestion he was part of the 'ruling faction' was an 'overly simplistic and incorrect characterisation of [his] role as a councillor'. This is discussed further in the chapter entitled, 'Inappropriate conduct of individual councillors': 'Cr Abate'.
71. Cr Eriksson stated she 'did not vote contrary to [her] assessment of the interests of the community, simply at the request of the six'. However, this is not supported by her evidence in relation to the direction,⁶ which would have had the effect of exposing the council to action for damages. She said she signed the direction to 'show support' for the 'ruling faction'.
72. The remaining five councillors – Crs Troy Atanasovski, Jenny Barboza, Miles Dymott, Margaret Giudice and Costas Socratous – did not consider themselves a faction.
73. I note the factions changed three times in the last council term (2005-08). In 2005-06, the majority faction consisted of:
 - Cr Suleyman (Mayor)
 - Cr Abate
 - Cr Barboza
 - Cr Capar
 - Cr David
 - Cr Zukalski.

⁶ This is discussed further in the chapter entitled, 'Decision-making contrary to the community interest': 'I. Keilor Lodge Reserve'.

74. The majority faction in 2006-07 consisted of:
- Cr Giudice (Mayor)
 - Cr Atanasovski
 - Cr Barboza
 - Cr David
 - Cr Dymott
 - Cr Eriksson
 - Cr Socratous.
75. I note Cr Dymott disagrees with the description that he was part of the majority faction in 2006-07. He stated:
- rather this was a period where I was able to use my vote to reduce the influence of some of the worst behaving councillors and encourage decision making which allocated residents and ratepayers resources based on need.
76. At the end of 2007, Cr David and Cr Eriksson joined Cr Abate, Cr Capar, Cr Suleyman and Cr Zukalski to form the 'ruling faction'. I was informed that Cr David and Cr Eriksson were rewarded for their move with the mayoralty and deputy mayoralty.
77. Cr David provided no comment on this matter in his response to my conclusions. However, Cr Eriksson stated:
- This view does not reflect the complicated and difficult dynamics involved in the election of the mayor and deputy mayor each year [...]. Furthermore, I think it fails to recognise the fact that the majority group consisted of the Suleyman people (Crs Abate, Capar, Suleyman and Zukalski) on the one hand, and myself and Sam David as a separate little group on the other.
78. Victorian council elections were held in November 2008. Only Crs David, Eriksson, Atanasovski, Giudice and Socratous nominated for re-election. Of these councillors, only Crs Atanasovski, David and Giudice were successful.
79. The current council is composed of: Cr Atanasovski (Mayor), Cr Tran Siu (Deputy Mayor), Cr Robert Bozinovski, Cr Geraldine Brooks, Cr David, Cr Giudice, Cr Maria Kiselis, Cr Marion Martin, Cr Stuart Miller, Cr Heidi Seitz and Cr Robert Shamon.

Table 1: Brimbank councillors 2005-08

	Taylors Ward	Horseshoe Bend Ward	Harvester Ward	Grasslands Ward
Councillor	Margaret Giudice	Cr Anthony Abate	Cr Sam David JP	Cr Troy Atanasovski JP
First elected to council	1999	2005	1997	2003
Mayor	2006-07	-	2007-08, 2003-04 & 1998-99	-
Deputy Mayor	-	-	2002-03	-
Councillor	Cr Natalie Suleyman	Cr Kathryn Eriksson	Cr Miles Dymott	Cr Jenny Barboza
First elected to council	1999	2005	2005	2005
Mayor	-	2005-06, 2004-05 & 2001-02	-	-
Deputy Mayor	-	2007-08	-	-
Councillor	Cr Marilyn Zukalksi		Cr Costas Socratous	Cr Ken Capar
First elected to council	2005		2005	2005
Mayor	-		-	
Deputy Mayor	-		-	

Table 2: Brimbank councillors 2008-12

	Taylors Ward	Horseshoe Bend Ward	Harvester Ward	Grasslands Ward
Councillor	Cr Robert Bozinovski	Cr Stuart Miller	Cr Geraldine Brooks	Cr Troy Atanasovski JP
First elected to council	2008	2008	2008	2003
Mayor	-	-	-	2008-09
Deputy Mayor	-	-	-	-
Councillor	Cr Margaret Giudice	Cr Robert Shamon	Cr Sam David JP	Cr Maria Kiselis
First elected to council	1999	2008	1997	2008
Mayor	2006-07	-	2007-08, 2003-04 & 1998-99	-
Deputy Mayor	-	-	2002-03	-
Councillor	Cr Heidi Seitz		Cr Tran Siu	Cr Marion Martin
First elected to council	2008		2008	2000
Mayor	-		-	
Deputy Mayor	-		2008-09	

INFLUENCE OF UNELECTED PERSONS

80. My investigation identified the operation and governance of the council was influenced by individuals from outside the council who hold no elected local government office, including individuals who would be, or were in the past, precluded from holding office because of criminal convictions.
81. I am concerned about the influence of unelected persons on council business as these individuals have not taken an oath of office to act in the best interests of the community serviced by the council and are not subject to the conduct rules of the Local Government Act. My investigation identified that their influence was exerted behind closed doors and at times for their own personal or political motivations.
82. In addition, where outside individuals are able to influence council decisions, the councillors involved run the risk of failing to discharge their oath of office, in accordance with section 63 of the Local Government Act. The oath requires councillors to undertake their duties in the best interests of the community and to faithfully and impartially carry out their functions, powers, authorities and discretions to the best of their skill and judgment.
83. My investigation established that individuals who hold no elected local government office have influenced council over a number of years. This is confirmed by the evidence of Ms Marilyn Duncan, Brimbank CEO from 1998-2007. She stated:
- occasionally I would mention to councillors that they have been elected to represent the people of Brimbank. That means that there's 11 of them that are there charged with making decisions. That does not mean that there's 23 other people that they are talking to, unless it's agreed by the council that there is a form of consultation.
84. Ms Duncan said she suspected outside influences in decisions, owing to the fact that councillors would 'suddenly get this great enthusiasm for something that really wasn't that sort of well thought of before', or would 'suddenly lose enthusiasm for things'. Ms Duncan said she 'used to have them [councillors] locked in 'til one o'clock in the morning, because they needed to decide things amongst the group'.
85. The individuals identified by my investigation as exercising influence over councillors from outside Brimbank include serving Members of Parliament, Mr Seitz and the Hon. Theo Theophanous, MLC; and Mr Hakki Suleyman (Cr Suleyman's father), Dr Andrew Theophanous (Cr Eriksson's husband) and Mr Craig Otte. My office also received evidence that Mr Telmo Languiller, MP and the Hon. Stephen Conroy, Senator were also involved.

86. A number of Brimbank councillors are/were employed by local Members of Parliament. Cr Capar was employed by Mr Languiller and the Hon. Brendan O'Connor, MP. Cr Suleyman was employed full-time by the Hon. Andre Haermeyer, former Minister for Police and Emergency Services and Corrections. Cr Socratous is employed by Mr T. Theophanous; Mr Languiller; and the Hon Brendan O'Connor. At interview, Cr David also said he had volunteered for Mr Languiller for nine years.
87. Concerns were expressed by a number of councillors that relationships between councillors and Members of Parliament have affected the independence of councillors and enabled unelected persons to influence council business.
88. According to Cr Eriksson:
- there are councillors who are close to certain State MPs, you know, you can look at nearly all of them and come up with that.
89. Cr Sam David (the then Mayor) said that Mr Seitz, Mr Languiller, Mr Hakki Suleyman and Dr A. Theophanous 'play a big part in councillors' lives [...]. That is absolutely wrong'.
90. Cr David, then Mayor, was asked if he thought the operation of Brimbank would improve if such people kept out of council business. He responded, 'Oh, well, without a doubt. Without a doubt.'
91. I will now address the evidence regarding the alleged influence of Mr T. Theophanous, Mr Suleyman and Mr Seitz. I will also discuss the alleged involvement of Dr A. Theophanous, Mr Otte, Senator Conroy and Mr Languiller.

The Hon. Theo Theophanous, MLC

92. Mr T. Theophanous has been a Member of Parliament since 1988. He is Dr A. Theophanous' brother and was the Minister for Industry and Trade, and Minister for Major Projects and Information and Communication Technology until he resigned from the Ministry in December 2008.
93. My investigation identified that Mr T. Theophanous influenced council business on two occasions, through his electorate officer, Cr Socratous, who was a member of council at the time. The influence of Mr T. Theophanous related to:
1. Cairnlea Park allocation
 2. Notice of motion – Government gambling policy.

I. Cairnlea Park allocation

94. On 28 August 2007, the council met to decide whether the council should execute a lease with the Cairnlea Soccer Club. At the time, Cr Giudice was the Mayor, leading the majority councillors: Cr Socratous, Cr Atanasovski, Cr Dymott, Cr Eriksson and Cr David.
95. In addition to being a councillor, Cr Socratous said he was an electorate officer for Mr T. Theophanous; Mr Languiller; and Mr Brendan O'Connor.
96. Cr Socratous stated that prior to the council meeting on 28 August 2007, his 'faction' intended to defer the lease 'until [they got] more information regarding the \$100,000 [the club was originally to contribute], regarding the location of the oval and so on'. Cr Socratous stated he was 'strongly against it, especially the allocation of the thing, of the oval'.
97. Cr Socratous stated:
- I had a telephone call, from my boss [...] Theo Theophanous, which he had pressure from [Senator Stephen] Conroy [...] that we should pass the Cairnlea issue. I remember I had to - that was - the telephone call came just I think 10 minutes before we go into the chambers, and yeah, I been [sic] told to - not to defer the item, it's in the best interests of - the way they put it to me was the best interests of anybody, it's no use arguing with them [Mr Suleyman and Senator Conroy], they are in the same Labor unity faction, and so on.
98. According to Cr Socratous, Mr Suleyman became aware of the councillors' intention to defer the lease from his daughter, Cr Suleyman. Cr Socratous said Mr Suleyman 'went to [Stephen] Conroy, [Stephen] Conroy went to Theo [Theophanous] and Theo [Theophanous] came to [him]'.
99. Cr Socratous stated:
- it hasn't been put clear to me if you don't pass it you're going to lose your job, but the way it was done I can understand - I understood that something is going on....
- it was explained to me about Labor Unity that it doesn't pay us like between - because Hakki is in the Labor Unity, I am in the Labor Unity, which to be honest I've got some members myself, Hakki controls some members, and then the membership issue came up, it doesn't pay by Unity to argue too strong, too strong for this way, power brokers.

100. Cr Socratous told the councillors in his faction:

I had this telephone call, and I believe my job is on the line, and which - that's how I understood it.

101. Cr Dymott recalled a councillor discussing the lease with him prior to the evening of 28 August 2007. He said the councillor told him a number of councillors intended to defer the lease. Cr Dymott stated he was 'opposed to the granting of the lease largely due to concerns around the integrity of the process'. According to Cr Dymott, the same councillor approached him just prior to the 28 August 2007 meeting. He said he was told the councillors:

could not defer the matter and had to vote for it as Cr Socratous' job working for an MP had been threatened if the lease was not granted.

102. Cr Dymott stated he voted against the granting of the lease and requested that his name be recorded in the minutes accordingly. He said, 'All other councillors voted for the granting of the lease including those that were previously going to defer the item'. Cr Dymott stated that he was 'further advised by another councillor that the reason pressure was being placed to grant the lease was due to an internal [ALP] party vote' scheduled for a fortnight later.

103. Cr Eriksson stated she was not aware of any influence by Mr T. Theophanous in relation to the lease. However, she recalled Cr Socratous had originally intended to defer the lease and later changed his mind.

104. Cr Socratous stated that the councillors in his 'faction' decided to grant the lease to 'support' him. Cr Socratous stated, 'I had no choice, put it this way'.

105. However, Cr Socratous has since stated:

Yes I have been advised not to defer the Cairnlea lease because is [sic] in the best interest for everybody involve [sic]. But calling it pressure [sic] I think is the wrong word to use. Yes it was explain [sic] to me how everything works between Labor Unity and its members. And that it dosent [sic] pay anybody to argue on things like that. And yes maybe [sic] I understood that something is going on and that I believe that my job was on the line (MAYBY) [sic]. Thats [sic] how I understand what happen. But that dosent [sic] mean that anybody pressure [sic] anybody.

106. I note that when he was interviewed by my office, Cr Socratous used the word 'pressure': he stated Mr T. Theophanous had 'pressure from [Senator Conroy]'.
 107. In response to this, Mr T. Theophanous stated:
 Stephen Conroy was concerned that people were going to vote on this issue, or that they were going to act not only on this issue but on a range of issues, that they would act in a way which was based on race and not on the merits of the case. And he passed that on to me. I had a discussion with Costas [Socratous], I told Costas that he should make his decisions not on the basis of race.
 ...
 The nature of those conversations [with Socratous] was to give him advice, and I would never threaten his job and I didn't threaten his job.
 ...
 [Stephen Conroy has] always been seen as close to the Turkish group there, and particularly to Hakki Suleyman
 ...
 Hakki is close to Stephen Conroy, but not to me. And Costas Socratous is close to me but not to Stephen Conroy.
108. At interview, Mr Suleyman stated he had known Senator Conroy for 12-13 years.
109. According to Mr T. Theophanous, he told Cr Socratous he 'shouldn't vote in a way which is discriminatory.' He acknowledged that Cr Socratous 'might have taken that to mean don't vote in that way' (to defer the lease).
110. Mr T. Theophanous has since added that he 'provided advice of a political and ethical nature to Mr Socratous'.
111. When asked at interview why Cr Socratous would allege he felt his job was threatened, Mr T. Theophanous stated:
 I can't explain it. I mean, I suppose it's possible that he might have dramatised it, or thought that that was the case, that I would take such a drastic action. And maybe he used that as a way of getting them to change their vote, I don't know. But I can tell you that I certainly did not threaten Costas [Socratous] with his job.
112. However, Mr T. Theophanous disagreed that he influenced Cr Socratous in relation to Cairnlea Park.

113. In response to my conclusions, Senator Conroy stated:

If there is any evidence of improper or undue influence, then I absolutely refute any suggestion that I have been involved in such activities.

...

I acknowledge Mr Suleyman has contacted me on a number of occasions and on a range of matters. Such contact, with numerous constituents and the public, occurs regularly as part of my life and work as a Senator. Similarly, when Mr Theophanous was an MP and Minister, we would also communicate about a range of matters. Our communications were strictly related to our respective capacities and functions as Labor Party Parliamentarians.

...

I categorically deny that I have pressured Mr Theophanous to ‘pass the Cairnlea issue’ [sic]. There were no steps taken by me to improperly influence any decision. I should acknowledge, however, that as a Senator, I have on many occasions supported a range of community groups in their cultural and sporting endeavours at federal, state and local government levels.

114. In the circumstances, I do not consider that Senator Conroy has acted inappropriately.

II. Notice of motion – Government gambling policy

115. According to Cr Socratous, Members of Parliament have twice ‘got involved on [his] dealings’. He alleged the second time related to a notice of motion he submitted to the CEO on 11 March 2008, condemning the Government for allowing the ‘TWO WAY Gambling Company to operate TV wagering in Victoria’.
116. Cr Socratous stated the Minister for Gaming spoke to Mr T. Theophanous about the notice of motion and Mr T. Theophanous subsequently contacted Cr Socratous. According to Cr Socratous, Mr T. Theophanous told him:
- “you have to remove your motion, it's no good being against the minister [...]. You work for me, you should follow orders”.
117. According to Cr Socratous, he told Mr T. Theophanous he was resigning; however, he then reconsidered, stating ‘Why should I resign, because I don’t believe in government policy, let them sack me’. Cr Socratous stated he told Mr Languiller he would only withdraw the motion if he was able to meet with the Minister for Gaming.

118. Mr Languiller stated that when Cr Socratous submitted his notice of motion, 'everybody started ringing people up'. He said:

I got the usual telephone calls of, "Your councillor [is] gonna [sic] move a resolution against the government" [...]. So people try and say, "Well, look, you've gotta [sic] stop him". I said, "Look, it's not that simple because he's an elected member".

119. Mr Languiller stated he knew Cr Socratous was 'spoken to' by Mr T. Theophanous. Mr Languiller said:

I think there were words to the effect that, "I'm [Mr T. Theophanous] not gonna [sic] have somebody working for me criticising my government, I'm a Minister of the Crown, it's an embarrassment".

...

I understand that if the employer in this case Theo picked up the telephone and said, "Costas I want to talk to you about this", that Costas may have run into assumptions about his employment. But I know for a fact, given that his employment has been retained to date, and as I recollect from discussions with Theo at the time, he [Mr T. Theophanous] never meant to terminate his employment.

120. Mr Languiller said Cr Socratous told him he 'want[ed] to see some outcomes' in relation to the Government's gambling policy. Mr Languiller stated:

I said [to Cr Socratous]: "Look, if you want to achieve something, it's probably a good idea [to meet with the Minister for Gaming]. Because if you condemn the government, or if you get up to move a resolution which actually condemns the government, but you don't have a seconder – you're absolutely on your own, and it gets harder, not easier." So I facilitated a meeting for him [with the Minister for Gaming].

121. Cr Socratous subsequently withdrew his motion. At the council meeting at which he was to present his motion, Cr Socratous said he advised the chamber: 'I have a motion, I have a meeting with the minister in two weeks' time'. Cr Socratous stated 'it would be better for [him] to discuss it face to face and put [his] point of view with the minister'. This is supported by an audio recording of the meeting.

122. Cr Socratous said he subsequently met with the Minister for Gaming and read his questions and the Minister's answers into the council chamber. I note that at the council meeting on 27 May 2008, Cr Socratous tabled a letter from the Minister for Gaming regarding their

meeting. The correspondence was received and noted. Cr Socratous read the three page letter in its entirety to the chamber.

123. Cr Socratous said that he did this because he did not 'want to be seen by the [Brimbank] people that [he was] backing out on [his] word'. When he was asked about the position he took regarding the allocation of Cairnlea Park, he said, 'But don't forget that it wasn't - on that thing, it wasn't a public thing, it didn't go out to the public'.

124. At interview, Mr T. Theophanous stated Cr Socratous decided:

after discussion with some people, some other people in the area, including, I think, Telmo Languiller, and some discussion with me, where we - where it was - there was an offer made to him to get access to the minister to speak to the - to the Minister for Gaming, and to have his - to air his concerns directly with the Minister and be able to - or, the minister's office, and be able to put his concerns. He took the view in the end that that was a more effective course of action, and so that occurred.

...

I do have a staffer working in my office who wants to overtly criticise the government. That does create an issue.

...

you might think it's undue influence. Well, I think it's part of the democratic process.

125. In relation to Cr Socratous' evidence that Mr T. Theophanous told him he 'should follow orders', Mr T. Theophanous said:

I would never tell any employee that they have to follow orders in relation to their duties as a Councillor as they see them. But, as I think I said at interview, I do think that in a democracy individuals who work for a Minister or a Member of Parliament in a political context, are expected to at least be mindful of the policy positions the Member or his party has adopted.

126. In response to my conclusion that he influenced Cr Socratous in relation to council business on two occasions, Mr T. Theophanous stated:

Insofar as I may have influenced Cr Socratous it was by putting to him ethical and political argument. Our democracy could not function if we were not able to put such argument to elected officials about matters of public policy.

Conflict of duty and duty

127. As discussed in my report, *Conflict of interest in local government*⁷, a councillor may experience problems with conflicts between their public duty (as a councillor) and their other duties, whether private or public. In my view, a conflict of duty and duty should be considered the same as a conflict of interest.
128. Where a councillor is employed as an electorate officer, the councillor's employment gives rise to the risk of such a conflict: a conflict between his or her duty as a councillor to the municipality and his or her duty as an electorate officer for a Member of Parliament (which is aligned with the associated private interest of maintaining their employment as an electorate officer).
129. In such situations, there is more than a risk that tensions can develop between the councillor's two duties, which may impact on the honest performance of their functions as an elected councillor.
130. I consider that the earlier examples of the arrangements in relation to Cairnlea Park and Cr Socratous' notice of motion regarding the Government gambling policy demonstrate that Cr Socratous had a conflict between his duty as a councillor and his duty as an electorate officer to Mr T. Theophanous. I consider that his duty to Mr T. Theophanous impacted upon the performance of his functions as a councillor.
131. Mr T. Theophanous stated that he took 'great issue' with this conclusion. He stated:
- In the first instance Cr Socratous is not strictly speaking my employee. He is in fact an employee of the Parliament working in my electorate office. In this sense he is an employee of the Crown. This means that he is exempt under the Local Government Act provisions.
132. Mr T. Theophanous is correct in that Cr Socratous is employed by the Crown under section 30 of the *Parliamentary Administration Act 2005*. Nonetheless, an electorate officer's duty is to the Member of Parliament – in this case Mr T. Theophanous. This is demonstrated by the fact that the electorate officer is employed to 'assist'⁸ the Member of Parliament and the fact that the electorate officer's employment ceases when the Member of Parliament exits office.

7 Tabled March 2008, available at <www.ombudsman.vic.gov.au>.

8 Section 30 of the *Parliamentary Administration Act*.

133. Mr T. Theophanous further stated:

I do not believe that you can reach the conclusion that Cr Socratou[s] had a conflict of duty and duty under the [Local Government] Act. I believe you have failed to recognise that a conflict of interest in public life generally involves a conflict between public duty and private interest or private gain. This is not the case with this issue which simply involved policy differences.

134. This matter did not, however, 'simply' involve 'policy differences'. Cr Socratous had a clear public duty as a councillor. He also had a private interest in maintaining his position as an electorate officer; an interest he sought to protect by misapplying his public duty in an effort to 'follow orders' of Mr T. Theophanous.

135. In my view, the position taken by Mr T. Theophanous has failed to recognise the broader ethical obligations of public officers to avoid conflicts; and the fact that conflicts of interest do not just exist when there is a pecuniary interest or an employment situation.

136. Mr T. Theophanous has also failed to recognise that a conflict of interest exists where a public official, in the performance of his or her function, could be influenced, or could be reasonably perceived to be influenced, by a private interest. Where there is a conflict, it can never be known in whose interests the councillor acted. I am concerned that such a fundamental misunderstanding of conflict of interest is evident in the position taken by a Member of Parliament.

137. According to Mr Languiller, the staff of Members of Parliament 'should not be elected in another jurisdiction [...] because there are inevitable conflicts of interest'. He stated that members of the public visit his office and assume the councillors work for him; however, publicly, they 'work for another jurisdiction'.

138. He further stated:

for some time now, it is true to say that I have held the view that in an ideal world, in order to avoid conflict of interest or perception of conflict of interest, between MPs and councillors and especially so with Mayors, they should not work for MPs at the same time. However, this is the nature of politics in Australia on all sides of politics, and is unlikely to change in the near future. However, if an outside institution with a more objective judgement of this subject were to make a recommendation whereby there be clearer guidelines in relation to councillors and MPs' concurrent employment, I am confident that the broad majority of the party, including myself would welcome it.

139. Mr Languiller also stated:

It is correct to say that I have held the view and said on a number of occasions that there should be clear guidelines for both MPs and councillors who concurrently work for MPs in relation to donations made to councillors in order to avoid the perception of conflict of interest or misunderstanding of any other nature. In the case of MPs this matter is straight forward because MPs must register donations received in one form or another which can be scrutinized. This could be equally beneficial to the person or company that makes a donation.

140. Mr Languiller also raised concerns about elected mayors being employed full-time by Members of Parliament and the associated perception of conflict of interest. He said 'it's true to say that consistent with my concerns about potential perceptions of conflict of interest, that I have said that no mayor should concurrently hold a full time position with an MP, no matter who that is'. I note that the mayoralty is considered a full-time position, which carried a salary of \$57,500 in Brimbank during 2007-08.

141. Mr Languiller stated that while mayors may work overtime for the Member of Parliament, which he said was 'extremely limited in the state jurisdiction', the Member of Parliament ultimately 'has to trust the staff/councillor' that they are not conducting council business during the hours that they are being paid by the Member of Parliament. Mr Languiller stated he could 'understand that the public may perceive this situation as double dipping'. He also raised similar concerns in relation to the use of office resources. Mr Languiller stated that Members of Parliament 'can't manage it' because they are often not in their electorate offices. He suggested that clear guidelines are required.

142. In this regard, I note that Cr Suleyman was paid as a full-time employee of the former Minister for Police and Emergency Services and Corrections, in addition to being paid a full-time wage as Mayor of Brimbank.

143. Mr T. Thephanous also commented:

Perhaps something more useful and positive would come out of your report if in fact you gave some clarity and guidelines in relation to the circumstance where Councillors are employed by the Government or the Opposition or work in a Member of Parliaments [*sic*] office.

144. In my view, the Local Government Act should be amended to preclude councillors from being employed as electorate officers for either State or Federal Members of Parliament in order to avoid conflicts of duty and duty.

Mr Hakki Suleyman

145. Mr Hakki Suleyman is employed as an electorate officer for the Hon. Justin Madden, MLC, Minister for Planning. He is also the father of Cr Natalie Suleyman. My investigation revealed that he has played a significant role in council business.
146. According to Dr A. Theophanous, Mr Suleyman is one of 'two tough characters' running the factions in Brimbank. The other person he nominated is Mr Seitz.
147. Dr A. Theophanous stated, 'George [Seitz] and Hakki [Suleyman] have been fighting for 10 years at least [...] [about] control of the council, control of the area'.
148. He said that his role in Brimbank differed to that of Mr Suleyman and Mr Seitz. He stated he did not tell the councillors 'you gotta do this or that', but he had heard Mr Suleyman and Mr Seitz 'ring up councillors and order them around'.
149. According to Cr Abate, Mr Suleyman is someone whom councillors 'bounce ideas off', but 'he doesn't tell you which way to go or that way to go, or what have you. At the end of the day you're your own councillor.'
150. In 1989, Mr Suleyman was convicted of Intentionally cause injury, Found armed with an offensive weapon, and Assault with a weapon (three charges). Mr Suleyman was fined \$5,000. Intentionally cause injury is punishable upon first conviction for a term of imprisonment of up to 10 years. Mr Suleyman's conviction would therefore have precluded him from being an elected councillor in the past, as per section 29 of the Local Government Act. Mr Suleyman denied that this is the case, stating it is 'legally and factually incorrect'. However, he did not explain why this is incorrect. I note that his period of exclusion expired some years ago.
151. My investigation identified that Mr Suleyman exerted significant influence in relation to council business, including decisions related to:
 - I) Keilor Lodge Reserve
 - II) Sunshine Pool
 - III) Cairnlea Park allocation.

I. Keilor Lodge Reserve

152. According to Dr A. Theophanous and Cr Eriksson, Mr Suleyman and his daughter Cr Suleyman made a 'solemn deal' with Mr Seitz and Mr Languiller that the council would return funding for works at Keilor Lodge Reserve if Mr Seitz agreed to support Cr Suleyman in the Kororoit pre-selection.
153. According to Dr A. Theophanous, when Mr Seitz broke the 'deal' – and Cr Suleyman lost the Kororoit pre-selection – Mr Suleyman 'went bananas'. Dr A. Theophanous stated:
- so then Hakki [Suleyman] proceeded to try to undo the club decision [...] by giv[ing] an instruction to the CEO [...]. They were now out to stop the club, having been betrayed.
154. Cr Capar, Cr Eriksson, the CEO and Dr A. Theophanous gave evidence that Mr Suleyman and Cr Capar presented the direction to Cr Eriksson for her signature. The direction instructed the CEO to remove funds for Keilor Lodge Reserve from the budget. Had the CEO followed the direction, the council could have faced a financial loss of at least \$100,000 for breaching its contract with the developer.
155. At interview, Mr Suleyman denied this and stated, 'I don't know about the - this letter'.
156. Mr Suleyman has since stated:
- It has been insinuated that sometime in mid 2008 I instructed the Brimbank Council CEO to stop the Keilor Lodge Reserve Clubhouse from going ahead. This is totally incorrect. I have never communicated with the Brimbank council CEO on the subject at all.
157. While Mr Suleyman may not have communicated with the CEO, the evidence revealed that he delivered the direction with Cr Capar to Cr Eriksson for her signature.
158. Issues surrounding Keilor Lodge Reserve are discussed in further detail in the chapter entitled, 'Decision-making contrary to the community interest'.

II. *Sunshine Pool*

159. According to a member of the Sunshine Residents and Ratepayers Association (SunRRA), Mr Suleyman was also involved in discussions surrounding the Sunshine Pool. SunRRA was concerned the council was not going to replace the 50 metre outdoor pool. SunRRA alleged on its website that Cr Suleyman, who had 'control of the council', was biased against Sunshine residents.
160. The SunRRA member stated Mr Suleyman approached him in the council chambers after a council meeting on 9 May 2006 and 'offered to arrange a meeting between himself [Mr Suleyman] and his daughter Natalie who was Brimbank's mayor at the time to quote: "work out a solution to the Sunshine pool problem"'. The SunRRA member stated the meeting was scheduled for 10 May 2006, but was postponed by Mr Suleyman.
161. According to the SunRRA member, 'in the meantime SunRRA exposed the rent free use of the council owned Biggs St property by the Suleyman faction'. He stated that on 9 and 23 May 2006, SunRRA submitted questions to the council about the property to be answered at the respective meetings. SunRRA stated the Mayor, Cr Suleyman, did not read out the questions.
162. Subsequently, on 24 May 2006, Mr Suleyman contacted the SunRRA member. The SunRRA member emailed other SunRRA representatives on the same day to relay his conversation with Mr Suleyman. According to the SunRRA member, Mr Suleyman stated:

remember that meeting for coffee (re the Pool options) we were going to have? [...] I understand you were making accusations against me last night [...]. The accusations don't matter [...]. The meeting now will not happen [...]. You can make all the accusations you like but I will take you on. I will take you on [SunRRA member]. I will take you on [SunRRA member].

163. The SunRRA member stated:

the inappropriate linkages between Council, state govt [sic] and factional allies are again as clear as crystal as is the way Brimbank's community development is controlled by a select few.

For a disadvantaged community like ours which has been badly represented for decades there is no hope of a brighter future while governance practices like these are allowed to flourish and continue inside and around Brimbank Council's operations.

164. In response to my conclusions in relation to the Sunshine Pool, Mr Suleyman denied such influence and stated:

There is an implied suggestion that because my daughter was Mayor I was somehow capable of wielding influence with council over decisions about the funding or redevelopment of the Sunshine Pool. The Sunshine Pool issue has been the subject of ongoing public debate for many years. There has been discussion within council and the community about whether to prioritise the pool above other facilities like libraries or roads. It is quite apparent that the pool project, if it were to proceed, would involve major expenditure for council and that no council would be likely to commit to such a project without receiving detailed financial costing regarding current and future budgets and without considering competing funding priorities from all council wards. It is ludicrous to suggest that I could somehow arrange the pool project to proceed by organising a meeting over coffee with one of its supporters.

III. Cairnlea Park allocation

165. My office also received evidence that Mr Suleyman attempted to influence the council's decision to allocate Cairnlea Park to the Albion Rovers Soccer Club, now known as the Cairnlea Soccer Club, allegedly affiliated with the Suleyman family. Cr Socratous alleged Mr Suleyman contacted Senator Conroy after he found out the council intended to defer its decision. Cr Socratous said Senator Conroy then contacted Mr T. Theophanous who subsequently applied pressure to Cr Socratous prior to a vote in the council chamber.
166. At interview, Mr Suleyman denied contacting Senator Conroy about the councillors' intention to defer the lease.
167. Mr Suleyman has since denied that he exerted 'improper pressure on the Council in respect of Cairnlea Park'. He said:
- [I] had no capacity to do so. I reject the insinuation that I was part of some kind of chain of influence leading from me to Councillor Socratous regarding Cairnlea Park.
168. However, I consider that Mr Suleyman's evidence is refuted by the evidence of Cr Socratous and Mr T. Theophanous.

Mr George Seitz, MP

169. Mr George Seitz is the current Member for Keilor. He has been a Member of Parliament since 1982.
170. Mr Seitz did not exercise significant influence over council decisions in 2004 to 2008 as the councillors with whom he has a close connection did not form the majority in the council. However, it is apparent that he has and shows a strong interest in council business, that he has extremely close connections with the current council majority and that his influence at Brimbank has the potential to increase in 2009, as councillors he has supported form the new majority.

Links with the new 'ruling faction'

171. On 29 November 2008, Brimbank City Council elections were held. On 2 December 2008, the Victorian Electoral Commission announced who had won seats in the four wards.
172. My investigation found that within a couple of hours of the Victorian Electoral Commission announcing the successful candidates, a new 'ruling faction' had formed.
173. The new majority group of councillors, many of which have links to Mr Seitz are: Cr Sam David, Cr Kiselis, Cr Seitz, Cr Atanasovski, Cr Shamon and Cr Tran Siu.
174. They met at the house of Mr Sam Tabban (Cr Shamon's uncle and a former Brimbank councillor) to discuss the mayoralty for the next four years. The remaining five councillors were not invited to, or advised of the outcome of, the meeting at Mr Tabban's home.
175. The connections between Mr Seitz and the new majority group are as follows:
- Cr Seitz is the niece of Mr Seitz. She was a member of the North West Labor Institute Reform Team, which was formed to run for and 'clean up' the council. In an article in the Brimbank Leader, dated 1 December 2008, Cr Seitz commented that her relationship with Mr Seitz would be an advantage as he 'will have an idea of available (State Government) funding we [the council] can link into'. Mr Seitz printed endorsement letters for Cr Seitz to the value of \$767.
 - Cr Kiselis was also a member of the North West Labor Institute Reform Team. Her mother-in-law and father-in-law are the Treasurer and Secretary of the Kings Park ALP Branch, which holds its meetings at the electoral office of Mr Seitz. Mr Seitz printed endorsement letters for Cr Kiselis to the value of \$828.15.

- Cr Atanasovski's relationship with Mr Seitz is demonstrated by, among other things, his council telephone bills. For example, Cr Atanasovski contacted Mr Seitz 35 times in July 2008. Mr Seitz also printed endorsement letters for Cr Atanasovski to the value of approximately \$800.
- Cr David states he has been friends with Mr Seitz for 40 years.
- Cr Siu is linked indirectly to Mr Seitz as he ran for election with Cr David, a long-time friend of Mr Seitz. I note in August – September 2008, prior to candidate nominations, Cr David requested the Brimbank Media and Communications Unit publish a photo of him and Mr Siu in the Brimbank newsletter. At the time, Cr David said 'Tran Siu is a young man that he is very match [sic] involved with our Youth in general such as Vissi-Hub, play a huge part in preparing the Sunshine Structure Plan and many other involvements with the Community'.
- Mr Seitz also appears to be linked to Cr Shamon through Cr Shamon's uncle, former councillor Mr Sam Tabban. The meeting in 2009 to discuss the mayoralty was held at Mr Tabban's house.
- At Mr Tabban's criminal trial (*R v Tabban*) in 2007, Cr Suleyman gave evidence that she was 'invited to [Mr Tabban's] house to discuss the budgetary process' in 2004. She stated she was 'quite surprised to see two local members [Mr Seitz and Mr Languiller] sitting around the table'. Mr Tabban gave sworn evidence at the trial about this same meeting. He stated the Members of Parliament attended the meeting as the councillors were discussing the mayoralty and Mr Seitz and Mr Languiller were aware of 'first year rule, second year rule and third year rule'. I note that, at interview, Mr Languiller recalled discussing the mayoralty at the above meeting; however, he said he had 'no recollection of ever attending a meeting for the specific purpose of discussing council budget'. Mr Seitz agreed with the statement of Mr Languiller.

176. At the meeting of 2 December 2008, the new 'ruling faction' decided the mayoralty for 2009-2012 would be awarded as follows:

2009: Mayor – Cr Atanasovski; Deputy Mayor: Cr Siu

2010: Mayor – Cr Siu

2011: Mayor – Cr Shamon

2012: Mayor – Cr David

177. A witness stated Cr David was chosen to be Mayor in 2012, and not earlier, as the group were concerned Cr David may not be loyal to the faction.

178. According to one witness, Mr Seitz discussed the mayoral deal a few weeks before the election and said that it was Cr Atanasovski's 'turn' to be Mayor. The witness also stated that prior to the 2008 elections, Mr Seitz expressed disappointment that Cr Giudice, Cr Atanasovski and Cr Socratous were not 'more highly motivated to get together a "team" not only for winning purposes, but to hold control once elected'. In response to these allegations, Mr Seitz stated that he did not recall the alleged conversation. He did, however, 'recall being invited to a meeting by the convenor, as a number of candidates were seeking advice'. Mr Seitz also stated:

As far as my support for Troy Atanasovski goes to become Mayor it is well known that it was my opinion that he should have had the Mayoral ship [sic] in 2008. I can only interpret that this so called witness has conjured up their own little story.

179. Mr Seitz also stated, 'I have never sought to have direct influence on council, and as my history will show'.

Dr Andrew Theophanous and Mr Craig Otte

180. In addition to the outside influences exercised by Mr T. Theophanous and Mr Suleyman, I am also concerned that other individuals – namely Dr A. Theophanous and Mr Craig Otte – seem to have close contacts with members of the ‘ruling faction’ and appear to have exercised an influence that may well go beyond that which would normally be expected of a husband (in the case of Dr A.Theophanous) or a campaign manager (in the case of Mr Otte).
181. This involvement and influence can be seen from emails⁹ that Dr A. Theophanous regularly exchanged with councillors regarding council business; and by the council motions and documents he drafted. An example can be seen in an email from Dr A. Theophanous to Cr Suleyman concerning a Brimbank budget pamphlet. In the email he told Cr Suleyman ‘I want’ the attached material included in the pamphlet. My concern is emphasised by the criminal records of both Dr A. Theophanous and Mr Otte. I consider that much care needs to be exercised before such persons are involved in or associated with council business.
182. Dr A. Theophanous is the husband of Cr Eriksson, who was elected to council in 2005. Dr A. Theophanous has never been a councillor with Brimbank. Nor could he be as he is disqualified from being a councillor under section 29 of the Local Government Act owing to his criminal conviction in May 2002 for Defraud the Commonwealth, which carries a maximum penalty of 10 years imprisonment. He was also convicted of receiving a bribe as a Member of Parliament and soliciting a bribe as a Member of Parliament. Dr A. Theophanous was sentenced to three years imprisonment for the three offences and he served 21 months in prison. Dr A. Theophanous described these charges as ‘three minor charges’ and advised that he was acquitted on appeal of one other charge.
183. Section 29 of the Local Government Act states:
- (2) A person who—
- ...
- (b) has been convicted of an offence committed when he or she was of or over 18 years of age which is punishable upon first conviction for a term of imprisonment of 5 years or more under the law of Victoria or the law of any other State or Territory of the Commonwealth of Australia or the law of the Commonwealth of Australia—
- is not capable of becoming or continuing to be a Councillor for a period of 7 years after the conviction.

