

CONFIDENTIAL MEDIATION REPORT

City of Burnside

Independent Mediation Recommendations

Report **29th August 2017**

Author: **Theressa Hines:**

Managing Director

EMPLOYER GLOBAL SOLUTIONS PL

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EGS Background

Employer Global Solutions PL (EGS) are specialised human resources, industrial relations and work health and safety specialists. We support organisations to understand and meet their legal obligations in all employment related matters. Further, we work with organisations to understand their current culture and identify opportunities for improvement, through audits, reviews, cultural surveys, training, assessment of tasks and performance etc.

EGS and, in particular, its principal, Theresa Hines, has substantial experience in industrial matters, workers compensation, incident investigations, performance management, workplace bullying, disciplinary management, human resource and safety management. EGS provide extensive training in employee related matters including bullying and harassment, work health and safety obligations, drugs and alcohol, and performance management, and also undertake reviews against the legislation and current industry or organisational performance, and provide recommendations on workplace improvement.

Theresa Hines, the Managing Director of EGS, has over 20 years' experience as an executive HR and WHS practitioner. She previously consulted on behalf of Worksafe Victoria conducting worksite visits and audits. She was the former EHS Director for Electrolux globally, the former HR Director Electrolux Asia Pacific, former Senior Industrial Advisor at Western Mining Olympic Dam Operations (now BHP) and HR Coordinator for Goodman Fielder. Theresa has post graduate qualifications in Work Health and Safety Management and undergraduate qualifications in Business (Labour Relations) and Management (Human Resources Industrial Relations).

Disclaimer:

In compiling this report, EGS have relied on information, including but not limited to: emails, text messages print screens, notes, diary notes, reports, minutes, determinations, legal advice reports etc.), which have been provided to EGS from the City of Burnside, Councillor Bagster and others.

Whilst every care has been undertaken to determine the validity of information provided, EGS have undertaken this review, on the basis that information has been provided in good faith and is factual and a true reflection of events and correspondence as it occurred. Further that it has not been doctored by any means. No responsibility will be taken by EGS, its principles or the author where misleading information has been provided.

Furthermore, as this report focuses on providing advice to City of Burnside, as an outcome of mediation sessions provided by EGS, EGS has taken the liberty of not including information which it gleaned in confidence by the parties involved in mediation. At times, information was shared with the mediator which was of a significantly personal nature and was communicated with an understanding it was provided in confidence. EGS take no responsibility, should it have become aware of information during mediation that may later have a bearing on this report or the City of Burnside.

EGS in compiling this report was provided with voluminous supporting information. EGS elected to take a selection of the material provided for the purposes of this report (122 appendices). The material used is largely gleaned from information pertaining to 2017 (though not always, as earlier material has had relevance). EGS acknowledges that there is significantly more information that supports the assertions in the findings section of this report, and that information can be provide on request. This information has been omitted, as it is believed that sufficient evidentiary material is enclosed.

Background

EGS was engaged to support the City of Burnside ('the Council'), to provide mediation support to both Councillor Lance Bagster and the CEO, Paul Deb.

The terms of engagement are set out in the Council resolution as follows '*That the Council engage Theresa Hines of Employer Global Solutions to provide a separate but individual and personalised support service (of up to five sessions each) to Councillor Bagster and the Chief Executive Officer for the purpose of addressing relationship and communication improvements and, thereafter, to provide a recommendation to the Council regarding the future management of their relationship*'.

The objectives of the mediation were

- To determine issues present between the parties, and
- To work through resolution of those issues, to enable both parties to enjoy a professional working relationship, and
- To provide mechanisms to reduce the negative impact of the relationship between the parties, other Council members and employees, and
- To report on the likelihood of a future professional relationship between the parties.

Mediation was engaged with both parties, on an individual basis. Both parties actively participated in the mediation. At no point in time were the parties requested to engage in a joint mediation session.

Both parties indicated that the other was victimising, bullying and harassing him. This alleged behaviour, was viewed by both parties as a significant and fundamental barrier to their professional relationship. Based on the allegation that both parties were engaging in unlawful behaviour, the mediator invited them to furnish evidence accordingly. Both parties provided information, which they stated demonstrated bullying, and therefore unlawful behaviour on the part of the other.

Bullying is defined as "**repeated, unreasonable behaviour directed towards a worker or a group of workers, that creates a risk to health and safety**" in accordance with the Australian Code of Practice Bullying. A criminal conviction may be applicable if a successful prosecution occurs under the Work Health and Safety Act (SA) 2012 ('WHS Act'), where it is determined that an organisation or person has failed to meet their legal Duty of Care obligations.

A Person Conducting the Business or undertaking (PCBU) has prescribed obligations to workers that includes, so far as is reasonably practicable (SFAIRP), ensuring the '**provision and maintenance of safe work environment**'.

Worker obligations under the Act, are that they must (amongst other things):

- **Take reasonable care that his or her acts and omissions do not adversely affect the health and safety of other persons; and**
- **Comply with any reasonable instruction given by the PCBU; and**
- **Cooperate with any reasonable policy or procedure of the PCBU relating to health and safety at the workplace that has been notified to workers**

For the purposes of the WHS Act, we have considered and treated Councillor Bagster as having obligations consistent with this Act (whether an Elected Member is an Officer consistent with the legislation, will need to be appropriately considered by legal experts, whom can advise Council accordingly). The CEO is classified as a worker, Officer and a PCBU.

EGS reports that, whilst both parties actively participated in the process of mediation, it was not successful in addressing the barriers between them. However, by virtue of the process, EGS was able to determine that Councillor Bagster engaged in behaviour and actions, which were bullying, harassing and stalking in nature and fundamentally unlawful. There was no evidence which indicated that the CEO engaged in bullying, harassing or stalking behaviour, though there was a Code of Conduct matter, which is addressed below.

Whilst support was provided to enable Councillor Bagster to cease and desist in these actions, it became clear that he was either unable or unwilling to do so and, therefore, he posed, and continues to pose, a significant health and safety risk to the other party (in addition to others).

It is pertinent to note that Councillor Bagster's inappropriate behaviours were noted in 2015, and (amongst others) they were directed at the former General Manager Community and Development Services. It is apparent that Councillor Bagster did not like the fact that the CEO defended the General Manager, resulting in a tense relationship between Councillor Bagster and the CEO. This tense relationship between the parties continued during 2016, as was evidenced by episodes of inappropriate behaviours exhibited by Councillor Bagster, in relation to several other topics.

Edward Byrt in his report, noted that these incidents over several months from 2015 to February 2017 led to resolutions C11055, C11112 and C11228 being carried. The resolution of C11055 appears to have been a catalyst for more rigorous and widespread endeavours by Councillor Bagster to achieve his goals, evidenced by an escalation in the number of emails and other communications to the CEO and a wider group of Council staff and Elected Members.

EGS findings and recommendations are provided below.

Evidence Presented

As a result of the mediation process between the parties and our review of the materials provided by both parties, it is beyond any reasonable doubt that Councillor Bagster and, therefore, the City of Burnside PCBU and Officers (which, includes the Chief Executive Officer and possibly Elected Members) have failed to meet their legal obligations under the WHS Act in regards to the Duty of Care to provide a safe workplace. Given this situation, the risk profile at the City of Burnside is extreme, and must be urgently addressed by the Elected Members and Chief Executive Officer (or person acting in that role)

Bullying is an adverse issue at the City of Burnside (particularly within Elected Members and Executive Management) that it seriously impacts the workplace risk profile across the organisation. There are highly inappropriate, high risk behaviours, which, as a matter of priority, need to be addressed and removed, to ensure that the organisation maintains a safe workplace for all of its workers. There are a number of control measures which are required to be implemented as outlined later in this report.

The evidence provided (attached as appendices) is voluminous. There is well over 100 documents including text messages, emails, reports, etc. which largely relate to the period January 2017 to August 21st 2017. The position of EGS is that the evidence demonstrates a systemic ongoing bullying, harassing, and stalking campaign has, and continues to be engaged by Councillor Bagster. Further, the victims of Councillor Bagster's (what can only fairly and reasonably be termed an 'horrendous') campaign are the City of Burnside CEO Paul Deb, the Mayor David Parkin, GM Martin Cooper, GM Barry Cant, and others at different times.

There is additional evidence demonstrating that Councillor Bagster has engaged in this behaviour for a significant period of time. However, due to the size of the appendices, EGS has omitted to include all supporting documentation on the basis that the information provided with this report, is adequate and sufficient to support the allegations and concerns.

The evidence also demonstrates that this behaviour is serious, systemic, comprehensive and at times harsh and cruel that it clearly posed (and continues to pose) a significant risk to the health, safety and welfare of the victims. It is difficult to determine whether Councillor Bagster is wilfully engaging in this 'horrendous' campaign against others, or, is subconsciously doing so because he is likely suffering a medical health issue which is impacting his ability to conform with social norms and engage appropriate behaviours.

EGS alleges that Councillor Bagster, by engaging in these behaviours (and others), has contravened his obligations as follows:

- As an Elected Member for the City of Burnside consistent with the Work Health and Safety Act; and therefore is subject to criminal prosecution; and
- The Fairwork Act (2009) and is therefore subject to orders (jurisdictional matters may apply); and
- The local Government Act (2009); and
- The Australian Code of Practice Bullying and therefore is subject to criminal prosecution; and
- City of Burnside Code of Conduct Council Members; and
- City of Burnside Policies and procedures; and
- Anti-discrimination legislation; and
- Anti-Stalking legislation.

By virtue of Councillor Bagster's behaviour, the City of Burnside and its Officers are exposed to:

- Prosecution for failing as a PCBU to provide a safe workplace. This can incur penalties up to 3 million dollars
- Prosecution for failing as Officers in the obligations to provide a safe workplace. This can incur penalties of up to 600k as well as 5 years' incarceration for each Officer.
- Increased labour turnover and loss of key staff
- Litigation and/or orders of the Court
- Increased Worker Compensation claims
- Increased unplanned absenteeism
- Negative public perception
- Unwanted negative media

- Increased costs due to legal support and resources required to support litigation

By virtue of Councillor Bagster's behaviours, the Department of Defence is exposed:

- To a risk of vicarious liability, if it can be demonstrated that Councillor Bagster undertook unlawful action, whilst at work or using a means (e.g. computer, telephone) provided by his employer. It is clear that significant correspondence from Councillor Bagster has occurred during normal work days and work times – we recommend that this be verified.
- For failing in the Duty of Care to others. If it was aware of ongoing medical treatment for Councillor Bagster for a significant medical matter, and it was aware that he had a propensity to engage in anti-social, bullying, harassing and stalking behaviours, then it may have failed in its obligation to others.

