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Randwick City Council
a sense of community

4 June 2019

Governance Review of Wylie's Baths Trust

FINAL REPORT

Executive Summary

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A The current situation

Since its establishment in 1996, the Wylie's Baths Trust (the Trust) have experienced considerable growth over the years. As such, there is a need to ensure its appropriateness, as well as adherence with contemporary standards of transparency, governance and community involvement.

Randwick City Council (the Council) engaged Grosvenor Public Sector Advisory (Grosvenor) to undertake a review of the current governance model of the Trust and provide a pragmatic and implementable report of the results to adjust the framework accordingly.

C Key recommendations

1. Amend appointment process for community members

2. Develop and implement a five year management plan

3. Develop and implement a risk management plan

4. Formalise structure around Council's engagement with the Trust

5. Further develop feedback loops between Baths users, Council and the Trust

B Principles of good governance

Leadership, ethics and performance culture	Stakeholder relationships	Risk management	External conformance and accountability
Planning and performance monitoring	Information and decisions support	Review and evaluation of governance arrangements	Internal conformance and accountability

D Benefits of implementing recommendations

> a strong sense of direction for the Baths, driven by an enforceable plan with clearly attributable actions and responsibilities

> enhanced protocols for engagement with stakeholders, including Council members and Baths users

> a greater understanding of the risks and challenges facing the Baths, and strategies to mitigate these

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Introduction

Introduction

Wylie's Baths Trust requires a governance review in order to ensure they are operating at best practice for an organisation of their size

Background:

> The Wylie's Baths are managed by the Wylie's Bath Trust (the Trust) that was established in 1996, when a lease agreement was entered between Randwick City Council (RCC) and the Trust.

> over the 20 years since, Wylie's Baths have experienced growth in demand and therefore the expectations placed on the Trust have changed.

Why we're here:

> RCC engaged Grosvenor to review the operation of the Trust Rules and the management structure of the Trust, including compliance, transparency, and community involvement.

> the purpose of this report is to inform of the appropriateness of the current governance arrangements of the Trust and any changes that are recommended towards better practice. Advice and recommendations have been provided to ensure a sustainable and viable future of the Trust, in line with better practice.

What we did

Current operations

The Trust oversees the operations of the Baths, governed by the Trust Rules and lease documentation, for the benefit of the Bath's users and the Council

Trust membership

> the Trust, in accordance with the Trust Rules, has eight members

> the Mayor serves as the Council representative on the Trust as well as the Chair

> each of the follow clubs has one nominated representative on the Trust

— Coogee Surf Club

— Coogee Diggers

— South Maroubra Dolphins

— Randwick and Coogee Amateur Swimming Club

> the remaining three members are community representatives which must meet the following requirements:

— regular users of the Baths

— reside in the Local Government Area

Trust finances

> Wylie's Baths generates an annual revenue in the order of $700,000 and budgets for a small annual profit, depending largely on patronage, the prevailing weather conditions and discretionary maintenance spend

— revenue is generated mainly from gate takings and kiosk contributions, with the biggest cost being staff wages

> there is an additional cash on hand reserve of approximately $500,000 with retained earnings (net assets) of $200,000

Infrastructure

> The principle remit of the Trust is to operate the Baths along with its structures and facilities, including any necessary maintenance and upgrades. This includes;

— the Baths themselves

— kiosk

— changerooms

— surrounding gardens

Governing documents

> There are two main documents which dictate the structure and obligations of the Trust:

— Wylie's Baths Trust Rules; and

— Sub-lease between Randwick City Council and Wylie's Baths Trust Inc.

Key stakeholders

> Baths users

— users can be split into three categories; swim club users, other local users and tourists

> Randwick Council

— as the original leaseholders of the site and the body to which the Trust ultimately reports, the Council have a significant interest in the Trust and their running of the Baths

Good governance, fit for purpose

An assessment framework based on the tenants of good governance was developed, in order to ascertain the Trust's current governance processes

What is good governance?

Governance refers to the processes by which organisations are directed, controlled and held to account. Good governance generally focuses on two main requirements of organisations:

> **Performance**

  - ✓ governance arrangements contribute to overall performance and delivery of services

  - ✓ mechanisms are in place that allow the organisation to achieve its outcomes in the best possible ways

  - ✓ the organisation is supported and enabled by its structure, instead of seeing it as a barrier or hinderance.

