

Port Macquarie-Hastings
Council
Public Inquiry

Inquiry Report
Volume 1

Inquiry Commissioner Frank Willan

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REPORT

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1. LETTER OF APPOINTMENT AND TERMS OF REFERENCE



New South Wales

The Hon. Paul Lynch MP

Minister for Local Government
Minister for Aboriginal Affairs
Minister Assisting the Minister for Health (Mental Health)

Ref: 07/0650
MIN:
Doc ID: A107758

Mr Frank Willan
19 Dunmore Place
MENAI NSW 2234

Dear Mr Willan

I have appointed you as Commissioner under section 740 of the *Local Government Act 1993* to hold a Public Inquiry into Port Macquarie-Hastings Council. You are to inquire and report to me, as Minister for Local Government, as to whether all civic offices at Port Macquarie-Hastings Council should be declared vacant.

I ask you to have particular regard to:

1. whether the Council exercised prudent financial and project management regarding the planning and development of the infrastructure project known as "The Glasshouse"
2. whether the Council properly considered what impact the Glasshouse project would have on the ongoing ability of Council to provide adequate, equitable and appropriate services and facilities to the community
3. whether the Council properly consulted and engaged with its community and exercised appropriate openness and transparency in its decision making for approving and undertaking the Glasshouse infrastructure project
4. any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the management of and working relationships within the Council.

Would you also make such other recommendations as you see fit.

Yours sincerely

Paul Lynch MP
Minister

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Phone: (61 2) 9228 3333 Fax: (61 2) 9228 5551

22. PROCEDURES AND SCOPE OF INQUIRY

2.1 Involving the Port Macquarie-Hastings Community

To ensure the community were aware of the Inquiry and the opportunities they would have to influence the outcomes a number of actions were taken:

- 2.1.1 Following the appointment of the Commissioner a Public notice of the Inquiry was published.
- 2.1.2 Meetings were offered to the relevant Members of Parliament, Mayor and Council's General Manager to advise the process the inquiry would take and to seek their considered views.
- 2.1.3 A Preliminary Hearing was conducted on 11th September 2007 at the Old Court House in Port Macquarie. This building is diagonally opposite the Glasshouse construction site. As part of the Preliminary Hearings papers were presented by the Commissioner and Mr Broad and a senior officer of the Department of Local Government appeared, at the Commissioner's request. The Commissioner's paper outlined the process and the procedure the Inquiry will adhere to and is as follows:

The inquiry will be conducted in terms of section 740 of the Local Government Act 1993, which provides for a number of things. It confers the powers, authorities, protections and immunities which are conferred on a Commissioner by Division 1, Part 2 of the Royal Commissions Act 1923. It also invokes the provisions of Sections 27a And 27b of The Local Courts Act 1982 in relation to contempt of court, and it brings into play other provisions of the Royal Commissions Act 1923 about the conduct of the inquiry.

The Commissioner is given wide discretion as to the procedures to be adopted in managing an inquiry of this nature. I propose to spend a few minutes outlining the procedures that I intend to adopt.

First, I have authorised various persons to assist in the conduct of the inquiry, under Section 12 of the Royal Commissions Act.

These include Mr Richard Murphy, and Mr Angus Broad. Mr Broad is seated below.

Today, should there be issues which people need to raise, you should see Mr Broad at the end of this preliminary hearing.

I propose to manage the inquiry on as informal a basis as possible.

Procedures will be presented and replied to in as simple and expeditious a way as possible, while at the same time recognising the rights of all those people who are involved.

Evidence will be, as far as possible, taken orally on oath. The inquiry has already received several hundred written submissions. Access to these submissions is via the internet and at Council access points outlined in the handout, which is available at the entry door.

In conducting this inquiry I have been called upon to form an opinion regarding governance issues affecting Port Macquarie-Hastings Council. It is my view that the Terms of Reference extend both to the role of Councillors who form the elected body and to the conduct of the corporate body principally represented by the staff.

The inquiry's principle focus is the matters relating to the 'Glasshouse' project but the Terms of Reference does afford me the right to consider other matters as I see fit.

To date I have received a number of submissions on other matters and a number of these have been referred to more appropriate bodies for investigation and appropriate action. This inquiry will focus primarily on the 'Glasshouse' project and only with my concurrence will other matters be allowed to be considered.

As I previously outlined, it will be my duty to make determinations on what other matters might be relevant to the effective administration of the area, and/or the working relationships between the Council, Councillors, the administration and most importantly, the community.

During the hearings I will not allow persons to make statements, or to enter into questioning, about matters that they determine to represent the broad intentions of Item 4 of the Terms of Reference. If a person wishes to make such statements they should do so by a written submission, which will then be evaluated. In some cases such persons may then be invited to make an oral submission on the issues they raise.

As I have indicated previously, several hundred submissions have been received. A small number of submissions do not fall within the Terms of Reference, and I have decided to exclude them from display.

A very small number of submissions have been received in confidence or it has been determined by me that they should be the subject of an initial in confidence consideration. Accordingly, copies of these submissions have not been made publicly available.

I have attempted to ensure compliance with privacy requirements and you will see that personal addresses and signatures have been removed from published submissions.

I have received indications that certain persons or entities wish to appear at these public hearings. Appearances at the inquiry will either be by way of application for and the granting of leave to appear or by my invitation to appear. I ask that persons or bodies seeking leave to appear approach Mr Broad following this preliminary hearing. I will convene later to deal with these applications.

I anticipate that some of the evidence that may be given during the course of this inquiry will be contentious, that the Council and individuals who are part of that process may want the right of reply. I have decided to put aside some time towards the end of the hearings to allow some people to make oral replies.

I emphasise that it is my preference that a written reply be made, where appropriate. Written submissions in reply may be forwarded to me, care of my office within a period of up to 14 days after the conclusion of the hearings.

The schedule of persons called to address the inquiry each day will be advertised on the notice board at the entrance to the hearing room. It is proposed that the list for each day will appear on the notice board early each morning. The list for each day and the following day will be posted on the inquiry's website each morning.

While every effort will be made to keep to the scheduled timetable and order of speakers, it is possible that in some instances, unforeseen events may lead to some changes.

An information paper about the general procedures for the inquiry and some associated material was provided directly to all Councillors and Council's General Manager shortly after the announcement of the inquiry. Details of this paper are available on the inquiry's website and copies can be made available on request of my assistants in attendance today.

Evidence before this inquiry can only be given in accordance with the Terms of Reference. It is my responsibility, as Commissioner, not to admit evidence which goes beyond the bounds of the Terms of Reference.

I emphasise that this inquiry is not called upon to reassess an individual's case. Accordingly, I will consider submissions and evidence from the point of view of the Terms of Reference.

I have made this decision because if I exclude people from having their submissions published where they appear to fall within the Terms of Reference, or to refuse to allow them to appear, there will be some concern that the inquiry may be less than open.

However, I repeat, I will curtail evidence where it falls outside the Terms of Reference.

All evidence will be given on oath which provides some protections for persons making an oral submission. I emphasise that the protection requires that I keep the inquiry within the Terms of Reference.

I should also point out again that this is an inquiry into aspects involving the governance of the Council. It is not a trial of individuals. The basis of the submissions, and the presentation of evidence and other matters are dictated by this, not by the rules that apply in court rooms for actions by parties against individuals or corporations.

The proceedings will be tape recorded in order to provide me with a transcript after the close of the inquiry in order to prepare the report.

Should any individual or corporation require a copy of the transcript or any part, they should contact the transcript provider directly to make arrangements. Their particulars can be obtained from my assistants.

I emphasise that I am not authorised to make copies of the transcript available otherwise.

The final report is to be presented to the Minister for Local Government, and will be tabled in Parliament. I am bound to lodge a report.

The report may contain recommendations. It is for the Minister and the Governor to consider and act upon my report.

Where speakers have already submitted a written document to the inquiry, it will be generally assumed that I have read the written material.

I believe that the public access to written submissions and the public nature of these hearings allows affected people to obtain sufficient particulars of contentious matters.

The mere fact that a critical comment is contained in the report of the inquiry is not of itself sufficient to open up that comment to scrutiny on the grounds of denial of procedural fairness.

Where matters are no more than conclusions on disputed facts that are ancillary or collateral to the major findings called for in the Terms of Reference, the finding cannot be impugned for want of procedural fairness, no matter how distressing the criticism or condemnation might be to the individual concerned.

I may ask the speaker to provide a brief summary of the contents of the written submission or I may ask the speaker to elucidate or amplify certain items contained within the submission. Or I may address other issues that are relevant and that Mr Murphy, Mr Broad or myself may raise from time to time.

I propose to ask questions of speakers directed to the issues that I see as beneficial to my understanding of the issues, rather than seeking that each speaker address the inquiry on matters that they perceive to be relevant to my consideration. All speakers should assume I have read their written submissions.

I would again like to emphasise that the inquiry is conducted in terms of Section 740 of The Local Government Act 1993. It confers the powers, authorities, protections and immunities which are conferred on a Commissioner by division 1(2) of the Royal Commissions Act.

For people to speak at it they have to seek leave. That leave may or may not be given.

It is only those who might wish to be allowed to participate in the inquiry process who will need to seek leave. If any person wishes to be legally represented at the inquiry, they should give notice to Mr Broad. I ask that they approach Mr Broad immediately following this preliminary hearing. I will convene later to deal with these applications.

I propose to take applications for leave to speak before the inquiry from persons who have not lodged a submission. If there are any such applicants, then they should also give notice to Mr Broad immediately following this preliminary hearing.

Again, I will convene later to deal with these applications. Any affected person who does not seek leave at this stage to appear is

free to do so during the course of the inquiry should they feel the need.

This inquiry's purpose is to provide information which will assist the Commissioner to make considered recommendations and will not be helped by people who are not speakers interjecting and trying to reply to what the speaker is saying.

That is contrary to the way in which I believe that this inquiry should be conducted.

Accordingly, I will not accept interjections of that type. I will require that speakers be given an uninterrupted opportunity to reply to questions put to them by people granted leave by me to ask them. If necessary, I will take steps, and if necessary exercise the powers available to me under the Royal Commissions Act, to ensure that this opportunity is extended to all speakers.

Under section 7 of the Royal Commissions Act, I have the power to allow certain people to be represented by a lawyer. People who may seek leave to be represented are those who are directly and substantially interested in this inquiry or those whose conduct may be challenged, to their detriment.

I will set out for you the way in which I envisage legal representatives participating in this inquiry.

Anyone who has been asked by me to attend and give evidence before the inquiry, may seek leave to have a lawyer present while giving evidence. If granted leave to appear, the lawyer may object to questions being asked of their client.

At the end of a witness's evidence, the lawyer may ask their own client questions. These questions should be limited to clarifying or elaborating on the evidence that the witness has already given.

What I have in mind is restricting questions to the type of question asked in re-examination.

I expect that witnesses will have different recollections of the same events. Ultimately, it will be up to me to decide, if necessary, which version of events I prefer. I propose to deal with differing recollections in this way:

If Person (a) is aware that his or her recollection of events differs from the evidence given by Person (b), then Person (a) can give his or her version of the event once he or she is called as a witness. Having heard the evidence of Person (a), I may decide to recall Person (b). If Person (a) has already given evidence, then Person (a) can write and tell me about his or her recollection of events. If I decide that I would like to hear more about what person (a) has to say, then I will recall Person (a).

*Therefore, generally speaking, I will not give a lawyer leave to ask questions of a speaker. Of course, having decided to approach the taking of evidence in this way, the rule in *Browne v Dunn* will not apply.*

To avoid recalling persons unnecessarily, I invite those seeking to respond to provide me with statements replying to assertions, particularly if they are aware of likely evidentiary conflicts. I may write to certain witnesses and ask them to provide me with a statement on particular issues, in order to expedite the hearings.

I ask that those statements be provided during the course of the hearings, so that I can ascertain whether I need to hear more evidence.

I should point out that I have not made a final decision to exclude other types of questions from being asked in particular circumstances. If a person wishes their legal representative to ask questions of a particular type, the legal representative can still seek my leave to ask those questions. If possible I would prefer that lawyers indicate in advance, in writing if they seek leave to ask questions which fall outside the perimeters I've just set out.

In particular I am concerned that the manner of questioning of speakers may become belligerent. This is contrary to the basis of this inquiry, which aims to encourage members of the public to come forward with information. The outcome of belligerent questioning in my view constitutes intimidation of speakers. Whether such intimidation is intended or not, the outcome is still the same and it is unacceptable to me.

If the process proposed by me is not followed I would reluctantly withdraw the notion that all, or some, people can cross-examine. So I would ask for your co-operation on that front and proceed accordingly.

I intend to be fairly conservative on issues related to the asking of questions. I must ensure that questions relate to the Terms of Reference. Questions put also need to be concise. The length of the hearings is confined, and I must ensure that I hear from as large a number of people from relevant groups as possible.

This is an inquiry. My role is to inquire about various matters defined in the Terms of Reference. I, and my assistants, will make inquiries about these matters. Any questioning of speakers by legal representatives, or others should be for the purpose of enlarging or elucidating the information provided by the speakers.

I will repeat some points that I have already made, and which are particularly pertinent in this context.

The mere fact that a critical comment is contained in the report of the inquiry is not of itself sufficient to open up that comment to scrutiny on the grounds of denial of procedural fairness. Where matters are no more than conclusions on disputed facts that are ancillary or collateral to the major findings called for in the Terms of Reference, the finding cannot be impugned for want of procedural fairness, no matter how distressing the criticism or condemnation might be to the individual concerned.

I think it is impractical, if we are to get through the business of this public hearing and to maintain our focus on the Terms of Reference, to have people making statements about things at various times. Whilst I'm happy for people, given that it is within the Terms of Reference, to ask questions of speakers, I will not allow people to make general statements.

I will repeat what I said earlier, that at the end of the proceedings we are reserving some time for people to briefly reply to issues that might have come up. They may also address such issues by way of a submission in reply. The latter is the preferred way of dealing with such issues.

One of the inevitable realities of a public inquiry is that a wide variety of things will be expressed and talked about. Some of the assertions might be right, some of them might be quite wrong. I don't think it is the job of the public inquiry to immediately determine the rightness or wrongness of such assertions when they appear. Judgments about the worth of what is heard will be made at the appropriate time, and in relation to all the evidence. I don't think it is in any way practical that everybody who feels that the last speaker has said something that they didn't agree with, or

that possibly reflected on them, to have the right of an immediate reply.

There may be many comments made in many parts of the media, or others beyond the inquiry itself as this inquiry proceeds.

I do not think the business of the inquiry is helped by engaging in debate or discussion on issues or ideas that the media or others, might, or might not, pick up on. The inquiry process is designed to garner evidence from the many concerned people who want to speak and who have been invited to speak.

I would remind you this is a public inquiry, and that people will be speaking under oath. I repeat that at the end of the hearings there are opportunities to present submissions in reply.

In conducting this inquiry I propose to adopt various processes intended to ensure that natural justice is afforded.

These processes will include publishing of the great majority of the submissions received and giving most of the people who have sought leave to make an oral submission to the inquiry the opportunity to do so. I will also offer persons directly affected by the evidence the opportunity to reply either orally towards the end of the public hearings and/or in writing within a period of 2 weeks beyond the end of the hearings for people who wish to make such responses.

The primary purpose of the right of reply is to allow persons to address any of these issues, in order to provide clarification, or to maintain balance.

I believe that the processes I am adopting for the conduct of this inquiry are the fairest and most efficacious means of ensuring fairness. I emphasise that it is my view that to allow written replies

is the most appropriate way to facilitate the right of reply as it will enable me to consider the merits of an argument more clearly.

Again, as I have previously indicated, there will be a period following the conclusion of the public hearings when an opportunity will be given for written submissions in reply. After this period has elapsed I will commence the task of writing my report.

Section 740 of the local government act requires that I report to the Minister for Local Government. In doing so, I may make recommendations. My recommendations may include recommendations affecting:

The elected body of the Council, represented by the Councillors;

The corporate body of the Council, represented by the staff;

The legislation under which Councils operate, principally, the Local Government Act.

I emphasise that I have only the power to make recommendations. I do not have power to implement changes directly.

However, I am empowered to refer matters that arise during this inquiry to various departments, agencies, authorities or commissions, including:

- The police;*
- The Independent Commission Against Corruption;*
- The Ombudsman;*
- The Australian Securities and Investment Commission, and*
- The Department of Local Government.*

Should any instance arise that in my view warrants referral to such a department, agency, authority or commission, then I propose to

refer such matter during the course of this inquiry and not to await the end of the inquiry before doing so.

The Local Government Act embodies provisions in the Royal Commissions Act that provide for my report to be placed before Parliament. At the time that I furnish my report to the Minister for Local Government, my task is complete.

It is then for the Parliament or the Minister to decide what actions may follow from any recommendations made by me. Similarly the publication of my report is a matter for the Parliament or the Minister to decide.

The procedures outlined in this presentation were followed except transcript of the hearings were made available on the Inquiry website, generally the following day.

2.2 Conducting the Inquiry

The Inquiry focused on the Terms of Reference so as to form a view regarding the adequacy of the Council's process in regards to the delivery to date of the "Glasshouse Project".

The Inquiry procedures were adopted as outlined below:

2.2.1 Public Notices

Following the appointment of the Commissioner a Public Notice of the Inquiry was published in the Camden Haven Courier, Port Macquarie Express, Port Macquarie News, Sydney Morning Herald and Daily Telegraph on 15 August 2007. Letters were sent to Council and Councillors advising them of the Inquiry.

2.2.2 Direct Approaches to the Council for Information

Once the Inquiry was announced the Council was required to provide the Inquiry team access to all relevant information regarding the

Glasshouse project. The Inquiry team attended Council offices and obtained a substantial amount of material.

This process was complimented by the Inquiry Officers requesting a substantial amount of additional material throughout the duration of the Inquiry.

2.2.3 The Inquiry wrote to:

- Local Members of Parliament both Federal and State
- The Mayor and each of the Councillors
- The General Manager,

advising them of the Inquiry, its terms of reference and inviting them to make a submission.

2.2.4 Meetings with the Commissioner were offered to the relevant Members of Parliament, Mayor and Council's General Manager to advise them the process the Inquiry would take and to seek their considered views.

2.2.5 The Preliminary Hearing was conducted on 11th September 2007 at the Historic Court House in Port Macquarie. This building is diagonally opposite the Glasshouse construction site.

As part of the Preliminary Hearings papers were presented by the Commissioner and Mr Broad and a senior Department of Local Government officer at the Commissioner's request.

2.2.6 The Inquiry's website:

Immediately following the appointment of the Commissioner, the Inquiry established its own website.

The website contained a précis setting out the Terms of Reference and an Information Paper providing information about the Inquiry and setting out the intended process which the Inquiry proposed to undertake.

Subsequently details regarding the Public Hearings and the list of speakers for each of the daily hearings was added.

The majority of Public Submissions were placed on the website and transcripts of the hearings generally the following day.

2.2.7 The Written Submissions

An Information Package, to assist the preparation of submissions, was prepared by the Inquiry.

A copy of the Information Package, in downloadable format, was made available on the Inquiry's website. Additionally, arrangements were made with the Council for copies of the Information Package to be available at the Council Chambers and at council's library. The council made copies of the Information Package available for this purpose. Ultimately approximately 800 submissions were received.

2.2.8 The Approach Taken by the Inquiry

The Terms of Reference called upon the Inquiry to obtain an overview of matters pertaining to the Glasshouse Project and to form an opinion on the governance matters raised in the Terms of Reference.

The approach taken was outlined at the Preliminary Hearing conducted in the Old Court House, Clarence Street, Port Macquarie on the 11 September 2007.

Section 2.1.3 contains the Commissioner's speech, which established the approach the Inquiry would take.

2.2.9 Common Understanding of Information

The Commissioner presented a paper at the Preliminary Hearing so as to share with Council and their legal team what he understood from the information he had considered so far. The intent of the paper was to enable Council to address the Inquiry on any misconceptions it considered the Commissioner had drawn.

The Commissioner had also previously written to the Director General of the Department of Local Government inviting the Department to make a written submission to the Inquiry.

Its submission outlined the Department's concerns regarding the Port Macquarie-Hastings Council's management of the Glasshouse Project. The tabling of this report was to enable Council to fully appreciate the Department's views so it could address these beliefs in its own submission or in evidential hearings. (Refer: **A-1**)

2.2.10 Publication of Submissions

The Inquiry emphasised its role as a Public Inquiry.

It sought, as far as possible, to obtain the public's view of the matters raised in the Terms of Reference.

This was emphasised in a number of ways, in the information sheet, the notices calling for submissions and advising the dates of the public hearings, at the commencement of, and during the Public Hearings conducted by the Inquiry.

The Terms of Reference, amongst other things, directed an inquiry into whether the elected representatives adopted appropriate governance procedures in their dealings.

In order to undertake the Inquiry required by the Terms of Reference, it was appropriate to seek involvement of the public, particularly when considering whether the council exercised appropriate openness and transparency in its decision-making and the processes surrounding its consultation

Copies of submissions were made available for the public viewing on the Inquiry's website.

2.2.11 Censorship of Submissions

The Inquiry relied on earlier advice regarding the general application of defamation law to matters contained in submissions. The advice indicated that matters would generally not be considered defamatory, if contained in Submissions falling within the Terms of Reference of the Inquiry.

The nature of this advice was incorporated into the Information Package.

Discretion was exercised as to whether to make a Submission publicly available.

In light of the advice that had been provided to the Inquiry, notwithstanding the Inquiry's view that Submission's should be publicly available, it was felt appropriate in certain instances to refrain from providing copies of certain Submissions.

A policy was adopted to consider whether a Submission should be censored or not be published, and each Submission was reviewed according to this policy.

In coming to its findings, the Inquiry has not relied on statements in unpublished submissions that were not tested in evidence during the public hearings.

2.2.12 Public Hearings

The Inquiry conducted Public Hearings over 20 days commencing with a Preliminary Hearing on the 11 September 2007 concluding with Rights of Reply during the week ending on 13 December 2007.

The Public Hearings were held at the Old Court House in Clarence Street, Port Macquarie.

There were 90 oral presentations presented at the evidential hearing sessions.

Speakers included:

- The Mayor and Councillors
- Council's General Manager
- Past and present senior members of council's staff
- Council's professional advisers and consultants
- Representatives from the various interest groups
- A former Member of Parliament
- Members of the public
- Other witnesses

The Public Hearings were conducted on an informal basis. The procedures, which were adopted, sought to ensure that the Inquiry proceeded in a simple and expeditious manner, whilst at the same time recognising the rights of people involved to reply.

The approach taken by the Inquiry at the Public Hearings was to put questions to the speakers on the evidential themes being pursued by it. This approach was underlain on the premise that the Inquiry had

reviewed the Submissions made by the various speakers before they were called, and was aware of the issues that they had raised.

In adopting this approach, the Inquiry sought to obtain clarification or further detail of matters, which it thought appropriate, whether the particular matters had been specifically raised in the Submission, or not.

It was felt that this approach would enable the Inquiry to make more efficient use of the limited time available to it at the Public Hearings.

Through the adoption of this course, the Inquiry heard from a greater number of speakers than it could otherwise have hear from, if each speaker were simply allowed to read from, and expand on their written Submission.

Most importantly, it allowed the Inquiry to direct itself to, and focus on, the issues it regarded as important to its Inquiry.

The Commissioner ensured all speakers requested by Council were given an opportunity to speak and in some circumstances on a number of occasions. Due to Council's previous criticism of other investigations the Commissioner ensured that all Council witnesses were not only called but were given an opportunity to speak which required the hearings to be extended from four to six weeks with no limits on time.

The list of witnesses called to make oral presentations is as follows:

WITNESS	OCCUPATION/FROM	REASON CALLED/STATUS	WITNESS	OCCUPATION/FROM	REASON CALLED/STATUS
Kimberley Ivory	medical practitioner / journalist	comm called - sub	Ian Ferguson	Action for Council Truth; Kooloonbung Group	comm called - sub
Alvena Ferguson	member Camden Haven Arts Council; Arts festival co-ordinator	comm called - sub	Robert (Bob) Worth	financial background	comm called - sub
Agris Cekiniskis	PMHC ACE Centre Director	staff	Sandra McClimont	Resident Action Network	comm called - sub
Tony Leahy	PMHC - Director, Corp & Business Services	staff	Barry Lewis	local govt background	comm called - sub
Craig Milburn	PMHC - Director, Community Development	staff	Neil Breakspear	resident Lake McMathie	comm called - sub
Robyn Birrell	PMHC - Director, Performing Arts	staff	David Malikoff	Proj Ref Group; puts on shows	comm called - sub
John Davidson	NSW Country Basketball	comm called - sports grounds knowledge	Robert Turner	resident	comm called -conf sub
Morton Crawford	school principal	comm called - sub	Anthony Thorne	Hastings Industry Construction Assocn	comm called - sub - HICA
Steve Chant	PMHC - Parks & Gardens co-ordinator	staff	Peter Newman	On board of Chamber of Commerce	comm called -conf sub
Sharni Lloyd	PMHC - Director, Regional Gallery	staff	Noel Martin	United Services Union	Comm called - sub
Rob Drew	PMHC - Mayor	Councillor	Jeff Condron	Country ALP	Comm called - hearing requested
Robert (Bob) Gilroy	Solicitor; Chamber of Commerce	Comm called - sub, evidence obo Chamber	Anne Tregeagle	Ex Root Projects	Council Expert (ex council consultant)
Max Grubb	Friends of PMH Regional Gallery	comm called; FoPMHRG	Chris Crick	Root Projects	Council Expert (council consultant)
Anthony Nichol (Arup)	ARUP	Council Expert (council consultant)	Bronwyn Eddinger	arts industry; Arts NSW Perf Arts Touring committee; Angel Place	council Expert
Chris Bylett	Currie & Brown	Council Expert (council consultant)	Penny Miles	Exec Officer, Arts on Tour	council Expert
E Liddell (C&B)	Currie & Brown	Council Expert (council consultant)	Terry Robinson	school principal	comm called - sub
Tim Greer	TZG, Architect	Council Expert (council consultant)	Margaret Meagher	consultant to PMHC	comm called?? - sub
Craig Teasdell	PMH Regional Gallery Advisory Board; architect	comm called - sub	R Jordon; Clive Owens; Kevins Retallack	Shop owners - Ritz Arcade	comm called - sub
Marie Van Gend	centre supporter	comm called - sub	Craig Milburn	PMHC - Director, Community Development	staff

E Polsen-Galloway	La Vive Classique Dance Academy	comm called - sub	Luke Nicholls	PMHC - Director, Development & environment	staff
Mel Gray-Thompson	resident	comm called - sub	Craig Milburn	PMHC - Director, Community Development	staff
Paul Rowlandson (K&C)	Director King & Campbell; member of chamber; supporters group	comm called - sub	Glen Holdsworth	PMHC traffic engineer	staff
Luke Nicholls	PMHC - Director, Development & environment	staff	Tony Leahy	PMHC - Director, Corp & Business Services	staff
Tim Molloy	PMHC - s94 officer	staff	Tony Leahy	PMHC - Director, Corp & Business Services	staff
Peter Loveday	resident	comm called - sub	Jamie Harrison	PMHC - councillor	councillor
Bernard Smith	PMHC - General Manager	staff	Daphne Johnston	PMHC - councillor	councillor
Phil Brown	ex chair of CUDAC	comm called - sub	David Mayne	PMHC - councillor	councillor
Craig Milburn	PMHC - Director, Community Development	staff	Lisa Intemann	PMHC - councillor	councillor
Rob Nardella	PMHC - councillor	councillor	Adam Prussing	PMHC - councillor	councillor
Robert Sharpham	PMHC - councillor	councillor	Barry Bratt	resident	requested hearing
Bryce O'Neile	resident; engineer; experienced assessor	comm called - sub	David Meidling	Action for Council Truth	comm called - ?
John Collins	resident; PROBUS	comm called - sub	Neville Parsons	PMHC Audit Committee	comm called -
Ron Clapton	resident	comm called - sub	Robyn Ryan	Teacher; music; adjudicator	comm called - sub
Cameron price	PMHC - councillor	councillor	William Turner	Chair, Friends of Reg'l Gallery, Supporters Grp	comm called - sub
Janet Cohen	ex PMHC cultural planner	comm called - sub / expert	Lance Vickery	RTA	comm called - expert
Ian Ferguson	Action for Council Truth	Right of Reply	Stephen Lonie	Management Consultant	Comm called - expert
Alvena Ferguson	member Camden Haven Arts Council; Arts festival co-ordinator	RoR	Laurie Lardner	resident; CUDAC	comm called -conf sub
Luke Nicholls	PMHC Director, Dev & Environ	staff - RoR	John Tingle	ex parliamentarian	council called witness
Peter Dransfield	Players Theatre	hearing request	Daphne Johnstone	PMHC - councillor	councillor - RoR
Craig Milburn	PMHC - Director, Community Development	staff RoR	David Mayne	PMHC - councillor	councillor - RoR
Adam Prussing	PMHC - councillor	councillor - RoR	Lisa Intemann	PMHC - councillor	councillor - RoR
Bernard Smith	PMHC - General Manager	staff - RoR	Jamie Harrison	PMHC - councillor	councillor - RoR
Rob Drew	PMHC - Mayor	councillor - RoR	Cameron Price	PMHC - councillor	councillor RofR
Angus Broad	Officer assisting				
Steven Miles	Counsellor				

2.2.13 Right of Reply

The Terms of Reference call upon the Commissioner to inquire, report and provide recommendations to the Minister on the governance of the Council. At all times it was open to the Inquiry to make a recommendation that the Governor declare all civic offices to be vacant.

Such a recommendation, if made, and if acted upon, could result in the appointment of an Administrator or a fresh council election.

Whilst the Inquiry would be only making comments, findings or recommendations, these might be taken up by the Minister or by the Governor and given effect to.

Given this, the Inquiry regarded itself as having a duty to act fairly in accordance with the principles of administrative law. The Inquiry sought to conduct its proceedings in a manner, which afforded natural justice to the Councillors, Council's staff and to members of the public.

Time was set-aside on the final days of the Public Hearings for Council, Councillors and members of the public to reply to matters, which had been raised during the Public Hearings.

Council, Councillors and members of the public were afforded an additional opportunity to make further written Submissions in reply within three weeks from the conclusion of the Public Hearings.

2.2.14 Natural Justice

The powers available to the Inquiry included the power to recommend the dismissal of the elected Body. In light of this power it was imperative that procedures were adopted to ensure that the principles of natural justice be observed.

Whilst not wishing to detail the entirety of the approaches taken to ensure this outcome, it is appropriate to highlight some of the major aspects embodied in the manner in which the Inquiry was conducted.

Included in the procedures adopted were:

- The majority of Submissions which were received by the Inquiry were made available for public viewing on the Inquiry website.
- Details which were thought to be inappropriate, were deleted from some Submissions.

This approach provided opportunity to others to comment on or correct statements made in the Submissions.

Other procedures included:

- Providing copies of documents to advisers, witnesses and to Council and seeking comment or clarification
- Conducting the hearings in public.
- Extending the amount of Public Hearings to accommodate all witnesses required by Council to give evidence.
- Allowing Council's legal team to put questions to speakers to ensure evidence is complete.
- A right of reply, both orally at the conclusion of the Hearings, and subsequently in writing.

2.2.15 Post Hearing Procedures

The Inquiry has adopted a view that where issues required further identification following the conclusion of the Public Hearings it should seek appropriate evidence.

2.3 Acknowledgements

The Inquiry would like to take the opportunity to express its thanks to the following persons who have assisted in the conduct of the Inquiry:

Angus Broad, who served as Assistant to the Commissioner during the inquiry. He handled relationships with the council and the public and the press. He helped in analysing and evaluating the Submissions. He assisted with the questioning of the speakers. He assisted with the compilation of the Report. He worked on the Inquiry from its inception; without his assistance the Inquiry and the Report could never have been completed.

Marilyn McAuliffe who has served as Assistant to the Commissioner during the Inquiry. Worked on the Inquiry from the beginning through to the publication of this Report. She brought the financial expertise to the work of the Inquiry, assisting with the evaluation of Submissions and a number of special investigations.

She also provided the resource base that organized the receipting and processing of Submissions, arranged speakers for the Public Hearings, stored and recorded the large quantity of material additional to the Submissions, and has assisted with the production of this Report.

Lindsay Ewens for assisting with the administrative arrangements.

Rosemary Lee for assisting with the preparation of the Report.

Thanks also offered to the Council, both the elected representatives and the staff. Their co-operation and provision of material has been extremely helpful.

There are also a number of other people who provided valuable input and support, and their assistance is also recognized.

Glossary

So far as possible the following assignments appear in the report

the Act	The Local Government Act 1993
the EP&A Act	The Environmental Planning and Assessment Act 1979
the Council	Port Macquarie-Hastings Council and, the council as made up by its elected and corporate bodies, or alternatively, the elected body as a single entity
the Elected Body	The Councillors
the Corporate Body	The General Manager and Council's staff
the Mayor	Councillor Drew
the Glasshouse	The name of the arts and cultural centre being built by the Council and, where appropriate, to the project as a whole
Mr Smith	Council's General Manager
Mr Milburn	Council's Director, Community Development
Mr Leahy	Council's Director, Corporate and Business Services
Mr Nicholls	Council's Director, Development and Environment
TZG	Tonkin Zulaikha & Greer, Council's architects, principally represented by Mr Greer
Root Projects	Root Projects Australia, Council's Project manager, principally represented by Ms Tregagle
Arup	Arup Acoustics, Council's acoustic engineers
TTM	TTM Consulting, Council's parking and traffic consultants, principally represented by Mr Holdsworth
Rider Hunt	Council's initial Quantity Surveyor
Currie & Brown	Council's subsequent Quantity Surveyor
Deutsche	Deutsche Asset Group and DBReef the owner of Port Central Shopping Centre
Port Central	a Shopping Centre adjoining the southern boundary of the Glasshouse site and the car parking facility attached to it
Civic Centre site	the site of Council's former Civic Centre and the site on which the Glasshouse was initially proposed to be built
Ritz Arcade	A site formerly comprising shops and units to the west of the Civic Centre site, which was resumed by the Council added to the Civic Centre site to become the Glasshouse site
Glasshouse site	the current site of the Glasshouse, comprising the Civic Centre site and the Ritz Arcade site, sometimes also referred to as the Civic Centre Site
Project Control Group	a group made up of representatives from the Council, initially comprising the Mayor as well as senior Council staff and key consultants. Its role was to oversee project issues

Project Reference Group

a local reference group was established in 2004 under the project's management plan to provide advice in relation to the detailed planning of the project and to assist the council in its communication processes

Industry Reference Group

a number of industry representatives consulted by the Council on design and budget issues

Mr Lonie

the author of a report by Morton Bay Management relating to operational issues affecting the Glasshouse, provided at the request of the Inquiry

RWP

Council's Rolling Works Program

3. PROJECT CHRONOLOGY

Council's submission provides a chronology of what it considers to be the important events in the progress of the Glasshouse project.

The Commissioner has considered the chronology and considers the chronology and the material provided in Council's submission fails to indicate a number of important milestones in the process. Notably a milestone that may be seen as disadvantageous to Council's view of its processes or its portrayal that its submission provides all information relative to the Terms of Reference of the Inquiry.

In the Commissioner's view the need to provide further chronology stems from Council's apparent stance that it should supply only evidence supporting its case.

This approach neither meets the Terms of Reference nor the Commissioner's request that all relevant information be provided to the Inquiry.

The Inquiry has prepared its own chronology.

The Inquiry is concerned that without the material referred to in the Inquiry's chronology and the appendices, a reader may not obtain a full and correct understanding of the events or processes followed by council.

The Inquiry emphasises that, for simplicity, the Inquiry's chronology only focuses on decisions of the Council and its senior staff in regard to the delivery of the project.

Community involvement and the financial planning to carry out the project are not included, but are equally important and are addressed elsewhere in this report.

Entries in the following table with no Project Chronology Numbers (PC) in column 1 were not included in Council's Project Chronology. However, they are considered by the Commissioner to be important.

The Commissioner has also added a comment on a number of events included in Council's Project Chronology. These comments in the vast majority of cases are intended to provide a more complete view of the document.

PROJECT CHRONOLOGY

P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
	25.11.94	Port Central Development Application consent		Council to provide 200 parking spaces referable to parking contributions previously paid for by developments. Port Central to provide 660 spaces to meet demand of its development
26	30.3.99	Council Meeting Item CRS 20 - Developing a regional Cultural Facility - Visual Performing Arts`	History - 5 working groups - need established Gallery programs Scope of works for gallery Support via consultation list of groups outlined Link directly to long term plan for Regional Cultural Facility	<p>Council resolved: (Gilbert/Harrison)</p> <p>That in planning for arts and cultural Infrastructure needs of the Hastings and in particular, in developing a regional cultural facility for the visual and performing arts, the following three stages be undertaken:</p> <ul style="list-style-type: none"> • Stage One –1999/2000. Hastings Cultural Facilities Study – a background study and document for the section 94 review. • Stage Two – 1999/2000. Project Detailing & Brief Development. Undertaken to refine and detail the requirements for a regional cultural centre and develop the brief for a full project planning stage. • Stage Three – 2000/2001 Full Project Plan. Undertaken to detail how a regional cultural facility could be built, maintained, funded, staffed, managed, programmed and marketed. <p>2. That \$5,000 is included for consideration in the 1999/2000 Management Plan for Stage Two outlined above</p> <p>Comment: The planning for the project starts.</p>
30	1.5.00	Bobb Todd and Civic Centre sites assessed	Sites assessed by David Hanly Architect	Report prepared for General Manager Civic Centre site with theatre facing Hay Street parking for 52 cars and truck access off Clarence Street

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
33	21.8.00	Council Meeting Item CRS 41 - Regional Cultural Facility	Stage 2 Gallery, Performing Arts centre, Heritage Interpretation, scoping	<p>Establish Cultural Facilities Taskforce consisting of</p> <ul style="list-style-type: none"> • Mayor • Deputy Mayor • General Manager • Director, Community & Recreational Services • Cultural Development Officer <p>The main role of this Cultural Facilities Taskforce would be to:</p> <ul style="list-style-type: none"> • Identify space requirements, site options and co-location models for cultural facilities • Develop a management and business plan for cultural facilities development • Identify funding sources for capital works, programming and staffing • Develop an architectural brief for cultural facilities
42	5.2.01	Joint venture proposal with Port Central	Proposal to develop joint facility	<p>Cannot locate paperwork. Earliest document provided is 26.7.01</p>
47	28.5.01	Council meeting Item 42 - Proposed Development of a Regional Cultural Facility	<p>Report from Cultural Facilities Workshop indicated importance of the CBD as the cultural precinct and key site for further investigation as a location for the facility. Following this report, the Cultural Facilities Taskforce inspected a number of regional facilities and determined that the key components of any future facility should be Minimum seat plan of 600</p> <ul style="list-style-type: none"> • 1,000 sq meter art gallery • Importance of technical components • Good management 	<p>Report identifies prior to Christmas 2000 owners of Port Central Shopping Centre approached by Council regarding a joint venture on the Civic Centre site. Matter had been considered by Cultural Facilities Taskforce who fully endorsed further negotiations.</p> <p>Council resolution (Resolved: Intemann/Johnson) "Council endorses the continuation of the discourse"</p>
52	13.7.01	Valuation for Civic Centre Site	\$2.3m for land \$2.6m for land and buildings see report	
	26.7.01	Deutsche proposal to General Manager		Developer offers \$4 million towards construction of ACE in consideration for the joint use of the Civic Centre site

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
	24.8.01	David Pensini advice to management regarding Ritz impact on ACE		Council management identifies fire risk due to Ritz design to Council ability to build ACE to boundary, puts project at risk.
	25.9.01	Letter from Deutsche to General Manager regarding Council's site concerns		Following meeting with Council on 15.8.01 Deutsche agrees to meet Council's concerns and attach draft Heads of Agreement. Heads of Agreement includes first right of refusal at market value if council does not proceed
	16.10.01	General Manager letter to Deutsche		<ul style="list-style-type: none"> General Manager advises intention to work towards concluding the agreement by end of November. <p>Additional requirements were:</p> <ul style="list-style-type: none"> The joint entry to the Art Gallery, Performing Arts Centre and Visitor's Information from Clarence Street Council also advises it intends to retain the balance of the commercial space on the site for the Art Gallery expansions
	12.11.01	Minutes of Ann Quadroy Meeting of General Manager and Deputy Mayor		Meeting discussed Heads of Agreement with Deutsche and Council identified a way forward.
	15.1.02	File note of C Milburn re Heads of Agreement		The minutes identify best practice advice that a PAC and cinemas are incompatible in one building
	29.1.02	Cultural Facility Taskforce Meeting		Covered Heads of Agreement and developed a consultation plan titled "Cultural Facilities Development Communication Strategy."
	11.2.02	Council Meeting Item 37 - Performing and Visual Arts complex Heads of Agreement	Significant costs That Council enter into a Heads of Agreement with Deutsche Property Funds Management Limited regarding the redevelopment of the Civic Centre site, including Regional Art Gallery and Regional Performing Arts Facility. Initiate consultation re the project concept.	<p>Council resolution (Resolved Campbell/Drew)</p> <p>That Council enter into a "Heads of Agreement" with Deutsche</p> <p>2. That Council initiate public consultation regarding the project. The report also identifies who the key stakeholders are for consultation and the financial implications of projects (No costs provided or estimates)</p>

PROJECT CHRONOLOGY																																
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS																												
	19.4.02	Letter from Deutsche to General Manager establishing cost to Council		<p>The commercial terms proposed for Council's Performing Arts Theatre and Gallery:</p> <table> <tr> <td>Demolition</td> <td>600,000</td> </tr> <tr> <td>structure</td> <td>6,150,000</td> </tr> <tr> <td>Fit out</td> <td>100,000</td> </tr> <tr> <td>Landscaping</td> <td>550,000</td> </tr> <tr> <td></td> <td><u>8,300,000</u></td> </tr> <tr> <td><u>Less Deutsche contribution to council</u></td> <td>-1,000,000</td> </tr> <tr> <td><u>Council Contribution</u></td> <td><u>7,300,000</u></td> </tr> <tr> <td>Deutsche Component</td> <td></td> </tr> <tr> <td>Six screen multiplex cinema</td> <td></td> </tr> <tr> <td>Structure</td> <td>5,050,000</td> </tr> <tr> <td>Existing Building</td> <td><u>100,000</u></td> </tr> <tr> <td></td> <td>5,150,000</td> </tr> <tr> <td>Payment to council for use of airspace</td> <td><u>1,000,000</u></td> </tr> <tr> <td>Deutsche costs</td> <td>6,150,00</td> </tr> </table>	Demolition	600,000	structure	6,150,000	Fit out	100,000	Landscaping	550,000		<u>8,300,000</u>	<u>Less Deutsche contribution to council</u>	-1,000,000	<u>Council Contribution</u>	<u>7,300,000</u>	Deutsche Component		Six screen multiplex cinema		Structure	5,050,000	Existing Building	<u>100,000</u>		5,150,000	Payment to council for use of airspace	<u>1,000,000</u>	Deutsche costs	6,150,00
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	5,150,000																															
Payment to council for use of airspace	<u>1,000,000</u>																															
Deutsche costs	6,150,00																															
	5.6.02	1st Meeting of Hastings Cultural Redevelopment Project		The Council design team starts to rework project																												
66	9.5.02	"Initial Consultant Appointments - theatre"	Concept briefs developed																													
	5.6.02	Valuation of proposed redevelopment		<p>Establish fair market value of complete development at \$9,000,000</p> <p>Value of all space to adjoining owner of \$420,000</p> <p>Rental value for proposed shops \$325,000 pa</p>																												
	19.8.02	Deutsche pulls out of joint venture letter to General Manager		Deutsche advise that since the proposed retail component fronting Hay Street has been deleted from the project it is no longer viable to Deutsche																												

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
71	11.9.02	Council Meeting 11 November, 2002	<p>Stakeholder consultation occurred with a range of groups including Art Gallery Advisory Board members and representatives of local performing visual arts groups which received extremely positive feedback and constructive comments. That the Development Application be lodged for the Port Macquarie Regional Cultural Facility on the existing Civic Centre site in Port Macquarie subject to 2 below. That Council hold a workshop to look at issues comparing the criteria in the brief with the facilities planned in the DA and this be held prior to the lodgement of the DA</p> <ul style="list-style-type: none"> • Council adopted a financial strategy in last 3 years by positioning itself to be able to fund major Projects which were imminent such as cultural centre, sporting fields and aquatic facilities • Basis of rate increase 2 years ago was to provide for ability to fund major projects in the future • Council has adopted a strategy of reducing its loan borrowings to 'build up' capacity to borrow for major projects. Borrowings for general works has decreased from \$1.5M in 99/00 to \$900,000 in current year • Debt serving ratio was 12% 2 years ago and is now 10%, Current projections for 10 years is to be 6%. LGMA indicates a desire to get debt to below 15%. Funding mix would include: <ul style="list-style-type: none"> - Approx \$5M general fund borrowings - 1.5M funding from Section 94 Plan - \$1M Commonwealth and State grants • \$3-\$4.5M from income generated from commercial rentals from the site • Additional work being undertaken on a range of funding options such as internal borrowings etc. • Will be ongoing recurrent cost to run centre although Council already has recurrent costs with the Art Gallery • Preliminary Quantity Surveyor report indicates cost in order of \$13-\$14M but this need to be further finalised as there are a number of variables eg grants and income from Commercial rentals • Current loan budget of \$2M loan borrowings allocated to commence the Project. • \$120,000 spent on design consultants to date. 	<p>Out of order report on Council Meeting of 11.11.02</p> <p>Resolution (Intemann/Morton)</p> <ol style="list-style-type: none"> 1. That the Development Application be lodged..... 2. That Council hold a workshop..... <p>Refers to income from commercial rentals</p>

P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
72	1.10.02	Council workshop Item 01- Port Macquarie Regional Cultural centre	Deutsche not wishing to proceed. Council to proceed on its own, amendment to remove cinemas, addition of commercial component, will be ongoing recurrent costs but already is within existing art gallery, stakeholder consultations to commence	Council to proceed without Deutsche but with a funding mix of: <ol style="list-style-type: none"> 1. \$5M General Borrowings 2. Section 94 of \$1.5M 3. Grants of \$1M 4. Rental income from Council of \$3-4.5M
75	2.12.02	Confidential council meeting Item 39 fire report on Ritz flats	Non compliance order to be placed on owners	Council writes to owners giving them to 10.1.03 to comply (Resolved: Steele/Campbell)
79	7.4.03	Council confidential workshop 7 Apr 2003	<ul style="list-style-type: none"> • DA process is now ready to proceed, however, some issues with regard to Ritz flats need to be finalized before DA process commences • Proposals/options –that discussion be held with the Strata Manager of Ritz Arcade to facilitate purchase of the property • Building is sub-standard from a safety and arguably a social point of view • Legal advice is that 'Council if it wishes could compulsorily acquire the Ritz Arcade. Council could then have the option of reselling or redeveloping the site itself. 	
88	11.8.03	Council workshop Item 10 Cultural facility	<p>Target budget \$14M, raised from:</p> <ul style="list-style-type: none"> • Government Grants \$1-1.5M • Section 94 \$4.5M • Income from commercial rental \$1M • General Funds borrowing \$9M <p>Traffic Management Consultant concluded that the development can satisfactorily accommodate parking needs within the town centre parking and Port Central</p> <ul style="list-style-type: none"> • DA could impose a car parking contribution <p>Scope of PA, Gallery, car parking, location and sites</p>	Identifying car parking as a sensitive issue. Report maximum usage will be out of commercial trading hours therefore can be accommodated. Refer to Port Central parking as a benefit no other facility has

P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
	14.8.03	Report from Hopkins Consultants to C Milburn		<p>Reviews plans of ACE Identifying that due to impact on Ritz owners a development such as this would have difficulty proceeding</p> <p>Identifies the issue of heavy vehicle access adjacent to Port Central pedestrian access etc.</p> <p>Questions the soundness of TTM traffic study based on their observations.</p> <p>Questions the fit of the design into the streetscape</p>
96	05.11.03	Council workshop Item 01 –Cultural Facility Proposal	Ready for DA lodgement, proceed with current project or further investigate Westport site. Affordability of both sites outlined in report. Outlined extensive community consultation undertaken	
98	17.11.03	Confidential Council meeting item 40 – Ritz acquisition	<ul style="list-style-type: none"> • Current market value of site between \$1.92M and \$2.36M both exclusive of GST • There are enough funds in the current Civic Centre budget to cover the initial acquisition. 	Comment: How could a budget absorb such an amount? Money is available but is required to complete existing project

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
99	17.11.03	Council Meeting Item 43 – Regional Cultural Facility	Redesign issues, central location crucial to success of facility, future report on car parking strategy to come back to Council, decision to continue to plan and build a Centre	Resolved (Woodlands/Intemann) 1. That a report be presented to Council on the future car parking strategy for the Port Macquarie CBD including the proposed Cultural centre and future requirements by January 2004 or as soon as possible. 2. That Council continue to plan to build an entertainment and cultural centre both financially and location wise.
	1.12.03	Parking access strategy adopted		Council at its meeting of 1.12.03. Item 15 Hastings Parking and access strategy adopted provide upper deck on Port Central parking station or Haywood Street. Neither has occurred.
104	2.6.04	Special Councillor workshop 2 June 2004	Facility will be managed and operated by Council and highly qualified staff secured <ul style="list-style-type: none"> • Cost between \$15M and \$20M to construct • Building design and life to last at least 80 years • In next 20 years Council will spend approx \$300M on roads and open spaces for community 	Implementation of the parking strategy will address parking issues in the CBD.