9 See Attachments 1, 2, 3, 4 and 5.

184. Mr Craig Otte was Cr Suleyman's election campaign manager in 2002 and an electorate officer for Mr Languiller and Senator Conroy in 2002; and for Mr Haermeyer in 2003.
185. My investigation identified that Mr Otte played a role in council business during the 2002-05 council term, despite being precluded from being a councillor because of his criminal convictions.
186. Since 1994, Mr Otte has been convicted of numerous criminal offences, including Burglary, Theft, Obtaining financial advantage by deception, Falsification of documents and Obtaining property by deception. Each of these charges carries a maximum penalty of 10 years imprisonment. Mr Otte is therefore disqualified from being a councillor under section 29 of the Local Government Act.
187. On 21 January 1998, Mr Otte was also convicted of deception offences committed when he was a trainee electorate officer for a former Member of Parliament, Ms Mary Gillett.
188. In response to my preliminary conclusions, Mr Otte argued that 'before any disqualifications set out in Section 29 can be applied [he] would need to first qualify for candidature'. He said that as he has never been a resident or ratepayer of Brimbank he is ineligible to stand for council, therefore his convictions are 'not applicable'. In my view, the issue is not whether Mr Otte has ever been a resident or ratepayer, but rather it is that Mr Otte could not stand for council owing to his criminal convictions.

Conclusions

189. I consider that the operation and governance of Brimbank have been unduly influenced by individuals who hold no elected local government office, primarily by Mr T. Theophanous and Mr Hakki Suleyman. It is also evident that Mr Seitz, Dr A. Theophanous and Mr Otte were also involved in council business.
190. Mr Suleyman was involved in the issue of a direction to the CEO, which could have cost Brimbank at least \$100,000. I received evidence that Cr Suleyman and Mr Suleyman agreed to return funding to the 2008-09 council budget for development works at Keilor Lodge Reserve if Mr Seitz supported Cr Suleyman at the impending Kororoit pre-selection. I note Mr Seitz denies this accusation. As a result of the influence of Mr T. Theophanous, a motion criticising the government was withdrawn and the voting intentions of councillors were changed. It is also not in dispute that Dr A. Theophanous was involved with the preparation of council motions, budget papers, newsletters and press statements.
191. Cr Suleyman's evidence at Mr Tabban's criminal trial – that two local Members of Parliament, Mr Seitz and Mr Languiller attended a meeting to discuss the council budget – illustrates that the influence and involvement of local Members of Parliament in council business has pervaded the last three elected councils (2002-2005, 2005-08 and the current council). However, as indicated earlier, both Mr Seitz and Mr Languiller deny discussing the budget.
192. In my view, the influence of unelected persons has affected councillors' ability to make objective and independent decisions in the interests of their community. It is evident from my investigation that the majority of councillors made decisions, and chose courses of action, based on the influence and instruction of unelected persons. Some decisions were made for personal gain or to cause detriment to the council. Others were made as a result of broken deals or as part of factional power play.
193. I consider Cr Socratous' responsibilities as an elected councillor were compromised by his employment with Mr T. Theophanous and his desire to keep his position as an electorate officer.
194. I note that only two of the six majority councillors nominated for re-election in November 2008 (Cr David and Cr Eriksson) and only Cr David was successful. However, I remain concerned that the influence and intervention of individuals who hold no elected local government office may continue. Such influence impacts upon councillors' ability to perform their functions in the best interests of the community. There is a risk that those currently charged with the responsibility of representing Brimbank will make such decisions based on factional or political alliances if the current culture at Brimbank persists.

195. The unelected persons identified during my investigation have not taken an oath of office to act in the best interests of the community serviced by the council and are not subject to the Local Government Act. Their influence was exerted behind closed doors and, apparently, for their personal and/or political motivations.
196. In relation to the independence of councillors, Dr A. Theophanous stated:
- I'm afraid that the councillors were not sufficient – have not been sufficiently independent – yes – because this extraordinary impact of the factions and therefore in a way I do not regret the fact that the Suleyman's have pulled out even though it means that George [Seitz] will almost certainly take control of the council and I think the saga will continue.

Appointing an administrator

197. Most events described in this report occurred before the 2008 election, which resulted in significant changes to the make up of the council including the removal of the 'ruling faction'. Nonetheless, I am concerned that poor governance practices and the culture of outside influence in Brimbank may be so entrenched that such problems could persist with the newly-elected councillors. If so, democratic change, in the short term, will have proved ineffective in improving the government and governance of Brimbank. Brimbank will effectively be a 'failed' council.
198. I therefore consider that the Minister should closely monitor the activities of the council. Should the Minister determine that practices similar to those that occurred prior to the 2008 election are occurring, or that outside influences continue to be similarly exercised, he should consider taking action. Such action may include suspending or dismissing the council, with a view to enabling Brimbank to be properly and effectively governed.

Recommendations

I recommend that:

- 1) The Minister for Local Government closely monitor the activities of the council and, should the poor practices that occurred prior to the 2008 election continue, that he consider suspending and/or dismissing the council and appointing an administrator.
- 2) The Local Government Act be amended to disqualify persons employed as electorate officers, ministerial advisers and parliamentary advisers, or employed by Federal or State Members of Parliament, from becoming or continuing to be a councillor or nominating as a candidate.

DECISION-MAKING CONTRARY TO THE COMMUNITY INTEREST

199. Councillors are required upon election to take an oath of office, in accordance with section 63 of the Local Government Act. The oath requires councillors to undertake their duties in the best interests of the community and to faithfully and impartially carry out their functions, powers, authorities and discretions to the best of their skill and judgment.
200. One of the common themes identified during my investigation was that the 'ruling faction', on a number of occasions, made decisions contrary to the best interests of the community. Some decisions appear to have been made for personal gain, to cause detriment to the council, or in retaliation for broken promises. In my view, some decisions represent a misuse of position by councillors elected to represent the community. This is demonstrated by decisions in relation to:
- I. Keilor Lodge Reserve
 - II. Cairnlea Park.
201. In my view, the 'ruling faction' used the council decision-making process in regard to Keilor Lodge Reserve for ulterior purposes.
202. The evidence obtained points to Cr Suleyman having used funding for Keilor Lodge Reserve to ingratiate herself with Mr Seitz in an attempt to gain his support in the Kororoit pre-selection. When Mr Seitz failed to support her, she sought revenge through the 'ruling faction' by attempting to halt development at the facility and then by calling for expressions of interest. In this regard, those councillors who belonged to the 'ruling faction' failed to exercise their statutory responsibility to undertake their duties in the best interests of the community.
203. Decisions about Keilor Lodge Reserve were also significantly influenced behind the scenes by individuals who hold no elected local government office: Dr A. Theophanous, Mr Suleyman, Mr Seitz and Mr Languiller. I consider their involvement in council business makes it difficult to determine whether councillors acted in the best interests of the community or as a result of the pressure exerted on them.
204. Dr. A. Theophanous has denied significantly influencing matters relating to Keilor Lodge Reserve. He stated his 'involvement as "adviser" to the [ruling] Group was dramatically reduced' after the 2008-09 budget was adopted and that his 'advice was rejected by the Suleyman people on a number of occasions'. He said, 'on the key occasion when my advice was sought on this matter [13th July 2008], my advice was in fact rejected by the majority in the ruling group'.

205. Decisions in relation to Cairnlea Park also appear to be contrary to the community interest. In my view, Cr Suleyman misused her position in relation to Cairnlea Park to allocate the facility to a club linked with her family in some form or another since 1990; the Secretary of which had provided election campaign support to Cr Suleyman in the past.
206. Late in the 2008-09 budget process, Cr Suleyman also demanded that \$680,000 be allocated to works at Cairnlea Park or the budget would not be adopted. The officers, concerned that the budget might fail, decided to accommodate the changes rather than risk the budget. In my view, this should have been referred to the council for open debate.
207. Despite this, Brimbank officers deleted items from the budget to allow funding for Cairnlea Park to be included. I am concerned that Brimbank residents may have been deprived of community infrastructure projects in order to accommodate pressure from an individual councillor wanting to fund a project to the advantage of her supporters. These matters are dealt with more fully in the following sections.

I. Keilor Lodge Reserve

208. Keilor Lodge Reserve is located in Taylors Ward, Brimbank and has been utilised by the Sydenham Park Soccer Club for approximately 11 years. The club uses the facility for six months a year in the winter football season.
209. In 2007, Sydenham Park Soccer Club requested that the council extend their change rooms to include social rooms, toilets and a kiosk. At the time the club was using portable buildings located in the car park as their social park and kiosk, while limited public toilets were available in the sports change facilities. The Brimbank officers noted the portable premises posed security and accommodation issues and were 'nearing the end of their useful life'.
210. The General Manager, Corporate Services advised that on 21 April 2007, the councillors and the executive management team attended at a workshop to discuss the 2007-08 budget. According to the General Manager, Corporate Services, all councillors attended except for Cr Suleyman, Cr Abate and Cr Zukalksi. Cr Capar arrived late.
211. The General Manager, Corporate Services stated the Keilor Lodge Reserve pavilion was considered at the workshop and she recommended the council allocate funding for the project over two financial years (2007-08 and 2008-09) as the design and construction could not be achieved in the 2007-08 financial year. This was identified in the 'Capital works project outline' provided to councillors at the

workshop. According to the General Manager, Corporate Services, funding the project over two years was 'in line with current practices'. Other projects funded over two years included:

- construction of the Lionheart pavilion
- construction of the Cairnlea community hub
- development of the West Sunshine Community Centre
- construction of the Cairnlea pavilion
- development of Sunshine Swim and Leisure.

212. On 26 June 2007, the council adopted its 2007-08 budget, which included funding for Keilor Lodge Reserve. The CEO informed my office the project was 'always going to be funded over two years'.

213. The following table provides a chronology of the significant events and decisions in relation to Keilor Lodge Reserve.

Table 3: Keilor Lodge Reserve chronology

26 June 2007	\$400,000 is allocated in the 2007-08 budget for development at Keilor Lodge Reserve (KLR). The project is to be completed with funding from the 2008-09 budget.
19 April 2008	The Mayor and Deputy Mayor withdraw funding for KLR from the draft 2008-09 budget.
22 April 2008	Council votes to defer awarding the contract for development at KLR.
May 2008	Cr Suleyman agrees funding for KLR may return to the draft budget.
27 May 2008	Council awards the contract to Raysett Constructions for development at KLR.
11 June 2008	The CEO and Mayor sign a contract with Raysett Constructions for development at KLR.
	Cr Suleyman loses the Kororoit pre-selection.
13 June 2008	Cr Capar questions the CEO about rescinding the contract.
16 June 2008	Six councillors direct the CEO, in writing, to withdraw funding for KLR.
18 June 2008	The CEO informs the Mayor he cannot follow the direction.
24 June 2008	Cr Zukalski moves a motion to call for expressions of interest for the new development at KLR. The item is deferred.
14 July 2008	The Mayor calls a Special Council Meeting for 16 July 2008 to consider the Community Facilities and Reserves Allocations Policy.
16 July 2008	Six councillors adopt the policy and call for expressions of interest for KLR at a Special Council Meeting.
26 August 2008	Council carries a motion to allocate Keilor Lodge Reserve to Sydenham Park Soccer Club.

2008-09 budget

214. At a council workshop on 19 April 2008, Cr David (Mayor) and Cr Eriksson (Deputy Mayor) presented a 10 page document entitled, 'Proposed budget changes from the Mayor and Deputy Mayor'. The document contained six motions, which outlined the projects to be added to, and deleted from, the budget for each ward.
215. The changes included deleting line item 107 for the allocation of \$779,500 for construction of a pavilion at Keilor Lodge Reserve. When questioned, the Mayor, Cr David, was unable to explain why the funding was withdrawn. He stated the 'ruling faction' made the decision at a meeting a few days prior to the budget workshop. According to Cr Atanasovski, withdrawing the Keilor Lodge Reserve funding for 2008-09 was 'money lost down the drain' as nearly \$400,000 had been spent in 2007-08 on project preparations.
216. The Deputy Mayor, Cr Eriksson said that the decision to withdraw the funding for Keilor Lodge Reserve was made as the project cost had blown out by \$300,000-\$400,000. She stated the \$400,000 allocated in 2007-08 for planning of the project had not been spent.
217. The General Manager, Corporate Services said that in 2007-08, Brimbank estimated it would need to spend approximately \$780,000 in the 2008-09 budget to complete the works at Keilor Lodge Reserve. However, when Brimbank prepared its 2008-09 budget, building costs had increased by 20-30 per cent. The project cost subsequently increased by approximately \$300,000. The General Manager, Corporate Services stated increased building costs applied to all projects. She further stated that while the council had not spent all the funding allocated for planning in the 2007-08 budget, it had spent \$90,000-\$100,000 on architecture and designing the pavilion.
218. According to Cr Eriksson, at a briefing on 21 April 2008, the councillors and officers discussed the council's 'contradictory position': 'on the one hand there had been a determination on April 19 to exclude the item from the forthcoming budget; on the other hand there was a recommendation from the Administration' to award the contract.
219. On 22 April 2008, Brimbank officers presented a report to council recommending it award the contract for the construction of Keilor Lodge Reserve to the successful tenderer, one of nine applicants reviewed by Brimbank's Tender Evaluation Panel. Given the issues surrounding funding the project, a motion to defer the item was moved by Cr Atanasovski and seconded by Cr Suleyman.

220. According to Cr Suleyman, she voted to defer the item as she had concerns about awarding a contract prior to finalising the 2008-09 budget. Crs Abate and Eriksson agreed this was a concern. According to Cr Suleyman, her concerns were 'not about the facility, it's about the process'.
221. Cr Eriksson has since stated the matter was deferred after 'furious discussions' between 'key persons in the Labor Party (including Mr Seitz), which resulted in an agreement for the matter to be deferred at the Council meeting while further discussion took place'.

Decision to award the contract

222. Cr Suleyman later agreed to return funding for Keilor Lodge Reserve to the 2008-09 budget in a meeting with Cr Atanasovski and the CEO. Cr Suleyman and Cr Atanasovski shook hands on this matter in the presence of the CEO.
223. On 27 May 2008, Cr Suleyman moved a motion to award the contract to the successful tenderer and for the council to sign and seal the contract. The motion was passed unanimously at the Ordinary Council Meeting. Cr Suleyman and Cr Zukalksi spoke out in support of the project. Cr Eriksson has since stated she was the only councillor who did not speak in favour of the project. She said that while the vote was recorded as unanimous, she did not raise her hand when the Mayor called the vote as she 'in no way endorsed this decision'.
224. The contract was signed by the parties necessary to form a binding contract, the CEO and the Mayor, on 11 June 2008.
225. Cr Suleyman was asked why she decided to award the contract. She stated she had spoken to the CEO about awarding a contract prior to adopting a budget and he 'explained it was nothing unusual [...] this is the way that, you know, other – other councils do business'.
226. When my officers asked Cr Atanasovski why he thought Cr Suleyman had changed her mind about the decision to fund the project, Cr Atanasovski stated, 'Maybe they thought they're gonna get help from me because I do have a few members of the Labor Party that do vote for those pre-selections.'
227. Dr A. Theophanous stated Mr Seitz discovered 'the Suleyman people' did not want to fund the Keilor Lodge Reserve project in the budget. He said:
- George found out about it and [...] he went bananas, he rang up all sorts of people and in particular he rang Hakki and he also involved the other member of parliament, Telmo Languiller another problematic character

[...]. Telmo and George called Hakki to a meeting [...]. They then called Natalie to the meeting and Hakki was told, "Listen, please save this club" - blah blah blah - "it's very important to me and to us" - you know - "it's very important to the party," dah, dah, dah - "and in return, we will guarantee you support for the preselection for Natalie when the time arises [...]"'. They shook on it, right? Yes, all those four.

228. Dr A. Theophanous stated he heard about the meeting and the agreement direct from both Mr Seitz and Mr Suleyman. When interviewed, Dr A. Theophanous stated 'I can assure you - well, that meeting took place [...]. That deal was struck.'
229. Dr A. Theophanous stated:
- so Hakki got this solemn promise, as I understand the facts of what happened, and then two weeks later [...] the building was proceeding before it had been approved by the budget [...]. They [the councillors] all got up except Kathryn, at the meeting of the council, and they start congratulating each other - this is all these people who'd been fighting, you know, "Wonderful, this club's going to go forward," et cetera.
- ...
- I said to Hakki, "What the hell are you doing, you know?" He said, "This is what happened, we had an agreement, you know, and Natalie's going to get in."
230. Cr Eriksson said that Mr Seitz and Cr Suleyman had made a deal: 'my understanding is that George [Seitz] had made some kind of commitment to Natalie Suleyman about that pre-selection'.
231. Cr Eriksson stated that she was overseas from 23 April – 27 May 2008. She stated that, upon her return, she 'was quite upset' to learn that Mr Seitz 'had pushed the Suleyman group into reversing their position on the funding of the pavilion by making promises to them concerning supporting Natalie for the Kororoit preselection'. Cr Eriksson stated it was after this reversal that she 'began to have her first suspicions of the relationship between Mr George Seitz and the Sydenham Park Soccer Club'.
232. My officers interviewed Mr Seitz about the meeting he attended with Cr Suleyman, Mr Suleyman and Mr Languiller in 2008. He stated Mr Languiller called him to the meeting. Mr Seitz stated the meeting was held in a café in Ballarat Road, Deer Park to discuss the council's decision to defer awarding the contract for development at Keilor Lodge Reserve. Mr Languiller said it was his 'recollection that Mr. Seitz asked [him] to convene that meeting'.

233. According to Mr Seitz, during the meeting Mr Suleyman and Cr Suleyman stated the project could not be funded ‘over two budgets’ and the contract could not be awarded prior to the council adopting the 2008-09 budget. Mr Seitz stated:

they agree, they would be nice, to her to support her in the future, you know, they’ll put it [Keilor Lodge Reserve] in the budgets, yeah, it’ll go in the budgets, meaning supporting her [Cr Suleyman] in the future for the seat of Kororoit.

234. According to Mr Seitz, he left Mr Languiller at the meeting as ‘the good cop [...] to negotiate’. Mr Seitz stated, ‘Telmo got a commitment for them that day that it [Keilor Lodge Reserve] would be included in the budget’.

235. While Mr Seitz denied making a deal with Cr Suleyman, he stated:

[Mr Languiller] probably assumed and said that they can talk George around [to support Cr Suleyman for the seat of Kororoit].

...

they [Cr Suleyman and Mr Suleyman] might’ve thought that they could, you know, by doing that [returning Keilor Lodge Reserve funding to the budget], ingratiate themselves to myself.

236. At interview, Mr Languiller acknowledged that Cr Suleyman agreed to return funding for Keilor Lodge Reserve to the 2008-09 budget at the above meeting. He was asked whether this outcome was achieved by promising Cr Suleyman that Mr Seitz would support her in an upcoming pre-selection. Mr Languiller stated:

I have to say that I don’t quite remember how it all took place. But I say this in generalities [...] it would not surprise me that in the context of a discussion of the kind, it would have been done [returning the funding to the budget] with the intention of getting goodwill from George [Seitz].

...

in politics, it’s always about building goodwill.

237. In response to my conclusions, Mr Languiller stated he had ‘no recollection of discussions with Suleyman or Seitz about the Kororoit preselection in the context of the Keilor Lodge’ and that he ‘lobbied Cr Suleyman in relation to Keilor Lodge Reserve, because [he] believed that that community was entitled to refurbishment of the premises’.

238. Mr Languiller stated the Sydenham Park Soccer Club is a 'long standing community based organization and whilst not strictly established in the electorate of Derrimut' it caters for families from 'the whole of the western suburbs and in particular the municipality of Brimbank'. As such, he stated it was:

entirely appropriate that representations be made by [him] and other elected officials in support of the allocations of funds by the municipality to the club for the purpose of refurbishments and rebuilding of the premises.

239. Mr Seitz stated that while Mr Haermeyer had not announced his resignation at this stage, 'everybody in Parliament' knew Mr Haermeyer intended to resign 'from Day 1 when he lost his ministry it was a matter of when'.
240. On 2 June 2008, Mr Haermeyer publicly announced his resignation. Cr Suleyman was an electorate officer for Mr Haermeyer, and had been for several years. She nominated as a candidate in the pre-selection for Mr Haermeyer's seat.
241. On 7 June 2008, just days prior to the Kororoit pre-selection, Cr Atanasovski says Cr Capar approached him at the St Albans Saints Soccer Club for a multicultural dinner. Cr Atanasovski stated Ms Marlene Kairouz, a candidate for the pre-selection, the 'ruling faction' and Dr A. Theophanous also attended the function. Cr Atanasovski stated Cr Capar whispered to him 'we're [the 'ruling faction'] gonna rethink the funding for Keilor Lodge'. Cr Atanasovski states that he responded inter alia, 'You're not gonna hurt Troy [Atanasovski] or anybody else – you're hurting the community'. This comment was allegedly made after the council had signed the contract for the development of Keilor Lodge Reserve and before the pre-selection. It appears to be a threat to stop the development if Cr Suleyman was not successful at the pre-selection.
242. At interview, Cr Suleyman disagreed the funding was returned to the budget in an attempt to obtain Cr Atanasovski's support in the pre-selection. She stated Cr Atanasovski 'does not have a vote in Kororoit'. However, Cr Atanasovski advised my office he did have voting rights in the pre-selection as he is a delegate of the ALP. He further stated that prior to the pre-selection, Cr Suleyman's father, Mr Suleyman, contacted him and requested that he support Cr Suleyman in the Kororoit pre-selection. Cr Atanasovski stated he told Mr Suleyman:

"We can't discuss these things like that, we're going to sit down in a proper way, discuss it". But he - we never met.

243. Given that her father, Mr Suleyman, was aware of Cr Atanasovski's status as a delegate, I consider it is likely Cr Suleyman also knew Cr Atanasovski had voting rights.
244. It is evident Cr Suleyman attempted to obtain personal benefit by exercising power over the funding for Keilor Lodge Reserve. In my view, she misused her position as a councillor in an attempt to win the Kororoit pre-selection.
245. Section 76B of the Local Government Act makes it an offence for a councillor to misuse their position to gain, or attempt to gain, a personal benefit or to cause detriment to the council.

The direction

246. The contract for the construction of the pavilion was signed by the Mayor and the CEO on 11 June 2008. On this date, Cr Suleyman lost ALP pre-selection for the seat of Kororoit to Ms Marlene Kairouz.
247. On 16 June 2008, the 'ruling faction' (Cr David, Cr Eriksson, Cr Suleyman, Cr Abate, Cr Capar and Cr Zukalksi) presented the CEO with a signed direction, stating:

We, the undersigned Mayor and Councillors direct the CEO to redirect funds from Keilor Lodge Reserve Line item [blank] in the 2008-09 Budget and replace those funds into other projects as to the direction of the Mayor.¹⁰

248. According to Cr Capar, Cr Abate typed the direction on Cr Suleyman's laptop in Cr Suleyman's home office, in the presence of Crs Capar, Suleyman and Zukalski. The direction was written shortly after Cr Suleyman's loss in the Kororoit pre-selection.
249. Cr Suleyman and Cr Abate denied writing the direction, or meeting at Cr Suleyman's house. Cr Zukalski did not recall. When Cr Suleyman was asked who prepared the document, she initially stated 'it could have been Cr Eriksson'. When asked again later in the interview, Cr Suleyman was more resolute, answering 'As I said, Kathryn Eriksson'. Cr Suleyman stated Cr Eriksson provided it to another councillor, who in turn provided it to Cr Suleyman. Cr Suleyman could not recall when she signed the document. She also denied discussing the direction with her father, Mr Suleyman.
250. When Cr Eriksson was asked why someone would suggest she wrote the direction, she stated:

Well, it detracts from whoever did write it.

10 See Attachment 6.

251. In my view, Cr Suleyman's response was an attempt to mislead my office. On 8 August 2008, when the CEO and the Minister were notified of my investigation, the CEO provided my officers with a copy of the direction. He stated, under oath, that Cr Eriksson had confided in him that Mr Suleyman had presented the document to her at her house one Sunday night around 8pm. Cr Eriksson and Cr Capar provided the same evidence. At interview, Cr Eriksson stated Mr Suleyman or Cr Capar telephoned her husband about the matter just prior to their arrival at her house with the direction.

252. Cr Capar gave evidence that Mr Suleyman drove him to Cr Eriksson's home, where they presented the direction to Cr Eriksson for her signature. When asked why Mr Suleyman drove him to Cr Eriksson's home, Cr Capar stated:

I don't know, it was just a matter of we got in Hakki's car, he drove me. I don't remember discussions as to why.

253. Mr Suleyman denied being involved in delivering the direction to Cr Eriksson's home. When the document was presented to him at interview, he stated it was the first time he had seen the document. The evidence does not support this statement as Cr Capar, Cr Eriksson and Dr A. Theophanous gave evidence, under oath, that Mr Suleyman delivered the direction to Cr Eriksson at her home on 15 June 2008.

254. Cr David stated Cr Eriksson informed him that Mr Suleyman and Dr A. Theophanous 'put [the direction] together'.

255. My officers asked Cr Suleyman how her father came into possession of the document on Sunday 15 June 2008. She stated:

I'm not too sure. Maybe – maybe because I was leaving to go overseas and he was dropping it off. I don't know. I had gone.

256. Cr Suleyman further stated:

I agreed as a councillor, to sign this before I left, and it happened to be before Saturday. It was the Saturday because Saturday I left.

257. However, records obtained from the Department of Immigration and Citizenship demonstrate Cr Suleyman was cleared through Customs at Tullamarine Airport at 10.18pm on Sunday 15 June 2008. She did not leave Australia on the Saturday. On the evidence, I consider it is most likely that Cr Suleyman was present at her house when the direction was written on 15 June 2008, in accordance with the evidence of Cr Capar.

The purpose

258. According to the current CEO, the purpose of the direction was:
- to ensure that the building of the new pavilion at Keilor Lodge Reserve would not go ahead therefore inconveniencing the Sydenham Park Soccer Club who were purportedly aligned to George Seitz.
259. Former CEO, Ms Duncan said:
- My opinion is that there had to be some punishment that was going to be given out to show George Seitz that he's not in charge.
- ...
- there's always been this thing about who's actually running the west. Is it the Suleymans or is it Seitz?
260. Cr Suleyman denied the direction was related to her loss or that it was to embarrass Mr Seitz. She claimed that when the direction was issued, Cr Eriksson was waiting on advice from the Municipal Association of Victoria (MAV) as to whether the council could award the contract prior to adopting a budget. She stated Cr Eriksson requested this advice prior to the council awarding the contract.
261. The evidence does not support this explanation. Cr Eriksson emailed the MAV on 21 July 2008 – over one month after the direction was signed. The MAV responded within two days of receiving the email. At interview, Cr Eriksson stated an officer of the MAV advised her ‘You can have contracts over a number of years and you can allocate funding’ prior to adopting the budget.
262. Cr Suleyman stated she signed the direction as the Mayor was:
- under the view that the project hadn’t commenced and – and, you know, that funds should be redirected.
- ...
- As I recall the Mayor and a number of councillors had stated there were still issues with this – with this facility and it had to be – you know, there had to be a re-direction of funds.
263. Cr Suleyman’s version of events is inconsistent with that of Cr David. According to Cr David, councillors presented the direction to him in his office. He was unable to recall which councillors. He stated there was a blank space next to ‘line item’ and he asked the councillors which line item the funds were to be redirected from. Cr David inserted the words

'Keilor Lodge Reserve' upon advice from the councillors and then signed the direction. According to Cr David, he was the last to sign it.

264. Cr David stated:

I have urge [sic] them not to go down that track [the direction], in this instance. Because I was responsible in taking this club from where it was previously into this type of club and into this venue.

265. However, he also stated he considered the CEO rushed offering the contract and ignored anomalies, such as the alleged use of the venue by Mr Seitz 'as a base' for 'branch members'. Cr David later acknowledged that concerns about Mr Seitz did not arise until after the contract was signed and Cr Suleyman had lost the pre-selection.

266. Cr David stated he was led to believe the purpose of the direction was:

just for delay, not to stop the whole thing altogether [...]. But the meaning behind it was to perhaps – looking at it now, it was to perhaps try [sic] and perhaps worry some people [...] such as George [Seitz], yeah. Of course, yes.

267. Cr Capar stated the councillors 'wanted to stop [the project] because [they] were concerned'. He stated he was concerned as he had not been advised of the specifics of the project:

I appreciate that it's a new facility but what is it? How does it look? What does it – who is it going to cater for?

268. Cr Capar stated he spoke to the CEO and said 'I haven't seen to the date [sic] the plan; what is it?' Cr Capar stated:

In hindsight, I shouldn't have [endorsed the contract] until those questions were answered but I presumed that Nick [Foa] would supply the information.

269. When asked why she signed the direction, Cr Eriksson stated:

I hadn't been happy at the previous meeting about passing it [the contract]. You know, we deferred it. I had been away, I hadn't got any answers during that time. Obviously then there was the Kororoit by-election that occurred.

...

Well, it's possible that it might have been because there was an unhappiness about what had happened, what George [Seitz] had done.

...

My understanding is that George [Seitz] had made some kind of commitment to Natalie Suleyman about that pre-selection.

...

The truth is that I had gone into a situation where I supported – I wasn't going to support someone else for Mayor. I ended up in this group and I was working together with this group of people.

...

In relation to this document I felt that I had to sign this document to show support.

...

I guess I felt under duress, you know, to have people arrive at your door.

270. Cr Eriksson responded to my conclusions stating:

Although I signed the request to the CEO on 15th June, it is wrong and incorrect to claim that my reasons were the same as those of the others who signed that document. As I stated when interviewed on September 16, 2008, I had had concerns about the original process in which Keilor Lodge entered into the 2007/08 budget process. Furthermore [...] I did not know the Mayor had signed the contract.

271. Cr Eriksson further stated the decision of the 'ruling faction' to fund the project after earlier removing it from the budget 'confirmed for [her] the validity of [her] position':

The fact that I had been opposed to the approval of the building of the pavilion from at least April 19, led me to the view that it was right not to proceed with the project even at this stage. I was uncomfortable as to the possible motivations of other members of the group of six [...]. I was also uncomfortable at the way the document to the CEO was presented to me late on a Sunday night for signature. Nevertheless, I thought it could be a further opportunity to further examine the issues and for the CEO to investigate my concerns and to be forced to demonstrate the worthiness of the project above others.

272. Cr Zukalski stated:

I've signed it with two thoughts in my mind, one in the back of my mind was saying, "This is wrong, this is Natalie not getting preselected," and the other thought was probably trying to make myself feel OK about signing it was: there is [*sic*] problems in the club and I do want to investigate it.

...

I know that [Cr Suleyman] was very, very angry that she lost her preselection to Marlene [Kairouz] but I wasn't - they didn't tell me anything. Whatever they did in their circle all I would get was "We're doing it because there's problems over at the club, George Seitz and" what's his name? "Troy Atanasovski".

...

I believed that was a very bad decision but I signed it [the direction] anyway because I thought if I don't sign it they're just going to, you know, come at me until I signed it anyway.

273. Cr Zukalksi also said:

Because I'm a part of that caucus group but also if I didn't sign it they're going to say - you know yourself - like you've got [to] understand if I questioned something it was always given to me in a different way. It was never the actual truth now that I realise, I was never told the truth the whole time. If I questioned Natalie [Suleyman] or Ken [Capar] for anything they would give me a reason that made me realise - not realise but made me think that I was doing it for the right reasons. They manipulated me.

274. Cr Abate said:

it was a decision that I took at the time.

...

Because I believed in the statement at the time.

275. According to Dr A. Theophanous, the direction was the result of a failed deal between Mr Seitz and Mr Suleyman. Dr A. Theophanous said Mr Suleyman 'was furious' about Cr Suleyman's loss in the pre-selection because he had a 'solemn deal with George [Seitz]'. According to Dr A. Theophanous:

Andre Haermeyer resigns and his assistant, Natalie Suleyman had been assumed a shoe-in for the preselection and what happens? George initiates the most brilliant but the most effective and nasty campaign - sorry, I laugh because - I see all this stuff in amazement. Anyway, then you could imagine and he initiates this bloody campaign and he ends up, right, defeating Natalie Suleyman who [was] assumed to be the shoe-in [...]. Hakki was totally outwitted by - and Hakki was also betrayed by some of his MP friends. In any event, she was done in as they say.

...

George had hated this woman [Cr Suleyman] forever. He got his club, basically he broke the deal, simple as that.

...

Now, as a result of this, of course, Hakki went bananas. He just couldn't believe it. He couldn't believe what he saw justifiably from a certain point of view the treachery in George.

...

Hakki was furious so then Hakki proceeded to try to undo the club decision [...]. Well, there were various steps [...]. I think the first thing that was done was they tried to give an instruction [the direction] to the CEO.

276. Dr A. Theophanous stated 'the Suleyman people' 'were now out to stop the [Sydenham Park Soccer] club having been betrayed'.
277. Mr Seitz denied making a deal with Mr Suleyman; however, he stated that after the pre-selection Mr Suleyman called him 'a dog and everything else' because he did not support Cr Suleyman.

Breach of contract

278. Upon receipt of the direction, the CEO, Mr Foa sought legal advice from Maddocks Lawyers, which stated:

The directive has no legal status. It merely reflects a view held and expressed by six Councillors.

...

Individually and collectively Councillors cannot commit Council to a decision unless a duly constituted meeting is held and a Resolution is made.

279. The CEO provided the Mayor with a memorandum and a copy of the legal advice on 18 June 2008. Had the CEO followed the direction, as was intended by the councillors, the council would have been in breach of contract and at significant financial risk.
280. All the councillors should have been aware a contract had been signed

– they had carried a motion over two weeks prior to ‘sign and seal’ the contract. At interview, the CEO stated:

My view is that the councillors knew that I had:

a) let a contract

b) the works had started, because they had been in my office and asked me what would be the impact of something like this and I let them know in no uncertain terms my view would be a cost of hundred – a hundred thousand.

281. According to Cr David, he ‘stressed to them [the councillors] the worry, I already signed the contract.’

282. Cr Zukalksi recalled the council breaching a contract with a waste management contractor earlier in her council term. She stated:

we found out about - a little about contracts, about, you know it's very difficult to get out of a contract once you've signed it, without due - due - you know, reason.

283. Cr Capar was certainly aware of the risk. He had discussed the matter with the CEO on 13 June 2008, after the council decided to award the contract and prior to signing the direction. According to the CEO, the councillors were aware of the risk as Cr Capar had said to him:

“It wouldn’t be more than a hundred grand [to breach the contract] would it?”

284. The CEO stated:

He [Cr Capar] was prepared for this organisation to suffer \$100,000 worth of damages for a breach of contract [...]. The advice I had from the lawyers is that they [the developer] would go for foregone profits, they may well have had to forego other jobs to take this one on so it could be anywhere – I imagine their claim would have started at \$300,000.

285. Former CEO, Ms Marilyn Duncan said that she briefed the 11 councillors about the consequences of breaching a contract during her time as CEO. According to Ms Duncan, the intention of the ‘ruling faction’ would have been to ‘punish’ people for Cr Suleyman’s pre-selection loss.

286. In response to my conclusions, Cr David stated that he is 'not a Lawyer' and was not 'fully aware of the consequences that might flow from the alleged breach of Contract'. He stated that when this was brought to his attention by the CEO, he 'immediately took the view that [the 'ruling faction'] should not proceed with the motion to rescind the building contract'. According to Cr David, he 'communicated this to other members of the faction and to the C.E.O.'.
287. Cr David stated that he supported the motion to rescind the building contract (the direction) in order to 'give full force and effect to the Community Facilities and Reserves Allocation Policy ie. [sic] that the allocation of community facilities be fair, open and transparent'. I note, however, that this policy had not been adopted when the direction was issued; and that the direction was intended to cease building works, therefore negating the need to seek expressions of interest for the new facility.
288. Cr David denied 'having acted or taking any decision with the intention of damaging George Seitz or any other person or of knowingly acting in a manner which might cause financial detriment to the Council'.
289. In response to my conclusions, Cr Suleyman added:
- I did not use my position as councilor [sic] in any way for the pre selection. I did not sign the direction in retaliation for the loss of the pre selection. I note that 5 other councilors [sic] signed the direction. The C.E.O. thereafter sought legal advice, in accordance with proper procedure.
290. Cr Eriksson also responded, stating:
- The very fact that I signed the directive does not in itself ascribe any intention on my part to break the contract; nor does it suggest that I had any other motive than the examination of what I believed was a very dubious project.