> **Conformance**

  - ✓ governance arrangements ensure the organisation meets the requirements of the law, regulations and published standards

  - ✓ engages with community expectations of probity, accountability and openness

  - ✓ focuses on accountability and responsibility to demonstrate due diligence under the law.
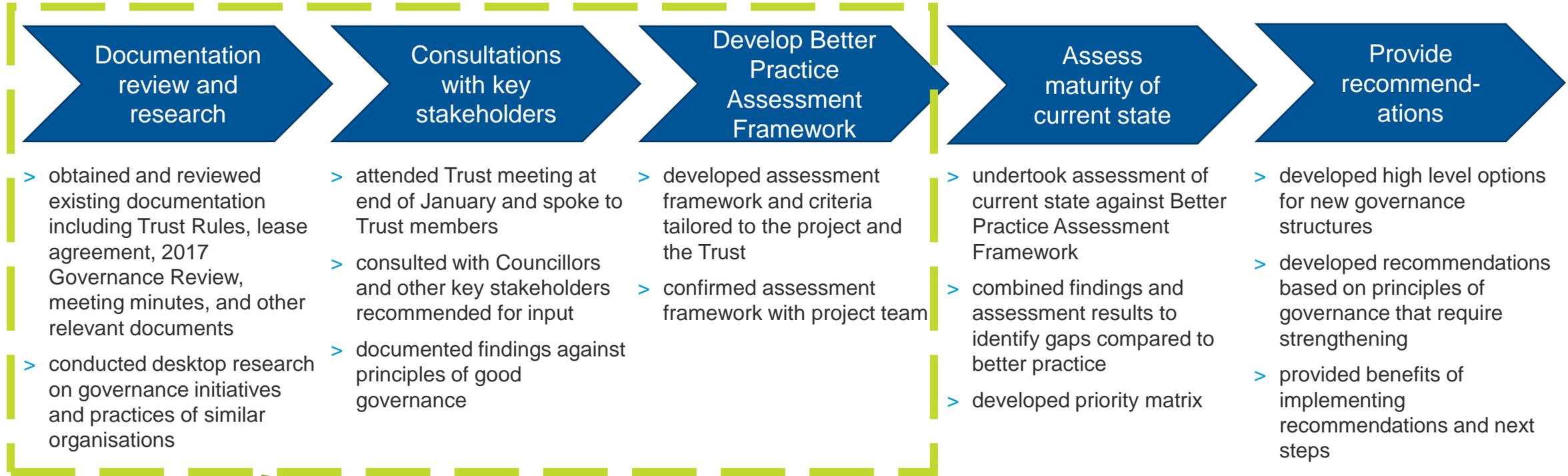
An assessment framework with eight criteria was developed based on the principles of performance and conformance. Furthermore, questions have been developed for each criteria to assist in assessing the Trust's governance processes.

Three key questions were considered while formulating the assessment framework:

1. What governance principles are important to the Trust?

2. What is the maturity level of the Trust in these principles?

3. How can we ascertain the gap between current and desired maturity level?

The assessment process

Our methodology for ascertaining the current state of the Trust and the governance processes required for their level of maturity involved a desktop review and stakeholder consultations, as well as an assessment of industry better practice

Documentation review and research	Consultations with key stakeholders	Develop Better Practice Assessment Framework	Assess maturity of current state	Provide recommend-ations

Documentation review and research
> obtained and reviewed existing documentation including Trust Rules, lease agreement, 2017 Governance Review, meeting minutes, and other relevant documents

> conducted desktop research on governance initiatives and practices of similar organisations

Consultations with key stakeholders
> attended Trust meeting at end of January and spoke to Trust members

> consulted with Councillors and other key stakeholders recommended for input

> documented findings against principles of good governance

Develop Better Practice Assessment Framework
> developed assessment framework and criteria tailored to the project and the Trust

> confirmed assessment framework with project team

Assess maturity of current state
> undertook assessment of current state against Better Practice Assessment Framework

> combined findings and assessment results to identify gaps compared to better practice

> developed priority matrix

Provide recommendations
> developed high level options for new governance structures

> developed recommendations based on principles of governance that require strengthening

> provided benefits of implementing recommendations and next steps

> compiled and provided summary report

In order to develop our framework for assessment, we undertook a desktop review and stakeholder consultations, as well as an assessment of industry better practice

Our basis

The eight principles of good governance below were used as a basis for our analysis and assessment of better practice

Leadership and culture

active commitment; mechanisms between the Trust and Council on communication and feedback; tools to determine success

Why is this important?