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
107	21.6.07	Confidential Council Meeting Item 51 Ritz Acquisition	<ul style="list-style-type: none"> Application to Minister for compulsory acquisition and reclassification to operational land. 	
108	28.6.04	28 June Extra Ordinary Council meeting item 04 – Cultural centre Development	<p>That Council confirms its commitment to the project in recognition of the community need and proceed to submit the Development Application for the Civic Centre site.</p> <p>That a consultation process be developed to ensure relevant stakeholder involvement in the development process.</p> <p>That the Traffic Management Report be updated to reflect the increased footprint and amended design for the Cultural centre and reported to Council within three (3) months.</p> <p>25% Increase in footprint Submit DA on CC site</p> <p>There was UNANIMOUS support for the Cultural centre by all Councillors</p> <p>Estimated cost of the project is \$15M to \$20M with funding coming from Section 94 funds of 33% Grant funds of \$1.5M; Loan fund for the balance.</p> <ul style="list-style-type: none"> Council current loan program in place for this project - 2004/05 of \$2.5M . 2005/06 of \$7M ; 2006/07 of \$7.5M Currently spent \$200,000 on developing project to date and secured \$875,00 funding Current General Funds are sound In past and coming decade, Council has significant investment in infrastructure such as roads, parks, water and sewerage. There has been no capital expenditure in cultural facilities. This facility will assist building the local Hastings community. 	Resolved Drew/Mayne

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
	24.5.05	Council workshop prior to DA being submitted		<p>Establish new cost and treats contingency different to before.</p> <p>The report on traffic is consistent with the report of 25.10.04 from TTM. This report is prior to the increase in building size and does not appear to address the increased parking needs.</p>
139	20.6.05	Council Meeting Item 26 – Cultural centre Update	<p>Industry Reference Group participants Project Reference Group participants Increase in footprint of site by 25% with Ritz inclusion which will now include the Gallery having a ground floor presence and conference break out rooms. Ongoing design meetings to target potential cost savings Designs now at Development Assessment stage More accurate cost estimates developed by Quantity Surveyor During next 3 years Council is budgeting to spend \$263,831,335 capital works in the area including the cultural centre. The cost of the cultural centre is approximately 12% of this budget. 2005/6 Corporate Plan includes the projected borrowings for the project including: Table providing breakdown of costs including 7.5% contingency provided. Totals summary:</p> <ul style="list-style-type: none"> • GFA (m²) – 7248 • Total cost - \$26,464,764 • Cost per m² – 3651 <p>Detailed list of cost increase and reasons why are included in this report. Summarised:</p> <ul style="list-style-type: none"> • \$3,398,000 in additional overall increases • Ritz acquisition - \$3,200,000 • Estimated escalations over 3 years - \$3,500,000 • Total increases - \$10,098,000 <p>Bring total cost estimate for Centre to \$31,664,755 Resolved: (Intemann/Sharpham)</p>	<p>(Resolved: Intemann/Sharpham)</p> <ol style="list-style-type: none"> 1. That the report be received and noted. 2. That a complete single breakdown of costs be provided. <p>Recommendation two has never been complied with.</p>

P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
144	1.8.06	Council meeting NOM item 34 – Fixed Construction Costs	<p>That Council support construction funding for the Cultural centre of \$25.42M (Item 26 Ordinary Council 20.6.05 to be indexed and exclusive of consultant fees and acquisition costs)</p> <p>That the Project Manager be advised that Council wishes this to be the target figure for this project.</p> <p>That an independent group of consultants and experts in construction industry including local representatives, with experience in commercial projects review the design and plans and specifications with a view to identifying further areas of savings that do not significantly impact on design and function.</p> <p>That a similar review of the project be undertaken to identify any commercial revenue opportunities that may be incorporated to offset the capital cost of the project. (Resolved: Sharpham/Prussing)</p> <p>This cut \$1.038M from June 05 budget.</p>	
156	25.10.05	Demolition Tender		
	14.12.05	Hay Street Forecourt		<p>Provides 2 options for development of Hay Street in front of Glasshouse recommends a range of passive recreational uses and proposes to provide space for out doors eating plans, I assume based on the Garrison building.</p> <p>Reports TTM Traffic Report states “that the proposed development can be satisfactorily accommodated into the town centre.”</p>

PROJECT CHRONOLOGY				
P C NO	DATE	ITEM	COUNCIL COMMENT	COMMISSIONER'S COMMENTS
175	6.3.06	Council Meeting Item 22 – Arts Conference & Entertainment Centre Business Plan	Business plan adopted	
184	26.6.06	Redesign for archaeology		
199	18.12.06	Confidential council meeting Item 26 MWC Let	That it be a recommendation to Council that Council award the main works contract for Tender T-06-25 Arts. Conference & Entertainment Centre, 30-42 Clarence Street, Port Macquarie to Hansen Yuncken, to the value of \$26,669,570.00 and that the site be made available to them from 15 January 2007.	

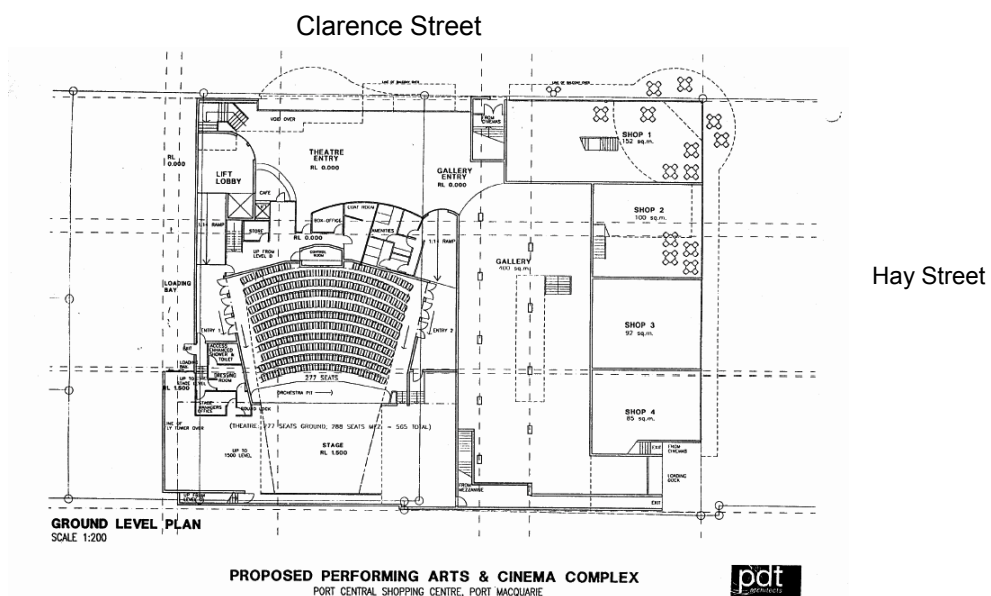
4. RESPONSE TO TERMS OF REFERENCE

4.1 Preamble

The Inquiry focused on obtaining evidence for each of the Terms of Reference. Council in providing their evidence relied predominantly on a range of paid consultants to demonstrate how it went about delivering the project. Each of these consultants demonstrated strong professional expertise and were recognized as leaders in their designated fields. It is worth noting the current Council's stated objective was for the Glasshouse to be an iconic building and they appear to have achieved that objective.

The evidence provided by these experts did not demonstrate Council considered Port Macquarie Hastings community in its broader sense as to its expectations when deciding the location of the building or its composition. Further the quest to achieving an iconic building (Sydney has the Opera House – Port Macquarie has its Glasshouse) seems to have significantly compromised the building functionality.

It appears that the impetus to build the project came from an opportunity to do a joint venture with the owners of Port Central Shopping Centre in 2001 when Deutsche Senior Management wrote to Council with a proposal to develop a theatre facility including several cinemas and retail shops on Council's Civic Centre site.



The proposal required Council to commit the site and provide the funding for the fit out of the theatre (estimated to be \$2.55 million) for which Deutsche would provide \$4M to construct the theatre and gallery and Deutsche would construct and develop the balance of the joint venture building. Each joint venture partner would obtain defined ownership of their building component.

Examination of the joint venture proposal appears to satisfy the objectives of a 600 plus seat raked theatre, the art gallery on ground level with the main entry off Clarence Street and the loading dock to the theatre adjacent to the then Ritz Arcade. The development also had the ability to subsidize the operation of the art gallery, due to its retail component.

The Department of Local Government's s430 Report contends the Ritz Arcade was acquired to accommodate the conference centre but there is sufficient evidence to demonstrate Council always intended the theatre to be used for this purpose.

The Commissioner therefore agrees with Mr Milburn's viewpoint that the theatre was intended to be utilized for conferences.

This is consistent with discussions the Commissioner had with the Mayor. Also since there are a number of existing accommodation providers in close proximity to the Glasshouse which compliment the theatre and can accommodate the balance of the needs of the conference market this would work.

The project at this stage was costed by Deutsche Asset Management at a figure of \$4 million to construct a community theatre/auditorium and gallery to be incorporated into multi-purpose building with Council contributing \$2.55 million for the fit out of the theatre and sharing ownership of the Civic Centre site Deutsche proposed to contribute the \$4 million in payment for shared ownership rights. This development was closer to community expectations than the current development is now from a cost an operation viewpoint.

The Commissioner considers the evidence supports the view that the project was well defined and likely to meet stakeholders' expectations including the broader community.

However the lack of financial analysis demonstrates Council was treating this project as an aspirational project rather than a business project. The project at this stage from a Council involvement appears to have been under the control of the then Mayor and his Deputy and the current General Manager.

There is sufficient evidence to demonstrate the Council by 2002 had taken a decision that the Civic Centre was an appropriate site for the theatre and the theatre should address Clarence Street, financial support for the project to be viable was necessary and the Ritz Arcade was definitely not part of the project.

It is also important to understand the principal design architects were a firm under the direction of the owners of Port Central Shopping Centre (Deutsche) although Council had engaged TZG architects to ensure Council needs were met as part of a review process.

Following Council's decision to remove the retail component along Hay Street Deutsche withdrew on the grounds that the project was no longer commercially viable for it.

At the Councillor's Workshop of 1st October 2002 Council agreed to proceed with the project without Deutsche. Three significant advisings were provided to Councillors at this workshop being:

Current Status:

“Following the withdrawal of Deutsche, the plans have been amended to replace the space which was to be cinemas with commercial space.

It is important to note that the commercial component will be required for the project to succeed financially, however,

also provides the opportunity for Council at some point in the future to convert it to community use.

Early indications are that in fact, the use of the space for conventional/commercial purposes as opposed to cinemas will provide a greater financial return and the withdrawal of Deutsche will provide a simpler project in terms of the delivery of the building. The current design has been developed after consultation with various stakeholders including staff and a range of specialist consultants. There are still parts of the design which need further refinement, however, it is necessary, at this point in the design process, to brief Council and to obtain stakeholder input.”

Financial Consideration

“It is estimated that the total project cost will be in the \$10-\$12 million it should be noted that Council has adopted a financial strategy in the last three years of positioning itself so as to be able to fund major projects which it knew were imminent such as cultural facilities, sporting fields and aquatic facilities. One of the basis upon which the Council gained an extraordinary rate increase two years ago was to provide for the ability to fund major projects in the future.

Council has also adopted a strategy of reducing its loan borrowings in recent times in order to “build up the capacity” to borrow for major projects such as this.

The borrowings for general work has decreased from \$1.5 million in 99/00 to \$900,000 in the current financial year.”

The Next Steps

“Stakeholder consultation will commence this week and include performing and visual arts groups within the

Hastings, the Art Gallery Board and the City of the Arts Performing Arts Working Party. Subject to satisfactory stakeholder consultation, a further report will be presented to Council on 21 October 2002, with a view to lodging a Development Application early in November. Running parallel with the design process, will be the continued investigation regarding potential tenants, developing up the management model and further work regarding the form of delivery of the project.”

During this ensuing refinement phase a number of significant decisions were made, the Inquiry assumes, by the Cultural Facilities Taskforce in relation to the project which effectively changed it to a different project to the project that was endorsed by Council at its meeting on 11 February 2002 (Resolved: Campbell/Drew)

Scope of changes:

- Elimination of the cinemas
- The elimination of the retail shops which fronted Hay Street
- The rotation of the theatre through 90 degrees so that it fronted on to Hay Street and subsequent relocation of the art gallery off the ground floor.
- Substantial increase in the façade and iconic nature of the building.

The Inquiry has seen no evidence to demonstrate any of these significant decisions were made with the knowledge of their cost or the impact on the Centre’s operations.

Council maintains the project did not significantly change and it considers the above changes minor and therefore all prior community involvement demonstrates their knowledge and commitment to this

project. From the evidence presented the Commissioner does not agree as the Commissioner considers the project began to lose credibility with the community from this point.

Council evidence in regard to car parking is inconsistent and lacks credibility. Review of evidence demonstrates Council was aware of this particular situation and had on a number of occasions indicated it intended to address it. Both Mr David Hanly's 2000 Plan, commissioned by the Council, and the Deutsche proposal indicated there would need to be a solution to the known Civic Centre car parking problem.

The evidence provided by Council to the Inquiry hearings attempted to demonstrate there were no car parking problems within the CBD (transcripts of evidence by the Mayor and General Manager and Director of Development and Environment). This proposition is dramatically different to that provided to the Inquiry by previous Council evidence. Nor is it supported by a survey undertaken by the community or a study undertaken at the Commissioner's request.

For example Council in response to a question from its Barrister chose to provide 3pm as a suitable example of maximum demand following the Inquiry's discussions regarding matinee sessions. Information now provided at the Inquiry's request from Council demonstrated parking for matinee sessions would be extremely difficult and would utilize all available parking at Port Central and no doubt impact on the commercial operations of the Port Macquarie CBD.

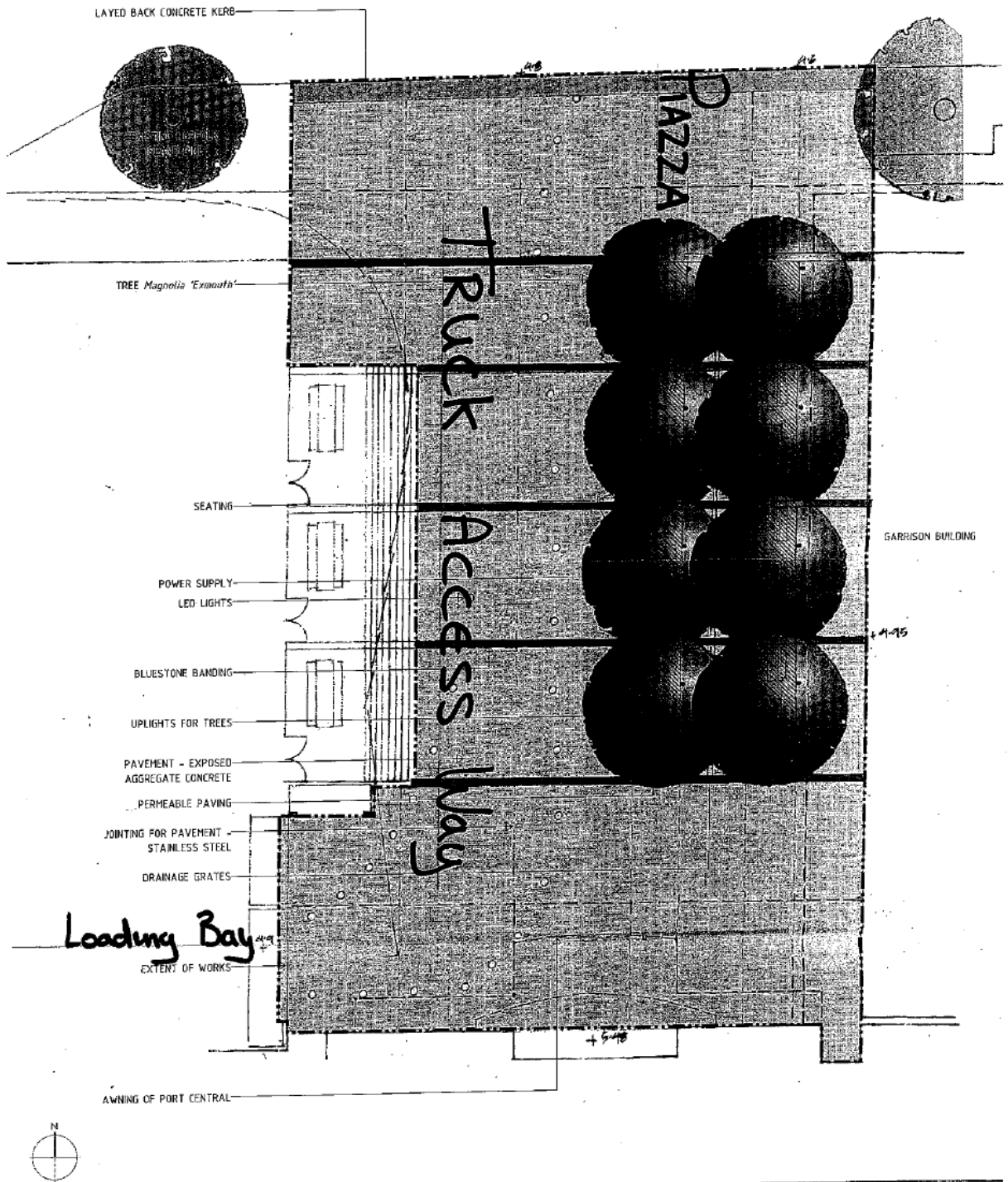
Council's approach to providing information as exemplified here led the community to conduct its own survey. This returned dramatically different results to Council and was consistent with the survey the Commissioner requested Port Central to conduct (Refer to Governance section for detail).

The Commissioner considers Council's emphasis on utilizing paid professional consultants and seeking input from a small number of community members who have demonstrated their commitment for a high level performing arts theatre has denied it an opportunity to have a more considered view of what the community needed.

Ms Cohen's evidence referred to this stage of the project as a speeding train out of control. Ms Cohen being part of Council's senior staff and involved in this area at this time establishes her to be a credible witness as to what was occurring. Perusal of available evidence presented demonstrates to the satisfaction of the Commissioner that in 2002 the then Mayor and his Deputy with the support of the General Manager and probably the support of a number of existing Councillors had determined that a major theatre capable of attracting major city shows and being utilized for quality conferences was to be built on the Civic Centre site. The evidence provided demonstrates the corporate body of Council and the bulk of the Councillors elected in 2004 have steadfastly driven the speeding train to deliver a theatre on the Civic Centre site and this seemingly blinkered approach has caused the current serious rift within the community and the project to become out of control with regard to cost and fit for purpose.

Further the rotating of the theatre so that it addresses Hay Street and the Garrison building has compromised its operation. Council's consultant, TTM, conducted a traffic study as part of the DA process which identifies that the opportunity for accidents in vehicles accessing the loading dock in Hay Street is medium risk of occurring and the potential outcome is death.

C L A R E N C E S T R E E T



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Project Number: 14747
 Drawing Number: Option 1
 Designed: DAT
 Drawn: PJS
 Checked: DAI

Client: Hastings Council

Preliminary Forecourt Design - Option 1

Rev. A

When you consider the current forecourt design for the piazza which has the eastern side of Hay Street planted with trees, tables and chairs etc (I assume spilling out from cafes within the Garrison building) the truck access route along the western side of Hay Street in close proximity to the Glasshouse facility exit and turning directly in front of the exit from Port Central Shopping Centre the identified “medium risk” within the TTM report has to be questioned.

The Inquiry has come to the conclusion that if Council had not been the approving body the development would not have been allowed to proceed in its current location. It is improbable that a private developer would have been allowed to mix reversing trucks with a community piazza in combination of all the above risk areas.

The Terms of Reference Addressed in the Following Sections

1. Whether the Council exercised prudent financial and project management regarding the planning and development of the infrastructure project known as ‘the Glasshouse’
2. Whether the Council properly considered what impact the Glasshouse project would have on the ongoing ability of Council to provide adequate, equitable and appropriate services and facilities to the community.
3. Whether the Council properly consulted and engaged with its community and exercised appropriate openness and transparency in its decision making for approving and undertaking the Glasshouse infrastructure project.
4. Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the management of and working relationships within the Council.

The Commissioner may make such other recommendations as he sees fit.

4.2 FINANCIAL MANAGEMENT

This section reviews whether the Council exercised prudent financial management regarding the planning and development of the Glasshouse.

4.2.1 Corporate Responsibility

4.2.1.1 The NSW Constitution

The NSW Constitution provides for a system of local government through establishing local government bodies with responsibilities for acting for the better government of those parts of the State where local councils are established.

The Act gives councils:

“the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public.

- *the responsibility for administering some regulatory systems under this Act*
- *a role in the management, improvement and development of the resources of their areas.*

4.2.1.2 Council's Charter

The principles contained in Council's charter bind councils when exercising these functions, relevantly they include:

- *to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively*
- *to have regard to the long term and cumulative effects of its decisions*

- *to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible*
- *to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants.*
- *to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected.*

4.2.2 Financial Management

4.2.2.1 Project Reporting

The Port Macquarie-Hastings Council In its submission to the Inquiry describes the Glasshouse as:

“a highly integrated multi purpose facility with a high level of technical specifications delivered in a functional design after extensive research and direct community input.”

(Ref: Council Submission 605 p14 – **R-1**)

At the time of writing this report, the Council had resolved to accept a tender for sound and lighting equipment for The Glasshouse. Media reported that the cost of this equipment “has blown out from \$1 million to \$2 million ”

(Ref: ABC Regional News 23.1.08 – **A-2**)

This is but one of many instances where costing blowouts have been reported.

On the 8 February 2002 the cost of the project was estimated to “*be in the vicinity of \$10 million plus*”. (Ref: Port Macquarie News 8.2.02 – **A-3**)

On 23 February 2005 the Council was reported as wanting to keep construction costs within \$20 million: (Ref: Port Macquarie News 23.2.05 – **A-4**)

On the 9 May 2005 the construction cost was reported as increasing from \$15 - \$20 million to \$23 million. (Ref: Port Macquarie News 9.11.05 –**A-5**)

On the 3 February 2006 Council's General Manager conceded that the costs of acquiring the Ritz Arcade would exceed \$3.2 million. Speaking about the former owner's claims, Mr Smith was quoted as saying:

"We haven't settled them all and I think it will go a little bit beyond \$3.2 million but we don't know yet." (Ref: Port Macquarie News 3.2.06 – **A-6**)

On the 4 August 2006 Council confirmed that the centre's costs would *"top the \$32 million mark"*. (Ref: Port Macquarie News 4.8.06 – **A-7**)

On 16 October 2006 press reports indicated that *"the council has spent \$4.6 million on Ritz Arcade acquisitions."* (Ref: Port Macquarie News 16.10.06 – **A-8**)

On 27 November 2006 Council issued a press release under the banner *"Heritage Adds Significant Costs to the ACE Centre"* indicating that heritage issues would add \$3 million to the cost of the project, with a then estimated cost of \$37.5 million.

These statements are drawn from the press. Elsewhere, advice regarding potential cost blow-outs have been regularly provided by the Council's consultants, particularly its Quantity Surveyors.

4.2.2.2 Expert Advice

In February 2002, Rider Hunt provided an estimate of the cost of constructing the theatre, gallery, visitor information centre, cinemas, retail and other facilities at \$13.43 million. While Council would share these costs they did not represent the true cost of construction for the facility, as they did not include fit out.

By October 2002 staff estimated:

“the total project cost will be in the \$10 – 12 million”

(Ref: Report to Council’s Workshop 1.10.02)

A little over a month later staff reported:

“ the current preliminary Quantity Surveyor report indicates a cost in the order of \$13 – 14 million however, this needs to be further finalised.”

On 30 December 2002 Council’s Quantity Surveyor, Rider Hunt, issued an estimate of \$16 million for constructing the facility.

It is important to emphasise that the construction cost is only part of the overall project cost.

On 26 August 2004 Council’s Quantity Surveyor’s construction estimate had risen to \$25.8 million.

In November 2003 Council began to consider the use of the Ritz Arcade as an option for expanding the footprint of The Glasshouse.
(Ref: Council submission in reply p11 – **R-7**)

On 20 January 2004 Council’s Architect provided its fee proposal for services encompassing the Ritz Arcade site (Ref: TZG letter 20.1.04 – **A-10**)

4.2.2.3 The Ritz Arcade

Incorporating the Ritz Arcade site into the project was to have serious cost implications. Not only were the costs associated with the acquisition of the Ritz Arcade now referable to the project, the gross floor area had grown by 25% to 7440m². Additionally, the delays in implementing Council's decision to proceed had led to significant cost increases. (Ref: Council Minutes of the Meeting 25.11.02 and Rider Hunt letter 26.8.04 –**A-11; A-12**)

In all probability the project cost now exceeded \$33.5 million (adopting the Rider Hunt estimate of 26th August, 2004 and the figures contained in the report to the Councillor Workshop of 24th May, 2005)

In the period following, Council's subsequent Quantity Surveyor's, Currie Brown, were to report substantial construction cost increased as shown in the table below:

DATE	COST
4.3.05	\$27,734, 576
20.5.05	\$28,664,764
14.9.05	\$28,536.768
19.9.05	\$28,603,427
24.10.05	\$27,968,552
21.11.05	\$28,528,348
27.2.06	\$29,937,437
22.9.06	\$28,067,186

By the end of June, 2006 the Council had resolved the compensation claims of the almost all of the former owners of the Ritz Arcade properties, or had made offers of settlement. At that stage the total amount agreed or offered (excluding legal costs) had grown to over \$4.4 million.

In the majority of cases, legal costs were yet to be resolved.

4.2.2.4 Consultants' Fees

Like other costs, consultancy costs increased. As the construction costs grew; architects, acoustic consultants and other consultants, whose fees were set as a percentage of construction costs grew proportionately.

Overall the costs of the project grew from somewhere in the vicinity of about \$6 or 7 million in April, 2002 to \$41.7 million, 6 or 7 times the initial budget.

(Ref: Report of Civic Centre Redevelopment Site Planning Advisory Group 11.4.02 – **A-13**; Evidence of A J Leahy 24.10.07 at P173 (see **R-6**); Briefing Note 59 –**A-14**)

Despite this, Council's submission portrays Council as exercising prudent financial management of the project.

FINDINGS

- It is clear that the costs of the project grew dramatically from 2002 onwards
- Council's Quantity Surveyors provided a significant number of reports between 2002 and 2006 detailing the increases in construction costs and their makeup
- The addition of the Ritz Arcade site brought with it the acquisition costs and the increased construction costs arising from the increased footprint of the Glasshouse
- Consultants' fees also grew in line with increases in construction costs.

4.2.3 Council's Financial Management Process

4.2.3.1 Council's Executive Group

Council's Executive Group comprises the General Manager, the Director Community Development, the Director Corporate and

Business Services, the Director Development and Environment, the Director Water and Natural Resources, the Manager Governance and Executive Services and the Human Resource Manager.

The group provided a submission to the Inquiry explaining their extensive and diverse experience, emphasizing Council's:

- Demonstrated management capability regarding large capital projects
- Implementation of organisational initiatives, including business planning and long term financial modelling.
- Assisting Council in its major strategic decisions, including the Glasshouse.

While the Council may have significant skills and experience when these are brought together, the evidence suggest that Council's Project management structure did not bring the diverse skills and experience of its Senior Managers and staff to bear on the Glasshouse project.

Rather, it appears that the various areas of the organization involved in the project have and continue to operate in isolation.

4.2.3.2 The Failure to Involve the Executive Group

Council's Director Corporate and Business Services, Mr Leahy gave the following account of his role regarding major proposals and particularly the Glasshouse:

Q. When it comes to a major new proposal being undertaken by council, who prepares the budget for that particular item?

A. New works are no different to any other type of works. The experts in that area, whether it be the engineers, our parks and garden staff, in this particular instance Craig's people, in terms of

knowing the facilities or the type of work we're doing, they are the people that come up with the estimates.

Q. So the particular staff who, as it were, are bringing that project forward?

A. Yes.

Q. What is your role in respect of that?

A. *Our role is to try to fund those estimates appropriately and make sure they are sustainable in terms of the overall financial health of the organization.*

Q. Do you vet those budgets as they come through?

A. *We may question some, but we don't have expertise right across the breadth of services and areas that the organization has to really know whether those estimates are spot on or not. So that is a very difficult situation. When you ask the question do we have the expertise, we don't. The people within our Finance area are Accountants; they are not Engineers, they are not Parks and Gardens professionals, they are not Water Supply professionals. So, no, we don't necessarily question those estimates.*

Q. So, to use your example of an engineer, would you expect somebody, say an Engineering department, to also be able to cost a project?

A. Yes.

Q. In respect of The Glasshouse project, have you had an extensive involvement in the budget for that project?

A. *We've had extensive involvement in the back-end of the process in terms of what needs to be funded and how it needs to be factored into the forward financial models, yes. We've done that work in terms of how to fund the actual project. In terms of how the budget has been made up, no.*

Q. In its submission, council talks about its process in respect of the Glasshouse project. If I can take you to some parts of that, in respect of Term of Reference 1, council refers to “Financial and Value Management” in a section commencing on page 48.

A. *Yep.*

Q. Do you have a copy of the submission?

A. *I do, yes.*

Q. It speaks on page 49 in respect of “Project Costs Management”. Have you personally been involved in any aspects of project cost management in respect of the Glasshouse?

A. *No.*

Q. It then goes on to a heading of “Financial Due Diligence”. It talks of a number of facets including demand analysis? Do you see where I am?

A. *Yes, I see that.*

Q. In respect of demand analysis, have you been involved in respect of that in any aspect of The Glasshouse?

A. *No*

Q. In respect of cost estimation, have you been involved?

A. *No. And I probably answered that question in the previous one. That’s probably a subset of the previous question you asked in terms of project cost.*

Q. So you have been, as it were, involved in fitting the project cost in council’s ability to meet it.

A. *Correct.*

Q. Is that a fair statement?

A. Yes.

Q. So you have not been involved in actually getting to a project cost?

A. *That's right.*

Q. I assume, then, you have been involved in the business and finance planning?

A. *Yes. I am certainly involved in that process. That process, actually, from an ownership point of view, resides in my division and we run and manage that process for the organization. So, from a process point of view, yes, we run it. In terms of the actual intricacies of how people put together their business plans or their forward estimates, I haven't been involved in that part of the 57 business plans that the organization has.*

Q. So really the business planning aspect you are not involved with but the finance planning you are involved with?

A. *In terms of how the project will be funded, yes.*

(Ref: Transcript 24.10.07 P 181)

Given Mr Leahy's role as chief financial officer of Council, his lack of involvement was surprising.

Equally surprising was Mr Leahy's refusal to confirm reliability of the current budgets for the Glasshouse.

Mr Broad

Q. My ultimate question to you with respect to that issue is whether you are satisfied that the current budgets are reliable?

A. *It's hard to answer in terms of not knowing the detail of where the current project is at, so I decline to comment on the basis that I don't have the information at hand in terms of where the project*

sits in regards to the costs of hazarding a guess and I don't think it is fair to do that.

Council's submission to the Inquiry emphasises that it has been prudent in its financial management of the project.

The Council refers to it's prudence as a combination of being:

wise, judicious and cautious.

(Ref: Submission 605 p.48 – **R-1**)

This assertion is supported by reference to the financial due diligence and project management process adopted.

Surprisingly Mr Leahy has had only limited involvement in the financial due diligence processes: (Ref: Evidence of A. Leahy 24.10.07)

Mr Leahy's lack of involvement is emphasised in the following extract:

*"In general terms I think it's fair to say that we have been that back end of the process to date, that is we are given an amount to included in the forward estimates and try to fund the amount. We have not been involved in the specific project elements and their evolution. It's also fair to say that the current budget of \$32.4 is fully funded with known impacts on Council's financial position going forward, as demonstrated by the financial modelling that has occurred. Both Kerrie and I have confidence that the models to date have been based on sound financial planning and therefore demonstrate the organization capacity to fund the current budget." (Ref: Email 24.11.06 from A Leahy to C Milburn – **A-15**)*

While the General Manager expressed an expectation that, despite the "silo management" divisions would liaise with other divisions,

there is the evidence that suggests that any liaison was both limited and superficial. (Ref: Transcript 15.11.07 P881 et seq)

Ultimately, the responsibility for the project and operational budgets fell on the project's proponent, Mr Milburn as Director, Community Development.

FINDINGS

- The Council failed to bring together the diverse skills of its senior managers and staff
- The various departments within Council have and continue to operate in isolation
- The Council failed to involve its Corporate and Business Services in an effective role in the budget and other financial aspects of the Project.

4.2.4 Council's View of the Project Budget

4.2.4.1 Council's Assertions Regarding the Budget

As has been indicated earlier in this report, the Council has been faced with a series of apparently embarrassing disclosures addressing substantial increases in the projects costs.

Most recently Council management has asserted:

"The Council, by resolution, set the budget on 1 August 2005 at \$25.42 million plus indexation. This is the only time Council formally set a budget for the project. The only other time a figure was fixed by Council was when the contract was let in December 2006."

(ref: Briefing Note 61)

There are two possible scenarios that can follow from this statement:

- Council went about pursuing the project for over 4 years without a budget

or

- The statement is simply incorrect

If the first interpretation is correct, then the Council failed to exercise prudent financial and project management until the anticipated cost of constructing the Glasshouse had reached \$28.665 million and the potential project cost, when adding Council's then disclosed figure had already risen to \$36.749 million (Ref: Currie & Brown 90% Cost Review 20.5.05 and Report to Meeting 1.8.05 – **A-32**).

Further, by this time the Council had already:

- Resolved to lodge a development application on 11 November 2002
- Recognised that the then project brief had been met on 25 November 2002
- Resolved to acquire the Ritz Arcade and to incorporate it into the Glasshouse project. (Ref: meetings 17.11.03; 2.6.04; 26.4.05 – **A-16; A-17; A-18**)
- Adopted contributions plans to facilities its functioning (Ref: Meeting 18.8.03 & 1.8.05 – **A-19; A-20**)
- Unanimously resolved in June 2004 to proceed with the project (Ref: evidence of R Drew 25.10.07 p 358)
- Provided funding for the project under its corporate plan (Ref: meeting resolution 9.5.05 **A-21**)
- Appointed a number of consultants including Architects, Acoustic Engineers, Quantity Surveyors, and Project Managers at a

prospective cost of \$3.865 million (Ref: letter Root Projects 20.6.05 – **A-22**)

- Appointed and conducted meetings of:
 - the Project Control Group
 - the Project Reference Group
 - the Industry Reference Group
- resolved to raise funds to provide funding for the Project (Ref: Meeting 30.5.05 **A-23**)
- Issued a number of discreet project briefs variously on 1.9.01, 1.2.02, 23.8.02, 29.12.03 and 1.2.03

Importantly, if the assertion in Briefing Note 61 is correct, the Council has both ignored and misled its consultants.

FINDINGS

- If the Council failed to adopt a budget prior to 1.8.05
 - Council failed to exercise prudent financial and project management until the anticipated cost of constructing the Glasshouse had reached \$28.665 million and project cost, had risen to \$36.749 million, and
 - Council has both ignored and misled its consultants

4.2.5 Council's Attempts to Manage the Project's Cost

4.2.5.1 The Value Management Workshop

In October 2004 the Council engaged Root Projects as Project Managers. Root Projects provided a submission (Ref: Attachment 37 to sub 605) and additionally, Mr Crick and Ms Tregear gave evidence during the public hearings.

In its submission, Root Projects refers to the value management workshop held on 13th December 2004.

The Council was represented by Mayor Drew, the General Manager, Mr Smith and Mr Milburn at the workshop. The various consultants appointed to the project were also present.

The workshop's objectives were:

- To review the scope of the project in light of the cost estimate prepared by Rider Hunt and in the light of more recent consultation with the Council and external stakeholders.
- To determine the direction for the project that will provide the best value for money within the project funding (Ref: Root Project: Report on the Value Management Workshop: 14.12.04 **R-8**)

Root Project's submission contains the following:

"The concept design and the brief was subsequently revised to reflect the changes identified and a new cost plan developed by Currie and Brown based on the revised concept design. The revised concept and cost position was presented to Council for approval to proceed."

"The revised approved target project was \$25,000,000" (based on the Rider Hunt cost plan)

4.2.5.2 The Quantity Surveyors Highlight Budget Concerns

On 28th November 2002, Rider Hunt, Council's then Quantity Surveyor, wrote to Mr Goldsworthy Council's independent expert:

"The initial project design proved to be over budget to such a degree that two further detailed cost plans had to be prepared to allow more informed decision making on a financially workable design solution."

Currie & Brown, Council's subsequent Quantity Surveyor, also understood that the Council had adopted budgets. Its submission contains a number of statements referring to a "budget", including:

Rider Hunt Estimate – August 2004

Currie & Brown were initially provided with an estimate prepared by Rider Hunt dated August 2004. This estimate totalled \$25,804,276 excluding escalation, road and forecourt works based on Tonkin Zulaikha Greer (TZG) initial concept design and brief.

The project budget at this stage was \$20,000,000 and therefore a value management workshop was carried out in order to identify potential cost savings and areas where the brief or design may be deficient.

Value Management Workshop –14th December 2004

The outcome of the value management workshop was that both cost savings and extras were identified based Rider Hunt's estimate figures and in the end Root Projects advised that a target budget be set at \$25,000,000 excluding escalation, road and forecourt works.

30% Design Development Cost Plan – May 2005

Currie & Brown prepared a 30% Design Development Cost Plan based on a measure of the 30% Design Development concept design documents and brief.

Issued in March 2005 the estimated construction costs totalled \$25,534,576 excluding escalation, road and forecourt works.

This was higher than the budget set at the value management workshop ...

90% Design Development Cost Plan – September 2005

Currie & Brown prepared a 90% Design Development Cost Plan based on a measure of the 90% Design Development design documents.

Issued in September 2004 the estimated construction costs totalled \$27,203,427 excluding road and forecourt works but including an escalation increase up to September 2005.

Council's budget was increased in September 2005 by \$989,275 to make allowance for escalation up to September 2005.

This resulted in the construction costs being \$1,214,152 over budget...

Council's architects similarly provided a submission to the Inquiry that referred to a budget (Ref: sub 660 **A-26**):

Cost Monitoring

The project cost was regularly reviewed by the Quantity Surveyor to monitor the design against the budget, and the cost monitored by the Project Control Group.

Throughout this period, numerous cost related decisions were made about the extent of building area, the type of structure, the quality of finishes and amount of equipment with continual modifications made to control cost

In August 2006 Currie & Brown wrote to the Council responding to concerns that had arisen over the tendered prices for construction of the Glasshouse. (Ref: letters Currie & Brown: 21.8.06 **A-27**; **A-28**)

Cost Planning Process

As you are aware throughout the project we have continuously highlighted a focus on cost issues and concerns that the project was over budget.

- *Our earliest involvement in the project recommended that the Project funding originally proposed at \$20 million was too low and*

recommended that the Budget be upgraded to \$27.89 million. This was confirmed in the Minutes of 17 February 2005.

- *Subsequent to the Minutes of Meeting 17 February 2004, a regular section within the Minutes “Critical Cost Issues” identified areas of concern where new areas of work were identified or generally items of ‘creep’ in scope were identified, eg April 2005 Minutes – Basement Plant room increased in size.*
- *Although there was attempts made by the Project team to reduce building area we identified that the GFA for the project grew from 6,665m² to 7,499m² with resultant increase in costs but no alteration to the Budget.*
- *Cost Plans were prepared based on documentation at 10%, 30%, 50% and 90% of design developments stage and at 40% and 90% documentation stage and then a Pre-Tender Estimate.*

At each of these stages of the Cost Planning Process the cost that was advised was in excess of the Budget. After each stage Cost Plan a review process was undertaken with the design team to identify potential scope and specification changes and this was presented to the Client and Project Manager. It is noted that often some of these potential savings would still be retained within the next issue of the documentation or be reintroduced at a later stage.

- *It was relevant that throughout the design development there was a continuous strain on the Budget with additional items being added, eg HV Cable, Bars to Level 1 and 3, Island Showcases, Banner Signage, etc.*
- *With respect, we believe that throughout the Cost Planning process the Client and Consultant term were aware that the design development was continuously pushing the limits of the Project Budget and that consistently the staged Cost Plans*

indicated costs in excess of Budget, following which the identified savings were not always adopted.

- *The Tender Estimate clearly identified a cost of \$24.17 million against the Project Budget of \$24.089 million. Further it should be noted that documentation received subsequent to the Tender Documentation (i.e. Construction Documentation) indicated additional costs.*
- *We highlighted both in the 90% Stage Cost Plan and with the Tender Estimate that a “list of possible scope omissions/reductions or alternatives should be prepared to the sum of \$1 million in anticipation of higher than estimated Tender returns”.*

We believe that the Cost Planning process was carried out with due skill and care and that the project team we were aware the Tender Estimate was in excess of the Budget and the potential for Tenders to be in excess of the Estimates.

While the cost planning process may have been carried out with due skill and care, the Council failed to take adequate steps to review the project during this process to ensure that the project could be undertaken within its budget.

FINDINGS

- Council's Quantity Surveyors provided warnings from 2002 onwards that the building could not be constructed within Council's budgets
- The Council was advised throughout the cost planning process that the construction cost was advised as being in excess of its budget
- The Council failed to take adequate steps to review the project during this process to ensure that the project could be undertaken within its budget

4.2.6 The Role and Membership of the Project Control Group

4.2.6.1 The Membership of the Group

The Inquiry considers that Council's response in Briefing Note 61 is intended to respond to concerns raised over the Mayor's involvement in the Project Control Group.

On 18 October 2004, the first meeting of the group was held. The Minutes of the Meeting record:

1. APPROVALS AND REPORTING

1.1 The Project Control Group (PCG) consists of Rob Drew (RD), Bernard Smith (BS), Craig Milburn (CM) and Tim Greer (TG).

1.2 RPA will Chair, minute and advise the PCG. RPA recommended that the Quantity Surveyor should also attend regularly when engaged to report on project finances

and the builder attend the relevant part of the meeting when the construction contract is let to report on progress. BS requested RPA include in the quantity surveyor tender brief for separate fees for attendance per meeting so extent of attendance can be assessed and modified if required.

1.3 CM to liaise with the Project Reference Group to provide feedback on the brief and design and report on comments to the PCT, TZG and RPA.

1.4 The project team will be required to report to Council at completion of DA documentation (schematic design) for approval to proceed and on a three monthly basis.

4.2.6.2 The Role of the Mayor

Ms Tregeagle, a former member of the staff with Currie & Brown gave evidence of the role of the Project Control Group and the Mayor's involvement in it: (ref: transcript 13.11.07 p716 et.seq)

Q. At any stage did you have communications, and I don't necessarily mean in writing, to the Mayor?

A. We instigated Project Control Group which met generally on a monthly basis. That Project Control Group included the Mayor and the General Manager and the Director of Community Services

Q. So those people attended meetings on a monthly basis?

A. Generally on a monthly basis. There were a few instances where a meeting was postponed.

Q. Do I take it that the primary person that you corresponded with was Mr Milburn?

A. Yes.

Q. Again, were you in direct contact with the General Manager, Mr Smith?

A. *Generally only through our communications through Mr Milburn, generally at the peak Project Control Group meetings, we had direct contact with the General Manager, and communication outside of that was Mr Milburn.*

Q. In respect of the Project Control Group, you said that met monthly. I think you have been asked to provide the Minutes of the records, sorry, no, I understand Mr Crick has been asked to provide those. To your recollection, was Mr Drew a regular attendee at those meetings?

A. *Quite often but not always.*

Q. To your recollection again, did he take an interest in the project meetings that he attended?

A. *Very much so*

Q. And was he in your view across the elements of the project?

A. *Not in detail at all, no. He- I believe that when there were important decisions to be made he was – he had been well briefed. But I certainly recall him asking questions and getting clarifications when issues needed to be dealt with that needed decisions.*

Q. Reading the Minutes of some of those meetings, there is some fairly technical stuff dealt with at times that one may be talking about, particular issues involving say the finishes in a ceiling or a room or whatever it might be. But then again conversely there we major issues discussed such as budgets?