As part of the review of material provided, it is evident that a number of workers are subjected to bullying in the workplace through the actions of Councillor Bagster and indicate that they do not feel safe as a result. Some indicated that they were being medicated (or self-medicating) due to the stress, others indicated that they had accessed medical support and, one person indicated that they had sought leave due to stress, specifically as an outcome of being bullied at work.

Documentary evidence provided demonstrated that Councillor Bagster had and continues to engage in behaviours which were and are highly inappropriate, bullying, harassing, intimidating and aggressive in nature. In some instances, members of the public (rate payers, LGA and Hender Consulting) were also exposed to these behaviours.

On meeting Councillor Bagster, EGS found him, at least in the first instance, to be professional, considered and intelligent. He has numerous qualifications and, furthermore, a reasonably lengthy career in the defence services. Therefore, making it more difficult to understand why he would wilfully engage in the behaviours demonstrated.

In summary, Councillor Bagster has engaged in bullying behaviours as follows:

- **Agitating and Belligerence:** Significant evidence (attached) demonstrates the belligerent and agitating that Councillor Bagster engages, particularly with Leadership Executive. On numerous occasions he will demand Questions on Notice (QON), which evidence demonstrates, he repeats time and time again. He fails to acknowledge responses. Furthermore his questions are often inconsistent with the legislation, examples include: (Appendix 34): 3, 6, 9, 13, 15, 20, 21 are either offensive and/or are a direct question regarding CEO.
- **Allegations:** Significant evidence attached, where it is alleged Councillor Bagster accuses the CEO and Mayor of inappropriate behaviour, despite no supporting evidence. An example includes the following statement from Councillor Bagster (Appendix 34) *'Has the Mayor, Mr David Parkin, encouraged his good friend and drinking pal, the CEO, to form a public apology to Cr Bagster, Burnside Council and the rate payers of Burnside for his proven misdemeanours and breaches of Code?'*.
- **Offensive behaviour:** There is considerable email traffic from Councillor Bagster to the Mayor and Council staff, which is inappropriate, offensive and accusatory. Many of Councillor Bagster's emails offend the Code of Conduct Council Members and are damaging to the relationship between Elected Members and Council staff.
- **Undue Pressure:** Councillor Bagster has engaged in initiating emails and text messages which are sent at all times of day and night. Text messages are often bullying, harassing, goading and offensive and often sent between 10pm and 2.59am. When challenged on content and timing, Councillor Bagster engaged in further bullying behaviour.
- **Bringing Organisation into Disrepute:** Councillor Bagster has on numerous occasions engaged in behaviour that brings the organisation into disrepute. He has made offensive statements in email to rate payers regarding Council staff and former Elected Members. The statements regarding staff have caused significant stress. He has also engaged in correspondence in his role as an Elected Member, which is highly offensive (re: Jim Jacobsen matter and the Jenny Turnbull matter). These statements do not reflect the expectations of Elected Members consistent with the Code of Conduct Council Members.

- **Communication Style:** The communication style Councillor Bagster chooses to engage, does not engender trust, team-work or build relationships. At times it is very derisive, aggressive and offensive. His behaviour demonstrated by the tone, content and sheer volume of his correspondence with Council staff, and at time with other Councillors, appears manic, paranoid, judgemental, and accusatory, and is often littered with personal attacks. By virtue of the content, delivery time and volume, Councillor Bagster is at times perceived as intimidating, threatening, abusive, bullying and harassing. It is apparent in the attachments that this communication has exacerbated both in tone and volume, in recent months.
- **Separation of Duties:** Councillor Bagster fails to act appropriately with regards to the separation of duties for Councillors and Council Administration. He demonstrates an unwillingness to act in accordance with his obligations. An example was the text messages to Barry Cant regarding pathway works not yet undertaken in Kensington, where his text messages are quite demanding and have an expectation that Barry Cant should undertake to investigate his matter of complaint, and provide a response immediately. Further, Councillor Bagster states that he holds Council accountable should someone get injured, despite being advised of the law. There is a failure of Counsellor Bagster to engage the appropriate mechanism to communicate to staff, or have matters raised.
- **Threats:** Councillor Bagster refers to the Revenant movie which is a movie based on a fur trapper ‘grief stricken and fuelled by vengeance, he tracks threw the snowy terrain to track down and kill the man who betrayed him’, which has instilled fear into the recipients. On occasions he likens others to that of Hitler, Stalin etc., and suggest they should be like ‘Switzerland’, and stay neutral on the matter. Furthermore, he also refers to people not being on his ‘target list’ and that ‘only one person is on his target list (CEO)’. Employees fear that this is a violent reference and taking into consideration Councillor Bagsters military background, are concerned that they are at risk from Councillor Bagster.

Councillor Bagster states he does not believe these references are bullying in nature or that they could or should be interpreted as violent. Based on the legislation it is apparent that a ‘reasonable person’ would view these statements as threats. Councillor Bagster does not acknowledge the risk he poses in this regard.

- **Harassment:** There is significant evidence attached, which demonstrates Councillor Bagster actively engages in harassment of others. In particular he harasses the CEO, Mayor, GM Martin Cooper and GM Barry Cant.
- **Stalking:** There is significant evidence attached, which demonstrates Councillor Bagster stalks the CEO. There are numerous text and email messages to the CEO from Councillor Bagster.....at times these messages are highly offensive, taunting and goading. Further they are sent in the early hours of the morning, which is another tactic Councillor Bagster appears to engage to cause harm.

The issue for the Council is that it is the determination of EGS that, as a result of our review into these matters, there are clear and substantiated contraventions of the Work Health and Safety legislation and a failure to meet the Duty of Care Obligations from the behaviours of Councillor Bagster. The challenge for the Chief Executive Officer and Mayor will be to expeditiously address these matters.

The Council should address these issues as a matter of urgency, to reduce the adverse risk profile and, most importantly, to ensure it is providing a safe work place. EGS believe that the risk to the health and safety of workers, and the potential fines and penalties, pose significant incentive to manage these issues expeditiously.

Enclosed are Councillor Bagster's statements from various attached correspondence. They support the findings that Councillor Bagster has engaged in a lengthy systemic campaign of bullying, harassment and threatening behaviour towards the CEO, the Mayor and GM Martin Cooper and GM Barry Cant. Further, that he has, in the opinion of EGS, stalked the CEO.

1. Councillor Bagster to CEO Paul Deb, Thursday 17th August at 12.19am text message stating ***'Hi Paul, I hope that you are doing okay!? I know that things must be difficult for you at the moment. Please call at anytime if you are up to a chat or negotiation. Regards Lancelot James Bagster'***. (Appendix 1) Text message was accompanied by laughing emojis and emojis poking tongue out and sent whilst CEO was on leave.
2. Councillor Bagster to CEO, Thursday 17th August at 12.53am (whilst CEO was on leave), text message with hyper link to Adelaide Now article titled ***'Councillor Lance Bagster seeks apology from CEO – following heated exchange over leaked email/news story'***. (Appendix 2).
3. Friday 18th August 2017 (appendix 112) 7.35pm, Councillor Bagster, despite Council resolution requiring him to abstain from communicating directly with CEO, and despite CEO being on leave, texted CEO ***'Hi Paul. Mate, I hope that you are okay!? How are you coping with the stress. Please call me...I am not your enemy. The offer's there at anytime. Please don't think that things are hopeless. I'm worried about you, as are a number of other Councillors..especially Fliss, Fordie, Billsie, Jane, Peter, Anne, David. Please don't self harm. If you cannot call us, please call Lifeline on 131114. We care about you mate. I'm confident that we can get you the support that may help you. Have you got Theresa Hines number? 0408142877. She's worried about you too. Things are not that bad mate, reach out to anyone of us'***.
4. Councillor Bagster messaged EGS, 17th August 9.15am, to determine whether EGS were in contact with CEO, and then following message with ***'Great. Give him my regards and let him know that the Council is concerned for his welfare. We're looking at discussing his circumstances in a special meeting on Monday. Let him know that we care for him. I'm not going to be asking for his dismissal'***(appendix 3). This message it is alleged, was aimed at ensuring the CEO became aware that a special meeting was to be held in his absence, where his performance was discussed, causing further angst to the CEO (Appendix 4).
5. Councillor Bagster engaged Council staff by text requiring them to action tasks (appendix 6, 7, 8, 9, 10, 11,12). Some messages are outside normal working hours and clearly sent at times they should be allowed to enjoy rest and respite. Staff received text messages after midnight, 1.18am, 2.45am and up to 2.59am, which is unacceptable (Appendix 7 received 5.50pm, Appendix 10 received 10.58pm, Appendix 12 received 8.52pm, Appendix 12 received 7.33am) (Appendix 20).
6. Councillor Bagster engages Council staff in text, in a manner that is inappropriate. In an email to GM Barry Cant (appendix 7), Councillor Bagster intimates ***'Hi Barry, I hope that you don't get stressed out or anxious because of this text message....'***. It is alleged this communication style is insulting to GM Barry Cant, is deliberate and intended to invoke a negative response. Further, it is not intended to demonstrate real concern. Council Members set the standard for the rest of the organisation and this behaviour is deplorable.
7. A complaint was lodged by Councillor Bagster against the CEO for contravening the Code of Conduct (appendix 18). This matter was independently investigated and the CEO had not contravened the Code of Conduct in regards to this matter.
 - a. Councillor Bagster deliberately and purposefully exhausts Council resources revisiting a matter of which Council Administration have no authority to revoke. Councillor Bagster was notified (Appendix 20).
8. Councillor Bagster deliberately and actively circumvented Council Process, direction (C11055) and policy by deliberately circumventing LJBAAdmin account by forwarding emails to a lance.bagster@gmail.com. Councillor Bagster received advice that this was contrary to his obligations as a Councillor and that he would be in direct contravention of Council Resolution C11055.
9. Councillor Bagster deliberately contravened Council Policy, process and direction (C11055) by placing 'out of office' automatic responses on the LJBAAdmin account and redirecting emails to lance.bagster@gmail.com.