Ensures awareness and oversight across all levels of accountability.

Stakeholder relationships

representation of internal and external stakeholders' interests; management of conflicting interests

Why is this important?

Maintains a consistent relationship between parties to provide essential support to the management of the Baths and achievement of overall objectives.

Risk management

identification, analysis, monitoring and management of risks; protection of Heritage status

Why is this important?

Ensures sufficient planning and therefore accountability to meet legal requirements and community expectations.

External conformance and accountability

key external accountable organisations; legislative instruments for conformance; reporting; review

Why is this important?

Demonstrates due diligence under the law while also enabling external stakeholders to remain accountable.

Planning and performance monitoring

conformance and performance within governance structure; budgeting and financial planning; Council support; governance meetings

Why is this important?

Contributes to overall performance of the Trust and allows for achievement of core objectives

Information and decision support

record keeping and maintenance; Council presence for decisions

Why is this important?

Allow the Trust and the Council to remain accountable, compliant and transparent.

Review and evaluation of governance arrangements

reviews of governance arrangements; internal audit; benchmarking

Why is this important?

Enables ongoing improvement and conformance to contemporary standards of governance.

Internal conformance and accountability

internal audit; management of roles of responsibilities; communication of policies and decisions; feedback from external stakeholders

Why is this important?

Demonstrates due diligence under the law while also enabling internal stakeholders to remain accountable.

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What we found

Current vs potential future state

While the current state of governance within the Trust is sufficient for their purposes, further improvements could be made to achieve best practice

Where the Trust is at

> a committed group of Trust members who understand their obligations and responsibilities under the Trust Rules

> the majority of governance procedures undertaken by the Trust are at the initiative of current members as opposed to being enforced by requirements within the Trust Rules

> communication with stakeholders occurs through formal and informal methods; however, no systems are in place to ensure the completion of feedback loops

> maintenance planning is undertaken in a planned and considered fashion, whereas wider management planning is delivered more reactively

> relevant skills are informally sought within Trust members when recruitment occurs

> meets legal standards and requirements

> internal governance review undertaken in 2017 but no frequency of these reviews seem to exist

In summary, the Trust is operating well and would continue to perform its duties at an acceptable level with no changes

Where we would like the Trust to be

> further integration of governance procedures into Trust rules to ensure continuity

> more interaction with key stakeholders to create a structure that supports leadership

> multiple engagement points with stakeholders to maintain a consistent relationship and external accountability

> effective risk management with mitigation strategies and contingency plans in place

> proactive planning, with mechanisms in place to ensure consistent performance monitoring

> planned continual review of internal conformance, structure and processes to remain accountable

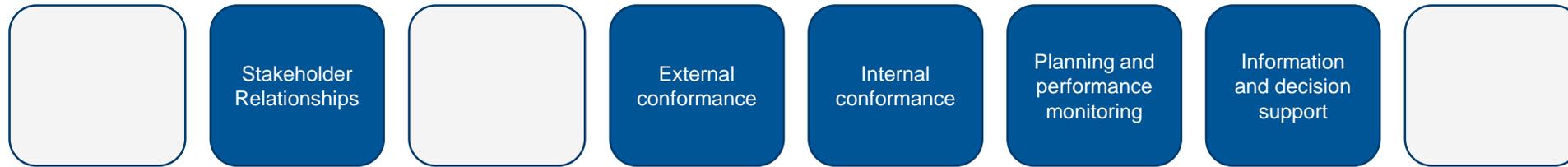> active involvement of key stakeholders through open lines of communication

In summary, there are small changes which can be made to the governance structure of the Trust which would enhance their performance

How we're going to get there

> demonstrate the significance of proactive planning for the effective management of the Trust

> ensure a mutual understanding of why these recommended changes will secure the future state of the Trust by achieving better practice

> communicate the benefits that will be attained by the Trust, Council and public users when these recommendations are implemented

> we recommend the following changes in order to achieve best practice in the Trust's governance:

— development and implementation of comprehensive management plans

— update of the Trust Rules

— creation of a Memorandum of Understanding regarding communication, reporting, decision-making processes and roles and responsibilities between the Trust and Council