A. *Yes*

Q. Were budgets a recurring theme?

A. *It is I believe an issue that is addressed on a regular basis at those meetings. It was an agenda item at those meetings.*

Q. There was a workshop that took place, I think it was on 14 December 2004 a Value Management Workshop?

A. Yes.

Q. Were any Councillors present at that workshop?

A. *The Mayor.*

Mr Milburn also gave evidence regarding the group: (ref: transcript 24.10.07 p 238)

Q. The third point that you referred to is the Project Control Group?

A. Yes.

Q. Can you just briefly outline members of that?

A. *The Project Control Group as it now stands costs of the General Manager, Steven Finlay, our Director of Infrastructure Services; myself; the Project Manager from Root Projects Australia; Tonkin Zulaikha Greer, The Architects; and Currie & Brown our Quantity surveyors.*

Q. I understand that the Mayor attended some of the meetings of that group?

A. Yes.

Q. Was he a member or was he just a

A. *Early on he was a member. Up until we let the contract, the Mayor was a member. Once we let the contract, it was our belief that it is really more an operational matter and it is not a conceptual development, so the Mayor was no longer a member or that Project Control Group.*

Q. And that was in accordance with the division, as it were, in Council between the

A. *Policy and strategy and operational*

Q.elected body and the corporate body?

A. *Correct.*

Q. Once you had let the contract, you had the view that it was to be undertaken by the corporate body as against the Councillors as the elected body?

A. *That is correct.*

4.2.6.3 Was the Mayor an Observer?

Council, in its submission in reply and in later evidence suggested that the Mayor's role was limited to being a mere observer.

Mr Smith said: (ref: transcript 12.12.07 p1727)

"I refer in particular to the role of Councillors during the detailed design phase. I again reiterate what I stated in my evidence, that there is no requirement or necessity for the mayor to be on the project for the detailed design phase, and in fact it could be argued that this action was not best practice.

I also again reiterate that in inviting the mayor to be an observer on that group, it was simply on the basis that the Glasshouse was one of our most significant projects ever undertaken, one which had a political face to it as well as an operational face. As such, it was felt appropriate that the mayor should have a broader appreciation of the high level of technical input and expertise which was being applied to the project.

There was no mandatory requirement for the mayor to be on that group, there was no requirement for the mayor to report back to Council or Councillors formally, and there was no requirement for the outcomes of the Project Control Group to be formally referred to Councillors. The Project Control Group is part of the delivery mechanism of the project, similar to a range of other actions. Council's role is to determine the projects it wishes to undertake in the community's interest determine the general level o the scope, approve the budget. It is then up to the organisation to deliver on those decisions in accordance with the Council's wishes.

The Mayor later said: (ref: transcript 12.12.07 p1738 et.seq)

"Mr Commissioner, my attendance at several meetings of the Project Control Group have been referred to. I would like to say I was invited to those meetings as an observer and I took up the invitation with the express an sole purpose of satisfying myself that we were applying the greatest possible rigor to the Glasshouse planning and process and to get and keep myself up to speed on that.

If the inference is that I have had any influence over that group that is entirely group. I did not seek to have any influence over those deliberations. Sitting in was part of my overall effort to keep a watching brief over the project, recognising my strategic as a Councillor.

Information I observed in those instances formed part of my overall knowledge of where we were going any general impressions were conveyed to my fellow Councillors in workshops, or Council, as part of the many discussions we had about all the various aspects for the task at had. As

you know, Commissioner, the Local Government Act requires me to be adequately informed and, as Mayor, this group assisted my work to ensure that was the case.

4.2.6.3 The Importance of the Group

The role of the Project Control Group was fundamental to the project. It was the group embodying Council's representatives and the consultants, particularly the Project Manager, the Architect and the Quantity Surveyor.

The Minutes of the group reflect the interplay between the evolution of the project, its cost and Council's responses and directions.

At its first meeting on 18 October, 2004 the General Manager is minuted as advising:

"that the budget target for the construction cost is \$20 million ..." (Ref: minute of Project Control Group meeting 18.10.04 – **A-29**)

On 25 January 2005 the Minutes record:

"3.1 Target budget is \$25 million for building works, not including forecourt"

At the 6th meeting of the group on 20 October 2005, some 2 ½ months after the Councillors had imposed a construction budget of \$25.42 million the Minutes read:

"Revised budget provided by PCG of \$27,968,552. This budget is based on the accepted cost estimate dated 19 September 2005 minus accepted cost reduction initiatives of \$634,875. This revised budget has been accepted by the PCG to ensure that the scope of the project remains as briefed."

FINDINGS

- The Project Control Group comprised of the Mayor, the General Manager, Mr Milburn and the Project Architect
- The evidence does not support a view that the Mayor had a role as an “observer”
- The role of the Project Control Group was fundamental to the project, embodying Council’s representatives and the consultants

4.2.7 THE ROLE OF THE PROJECT CONTROL GROUP IN MANAGING THE BUDGET

4.2.7.1 Setting and Controlling the Budget

The evidence indicates that the Project Control Group was fully aware of the budget problems. The Mayor and senior staff had a responsibility to advise Councillors of this significant concern. It is disappointing that a number of Project Control Group members appear not to have done so.

4.2.7.2 A review of the Minutes

Separately, the Project Team commenced to hold its meetings in January 2005. The Minutes record that Mr Milburn frequently attended the meetings, with the General Manager attending the first meeting.

The Minutes of the initial meeting record:

“3.1 Target budget is \$25 million for building works, not including forecourt” (Ref: Minutes of Project Team meeting 20.1.05 A-30)

Both the General Manager and Mr Milburn were present at this meeting.

The Minutes of the team’s 5th meeting held on 3rd March 2005 record:

“RPA advised all consultants that PCG reviewed cost estimate at \$27.9 million and resolved that budget for project to be set at \$27.39 million for identified scope as per cost plan...”

Briefing Note 61 and the newspaper reports leading up to the Council’s meeting on 1 August 2005 would suggest that an important step had been reached in the process; the adoption of a budget that would serve as a reference point for the construction of the Glasshouse. The Minutes of the project team meeting on 16th August 2005 do not reflect this.

It is interesting to note that the following Project Team meeting did not record this important event nor did the Minutes of the following meetings on 18 October 2005 or 1 November 2005 mention this issue, despite Mr Milburn being present at the latter meeting.

The budget was referred to at the team’s meeting on 15 November 2005. By this time Council’s Quantity Surveyor had provided a 90% cost review.

The estimated cost of constructing the Glasshouse was \$27,968 million, almost \$2.8 million above the budget cap.

The Project Team, apparently unperturbed and unaffected appears to have had no regard to Council’s decision. The minutes record:

“Summary of 40% Cost Review, \$490,469 over 24.10.05 approved budget.”

It would appear to the Commissioner that Council’s representatives on the Project Control Group had a responsibility to advise the consultants of council’s budgets

It would also seem that Council's representatives on the Project Control Group had a responsibility to ensure that council's budgets were implemented

The failure to carry out these responsibilities meant that the project team were working to a different construction budget, which at that stage stood at \$27, 498,083.

FINDINGS

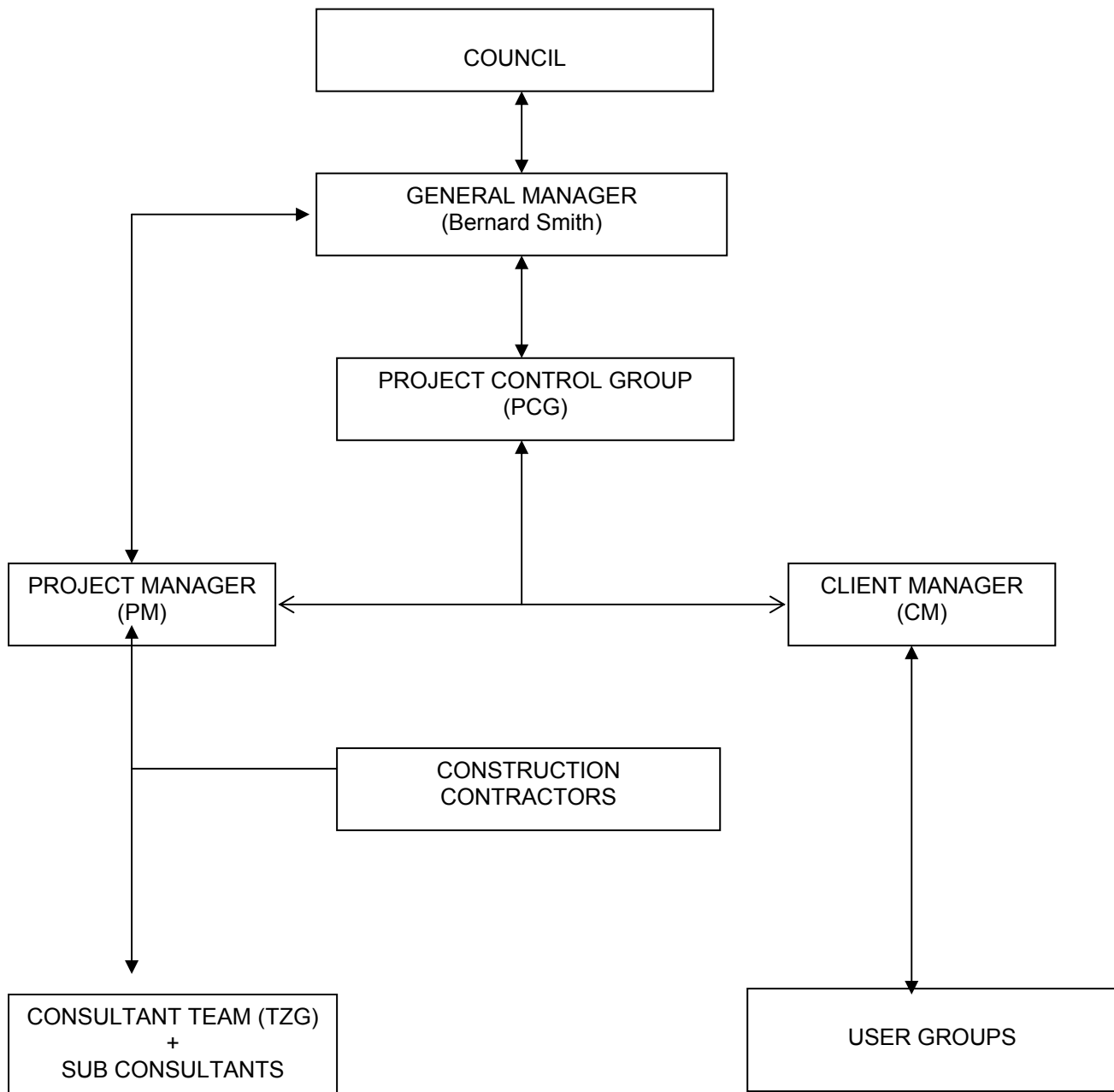
- The Project Control Group appears to have been fully aware of the budget problems.
- The Mayor and senior staff had a responsibility to advise Councillors of this significant concern.
- A number of Project Control Group members appear not to have discharged their duties.
- Council's representatives on the Project Control Group had a responsibility to advise the consultants of council's budgets.
- Council's representatives on the Project Control Group had a responsibility to ensure that Council's budgets were implemented.
- The failure to advise the consultants of Council's budgets and to ensure they were implemented lead to the project team working to a different construction budget.

4.2.8 THE BUCK STOPS HERE

4.2.8.1 The Structure

The Mayor had been a member of the Project Control Group from its inception in late in late 2004 until the construction contract was awarded (Ref: C. Milburn evidence 24.10.07 p338)

The group occupied the position shown in the structure plan below (Ref: sub 605 p66)



4.2.8.2 The Mayor's Role

During the hearings Mr Milburn, the General Manager, the Mayor and Councillors were questioned regarding the role of the group and the Mayor's involvement in it.

Clearly, the Project Control Group was the direct point of contact between the Council and its consultants, particularly those at the top of the tree being the Project Manager, the Architect and the Quantity Surveyor. It was also the fundamental level for Council's control over the project.

At the group's first meeting the following processes and procedures were put in place:

1. APPROVALS AND REPORTING

- 1.1 The Project Control Group (PCG) consists of Rob Drew (RD), Bernard Smith (BS), Craig Milburn (CM) and Tim Greer (TG)
- 1.2 RPA will Chair, minute and advise the PCG. RPA recommended that the Quantity Surveyor should also attend regularly when engaged to report on project finances and the builder attends the relevant part of the meeting when the construction contract is let to report on progress. BS requested that RPA include in the Quantity Surveyor tender brief for separate fees for attendance per meeting so extent of attendance can be assessed and modified if required
- 1.3 CM to liaise with the Project Reference Group to provide feedback on the brief and design and report on comments to the PCG, TZG and RPA.

- 1.4 The project team will be required to report to Council at completion of DA documentation (schematic design) for approval to proceed and on a three monthly basis.

The Inquiry, despite requests to Council, Root Projects and TZG, has not been given copies of the Minutes of all meetings, of this group – reference to this issue will be made elsewhere in this report.

Those Minutes that are held show the attendance and involvement of the Mayor at a number of meetings. Additionally, the agenda for meetings anticipate the attendance of the Mayor.

The role of the Mayor in the group and his position regarding his fellow Councillors was an important part of the Inquiry's focus.

On 24 October 2007 Mr Milburn gave the following evidence: (ref: transcript 24.10.07 p238)

Q. The third point that you referred to is the project control group?

A. Yes.

Q. Can you just briefly outline membership of that?

A. *The Project Control Group as it now stands consists of the General Manager, Steven Finlay, our Director of Infrastructure Services; myself; the Project Manager from Root Projects Australia; Tonkin Zulaikha Greer, the Architects; and Currie and Brown our Quantity Surveyors.*

Q. I understand that the Mayor attended some of the meetings of that group?

A. Yes.

Q. Was he a member of was he just a ---

A. *Early on he was a member. Up until we let the contract, the Mayor was a member. Once we let the contract, it was our belief that it is really more an operational matter and it is not a conceptual development, so the Mayor was no longer a member of that Project Control Group.*

Q. And that was in accordance with the division, as it were, in Council between the ---

A. *Policy and Strategy and operational---*

Q. -- elected body and the corporate body?

A. *Correct.*

Q. Once you had let the contract, you had the view that it was to be undertaken by the Corporate Body as against the Councillors as the elected body?

A. *That is correct.*

4.2.8.3 Council's Submission

Council's submission does not refer to the Mayor's former participation in this group.

Council's submission in reply down plays the role of the Mayor in the Project Control Group: (ref: sub 801 p16)

Project Control Group Membership and Roles

The composition and roles of the membership of the Project Control Group (PCG) was raised by the Officer Assisting the Commissioner on a number of occasions. A review of relevant documents does not provide details of the roles of each member of the Project Control Group. There is some information in relation to the role that the Director, Community and Development would undertake, but nothing further in relation to the role of any other person.

The only other evidence that can provide a clear definition of the Mayor's role is the testimony of the General Manager and the Mayor as given under oath to the Inquiry. The Mayor has stated he had observer status at these meetings.

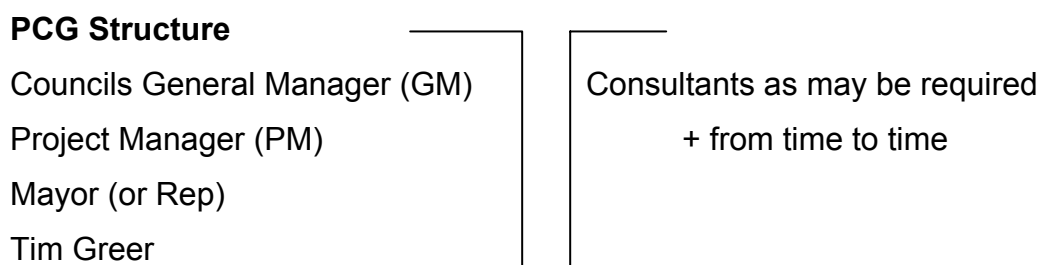
Council has also provided Briefing Note 31 regarding the role of the Mayor in this group. Relevantly, Council maintains:

"The only other evidence that can provide a clear definition of the Mayors role is the testimony of the General Manager and the Mayor given under oath."

4.2.8.4 The Membership Structure

In late July and early August 2004 the Council advertised the position of Project Manager for the Glasshouse. (Ref: Sub 605, Project Chronology: doc pc 116 – **R-3**)

The information brief contained the following diagram of the Project Control Group structure:



Nowhere does this document suggest or imply that the Mayor had an "observer" role.

The Mayor was a member of the Project Control Group and he attended a number of its meetings.

Significantly, he attended a meeting of the group on 20th October 2005 where budgets were expressly authorized (Ref: PCG Minutes of 20.10.05 **A-31**)

3.1 *Design Development approval is provided by PCG with revised budget of \$27,968,552 approved, based on accepted list of scope reductions. List is attached.*

Budget

6.1 *Revised budget provided by PCG of \$27,968,552. This budget is based on accepted cost estimate dated 19 September 2005 minus accepted cost reduction initiatives of \$634,875. This revised budget has been accepted by the PCG to ensure that the scope of the project remains as briefed.*

The “accepted” cost estimate for construction of the Glasshouse dated 19 September 2005 had been provided by Council’s Quantity Surveyor at \$28,603,427.

Despite the fanfare and rhetoric of Councillors Sharpham, Prussing and Nardella’s successful motion to cap construction costs a little over 2 months earlier, Council’s consultants were being authorized to proceed further at a budget over \$2.5 million higher, an increase of 10% in less than 12 weeks.

4.2.8.5 The Role of the Project Control Group

There are significant issues surrounding the role of the Project Control Group not the least of which is Council’s representatives’ apparent disregard for Council’s decisions.

The group was the interface between Council and the consultant’s so far as Council was concerned. Representatives were the mouth, ears and eyes of Council, they:

- Communicated Council’s views;
- Authorized variations
- Communicated the construction and other budgets

- Heard the issues raised by the consultants, and,
- Viewed the plans provided from time to time

The Mayor was keen to portray Council as financially responsible:
(ref: transcript 25.10.07 p363 et.seq)

A. Well, I think it goes back to, I believe, a very responsible stance – I am not sure what date is connected to that – that council I deliberately made in August 2005 that we were going to cut just over \$1 million out of the budget and the construction cost at that point would become \$26.6 million. So there had to be pressure put on the designers of the building to pull the costs back. We as a Council were getting concerned and we were listening to the community about the way the costs were going up. So we took that very deliberate step back in August 2005, construction costs, \$26.5 million. So there had to be quite significant cost savings implemented into the design.

I think that we have been able to – well, ‘we’ haven’t, but certainly the designers have certainly been able to deliver on that pressure place upon them to bring the costs down.

I think it is one of those buildings that you could spend quite significant millions of dollars extra to what we are at this stage, just through the complexity and the intensity, I suppose, of IT, especially, that is involved in a building; the design of acoustics and the like. We could have spent, quite easily, millions of dollars extra, but we were responsible. We made that stance in August 2005 to limit the construction cost to \$26.6 million.

Q. Throughout your involvement as Mayor, have you been concerned about cost escalation in the construction of this building?

A. *I'm concerned about cost escalation on anything. I have a small business. I hate getting cost escalation in anything. But, yes, of course. And again, I come back to the very deliberate stance Council made to stand firm on that construction cost, even wipe out just over \$1 million of the budget to bring it back to \$26.6 million. I think that was a very, very strong stance the council took at that time, we sent the message back to our staff and our consultants, "You are going to have to sharpen your pencils little bit further"*

Q. Do you believe that you achieved that?

A. *I believe so. We are on budget and hopefully we are on time.*

The Mayor was then questioned regarding his involvement in the Project Control Group and the 20th October 2005 meeting.

Q. A year later, on 20 October 2005, there was a Project Control Group Meeting, being number 6. The attendance of you is recorded, and I will show you that document?

A. *No, I will believe you.*

Q. You are aware of that? Item 3.1 states: Design development approval is provided by PCG ---That's I think, an acronym for the Project Control Group---With revised budget of \$27,968,552.

Now this is a year. This is slightly after I think, the meeting that you are referring to, I think it was in August 2005, when you constrained the cost, I think, to \$25 million?

A. *Yeah, 25.6, I think.*

Q. Mr Milburn's document refers, as does Council's submission, to the cost controls being obtained by its Quantity Surveyor. On page 52 of Council's submission, where I have just referred to the reference to the \$12 million saving, there is

reference to the cost estimation processes and it refers to costings by the Architect and Ryder and Hunt (correction: Rider Hunt), the initial Quantity Surveyor's, in December 2002. It then goes to a cost plan in March 2005 and it goes forward to 40 per cent, 90 per cent, 40 per cent, 90 per cent, either design and development or documentation, then subsequently bill of quantities, pretender estimate and the tender of quantities as having been obtained. Do you see those references?

A. Yes.

Q. Can I suggest to you that in respect of that, Ryder Hunt, as I suggested came to a figure of \$26,883,829 on 26 August 2004; but Currie & Brown, Council's subsequent Quantity surveyors, came to a figure of \$27,734,576 on 4 March 2005; that Currie & Brown came to a subsequent figure on 20 May 2005 of \$28,664,764; that in September of that year Currie & Brown's figure had fallen slightly to \$28.536 million; and thereafter it dropped in October 2005 to \$27,968,552. In that respect, that appears to have been the lowest figure in that series, and the pre-tender estimates of 22 September 2006 were \$28,067,186. None of those figures suggests some \$12 million saving.

A. *All I can say to you is, again, in August 2005 council made the very deliberate move to limit construction costs to \$26.6 million. All the rest of it is, as far as I'm concerned, operational issues and they would need to be discussed with the appropriate professional staff.*

Q. So what you are saying to the Commissioner is, effectively, "Don't ask me; ask the GM or staff?"

A. *They are operational issues. All I'm telling you is, from a policy perspective, the Council again made the deliberated decision to*

put a cap on the construction at \$26.6 million. What happened behind all of that I'm not privy to and nor, probably, should I be. All I want to know is that we are going to get the construction cost for that price.

Q. In your role as a member of the Project Control Group were you representing your fellow councillors?

A. I was there as probably an Observer, and that's basically about it. I had no involvement, as such, in the meetings. I was there to probably take in how that sort of process came about, and that was my complete involvement in those groups.

Q. As part of your involvement in that process, did you take in the amount that the Quantity surveyors were saying it would cost to build this facility?

A. You sit there, and I am obviously no expert in Quantity Surveying. What it was was probably an education for me on how it all comes about. What it did indicated to me was that there are certainly downward pressures that are put upon these designs and the Quantity Surveyor's to bring the projects into budget, and that is what I picked up out of those particular meetings. It was downward pressure being placed upon everyone involved in those meetings to get the construction down.

Q. I suggest to you that a figure of some \$27 million, \$28 million would have stuck in your mind?

A. Sorry?

Q. I suggest to you that a figure of some \$27 million or \$28 million would have stuck in your mind?

A. There was a whole raft of figures bouncing around in that meeting. I think it was a four-hour meeting. I think the figures that were being bounced around by all the different consultants – I can't

*remember whether there was \$27 million in that meeting at all.
There was a raft of –*

Q. Are you suggesting to me that the documents that I have referred to incorrectly record what occurred at the meetings?

A. No, I'm not saying that at all.

Q. You are simply saying that you may not have understood that the figures they were talking about were that level?

A. I wasn't there as an expert. I was simply observing a process and how that all comes about.

Q. But you didn't come away with a feeling that the budget was in the order of \$27 million or \$28 million – not at all?

A. Not that I recall.

In the face of all of the evidence, the Inquiry does not accept that the Mayor was simply an "observer".

The structure presented by the Council, when it advertised the role of Project Manager, does not suggest this, nor do the minutes of the group's meetings. Similarly, neither suggest, as the General manager would later say

"... I again reiterate what I stated in my evidence, that there is no requirement or necessity for the mayor to be on the Project Control Group for the detailed design phase, and in fact it could be argued that this action was not best practice.

I also again reiterate that in inviting the mayor to be an observer on that group, it was simply on the basis that the Glasshouse was one of our most significant projects ever undertaken, one which had a political face to it as well as

an operational face. As such, it was felt appropriate that the mayor should have a broader appreciation of the high level of technical input and expertise which was being applied to the project.

There was no mandatory requirement for the mayor to be on that group, there was no requirement for the mayor to report back to Council or councillors formally, and there was no requirement for the outcomes of the Project Control Group to be formally referred to councillors. The Project Control Group is part of the delivery mechanism of the project, similar to a range of other actions. Council's role is to determine the projects it wishes to undertake in the community's interest, determine the general level of the scope, approve the budget. It is then up to the organisation to deliver on those decisions in accordance with the Council's wishes."

On the evidence the Inquiry does not accept that the Mayor had no functional role to express the views of the Council and to report back to his fellow councillors, particularly where Councillors had capped the construction cost on 21.8.05.

FINDINGS

- The Project Control Group was the interface between Council and the consultant's so far as Council was concerned.
- Council's representatives were the mouth, ears and eyes of Council, it:
- Communicated Council's views;
- Authorized variations
- Communicated the construction and other budgets
- Heard the issues raised by the consultants, and,

- Viewed the plans provided from time to time
- The Mayor was not simply an “observer” on the Project Control Group
- Like other Council representatives, the Mayor had a functional role on the Project Control Group

4.2.9 FAILURE TO ACCEPT RESPONSIBILITY

4.2.9.1 The Continuing Blow-out

Following Council’s earlier workshop in June 2004, the Mayor and Councillor Mayne proposed a motion “that Council confirms its commitment to the project...”. The motion was carried unanimously. (Ref: meeting 28.6.04 **A-34**)

The report to the meeting stated:

“the facility will cost between \$15 –20 million to construct”

On 26 August 2004 Council’s Quantity Surveyors provided their “draft current estimate” for construction at \$26,883,828 over 1/3rd more than the maximum anticipated (Ref: letter Rider Hunt 26.8.04 **A-12**)

The ad hoc variations to the project’s scope were again coming home to roost.

It was not the first time that the Council was faced with a budget blow-out.

In 2002 Rider Hunt had written:

“The initial project design proved to be over budget to such a degree that two further detailed cost plans had to be prepared to allow more informed decision making on a financially workable design solution. This work had not been anticipated in our original brief.”

(Ref: letter Rider Hunt 28.11.02 **A-36**)

Now, the increased costs associated with the inclusion of the Ritz Arcade site and of the additional facilities had been quantified.

Despite this massive increase in the anticipated construction cost Rider Hunt's advice does not appear to have been communicated.

At the Project Control Group's meeting on 18 October 2004 Mr Greer advised "*the current cost estimate from Ryder & Hunt is \$26 million*" (Ref: PCG minutes 18.10.04 **A-29**)

The Mayor was present at this meeting.

Council changed its Quantity Surveyors and on 4 March 2005 Currie & Brown provided an estimated cost of construction at slightly less than \$27.75 million.

By 20 May 2005 this estimate had risen to over \$28.65 million.

4.2.9.2 Council Reporting

Despite this the report to Councillor's Workshop on the 24 May 2005 advised:

"The estimated cost of the building in Nov 2002 was \$15,000,000 to \$20,000,000. This was prior to the changes in the project scope outlined above. Escalation over the past 2 years is estimated to be \$2,400,000.

<u>The current costs include:</u>	\$
<i>Construction</i>	<i>21,250,000</i>
<i>Contingency \$</i>	<i>1,750,000</i>
<i>Salt Water Cooling System Premium</i>	<i>170,000</i>
<i>Double Coded Female Toilets Premium</i>	<i>125,000</i>
<i>Ritz Acquisition</i>	<i>3,200,000</i>
<i>Consultants</i>	<i>2,000,000</i>

Cost saving have been achieved by locating all front of house operations in the one locality and all back of house/administration offices together and in the air intake system for the foyer. Ongoing design meetings will continue to target potential costs savings.

These costs have been included in past and the current Draft Management Plan and are fully funded.

4.2.9.3 The Obligation of Staff to Report Cost Estimates

During the hearings the General Manager was taken to various estimates provided by the Quantity Surveyor and asked about the corporate body's responsibility to report the budget blowouts that were being advised.

Q. You were involved in a number of meetings of the Project Control Group?

A. Yes.

Q. Certainly in its early stages in late October 2004 and early in 2005?

A. Yes.

Q. In those meetings – and I'll pick 18 October 2004 as an example –you were reported as advising that the budget target for construction was then \$20 million. I'll show you the document.

A. *I certainly accept that, yes.*

Q. The minute records that the architect, Tim Greer, advised the current cost estimate from Rider Hunt as being \$26 million?

A. Yes.

Q. Given that circumstance, what was your role in reporting to Councillors?

A. At that point there was no need to report the outcome of that meeting directly back to Council. This is a very important point. Council sets the project and sets the budget, and staff in the organisation and its various experts and consultants then need to deliver the project. Invariably, every single project of this nature, which utilises this sort of process, you end up with estimates which are more than you can afford and you go away and work the design and work and work and work until you get it down, which is of course, as has been demonstrated, is what happened in this project. However, if we reach the point where we don't believe we can meet the Council's requirements in terms of the budget, then we go back to the Council. At any particular point, a single point of time, where it is part of the design process, part of the implementation of any project, there is not the need or the necessity to report back to Council on a three or four-weekly basis.

Q. Given that Rider Hunt first reported an estimate of \$26.88 million in August 2004 and that concurrently through 2005 and up to September 2006 in subsequent advice from Currie and Brown, was in excess of Council's then budget, what was your reporting role to Council?

A. Sorry, can you refresh me on start times of the estimates?

Q. I'll show you those. It's an easier way of doing it. This document sets out the provider of the estimate, being Rider and Hunt (correction: Rider Hunt) initially, C and B standing for Currie and Brown. It sets out the estimate, the nature of some inclusions or exclusions, the importance is the commencing date, 26 August 2004, and tentatively

(correction: relevantly) the last one was a pretender estimate of Currie and Brown dated 22 September 2006.

- A. *Mid-04 was in effect the decision by Council to acquire the Ritz and expand the footprint and obviously expand the costs of the project and that was reflected in the reports to Council. The second half of 04 was obviously utilised to undertake significant redesign, which was going to have cost implications. It was recognised, within that design proves, that there were costs issues, witnessed by the value management exercise at the end of – was it the end of '04, early '05? Then when we felt that we had gone as far as we could go in terms of during the design that was reported back to Council as part of a workshop report on the following year's budget in April of '04?*

Then when we felt that we had gone as far as we could go in terms of driving the design that was reported back to Council as part of workshop report on the following year's budget in April of '04.

Q. Do you recall the construction costs that were then reported to that workshop?

- A. *The construction costs reported were \$23 million. However, the comment was made that, "we need to do a little bit more work on that construction cost and drive it down a bit."*

Q. When was that?

- A. *That was in April of '05.*

Q. April '05?

- A. *Yes. That was a report – annually we have workshop reports to Council as prelude to adopting the management plan and talking about rolling works programs.*

Q. The amount was \$23 million?

A. Within the report the comment was made that the construction costs were in the order of \$23 million. It was still a bit on the high side and we needed to do some more work.

Q. At that stage, of course, Currie and Brown had advised on 4 March that year an estimate of \$27.734 million?

A. I think we would need to ensure we are comparing apples with apples on that. That is just a comment in the report, but I think I would caution myself and everyone that we need to clarify what Currie and Brown were referring to and what the Council report was referring to.

Q. What would the Council report be referring to at \$23 million, construction costs?

A. Yes, but again I just caution that we will provide some information in terms of did it include contingencies, did it include escalation, et cetera. It's important that we clarify or ascertain what figures we are comparing. If I could just continue on: prior to the adoption of the corporate plan there was a special report to the Council giving a more detailed explanation of the project and where the costs were at, and then it was subsequently incorporated in the corporate plan later.

For over 2 Years Council received advice that the prospective costs of constructing the Glasshouse was significantly over budget. During this time there appears to have been no formal reporting of this to the Councillors.

Despite what was suggested by the General Manager, staff had a duty to report this issue to the Councillors.

4.2.9.4 The Obligation of Councillors to Acquaint Themselves With the Cost Estimates

Councillors were asked about their knowledge of the Mayor's involvement on the Project Control Group and his reporting of their meetings.

Councillor Mayne did not know what the Mayor's role on the group had been. With some assistance from Council staff, Councillor Mayne would suggest that the Mayor was a mere participant.

Councillor Mayne gave the following evidence:

Q. In late 2004, the Mayor became involved on a group which was specifically dealing with issues relating to the Glasshouse. I think that was the Project Reference Group?

A. Yes.

Q. Were you aware of the Mayor's involvement in that group?

A. *Can I just clarify something. 2004 and the Project Reference Group and ---*

Q. Sorry, Project Control Group is what I should have said, not the Reference Group?

A. *Yes, I'm aware of that.*

Q. You're aware of that?

A. Yes.

Q. Did the Mayor ever report back to you in respect of the meetings that he attended?

A. *At workshops, yes.*

Q. At any stage, did he report to you on the position of Council's budget and the advice being given by the Quantity surveyors?

A. *I don't recall the Mayor doing that, but we were informed by senior staff. I don't recall the Mayor actually –*

Q. In your view, what was the Mayor's role in the Project Reference Group?

A. I assume he was Chair – no? Sorry, I'm getting advice. Okay, it would be just as a participant.

Q. Did you see him as representing your fellow councillors?

A. I would see him in a broader sense representing the community, but being able to have his councillor hat on, I'm sure. It would be not good stewardship if he didn't I think he would have to be representing us and our thoughts and feelings.

Q. Is that because of his obligations as a councillor?

A. I would say, yes, and his role as a Mayor.

Q. Both in respect of the corporate body and in respect of the general public?

A. General public, yes.

Q. What are, in your view, the traditional responsibilities of a mayor? You've just referred to Councillor Drew as having some sort of further responsibilities. What did you see them as?

A. I see them as ceremonial. I also see the Mayor's role as being not necessarily the final say, but a coordinator of the final say, if you like, meaning that he has the two votes, if it's so required, in the chamber. But I also see him in an advisory role as well to other councillors, perhaps even a mentoring role, if I dare say that. I have served the same amount of time as the Mayor and I find that he does not lack in wisdom or insight into operational matters as well. (Ref: Transcript 27.11.03 P1097 et seq)

Councillor Price was keen to distance the role of Project Control Group and the Mayor by portraying it as an "operational group". This

stance was an attempt to distance the group from his responsibilities as a member of the elected body.

Councillor Price gave the following evidence:

Q. The final question that I would like to ask you, Councillor Price, is this: were you aware that the Mayor was a member of the Project Control Group which had been established in or about October 2004?

A. I am aware that he was a member of that group.

Q. Councillor Price, what do you consider the role of that group to have been?

A. It's an operational group that considers in detail the management of the project.

Q. In respect of Councillor Mayor Drew's involvement, what you view of what his role would be?

A. To provide input as a member of that group. It would not be to report back to the Council body, given that it's an operational group and not a committee of council.

Q. So you did not see him as being a provider of information to councillors?

A. Not specifically by virtue of his membership on that group, no.

Q. So that any knowledge that he acquired as a member of that group would be only directly provided to the staff?

A. Correct.

(Ref: transcript 4.12.07 P1362)

There was a significant difference between the estimates provided by Rider Hunt and Currie & Brown, staff reports and public advice.

The Deputy Mayor Sharpham dealt with this issue and the Mayor's role in the Project Control Group by suggesting that it was merely part

of a general role; part of his Mayoral functions, although it brought some reporting function.

Ultimately, Councillor Sharpham was not sufficiently interested in the workings of the group to seek out advice from the Mayor. He gave the following evidence:

Q. I have asked questions previously of Councillor Nardella in respect of the role of the Mayor in the Project Control Group. As Deputy Mayor, were you aware of his involvement in the Project Control Group?

A. I suppose we were all aware, through the workshops that we attended where he made comments that related to what the discussion was at that time, the information that came from that group.

Q. So far as him being on the Project Control Group, were you aware that he was a member of the Project Control Group?

A. I was, but he is a member of every group.

Q. Do I take it that your understanding was tacit that if he was Mayor, he would be on a group?

A. Sorry, say that again.

Q. Do I take it your understanding was tacit that, as he was Mayor, he would be on a group?

A. Not necessarily. It depends what that group is. He has the ability to be part of any group that meets, any Council meeting.

Q. Did you see the Mayor as representing you and your fellow councillors on that group?

A. I saw him as one that brought back information to our workshops – not necessarily representing councillors, but certainly if any of us are on that committee, we are representing the Council, I suppose, as such and I see his role much the same.

Q. And as a member of the committee, what is your role in respect of reporting the deliberation for that committee to your fellow councillors?

A. Minutes are passed down to all councillors in a formal meeting. It depends what sort of a meeting it is.

Q. So effectively there is a reporting role?

A. Yes.

Q. Do you recall any direct discussions with the Mayor regarding his involvement at meetings with the Project Control Group?

A. Not one.

Q. Do you recall any other discussions, other than direct discussions with him, of any matters relating to his involvement in the Project Control Group?

A. Other than the discussion in a workshop situation, you mean?

Q. Any discussions?

A. Yes. During discussions in workshops, issues that related to what we were discussing at the time, that related to those groups, would have been brought forward by him at that time. He was involved in discussions, like the rest of us were.

(Ref: transcript 21.11.07 p1173)

Councillor Nardella gave evidence that he was not aware of the Quantity Surveyor's figures, leaving those issues for the staff. He was keen to portray a view that the resolution capping the budget was an answer to such concerns. Again he showed a disinterest in the Mayor's involvement in the group:

Q. That is an extract of Port Macquarie News dated 29 July 2005. That reports your intention to go to the Council meeting with a view of moving to impose a cap?

A. *Yes, that's right. We put forward the notice of motion in anticipation that the broader Council would agree with that.*

Q. And subsequently that cap was imposed?

A. Yes.

Further:

Q. It was built out of, from your recollection, a \$23. Million-odd figure plus a contingency of some other sum?

A. *Quite possibly, yes.*

Q. At that time were you aware of any other figure that was being put forward in respect to the possible costs of construction of the facility?

A. *No, other than the figures presented to the workshops.*

Q. So you were relying on Council's staff's figures?

A. Yes.

Q. You were not aware that Council's Quantity Surveyor, some two months prior, had indicated a prospective construction cost of \$28.644 million?

A. *No, I don't believe I was aware of any figures like that, unless of course they've been presented to us at a workshop, and you'd have to go through the workshop items.*

Q. Your best recollection is that at the time you were not aware of some figure over \$28 million for construction?

A. Yes.

Q. Do you recall whether, as a Councillor, you were provided any of the construction cost estimates provided by either of Council's two Quantity Surveyor's?

A. *to the best of my recollection, no.*

Q. Given that at the time that you put the motion to Council in 2005, would you have been concerned if Council were saying that prospective cost of construction was in the order of \$23 million when Quantity surveyors were estimating a significantly higher amount?

A. Well, I suppose the technical detail is left to the organisation and the staff and they can get a range of different prices, et cetera, but if they believe they could get the \$25 million, or whatever it is, then that's something they need to work towards and achieve in line with the project brief.

Q. So the fact that a consultant may have said something significantly different would not have been foremost in your mind?

A. If a recommendation came up saying that \$28 million is the figure to Council, the final figure, yes, I would have been concerned. However, if the staff were in the process of working out that detail, whether its 23, 25, 28 and working all those prices, that's something that they need to sort out and then get up to the Council and then we would obviously make that decision from there.

Q. Doesn't your resolution suggest that you reviewed (correction: viewed) the process as all but complete?

A. With regard to what we wanted to achieve in the project, as in the footprint, we wanted the main two-tiered theatre, the gallery and some of those things, some of the finite details obviously would have progressed as the project progressed on from there, but the main thrust of the project obviously was to that point.

Q. Didn't the simple fact that you were imposing a cost ceiling reflect the fact that you viewed the matter as now at a deliverable stage?

A. *The cost that it would be able to be delivered at?*

Q. No, I'll explain it. What I am suggesting to you is that by imposing a cost ceiling at the time you did, you viewed the project as sufficiently crystallised that such a ceiling could in fact be imposed?

A. *Of course, with indexation, and that's what the resolution had.*

The Commissioner

Q. But you did it knowing there was a possibility of change?

A. *So having the meeting rooms, the theatre and all those sorts of things, yeah.*

Mr Broad

Q. And if Council had finalised what it intended to build, at that stage it could now say, "We want to build it," and you were saying, "We accept that, but here's your maximum bid'?

A. *Yes, and that figure of 25.2, that was something that we clarified with the GM when we put it up.*

Q. So you sought the General Manager's advice ---

A. *Yes.*

Q. --- before putting that proposal forward?

A. *Correct.*

Q. And his advice to you was what?

A. *That's a construction cost figure. My understanding was that we needed to maintain an indexed component in there in order to make it achievable. Say, for example, for some strange reason it got delayed some years or whatever, you would have that indexation to catch up, but if it was to start tomorrow, 25, whatever it is.*

Q. So you were simply saying, if we are held back for any reason, we

will certainly acknowledge indexation—

A. Yes.

The Commissioner

What I am hearing is that they actually set it at 23.5 construction cost plus contingency.

Mr Broad

What I think you are hearing is that there was a figure of 23.5, that there were some contingencies which I think Council had always built into its budget.

Q And I think what you are saying is that the \$25.42 million is basic construction costs plus, as best you recollect, the contingencies?

A. Yes.

The Commissioner

The question on that is that 23.5 compared to 28. Is that we are talking about?

Mr Broad

28.664, from recollection, yes.

The Commissioner

So the Quantity Surveyor is saying 28.64 and the Council is advising the Councillors 23.5, and we add some contingencies to get a locked down price.

Q. Is that what you understand?

A. Yes. *At the time there were some ballpark figures and it was around that 25. I just remember there was that figure of about 25.42, hence that's why we put it in the recommendation. That*

was obviously to allay community concern that, look we can cap that construction cost and it was responding to that concern at the time.

Mr Broad

Q. Subsequently, did you become aware of any of the figures that were being put forward by the Quantity surveyors?

A. I can't – I just can't recall any of the workshop items. I just can't put my mind to whether there was prices or figures put in by the Quantity Surveyor. I know we have received reports that have had, you know, figures in them, but I just can't pinpoint those exact figures.

Q. In the lead-up to the proposal that you put to Council of capping the costs, there was some public feeling about the cost blow-out in respect of the Glasshouse proposal.

A. (witness nods)

Q. Do you agree with that?

A. There were some concerns expressed in the community. That's agreed. There was obviously a number of newspaper articles that were generated that indicated there was concern.

Q. In August 2003 – and this is prior to your time Council – Council had been advised of a budget of \$14 million or had adopted a budget of \$14 million for this project. In September 2003 a gentleman by the name of George Schroeder had written to the Council complaining about a cost of \$15 million for the project. In October 2003 a woman by the name of Margaret McIntyre referred to a cost of \$14 million; on 5 November 2003 a report to Council suggested a cost of about \$15 million and \$20 million. Is that the sort of costing that you came to Council and were met with?

A. *Yes, I remember seeing figures of that. I just remember the \$20 million-odd in the paper – seeing it more broadly, obviously not being on Council, and it was one of a number of broad range issues leading up to the local government election that March. So trying to get your mind around the various issues at the time, you roughly remember that it's not \$80 million or it's not \$2 million. So, okay, that thing is going to be \$20 million.*

Another thing we brought up at the time was we wanted to bring forward the link road project, and the rough guess at the time was that that was around \$20 million, so you could convey that message to the people that, you know, we would like to get that up as a priority; it's going to cost X amount, that sort of thing.

Q. On 6 May 2005, Mayor Drew released a press release which advised that current construction cost was estimated at \$23 million. From what I have read from the press clippings there appears to have been some adverse publicity that arose from that? Was it about that time that there was an upswirl in public concern about the project?

A. *From memory, there was obviously a number of opponents that had been there for a long time, I suppose, and it was at that point that they could – it was point that they wanted to make that, look, hey, the project has blown out, look, we told you so – that type of thing.*

Without knowing technical details about construction and all those sorts of things, I was satisfied in my mind, running through the questions and answers sessions at the workshops and so on that, yes, there is going to be an escalation in cost; that's part of the construction industry and that's what happens. Likewise, over a period of time, revenue increases, so does construction.

But we needed to achieve what the community wanted to achieve, make it workable - this is my view - make it workable, and then we would come to a figure that we needed to cap and that's where we finally came to that \$25.4m-odd figure.

Q. In October 2004, Mayor Drew had become a member of the Project Control Group. Were you aware of his involvement in that group?

A. I think he did raise at workshops that he had the opportunity to sit in front of that reference group and gain information. Often as the figurehead of the Council, he's the one who has to respond to media.

He might be doing an interview that could be asking a whole range of issues, and so that he has got his mind around that, he is often the one who goes to those sorts of meetings so that he can - he treats it more so as a full-time job than anything else.

Q. Do you see his role as simply an attendee?

A. I think he needs to make himself aware of the project in a lot more detail in a sense so that he's got the ability to answer questions at public meetings, community forums, those sorts of things, in the media. Otherwise, he wouldn't be doing his job.

Q. Were you aware of his attendance at various meetings of the Project Control Group?

A. I just can't recall back then, that time.

Q. Do you recall at any stage seeking his guidance in respect of the project?

A. No, I don't think so. When we were in the workshop forums and so on, we asked questions of the mayor, but generally speaking, no, not to find out all that technical detail.

Q. Do you recall him reporting to you and your fellow Councillors regarding his attendance at meetings with the Project Control Group?

A. Yes, he has made comments in the past where he's got a lot more across the project than what we have, which was fantastic, so he would raise that at the workshop in a general discussion. He had his mind around it better than what we did.

Q. Your assumption is based on his attendance at these meetings of the Project Control Group?

A. Yes.

Q. Did he at any stage ever comment on any advice given by the consultants retained by the Council?

A. I just remember him making remarks along the lines with regards to the technical detail, how there's a need to ensure that there is good acoustics. That is something that's important and important to the performing arts sector, in getting some of these events and shows and so on, there is a requirement to have proper acoustics as opposed to just putting up a normal wall. Just those sorts of things, to broaden your mind you sort of become aware of throughout that process.

Q. Do you recall him at any stage giving you an indication of what sort of costing the Quantity surveyors were putting forward?

A. I just can't recall that now; it's too long ago.

Again, Councillor Price portrayed the Mayor as having a limited role that did not involve the other Councillors. Clr Price: (ref: transcript 4.12.07 p1337)

Q. I will take you back to the reports that you said you trawled through. Do you recall trawling through any of the reports of the Quantity surveyors? Do you recall the names of those companies?

A. It is not the role of a councillor to view and review the quantity surveyor documents. I mean, they were certainly sighted. They are about this fat, each one (indicates about six inches), and they are done at a number of stages through the design process. It is not the role of a councillor to oversee and go through those particular reports in detail, and I certainly did not do that.

Q. Are you saying they were available for you to look at if you had wished?

A. All of the documents that I required in order to make a sound policy decision about the location, the general function and final cost of this particular project were made available to me. That does not include - there are thousands of documents that would be involved in a project of this complexity.

Q. I didn't ask you a question about what documents you considered as part of your decision-making process, I asked you a simple question of whether or not these documents, that is, the Quantity surveyors' reports of Rider Hunt and Currie & Brown were made available to you if you had wished to look at them?

A. Most certainly. They would have been accessible to me.

Q. Did you know of their existence?

THE COMMISSIONER:

I think he used the word, if he had wished. I got the impression Councillor Price didn't wish to. Can you rephrase your question, sorry.