Conclusions

291. I do not accept the reasons put forth by Cr Suleyman to explain why the 'ruling faction' issued the direction to the CEO. On the available evidence, I consider the direction was issued in retaliation for Cr Suleyman's pre-selection loss. In this regard, I prefer the evidence provided by the Mayor, Cr David, Cr Eriksson, Cr Zukalski and Dr A. Theophanous. My conclusion is further supported by Mr Suleyman's involvement in the preparation of the direction.
292. In my view, the other reasons provided by the councillors are inconsistent with the evidence. If the councillors had legitimate concerns about the project – i.e. the CEO rushed the contract or the councillors were not provided with enough information – they could have deferred the item again or requested further information from officers.
293. Despite concerns, the councillors unanimously endorsed the contract on 27 May 2008 and made positive, public comments about the project. Nothing changed between the awarding of the contract on 27 May 2008 and the direction – except Cr Suleyman lost the pre-selection, which she expected to win.
294. In accordance with section 76B(1) of the Local Government Act, councillors must exercise reasonable care and diligence in their decision-making. It is clear that the six councillors who signed the direction did not exercise reasonable care. They did not consult with the other five councillors; and they did not seek advice from the administration, including the CEO, prior to directing that the CEO breach the contract. It is clear that they were happy to jeopardise the financial viability of Brimbank for a vendetta and that their motivation was purely personal.
295. In my view, Cr David, Cr Eriksson, Cr Suleyman, Cr Capar, Cr Abate and Cr Zukalksi may have breached section 76B(1) of the Local Government Act.
296. Cr Abate stated:
- I think in retrospect I should've given it more thought, definitely.
297. Cr Eriksson said:
- I believed it wasn't necessarily the correct way to handle the situation.
298. I note that Cr Capar did not respond to the adverse comments I have made against him in this report 'on the basis of legal advice'.

299. Councillors are also required to act in the best interests of the community. The decision to issue the direction was not in the best interests of the community. Based on the evidence provided by Cr David, Cr Eriksson, Cr Zukalksi and Dr A. Theophanous, it was issued in retaliation for Cr Suleyman's loss in the pre-selection. The direction could have caused detriment to the council. Section 76B(3) of the Local Government Act states:

A person, who is or has been, a Councillor or member of a special committee—

(a) must not make improper use of their position—

- i. to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
- ii. to cause, or attempt to cause, detriment to the Council

300. In my view, the 'ruling faction' councillors may have breached section 76B(3) of the Local Government Act. I recommend that this issue should be investigated by Local Government Victoria.
301. In response to my recommendation, Cr Abate stated 'the factual matters raised in the report do not support such a recommendation' in relation to him. He stated the allegations suggest he 'had a peripheral role in this matter' and that there is 'no direct evidence linking [him] to any inappropriate conduct that is alleged in relation to the KLR [Keilor Lodge Reserve] project'. In addition, Cr Abate stated that my report 'makes the error of impugning [Cr Abate] as a result of [his] association with other councillors' and that it fails to recognise that people have 'different reasons and motives' for a decision 'in the context of collective decision-making'.
302. I do not accept Cr Abate's response. I have received no evidence from Cr Abate to demonstrate that his motive was different to that of other councillors in the 'ruling faction'. At interview, Cr Abate was unable to provide a reason for his decision to sign the direction, other than: 'it was a decision that I took at the time [...]. Because I believed in the statement at the time'. Cr Abate also failed to provide a reason in his response to my draft report for his decision to redirect funds from Keilor Lodge Reserve, other than that the redirection of funds would allow him to 'lobby for those same funds to be invested' in his ward. In my view, this does not explain why Cr Abate decided to withdraw funds from this particular project. Further, whatever Cr Abate's motivation, his decision to redirect funds placed the council at financial risk.

303. Cr Abate also stated:

If the request to redirect the funds is interpreted as being a request to cancel the contract with Raysett Constructions, this request does not constitute an 'attempt to cause a detriment to the Council'. Such a request is not sufficiently proximate to any potential loss to come within the scope of s 76B(3). This is because the person who ultimately had the capacity to the cancel [sic] the contract was the CEO, but he could only reasonably do this if it was legally sound to terminate the contract. Thus there was a considerable process that needed to be undertaken between a request to cancel by member or members of the council and any actual cancellation. To this end, and as far as I am aware, it is telling that once councillors were informed that the contract was valid and could not be terminated without loss to the council, there was no further attempt by me to cancel the contract.

304. Despite Cr Abate's argument, it is clear that the majority councillors' objective in issuing the direction to the CEO was for the CEO to cancel the contract. Had the CEO followed the direction, in turn meeting the councillors' objective, the council faced significant financial loss. Cr Abate's assertion that the CEO 'could only reasonably [terminate the contract] if it was legally sound' to do so is incorrect. The CEO had the capacity to cancel the contract on the basis of the direction alone; whether it was a legally sound option is irrelevant.

305. Cr Abate further stated:

I accept that this matter could have been dealt with better.

306. I remain of the view that Cr Abate, and the other five councillors, should be investigated by Local Government Victoria for possible breaches of section 76B(3).

Recommendations

I recommend that:

- 3) Local Government Victoria investigate possible breaches of section 76B(3) of the Local Government Act by Cr Suleyman, Cr David, Cr Eriksson, Cr Abate, Cr Capar and Cr Zukalski, with a view to determining whether action should be taken against them.

Expressions of interest

307. On 18 June 2008, the CEO advised the Mayor he was unable to follow the direction of the 'ruling faction'. However, it is apparent that the 'ruling faction' continued in their attempts to 'worry' Mr Seitz.
308. For example, at an Ordinary Council Meeting on 24 June 2008, the council met to adopt its 2008-09 budget. Cr Zukalski attempted to attach an addendum to the council budget in relation to the Keilor Lodge Reserve item on the budget, as follows:

Addendum

Moved Cr Zukalski

In relation to the Keilor Lodge Reserve item on the budget, the following determination be made:

1. That the building of the pavilion at the Keilor Lodge Reserve proceed as determined under the contract with the builders
 2. That nevertheless the Council express concern at the process which led to the awarding of the contract without a proper submission and examination of the claims and qualifications of the Sydenham Soccer Club, the current users of the reserve
 3. In view of the circumstances in clause 2), that the Council and Council administration review the current usage by the Sydenham Soccer Club in order to determine whether all conditions of usage have been maintained, including social justice principles and proper business planning, and report back to the full Council as to whether and what action is required
 4. That upon completion of the Pavilion, expressions of interest from all interested organisations and sporting clubs be made and considered through due process by the Council for re-allocation of the users of the reserve
 5. That in addition to the main sporting organisation that may be granted use of the reserve, other community groups be invited to share in the facilities.
309. Cr Zukalski stated she did not write the addendum. She said it was initiated and written by her 'group', but she was unable to recall who in particular was involved.

310. According to Dr A. Theophanous:
- Hakki insisted that the matter [expressions of interest] be raised at the council [...] to Capar and the others.
311. I note Cr Suleyman was overseas at the time. Dr A. Theophanous stated:
- the other five [the opposition] of course they knew that Hakki [Suleyman] was trying to do something about the club so they jumped up and down, carried on.
312. At the council meeting on 24 June 2008, the five 'minority' councillors walked out of the council chamber, resulting in a lack of quorum. The CEO said he told the council to defer the item and adopt the budget. He stated if the addendum was attached to the budget, there was a risk the budget would be rescinded – in his view, this would represent a failure of governance. Cr Zukalski consequently removed the addendum and referred it to report 10 on the agenda, which related to the council's Community Facilities and Reserves Allocation Policy. The policy was designed to ensure facilities were allocated in an open and transparent manner.
313. The Brimbank officers' recommendations for the policy were:
- 10.9.1. That Council nominates three Councillors to the Allocation Assessment Advisory Group.
- 10.9.2. That Council adopts the attached Community Facilities & Reserves Allocation Policy.
314. Cr Zukalski moved an alternative motion that the council adopt the policy and nominate Cr David, Cr Eriksson and Cr Suleyman to the Allocation Assessment Advisory Group. The addendum noted above was also attached to her alternative motion. The motion was seconded by Cr Capar. However, Cr Giudice then moved a motion, which was carried, to defer the item.
315. According to Dr A. Theophanous, on 13 July 2008 (after Cr Suleyman returned from overseas) he was invited to a meeting at the Keilor Hotel with the majority councillors. He stated he attended the meeting and they discussed:
- what they were going to do next because they'd been clouted by the others because the thing [Cr Zukalski's 24 June 2008 motion] had been deferred. So at this meeting, the Mayor and myself, strongly advocated that we do not proceed in this matter. I said, "Look, the way the - let the thing be built. Why don't we investigate the issues that have come up

with George Seitz and then find out what's going on?" and this - what happened was, they rejected my advice.

316. On 14 July 2008, the Mayor, Cr David, advised the CEO he wished to call a Special Council Meeting 'to be held at 7.00pm on Wednesday, 16 July 2008, for the purpose of transacting the following business: Community Facilities and Reserves Allocation Policy'.
317. It is unclear why the policy could not have been discussed at the next Ordinary Council Meeting, which was to be held less than a week later on 22 July 2008. In response to this, the Mayor stated:
- It could have been. I don't know why, but it could have been done, yes [...]. They asked me to call it and I did call it, yeah.
318. According to the council minutes for the Special Council Meeting, 71 people were in attendance in the gallery. After the meeting formalities, Cr Suleyman moved, and Cr Abate seconded, the following motion:
- That this item be moved next door In Camera due to the possible adverse impact that it may have to various stakeholders as per the section of the Local Government Act of Section 86 of the Act.
319. According to Cr Eriksson, the 'ruling faction' had decided prior to the meeting that they would move in camera as they intended to discuss Mr Seitz and allegations of branch-stacking and they did not have the protection of parliamentary privilege. I note that Mr Seitz was not discussed *in camera* and that the issue was not listed on the meeting agenda. Cr Eriksson stated this was because it was 'not a separate agenda item': the role of Mr Seitz 'related directly' to her reasons for calling for expressions of interest.
320. Cr Abate stated he seconded the motion to move in camera as he 'feared for [his] safety and that of other councillors knowing that any unpopular decision could provoke hostility'.
321. Cr Suleyman also stated she decided to move the meeting in camera prior to the meeting.
322. The CEO stated the councillors had clearly contemplated moving in camera prior to the meeting as Cr Suleyman had sought legal advice at 6.00pm (before the meeting). The CEO stated that when the six councillors moved in camera, he told them he did not believe they had a duly constituted meeting as they had left the council chamber. He stated Cr Suleyman told him she had received legal advice from Brimbank's legal representative that it was 'alright'.

323. I question whether Cr Suleyman had sufficient reason to move the meeting *in camera*. The Special Council Meeting was called to discuss only one item. At least 71 residents attended the meeting, only for Cr Suleyman to close the meeting off to the public.
324. Section 89 of the Local Government Act requires that meetings are open to the public unless subsection 2 applies, ensuring open and transparent decision-making wherever possible. Transparency requires a preparedness to open a decision to scrutiny and possible criticism. It ensures councillors are held accountable to the community for their decisions. In my view, Cr Suleyman moved the meeting *in camera* to avoid scrutiny and possible criticism. It appears the other five members of the 'ruling faction' followed Cr Suleyman *in camera* for the same reason. In my view, this step was planned.
325. Cr Eriksson denied moving in camera to avoid scrutiny, stating she went in camera to present 'confidential information' relating to the activities of Mr Seitz. Cr Eriksson stated she wanted 'more scrutiny, especially of the real situation between the Sydenham Park Soccer Club and branch stacking in the ALP' and that this is proven by the release of her press statement.
326. The *in camera* meeting commenced at 7.04pm. Cr Suleyman, Cr Abate, Cr Capar, Cr Eriksson, Cr Zukalksi, Cr David, the CEO and the General Manager, Human Services attended. The remaining five councillors refused to follow.
327. During the *in camera* meeting, Cr Zukalski moved the following motion:
- Add to Clauses A and B [1.9.1. That Council nominates three Councillors to the Allocation Assessment Advisory Group. 1.9.2. That Council adopts the attached Community Facilities & Reserves Allocation Policy.], the following clauses:
- c. That the Council nominates Mayor, Deputy Mayor, and Cr Suleyman to the allocation Assessment Advisory Panel
- d. Having regard to the adopted policy, Council immediately calls for expressions of interest for the use of Keilor Lodge Reserve at Sydenham Park, from interested Sport and Community groups
- e. That the CEO begin the necessary process in relation to Clause D, with expressions of interest closing on the 16th August 2008 and the panel to consider the EOI's and report back to the Full Council Meeting on Tuesday 24th August 2008.

328. Email evidence obtained by my office establishes that the motion was not written by Cr Zukalski. The motion was written in a series of emails between Dr A. Theophanous, Cr Suleyman and Cr David.
329. The motion was seconded by Cr Capar and carried. The meeting ended within six minutes, at 7.10pm. According to the General Manager and the CEO, the meeting was very tense. They agreed that while a couple of councillors made comments, there was no debate about the policy and it was evident the six had decided how they were going to vote prior to moving *in camera*.
330. Cr David, the Mayor stated he was disappointed the remaining five councillors did not follow the 'ruling faction' *in camera*. He stated 'they should have followed through and they should debate them [the other councillors] on the matter'. In my view, it is unlikely the result would have changed had the remaining five attended.
331. Cr Suleyman acknowledged she had formed a firm and unyielding mind on how she intended to vote in relation to the motion prior to moving *in camera*: 'I had certainly made up my decision'. She stated the 'ruling faction' had already 'decided that the policy will be enforced'. At interview, it was apparent Cr Suleyman was unaware of the requirement that councillors must enter the decision-making process with an open mind when making decisions that affect individuals.
332. In response to this, Cr Eriksson stated she was not always 'in agreement with the decision to open the expressions of interest'. She stated:
- My husband was opposed to proceeding with the issue of the Expressions of Interest at the meeting of the group on the 10th [of] July. I was also of that view [...].
333. According to Cr Giudice, the resolution was invalid as clauses (d) and (e) of the motion did not deal with the business that was the subject of the public Notice of Meeting, which was to adopt the policy and nominate councillors to the Allocation Assessment Advisory Group. Cr Giudice stated clauses (d) and (e) purport to implement the policy, which is 'entirely different business'.
334. Section 84 of the Local Government Act states:
- (1) The Mayor or at least 3 Councillors may by a written notice call a special meeting of the Council.
 - (2) The notice must specify the date and time of the special meeting and the business to be transacted.

- (3) The Chief Executive Officer must call the special meeting as specified in the notice.
- (4) Unless all Councillors are present and unanimously agree to deal with another matter, only the business specified in the notice is to be transacted.

335. Cr Giudice stated:

The notice of this meeting gave no indication that the implementation of the Policy in any way was to be considered or acted upon, and certainly not of the specific targeted action that was the subject of clauses d. and e. Accordingly clauses d. and e. are invalid.

336. According to the *Community Facilities and Reserves Allocation Policy*:

A Council facility and/or reserve becomes available to allocate for community use as a result of:

- Existing availability capacity for multi-use or mixed-use users;
- Vacation by the existing occupant;
- Acquisition by Council; and/or
- New capital work (e.g. building, sporting reserve).

337. The General Manager, Human Services informed my office the policy was not intended to apply to occupied, existing grounds, such as Keilor Lodge Reserve; it was to apply to 'new developments and sites where groups had vacated'.

338. Brimbank sought legal advice on the application of the policy after Cr Zukalski attempted to attach the addendum to the budget. Brimbank's legal advice was that as the Sydenham Park Soccer Club did not have a lease, or a lease in over-holding (the club was using the reserve on a seasonal lease only), it had no 'legal option' on the site. The General Manager, Human Services stated the policy 'was not explicit enough to differentiate between new and redeveloped facilities, and therefore the policy could in fact apply'. I understand the policy is currently under review to resolve this issue. In my view, the policy was applied to Keilor Lodge Reserve by the 'ruling faction' to again 'worry' Mr Seitz.

339. Cr Eriksson denies this was her motivation, stating she voted to call for expressions of interest as she wanted an investigation into the 'behaviour of Mr Seitz' and the 'stacking of branches' of the ALP. I do not accept this explanation given that the resolution passed by the 'ruling faction' made no mention of such an investigation.
340. In a letter to my office dated 11 August 2008, the 'opposition' councillors, Cr Giudice, Cr Atanasovski, Cr Barboza, Cr Dymott and Cr Socratous, stated the decision of the 'ruling faction' was 'made for ulterior purposes and was therefore without power.' They contended the 'ruling faction' had 'improper motives, namely because of a perceived relationship between members of the Club and the ALP pre-selection they have attempted to disadvantage the Club'.
341. According to the 'opposition' councillors, the Vice-Secretary of the Sydenham Park Soccer Club contacted the Mayor of the council, Cr David, to query why the council was calling for expressions of interest for Keilor Lodge Reserve. The Vice-Secretary stated, in a Statutory Declaration, that Cr David told her 'You Macedonians did not support Natalie Suleyman in the elections'. She further stated Cr David told her he was upset that she had only thanked two councillors, instead of the whole council, for the approval of works at Keilor Lodge Reserve.
342. Cr David denied telling the Vice-Secretary that expressions of interest were called because the Macedonians at the Sydenham Park Soccer Club did not support Cr Suleyman in the pre-selection. He stated 'that's absolutely rubbish'. However, as noted earlier he acknowledged that expressions of interest were called for Keilor Lodge Reserve to 'worry' Mr Seitz. Cr David stated the 'morality' of the decision to call for expressions of interest was wrong, and he did not 'like what was happening', but the *Community Facilities and Reserves Allocation Policy* allowed the council to do it and he 'agree[d] with them [the other majority councillors] to support them'.
343. In response to my concerns about the 'ruling faction's' decision to call for expressions of interest, Cr Eriksson stated that while she initially supported the call for expressions of interest – due to her concerns that Mr Seitz was 'branch-stacking' – she began to 'rethink the issue' after the matter was deferred 'especially in the light of the attitude of Natalie Suleyman'. Cr Eriksson stated:

I was very sorry for her and the way she had been treated in the preselection. I felt it was very unjust. However, I felt that she was too emotional about the issue and had lost objectivity on the matter.

344. Cr Eriksson stated she had told Crs Abate, Capar, Suleyman and Zukalski, prior to their meeting on 10 July 2008, they had made their 'point' and it was now 'time to see what evidence [they] could obtain'. According to Cr Eriksson, she 'did not wish to be associated with the view that the group was acting out of revenge for Mr George Seitz' behaviour at the preselection'.
345. However, it is apparent the 'ruling faction' passed the motion to continue their efforts to 'worry' Mr Seitz.

Melbourne Knights Soccer Club

346. My office also received evidence that Cr David requested the Melbourne Knights Soccer Club withdraw its expression of interest for Keilor Lodge Reserve.
347. At interview, Cr David admitted he 'promised to look after them [the Melbourne Knights Soccer Club]' when Lloyd Reserve became available, if the club withdrew its interest for Keilor Lodge Reserve. Cr David stated he advised the Melbourne Knights, 'When the present club [Brimbank City] moves away I make sure and ask others to try and support' the Melbourne Knights. According to Cr David, he informed the club it would need to apply for Lloyd Reserve in an expression of interest process. Nevertheless, he told them he thought they would meet the requirements of the council's *Community Facilities and Reserves Allocation Policy*.
348. Cr David then contacted a Brimbank officer responsible for sporting grounds to inform him of his 'promise'. At interview, Cr David acknowledged he asked the Brimbank officer to keep the 'promise' private. He stated he did not want the officer to tell other Brimbank staff.
349. The Melbourne Knights subsequently withdrew its interest for Keilor Lodge Reserve.
350. Cr David stated that he contacted the Melbourne Knights 'to ask them to withdraw their participation as an interested party in the allocation policy, since they were already a well established club and had a far better facility in North Sunshine'. According to Cr David, he was 'merely trying to achieve a more equitable allocation of community sporting resources'.
351. In my view, it was inappropriate for Cr David to make a promise to the Melbourne Knights and for him to request the Brimbank officer keep the promise private. It is contrary to the principles of openness and transparency and is inconsistent with the council's *Community Facilities and Reserves Allocation Policy*.

352. I consider the council should remove councillors from the Allocation Assessment Advisory Group, as there is a potential for councillors to abuse the process to gain favour with particular clubs. The allocation of facilities and reserves should be determined by Brimbank officers, in accordance with the *Community Facilities and Reserves Allocation Policy*, and Brimbank officers should present their recommendations to the council chamber for a decision.

Conclusions

353. I consider the 'ruling faction' misused the *Community Facilities and Reserves Allocation Policy* to call for expressions of interest and 'worry' Mr Seitz. This is not a proper use of the councillors' authority. It is clear the policy was not intended to apply to improvements at existing facilities used by an existing occupant, as was the situation at Keilor Lodge Reserve.

Recommendations

I recommend that:

- 4) Brimbank remove councillors from the Allocation Assessment Advisory Group. The allocation of facilities and reserves should be determined by Brimbank officers, in accordance with the *Community Facilities and Reserves Allocation Policy*, and Brimbank officers should present their recommendations to the council chamber for a decision by council.

Brimbank response:

The CEO advised that this recommendation will be considered in the context of 'a review of the community facility management arrangements across the municipality', commissioned by the CEO in late 2008. The CEO anticipated that a draft report of the review will be presented to the council for consideration in May 2009. He stated that Brimbank's Community Facilities and Reserves Allocation Policy will be updated upon completion of the review.

I recommend that:

- 5) Brimbank ensure that if Lloyd Reserve becomes available, the Community Facilities and Reserves Allocation Policy is complied with; any interest from the Melbourne Knights is assessed on its merits; and a probity auditor is engaged to oversee the process.

Brimbank response:

The CEO supports the recommendation and stated it 'will be implemented'.

II. Cairnlea Park

354. Cairnlea Park was completed in 2007 and is allocated to the Cairnlea Soccer Club,¹¹ which incorporates a juniors club and a seniors club.¹²
355. During my investigation, I received information that after the budget had been finalised at the council's budget workshop, Cr Suleyman 'demanded' that additional funding for lights, fencing and parking at Cairnlea Park (worth \$680,000) be added to the budget or the budget would not be adopted. As a result of the 'demand', the CEO and the General Manager, Corporate Services deleted, deferred, changed or reduced in scope several budget items to enable funding for the Cairnlea Park works to be included.
356. It was alleged by Brimbank staff and residents that Cr Suleyman's family were linked to the clubs using the facility.
357. I was concerned Brimbank residents may have been deprived of community infrastructure projects in order to accommodate pressure from an individual councillor wanting to fund a project to the advantage of her supporters. The alleged actions of Cr Suleyman appeared to breach the councillor oath of office, which requires that councillors act in the best interests of the community. It is also clearly a misuse of Cr Suleyman's position as a councillor. In addition, I was concerned that the Brimbank officers acceded to Cr Suleyman's 'demand' without referring the matter to the whole council.
358. While my investigation into concerns surrounding Cairnlea Park focused on Cr Suleyman's alleged demand, a discussion of the allocation of Cairnlea Park is necessary to provide context and to highlight other issues surrounding Cairnlea Park.

11 According to Brimbank officers, Cairnlea Soccer Club was formerly known as Delahey Junior Soccer Club, Albion Junior Soccer Club, Albion Rovers Soccer Club, Satellite City Rovers, Melton Red Soccer Club, Albion Red Sox Soccer Club and the Albion Turk Gucu Soccer Club (being the least recent club name).

12 The juniors club was known as the Albion Junior Soccer Club when the council agreed to build Cairnlea Park in March 2005; and as the Delahey Junior Soccer Club when the council signed a lease with the club in August 2007. The seniors club was formerly known as the Albion Rovers Soccer Club.

Background

359. On 8 March 2005, the council resolved to develop a soccer facility at Cairnlea and to allocate the facility to the Albion Junior Soccer Club (now known as the Cairnlea Soccer Club). The council did not contemplate use of the facility by the Albion Rovers Soccer Club (the seniors) at the time.
360. A former SunRRA President alleged Cr Suleyman had a conflict of interest when she voted to allocate Cairnlea Park to the Albion Junior Soccer Club in 2005, due to her family's involvement with the Albion Rovers Soccer Club. SunRRA stated that at the time of the decision, Cr Suleyman's brother, Mr Mehmet Suleyman, was on the Committee of management for the Albion Rovers Soccer Club; and that Cr Suleyman's father, Mr Hakki Suleyman, was previously a public officer for the club. SunRRA stated that the Albion Junior Soccer Club committee appeared to be a sub-committee of the Albion Rovers Soccer Club committee of management.
361. From July – October 2005, SunRRA complained to Local Government Victoria that Cr Suleyman had breached the Local Government Act conflict of interest provisions.
362. In response to SunRRA's complaints, Local Government Victoria stated Cr Suleyman did not have a conflict of interest as the Albion Rovers Soccer Club and the Albion Junior Soccer Club were two separate clubs; and her father and brother were not public officers for the Albion Junior Soccer Club.
363. Local Government Victoria has since added that, at the time, the council provided it 'with a copy of the Certificate of Incorporation for the Delahey Junior Soccer Club Inc (which was otherwise known as the Albion Junior Soccer Club) dated 14 January 2004'. Local Government Victoria stated it was also provided with a list of the committee members for the Albion Junior Soccer Club and the Albion Rovers Soccer Club and 'the names of Cr Suleyman's father and brother only appeared on the committee list for the Albion Rovers Soccer Club'.
364. Local Government Victoria stated it investigated the incorporation of the two clubs and concluded that the 'two were distinct entities' on 'the evidence presented to Local Government Victoria'.
365. On 13 September 2005, in an article entitled, 'I'd sue, warns mayor', Star News Group reported:

Cr Suleyman repeated her insistence that Albion Rovers Soccer Club and Albion Junior Soccer Club were separate clubs when she voted in

favour of council spending \$650,000 to relocate the juniors to Cairnlea on 8 March.

...

"My father is not associated with the Albion Junior Soccer Club, nor any of my family members," she told Star last week.

366. On 9 May 2006, the council voted to approve 'Delahey Junior Soccer Club's' request to 'extend the use of the Cairnlea Park soccer facilities to include the Albion Rovers Soccer Club' (a seniors club). At the time of this decision, Cr Suleyman's brother, Mr Mehmet Suleyman, appeared to have ceased as a committee member for the Albion Rovers Soccer Club.
367. When interviewed by my office, Cr Suleyman stated her father was 'supposingly [sic]' connected to the Albion Rovers Soccer Club '15 years ago'. Mr Suleyman also stated he was on the committee for one year 'about 15 years ago, [or] 20 [years ago]'. Both stated Mr Suleyman attended some Cairnlea Soccer Club matches, but said he did not attend regularly.
368. I obtained a screen dump of the Albion Rovers Soccer Club website from April 2005. The screen dump lists the Albion Rovers Soccer Club committee of management, which includes 'Mehmet Suleyman', Cr Suleyman's brother. According to SunRRA, Mr Mehmet Suleyman's name was removed from the Albion Rovers Soccer Club website 'between 28 April 2005 and 10 June 2005 (after the vote in Council)'.
369. I also obtained a copy of the Incorporated Association Extract from Business Affairs (Consumer Affairs Victoria) for the Albion Rovers Soccer Club. The document identified a 'Mr Harry Suleyman' as being a public officer for the Albion Rovers Soccer Club in 2000. I believe that 'Harry' is Mr Hakki Suleyman.
370. Further enquiries by my office confirmed the address provided to Business Affairs by 'Mr Harry Suleyman' was that of Mr Hakki Suleyman.
371. In addition, forensic analysis of Cr Abate's laptop found he prepared a Justice of the Peace application on behalf of Mr Suleyman in March 2006, in which Mr Suleyman is purported to be a 'Committee Member, Albion Rovers' from 1990-1995. In the application, the outcome of his role with the club was stated as:

Development of a sporting organization which encourages the participation of youth from all cultures in a harmonious environment.

372. The reference to 'youth' implies Mr Suleyman was involved with the Albion Junior Soccer Club, as the Albion Rovers Soccer Club is a senior team.

373. The connection between the Albion Junior Soccer Club and the Albion Rovers Soccer Club is evident in a memorandum from the then CEO, Ms Duncan, to the then Mayor, Cr Suleyman, dated 23 September 2003. The memorandum related to an application from the Albion Rovers Soccer Club for the Albion Junior Soccer Club to move to Delahey Recreation Reserve, Delahey. The memorandum stated:

It [Albion Rovers Junior Soccer Club] appears to be directly linked and / or be a part of the Albion Rovers Soccer Club.

...

The “junior club” has continued to use Lloyd Reserve although its 2003 winter licence application form names the applicant club as “Albion Rovers Soccer Club”. Recent correspondence from the [junior] club is on Albion Rovers Soccer Club letterhead and the Victorian Soccer Federation website’s 2003 details for the Junior Soccer Club list the same Secretary and mailing address as for the Albion Rovers Soccer Club, but different Presidents and Liaison Officers.

374. The memorandum also raised concern that the Albion Rovers Soccer Club’s lease with the Shire of Melton was terminated around 1999 and that the Shire of Melton subsequently wrote off an outstanding debt. According to a witness, the debt was \$14,000. The memorandum stated the Albion Rovers Soccer Club ‘has not been a good lessee with two separate Councils in the past’ and questioned the club’s capacity to contribute to necessary works at Delahey Recreation Reserve given that in 2001-02, it was ‘operating at an operational loss’.
375. In her memorandum to Cr Suleyman (the then Mayor), Ms Duncan recommended the Albion Junior Soccer Club’s request to relocate to Delahey Recreation Reserve ‘not proceed’. According to Brimbank, the request was rejected. However, on 14 January 2004, the Chairperson of the Albion Juniors Soccer Club (who also was, and continues to be, the Secretary of the Albion Rovers Soccer Club) submitted an Application for Association Incorporation (the application) to Consumer Affairs Victoria for the Albion Junior Soccer Club to be incorporated as the Delahey Junior Soccer Club.
376. While the club was renamed, it is clear the Delahey Junior Soccer Club remained linked to the Albion Rovers Soccer Club: the application was submitted by the Secretary of the Albion Rovers Soccer Club; and on 8 March 2005, the council voted to relocate the ‘Albion Juniors Soccer Club’ (not the Delahey Junior Soccer Club) to Cairnlea Park.

377. On 9 March 2005, the Albion Rovers Soccer Club website stated: 'It's official Albion Rovers are moving to Cairnlea [...]. We will start in earnest to raise funds as part of our contribution to the project. If you can help with donations or if you have an idea on fund raising events please contact [the Secretary, Albion Rovers Soccer Club]'.
378. In an email between Brimbank staff, dated 30 March 2005, a Brimbank officer stated:
- no incorporated association called Albion Junior Soccer Club exists or has existed. The club operated under the name of Albion Junior Soccer Club but under the auspices of Albion Rovers Soccer Club, an incorporated body [...] in our case [Brimbank's] we deal only with the incorporated group when it comes to the legal documents.
- ...
- It is clear that Albion Rovers Soccer Club has been telling people that the whole club [juniors and seniors] is moving to Cairnlea.
379. The then General Manager, Community Services was asked if there was any undue influence from councillors to ensure the Albion Junior Soccer Club was allocated Cairnlea Park. She responded:
- Absolutely [...]. Which is not unusual, but that one got a very big focus - very big focus from Natalie Suleyman [...]. She attended personally every meeting [with the Albion Rovers and the then CEO, Ms Duncan].
380. The then General Manager, Community Services stated the Cairnlea Residents Association wanted 'a broader facility' and did not want the Albion Junior Soccer Club to be allocated the ground. She stated:
- there was also a lot of discussion around whether that was discrimination against that club because it had been such a long period beforehand that they [Albion Rovers Soccer Club] had misbehaved, for want of a better word. But I feel that if she [Cr Suleyman] wasn't there it [Albion Junior Soccer Club] wouldn't have got [Cairnlea Park]- if Natalie [Suleyman] wasn't there that wouldn't have gone ahead.
- ...
- She's very very -very affiliated with that community of course. The Turkish community [...]. The community and the club.
381. Forensic examination of the council laptops and email accounts of Cr Suleyman and Cr David identified they received election campaign support from the Secretary, Albion Rovers Soccer Club in 2005.

382. In an email exchange from 30 September 2005 to 20 October 2005, Cr David requested the Secretary, Albion Rovers Soccer Club arrange for six 'troops to mind the (Booths)' on 26 November 2005: election day. Cr David told the Secretary, Albion Rovers Soccer Club:

It is very important that we get our people back on Council.

383. On 20 October 2005, the Secretary, Albion Rovers Soccer Club emailed Cr David, stating:

Hi Sam

Spoke to Hakki [Suleyman] and we r [sic] organising help for all our candidates and he will be coordinating everything.

Please speak to him and let him know what you need.

Be more than happy to help you.

384. I note the Albion Rovers Soccer Club Secretary's election campaign assistance to Cr Suleyman and Cr David was after the council's decision to relocate Albion Junior Soccer Club to Cairnlea Park (8 March 2005) and prior to the council's decision to allow the Albion Rovers Soccer Club to use the facility (9 May 2006) and to execute a lease with the clubs (28 August 2007).
385. The Secretary, Albion Rovers Soccer Club and Cr Suleyman also exchanged emails in relation to the lease and a complaint from a resident. Cr Suleyman provided the Secretary, Albion Rovers Soccer Club with advice on how to answer the complaint and suggested he question officers about Brimbank's treatment of the club.
386. According to the General Manager, Human Services, Brimbank did not have a written policy to guide the allocation of facilities at the time Cairnlea Park was allocated. Brimbank subsequently developed its *Community Facilities and Reserves Allocation Policy*, which was adopted by council on 16 July 2008, in order to ensure a more transparent process.
387. The current CEO, Mr Foa, was asked how the Albion Rovers Soccer Club would be rated in terms of the *Community Facilities and Reserves Allocation Policy*. He stated:

[The Albion Rovers Soccer Club] have got a very poor financial history according to our Leisure Dept [sic], which would count against them in terms of allocation. Also, they have less of a focus on junior sports development, which would also rate them low, although they have

recently improved their junior numbers. At the time of allocation, (and to a large extent now) they are a 'senior' competition club, and Council's allocations policy encourages junior sport development.

388. In response to my conclusions, Local Government Victoria stated:

Local Government Victoria was asked specific questions in 2005 unaware of the matters put in [my] report which appear to span a significant period. At the time of the inquiries by Local Government Victoria, the club's legal situation was investigated and deemed appropriate on the information provided.

Conflict of interest

389. Cr Suleyman stated that her 'political opponents' alleged she had a conflict of interest in the decision to allocate Cairnlea Park to the then Albion Junior Soccer Club. Cr Suleyman stated she did not declare a conflict of interest. She said:

I don't have to declare a conflict of interest. It is based on my personal view of whether or not it is of best interest to have it declared.

390. While I do not consider Cr Suleyman had a direct or indirect pecuniary interest in the matter, I consider the nature of her interest in the decision to relocate the Albion Junior Soccer Club was such that it may have conflicted with the proper performance of Cr Suleyman's duties as a councillor. However, section 77B, as it stood at the time of the decision, was based on the councillor's 'opinion', not that of a reasonable person.

391. Section 77B of the Local Government Act stated:

For the purposes of section 79, a Councillor or a member of a special committee has a conflict of interest in respect of a contract, proposed contract or other matter if the Councillor or member—

...

(b) is of the opinion that the nature of his or her interest in the contract, proposed contract or other matter is such that it may conflict with the proper performance of his or her public duties in respect of the contract, proposed contract or other matter.

392. As discussed in my report, Conflict of interest in local government, it was unclear if the intention of this provision was for an objective or a subjective test. I recommended that the provision be reviewed to clarify this issue.

393. I am pleased that the subjective test of the councillor's 'opinion' was amended in 2008 and replaced by an objective test of 'reasonable likelihood' for a 'direct interest'. The amendments to the Local Government Act also consider the interests of 'direct relatives' and 'family members' as creating an 'indirect interest by close association' for the councillor.

Demand for changes to the budget

394. In the early stages of my investigation, I was informed that after the administration and councillors finalised the 2008-09 draft budget process at the council's budget workshop, Cr Suleyman demanded that funding for Cairnlea be included in the budget, or she would not support it. The officer stated the budget document had not been written at that stage; however, all the budget spreadsheets had been completed. The officer stated the next step was to write the budget report so it could be presented to the council in the chamber.

395. The officer stated she spoke to Cr Suleyman for approximately 40-45 minutes on 24 April 2008, five days after Brimbank's budget workshop. According to the officer, Cr Suleyman 'demanded' the 2008-09 budget include funding for works at Cairnlea Park. The officer stated:

I said [to Cr Suleyman] you just can't do it. I mean, I've finalised everything – I said off the top of my head at the time - I said it's equivalent to around a half a percent rate increase. I said the only way they [funding for Cairnlea] can go in is that once again you reprioritise I'm not, I just cannot find that money to actually put it in the budget [...]. I cannot find [\$680,000] it just cannot happen.

396. The officer stated from her discussion with Cr Suleyman, 'there didn't appear to be anything that could be removed from the budget particularly from Taylor's ward'. The officer said she received another telephone call from Cr Suleyman a couple of hours later, in which Cr Suleyman advised she had 'a solution after speaking to Councillor Ken Capar'. The officer stated Cr Suleyman suggested the following amendments to the budget could be made in order to fund the Cairnlea Park works:

Delete road rehabilitation work to Gert[r]ude Street St Albans
(\$545,435)

Delete road rehabilitation work to Ardwell Street St Albans
(\$26,167)

Delete road rehabilitation work to Shannon Court St Albans
(\$27,015)

Delete road rehabilitation work to Lee Street, St Albans (\$19,300)

Delete road rehabilitation work to Mark Street St Albans
(\$28,549)

Add on 3 Speed Humps Noble Drive Cairnlea
\$30,000

Add on 2 speed cushion Furlong Road Cairnlea
\$15,000

Add on Gateway project Cairnlea
\$30,000

397. The officer stated:

At this stage I wasn't prepared to agree to anything as I would need to speak to the Engineers for technical advice who later advised me that Gert[r]ude Street St Albans should not be deleted/ deferred due to the condition of the road.

398. The officer stated that on 28 April 2008 she met with the CEO and Cr Suleyman. According to the officer, Cr Suleyman said 'If Cairnlea is not in the budget, I will not be supporting that budget'. The officer discussed Cr Suleyman's threat with the CEO and they both believed Cr Suleyman would be effective in controlling the councillors to dissolve the budget if the Cairnlea development was not included. The officer stated, 'I mean the reality is it is Councillor Natalie Suleyman who is running the council'.

399. According to the CEO, he was concerned that a failure to adopt the budget may have resulted in a failure of governance, in that the council may not have met the requirements of the Local Government Act, which state a budget must be adopted by 31 August 2008. The officer and the CEO were also concerned Cr Suleyman might add Cairnlea Park funding to the budget in the chamber, increasing the council's budget by over \$600,000.