10. Councillor Bagster refused to remove the ‘out of office’ notification from the LJBAAdmin account despite being advised he was required to do so, as it was in direct contravention to direction (C11055) (appendix 30), and despite a reminder 30th March 2017 (appendix 21).
11. Councillor Bagster implemented an ‘out of office’ message on the LJBAAdmin account whose content contravened the Council Code of Conduct for Council Members, as well as brought the organisation into disrepute. The ‘out of office’ Councillor Bagster placed was as follows **‘G’day and thanks for your e-mail. Due to a corrupted and compromised ICT protocol at Burnside Council I am currently not directly receiving emails to my Burnside Council e-mail addresses....’**.
12. Councillor Bagster, despite advising he had removed the ‘out of office’ on the LJBAAdmin email account (appendix 22), reinstated same, despite being aware it was in direct contravention of the Code of Conduct for Council Members, and, having received prior instruction from Council (appendix 21, 23).
13. In response to notification from Council (appendix 21) to Councillor Bagster, 29th March 2017 in an email to Martin Cooper (et al) (appendix 23), Councillor Bagster states **‘and I find whoever wrote this drivel is lining themselves up for some considerable trouble’**.
14. 18th April 2017 (appendix 27) to Barry Cant and Martin Cooper (copying Elected Members), Councillor Bagster raises a number of requests for information (RFIs) regarding the C11112 amendment. Three RFI’s raise alarm.
 - a. The first states **‘How could Council serious (sic) believe it is appropriate to deliver a resolution that so offends me and punishes me for the CEO’s wrongdoings, when they should have been considering sacking the CEO for his atrocious behaviour and misdemeanours?’** and
 - b. **‘What restrictions and limitations has the CEO incurred to his correspondence as a result of his atrocious misdemeanours?’** and
 - c. **‘Did your report consider a recommendation that your boss be sacked to Council? (that’s a rhetorical question btw)’**, and
 - d. **‘I appeal to Councils sense of rightmindedness to repeal this atrocious protocol that I can only assume you, the Mayor and the CEO devised’** and
 - e. **‘I hold any of the Councillors who voted for the original resolution and the amendment in particular in low regard. They have deeply offended and upset me’**.
 - f. Councillor Bagster continues **‘You must know that I am determined to right this dreadful injustice, and please believe me when I say that I am prepared to seek justice to the bitter end. A viewing of the movie “the Revenant” might be educational for this purpose’**. The movie The Revenant is a 2015 thriller, where the main character seeks revenge on another character by killing him.
15. (Appendix 29) Councillor Bagster states **‘if the CEO has secured such support from the MLS; an explanation as to how the CEO is entitled to this comfort, support and protection when clearly his private libelling, vilification, defamation, malfeasance have nothing to do with his CEO role; and are not required of him in his line of duty as CEO’**.
16. Appendix 29, Councillor Bagster in point 5 requests a **‘copy of the CEO’s most recent employment contact and highlight any triggers that the Council has to secure his dismissal (such as a successful Motion of ‘No Confidence)’**.
17. Councillor Bagster (appendix 30) to GM Martin Cooper stated **‘that he only seeks to get to the bottom of the issues involved and to find the true (sic) as to who wrote those horrendous allegations against me and who proposed C11055 to CR Piggott....I believe he was asked at short notice by the Mayor or Council Administration (led by you-know-who, no...not Valimort) to run such a wacky and illegal Motion (sic). How’s that for an apology’**.

18. Monday 22nd May 1.52pm, GM Martin Cooper emailed Councillor Bagster in regards to the content he provided for the Council Winter 2017 Focus magazine contribution with a statement including ***‘help get rid of the bad eggs and dead wood’*** within Council. Councillor Bagster (Appendix 33) responded to Martin Cooper (et al) stating ***‘I am not referring to Elected Members. Alternatively it refers to elements of Council Administration and I could give you specific examples and the reasons as to why they should be removed and replaced. Martin, this is politics.....You have obviously not watch the revenant yet!?’***
19. (Appendix 34) Councillor Lance Bagster in an email to Martin Cooper (et al) states ***‘You could perhaps tone down your allegations that my questions are ‘offensive’; you will understand that these questions are part of an ‘information campaign’ and I have a political imperative in operation. You really should watch the ‘Revenant’; it’s such a good movie’.***
- a. Councillor Bagster states ***‘I am genuinely sorry that you have been upset by getting early morning SMSs, but this was not ‘harassment’ on my part nor was it my intent to harass you. I will accept a swift apology from you and a retraction of that allegation’.***
- b. Councillor Bagster continues ***‘Please be assured that you (personally) are not on my ‘target list’.***
20. SMS April 13th 2017, 3.13pm Councillor Bagster to GM Martin Cooper ***‘.....please let your staff know that I never intended to cause them stress or anxiety. But my aim to dislodge a cancerous growth from Council will remain’.***
21. In a SMS April 19th 2017, 5.19pm from Councillor Bagster to GM Martin Cooper ***‘.... I don’t want to harm anyone’s career – with one key exception’.***
22. In a SMS Saturday May 13th 2017 to GM Martin Cooper, Councillor Bagster stated ***‘You must know that I lament the fact that none of this angst would have been necessary if your boss had simply done the ‘righty’ by the City and met with me as he said he would, apologised for his atrocious conduct and perhaps his resignation to Council – which I would now enthusiastically embrace. Please don’t get too attached to him! A fish rots from the head’.***
23. In an email trail (appendix 42) (Friday May 26th 12.08pm), Councillor Bagster responded to Councillor Henry Davis stating ***‘... Henry, I am not sure what you are doing on Council. I pay rates, you do not....’***
24. Friday May 26th 2017, GM Martin Cooper lodged a Code of Conduct complaint against Councillor Bagster (appendix 44, 45) with the CEO, as required by Council policy. Councillor Bagster Friday 16th June 2017 11.24am (appendix 46) emailed Robyn Daly from JLTA responding that ***he believed Martin Cooper was ‘wilfully acting against the best interests of the representatives and those who exceed or deliberately transgress his duties and responsibilities as a Council Officer’.*** Councillor Bagster further iterates that ***‘he was hoping that GM Martin Cooper would have the intestinal fortitude to have apologised before he invoked legal action’.***
25. On Friday 26th May 2017 3.11pm (appendix 48) Councillor Bagster to Martin Cooper wrote ***‘Martin, I really hope that you are able to work with me rather than against me....’***
26. On 2nd June 2017 6.41pm Councillor Bagster furnished an email titled ***‘Open Statement for Media – Please publish in full’*** where it alleges the ***Burnside Council CEO, Mr Paul Deb (aka McDeb), has mischievously contrived and orchestrated terrible and false allegations against me to cover up his own misdemeanours’*** and ***‘Mr Deb ...has now contravened the Local Government Act and is 100% conflicted in his current actions. Mr Deb (sic) actions against me are purely motivated by self-interest, retribution and revenge. I am the innocent victim of childish, unlawful bullyboy tactics’.***
27. On Monday 26th June 2017 10.03pm (appendix 47) Councillor Bagster in an email to GM Barry Cant (et al) stated ***‘please have the balls to identify yourself’.*** ***‘Have you seen the CEO’s resignation letter? I haven’t***

seen it in the confidential agenda. It doesn't make sense. What about the resignations of the three recalcitrant Councillors?' and 'I am happy with you remaining as Switzerland. Martin Cooper was playing Italy in this campaign, which was a bit silly. You should hold firm to your position. But whatever you do, keep a box of matches and a blanket handy. Don't put your eggs in the wrong basket. You know that I will be on the right side of history. I'll pray for you'.

28. In an email (Appendix 47) Monday 26th June 10.59am to GM Barry Cant (et al) Councillor Bagster states *'Exactly! Are you deliberately trying to be patronising' and 'Who's playing 'interference (sic)' now that Martin's not there to hold hands?' and 'Has anyone submitted their resignations yet?'*
29. In an email (appendix 48) Tuesday 27th June 2017 3.33pm to Mayor David Parkin, Councillor Bagster remarked *'Despite some Councillors contrived and laughable consternation at sitting beside or near me in the Council chamber and their threats to resign.... They stand as a stark reminder of, and go to reinforce, the CEO's false and ridiculous claims against me. Mark Osterstock, a uniformed police officer, cowering in his seat – it is a laughable sight to be sure! The new seating arrangements highlight the complete hypocrisy and farce that Burnsideans will see: a big man and uniformed police officer, failed liberal candidate, shrinking violet...sitting at the table of the 'high-priests''.*
30. On Wednesday 28th June 2017 12.28am Councillor Bagster in an email (Appendix 50) responded to EGS request for mediation stating amongst other things *'Now that the CEO's bogus claims of bullying, harassing and threatening behaviour (and the Burnside Council Administration claims against me to SAPOL and the Safe Work SA have been dismissed or found to be baseless)...'*
31. On Thursday 29th June 2017 at 8.53am (appendix 51), Councillor Bagster in a response to a rate payer Alwyn Lim stated *'I was promised by Mr Barry Cant that Council Administration would be following that (tree removal) up, but it never happened', further he states 'I'm a little bit preoccupied with fighting other battles on Council - mainly trying to fix a broken culture and corrupted attitudes'. .. 'Council is a quagmire of bad blood and bad attitudes at the moment. The CEO is playing a terrible and devious (sic) game that goes well beyond bullying or harassment. He's attempting to turn the entire Council against me. After Council meetings he meets secretly with his key staff and corrupted Councillors to plot and plan his next underhanded move. ... It's a disgusting and partisan display from a man who has breached his own code of conduct; his employment agreement and the Act'..... 'What's worse is the Mayor, who says he's acting collegially, is actively assisting the CEO in his devious and corrupted course of action. David Parkin has actually mimicked the CEO's baseless allegations against me. I guess they're good mates. I am actually going to be standing for another term, I can't leave the council when the fox is running the hen house. It's my duty to rid the council of these gangrenous elements'. 'Bastardry abounds and is thriving at Burnside Council!'*
32. Wednesday 28th June 2017 1.34am, Councillor Bagster sent a SMS to Matthew Spearman (appendix 52) which states *'...were you instructed to block my emails? Please send me the directive to my Gmail account. I promise not to reveal that you provided me this information. I need to get rid of Paul Deb. He's my only target. Lance'.*
33. In an email (appendix 53) Councillor Bagster to the Mayor alleges *'Be assured Mayor; you will be on the wrong side of history and you own legacy to the City of Burnside is 'scorched earth' and acrimony. You are presently the most disrespectful and disrespected elected member of Council. It is my hope that you will soon come to this realisation and it is you that will begin thinking and acting right-mindedly (sic) and honourably. Presently you do not enjoy my confidence or trust, Your current behaviour and actions reflect poorly on you and on Council and I am presently embarrassed to be associated with you as a member of this Council....I will not allow the dark forces on Council and Council Administration to get away with their evil deeds or wrong doings'.*
34. In an email Tuesday 25th July 2017 (appendix 56), Councillor Bagster complains to the Mayor *'Do you think that you just might not be playing nicely in the sand pit!? You are a terrible Mayor and for a man who I once considered a friend and a person of honour and integrity; you have come a long way!'*