MR BROAD:

Q. If you had wanted to see those reports, were they available to you?

A. Well, I didn't request them because it is not my role as a councillor to view those documents and so it is sort of speculative to say, if I had requested them would they have been made available to me. The fact is that there are strategic - there are documents that are of relevance to councillors' decision-making process and there are documents that are relevant to the staff in dealing with the detailed operational aspects, and the quantity surveyor's report is an example of a document that is relevant to the project management group and the supervisor of the project but certainly not of relevance to me as a to make policy and strategic decisions in relation to the Glasshouse.

Clr Price was asked further questions regarding this issue:

Q. Can I go to another question then: did you know of the existence of Quantity surveyors reports?

A. *Most definitely. In fact, my role is to ensure that there are Quantity surveyors reports. I need to be satisfied that there is a process of going through how many door knobs are there, what will they cost, what is the thickness of the glass, I need to know that that has been done so that the estimates of construction costs are correct.*

Having been made aware that those reports were being created and considered by Council staff, that is where my role stops. I don't need to know the thickness of the glass or how many doorknobs there are or the cost of an acoustic door. I just need to know that all of those things are considered in detail by the Council staff. And that I am aware is the case.

Further:

Q. Councillor Price, a quantity surveyor ultimately comes to a considered estimate of the cost of building a structure such as the Glasshouse. In your view, should a councillor ascertain what that ultimate price is?

A. Mr Commissioner, there are, I am sure you would already be aware, there are Quantity surveyors reports provided at a number of stages of the design process - early, mid and then at 90 per cent, and that of course the price, the bottom line Mr Broad refers to, is going to go up and down through that process, and if say at 50 percent, for example, through the design process the quantity surveyor's interim report comes back and the price is higher than what was budgeted for, that is not of concern to me.

What is of concern to me is that Council, councillors, determine the ceiling, the cap. They determine the price that the design team is to meet. And so, if at some stage one of the quantity surveyor's reports happened to come in at a price higher than that was their problem, the design team then needs to go away and find cost savings and ways of reducing the cost of the building in such a way that it does not compromise the core functions. That is what they did. So, to answer your question, my concern is to, with the other councillors, set the cap. And we did that.

MR BROAD:

Q. Not long after you were elected, on 26 August 2004, Rider Hunt, who were then Council's Quantity surveyors, provided an estimate of the costs, which I indicate includes the road and the forecourt work, of \$26,883,829. At that stage, I think Council's budget was in the order of \$20m. Were you ever advised that the cost estimates were over Council 's budget?

A. *I believe so.*

Q. You believe so?

A. *Yes. It was a number of years ago, but I do recall that.*

Q. Did you ever question how much they were over?

A. *I can't recall the specific details of that presentation. But again, as I said earlier, if a quantity surveyor comes back with an estimate of the cost based on the design at that time, what is of concern to councillors is two things: the nature of the facility that we would like to see and the cost which, on behalf of the community, we are prepared to spend. So regardless of an early estimate of an interim design, councillors considered - -*

Q. Why do you say it was an interim design?

A. *It's an iterative process. There have been several substantial redesigns and there's also - it is an iterative process of finding cost savings. For example, they might look at the thickness of the acoustic wall and determine that it doesn't need to be as thick as it was previously designed in order to meet the same acoustic qualities, and so they will redesign it. That's a redesign, and there are many, many minor variations made throughout the design process. That is the case for all buildings of this nature.*

Q. The estimate provided by Rider Hunt as at 26 April 2004, excluding the road and forecourt work, was \$25,804,276. The budget at that stage was \$20m. At that stage, the cost estimate was 25 per cent over budget. Would that signify to you that there's a fairly high probability that if you wanted to proceed with that building of that budget, you couldn't build it?

A. *That would signify to me that, based on the design at that time, that the Quantity Surveyor reviewed, in their best estimate that would be the cost of construction. So the question then becomes*

what can Council afford and what facility does the community require, and it's about balancing those two things because obviously two extremes - if we were to put up a shed and say, "You can sing in that," only cost us a hundred grand, that would be completely inadequate. The other extreme, if we had the Rolls-Royce version, you know, seats that recline - if we were to have the Rolls-Royce version at an exorbitant cost, clearly that is inappropriate. So it has been a dance between these two imperatives: one, to control the cost; two, a level that Council can afford, and to provide for the community a facility that meets its needs.

Q. This dance that you just spoke about, have councillors been involved in that dance or have they left that to the staff?

A. We have been involved. We were involved with being provided with regular updates since I have been elected.

We have also played the role of setting the cap on the construction cost. So certainly we have been involved. I haven't been involved in negotiating every detailed cost savings. The staff have not come to me and said, "What material do you think we should make the windows sills out of?"

Q. You seem to be indicating that you had a general awareness that the Quantity Surveyors were saying, "Our estimates of the cost of building is above budget." Is that what you're saying?

A. Yes.

Q. I would invite to you look at this document. I've just shown you a newspaper extract of Friday, 3 June 2005. I assume it's from the local newspaper. As at 4 March 2005, Currie and Brown, Council's then Quantity surveyors, were estimating the cost of construction of the Glasshouse at \$27.734m,

roughly. Given your evidence, that you were generally aware of the sort of figures that the quantity surveyors were advising, were you concerned that as at June 2005, some three months later, Council appears to be saying that the construction costs were only \$23m?

A. Could you repeat the question, please.

Q. Yes. I started off with the proposition that Currie and Brown had advised on 4 March 2005 an estimate of \$27.734m for the construction costs of the Glasshouse. I showed you an extract from the paper of May 2005 which indicated Council was advising the construction costs at \$23m?

A. (Witness nods).

Q. My question is this: given what you've said about having a general knowledge of the advice of the Quantity surveyors, were you concerned that Council was telling the community that the cost of construction was substantially less?

A. To be honest, I cannot recall the specific sequence of events and the particular dollar figures. In the end, it's Council's role to ensure that the project is affordable and it's at an appropriate price .

It is the Commissioner's concluded view that the cost of constructing the Glasshouse was not an "operational" issue to be addressed by staff but a fundamental issue for the Council to deal with.

To the extent that Council has provided figures that were publicly available, they did not refer to escalation in the costs of construction.

FINDINGS

- Despite the massive increases advised by Council's Quantity Surveyors, this advice does not appear to have been communicated to the Councillors.

- For over 2 Years Council received advice that the prospective costs of constructing the Glasshouse was significantly over budget.
- Responsible staff failed to report this matter, nor did they raise concerns.
- Responsible staff had a duty to ensure that this issue was brought to the Councillors' attention.
- The cost of constructing the Glasshouse was not an “operational” issue to be addressed by staff but a fundamental issue for the Council to deal with.
- Councillors sought to distance themselves from the role of Project Control Group.
- Councillors demonstrated little interest in obtaining information regarding issues being dealt with by the group and did not attempt to seek out this information.
- Councillors demonstrated a similar disinterest in obtaining details of, or seeking out the Quantity Surveyor's advices.
- A number of Councillors have attempted to cover over the role of the Mayor on the Project Control Group.

4.2.10 The Budget Cap

4.2.10.1 Escalation

On the 1st August 2005 the motion put forward by Councillors Sharpham, Prussing and Nardella provided:

“That Council support construction funding for the Cultural centre of \$25.42 million. (Item 26 Ordinary Council 20/6/05 to be indexed and exclusive of consultant fees and acquisition costs) (Ref: minutes of meeting 1.8.05 A-32)

The figure of \$25.42 million comprised a stated construction cost of \$23.58 million and a contingency of \$1.84 million (Ref: Minutes of Meeting 20.6.05 **A-33**)

Persons reading the motion would incorrectly assume that this was the current cost of construction.

The figure of \$23.58 million fails to take into account that it is an historical cost to which \$2.2 million needed to be added.

Mr Milburn was taken through a number of Council's minutes by Mr Miles. Mr Milburn provided copies of the minutes some of which contained notes recently written by Mr Milburn (Ref: transcript 11.12.07 p 1615)

Copies of pages 4 and 7 of the meeting of the 20th June 2005 are set out below:

projects.

BCA/Planning City Plan Services
 Fire Safety Engineering Defire
 Access Accessibility Solutions
 Specialist Advisor Don Goldsworthy

Table 1 below provides a breakdown of the costs of the facility including the 7.5% contingency. Each of the functional areas of the facility are outlined and information includes gross floor area, total cost and cost per square metre.

Table 1

	GFA (m2)	Total Cost	Cost Per M2
Foyer	1574	\$ 6,656,757	\$ 4,229
Theatre	1142	\$ 5,159,447	\$ 4,518
Theatre Back of House	1253	\$ 3,109,717	\$ 2,482
Gallery	672	\$ 2,110,026	\$ 3,140
Gallery Back of House	396	\$ 1,233,639	\$ 3,115
Studio	155	\$ 433,049	\$ 2,794
Back of House L1	253	\$ 631,676	\$ 2,497
Restaurant	273	\$ 628,502	\$ 2,302
Conference Facilities	344	\$ 885,861	\$ 2,575
Plant Rooms	1186	\$ 2,731,573	\$ 2,303
Sub Total	7248	\$ 23,580,246	\$ 3,253
Additional Theatre Lighting and Sound		\$ 1,038,140	
Contingency @ 7.5%		\$ 1,846,379	
Total	7248	\$ 26,464,764	\$ 3,651

Escal \$2.2M

Benchmarks for the construction of similar facilities around Australia per square metre are:

- The new Asian Gallery at the Gallery of NSW (2003) – \$6,700/m2
- Newcastle Regional Art Gallery (2004) – Extension & renovation to existing building - \$4,300/m2
- Broughton Anglican College (2005) – Multi-purpose school hall intended for speeches and small performance etc – no theatre - \$3,200/m2
- ANZAC Hall Exhibition Gallery (completed 2000) at the Australian War Memorial - \$2,850/m2 (escalation of 5% \$3,635/m2 in 2005).

Table 2 below, outlines the areas where costs have been included in the DA Stage cost plan that were not included in the initial cost plan or have been increased to reflect more accurate design and costings, strategic decisions in relation to ESD issues and operational aspects of the facility.

PORT MACQUARIE-HASTINGS COUNCIL

Items	Cost incl. Add-ons
Additional cost of powerfly system	650,000
Increase due to steel rate increase	90,000
Total cost of sewer relocation incl. access tunnel	103,000
Total cost of fibre optics for link back to HQ	78,000
Cost of additional fire stairs and exits	20,000
Total cost of substation	180,000
Total cost of retail display cabinets	78,000
Increase in cost due to structural piers depth increase after geotech	70,000
Total cost of fire curtain	39,000
Increase in hydraulics incl.	565,000
Total cost of dock leveller and other transportation equipment	52,000
Total cost of relocatable gallery walls	16,000
Total cost of windbreak wall	35,000
Increase in fire services incl.	40,000
Total cost of gallery lighting incl. track system	126,000
Total cost of PABX and Phone System	39,000
Total cost of adding winch room	20,000
Additional cost of river cooling system	120,000
Additional cost of double coded toilets	125,000
Total cost of Meeting Rooms	952,000
Total cost of data cabling in mezzanine foyer	13,000
Total of Above	\$ 3,398,000.00
Ritz Acquisition	\$ 3,200,000.00
Estimated Escalation over 3 years	\$ 3,500,000.00
Total	\$ 10,098,000.00

In addition to the above increases which total \$3,398,000, escalation in building costs over the three years since the first estimate was obtained is estimated at approximately \$3,500,000. These additional costs along with the Ritz Acquisition budget result in total additional costs of \$10,098,000.

Total costs for the project are:-

Direct Costs	
Construction	\$23,580,246
Theatre Sound & Lighting	\$1,038,140*
Associated Costs	
Contingency 7.5%	\$1,846,379
Ritz Acquisition	\$3,200,000
Consultants	\$2,000,000
Total	\$31,664,755

TS&L excluded
 26,464,765
 = QS Ref'd May 05
 less 2-2M Escalation

* There is over \$800,000 in the Construction costs allowed for theatre sound and lighting.

23,580,246
 1,846,379

 25,426,625

Mr Milburn provided an extensive explanation regarding the relationship between the figures provided by Currie & Brown (Ref: transcript 11.12.07 p1616 et seq)

The upshot was, as Mr Milburn noted in the minutes, \$2.2 million had been left out of the report. The figures represented an historic cost and were \$2.2 million below then current estimate.

Councillors Sharpham, Prussing and Nardella also failed to incorporate escalation when proposing a construction cost cap of \$25.42 million on 1 August, 2005.

FINDINGS

- Reports to Council's meetings failed to include, or take into account \$2.2 million in escalation.
- The effect of this failure meant that persons reading the reports would incorrectly assume that the current cost of construction was \$2.2 million less than the estimates provided by Council's Quantity Surveyors.
- Councillors Sharpham, Prussing and Nardella failed to incorporate escalation when proposing a construction cost cap
- The "capped" budget adopted by the Council did not represent the likely cost of constructing the Glasshouse.

4.2.11 Summary

4.2.11.1 Overview

Quite clearly responsible staff failed to highlight escalation in their reports.

Collaterally, the Councillor's demonstrated a fundamental disinterest in, and disregard for the costs of constructing the Glasshouse.

The failure affected both the staff and the Councillors.

The Commissioner considers that responsible staff failed to properly and adequately advise the Councillors.

Councillors have failed to demonstrate adequate diligence when dealing with the financial management of the project, in particular they have:

- Failed to adequately acquaint themselves with the project and particularly its costs.
- Failed to impose adequate financial controls over the project.
- Failed to recognise and consider the financial and other implications of the substantive changes to project brief
- Failed to ensure rigor in the Mayor's role on the Project Control Group
- Excused their failures upon the basis that financial issues were "operational issues" falling outside their role.

It is clear that following Deutsche's withdrawal from the project Council allowed a significant and uncontrolled cost blow-out.

It is also clear that Council approved cost increases without consideration, formality or authority.

Perhaps this is best demonstrated by the following extract of an e-mail sent by the Inquiry and Council's response in Briefing Note 61.

-----Original Message-----

From: Angus Broad **On Behalf Of** PMHCPublicInquiry
Sent: Wednesday, 23 January 2008 1:33 PM
To: 'gm@pmhc.nsw.gov.au'
Cc: 'Neil.Porter@pmhc.nsw.gov.au'
Subject: Request for further documents

Dear Bernard

Root Projects submission to the Inquiry refers to the revision and approval of the budget during the period of that company's involvement. In particular Root Projects refers to

- a budget approval of \$25m following the Value Management Workshop on 13 December 2004 (see page 5 of the submission)
- a budget approval of \$25,989,275m in or about September 2005 (see page 5 of the submission)
- a budget approval of \$28,593,000m following contract documentation phase(see page 6 of the submission)
- a budget approval of \$29,771,552in following the re-design phase (see page 8 of the submission)

The Project Control Group's minutes record

- a budget approval of \$27,968,552 on or about 20 October 2005 (see minutes of meeting No. 6)

The Project Team's minutes record

- a budget of \$25m for building works and \$1.1m for other civil works including the forecourt as at 27 January 2005 (see minutes of meeting No. 1)

On 7 August 2006 Root Projects wrote to the council regarding its consultancy fees referring to a budget of \$27,389.000 (excluding forecourt & archaeological works) being "agreed by Council on 24 February 2005".

I have had difficulty locating the records of these budget variations in council's minutes and I would ask that you indicate the meetings that I should refer to.

If they were not provided for by council resolution, then I ask that you indicate the source of the various approvals and, as necessary, provide the relevant delegation providing the source of power to approve these variations.

Thanks

Angus

Angus Broad
Officer Assisting the Commissioner

BRIEFING NOTE	
Briefing Note No.	61
From	Port Macquarie Hastings Council
To	Commissioner Frank Willan
Date	24 January 2008
Subject	Root Projects submission questions

In response to the email from Mr Angus Broad of 23 January 2008 seeking information about the Root Projects Australia submission and matters around the budget the following is provided.

The Inquiry would need to seek information from Root Projects Australia as to the meaning, definition or understanding Root Projects Australia had/have in relation to the words *target*, *budget*, *approval* and *Council*. It appears to be clear from the Root Projects submission that the figures relate to the target budget for the projects construction. It is also clear that the changes in the figures reflect the development of the project and the consideration of issues such as adjustments in escalation, contingency, redesign and detailed design costings.

Council's position is that the budgets quoted in the Root Projects Australia submission were target working budgets for the project team. The Council, by resolution, set the budget on 1 August 2005 at \$25.42M plus indexation. This is the only time Council formally set a budget for the project. The only other time a figure was fixed by Council was when the contract was let in December 2006. The Council report of 18 December 2006 clearly sets out how the budget set in August 2005 was met. It should also be remembered that Council in June 2006 rejected all the first round tenders due to the tender prices being over budget.

The project team were working within the parameters of the August 2005 budget and the final contract was delivered within that budget. The project is being delivered within the budget set by Council when they let the contract in December 2006.

Working with consultants in ensuring a budget is met is part of the day-to-day role of the General Manager and staff in meeting their obligations to the organisation and community. The evidence provided to the Inquiry by Council has demonstrated the fact that Council let the tender within the budget set. What the working budgets were during the project development phase are secondary to the setting of the budget by Council in August 2005 and the meeting of this budget in December 2006.

End briefing note

CONCLUSIONS

- Council, represented by both the Councillors and staff, have failed to demonstrate adequate diligence when dealing with the financial management of the project, in particular they have:
- Failed to adequately acquaint themselves with the project and particularly its costs
- Failed to impose adequate financial controls over the project
- Failed to recognise and consider the financial and other implications of the substantive changes to project brief
- Failed to ensure rigor in Project Control Group
- Excused their failures upon the basis that financial issues were “operational issues” falling outside their role.

4.3 PROJECT MANAGEMENT

This deals with whether Council exercised prudent project management regarding the planning and development of the Glasshouse

It is natural and desirable for communities to have aspirational goals and this community's aspiration for a serious theatre is long standing.

Dr Ivory in her oral presentation referred to a public meeting in May 1993 which was attended by the then Mayor, Ray Cooper. This meeting was off the back of the development of the Manning Entertainment Centre which was opened in 1988. The community continued to seek fulfilment of this goal and council's project chronology demonstrates the community continued interest in this goal.

4.3.1 Project Commences

Council at its Ordinary Meeting on 30 March 1999 resolved to continue planning for a regional cultural facility. Council had already provided for the Stage 1 Cultural Facilities study in its budget.

Resolved: (Gilbert/Harrison)

- 1. That in planning for arts and cultural infrastructure needs of the Hastings and in particular, in developing a regional cultural facility for the visual and performing arts, the following three stages be undertaken:*

Stage One – 1999/2000. Hastings Cultural Facilities Study. Undertaken as part of the Open Space and Community Facilities Study – a background study and document for the Section 94 review.

Stage Two – 1999/2000 Project Detailing & Brief Development. Undertaken to refine and detail the requirements for a regional cultural

centre and develop the brief for a full project planning stage.

Stage Three – 2000/2001 Full Project Plan. Undertaken to detail how a regional cultural facility could be built, maintained, funded, staffed, managed, programmed and marketed.

2. That \$5,000 is included for consideration in the 1999/2000 Management Plan for Stage Two outlined above.

Therefore, the Commissioner agrees with council's view that there was community support for a cultural centre within the Port Macquarie Hastings area. The then council in 2000 and its community appear to have endorsed council's desire to build a facility at least equivalent to the Manning Centre and there is no substantial evidence that the community was dissatisfied with the concept of such a project.

The project although only in concept phase appears to be under control and would likely satisfy this Inquiry's Terms of Reference.

FINDINGS

- The Commissioner agrees that in year 2000 there was community support for Council to develop a cultural centre within the Port Macquarie Hastings area.

4.3.2 Council Corporate Bodies Control of Information

As demonstrated in the transcript of evidence of the Mayor, General Manager and Director, Community Development the Council corporate body has a very restrictive view of what role the elected body can have in overseeing the process. Their view seems to be Councillors approve policy and receive advice from Council staff on its implementation. The memo from Bernard Smith to Council sets this out and is as follows:

“A number of queries have been raised by Councillors regarding the operational implementation and management of the Glasshouse building contract.

A clear delineation needs to be made between the roles and responsibilities of the Council and Council’s engaged Project Managers. Council is responsible for approving the project as well as approving construction contracts and funding. Operational implementation regarding the Project, its ongoing management, day-to-day decision making etc. is the responsibility of the Project Managers in conjunction with Council staff.

The provision of day-to-day operation details is not appropriate to Councillors in these circumstances. Notwithstanding this given the nature of the projects and the high level of interest it is appropriate that Councillors receive a detailed update on the project on 3 monthly intervals, outlining the status of the project and any significant issues. This level of reporting will be greater than Council has implemented for any other project.

Should you wish to discuss the matter please do not hesitate to contact me.”

For routine matters this is correct but in the case of the Glasshouse Project where there is a history of cost management failures and scope changes this is too restrictive. Such a restrictive approach in the view of the Commissioner would deny Councillor’s their ability to perform their duties.

In the case of the Glasshouse and the current Councillors once Council approved the project as put to them in the 2 June 2004 Workshop it became operational. Information provided at that Workshop was designed to achieve approval and centred around

information provided by internationally recognized consultants employed by Council.

Interestingly there is much evidence showing the bulk of Councillors had issues with the details of the Glasshouse project such as the location but not the concept, but all appear to have been sold on the detail at that workshop and unanimously supported it (in the case of a few Councillors with some minor reservations)

The workshop did not appraise Councillor's of previous lower cost alternatives, particularly those which included substantial commercial opportunities.

The concept designs developed by David Hanly in May 2000 (**A-38**) and Powell Dodds and Thorpe in 2001 (**A-39**) appear to meet community expectations and appear affordable and fit for purpose. Interestingly both architects did not require heavy vehicle access via Hay Street and did not require the Ritz Arcade to be acquired and demolished. Neither of these solutions were discussed at that workshop or any other serious alternatives. This workshop did not consider for example the proposed development put to Council in late 2002 after Deutsche pulled out on 19 August 2002.

FINDINGS

- Council corporate body has a very restrictive view of the role the elected body can have in overseeing the process utilized to deliver the Glasshouse project. Thereby, denying Councillor's the ability to perform their duties.
- The information supplied by the corporate body to the new Councillor's Workshop on 2 June 2004 was incomplete.
- Councillors at the workshop were not appraised of the lower cost alternatives endorsed by the previous council.

- Councillors at this workshop were not advised of the opportunities forgone by the removal of the retail shops fronting Hay Street.

4.3.3 Post Joint Venture and Impact of Ritz on Project

With the demise of the joint development proposal of Deutsche the project became a council run project. Prudent project management requires that decisions which impact on a project should be adequately addressed.

As an example council's decision to have the architect TZG turn the theatre 90° and develop a major façade fronting Hay Street varies significantly from the initial project. These decisions have obvious implications for vehicle access and impact on Ritz Arcade as well as increasing the façade and foyer cost (iconic building).

No evidence has been provided to demonstrate that Council considered the financial implications of this decision or the operational issues it caused. The evidence provided in council's documents demonstrates that council at this early time was aware of the impact the building would have on the amenity of the Ritz Arcade and their flats.

(Refer to chronology both within Council's submission and this report.)

After giving due regard to Council's responsibilities regarding fire risk as outlined in their submissions it was disturbing to hear the evidence provided by the owners who addressed the Inquiry (refer to transcripts).

Their evidence demonstrated their willingness to comply with the Council's request (Order) to remedy the building's fire risk only to be told after some months not to bother to fix the building as the Council are now going to acquire it.

Perusal of the evidence could lead to a conclusion council had recognised its need to acquire this building so as to build the original Glasshouse footprint. At the time it chose to serve its final notice regarding fire prevention 19 August 2002 (Sic: the initial site inspection by Deutsche architects advice to the General Manager on 25 September, 2001 of the problem and David Pensini on a council action plan dated 24 August, 2001 reported the problem to council management). Council management was aware of the need to acquire the Arcade. Councillors became aware of the problems with building to the boundary of the Ritz Arcade at a workshop in April 2003, which of course raises the question why it took so long (20 months) for Councillors to be advised of the difficulty with the Civic Centre site.

FINDINGS

- Councillors were not appraised of the alternative design facing Clarence Street thereby being unaware of the ability to remove the danger of heavy vehicle(s) accessing through a piazza in Hay Street.
- Councillors were not advised of the increased cost associated with earlier decisions made by the senior staff between 2002 and 2004.
- Councillors were not formerly advised that council management were aware of the constraints of the Civic Centre site due to its impact on the amenity of the Ritz Arcade flats.
- Councillors were not formerly advised that the owners of the Ritz Arcade were willing to comply with Council's order to remedy fire risks

commercial component, cost becomes less important, community involvement moves to project implementation i.e. operational.

Since 2002 the project has been under the direction of the current General Manager and professional consultants and later with the assistance of Mr Milburn.

It is interesting that the only project scrutiny is provided by the General Manager and Mr Milburn. The Financial Director ensures funds are available and has no role in satisfying Council that the budget is achievable or is value for money. This scrutiny role rests solely with the General Manager.

As Councillors Intemann and Harrison attest, questions on budget detail or project management were considered operational and the responsibility of staff. Interestingly even the External Audit Committee chose not to be involved.

How project management was exercised:

Prior to 2000	Council working parties
2000 to 2002	Cultural Facilities Taskforce consisted of: <ul style="list-style-type: none">• Mayor• Deputy Mayor• General Manager• Director, Community and Recreational Services• Cultural Development Officer
2002 to 2004	General Manager and senior staff
18 October 2004 to Now	Project Control Group <ul style="list-style-type: none">• Mayor• General Manager

- Acting Director Community Services
- TZG Architect

(Council in its evidence to the Inquiry has advised the Mayor was more an observer in the Project Control Group but the evidence the Inquiry has seen does not support this view)

For Council to have exercised prudent project management regarding the planning and development of the infrastructure project known as the Glasshouse Council would have needed to demonstrate that it made decisions after evaluating their financial and operational impact. The evidence demonstrates that Council wrestled the project out of Deutsche's control and then focussed on building an iconic building with a piazza between the Glasshouse and the Garrison Building.

FINDINGS

- The evidence demonstrates that Council in 2002 wrestled the project out of Deutsche's control and then the Council focussed on an iconic building with a piazza between the Glasshouse and the Garrison building
- Councillors were not given an opportunity to manage the change in the Project .
- Councillors were not provided with costed options for them to exercise their functions.
- Councillors were misled that the project was fully funded and the operational cost would not impact on other services.
- Councillors were provided with a divisive supporting argument relating the money spent on Parks and Garden, Sport and alleged Council's previous underfunding of the arts.
- The elected body did not demand staff to provide sufficient information to make a considered decision.

4.3.5 How the Project Developed

From a time viewpoint the project was at its **first significant milestone** when Council at its meeting on 11 February 2002 agreed to enter into a Heads of Agreement with Deutsche to build a theatre and regional gallery fronting Clarence Street at a cost of less than \$7 million which included the \$4 million Deutsche put into the venture to pay for a commercial interest in part of the Council owned Civic Centre site (Resolved: Campbell/Drew)

The **second significant milestone** occurred at Council's meeting on the 11 November 2002 when Council resolved:

1. That the Development Application be lodged for the Port Macquarie Regional Cultural Facility on the existing Civic Centre site in Port Macquarie subject to (2) below:
2. That Council hold a workshop to look at issues comparing the criteria in the brief with the facilities planned in the DA and this being held prior to the lodgement of the DA.

The report to Council identified *“stakeholder consultation had occurred with a range of groups, including the Art Gallery Advisory Board and members and representatives of local performing visual arts groups. Extremely positive feedback was received from these groups, as well as, constructive comments which will be taken up as part of the detailed development phase.*

The design and development phase is drawing to a conclusion.....”

These statements would normally demonstrate a project on the way to construction subject to a fine tune and funding package be put in place. (The resolution was resolved by Intemann/Morton)

The **third significant milestone** occurred with a confidential report to a Councillor Workshop on 7th April 2003 where Council staff finally identify that for the Cultural centre to be built the Ritz flats on top of the Ritz Arcade will need to be sealed and preferably demolished. At this stage the Ritz Arcade is not required for the ACE building. Council in the report refers to compulsorily acquiring the Ritz Arcade for redevelopment into a building which would be of benefit to the CBD. This statement demonstrates Council's lack of understanding of the "Compulsory Acquisition Legislation" at this time.

Although there has been a number of Council Workshops and meetings the **fourth significant milestone** was when Council decided to compulsorily acquire the Ritz Arcade. This occurred at a Council meeting on 21 June 2004, some fifteen months after the previous significant milestone.

Council resolved that application be made to the Minister for compulsory acquisition of the Ritz Arcade for "community, cultural and entertainment facilities and property development purposes" (Resolved: Mayne/Johnston)

The **fifth significant milestone** occurred at an Extraordinary Council Meeting on 28 June 2004 when Council unanimously supported a Development Application be submitted for the Cultural centre on the Civic Centre site (Resolved: Drew/Mayne).

This meeting is also significant as Mayor Drew moved from the floor to incorporate the Ritz Arcade site into the Cultural centre footprint. This now made the compulsory acquisition legal.

The **sixth significant milestone** is when a motion was put to cap construction cost at \$25.42 million (Resolved: Sharpham/Prussing)

The **seventh significant milestone** occurred on 19 December 2005 when Council approved the demolition contract (Resolved: Mayne/Sharpham).

The **eighth significant milestone** occurred at a Council meeting on the 19 June 2006 when Council rejects construction tender and decides to re-tender.

The **ninth significant milestone** occurred when Council on the 6 November 2006 rejected the Department of Local Government's request "to defer entering into contracts relating to ACEC" and at same meeting approved 11 FTE's staff to operate ACEC.

The **tenth significant milestone** occurred when Council awarded construction to Hansen & Yuncken on the 18 December 2006.

Reviewing the above significant milestones demonstrates to the Inquiry that Council's Corporate Body and elected body have been determined to build a major theatre on the Civic Centre site. This commitment began with the previous Mayoral team in 2000. The Port Macquarie News in its edition Monday, 31st January 2000, reported the new General Manager's his commitment to the project. The General Manager's commitment has continued under Mayor Drew. Mrs Cohen's referral to a runaway train is very apt to describe Council's project management style and process council adopted.

Consideration of the above milestones and the chronology at Section 3 or the chronology within Council's submission does not demonstrate that since 2002 Councillors ever seriously considered the need to exercise control over the project and particularly the changes to its scope.

The Inquiry recognises that Council staff in consulting with professional uses listened to their advice but does not see where their advice was tempered by financial reality.

Council had plenty of opportunities to review the project with the broader community but their actions demonstrated that the Glasshouse would be built whatever the cost.

In summary the Commissioner considers the Council has failed to demonstrate prudent project management. When one reviews Council's Right of Reply as presented by Mr Miles it is difficult to see the current Council learning from its past mistakes.

FINDINGS

- Council since 2002 has not exercised control over the changes to the project scope for the benefit of Port Macquarie Hastings community.

CONCLUSIONS

- Council represented by both the Councillors and staff have failed to demonstrate prudent project management.
- When one reviews Council's Right of Reply as presented by Mr Miles it is difficult to see the current Council learning from its past mistakes.

4.4. IMPACT ON COUNCIL'S ABILITY TO DELIVER OTHER SERVICES

4.4.1 Financial History

Council through its financial and programs management process has the ability to decide what and when a certain work will occur. This process effectively allows council to direct resources to a specific project without identifying what projects have been cancelled or deferred. In 2004 Council recognised a serious backlog of work and sought and gained a 22.71% special rate variation on its general fund. In 2005 Council gained a further special rate increase of 7.54%.

The evidence provided by recurring Council reports regarding the Cultural Centre demonstrate that prior to the Joint Venture proposal in 2000 Council was mindful of the difficulty in funding such a project.

During the time of the joint venture with Deutsche the only indication of financial impact was by Mr Milburn's critical comment that the project was too much Deutsche's way to the disadvantage of council.

The following may provide an insight into Council's approach to this project and its cost:

- A. When Deutsche pulled out in late 2002 (Council meeting 11.11.02) Council stated it could afford a project which required Council to service a borrowing of \$5M. Balance of project cost to come from other sources of funds.
- B. Council meeting 11 August 2003 project now \$14 million requiring council to borrow and service a loan of \$9 million. Councils comment: financial model has provided for this expenditure.
- C. Council meeting 28 June 2004 project now \$15 to \$20 million requiring council to borrow and service a loan of about \$11 million.

Council comment: Council can afford because of good work over preceding four years.

D. Council Meeting 24 May 2005 project now \$28.45 million.

Council's comment: cost included in the current Draft Management Plan

E. Council Right of Reply submission "Financial Capability"

"The evidence provided to the Inquiry through its detailed written submission to the section 740 as well as the oral evidence presented by Tony Leahy, Mr Bernard Smith and Mr Craig Milburn gives a clear picture of Council's responsible approach to its overall financial planning and its specific planning for the Glasshouse project. All measures indicate that the organisation is maintaining a sustainable approach to its financial responsibility."

F. Council's Right of Reply Submission " Adjustment in Works Program"

"Annual adjustments in the Rolling Works Program (RWP) of any Council are a common occurrence. Projects are brought forward or delayed due to a number of factors including external environmental influences; changing community priorities; economic downturn (for example section 94 developer contribution); cost escalations; more detailed plans and estimates. The formal structure for these matters to be addressed is in the annual budget process and quarterly reviews undertaken of the budget.

Port Macquarie-Hastings Council, like other council's in NSW regularly reviews its priorities for its works program and any review of the RWP over recent years will reflect changes to the program brought about by changing

parameters already mentioned with projects changing, moving forward or delayed and budget allocations adjusted.

The Inquiry in reviewing Councils RWP should not and cannot, attribute at face value changes to the RWP to the Glasshouse.”

Council has commented on a number of occasions that it is in a sound financial position and considering the evidence of Mr Leahy this is probably correct. Council can manage with the funds available within the General Fund particularly since it gained approval for a special rate variation in 2004. But this is not the question in this Terms of Reference which states what is the impact of the Glasshouse project has on its other essential programs. We should not forget in 2004 Council identified its backing of essential works to the community and the Minister and the Glasshouse was only one component of that justification for an increase to the general rate.

The cost of the Glasshouse to the residents of Port Macquarie-Hastings encompasses not only the cost to construct and fit out the building but also the ongoing cost of operating the Arts Conference and Entertainment Centre (ACEC). Council has maintained in its submissions to the Inquiry and throughout its evidence during the hearings that the cost of the Glasshouse has been included in the financial model for a number of years and will not impact on Council's services or projects. The issue is whether or not Council took into account all associated costs of the construction and the ongoing operation of the Glasshouse when assessing its ability to fund it.

During the hearing process, a number of Glasshouse supporters referred to the previous Cultural Centre as a white elephant of little use to the community. This leads me to the following letter from

Mr Hill to the editor of Port Macquarie News and published on 17 November 2006.

In referring to the Glasshouse, Mr Hill says *“In considering the purchase of an elephant, especially a white one, any prudent buyer would consider the cost of feeding it, since elephants consume a prodigious amount of hay. The available evidence indicates this elephant will be particularly hungry.”*

When considering any purchase with ongoing costs, a purchaser would consider all associated costs.

Despite Council’s evidence that the Glasshouse project has been included in financial modelling since 2003 and the building appeared in Council’s 10 year rolling works program from 2003/04, there is no evidence before the Inquiry that council took into account all costs of the centre, both current and future or how they addressed the escalating costs of the project.

Since the inclusion of the Cultural Centre in the Rolling Works program in 2002/03, the cost of the ACEC increased from \$7,000,000 to \$40,700,000. An increase of \$33 million over 6 years would necessitate changes to priorities within the rolling works program and the need for additional funding.

In June 2004, Council sought a special variation to increase its general income on a permanent basis by 22.71% to fund an infrastructure shortfall amounting to \$144 million. In its application, Council stated:

“Council over recent years has undertaken a major review of the current and future needs of the community in the following areas:

- *Roads;*

- *Open space and recreational facilities; and*
- *Community and Cultural Facilities.*

These major reviews have formed the basis of Council's developer contribution plans and have highlighted the current significant shortfall in the existing communities ability to fund its proportion of scheduled works."

Outcomes

The following are some of the major outcomes to be delivered by the proposed rating increase:

Roads

- *Increase road capacity to meet existing demand and growth requirements*
- *Ring Road construction*
- *Major arterial road upgrading*
- *Provide for timely asset replacement of infrastructure*

Parks & Recreational:

- *Provide new major regional recreational facilities to meet existing demand and growth requirements*
- *Upgrade aquatic facilities*
- *Provide athletics facilities*
- *Upgrade Regional Indoor Stadium*
- *Provide covered grandstand for Regional Stadium*

Environmental Management

- *Acid Sulphate Soil Remediation*
- *Urban Bush land Reserve Projects*
- *Kooloonbung Creek Restoration Works*

Improve general infrastructure to meet current community service standard expectations

Social & Cultural Infrastructure

- *Provide for social and cultural infrastructure to meet current community demand*

- *Performing Arts Facility*
- *Increase number of community facilities*
- *Meet demand from specific sectors for purpose built facilities”*

The Minister approved an increase of 19.1% above the rate cap of 3.5% providing Council with additional funding of \$3,902,058 per annum over and above the 3.5% rate cap amount.

In 2005/06 the Minister approved a further increase of 7.54% (4.0% above the rate cap of 3.5%) for PMHC, adding an additional \$1,034,823 to the general fund per annum to fund the backlog. In support of the application for the special rate increase, Council again listed the above stated major projects.

In June 2004 when the first application for a special rate increase was lodged, the estimated cost of construction for the Performing Arts facility was \$15-20 million (Ref: Council paper – Cultural Facility - Councillor Workshop 2/6/04). Currently the total project cost stands at \$41.76 million (up by \$1m from that quoted by Mr Leahy on 24/10/07 (Transcript - p173).

In the absence of evidence to the contrary, the Commissioner has assumed that a significant portion of the funds raised through these special variations will be used to part-fund the construction of the Glasshouse and fund the ongoing cost of its operation.

FINDINGS

- Despite Council’s evidence that the Glasshouse project has been included in financial modelling since 2003 and the building appeared in Council’s 10 year rolling works program from 2003/04, there’s no evidence before the Inquiry that Council took into account all costs of the centre, both current and future or how they addressed the escalating costs of the project.

- The Inquiry considers that a considerable portion of the special rate variation of 2004 and 2005 granted to overcome a backlog will be utilized on only the Glasshouse project.

4.4.2 Impact On Other Projects

The Inquiry has received a number of submissions and heard evidence during the hearings expressing concern that other projects would be deferred as a direct result of the increases in the cost of constructing the Glasshouse and its ongoing operation.

Tony Leahy, Director of Corporate and Business Services stated in his evidence *“If there are other projects that are of lesser priority, they can be deferred”* when asked about funding cost blowouts on capital projects. (Transcript 24/10/07 p167)

Mayor Drew in his evidence stated that works would be put back due to the increased costs of the Glasshouse. (Transcript 25/10/07 p 373 – 374)

Unfortunately analysis of Council’s rolling works program does not provide an understanding of the likely impact of increased construction costs on other projects due to the ongoing changes within Council’s Rolling Works program.

This is confirmed in Council’s Submission in reply *“The Inquiry in reviewing Council’s RWP should not and can not, attribute at face value changes to the RWP to the Glasshouse.”* (SUB # 801 p 27)

Unexpected increases of over \$1 million for theatre equipment, as reported in the Port Macquarie news on 23 January 2008, puts even more pressure on Council’s budget. Council confirmed the increase at \$1,066,718. As this is unplanned expenditure and Council has limited funding with predetermined revenue fixed by rate pegging and increasing debt due to borrowing approximately \$31.6 million for the

Glasshouse project, it is reasonable to assume that the funds will be found to ensure the Glasshouse opens on time, even if this results in a delay of other projects while other avenues of funding are pursued (refer closed council meeting paper – 21/1/08 **A-42**).

As demonstrated by Council's justification for the special rate variations, funds are extremely limited. The increases in the cost of the Glasshouse over the past 6 years will have impacted Council's ability to fund projects. Borrowings need to be repaid with interest and this will have a long-term effect on Council's funding of other projects and services.

FINDINGS

- The Council's Rolling Works Project allows the increase in the Glasshouse costs to be accommodated without identifying the affect on the other essential projects.

4.4.3 At What Cost

Council's operational budget was detailed in *The Glasshouse Arts Conference and Entertainment Centre Operating Budget(s) and Operational modelling for 2008-2009 and out years* which was supported by the PMHC *Business Plan 2007/2008*.

In 2003 Council estimated a subsidy of \$500,000 would be required to support the operations of the ACEC. In its submission to the Inquiry (Sub 605 p90) Council states: "*an amount of \$500,000 was first included in council's operation budget in 2003 to cover the operational subsidy for the facility and to allow Council to include the operations of the facility in its financial modelling.*"

It is interesting to note that the estimated operating deficit (Council subsidy) is still \$500,000 despite substantial functional changes and increased building and equipment costs.

The Commissioner has not seen any evidence that demonstrates the subsidy has been reviewed to accommodate significant changes to the project. Specifically there is no evidence that the static operating loss of \$500,000 was ever queried by councillors.

At the request of the Commissioner, Stephen Lonie, a management consultant with experience consulting to the arts sector and involved in the review of the operations of many performing arts organization, (refer Transcript P1487) prepared a report, in part, on his assessment of the projected events schedule for the proposed facility and resultant income projections (Moreton Bay Management Report to Commissioner – Dated 30 November 2007 **A-43**)

With regard to council's income projections, Mr Lonie's conclusions included the following:

- *“the income projections were not adequately supported by the information contained in the Council's Section 740 Submission, Business Plan or Operational Plan and Budgets.” (p.10).*
- *“The generation of the income estimate for actual performances of \$292,000 (Touring of 20,000 + Local production of \$12,000 + Subscriptions of \$260,000) appears achievable in a particular year” but with riders relating to the centre's future offerings to the target population and the community's actual support for the events program. (P.11)*
- *“In its initial start up years, this venue will have the capacity to attract these performing arts organisations, but at a risk, It will only be after a few seasons that the local regional market's appetite for the performing arts will be tested and become evident.” (P.12)*

Mr Lonie also raised concerns regarding the sustainability of projected income for grants, sponsorship, donations, general,

merchandise and retail in the long term. While Council has already exceeded its Sponsorship budget for the next three years and is working towards meeting the grants budget, it will need to work hard in future years to maintain these levels of support.

The Commissioner notes council's view of Mr Lonie's report, but considers Mr Lonie's report credible. (Report to Commissioner – Dated 30 November 2007 and attachment)

Ms Bronwyn Edinger was identified as an expert in performing arts and has a long association with providing advice to Council on this project. Council called Ms Edinger as an expert witness at the Inquiry hearing of 13 November 2007. The following is part of the transcript of her evidence:

Ms Edinger being questioned by Mr Broad

Q. The theatre that is being built here at Port Macquarie, in your view what would be its closest comparative? What other theatres would you see as probably being comparable to it?

A. I should contextualize the comments probably by saying that the majority of my background is theatre rather than music, and I have run a number of producing companies, Black Swan as well venues. It's hard to make a comparison in that this building will be a state of the art venue, and over the years other venues in regional Australia have had to make compromises or they have not been maintained sufficiently enough. So that even if they were state of the art when they opened, their quality has eroded since then. I think that this building essentially is a benchmark in how original venues should be constructed and, as far as I know, complies with the benchmarking document from the Victorian Association of Performing Arts Centres, which is largely used across the country as a benchmarking document.

Q. You just mentioned quality being eroded. How does the quality of a theatre erode?

A. A number of theatres have been built around the country without an understanding of the repairs and maintenance requirements of those venues. A good example was I ran the Illawarra Performing Arts Centre in Wollongong for some years. For something like 12 years, no substantive repairs and maintenance had taken place and therefore it got to a stage where it was tired and needed a revamp and needed certain upgrades to take place.

Q. What sort of upgrades are we talking about? Are we talking about the theatre seating having to be replaced? What does erode?

A. Like any public building or any public facility, wear and tear over time takes its toll. It depends on the particular fit out of each theatre as to how quickly those things erode. But like in any public building, whether it's a shopping centre or a theatre, the components of an air conditioner, for example, need to be replaced after maybe 15 years. I should preface this by saying that those repairs and maintenance are not where my expertise lies, but in running venues generally, after a certain amount of time, especially if you're a successful venue, you will eventually have to either reupholster or replace the seats, and it depends on how successful a venue you are as to how soon that happens.

Questioning by the Commissioner:

Q. Sorry, I didn't mean to say that in that way. The Opera House is extremely relevant and I know they spend many, many millions of dollars in maintenance refurbishment programs every so many years, huge amounts of money. What I am interested in the Illawarra one is what is the situation there, what sort of things do they have to replace and what sort of costs are we talking about?

A. *Right. As I said, nothing significant has been spent on building for something like 12 or 13 years, and I think the first major project at that point was the refurbishment of their foyers, replacing carpet and painting and issues like that. Also it is dependent upon how successful your venue is because the more successful it is, the more wear and tear and the more you need to replace things. It will change for every venue, depending on the fit out because it depends on the quality of the fit out, to start off with. A cheaper fit out in a successful venue will lead to the need to replace it more quickly. It's hard to make a rule of thumb about what needs to be replaced at what stage.*

This evidence establishes the benchmark quality as per “Oh What a Beautiful Stage” the building and the need to maintain the building to its original standard.

Ms Edinger being examined by Council’s Barrister Mr Dawson

Q. You are aware there are a couple of issues in respect of the Glasshouse project. The first is the CBD location. Have you anything to say about the importance or otherwise of the Glasshouse being located in the CBD?

A. *Absolutely. I think the Council is to be congratulated for such a terrific position. Many regional theatres struggle with the issue they are out of town and therefore out of sight and out of mind and from a number of points of view the site is ideal. From a philosophical point of view, which I am more interested in, is the fact that it plants culture and arts clearly as part of every day life rather than something that is elitist or other. But from a marketing and operational point of view it is excellent. You get free reinforcement of your marketing every time someone walks past the front door. It also means that theatre patrons can take advantage of restaurants and other eateries around the area. There is a lot of economic theory based on Charles Landry and*

Richard Florida about creating communities and how the attraction of people with innovation is built by creating exactly those environments and how communities can economically grow through those combinations, so operationally I think it is a terrific zone.

Q. I think the Glasshouse you referred to as a benchmark facility. Is the quality of the facility important to attracting productions to the theatre?

A. Absolutely. The functionality is very important because you won't be able to take certain productions if you don't have - if the theatre does not have certain functions, for example, the fly lines. There are productions that won't choose to come here or can't be played at the theatre because it does not have that functionality.

Q. To make some comparisons with the theatre at Taree, how do you compare that facility? Are you aware with that facility?

A. Yes, I am, in terms of I have sent productions to Taree. I have dealt with the organisation in a business level and I have dealt with producers who have been there. Taree does a great job within their parameters, but that is very limited parameters. They struggle with the fact that they are out of town and also with the fact they have limited functionality, limited equipment.

There are a number of productions that can't go there because the functionality is not there and there is also an issue about the training of high quality technical staff and also number of technical staff. While I don't want to detract from their efforts, Taree misses out on a number of experiences because the venue is not equipped to take them.

Q. There has been criticism that the Glasshouse is being elitist. How can that perception be overcome in the programming,

firstly, and, secondly, does the draft program in your view overcome that problem?