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4

What we recommend

1. Amend appointment process for community representatives

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	Stakeholder Relationships		External conformance	Internal conformance	Planning and performance monitoring	Information and decision support	

Key:

☐ (blue) *Enhances principle*

☐ (white) *Principle does not apply*

Our observations indicate…

> community members have most recently been selected by a subcommittee of the Trust, including the Mayor and a Trust member who reached a unanimous decision, whereby a recommendation was made to the Council to approve

> community member positions do not come up often, and there is no set term

> the only requirements of community representatives is that they are residents of the LGA and show a 'keen interest' in the Baths

> community representatives can also be members of the swim / surf lifesaving clubs, which have four dedicated positions on the Trust

> we find no evidence that the current process hinders the ability for the Trust to deliver appropriate governance outcomes

Better practice indicates…

> Trust members come from a variety of backgrounds, with transparency as to the organisations to which they belong and the interests they represent

> a formalised skills matric should exist that identifies what skill sets are required and ensures that these are considered when positions for new members are advertised
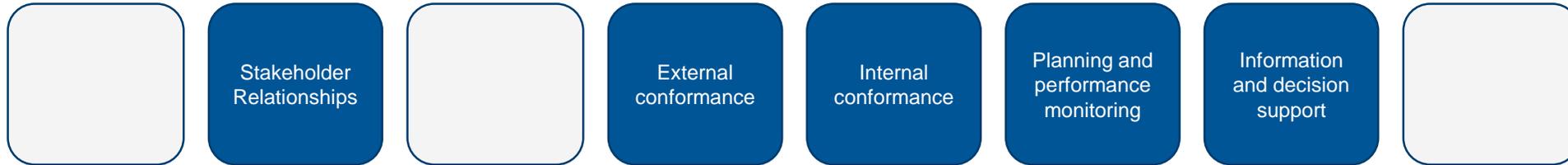
Consult participants indicate…

> there are two schools of thought regarding the current appointment of Trust members:

— the process is fine as it is, and;

— promotes a 'closed shop' whereby current Trust members are more inclined to recommend the appointment of those within their circle, closing off the Trust to ideas which may be different from their own

> by all accounts, the current system is not 'broken', however there may be room for refinement within the appointment process

Others achieve this by…

> clearly stating a conflicting interest management process in governance frameworks, therefore preventing the potential problem of having conflicting interests on the committee

> having a written conflicts management arrangements policy to ensure the duties and powers of members are used in the best interests of the organisation

> having a designated nomination committee to avoid selection bias

1. Amend appointment process for community representatives

| | Stakeholder Relationships | | External conformance | Internal conformance | Planning and performance monitoring | Information and decision support | |

Key:

Enhances principle

Principle does not apply

We recommend…

> a revision of the Trust Rules which dictate the requirements of new community representatives on the Trust:

— community representatives do not need to reside in the Local Government Area

— a three year term for community representatives, whereby they can reapply

> the formalisation of the Trust skills matrix which identifies existing skill sets of Trust members and helps to inform those which would be required of new members. This would apply to all Trust members

— we understand that an informal version of this matrix already exists, however formalising and embedding this as part of the management plan will ensure consistent use in the recruitment process

> the process for appointing community members should ultimately reside with a senior non-elected council official (i.e. the General Manager (GM)) to remove any real or perceived political conflicts
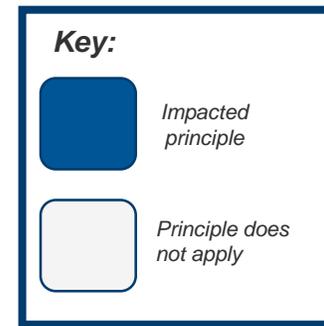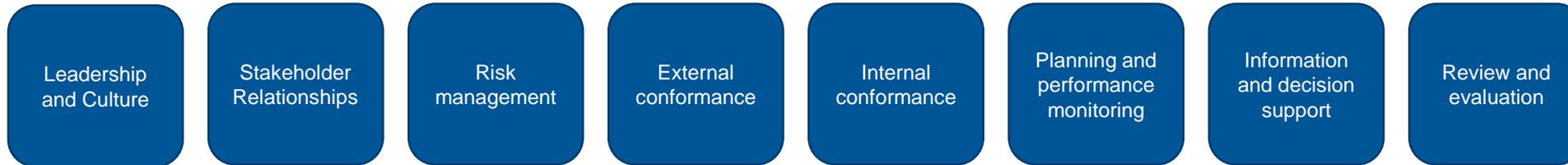
By doing this, we will achieve…