35. In an email Tuesday 1st July 2017 12.01 pm, Councillor Bagster in response to Mayor Parkin states *'You really are hilarious'... 'Blind Freddie could offer you the five good reasons why the EO staying in chamber for that Item was conflicted act: therefore corrupt'. 'I need not explain how the CEO (and Council Administration) have authored, researched, contributed and contrived and developed every single contemporary complaint against me'. 'I have a clear path to a successful (and private) prosecution of my claims against the CEO'. 'It is important for the CEO to understand what he's doing and how he's making his situation much worse for himself and the Burnside Council' The CEO's ongoing offences simply worsen his already untenable position and add insult to injury and injustice. Mr Mayor, in the best interests of the City of Burnside, please encourage the CEO to step down and I won't have to 'pull the trigger' on proceedings against him. You might also consider your own early retirement as being appropriate under the circumstances'. 'Do not doubt that I have the means of achieving a successful litigation. Please understand that I have been very restrained and kind to the poor Mr Deb. I'm sympathetic to his difficult role and his inadequate capabilities to perform efficiently or appropriately in it. I am also aware of the great many other pressures he faces; especially regarding the settlement of his former marriage. I don't want to destroy the man; but I do want to see reasonable justice done...'. '...You'll be quite practiced at signing off complaints now. One more sure wont give you RSI'.*
36. In an email (appendix 57) to GM Barry Cant Tuesday 1st August 2017 12.20pm Councillor Bagster stated amongst other things *'...Were you and the tribe scheming any of these up at the Robin Hood hotel when I caught you guys in consortia. Anything else you and McDeb have planned?' 'I saw you as fair minded and above Paul's personal retribution. I thought you might be a candidate for the interim CEO role when I (sic) Deb is tossed. I thought you were playing Switzerland. Now I think you're just being Italy'.*
37. In an email (appendix 58) Wednesday 26th July 2017 12.51am, Councillor Bagster emailed Mayor David Parkin, copying amongst others Daniel Jervis-Bardy from the Messenger, stating *'...will you fess up to supporting your good buddy Paul Deb at any cost to your soul and your dying breath!?' 'Can I assume you wrote all these complaints against me without the helping hand of Council Administration and Mr Deb? You and I both know that the CEO is writing (having written) all these complaints. The CEO is therefore 100% compromised and conflicted. Are you aware that that's corrupt? The CEO should definitely be reported to ICAC and he should also be summarily dismissed'. 'Please stop supporting this corrupt behaviour Mr Mayor. It's so unbecoming. Almost as cowardly and unbecoming as your behaviour at the last meeting'.*
38. In an email (Appendix 59), Councillor Bagster Tuesday 1st August 2017 6.57pm, to GM Barry Cant stated *'And thanks for having the balls to put your name to that last email on the subject'.*
39. Councillor Bagster in an email (appendix 60) Tuesday 1st August 2017 to GM Barry Cant states *'merely play acting at the behest of the CEO' and 'I hope that you won't become another victim at the end of the day that walks out the council door for good when Paul Deb is inevitably forced to leave...'*.
40. Lance Bagster in an email Sunday 6th August 2017 10.17pm (appendix 61) to the Mayor states *'You continue to inappropriately, and devoid of honesty, honour, courage, integrity...disseminate your perverted ramblings via e-mails to the long suffering Elected Members and 'you (sic) chum Paul McDeb', and 'The people of Burnside deserve to know just what is happening on Council, and what a shambolic Council you run and what a dysfunctional and demoralised Council administration McDeb is responsible for' and '..is the unconscionable and indefensible position you have taken in supporting your good mate and (hopefully future co-defendant and inmate Paul', and '..you also keep supporting McDeb's horrendous and defamatory position WRT my apparent bullying, harassing and threatening behaviour' and 'More recently Mr Barry Cant, on behalf of McDeb, has alleged that I am warmongering, misogynist'. 'SAPOL have even told you that you are bullying and harassing me, didn't that act as a combat indicator' and 'Mr Mayor, I beseech you to search the remnants of your corrupted soul...those bits that Beelzebub hasn't purchased from you' and 'you must know in your heart of hearts that you pathetic efforts in this campaign of good and evil' and 'please stop being so damn immoral and wicked', and 'start acting in the best interests of the City of Burnside' and 'please be on the right side of history' and 'I can assure you that your early resignation (along with Paul's) will be seen as more honourable than the humiliation you are presently destined for – if not a short stint at 'Her majesty's Pleasure' that I have separately indicated you risk by at breaches of several state govt acts' and 'though you already have proved you leave no legacy; it would be*

best you that you minimise the damage you and Paul McDeb currently do to our fair city, the long suffering people of Burnside and the poor defenceless employees of the Burnside Council’.

41. In an email (appendix 62) Sunday 6th August 2017 11.34pm to Mayor David Parkin, Councillor Bagster states amongst other things *‘I am sensitive to the problems associated with being on the wrong side of history – you constantly show me!’* and *‘As an example – Hitler, Himmler, Goering, Goebbels, Mengele etc... all thought themselves to be correct, proper and to be leaving a legacy of the 1000 year Reich’* and *‘The Burnside Council hasn’t even built a sports stadium or yet forced its employees into brown uniforms. But I am guessing something like that is on your mind’* and *‘Please understand that you do not have the capability, nor can you justify the position that you take regarding, defending your good mate and cum, Mr Paul McDeb’* and *‘There comes a point where you are devoting your energies and efforts to a corrupted and unwinnable cause. That time is now.’* *‘My personal and sagely advice to you is that you should begin to act with integrity, honesty and respectfully’.* And *‘its time you resigned and left the ‘big thinking’ to people who are capable of acting in the best interests of the City of Burnside’* and *‘God save your soul’.*
42. On Monday 7th August at 12.11 am (appendix 64) Councillor Bagster emailed Mayor Parkin with the chorus of the song *‘We will rock you’*. Further there was an attachment to the email with the following words *‘Buddy, you’re a boy, make a big noise, Playing in the street, gonna be a big man someday You got mud on your face, you big disgrace, Kicking all over the place (singing) We will, we will rock you (singing), We will, we will rock you. Buddy, you’re a young man, hard man, Shouting in the street, gonna take on the world some day, you got blood on your face, you big disgrace, Waving your banner all over the place, We will, we will rock you (Singing), we will, we will rock you. Buddy, you’re an old man, poor man, Pleading with your eyes, gonna make you some peace some day, You got mud on your face, big disgrace, Somebody better put you back on your place’.*
43. On Sunday 6th August (appendix 65) 10.17pm Councillor Bagster emailed Mayor Parkin and attached QON. Number 21 of the QON states that *‘Preamble. Cr Bagster attended a ‘mediation;’ session last Wednesday evening (26th July 2017) which was supposed to include the CEO. Cr Bagster went in good faith, expecting to hear from the CEO and to understand his perspective and the position he’s taken on various contemporary issues and why. The CEO was a ‘no show’ at mediation. Was the CEO’s no show is (sic) a clear indication of his attitude and desire to resolve current problems and issues he has with Ems? When with (sic) the CEO have courage to attend a mediation session with Cr Bagster?’.* EGS confirmed refer appendix 65 that the CEO had not been invited to attend and furthermore Councillor Bagster had been appraised of this information in writing and verbally, prior.
44. Email Tuesday 8th August 2017 (appendix 68), Councillor Bagster to Councillor Grant Piggott states *‘I must admit that my analogies and stories were somewhat over the top and exaggerated for effect and as an ‘attention grabber’’* and *‘I hope that you are not genuinely upset’* and *‘I also have to admit that I am at the end of my tether and completely frustrated in dealing with a recalcitrant CEO (The Mayors good chum) and Council administration. In fact it is ‘doing my head in’’. ‘I should remind you that on this Council I am your peer, and no subordinate of yours’* and *‘...reluctant Mayor who is severely (sic) conflicted by his undying loyalty to his good chum’.*
45. On Tuesday 8th August (appendix 69) 4.18pm It is alleged Councillor Bagster was deceitful in an email to Councillor Jane Davey communicating that he attended the mediation sessions and that the CEO failed to show.
46. Email (appendix 74) 17th July 2017 11.14pm, Councillor Bagster emails EGS regarding mediation and refers to the CEO as McDeb.
47. Having received advice from EGS to cease using the term Mc’Deb and engage professional behaviour, Councillor Bagster in an email (appendix 74) 17th July 2017 11.37pm states *‘It is my understanding that Mr McDeb’s birth certificate says his name is spelt McDeb. I had thought it was his official title. I’m happy to use the less formal surname “Deb” if you’d prefer. But I hope his subpoena or any future warrants will read McDeb’.*