A. *It is an easy tag to put on an arts organisation because it wraps up a whole lot of stereotypes. But in fact the programming of the Glasshouse demonstrates that it has work available for families at very low accessible prices, it has work available for older members of community at prices they can afford, and even talking about the general public, some of the shows have a very strong public appeal so I think the community here will embrace it very strongly.*

Q. Returning to risk at the moment, I understand productions, at least some national productions, have government funding?

A. *That is right generally.*

Q. And can you explain how that government funding works?

A. *There are essentially two areas of government funding State funding and Federal funding. They often intersect and the way the funding works is that funding is applied to the touring costs, touring cost being accommodation, travel, per diems, travel allowances, those sorts of things.*

The rationale behind it is that regional people should be able to access arts product for similar prices as you can in CBDs in Sydney or Melbourne, or Perth for that matter, so producers sell off their show, if you like, for the cost of the production but the costs of getting it to the venue are subsidised by government funding.

This evidence establishes the role of the location for its use as a theatre staging major shows such as those presented at the Opera House. Comparisons are drawn with the Manning Centre at Taree and its location

Mrs Edinger being questioned by the Commissioner:

THE COMMISSIONER

Q. You just referred to government funding for touring programs. It was an interesting comment about Taree, and for those who have been here, I am not a great fan of theirs but it does work. Interestingly, you said that Taree misses out?

A. Yes.

Q. What sort of programs do they miss out, touring programs that are funded and supported? Can you give some examples?

A. *The difficulty is that the program works in a way where a venue will put up their hand, or ask for a particular show to be delivered, knowing the technical specifications of that show. So what it means is that there are a whole range of shows that Taree can't ask for because they don't have the basic prerequisites. It is hard to hypothesise what the venue manager there might have asked for if he had the technical requirements but, for example, they can't take - manage shows from the State Theatre Company, the Sydney Theatre Company. People in Taree can't take the main State shows because the technical requirements of that company are higher than Taree is able to provide.*

Q. Do they attract touring support?

A. *Touring support is funded through touring bodies rather than to the specific venue. So after the tour, the touring body will put in a funding application based on an itinerary for it to receive funding support. Government committees base their decisions on what venues are on the itinerary and the cost effectiveness of the itinerary, but the funds don't flow to individual venues.*

Q. What shows that are attracting financial support from one level or another of government, whether direct to companies or the venue, is this venue going to attract which Taree can't?

A. Sydney Theatre Company.

Q. And they get support?

A. *Yes, absolutely. This venue is designed to be able to take any show that may be offered for tour on that touring circuit, so that would range from dance, theatre, some contemporary music. The functionality is there for the venue to program whatever it decides it has the where with all to manage.*

Q. Two questions, then: what is the likely cost of tickets for those kinds of shows? Are they within the gambit which Craig has put up for these or are they \$80 or \$60 or \$40 tickets?

A. *It depends on the venue's pricing policy for each show and how they approach their subscription season. It also depends on their programming philosophy. Some of the shows that may be available for touring - because in any one program you are only programming a small number of the entire available shows for touring and you program them according to the level of risk you can take and the level of audience that you think you can achieve and that, with the ticket price, operates together to assess that risk in terms of finance. So there is no reason that the venue cannot program any of those shows we have talked about.*

It also depends on the rest of the touring program around it, cross-subsidies for shows and those sorts of things, and most venues have a standard set of ticket prices for their subscription series and they are the same costs for all shows in that series.

Ms Edinger addressed how government funding assists with the touring companies, the location of the Manning Centre and ticket pricing are subsidised.

Due to the significance of Ms Edinger's evidence and the importance the Manning Centre had in establishing the Port Macquarie-Hastings Council aspirational goal for a performing arts theatre the Commission of Inquiry tested the evidence by seeking advice from the Manning Centre Management.

The Centre Manager responded formally to the Commissioner on 25 January 2008 with up to date evidence. Quoting from that letter:

"The Manning Entertainment Centre was upgraded with a fly tower in January 2005 with the support of community donations of 60% of the cost since that upgrade the Centre is able to take on "A Grade" touring productions."

The Centre Manager also stated:

"the theatre can accommodate shows from the Sydney Theatre Company and the State Theatre Company not that we have purchased any if they ask for \$40,000 per performance, plus royalties (say 16% of the box office) plus eight staff to bump the show in over two days and then to bump it out, at night, & after the performance. After doing the figures I find I would not be able to justify over \$120 per ticket price for the Manning Theatre goers." (ref Letter from Manning Centre in attachments).

FINDINGS

- The Inquiry considers the \$500,000 subsidy has not been updated to accommodate significant charges and cost increases within the project.

4.4.4. AA Grade Venue Issue Or Financial Risk?

Ms Edinger, in her evidence (transcript p 756) stated that:

“ Manning can't take – manage shows from the State Theatre Company, the Sydney Theatre Company. People in Taree can't take the main State shows because the technical requirements of that company are higher than Taree is able to provide.”

Council, in its Briefing Note No.56 in response (ref 3) to Mr Lonie's report refer to the need to achieve a AA rated venue to purchase certain shows. It states:

“There are none in this region.” (P.2)

and goes on to say:

“Without an AA grade venue productions coming from companies such as Christine Dunstan and Hit Productions would not be able to perform at Port Macquarie.”

This is very interesting given that the Manning Centre, while not considered to be a AA rated venue by Council, has booked three HIT Production shows for 2008, including 'Menopause the Musical' which is also showing at the Glasshouse.

It is apparent to me that Port Macquarie-Hastings Council may have concluded that the Manning Centre has not booked shows from companies such as The State Theatre and the Sydney Theatre Company because it does not have a AA rating or the required technical capability, rather than considering that they are aware of the financial risks associated with such shows and the impact on ticket prices and their operating budget.

This financial risk associated with entrepreneurial performances is in itself a concern for a venue, however add the need for a:

'few significant performances each year to generate revenues to underwrite the ongoing operations of the business' (Lonie)

and that risk is magnified.

FINDINGS

- Port Macquarie-Hastings Council is unlikely to have fully appreciated the financial risk of staging shows from Sydney Theatre Company.
- The Manning Centre to stage the same Sydney Theatre Company shows is required to charge up to twice the Glasshouse ticket prices even after running a lower cost operation.

4.4.5 OPERATING EXPENSES

Ms Edinger also queried some aspects of the operating budget that appear not to have been adequately assessed by council. One such matter is that of merchandise income at \$30,000, a concern supported by Mr Lonie.

Ms Edinger commented:

"Merchandise income seems very high. Unless the show is something like a commercial comedy, it is unlikely that you will sell terribly much merchandise.... Unless you are the Sydney Opera House and expecting a lot of tourists, don't be too optimistic about selling your own merchandise."

Council's explanation to support the estimated merchandise income (Ref: Briefing Note 47 p.5) was:

“Current Gallery merchandise is net \$25,000 (from a much smaller retail space).”

The Commissioner considers from this response Council has not fully investigated and analysed the likely returns from theatre merchandising which would be markedly different to Gallery merchandise or has taken into account the advice that was offered by Ms Edinger approximately 3 years beforehand.

Council in its Right of Reply response contradicts the evidence presented by Mr Leahy by stating Glasshouse operating budget should not include expenses provided by the ‘corporate’ areas. For example, Council’s Briefing Note 47 in response to the, Report on Glasshouse Operational Expenditure, advised on the matter of Software and IT support that:

“the replacement of computers and upgrading of software is built into the IT annual budget for the entire organisation”.

This is in conflict with Mr Leahy’s evidence of 24 October 2007:

“We have a fairly robust regime of overhead charge-out where it is based on activity-based costing principles. We use unit rates for IT, ... So whilst the cost of that service is contained and managed by the individual manager in, say, the finance area, those costs have been redistributed across the users of that service.”

In order to assess the adequacy of Council’s Glasshouse budget, other venue’s expenditure were examined. Penny Miles, Executive Officer, Arts on Tour, in her evidence on 13 November 2007 referred to the Albury Centre as a good benchmark and being of a similar budget, seating capacity, geographic location and population to the

Glasshouse. (Transcript P762 – 763). Given this, the Albury facility's operation was investigated by the Commission of Inquiry.

The Albury Convention and Performing Arts Centre does not include a gallery, but it does include a convention centre. The centre has six full time employees and one part time employee, compared to the Glasshouse with eight full time staff (excluding Gallery staff).

An analysis of Albury's operating expenses for 2007 financial year show many to be significantly higher than those detailed in the Glasshouse 2008-2009 Operational Budget Plan while other expenses were not included in Council's Glasshouse budget.

Council in treating the Glasshouse as a community facility and not a business activity allows them not to report any profit or loss on major productions.

FINDINGS

- Comparisons of the Glasshouse operating expenses with those of the Albury facility indicates the Glasshouse costs are being budgeted at a lower amount.
- Council by treating the Glasshouse Theatre as a community facility denies community and Councillors access to its financial position including profit or loss as shows.

4.4.6 Should Glasshouse Be Treated as a Business?

The Commissioner on a number of occasions attempted to obtain the component operational budgets for the Glasshouse without success. For example, Council's response has been as follows:

Ref: Request for additional Information from Mr Milburn from Commissioner

"I note receipt of your correspondence dated 4 October 2007 and subsequent email of 12 October 2007.

The following information is provided in response to the points raised:

1. You have requested a **capital breakdown in three components** – namely

- *Regional Gallery/Museum*
- *Performing Arts Theatre*
- *Conference Facility*

The Glasshouse is a multi purpose venue and the areas you have requested are just three of the uses of the building and are in fact an artificial breakdown of the makeup of the building. Other uses include areas such as education, functions and retail. I would again respectfully suggest that a full briefing on the building design and philosophy would be beneficial in developing the Commissioners and Officers understanding of the nature of the facility and its operations.

Council reiterates that in both capital and operational terms that there is no ‘conference facility’ in the building. There is a conference capacity and use but no stand alone ‘conference facility’. Therefore it is not possible for Council to provide a breakdown of the capital or operational costs associated with this element beyond what has already been provided in our submission by way of explanation of the inclusion of additional meeting rooms following community consultation and in the Glasshouse Business Plan.

1. You have requested a **detailed operating budget over 5 years** for each of the following facilities:

- *Regional Gallery /Museum*
- *Performing Arts Theatre*
- *Conference Facility*
- *Café*

As the project is a fully integrated building and all the operational planning has been undertaken in line with this high level of integration

it is not appropriate to artificially breakdown the budget to arbitrary components.

This type of integration is in line with the direction of Arts NSW and industry best practice. Council has provided a 5-year budget for the Glasshouse operations to the Commissioner in its submission (attachments 8 and 9- R-2).

Provided by

Craig Milburn

Director – Community Development “

Director, Community Development was unwilling to supply information to the Inquiry but the Inquiry was aware that in Council Report 20 June 2005 the following breakdown of capital costs were made available:

	GFA (m²)	Total Cost	Cost Per m²
Foyer	1574	6,665,757	4,229
Theatre	1142	5,159,447	4,518
Theatre Back of House	1253	3,109,717	2,482
Gallery	672	2,110,025	3,140
Gallery Back of House	396	1,233,639	3,115
Studio	155	433,049	2,794
Back of House L1	253	631,676	2,497
Restaurant	273	628,502	2,302
Conference Facilities	344	885,861	2,575
Plant Rooms	1186	2,731,573	2,303
	7248	23,580,246	3,253
Sub Totals		1,038,140	
Additional Theatre Lighting and Sound		1,846,379	
Contingency @ 7.5%			
Total	7248	26,464,764	3,651

The Commissioner has previously acknowledged Mr Milburn’s statement that the theatre was always intended to be utilized in conjunction with other commercial venues for conferences. Therefore it is probable the theatre will be used to compliment other Council and private venues.

The Inquiry accepts the Regional Gallery to be predominantly a community facility and not a business activity but does not accept a theatre designed to stage major commercial productions and facilitate significant conferences to be a community facility and non-commercial. A similar view is held about the café/restaurant.

The Commissioner, extrapolated the financial breakdown presented to Council in the previous table and developed the following, which demonstrates the significant cost of the theatre within the total cost of the Glasshouse.

Component	Current Cost
Theatre/conference centre	\$30M
Gallery	\$9M
Restaurant	\$1.7M

For Port Macquarie-Hastings Council to provide its community with a true understanding of the operating costs of the Glasshouse theatre, it needs to declare the ACEC a 'business activity' in accordance with, 'Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality' as many NSW councils operating a similar facility have done, and report on the activity in their annual financial statements (Special Purpose and Financial Reports - Income Statement of other Business Activities).

Agris Celinskis, Glasshouse Centre Director, prepared a paper, 'Response – draft Business Plan – comments and recommendations' (**A-46**), in April 2006 Mr Celinskis was well aware of the costs associated with operating a facility such as the Glasshouse and raised a number of related issues in his paper. He states:

“There is reference to recurrent operational expenditure, but experience has proven that most arts organizations heavily reliant on technical infrastructure will experience

financial problems approximately 3 years into opening due to deterioration of FF&E, particularly under heavy usage.

With rapid technological change, it is important to purchase items that will fulfill the requirements today and for at least the next 4 years. Under traditional accounting methods and depreciation schedules, accounting losses of \$1 to 4 million are not uncommon based on depreciation alone. A strategy needs to be adopted by council and the ACE for ongoing asset replacement program: otherwise it will be necessary to change business strategy to an almost commercial model in later years to allow continued operation. With a structure of \$30M at construction, it would be safe to allow for at least 250k every their year from commencement for retained funds.”

The document “Oh, You Beautiful Stage” which is Council’s benchmark document recommends that 3% of the building cost should be put aside each year for “*maintenance, plant replacement and upgrading*”. Mr Lonie presented similar evidence.

Council has no provision in its operating budget for major maintenance, plant replacement or upgrades. Yet Council estimates the expected useful life of the Glasshouse to be 30-40 years (Sub 605 p 70), presumably as being fit for purpose as a leading theatre.

Council’s Briefing Note No.56 in response to Mr Lonie’s report states:

“As the performing arts sector is constantly developing presenting venues need to keep pace with technology.”

On page 6 of this document Council agrees with Mr Lonie that:

“an AA rated facility is vital for the long-term viability of the Glasshouse and the delivery of a successful business plan”.

The cost of maintaining the Glasshouse at such a high standard is raised in many of the submissions received by the Inquiry.

The Mayor in his evidence on 25 October 2007 stated:

“We’re still going to deliver a first-class facility for today and into the future ...”

It is evident then that to maintain the building at an AA rating and continue to attract premium events and thereby sustain essential income, capital upgrades and maintenance will be essential.

The ‘Report on Glasshouse Operating Expenditure’ commissioned by the Inquiry and presented at the hearing by Mr Broad on 13 December 2007 highlighted the fact that the Glasshouse budget did not include an expense line for asset management as per the benchmark in the document ‘Oh, You Beautiful Stage – Benchmarks for Performing Arts Centres’ (P23):

“Proprietors need to implement regular, cyclic maintenance, as well as programmed capital upgrade programs. Given the speed of technological development, and increasing demands on production sophistication, performing arts centres are in particular need of regular expenditure to ensure that equipment stocks and technical infrastructure is frequently upgraded to current industry standards.”

Council’s Business Plans for 2006/07 and 2007/08 state:

‘For the ACEC to be financially responsible it will be required to maximize its income opportunities. ...’

Expenditure will also need to be kept to a minimum particularly in recurrent cost areas. Expenditure can be minimized by:- ...

- *Strategic asset management and replacement programs.”*

Despite this strategy, and Council’s assurances in Briefing Note 47 (p1) that the “Glasshouse Business / Operational Plan **was developed in line with all Council’s business plans**”, no allowance was made for asset management and replacement expenditure in the Glasshouse operational budget or in Council’s 10 year ‘Rolling Works Plan’.

FINDINGS

- Based on project cost of Glasshouse the performing arts component (theatre) costs approximately \$30 million.
- For Port Macquarie-Hastings Council to provide its community with a true understanding of the operating costs of the Glasshouse theatre, it needs to declare the ACEC a ‘business activity’ in accordance with, ‘Pricing and Costing for Council Business – A Guide to Competitive Neutrality’ as many NSW councils operating a similar facility have done, and report on the activity in their annual financial statements (Special Purpose and Financial Reports – Income Statement of other Business Activities).
- Council has no provision in its operating budget for major maintenance, plant replacement or up grades. Yet council estimates the expected useful life of the Glasshouse to be 30 –40 years (Submission 605 p70), presumably as being fit for purpose as a leading theatre.
- It is evident that to maintain the building at AA rating and continue to attract premium events and thereby sustain essential income, capital upgrades and maintenance will be essential.
- Despite this strategy, and Council’s assurances in Briefing Note 47 (p1) that the “Glasshouse Business/Operational Plan **was developed in line with all Council’s business plans**”, no allowance was made for asset

management and replacement expenditure in the Glasshouse operational budget or in Council's 10 year 'Rolling Works Plan'.

4.4.7 Annual Maintenance, Replacement And Upgrades To The Building And Equipment

In accordance with the recommendation of Council's benchmark document an annual maintenance provision of 3% to maintain the theatre at its current standards should be included in the Glasshouse budget. This is required to enable the Glasshouse to continue to present top shows. This provision is estimated at **\$1.26 million** per annum. Council has included an amount of \$20,000 in the budget for repairs and maintenance, maintaining that in the first year or so any maintenance will come under building warranties etc. However, Council has failed to take into account the need to maintain the building at its current high standard.

The Glen Street Theatre reported reserves in excess of \$1 million for asset replacement and maintenance in its 2006-07 annual financial statements.

Some technical plant and equipment can be expected to wear out within 4 years. If Council plans to maintain the high standard set for the Glasshouse, it will be necessary to replace plant and equipment, in some cases before it wears out. Additionally, items such as carpets and seating will need to be upgraded on a regular basis throughout the life of the building.

Under accounting principles, assets are depreciated as they age, reflecting the useful life of the asset. This is a non-cash expense and is considered an operating expense

Consideration must be given to these requirements within the operating budget, however, Council has not included any provision for these expenses.

4.4.8 Interest On Glasshouse Loans

The interest on loans taken out for the construction of the Glasshouse is an operational expense and should be included in the Glasshouse operational budget.

To date, Council has borrowed \$31,589,755 (Council submission 605 p.122) part fund the construction of the building (including the purchase of the Ritz Arcade site). Evidence relating to the actual interest payable per annum on these borrowed funds was not conclusive. In papers supplied by Council (see attachment) Council has estimated loan repayments (principle and interest) to be around \$3 million per annum. A conservative estimate of annual interest that will be paid on these loans is **\$1.5m per annum**. This should be included in the Glasshouse operating budget as an expense as confirmed by Mr Leahy in his evidence on 24 October 2007 (transcript p195 lines 5-7)

“In terms of where the budget resides for the interest and principal repayments ongoing, they are within the management area of that division. So in Mr Milburn’s budget he will see the principal repayment and the interest repayment in this facility for the next 20 years.”

Mr Leahy asked if interest was an operational cost as opposed to a capital cost, he replied:

“Correct”

Council’s Briefing Note 47 states

“Interest on Loans – Loans are dealt with centrally and are paid out of general rate revenue and are dissected back against each of the areas for reporting purposes.”

4.4.9 Other Budget Issues

When compared to other theatre venues, the operating budget is deficient in a number of areas. For example, the cost of consumables for the operation of the Glasshouse is low at \$3,000 when one considers the need for ticket stationery, general stationery, print cartridges and the like. In Council Briefing Note 47, council tries to explain away the cost of some consumables such as tickets by saying:

“the costs of the ticketing is built into the ticket prices adopted by Council for ticket sales. This cost is charged out at a rate of between \$0.50 and \$2.75 per ticket. This charge covers the costs associated with the ticketing. The payment of fees by credit card is built into the detailed budget costings.”

It is not reasonable to net off the cost of tickets/ticketing against the income received for tickets sold. Other than retail and merchandise, Council has not specified any other items net of expenses. Unless all associated costs are included in the budget as being an expense, the income will be overstated and the actual operating deficit understated.

Despite advice from Ms Edinger that Merrigong’s annual insurance cost was \$49,000 (in 2003), Council has only included \$10,000 in their budget. Council’s response on this matter (Briefing Note 47) was:

“This is a corporate matter. All Council facilities are insured under one policy and insurances are itemised out. The insurance policy is dissected up and charged against each area.”

The Commissioner would be surprised if the insurance on the Centre's building, plant and equipment etc is only \$10,000 per annum. The Commissioner is therefore of the view that Council has not included the full cost of insurance for the Glasshouse facility in the Glasshouse operating budget.

4.4.10 Shared Resources And Overheads

Council has not included the cost of tasks and staff resources associated with HR, IT, Payroll etc (Ref: P 20 of Glasshouse operating budget 2008-2009 – Refer Council Sub 605 PC documents **R-3**). Other venues include these expenses (in some cases they are termed 'internal charges').

Agris Celinskis has stated (reference: *draft Business Plan – comments and recommendations*):

“The business plan glosses over the finer detail of integrating intra council units and relationships within the ACEC operating scope and also budget methods and determining economies of scale. The ACEC will at times require 24/7 on call arrangement, with the most critical systems falling back to divisions of Technology/ICT, Facilities and Infrastructure units and their managers. The advent of a true ACEC in the region will bring additional demands to these council units. This will involve extra expenditure on their behalf and it is difficult to tell if this has been allowed for directly in the ACEC budget or if these individual units will do so under SLA's (Service level agreements) with the ACEC.”

While Council maintains in Briefing Note 47 that:

the Glasshouse Business Plan has been developed in consultation with a range of other similar facilities, has

used experienced consultants in cultural facility operations, has been peer reviewed and has been refined by a highly practiced and experienced manager (Agris Celinskis)”

the plan does not include those items referred to above.

Root Projects, in their document ‘Operations Plan: Strategic Directions Report’ dated 10/3/05 note the following for consideration by council:

“Resources: it has been identified that existing Council departments, IT, Human Resources, and Payroll, will require additional resources in order to deal with the additional demand on their services generated by the HCC operations”.

Council, in its Briefing Note 47 states:

“These are dealt with in the financial management system.”

While the accounting for internal charges within Council’s financial system may be appropriate, the cost, if relevant to the ACEC must be reflected in the ACEC budget. By excluding these internal charges and other shared expenses, Council is substantially understating the cost of operating the Glasshouse.

4.4.11 Future Years

Budgets for future years were compiled by adding a flat 2% on the previous year’s budget amount. (Ref: Glasshouse Business Plan 2007/2008 p9 –Submission 605). Budgeting undertaken on this basis is unrealistic as requirements do not remain static with flat increases in cost or usage. It is evident that no thought has been given to the

operating requirements in future years and consequently lacks credibility. It is also interesting to note that the undated document provided by Council in its (Submission 605 – PC 077) includes only information for year one and year five, whereas the Inquiry obtained a similar document from Council with budgets for all five years. As the documents contained different figures and were undated, no confidence can be placed on either set of Council documents.

4.4.12 What Is The True Operational Cost?

If the Inquiry assumes that Council will achieve the income that has been estimated in their Glasshouse 2008-09 Operating Budget Plan and when taking into account the estimate of expenditure that has not been included, the subsidy required to be made by Council out of its limited funding would be substantially greater than the \$500,000 continually quoted by Council.

The estimated additional expenses have been added to Council's estimates in the following table:

Income (as per 'likely' income in Budget)	\$ 687,000
Less:	
Expenses (as per 'likely' expenditure in budget)	\$1,236,175
<u>& Additional expenses</u>	
Shared resources	\$ 10,000
Insurance (additional)	\$ 60,000
Depreciation Building Plant & Equipment	\$1,700,000
Interest on Loans	\$1,500,000
3% maintenance & upgrade provision	<u>\$1,260,000</u>
(Deficit) – ACEC	<u>(\$5,786,675)</u>

When the above expense items are included in the operational budget, the resulting deficit (Council subsidy) is significantly greater than Council's estimate of \$500,000.

The above demonstrates the difficulties facing Councillors when they are provided information which is not complete. We have seen the

Capital cost spiral and noted Councillors were always advised that it could be afforded generally in association with a comment such as “because of good work over proceeding four years). Councillor Intemann questioned the level of operational subsidy and was told:

“that it was still correct”

The Inquiry has witnessed Management’s approach to what information Councillors were provided with. A number of Councillors stated they received all the information they needed or as they asked for but with such incomplete information how were they able to exercise their duties.

The Community in a number of submissions, identify projects which are not occurring and blame the increase in the Glasshouse Project for the reason for it slipping. The RWP allows staff to move projects for a multitude of reasons so the Glasshouse cannot be directly linked. A confidential submission from a Council employee referred to being told by his superior, projects were being deferred due to the Glasshouse consuming available funds, but being a confidential submission this remains an accusation.

CONCLUSION

1. Council in 2004 and 2005 needed a special rate increase to catch-up with a broad range of general fund infrastructure and maintenance jobs with the Glasshouse being but one of the projects.
2. Council revenue is controlled by rate pegging and the Glasshouse Project has required an extra \$20 million plus to build as well as a larger operating subsidy.
3. Council has never been in control of the Glasshouse costs both capital and operational.
4. Essential and discretionary services are being impacted on by the uncontrolled escalation of the cost to build the Glasshouse

5. The operations of the Glasshouse will adversely impact on the provision of works and services provided from the General Fund.
6. Considering the real cost of operating the Glasshouse the centre will require a major amount of community subsidy even if it were able to attract major shows and conferences 365 days a year.

4.5 COMMUNITY CONSULTATION

4.5.1 Introduction

Dr K Ivory, a long time supporter of the provision of a cultural centre in Port Macquarie and member of the Project Reference Group wrote of the initial meeting that laid the foundation of what was to become the Glasshouse.

(Ref: Sub 663)

The concept of a cultural centre for Port Macquarie has been close to my heart since Greater Taree City Council opened the Manning Entertainment Centre (MEC) in 1988.

On 26 May 1993 the Hastings Art Council invited the community to a public meeting with a view to 'forming an independent committee' because we believed, 'Port Macquarie deserves a venue like the Manning Entertainment Centre to cater for touring companies, conference groups and large exhibitions.' (Quote from original announcement)

What was conceived, as a comparable project in the Manning Centre does not now share the same level of community support that the Manning Centre does.

Perhaps this difference is most clearly seen in the difference in financial support that each community has shown to provide for each centre.

In a letter dated 22nd January 2008, the Manning Centre's, Centre Manager, wrote:

After the fly tower was completed in 2005 (60% of the monies to build it being donated by the generous people of the Manning) it meant that when we went to purchase productions from the various touring companies we could consider all touring productions.

This generosity followed the community's earlier fundraising efforts, when it had contributed approximately \$1.3 million towards the initial building cost of \$5.4 million, almost a quarter of the cost.

Clearly, support for the Manning Centre goes well beyond the box office.

Conversely, the Glasshouse has not demonstrated this type of support. While the Council emphasises the potential box office success that early tickets sales suggest, all of the evidence available to the Inquiry suggests that the community is deeply divided over its support or opposition to the Glasshouse.

4.5.2 COUNCIL'S RESPONSIBILITY

4.5.2.1 Council's Statutory Responsibility

Councillor Price provided the following assessment of Council's consultation in his submission (Ref: Submission 702)

"Extensive consultation has occurred over a number of years leading up to the decision to proceed with the Glasshouse. The enhancement of the design and expansion of the site were in direct response to that consultation.

I have a Certificate in Planning for Public Participation and a Certificate in Techniques for Participation and a Certificate in Communication in Public Participation from the

International Association for Public Participation. In my view the consultation process was exemplary.”

Council put in the following view in its submission:

“Council has invited community consultation at every appropriate point in this project, often having to accommodate delay.”

The role consultation plays in local government is emphasised in the stated purpose of the Act and in the Council's Charter.

The purpose of the Act include

“to encourage and assist the effective participation of local communities in the affairs of local government” (Ref: Section 7)

Under their statutory Charter councils are empowered:

“to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those facilities are managed efficiently and effectively.”

“to facilitate the involvement of Councillors, members of the public, users of the facilities and services and Council staff in the development, improvement and co-ordination of local government.”

“to keep the local community and the State government (and through it, the wider community informed about its activities.” (Ref: Section 8)

The Charter contains an important rider:

“A council, in the exercise of its functions, must pursue its charter...”

FINDINGS

- The Act anticipates that both members of the public and users of facilities should be involved in a council’s processes.

4.5.3 THE MIST CLEARS

4.5.3.1 A Joint Venture With Port Central

In August 2000 the Council established its Cultural Facilities Taskforce. Its role was to:

"initiate the detailed investigation of a major cultural facility within the general CBD area of Port Macquarie"

In November 2000 the Taskforce met the Minutes recorded:

"Form follows function – what role will these facilities play in relation to the wider community – community and economic development – and therefore what sort of space do we want them to be?"

- *Arts and cultural facilities need to be inclusive for everyone in the community and the programming needs to target a range of different groups and interests and potential uses of the facility.*

In 2001, with Port Central's joint venture proposal, the dream of a cultural facility took on a form and a reality. Council would now build the centre on the Civic Centre site.

Defacto, the site had been chosen.

The community's aspirations of a regional cultural facility had now taken a form.

Findings:

- Port Central's proposal provided the substance for the project to proceed

4.5.4 NEEDS OVERRIDE CONSULTATION

4.5.4.1 The Joint Venture

In May 2001 Council, in closed meeting, considered a confidential report acknowledging that prior to Christmas 2000 the owners of Port Central had made the proposal for the joint venture (Ref: Meeting 28.5.01)

The report stated:

Consultation

At this point in time, the matter is surrounded by a high level of commercial confidentiality and it would be inappropriate for any wider consultation to occur

By February 2002 Council had received draft Heads of Agreement for the project and had received advice from the Cultural Facilities Taskforce.

The report to the Taskforce meeting on 29 January 02 had stated:

It is desired to get formal Council agreement at its Meeting on 11 February 2002 so as to enable the matter to then progress quickly and importantly public consultation to occur.

In the view of the author of the Report, consultation would be an important element:

Consultation

Following Council adoption of the Heads of Agreement, it is vital that community consultation be undertaken. It needs to be borne in mind that consultation needs to revolve initially around the parameters and general concept of the

project as opposed to the detail. In that respect, both the Art Gallery Advisory Board and the City of the Arts Committee provide a good representation of the arts community. The Hastings Choristers are represented on those groups, although, further to those groups it will be important to involve the Port Players, as they can legitimately be singled out as a key group.

The consultation schedule is attached. The timeframes suggested may vary, however the general approach is indicated in this document.

What had been going on behind closed doors would now become public as it:

“is envisaged that the Heads of Agreement will become a public document....”

(Ref: Report to the Cultural Facilities Taskforce meeting 29.1.02)

Attached to the Report was communication strategy, that dealt with issues including:

“Why has it (sic. there) been no consultation with the community to this point?”

As suggested earlier in this part, the Council had been presented with a fait accompli. If it was successful in its negotiations with Deutsche the centre would be built.

The corollary was that to proceed meant that the Council could not pause to seek the Community's views.

In other words, consultation was out of the question. The residents and ratepayers would get what the Council could negotiate; and the time to negotiate was limited to six months.

Council could only endeavour to explain its decision through its communication strategy.

By May 2002 the Council had entered into the Heads of Agreement and was hard at work negotiating with Deutsche. While consultation was being considered it would be limited:

Public Consultation

Once we have an agreed final concept design it is believed it will then be an appropriate time to reconvene a meeting of stakeholders and undertake some form of workshop to discuss the design. Finalisation of the project delivery and financial arrangements needs to occur after the adoption of a final concept design, but prior to lodgement of a Development Application.

(Ref: Report to Cultural Facilities Taskforce 3.5.02)

FINDINGS

- The corollary to the joint venture was that the Council could not pause to seek the Community's views.
- If the Council chose to pursue the joint venture, consultation was out of the question.
- When Council chose to pursue the joint venture, it adopted a communication strategy to explain its decision.

4.5.5 THE NEW PROJECT

4.5.5.1. The End of the Joint Venture

The Commercial confidentiality of the joint venture with Port Central had removed the wider community from involvement in the project.

While the public was aware of Council's resolution to enter into the Heads of Agreement, they were not aware of the cost and other relevant issues, such as parking.

The public's knowledge was limited to an awareness that the joint venture would provide:

- A 600 seat theatre;
- A 1000m² Art Gallery; and
- The Visitor Information Centre;

together with cinemas and some shops fronting Hay Street. (Ref: Minutes 11.2.02)

The proposed theatre and gallery were generally in line with what had come out of the Cultural Facilities Planning Workshop in July 2000. (Ref: Minutes 11.2.02).

The Workshop had involved "*Councillors, Senior Management and key staff...*"

(Ref: Australia Street/Byron Harford & Associates Report 8.10.01)

4.5.5.2. The Sign Off

In August 2002, after eighteen months of negotiations with Deutsche the joint venture was off.

In that time the Council has developed a project brief and refined its plans to such a stage that it could sign off that they met the project's brief and that the Council could proceed to consider a Development Application for the project. (Ref: Minutes 1.10.02, 1.11.02, 11.11.02 and 25.11.02)

While Mr Milburn did not agree with the concept that the effect of the Workshop on 25 November 2002 and the earlier resolution of 11 November 2002 to proceed with the Development Application constituted a 'sign-off' he recognised that it was a signal "*to continue to proceed*", saying:

"So the project still had a long way to go, but the resolution on 11 November 2002 was a signal for us, as staff, to proceed with that continued consultation, continued development of concept"

(Ref: Transcript 21.11.07 p 1106)

These Minutes are important in the life of the project as they represent the early stages of the project, when Council decided to go it alone.

It is useful to consider at this stage what consultation had occurred as at this time: The Report to the Workshop on 1 October 2002 records:

The following is an extract from the Report presented to Council on 11 February 2002:

In May 1993, a public meeting was held at Port Macquarie High School to determine public interest in the provision of a performing arts and cultural centre in Port Macquarie by the year 2000. Following that a committee of interested persons was formed to investigate the feasibility. An Arts and Cultural Working Group in 1997 found that “ the performing arts mostly have to suffer totally inadequate facilities including the almost unusable Civic Centre.

The Hastings Development Plan: Council and the Committee looking to the future 1996/2016 identifies the vision for a prestige cinema and entertainment complex that provides for theatrical productions and other entertainment. In 1998 the NSW Minister for Arts Regional Program Manager stated that the Civic Centre could be adopted for use as a performing arts facility. An Arts and Culture Futures community consultation was undertaken between February and April 1999. Of 93 respondents to a survey 78 ranked the cultural centre for the visual performing arts as very important.

In early July 2002 Council utilising specialist consultants undertook a Cultural Facilities Planning Workshop which identified a top priority for cultural development as a performing arts facility and the high priority as a stage 2 art gallery. Preferred site options were discussed and the Port Macquarie CBD precinct taking in the Civic Centre and Gallery was determined to be high priority status. The Workshop report notes “site has the ability to cater for all community cultural needs and provides a critical mass of activity to supply ongoing CBD vitality”.

At its meeting on 21 August 2000 Council noted the outcomes of the Cultural Facilities Workshop and formed a Cultural Facilities Taskforce with the stated objective of overseeing the development of key cultural facilities and site options. The Taskforce viewed a number of facilities at Bathurst, Sutherland, Bendigo and Wagga and, with input from consultants, determined that the key criteria.

- *Seating of a minimum of 600 for the performance arts facility*
- *1000m² art gallery*
- *recognition of the importance of the technical components of both facilities and the fact that this will determine their success or otherwise*
- *recognition of the imperative of good management to ensure the ongoing success of both facilities*
- *importance of a street presence which provides a totally separate identity from surround buildings and uses.*

As indicated in the same Council Report, a detailed project brief has been developed outlining the various spacious and technical requirements.

4.4.5.3 The Way Forward

In effect, the Council was starting on a new project, one that it would do alone. The Council now had the opportunity to bring the wider public into its processes.

This was not to be the case, as is demonstrated by the following extract: from the same report.

The Next Steps

Stakeholder consultation will commence this week and include performing and visual arts groups within the Hastings, the Art Gallery Board and the City of Performing Arts Working Party. Subject to satisfactory stakeholder consultation, a further report will be presented to Council on 21 October 2002, with a view to lodging a Development Application early in November. Running parallel with the design process, will be the continued investigation regarding the potential tenants, developing up the management model and further work regarding the form of delivery of the project.

Consultation with stakeholder groups and the provision of information to the wider public would be Council's strategy into the future.

FINDINGS

- The Commercial confidentiality of the joint venture with Port Central had removed the wider community from involvement in the project.
- While the public was aware of Council's resolution to enter into the Heads of Agreement, they were not aware of the cost and other relevant issues.
- When the joint venture with Port Central came to an end, the Council had developed a project brief and refined its plans to such a stage that it could sign off that they met the project's brief.
- When the Council resolved to go it alone, it had the opportunity to consult with its community.
- Rather than consult with its community, the Council chose to consult with stakeholder groups and provide information to the wider public

4.5.6 ENGAGING THE COMMUNITY

4.5.6.1 Council's Paradigm

The third Term of Reference asks the Inquiry to consider “whether the Council properly consulted and engaged with its community...”

Council's paradigm is expressed in its submission (Ref: Submission 605 p141)

The PMHC recognises the need for an elected body of community representatives, and its bureaucracy, to maintain effective communications with its constituency. Consulting with and keeping residents fully informed of Council's activities and initiatives is both an important duty and a constant challenge. To this end, there a number of means of ensuring this communication takes place.

This paradigm fails to recognise that communication is neither equivalent to nor does it meet Council's statutory obligation to duly consult with its community prior to making any decision.

(Ref: Councils Charter: The Act section 8)

4.5.6.1 Consultation or Communication

There was a recurrent theme that questioned whether Council's strategies were communication or consultation through the hearings.

Council's General Manager was referred to Council's media releases and provided the following response:

Q. Council appears to have provided a number of media releases?

A. Yes. You wouldn't necessarily class that as consultation. It comes in various forms. I think there's formal consultation and formal consultation and information provision, and at the appropriate time you would use the appropriate means.

4.5.6.2 The Brochure

In September 2003 the Council produced a brochure, which was distributed to all residents. Over the following two months the Council displayed a copy of the then plans and a model in shopping centres and met with community groups. (Ref: Council Chronology)

Mr Milburn described this process in the following terms: (Ref: Transcript 15.11.07 p901 et. seq.)

It then distributed a brochure to every household in the community. It had a tear-off slip. Responses came back from that. We took those plans and a model out to the shopping centres and libraries at the time and elicited feedback from the community at that particular point in time as well.

That feedback came into considerations from Council. There was a range of issues that were actually raised in relation to that. There were questions asked over, "Can we look at a couple of other sites?" Again, "Can we look at the Hayward Street site", or what's known as the Koolunbung site; "Can we look at the Westport site again?" Those sorts of elements were actually re-examined once more.

A number of organisations asked for meetings about that. The Chamber of Commerce was one of those. We had members of the tourism industry wanted to meet with us and talk about it. The Gallery Advisory Board wanted to discuss it.

The brochure gave the community an opportunity to provide “comment or feedback” by returning the small tear off strip to the Council.

These processes, in late 2003 were to be the first and last time that the community could comment on:

- the concept and its components
- its location
- parking
- its capital and ongoing costs

4.5.6.3 Council’s Submission

Council’s submission records the process of public consultation undertaken by it, referring to the provision of the brochure the model and the community addresses, amongst others. (Ref: Submission 605: pp 147 –149)

The submission concluded:

“Council has made a comparison of the consultation process undertaken during the Glasshouse project to the International Association of Participation (IAP2) standards for community consultation. The process has met all aspects of those standards” (Ref: Submission 605 p149)

In its submission in reply council states: (ref: Sub 801 p29)

Council has demonstrated in its written and oral evidence that there is a continuum from the early 1990’s consultation

through to the project currently being constructed. It has also provided evidence that there have not been two or more projects.

Council has also provided evidence of broad community consultation at the appropriate times in the development of the project. This narrowed to more specific stakeholders when Council unanimously resolved to proceed with the project in June 2004. This decision is a key point in the consultation process for at least two reasons. Firstly the decision was taken by the newly elected Council after extensive and broad based community consultation in 2003/4. This consultation provided key feedback in relation to the proposal and resulted in the site being expanded and the decision to proceed.

4.5.6.4 Council Dismisses Concerns

In the 1990's the public had been asked whether it supported the concept of a performing arts centre.

By 2003 the Council, despite Council's protestations otherwise, had selected the site and had determined what was to be built, and at what cost. (see transcript generally)

When concerns were raised by members of the public following the September and October consultation processes, they were dismissed:

The recent community brochure was circulated to every household in the Hastings and three (3) community information sessions where held. Written comments have been received from 189 people. 131 Expressed support for the proposal, 31 opposed the proposal and the remainder expressed no opinion but wish to be kept informed. Of the

131 who supported the proposal, 72 expressed concerns over the site and suggested other sites. The most frequently suggested alternative was Westport Park.

(Ref: Minutes of 5.11.03)

The dismissal of the public's concerns reinforces the view that the council did not intend to engage the community, but merely to provide information.

There is no evidence to show that the Council took the concerns expressed by the wider public into consideration or addressed them in any meaningful way, preferring the views of stakeholders.

The report to Council's meeting on 17 November 2003 supports this view.

In order to ensure that the community was fully apprised of the project, noting significant stakeholder consultation had occurred, a Newsletter was distributed to all residents.

4.5.6.5 The New Council

On 28 June 2004 Council resolved (Drew/Mayne) to confirm its commitment to the project (Ref: Minutes 28.6.04).

By this stage the Ritz Arcade site had been added, resulting in a 25% increase in footprint and, what would be, a significant increase in cost. (Ref: Rider Hunt Costing 26.8.04)

The public was neither informed of the proposal to add the Ritz Arcade site, nor was it informed of the prospective cost increase.

The September 2003 brochure stated:

“The overall cost of the centre is approximately \$15,000,000”

With the addition of the Ritz Arcade site the building’s costs had risen to almost \$27 million.

With the costs of the forecourt, the compensation payable to the Ritz Arcade owners, the fit out and consultant’s fees added, the costs had more than doubled, exceeding \$30 million (Ref: Rider Hunt costing 26.8.04, Minutes 24.5.05)

Mr Milburn gave the following evidence regarding the decision to include the Ritz Arcade site and the consultation processes underlying it: (Ref: Transcript 21.11.07 p1107 et.seq)

A. Soon after that rally was a workshop that the mayor organised and that information was contained and provided to the councillors there. I don't recall exactly who suggested that the footprint be extended, but I do know that at the subsequent Council meeting to that workshop, the Council made that resolution to proceed. So the actual source of the need to actually extend the footprint came from the community.

Q. So the community was saying in as many words, "We want a building on the civic centre site and the Ritz site as well."

A. What the community said was, "Here are these plans, we like the concept, what's in there, there are a few issues with it." One of the issues was the gallery was not seen to be in an appropriate place and needed to be lowered onto the ground floor from the first floor where it was. There were issues in terms of other space such as we discussed before - the additional break-out or meeting room space in the facility, and a number of other areas that were raised.

When pulling those together into a plan it was not possible to make them fit appropriately on to the civic centre site in any functional sense. Therefore, the natural progression of that is that you need a larger footprint. As indicated before, Council had already been looking at the Ritz site and, as Councillor Mayne indicated, it proved to be quite timely that Council was doing that and the opportunity opened up for the additional 500 square metres.

Q. So in respect of the public rally in June 2004, to your recollection did anyone at that public rally come up to you and say, "Look, Craig, we are going to need to extend this facility on to the Ritz Arcade site"?

A. I don't recall many of the specific conversations at that public rally, but I do recall having feedback from people who attended the rally, people who saw the plans, groups such as the Art Gallery Advisory Board, discussions with people from the Ministry of the Arts, those sorts of areas, saying we need to get that gallery onto the ground floor.

Q. Was the project reference group saying to you, "Look, Craig, the gallery has got to be on the ground floor, you've got to get the Ritz so we can do that"?

A. No, the project reference group wasn't formed until October 2004.

Q. So who were the community representatives who were telling you that you needed the Ritz Arcade site?

A. As I indicated previously, we had communication directly with the gallery advisory board, representatives of the Ministry of the Arts telling us that information. The state guidelines for regional galleries indicate very clearly you need to have appropriate access. One of the compromises we made to try to fit the design on the site and within the budget was to place

it on the first floor. It was always a compromise we weren't happy with. We also had a range of stakeholders in the visual arts area saying the gallery needs to be placed onto the ground floor for public access.

Q. So it was the project advisory group?

A. No, there was no project advisory group; it was the gallery advisory board as a group representing the community who represent that gallery.

Q. So we come back --

A. That was one of the groups.

Q. Okay. What other groups?

A. As I just indicated previously, representatives of the Ministry of the Arts, New South Wales guidelines for regional galleries, representatives of visual arts areas, the general consultation that went through that process.

Q. So that was the group that subsequently became the advisory group?

A. No, that's not the group that became the project reference group. The project reference group was made up of people from our community who were directly involved in the arts.

Q. I wasn't talking about the reference group. I'm talking about the advisory group, the external arts providers who you subsequently put on –

A. The industry reference group.

Q. The industry reference group.

A. The industry reference group - "group" is a very, very loose term I guess used with that. They were basically people in the industry throughout Australia, and eventually New Zealand as well, who actually consulted with and I commenced consulting

with them in 2002. They range from producers, presenters, venue operators, et cetera. They were providing advice and feedback at that time as well.

That actually prompted my memory, because we did take those plans, I think it was October 2003, to the Australian Performing Arts Centres Association and people there were involved not just with performing arts; there were some people there involved with visual arts and there was certainly feedback at that time about the functionality of the gallery being on that level 1.

4.5.6.6 Consulting Before Making the Decision

Councillor Price was asked a number of questions about Council's consultation processes. Councillor Price was keen to emphasise the need for consultation prior to decisions. (Ref: Transcript 4.12.07 p1350 et. Seq)

Q. In your view, in your term as a councillor, has the Council been genuine in its community consultation?

A Most definitely. And that is exemplified by the fact that in response to that consultation that occurred that the functionality and the extent of the facility was changed to, which led to the expanded footprint. I mean, that is a clear reflection that Council responded to the feedback we received from the community. It is ironic. Of course, that led to escalation in cost, but it is ironic that a lot of the criticisms and questions are around change to the nature of scope of the project but it was precisely the fact that we responded to that feedback received that demonstrates that Council's community consultation was in fact genuine.

What would not be genuine would be a referendum after the decision had been made because it is cynical to have a consultation process after a decision has been made. The time to have consultation is prior to the decision so it is on that basis I did not support a referendum and, secondly, there are about 50 techniques for public participation and that is probably just one, and probably not the most appropriate in this instance. But I was aware of consultation going right back - I mean, this has been 14 years in the planning. My first involvement was in 2000, prior to being a councillor, so, I mean, the extent of the community consultation is clear before you. Never before has there been a project that we have more extensively consulted with the community.

Councillor Price was keen to defend Council's consultation practices in his submission. (Ref: Sub 702)

Extensive consultation has occurred over a number of years leading up to the decision to proceed with the Glasshouse. The enhancement of the design and expansion of the site were in direct response to that consultation.