✓ clarity as to the skills brought to the Trust by each member

✓ a formal procedure to ensure the replacement of skill sets when members depart

✓ elimination of any real or perceived conflicts of interest or bias within the Trust membership

✓ consistent and fair recruitment process removed from any political interference

This will be actioned by…

→ a consultative process between the Trust and council to ascertain agreement on wording changes to the Trust Rules

→ the Trust will formalise any current skills matrix by embedding it into the management plan

2. Develop and implement a five year management plan

Leadership and Culture	Stakeholder Relationships	Risk management	External conformance	Internal conformance	Planning and performance monitoring	Information and decision support	Review and evaluation

Key:

- ◼ Impacted principle
- ◻ Principle does not apply

Our observations indicate…

> management by the Trust is focused on continuing the status quo

> little in place to ensure continuity of management if Trust members replaced

> present financial resources do not cover the greatest risk facing the Baths (destruction of the sea wall)

> community engagement is limited to current/recent events and does not allow for input into future direction of the Baths

Better practice indicates…

> forward planning by Trusts in order to effectively manage assets over the long term is preferable

> engagement with stakeholders as to the long term management of assets helps to build a sense of inclusiveness and collaboration

> in the event of a change of management, continuity can be assured by way of a management plan which has been endorsed by external stakeholders

Consult participants indicate…

> two schools of thought regarding future direction of the Baths:
  — further commercialisation to capitalise on potential revenue streams
  — preservation of status quo: *"not another Bondi Icebergs"*

> there is a lack of understanding (sometimes stemming from a lack of interest) from some participants as to how management of the Baths is undertaken by the Trust

Others achieve this by…

> following a Governance Review Framework which details planning and ongoing management of resources to maximise accountability and success

> the careful measurement of process, impact and outcomes

> regular progress reporting to Council as well as annual reviews on performance

> annual audit plan for internal reviews of the Framework and associated management plans

2. Develop and implement a five year management plan

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Leadership and Culture	Stakeholder Relationships	Risk management	External conformance	Internal conformance	Planning and performance monitoring	Information and decision support	Review and evaluation

Key:

Impacted principle

Principle does not apply

We recommend…

> a five year management plan be created by the Trust that explicitly outlines Council's vision for the Baths and how Trust will deliver on their vision

> input from the wider Baths community to be sought, with endorsement by the Council

> publicly available and reviewed annually

> the plan should be comprehensive and include:

— strategic vision (as dictated by Council)

— asset management

— governance

— financial forecasting

— risk management (see Recommendation 2)

> much of the content required for such a plan already exists in part as separate documents

> due consideration would need to be paid to any changes in the lease arrangement with Council, including Native Title claims
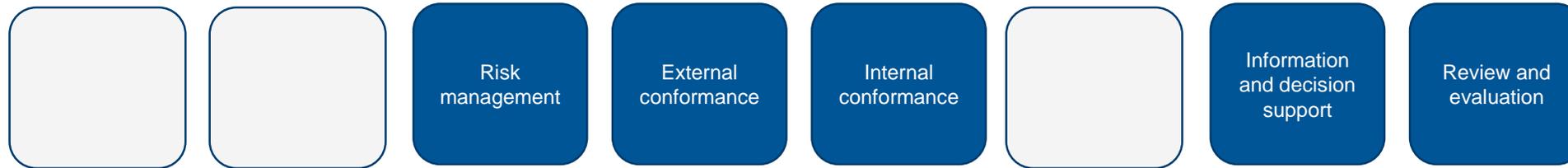
By doing this, we will achieve…

✓ a clear vision for the future of the Baths which is shared between the trust, Council and Baths users

✓ basis for effective management of resources and stakeholder relationships

✓ comprehensive plans to manage future risks and adequate contingency plans

✓ full accountability for actions made and consistency across decision making processes

✓ continuous improvement for all aspects of the management of the Baths

This will be actioned by…

→ the Trust will create the initial management plan, with review and input from Council and the Baths users