48. On 10th August 2017 (appendix 77) Councillor Bagster applied to Mayor Parkin for a leave of absence from Council for a three month period, due to health issues. A subsequent email from Councillor Bagster to Mayor Parkin (appendix 77) Thursday 10th August 2017 11.44am states ***‘I understand that Ms Theresa Hines (Council appointed mediator) was after the date of my previous unsuccessful leave application. Would you be so kind as to contact her to discuss? I believe that she’s also after an understanding of: the reasons why it was rejected by Council; why Council held the motion and resolution for that purpose in confidence; and why you elected to make my requests for the same information to you a matter worthy of your complaint to ICAC (as you have revealed to me)’***. Whilst it is acknowledged that EGS did ask Councillor Bagster the rationale as to why a previous leave application was unsuccessful, EGS did not request any of the further information that Councillor Bagster asserts above.
49. In an email (appendix 79) Friday 2nd June 2017 7.16pm, Councillor Bagster to Matthew Spearman (et al) states ***‘This ones also a pretty pertinent for the review and witch hunt’. ‘I hope that Council can vet that (attachment) for anything threatening, bullying or harassing’ and ‘when council actually discovers, or comes to the realisation, that its me as the victim of bullying and harassment’ and ‘I deserve and expect an apology from the CEO, Martin (Cooper) and the Mayor’ and ‘maybe you might care to remind Mr Martin Cooper that I requested he electronically submit a draft of his clear and unqualified apology and statement to me by 3.00pm..30th May 2017’ and I am still hopeful that I will receive the draft before the apology, statement and retraction is to be published (in full) in the public (non-Confidential section) of the next Council meeting agenda or as an alternative in the Messenger newspaper or the Advertiser by NLT 13th June 2017’***.
50. In an email (appendix 82) Sunday 13th August 2017 from Councillor Bagster to Ms Robyn Daly (JLTA) where he states ***‘I have been exposed to malfeasance and defamatory remarks. These damages have been sustained due to the deliberate and reprehensible actions of Council Administration staff’***.
51. An email (appendix 83) Friday 11th August 2017 9.00pm, was despatched from Councillor Bagster to Mayor Parkin and Safework SA, in regards to the lodgement of a Safework complaint by Council, alleging unsafe work practices caused by the bullying actions of Councillor Bagster. Councillor Bagster states ***‘How is it that you feel this complaint, along with all the many others to 6 different agencies, is going to assist anyone other than your good buddy, the CEO?’*** Councillor Bagster continues ***‘Frankly, was this complaint against me written at the behest of the CEO?’*** Councillor Bagster also states ***‘your (Mayors) roles and responsibilities do not include conducting retribution on behalf of your good mate, the CEO – not to do his dirty work’***.
52. Councillor Bagster responded to email from Councillor Osterstock (appendix 86) Monday 14th August 2017 6.48pm stating ***‘... We should be especially expect to be free of any acts of physical violence, ongoing abuse, defamation, bullying and harassment’***. Councillor Bagster refers to himself ***being placed in Stockade (and provides a photo of an example stockade) therefore reducing his ability to wreak havoc on staff. Being pelted with rotten fruit rather than sustaining the relentless and ongoing attacks from the likes of government agencies. The CEO hiding in Council and dealing with the member body remotely’***.
53. In an email (appendix 87) Monday 14th August 2017 8.29pm, from Councillor Bagster to the Mayor he states (amongst other things) ***‘Do you plan to resign when each and every one of your complaints made against me by you, and on behalf of your good buddy the CEO, fall flat and are all revealed to have been made vexatiously, in bad faith and as retaliation on behalf of the CEO’***.
54. (Appendix 89) Councillor Bagster Monday 14th August 8.41pm emails Mayor Parkin as follows: ***‘Dear colleague and friend, The scorecard so far:***
- a. ***Complaint to the Minister. DONE***
 - b. ***Complaint to SAPOL. DONE (great result)***
 - c. ***Complaint to Ombudsman. DONE***
 - d. ***Complaint to ICAC (that you indicated). DONE***

- e. *Complaint to SafeWork. Work in progress.*
- f. *Code of Conduct complaint. Work in Progress'*

And *'when do you want me to "pull the trigger" on my issues? Please just give me the nod! All lined up and revving up the engines'*. Further he states *'BTW (by the way), when are you and Paul planning to resign? That would allow Burnside Council Council (sic) to move into a new era of enlightenment and integrity. I sense that the long suffering people of Burnside and the Council staff truly want that change'*.

55. Councillor Bagster Wednesday 16th August 2017 2.58pm (appendix 90) emailed Mayor Parkin (et al) advising he was convening a special meeting of Council to discuss the CEO's Performance and Appraisal 9am 21st August 2017. He stated in the email content that he would like HR Specialist Mr Andrew Reed to attend to provide Council with a summary and overview of the CEO's recent performance assessment at the commencement of the meeting. (Appendix 96) GM Martin Cooper Wednesday 16th August 4.14pm emailed Councillor Bagster as instructed by the Mayor identifying to Councillor Bagster the requirements for a special meeting, and advising that that criteria had not been satisfied.
56. Councillor Bagster responded (appendix 96) Wednesday 16th August 2017 10.37pm, with the criteria required, further he stated *'Lastly, please provide me with an assurance that BCC required the same level, requirement, and 'proof' and 'legitimacy' for a recent 'Special Meeting' of Council to discuss the press release regarding the false allegations (by you and the CEO) of bullying, harassment and threatening behaviour you have alleged to Safe Work SA'*.
57. (Appendix 97) Wednesday 16th August 2017 4.31 pm (amongst other things), *'...you are mistaken in your understanding that the LGAMLS has extended indemnity to the CEO of the City of Burnside for his private and personal unlawful activities'*.
58. In response to Robyn Daly (JLTA) (Appendix 97) Wednesday 16th August 2017 10.48pm Counsellor Bagster states *'...I truly hope that you are not just having a big joke with me – at the end of which you say, NOT!?. Can you please tell me if you are legally trained?'*.
59. Thursday 17th August 12.09am (Appendix 100) Counsellor Bagster emailed Mayor Parkin with 46 QON for the agenda Council meeting 22 Aug 2017. Of those QON, many (though not all) were requested by Councillor Bagster previously, and administration or the Mayor duly responded.
- Of the 46 QON proffered, questions 6,7,8,9,10,11,46 it is alleged can be viewed as attacks or challenges to the Mayor and bullying in nature. QON 3,4,20,21,22,29,30,31,34,35,36,37,38,39,42,43,45,46 it is alleged can be viewed as attacks or challenges to the CEO.
- QON 20, 21,22 relate to an event that was conducted external to Council premises and was not a working or Burnside event.
60. Thursday 17th August 2017 1.06am (appendix 102) Councillor Bagster emailed the Mayor, CEO Ombudsman, Safework, Greg Griffin, Ian Rice et al, with an attachment to an Adelaide news story titled *'Burnside Councillor and military man Lance Bagster reported to police for allegedly making threats'*. Councillor Bagster states that he has been *'the subject of bullying for the last 12 to 18 months and it can only be described as unusual bullying, harassment and unethical behaviour from the Burnside Council Administration and the Mayor'*. Councillor Bagster further states *'I can't deny that I blame the Burnside Council CEO for the current predicament and a dysfunction of Council'*. He continues *'God save you. God save me. God save the Queen'*.
61. Thursday 17th August 2017 2.13pm (appendix 118), Councillor Bagster to GM Martin Cooper *'Contrary to some of your assertions, I do not hate the CEO, I like him personally very much and want what is best for him and Burnside. I want us all to do what may help the CEO and the City of Burnside out of the current dysfunction and crisis we currently find ourselves in'*.

62. Thursday 17th August 2017 2.55pm (appendix 120), Councillor Bagster in response to the Mayors email amongst other things states ***'Your personal opinion about my being conflicted in this matter are as ridiculous as you (sic) own recent actions and your any complaints against me and other Elected Members'***.
63. Thursday 17th August 2017 3.22 pm (appendix 116) Councillor Bagster advises Andrew Reed and Sarah Peerce (Hender Consulting) of the Council Special Meeting and requests their attendance for the purposes of discussing the CEO's performance appraisal and review. Councillor Bagster purports to be ***'most concerned for the current health and well being of the CEO and therefore it is important that Council acts swiftly to try and see how we can help him cope or improve'***.
64. Saturday 19th August 2017 10.40pm (appendix 92) Councillor Bagster in an email to Elected Members states he has ***'appealed separately to Mark Hender since Martins (Coopers) assertion (that they would not be attending), and I am hopeful that we shall have someone coming to brief us on Monday morning regarding the CEO's performance and his recent appraisal'***. This email is despite Hender Consulting emailing Saturday 19th August at 10.57am (appendix 93) Councillor Bagster advising that they would not be attending.

Councillor Bagster states ***'If, per chance, we do not, I have sufficient facts from my discussions with Hender that I can tender to the meeting'***. It is alleged that this is a misleading statement as Hender Consulting General Manager Andrew Reed advised that he could confirm that no discussion took place between a representative from Hender Consulting and Councillor Bagster, in regards to the CEO's performance or appraisal. He has provided a written statement to this effect.

65. Mark Hender (Hender Consulting) indicated that he and GM Andrew Reed were concerned with the content of Councillor Bagsters email (appendix 92) which indicated to them that their contract with Burnside Council was at risk, where Councillor Bagster stated ***'It would be enormously unwise and potentially a breach of contract for Hender to renege on briefing the whole of Council meeting. If Hender is a no show then I think that we take the appropriate action in this regard'***.

It is alleged that Councillor Bagster engaged in a demonstration of concern for the CEO ***'I am very worried for the CEO I worry that he may 'self-harm' in his current predicament' and 'I do not think it best that we allow the CEO to languish on indefinite stress leave (or whatever it has been coined).....'I think realistically we could consider something along the lines of a mentor for the CEO to get him and the Council back on the rails'***

66. Councillor Bagster Saturday 19th August 2017 10.57am (Appendix 93) emailed Hender Consulting ***'Your client is the Burnside Council, and not the subordinate CEO committee..... I fear your obfuscation, delay and inaction on this issue has put Hender in a very precarious position, and not just with Burnside Council'***.
67. Saturday 19th August 2017 9.54pm (appendix 114), Councillor Bagster in email attacks Councillor Piggott ***'your actions and past performance make you as hypocritical as others embroiled up to their decrepit eyeballs. You were the key proponent of the dastardly and unconscionable C11055. You are no innocent in any of these matters – you reek the same stench as the others with whom you are closely associated'***.
68. Sunday 6.05pm August 20th 2017 (Appendix 107), Councillor Bagster provides a 3 page attachment to an email titled 'CEO Performance and Council Dysfunction'. It is alleged that the document is littered with erroneous allegations, unsubstantiated claims and personal judgments of the CEO's character. This document allegedly highlights the significant lengths that Councillor Bagster will engage to bully, harass, intimidate and defame the CEO. Further, it is alleged Councillor Bagsters behaviour is outrageous, contemptuous and inappropriate. Furthermore, these allegations are largely inconsistent with the intent and stated agenda of the 'special meeting'. Councillor Bagster presents a significant risk profile to the City of Burnside.
69. Sunday August 20th 2017 6.20pm (appendix 104) Councillor Bagster provides to Robert Dabrowski the proposed motion. This document raises serious concerns

- a. **Point 1** states *'The CEO be issued WARNING over his substandard performance, and unsatisfactory conduct and management of BCC Administration'*.
 - b. **Point 2** that *'Council expresses its LOSS OF CONFIDENCE in the CEO for his current poor performance, attitude and unsatisfactory conduct'*.
 - c. **Point 3** *The BCC appoints a special mentor namely Jim Jacobson. Councillor Bagster previously made a number of allegations in regards to Jim Jacobson's alleged unruly behaviour, poor behaviour and performance (appendix 105)'. Councillor Bagster stated previously that Jim Jacobson 'is a man of sullied reputation' and 'his legacy in this Council as former EM is simply poisonous and merely a trail of broken relationships and dysfunction... all of which show that he (sic) a person of dubious character'*.
 - d. **Point 5** *'The CEO be STOOD DOWN Until the above matters are addressed and the mentoring program established'*.
70. Sunday August 20th 8.49pm (appendix 106), Councillor Bagster emails GM Martin Cooper (et al), *'...Further, I not (sic) that under Section 102 of the LG Act that you have not been properly or appropriately appointed by Council to undertake the role of acting CEO'*.
71. Sunday August 20th 9.28pm (appendix 104), Councillor Bagster in reply to GM Martin Coopers advice that the 'special meeting' could not proceed as there were insufficient numbers to establish a quorum', stated *'I do believe you are being somewhat facetious and disrespectful... Others will eventually deal with you inappropriate attitude and disgusting, disrespectful behaviour towards elected officials'*.
72. Sunday 20th August 2017 10.06pm (appendix 104) in an email from Councillor Bagster to GM Martin Cooper he states *'... consider taking more time off work to overcome your obvious stress and anxiety'*.