I have a Certificate in Planning for Public Participation and a Certificate in Techniques for Public Participation and a Certificate in Communication in Public Participation from the International Association of Public Participation. In my view the consultation process was exemplary.

When giving evidence Councillor Price was questioned about the changes to the project that had occurred during his period of office and he said:

The two most significant changes were, firstly, the expansion of the footprint. That accommodated the gallery to be on the ground floor, which is a desirable thing. And also the provision

of additional multifunction rooms that could be rehearsal places, performance rooms and also function as breakout rooms when it was used for conferencing. The second probably most significant change was to accommodate the conservation of the archaeological remnants found. That led to the display in the basement where people could see in situ the barrel drain and the footings.

Councillor Price was asked about public consultation surrounding the inclusion of the Ritz Arcade site: (Ref: transcript 4.12.07 et seq)

MR BROAD:

Q. Councillor Price, you just indicated two instances where in your view there was substantial changes to the Glasshouse project, the first of which was where there was a 5 per cent (correction 25%) increase to the area of the Glasshouse and where the various meeting rooms were included. The second one was the period when the Glasshouse was redesigned following the discovery of the archaeological relics. In respect of the first instance, did Council consult with the community before deciding to enlarge the footprint of the Glasshouse and to include the other facilities?

A. The decision to expand the footprint was precisely in response to community consultation, so Council consulted with the users of the facility, and that included both local users and also those who might put on productions, and there was a requirement for the green room to rehearse, for preparation spaces, and also it consulted with the business community and the feedback from the business community was that, given one of the uses was conferencing, that it would be preferable to have break-out

rooms. And so it was in response to that consultation with the community that the decision to redesign the building to accommodate those uses occurred.

Q. When explaining the jump in the cost of the construction from in the order of I think it was \$17m-odd to some \$26m or some \$25m, Council's then quantity surveyors described that increase principally due to the increase in the footprint. Council, in determining to increase the footprint of the building some 25 per cent, was going to foist the residents and ratepayers with a substantially increased cost for the building; do you agree with that?

A. Well, I certainly don't agree with the way in which it was expressed. The Council resolved to change the design to better meet the needs of the community and, of course, that comes at a cost and that cost is considered along with all other Council priorities.

Q. Was the community ever asked to your knowledge whether it would support the increase in space and the increase in cost of the facility?

A. The community responded to Council in providing clear feedback on the nature of the facility, the requirements the community had, and both the business community and the arts and cultural community gave Council clear direction on the needs that they would have and it was in response to that Council resolved to change the design to accommodate it. In terms of the cost, it certainly did consult with the community and that is done annually through the corporate plan process. There is an opportunity for every resident to comment on Council's entire budget, which of course included the Glasshouse.

Q. And in the corporate plan process was the cost of the Glasshouse highlighted to the community?

A. I don't have that document here.

Q To your recollection?

A. I can't recall whether or not it was.

Q. Would you agree with me that the arts community and the business community are just a small component of the overall community?

A. No, I don't agree with that statement at all. If I could elaborate to answer that question, the business community encompasses all of the people that are employed by local businesses and their families, the people who sell coffee at Creme, who are employed because of the flow through of customers, some of whom come for conferencing.

In terms of the arts and cultural centre, that includes of course all the school children, eisteddfods. There are more people who attend some cultural events, even if it is live music or theatre, than there are people who attend sporting events, so I would have to disagree with your statement that the business community and arts and cultural community are a small part of this community.

Q. Isn't the reality of the situation this, that Council didn't consult with the wider business community, it consulted and sought the views of the Chamber of Commerce?

A. The role - one of the primary functions of the Chamber of Commerce is precisely to represent their business community and be a point of contact with levels of government, and so every business has the opportunity to join the chambers of commerce, and there are a number of them, and so as a representative mechanism for consultation it is very

appropriate for Council to consult with the Chamber of Commerce on issues.

Q. Similarly, can I suggest to you that the Council didn't consult with the wider arts community, but consulted with a limited number who comprised the Project Reference Group?

A. There are a number of ways in which consultation can take place, and the International Association of Public Participation, which is the world's best practice, there's a spectrum from inform, where you just tell them what the decision is, to consult, involve, collaborate and empower. So there is a spectrum, and with different parts of the community, you would involve them at different levels. So the broader community was involved through the opportunity to put in submissions to the corporate plan, but then a select group of stakeholders, with a particular interest and expertise, were involved at a much more collaborative level.

Q. Did the corporate plan ever contain words such as, "Council is considering increasing the size of the footprint of the Cultural centre by 25 per cent. Its costs will be - to draw a figure - "\$5m"?"

A. It is the role of Council and democratically elected councillors to make the final determination on issues such as that, taking into consideration the understanding of the needs of the community. Those needs need to be determined through a consultation process.

An analogy would be should Council consult on the specific length or extension of the runway and the thickness of the tarmac? They are not interested in that. The community is interested in securing a discount airline, and there was consultation around that, surveys of airline users. Council then

take that into consideration, they look at the technical requirements to meet those needs, they get cost estimates and weigh up those, along with all of the other expense items in the budget, and then make a determination.

The implication of your question is that Council should have gone back and consulted extensively with the community on those details, whereas what I'm saying is Council needs to consult broadly to get a very good understanding of what facility is required, how it will be used, and then consider what it can afford, in balance with all of the other items that we would like to have in the budget.

Councillor Price also nominated the changes associated with archaeological finds. (Ref: Transcript 4.12.07). The Chronology provided by Mr Milburn does not record any consultation as having occurred regarding this issue.

The Council failed to consult the wider community before making its decision to proceed with the project.

To the extent that the Council involved the public, this involvement was de-facto and, no doubt, driven by the communication strategies, first adopted in early 2002.

FINDINGS

- Council's paradigm of maintaining effective communications with its community fails to recognise that communication is neither equivalent to nor does it meet Council's statutory obligation to duly consult with its community
- In late 2003 the Council sent a brochure to its community, it was the first and last time that the community could comment on:
 - The concept and its components

- The location of the Glasshouse
 - Issues such as parking
 - The capital and ongoing costs
- By 2003 the Council, despite its protestations otherwise, had selected the site and had determined what was to be built, and at what cost.
- When members of the public raised concerns following the in late 2003, the Council dismissed them.
- Council's dismissal of public concerns reinforces the view that the council did not intend to engage the community, but merely to provide information to it.
- The public was neither informed of the proposal to add the Ritz Arcade site, nor was it informed of the prospective cost increase.
- The Council failed to consult the wider community before making its decision to proceed with the project.
- To the extent that the Council involved the public, this involvement was de-facto and, no doubt, driven by the communication strategies, first adopted in early 2002.

4.5.7 THE STAKEHOLDERS

4.5.7.1 The Local Arts Community

By October 2002, Deutsche had withdrawn from the project and Council was free to determine (as it did) whether it should go it alone.

The Report to the workshop of 1 October 2002 acknowledges that:

“The current design has been developed after consultation with various stakeholders including staff and a range of specialist consultants. There are still parts of the design which need further refinement, however, it is necessary, at this point in the design process to brief Council and to obtain stakeholder input.”

The Report advised:

The Next Steps

Stakeholder consultation will commence this week and include performing arts groups within the Hastings, the Art Gallery Board and the City of the Arts Performing Arts Working Party. Subject to satisfactory stakeholder consultation, a further report will be presented to Council on 21 October 2002, with a view to lodging a Development Application early in November. Running parallel with the design process will be the continued investigation regarding potential tenants, developing up the management model and further work regarding the form of delivery of the project.

The genesis for this view had arisen from the Report to the Cultural Facilities Taskforce meeting on 29 January 2002, which stated:

It needs to be borne in mind that consultation needs to revolve initially around the parameters and general concept of the projects as opposed to the detail. In that respect, both the Art Gallery Advisory Board and the City of the Arts Committee provide a good representation of the arts community. The Hastings Choristers are represented on those groups, although, further to those groups it will be important to involve the Port Players, as they can legitimately be singled out as a key group.

4.5.7.2 The Early Briefings

In February 2002 the Council wrote to a number of persons with a “prominent involvement in cultural activities within the Hastings” inviting them to attend a briefing on the Port Central proposal. The invitation was sent to 38 persons. (Ref: Submission 605: PC 68)

The Council was moving to obtain expert input from its local arts community.

4.5.7.3 Expert Advice From the Community

In September that year a further letter was sent to a smaller group, involved in local performing arts groups, inviting them to a further briefing session. (Ref: Submission 605 PC 73)

This process was repeated in June 2003.

Collaterally, the Cultural Facilities Taskforce, comprising the then Mayor and Deputy Mayor, the General Manager and two senior members of staff inspected a number of facilities.

Additionally, the council had, by the time its joint venture fell through, retained the services of expert consultants including architects and acoustic engineers.

In late 2004 the council had moved to appoint the Project Reference Group. Many of the persons who had been invited to the earlier meetings were invited to join the group.

The following letter contains a description of the role of the group, its membership and council's underlying strategy:

Part 6.3

02 6581 8107

COPY

File: C.875.90

Refers to : 10.12.04, 0003

15 December 2004

Margaret Newman
Secretary
Camden Haven Arts Council
PO Box 62
KENDALL NSW 2439

RE Project Reference Group

Thank you for your letter received at Council on 10 December 2004 raising your concerns about the Camden Haven Arts Council not being invited to nominate a representative to the Project Reference Group. The role of the Project Reference Group is:

- To provide advice in relation to the key areas required in line with the brief and detailed planning of the new facility.
- Provide comments and advice in relation to the functional layout of the facility, its linkages and relationships of the design and its operations.
- Assist in the community communication processes for the project

The group has been established after identifying key areas of potential future use for the centre at the local level. Some of the areas include:

- Galleries
- Museums
- Speech, drama, music Eisteddfod
- Theatre
- Dance
- Primary and high school
- Bands and orchestras
- Sound and lighting
- General community
- Conferences

Council has invited the following individuals to be part of this group on the basis of their previous involvement and input into the development and their expertise in relation to the areas outlined above.

Ray Wilson, Carol Irving, David Gwilliam, Robyn Ryan, Peter Piaud, Francesca O'Donnell, David Mahlikoff, Kimberley Ivory, Pat Munro, Jane Wilkie, Shane Buckley, Marie Van Gend, Andrew Campbell, Ann Molver, Taryn Johnston, Nigel Head, Maggie Barnewell.

Council has not invited any specific group or organisation to provide representatives. There will

be other opportunities for community consultation at which local groups and organisations will be able to provide direct input into the process.

I am available to make a presentation to any group that wishes to hear about the new Cultural Centre and its current progress. Council also has a database established to which we will be sending regular (2 - 3 monthly) newsletters providing updates of the project. Should the Camden Haven Arts Council wish to be on this list please contact Bev Fraser on 6581 8570 and ask that you be added to it.

In addition to the local Project Reference Group Council has an Industry Reference Group that includes:

Sydney Theatre Company, Sydney Dance Company, Sydney Symphony Orchestra, Australian Ballet, National Gallery of Victoria, NSW Gallery, NIDA, North Coast TAFE, the Victorian Arts Centre, Australian Performing Arts Centres Association, NSW Ministry for the Arts, City Recital Hall, Newcastle University, Queensland University of Technology, Queensland Performing Arts Centre.

As you can see from this, Council is ensuring that it seeks and gains local and touring expertise into the design along with input from people who are very experienced in the running of similar facilities.

I trust this addresses your concerns and assures you that there is a high degree of experience and expertise being utilised in the development of this very exciting project for our community.

Yours Faithfully

Craig Milburn
Acting Director of Corporate & Community Services

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There is no doubt that the Council closely consulted with this group.

In her submission, Dr Ivory wrote: (Ref: Sub 663)

*The answer to this question can only be a resounding 'yes'.
In over 20 years in Port Macquarie I cannot think of a
project that has enjoyed more community consultation.*

Members of the Project Reference Group including Robyn Ryan, David Malikoff, Marie van Gend, and Dr Ivory gave evidence.

All provided favourable commentary of Council's processes.

Marie van Gend, like others in the group has had a long-term relationship with the project. In her evidence she outlined her involvement. (Ref: Transcript 31.10.07 p504 et seq).

Importantly, she detailed the information available to the members of the group and their ability to provide direct feedback. (Ref: Transcript 8.10.07 p506 et Seq.)

Q. In respect of the Project Reference Group, were you kept appraised of the physical design of the Glasshouse?

A. Yes.

Q. So you were given the opportunity of going through the plans?

A. *Yes. The Project Reference Group is a very, very actively hands-on group. That's our purpose. We are not there to sit there and passively rubber-stamp stuff. The Project Reference Group is probably the most functional committee I have ever been on because it is very, very active, not very passive - very passionate is the word I was looking for.*

The range of people in the group covers almost every skill background area of the arts that could be asked for. So the whole way through the design process, we have been able to give a lot of constructive feedback and I think massive redesigns have happened as a result of that. We have had teachers involved in the committee, who have been able to advise on the best ways of managing for their students, just functional stuff like that. As Kimberley Ivory mentioned last week, we have actually doubled the number of female toilets - fundamental stuff like that.

Also one of the really important things about the people who are involved in the Project Reference Group is their backgrounds. Nobody is just there because they have a single skill or a single experience. For example, most of the people who are involved in the arts who are on that committee are also active performers. So we didn't have just an administrator who would just make things happen; we had people who had experience in administration and running events but who also were singers or dancers or active members on the arts community. So they can see things in the big picture and that was an invaluable thing.

Later on, of course, because they are active people among the community, it also had a very, very powerful role in feeding back and getting feedback from the community to bring to meetings and we were encouraged to do that.

Q. Do I take it that, as part of that group, you also had direct access to the architect?

A. The architect briefed us, yes, and also the sound engineer, he came and spoke to us as well.

Q. And also the project manager?

A *Yes, we had a lot of people speak to us. They were very, very open when dealing with our questions and our feedback, suggestions.*

Q. Also you have had direct access to Mr Milburn?

A. *Craig chaired the meetings, yes.*

Q In the course of that process, were you kept aware of the budget for the project?

A. *There are ongoing budget discussions, yes.*

Q. Were you kept aware of the prospective costs of the project?

A. *Yes.*

Robyn Ryan who had also had a very long and direct involvement with the project also spoke of the group's ability to consult and, importantly, to provide feedback (Ref: Transcript 5.12.07 P1377 et. seq.)

Q. What were the emphases of the group?

A. *I think the group sought information from all the various professionals or people who were involved in all aspects of the arts, people that would be using the proposed facility, ballet, obviously drama, we were all represented. So it was quite a big group of people.*

Q. What I'm trying to find out is really what your role was. Was your role to provide feedback to the Council on what facilities should be included? Was it to deal with issues such as the cost of construction?

A. *We were asked for input on what sort of desirable aspects of the building. In order to get those aspects, obviously costings are made, and we were kept up to date with costings and from time to time how that progressed.*

But it was very much information was sought about – for example, in my particular area - how would choirs use it, how would my students of voice and piano use it, all those kinds of things. What would the sight lines be? I was particularly interested in the acoustics side of it. Would there be a smaller space where we could rehearse smaller groups? If the eisteddfod was going to be in there, what sort of facilities would that be?

For large choral festivals, would we be able to house large numbers of singers on the main concert platform? Would there be good sight lines to the conductor? Would there be adequate places to be an orchestra? How big would the pit be? How big do we want the pit to be?

It wasn't just our community we had to think about, we had to think about shows coming through this community and to lift the standard of the music, dance and ballet that we already had existing. So I saw it as a very stimulating committee, but not only that, I felt that the whole process was very transparent and we were at all times fully informed, and our feedback was openly sought and acted upon.

Q. You have given emphasis to design and functionality. In the course of providing your feedback, were you ever put in a situation where Council would come back to you and say, "Look, if we are to provide, say, a big orchestra pit, it's going to come at a cost and the cost of that would be" - to pluck a figure - "\$550,000"? Were you ever given that sort of feedback with a rider that says, "We are a bit concerned that this is going to take it over our budget. Is there a way we can pare it back?" Did you have those sort of discussions?

A. There were definitely adjustments made. I think in my submission I referred to state of the art facility, meaning for Port Macquarie, not meaning a Rolls-Royce building. We would all love a Rolls-Royce building, but we understand that budgetary guidelines exist and so it had to be scaled down to the budget. Obviously we wanted blah, blah, blah. That couldn't obviously happen. I have always wanted the best. It seems to me that what we are getting is as good as we can possibly afford. Mind you, on the PRG, because I work out of Port Macquarie quite a bit, I wasn't at every single meeting.

Q. Going back to my question, were you really given the information that said, "If we adopt your option, this is what it will cost, this is its effect on the budget," or was it more, "Thank you for your input. We will go away and see if we can include it"?

A. I think the latter, because you wouldn't expect an answer immediately like that, I'm sure. So definitely it certainly was adjusted

Dr Malikoff was satisfied with the way that the Council had undergone its consultation processes, that he wrote the following regarding the Terms of Reference 3:

"I really cannot believe this is even a question."

(Ref: Submission 558)

His submission went further to state:

"As a member of the Project Reference Group formed soon after, I can state specifically that my advice on certain design aspects relevant to staging smaller productions in the studio were listened to and substantially incorporated into revised designs, as was advice from other members of the group, especially, I recall, with

reference to staging the Eistedford. Throughout, I have been extremely impressed by the way Council and its officers have been determined to make this a facility for and of our community by continually presenting it for constructive criticism and input.

Dr Malikoff gave a glowing account of the process of the Project Reference Group, of the information made available to the group, the group's ability to provide feedback and its acceptance and implementation by Council (Ref: Transcript 1.11.07 P627 et.seq.)

He was particularly impressed by Mr Milburn, providing the following assessment. (Ref: Transcript 1.11.07 P651)

Whilst I think Mr Milburn's particular talent is being able to, quite brilliantly, bring together design aspects and people to make something happen - he is not an artist or a performer; he is a very open-minded man - he was actually quite willing as a representative of the Council to take people's input into the design of the facility. I think that is, in fact, something that reinforced my desire to be part of the Project Reference Group

Such was Dr Malikoff's conviction with the integrity of the process, that he would not accept a view that the Council may have been less than forthright. (ref: Transcript 1.11.07 p640)

Q. Does it question whether you, as a member of the Project Reference Group, were provided correct information by the Council?

A. Here you get the difference between artist and scientist. As a medico I have to keep an open mind. I have developed over a period of time a respect for Craig Milburn's accuracy and integrity. Therefore, I assume that when he gave us certain figures, they were given with good reason

and reasonable accounting. Now I have to keep an open mind on that. Therefore, until I see his response, which I think is a reasonable request, I don't have to say that I'm concerned. I would be concerned if he can't answer it. If in fact you can demonstrate that there has been wool pulled over our eyes, I'd feel really annoyed.

However, I have been in my profession for 26 years trying all the time, every day, to ascertain the accuracy not necessarily of what someone tells me, but of their intent in telling me, whether I can actually believe this particular person or not. I have taken the view that the approach that we had through the Project Reference Group has been one of accuracy, integrity. Undoubtedly, there have been mistakes. I don't know; I mean, these are human beings we are dealing with, but if you are trying to get me to infer that, in some way, yes, we might have been misled, I have no evidence, sorry, that we have been misled.

It is clear that those residents who had been consulted in the early part of the process and later, as part of the Project Reference Group, were convinced by what was proposed.

They had information, they provided input and they were satisfied that their views were being considered and, where appropriate, acted upon.

This group was satisfied that the Council had consulted with them.

Being satisfied with the process, they moved to secure wider support from the arts community when they felt that the project might be at risk. (ref: Sub 100)

Their belief has galvanized a significant section of the community to marshal its forces to oppose who it sees as detractors and to provide its support for the

council. A significant number of submissions to the Inquiry are a direct result of this process.

4.5.7.4 Industry Advice

Prior to the commencement of the hearings, the Council provided a list of persons that it asked be called to give evidence. The list included Council's expert consultants and, relevantly Penny Miles and Bronwyn Edinger, both of whom had been consulted by the Council.

Council's submission commences with a quote attributed to Ms Miles, speaking of Council's engagement with peak bodies, such as APACA. The letter also speaks of Council as having received "best industry practice advice" (Ref: Submission 605) Ms Miles gave evidence during the hearings (Ref: Transcript 13.11.07 p760)

Council's submission refers to consultation with Bronwyn Edinger (Ref: Submission 605 p 26 & PC 40)

Miss Edinger gave a concise account of her view of Council's consultation process, so far as it involved her. (Ref: Transcript 13.11.07 p 743 et seq)

Q. I understand the Council put you forward as an expert witness on their behalf, probably a fair statement. Could you explain to me the role you have fulfilled in this project?

A. I have been familiar with the project for quite some years now. I think it originally came to my attention when I was manager of Arts on Tour NSW, a state organisation, and at that time we had conversations with Council about the nature of the project and the nature of the venue itself. It first came to my attention when I was the general manager or director of the Illawarra Performing Arts Centre in Wollongong, where Craig Milburn and I had a number of conversations about the nature of the venue, the programming of

the venue, and the operating budget of the venue. Craig also attended a number of APACA conferences, the Performing Arts Centre Association, of which I am involved, and I have also been involved in the interviewing panel as an industry representative for two positions at the Glasshouse.

Q. Have you found or are you aware that, as you have given advice to Council, have they listened to the advice?

A. Absolutely.

Q. And after have acted on it?

A. *Yes, in terms of particularly the appointment of staff and in terms of issues about programming, in terms of issuing about functionality, yes.*

There can be no doubt that Council sought and obtained significant advice from a wide range of industry providers.

Additionally, in 2000 members of the Cultural Facilities Taskforce inspected a number of facilities in NSW and Victoria. Expert advice was sought from Australia Street and Byron Harford, Mr Milburn attended the APACA conference in 2003 and council wrote to a number of venues seeking informal meetings, to obtain input on Council's plans generally in the form below:

Paul 6.10

66

6.9.04 0102

02 6581 8107

File: C.875.90

3 September 2004

(1709)

Ms Annie Eves-Boland
Production Manager
Sydney Theatre Company
PO Box 777
MILLERS POINT NSW 2000

Dear Ms Eves-Boland

Re: Port Macquarie Cultural Centre

Hastings Council is very excited to be initiating the development of a \$20m Cultural Centre which will include a 600-650 seat proscenium arch theatre with full fly tower, backstage facilities and dressing rooms, a regional art gallery, museum exhibition space, conference facilities, ticketing office and restaurant.

The development includes a performing arts centre with a sprung floor stage and rehearsal space, large stage wings for scenery and prop movement, rear stage area and crossover, loading dock on the same level as the stage to allow vehicles to unload directly to the side stage areas and onto the stage, a manual flying system, proscenium arch stage to 14 metres in width, dressing rooms for principal artists and chorus dressing rooms, wardrobe area, green room, theatre stock, full technical and lighting system including closed circuit TV to the dressing room and other areas, grand piano, touring manager's office and areas for technicians.

As part of this development, I am utilising a number of related organisations and companies to provide industry input into the designs as they develop. It would be appreciated if someone from the Sydney Theatre Company would consider making themselves available from time to time when I visit Sydney to peruse plans and discuss possible issues for consideration. I have already obtained the assistance of the Australian Ballet Company, the Sydney Symphony Orchestra and the Sydney Dance Company in this regard. Entertech with Dennis Irving, as the theatre consultants on the project, Arup Acoustics are the acoustic consultants with Tonkins Zulaikha and Greer as the architects.

I would be grateful if you would consider the request to assist by providing comments as outlined above and would ask if you would contact me on (02) 6581 8588 or via email to confirm the Sydney Theatre Company's possible involvement in this exciting project.

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PROCESSED

The opportunity to bring the Sydney Theatre Company to the Mid North Coast of NSW is something that the community and the Council would hope to ensure through the provision of a first class facility in the region.

I will be meeting with the Sydney Dance Company at their office on Thursday 16 September at 11am and was wondering whether yourself or Barry Searle would be able to attend this meeting?

Should you wish to discuss any matter in relation to this letter, please contact me on 6581 8588 or via email craigm@hastings.nsw.gov.au.

Yours faithfully



Craig Milburn
Acting Director of Corporate & Community Services

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This advice and advice referred to in Part 1 was principally an attempt to obtain a perfect theatre.

A significant body of material provided by the Council would suggest that Council had consulted widely.

There are some clouds hanging over Council's notion that it consulted with industry groups.

At pages 103 and 104 of its submission Council provided a list of consultants utilized on the project. It refers to NSW Arts as having undertaken a 'General Review' (Ref: Submission 605).

Council's submission attaches a submission from its architects TZG, which contains the following statements under the heading "Peer and Industry Reviews August – November 2005":

"General Performing Arts Review – Michael Goss & Deborah Ely, Ministry for the Arts (Ref: Submission 605, att 36)

As part of its investigation processes, the Inquiry wrote the following letter to Mr Goss:



Port Macquarie-Hastings Council Public Inquiry

Locked Bag 3030 NOWRA NSW 2541
TEL (02) 4428 4200 **FAX** (02) 4428 4199
EMAIL portmacquariehastings@dlg.nsw.gov.au **WEB**
www.dlg.nsw.gov.au/portmacquariehastings

Mr Michael Goss
Arts NSW
Level 9 St James Centre
111 Elizabeth Street
SYDNEY NSW 2000

Dear Mr Goss

I have been appointed to conduct a Public Inquiry into Port Macquarie-Hastings Council. The Terms of Reference call on me to inquire into issues associated with the Glasshouse infrastructure project.

I understand that the council has drawn on your expertise in formulating the project and that you have been approached directly by the council and by its consultants.

I also understand that you undertook a general performing arts review of the facilities between August and November 2005.

I ask that you provide a copy of your review report together with copies of all correspondence between yourself, the council, council's architects (Tonkin Zulaikha Greer), council's project managers (Root Projects) and/or any other consultant; regarding your review.

I would also ask that you provide an outline of the nature of your involvement in this process, including a diary of any attendance on site, with council's representatives or other in undertaking your review as well as an overview of your processes.

I would appreciate your earliest response to my request.

Yours sincerely

Frank Willan
Commissioner

The response from the Arts NSW needs no further comment

09/02 '08 14:06 FAX 61 2 9793 0699

LOCAL GOVT CO-OP

002/003

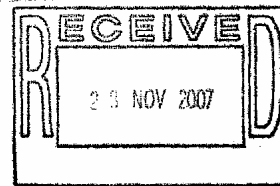
Part 6.12



Ref: G 24458/41 B-002/1

26 NOV 2007

Mr Frank Willan
Commissioner
Public Inquiry into Port Macquarie Hastings Council
Department of Local Government
Locked Bag 3015
NOWRA NSW 2541



Dear Mr Willan

Thank you for your email letter of 10 October 2007 to Mr Michael Goss, program manager, capital infrastructure, Arts NSW. Your comments regarding the Department of Local Government's public inquiry into the Port Macquarie-Hastings Council's development of the Glasshouse project have been noted. I note, also, your request for advice from Mr Goss for the following matters:

- *I understand that the council has drawn on your expertise in formulating the project and that you have been approached directly by the council and by its consultants.*
- *I also understand that you undertook a general performing arts review of the facilities between August and November 2005.*
- *I ask that you provide a copy of your review report together with copies of all correspondence between yourself, the council, council's architects (Tonkin Zulaikha Greer), council's project managers (Root Projects) and/or any other consultant; regarding your review.*
- *An outline of the nature of your involvement in this process, including a diary of any attendance on site with councils representatives or other in undertaking your review as well as an overview of your processes.*

Our records indicate that Mr Goss did not undertake a general performing arts review of the facilities. Therefore there is no report or any correspondence between Arts NSW, the council, the council's architects Tonkin Zulaikha Greer, the council's project managers Root Projects Australia Pty Ltd and/or any other consultants regarding the review of the Glasshouse project.

Mr Goss is employed by the NSW Department of Arts, Sport and Recreation, to manage Arts NSW's capital infrastructure and museums programs; and the regional clients of the community cultural development program. The role of the program

Arts NSW is part of the Department of the Arts, Sport and Recreation.
Level 9, St James Centre, 111 Elizabeth Street, Sydney NSW 2000 PO Box A228, Sydney South NSW 1235 Tel: (02) 9228 5533
NRS: 133 677 Fax: (02) 9228 4722 Freecall: 1800 358 594 (within NSW) Australian Business Number (ABN): 522 737 236 34
E-mail: mail@arts.nsw.gov.au Website: www.arts.nsw.gov.au

manager is to provide advice relating to the capital infrastructure program and applications under Arts NSW annual cultural grants program; to liaise with clients and advise them on program guidelines and application procedures.

Assessments of applications are made by Arts NSW under the State's Cultural Grants Program and reviewed by peer-group assessment committees, who are appointed by the Minister for the Arts. It is on the basis of the committee's recommendations that support for capital infrastructure projects are approved by the Minister.

Within this context, it is accepted practice for the program manager to advise local government authorities, who are clients or prospective clients of the capital infrastructure program, on the policies and procedures involved. Unless a request for advice is received in writing by Arts NSW, advice is provided informally, including at meetings and by telephone, as part of the program manager's general duties for client relations.

As part of his general duties to monitor all capital infrastructure projects assisted by Arts NSW, the program manager recollects that at the invitation of the Council he:

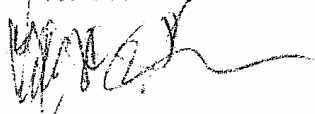
- met with Mr Craigie Milburn, Director, Community and Cultural Services, Port Macquarie Hastings Council, a number of times to be briefed on the progress of the Glasshouse project;
- met with Tonkin Zulaikha Greer Architects at their offices in Surry Hills in 2005 and 2006, to be briefed on the design of the Glasshouse project; and
- responded by telephone to inquiries from Root Projects concerning the project.

While the project was discussed at these meetings and the inquiry from Root Projects, no general performing arts review of the Glasshouse was made by Mr Goss on behalf of Arts NSW.

I trust this information will be of assistance.

Should you require any further information, please do not hesitate to contact me on (02) 9228 5809.

Yours sincerely



Hugo Leschen
Acting Deputy Director-General

Ultimately, industry advice appears to have been sought to obtain support for Council's aspirational goal to be recognised as having the leading facility rather than obtain best value.

FINDINGS

- There is no doubt that the Council closely consulted with the local arts community.
- Council sought and obtained significant advice from a wide range of industry providers.
- There are some clouds hanging over council's portrayal of its level of consultation with the industry.

4.5.8 RESPONDING TO COMMUNITY CONCERNS

4.5.8.1 Council's Response to the Brochure

In September 2003 27,000 brochures were distributed to all households. (Ref: Submission 605 p155). Despite this large number, only 189 responses were received (Ref: Minute 15.11.03).

Many of the responses raised issues, including:

- A lack of parking
- Whether the money would be better spent on other projects
- That the site was inappropriate
- Concern that proceeding with the project might lead to a rate increase
- Useability
- Size
- Traffic

The Report to Council's meeting on 15 November 2003 was dismissive when referring to the responses. Attached is an extract of the relevant part of the report:

"The recent community brochure was circulated to every household in the Hastings and three (3) community information sessions where held. Written comments have been received from 189 people. 131 expressed support for the proposal, 31 opposed the proposal and the remainder expressed no opinion but wish to be kept informed. Of the

131 who supported the proposal, 72 expressed concerns over the site and suggested other sites. The most frequently suggested alternative was Westport Park.”

4.5.8.1 Concerns Grow

In late 2003 concerns regarding council’s consultation process grew.

On 27 November 2003 the Resident Action Network sent the following e-mail:

7.2

28.11.03 7
0020



Sue Baker
<suebaker@midcoast.com.au>
27/11/2003 11:45 AM

To tanyah@hastings.nsw.gov.au
rdrew@hastings.nsw.gov.au
ncampbell@hastings.nsw.gov.au
frankh@hastings.nsw.gov.au, list@midcoast.com.au,
cc djohnston@hastings.nsw.gov.au,
mayneo@optusnet.com,
jpearson@hastings.nsw.gov.au,
jsteele@hastings.nsw.gov.au,
bwoodlands@hastings.nsw.gov.au
C.875.90 (20680)
6.9.04 0225

*RAG
and you please have
a response ORANGE
THANKS ROS*

bcc
Subject CULTURAL CENTRE ETC

TO HASTINGS COUNCIL GENERAL MANAGER, MAYOR AND ALL COUNCILLORS
RE: CULTURAL CENTRE

Residents Action Network members have asked the RAN committee to express concerns to council re the Cultural Centre and the public consultation process.

A report tabled at the last Council meeting stated that in relation to the questionnaire circulated by council, a total of 189 responses were received. Of these, 131 expressed support for the proposal, 30 opposed the proposal and the remainder expressed no opinion but wished to be kept informed. Of the 131 who supported the proposal, 72 suggested other sites, with the most frequent alternative being Westport Park. Therefore only 59 respondents supported the proposal for a Cultural Centre to be built on the Civic Centre site.

We would like to raise the following questions and would be grateful for a reply:

- Can Council really consider that a total of 189 responses is adequate indication, at this stage, that the community supports the proposal in general?
- Can Council really consider that the response of only 59 respondents in favour of the Civic Centre site is sufficient evidence of support for this particular site?
- And most importantly, in view of the responses, how did it come about that a recommendation to proceed with the Civic Centre site was put to the last council meeting?

We encourage council to do more consultation and get more feedback from the community. Issues such as the following need more consideration before a decision is made:

- Compatible working spaces for the Gallery and the Performing Arts Centre (should these two be incorporated in the one building at all?)
- Catering and other facilities necessary for large conferences/conventions
- Car parking and congestion
- Public access

PROCESSED

Much more public consultation needs to be done on the question of a suitable site.

Please councillors..... this is a very important decision which needs to be extremely well thought out before any further recommendations are put to council meetings. Please do not leave the new council with a decision which has been hastily made and will leave a legacy of community anger. It is much more important to thoroughly sort out all issues than to rush a decision. RAN is willing to assist in whatever way eg a further consultation process etc.

We also ask that no hastily thought out decisions also be made in relation to the Draft Greater Port Macquarie CBD Master Plan- the issues here are also very complex and need much more community consultation before any recommendations are made.

Yours sincerely

Sue Baker

On 5 November 2003 the Port Macquarie Historical Society sent the following letter:

09/02 '08 17:37 FAX 61 2 9793 0699 LOCAL GOVT CO-OP 007


Part 7/3

11-11-03 0001 *C5*

C. Schubert

Port Macquarie Historical Society

22 Clarence Street, Port Macquarie NSW 2444
Post Office Box 82, Port Macquarie 2444
Phone / Fax **02 65 831108**
ABN 21 094 844 196
All correspondence to the President



5.11.03

General Manager,
Hastings Council,
Burrawan Street
Port Macquarie, 2444

HASTINGS COUNCIL	
11 NOV 2003	
File No:.....	<i>C. 875.90</i>
File No:.....	<i>(20080)</i>

Dear Sir,

Re Cultural Centre Project

The above Society wishes to register comment in respect to the stated project.

1. The concept and design are good but not suitable for that location
2. The lack of provision of PARKING is unquestionably ridiculous and demonstrates that Council Policy does not take into account the parking problem in the CBD
3. Parking at present would rate 2/10
4. The ideal place for this project would Macquarie Park where there is space for parking and for extension to the centre if it were ever required.
5. As there is a new sporting complex being developed in Koala Street, that would absorb the Macquarie Park activity
6. Macquarie Park being Council owned does not require the purchase of any land or upgrading of infrastructure.

I trust the Council will review this matter thoroughly and be guided by public response in future decisions.

Yours faithfully,

Kevin Schubert

Kevin Schubert, President *Email pmmuseum@midcoast.com.au*
Internet http://www.midcoast.com.au/users/pmmuseum/



PROCESSED

The Residents Action Network provided a submission, critical of Council's processes, providing the following assessment:

“Council did not properly consult and engage with its community nor did it exercise appropriate openness and transparency in its decision making for approving and undertaking the Glasshouse infrastructure project.

This Council is notorious for the lack of openness and transparency in its decision-making relating both to this project and other contentious developments. In relation to this project Council ignored a referendum held in November 2003 that clearly showed that the majority of the population, whilst in favour of a cultural centre at the cost then foreshadowed, did not want it to be located on the CBD site. Prior to the 2004 Local Government elections, every single one of the elected Councillors stated they supported the findings of this 2003 referendum. However, since that election it has become increasingly clear that Council would not listen to the well-argued criticisms that have been made by the community in relation to this project. There is a perception that the decision to proceed with the project in the face of overwhelming opposition was reached behind closed doors and that this involved a number of representatives with property interests in the CBD who have the ear of Councillors and senior Council staff.

From top (Councillors and the General Manager), down to some of the senior staff, this Council has ingrained culture of obfuscation and spin that permeates throughout the upper management level.”

Its author, Sandra McClimont gave evidence during the hearings, she was asked about her work's views on consultation: (Ref: transcript 31.10.07 P 591 et seq)

Q. Can I, having gone down this path where we're both using the word "consultation", ask you to define what you or what RAN sees as consultation?

A. We have to distinguish between consultation and the passing over from one party to another of information." Consultation" implies that there is communication between the two parties with an exchange of ideas. If that is done across not just groups like the Chamber of Commerce and small arts-focused groups but across the wider population, you can say you have general consultation.

Q. Is consultation, and I'll go back to the Glasshouse project, with potential users of the facility in your mind consultation?

A. No. It has to go beyond the users. It has to go to the people who will actually pay for the facility.

Q. Do you see value when Council is embarking on a project such as the Glasshouse in the Council consulting with the potential users of the facility?

A. Of course.

Q. Do you see benefit in the Council consulting with the various providers of art forms, whether it be ballet, theatre, symphony music, plays, drama, as also important?

A. Yes.

Q. Conversely, you appear to emphasise the need for the community as a whole to be consulted?

A. Yes.

Q. What is your view regarding the degree of consultation so far as it has affected the community with respect to the Glasshouse?

A. As I said before, if you compare the two examples I have given you of how Council consulted in relation to the Stingray Creek Bridge and in relation to Area 13, if they had gone through the same process with this cultural centre, we would not be here today. If options would have been put to a cross-section of the community, if options had been discussed, prices, all the pros and cons of each of the options, I don't think we would be here today. There would have been consensus and that would have been the end of it.

On March 5 2004 the Chamber of Commerce wrote to the Council expressing its concerns, with the intent of encouraging the Council to re-assess its current thinking and to develop and re-establish communication with the wider community.

The Chamber raised the following significant issues:

- i. Lack of feasibility studies on alternative sites and combination usage*
- ii. High capital & ongoing costs without a strong revenue stream (ratepayers)*
- iii. Limited potential for expansion due to restricted footprint*
- iv. Insufficient car parking facilities in the CBD*
- v. Risk management issues arising from traffic congestion*
- vi. Logistical problems caused by the unloading of semi-trailers & trucks associated with touring companies and other users of the facility e.g Sydney Theatre Co*

- vii. *The absence of large conferencing facilities to generate income revenue*
- viii. *Inadequate “spill out” space around the facility*
- ix. *Council documents supplied to CUDAC make recommendations that are in conflict with Council’s decision to focus on the Clarence Street site*
- x. *Alternative uses of the Civic Centre as a valuable commercial site.*

This letter, written by the CUDAC sub-committee, would have severe repercussions, with allegation of improper conduct by a councillor, internal disputes, the demise of CUDAC sub-committee and the resignation of a number of members. It was clear from evidence given to the Inquiry that the letter was not well received in Council and a response ensued. (Ref: transcript R W Gilroy 30.10.07 p 386 et seq, P Newman 1.11.07 p 683 et seq, P Brown 15.11.07 p929 and L Lardner 6.12.07 p1512 et seq)

4.5.8.2 The New Council’s Response

Following the elections in 2004 members of the Kooloonbung Group began a campaign against building the Glasshouse on the Civic Centre site, advocating the Kooloonbung site.

As time progressed criticism by the group and, in turn, council became more strident. The Port Macquarie News published a letter from Ian Ferguson, a member of the group. The letter made a number of allegations, including: (Ref: transcript News 15.10.04)

“ many of the ratepayers present at the meeting expressed amazement at the way the meeting was conducted, and at Council’s unwillingness to even look at the Kooloonbung

option at all, let alone in an objective and transparent manner.

Some said they were disgusted, and felt powerless. Others said it was the worst run council meeting in 30 years.”

By this time the newly elected council had conducted a workshop on 2 June 2004 (having previously resolved to acquire the Ritz Arcade site) confirmed its commitment to the site, adding the Ritz Arcade site.

On 18 March 2004 Council’s General Manager had written to the Chamber of Commerce thanking it for its in principle support, anticipating that the project would “*be fully re-assessed by the new Council*”, advising:

“I will ensure that as part of these deliberations, the new Councillors are aware of the Chamber’s current concerns prior to them making any decisions on how the Project will progress forward”

The Chamber was being placated. There is no evidence, from the reports to the 2 June 2004 workshop or the 28 June 2004 meeting that issues, including:

- The lack of feasibility studies
- The high capital and ongoing costs
- Car parking
- Risk Management and
- Logistical problems

The only issue that appears to have been considered were concerns over a lack of conference facilities. These concerns became a major plank to support Council’s decision to add the Ritz Arcade site.

The decision to proceed with the project on 28 June 2004 did not end the protests. On 27 June 2004 Penny Marshall sent an e-mail to the Council it read:

“To:

The General Manager, Hastings Council

The Mayor and all Councillors

Re: Proposed Cultural centre on Civic Centre Site.

Any decision on this must be deferred pending thorough and genuine community consultation.

Council must demonstrate that other feasible options have been properly and independently investigated.

I strongly disapprove of Council wasting ratepayers money even on the preparation of a DA for this purpose on the Civic Centre site until these steps have been taken and real community support is demonstrated.

To approve the current proposal at this time would indicate a cavalier and irresponsible attitude to Council’s financial management, and would be an insult to the community as a whole.

On 14 July 2004, sixteen days after the decision to proceed, Council replied, telling her (in a lengthy but vacuous letter) that it was not interested in her concerns:

Part 7.9

29.6.04 0027

Hastings Council
PO Box 84
Port Macquarie NSW 2444
DX 7415
Email: council@hastings.nsw.gov.au
Website: www.hastings.nsw.gov.au
Fax:

FILE



(20680)

14 July 2004

27. 7. 04 0047

Mrs Marshall
29 Wandoo Place
BONNY HILLS NSW 2445

Dear Mrs Marshall

Thank you for your email dated 27 June 2004. In response to your email I wish to make a number of comments:

Hastings Council and its staff have been listening to the community for over 15 years in relation to development of a cultural centre. Local input has come from the many residents who have been involved in various working groups and committees over the time looking specifically at this issue, feedback to Council in relation to various proposals, responses to the brochure that was circulated to all residents in 2003 and the numerous comments in relation to the best proposal.

Councils also listened to a wide range of other experts in the field including representatives of the New South Wales Ministry for the Arts, the Urban Design Advisory Service, traffic specialists, cultural planners including Sue Boaden from Australia Street and Architects. Councilors and staff have also visited many such centres along the east coast of Australia. Council facilitated a cultural futures forum for additional input from the community and a range of other planning exercises over many years. Council has listened to the positive and negative comments it has received throughout this process.

In exploring possible sites for a cultural centre, Council has looked at a wide range of sites across the Hastings and assessed them on a variety of issues including:- car parking, access, planning approval requirements, Councils long-term planning and infrastructure needs, aspects of planning and Councils financial capacity both in relation to the capital investment and the ongoing recurrent costs.

After weighing up all this input and detailed information the Council, have resolved that the development of a cultural centre will proceed on the Civic Centre site. Council acknowledges that there is no one perfect site for such a development but it believes this site best meets the needs of the community now and into the long-term future.

Wherever this facility is developed Council and the community to build and operate into the future. One of the factors considered in choosing the Civic Centre site was that Council already owned this site and this reduces the cost to ratepayers. In order to make the facility accessible to the local community the fees and charges will

PROCESSED

The Greater Port Macquarie Region - 4th City of the Arts

Offices: Cnr Lord & Burrawan Streets, Port Macquarie (02) 6585 1922 - 9 Laurie Street, Lauriston (02) 6559 9958

need to be subsidised the same as Council does to provide access to the libraries, sporting fields and the parks and gardens of the area.

Now after over 15 years of talking about the need for a facility such as this, this Council has made the decision to proceed on the Civic Centre site including the acquisition of the Ritz Arcade. This has come after extended, open and sincere consultation over many years. The design has been developed with input from local people as well as looking at national standards for such as facility. Its location has been decided after extensive examination of many sites. As the development of this facility continues a local Project Reference Group will be established to continue to provide input into the functional design of the facility. This Council has not tried to hide any issue in relation to this development including its capital cost and the ongoing recurrent costs to community. The project will not result in a massive debt to the community and has in fact been planned for both in relation to capital and ongoing costs for a number of years.

I trust that this has answered your concerns.

Yours faithfully



Craig Milburn
Acting Director of Corporate & Community Services

cc Councillors

VAB.

Elsewhere the Council's strategy provided a series of 'good news' stories (eg media releases: 29.6.04, 3.8.04, 21.10.04 & 6.5.05)

4.5.8.2 Dealing With Criticism

Mr Ferguson gave evidence during the hearings, as did Mr Meidling (Ref: Transcript 3.10.07 p550, 5.12.07 p1425 and 22.11.07 p1256) both are members of Kooloonbung Group.

As is indicated elsewhere in this report this group was strident critic of Council's decision to build the facility on the Civic Centre site. The group continually advocated that the Centre be built elsewhere. Underlying the group's concerns was a lack of parking and pedestrian safety issues over truck access to the loading bay.

The group's criticism grew and extended to governance issues, with claims against both Councillors and staff. Its criticism would divide the community into groups perceived as opposing or supporting the project.

This would lead to council:

- Drawing on the project's supporters to push Council's message
- Providing incorrect and/or misleading information to support its decisions
- Denigrating opponents of the Project
- Adopting a series of communication strategies.

FINDINGS

- The Council initially ignored concerns raised by the community following the brochure and the display of the model.
- The Council adopted a number of strategies to meet criticism of its processes, none of which were consultative in their nature.

4.5.9 THE USE OF SUPPORTERS

4.5.9.1 The Supporters

The rift between those supporting the Glasshouse and those opposing it, engendered a willingness of supporters to spread the word. This is particularly demonstrated by the Supporter's rally less than a month before the Council resolved to support the project.

Additionally, Council's media file contains articles quoting comments from its consultants and representatives of bodies, such as the Dancer's Company.

It also contains a report, in an e-mail from Ms van Gend, reporting her attendance at meeting called by the Kooloonbung Group that included the following statement:

"We had a great showing of "people in red". I didn't count, but we made up at least half the audience. Robyn, Anne, David, Nigel and I were there on PRG duty. On arrival we were asked to register our names and given a selection of three delectable letters criticizing different aspects of Council which we could take to the Barber Shop in the Ritz Arcade for distribution to the Minister for Local Government. Hmmmmm"

The Council sought out and actively used supporters to respond to critics.

Council's use of supporters was not intended as part of a consultation process, rather it was a means of responding to detractors.