3. Develop and implement a risk management plan

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		Risk management	External conformance	Internal conformance		Information and decision support	Review and evaluation

Key:

■ Impacted principle

□ Principle does not apply

Our observations indicate…

> risk has been considered by the Trust with some preliminary measures implemented

> risk management is undertaken in an ad hoc fashion, with multiple documents, templates and procedures that do not always correlate a risk assessment framework/risk register exists and with no mitigating actions

> limited examples of risk management procedures being implemented and no documentation outlining when these need to be reviewed

Better practice indicates…

> a comprehensive risk management plan provides for consistency in assessing and assigning mitigations to risks

> this also allows for a structured review process of past and existing risks, ensuring that they are appropriately managed over time

> a Trust member with experience in managing risk and / or corporate governance may be beneficial in implementing such a plan
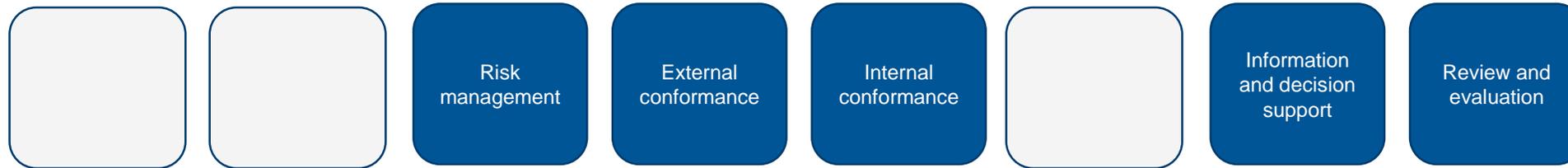
Consult participants indicate…

> risk is considered as part of the running of the Trust; however, there is no clear understanding of processes followed

> high risk issues are flagged without clear action plans put in place to mitigate them

> some risk management processes are in place but may not always be followed correctly, partly because people are not aware of their existence

Others achieve this by…

> incorporating risk management into their wider management plans

> outlining risk management planning within their Terms of Reference

> engaging in continual maintenance of a risk register, providing the opportunity to highlight emerging risks and also add new risks as required

3. Develop and implement a risk management plan

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		Risk management	External conformance	Internal conformance		Information and decision support	Review and evaluation

Key:

Impacted principle

Principle does not apply

We recommend…

> a comprehensive risk management plan be developed and implemented by the Trust as of the five year management plan (see Recommendation 1)

> many of the risks contained in this plan will have already been identified in the past, such a plan will allow for these to be consolidated and achieve consistency

> mitigation strategies for each risk should be outlined and actioned in order to reduce the overall impact

> continual review and maintenance of the risk management plan should be incorporated into the Terms of Reference

> this will ensure that new risks are continually added as required along with review of the effectiveness of mitigation strategies
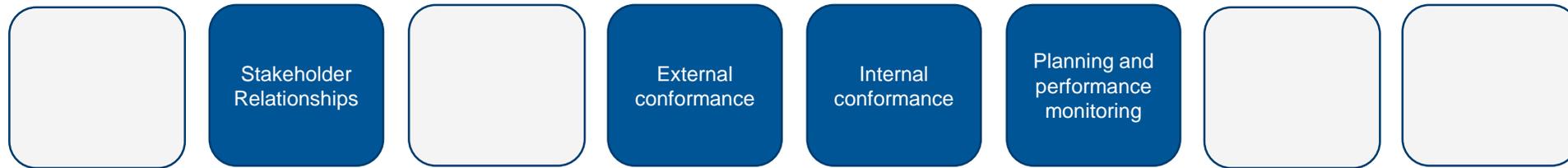
By doing this, we will achieve…

✓ an increased focus on risk at Trust meetings and in subsequent strategic planning

✓ identification of new risks as they arise

✓ minimised harm to the Baths and its stakeholders

✓ review of the effectiveness of current mitigation strategies for existing risks

✓ contingency strategies for potential future risks

✓ full accountability for monitoring and managing of risks

This will be actioned by…

→ the Trust will be responsible for the development and review of the risk management plan

→ alterations to the Terms of Reference will be done in conjunction with Council

4. Create structure around Council's engagement with the Trust

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| | Stakeholder Relationships | | External conformance | Internal conformance | Planning and performance monitoring | | |

Key:

▪ *Impacted principle*

▫ *Principle does not apply*

Our observations indicate…

> the Council's only regular presence in relation to the Trust is at Trust meetings through the Mayor's member position as Chair (or a nominated Delegate as required)

> the Council has final sign-off for decision-making or voting processes, including the appointment of new community representative members

Better practice indicates…

> a culture of shared responsibility between the Council and the Trust will grant the Trust the autonomy to manage in alignment with the Council's strategic vision for the asset

> formalising shared responsibilities allows for consistency in approach when Council or Trust membership changes, as well as confidence in who is making decisions

> the communication between the Council and Trust members is important in sustaining both internal and external legitimacy and accountability
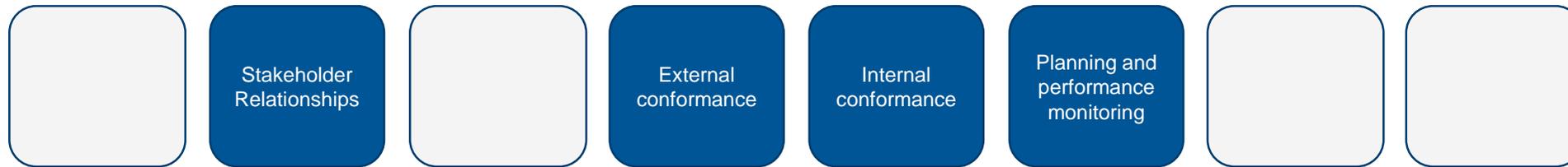
Consult participants indicate…

> the perception there is little association and involvement by Council with the management of the Trust

> there does not appear to be a regular/open process in place for feedback to and from the Council

> two contrasting schools of thought emerged regarding the Mayor as Chair of Trust meetings:

— position provides oversight and accountability by Council

— Ineffective as it means Council's involvement will sift depending on the priority given to it by the current Mayor

Others achieve this by…

> having consistent mechanisms of communication in place to convey relevant feedback and issues as they arise, ensuring sufficient oversight and accountability

> having an agreed understanding for involvement of Council i.e. appropriate times to escalate decision-making

> creating appropriate feedback loops for interested stakeholders

4. Create structure around Council's engagement with the Trust

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| | Stakeholder Relationships | | External conformance | Internal conformance | Planning and performance monitoring | | |

Key:

■ Impacted principle

□ Principle does not apply

We recommend…

> a formalised approach to the way in which the Trust engages with Council, including

— a jointly produced and agreed Memorandum of Understanding (MoU) between the Trust and Council, which would clearly outline the roles and responsibilities of each party

— reporting and communication protocols, which would dictate when and how Council would engage with the Trust and vice versa

> appointing the General Manager (or their delegate) as Councils representative on the Trust

— this would remove all elected Council presence from the Trust, with the view that the MoU along with the elected community representatives and the GM would sufficiently represent the Council's interests

— provide fuller and clearer separation of roles and responsibilities between strategic vision for the asset council) and operational management (Trust)
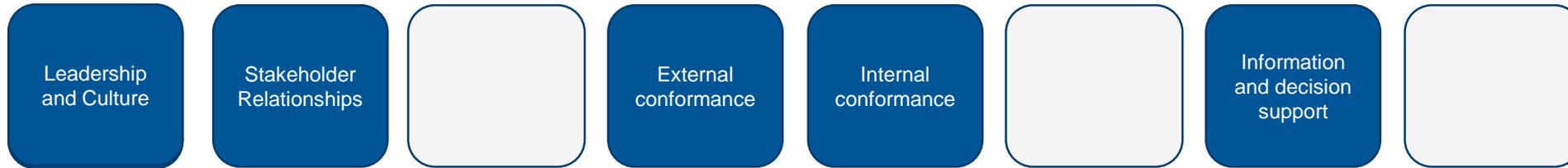
By doing this, we will achieve…

✓ clear delineation between the roles and responsibilities of the Council and the Trust, with a mandate for each party to carry these out

✓ enforceable parameters around the ways in which the Trust and the Council engage with one another, removing the 'no news is good news' stigma

✓ clarity surrounding reporting requirements in regards to form, content and frequency

This will be actioned by…

✓ both the Trust and Council will formulate and agree to a Memorandum of Understanding

✓ a change to the Trust Rules removing the role of the Chair and replacing the Mayor with the GM