Findings:

On review of the significant amount of information and evidence (attached) provided by the Council, the CEO and Councillor Bagster, it is the view of EGS that Councillor Bagster has engaged in behaviours that are, at least, to be considered as bullying. These behaviours include ‘verbal abuse and insults both in written and verbal form’, ‘aggression’, ‘humiliation’, ‘intimidation’, ‘harassment’ ‘threats’, ‘unreasonable deadlines’, ‘unreasonable assignments’ and ‘undermining’. The victims of this ongoing, systemic bullying campaign engaged in by Councillor Bagster include the CEO, Paul Deb, the Mayor, David Parkin, GM Martin Cooper, GM Barry Cant, fellow Elected Members and others. We also find, supported by the significant weight of evidence, that Councillor Bagster is stalking the CEO and that he has engaged in this behaviour for quite some time.

Furthermore, it is alleged that the CEO and the Mayor have been undermined by Councillor Bagster. There is significant evidentiary support to demonstrate this finding. Councillor Bagster has threatened and cajoled both the CEO and the Mayor to resign from Council and has also threatened them, and GM Martin Cooper, with legal action. He has accused them of inappropriate dealings, has engaged them in highly inappropriate emails referencing Nazi Germany leaders and target lists and he has text messaged them during the night with offensive and insincere messages. Councillor Bagster made accusations of impropriety, but has failed to provide any evidence to support these allegations, to the contrary, EGS finds that it is he, Councillor Bagster, who has engaged in unlawful behaviour and is liable to prosecution under the Work Health and Safety Act (SA) 2012.

Both Councillor Bagster and the CEO Paul Deb participated in the mediation sessions, as requested. Both parties raised a number of issues in regards to alleged unfair, inappropriate and bullying treatment that they insinuated they were subjected to by the other party. Furthermore the CEO raised his concerns that the Mayor, Executive and management teams within Council were also subjected to ongoing bullying by Councillor Bagster. The CEO communicated that Councillor Bagster’s behaviour would need to change to enable them to have a successful working relationship. The CEO provided extensive material to support his assertions that he (and others) were the victim of bullying behaviour by Councillor Bagster. The CEO admitted that he had engaged in behaviour that contravened the Code of Conduct for Council Employees and he had complied with the required outcomes pertaining to this matter. EGS is, however, concerned that the bullying behaviours of Councillor Bagster may have precipitated the CEO’s Code of Conduct behaviour, (whilst agreeing it does not excuse the behaviour) and, had this been investigated appropriately and sufficiently, may have allowed for a different determination, such that this matter may have been addressed earlier.

Councillor Bagster provided verbal details of his Code of Conduct complaint against the CEO, which he stated supported his bullying assertions and, further, he raised his disappointment that he did not believe that he had received an apology from the CEO, in regards to the Code of Conduct matter. EGS have sighted, both the email dated 24th March 2017 to Councillor Bagster and the apology from the CEO. Councillor Bagster has indicated on numerous occasions, both internal and external, that the CEO has not provided him with an apology. Clearly, this is not factual and is totally incorrect. Councillor Bagster, in numerous emails and text messages with Council staff and people external to Council, has seen fit to raise the CEO Code of Conduct matter and in doing so has made serious misrepresentations. However, this matter has been dealt with as stipulated by the Council. As Councillor Bagster represents the employer of the CEO, it is inappropriate for Councillor Bagster to raise the matter in this way. Councillor Bagster, by engaging in this action, is bullying the CEO.

Councillor Bagster demonstrated a willingness to address the issues raised in mediation, on the proviso that the CEO publicly apologised to him. A public apology is inconsistent with the Council Direction determined by the Elected Members. It is apparent that Councillor Bagster is not content with that outcome, however, rather than address this matter through appropriate mechanisms he continues to harass the CEO.

In discussion with Councillor Bagster we reviewed behaviours that constituted bullying, and determined whether he had engaged in such behaviours. We had agreement from Councillor Bagster who indicated that he was clear that his communication and, in particular the content, would not be acceptable in his employer’s (Department of Defence) workplace. We also had agreement that Councillor Bagster would cease communicating in an offensive manner and when in doubt he would seek another person to review his content. Whilst it is acknowledged that Councillor Bagster put some effort into refraining, he was not able to do so and to sustain the agreed change in communication protocol. His communication with others appeared to exacerbate in volume, inappropriate content and at times appeared manic. He would also send messages and emails at all times of the night and day, without any consideration for the recipient.

There is significant evidence of highly offensive, bullying, aggressive, intimidating and undermining emails sent by Councillor Bagster to others.

Councillor Bagster was unable to demonstrate 'safe work practices' during the period of mediation. It was, therefore, decided to suspend mediation, as it would be inappropriate to expose the CEO to ongoing significant high risk behaviours. Further, as the behaviours of Councillor Bagster were considered to be unlawful and high risk, EGS were required to report the matter to the Council, and further make recommendations to enable the organisation to meet its safe workplace obligations.

EGS finds that Councillor Bagster is engaging in high risk bullying and harassing behaviours. He subjects people (the CEO and others) to threats, intimidation and undermining. Further EGS finds that he is stalking the CEO. The sheer volume of evidence and Councillor Bagster's unwillingness or inability to manage and cease his behaviours and actions, means that he poses a significant risk to others as well as to the organisation. It is apparent since 2015, and despite many opportunities to cease and desist from inappropriate conduct and behaviour, and further despite being counselled as to how he should behave, he has continued to conduct himself in an inappropriate manner.

EGS finds that Councillor Bagster bullies and harasses the CEO, the Mayor, GM Barry Cant, GM Martin Cooper, fellow Elected Members and other employees on a regular basis. He is particularly aggressive when he is unable to secure his position and then engages in personal attacks. It is apparent that Councillor Bagster takes dissenting opinions and points of view which differ from his own as a personal attack upon him. EGS also finds that he displays a level of paranoia and irrationality and furthermore can be obsessive and manic at times. It also finds that he is stalking the City of Burnside CEO. Councillor Bagster has demonstrated that he will bully and intimidate people external to the organisation, to either push his point of view or to demand his position.

There is a significant level of fear within the organisation caused by Councillor Bagster's actions. The appendices provided, demonstrate that Executive Management have had to engage staff on this matter to try and allay staff concerns. Councillor Bagster will deflect issues raised with him, onto the person raising the issue, or use aggressive tactics to intimidate the other person; there are several emails attached, which demonstrate this behaviour. Councillor Bagster is either unaware of the trauma he is causing others, or does not care. It is alleged that he is choosing wilfully to engage in these unsafe and unlawful behaviours. Despite being advised by EGS that his actions were bullying and unlawful and could lead to criminal charges, he has not ceased.

It is apparent from the attached emails, that Council Bagster appears to demonstrate that he is motivated by 'politics' and hence his actions are part of some 'game'. Councillor Bagster does not demonstrate appropriate behaviours, what he refers to as 'politics', for an Officer of the City of Burnside, and presents a significant risk to staff and Elected Members. Councillor Bagster has demonstrated on numerous occasions that he will use all means to advantage his position, whether it is factual or not. There are occasions (evidenced in the attachments) when it is apparent that Councillor Bagster has misled others, including his fellow Elected Members. It is EGS belief that this has been a deliberate course of action to engage their favour.

Councillor Bagster demonstrates an unwillingness or inability to address these matters and appears more concerned at 'scoring points' for political purposes, irrespective of the impact of his behaviour and actions on others. Further, this is despite being made aware of the illegality of his actions, and despite being aware that he may be exposed to criminal prosecution. Whilst he is aware that the impact of criminal charges would likely impact his employment with the Department of Defence, he is either unwilling or unable to cease his unlawful behaviour.

Councillor Bagster is viewed by a number of workers as being the alleged bully within the organisation. This is supported by the sheer weight of evidence in the significant correspondence from Councillor Bagster, the CEO, Council and others, attached to this report.

Whilst Councillor Bagster may have credence in some of the issues that he has raised, it is in the way that these matters were raised, the alleged bullying and harassing nature, the discriminatory and stalking behaviour, the threats and intimidation communicated to others, which has meant that Councillor Bagster has been perceived as a bully by some employees, some Elected Members and some members of the public.

It is understood that these matters (and others) are currently being investigated by a number of agencies and, without prejudicing those matters, as they will naturally take their course and afford Councillor Bagster natural justice, his behaviour exposes Council to an untenable risk profile.

The matters raised in this report pose such a significant risk to the organisation and its people, it makes it very difficult, if not impossible to understand how the organisation can continue with Councillor Bagster in this role, considering the legal Duty of Care implications.

It is clear that people considerations and alarm bells had been evident for quite a period of time as evidenced by the sheer volume of issues attached to this report (however that is not an exhaustive list) –where a number of employees (past and current) and rate payers indicated that they were being treated poorly and had raised complaints regarding Bagsters alleged bullying behaviour, actions and communication. There are examples which date back to 2015, however, it is apparent that the behaviour has exacerbated in the past 18 months.