FINDINGS

- The Council sought out and actively used supporters to respond to critics

4.5.10 PROVIDING INCORRECT AND/OR MISLEADING INFORMATION

4.5.10.1 Council Reports

It is not the intent of this part to fully explore all instances where there has been misleading and/or incorrect information available to the public. It contains a few instances where it occurred.

Most notably, the Council the Council provided cost estimates that were significantly different from expert advice being provided by its Quantity Surveyors, or which contained significant omissions. The following are some examples.

The report to Council's meeting on 24 May 2005 contained a number of what were said to be "current costs". Similarly, the report to the following meeting on 20 June, 2005 also provided a "breakdown of the costs of the facility..." and "total costs for the project."

On 11 December 2005 Mr Milburn gave further evidence and provided copies of a number of minutes of the meetings. Mr Milburn gave evidence that the amounts contained in the report failed to the meeting on 20 June 2005 failed allow for an additional \$2.2 million in escalation. (ref: transcript 11.12.07 p1617 et seq)

While the Councillors may have been aware of Council's internal reporting procedures, it is doubtful that any members of the public would be aware that \$2.2Million had been subtracted from the real cost of construction to come to the figures.

This was not the first time misleading information had been provided. The site assessments of 16 July 2001 were also misleading. The assessment contained the following statement regarding the Kooloonbung site: (Ref: Submission 605 pc 53).

- *There are no car parking credits available for the site meaning the car parking on the site plus car parking required for the facility would need to be provided. Under the DCP 18 that would result in approximately 550 car parks needing to be provided which would significantly increase the cost of the project.*

This issue was taken up with Mr Nicholls, who gave the following evidence: (ref: transcript 14.11.07 p833 et seq)

Q. Leaving that aside, one has a figure of 254 spaces. I would assume that the Glasshouse development, whether it be put on the Civic Centre site or on the Kooloonbung site, would generate the same demand?

A. Yes.

Q. Council has considered a number of alternatives for the siting of the Glasshouse. Are you aware of that?

A. *That would predate my involvement with Council.*

Q. Look, I will show you a document. It is to be found in I think the project chronology documents provided by the Council. It contains a map of Port Macquarie and cites a number of places. It then goes on to consider a number of sites, including the civic centre, the Bob Todd site, the former post office, and others. Do you agree with that?

A. *Yes, it does.*

Q. It deals with the Kooloonbung site and it contains in there the following statement:

There are no car parking credits available for the site, meaning that the parking on the site plus parking required

for the facility would need to be provided. Under DCP 18 this would result in approximately Do you see that?

A. Yes, I see that.

Q. I think you just indicated that the existing parking on that site is 154 parking spots, is that correct?

A. Yes, that is correct.

Q. How, then, can one come to a figure, when one adds 254 to 154, to a figure of 550 car parks?

A. Obviously I have not seen that document before but what I can tell you is that the 254 spaces is based on a parking study which was completed for the Glasshouse site. The figures that have been referred to there refer to the requirements under DCP 18. I am not sure how the calculation occurred but there are base figures in the development control plan about the parking required space per floor space. I have not got the figures there but I could look at whether it is a calculation of a base floor space to parking requirement as opposed to an individual parking study. It does not surprise me that that could be shown as different.

Q. I do not understand you. If one was to build the Glasshouse project on the Koolonbung site, the floor space would remain static surely; would you agree with that as a proposition?

A. The assessment you are looking at for the 254 spaces is not based on a floor space assessment, it is based on an individual parking assessment on the use of the different uses on the site. It is not my understanding that is based on a straight floor space calculation.

Q. Can I suggest to you that the parking requirements for the Glasshouse are based on a number of factors: one, in

respect of the theatre, the number of seats provided; do you agree with that?

A. Yes.

Q. In respect of the majority of other spaces, it is based on the gross floor area as required by DCP 18 for those particular uses?

A. *I would have to look at that again. I do not know whether that statement is correct. My initial review of the TTM report was that it looked at a number of ways of calculating parking. One was based on floor space requirements under DCP 18. My understanding is these figures of 254 are based on a first principles assessment of the usage of a particular site or parts of the site. But I am not aware whether your statement is correct.*

Q. But, as a proposition, if you built the same building, used it for the same purposes, albeit on a different site, wouldn't it generate the same parking requirement?

A. *Yes. If you are asking me that question.*

Q. I am.

A. *Based on the detailed traffic study that has now been prepared, now I am not sure whether that was available when those figures you are talking about were actually prepared, but based on the detailed parking study that we saw for the development application, yes, we assume 254 spaces.*

There are significant other instances where information available to the public has been inaccurate and/or misleading, not the least of which have been a series of statements regarding parking for the Glasshouse, whether it be the parking demand generated by it, or the potential use of parking in the adjacent Port Central

Shopping Centre car park. These issues are taken up elsewhere in this report.

FINDINGS

- The Council has, on a great number of occasions, provided misleading and/or inaccurate information in reports and other material available to the public.

4.5.11 DENIGRATING OPPONENTS OF THE PROJECT

4.5.11.1 Instances

In its submission, the Kooloonbung Group referred to denigration of opponents: (ref: sub 299)

Both the Mayor and the GM have on a number of occasions caused to be published articles denigrating people with views different to those of PMHC, and particularly the Kooloonbung Group members (see Appendix 8)

Apart from breaching the Code of Conduct through these actions, they used the tactic to discredit us without any basis in truth, which also had the effect of creating division in the community. Recent responses from Glasshouse supporters have picked up on this, and vilified Glasshouse opponents. This immature example of “civic leadership” is reprehensible, and PMHC should be brought to account.

While the Inquiry does not necessarily concur with the views expressed in the last sentence, the Inquiry is concerned that the Council has denigrated opponents of the project, and that such denigration emphasises the flaws in Council’s consultation processes.

There were a number of significant instances that came to the Inquiry’s attention.

Councillor Johnston provided the following evidence to the Inquiry:

Janet Cohen also addressed the Council as an ex-employee. What she didn't say was when the Premier Bob Carr made Port Macquarie the fourth City of the Arts, she was employed as a cultural officer. But every time her superiors spoke to her about anything, she would say, "I'm resigning." Well, she said it once too often and it was accepted. So she didn't tell the real picture there. She has just got a chip on her shoulder, like so many other people who have put in complaints to this Commission.

On 4.12.07 Mr B O'Neile, who had been a long-time critic of the project, gave evidence. Mr O'Neile had qualifications in engineering and town planning, was a fellow of the Australian Planning Institute. His career had culminated in his appointment as a technical assessor on the Land and Environment Court of NSW.

Mr O'Neile did not support Council's views over parking issues associated with the Glasshouse. Mr O'Neile's qualifications and experience meant that his evidence warranted special attention.

When Mr O'Neile gave evidence, Council's solicitor embarked on a series of questions that had no other purpose but to denigrate Mr O'Neile. In that sense, Council's approach became a trial of an individual, who like many others was giving evidence of his views. (ref: transcript 4.12.07. p1298 et seq)

In the opening address the Inquiry had emphasised:

... that this is an inquiry into aspects involving the governance of the council. It is not a trial of individuals, so I will do my utmost to protect individuals, so I will do

my utmost to protect individuals at this inquiry – that is from either side of the debate. The basis of the submissions and the presentation of evidence and other matters are dictated by this, not by the rules that apply in courtrooms for actions by parties against individuals or corporations. This is not a trial, this is a commission of inquiry.

On 27.11.07 Council considered and approved a number of briefing notes to be provided to the Inquiry.

Among these was Briefing Note 14.

This Briefing Note was nothing more than a personal attack on Mrs Alvena Ferguson, who had given evidence on the first day of the evidential hearings.

Having been provided with a copy of the Briefing Notes, Mrs Ferguson immediately approached the Inquiry to be granted a right of reply. This request was granted. Mrs Ferguson exercised her right of reply on 5.12.07. (ref: transcript 5.12.07 p1445 et seq)

In what was clearly a highly embarrassing process, Mrs Ferguson was forced to defend her integrity from an attack over issues that could never fall within the Terms of Reference of the Inquiry.

To make matters worse, Council's solicitor sought to question her about the source of her copy of what had been a confidential briefing note. (ref: transcript 5.12.07 p1456 et seq)

The Inquiry did not allow this questioning.

So grave was this course of conduct that it is necessary to record Mr Broad's assessment (ref: Transcript 5.12.07 p1455).

MR BROAD:

Commissioner, I think this needs some form of response. We are here conducting an inquiry into governance issues affecting this Council. The evidence that I have sought to adduce to assist the Commissioner has been intended to pursue the issues within the terms of reference. It has not been directed beyond that.

I am concerned that what is occurring, and what has occurred now today, is that Mrs Ferguson has exercised in part her right of reply to respond to allegations falling so substantially outside the terms of reference that they cannot be described as anything other than a vitriolic attack on her.

They have no relationship, in my submission – and it is a matter for your ultimate consideration, Commissioner – to the quality of her evidence, they have no relationship to the issues before this inquiry, and I am concerned that Mrs Ferguson should be called upon to defend her integrity in these circumstances.

For my own part, Commissioner, I have personally been involved in at least one small volunteer association where an honorarium was paid annually to the secretary, which recognised the simple reality of the work that went into that association. This appears to be comparable to that. Again, I think the nature of what Mrs Ferguson has had to deal with today is wholly inappropriate.

Council's submission in reply attached a number of documents commenting on the evidence given by a number of persons. Amongst them is a commentary on the evidence provided by Mr Meidling. Mr Meidling is a member of the Kooloonbung Group and raised concerns

regarding the loading bay, parking and the draft business plan in the group's submission and in his evidence. Mr Meidling is categorised in the following manner:

Seems to indicate that he is an instant expert on all matters attached to the above without substantiation.

His management knowledge is dismissed as *antiquated* with the comment

NOTE: This is prevalent in non Gen X or Gen Y managers.

In circumstances where opponents are singled out and denigrated for having and for expressing views contrary to those of the Council, it cannot be said that the Council truly consulted with its community.

Clearly the actions of the Council have been to single out opponents and to present them to the community at large as people who should be disregarded, in what was a jackboot approach.

FINDINGS

- The Council has embarked on a course of denigrating those who it sees as opposed to the project
- Consultation with the wider community cannot occur where opponents are singled out and denigrated for having and for expressing views contrary to those of the Council.

4.5.12 COMMUNICATION STRATEGIES

4.5.12.1 The Initial Strategy

Council's initial dealings with Deutsche were commercially sensitive and confidential.

By determining that it would enter into the Heads of Agreement with Deutsche, the Council ruled out the opportunity to consult with its residents and ratepayers.

A communications strategy was adopted as a substitute. Below is a copy of that strategy. (ref: Sub 605 PC 28).

CULTURAL FACILITIES DEVELOPMENT COMMUNICATION STRATEGY DRAFT

Strategy	Content	Timing
Initial Media release	<ul style="list-style-type: none"> • A brief description of the integrated proposal • The benefits of the proposal. • A summary of the heads of agreement • Where enquiries can be directed. • How the community will continue to be informed. • That is it is only a six (6) month negotiation period, still needs acceptance by both parties • Council has set minimum standards. • Council has undertaken previous investigation and sought expert input. 	12 Feb
Council Newsletter	<ul style="list-style-type: none"> • Background and chronology to proposal • Announcement and Key issues and benefits 	1 st after 12 Feb
Council Web Site	<ul style="list-style-type: none"> • Background and chronology to proposal • Copy of Media release • Benefits of Proposal • Issues to be considered • Process for community questions and input 	Set up for 12 Feb and regularly updated
Nominate Council Representative	To deal with all questions from public and media in relation to the proposed development	12 Feb
Art and Cultural Taskforce, Performing Arts Working Group and Gallery Advisory Board	Utilise these groups for community representative comment on specific aspects of the proposal	During 6 month negotiation
Media Release 2	Update at half way mark	May 10
Council newsletter	Update of progress	May/June
Media Release 3	Details of outcomes of negotiations - Announcement of agreement/no agreement	August
Assuming positive outcome from negotiations		
Dedicated Newsletter supplement	Establish a dedicated supplement for the quarterly Council Newsletter – eg Noosa. This is to provide regular update throughout the DA Application Stage and Construction Stage	Quarterly
Council Web Site	Provide regular updates of progress throughout the DA Application Stage and Construction Stage	Updated Monthly

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DA Public Exhibition	<ul style="list-style-type: none"> • Extend the Public Exhibition Period to 45 days • Conduct 3 public forums – Port Macquarie, Wauchope and Camden Haven • Plans on display at 3 Council offices and libraries • Announcement of Council appointed Project Manager 	During Public Exhibition period
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Question relating greater public utilisation

Issues to be prepared for prior to announcement

- * Questions in relation to the encroachment or closure of Hay Street given the past history of the sell off of Hay Street
 - * Safer for pedestrians
 - * Establishment of a Piazza
 - * Relaxed outdoor area
 - * Public art, sculptures etc
 - * Extend outdoor eating areas
 - * Not selling the street – changing its use to allow greater community use

 - * Why no other developers have been approached
 - * Council was approached by the developers
 - * Initial assessment was that the proposal was worth exploring

 - * The possible ramifications of a relationship between Council and a commercial developer
 - * The relationship is not uncommon in modern local government
 - * The property ownership will be determined before Council signs off on anything
 - * The working relationships will be determined before Council signs off on anything

 - * What will happen to the gallery and civic Centre operations during the building of the Construction phase
 - * The Gallery will be relocated to a site to be determined
 - * The Gallery was always seen as an interim Gallery
 - * The Civic Centre will cease all operations during the construction phase

 - * How does the facility development relate to cultural planning and the Open Space Community and Cultural Facilities report
 - * The need for such a facility was identified as early as 1995 and was included in the 1997 Community Services Plan
- G:\Corporate & Community Services\Community and Cultural Governance\Community Planning\Performing Arts Centre\Communication\The OSCAR report highlights the need for such facilities in the CBD

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- * The proposal may allow for the provision of some meeting type space in the development.

- * What are the car parking ramifications

- * These will be determined in line with the necessary Building Codes and Development Control Plans
- * The relationship with the Port Central Shopping Centre is one of the advantages of the proposal

- * How will it be paid for

- * The Developers are proposing to provide the basic construction of the facility – its shell and main services.
- * Council will be responsible for the fit out
- * Council will budget for the fit out costs using special purpose grants from State and Federal Government, rates revenue, possibility of a special cultural facilities levy, S94 funds when plan is finalised.

- * What advice has Council sought

- * Tour of similar facilities in NSW and Vic
- * Building specifications from Bendigo and other facilities
- * Benchmark Specifications from Victorian Performing Arts Association
- * Input from Australia Street Consultants and performing arts architect specialist

- * Why has it been no consultation with the Community to this point

- * Consultation relating to the need for such a facility was undertaken in the development of the 1997 Community Services Plan
- * The specific requirements for such a facility have been drafted following inspection of other regional centres and reference to benchmark standards and expert advice.

- * What is the process from here

- * 6 months of negotiation leading to the submission of a DA if agreement is reached
- * Council will continue to inform the community of the development of the negotiations where it is able to do so via the Council newsletter and its Web site.
- * The DA will be placed on extended exhibition
- * 3 community forums will be held during the A Public Exhibition phase

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- * Is there a percentage for Public Art to be included in this Construction
 - * Council will impendent is Public Art policy as part of this development
- * Can the heads of agreement be released to the public, if not a summary of the heads of agreement?
 - * The Heads of Agreement will be released to the level that commercial interests will allow

It would be Council's guide when dealing with issues such as why there had been no consultation to that point.

4.5.12.2 The Later Strategies

Subsequently, Council adopted its "Cultural Centre Key Community Information and Consultation" strategy. Again a copy appears below.

Cultural Centre Key Community Information and Consultation Activities & Actions

Key Activities	Actions
Community Newsletter	Quarterly Updates 'Where at Now'
Model	Onsite
Plans, Photo Montage	All Council Offices, Libraries, Key Shopping Centres
Meetings – General	3-6 Public Information Meetings as part of DA
Specific Groups	As requested – Continuing
Media Updates	2 Monthly
Site Signage	By December on Civic Centre Site
Project Reference Group	As Required
Touring Reference Group	As Required
Web Cam	On site during Construction
Community Site Tours	On Sundays During Construction

Again, despite its name, it was a communications strategy and did not provide for consultation with the wider community.

About September 2005 the Council adopted another communications strategy, which, again, appears below: (ref: Council's Media clippings CD)

Its aims, objectives and tactics bear special attention.



Arts, Conference and Entertainment Centre
Communications Strategy as at September 2005

Aim: A strategy to be implemented over six months which will positively influence public and business perception regarding the Arts, Entertainment and Cultural Centre.

Objectives: Utilise direct and indirect tactics to ensure that accurate, factual information about the centre is widely communicated so that the community understand the facts and reality of how the centre will benefit them.

Tactics: The tactics can be divided into a number of key areas.

1. *Media Briefing Kit:* A resource to facilitate factual accurate reporting

Outline	Date	Outcomes
<p>A summary document providing all the key facts about ACE, the development milestones, consultation processes and involvement of community groups. Also key contacts for seeking comment both inside and outside Council.</p> <p>Include electronic and printed images of maps and the display that can be used in reporting</p>	<p>ASAP - should have existed as a take away document for briefings already occurred with 2MC and Prime</p>	<ul style="list-style-type: none"> • Open transparent communication. • Creates a basis to negotiate with media if facts are reported inaccurately. • Spiral bound resource that can be updated therefore keep top of mind

2. *Editorial Media Relations: A plan of significant media opportunities, reinforcing key messages and utilising varied spokespersons*

Story Overview	Date	Spokesperson/ Contact	Key Messages
<p><i>Red Curtain Ball</i></p> <ul style="list-style-type: none"> Announce competition to win tickets Reminder on ticket sales Social pages coverage of event 	<p>ASAP</p> <p>Oct 7 21 Oct</p>	<p>C.Milburn</p> <p>V. Freestone</p>	<p>Ball will be an event to remember, competition creates opportunity for all. Event is celebration of the civic centre and its role in our cultural heritage. Fitting that a site that has always been for public use will remain that way in the new phase.</p>
<p><i>Encore Performance</i></p> <ul style="list-style-type: none"> Announce performance date as result of overwhelming support for Ball Photo opp of acts rehearsing as ticket reminder 'Pulse' double page spread in Port News post event 	<p>Oct 10 3 Sunday Oct 19 in Nov</p>	<p>C.Milburn</p> <p>Community Groups</p>	<p>Acknowledgement of how important public performance space has been in development of the arts in the Hastings. This event will allow the whole community to farewell the civic centre, appreciate our local talent and the benefits a world-class facility will offer them.</p>
<p><i>Non for profit Auctions</i></p> <ul style="list-style-type: none"> Profile of whats available and how auctions will be run Photo story of happy community group with their new resources 	<p>late Nov Dec</p> <p>Post auction</p>	<p>Mayor</p> <p>Com.Groups</p>	<p>PMHC aware of creating ways for community to benefit from Civic Centre closure. Interacting with community groups and providing practical assistance. Postive images of end of Civic Centre era.</p>

Story Overview	Date	Spokesperson/ Contact	Key Messages
<p><i>DA Exhibition</i></p> <ul style="list-style-type: none"> Camden Haven / Wauchope story on exhibition Advertising schedule 		<p>C. Milburn</p>	<p>PMHC taking the facility to outlying areas and explaining how they will benefit.</p>
<p><i>Peer Review</i></p>	<p>15 Oct.</p>		
<p><i>Demolition Contract</i></p>			<p>Transparent process to award contract. Any environmental/ latest technology angle. Develop timeline of demolition milestones as media briefing notes.</p>
<p><i>Local Interest Groups</i></p>	<p>Ongoing</p>	<p>Varied</p>	<p>Develop a template form that groups complete and fax to Council Communications section with contacts and story ideas/ photo opportunities. These opportunities can be followed-up and turned into editorial when appropriate.</p>

3. *Community Newsletter*: Utilising a publication with a print run of 50,000 to convey messages and images exactly as set by PMHC.

Newsletter Edition	Story Outline	Spokespeople
October 2005 Rural Press	PMHC Parking Strategy – Outline of how strategy is being developed and its impact on the CBD and in particular ACE. ACE and the impact on our youth – outlines the availability of the centre for young people, how they will use it and how schools have been included in the planning process	GM C. Milburn
November 2005 Pictorial	DA Exhibitions, including images of plans and major milestones approaching. Include quotes / testimonials of people who have seen exhibition and have reacted positively. Some positive stats generated from feedback forms.	Community
December 2005 Rural Press	PMHC Community Consultation Policy review. An update on the process being undertaken to revise PMHC Community Consultation Policy, utilising ACE as example where appropriate.	Mayor / Beth Flynn

4. *Briefings*: Direct contact with target users groups to give factual presentation on relevant benefits

Target Group	Timing	Resources	Outcomes
<i>Schools</i> – approach all local high schools and Primary Schools to present to staff regarding the facility and how schools will use it.	<ul style="list-style-type: none"> Approach letter 10 Oct Follow-up 14 Oct Mtgs Oct/ Nov 	<ul style="list-style-type: none"> Tailored version of media kit as leave behind facts resource for staffrooms. Article copy for school newsletter Offer inclusion on newsletter database 	<ul style="list-style-type: none"> Teachers become aware of positive potential for local students created by ACE. Establish third party contact with parents through newsletter Build on database of people directly informed through newsletter Incorporate most supportive schools into launch / future activities Teachers are active members of community and will inform others of the facts they learn
<i>Business Networks</i> <ul style="list-style-type: none"> Business Women's Network Chambers of Commerce BEC ABL 	<ul style="list-style-type: none"> Ltr offering presentation at relevant mtg asap Mtgs as scheduled 	<ul style="list-style-type: none"> Brief article text promoting presentation for inclusion in newsletter Powerpoint pres Summary handout of key facts with tear off for inclusion on database 	<ul style="list-style-type: none"> Takes public consultation and facts directly to target markets Opportunity to leave behind factual summary to correct inaccuracies in the community Not only relying on third parties (i.e media) to convey facts Generate a groundswell of well informed business people who understand process and benefits

More recently, the Council has adopted a further document titled "Communication Tactics – PMHC / Glasshouse" which was to deliver its communication strategies until the end of June 2007. Again a copy appears below:

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COMMUNICATION TACTICS - PMHC / GLASSHOUSE
To End June 2007

Tactic	Key Messages	Distribution Channel	Spokespeople / Branding	Date
Community Information Sheet	Factual summary of facility, its uses and community access	Direct mailed to 23,000 rate payers	Spokespeople n/a Co branded Council and Glasshouse	Due for mailing 29 June
Letter from Mayor	<ul style="list-style-type: none"> Recommend brochure Clarify cost Decision making process Commitment to community 	Direct mailed with Info Sheet	Mayor	Due for mailing 29 June
Proactive Media	<ul style="list-style-type: none"> Heritage office supports artefact preservation Reminder of positive action 	Media release to all media	Craig Milburn Council branded	Distributed 21 June Coverage 25 June
Media Conference	<ul style="list-style-type: none"> Council putting resolution into action Update on Council's commitment to better informing community Launch brochure, media Kit, visual package Briefed over 1000 residents 	Conference at Council all media invited	Council branding Mayor GM On hand; Craig M, Robyn B	Thursday 28 June (coverage Thursday night / Friday)
Advertorial Campaign	<ul style="list-style-type: none"> Facilities summary, feature new images 	Double Page Spread July Focus July Pictorial	Council / Glasshouse Agris (Pictorial)	Available from first week July
Political Issues Management - Report Response	<ul style="list-style-type: none"> Council have responded to DLG within timeframe Summary details of response 	Media release to all media	Mayor	Pending response being public as part of meeting notice - 27 June Ideal - hold to Monday 2 July

4.5.12.3 Reliance Upon the Strategies

Mr Milburn provided a chronology containing what Council portrays as its consultation events. In the period from 2000 to 28.6.04 when the current Council resolved to proceed with the project, there appears only 2 instances where the Council provided an opportunity for the general body of residents and ratepayers to put their views.

Firstly, in response to the brochure, and secondly in response to the exhibition of the model and the plans in shopping centres.

For the reasons already indicated in this part, these processes were not consultative. Council did not wish to listen to, let alone consider the wider public's views; that is unless they provided support.

At all times the Council has been driven by its communication strategies when dealing with the wider public.

Findings:

- The Council did not consult with its community, rather, it put in train a number of communication strategies that it would portray as consultation.

4.5.13 Conclusion

4.5.13.1 Council's Views

Council's submission to the Inquiry contains a section titled "The Process of Public Consultation". The section details Council's views of the public consultation undertaken. (ref: sub 605 p149)

The section concludes:

"Council has made a comparison of the consultation process undertaken during the Glasshouse project to the International Association of Participation (IAP2) standards for community consultation. The process has met all aspects."

On page 155- 157 the submission details the community and industry consultation events.

When asked whether, in his view, Council's had adequately consulted with the community the Mayor gave the following evidence: (Ref: transcript 25.10.07 p356 et seq)

Q. Mayor Drew, this project had its genesis quite some time ago. Mr Milburn took us through the procedural chart which commenced in 1992 and there are a substantial number of parts in that path that refer to consultation. Could I pick out this. In 1996, on 5 November, I'm reading back from this timeline, there appears to have been a community services plan and an arts and cultural working group which refers to consultation with over 70 groups and organisations.

There were a number of events coming forward from that date. In your view, has council adequately consulted with its community in respect of the project that it was proposing, whether initially or subsequently, whether it be from 2002 when the plans, as I understand it, became more formalised?

A. *I'd like to know your definition of "consultation".*

Q. Can I throw it back to you. What would you see as consultation in respect of council's responsibilities?

A. *I think consultation takes on a raft of different aspects. Certainly, one is going and asking the community what their expectations, hopes and desires and probably I'd go as far as dreams are concerned for a facility such as this, but from there you then also consult with experts in their fields. They could be members of your community, I might say, but certainly to gauge the expertise from consultants and the expertise of your professional staff that is contained within the council organisation itself. I think that is all part of consultation. Councillors in general certainly make themselves available very readily to be able to move through their community. I know this present term of council do exactly that. We are very available for our community to have ideas put to us, to listen to information that we may have to tell them about particular projects and services that we are looking at delivering or are delivering. Consultation is not just about going out and taking on board everything that the community might be telling you at a particular time or their wish list. It's part of a whole raft of issues relating to consultation.*

Q. Could I go through this process with you. Is consultation going to the public as a whole and collecting their views?

A. *As a whole?*

- Q. Yes. I was going to put a number of facets, not one excluding another, so please don't think that I'm only saying consultation is one circumstance.**
- A. Can you –*
- Q. Okay. Could I suggest that consultation takes a number of forms.**
- A. Mmm-hmm.*
- Q. It may involve going out to the public as a whole?**
- A. Yes.*
- Q. It may involve going out to potential users, specialist user groups, as is the case with Glasshouse?**
- A. Yes.*
- Q. As you indicated, it may involve obtaining expert advice from consultants and others?**
- A. Yes.*
- Q. It may involve providing information, such as the brochure provided by council and requesting feedback.**
- A. Yes.*
- Q. You would suggest, no doubt, that providing information is also consultation?**
- A. Yes.*
- Q. You would suggest that staff and others attending groups and providing Powerpoint presentations, or other things, is consultation?**
- A. Yes.*
- Q. You would suggest that the availability of councillors to meet with the members of the community to answer questions is also consultation?**
- A. Yes.*

Q. Have I missed anything?

A. *Sorry?*

Q. Have I missed anything?

A. *No, I think that's pretty extensive. Yes. There are probably other forms of that as well, but yes, that's a fairly extensive list.*

Q. In 2004, the new council had been elected. It had its workshop. It resolved to go forward with this project. I understand that was a unanimous decision; is that correct?

A. *I believe so.*

Q. Did council go back to its community as a whole saying, "Here's our project. We've resolved to go ahead with this. What do you think?", or did it rely on its previous consultation?

A. *Probably a bit of both. I think in any journey you've got to make decisions somewhere along that journey and the council had come to the point of that journey where a major decision had to be made through previous consultation, through all those areas that you've suggested and that's what we did. We made a decision to move that project forward. The council believed that we had gained enough information to make that decision to move the project forward.*

Q. Council produced a brochure in 2003?

A. *Yes.*

Q. I understand that was sent to all householders?

A. *Yes.*

Q. Council received, I think, 185 replies to that?

A. *Yes.*

Q. That suggests a very poor rate of response. Can I suggest that to you?

A. *I think you're probably correct, which could indicate there wasn't a great deal of interest in this particular project at that particular time.*

The General Manager, Mr Smith was also asked about the wider consultation with the community, he gave the following evidence. (Ref: Transcript 15.11.07 p902 et seq):

Q. Other than the brochure and the display of the models and the involvement of the local residents group, what other consultation has Council undertaken in respect of its proposal, with its community?

A. Are you talking about the project over the last six or seven years?

Q. Let's move forward. In 2003, there was a brochure?

A. Yes.

Q. Subsequently, the models were placed on exhibition, and I think that was somewhere in about October, from the chart, the truth, that was in about October 2003?

A. (Witness nods).

Q. Subsequent to that, what consultation has Council undertaken with the community as a whole?

A. I think it's vital to the context of the timeline to lay that out in the sense in late 2003/early 2004, there was a significant amount of public discussion about the project, particularly in the context of the Council election. From my recollection, the actual implementation of the project at an operational point of view probably went into a bit of a hiatus, but I could stand corrected on that. The key points, however, are following the election of the new Council. Of course, this project was an election issue. You will have to bear with me in terms of I think it's important to map it out.

Following the election of the new Council, there was a great deal of community discussion and community debate. The councillors

themselves ensured they were fully briefed and advised of the circumstances, and then of course decided to proceed. So in terms of it did not determine that it should go back and consult on a vast range of sites, it had satisfied itself with the processes to date.

There were consultative processes, in the sense of the management plan, which identified the project, and in fact with some meetings with residents as part of the management plan process, I believe 2005 but I'm not too sure whether it is 2004 or not, this particular project was discussed and was raised as part of the consultative process with regard to the management plan. We of course had the development application process as well, which is another key consultative process, but that is probably getting at the operational end

.In terms of the project itself, is it worthy, you have that management plan process and of course you have all the other informal consultative mechanisms, whether it's the councillors in their roles talking to people and talking to groups or the community providing its own feedback. But it certainly can't be stated that the community was unaware of the project or was sitting silently in the background.

4.5.13.2 Communication is Everything

Elsewhere, Council suggested utilising its December 2005 edition of its *Community Newsletter* (with a print run of 50,000) to announce the review of its Community Consultation Policy, the Glasshouse) *as example where appropriate.* (ref: Arts, Conference and Entertainment Centre Communications Strategy – Sep 05)

But then, this proposal was only part of its Glasshouse communication strategy.

4.5.13.3 Review

The Council did consult widely with its local arts community and with industry. Such consultation has led to a theatre that far exceeds a 'fit for purpose' standard and at great cost.

It is the wider public, who were continually excluded from the process, who will bear the cost.

Conclusions

- All of the evidence leads to the inevitable conclusion that that the Council failed:
 - To involve its community in the planning and funding for the Centre
 - To consult the wider community, preferring the views of the Project Reference Group, and industry providers
- The Council refused to recognise and consider community concerns and:
 - Denigrated individuals criticising the project
 - Provided misleading and/or incorrect information
 - Improperly used its support group to campaign against critics, rather than to adopt proper consultation policies
- Council's communication strategies have driven its processes and have both overtaken and subverted genuine community consultation
- Ultimately, the Council refused to waiver from its perception of the project
- The Councillors failed to fulfil their role as elected persons and, particularly, to facilitate communication between the community and the council
- Ultimately, the Council has failed to provide a facility for its community, after undertaking due consultation. In so doing, the Council has failed to meet its charter.

4.6.1 Enlisting Support

Governance involves the manner in which Council's undertake their responsibilities and functions under the relevant Acts of Parliament on behalf of the community. Port Macquarie-Hastings Council in serving its community needs to consider the impact of decisions on the broader community. The four Terms of Reference directly relate to Governance.

The Public Inquiry under Section 740 of the Act has afforded Council and its ratepayers/community an opportunity to express their views and provide evidence pertinent to the Glasshouse project. Council and some of the community have referred to democratic process and the right of the people to decide at the September 2008 elections.

Council has consistently asserted that the Glasshouse project in its current form (cost & configuration) and location is supported by the bulk of its ratepayers. Further they alleged that a small number of opponents, sometimes referred to as four people, has attempted to misinform and intimidate the broader community. A number of Councillors promote this view and dismiss opposition as being ill founded and misdirected. The Gallery Director and The Friends of the Gallery, amongst others appear to carry this message through the wider community.

Council submission in reply Page 4 "Council's Position Statement" states in Item 2:

"that the unprecedented level of public interest in the inquiry clearly demonstrates a lively, engaged and supportive local community that should be represented by a democratically elected Council."

This Council statement mentions previous assertions that opponents are few and probably the Die Hard 4. Perusal of evidence put to the Inquiry tells a different picture. Council has allowed its staff to organise the “for” submissions as exemplified by the actions of the Regional Gallery Director.

This Council officer campaigned strongly to counter any opposition to the Glasshouse project with very strong statements including a submission template. Review of Council documents provides evidence of similar position and actions taken by other Council staff.

Similarly a Director of consultant’s King and Campbell who identified this firm as Development consultants for private industry and stated in their oral presentation they have a significant relationship with Council. In response to a question they stated under oath the following:

Q. Has King and Campbell been involved in suggesting to developers that they should put submissions in to this Inquiry?

A. *“I think the term - it is an interesting term, “Developer”. I think if we all build a house we are all Developers. I think in terms of we have supported our clients in the idea that there is some value in putting forward a submission to the Inquiry, when the Inquiry started that is really, that was the bulk of what they could do, so people came to us and asked what they thought they should do to support the Glasshouse and we said, “put in a submission”. That is normally the way to go.”*

Although the community has not had the opportunity to read the “Confidential Submissions” these generally justify their need for confidentiality as:

“if their adverse statements were published their livelihood would be threatened”.

Even anonymous submissions from supposed Council employees involve the same statement to justify their confidentiality.

When you consider the above it is understandable the level of emotion which has bedevilled the democratic process you would expect from a functioning Council. To quote from the Regional Gallery Director submission in reply and I would state this Council employee is committed to her role and very passionate about the arts.

Extract from Port Macquarie-Hastings Council, Director of the Regional Gallery submission in reply:

“In opening this submission I wish to make a brief reference to the damaging effects of the Inquiry on the general development of other arts facilities by local government throughout the state and indeed across the nation. Many Council’s are acutely aware of the NSW Department of Local Government’s intricate and close examination and perceived critical view of the Glasshouse Development through this current Inquiry.

Council’s are now observing the damaging outcome of committing funds on arts infrastructure in terms of a signature building. All eyes are on Port Macquarie Council and the Glasshouse Inquiry is a very persuasive reason to not venture into arts spending. This Inquiry has a huge and detrimental effect on the Arts. State and National funding bodies, indeed many who have committed funds to the building are intimately aware of the Glasshouse Inquiry and its intricacies.

I also ask the Commissioner to consider the public reaction to the Glasshouse within the context of Arts spending within Australia and the unsettled history of the Arts and the heated political climate it generates.

Traditionally, when Government departments spend money or invest in the Arts they are often attacked from conservative members of the public or by factions with opposing interest. (the Glasshouse in point.) Generally, Arts spending is called into dispute, as it may continue to function and communities may continue to grow without notable expense on the arts.

Town Planners, Social Planners, Cultural Planners, Health and Crime workers can support the vital implications if extensive town development proceeds without the growth of the arts and the required infrastructure to develop a crucial arts hub as the focus of the community. Indeed, statistics indicate that in times of social crisis the Arts becomes an essential area for social cohesion and public consolation. Theory supports the need for the arts maintain social wellbeing and a cohesive community. Commitment to community reduces crime and reduces the decline in community health.

*Government spending on the Arts is always contentious. Unfortunately, important statistics supporting the value of the arts to the general community can often fail to attract the traditionalist's dollar. Profits from the arts are gained from less conspicuous and indirect areas. Dollar outcomes and profits are often perceived as less visibly accountable. **Arts Bashing** is often the result of financial rationalists with limited vision and foresight reflecting little attempt to*

understand the benefits or less overt advantages to business and community development.

Paradoxically, Governments are the first to call on the Arts when they want to show off our country's assets. They commit passionately to arts dollars with hugely expensive arts events for the Olympics or to enhance overseas trade with expensive cultural exchange projects and all without a murmur from the public.

The Department of Local Government inquiry into the Glasshouse has come about as a result of another example of local community Arts Bashing. This inquiry whatever the outcome will become a poignant message to all Government organisations who want to spend money on the Arts. It will be the sire call not to proceed with major Arts developments as Councils and executive staff will get their heads chopped off or at least get hauled through an intricate and exhaustive inquiry.

I call on the Commissioner to support the arts and spending on arts infrastructure and try to reduce the devastating effects this Commission or inquiry has on the arts at a state and national level.

Due to the influence of the Regional Gallery Director's and the Friends of the Gallery on a section of the Port Macquarie Hastings community the Director's submission is attached in full in Volume 2.

The Commission of the Inquiry has heard no significant evidence that the community does not support arts spending but questions the fit for purpose of the Glasshouse to accommodate the wider community.

The evidential hearings and Council's submission demonstrate an approach by council, which was not inclusive and critical of opposing

views. Examination of Council's Response in Reply is a reasonable demonstration of how Council approaches its governance responsibilities. The following sections are an examination of their responses to significant issues raise at the Inquiry. Each issue is treated in the order presented in Council's Submission in Reply commencing on Page 7 of that submission.

FINDINGS

- Council has allowed its staff to organise support for its role of developer of the Glasshouse thereby compromising their role as regulator.
- The Inquiry considers the Port Macquarie Hastings community support spending on the arts but questions the fit for purpose of the Glasshouse to accommodate the wider community

4.6.2 Process of the Acquisition of the Ritz Arcade

Commissioner's Comment:

Council became aware that it could not proceed with its plans to build the Arts and Cultural centre on the Civic Centre site due to the opening windows of the Ritz flats which created a fire hazard for the ACE well before acquisition action. Advice was provided from the Planning Department among others regarding the impact on the amenity of these flats by the ACE building to the boundary.

Councillors were to our knowledge not advised that to proceed with the Civic Centre site they would need to address the Ritz Arcade problem until after a number of significant milestones to develop on the Civic Centre site had occurred.

These matters are not included in the Council's response.

FINDINGS

- Councillors were not advised that to proceed with the Civic Centre site they would need to address the Ritz Arcade problem until after a number of significant milestones to develop the Civic Centre site had occurred.

4.6.3 Theatre Orientation

Commissioner's Comment:

Theatre orientation towards Clarence Street was a requirement of Council as stated in a letter from the General Manager to Deutsche Asset Management on 16th October 2001: (Refer Project Chronology – PC 042 at page 33)

"... the following points are seen as important to the success of the project:

The joint entry to the Art Gallery, Performing Arts Centre and Visitor's Information Centre from Clarence Street...."

also the Cultural Facilities Taskforce meeting of 29th January 2002 report contains the following statement:

"Following numerous preliminary discussions with Deutsche Asset Management and the preparation of various plans, it has been acknowledged that it is possible to fit a Performing Arts facility and Art Gallery of the required size on the existing Civic Centre/Art Gallery site"

The following letter from Deutsche to the General Manager on 25th September 2001 is more than likely part of the deliberations the Cultural Facilities Taskforce considered at its 29th January, 2002 meeting. The letter demonstrates even with the issue of the Ritz Arcade the ACE could fit whilst the building faces Clarence Street.

RESTRICTED

Deutsche Asset Management

27- 9- 01 0051

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25 September 2001

Mr Bernard Smith
General Manager
Hastings Council
P.O. Box 84, Port Macquarie
NSW 2444 Australia

Dear Bernard

Auditorium and Gallery at Port Central Shopping Centre

I refer to our meeting with Council and its consultants on 15 August, 2001.

Following that meeting, our architect has further developed the schematic design to address a number of concerns raised by Council and or its consultants, including:

1. Increased height of fly tower and stage
2. Set back from adjoining property to allow for light and air
3. Shared amenities for the auditorium and gallery
4. Theatre café and bar
5. Provision of loading facilities for gallery.

It would appear that at this stage of the design concept most of the Councils requirements can be accommodated on the site.

The next stage in this project is to undertake more detailed design and costing of the current concept, submit an application for development consent, and formalise the relationship between Council and DeAM.

As requested, I attach a Heads of Agreement for the construction of the auditorium and gallery and the transfer of a stratum interest in respect of the cinemas and retail facilities.

Would you please confirm Councils acceptance of this proposal by signing and returning the attached copy of the Heads of Agreement

Yours sincerely

Stephen Garmston
Head of Retail Asset and Development Management

cc. Jack McGougan
Alexandra Varvaressos

Ref 101.06.0801

HASTINGS COUNCIL
925.121
925.111
27 SEP 2001
File No: 31566
(342)

PROCESSED

Deutsche Bank Group

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HEADS OF AGREEMENT

DRAFT

1. **PARTIES**

- 1.1 **HASTINGS COUNCIL** ("The Council")
- 1.2 **DEUTSCHE PROPERTY FUNDS MANAGEMENT LIMITED A.B.N. 47 006 036 442** ("De AM") as responsible entity for **DEUTSCHE WHOLESALE PROPERTY FUND ("DWPF") ARSN 090 499 013** being a registered Managed Investment Scheme established by constitution dated 30 June 1983.

2. **PROPERTY**

Land situated at the corner of Clarence and Hay Streets, Port Macquarie being Lots 21 and 22 DP868598 ("the property").

3. **DEFINITIONS**

Community theatre and gallery means the minimum 600 seat community theatre and minimum 1,000 sq metre gallery (including mezzanine) and associated ancillary facilities to be constructed within the proposed development to be constructed on the property.

Cinema and Retail Facilities means the cinemas and retail shops to be constructed within the proposed development to be constructed on the property.

4. **BACKGROUND**

- 4.1 Port Central Shopping Centre situated in Horton Street and Hay Street, Port Macquarie is owned and managed by DWPF. DeAM has authority to act on behalf of DWPF.
- 4.2 The Port Central Shopping Centre adjoins the property and the parties have been in discussions in relation to a possible joint venture to develop the property.

5. **THE AGREEMENT**

- 5.1 DWPF will make a Development Application to the Council for the construction upon the property of a building generally in accordance with the draft project brief supplied by Council a copy of which is annexed hereto marked "A", and the preliminary plans prepared by Powell Dodds Thorpe dated 19 September 2001, a copy of which is annexed hereto marked "B".
- 5.2 If the Development Application is approved, DWPF will cause the building to be constructed upon the property, at its cost, in a good and workmanlike manner and to the reasonable satisfaction of the Council and with completion of the works in accordance with a time frame yet to be agreed.
- 5.3 It is yet to be agreed and determined as to how the title of the property will be dealt with following completion of all of the works, but it is the intention of the parties that following completion of construction the Council will have either

ownership or absolute entitlement in perpetuity for the use and enjoyment and profits of the following parts of the works:-

- (a) The minimum 600 seat community Theatre;
- (b) The minimum 1,000 sq metre gallery;
- (c) 3 of the 6 proposed shops within the proposed building, which 3 are yet to be determined.

DRAFT

6. CONDITIONS

6.1 This agreement is non-binding and is subject to:-

- (a) Agreement between the Council and DWPF in relation to the final design of the proposed building and the layout, proportions and design of the parts of that building;
- (b) Development Consent being granted to the application to be made by DWPF for construction of the proposed building, such consent to be on terms and conditions reasonably acceptable to DWPF.
- (c) Agreement between the Council and DWPF as to method and manner in which legal title to the interest of both parties in the proposed development are to be structured.
- (d) DWPF entering into an Agreement for Lease of the cinemas to be constructed within the proposed building with such terms and conditions to the reasonable satisfaction of DWPF.
- (e) DWPF obtaining all required legal authorities to enable it to enter into the proposed transactions which authorities are required pursuant to the Managed Investment Schemes which it conducts and which are the owners of Port Central Shopping Centre.

6.2 The Council will not enter into any other transaction or dealing with the property for a period of six (6) months from the date of this document and further agrees that within that period of six (6) months it will deal and negotiate only with DWPF in relation to any proposed use of the property.

7. PROBITY STATEMENT

7.1 This agreement recognises that Hastings Council is a local government authority with specific probity and public accountability issues which must be adhered to.

IN WITNESS WHEREOF the parties hereto have set their hands and affixed their seals the

day of Two thousand and two.

THE COMMON SEAL of THE COUNCIL)
OF HASTINGS was hereunto affixed on)
this day of) Mayor
2000 in pursuance of a resolution)
of Council passed on the day of)
2002) General Manager

DRAFT

THE COMMON SEAL of Deutsche Property)
Funds Management Limited A.B.N.)
47006036442 (“De AM”) as responsible entity)
for Deutsche Wholesale Property Fund)
 (“DWPF”) ARSN 090 499 013 was)
hereunto affixed pursuant to a resolution by)
the Board of Directors and in the presence of:)

.....
Director

.....
Secretary

Given Council’s continual assertions that there was only one project with minor changes their answer appears less than complete. The rotation of the Theatre was a very significant change with major impact on project cost, operation and financial viability.

The Inquiry considers that when Council decided to remove the retail from Deutsche Commercial terms thereby leading Deutsche to withdraw. Council staff gave TZG an open brief to proceed. At this stage the project became a new project.

The evidence of Councillor Johnston on 20th November 2007 clarifies Council view of this withdrawal:

- Q. Why do you think Council walked away from the Deutsche proposal?**
- A. *Because when they got to speaking to them, they went back on it. They decide d it wasn’t commercially viable for them. It wasn’t going to give them any great financial benefit, so they pulled out.*
- Q. The last documentation I saw on that was that Deutsche wanted 15 years peppercorn rental for the retail space as part of their condition, that gave 15 years to the art gallery to double the size, which was a good growth potential, and Council declined and walked away.**

A. *You know what these banks are like. It was all their way, it wasn't the Council's way. The Councillors of the day weren't unhappy they withdrew because they didn't think it was any great asset to the Council either, the way they were trying to arrange it.*

Q. The Councillors of the day, did they have a say in the decision to change the essential agreement to the deal that Mayor Richards was satisfied with?

A. *The Councillors – it was a unanimous decision to do that at that time. I have it here somewhere in my file do you want me to find it? Do you want to go with something else while I'm looking?"*

Q. Councillor Johnston, I might be able to assist you I have here a copy of a report to a Council workshop on 1st October 2002 it discusses the withdrawal of the Deutsche group. Would you like me to read what it says under the heading "Current Status"?

A. *Yes, I've found it here in my papers, but you read me yours now.*

"It reads as follows":

"Following the withdrawal of Deutsche, the plans have been amended to replace the space which was to be cinemas with commercial space. It is important to note that the commercial component will be required for the project to succeed financially. However..."

"I think the word "it" is missed out..."

"Also provides the opportunity for Council at some point in the future to convert it to community use."

Then it goes on:

"Early indications are that in fact the use of the space for conventional/commercial purposes as opposed to cinemas will provide a greater financial return and a withdrawal of Deutsche will provide a simpler project in terms of the delivery of the building.