400. The CEO stated:

The threat to change the draft budget in the chamber was considered to be credible. The Council adopted an alternative resolution of a zero rate rise accompanied by the cancellation of a major capital project in Cr Suleyman's mayoral year of 2006/07. Other members of the group of six Councillors referred to that instance when pressing their demands for the inclusion of the Cairnlea Projects.

401. Consequently, the CEO and the officer agreed to include \$620,000 funding for the works in the 2008-09 budget. The officer stated she was 'forced to' by Cr Suleyman's demand. The CEO stated he and the officer 'felt compelled to make the decision [they] did'. Between 29 April 2008 and 6 May 2008, the following projects were 'deferred, changed in scope or reduced' to accommodate Cr Suleyman's demand:

Cairnlea Park – Additional car park

Included \$300,000

Cairnlea Park – Perimeter fencing along residential boundary

Included \$70,000

Cairnlea Park – Sport ground lighting

Included \$250,000

Plant & Equipment

(Reduced by \$150,000)

St Albans Leisure

(Deleted \$92,250)

Shipping Containers Replacement Program

(Deleted \$57,500)

Service lane – Old Calder Highway

(Reduced by \$30,000)

Community Centres works

(Deleted \$12,500)

Purchased Assets eg Furniture, IT equipment etc

(Reduced by \$37,500)

Dinell Street Road Sunshine rehabilitation

(Deleted \$74,263)

Risk/maintenance audit works

(Deleted \$120,000 and deferred for 12 months)

Minor works improvement – reactive

(Reduced by \$46,000)

402. The officer stated she removed capital works projects in order to ensure Brimbank service delivery was not affected. She said it was important the budget was adopted because it is 'probably one of the most strategic documents in the organisation to operate. You need an adopted budget'. The officer stated:

It's one project that we had to let through. When you talk about \$133 million budget, do you risk that? I mean you have got to weigh things up [...]. It was my decision, but I wasn't happy with it.

403. It is apparent from the officer's evidence that one councillor, Cr

Suleyman, exerted significant power over the budget. The officer stated:

Natalie Suleyman does have a lot of power.

404. When asked why she did not deny Cr Suleyman's request, the officer stated:

I think I just didn't want to take the risk of that [the budget] being adopted outside our financial capabilities.

405. The CEO stated:

I can put my hand on my heart and say these are necessary projects [lighting, fencing and car park] because we built it [Cairnlea Park] at a junior level training standard and yet we have allocated it to a senior level team and now we have created residential amenity issues [...]. I have said to her, 'Natalie I accept that the projects you are putting forward are reasonable projects. My view is they are probably jumping the gun' – her threat to me was if this doesn't get in, if this doesn't get up then the rest of the budget will fall.

406. Cr Suleyman denied demanding funding for Cairnlea be included in the budget. She stated funding for Cairnlea was 'put in [the budget] on the day where [council] had the workshop' (19 April 2008). Cr Suleyman stated:

at the workshop and during the deliberations to the final end product of the budget, did I and a number of councillors put forward projects, including the Cairnlea? Yes I did.

407. Cr Suleyman denied collating a list of projects that could be deleted from the budget to fund the project and denied having the power to dissolve the budget:

I have a relationship and a dialogue with councillors but I do not have the power to throw out a budget.

408. Examination of the 'Proposed budget changes from Mayor and Deputy Mayor', presented at the budget workshop on 19 April 2008, demonstrates funding for Cairnlea was not added to the budget at this workshop.

409. According to Cr Socratous, funding for Cairnlea was not on the officers' report detailing 'high priorities, medium priorities, low priorities'. He stated:
- there was no discussion at all, there wasn't - in the briefing meeting I don't believe it was discussed.
410. The then Mayor, Cr David, stated:
- Nat[alie Suleyman] wanted to finish the project regardless of what.
411. Cr David further stated that Cr Suleyman told him 'she approached the CEO' about including the works in the 2008-09 budget.
412. The Cairnlea pavilion is within the Grasslands Ward; however, Cr Suleyman is elected in the Taylors Ward. The officer stated:
- usually their behaviour is – the Councillor's worry about their own wards but in this case Natalie Suleyman's got an interest in this particular club.
413. In response to my conclusions in relation to Cairnlea Park, Cr Suleyman stated:
- I supported the Cairnlea Works because of the importance to the local community. I did not act improperly. As mentioned earlier I have supported the funding of many sporting clubs and projects within Brimbank.
414. In response to my conclusions, the CEO stated:
- The process of the formulation of the 2008/09 budget involved a degree of involvement by Councillors beyond parameters which I was both comfortable with, or had experienced before.
- There is, however, a legitimate role for Councillors in having input into the budget process.
- ...
- The MAV [Municipal Association Victoria] guide for prospective Councillors [... states] that "Councillors are responsible for determining the Council's annual budget, which includes those activities and projects which are to be funded throughout the year".
- The ultimate responsibility and accountability for the budget rests with the Council.
- The Draft budget preparation for Brimbank's 2008/09 budget has highlighted a key question about the extent to which budget

“preparation” is able to occur outside the Council chamber. I would contend that it is standard practice across local government for much of the “preparation” of the budget to be done well in advance of its introduction to the chamber.

Development of a draft budget occurs outside the Council Chamber and is based upon discourse between officers and the Council. Officers should still only recommend a budget that was consistent with the Council Plan and local government Act principles.

...

It is consistent with the role of the Chief Executive Officer to be cognisant of the balance between reaching a sustainable budget based on good asset management principles and the input of Councillors. The decision to include the three additional projects for Cairnlea Park guaranteed safe passage of the budget and averted a failure of governance [...]. [The budget was] carried unanimously.

Conclusions

415. I reject Cr Suleyman’s evidence that funding for Cairnlea Park was added to the budget at the workshop on 19 April 2008 as the evidence is that Cairnlea was not included in the ‘Proposed budget changes from Mayor and Deputy Mayor’. Further, Cr David provided evidence that Cr Suleyman approached the CEO about including the works in the 2008-09 budget; and Cr Socratous gave evidence that funding for Cairnlea Park was included in the budget without any discussion with councillors.
416. On the balance of probabilities, I consider that the evidence of the CEO; the General Manager, Corporate Services; Cr Socratous; and Cr David is more reliable than that of Cr Suleyman on this issue, particularly given that Cr Suleyman misled my office in relation to a number of other matters. Further, I consider that I can rely on the evidence of the CEO and the General Manager, Corporate Services as their evidence not only highlighted concerns about Cr Suleyman’s conduct, but also the administration’s response to her demand.
417. In my view, Brimbank residents were deprived of community infrastructure projects in order to accommodate pressure from Cr Suleyman, who wanted to fund her own project.
418. While the works at Cairnlea Park may have been necessary, given that the facility is now utilised by a senior soccer team, they were not considered a priority when the officers determined high, medium and low priority projects during budget preparations. Further, the funding was added to the budget without any consultation with the whole council. The only reason the project was funded in the 2008-09

budget was that Cr Suleyman made use of her position to demand that Cairnlea Park funding be included, or the budget would fail.

419. I consider Cr Suleyman acted with inappropriate partiality, and made improper use of her position to gain an advantage for her and her associates.
420. Cr Suleyman also breached the public's trust in that she failed to perform her duties in the best interests of the community, as per the *Councillor Code of Governance*. Instead, she used her position as a councillor to fund a facility allocated to a club that has been linked to her family in some form since 1990; the Secretary of which has provided election campaign support to Cr Suleyman in the past.
421. It is apparent that acceding to Cr Suleyman's demand negated the risk of the council failing to adopt a budget (resulting in a failure of governance), or Cr Suleyman adding \$680,000 worth of funding to the budget on adoption night. However, I am concerned about a situation where the behaviour of one councillor can result in a basic distortion of how the budget is to be developed. The CEO commented that Cr Suleyman's 'demand' was also supported by the other five 'ruling' councillors. In my view, the Brimbank officers should have referred the matter to the full council and not allowed the budget to be interfered with by one councillor.
422. The CEO requested that I reconsider my adverse finding against the officers for failing to refer the proposed inclusion of Cairnlea funding to the full council. In addition to the reasons for his decision provided at interview, the CEO stated:

Both the CEO and General Manager Corporate Services felt compelled to include the three Cairnlea projects for the following reasons:

Cr Suleyman's threats that the budget would not be passed was a genuine financial risk, as there were repeated demands by other Councillors from the group of six that the Cairnlea projects had to be included

...

Both the CEO and General Manager Corporate Services were told in no uncertain terms by a number of Councillors that the budget would be changed in the chamber if the Cairnlea projects were not included.

...

The removal of projects by officers and the inclusion of the Cairnlea projects mitigated financial risk and a potential failure of governance.

423. Despite the risks of not complying with Cr Suleyman's 'demand', I remain of the view that the CEO should have brought the matter to the attention of the full council. The decision of the CEO and the General Manager, Corporate Services to accommodate Cr Suleyman's demand meant that Cr Suleyman was able to secure \$620,000 funding for a club linked to her family and supporters – without scrutiny from the full council or the public as to the appropriateness of her demand.
424. In my view, it would have been appropriate for the CEO and his officers to present two draft budgets to the council chamber: the draft budget prepared by the officers after the councillor workshop, and the alternative budget prepared after Cr Suleyman's demand. The council would then need to decide, in public, which budget it supports. As pointed out by the CEO, 'ultimate responsibility and accountability for the budget rests with the Council'.

Recommendations

I recommend that:

- 6) Brimbank review its Community Facilities and Reserves Allocation Policy to ensure that all new facilities, and sites where groups have vacated, are allocated through a public allocation/ expression of interest process, at a minimum.

Brimbank response:

The CEO supports the recommendation. The CEO advised that in late 2008, he commissioned 'a review of the community facility management arrangements across the municipality'. The CEO anticipated that a draft report of the review will be presented to the council for consideration in May 2009. He stated that Brimbank's Community Facilities and Reserves Allocation Policy will be updated upon completion of the review.

I recommend that:

- 7) Brimbank review Cairnlea Soccer Club's compliance with the conditions of its lease with Brimbank, in light of my investigation.

Brimbank response:

The CEO supports the recommendation and agrees to review the matter.

INAPPROPRIATE RELEASE OF INFORMATION

425. Instances were brought to my attention that councillors shared confidential information, obtained by virtue of being a councillor, with individuals who hold no elected local government office.
426. My investigation also found councillors inappropriately released information to the media. The instances identified by my office suggest the information was leaked for a councillor's personal benefit or to tarnish the reputation of Brimbank or other fellow councillors.
427. Ms Marilyn Duncan, the CEO at the time of Cr Capar's alleged leak to the media, informed my investigators that upon publication of the relevant article she told the Mayor, Cr Suleyman, to control her councillors. Ms Duncan stated leaks to the media were a common occurrence and an example of councillors, like Cr Capar, being 'out of control'.
428. The following case illustrates that Cr Eriksson failed to comply with the confidentiality provisions of the Local Government Act. In addition, it appears that both Cr Eriksson and Cr Capar have breached the *Councillor Code of Governance*.¹³

***In camera* resolution - Cr Eriksson**

429. On 17 and 18 July 2008, Cr Eriksson sent a press statement to various media outlets detailing a council resolution made in camera on 16 July 2008.¹⁴ At the meeting, the council resolved to adopt the *Community Facilities and Reserves Allocation Policy* and called for expressions of interest for Keilor Lodge Reserve.
430. The CEO stated he advised the Mayor it was normal practice to resume the open meeting of council and, as there was no further business to transact, the Mayor should formally declare the meeting closed. However, the Mayor did not return to the chamber to re-open the meeting to the public and therefore he did not officially close the Special Council Meeting. According to Cr Eriksson, this was because the chamber was 'in chaos'.
431. In accordance with section 77(2) of the Local Government Act, the resolution remained confidential until a motion was passed by council to make the resolution public.

13 See Attachment 7.

14 This meeting is discussed in the chapter entitled, 'Decision-making contrary to community interest'.

432. On 17 July 2008 at 11.44am, the CEO emailed the 11 councillors, 'In Strictest Confidence', advising them of the resolution's confidential status. He stated:
- it remains a confidential resolution and to provide it to others that are not Councillors is a breach of section 77 2 of the Act.
- ...
- In order to make the resolution public and to allow a public advertisement to give effect to the resolution, I have been advised to list the adoption of the minutes of the special Council meeting and an appropriate resolution that those minutes become public at the Ordinary Council meeting on Tuesday 22 July.
433. Despite the CEO's advice, Cr Eriksson sent a press statement to a journalist at *The Sunshine Advocate* (Fairfax Media) at 2.17pm, less than three hours after the CEO's email advising the resolution was confidential. It is clear Cr Eriksson received the CEO's email prior to releasing her media statement as his email was sent to Cr Eriksson's councillor email account; the same account from which Cr Eriksson sent her press statement.
434. Cr Eriksson also released the press statement via her councillor email address to News Limited and Star News Group on 17 July 2008, and *The Age* on 18 July 2008.
435. Cr Eriksson has since stated she sent the press statement to the *Leader* and 'possibly also to the Star newspapers' prior to receiving the CEO's email and therefore her 'initial release was not in direct contradiction to any directive from the CEO'. However, this is not supported by email evidence obtained by my office, which indicated that her press statement was first released at 2.17pm to a journalist at *The Sunshine Advocate* (Fairfax Media). I note that Cr Eriksson did not provide evidence at interview that she released the press statement prior to receiving the CEO's email.
436. When interviewed, Cr Eriksson stated she spoke to a journalist at *The Sunshine Advocate* (Fairfax Media) about the resolution prior to the CEO's email and prior to emailing her press statement to the journalist. She was unsure whether this was on the evening of 16 July 2008 or the following morning. At interview, Cr Eriksson stated:
- There was an issue about whether it was confidential or not. It wasn't clear the night before [16 July 2008].

437. Cr Eriksson has since stated she spoke to the journalist at 10.26am on 17 July 2008. Cr Eriksson stated the journalist called her again later on 17 July 2008, asking her 'opinion of the nature of the CEO's confidential email', which had been leaked to the journalist. Cr Eriksson stated she read the email after the journalist's call and 'thus by the time [she] read the CEO's directive, [she] had sent the email to four newspapers'. However, I note that the journalist emailed Cr Eriksson on 18 July 2008 at 12.01pm in response to Cr Eriksson's press statement. In the email, the journalist said she had 'a lot of questions' about the statement, including: whether Cr Eriksson was 'breaching the local government act [*sic*] by disclosing the outcome of an *in camera* [*sic*] meeting'; who Cr Eriksson was referring to when she used the term 'we'; and what evidence she was referring to. It does not appear from the journalist's email that she had spoken to Cr Eriksson the previous day, as suggested by Cr Eriksson.
438. When Cr Eriksson was asked at interview what she understood *in camera* to mean, she responded: 'confidential but I believed the contents we discussed in the meeting were confidential but the resolution should have gone back to the chamber'. According to Cr Eriksson, she considered the resolution itself was not confidential as it was 'more or less similar to what was said on [24 June 2008]'.
439. If there was any doubt after the *in camera* meeting, the CEO's email made it clear the resolution was confidential.
440. The emails referred to above appear to provide *prima facie* evidence of breaches of section 77(2) of the Local Government Act by Cr Eriksson. Section 77(1) states:
- A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- Penalty: 100 penalty units.
441. In my view, councillors should be aware of the confidentiality provisions of the Local Government Act. Whether they are or not, this does not reduce their liability, as ignorance of the law is no excuse.
442. Cr Eriksson has argued that the confidential resolution itself was not 'reproduced in [her] Press Statement' and that when she released the statement, 'it had already become public knowledge' that the council had decided to call for expressions of interest.

443. I consider the press statement was politically motivated and released in order to justify the decision by the 'ruling faction' to call for expressions of interest for Keilor Lodge Reserve.
444. It is evident the media release was also the subject of undue influence from an individual who did not hold an elected office, namely Dr A. Theophanous. Email evidence obtained by my office established he wrote the press statement released by Cr Eriksson.
445. I consider that Cr Eriksson may have breached the confidentiality provisions of the Local Government Act by releasing the media statement. She also appears to have breached section 5.3 of the *Councillor Code of Governance*, which states:
- The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature.
- ...
- The Mayor may delegate authority to a Councillor to make official comment on behalf of the Council, where appropriate.
- ...
- As individual councillors, we are entitled to express our own independent views through the media, however we will make it clear that any unofficial comment is our own personal view, and does not represent the position of the Council as whole.
446. At interview, Cr Eriksson acknowledged the Mayor did not delegate to her the authority to release a media statement on behalf of the council. However, she said that she did 'tell him subsequently' that she had issued the statement.
447. Cr Eriksson denied she issued the press statement on behalf of the council, stating it was released 'on behalf of myself'. However, when my officers reminded Cr Eriksson of the wording of the statement — for example, 'we have prima facie evidence' — she stated:
- Well, at the time I believed I had the support of the other councillors but I understand that's not the case now.
448. Cr Eriksson has since provided inconsistent evidence, stating she used the term 'we' to refer to the 'majority group'. She states that therefore, it is 'unfair to claim' she breached the *Councillor Code of Governance*.

449. Despite this, I remain of the view that Cr Eriksson appears to have breached the *Councillor Code of Governance* as she failed to 'make it clear that any unofficial comment [was her] own personal view'. I note that it is the responsibility of the councillor to make this clear.
450. In response to a complaint regarding Cr Eriksson's statement, the CEO stated:
- the press release from Councillor Eriksson is not attributable to or speaking on behalf of the organisation. I can confirm that the organisation (Brimbank City Council) is not involved in an investigation as referred to in Councillor Eriksson's media statement.
451. The Councillor Conduct Panel (CCP), created by amendments to the Local Government Act in 2008, will provide a means of addressing breaches of councillor codes of conduct. Section 81J of the Local Government Act (amended in November 2008) states a council, a group of councillors or a councillor may make an application for a CCP to make a finding of misconduct for breaching a councillor code of conduct. If the CCP makes a finding of misconduct against a councillor, the councillor may be reprimanded, directed to make an apology or directed to take a leave of absence. More severe penalties apply for findings of serious or gross misconduct.
452. In response to my concerns, Cr Eriksson denied leaking confidential information for 'personal gain or to tarnish the reputation of Brimbank or other fellow councillors'. She stated her motivation in relation to the confidential resolution was 'a genuine and heartfelt desire to expose this phenomenon and its continuing impact on Brimbank council matters'. By this, I take it Cr Eriksson is referring to Mr Seitz and allegations of 'branch-stacking'.

Leak to *Brimbank Leader* – Cr Capar

453. On 7 August 2006, councillors were provided with a detailed list of Brimbank's credit card expenditure, entitled, 'Accounts for Payment and the Purchasing Card Transactions for July 2006'. The document was provided to councillors in preparation for the next Ordinary Council Meeting. While the document was not designated confidential by the CEO, it was not available publicly.
454. On 22 August 2006, Cr Giudice moved a motion to 'approve for payment the month of July 2006 [\$90,844.26] as per circulated Listings'. The motion was seconded by Cr Zukalksi and carried. The minutes note that 'Cr Capar wished to be noted as voting against the motion'.

455. On 5 September 2006, the *Brimbank Leader* published an article entitled, 'Almost \$91,000 swiped on the city plastic in a month. Sure is... Hard to credit'. The article was critical of Brimbank staff's credit card use and provided specific details of Brimbank purchases for July 2006, listed in the confidential document provided to councillors.
456. The article stated 'a document obtained by the Leader shows aerobics, movie tickets, fast food and flowers are among the council's credit card expenses for July'. It was noted in the article that Cr Capar was on the council's audit committee and had voted against approving payment of the expenditure, stating 'more information on the expenditure was needed'. Several quotes attributed to Cr Capar were critical of Brimbank staff. Cr Capar was quoted as saying, 'Let's find where the waste is'.
457. The following week, the *Brimbank Leader* published a letter from Cr Capar stating:
- The article in last week's *Brimbank Leader* (Page 1) on the use of council credit cards presented an unfair and misleading picture.
- ...
- But I want to strongly emphasise that I did not provide the confidential financial details reported in the article.
458. Cr Capar also apologised for his remarks being 'used to cast a slur on council officers' and for 'any distress it may have caused'. He stated that 'the KFC mentioned in the article was in fact purchased by a staff member for councillors who were attending a formal council meeting' and that 'the ANZ Wine Club subscription, was actually charged by mistake and immediately reversed'.
459. I consider it is likely that Cr Capar leaked the information relating to credit card use to the *Brimbank Leader*. My view is supported by the fact that Cr Capar was the only councillor quoted in the article as being critical of Brimbank staff's credit card use and by the fact that Cr Capar was the only councillor at the Ordinary Council Meeting of 22 August 2006 who 'wished to be noted as voting against the motion' to approve payment of the Brimbank credit card expenditure for July 2006.

Conclusions

460. The release of confidential information contravenes Brimbank's *Councillor Code of Governance*, which prohibits councillors from releasing confidential information to a third party and requires that councillors 'respect the confidentiality of the information [they] receive in the course of performing [their] duties and responsibilities'.

461. The *Councillor Code of Governance* also requires that councillors ‘will observe the highest standards of honesty and integrity’. Councillors involved in leaking information to the media have, in my view, failed to act with the integrity expected of elected representatives.
462. Section 77 of the Local Government Act also makes it an offence for a councillor, or member of a special committee, to ‘release information that the person knows, or should reasonably know, is confidential information’. The penalty for such an offence is 100 penalty units. It is apparent that Cr Eriksson may have breached this section of the Local Government Act.
463. The inappropriate release of information can create mistrust between councillors and the administration. It may impact on an individuals’ willingness to contribute to confidential discussions and is indicative of a serious failure of governance.
464. Consequently, I consider that Local Government Victoria should investigate possible breaches of the confidentiality provisions of the Local Government Act by Cr Eriksson, with a view to determining whether action should be taken against her.
465. The CEO must also make councillors aware of the confidentiality provisions of the Local Government Act and section 5 of the *Councillor Code of Governance* to ensure similar instances do not occur with the new elected council.

Recommendations

I recommend that:

- 8) Local Government Victoria investigate a possible breach of section 77(1) of the Local Government Act by Cr Eriksson, with a view to determining whether action should be taken against her.

I recommend that:

- 9) The CEO brings to the attention of councillors the confidentiality provisions of the Local Government Act and section 5 of the *Councillor Code of Governance*.

Brimbank response:

The CEO supports the recommendation. He stated it ‘has been enacted with the preparation of the Councillor Information Manual 2008/09 and specific training provided [to councillors] by Maddocks Lawyers on 11 December 2008 around confidentiality provisions of the [Local Government] Act.

BREACH OF THE VICTORIAN ELECTORAL ACT

Victorian Electoral Commission records

466. During my investigation, I was concerned to find the names and details of tens of thousands of Victorian citizens on the council laptop provided to Cr Capar.
467. The information was found within Excel Spreadsheets entitled, 'ALP [Australian Labor Party] members not yet renewed', 'Brimbank City', 'Derrimut SECC', 'Maribyrnong FEA [Federal Electorate Assembly]', 'POSC [Public Office Selection Committee] Committee', 'Grassland Individuals', 'Grassland Families', 'Harvester Individuals' and 'Harvester Families'.
468. The information on each list varied; however, it included full names of all voting individuals residing in a property, addresses, dates of birth, gender, identification numbers, telephone numbers and email addresses. The ALP list also noted the date the individual joined the ALP and whether their membership fees were up-to-date.
469. My office made enquiries with the Victorian Electoral Commission (VEC) to determine whether the information was from VEC records. My officers provided the VEC with a selection of the identification numbers on the 'Grassland Individuals', 'Grassland Families', 'Harvester Individuals' and 'Harvester Families' lists. The VEC confirmed the information on these lists was from VEC records.
470. The Electoral Act requires that the VEC provide 'a list specifying electors and their particulars' to Members of Parliament (MPs) and registered political parties free of charge. According to the VEC, it fulfils this role by providing each MP with a new roll for the electorate they represent at the beginning of each month, except for January (due to the holiday period). A cover letter is sent with the roll, which states, *inter alia*:
- You are reminded of the confidential nature of the data, which is provided for permitted purposes only, and the need for secure use and storage of this information.
471. Section 36 of the Electoral Act states that MPs and political parties must not use the enrolment information provided by the VEC except for permitted purposes.

472. Section 36(3) of the Electoral Act defines permitted purpose:
- (2) The permitted purposes in relation to a registered political party or a candidate are—
 - a. any purpose in connection with an election; and
 - b. monitoring the accuracy of information contained on an electoral roll or on the register of electors.
 - (3) The permitted purposes in relation to a member of the Assembly or the Council are—
 - a. any purpose in connection with an election; and
 - b. monitoring the accuracy of information contained on an electoral roll or on the register of electors; and
 - c. exercising the functions of a member in relation to the member's constituents.
473. The Electoral Act definition of 'election' is limited to State Parliament elections. Therefore, use of the electoral information for council elections is not permitted. The penalty for an offence against section 36 is 600 penalty units in the case of a natural person and 3,000 penalty units in the case of a body corporate or registered political party.
474. At interview, Cr Capar was asked how he used the lists. He said:
- Sometimes you do leafleting, sometimes you do letters, sometimes you just - yeah, yeah - for community group contacts.
475. Cr Capar stated that he was unaware he was not permitted to use the information for local government election campaigning.
476. I note in accordance with section 24(C) of the Local Government Act, any candidate for a council election may request that the CEO provide the candidate, free of charge, with 'a copy of the voters' roll for the ward or municipal district for which the candidate has nominated'. Section 24(C)(3) states the candidate must only use the voters' roll for the purpose of conducting the election campaign and they must destroy the copy and any copies made of it, or return the copy and any copies made of it, to the CEO within 30 days after the day of the election. The voters' roll provided includes the full name of the elector, the address at which they are enrolled and their postal address. Candidates are not provided with dates of birth, or the details of silent electors.

477. Cr Capar acknowledged he received the voters' roll when he nominated for council in 2005. He also requested and received additional electoral information in April 2006, August 2006 and September 2008 from the ALP. He requested names, dates of birth, gender, ethnicity, postal and email addresses, and telephone numbers.
478. Section 37 of the Electoral Act states a person must not disclose enrolment information that has been provided under section 33 or 34, unless the disclosure would be a use of the information for a permitted purpose.
479. My office interviewed the ALP's IT Data Manager from whom Cr Capar obtained most of the lists, Mr Sel Sanli. Mr Sanli is also the Deputy Mayor of the City of Maribyrnong. Mr Sanli stated he had been providing electoral information to councillors since he started at the ALP five years ago, as this is what his predecessor had done. Mr Sanli stated he discussed the issue with a former ALP colleague. According to Mr Sanli, the colleague 'found the Act that says you can use the electoral role [sic] for election purposes'. Mr Sanli did not know which Act his colleague had referred to and stated he 'didn't go read the Act' himself. Mr Sanli stated:
- my understanding was that I could send the information to ALP members or council - the representatives.
480. He stated he had used the information for his campaign in November 2007,¹⁵ during which he was assisted by Cr Capar, Cr Suleyman and Mr Suleyman. Mr Sanli stated he had previously given the electoral information to other councillors who were ALP members. He was unable to name the councillors to whom he had provided the information. However, he 'assumed' he had provided the information to Cr Suleyman and another candidate, as Mr Sanli helped the candidate with his campaign.
481. According to Mr Sanli, he only became aware that he was not permitted to provide the information to councillors two days prior to being interviewed by my office. He provided my office with a copy of an email he received from Mr Stephen Newnham, State Secretary and Campaign Director, ALP, Victoria Branch on 27 October 2008. Attached to the email was legal advice from Holding Redlich Lawyers, dated 4 September 2008. The advice was provided in response to a request for:
- advice as to whether the ALP can provide copies of the electoral rolls which it receives from the Australian Electoral Commission (AEC) and the Victorian Electoral Commission (VEC) for use in connection with a local council election.

¹⁵ A by-election was held in November 2007 owing to the resignation of former councillor Joseph Cutri. Cr Sel Sanli was elected and was re-elected in the November 2008 elections.

You have instructed us that the ALP receives a Commonwealth electoral roll from the AEC and a Victorian electoral roll from the VEC which the ALP then has combined into a single roll.

482. The legal advice stated:

In our view, on the basis of the above, the ALP is prohibited from using the Victorian electoral roll it receives from the VEC in connection with a local council election but it may use the Commonwealth electoral roll it received from the AEC in connection with a local council election. On the basis of the prohibitions under the Victorian Electoral Act, however, we do not consider that the ALP can use the roll which it has combined for use in connection with a local council election.

483. My officers asked Mr Sanli if he informed his manager, Mr Stephen Newnham, that he had been providing the information to councillors for five years. He stated that he did not. Mr Sanli stated:

He knows I send that out for campaign purposes but I don't know - I don't know if he knows whether I send it out to councillors or not.

484. In response to my conclusions, Mr Sanli stated:

I would like to stress the point that I only gave Cr Capar Electoral information relating to the Brimbank council area.

...

Since I began working in this position, it was accepted practice to assist ALP members with their elections. [A former ALP colleague] who was working with me checked the Act through a website (AEC or VEC). I also read the section with him that states that 'there is permitted use in connection with an election' prior to the 2005 Local Government Elections. We had come to an understanding that the word 'election' refers to any elections whether it is Federal, State or Local Government.

Leading up to the 2008 Local Government elections, the ALP had taken legal advice as to whether it was permitted use of the Electoral information for Local Government elections. The advice that came back from the lawyers was that their understanding of the word 'election' would be referring to state elections only.

...

although I believe I was within the law, I have stopped sending out information in relation to Local Government elections after receiving the advice from the lawyers.

485. I note that in his response, Mr Sanli stated he read the relevant section of 'the Act' in 2005 and came to an understanding that 'the word "election" refers to any elections'. This is inconsistent with Mr Sanli's earlier statement at interview that he 'didn't go read the Act' himself, but relied on oral advice from his former ALP colleague.
486. In response to my conclusions in relation to the ALP, Mr Newnham stated that he sought legal advice after 'a number of requests from ALP members for access to the electoral roll'. He stated a copy of the legal advice was circulated to State and Federal ALP MPs on 24 September 2008 and to the State ALP Municipal Co-ordinating Committee on 26 September 2008. Mr Newnham stated:
- when contacted by MPs about the legal advice I consistently advised caution & made it clear that our office would NOT be providing a copy of the roll to local council candidates in the 2008 elections.
487. I note Mr Newnham did not provide the legal advice to Mr Sanli until 27 October 2008. I also note that Mr Newnham made no comment about what the ALP's practice was in relation to providing access to the electoral roll prior to receiving the legal advice.
488. Mr Newnham also stated:
- It should be noted that Mr Sel Sanli is not an employee of the Australian Labor Party. He in fact works for the Parliament of Victoria in servicing the database requirements of state ALP MPs & is funded by them.

Conclusions

489. I consider that there appear to have been serious breaches of the Electoral Act by the ALP and, possibly, by Mr Sanli in relation to electoral material that was obtained from the VEC pursuant to section 33 of the Electoral Act and which was used and disclosed for purposes other than those permitted. The use and distribution of the material appears to amount to offences under sections 36 and/or 37 of the Electoral Act.
490. I am concerned that the ALP's IT Data Manager disclosed the information to Cr Capar and that the ALP's IT Data Manager appeared to be unaware of the legitimate uses of the information. The ALP is reminded each month by the VEC when it receives the electoral roll of the confidential nature of electoral information.

491. The VEC should consider how other registered political parties and MPs are using the VEC electoral information, as the concerns identified in my investigation may be indicative of wider issues.
492. The ALP also appears to have breached its own *Privacy Policy* by releasing the 'POSC Committee', 'Brimbank City' and 'ALP members not yet renewed' lists to Cr Capar. These lists detail full names, addresses, dates of birth, gender, membership numbers, telephone numbers and email addresses. In addition, the lists note the date the individual joined the ALP and whether their membership fees are up-to-date.
493. The ALP's *Privacy Policy* states:

Personal information provided by you will not be disclosed to any third party except where it is legally required, such as in the investigation of a criminal offence, and in compliance with a search warrant or subpoena.

Recommendations

I recommend that:

- 10) The Victorian Electoral Commission investigate possible breaches of the Electoral Act by the Australian Labor Party.
- 11) The Victorian Electoral Commission consider how other registered political parties and MPs are using the VEC electoral information.
- 12) The Victorian Electoral Commission amend its correspondence to Members of Parliament and registered political parties to ensure they are regularly made aware of the permitted uses for electoral information under the Electoral Act, including the definition of 'election', which excludes local council elections.

INAPPROPRIATE CONDUCT OF INDIVIDUAL COUNCILLORS

494. In addition to the concerns highlighted earlier in my report, my investigation also identified that some individual councillors engaged in improper conduct, or at the very least, poor behaviour not befitting an elected representative. This included failing to identify conflicts of interest.
495. I was particularly concerned with the conduct of Cr Suleyman, Cr Capar and Cr Abate. My investigation found that these councillors acted in self-interest and failed to meet community expectations.
496. It is also of concern that while Mr Suleyman and the Australian Turkish Cypriot Cultural and Welfare Association (ATCCWA) were using 76-78 Biggs Street rent-free; Cr Suleyman gained access to Brimbank files relating to the property; attended regular ALP meetings at the property; and caused \$11,000 worth of works to be completed by Brimbank at the property.
497. In addition, it is of concern that the then CEO of Brimbank took no action to ensure that Mr Suleyman and the ATCCWA entered into a lease agreement with Brimbank until Mr Suleyman's use of the property rent-free was exposed to the public. After four years, Brimbank also amended the ATCCWA's planning permit for the property instead of taking enforcement action against the ATCCWA for failing to meet the permit conditions.
498. In addition, Cr Suleyman failed to appropriately dispose of confidential council documents, instead leaving them in her recycling bin and that of her neighbour.
499. Cr Suleyman also failed to treat officers fairly and honestly, in accordance with the *Councillor Code of Governance*. I received evidence that she was 'abusive' and 'aggressive' towards Brimbank officers. My investigation also identified that she was motivated by self-interest. This was demonstrated by her insistence that Brimbank spend \$572 on gold membership cards with her signature for the opening of the Sydenham library.
500. My investigation also identified that Cr Capar misused his position for personal gain on several occasions. Cr Capar used confidential information obtained through Brimbank in an attempt to start a private business distributing automated toilets. He also misused his position and information obtained through Brimbank to seek an advantage for his father in relation to his father's kebab van.

501. In addition, I established that Cr Capar drove unlicensed for 32 months of his three year council term, despite purporting to be concerned about 'hoon' drivers in a local newspaper article.
502. My investigation also identified concerns about the conduct of Cr Abate. I received evidence that he bullied a Brimbank officer and failed to treat staff with respect.
503. I also established that Cr Abate failed to declare that he had been appointed as Executive Officer of the Migrant Resource Centre when he voted in favour of the 2008-09 budget, which included funding for the MRC. Cr Abate had been appointed as Executive Officer of the MRC eight days prior to adopting the budget.

Cr Suleyman

504. Cr Suleyman was first elected as a councillor in 1999. She was re-elected in both 2003 and 2005 and was mayor on three occasions. Cr Suleyman did not nominate for re-election in 2008.
505. During her first interview, Cr Suleyman was an unsatisfactory witness. This is illustrated by her responses to interview questions about the written direction issued to the CEO by the 'ruling faction', which directed the CEO to withdraw funding from Keilor Lodge Reserve development works. Had the CEO complied with the direction, the council would have been in breach of contract and at significant financial risk.
506. Cr Suleyman claimed Cr Eriksson wrote the direction; however, this is refuted by the evidence of Cr Eriksson, Cr Capar and Dr A. Theophanous. They state that Mr Suleyman and Cr Capar presented the direction to Cr Eriksson for signature at her home on Sunday 15 June 2008.
507. Cr Suleyman also attempted to distance herself from preparation of the direction, claiming she was not in the country when it was delivered to Cr Eriksson. However, evidence demonstrates she did not leave the country until the evening of 15 June 2008, after the direction was delivered to Cr Eriksson by Cr Capar and Mr Suleyman.
508. In addition, Cr Suleyman claimed that Cr Eriksson requested advice from MAV prior to the council awarding the contract for Keilor Lodge Reserve and the 'ruling faction' issuing the direction to the CEO. However, this is also not correct as Cr Eriksson requested advice from MAV on 21 July 2008 – over one month after council awarded the contract and the 'ruling faction' issued the direction.
509. Cr Suleyman denied threatening the General Manager, Corporate Services that she would not support the 2008-09 budget if funding for Cairnlea Park was not included. Cr Suleyman stated funding for Cairnlea was added to the budget on the day of the budget workshop, 19 April 2008. However, the evidence demonstrates that this is incorrect.
510. At interview, Cr Suleyman also claimed to have paid for all personal use of her council-supplied mobile telephone. However, an audit of her usage demonstrates that she did not pay for a large percentage of personal use and that she only paid \$216 towards her 2001-02, 2002-03, 2003-04 and 2004-05 mobile telephone bills, which totalled \$12,489.