5. Further develop feedback loops between Baths users, Council and the Trust

Leadership and Culture	Stakeholder Relationships		External conformance	Internal conformance		Information and decision support	

Key:

Impacted principle

Principle does not apply

Our observations indicate…

> there are limited regular, formal and structured processes for feedback and communication between community members and regular users of the Baths and the Trust

> there have been two reports to Council by the Trust that have provided a review on current operations and structure with recommendations, however there is limited evidence of the progression of these

Better practice indicates…

> structured communication protocols between Trusts and stakeholders (both Baths users and Council in this case) ensure there is a consistent flow of information between decision makers and stakeholders

> this is vital in ensuring accountability by both the Trust and the Council as a mechanism to constantly review and monitor the five year management plan and any associated outcomes
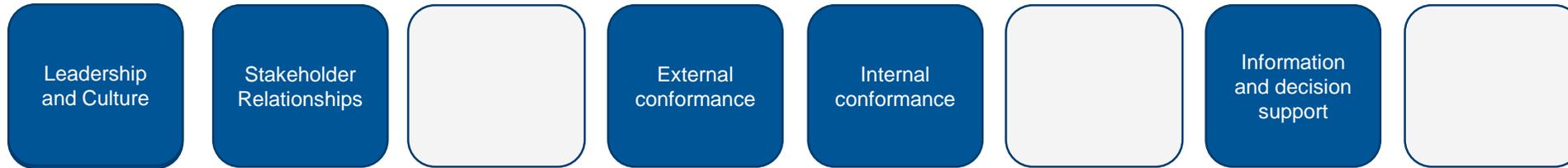
Consult participants indicate…

> the Trust members, when onsite, are in frequent contact with users of the Baths

> the main pathway of communication by the Council is through the Mayor's position in the Trust, with little flow of information otherwise

> meeting minutes are documented and are distributed to Trust members and the Council General Manager

> there is modest, if any, interaction between the Trust and Councillors, other than the Mayor

Others achieve this by…

> considering all dynamics and levels of stakeholders in an interconnected framework in order to positively influence organisational culture and capacity

> updating Council with progress reports as required (not including the regular updates) allowing for a transparent and therefore respected relationship

5. Further develop feedback loops between Baths users, Council and the Trust

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| Leadership and Culture | Stakeholder Relationships | | External conformance | Internal conformance | | Information and decision support | |

We recommend…

> The development and implementation of robust communication protocols between Council and Trust members

> establishment of formalised communication channels with regular Baths users in order to obtain feedback on management of the Baths and key decisions

— these protocols may be included in the Memorandum of Understanding (see Recommendation 4) and will allow for regular feedback on the performance of responsibilities by each party

> quarterly reports be produced by the Trust and made publicly available in order to keep all stakeholders informed of Trust activities and undertakings

By doing this, we will achieve…

✓ a consistent and agreed approach to communication between all key stakeholders

✓ the opportunity for all stakeholders to be involved commensurate with their level of interest, encouraging greater buy-in when decisions are made

✓ a culture of honesty and openness, removing any perception of a 'closed shop' and allowing for more authentic engagement with the wider Baths community

This will be actioned by…

✓ agreement of communication protocols between the Trust and Council which are then included in the MoU

✓ inclusion of quarterly public reports in the Trust Rules, specifying the content and format

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Resources
(Documents and Stakeholders

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Consultations

Formal consultation meetings were held with the following people through the course of this review. In addition, numerous interactions were held with the Secretary of the Trust (Janice Morris) to clarify information provided and/or obtain additional documents

> Trust Members (at the January Trust meeting), including:

 — Thea Askew (Treasurer)

 — Peter Court

 — Tony Cousins

 — Chuck Hahn

 — Steve Levett

 — Janice Morris (Secretary)

 — Tony Waller

> Courtney Tallon (Baths Manager, at the January Trust meeting)

> Annette Moran (at the January Trust meeting)

> Cr Kathy Neilson (Mayor and Chair, at the January Trust meeting)

> Cr Danny Said

> Cr Tony Bowen

> Cr Alexandra Luxford

> Cr Harry Stavrinos

> Cr Brendan Roberts

> Cr Anthony Andrews

> Cr Ted Seng

> Cr Lyndsay Shurey

> Chris Bastic (former Cr)

> Dominic Sullivan (former Mayor)

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