Councillor Bagster has failed in his legal obligations as a person at the workplace, in accordance with S29 of the Work Health and Safety Act (SA) 2012 pertaining to obligations on persons at a workplace (whether or not the person has another duty under this Act) to

- **Take reasonable care that his acts/omissions do not adversely affect the health and safety of other persons;**
- **Comply with reasonable instructions from persons conducting the business or undertaking to ensure that the person conducting the business or undertaking can comply with the Act; and**
- **Take reasonable care for his own health and safety.**

Councillor Bagster has engaged in behaviour which contravenes the Fair Work Act (2009) by bullying and harassing the CEO, the Mayor, GM's Barry Cant and Martin Cooper, amongst others. There is significant documented evidence to support this allegation. It is acknowledged that there may be jurisdictional issues in regards to the Fairwork Commission, this is a matter for Council to address with appropriate legal representation.

Councillor Bagster has engaged in behaviour which contravenes the Work Health and Safety Act (SA) 2012, and the subsequent Regulations and the Australian Code of Practice Bullying. Councillor Bagster it is alleged, has failed in his obligations as an Officer of Council to provide a safe workplace and furthermore he has exposed others to unsafe conditions, due to his alleged bullying and harassing behaviour. Further, it is alleged that he has exposed Council, the PCBU and his fellow Officers to potential prosecution, fines and penalties for failing in their Duty of Care obligations. The fines are up to 3 million dollars on each occasion and periods of incarceration are 5 years. Work Health and Safety prosecutions fall within the criminal jurisdiction.

Councillor Bagster has exposed the Department of Defence to potential prosecution, by virtue of their vicarious liability, for potentially engaging in unlawful behaviour (bullying and harassing) which Counsellor Bagster may have engaged in, during work days at the Department of Defence. There is significant email and text message evidence which may support this position. However this would need to be confirmed with the employer.

Councillor Bagster has engaged in discriminatory behaviour towards the CEO. Despite protestations and advice to cease and desist, Councillor Bagster continually referred to the CEO Paul Deb as Paul McDeb. McDeb being a reference to the CEO's Scottish heritage. The CEO and Mayor have requested of Councillor Bagster on numerous occasions to cease and desist engaging in this behaviour. The CEO advised on numerous occasions that he found the term McDeb discriminatory, inappropriate and offensive. Additionally, Councillor Bagster spread rumours that McDeb, was the CEO's real surname on his birth certificate, despite this being a fabrication. There is significant documented evidence to support these allegations.

Councillor Bagster is stalking the CEO. Stalking is unwanted or obsessive attention by an individual towards another person. Stalking behaviours are related to harassment and intimidation. There is significant evidence attached to support this assertion. Legislation has been enacted which makes stalking an offence (Criminal Law Consolidation Act 1935 (SA) s19AA). Behaviours defined as stalking include (but are not limited to):

- giving or sending offensive material to another person, or leaving it where it will be found by given to or brought to the attention of the other person. Councillor Bagster has sent significant offensive material to the

CEO, as well as the Leadership team, administration team and the Mayor. Samples have been appended, however this is not the exhaustive list.

- acting in any other way that could be reasonably be expected to arouse another person's apprehension or fear. Councillor Bagster has made continual references to the movie the Revenant, target lists, Hitler, Stalin, 'don't get used to them' and much more, despite being advised on numerous occasions that his behaviour was offensive and bullying.

Councillor Bagster continually engages in behaviours and actions inconsistent with the Code of Conduct Council Members, operational policies and procedures as well as alleged breaches of the Local Government Act (1999). He has done so contrary to advice and warnings. There is significant evidence that supports this assertion including, but not limited to:

- **Part 2 – Behavioural Code where a Council Member must:**
 - **2.2 Act in a way that generates community trust and confidence in the Council.**
 - Councillor Bagster in his Council authorised email account utilises an out of office message. The content of that message states that the Council IT system is corrupted. Further there is significant email correspondence where Councillor Bagster denigrates staff, the Council and its leadership to rate payers, the public and media.
 - **2.6 Comply with all Council Policies, Codes and Resolutions:**
 - Councillor Bagster has demonstrated on numerous occasions in his inability and unwillingness to comply with organisational policies, codes and resolutions. These include, but are not limited to:
 - Initiating and subsequently failing to remove the 'out of office notification' on the approved Council email account, despite being advised that it contravened organisational policy and despite being provided with a copy of the relevant Records Management policy.
 - Initiating and subsequently failing to remove the 'block' on the approved Council email account, despite being advised that it contravened organisational policy and despite being provided with a copy of the relevant Records Management policy.
 - Failure to follow Council resolution to cease direct communication with the CEO, by text messaging the CEO on at least 3 occasions whilst the CEO was off work on leave, and despite knowing this action contravened Council Resolution.
- **2.8 Endeavour to provide accurate information to the Council and to the public at all times:**
 - Councillor Bagster has engaged in actions and behaviours which are inconsistent with the requirement to provide accurate information. Examples include: Despite having received advice that the CEO Deb would not attend a mediation session with Councillor Bagster, as he was not invited, Councillor Bagster then alleged in a potential QON that the CEO failed to attend. Even after this point was clarified with both the CEO and Councillor Bagster, Councillor Bagster still alleged the CEO failed to attend.
 - Councillor Bagster has communicated on a number of occasions' that he has been bullied by not receiving responses to his QON, however evidence demonstrates that Councillor Bagster despite receiving the information requested, continues to agitate and demand responses to the same questions. This is clearly a deceitful tactic on behalf of Councillor Bagster.

▪ **2.11 Not bully or harass Council staff:**

Referring to the Australian Code of Practice Bullying, Councillor Bagster continually and flagrantly engages in bullying behaviour. There is significant evidence attached which supports this assertion. Councillor Bagster has engaged in behaviour which is:

- **Undermining:** Councillor Bagster has engaged in behaviour which has undermined Council staff, the CEO and Mayor Parkin. There are numerous examples attached.
- **Being Treated Less Favourably than Colleagues:** Councillor Bagster treats the CEO less favourably than others. Furthermore he treats a number of the Elected Members and the Mayor less favourably than other Elected Members. There is significant email traffic that supports this assertion.
- **Intimidation or Harassment:** There is much evidence attached which demonstrates that Councillor Bagster often intimidates others, usually through email or text message. He makes references that they should 'be like Switzerland, you're not on my 'target list', references to Hitler, Stalin etc. Whether they are qualified etc.

Councillor Bagster engages in significant harassing behaviour, which includes but is not limited to: disparaging comments, requests for them to repeat work many times over, failing to adhere to processes etc.

- **Aggression:** There is significant evidence demonstrating that Councillor Bagster engages in aggressive communication and behaviour. Examples include the yelling and pushing of a chair during a council meeting.

The open attacks of other people who may have a differing view point on a matter, the personal attacks on people directly or indirectly. The attached emails demonstrates many examples of this behaviour displayed.

- **Blame for things out of your control,** Councillor Bagster continually holds the Executive team accountable for matters out of their control. Including but not limited to budgets and priorities set by the Elected Members, decisions of Elected Members, matters which impact him personally e.g.: MLS coverage, failing to prioritise Kensington road pathway works to his satisfaction.

Further there are many occasions where he has accused the CEO of despicable and bullying acts, whereas there is no basis for those allegations and often the matters he refers are process and legislative requirements.

Further he has made numerous allegations against the Mayor, which have been false or misleading, for example inferring that the Mayor deliberately requested that Hudson Consulting fail to attend the scheduled Special Meeting; on review of this matter, the decision to not attend was from Hudson Consulting.

- **Intrusion – pestering, spying or stalking:** Councillor Bagster pesters staff particularly the Executive members, when he does not agree with a decision of the Elected Members, or, if he believes that he is right on a matter he will continue to agitate despite it being explained and demonstrated to him on numerous occasions. Furthermore, he pesters to enable him to secure information in regards to the CEO and Mayor.

- **Humiliation:** Councillor Bagster appears to take great delight in humiliating key staff including Elected Members and executive staff where he will make offensive comments about their roles, mental capacity etc. This is reflected in the attached emails.
- **Threats (implicit or explicit):** Councillor Bagster often engages in threats to staff, the mayor, the CEO, Executive team and Elected Members. These threats often include legal action, bullying complaints with SafeWork, statements ‘not getting attached to the CEO or Mayor as they won’t be around long’, threats of ‘target lists’ etc.
- **Repeatedly giving unreasonable deadlines or targets:** Councillor Bagster often demands significant work and places a deadline without discussing the matter with the person undertaking the work and their priorities.
- **Repeatedly giving unreasonable assignments:** Councillor Bagster often will request work to be repeated many times over. He provides numerous QON requests which are inconsistent with the legislation, or are personal in nature or are offensive. He continues to agitate in this manner expending valuable resources and wasting staff energy and deflecting from their real activities at hand.
- **Verbal abuse/ insults:** Councillor Bagster has, during Council meetings, engaged in verbal abuse and insults and hostile exchanges. Behaviour which exceeds debating.

Councillor Bagster has also engaged in activities which have contravened the Telecommunications legislation by using an electronic carriage to undertake bullying and harassing activities.

The Council and the administration have not been idle in endeavouring to manage this unfortunate situation and there have been several Code of Conduct considerations during the period, because of the actual and apparent breaches by Councillor Bagster. However, a fundamental deficiency in any Code of Conduct investigation is that even in the situation of a finding of a breach the ‘penalty’ is essentially ineffective for someone who by his actions appears to not respect the system, the Council nor the administration.

The Council is unable to demonstrate it is meeting its legal duty of care obligations whilst this behaviour is present in the organisation. It is for these reasons and due to the risk profile of the organisation, potential litigation, potential of increased stress claims, potential prosecution, fines and penalties, should be sufficient evidence to support Councillor Bagster to exit the organisation.

Much correspondence was provided by the Council and Councillor Bagster, which indicated that Council is failing to meet its legal Duty of Care obligations pertaining to the Work Health and Safety Act (SA) 2012 to provide a safe workplace and, further, is at risk of finding itself in contravention of the Fair Work Act (2009).

Councillor Bagster has wilfully engaged in a systematic and ongoing bullying campaign and is, therefore, a significant risk to the City of Burnside, its workers and rate payers and, hence, is at risk of prosecution under the Work Health and Safety Act (SA) 2012 and subject to orders under the Fairwork Act (dependent upon a favourable jurisdiction ruling).