511. In addition, Cr Suleyman stated at interview that she had a 'dialogue' with Dr A. Theophanous, but she did not talk to him 'directly about council business, no, just - just gossip about council'. The evidence obtained by my office through interviews and forensic examination of councillor laptops and Blackberries, does not bear out Cr Suleyman's statement.
512. Cr Suleyman cancelled her second interview on two occasions. When she did attend, she said she was affected by medication. At this interview, Cr Suleyman's solicitor presented a list of her medications. The interview was discontinued as Cr Suleyman said she was unwell and could not recall incidents about which my officers wished to interview her.
513. My investigation identified Cr Suleyman as being the leader of the 'ruling faction'. During her time at Brimbank, it is apparent Cr Suleyman controlled both the Mayor, Cr David, and those in her faction: Cr Abate, Cr Capar, Cr Eriksson and Cr Zukalksi. While one would expect the mayor to lead the council, Cr David was described as a 'follower' by councillors and Brimbank officers.
514. Cr Suleyman's power over the 'ruling faction' was apparent in the direction the six councillors issued to the CEO in relation to withdrawing funds from Keilor Lodge Reserve. Cr David, Cr Eriksson and Cr Zukalski acknowledged, under oath, that the direction resulted from the failure of Mr Seitz to support Cr Suleyman in the pre-selection. Cr David gave evidence that he 'urged' the 'ruling faction' not to issue the direction; Cr Zukalksi stated she knew it was 'wrong' and that she felt 'used' and 'manipulated' by Cr Suleyman and Cr Capar; and Cr Eriksson stated she 'had to sign [the direction] to show support'. In signing the direction, the councillors enabled Cr Suleyman to seek revenge against Mr Seitz.
515. One witness described Cr Zukalski as Cr Suleyman's 'acolyte'. It was evident during my investigation that Cr Suleyman used Cr Zukalksi to further her own agenda and to avoid scrutiny.
516. This is demonstrated by a letter of complaint to my office, which was signed by Cr Zukalski and received on 9 September 2008 (after my investigation commenced). At interview, Cr Zukalski admitted the complaint was written by Cr Abate and Cr Suleyman. Cr Zukalski said Cr Suleyman and Cr Abate suggested she sign the complaint as one of the issues raised in the complaint related to the council's decision not to bail out the Sydenham Community Centre, where Cr Zukalski had worked. In my view, Cr Suleyman and Cr Abate manipulated Cr Zukalski into signing the letter. At interview, Cr Abate attempted to mislead my office

about his role in the complaint. He initially stated that he typed the letter, but that Cr Zukalksi told him what to include. He later admitted that he and Cr Suleyman wrote the complaint; that it was written over two nights; and that Cr Zukalski was only present on the second night.

517. The decision of Cr Suleyman and Cr Abate not to sign the letter suggests subterfuge. I consider the complaint was designed to deflect attention from issues surrounding the 'ruling faction'.
518. Cr Abate has since stated, 'I deny pressuring Cr Zukalksi to sign [the] letter'. He stated Cr Zukalkski 'signed that letter and personally sent it by mail. The letter was a blend of Cr Zukalski's, Cr Suleyman's and my own views'. In addition, Cr Abate stated it was 'incorrect to state that [his] decision to not sign the letter was "dishonest"' as there was no 'legal, business or other protocol' that required all parties to sign the letter.
519. Cr Zukalski also moved motions in the chamber upon Cr Suleyman's request. Particularly relevant is the motion Cr Zukalski put forward to call for expressions of interest for Keilor Lodge Reserve. This motion was written by Cr Suleyman and Dr A. Theophanous.
520. At interview, Cr Zukalski stated she wanted to resign as a councillor mid-way through her term; however, Cr Suleyman told her it would be 'a lot of trouble'. Cr Zukalski stated:
- Thinking now, I realise that probably in her little mind if I did leave the next person would come up and she wouldn't have that extra person [to form a majority]. So now I realise that the whole time I've just been used.
- ...
- Now, going back, thinking back, I think that I was groomed by Natalie [Suleyman] to become a councillor and I think [that is] where I made my biggest mistake. I've been groomed for quite a long time by her, thinking I was a very important person and whenever - but I wasn't a part of their higher plan if you like. I was a mushroom. I think I was kept in the dark and fed nothing but bullshit.
521. The *Councillor Code of Governance* requires that councillors 'treat our colleagues, members of the community and Council staff honestly and fairly'. Despite this, I received evidence that Cr Suleyman failed to respect Brimbank officers and in some instances, abused and bullied them. She was invariably described as a 'difficult person'. One former employee referred to Cr Suleyman, Cr Abate and Cr Capar as 'very much a gang of three [...]. That threesome was very difficult, very difficult'.

522. One Brimbank officer reported being 'pressured', 'harassed' and 'bullied' by Cr Suleyman, Cr Abate and Cr Capar. I received evidence from the current CEO, Mr Foa; the former CEO, Ms Duncan; and an officer that the three councillors told both CEOs to terminate the officer's employment. According to the former CEO, Ms Duncan, she refused their requests, advising them that the employment of officers was not their 'area'. Mr Foa has also refused such requests in his time as CEO.
523. The former CEO, Ms Duncan stated:
- Natalie Suleyman used to behave in a sort of interesting way [...]. Natalie would quite often start to attempt to berate and harass people [in council briefings], but then I would take her out of the room and have a few words with her.
524. Ms Duncan stated:
- Natalie is quite easily influenced by others. And - so gets into this business where, you know, she can be - properly managed she was all right, but then you couldn't hold it with her. Because she only needed to get Ken Capar and Anthony Abate in her ear, and she was off. And that was the difficulty.
525. The Manager, Media and Communications expressed concerns to my office about the behaviour of Cr Suleyman and recalled that on 29 July 2008, she emailed her manager advising of a conversation with Cr Suleyman. The Manager, Media and Communications stated Cr Suleyman had contacted her to complain that the Media and Communications unit would not write a speech for Cr Zukalski.
526. The Manager, Media and Communications stated Cr Zukalski had been invited to speak to the Brimbank Central Rotary about her work with the council. Cr Zukalksi requested the Media and Communications Unit write a speech for her; however, her request was denied on the basis that the unit only 'prepares speeches for official Council functions that are performed, or delegated, by the Mayor'.
527. The Manager, Media and Communications stated the Mayor, Cr David subsequently contacted the Executive Co-ordinator and requested that the Media and Communications Unit write Cr Zukalski's speech. The Executive Co-ordinator reiterated the advice of the Manager, Media and Communications. The Manager, Media and Communications then emailed Cr Zukalski with 'dot points that she could include in her presentation' and reiterated her original advice.

528. That day, the Manager, Media and Communications received a telephone call from Cr Suleyman. The Manager, Media and Communications reiterated her original advice. She stated Cr Suleyman asked her what she was doing 'running a million dollar department' if the unit was not writing speeches for councillors. The Manager, Media and Communications informed Cr Suleyman she had spoken to staff and the General Manager, Corporate Services who 'confirmed that this had never been the practice within the Unit'. The Manager, Media and Communications stated Cr Suleyman then made 'disparaging remarks' about the General Manager, Corporate Services. The Manager, Media and Communications stated:

throughout the conversation Cr Suleyman was abusive, would not let me answer her questions without interruption and hung up on me.

529. Moments later, the Manager, Media and Communications overheard Cr Suleyman refer to her as 'that fucking bitch' to the Executive Co-ordinator. The Executive Co-ordinator's evidence supported this.

530. The Executive Co-ordinator stated:

Natalie is fiery at the best of times and she will speak her mind. She found - I think I know the situation you're talking about, but I think she found the person as being obstructive and that's what started the abuse.

...

one of the things that happens in council is that we tend to make the councillors bigger than Ben-Hur, so in other words they think they become gods instead of mortals. And once you do that, they go off on a tangent at every opportunity and I think that that's what happened with Natalie [Suleyman] at the time.

531. When asked about Cr Suleyman, one former employee stated:

[Cr Suleyman] came to the council as quite a young person and increasingly as she gained more power, became quite a difficult personality to deal with.

...

She is a very difficult sort of bombastic type of personality if things don't go her way [...].

532. When asked for specific examples of this behaviour, the former employee stated:

Look, there are so many I wouldn't even - and I wouldn't know where to pinpoint because it was on a daily basis

533. The former employee recalled Cr Suleyman attempting to 'harangue' a Brimbank officer at a public meeting after the officer failed to review a process within a five-year timeframe. The former employee stated:

I'd say she just really wanted to humiliate him [the officer] and she certainly did succeed in doing that.

534. According to the former employee, 'everyone [at Brimbank] sighed a sigh of relief when Natalie [Suleyman] didn't get the Mayoralty' in December 2006. However, she acknowledged that Cr Suleyman 'was very strong in her capacity to try to bring things to order' in the chamber.

535. At interview, the former employee said she left Brimbank as:

[she became] increasingly unhappy [...]. It was mainly in the sort of - if I could call it the reign of Natalie [Suleyman]. It became - the relationship between the executive and the council became very difficult [...] she [Cr Suleyman] was always incredibly rude to me for some reason.

536. The former employee referred to a workshop in Daylesford in 2006, which the councillors and Brimbank officers attended. According to the former employee, 'it was a most unsuccessful workshop that became very difficult'. The former employee said:

[Cr Suleyman was] very aggressive - she has a very aggressive nature [Cr Suleyman] [...] rolls her eyes, talks over you, talks about what you're presenting to the people beside you, it's that whole scenario. She really has very little manners.

537. The former employee stated Cr Suleyman and Cr Abate used 'fairly abusive' words to tell her they disagreed with a suggestion to merge two clubs and move them to a larger site. While the former employee was unable to remember the specific words used, she stated that they were words she could not cope with. She said she 'went for a very long walk' with another officer as she became 'quite teary'. She said:

I had been thinking about moving on [from Brimbank] but that really was a decision for me that I thought - "I'm not working for a place like this".

538. Another officer at the workshop recalled 'Natalie Suleyman having an absolute attack' on the former employee.

539. The Daylesford workshop was facilitated by an external consultant with experience in local government. He stated his role was to facilitate

the council to reach decisions in relation to State Government planning decisions, as he had done for a number of other councils. The facilitator stated the program altered from what he thought he was doing to the 'changed wishes or directions of the Mayor [Cr Suleyman] and the ruling faction'. He described Cr Suleyman as a 'very powerful lady', who was 'verbally dextrous'. He said 'she evidently controlled the ruling faction'. The facilitator stated Cr Suleyman was supported by a 'heavy', Cr Capar, 'who sided with the Mayor whenever she was in trouble'.

540. According to the facilitator, Cr Suleyman and the other councillors were not committed to 'planning and setting objectives measurable and achievable in the interests of the ratepayers'. He stated that despite Brimbank's debt at the time, the 'ruling faction' was 'quite determined to spend what they wanted to spend without relationship to the needs of the city'.

541. The facilitator stated the workshop was:

The hardest weekend I've ever had in trying to achieve the stated goals of the CEO [...]. They [the councillors] didn't want to go anywhere. [The councillors were] more concerned with their own power base, their own egos and their own pet projects'.

542. I will now address some of my specific concerns about Cr Suleyman's conduct and behaviour.

i. Biggs Street

543. During my investigation, my officers received evidence under oath from several councillors and senior Brimbank staff that Cr Suleyman's father was able to use council-owned premises situated at 76-78 Biggs Street, St Albans, rent-free, owing to Cr Suleyman's role as mayor in 2001.

544. The North St Albans Child Care Centre (NSCCC) had occupied the Biggs Street premises for several years. On 23 August 2001, the council received a letter from the Secretary of the NSCCC addressed to 'Cr Natalie Suleyman, Mayor City of Brimbank'. The NSCCC advised that it wanted to terminate its lease for the Biggs Street property. The letter also advised that the building had 'been used by the Australian Turkish Cypriot Cultural & Welfare Association Inc [ATCCWA] on an ongoing basis in cooperation with the committee'.

545. The ATCCWA's president was, and continues to be, Mr Hakki Suleyman, father of then Mayor, Cr Suleyman.

546. In an email dated 28 August 2001, an officer from Brimbank's Risk Management, Legal and Governance Department raised concerns

with Brimbank's 'in house lawyer' about ATCCWA's occupation of the property. The email stated:

A permit is required for this use and I am not aware of the issue of the requisite permit.

My view is that the previous lessee had no right to assign the lease of the property to the above Association because there was no lease in existence from which such a right could be derived.

...

There is, therefore, no legal authority to support the current occupation.

...

Because the Association's occupation is not lawful, the first step should be to inform the Association of this and that it should desist from using the property until the above matters are resolved.

547. On 30 August 2001, the General Manager, Risk Management and Compliance sent a 'Memorandum' to Ms Duncan, the then CEO informing her of issues surrounding ATCCWA's use of the property and stated:

Clearly, as both the lessor and Responsible Authority we cannot ignore proper process.

548. On 5 September 2001, the Legal and Governance department engaged an independent valuer to conduct a rental valuation of the centre. The value was estimated at \$15,125 (inclusive of GST) per annum.
549. On 11 October 2001, the General Manager, Risk Management and Compliance advised the ATCCWA that the organisation had to obtain a planning permit, prior to the council entering into a maximum three year lease agreement. ATCCWA was further advised it would need to pay \$1,200 per annum rent, \$500 building insurance and a lease preparation fee of \$500.
550. A planning permit (the permit) for the centre was issued on 10 April 2002, which allowed the land to be used as a place of assembly. The permit stated that prior to 'use/or development' of the premises, the parking area was to be sealed with an all-weather coat and each car space was to be line-marked. Part 2 of the permit stated that within six months of 'occupation of the building', a 'detailed traffic report to the satisfaction of the Responsible Authority is to be obtained'. The permit also stated that the permit expires if 'the development and use is/are

not started within two years of the date of this permit or not completed with 4 years of the date of the Permit’.

551. On 11 November 2002, Brimbank created a lease document, which listed the ATCCWA as the tenants of 76-78 Biggs Street and noted the rent as being \$1,700 per annum. Over the next four years, Mr Suleyman refused to sign the lease, did not pay any rent and continued to occupy the premises in contravention of the existing permit.
552. It is clear from numerous documents contained in Brimbank’s property files that at least two Brimbank officers consistently raised non-compliance issues with both Mr Suleyman and the then CEO over this period.
553. I note that on 25 May 2006, SunRRA released a document titled ‘Press Release, Mayor’s Father Enjoys Rent Free Council Building Since 2002’. Several media organisations reported ‘inappropriate use’ of the centre by Mr Suleyman.
554. This public scrutiny appears to have been a catalyst for Brimbank to ensure Mr Suleyman complied with both the lease and the planning permit. On the same day as SunRRA’s press release, Brimbank notified Mr Suleyman it had finalised the lease agreement and would now begin invoicing the ATCCWA accordingly.
555. On 6 June 2006, Mr Suleyman made his first rent payment of \$200 to Brimbank. He made his first payment to insure the building on 22 June 2006. I note that between August 2001 and 8 August 2008, when my investigation commenced, the ATCCWA had paid only \$2,300 in rent.
556. On 10 July 2006, Brimbank amended the existing permit, negating the need for Mr Suleyman to seal/ line-mark the car-park or provide a traffic report. It also enabled immediate use of the facility – although it is clear the property was already in use.
557. One senior Brimbank officer recalled being called to a meeting with the CEO, Ms Duncan, and a former Manager of Statutory Planning at which the permit was discussed. The senior Brimbank officer stated:

I suspect that Marilyn [Duncan] had been lobbied by Natalie Suleyman (as a result of her father probably lobbying her) or there was media attention at the time about the matter which had led to the above meeting being conducted.

Discussion took place at this meeting about how compliance could be achieved with the permit conditions.

...

I recall that [the former Manager of Statutory Planning] suggested that he could amend the permit by issuing an “amending permit” that would have the effect of revoking any obligation that would otherwise be applicable in relation to the car park construction. I suspect that the amending permit also revoked the obligation to provide a traffic report.

I recall that the amending permit was issued at some stage subsequent to our meeting.

I must say that I was extremely surprised that [the former Manager of Statutory Planning] volunteered to amend the permit in the way described above. My recollection is that the deletion of the above conditions from the permit virtually “gutted” the permit as there would have been little else to comply with.

As the Responsible Authority, Council should be setting a high benchmark of compliance when it comes to the administration of the Planning and Environment Act. In this case, I regret to say, it failed miserably.

558. The senior council officer stated that if the Biggs Street property was a private residence, Brimbank would have imposed the permit conditions and enforced a failure to comply.
559. In October 2007, Mr Suleyman requested Brimbank’s Property Manager attend at the property to discuss maintenance issues. When the manager arrived at the centre, Cr Suleyman and her mother were also there. The manager stated that both women walked around the property and advised him what they wanted done including: lights, guttering, new doors, painting and works on the windows and eaves. The works were completed over the next few weeks, at an estimated cost of \$11,000. It is apparent that Mr Suleyman received favourable treatment due to his daughter’s influence.
560. In response to my conclusions, Ms Duncan stated:
- It is not correct to state that no action was taken over the period 2001 to 2006. Senior property officers conducted meetings with Mr Suleyman over a long period in an attempt to resolve the issues of outstanding rent and failure to comply with the permit conditions. Being unable to reach a satisfactory outcome with Mr Suleyman the issue, after some time had passed, was escalated to my office.

561. Ms Duncan stated that subsequent meetings between her and Mr Suleyman resulted in Brimbank's Planning Department reviewing the permit condition to determine whether it was 'fair and reasonable'. In addition, Ms Duncan stated that the rental amount was revised to reflect 'the services that were being provided to a minority group', while also including a 'dollar value calculation in recognition of the unpaid rent over previous years'.

562. In her response to my conclusions about Biggs Street, Cr Suleyman stated:

When I was Mayor I stated on the record that Mr Hakki Suleyman (Father) is the President of the ATCCWA. This was in order to reflect any perceived conflict of interests. I also stated publicly that I would vacate the meeting. Cr Atanasovski was appointed to chair the meeting. I vacated the chamber and did not remain in the room until I was called back into the room when the item was dealt with. I did not have to leave the chamber under the act [sic] but I did so for transparency and good governance. I did not influence anyone in any shape or form on this matter.

I did not use my position to enable my father and the ATCCWA to use the property rent free or cause \$11,000 of works to be completed.

563. In response to my concerns about Biggs Street, Mr Suleyman stated he 'embarked on lengthy negotiations over the lease of Biggs Street, and the use of the building for meetings, cultural events and community based activities'. He stated there were 'obvious limitations' on how the building could be used as it was 'little more than a converted residential home'. Mr Suleyman stated Brimbank 'wanted to fix an exorbitant price for rent, whilst also demanding that the tenant pay for various upgrades required by new permit conditions.' According to Mr Suleyman, the ATCCWA 'could not afford these kinds of expenditure'. He said he sought professional advice and argued with Brimbank 'that the lessor had the legal obligations for capital improvements, not the lessee'. Mr Suleyman stated:

The dispute about these matters dragged on and on, with Council Administration not suggesting any resolution or alternatives for public gatherings so we continued to use the premises in the meantime. It was used by Women's groups, youth groups and for example we had a group of more established migrant Australians holding a sewing group with women who had migrated more recently from Africa. These activities were for the benefit of the community and the council administration knew that.

564. Mr Suleyman further stated:

[It was] not the fault of the groups who used the premises whilst the issues were being sorted out that the council bureaucrats couldn't make up their mind about the lease arrangements and the viability of the permit conditions. In the end, we were able to come to an agreement and the permit conditions were lifted, the lease proceeded in the usual way.

565. Mr Suleyman stated that 'at various stages when maintenance was needed to stop the deterioration of the property [he] advised the council building management section'.

Use of Biggs Street

566. Mr Suleyman acknowledged at interview that since 1999-2000, the Maribyrnong North (Turkish) Branch of the ALP has conducted its meetings at the Biggs Street property, every one to two months. I understand that the address was listed as the ALP Maribyrnong North (Turkish) Branch on the ALP website.

567. Mr Suleyman stated that his daughter, Cr Natalie Suleyman, attended the branch meetings in an executive role, including secretary and deputy president. This is supported by documents located on Cr Suleyman's council-supplied laptop, including 'Minutes of meeting held Thursday 25th September, 2003 Held at 76 Biggs Street, St Albans'.

568. The document is titled 'Australian Labour [sic] Party Maribyrnong North (Turkish) Branch'. The minutes record that 'The President, Natalie Suleyman opened the meeting at 7.30pm' and that several matters were moved by Cr Suleyman's sister 'Nazan Suleyman'. One matter was seconded by 'Hakki Suleyman'. The minutes also noted:

[Cr Suleyman] gave a report on Brimbank Council Community grants where [sic] now available to community groups to apply for applications close in October and information sessions are being held by council.

569. A witness gave evidence that Mr Suleyman used Biggs Street to join members to the ALP. She stated she attended the ATCCWA two to three years ago around local election time. The witness said the group was provided with lunch after activities with the council or the Migrant Resource Centre. The witness stated that after lunch, attendees were provided with leaflets and were asked to put their 'name down and sign it'.

570. The witness stated she was unsure what the form was when it was handed to her; however, she later noticed an ALP sign on the left side of the leaflet. The witness said she refused to sign the leaflet as she felt she was being forced to sign. However, 'everybody was signing it'. She stated, 'You can't say, "No I won't" [...] because they [ATCCWA] feed us beforehand [...] they have a power there'. According to the witness, 10 out of 60 ATCCWA members would not know they are members of the ALP; however, they would be too frightened to admit this because of Mr Suleyman's role at the MRC and ATCCWA.
571. According to the witness, the ATCCWA members who signed the forms did not pay a fee to join the ALP as they are migrants and could not afford it. I note that it costs \$47-\$210 to join the ALP, dependent upon the individual's income.
572. During my investigation, Mr Suleyman provided a list of ATCCWA members. There were 65 members on the list. A forensic analysis of ALP lists found on Cr Capar's laptop identified that at least 29 of the 65 ATCCWA members are/were ALP members.
573. At interview, Mr Suleyman was asked how often the ATCCWA used the property. He stated that ATCCWA 'used to use it very much, but now very hardly we use. It depends how activities go. Or when we have a meeting'. He stated that ATCCWA uses the property 'probably two times a week, three times a week' for '12 hours [all together], maybe less'. He acknowledged that there is therefore capacity for the property to be used by other groups.
574. I note that on 2 June 2006, Cr Suleyman's former campaign manager, Mr Otte, emailed Mr Suleyman stating:
- Hakki, let me be very clear. You need to do the right thing.
- Have a Council facility of your own and only using it for 4 hours a week is the wrong thing.
- All you are doing is causing problems for Natalie and the ALP.
- Simply saying that you do not care is not going to fix the problem.
- You need to start using the facility otherwise you are going to drag Natalie, yourself, Turkish people and the ALP down.

575. Brimbank files also indicate that an individual was sleeping at the property at one stage. An internal Brimbank email, dated 5 May 2004, stated:

During a recent building inspection by one of my Building Maintenance Officers, it was noted that a person was residing in the Community Centre in Biggs St due to the early nature of the inspection and the persons [sic] attire.

The building was again visited at a later date and the same person was again in the building. I have attached some photos of the property which show the bed and kitchen.

576. It appears from the file that no further action was taken on the issue.

Access to Brimbank files

577. I note that on 9 October 2001, the Brimbank 'Property and Lease' file relating to 76-78 Biggs Street was signed out to 'N. Suleyman'. On 28 February 2002, Cr Suleyman signed out another Biggs Street file entitled, 'Property – Lease of Land'. A computer generated 'Councillor Request Form', dated 27 February 2002, identifies she had telephoned the City Maintenance Services Department prior to signing out the file, stating 'Branches need to be cut along 76 Biggs Street, St Albans'.
578. It is clearly inappropriate for any councillor, including a Mayor, to take possession of or have unauthorised access to original 'property' files.
579. All Brimbank staff, including the former and current CEOs, interviewed on the matter said it was inappropriate for councillors to access Brimbank files. Brimbank officers stated that if councillors have a question, the proper procedure is for them to address that question to staff for an answer.
580. None of the officers interviewed by my office mentioned the existence of a policy that prohibited councillors from accessing Brimbank files, particularly when the councillor has a personal interest in the subject matter.
581. Cr Suleyman had a direct interest in the file on her father's behalf; there was no other reason for her to be looking at the file. It is unclear whether the file was removed from council premises. Cr Suleyman said she did not make that file available to her father. In addition, I am unable to establish whether documents or file notes were removed (as the pages are not numbered) or how long Cr Suleyman had the file as there are no return dates on either file.

Conclusions

582. It is of concern that while Mr Suleyman and the Australian Turkish Cypriot Cultural and Welfare Association (ATCCWA) were using 76 -78 Biggs Street rent-free, Cr Suleyman gained access to Brimbank files relating to the property; attended regular ALP meetings at the property; and caused \$11,000 worth of works to be completed by Brimbank at the property.
583. It is also apparent that the then CEO, Ms Duncan, failed to take any action despite the advice of several Brimbank officers from 2001, when it first became known that Mr Suleyman was a tenant at the property. Brimbank files indicate several senior Brimbank officers consistently raised with Ms Duncan the fact that Mr Suleyman had failed to comply with the permit. In my view, Ms Duncan's inaction set a poor example for Brimbank staff. Her failure to act, which continued until she left Brimbank in May 2007, enabled the misuse of a public facility by a councillor's relative.
584. In addition, Brimbank failed to either cancel the permit or evict Mr Suleyman for over five years despite the non-payment of rent. Rather than enforce the existing permit, Brimbank amended the permit on 10 July 2006, negating the need for Mr Suleyman to seal /line-mark the car-park or provide a traffic report. It also enabled the continuing use of the facility.
585. In my view, the property has been misused and under-utilised. I consider Brimbank should review ATCCWA's lease for 76-78 Biggs Street to ensure ATCCWA is compliant with the lease conditions; to determine whether it is appropriate for the property to be used by ATCCWA; and to determine whether the property may be used by other community groups.
586. I remain concerned that Cr Suleyman was able to sign out Brimbank files relating to a council property utilised by her father. I consider Brimbank should introduce a policy to prohibit councillor access to Brimbank files. Councillors should initially seek information from the CEO when necessary to conduct their official duties.

Recommendations

I recommend that:

- 13) Brimbank review ATCCWA's lease for 76-78 Biggs Street to ensure ATCCWA is compliant with the lease conditions; to determine whether it is appropriate for the property to be used by ATCCWA; and to determine whether the property may be used by other community groups.

Brimbank response:

The CEO supports the recommendation and stated a review 'has been undertaken and legal advice obtained as to the adherence of lease conditions. It should be noted that Council issued a letter of 'show cause' and debt collection proceedings in September 2008 in relation to this property. Further scrutiny of this lease will continue and maximising the use of the facility by multiple groups will be pursued as an objective'.

I recommend that:

- 14) Brimbank introduce a policy to prohibit councillor access to Brimbank files.

Brimbank response:

The CEO supports the recommendation and stated that 'the Mayor and Councillors have been advised that they are not allowed access to any Brimbank Information Records Management files' and that 'requests for advice regarding information held on files should be referred to the Executive Co-ordinator, CCRU [CEO and Councillors Resource Unit] who will research the files and provide relevant information to the Councillor[s]'. The CEO stated this advice formed part of the Council's Quality Procedures.

ii. Inappropriate disposal of confidential documents

587. During my investigation, on 4 September 2008, Cr Suleyman contacted Brimbank officers and the CEO advising them that she had disposed of a large amount of council documentation by placing it in her home recycling bin. She stated that she had also placed a large amount of documentation in her neighbour's recycling bin situated across the road from her house. She stated that her neighbour's recycling bin had not been collected and remained in the street.
588. When asked by the CEO what type of documents she had placed in the bins, Cr Suleyman replied 'council documents including yellows'. 'Yellows' are confidential council documents provided to councillors when they are performing their official duties. According to the CEO, these documents may relate to council tenders; staff employment matters, such as senior staff and CEO performance evaluations; town planning, including the names and addresses of objectors to proposed projects; and other matters protected under the *Information Privacy Act 2000*.
589. According to the CEO, his conversation with Cr Suleyman 'centred around how this was inappropriate to which she agreed'.

590. The CEO arranged for the bin of Cr Suleyman's neighbour to be collected and for the documents to be disposed of.
591. The CEO expressed concern to my office that the confidential documents disposed of by Cr Suleyman may have contained personal or sensitive information. If this were the case, Cr Suleyman may have breached the Information Privacy Act or the *Public Records Act 1973*.
592. The CEO stated he 'immediately implemented a new system' whereby each councillor is provided with a 'document security bag' with instructions to deliver the bag to Brimbank's Records Department for appropriate document destruction.
593. Cr Suleyman has since stated:
- I arranged for the Council to pick up the documents and dispose of them securely. Any yellow documents were shredded before I put them in the Recycle bin. What I did was in accordance with custom and practice at the time.
594. In response to this, the CEO stated:
- At no stage during the conversation did she [Cr Suleyman] state that the documents were shredded, in fact it would have been inconsistent with the conversation we had to suggest that they were. It would not have been an issue about the correct disposal if in fact the documents were shredded.
- We have never supplied shredding machines to Councillors, and it is inconsistent with her past practice whereby she would fill a bin and call Council to have it removed and disposed of correctly.
595. I am also concerned that the quantity of records disposed of by Cr Suleyman suggests she has retained them at her home unsecured. It is my view that confidential 'briefing' documents should be returned to council's Records Department for appropriate destruction as soon as they are no longer required by the councillor.

iii. Sydenham Library

596. My office was informed by a Brimbank library officer that when Brimbank opened the Sydenham Library in December 2006, Cr Suleyman, then Mayor 'insisted that [Brimbank] organise' 100 gold membership cards with her signature to be available for the first 100 members.

597. The officer stated:
- there was an enormous amount of work that needed to be done, you know, just to set up and then it was sheer – I don't know was it vanity, ego, arrogance.
598. Regular library cards cost the council 16 cents each; however, Cr Suleyman's gold membership cards cost the council \$5.72 each – that is an additional cost to the Brimbank ratepayers of \$556. The cards were clearly designed to increase community awareness of Cr Suleyman. In my view, this represents mismanagement of council resources for the personal gain of Cr Suleyman.
599. Cr Suleyman has since stated, 'Council officers developed a program for the Library including the gold Library membership cards. It was not my idea. I supported the idea wholeheartedly'.
600. This is not supported by the evidence of five Brimbank officers. In addition to the library officer who brought the matter to my attention, three Communications and Media staff stated the cards were issued 'at the last minute' at the instigation of Cr Suleyman and that 'the marketing staff within the libraries division also fought against the initiative'. The then General Manager, Council Business and Community Relations also stated that the gold membership cards proposal was driven by Cr Suleyman.
601. While this may reflect poorly on Cr Suleyman, I am also concerned that Brimbank allowed the funds to be spent on the gold membership cards.
602. According to the library officer referred to above, another issue 'like the gold cards' related to decals on the Sydenham Library door.
603. The library officer stated that two removable panels were placed on the Sydenham Library doors prior to the formal opening in order to 'keep prying eyes' out. The officer stated that in the middle of the panels were the words:
- Natalie Suleyman – Mayor of Brimbank
604. According to the library officer:
- Again that wasn't for the benefit of the community, it was just about having her name – her name there.
605. The CEO informed my office that he resolved to remove the decals on 25 May 2007 after concerns were raised by Cr David and Cr Socratous that 'the signage on the doors was not in keeping with previous practice and it had the effect of promoting one Councillor'.

606. The CEO stated that Cr Suleyman was 'quite persistent that they [the decals] be reinstated because they carry her name'. He stated that he discussed the matter with Cr Suleyman in June 2007, during which she requested a synopsis of the events that led to the removal of the temporary decals. He advised her that the decals were removed after discussions with the councillors and that 'she would need a resolution of Council to have her name reinstated on the doors of the library'.

Cr Capar

607. Cr Capar was elected to council in 2005. He did not re-nominate for election in November 2008.
608. My investigation identified that Cr Capar's conduct and behaviour during his time as a councillor was not befitting an elected representative. He engaged in improper conduct during his time as a councillor by misusing his position for his own personal gain on several occasions.
609. I will now address some of the specific concerns relating to Cr Capar's behaviour, identified during my investigation.

i. Automated toilets

610. My investigation identified that Cr Capar had misused information he obtained as a councillor for his own personal gain.
611. Cr Capar learnt through his role as a councillor that automated toilets were expensive to purchase and install in Australia, owing to the fact that there was only one supplier country-wide. A Brimbank officer alleged that Cr Capar said he sourced another automated toilet manufacturer in Asia; spent \$20,000 preparing a business plan; purchased the distribution rights for the toilets; and then on-sold the rights for between \$40,000-\$60,000.
612. In 2006, council tendered for an automated toilet in St Albans. On 8 May 2007, the contract for the automated toilet was awarded to W C Convenience Management Pty Ltd, for \$261,965.
613. In 2008, the council tendered for two automated toilets: one to be built in Cairnlea Reserve and one to be built at Deer Park. The tenders closed on 11 February 2008. The contracts were awarded to W C Convenience Management Pty Ltd in February and March 2008.
614. I understand that W C Convenience Management Pty Ltd is the only supplier of such toilets in Australia, which are made by one manufacturer: Exeloo, New Zealand.
615. According to the General Manager, Engineering and Operations, Cr Capar informed him he had sourced another manufacturer in Asia and that he was considering entering into business with the manufacturer to supply the toilets in Australia. Cr Capar asked the officer what Brimbank looks for in bids for new toilet installations. The officer advised Cr Capar that Brimbank has specific selection criteria, including experience and product specifications. Cr Capar also requested that

the officer provide a copy of the St Albans automated toilet tender documentation and specifications for him to use as a business guide. The officer said he told Cr Capar he could only provide publicly available tender information, which he subsequently provided. The officer states that Cr Capar told him not to worry as he did not intend to bid for jobs within Brimbank.

616. At his first interview with my office on 17 September 2008, Cr Capar was asked if he received information through council about automated toilets. Cr Capar stated the council had toilets installed and he 'thought it was funny that it cost so much to install a toilet'. He stated he had a discussion with a Brimbank officer about why the cost of the automated toilets was so high and he was told it was 'because they're just a monopoly [Exeloo] and it's out of the country.' Cr Capar said he researched the matter further and 'found out it shouldn't be as much'.
617. Cr Capar stated he contacted an international manufacturer of automated toilets, Petech Minh Chau, to ascertain how much the manufacturer would charge to supply a toilet to Australia. He stated that the manufacturer 'came back with prices and from there and that's why I was surprised it was so cheap'.
618. According to Cr Capar, he then 'just dropped the idea.' He denied preparing or paying for a business plan. When asked if he attempted to obtain a financial benefit by using information obtained in his role as a councillor, he replied:
- Absolutely not, absolutely not [...]. It was - going back to the original, it was \$400,000 for one metal container I thought and it's one of those curiosity things that I wanted to find out exactly how much it's costing.
619. Following his interview, a forensic analysis of Cr Capar's laptop, Blackberry and email account was conducted.
620. It was apparent from the results of the analysis that Cr Capar had attempted to mislead my office in relation to his 'research' into automated toilets. My investigation identified a significant number of emails and other documents illustrating that Cr Capar had attempted to use information obtained from council to earn money through the distribution of automated toilets in local government.

621. For example, Cr Capar emailed Petech Minh Chau, a Vietnamese automated toilet manufacturer, on 16 September 2007. The email stated:¹⁶

Dear Sir

We would like to develop market for your automated toilets in Australia. Currently there is monopoly for Exeloo Toilets manufactures [sic] in New Zealand. This company is retailing for Local Governments at expensive prices. If we can develop market at reduced price compared to Exeloo with my background in Local Government and Business we can gain market share.

I request that we develop partnership for Australia and Pacific Region together. We are requesting distributorship for this region. Please send your comments and ideas so that we can work together.

What I require to market your AUTOMATED TOILETS are your specifications and marketing material in English with prices. I will develop extra partnership with Australian Engineering Company to install these TOILETS to Government Specifications when Contract are [sic] gained.

We can develop this market successfully. We are confident that this is achievable as the conditions in the Australian Market is [sic] favourable to your and my partnership.

In conclusion we are happy to be your distributors [sic] in Australia and Pacific Island Region. Please contact to further our discussions.

Yours in Cooperation and friendship

Mr Ken Capar

Councillor

622. Cr Capar received a response from the Director of Petech Minh Chau on 17 September 2007, stating the company wanted a partner to develop a market for automated toilets in Australia. The Director also attached details of Petech Minh Chau's products. Cr Capar responded on the same day stating:

We would like to discuss terms for distribution of your products. We would like to have sole distributorship for Australia and New Zealand.

16 See Attachment 8.

623. On 18 September 2007, Cr Capar emailed Petech Minh Chau again:

Thank you, I have received you [sic] general prices for the Automated Toilets. I would like to become 'EXCLUSIVE DISTRIBUTOR' for your company. Can you send me your requirements for this agreement. [sic]

624. Later on the same day, Cr Capar received an email from a Brimbank officer (Officer A) with five images attached. The email stated:

As requested, please find attached the floor plans and elevations of the proposed toilet for St Albans. I have also included photos (of similar projects).

625. Cr Capar forwarded the five images to Petech Minh Chau on the same day and asked:

What price can you do the attached version of this toilet that is attached
It needs to be all Australian Standard. It must have the same options
What price? CIF [cost, insurance and freight] and FOB [freight on board]
Price?

626. My officers presented the email and images to the General Manager, Engineering and Operations to determine whether the images attached to the email were publicly available, or confidential council images. He stated:

No, these wouldn't be available publicly.

...

Unless you can get onto their [Exeloo] website and you can download these things off their website

627. My officers were unable to find these images on the Exeloo website <www.exeloo.com>. My enquiries with Brimbank revealed that the attachments were sent to Brimbank by WC Convenience Management Pty Ltd via email on 19 October 2006. According to a Brimbank officer, the attachments were required to assist Brimbank in coordinating the installation of the automated toilet with streetscape works that were planned in the same street. I note that WC Convenience Management Pty Ltd's email stated:

This information is privileged and confidential and is intended for the use of the individual or entity to which it is addressed.

628. On 20 September 2007, Cr Capar requested Officer A provide him with the price of purchasing and installing the automated toilet in St Albans. Officer A responded on 25 September 2007, providing Cr Capar with a breakdown of the costs for design, construction and installation of an Exeloo toilet; professional fees for consultants; town planning application fees; headwork charges; and authority connection fees. This information was not made available during the public Ordinary Council Meeting on 8 May 2007, at which the contract was awarded. Cr Capar forwarded the officer's email to another individual, who is not a councillor or Brimbank officer.

629. The General Manager, Engineering and Operations was asked about the appropriateness of Cr Capar receiving, and Officer A providing, this information. He stated:

That's not appropriate.

...

we provide a report to council to award the contract. Attached to that are what we call the yellows which are a confidential attachment. That gives enough information on price for the council to make a decision. It doesn't give a breakdown of the different prices. There's absolutely no reason why a councillor needs to know what the breakdown of the costs are.

630. According to the General Manager, Engineering and Operations, Cr Capar's ability to request, and receive, information that he was not entitled to is:

a by-product of the relationship of the councillors - not the relationship but - yeah, I guess the relationship that they're allowed to have or the level of authority that they're allowed to be perceived to have, it confused officers, and that's why we banned councillors having anything to do with [officers] [...]. Even the other day there was an email chain came to me where [a councillor] had been emailing and talking to one of my traffic engineers and I just sent her an email putting an end to the email chain giving my answer and saying, "Councillor, you're not supposed to be corresponding - talking directly to officers."

631. At interview, Cr Capar stated he did not advise Officer A that he required the information to start a business. Officer A stated:

at the time of providing the information, I was under the direct understanding his [Cr Capar's] queries and the information I provided was relevant to the delivery of future similar projects to be completed in his [Cr Capar's] Ward and the information would allow him to perform his duties and role as a Councilor [sic]. At the time of providing the

information, I had no knowledge or understanding of how or if he [Cr Capar] would use the information provided for any possible personal gain in the future.

632. Officer A stated Cr Capar later informed him of his business venture at a consultation session at the Deer Park Historical Centre to discuss the automated toilet project. Officer A stated Cr Capar said he had sourced a less expensive product from Vietnam, had a business partner and engineer and thought he could make lots of money out of the business.
633. On 7 October 2007, Cr Capar sent two emails to Petech Minh Chau. The first requested technical specifications and cost, noting:

The objective is to be considerably lower than Exeloo in dollr [sic] terms but yet match quality and service provision.

634. The second email stated¹⁷:

our company is working on a business plan for marketing of the APT's [Automated Public Toilets] in Australia and Pacific Region.

We will complete this process as soon as possible. We would like to develop comprehensive plan and this will take a few weeks to analyse market segment and other related data.

In the mean time we are sending you technical drawing utilised be [sic] Exeloo in sale of a APT to a local Council authority in Australia. This is a condifential [sic] report to be utilised by PETECH and our selves [sic] to match the technical requirements that Exeloo are supplying to potential customers. Can you please supply a similar technical drawing of a similar corresponding product. [sic]

...

We believe that if all criteria can be met that all local government departments are asking for we believe there is substantial market in Australia. We have engaged marketing and communication company to professionally present to prospective purchasing managers of local government in Australia. They will complete the marketing strategy within few weeks.

Finally, the marketing consultant is requesting the literature that you sent previously regarding the brochure and marketing material be resent in a format that we ccan [sic] edit for Australian version and so that our details can also be incorporated be [sic] sending to australian [sic] potential customers.

17 See Attachment 9.

635. The 'confidential report' included six attachments of internal and external images of Exeloo's automated toilets, floor plans, elevations and dimensions. Five of the images were provided to Cr Capar by Officer A on 18 September 2007. The remaining image was also provided to Brimbank by W C Convenience Management Pty Ltd.
636. It is clear that Cr Capar obtained this information in his role as a councillor and that he used it for his own personal gain. In response to this, Cr Capar stated:
- I have no explanation of that, I have no statement [...]. I did a mistake, I didn't think through [...]. I accept that it's confidential.
637. Cr Capar acknowledged that he perceived the distribution of automated toilets to be a 'good business to get into'; that it was his intention to make money out of automated toilets; and that he did 'things to see if [he could make] a business out of it'. He also said he received a letter from Petech Minh Chau confirming that he would be their sole distributor in Australia. This is despite previously informing my office that he was merely curious about the cost of the products. He denied that he had attempted to mislead my office in his first interview by stating that he had 'absolutely not' attempted to obtain a financial benefit by using information obtained in his role as a councillor. He stated:
- When you said attempt - OK. My understanding of attempt to was that I'd gone into a business, I made the arrangements to do the business.
638. In addition, my investigation identified an attempt by Cr Capar to involve a Brimbank officer in his toilet venture, which could have exposed that officer to a conflict of interest. Cr Capar asked the Brimbank officer to develop a business plan. On 2 November 2007, Cr Capar emailed the Brimbank officer a document entitled, 'Basic Business Summary of Automated Public Toilets NOV 2007 Version 1', which listed Cr Capar as the Managing Director of the company; and the Brimbank officer as the Director, Business Development and Marketing. Two other individuals were listed as the Director, Engineering and Product Development and the Director, Operations. However, this business plan did not proceed.
639. The last piece of correspondence found by my office on the 'toilet venture' was an email from Cr Capar to Petech Minh Chau, dated 9 November 2007. The email suggests Cr Capar and his company are 'on schedule [...] with business planning' and 'very motivated to start this project in Australia and the Pacific Region'.

Conclusions

640. Cr Capar stated his involvement in the ‘toilet venture’ was initiated by concerns about the cost of the toilets and the fact there were likely to be more requests to install such toilets in parks.
641. However, I consider that Cr Capar abused his position as a councillor in an attempt to obtain a personal benefit. He had no legitimate reason to request information from Brimbank officers – it was purely for personal gain. It is apparent Cr Capar was motivated purely by self-interest, and not the best interests of the community. In my view, he breached both the public’s trust and the Local Government Act, including his oath of office.
642. In his correspondence to Petech Minh Chau, Cr Capar referred to himself as ‘Councillor’ and to how his ‘background in Local Government’ could benefit the company. In my view, Cr Capar misused his position as a Brimbank councillor for his own personal gain. Section 76B(3) of the Local Government Act states:
- A person who is, or has been, a Councillor or member of a special committee—
- (a) must not make improper use of their position—
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
 - (b) must not make improper use of information acquired because of their position—
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
643. It is clear Cr Capar made improper use of information acquired in his position to attempt to gain a personal advantage. I consider this should be investigated by Local Government Victoria.
644. Cr Capar may have also breached section 77 of the Local Government Act, which makes it an offence for a councillor to ‘release information that the person knows, or should reasonably know, is confidential information.’
645. I am also concerned about the weaknesses in Brimbank processes highlighted by this matter. In my view, councillors should only be provided with information necessary to assist them in making informed decisions in the council chamber or to fulfil other official duties. Brimbank staff should not provide councillors with information outside of these parameters and councillors should not request such information.

646. I also note the *Councillor Code of Governance* states councillors are to 'make all initial contacts with staff via General Managers and Managers'. The CEO must ensure all councillors are aware of this requirement and that staff report any contact from councillors contrary to this policy.

Recommendations

I recommend that:

- 15) Brimbank introduce a policy detailing the circumstances and the means by which a councillor may request, and a Brimbank officer may provide, council information; and requiring that councillors do not use information other than for the purpose for which it was provided.

Brimbank response:

The CEO supports the recommendation. He stated 'the requirement for Councillors to make enquiries for information and advice through the CEO, General Managers or the CCRU [CEO and Councillors Resource Unit] has recently been restated to Councillors and is encapsulated in the Councillor Information Manual. Further training will be provided to Brimbank staff so that they understand the protocols around being approached by a Councillor for information and the requirements to protect confidential material. The induction program for new staff will also be updated to ensure compliance with this recommendation'.

I recommend that:

- 16) Local Government Victoria investigate the conduct of Cr Capar, with a view to determining whether action should be taken against Cr Capar in relation to the 'toilet venture'.

ii. Ken's Kebabs

647. During my investigation, I received information that Cr Capar misused his position as a councillor, and information obtained through council, for the benefit of his father's private business, 'Ken's Kebabs' on several occasions.
648. I received evidence from the owner of a car yard development (the property owner) alongside 'Ken's Kebabs'. The property owner gave evidence, under oath, that Cr Capar and his father attended at a separate business address of the property owner around March 2006. The property owner recognised Cr Capar as being a current councillor and Cr Capar handed him one of his council business cards. At the time of Cr Capar's visit, the property owner had a council planning permit to develop a car yard on Station Road, Deer Park.

649. According to the property owner, Cr Capar informed him he intended to put a kebab van (Ken's Kebabs) at the front of a property that abutted the car yard development. The property owner stated:

And he said to me that he needs about a metre of my land to put his kebab van, because it's a fairly large van, right? And he said at the same time that my permit had expired.

650. The property owner said he had been unaware that his planning permit for the car yard development had expired. The property owner stated:

I was very upset at the fact that Cr Capar had already looked at who – looked into who I was and my permit and so forth. I later checked with the council and Cr Capar was right, my building permit had expired by over three months.

...

I said, "Look, I don't need - I'm not using the land at the moment, I'm not ready to build" - and a good businessman won't - would - sorry, "would rent you this land". I said, "But I'm not gonna do that". I said, I'm gonna let you use that land, but you're gonna get me the permit". He goes, "I'll see what I can do, I'll see what I can do".

...

I was so pissed off that by the time he got to the front gate, I was already on the telephone to the - what do you call it? VCAT [Victorian Civil and Administrative Tribunal].

651. The property owner stated he obtained a permit extension through the Victorian Civil and Administrative Tribunal and 'didn't go through Ken [Capar]'. He said:

I got an extension on it, and I thought, "Wow", I thought, "How cheeky". He must've thought that, you know, me being a car dealer, and car dealers are stereotyped, that he might be able to swing himself the use of my land and you know, think that he could assist me. But he didn't [...]. Now, as it turned out, the van that they got was smaller and didn't need to go onto my land.

652. At interview, Cr Capar acknowledged he attended the property owner's business address to ask about placing the kebab van on part of his property. He said the property owner agreed. Cr Capar also acknowledged that he told the property owner that his permit had expired, but Cr Capar was unable to remember if this was at the same meeting at which they discussed the placement of the kebab van. According to Cr Capar, he checked the status of the property owner's permit at the request of the property owner.

653. The property owner also provided evidence that Cr Capar suggested he put a submission to the council for its 2007-08 budget, requesting the council build indented car-parking spaces on Station Road, outside both 'Ken's kebabs' and the property owner's car yard development.
654. While the property owner stated he 'wanted indented parking from day one', Cr Capar's father's permit for the kebab van also required that he construct two indented car parks outside the kebab van – which he had failed to do. The property owner stated Cr Capar told him if he was to ask 'council for indented parking at the budget' and present to the council, Cr Capar would support it and so would the other councillors because 'they're all dumb'. According to the property owner, Cr Capar told him the council would take funding from street humps to be built in a street near Cr Capar's home to fund the parking.
655. The property owner subsequently presented a submission to council for indented car parks 'outside the carwash and soon to be built caryard further along Station Road'.
656. Brimbank stated it was unwilling to fund the construction of the car parking spaces as Cr Capar's father's planning permit required that he 'construct two indented car parking spaces' at the location and bear the 'full cost of the indented parking/line remaking'.
657. The property owner stated:
- The hidden agenda is he wouldn't have to pay to put indented parking for his - obviously for his father at that van, or for his own benefit. Whether it's his van or his father's.
- ...
- So I was sort of used as a pawn, I believe, to go to council, but I'd had interest in my own benefit if council were to say yes to it.
658. At interview, Cr Capar stated he attended at the property owner's business address and spoke to him about indented car parking. Cr Capar was unable to recall whether the matter was initially raised by Cr Capar or the property owner. Cr Capar stated:
- I spoke to him [the property owner], I said, "That's the best place just to put it in [a request for council to build indented car parking] because I'm not going to do it through the normal budgetary process, that'd be a question mark [...] because like - because it's associated with my dad, I'm not going to raise it, and I said, "Put it through" - at the time General Purpose Advisory Committee, it's a public submission process like for

the budgetary items. If the councils see fit, that's fine, but I'm not going to do it like through my action.

659. Cr Capar stated the property owner's request for indented car parking related to a 'physically like different place' to that where his father was required to build car parking and that his father was going to build the car parking required by his permit. This is inconsistent with Brimbank's rejection of the property owner's submission. Further, I note Cr Capar's comment earlier that he was unable to suggest the council fund indented parking on Station Road as there would be a 'question mark [...] because it's associated with [his] dad'.
660. My office was also provided with documentation from Brimbank, outlining another example of Cr Capar misusing his position for the benefit of 'Ken's kebabs'.
661. On 9 March 2006, a Brimbank Environmental Health Department Team Leader (the team leader) attended at a 'food van located on the site of a carwash' in Station Road, Deer Park. The occupant of the van, Cr Capar's father, claimed it was registered with Brimbank under the Food Act 1984, in the name of his son, Cr Ken Capar.
662. The team leader conducted a 'brief and non exhaustive inspection of the van for compliance with the Food Act'. He found the registration number of the van at the site was inconsistent with the food van registered with Brimbank under the Food Act. In addition, while the van was registered under Cr Capar's father's name, it was registered to Cr Capar's home address.
663. At 9.40pm that day, the team leader received a telephone call from Cr Capar. On 10 March 2006, he emailed the council stating:
- I received a call from Cr. Ken Capar on my mobile telephone (I am at a loss as to how my number was obtained by the Councillor although I have no formal objection).
- During the ensuing conversation I indicated my doubt that the van was properly registered pursuant to the Food Act. I indicated that, while I had no authority to make a definitive statement, I thought that Council may not allow the van to operate from the site.
- ...
- Cr Capar indicated that he thought that the operation of the van on that site was legitimate under planning law.
664. The team leader stated Cr Capar ended their conversation, commenting that he would have a discussion with a senior Brimbank officer and the CEO about the placement of the vehicle.

665. The General Manager, City Development said he made enquiries with Brimbank's Planning and Community Regulations departments to determine whether planning approval for the kebab van was required and whether there was any breach of Brimbank's Local Laws.
666. The General Manager, City Development said he received advice from the departments that the relevant local law was not applicable, but that the carwash owner would need to obtain an amended permit.
667. The General Manager, City Development stated he:
- informed Cr Capar about the need for his father to obtain planning approval and food registration for the food van and the relevant departments followed up with correspondence to him and his father. As the necessary paperwork and applications were not received in a timely manner this was followed up over a period of time with a number of reminders and warnings of enforcement action until eventually the application was made and planning approval obtained. Even after the approval was obtained there was a delay in providing the details for and constructing the indented car spaces off Station Road and this was pursued until they were eventually constructed.
668. It is clear Cr Capar used his position as a councillor for his own private gain and that of his father in relation to 'Ken's kebabs'.

iii. 'Speed worries Cr Capar'

669. During my investigation, my officers had cause to check Cr Capar's criminal history with Victoria Police. I identified that on 21 November 2002, Cr Capar was convicted of Driving whilst disqualified at the Sunshine Magistrates Court and given a one month, wholly suspended, prison sentence.
670. A further check with VicRoads in relation to Cr Capar's Victorian drivers licence status revealed that, prior to the above sentence being imposed, Cr Capar's drivers licence had been cancelled on 11 September 2000 after three convictions for exceeding the prescribed concentration of alcohol. Cr Capar's drivers licence had been suspended a further five times for exceeding the speed limit and 'demerit points suspension'.
671. VicRoads informed my office Cr Capar did not hold a drivers licence from when it was cancelled on 11 September 2000, to 12 May 2008 when he obtained a learners permit. He only obtained a full drivers licence on 29 July 2008.

672. At interview, Cr Capar admitted he was unlicensed when he was elected to council on 26 November 2005 and that, despite this, he continued to drive whilst performing his functions as a Brimbank councillor.
673. Cr Capar was presented with a newspaper article including a photograph of him meeting with Kings Park residents. The caption of the photograph is:
- Speed worries Cr Capar with Kings Park residents who are concerned about hoon drivers speeding along Gillespie Rd.
674. At interview, Cr Capar recalled driving his car to the above meeting while he was unlicensed. He also stated he had driven a Toyota RAV, which he leased from Toyota Finance and disposed of in March 2008. He said, 'I've driven it for 17,000 kilometres'. When asked why he had been driving without a licence he stated, 'Because I had to'.

Cr Abate

675. Cr Abate was elected to council in 2005. He did not re-nominate for election in November 2008.
676. Cr Abate was a member of the 'ruling faction' during my investigation. I note that Cr Abate stated the suggestion he was part of the 'ruling faction' was an 'overly simplistic and incorrect characterisation of [his] role as a councillor'. He stated he was 'motivated by one sole aim: to exercise the powers conferred on [him] to best advance the peace, order and good government of people of Brimbank'. He stated:

To the extent that I voted in a similar manner with the councillors David, Eriksson, Capar, Suleyman and Zukalski, this was a result of the fact that their views in relation to activities and projects of council often aligned with my judgment about how best to discharge the functions of council.

677. It was evident from my investigation that Cr Abate failed to treat 'colleagues, members of the community and Council staff honestly and fairly', in accordance with the Councillor Code of Governance.
678. I received evidence that Cr Abate failed to respect Brimbank officers and in some instances, abused and bullied them.
679. The former CEO, Ms Duncan further stated:

As far as menacing and bullying type attempts - you'd have to say that Anthony Abate was probably an expert at it.

680. One Brimbank officer stated he had been 'pressured', 'harassed' and 'bullied' by the 'gang of three' – Cr Suleyman, Cr Capar, and particularly, Cr Abate. According to the officer, the CEO and the former CEO, the 'gang' asked both CEOs to terminate the officer's employment. The officer recalled several instances in which he had felt bullied by Cr Abate.
681. Another officer stated Cr Abate would regularly tell Brimbank officers 'you can't trust council administration'. A further officer stated:
- He'd make all sorts of allegations about us always. He made it very clear that we were untrustworthy and by saying - and always accusing us of, you know, policy on the run, all those sort of statements.
682. One officer recalled Cr Abate 'absolutely los[ing] his temper, yelling abuse at Margaret Giudice'.

683. A forensic analysis of Cr Abate's laptop and email account identified emails in which Cr Abate demonstrated a lack of respect for councillors and Brimbank staff.
684. At 6.18pm on 25 September 2007, Cr Abate emailed Cr Capar, Cr Zukalski and Cr Suleyman, stating: 'Givem [sic] hell tonight. I wish I was there !'. I note there was an Ordinary Meeting of Council that evening at 7.00pm. I do not consider this is an appropriate attitude to take toward council meetings, Brimbank staff and fellow councillors.
685. In another email to the CEO, dated 31 August 2007, in relation to the 'Arthur Street Trees', Cr Abate stated:
- Nick
- This is an unsatisfactory outcome as per usual. Keep up the great work !
686. Cr Abate forwarded the email to Cr Suleyman, stating:
- Fyi. Am absolutely disgusted with this outcome. Cheers AA
687. At interview, Cr Abate was asked about the appropriateness of the above email to the CEO. Cr Abate stated:
- Well, it was one of those things that - like we were discussing before, that was - was probably pushed more than it should've been.
- ...
- By me. And I regret that very much.
688. He acknowledged this was not the sort of email one should send to an employee (the CEO is employed by the council) and that the CEO had never communicated with him in this manner.
689. Cr Abate accepted that 'there may be' instances where he had failed to show respect for Brimbank officers or councillors.
690. I note that in response to my concerns about his conduct, Cr Abate stated:
- The allegations made against me in relation to alleged inappropriate conduct of individual councillors are inaccurate, lack evidential cogency, in the main they are trivial and, taken at their highest, do not disclose conduct that can be classified as inappropriate.

691. In response to allegations that he told the CEO to terminate the employment of one officer, Cr Abate stated his comments about the work performance of others were 'lawful, motivated solely by a desire to ensure that council business was administered properly and always made in a proper setting and context'. Cr Abate noted that there were 'no examples of instances where [he] reportedly "pressured, harassed or bullied" [the officer]'. I note, however, that examples were discussed with Cr Abate when he was interviewed by my office.
692. Cr Abate further stated that the allegation he was 'fairly abusive' to a former employee 'lacks adequate particularity to elicit a response'. In relation to the allegation that he lost his temper at Cr Giudice, Cr Abate stated that he and Cr Giudice 'exchanged contrary views in a passionate and forthright manner [...]'. The allegation that I behaved in such a manner is purely the impressionistic and subjective viewpoint of another person'.
693. While Cr Abate acknowledged that the appropriate level of 'robustness' in a 'political or workplace setting' is a 'grey area', he maintained that his conduct has not 'crossed the line into what it is [*sic*] clearly impertinent conduct towards others'.
694. While Cr Abate considers he treated staff and councillors appropriately, this is not supported by the evidence of several witnesses.
695. In addition to his behaviour towards councillors and staff, I was concerned about Cr Abate's involvement with the Migrant Resource Centre.

i. Migrant Resource Centre – North West Region

696. The MRC is a not for profit, community based organisation governed by a voluntary committee of management. The organisation was established in 1989 to provide support for refugees and migrants and to support those who work with this target group. Cr Abate was appointed the MRC's Executive Officer (EO) in June 2008.
697. At the time of his appointment, Mr Hakki Suleyman was the Chairperson of the Committee of Management (since 2002), Cr Atanasovski was the Deputy Chairperson, Cr Zukalski was the Deputy Secretary and Cr Abate was the council's representative on the MRC board. Upon obtaining the position of EO, Cr Abate stood down from the board.
698. During my investigation, Brimbank's General Manager, Human Services, alleged Cr Abate failed to declare a conflict of interest when he voted to adopt the 2008-09 budget, which included funding for the MRC. The General Manager, Human Services stated that on 11

March 2008, she received an email request from Cr Abate asking her 'to develop a budget bid for a homework program and / or traffic school program'. She stated she advised Cr Abate she 'would consider this suggestion in the broader context of [her] Divisional budget, as [she] had already allowed for some partnership development projects with CALD communities, and that [she] would be working closely with the CEO [EO] of the MRC to develop appropriate priority projects'.

699. According to the General Manager, Human Services, she met with the then EO of the MRC on 14 March 2008 'to discuss partnerships etc, and also to discuss [her] presentation to the Board Meeting which had been arranged initially at the request of Cr Abate, as a member of the MRC Board'. The General Manager, Human Services stated she indicated to the then EO of the MRC that 'Cr Abate had been advocating strongly for Council to provide funding to the MRC for specific projects'. The General Manager, Human Services advised the EO that she was interested in her 'views in relation to whether such projects were in fact a priority for the MRC'. According to the General Manager, Human Services, the then EO 'indicated that she was not aware of these projects specifically, but went on to say that Hakki Suleyman (MRC Chairperson) had mentioned these types of projects needing to be a priority for Council to fund.' The General Manager, Human Services stated that the then EO said the MRC was 'operating at capacity, and even with funding from Council, they would have had some difficulty in identifying appropriate staff to co-ordinate such projects'.

700. The General Manager, Human Services stated:

Despite my advice to Cr Abate, [he] continued to pursue these specific projects through the budget process. As evidenced in the budget document prepared by the "Mayor", as part of Council's 2008/2009 Budget process, funding of \$30,000 was allocated for 'specific' projects which had morphed into a 'New and Emerging Community Youth Arts and Sports Brokerage funding program.

701. Email evidence obtained by my office revealed that Cr Abate initiated the budget item. On 17 April 2008, Cr Abate emailed Cr Eriksson. Cr Eriksson forwarded the email to her husband, Dr A. Theophanous. In his email, Cr Abate 'put forward' that the council allocate \$30,000 to a:

New and Emerging Community Youth Arts And Sports Brokerage Program – A joint initiative between Council and MRCNW to link existing sporting and cultural clubs with youth from new communities. The program will provide a voucher style system for participants to pay fees and obtain uniforms and equipment.

702. The General Manager, Human Services stated that while she considered it appropriate to have a budget allocation within her division for joint partnership projects, she was 'uncomfortable with the fact that this project was specifically defined by the "Mayor" in this budget document, which was contrary to the agreement that the then MRC CEO [EO] and [she] had'. I note the budget document the officer referred to was that prepared by Dr A. Theophanous.
703. The General Manager, Human Services further stated:
- Furthermore, it is highly unusual for Councillor's [sic] to be so specific about a project on behalf of an organization like the MRC, as these matters are normally managed at the officer level of participating organizations. At the time, I formed the view that Hakki Suleyman had pushed this project through Council via Cr Abate's involvement on the Board. Having said that though, as stated earlier, I supported the allocation of funding in my Divisional budget for joint Council / MRC projects on the basis that Council has a role in developing and delivery [sic] joint projects for newly arrived communities in Brimbank.
704. According to the General Manager, Human Services:
- All of this occurred prior to Cr Abate being appointed to the CEO's [EO's] role @ [sic] the MRC. However, I was shocked to learn of Councillor Abate's appointment to the position of CEO [EO] at the MRC, and felt that there was a clear conflict of interest given his 'Council – appointed' role on the Board of Management, and his subsequent interest in ensuring that the MRC received Council funding for a specific 'pet' project.
- On 24th June 2008 at the Ordinary Meeting of Council, Council considered the 2008/2009 Budget. At this meeting, Cr Abate only declared 'an interest' as a member of the MRC in relation to the adoption of the Budget. In my view, he clearly had a [sic] either a 'conflict of interest' or a 'pecuniary interest' according to the Local Government Act.
705. Further evidence obtained by my office corroborates the view that Cr Abate had a conflict of interest in the budget.
706. According to Cr Abate, the EO position was advertised on 24 May 2008. Applications closed on 2 June 2008. Cr Abate states he submitted his application for the MRC EO position on 29 May 2008. According to Cr Abate, there were 10 applicants, three of which were interviewed.

707. On 12 June 2008, Mr Suleyman wrote to Cr Abate informing him that he had been selected for the position of 'Executive officer' of the MRC. The start date for the position was 8 July 2008.
708. Cr Abate had therefore been offered the MRC EO position prior to voting on the budget on 24 June 2008.
709. Furthermore, a forensic examination of Cr Abate's council laptop identified that on 15 June 2008 at 8.31am, Cr Abate created a 'Word' document entitled, 'From the Committee of Management'. The document was dated 16 June 2008 and stated:
- The Committee of Management, North West Migrant Resource Centre, is pleased to announce the appointment of Mr Anthony Abate to the position of Executive Officer effective from 8 July 2008.
710. In response to my view that his position as EO created a conflict of interest, Cr Abate stated he did not have a conflict of interest for the following reasons:
- (i) He 'was not an employee of the MRC at the time the relevant budget was passed' and therefore, he 'was not to any degree obliged to follow their directions or instructions';
 - (ii) No money was in fact allocated to the MRC in the relevant budget;
 - (iii) I was not an employee of a company for the purposes of the Act; and
 - (iv) The MRC was established under an Act of Parliament.
711. Cr Abate further stated he did not have a conflict of interest as a committee member of the MRC as the 'role of councillors (with non-voting rights) on any committee is to provide a bridge or link of views between council and the community'. He stated he 'initiated a process in full consultation' with the General Manager, Human Services; and that he arranged a meeting for her to address the committee and listen to its views, which he did not attend. In addition, Cr Abate stated he resigned from the committee prior to the budget being passed.
712. Cr Abate denied that the General Manager, Human Services advised him against putting in a budget bid for the project and stated that, after the bid was developed, she 'chose to ignore it by not entering the bid as a separate line item'. According to Cr Abate, he 'agreed that the initiatives be part of [the General Manager, Human Services'] divisional

budget'. Cr Abate stated he did not have a pecuniary interest in the budget as the initiative does not appear in the budget as a separate line item and the 'budget only makes a loose commitment to work with the MRC in partnership'.

713. According to the General Manager, Human Services, while it was not 'explicitly stated' in the document entitled, 'Proposed budget changes from the Mayor and Deputy Mayor', it was her 'belief that this money was expected to be provided by Council to the MRC for them to administer'. The General Manager, Human Services said she had, however, 'advised that Council would need to manage the allocation of these funds based on a comprehensive program developed (i.e. funding criteria and application forms, funding agreements etc) to ensure the appropriate allocation of funds to participating clubs etc'. The General Manager, Human Services stated that, at this stage, 'no funding has been allocated, as the program is yet to be developed'.

Conclusions

714. Despite Cr Abate's response, I remain concerned that he failed to declare that he had been appointed as the EO of the MRC when he voted for the budget, particularly given that he was the councillor who proposed that funding for the MRC be included.
715. In my view, Cr Abate used his position as a councillor for the benefit of an organisation to which he had been appointed the EO. While Cr Abate may not have breached section 79 of the Local Government Act, I consider that had the public known of his appointment, the perception would have been such that Cr Abate was conflicted between his duties as a councillor and as a future EO of the MRC.
716. It is important to recognise a conflict of interest exists where a public official, in the performance of his or her function, could be influenced, *or could be reasonably perceived to be influenced*, by a private interest.
717. As discussed earlier in my report, it is important for councillors to avoid a legalistic approach to conflict of interest. Instead, councillors should consider the broader ethical obligations of public officers to avoid conflicts.

Other councillor conduct

718. During my investigation, other information came to my attention relating to the minority councillors: Cr Atanasovski, Cr Barboza, Cr Dymott, Cr Giudice and Cr Socratous. While a number of issues were not substantiated, the issue of conflict of interest was raised.
719. My investigation identified that the broader issue of conflict of interest was not solely confined to the 'ruling faction'. The following issues highlight my concerns about councillors' failure to identify and address conflicts of interest.

i. Heritage overlay

720. On 13 March 2007, Brimbank officers put a motion to council with a list of properties to which they considered Brimbank's heritage overlay should apply. The council voted on the matter on 13 March 2007. The council adopted an alternative resolution, which retained a private residence of Cr Dymott as a 'contributory' property. Cr Dymott's residence was in part of a precinct included in the overlay.
721. At interview, Cr Dymott stated that he declared an interest 'four or five times' during discussions of the heritage overlay. However, he did not declare a conflict of interest as he did not consider he had one. He has since stated:
- the vote took place in the context of significant community angst regarding perceived loss of value of homes within proposed heritage precincts. I did not share this downbeat view but certainly at no time believed that the fact that my home was within a precinct would provide a gain to me, as any possible positive impact on value would be offset due to loss of development rights and other burdens. As such I did not believe a Conflict of Interest existed but declared an Interest for the purposes of transparency.
- ...
- If I had not voted on this matter, much of the local history could have been without any protection whatsoever. This is particularly the case as I believe many councillors opposed it based on political opportunism and played on the fears of property owners to be affected by the overlay.
722. In my view, the heritage overlay had the effect of changing the value of Cr Dymott's property. As such, he was required under section 79 of the Local Government Act to declare a conflict of interest and would subsequently have been precluded from voting on the matter.

723. Cr Socratous also had an interest in the heritage amendments as the Sunshine Cypriot Orthodox Community of Apostolos Andreas Church, for which he is President, was included in the overlay. Cr Socratous did not declare an interest or conflict of interest.
724. In my view, Cr Socratous should have disclosed an interest in accordance with section 77A of the Local Government Act as he would have had a reasonable expectation of receiving a non-pecuniary benefit should the motion have been carried by council. I note that while councillors are required to disclose interests under section 77A, it is not an offence to fail to disclose an interest.
725. While the Local Government Act is clear, I do not consider these matters warrant referral to Local Government Victoria for investigation as Cr Dymott and Cr Socratous obtained no direct benefit. Rather, the matters indicate that a lack of understanding of conflict of interest is a significant issue for all councillors.

ii. Campaign donations

726. During my investigation, Mr Seitz informed my office that in 2008 he paid for advertising for four candidates: Cr Kiselis, Cr Seitz, Cr Atanasovksi and an unsuccessful candidate, Mr Peter Gelo. Mr Seitz brought this to the attention of Brimbank on 22 December 2008, when he contacted an officer requesting information about election campaign donation returns.
727. Mr Seitz said he paid to print endorsement letters from him to residents on behalf of the four candidates. He said he spent approximately \$300 on each of the four candidates, for a total of approximately \$1,200. Mr Seitz later provided a receipt for the printing, which identified that he paid \$2,973 for printing 25,500 'support letter[s] for council candidates'.
728. According to the election campaign donation returns completed by the four candidates from 14-23 December 2008, they received the following donations from Mr Seitz and others:
- Cr Atanasovksi: 'no disclosable gifts'
 - Cr Kiselis: \$828 for a 'personal endorsement letter by G. Seitz' and \$3,245 from Ms Teresa Kiselis for printing
 - Cr Seitz: \$767 for a 'personal endorsement letter by G. Seitz' and \$3,245 from Ms Jill Kriechbaum for printing
 - Mr Gelo: \$550 for a 'personal endorsement letter by G. Seitz'.

729. Mr Seitz stated he printed endorsement letters for candidates 'every election' and that he had printed letters for Cr Atanasovski for the 'last three elections'. He stated he paid for the printing with his electoral allowance, which he said was part of his wages. I note the electoral allowance is 'paid to cover incidental expenditure incurred in discharging a Member's electoral responsibilities'¹⁸.
730. I note that the *Parliamentary Salaries and Superannuation Act 1968* and the associated regulations provide no guidance on the use of allowances. They merely note how such allowances are to be calculated.
731. According to Mr Seitz, 'it's a sort of tradition' to print endorsement letters and other Members of Parliament do the same. He stated that 'in the past [he] would draft the endorsement letter and then the candidate's volunteers would print the letter on the back of the candidate's personal letter at their campaign office'.
732. In relation to councillors declaring such gifts, Mr Seitz stated letters had been 'done before and nobody ever bothered with [declaring] it'. Mr Seitz stated that owing to my investigation, he told Cr Atanasovski to contact Brimbank to determine if the councillors needed to declare his assistance. According to Mr Seitz, Cr Atanasovski was informed he did not need to declare it. Mr Seitz then contacted Brimbank himself. Mr Seitz said he was told at first there was no need for councillors to declare his assistance; however, he then received a call back and was provided an answer in 'double-Dutch'. Consequently, he said he told the four candidates to declare his gifts on their returns.
733. On 7 January 2009, my officer questioned the current Mayor, Cr Atanasovski, about his return. He acknowledged Mr Seitz printed a personal endorsement letter for him. Cr Atanasovski stated he did not ask Mr Seitz to write or print the letter and he did not find out about the letter until after it was sent out. According to Mr Seitz, Cr Atanasovski delivered some of the letters and was aware Mr Seitz had printed approximately 8,000 copies. Mr Seitz stated:

Mr Atanasovski did not see the letter I did for him, as all discussions that took place regarding this were between my self and the voluntary campaign workers. The distribution of this letter was also organised through voluntary campaign workers and the printer.

734. Cr Atanasovski stated Mr Seitz suggested he should declare the contribution; however, Cr Atanasovski sought legal advice from Brimbank's Manager, Legal Governance, Mr Robert Tommasini, and was told he was not required to declare it as it was 'material' not 'financial support'. Cr Atanasovski said he considered that the contribution of Mr Seitz was 'not a gift' and he was therefore not required to disclose it on his return. Cr Atanasovski stated that he was 'not aware of the quantity of the letter' when he discussed the matter with Mr Tommasini.
735. Mr Tommasini informed my office he was approached by Cr Atanasovski about Cr Atanasovski's election campaign donation return just prior to Christmas. According to Mr Tommasini, Cr Atanasovski asked 'whether he had to declare it if a person gave him a letter of support used in his election campaign'. Mr Tommasini said he advised Cr Atanasovski 'that if it was only a letter of support given to him and nothing more it would not in my view be a problem, and I would not declare it'. When Mr Tommasini was informed by my office that Mr Seitz had in fact printed endorsement letters for Cr Atanasovski to the value of approximately \$800, Mr Tommasini stated Cr Atanasovski would be required to declare such a gift.
736. On 8 January 2009, Cr Atanasovski contacted my office to advise he had researched his obligations and intended to re-lodge his return that day to show the gift of Mr Seitz. According to Cr Atanasovski, he spoke to Mr Seitz 'immediately' after discussing the matter with my office on 7 January 2009 and asked Mr Seitz if he sent 'material that is worth over \$200 or there about'. Cr Atanasovski stated that Mr Seitz informed him that he had sent material 'that costed \$800'. Consequently, he lodged another declaration on 9 January 2009. Cr Atanasovski told my office he had received 'bad advice' from Brimbank. Despite the evidence of Mr Seitz that Cr Atanasovski delivered some of the letters, Cr Atanasovski maintained he had not seen the letters prior to their delivery.
737. When asked if he received any gifts from Mr Seitz for the 2005 election campaign, Cr Atanasovski stated Mr Seitz 'didn't provide [him] anything [...]. I don't know [...]. I can't remember.' In Cr Atanasovski's Election Campaign Donation Return for 2005, he did not declare any donations.

738. Section 62 of the Local Government Act requires councillors to declare:
- any gifts received during the donation period, by the candidate or on behalf of the candidate, to be used for or in connection with the election campaign—
- (i) the amount or value of which is equal to or exceeds \$200; or
 - (ii) being goods or services the amount or value of which is equal to or exceeds \$200.
739. In my view, the endorsement letters fall within section 62, in accordance with the Local Government Act, and Cr Atanasovski was required to declare the gift.
740. In light of the evidence of Mr Seitz that he has supported Cr Atanasovski in a similar way for the past three elections, I consider Local Government Victoria should investigate whether Cr Atanasovski and other candidates have failed to declare gifts from Mr Seitz in the past.

Recommendations

I recommend that:

- 17) Local Government Victoria investigate whether Cr Atanasovski failed to declare election campaign gifts in the 2003 and 2005 elections, with a view to determining whether action should be taken against Cr Atanasovski.
- 18) Local Government Victoria investigate whether Mr Seitz provided election campaign gifts to other councillor candidates that have not been declared by the candidates.
- 19) Local Government Victoria provide guidance to councils about the requirements of section 62 of the Local Government Act in relation to what constitutes a gift.

MISUSE OF ELECTRONIC EQUIPMENT: PORNOGRAPHIC AND INAPPROPRIATE MATERIAL

741. Each of the 11 Brimbank councillors was supplied with a laptop computer, a home telephone / fax machine and a Blackberry mobile telephone with email access.
742. Early in my investigation, my office obtained the council laptops provided to each of the 11 councillors for forensic examination.
743. I also obtained the council Blackberry mobile telephones of some councillors for analysis. I was concerned to find inappropriate content on some of the laptops and Blackberries.
744. Brimbank councillors are required to comply with the *Councillor Protocols* produced by the CEO & Councillors' Resource Unit. This 'Service Unit procedure' outlines the protocols and responsibilities of the mayor and councillors when performing their roles and responsibilities on behalf of the council. The protocols state:

5.2 Equipment Usage and Maintenance

5.2.1 The Mayor and Councillors are provided with a Mobile Telephone. This telephone is to be kept in a secure location at all times (not left in a motor vehicle) and used for Council business purposes only.