The PCBU, Officers and GMs, assisted by the Mayor, have undertaken the following actions to ensure that they provide a safe workplace and to comply with the WHS legislation:

- Lance Bagster Correspondence Management Protocol
- COCC complaints
- Ombudsman reporting and OPI reporting

- SAPOL complaint
- Safework SA complaint
- Fair Work Australia anti bullying lodgement
- Staff Welfare Day
- Staff and leadership briefings
- Employee Assistance Program offering and support
- Commissioned third party reviews (e.g. Byrt Report)
- Excluded all staff (aside from the Executive Team) from Council meetings
- Engaged EGS to undertake mediation and report to Council
- Mayor requested to meet with Minister
- Staff emails and mobile blocked from Councillor Bagster contact
- GM Martin Cooper attended 1:1 meeting with Cr Lance Bagster in April to outline the impact of his behaviours on others
- GM Martin Cooper provided two verbal updates to Elected Members in accordance with Council Resolution

Despite significant efforts from the City of Burnside PCBU, it is at significant risk of failing in its legal obligations in accordance with the Work Health and Safety Act (SA) 2012. The maximum fine is \$3 million on each occasion for Category 1 offences.

Despite significant efforts from the City of Burnside Officers, which includes the CEO, and possibly Elected Members and the GM's, they are at significant risk of failing in their legal obligations in accordance with the Work Health and Safety Act (SA) 2012. The maximum fine for Officers is 600k and 5 years' incarceration on each occasion. Legislation prohibits Council from paying this penalty on behalf of Officers. Legal advice is required to determine whether Elected Members are Officers, for the purposes of the WHS Legislation, and specifically any exposure Elected Members may have, in this regard.

Recommendations

It is EGS advice that Councillor Bagster is engaging in systematic, high risk bullying behaviour and poses a significant risk to the City of Burnside and its staff. It is EGS advice that the City of Burnside is at risk of prosecution for failing in its obligations stipulated in the Work Health and Safety Act (SA) 2012, to provide a safe workplace.

This report is the outcome of the discontinued mediation conducted by EGS on behalf of the City of Burnside. As a consequence of reviewing voluminous material provided during mediation and by observing communication between the parties (and others) during this period, it is clear that ongoing mediation is not appropriate, as there is significant evidence that unlawful behaviour is being engaged in by one of the parties to the mediation (Councillor Bagster), hence the mediation has ceased.

The provision of the Council report was on the basis the mediator identifies recommendations for Council regarding the future management of their relationship. In giving serious consideration as to the content of the recommendations EGS had to be fully cognisant of both internal Council requirements (policies, procedures, Code of Conduct etc.) as well as legislative obligations.

The obligations outlined in the Work Health and Safety Act (SA) 2012 in regards to providing a safe workplace are not being met by the Council, due to the actions of Councillor Bagster. The major causation factor is bullying as defined in the Safework Australia Code of Practice for Bullying. This is a significantly serious matter and must be corrected as a matter of urgency by the Council. Council Bagster has bullied the CEO (amongst others) and it is for this reason, EGS discontinued mediation.

Councillor Bagsters communication, (examples of which are attached to this report), demonstrate that Councillor Bagster wilfully engages in deceit, bullying, harassing, threatening, intimidating and potentially stalking behaviour. There is significant correspondence which demonstrates he engages in behaviour to deliberately and purposefully undermine the CEO and the Mayor. Further EGS finds that he has demonstrated engaging in behaviour to incite and provoke responses from others including but not limited to, text messages to Executive Management and other staff well into the night, and that those text messages are often very disturbing.

The matters raised in this report pose such a significant risk to the organisation and its people, it makes it very difficult, if not impossible, to understand, how the organisation can continue to accommodate Councillor Bagster in this role, particularly considering its legal Duty of Care implications.

EGS concludes that there are serious issues arising from Councillor Bagster's bullying and other inappropriate behaviours, as well as allegations of his stalking, all of which Council must address. This matter should be managed in conjunction with expert legal advice and, therefore, should be further prosecuted in conjunction with the Council's lawyers. There are also government agencies that are tasked with managing matters of this nature: Fairwork, Safework, SAPOL, Employee Ombudsman, Local Government Ombudsman, Health and Safety Representative issuing a Provisional Improvement Notice (PIN) etc.

Council Elected Members need to develop an appropriate course of action to remove the significant risk currently being presented to Council. Additionally they need to demonstrate to internal staff and external agencies, that it is appropriately managing and reducing its risk profile. Elected Members, must demonstrate that they have undertaken necessary actions to ensure compliance with the work health and safety legislation.

There is a significant reputational risk to the Council, amongst Council members, the public and additionally those organisations that interact with the Council. The correspondence which EGS has reviewed demonstrates that this is a very real concern, as media has been included in correspondence and the information provided is inconsistent with the facts.

The significant weakness in the local government system is the relatively ineffective powers given to the Minister, the Council and the CEO as chief administrator. The Minister has limited powers to intervene under the Local Government Act 1999. The current legislative and regulatory regime applicable to this situation is inadequate to empower the Council to deal satisfactorily with Councillor Bagster and his inappropriate conduct (Byrt report).

EGS recommends:

1. Council refer the Byrt Report and this Mediation Report, together with the supporting evidence to the Officer of Public Integrity to enable the OPI to consider and determine whether the behaviours of Councillor Bagster amount to an abuse of public officer or corruption in public administration, because of the apparent threats against public officers.
2. Council approach the Local Government Association (LGA) with a view to initiating a submission to the Minister to seek improvements to the legislative and regulatory regime controlling local government to better enable a Council to implement necessary management protocols and to provide both Councils and the Minister with powers to adequately curtail inappropriate behaviours through all mediums and to put in place meaningful penalties for serious breaches of expected behaviours.
3. Seek advice to determine whether Councillor Bagsters conduct has contravened the Anti-stalking legislation.
4. Seek advice to determine whether Councillor Bagster's actions have contravened the Telecommunications' legislation.
5. Seek advice on whether Elected Members can move a motion, as follows:
 - a. When an Elected Member (Councillor Bagster) engages in behaviour and actions which are unlawful, and, which are being investigated but not yet realised, and, when those allegations present such an unacceptable risk to the organisation that a motion is passed, to place the Elected Member on indefinite leave, until the matter is resolved in the appropriate jurisdiction. Until such a time as a new Election is called and they are effectively removed, or until such a time that they are prosecuted for unlawful matters and therefore ineligible to hold their position.
 - b. When an Elected Member's (Councillor Bagster) behaviour and actions suggest that there are mental or psychological health matters, which impact on their ability to be an effective Elected Member, that they are placed on indefinite leave. This period of indefinite leave would continue until the matter has been appropriately addressed. A requirement for returning to the Elected Member role, would be the provision of a suitable medical certificate advising fitness for purpose.
6. Seek legal advice, to determine whether (or under what means) Council can request (or demand) an Elected Member to undertake a medical health assessment, for determination of fitness to undertake duties. There is no apparent means currently to determine an Elected Members mental health ability, particularly when they demonstrate conduct, actions and behaviours, which reasonably could indicate a serious mental health matter.
7. That this report and the attached appendices should be provide to Safework SA, as evidence of the complaint that they are currently investigating.
8. Council lodge an application with the anti-bullying division of Fairwork to request the Commissioner order the bullying to cease. The Council, in its application, should provide the attached material and this report, to support the concerns that Councillor Bagster has wilfully engaged in a horrific bullying campaign, and that he exposes Council and its people to significant harm.
9. Council should undertake an investigation to determine the likelihood of Councillor Bagster engaging in bullying and harassment communication (therefore unlawful action) whilst at his place of work, therefore exposing the Department of Defence to potential vicarious liability. Council should seek legal advice in this regard.

10. Council will need to constructively challenge the organisation to ensure that workers needs are fairly considered, legal obligations are met and to ensure appropriate communication and consultation occurs as necessary, and should be viewed as a minimum standard required. There are a number of organisational members who have been subjected to an ongoing campaign of bullying by Councillor Bagster. Further this campaign has been relentless impacting their psychological well-being. This needs to be appropriately addressed by providing support as required and communicating the support available.
11. If a mental health issue is suspected which is impacting on an Elected Member's ability to carry out their duties, and which significantly impacts others within and external to the organisation there is no provision for Council or the Local Government Ombudsman to address these matters. This is a significant issue which needs to be addressed. It is likely that under the Work Health and Safety Act (2012) SA, where it requires that 'workers cannot adversely affect the health and safety of others' that if Council suspects that a Councillor's', behaviour is such, that it is detrimentally impacting the health and safety of others, then an independent medical assessment to determine whether a mental health or psychological issue is present, may be required.

Failure to address this matter, presents a significant risk exposure to the Council for failing in the Work Health and Safety obligations. Furthermore, failing in Duties in this regard are deemed criminal matters and therefore criminal prosecution could apply.

12. Councillor Bagster's actions have created a discord between Elected Members. It is apparent in the evidence provided that Councillor Bagster could and did mislead others, this has impacted the relationship between some of the Councillors and they now need to work together demonstrating leadership, to address this very serious matter for the good of the organisation and for the people who have been victims. Further they need to communicate this support to the victims as many have received threatening communication, and therefore those concerns need to be allayed.
13. The organisation should embark on development activities which build relationships and engender trust and communication particularly between the Elected Members and also between the Elected Members and the Executive Team. It is clear that the Executive Management team have been exposed to Councillor Bagster's behaviour for a significant period of time. Elected Members have omitted to demonstrate reasonable care by removing the harm caused by Councillor Bagster's behaviour, and that has left the Executive Management exposed, without any sense of resolution to the matters. This has impacted both their professional and personal lives. By removing the harm, Elected Members are reinforcing to all staff that this behaviour is unacceptable irrespective of a person's role within the organisation. Further, it will reduce the likelihood of good talent exiting the organisation, which is a reasonable risk currently.
14. Training in bullying and appropriate behaviours with regard to the Code of Conduct for Council Employees and the Code of Conduct Council Members must now be implemented as a high priority. People need to be held accountable for their behaviour, irrespective of their role within the organisation. Elected Members need to take a primary role in demonstrating appropriate behaviours and actions. Elected Members and staff need to be educated in regards to the WHS Act and the requirement that they act, and therefore 'failure to act or omission, is an offence, and therefore they may be subject to prosecution.
15. Training must now be provided in the Work Health and Safety Act so that employees irrespective of their role understand that they have mandatory legal obligations to report, which are required to be met.

Appendices 1 to 17 (attached)

Appendices 18 to 26 (attached)

Appendices 27 to 33 (attached)

Appendices 34 to 40 (attached)

Appendices 41 to 46 (attached)

Appendices 47 to 50 (attached)

Appendices 51 to 61 (attached)

Appendices 62 to 67 (attached)

Appendices 68 to 77 (attached)

Appendices 78 to 90 (attached)

Appendices 91 to 103 (attached)

Appendices 104 to 112 (attached)

Appendices 113 to 122 (attached)