The Mayor and Councillors are provided with a lap top computer. This is to be kept in a secure location at all times (not left in a motor vehicle) and used for Council business purposes only.

5.2.3 The Mayor and Councillors are provided with a home Telephone / Facsimile Printing / Scanning Machine. This is to be kept in a secure location at all times (not left in a motor vehicle) and used for Council business purposes only.

745. Brimbank also has a *Telecommunications and Email Use Policy*, which applies to all employees of council, councillors, contractors and temporary staff, and other workers at Brimbank. The *Unacceptable Electronic Communication Usage Policy* prohibits the following usage:
- sending or receiving any material that is obscene, hateful or objectionable material
 - transmission of pornographic or other sexually explicit or offensive material

- uploading, downloading or transmitting commercial software or copyrighted material in violation of its copyright
 - accessing internet radio stations or other music sites
 - undertaking personal commercial ventures or business activities not related to council business.
746. It was clear from the forensic analysis that most councillors had not complied with the Councillor Protocols in that they had used their laptops for non-council business. Many of the laptops contained hundreds of personal photographs, video recordings and documents, as well as music and movie downloads.
747. I was particularly concerned with the contents of Cr Capar's laptop. It is apparent that Cr Capar was also concerned about the appropriateness of the contents of his laptop as he was reluctant to provide the council-owned laptop for inspection.
748. According to the CEO, Cr Capar attended at his office on 2 September 2008 in response to a request from Brimbank's Manager, IT for his laptop. The CEO stated Cr Capar informed him:
- I have been advised that I own the intellectual property on this computer and I don't trust council with it. You might install key stroke recognition software on it and monitor my computer.
749. The CEO advised Cr Capar the laptop was council property and must be provided to Brimbank upon request. Cr Capar stated he would only provide his laptop to the Manager, IT if he could remain with the laptop and watch the technicians work on it. Cr Capar subsequently refused to provide his laptop.
750. On 3 September 2008, the Manager, IT made a second request for Cr Capar's laptop. Cr Capar subsequently provided his laptop on 5 September 2008, advising the Manager, IT he would wait for the upgraded software to be installed.
751. A forensic analysis of Cr Capar's laptop identified:
- fifteen pornographic images and two inappropriate movie files
 - inappropriate software, including 'Azureus', 'Bit Torrent', 'iMesh', 'Limewire' and 'Shareaza'. These programs allow users to share and download files with each other. Files shared on these networks are not restricted to legitimate files, but also contain copyrighted and illegal material. Such examples include movie files, software, and music files

- two hundred and seventy-two MP3 (music) files
- incomplete download files, including 21 foreign movie files
- a large amount of inappropriate audio and movie 'clip' files, which clearly did not relate to council business. For example, a video of a woman kicking a baby; and politically incorrect/obscene audio and movie 'clip' files.

752. When first questioned at interview, Cr Capar denied downloading the various pornographic images and videos. Thereafter, when asked how the pornographic images came to be on his computer, Cr Capar stated:

When you go on to Peer to Peer or whatever it's called the shareware type stuff, you'll find that a lot of files that people put onto the internet are renamed for whatever reason and for argument's sake, say you're going to download Singer A, you search for Singer A, that file comes up or whatever, hundreds of files come up, Singer A comes up you download it. Then you find when you double click on it to open it or whatever that it's a different file.

753. He later admitted to looking at 'porn' on his council laptop:

On the internet on Google I might have looked at it, I will accept - - -

...

The only time like I've said to you is if I've looked at it [pornography] a couple of times on internet explorer as a normal browser.

754. Given the quantity of files and images; the explicit names of the websites; and the titles of the videos downloaded, I consider Cr Capar's response to be misleading.

755. A forensic examination of Cr Capar's council email account also identified a sexually explicit email exchange. This exchange included a short, sexually explicit video, which Cr Capar received on his Blackberry and then forwarded to his private email account.

756. I also identified inappropriate material on Cr Suleyman's laptop, including:

- inappropriate 'Limewire' software
- three hundred and nineteen MP3 files, suggesting Cr Suleyman used 'Limewire' for the purpose of downloading files. Forty-one incomplete files were also located
- a sexually explicit image located in a default folder where the application MSN Messenger stores user profile images/avatars

- an 'Internet favourite bookmark' pertaining to Turkish television titled 'Turkey – Watch free live TV' and 'WazTV.com – Watch ATV Turkey free online'.
757. In response to this, Cr Suleyman stated she has 'never used MSN' and did 'not know how a sexually explicit image became stored in a default folder over the years'.
758. It is clear both Cr Capar and Cr Suleyman breached the council's policies in relation to their use of council laptops and email accounts.
759. I also note that when the Manager, IT requested Cr Dymott's laptop, Cr Dymott advised him that his laptop had been damaged nine months earlier and offered to reimburse Brimbank for its replacement. When the laptop was produced, despite the damage, my office was able to conduct a forensic examination of it. The examination did not locate anything to suggest Cr Dymott had engaged in improper conduct.
760. In my view, Brimbank should ensure that Cr Dymott pays for the replacement of, or repairs to, the laptop. I also consider that councillors should notify Brimbank immediately if council-owned property is lost or damaged.

Conclusions

761. It is apparent that most councillors have failed to comply with the *Councillor Protocols* that guide the use of council property, such as laptops and Blackberries, in that they have used the property for non-council business, some extensively.
762. While some councillors' use of the property has been limited to storing personal items, such as photographs and documents, others have clearly abused the provision of these items by downloading software, MP3 files and pornographic images.
763. I understand Brimbank has implemented changes to prevent abuse of council laptops and Blackberries in the future. Brimbank's Manager, IT advised:

at the commencement of the new Council term in December 2008, we made a major change to the way the new and returned councillors are able to access the Internet. Previously they had the ability to perform web activities at home on their laptops by going directly out to the Internet through the Council-supplied ADSL line. This approach bypassed our network and enabled the councillors to have unlimited

access to any web site without restriction and without the ability for Council to analyse their activity. Now, they must log on to the Council's network before they can access the Internet. This means that they are subject to the same level of filtering and monitoring as Council staff.

In addition, we have removed the ability for councillors to use the fax function on their printer/photocopier/fax/scanner. In the past, some councillors had used the fax line as a way of making telephone calls. This means that faxing or telephoning is no longer possible using this technology. From now on, if there are any documents that a councillor wishes to send that would have previously been done via fax, he/she can scan the document and email it, thus ensuring that we will retain a record of that correspondence in our system. If they wish to receive a fax, the fax will be directed through Council's central number, which is managed by Records Department staff who will store the electronic image in the document management system and then send a copy of the image to the councillor concerned.

764. I am satisfied these changes will deter councillors from using their council laptops and internet access inappropriately. Further, the changes will provide Brimbank with an opportunity to monitor councillor use of the internet and provide a means to hold councillors accountable.

Recommendation

I recommend that:

- 20) Brimbank remind councillors of the requirements of the Telecommunications and Email Use Policy, and the Unacceptable Electronic Communication Usage Policy.

Brimbank response:

The CEO supports the recommendation. He stated the 'Telecommunications and Email Use Policy forms part of the Councillor Information Manual. The Unacceptable Electronic Communications Usage Policy will be issued as an addendum to this document'.

INAPPROPRIATE USE OF COUNCIL FUNDS AND PROPERTY

765. My investigation identified concerns about the inappropriate use of council funds and council property enabled by a lack of transparency; a failure to have in place policies to guide decisions and spending; and a lack of auditing.
766. My investigation established that councillors have failed to identify and reimburse Brimbank for private use of council telephones. An audit identified that some councillors owe Brimbank hundreds, if not thousands of dollars. I was also concerned that Brimbank had never audited councillors' mobile telephone bills, despite Brimbank spending \$63,757 (after reimbursement from councillors) on mobile telephone bills for 2005-08.
767. I also have concerns about gifts purchased by Brimbank for the outgoing mayor each year. Some councillors chose their own gifts, spending up to \$1,000. I was concerned to find that Brimbank has no policy to govern the purchasing of mayoral gifts.
768. Also, my investigation identified issues with the former CEO's remuneration package. I established that Brimbank provided the former CEO a motor vehicle, purchased six months prior for \$38,833, and subsequently paid \$35,523 Fringe Benefits Tax. The former CEO was also given six months remuneration even though she was not entitled to either under her employment contract.

Excessive councillor telephone expenditure

769. A few days after I commenced my investigation, on 13 August 2008, Cr Suleyman left over \$1,500 in cash under the storeroom door in the CEO's office. Cr Abate left \$200. The money was to reimburse Brimbank for personal calls made on the councillors' mobile telephones in 2007-08.
770. It was evident the councillors made the payments as a result of the commencement of my investigation. Cr Suleyman and Cr Abate had failed to reimburse Brimbank for any calls from July 2007 – June 2008 until 13 August 2008, despite being required to reimburse Brimbank monthly. They had also failed to submit Communications Expense Declarations monthly as required by Brimbank's Councillor Protocols, dated 16 June 2000. Early enquiries by my office identified that other councillors had also failed to comply with the protocols.
771. The *Councillor Protocols*, dated 16 June 2000, govern councillor use of mobile telephones. The policy states:

Equipment usage and maintenance

The Mayor and Councillors are provided with a Mobile Telephone. This telephone is to be kept in a secure location at all times (not left in a motor vehicle) and used for Council business purposes only. The Mayor and Councillors will be required to verify their telephone accounts monthly by signing, dating and returning a Communications Expense Declaration to the Executive Assistant to the Councillors for payment.

772. Section 75 of the Local Government Act states:

A Council may reimburse Councillors or members of Council committees for necessary out-of-pocket expenses incurred while performing duties as a Councillor or committee member.

Brimbank audit

773. Prior to my investigation, Brimbank had never conducted an audit of councillors' use of mobile telephones, or questioned councillors' honesty in relation to declaring private use. I note Brimbank has an internal auditor, but he does not audit councillors' bills.
774. Given the amount spent by Brimbank on councillor telephone bills, I was concerned that councillor abuse of the system had gone unchecked. Attachment 10 shows councillors' telephone / fax, broadband and

mobile expenditure for 2005-08. My office raised these concerns with Brimbank's CEO, Mr Foa, early on in my investigation.

775. Subsequently, in October 2008, the CEO engaged an external auditor (the auditor) to 'Review Brimbank City Council Councillor Mobile Telephone Usage'. The audit was conducted in conjunction with my office.
776. The audit focused on councillor mobile telephone use and did not consider use of broadband or the telephone/fax provided to councillors. My investigation also identified councillor misuse of these facilities. In my view, Brimbank should consider reviewing the councillors' use of broadband and telephone/faxes.
777. One of the difficulties in auditing councillor mobile telephone bills was there appeared to be nothing to audit. While councillors said they highlighted their mobile telephone bills in order to determine their personal calls, the highlighted bills were not provided to Brimbank.
778. In order to assist the audit, I requested each councillor highlight any personal calls on their mobile telephone bills for June and July 2008.
779. It is important to note it was not possible for the auditor to identify all personal telephone calls. Only those numbers highlighted by the councillors, or identified by my office, were classified as personal. It is likely that a significant number of personal calls were not identified in this process.
780. Calls between councillors were not included as private in the audit. However, it appears (given the high number of calls between some councillors) that not all calls between councillors were council business. For example, in the month of May 2008, Cr Suleyman and Cr Abate made 491 mobile telephone calls to each other (including SMS messages) for a total cost of \$305.
781. The audit, completed in December 2008, found that some councillors were not complying with section 76B(3) of the Local Government Act, which states:

A person who is, or has been, a Councillor or member of a special committee—

- (a) must not make improper use of their position—
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person

782. While the audit identified that councillors had generally failed to comply with the *Councillor Protocols*, I was particularly concerned with the audit's findings in relation to Cr Suleyman, Cr Capar, Cr Abate, Cr Giudice and Cr Zukalski.

Cr Suleyman

783. I was particularly concerned with the mobile telephone use of Cr Suleyman. Cr Suleyman had the highest mobile telephone bill for the three year term: a total of \$15,695. Given this, the auditor examined Cr Suleyman's mobile telephone bills for the financial year 2007-08. I also scrutinised her bills from when she was first elected to council.

784. The following table outlines Cr Suleyman's telephone bills for 2002-2009; whether she submitted Communications Expense Declaration forms; and any reimbursement to Brimbank.

Table 4: Cr Suleyman's mobile telephone bills 2001-2009

Year	Total cost of bill	Declarations submitted	Total reimbursement
2001-02	\$1,567	-	Nil
2002-03	\$3,200	-	Nil
2003-04	\$3,219	2	\$216
2004-05	\$4,503	-	Nil
2005-06	\$9,372	10	\$2,922
2006-07	\$5,734	11	\$700
2007-08	\$6,165	12	\$1,528
2008-09 ¹⁹	\$1,743	2	\$519
	\$35,502	37/85 ²⁰	\$5,884

785. At interview, it was put to Cr Suleyman that she did not submit any declarations until 2003-04 and she did not reimburse Brimbank in 2001-02, 2002-03 or 2004-05. I note that she only paid \$216 towards her 2001-02, 2002-03, 2003-04 and 2004-05 mobile telephone bills, which totalled \$12,489.

¹⁹ Cr Suleyman ceased to be a councillor in November 2008. Her last bill was for this month.

²⁰ Cr Suleyman was issued with 85 monthly telephone bills/Communications Expense Declarations during her time as a councillor. She only submitted 37.

786. Cr Suleyman attempted to transfer responsibility for this to the CEO. She stated:
- That's an error. That is a real error. I mean I am amazed that the CEO would not have brought [this to my attention].
- ...
- I can't believe that this is the amount that - you know, and I feel very, very disappointed in myself.
- ...
- I will personally go through it [her bills] myself again.
787. Cr Suleyman's mobile telephone bills dramatically increased over time. This increase is highlighted by the following comparison. Cr Suleyman's first mobile telephone bill (July 2001) was \$50. Her annual mobile telephone bill peaked in 2005-06, at \$9,372. I note that her bill dropped to \$5,734 in 2006-07, after it was reported extensively in the media that her bills were the highest of any councillor in the State and eight times higher than that of a City of Melbourne councillor.
788. Cr Suleyman's first mobile telephone bill was received by Brimbank in July 2001. From this time to 9 March 2004, Cr Suleyman did not sign, date or return any of her Communications Expense Declaration forms as required by council policy. On 9 March 2004, Cr Suleyman submitted unsigned declarations for December 2003 and January 2004. She reimbursed Brimbank \$102 and \$114 respectively. Cr Suleyman failed to submit any further declarations until 21 March 2007, when she submitted declarations for August 2006 to March 2007. She reimbursed Brimbank for an average of \$34 per month, equating to 6 per cent of her average \$504 monthly bill.
789. Cr Suleyman's reimbursement to Brimbank dramatically increased after my investigation began on 8 August 2008.
790. This is demonstrated by Cr Suleyman's reimbursements for March and April 2007. On 21 March 2007, Cr Suleyman reimbursed Brimbank \$20 toward her \$472 March 2007 mobile telephone bill, a total of 4 per cent. On 13 August 2008 (five days after my investigation began), Cr Suleyman reimbursed Brimbank \$135 toward her \$461 April 2007 bill, a total of 29 per cent.
791. In 2006-07, Cr Suleyman's bills totalled \$5,734 for which she reimbursed

Brimbank \$700 (12 per cent). On 13 August 2008 (after my investigation commenced), Cr Suleyman reimbursed Brimbank \$1,528 for her 2007-08 bills, which totalled \$6,165 (25 per cent).

792. The auditor calculated that Cr Suleyman's private use of her mobile telephone for March – June 2008 was approximately 48 per cent.
793. At interview, Cr Suleyman stated she did not have a personal mobile telephone. Instead, she said she used the council-supplied telephone and reimbursed the council.
794. In my view, Cr Suleyman misused her council mobile telephone by excessive private use and failed to fully reimburse Brimbank, in breach of section 76B of the Local Government Act.
795. In addition, she failed to submit declarations and reimburse Brimbank monthly. Cr Suleyman failed to reimburse Brimbank for her 2007-08 bills until 13 August 2008, after the end of the financial year and two reminders from the Executive Co-ordinator.
796. In response to this, Cr Suleyman stated:

I did not misuse my position by abusing my mobile telephone. I have made substantial reimbursement over the years.

Cr Capar

797. Cr Capar had the second highest mobile telephone bill for the three year term totalling \$10,717. At interview with my officers, Cr Capar stated he tried to 'restrict' his private use of the council mobile telephone.
798. In the financial year 2006-07, Cr Capar's total mobile telephone bill was \$3,594. He failed to submit any declaration for two months of the financial year. He declared 'Nil' personal calls for seven months and a total of \$312 for three months.
799. The auditor found that Cr Capar's June and July 2008 mobile telephone bills comprised approximately 55 per cent private calls. During these months, Cr Capar made at least 356 private calls, for a total of \$440. On 16 September 2008, Cr Capar reimbursed Brimbank \$40 for his June 2008 mobile bill, representing approximately 11 per cent private use. At the time of my investigation, Cr Capar had not returned a declaration for July 2008.
800. In the financial year 2007-08, Cr Capar's mobile telephone bill totalled \$4,159, for which he reimbursed Brimbank \$568 (13 per cent).
801. In my view, Cr Capar misused his council mobile telephone for excessive private use and failed to fully reimburse Brimbank, in breach of section 76B of the Local Government Act.

Cr Abate

802. Cr Abate had the third highest mobile telephone bill for the three-year term: a total of \$9,939.
803. At interview, Cr Abate estimated that, on 'average', 10-15 per cent of his mobile telephone bill consisted of private telephone calls, for which he reimbursed Brimbank. He stated 'I'm sure I over estimate but I do that as a matter of practice'. Cr Abate acknowledged he would often submit his declarations months late.
804. The auditor found that 53.9 per cent of Cr Abate's June 2008 mobile telephone bill, which totalled \$313, was made up of private calls. On 13 August 2008, Cr Abate reimbursed Brimbank \$20, or 6 per cent for private calls. In July 2008, 67 per cent of his calls were estimated to be private.
805. I note on 13 August 2008, five days after my investigation began, Cr Abate submitted outstanding mobile telephone declarations to Brimbank for February 2007 – June 2008. On this date, Cr Abate reimbursed Brimbank \$8 for his July 2006 mobile telephone bill, which totalled \$349.70. Cr Abate also reimbursed Brimbank \$10-\$20 for each of the other 13 months for which he had not reimbursed Brimbank.
806. In my view, Cr Abate misused his council mobile telephone for excessive private use and failed to fully reimburse Brimbank, in breach of section 76B of the Local Government Act.
807. Cr Abate has since stated that he used his telephone 'widely for council business'. This fails to accord with the Councillor Protocols which state council mobiles are to be used for 'Council business purposes only'.
808. Cr Abate further stated, 'there was no established formal process for returning "Communications Expense Declarations"'. I note, however, that the Councillor Protocols clearly state 'Councillors will be required to verify their telephone accounts monthly by signing, dating and returning a Communications Expense Declaration to the Executive Assistant to the Councillors for payment'.

Cr Giudice

809. Cr Giudice's mobile telephone bill for the three year term totalled \$7,483.
810. The auditor found that during June and July 2008, Cr Giudice made \$147.85 worth of personal calls (18 per cent and 31.8 per cent of her respective total mobile telephone bills). The audit found Cr Giudice reimbursed Brimbank 9 per cent of her June 2008 mobile telephone bill and 10 per cent of her July bill.
811. In the 2007-08 financial year, Cr Giudice's total mobile telephone bill was \$2,436.63. Prior to being summonsed for interview by my office, Cr Giudice had reimbursed Brimbank only \$33 for her September 2007 mobile telephone bill. Cr Giudice had declared nil for her other bills from July 2007-May 2008.
812. On Friday 10 October 2008, three days prior to being interviewed by my office, Cr Giudice informed Brimbank she had 'reconciled once again [her] bills for Dec, Jan, Feb, March, April, May, June' and reimbursed Brimbank a further \$435.27.
813. At interview, it was noted that Cr Giudice had declared nil personal calls for 10 months of the financial year. She explained:
- I was not diligent enough in looking after my bills and I'm going to tell you the exact truth on that. I've had some personal issues that have been plaguing our family for quite some time. And I was just not diligent enough to have a look at the bills. So I'm going to be absolutely up-front [...] about that.
814. It is clear Cr Giudice failed to comply with Brimbank's mobile telephone use policy, in that she submitted misleading Communication Expense Declaration Forms and failed to reimburse Brimbank for all her personal calls, in breach of section 76B of the Local Government Act.
815. Cr Giudice has since stated:
- Whilst it is true that in the last year or so I was not diligent enough in verifying my telephone accounts, sometimes it is hard to determine which are strictly personal calls and which are not.

Cr Zukalski

816. Cr Zukalski's mobile telephone bill for the three year term totalled \$7028. At interview, Cr Zukalski was asked about her private use of her council mobile telephone. She stated, under oath:

I do ring my children on the Blackberry because if I'm doing council business and I need to ring home I do ring them, but there are some calls that I would probably make on there that are not related and I pay.

817. During the interview, Cr Zukalski was asked to provide the telephone numbers of her two teenage sons, her husband and her sister. My officer then examined the first page of her July 2008 bill, which totalled \$308.77. Thirty-two of the 47 calls on the first page were to Cr Zukalski's sister, sons, and husband. In response, Cr Zukalski stated:

I have paid for private calls on those.

818. However, on 2 September 2008 Cr Zukalski submitted a signed declaration to Brimbank stating she had made nil private calls for July 2008.
819. Cr Zukalski was questioned about some of the remaining 15 calls listed on the first page of her July 2008 bill. Cr Zukalski agreed many of the remaining calls were also personal calls. She explained she thought the council mobile telephone was 'like a perk of the position, I thought. But I do use it as council business'.
820. After her interview, Cr Zukalski wrote to me advising that she had spoken to her two sons and they admitted using her council-supplied mobile telephone on occasion. Cr Zukalski subsequently reimbursed Brimbank \$150 for her August 2008 bill.
821. The auditor found during June 2008, Cr Zukalski made 406 private calls, equating to 54.7 per cent of her total bill. In July 2008, Cr Zukalski made 295 personal calls at a cost of \$374. This was found to be 90.3 per cent of her total bill.
822. In my view, Cr Zukalski misused her position by abusing her council mobile telephone and failing to reimburse Brimbank for personal calls. In addition, she failed to submit declarations and reimburse Brimbank monthly. She submitted declarations for her 2005-06 bills on 13 August 2008. I note Cr Zukalski declared nil personal calls on these bills. All Cr Zukalski's 2007-08 declarations, except for one, were submitted on 13 August 2008. She reimbursed Brimbank \$230, just five per cent of her yearly bill (\$3,905).

Conclusions

823. My investigation identified excessive use of council mobile telephones by councillors. It was evident from my investigation that some councillors treated the mobile telephone as a benefit of office – Cr Zukalksi admitted she treated it as such.
824. In my view, some councillors improperly used their position to gain a financial advantage for themselves by not declaring fully their personal use of council-supplied mobile telephones. The personal gain of some councillors exceeds hundreds, if not thousands, of dollars.
825. While councillors must take responsibility for ensuring their Communications Expense Declarations are accurate and submitted monthly, their abuse of the system was enabled by Brimbank's failure to hold the councillors accountable.
826. Brimbank spent \$63,757 (after reimbursement from councillors) on mobile telephone bills for 2005-08. I consider a significant portion of this amount should have been paid for by councillors, not the ratepayers of Brimbank.
827. In my view, individual councillor mobile telephone usage should be published on Brimbank's website quarterly, as done by the City of Melbourne, to ensure councillors are accountable to the community. In my view, this will deter councillors from abusing the system.
828. I note the *Councillor Protocols* state the councillor mobile telephones are to be used for council business only. While some personal use is acceptable (if paid for by the councillor), I consider that personal use should be kept to a minimum. It is apparent Brimbank needs to make this clear to all councillors.
829. Brimbank should also ensure councillors submit signed declarations each month and that they also reimburse Brimbank for any personal use monthly.
830. Regular audits of councillor mobile telephone bills should also be conducted by Brimbank. In order to facilitate this, Brimbank should require councillors to provide Brimbank with a bill with any personal calls highlighted. As it stands, Brimbank provides councillors with a copy of their bill each month and then requires that the councillor submit a signed declaration to Brimbank noting any personal use. The councillor is not required to provide a highlighted bill to Brimbank.
831. I consider the above requirements should be included in the *Councillor Code of Governance*, in order to provide a means of holding a councillor accountable for misusing their council mobile telephone.

Recommendations

I recommend that:

- 21) Brimbank publish each individual's total mobile telephone usage on the Brimbank website quarterly.

Brimbank response:

The CEO supports the recommendation. He stated that the 'Councillor Information Manual has already advised Councillors that individual breakdown of their telecommunication costs will be reported in the Chamber, but we will publish this on the website as per the recommendation'.

I recommend that:

- 22) Brimbank review its policies in relation to councillor mobile telephone use to ensure councillors are required to:
- highlight any personal calls on their bills and provide these to Brimbank with a signed declaration monthly
 - reimburse Brimbank for personal calls monthly.

This should be incorporated in the Councillor Code of Governance.

Brimbank response:

The CEO supports the recommendation. He advised that Brimbank 'has already reviewed its policy in relation to Councillor mobile phone use' as a result of my investigation.

I recommend that:

- 23) Brimbank regularly audit councillor mobile telephone bills.

Brimbank response:

The CEO supports the recommendation. He advised that 'regular audits will be put on the Internal Audit Plan and overseen by Council's Audit Committee'.

I recommend that:

- 24) Brimbank consider recovering outstanding money from councillors who have failed to reimburse Brimbank for all personal calls, as outlined in the audit.

Brimbank response:

The CEO stated 'the results of the audit will be considered by the Audit

Committee with a view to recover amounts relating to personal use. It should be noted, however, that the audit was unable to be conclusive due to a lack of documentation from Councillors in relation to personal use. Council's solicitors have been instructed to provide advice in regard to legal and commercial considerations of recovery based on audit estimates'.

Mayoral and councillor gifts

Councillor gifts

832. In addition to mayoral gifts, councillors may receive gifts from various members of their community as a result of their position as a councillor. In accordance with Brimbank's Acceptance of Gifts and Hospitality Procedure, councillors are required to enter all gifts or hospitality, regardless of their value, into a register maintained by Brimbank. The procedure aims to ensure 'the council operates in an open and transparent way' and minimises the risk of improper practices.
833. At interview, councillors stated they were aware of the requirement to fill in the register; however, none of them knew all gifts and hospitality must be recorded.
834. An examination of Brimbank's gift register revealed that it contained only one councillor entry since 2005, for a tree received by Cr Suleyman. The register notes the value of the tree as 'unknown'.
835. I am concerned councillors may have failed to disclose gifts and hospitality, particularly given that none of the eleven councillors knew that all such gifts, no matter the value, must be declared. The Internal Auditor stated:

They're not declaring their gifts [...]. It's obvious to everyone.

Outgoing mayoral gifts

836. During my investigation, I received evidence that Cr Suleyman purchased a pen for herself, valued at approximately \$1,000, and a handbag, valued at \$400, using council monies. Enquiries by my office identified that the items were given to Cr Suleyman as outgoing mayoral gifts. I was concerned that the gifts were exorbitant for what, I understand, is intended to be a token gesture of thanks to the outgoing mayor, who also receives a salary and the use of a motor vehicle during their term.
837. The Executive Co-ordinator stated she usually assisted with the purchase or organisation of a gift for the outgoing mayor each year. She stated she often asked the outgoing mayor what they would like to receive.
838. The Executive Co-ordinator stated that Brimbank does not have a policy on mayoral gifts, although the CEO recently informed her that they should develop one. She stated:

We've always given [outgoing mayoral gifts] right from 1998. It was - I think it - if anything, it was probably a hangover from Keilor days because the Sunshine - I'm from the former Sunshine Council, we never

ever did anything like that, but Keilor Council did. And the first Mayor of Brimbank was an ex Keilor councillor and so we - in those days we were giving \$180/\$190 and I understand that appreciation means that you keep, you know, upping the ante. But it was more just a nice little gift. But it sort of - the last couple of years it's got out of hand.

839. Former CEO, Ms Duncan said:

The custom and practice was to invite the outgoing Mayor to nominate their preference in regard to the gift. It is correct to state that no formal policy was in place but the practice was based around responsible adults making reasonable decisions.

840. The following table illustrates the gifts, and their values, given to outgoing Mayors since 1998.

Table 5: Mayoral gifts 1998-2008

Date	Name	Gift	Value
1998	Cr Lombardi	Watch	\$150* ²⁰
1999	Cr David	Briefcase	\$150*
2000	Cr Gujinovic	Crystal globe	\$99*
2001	Cr Apap	Watch	\$195
2002	Cr Suleyman	Schots Restoration furnishings	\$224
2003	Cr Puig	Sculpture	\$350
2004	Cr Costa	Watch	\$299
2005	Cr David	Watch	\$250*
2005	Cr Suleyman	Handbag	\$400 ²¹
2006	Cr Suleyman	Mont Blanc pen and pouch	\$960
2007	Cr Giudice	Diamond pendant	\$1,000
2008	Cr David	Clock radio and three ties	\$170

²⁰ * Denotes approximate value.

²¹ Cr Suleyman paid the balance, \$550.

841. Cr Suleyman was mayor in 2005 and 2006. In September 2005, three months prior to the annual statutory meeting at which the outgoing mayoral gift is presented, Cr Suleyman requested Brimbank purchase her an \$895 Longchamp Paris handbag.

842. According to the Executive Co-ordinator, she informed Cr Suleyman:

"No, we will put a deposit on it" and Marilyn [Duncan, then CEO] agreed with the \$450.00.²¹ That's what we put.

843. The Executive Co-ordinator stated that the handbag was ordered on 9 September 2005 as the retailer had to 'bring it in from somewhere else'. The handbag was presented to Cr Suleyman at the annual statutory meeting in December 2005.

844. On 29 November 2006, Ms Suleyman also purchased two Mont Blanc pens, with pouches, at a cost of \$960 each.

845. At interview, the Executive Co-ordinator stated:

I was in my office one day and I got a telephone call from Mont Blanc saying, "Hi, I'm so and so from Mont Blanc. I'm just verifying that you're able to pay this amount of money". And I nearly fell off my chair and I went, "Oh. I have no idea what this is about. I'm sorry, I'm going to have to ring you back". And I took the man's name and number and went down to the other end where the Mayor [Cr Suleyman] and the CEO [Ms Duncan] were and I said, "I've just had the most peculiar call", and they confirmed that they had bought two Mont Blanc pens for that amount of money

...

I said, "Well, you're not getting them as pens. They're not your fit".

...

I just said, "That's your farewell gift, Natalie [Suleyman]. I don't want to hear anything more about it". And so she [Cr Suleyman] just agreed to it and she got it when she finished her Mayoral term. And then Marilyn [Duncan] said, you know, "That can be my parting gift", so she [Marilyn Duncan] got her pen straight away but she didn't ask for a gift from the councillors per se when she left.

846. When asked why the pens were purchased, if they were not for the outgoing mayor as parting gifts, the Executive Co-ordinator stated 'they just liked them'.

21 Brimbank in fact paid \$400.

847. According to Ms Duncan, the pen was a 'fabulous gift', but she 'never used it'. This was supported by the Executive Co-ordinator, who stated 'Marilyn [Duncan] didn't like the pen at all [...]. She didn't particularly want it [...]. I think she just went along with Natalie [Suleyman]'. According to the Executive Co-ordinator, she suggested Ms Duncan put the pen on eBay to recover some of the cost; however, Ms Duncan stated, 'Oh no, it's a gift from Natalie [Suleyman]'. The Executive Co-ordinator stated:

It's from the councillors, staff and Mayor, but it was more perceived to be a gift from Natalie [Suleyman].

...

if they [the residents] were to know that we'd spent \$1,000 on a pen I think they'd be outraged.

848. Ms Duncan has since added:

In regard to gifts from Council to the CEO the decision was never part of my remit but anything other than gracious acceptance of the gift, whatever form it took over the years, including the notion of disposal (by whatever means) may have been misconstrued and seen to be offensive.

849. For her 2007 outgoing mayoral gift, Cr Giudice said she chose a diamond pendant valued at around \$1,240. Brimbank contributed \$1,000 as Cr Giudice said she was told 'that was what had been done in the past'. When asked if she thought \$1,000 was an appropriate amount to spend on a mayoral gift, she stated:

Well I was told that that was the norm. I actually almost refused it. And then [the Executive Co-ordinator] said to me, "Margaret, you're entitled to it. You've done a wonderful job. Please take it."

850. Cr Giudice has since stated:

I was not aware of any policy regarding mayoral gifts and was guided solely by the practice which was outlined to me at the time.

851. The Executive Co-ordinator stated:

Up until two years ago I only ever spent \$300 or thereabouts and then Natalie [Suleyman] spent \$1,000 on her gift.

...

And so I said to Marilyn, "Well, she's now set a precedent that the Mayors that follow will get a gift to the same value". And so Margaret Giudice last year got a [diamond pendant].

852. In response, Cr Suleyman stated, 'Council officers authorised and made the payment of the gifts in question. This was in accordance with the usual practice at the time.'
853. In response to my conclusions, the current CEO stated that after the purchase of the two Mont Blanc pens (\$960 each), the Executive Co-ordinator informed the then CEO, Ms Duncan and Cr Suleyman that 'they were setting a new benchmark'. According to the current CEO, Ms Duncan and Cr Suleyman both agreed at the time that 'this would be the new standard'. The current CEO stated the Executive Co-ordinator 'believed that she was acting under instructions from the Mayor and CEO in applying this benchmark to future mayors', such as Cr Giudice in 2007.
854. The CEO stated he was 'neither involved in the decision [to spend \$1,000 on Cr Giudice's gift] nor aware of previous practice' and that he 'became aware of it after the purchase of the gift'. He stated the 'gift value was amended for the outgoing Mayor in 2008 (Cr David) and encapsulated in the new Councillor manual issued to all new Councillors'.

Conclusions

855. I am concerned Brimbank has not had a policy to govern the purchase of outgoing mayoral gifts – with the funds of ratepayers – since the amalgamation of the cities of Sunshine and Keilor in 1998.
856. In my view, the cost of the handbag, the pen and the pendant were examples of self-serving indulgence enabled by the absence of a policy. These purchases clearly were not made in the community's interest and were unnecessarily burdensome on the ratepayers.
857. In my view, the gift should be chosen and organised by the CEO, or his Executive Co-ordinator with the CEO's approval. The outgoing mayor should play little, if any, role in determining their gift.

Recommendations

I recommend that:

- 25) Brimbank develop and implement a policy in relation to mayoral gifts. The policy should set a limit on the amount to be spent on mayoral gifts and should provide for the value of the gift to be published on the Brimbank website annually.

Brimbank response:

The CEO supports the recommendation. He advised that the 'Councillor Information Manual, prepared for the new incoming Council, has set a limit on gifts as follows: -

The Outgoing Mayor receives a gift each year to a maximum value of \$300, and the Outgoing Councillors receive a farewell gift to a maximum value of \$200. Councillors must also declare these gifts using the template provided for in the policy’.

The CEO further stated that my recommendation ‘to publish the Gift Register is supported’.

I recommend that:

- 26) Brimbank ensure all administrative staff and councillors are aware of the *Acceptance of Gifts and Hospitality Procedure* and the need to register all gifts and hospitality.

Brimbank response:

The CEO supports the recommendation and stated that ‘Councillors will be reminded annually’.

Former CEO's remuneration package

858. During my investigation, it was brought to my attention that the former CEO, Ms Duncan, was provided with a six-month old Honda Sedan Euro motor vehicle as part of her remuneration package. Brimbank consequently paid \$35,523 Fringe Benefits Tax (FBT) to the Australian Taxation Office, as the vehicle was to be used for private purposes.
859. I was concerned about the probity of this arrangement. Consequently, my officers reviewed documentation relating to the remuneration package and interviewed Ms Duncan.
860. Ms Duncan was appointed as the CEO of Brimbank in March 1998, having been employed with Brimbank in other roles since 1995. She signed a five-year contract upon appointment and a second five-year contract in 2002. This contract was to cease in September 2007. However, Ms Duncan resigned from Brimbank in November 2006 and left in May 2007 after the council appointed her replacement, Mr Foa.
861. At interview, Ms Duncan explained the reasons for her departure:

I'd been there, as you know, for some time. And it was becoming more and more obvious to me after the last election²² [...] that a number of the people that were coming onto that council were people that I probably was not really prepared to work with. And I can't be sort of - because they this or that or the other - I just did not like the mix, and thought that it was going to become quite toxic. And so I went on with it for a little while, and then thought, "No, I don't think so". And the more often that people would be attacking officers and - you know, someone has to resign because they didn't fill in a pothole or they did this and that - I thought, "I don't really need to do this any more".

862. Ms Duncan stated she informed the 2006 'leadership team' (Cr Suleyman, Cr Abate, Cr Barboza, Cr Capar, Cr David and Cr Zukalksi):

in the October [*sic*], I said to them, "Let's - yeah, let's call it quits", and then the changeover in the power base happened in the November [Cr Giudice became Mayor]. Still didn't change my mind, I just said, "No, this is it" - you know, sort of - you know, "I'm off". And so then I said to them, "We can - we can either do this in a dignified nice way, it doesn't have to be a blood bath, but if you want a blood bath, bring it on"

22 This was in 2005.

863. Ms Duncan stated:

I will put this on record - I left the council because I said to the leadership team, "There are things that you want me to do that I'm not prepared to do, so why don't we have a dignified departure and I'll go my way and you go your way - end of story." And that's what happened.

864. According to Ms Duncan, Cr Suleyman, Cr Abate and Cr Capar asked her to 'remove some senior officers'.

865. Ms Duncan stated she told 'the leadership team': "No, that's not your - that's not your area, I will not respond to that".

866. According to Ms Duncan, 'the leadership team' were not surprised with her decision to resign. She stated:

Because I was becoming probably more and more - I was fighting fire with fire a few times.

...

So when they became sort of - you know, obnoxious in the briefings, I'd sent all the officers away, and then I'd become even more obnoxious to them.

867. Ms Duncan said she informed 'the leadership team' she wanted to leave Brimbank by Christmas 2006; however, she said:

I believe that they got advice from somewhere that it would not be a good idea for me to go at Christmas because it would look as though I had done something wrong, or they had done something wrong - which is even more important - so - so they came back and said would I be prepared to stay on until they found a replacement. And I said, "Yes, because I'm not - I'm not desperate to get out, but I'm not looking to continue".

868. Ms Duncan stated 'the leadership team' obtained legal advice from Maddocks Lawyers, who then prepared a resignation letter for her to sign in November 2006. The termination was deemed to be by 'mutual agreement'. A Deed of Release was drawn up, which stated that Ms Duncan was to stay at Brimbank until a replacement CEO was appointed. She left in May 2007.

869. The Deed of Release provided that Ms Duncan would receive six months pay (\$117,054.50, including superannuation) less tax and that the council would transfer, 'free of charge', a Honda Accord Euro Sedan motor vehicle. The motor vehicle was purchased by the council in December 2006 (after Ms Duncan's resignation) to replace a car that was

purchased 10 months earlier. The council paid \$38,833 for the car, in addition to \$35,523 FBT.

870. Ms Duncan's employment contract stated that in the event of termination by mutual agreement, 'the Chief Executive Officer shall only be paid her Remuneration Package up to the date of termination, inclusive of any pay in lieu of notice'.
871. According to the then Manager, Human Resources, Mr Gerry Smith, the council was 'dysfunctional' and making it difficult for Ms Duncan to manage the organisation. He stated the severance arrangement was not part of Ms Duncan's contract, but was a 'commercial arrangement'. He said Ms Duncan offered to resign in exchange for remuneration benefits and that, in his view, six months severance pay was 'not unreasonable'.
872. A confidential briefing related to Ms Duncan's remuneration package, and provided to the councillors, did not explain why Ms Duncan was provided with six months remuneration and a motor vehicle. The briefing merely refers to the conditions of the Deed of Release.
873. Ms Duncan was asked how this remuneration package was determined. She stated:

Because when we said we can either do this as a blood bath or we can do it as a sort of reasonable - you know, dignified departure - I said to them, "This is what I want".

874. I note that Ms Duncan has since added that 'at no time' did she use the expression 'bloodbath' with the mayor or councillors. She stated that she used this expression at interview with my officers as a 'short-hand colloquialism [...] to describe the consequences of the Council choosing to terminate my contract without a proper process'.

875. At interview, when asked how the motor vehicle became part of her package, Ms Duncan stated:

I'd waived a - an annual increase in one year. I said, "It's not about money, you know, if you're going to get so excited, forget about it, we'll just keep pressing on". But then I couldn't do that every year.

So the next year I said to them, "Instead of giving me the money, include the cost of the vehicle - include the vehicle in my package, because it's effectively the same amount".

876. The then Manager, Human Resources confirmed the council did not want to increase Ms Duncan's pay in 2004 or 2005 and that the council provided her with the motor vehicle in lieu. He was not aware of the FBT paid by council.
877. Ms Duncan stated she thought the councillors 'discussed it amongst themselves' and 'ultimately' agreed to her terms. When Ms Duncan was asked why the council would agree, she stated:
- I could position myself where they would then have to give me six months [pay] anyway to get rid of me.
- ...
- I didn't have anything on them, but I could've become so obnoxious with them and so - you know, that they would just bump you and give you the six months [pay] to get rid of you.
878. Ms Duncan stated that the councillors were 'frustrated' because she would not accede to their requests.
879. According to Cr Atanasovski, he 'heard whispers' that Ms Duncan was pressured to move on by the mayor of the day, Cr Suleyman. He stated:
- They did get on well, but there was a bit of a hiccup about something; I don't know what it was. And all of a sudden, the - a bit of a sour between the two of them. I don't know what happened.
880. Cr Atanasovski stated that Ms Duncan's settlement package cost the council 'a substantial amount of money'. He stated:
- We [were] informed that that's what her entitlements are, and that's why I vote[d] for [the motion relating to her settlement package].
881. Cr Giudice stated:
- I think there was some kind of argument between her and Natalie [Suleyman].
- ...
- But we could see that the relationship between Natalie [Suleyman] and Marilyn [Duncan] was starting to decline.
- ...
- just the way that they were talking to each other. They didn't seem to be as close as they were. Marilyn [Duncan] seemed to be getting a bit more detached.

882. In relation to Ms Duncan's remuneration package, Cr Giudice stated:

I think it was just an offer made from Natalie [Suleyman]. In hindsight, I think it was probably very wrong of us to do that.

883. However, Cr Giudice stated she thought:

there was something in the - in the contract that specified that she had to have a certain amount of money.

...

I think there was something that was said in a briefing about something in the contract.

884. In response to my conclusions, Ms Duncan stated:

In 2006, the Mayor (Cr Suleyman) indicated that a majority of the Councillors wished to terminate my contract. As I understood it, the reason was based on my failure to comply with demands that I felt were unreasonable. This included, for example, repeated requests to terminate the employment contracts of some senior Council executives.

I indicated that I did not regard this as a proper basis for terminating my contract. However, I indicated my preparedness to terminate the contract by mutual agreement. This was agreed to by a majority of the Councillors.

The terms of the departure package were based on independent legal advice sought by Council, without my involvement. This included the treatment of the motor vehicle.

In summary the most effective and lowest cost option for Council was to follow the mutual agreement path under clause 6.3.1 of the contract because termination of the contract without a "resignation" would have required Council to provide 12 months notice (or pay-in-lieu) under clause 6.3.3. This would have required Council to prove non-performance reasons and observe the natural justice provisions under the Local Government Act. This, they clearly could not do.

As I understand it, Councillors were advised that it would be cheaper for the Council to terminate the contract with 6 months' [sic] severance pay and the provision of the motor vehicle at no cost, rather than pay out 12 months' [sic] salary.

Conclusions

885. Ms Duncan's employment contract did not entitle her to a motor vehicle or six months pay. While I have received evidence that the council's decision to provide Ms Duncan with six months severance pay was not unreasonable, I consider that the council's decision to transfer the motor vehicle to Ms Duncan 'free of charge' was imprudent. It cost the council a total of \$74,356.49 to provide Ms Duncan with a motor vehicle, purchased by the council six months prior for \$38,833.49.
886. I note the council's decision in relation to Ms Duncan's package was made *in camera*, as per section 89(2) of the Local Government Act. Had the council been obligated to make a decision in a public meeting, I consider Ms Duncan may not have been so handsomely rewarded.
887. Ms Duncan's package was clearly not handled by the council in an open and transparent manner. It is apparent from the evidence of Cr Atanasovski and Cr Giudice that some councillors may have been unaware of Ms Duncan's entitlements and the reasons behind the size of her package.
888. According to a Local Government Victoria officer, Local Government Victoria has no role in the remuneration of CEOs as 'there's a very clear understanding that the councils - the elected councils are responsible for the employment of the chief executive officer'. In my view, the probity of remuneration packages for outgoing CEOs would be improved if Local Government Victoria played an active role in giving guidance on such arrangements.

Recommendation

I recommend that:

- 27) Local Government Victoria provide to all local councils guidance on all remuneration packages of outgoing CEOs, to ensure that such packages are in the community's interests.

Local Government Victoria response:

The Secretary, Department of Planning and Community Development²³ accepted the recommendation and stated: 'Local Government Victoria will examine the best way to provide all councils guidance on remuneration packages of outgoing CEOs'.

THE CULTURE OF BRIMBANK

889. In addition to identifying evidence of undue influence by unelected persons in council matters, my investigation found that the manner in which councillors exercised their power fell far short of the standards required under the provisions of the Local Government Act, the principles of good governance and the Brimbank *Councillor Code of Governance*²⁴ (the Code).
890. Councillors generally lacked awareness of their role. I identified a culture of factional voting, regardless of the issue, and unacceptable behaviour that breached the Local Government Act, the Code and common courtesy. I have identified behaviour, which, in my view, breaches all the required standards, and which poorly serves the people of Brimbank.
891. Such breaches limit the good governance that a community deserves. As well, there is an actual and potential loss of confidence in their councillors and disengagement by the community. Also, poor behaviour will discourage good candidates from standing for local government and this, too, is to the detriment of the community. In addition, proper and satisfactory working relationships among the councillors themselves, between the councillors and officers, and between councillors and the community cannot develop. Decisions that are made when the principles of good governance are not followed are clearly poor decisions as they are likely to be biased and lack objectivity.
892. According to Cr Barboza, not all councillors carried out 'their role in the most appropriate way'. She stated her last two years as a councillor were 'difficult to deal with' as she 'felt pressurised to make decisions that [she] did not feel comfortable with'.
893. Cr Dymott stated:
- I spent most of my time and energy whilst on Brimbank Council fighting against inappropriate and highly unethical behaviour of various other councillors. My view remains that most (but not all) councillors I served with had little or no concern for the interests of the residents they were elected to represent.

Training for councillors

894. To assist councillors in understanding their role and the standards required of them, Brimbank officers supply them with an induction folder upon election. All Brimbank councillors elected in 2005 were given a folder containing a copy of the Local Government Act; a document explaining meeting procedures; and a manual relating to Brimbank practices, including protocols for using council equipment and reimbursement for private use of that equipment. Councillors also received a presentation that gave an overview of the workings of Brimbank and each of the, then, five administrative departments. The councillors were given training covering the policy, practices and ambit of those departments.
895. Councillors are thereby provided with material that will help them in understanding their role and the standards of behaviour required of them. As well, it is made clear to them that they may approach senior Brimbank officers for assistance.
896. In spite of the assistance and material they are provided with, I have concluded that some councillors have routinely ignored the relevance of and the need to adhere to these rules.
897. Despite the role of councillors, as identified in the Local Government Act, most councillors were first and foremost concerned with short-term representational issues. Cr Suleyman said her role was to 'advocate for their [the community's] needs'. Cr Abate stated:
- My role is to advocate on behalf of those that I represent; my role is to - to listen to - to those that I represent; my role is to forward on concerns of the residents that I represent, and ask that those issues be considered by the officers or the public servants, in line with the existing policies and - and processes.
898. Cr Atanasovski was the only councillor who considered that setting strategic goals was an important part of his role. Cr David considered that decision-making was the most important part of his role.
899. Councillors showed limited interest or knowledge of the relevance of their custodial/long-term role. One senior Brimbank officer commented to my investigators that it was very hard to motivate councillors to have input into, and give consideration to, decisions that would set the future vision for the city.

900. The officer stated councillors ‘had little involvement in the Council Plan. This has not been for want of trying’ on the part of officers. The Council Plan is a four-year plan ‘that sets the direction and dictates the resources required to implement a strategic agenda for the City’. The officer stated:

I don’t expect all Councillors to grasp the nexus between strategy and resource allocation, nor understand and prioritise their custodianship (long term thinking) role over their representational (Short term thinking) role. However, it is the norm for this to be the case at Brimbank, rather than the exception.

901. One senior Brimbank officer commented:

the level of involvement and interest of most Councillors at Brimbank is inversely proportionate to the size and complexity of the issue. Ie: Wanting a street tree removed to satisfy a promise made to a resident will result in the Councillor instigating onsite meetings, up to a dozen phone calls and emails to pressure officers into removing a tree that doesn’t fit the policy for removal.

902. The officer stated that the above was a ‘real example’ involving Cr Abate and a tree in Conrad Street, which resulted in Cr Abate ‘yelling at the CEO’. According to Cr Abate, the issue resulted from the fact that ‘the organisation did not have any known tree-removal policy’. However, the CEO has since provided my office with a copy of the council’s tree removal policy, which outlines the circumstances under which a tree may be removed. I note Cr Abate did not respond to the allegations he yelled at the CEO or pressured officers.

903. The senior Brimbank officer stated that in contrast to councillors’ high level of involvement with trees, ‘a multimillion dollar tender award or major strategic project [would] barely get a passing comment at a Council meeting’.

904. In relation to vital infrastructure being cut from the budget by the ruling faction, one senior Brimbank officer stated:

We have \$1 billion worth of assets in various states of disrepair. We are managing to reduce the asset renewal gap. However the executive often have discussions and concerns about “Non sexy” projects being cut from the budget to fund a new soccer pavilion [...]. [We often say] “You can’t cut a ribbon for a drain. If we think it has to be in the budget, then we have to give it its best chance of getting up by not highlighting it in the budget papers”.

905. The emphasis on constituents' personal issues, rather than strategic leadership, may be useful for a councillor's re-election chances; however, it is a fundamental misconception of the proper role of councillors. I recognise that, as Cr Eriksson commented, there is an enormous amount for a new councillor to learn, and, as other councillors noted, much of this is done 'on the job'. However, I consider that the rules of conduct and scope of the role are straightforward and should not be disregarded or breached in the way that I have found in Brimbank.

The role of the mayor

906. Section 71 of the Local Government Act states:
- (1) The Councillors must elect a Councillor to be the Mayor of the Council.
907. Section 73(1) and (2) of the Local Government Act state:
- (1) The Mayor of a Council takes precedence at all municipal proceedings within the municipal district.
 - (2) The Mayor must take the chair at all meetings of the Council at which he or she is present.
908. Since 2005, Victorian council mayoral elections have been held in December each year. There are no rules on how long a councillor must have served before being elected mayor, or on how often a councillor may be mayor. In 2007-08, the full-time mayoral position carried a salary of \$57,500; a motor vehicle; secretarial help; and the same office equipment provided to all councillors. As it has a substantial salary it is treated as a full-time position, and therefore the pool of candidates is limited by councillors' employment circumstances.
909. There have been three mayors in Brimbank since 2005: Cr Suleyman was mayor in 2005-06, Cr Giudice in 2006-07 and Cr David in 2007-08.
910. At interviews, councillors considered that a good mayor should:
- be a leader
 - hold a council together in the chamber
 - have representational skills
 - understand meeting procedures.

911. Cr David said that being mayor has an extra obligation:
- I think you have to be seen to be [the] drive[r], you be the driver for the rest of the councillor[s] you be the flag bearer for the council, yes. You have to be seen that you are drive by [sic] example.
912. In spite of their view that a mayor should have certain characteristics, several councillors referred to the custom in Brimbank of councillors taking turns to be mayor and noted that the mayoralty was something to be shared. Dr A. Theophanous regarded the taking of turns as reflecting the democratic principle. Cr Suleyman was described as 'greedy' for wanting to stand a fourth time for mayor before others had had their turn.
913. It is clear that, at Brimbank, the mayor was elected because councillors perceived it to be that person's turn; and also that the mayoralty may be used as a reward for supporting a certain faction. Ms Duncan commented to my officers that 'Brimbank is famous for what happens on election night for a mayor', with factions settled at the last minute when mayoralty deals are made. Councillors also spoke about Brimbank's mayoral elections being the subject of comment in other cities.
914. There was no evidence that a councillor was, between 2005 and 2008, elected as mayor because of any relevant strength or ability, but rather because of a deal done between councillors, based on whose turn it was.

The 2007-08 faction

915. While there may have been factions before 2005, they were certainly evident after 2005. That year, Cr Suleyman served as Mayor, supported by Crs Abate, Capar and Zukalski. Cr Barboza noted that in her first year on council (2005-06) she started to see 'a lot of conversations that didn't seem right – people being left out of particular conversations. Ganging up'.
916. Cr Zukalski said Cr Suleyman and Cr Capar kept information from her. She said:

if I questioned something it was always given to me in a different way. It was never the actual truth now that I realise, I was never told the truth the whole time. If I questioned Natalie [Suleyman] or Ken [Capar] for anything they would give me a reason that made me realise - not realise but made me think that I was doing it for the right reasons. They manipulated me.

917. Two separate groups appeared to become more defined soon after Cr Giudice was elected mayor for 2006-07. The evidence is that Cr Suleyman wished to stand again for a fourth term, but was unable to raise the support required. Cr Giudice was elected unopposed. During the first months of Cr Giudice's mayoralty, hostilities grew between her supporters, and Cr Suleyman and her supporters (Crs Abate, Capar and Zukalski). According to Cr Eriksson, there was a 'cold war impasse' between the factions by May 2007.
918. The following years' mayoralty was not settled until just before the election on the evening of 11 December 2007. One group of councillors thought it had been decided that Cr Atanasovski would be mayor, as it was his turn, but two to three hours before the election, Cr David nominated. He was elected Mayor and Cr Eriksson was elected Deputy Mayor.
919. Cr David was elected mayor not because it was his turn; he had already been mayor twice before. Only two councillors thought Cr David was an adequate mayor. Comments from other councillors were that he was 'a follower and a fence-sitter' and incapable of standing up to the people who voted for him. A former senior Brimbank officer stated, 'He goes with whichever faction he is in. He goes with the flow' and that he was a 'weak persona'. Other senior Brimbank staff shared this view and said it was obvious, as Cr Barboza noted, that Cr David was being dominated by other councillors 'who use their power through him.' Cr Barboza said 'he was scared to go against people. Because they've given him power to be mayor'.
920. Although Cr David thought he had been a good mayor, my investigation identified that he was unable to stand up to Cr Suleyman when he thought she was doing the wrong thing. This is evident from his decision to sign the direction aiming to arbitrarily remove funding for Keilor Lodge Reserve, he says, against his better judgment.
921. His weak chairmanship is illustrated also by the events of the Special Council Meeting of 15 July 2008, when Cr Suleyman took over from him as soon as the motion under consideration was put, and said, 'We will move in camera now, Mr Mayor, and we will go to the press tomorrow.'
922. In the case of Cr Eriksson, according to her husband, Dr A. Theophanous, she became deputy mayor because it was her turn. She was, until then, a supporter of Cr Giudice and had been one of those who told Cr Suleyman that she did not support her for a fourth-term as mayor.
923. Nevertheless, it is clear that she was unlikely to take her turn on that occasion unless she agreed to form part of the ruling faction; the faction that she had not previously supported.

Conclusions

924. Voting for a mayor without taking notice of strengths and ability to do the job properly is not consistent with the principles of good governance upon which local councils should be run. In my opinion, using the mayoralty to cement a majority group in power for the term of a council is also inappropriate. In 2008, it is clear that the council was dominated by three councillors (Cr Suleyman, Cr Abate and Cr Capar). The rest of the 'ruling faction' was not independent but voted without using their best skill and judgment, and without regard for the best interests of the community.
925. It is apparent that a majority group of councillors, with outside support, dominated Brimbank in 2008. It appears a similar dynamic has been set up for the term of the present council. The majority group of councillors has already selected its mayors for the next four years and there is credible evidence that the order was deliberately chosen to keep Cr David's support throughout the whole period.
926. I do not consider that taking turns to be mayor is democratic. In my view, it excludes the free election of a mayor, based upon the merits of the candidate and the requirements of the position.

LOCAL GOVERNMENT VICTORIA

927. The role of Local Government Victoria is to work in partnership with councils and local government associations to ensure the effective and efficient delivery of local government services to Victorian communities. Local Government Victoria also provides advice to the Secretary and Ministers on the administration of the Local Government Act; and investigates and prosecutes breaches of the Act.
928. My investigation identified concerns about the way in which Local Government Victoria discharged its statutory responsibility to investigate potential breaches of the Local Government Act in relation to Brimbank. In my view, Local Government Victoria's response to complaints about Brimbank did not adequately address the issues raised.
929. I note in this context that Local Government Victoria does not appear to be sufficiently resourced to discharge its statutory responsibilities.

Brimbank

930. My officers reviewed Local Government Victoria complaint files to determine what action, if any, Local Government Victoria had taken in response to complaints about Brimbank in the past.
931. My enquiries found that the complaints were not filed separately, but with other Brimbank complaints. The files typically contained a letter of complaint, followed by a response letter from Local Government Victoria. There was no documented assessment of each complaint on file.
932. In my view, each complaint should have been assessed to determine its nature, how it should be dealt with, when it should be dealt with, who should be involved and whether further information or investigation is required. An assessment should ensure that all issues in a letter of complaint are identified and appropriately addressed.
933. There was also little, if any, evidence on the Local Government Victoria files of preliminary enquiries, discussions or documents that were used to support its conclusion that the matter should not be investigated.
934. I was also concerned that Local Government Victoria appeared to take little action in response to the complaints.
935. According to the CEO of Brimbank, Mr Foa, he contacted Local Government Victoria several times from May – July 2008, in relation to his concerns about the conduct of some councillors.

936. The CEO stated that Local Government Victoria would not act unless there was a failure of governance. According to the CEO, he attempted to stop the councillors reaching that point.
937. In response to this, the Secretary, Department of Planning and Community Development stated:
- The primary test of governance in the context of the Minister for Local Government's powers under the Local Government Act 1989 (the Act) to suspend a council is a failure of each council to be able to make decisions necessary to conduct its business.
938. While the council may have been making decisions, the decisions were sometimes not in the community interest and were influenced by individuals who hold no elected local government office, including those precluded from being a councillor because of previous criminal convictions.
939. Section 223B of the Local Government Act provides Local Government Victoria inspectors with broad powers:
- An inspector of municipal administration may examine or investigate—
- a) any matter relating to a Council's operations or to Council elections or electoral matters; and
 - b) any possible breaches of this Act.
940. Local Government Victoria has 'five or six' permanently appointed inspectors, while the Minister also has the power to appoint an external inspector.
941. I was concerned that Local Government Victoria may not have sufficient capacity to investigate complaints or to make preliminary enquiries.
942. My investigation was unable to identify how many investigations had been conducted by Local Government Victoria in 2008. It would appear that only a relatively small number are investigated by inspectors. I was unable to locate any statistics in the *Department of Planning and Community Development Annual Report 2007/08*. In response to this, the Secretary, Department of Planning and Community Development stated:
- There is no requirement to include statistics of complaints in the annual report of the Department. The Department is however about to implement a new Document and Record Management system which will allow the capture of some statistics. Ministerial correspondence is subject to a different system. The Department will examine whether it can be adapted to also capture statistics relevant to complaints received.

943. I understand that Local Government Victoria was this year allocated a one-off sum of \$300,000 to deal with 'the run up to and post the election', in addition to its normal workload. According to one senior officer, Local Government Victoria has also discussed putting 'in place a more dedicated investigatory sort of group'.
944. I will now address some of the issues raised by the CEO, Mr Foa with Local Government Victoria from May – July 2008, in addition to a complaint from a Brimbank resident. In my view, these issues highlight inadequacies in Local Government Victoria's discharge of its statutory responsibility to investigate potential breaches of the Local Government Act by Brimbank councillors.

Excessive telephone use by councillors

945. On 28 August 2006, a Brimbank resident emailed the then Minister for Local Government in relation to allegations of excessive council mobile telephone use by Cr Suleyman reported in the media. The resident stated:

I urge you to investigate the latest issue with our Mayor: Usage of Mobile Telephone as reported in The Age Sunday 27/8/06.

Mayor Suleyman and CEO Marilyn Duncan must be accountable to some-one, I believe that some one is you. With all the allegations of corruptness [sic] in the Brimbank Council surely it is your responsibility to investigate.

946. Then Executive Director, Local Government Victoria and Community Information responded on behalf of the Minister by letter, dated 19 September 2006. The response stated:

Councils generally provide certain items such as telephones and fax machines for councillors to use for council business, and have policies governing the use of those facilities. It is incumbent upon councillors to use these facilities in accordance with those local policies.

Responsibility for administration of such local policies rests with the elected Council.

Thank you for your interest in local government.

947. This response referred the allegations of corrupt conduct back to the council, of which Cr Suleyman was Mayor.
948. In my view, Local Government Victoria should have considered appointing a Municipal Inspector to investigate the matter. I note

section 223B of the Local Government Act provides Local Government Victoria inspectors with broad powers.

949. Alternatively, Local Government Victoria could have suggested that Brimbank conduct an internal audit of councillors' mobile telephone use.
950. The Secretary, Department of Planning and Community Development has since acknowledged that 'the suggestion Brimbank conduct an internal audit would have been an appropriate addition to the Local Government Victoria response'.

Leak of draft budget material

951. The CEO of Brimbank, Mr Nick Foa, wrote to Local Government Victoria on 2 May 2008 to inform him that information had been leaked to The Advocate from the council's budget briefing on 19 April 2008.
952. The briefing was an internal working session for councillors and senior officers. The CEO stated that the leak suggested a councillor may have breached section 76B(3) of the Local Government Act, which states that councillors must not make improper use of information acquired in their position to gain, or attempt to gain, directly or indirectly an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the council.
953. Around 14 or 15 May 2008, the CEO states he reminded an officer of Local Government Victoria, in person, of his letter dated 2 May 2008. The Executive Co-ordinator also emailed the officer on 19 May 2008 about the matter.
954. Local Government Victoria responded on 22 May 2008, stating:
- the matter is unlikely to constitute a breach of the Act. Previous legal advice received by LGV relating to requirements of this section [76B(3)(b)] indicates that the alleged actions outlined in your letter are unlikely to be improper for the purposes of this section of the Act.
955. In November 2008, my office requested that Local Government Victoria provide a copy of the legal advice referred to above. Local Government Victoria subsequently provided a copy of advice it received from the Victorian Government Solicitor's Office (VGSO) in February 2007.
956. The legal advice did not support the statement of Local Government Victoria. The legal advice was not concerned with section 76B(3)(b) of the Local Government Act. Rather, it related to section 76B(1)(b) and the meaning of the phrase 'reasonable care and diligence'.
957. In March 2009, in response to my concerns about Local Government Victoria's reliance on irrelevant advice, Local Government Victoria

informed me that it had provided the wrong legal advice to my office. Local Government Victoria then provided a copy of advice it received from the Victorian Government Solicitor in September 2006. The advice related to allegations that a councillor had breached sections 76B(3)(a) and 79 of the Local Government Act.

958. I note that this advice does not, in fact, deal with or mention the section of the Local Government Act in question in relation to the leak of draft Brimbank budget material – that is section 76B(3)(b). Nonetheless, it does discuss, among other sections, section 76B(3)(a) – a similar provision, which contains much of the same terminology. In particular, the phrase ‘improper use’ is used in both provisions.

959. Local Government Victoria stated the two provisions, 76B(3)(a) and 76B(3)(b):

are essentially the same and Local Government Victoria used the same advice in understanding the application of section 76B(3)(b) to respond to the CEO’s letter of 2 May 2008. This was based on the view that the term ‘improper’ was to be interpreted in a consistent manner across the statute.

960. The Victorian Government Solicitor’s advice discussed the phrase ‘improper use’ and the way it has been interpreted, particularly by the High Court in *R v Byrnes* (1995) 130 ALR 529, noting that it requires ‘a gross departure’ from public administration standards. The Victorian Government Solicitor went on to compare the actions of the councillor in question with that standard. The two allegations made against that councillor did not involve leaking sensitive budget material to a third person, but were unrelated instances of the councillor using his position to gain advantage, first by the use of his council email address, and secondly by voting on a council resolution concerning funding of the relevant project.

961. While the Victorian Government Solicitor’s discussion may be of use in considering the application of section 76B(3)(b) to the Brimbank situation, I find it difficult to see how advice regarding the application of a different provision to very different circumstances can be claimed as legal advice supporting the view that ‘the alleged actions outlined in your letter are unlikely to be improper for the purposes of the Act’. In my view, there is nothing in the Victorian Government Solicitor’s advice that justifies that statement.

Lack of quorum

962. At the Ordinary Council Meeting of 24 June 2008, at 9.04pm, five councillors – Cr Barboza, Cr Atanasovski, Cr Socratous, Cr Giudice and Cr Dymott – left the chamber after Cr Zukalksi attempted to attach an addendum to the council’s 2008-09 budget. The addendum proposed that the council call for expressions of interest for Keilor Lodge Reserve.²⁵ As five of the nine councillors present left the chamber, the meeting temporarily lapsed for a lack of quorum.
963. According to the CEO, he advised the councillors that they needed to return to the chamber, or he would need to notify the Minister that a ‘call of the council’ was necessary at a future time and date.
964. Section 85 of the Local Government Act states:
- (1) If a quorum of a Council cannot be formed or maintained due to the absence of Councillors, the Minister or the Chief Executive Officer may require all Councillors to attend a call of the Council meeting.
- ...
- (6) If after considering any submissions from the Councillor and the Council the Minister is not satisfied that the Councillor had a reasonable excuse for not attending or remaining at the call of the Council meeting, the Minister may order that as from the date specified in the order the Councillor is incapable of remaining a Councillor.
965. A ‘call of the council’ was not necessary on this occasion as the councillors observed the CEO’s advice and returned to the chamber at 9.35pm.
966. On 26 June 2008, the CEO’s then Executive Advisor informed the CEO:
- The councillors who temporarily left the Chamber should be counselled to refrain from engaging in such behaviour. If they absented themselves as a protest or to ensure that the Council was unable to deal with a particular item of business and in so doing attempted to manipulate an outcome then this is a serious matter that may require further examination/ action and advice.
- If the Councillors left the Chamber of their own accord as individuals for their own reasons and did not collude beforehand (that if a matter was going a particular way they would then systematically stage a walk out) then this is less serious, but does require counselling (as mentioned above)

25 This matter is discussed further in the chapter entitled, ‘Decision-making contrary to the community interest’.

967. On 30 June 2008, the CEO discussed the matter with a Local Government Victoria officer. The CEO states that the officer asked him if there was a 'failure of governance' and he responded 'there wasn't but they came very close'. The CEO stated:

I raised my frustration at the increasingly difficult job of keeping the Council on track, without some sort of external assistance such as an investigation.

968. The Local Government Victoria officer responded to this, stating:

We discussed this in the context that the relationship between a CEO and their council not always being an easy one. A difficult relationship is not of itself a reason to commence an external investigation. Other external assistance such as seeking mediation or assistance from a peak local government body may have been appropriate and was available for the CEO to seek to institute.

969. No action was taken by Local Government Victoria as the councillors returned to the council chamber and conducted council business.
970. The Secretary, Department of Planning and Community Development stated that 'what the CEO described as having occurred at Brimbank was not a matter that would have been appropriate for an investigation' as the Brimbank councillors returned to the council chamber.
971. Given the seriousness of failing to remain at a 'call of the council', I consider Local Government Victoria should have played a role in reminding Brimbank councillors of the requirements of section 85 of the Local Government Act.

The direction

972. In his discussion with the Local Government Victoria officer on 30 June 2008, the CEO stated that he informed the officer 'there were documents available for discovery' if Local Government Victoria were to investigate. The CEO stated:

I referred to the directive received from Councillors to redirect the funds from Keilor Lodge Pavilion. I asked him if he wanted a copy of that document, and he replied "Not Yet".

973. At interview, the Local Government Victoria officer was advised that the councillors who issued the direction were aware of the potential financial cost to council had the CEO withdrawn the funds from the project. He was also advised of the motivations behind the direction. The officer stated:

That evidence was never in front of me to my knowledge.

...

Had it been, we would probably have sought some specific advice about it.

...

If we had been presented with a complaint with fuller details, or perhaps fuller details having made further enquiries, you know, we might - may well have gone a different path.

974. According to the Local Government Victoria officer:

the conversation I had with Nick Foa was to the effect that he had been approached with a request and he had told them that he wouldn't accept that direction. I mean, that was pretty much the conversation.

975. The officer has since added:

The CEO told me he had advised the councillors that only the council in a council meeting could decide to redirect funds. I agreed with the CEO that that was the proper advice to give the councillors.

976. The officer stated he did 'not recall documents being offered' to him by the CEO.

977. I am concerned that Local Government Victoria did not pursue this matter. As discussed earlier in my report, I consider that the councillors who issued the direction may have breached section 76B(3) of the Local Government Act. While he was not provided with evidence of this, it was there to find should Local Government Victoria have investigated.

Conclusions

978. Local Government Victoria did not in my view adequately deal with a number of complaints about Brimbank, received from residents and the Brimbank CEO.

979. Also, in my view, Local Government Victoria is insufficiently resourced to meet its statutory requirements. I consider that Local Government Victoria's capacity to investigate, and the resources available to it, should be reviewed. Further, I consider that Local Government Victoria should introduce a dedicated investigative team to ensure its statutory requirements are able to be met.

Recommendations

I recommend that:

- 28) Measures be taken to ensure Local Government Victoria is sufficiently resourced to meet its statutory requirements in relation to investigating breaches of the Local Government Act.

Local Government Victoria response:

The Secretary, Department of Planning and Community Development accepted this recommendation. He also added 'in relation to the parts I have seen, your report makes some valuable and constructive suggestions to improve local government performance in Victoria'.

I recommend that:

- 29) Local Government Victoria introduce a dedicated investigative team to investigate complaints under the Local Government Act.

Local Government Victoria response:

The Secretary, Department of Planning and Community Development accepted the recommendation and stated: 'A dedicated investigative unit is in the process of being established within Local Government Victoria. A manager of Investigations has been appointed and a Senior Inspector has been recruited to date'.

I recommend that:

- 30) Local Government Victoria document the formal assessment of each complaint, assessing each allegation against the relevant sections of the Local Government Act.

Local Government Victoria response:

The Secretary, Department of Planning and Community Development accepted the recommendation and stated: 'Local Government Victoria has commenced the implementation of a documented process to record the formal assessment of complaints'.

SUMMARY OF RECOMMENDATIONS

I recommend that:

1. The Minister for Local Government closely monitor the activities of the council and, should the poor practices that occurred prior to the 2008 election continue, that he consider suspending and/or dismissing the council and appointing an administrator.
2. The Local Government Act be amended to disqualify persons employed as electorate officers, ministerial advisers and parliamentary advisers, or employed by Federal or State Members of Parliament, from becoming or continuing to be a councillor or nominating as a candidate.
3. Local Government Victoria investigate possible breaches of section 76B(3) of the Local Government Act by Cr Suleyman, Cr David, Cr Eriksson, Cr Abate, Cr Capar and Cr Zukalski, with a view to determining whether action should be taken against them.
4. Brimbank remove councillors from the Allocation Assessment Advisory Group. The allocation of facilities and reserves should be determined by Brimbank officers, in accordance with the Community Facilities and Reserves Allocation Policy, and Brimbank officers should present their recommendations to the council chamber for a decision by council.
5. Brimbank ensure that if Lloyd Reserve becomes available, the Community Facilities and Reserves Allocation Policy is complied with; any interest from the Melbourne Knights is assessed on its merits; and a probity auditor is engaged to oversee the process.
6. Brimbank review its Community Facilities and Reserves Allocation Policy to ensure that all new facilities, and sites where groups have vacated, are allocated through a public allocation/expression of interest process, at a minimum.
7. Brimbank review Cairnlea Soccer Club's compliance with the conditions of its lease with Brimbank, in light of my investigation.
8. Local Government Victoria investigate a possible breach of section 77(1) of the Local Government Act by Cr Eriksson, with a view to determining whether action should be taken against her.
9. The CEO brings to the attention of councillors the confidentiality provisions of the Local Government Act and section 5 of the *Councillor Code of Governance*.

10. The Victorian Electoral Commission investigate possible breaches of the Electoral Act by the Australian Labor Party.
11. The Victorian Electoral Commission consider how other registered political parties and MPs are using the VEC electoral information.
12. The Victorian Electoral Commission amend its correspondence to Members of Parliament and registered political parties to ensure they are regularly made aware of the permitted uses for electoral information under the Electoral Act, including the definition of 'election', which excludes local council elections.
13. Brimbank review ATCCWA's lease for 76-78 Biggs Street to ensure ATCCWA is compliant with the lease conditions; to determine whether it is appropriate for the property to be used by ATCCWA; and to determine whether the property may be used by other community groups.
14. Brimbank introduce a policy to prohibit councillor access to Brimbank files.
15. Brimbank introduce a policy detailing the circumstances and the means by which a councillor may request, and a Brimbank officer may provide, council information; and requiring that councillors do not use information other than for the purpose for which it was provided.
16. Local Government Victoria investigate the conduct of Cr Capar, with a view to determining whether action should be taken against Cr Capar in relation to the 'toilet venture'.
17. Local Government Victoria investigate whether Cr Atanasovksi failed to declare election campaign gifts in the 2003 and 2005 elections, with a view to determining whether action should be taken against Cr Atanasovski.
18. Local Government Victoria investigate whether Mr Seitz provided election campaign gifts to other councillor candidates that have not been declared by the candidates.
19. Local Government Victoria provide guidance to councils about the requirements of section 62 of the Local Government Act in relation to what constitutes a gift.
20. Brimbank remind councillors of the requirements of the *Telecommunications and Email Use Policy*, and the *Unacceptable Electronic Communication Usage Policy*.
21. Brimbank publish each individual's total mobile telephone usage on the Brimbank website quarterly.

22. Brimbank review its policies in relation to councillor mobile telephone use to ensure councillors are required to
 - highlight any personal calls on their bills and provide these to Brimbank with a signed declaration monthly
 - reimburse Brimbank for personal calls monthly.

This should be incorporated in the Councillor Code of Governance
23. Brimbank regularly audit councillor mobile telephone bills
24. Brimbank consider recovering outstanding money from councillors who have failed to reimburse Brimbank for all personal calls, as outlined in the audit.
25. Brimbank develop and implement a policy in relation to mayoral gifts. The policy should set a limit on the amount to be spent on mayoral gifts and should provide for the value of the gift to be published on the Brimbank website annually.
26. Brimbank ensure all administrative staff and councillors are aware of the *Acceptance of Gifts and Hospitality Procedure* and the need to register all gifts and hospitality.
27. Local Government Victoria provide to all local councils guidance on all remuneration packages of outgoing CEOs, to ensure that such packages are in the community's interests.
28. Measures be taken to ensure Local Government Victoria is sufficiently resourced to meet its statutory requirements in relation to investigating breaches of the Local Government Act.
29. Local Government Victoria introduce a dedicated investigative team to investigate complaints under the Local Government Act.
30. Local Government Victoria document the formal assessment of each complaint, assessing each allegation against the relevant sections of the Local Government Act.



G E Brouwer
OMBUDSMAN