The current design has been developed after consultation with various stakeholders, including staff, and a range of specialist consultants. There are still parts of the design which need further refinement. However, it is necessary at this point in the design process to brief Council and to obtain stakeholder input.”

“Quite clearly, Council wasn’t upset that Deutsche had Deutsche?”

A. No, they weren’t upset.

Q. That’s all.

Council in deciding go it alone took on full cost of the project and lost Deutsche Commercial input. This input amounted to \$4 million worth of construction for consideration of part ownership of the Civic Centre site valued in 2001 between \$2.3 million to \$2.6 million as per Council submission on Page 87, Council at this stage had the opportunity to build the ACE at a cost in the order of \$2.5 million for theatre fit out, land value of say \$1.3 million plus unforeseeables such as demolition giving a total cost of less than \$5 million to Council.

It’s difficult to comprehend how Council could make this decision and not provide all the details to the incoming Councillors.

FINDINGS

- Council in deciding to gain a better deal with Deutsche walked away from an opportunity to build an ACE for \$5 million so as to maintain ownership of the Civic Centre site.
- Council staff failed to appraise the new Councillor’s elected in 2004 of the lower cost project design.

4.6.4 AA Standard And Entrepreneurial Providers

The question posed by this discussion is what the facility was intended to do in 2002? Was the Performing Arts component being built as a broad community centre or as theatre designed to attract major performers and significant conferences? The difficulty in answering this question is:

1. That Council never developed a feasibility study and as mentioned elsewhere appeared to treat it more as an aspirational project.
2. Attempts to understand what the community intent for the project was as compared to Council staff is difficult to find out. The question regarding the theatre standard is important as it enables proper planning for its future use and maintenance.

The Mayor, Mr Drew, in conversation referred to Council responsibility to the business community, which is only reasonable, but without adequate rigor such as feasibility studies how do you develop a financial model for its operation and on-going maintenance and who should fund it i.e. the community or business?

For example if you build a AA standard theatre “Oh What a Beautiful Stage” page 30 suggest you provision 3% of current value of building and technical fit out for annual maintenance and capital upgrade budgets. The 3% provision assumes the building is already at current standard. To comply with Council’s adopted best practice approach Council budget should be showing a \$1.26 million pa provision to maintain the building in addition to the other building management costs. Also if the building is intended as a high-grade community hall the costs may become greater due to its greater wear and tear.

FINDINGS

- Council is understating its annual subsidy to the Glasshouse by not including the 3% provision for major maintenance as set out in its adopted

benchmarks document “Oh What a Beautiful Stage”. This amounts to an understatement of \$1.26 million pa.

4.6.5 Commercial Space

Commercial space is a factor in 2000 with the Deutsche joint venture proposal. Previous Mayor’s stressed the need for additional income from Council to subsidise the operation of non-commercial components such as the Gallery. Deutsche in contributing \$4 million worth of construction for approximately \$1.3 million worth of land were making a commercial contribution similar to that which occurs with a facility run café. This does not appear to feature in Council’s budget or comparisons. Also when Deutsche pulled out the retail component of four ground floor shops fronting Hay Street that was valued by Valuer-General at \$220,000 pa as income to Council refer to Valuer-General item 2.6.02 in Chronology. Council in eliminating the four ground floor shops has foregone an income of \$220,000 per annum which could have subsidised the ACE.

4.6.6 Cost Savings Additions and Omissions

Council submission to the Inquiry on page 52 stated:

“The net result has been a saving in the project of over \$12 million though strong project design and cost management practices.”

Given Mr Milburn’s assertion that the project only went through some elemental change and hence always remained the one project such an answer is flawed. When the question was put to a number of Council staff and Councillors no credible answers were provided.

The answer provided in Council's final submission still leaves the question as to when Council staff fulfilled their duty to gain Councillor approval to a significant increase in project scope.

FINDINGS

- Council staff failed to gain Councillor approval to scope changes which enabled staff to report a \$12 million saving to a project that still increased in cost.

4.6.7 Port Macquarie-Hastings Council's Public Inquiry, Reporting on the Glasshouse Operational Expenditure

Council response in the Right of Reply document demonstrate why the Report was commissioned.

Council states:

"The report does not appear to have been prepared using correct or accurate information throughout the report. Further, it has not taken into consideration the inter-relationships between functions and staffing associated with the Glasshouse project or the fact that Council centralizes a number of its functions including human resources, information technology and insurance"

However, the Operational Expenditure Report raises a number of questions. There is no information in the report as to who prepared and authored it, when it was prepared, or what information was used to prepare the analysis and conclusions in the report.

Most importantly, there is no information as to the origin of the document. If, the document was commissioned by the

Inquiry it is very difficult to understand how the Department of Local Government could be seen in any way as being impartial in this matter given it was the Department that initiated the section 430 Investigation and subsequently the section 740 Inquiry; seconded its own staff to assist in the Inquiry; made a submission to the Inquiry criticising Council's actions; it was one of the DLG staff who is now an Officer Assisting the Commissioner, Mrs Marilyn McAuliffe, made the recommendation to the Minister to proceed with the Inquiry; and Mr Angus Broad, also Officer Assisting the Commissioner, was part of the DLG team that undertook the initial step in this Public Inquiry process by conducting the Promoting Better Practice Review of the Council which was published in March 2006.

Finally the document does not provide a purpose or delineate a clear methodology. The methodology that has been used is inconsistent in the document with one method being used to compare some of the centres and a different method being used to analyse the Glasshouse.”

Council evidence in its Right of Reply is inconsistent with that provided by Mr Leahy, Council's Finance Director. Mr Leahy's evidence is consistent with the Commissioner's understanding of Council's approach to their members (Refer to transcript dated 24.10.09 A J Leahy p 192)

Q. When we heard from council's director for the performing arts centre yesterday, we explored the issue of funding of cleaning costs. He indicated that the cost for the day-to-day cleaning of the centre wasn't provided for in his budget. Are you in a position to tell me where that funding has been provided for?

A. *I have a different view to Agris, and that, quite clearly, should be within his operating budget.*

Q How do you reconcile his statement yesterday, as the line manager, saying it is not in there?

A. *I don't. I am just giving you a statement of fact.*

Q. In terms of program budgeting and reporting, is it council's practice to attribute costs to relevant programs or to have corporate overheads for things like IT?

A. *We have a fairly robust regime of overhead charge-out where it is based on activity-based costing principles. We use unit rates for IT, as an example; we use unit rates for some of the finance functions where they are processing invoices or those sorts of things. So whilst the cost of that service is contained and managed by the individual manager in, say, the finance area, those costs have been redistributed across the users of that service.*

Q. So would it be correct statement that says, as a general rule, that where there is a shared services arrangement - be it for HR or be it for finance support, for cleaning or IT - that would be apportioned and charged to the relevant cost centre?

A *Correct.*

Q. And, therefore, you would expect that in preparing budgets for those cost centres they would make adequate provision for those costs?

A *Yes.*

Q. Has the community services director, to your knowledge, made inquiries of your staff as to the relevant costs for those shared services that are performed in your area of responsibility?

A. *They would have had discussions with Mrs Avery, in terms of what their overhead responsibilities would have been, but overheads within that context - we would give them a budget for the overhead and then recharge them.*

Mr Leahy's evidence clearly demonstrates the Glasshouse budget should have contained the cost of the services provided by corporate areas.

The report referred to was prepared at the Commission's request and was intended to provide a ball-park comparison of benchmark facilities identified by council. The tabling of the report by the Commission was designed to ensure Council had access to the majority of the evidence available to the Commission. The Report was also designed to assist all parties to learn from the experience of other venues.

The Commission of Inquiry would expect that Council in developing a business plan for the Glasshouse would include all costs as is council's own practice when it deals with water supply and other works financial statements.

4.6.8 Project Control Group Membership and Role

The Commissioner's interest in the Project Control Group membership stems from Councils assertion this group was the body controlling the project. Interestingly as the Inquiry asked questions of Council the answers evolved.

4.6.9 Car Parking

Council's approach to car parking for the Glasshouse demonstrates the fundamental conflict council has in dealing with being the developer and the regulator. A review of the history of this project demonstrated Council's inability to handle this conflict.

If we take Council as the regulator we would expect that they would require the Developer of such a significant project to ensure this project did not seriously impact on the surrounding business's and satisfy the car parking needs of it own customers.

The evidence provided to the Inquiry regarding car parking at best could be called careless with the facts for instance Council's evidence provided by its Director of Development on the 14 November 2007 to Inquiry hearings under question by Council's Barrister led the audience to believe that parking was available within 400m of the Glasshouse to accommodate patrons.

The Port Macquarie News printed this as a headline story in its next issue. This prompted members of the community to conduct their own survey. Mr Nicholls evidence was as follows:

Q In terms of this suggestion of the parking problem associated with the Glasshouse, do you have figures available to you in respect of the availability of parking at peak usage times?

A. Yes. We often get an issue of there's a parking problem. Most towns and most people suggest there is a parking problem. What we do in relation to parking management is we conduct surveys of actual parking utilisation. We conducted a survey of parking utilization in August 2007. In that period we actually collected information about the usage across the period of parking in the town centre and how much was available.

If I can just read out a couple of figures. I used that survey information to look at an area within the 400 metre walking catchment of the Glasshouse, which in planning would be considered the area where people would be most comfortable walking to the centre from. In that, it showed from our parking survey that there were 964 spaces which were publicly available in that walkable catchment.

We conduct a survey on a Thursday, which is the time we do a parking assessment because it would be the most use of the centre. The 3pm utilisation, which we collect information at 9am, 11am, 1pm and 3pm, 3pm would be the best representation of an evening level of use, but it would be less than the 3pm. It showed that in those spaces that 591 of those spaces were not utilised, so they were actually available at that point, which was a 61 per cent availability.

What we then looked at was - the survey data wasn't collected for the Glasshouse purposes - but of those parking spaces, 317 that were available, so were vacant, were spaces that either had a three hour time limit or an all day time limit. There were statements about whether there is availability of parking in this particular area of town, and at that time there were 317 spaces available with either three hours or full day parking on them.

One other comment I wanted to make was that generally across the CBD there are parking time limits. We generally have one hour, two hour, three hour and all day, they are the main ones. Generally one and two hour parking is 50 per cent of the parking in the CBD area, and three hour and all day parking is generally 50 per cent of the parking. There was statements made that it was pretty much all one hour parking, and that is actually not correct, particularly in that catchment of the Glasshouse.

When I look at those figures and compare them to what was looked at for the peak usage that was proposed under the TTM report and the development assessment report for the Glasshouse, it would support a statement that there are spaces that are available for utilisation in that area.

Q. You referred to the 400-metre radius being the benchmark?

A. Yes.

The Commissioner considers this evidence was designed to lead the Commissioner into a false conclusion. The Inquiry rejects it for the following reasons:

- This Director was aware that Council intended to conduct matinees during business hours which would require a substantial number of three hour and longer parking spots. Further under prior questioning he confirmed that he considered the Port Central Shopping Centre car parking as being available for Glasshouse patrons.
- Previous evidence demonstrated community had access to 200 spaces at Port Central with balance being the property and for the purpose of businesses and their customers.
- This council evidence infuriated a sector of the community which led them to conduct their own survey. The community survey demonstrated that the only time three hour parking or longer is available within proximity to the Glasshouse is at 3pm when some employees vacate their all day parking and we assume parents pick up their children. At times to suit matinees or conferences which would be 9am, 11am, or 1pm there was virtually no parking spaces available.
- After several requests by the Commission and some time later Council provided the information they had on the 14 November 2007 regarding the earlier timeslots as it demonstrated that other than at 3.00pm it was difficult to find a three-hour or longer parking spot within the CBD.

Evidence provided by a Pharmacy owner in Horton Street near the Glasshouse demonstrated the parking problems are long standing. Council in its evidence to this inquiry states “there is no complaint on file about parking when the Civic Centre was operating”. The Commissioner considers this a very careful

statement which would lead a reasonable person to assume there was no parking problem.

The following evidence demonstrates this to be questionable:

Transcript of Mr R J Turner being questioned by Mr Broad assisting the Commissioner:

THE COMMISSIONER: Can I call on Robert Turner, please?

<ROBERT JOHN TURNER, SWORN: [3:12pm]

<EXAMINATION BY MR BROAD:

MR BROAD:

Q Mr Turner, at the outset could I ask you to give your name?

A. Yes, Robert John Turner

Q. Mr Turner, you have provided a submission to the inquiry. You have requested that it not be published. The Commissioner has acceded to that request. I am not now about to ask you for leave to publish that submission, but what I am going to do is raise some questions on the matters that your raised in your submission and ask you to develop those?

A. Yes.

Q. If I can continue, Mr Turner, are you a supporter of the project generally?

A. Well, I was never really involved one way or the other in the project. It has had a long history and its location is right behind the pharmacy. I should clarify that: I don't actually own the business of the pharmacy any more, I have sold that, but I still own the property that the pharmacy is located in. So the proximity and the fact that I have lived in this town for 36 years meant that I had a bit of interest in the project.

I never really agreed with the location, but you don't always get everything done that you think is right. From the outset, I wasn't really that sort of concerned; I thought that having an arts or a cultural facility was a good thing for the town but, as I said, I was initially not agreeing with the location.

Q. May I put it succinctly that you are a supporter for the provision of a cultural centre, but you do not necessarily support its placement on the Civic Centre and the Ritz Arcade site?

A. That's correct.

Q. Mr Turner, do you see that the placement of the arts and culture centre on the Civic Centre and Ritz Arcade site will raise parking issues?

A. Most definitely. There is a well-known lack of parking in the CBD for customers of retail businesses at the moment. I often have customers saying to me that they have trouble parking. Those parking problems were always exacerbated when something was on at the old civic centre, if there were eisteddfods or other performances during the day. I would imagine that if this facility is to be used parking problems would be exacerbated, not to mention the lack of parking during the construction phase.

Q. Can I classify the current parking that is available within the CBD centre this way: there appear to be a number of areas where parking is restricted for, say, disability access?

A. Yes.

Q. There appears to be some areas where parking is permitted for one hour?

A. Yes.

Q. There appear to be areas where parking is permitted for two hours?

A. Yes.

Q. And there appear to be areas away from the CBD where all-day parking is permitted?

A. Yes.

Q. From my view of the CBD area, it appears that there is one – hour parking available within the Port Central car park?

A. Yes.

Q. It appears that other parking is available in the Port Central car park for three hours?

A. Yes.

Q. To your knowledge, is their three-hour parking available on this street in the CBD?

A. *No. To my knowledge, there is no sign posted three-hour car parking. The car park down near the wharf allows for five hours. I think the next longest car parking is two hours, or there are no restrictions.*

There is all-day car parking all so on the top level of Port Central. That normally fills up by 8.30.

Q. Would that primarily serve the staff businesses within the CBD area?

A. Yes.

Q So you say that that is filled up early in the morning?

A. Yes.

Q. If one were to attend a 90 minute matinees and one were to park in one of the prevailing two-hour zones, that would suggest limited time, firstly, to arrive at the venue and, secondly, to depart from the venue, wouldn't it?

A. *Yes, that is logical, yes.*

Q. Council has secured a site in William Street. I think it is William Street and -----

A. William Street and Murray Street.

Q. William Street and Murray Street – that’s beyond the Port Central car park?

A. That’s right.

Q. To your knowledge, is that intended for car parking?

A. Yes, that is what the initial announcement from the Council state, that it was the site of a future CBD car park and there was sign erected on the fence around that empty block of land to that effect.

Q. It, at present, appears to be a rather deep hole in the ground?

A. That’s right. It has been like that for a long time.

Q. How long, do you recall?

A. I can’t remember exactly. It would be probably about five or six years, I would say, but could be corrected on that.

Review of transcripts of evidence by Council senior staff and Councillors supporting the development demonstrate their belief that the Port Central Shopping Centre is available in its current configuration to be utilized to satisfy the Glasshouse parking needs

Councils answer to the use of Port Central as the Glasshouse principle source of three hour or longer parking was surprising. The constant referral to the 200 spaces which were required as a replacement of an existing Council car park on this site (funded by developer contributions prior to Port Central) as being available for Glasshouse patrons ignores the evidence that the CBD businesses along with Port Central businesses utilises these spaces for their employees. It is well known to the Community that the all day parking space on the top deck of Port Central are fully utilized before 9am on a weekday.

The balance of the parking within Port Central was and continues to be paid for by the Port Central business owners and is an essential requirement for their success.

An e-mail from a representation of the owners of Port Central to the Commissioner puts it very clearly:

“Thank you for your email in relation to the parking. Following your email, and having read the transcript of the evidence put forward by the Council, we thought it prudent to carry out some traffic count at regular intervals throughout the day (9am, 11am, 1pm and 3pm), to better gauge the amount of parking available. We have now concluded this exercise and I have pleasure in enclosing the results for your information.”

Points of interest worth noting are as follows:

- 1. The car park is at capacity between 11 and 1pm every day with the exception of Sunday's.*
- 3. The 1-hour spaces are well used throughout the day with there being an average of between 0 and 9 car spaces available throughout the day.*
- 4. It is evident that the all day spaces are being utilized by workers of the City, with the space being full between 9am and 3pm on all days with the exception of Saturday and Sunday.*
- 5. At 3pm, there are an average of 276 spaces available, made up of 68 all day, 227 three hour, and 4 one hour spaces. However, if you just look at weekdays, the numbers reduce dramatically to an average of 245 spaces, made up of 26 all day, 217 three hour, and 3 one hour spaces.*

Turning to your specific questions, we respond as follows:

The notion that the car parking spaces in Port Central are available for the broader community is fundamentally incorrect.

The main purpose of the car park is for the use of our shoppers. There are 851 car parking spaces in the car park. Of those, 651 is purely for the use of Port Central customers. That is not to say that the people who use these spaces actually shop at Port Central, but the car park is owned and maintained by Port Central, and was required to be built under the initial development approval, and complies with the Council car parking code to provide 1 space per 30m² of Gross Lettable Floor Area.

There are 200 car spaces which are free for the general public's use, 24 hours a day 7 days a week. This is a covenant which was entered into between Port Central and the Council when the original development approval was given, to replace an old council car park which was located on part of the site that was demolished to make way for the new shopping centre and car park. These 200 car parks are available for the broader community. I have enclosed a copy of the covenant for your reference.

We have a management agreement with the Council to police the car park during business hours. They patrol the car park and issue penalty notices to people who contravene the time limits. Port Central does not receive any income from these penalty notices. This management agreement by no means provides parking for the broader community.

It is important that once the Glasshouse is opened we have ample parking spaces for our customers, particularly when morning, noon and matinee events are operating. Port Macquarie's population is growing very rapidly, and this is expected to continue for the foreseeable future. Putting the Glasshouse to one side, we believe that based on current government projections on population, the pressure on parking in the City and in particular Port Central will

continue to be squeezed. This will only be exacerbated by the Glasshouse, and hence we will be looking to consult with our customers on the matter to ensure we can provide them with ample parking once the Glasshouse opens.

COMPARISONS TAKEN OF THREE PARKING STUDIES
(AVAILABLE SPACES)

Provider of Study	Time 11am		Time 1pm	
	3 hours	All Day	3 hours	All Day
Port Macquarie-Hastings Council within 400m of Glasshouse on a Thursday	157	0	155	9
Action for Council Truth Inc. (within 400m of Glasshouse on a Thursday)	0	19	0	13
Port Central figures (within the Centre's parking for a week)	19	0	2	0

The above table demonstrates the figures of available spaces presented by the Community Group Action for Council Truth and Port Central Management are similar where as Council appears to have observed dramatically more vacancies..

Even Council's more generous vacancy figures demonstrate a matinee session will utilize all available parking which will undoubtedly impact on the commercial viability of the CBD. This fact is in direct contravention to Council's statement that the Civic Centre site was chosen as it enhances the vibrancy of the CBD and supports its commercial viability.

We have discussed the impact matinee sessions will cause on parking but if the Council achieves their objective of attracting substantial conferences which are predominantly run in normal business hours CBD businesses could possibly suffer to a much greater extent.

Examination of evidence demonstrates the struggle the Council's has had in dealing with the conflict of being the developer whilst also being the regulator. The Commissioner considers the developer role dominated Council's role. Evidence presented by Mr Holdsworth demonstrated council was aware of this problem and I assume chose to defend as a rapacious developer would do.

Mr Holdsworth giving evidence on 20th November 2007 in response to questioning from Mr Broad:

"Just to give you an example of how it works in this case, the shopping centre parking requirements adopted by most councils, in fact adopted by the private sector, are pitched at providing parking sufficient that for 2 per cent trading hours of the year the supply is exceeded, and that works out to be about the 85 percentile mark.

Two per cent of trading doesn't sound very much, given there are somewhere in the order of 2000 trading hours a year, it works out about 40 hours or somewhere in the order of seven or eight days a year people accept that parking in shopping centres will be exceeded. So we actually went through that process of statistical – in a sense, what you do is throw into a computer analysis all the functional areas of the centre, generate every possible combination of functions.

It's a little bit like generating all the possible trifecta at Caulfield on a Saturday, if you like. It generates a full histogram of all possibilities, and we in fact did that for this particular project. Realistically to report that in a report would have people scratching their heads for about the next month, I think, and it would become so complicated.

So what we did out of that represented normal maximum scenario for this centre, given that experience going through the statistical process.

They are not meant to represent the conceivable maximum. The absolute maximum likely here is everything in this centre, all the people, toilets, offices, band areas, auditoriums, gallery. Whilst that in theory might be able to occur, in practice it does not. So what we were trying to achieve in developing those three scenarios was either a description of what could be considered to be a normal operating maximum for those periods of time.

Q. Where that scenario conflicts with, say, Development Control Plan 18, which should prevail?

A. My view is, and I'm not setting policy, don't pretend to, but my view is that the practical reality should prevail and the developer shouldn't be required to provide excessive parking if a local government policy is have the tendency to ask them to do that, and that's why we have appeals and tribunals to assess the policy against reality.

So I think the developer's responsibility is to provide for the realistic requirement and I think it is council's responsibility to be satisfied and to respond to that.

Q. Using your previous suggestion, that Councils may wish to catch up on parking if there is a shortfall, you say that a developer shouldn't be called upon to provide catch-up parking?

A. Absolutely not, and I feel very strongly about that.

Q. So their parking requirement should reflect their use, the demand created by their use of the premises?

A. *It should reflect two things: it should certainly reflect their demand; secondly, when they are located in the CBD, it should be located and managed in such a way as to contribute to the overall confluence of the CBD.*

Q. Sorry, I don't understand the rider you just put. Can I go back to my original question? Should a developer meet the perceived requirements of their use of a property?

A. *They should satisfy the demand they place in respect of parking, yes.*

Q. Should that parking therefore be available in a reasonable proximity to that development

A. *That's when I come to my second comment. In the case of parking, so where it is located becomes of less relevance if you take that principle on board. The CBD is better served by distributing public parking across it broadly. Certainly at its perimeter it's not right, but in the heart of the centre because there are now many issues that certainly they should distribute across and around the perimeter and it's not of great consequence that a development such as the one we are talking about may provide parking down near Short Street.*

Q. Why is that?

A. *Because in the CBD, you're trying to distribute, for traffic engineering reasons, traffic management reasons, as much as to facilitate the other development, You're trying to spread parking load across the CBD and focusing, concentrating in other areas. If I can use that as an example, and it's partly what I'm saying, this site is located in the heart of the CBD, the Clarence Street and Horton street intersection is what I see as the hub or the heart of the CBD, and is immediately adjacent to it.*

If one were to provide significant amounts of parking on this site, its only access could have been via Clarence Street or alternatively the Clarence street frontage. That would have introduced significant traffic movement into a very sensitive pedestrian environment and to an environment which Council has adopted for itself, the objective being to protect and manage it.

That is an example as to why you shouldn't just say, "Here we have a development. Let's locate all the parking on this site or very close to it."

There are other issues in CBDs that should prevail over the approach that one might use out in the middle of a paddock, where you wouldn't even contemplate putting parking a kilometre away. You can always locate it at the door, within the CBD, if that was not the desirable approach.

Q. Can I suggest to you that there is a difference in providing a facility such as the Glasshouse than perhaps is the ordinary use of the CBD, in that respect, if one is doing a development in a CBD in the general sense, one is either providing retail or commercial facilities. Would you agree with that?

A. Usually in a CBD you would expect about a third of your gross floor area to be non-retail.

Q. But you would ---

A. Part of the development is retail commercial, yes.

Q. You would expect that persons travelling to the CBD in respect of those developments would not be merely travelling to one shop or one particular business, but may conduct their business over a range of facilities. Do you agree with that?

A. Absolutely, and that's my entire point.

Q. And that is what I assume your point was. But can I suggest to you that, in respect of this development, the traveller going

to the theatre is going for a very specific purpose. They are not going to shop, they are not going to visit their accountant, they are going to see a play, a musical or whatever it might be?

A. I disagree with the concept or the perception you have of the person visiting the theatre. I'll give you one example. 65 per cent of people in theatres, within large regional shopping centres, after midday on a Saturday are engaged in other retail shopping activities. These trips for leisure purposes tend to be multi-purpose. People will not only go to the theatre, they will leave the theatre, they will go to restaurants, they will go to the pubs, they will do other activities. It's not right project these attendees as solely attending at the theatre activity.

Q. What you're saying is that people attending say theatre activity don't want to rush there and rush home?

A. They are in leisure time, they are in time where things are not of great urgency, so they have got the capacity to engage in other activities in the way that they haven't been, going to work, et cetera.

Q. If a session lasted for 90 minutes, given their intended purpose to arrive to view, to go and shop or have a drink or eat, two-hour parking may not be the best response to their needs?

A. It may not be the best response for a certain element of them, yes, you're correct but for another---

Q. I think you gave a figure of 60 per cent?

A. I said 65 per cent of people in theatres in regional centres after midday on Saturday have engaged in retail shopping.

Q. So we are talking about almost two-thirds?

A. *In that instance, yes. I'm not suggesting it would be exactly the same here, but I'm just giving you an example as to show people in leisure and recreational-type activities would engage in a number of activities.*

Q. The scenarios that you adopted did not assume a use of the theatre during the daytime?

A. *Yes, you're correct, the scenarios that we described did not, but that's not to say there was a suggestion that the theatre won't be used in the daytime. What we were trying to do is obtain three scenarios from which one could conclude the normal maximum, and the normal maximum out of those three scenarios turned out to be the scenario for when the auditorium was filled up and ancillary things in relation to that, and we described that as being 7.30 in the evening. That scenario equally applies to 20 or 3 o'clock in the afternoons. It was suggested it will only occur in the evenings.*

Q. Can I suggest to you in the event that the theatre was used in the afternoons, not only would you have, which is your scenario 1, this evening mass, you will also have the possibility that the gallery will be functioning. In fact the probability that the gallery will also be functioning?

A. *Yes. Again I come back to my comment about what is a normal maximum, though. There are a number of reasons why if the centre was functioning with the auditorium and gallery at some significant level during the afternoon period, you wouldn't have the same rate of parking occurring at night, and that is why you do it the way we did it. For instance, in the morning at 11 o'clock, if there's a matinee, or in the afternoon at 2 o'clock, you would expect a completely different set of transport outcomes.*

People at night will arrive by private vehicle, public transport, and it will also include organized transport in that scenario, minibuses

and the like. You wouldn't expect bringing a significant number of people on to the site. In the afternoon period, you would expect far more organization in the manner in which they would choose to travel to the site; you would expect the car occupancy, people will be more organize, you would expect some clubs to organize their own transport facilities, minibuses or taxi use and you would expect a higher proportion of bus access to the site.

The afternoon periods is the Tuesday scenario because I choosing this scenario that we did, with the auditorium at night, we were actually choosing the scenario which has built into it parking demand rate generally speaking in the rates of 10 spaces for 100 square metres of GFA. That is three times the requirement that is based on a retail development in this CBD. It is not as if in choosing that relative to your suggestion that it might will apply in the afternoon.

Q. In respect of scenarios 2 and 3, did you comment on the potential of people attending during those periods having lesser individual transport demands?

A. No, we didn't, we chose the scenarios in order to encompass all those possibilities, as I said, I could have presented this in a statistical analysis which would have sent anybody into a head-spin.

What we would rather do and what we did choose to was choose three scenarios that people could understand and three scenarios that represented, in the description we gave to them, a normal, maximum activity.

I agree you may well have the auditorium functioning at 2 o'clock in the afternoon or at some time have the gallery reasonably occupied at 2 o'clock in the afternoon, but I wouldn't agree that is

normal maximum, because that would be by exception, not by the rule, as far as those activities being combined in that way.

Q. In your earlier figures, you gave a differential above maximum of 2 per cent of the time. Is that the sort of figure you would be suggesting in respect of the daytime use of the theatre?

A. I would expect that the parking demands – from memory, our realistic estimate of parking demand generated by the business on the site by the scenarios is somewhere in the order of 200 spaces, I would expect that that demand rate may be exceeded, given the background of those scenarios, on about 2 per cent of the hours trading of this particular site. In other words, you might get five or six days of the year where we exceed that.

The Commissioner does not agree that parking is not a problem as the issues surrounding parking are at the heart of good governance. Council chose to ignore the community concerns as demonstrated by their inactions. Further Council continually refers to a solution it knows it is not likely to deliver in the foreseeable future.

Further the information Council's corporate body provides to its Councillors and the community is of questionable accuracy. The Commissioner considers evidence is presented on the qualification of the paid consultant rather than its merits.

As an example I refer to Mr Holdsworth's evidence who Council has established as a noted expert in his field.

The Traffic Inquiry Report prepared by Mr Holdsworth for Council date 25 October 2004 addresses car parking requirements for the Glasshouse development. The report establishes credits for the previous building and totalling 195 spaces.

The Report then establishes the car parking requirements per DCP 18 for the Glasshouse project at a total of 401 spaces, which is

entitled to be reduced by the 195 credit spaces leaving 204 to be provided.

The Report then outlines a case to apply First Principle's to estimate maximum liability parking needs. The application as developed by TTM substantially reduces the demand with the result maximum daytime demand is less than previous development credits for the old Civic Centre site. The reports presentation relies on the reader to accept the Authors expertise and does not explain the underlying assumptions. The Commissioner does not dispute his expertise but considers the assumption which generate the outcomes should have been fully explained to Councillors and the community to enable them to make informed decisions.

For example First Principle assumes no daytime use of the theatre for either shows or conferences. Equally under all scenarios there is no consideration of the foyer/lobby/bars although council has indicated that the Glasshouse is a multipurpose centre and all areas can be utilized concurrently. Again there is no explanation in this report for the above or the independent assessors report on the Development Application.

As an example if you utilise the assumption identified in the TTM Report, table 5.6 First Principle estimate of maximum likely parking credits and include a 400 person conference you calculate a requirement of 408 less the 195 credits generating a net additional need of 213 spaces.

Council at its meeting on 17 November 2003 requested the TTM strategy be reviewed to consider the increased footprint caused by the inclusion of the Ritz Arcade. The 25 October 2004 TTM report was based on a building with 4362m² of useable gross floor area.

In Council's meeting on 25 June 2005 Item 26 the usable gross floor area was identified as 6062 sqm which is 31% larger. Using TTM

assumption this equates to apparently 590 car spaces less credit spaces which after deduction nets out to approximately 395 additional car spaces.

Given the above evidence it would appear the Councillors never had enough accurate information to make a considered decision and equally it is disappointing that the Councillors did not demand it as a body as they are fully entitled to.

Council approval to parking has concerned a section of the community as evidenced by comments and letters from members of the Friends of the Gallery, a number of councillors and to quote a resident Mr David Pain.

“Finally, parking issues seemed to take up a great degree of time and thought at the Inquiry. As mentioned above, I attended nearly every session. On each occasion (35 out of 35) it took me no longer than 60 seconds to find two hour parking within 45 seconds walk from the courthouse. Perhaps parking really is a “State of Mind”. Those who are positive find it, those who are negative, don’t.

Naturally this view is not universally supported.

FINDINGS

- Council’s approach to car parking for the Glasshouse demonstrates the fundamental conflict council has in dealing with being the developer and the regulator. A review of the history of the project demonstrated Council’s inability to handle this conflict.

- Port Central car park apart from the 200 council spaces belongs to the businesses of Port Central and council has no right to plan on using this space for the Glasshouse without the owner's agreement.
- The information supplied to Councillors in the DA process and at their workshop was unreliable and unrealistic.
- The Inquiry after considering the assumptions used by TTM for realistic car parking needs of the Glasshouse calculated a figure equivalent to that required by the Kooloonbung site.
- Council staff have sought to minimize car parking needs as a rapacious developer might.

4.6.10 Access Loading Dock

Council has consistently ignored advice that the Glasshouse design is defective as the loading dock is in an inappropriate location.

Hopkins Consultants in providing a review of the Performing Arts Centre dated 14 August 2003 at the request of Council, states as follows:

3. Adjoining Land owners

Property to the west

The design potentially has a significant impact on the adjoining Ritz Arcade. We understand that negotiations are occurring with those property owners. Normally, a development application which impacts on an adjoining property in this nature, would have difficulty proceeding.

Property to the east (short section of Hay Street)

The application relies on the use of a short section of Hay Street for vehicle access, and vehicle turning. Normally, reliance on a public road for heavy vehicle manoeuvring is discouraged by Council, for obvious safety and amenity reasons.

The vehicle access to the PAC directly adjoins a heavily used pedestrian link to Port Central shopping centre. Any SEE needs to clearly define the limit of hours that trucks would be using the access and address how pedestrian/truck conflicts are to be avoided. Public safety issues will take priority and could be included in the Traffic Report.

Hastings Council's consent as the owner of the road is required on the application. In this regard, a resolution of support from the Town Centre Masterplan Committee, is desirable.

The application (SEE) will need to detail the manner in which Hay Street is to be altered to accommodate the development and will need to show that it has consulted with and made provision for the existing business' which front this section of Hay Street and rely upon it.

4. TTM Traffic Report

The conclusions of the TTM Report appear to rely on an assumption that the maximum net additional parking demand can be accommodated in the evening periods in the local on-street and off street parking areas. Regular observation of the on- street parking in this end of the Town Centre, indicates that it is highly utilized and unlikely (by casual observance) to have the capacity to absorb the additional parking. Perhaps TTM have parking survey data that supports their assumption or alternatively, a Parking Strategy involving a formal agreement between Port Central (private off street parking) and the PAC to provide direct access to their parking after hours ?

This is not the only time Council has been so advised. The Inquiry on reviewing the evidence has concluded that the creation of a piazza with an entry and exit facing the Garrison Building on Hay Street was more important to Council than community safety.

The Commissioner considers given the location of the loading dock cannot be relocated, permanent structural barriers should be put in place separating the pedestrians from the access route to the loading dock.

FINDING

- Pedestrian barriers need to be erected along both sides of the route from Clarence Street to the loading dock adjacent to the entry of Port Central Shopping Centre.

CONCLUSIONS

- Councillors have not had enough accurate information to make a considered decision in regards to the approving of the Glasshouse to be built on the Civic Centre site.
- The majority of Councillors have failed to demand their right to accurate and complete information regarding the development of the Glasshouse on the Civic Centre site.

- The community has been constantly misled by Council regarding the Glasshouse and its development on the Civic Centre site.
- the Glasshouse Theatre and Conference centre cannot generate enough income to cover its long term costs of operations under the current decision making processes.
- The annual financial shortfall when all legitimate costs are considered will consume the bulk of the 2004 and 2005 special rate variations.

4.7 Ancillary Issues

Council's Role as Both the Applicant and Consent Authority

At its meeting on 11.11.02 Council committed itself to the project and resolved to lodge a development application for the facility.

While this was the first formal resolution to proceed with the project, there is little doubt that the council was already determined to proceed with the project and, importantly, on the former Civic Centre site.

With the goal of providing an arts and cultural centre on the site, the council directed its resources to secure that outcome.

Council would become both the proponent and, when the development application was lodged, the determining authority.

In determining a development application, councils exercise an independent statutory function vested in them by the Environmental Planning and Assessment Act.

The former Civic Centre site was not without its own limitations. Those limitations were to be highlighted by the design for the Glasshouse

- which provided no car parking,
- obtained access to its loading bay over a part of Hay Street that was to become a pedestrian plaza,
- did not comply with some of council's development codes,
- overhung Hay Street, and
- in one consultant's view, was unsympathetic to surrounding developments. (ref: letter from Hopkins Consultants 13.8.03)

These issues were significant, if council was to exercise its duties and functions under the EP&A Act and determine its own development application.

Throughout the course of the project the council wrestled with a fundamental issue, no public car parking was being provided on the site, nor, for that matter had council made provision for parking to be provided elsewhere.

Whether council liked it or not, the provision of car parking was essential.

Council was faced with providing parking immediately, or alternatively, providing a monetary contribution in lieu, so that Glasshouse patrons could share in any new parking facility provided by the council.

Either way, it would be expensive.

The Council chose the latter course, providing a monetary contribution.

Having done so, it set in train a series of actions that would ignore the real needs of the facility.

Separately, the use of the theatre and gallery would require access by large vehicles. This might involve articulated vehicles to offload and re-load stage equipment, props and the like, or artworks for touring exhibitions for the gallery. More frequently access would be needed for other trucks, such as those removing garbage or making other deliveries.

The plans made provision for a loading bay set against the wall of Port Central, slightly west of its major entry onto Hay Street. Hay Street would be closed and a pedestrian plaza created. The risks posed by this configuration could be fatal to pedestrians.

These 2 examples give an indication of the need for the determining authority to pay close scrutiny to the development application and to ensure the integrity of the consent process.

There is significant evidence that council did not ensure the integrity of the consent process.

While the council appointed an independent assessor to guide its decision, its processes, when viewed as a whole, did not provide adequate scrutiny, nor did Council ensure integrity.

The council did not allow its assessor as having an independent role:



Craig Milburn/PMHC
23/12/2005 08:03

To Matt Owens/PMHC
cc
bcc

Subject Re: ACE Centre DA - Meeting with Steven Connelly

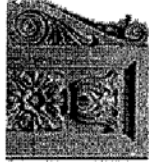
Matt

Great time!! Is there any way we can get him on the Monday, afterall he is working for us. Also I would think that 3.30 in the afternoon would not give us much time. Does he know that we (as developers) will be wanting to spend some time with him?

Thanks

Craig Milburn
Director Community Development
Port Macquarie Hastings Council
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Fax (02) 65 818 107
Mob 0417 489 089
Email craigm@hastings.nsw.gov.au
www.hastings.nsw.gov.au/FrontDesk/CommunityandCultural/Community.html
Matt Owens/PMHC

Continued next page...



Matt Owens/PMHC
22/12/2005 04:07 PM

To Craig Milburn/PMHC@PMHC
cc
Subject Re: ACE Centre DA - Meeting with Steven Connelly

Craig

I just received an email from Steve Connelly. He is proposing to be in Port Macquarie on Friday 6 January at 3.30pm.

Matthew Owens
Planning Manager
Port Macquarie - Hastings Council
Office Phone: (02) 6581 8535
Mobile: 0439 818 621
Fax: (02) 6581 8788
Email: matto@pmhc.nsw.gov.au
Craig Milburn/PMHC



Craig Milburn/PMHC
22/12/2005 09:54 AM

To Matt Owens/PMHC@PMHC
cc
Subject Re: ACE Centre DA - Meeting with Steven Connelly

Matt

Any luck with the 9 Jan meeting yet? Our Project Manager will be here that day as well so it would

Similarly, it appears that the independent assessor involved himself a little too closely in Council affairs, for example, undertaking the role of drafting Council's letters.



"s j connelly"
<steve@connelly.com.au>
16/01/2006 08:15

To <CraigM@pmhc.nsw.gov.au>
cc
bcc
Subject [Maybe Spam] Re: 1231 cultural centre

History: This message has been replied to.

craig
my suggested words are as follows:

I note your advice that the identified deficiency in onsite parking spaces is 79, including 5 dedicated staff parking. The applicant proposes to meet this parking demand by development of the Council's William Street site (adjoining Port Centre Car Park). The required car parks will be allocated in this development with the 5 staff spaces specifically reserved with no time limit restrictions. The William Street site has recently been purchased by Council and is in addition to the other 3 principle sites identified in the CBD Car Parking Strategy. It is proposed to provide approximately 200 car parks on this site. Having regard to the above, the applicant proposes a voluntary planning agreement pursuant to Section 93F of the Environmental Planning and Assessment Act as an appropriate way of dealing with this matter.

Regards.

Steve Connelly
stephen j connelly
s j connelly Pty limited
www.connelly.com.au

----- Original Message -----

From: CraigM@pmhc.nsw.gov.au
To: s j connelly
Sent: Saturday, January 14, 2006 1:14 PM
Subject: 1231 cultural centre

Steve

This is the first draft of the wording to be included in the letter for the DA from the General Manager. Does it adequately address your requirements?

Thanks

2. Provision of Parking for the Development

The Developer proposes that the identified number of parking spaces of 79, including 5 dedicated staff parking, identified in the Traffic report prepared by TTM be provided by way of the development of the Council's William Street site (adjoining Port Centre Car Park). The required car parks will be allocated in this development with the 5 staff spaces specifically reserved with no time limit restrictions. The William Street site has recently been purchased by Council and is in addition to the other 3 principle sites identified in the CBD Car Parking Strategy. It is proposed to provide approximately 200 car parks on this site.

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Additionally, information provided to him appears to have been incomplete.

There are number of issues raised regarding the TTM parking assessment report that are dealt with in part 4.6.

Major concerns regarding the parking assessment include:

- a failure to consider daytime use of the theatre,
- the adoption of incorrect functional areas being considered, and
- a failure to recognise the facility's use as conference centre and the use of the foyer areas for trade shows, community shows and the like.

The Inquiry regards it as fundamentally flawed.

Similarly, it appears that the assessment provided by the Traffic Committee was also significantly flawed, as the TTM report provided to it did not contain the same access hours as appeared in a latter report that was considered by the independent assessor, which provided the basis of his report regarding the development application.

Council's responsibilities to provide car parking for the Glasshouse were not governed by the development application but, rather, from an overriding obligation that arose under its charter to provide "*... adequate, equitable and appropriate services and facilities for the community*" (ref: Act s.8)

Having reviewed the TTM Report and after applying what appear to be the correct floor areas, the Inquiry has concluded that the probable parking demand is at least twice that adopted by the council.

Applying the prevailing rates for providing parking, as outlined by Mr Nicholls, Council's Director of Development & Environment, this would involve a contribution at least 4 times greater than council provided. (ref: transcript 14.11.07 p832)

These costs would have been, or should have been known to the council, if it had exercised a reasonable degree of care and diligence in carrying out its functions.

The council, in its attempts to deflect criticism, adopted strategies aimed at minimising the potential additional costs of car parking. It portrayed itself as a developer.

So intent was council on this stance, that Mr Miles, Council's solicitor, would make the following submission in reply: (ref: transcript 13.12.07 p1757)

Had the Council been a private developer, I suggest it would have appealed to the Land and Environment Court against the imposition of this condition requiring the payment of a contribution of \$1.3m to the section 94 plan for car parking. Based on my experience in the Land and Environment Court and the evidence of Mr Holdsworth, it is my view that the Land and Environment Court would have more likely than not upheld the appeal and removed the condition requiring the \$1.3m car parking contribution to be paid. Council accepted the advice and recommendations of the independent planner and took it on the chin and paid the \$1.3m.

In other words, if council (wearing its hat as determining authority) imposed on itself (as the developer) obligations greater than might be imposed on another developer, it (as the developer) could appeal against its own decision.

Mr Miles was aware of council's overriding obligation imposed by the charter and continued his submission:

It is also important at this stage to recognise there is a distinction, both at law and in reality, that must be properly drawn between the car parking provision that the Council must make pursuant to its obligations under the Environmental Planning and Assessment Act,

and Council having met that obligation upon the payment of the \$1.3m to the car parking fund, and Council's responsibilities, which are enumerated in the section 8 of the Local Government Act charter, and that is to provide adequate facilities.

His response to this hurdle was to “*suggest in this instance adequate facilities can be read to mean adequate car parking in the CBD of Port Macquarie*” and not, separately, the glasshouse.

The council's obligation under the charter is quite unrelated to Council's obligations under the EP&A Act. By portraying itself as a developer, council was seeking to ignore its overriding responsibilities to its community.

Council's commitment to the Civic Centre site had crystallised with the joint-venture proposal with Deutsche, the owners of Port Central Shopping Centre. By 2005 the commitment was absolute.

Problems associated with the site would not change this course. The parking needs would neither be met nor catered for by Council's contribution. Council had determined:

Car parking for the use of the Cultural Centre is not to be located on site. Council has determined that the use of off street parking in the vicinity and the car park attached to the adjacent Port Central Shopping Centre is sufficient for the users of the Cultural Centre, particularly as most will be at night, when the shopping centre use is very limited. Council will be required to meet all Car Parking requirements in line with the DA. (ref: Project Brief February 2005 p10)

Mr B O'Neile, who had formerly been an Assessor appointed to the Land and Environment Court suggested that Council had *Downplayed its role as a responsible planning authority and virtually concentrated all its efforts in pursuing its role as a developer to get its*

predetermined project approved, with a rigid determination not to deviate in any respect from its chosen scheme. (ref: submission 197)

When the application came before the council for determination, Councillors were provided with inadequate and/or flawed professional advice and an inadequate report.

Regrettably, legitimate concerns raised by the community had been dismissed.

Even if the advice and the report had been sound, the outcome would have been the same. This is an instance where Council's determination to bring forward its project overrode independent consideration and review.

The council had been the subject of strident criticism for a number of years from residents and ratepayers, who considered the site as inadequate. As this criticism grew, so did council's determination to provide the facility and, most importantly, on the Civic Centre site.

The Act requires that every Councillor and member of staff of a Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under the Act. (ref: section 439)

This requirement is emphasised in the Code of Conduct adopted by the Council. (ref: Code of Conduct part 5.2)

The EP&A Act provides that in determining a development application, a consent authority, in this instance the Council, is to take into consideration matters as are relevant to the development anticipated the development application, including:

- planning instruments
- any regulations applying to the land,

- the likely impacts of that development, including environmental, and social and economic impacts in the locality,
- the suitability of the site for the development,
- any submissions regarding the development,
- the public interest.
- (ref: section 79C)
- Rather than exercise its duties and functions as required by the EP&A Act, the Council went about a process of:
 - obscuring its processes
 - poorly or incorrectly briefing its advisors
 - ignoring legitimate concerns.

Ultimately the Council failed to undertake the function of determining the application by properly considering it. It also failed to exercise a reasonable degree of care and diligence in carrying out its functions.

Whether one is talking about this project, the Port Macquarie-Hastings Council, or any other council or determining body, the importance of the integrity of its processes cannot be understated.

Projects, such as the Glasshouse have significant long-term consequences. Projects, such as the Glasshouse have the potential to pit a council's aspirational goals against its duties as an independent determinant of the development application that will facilitate that goal.

The interplay between a council's aspirations and its duties may (as they did in the Glasshouse project) conflict.

Councils must appropriately resolve any conflict or incompatibility between their aspirational interests and the impartial performance of their public and professional duties as an independent determining body.

Where a council has committed itself to a significant aspirational goal it may be unable to impartially perform its duties as an independent determining body, or may be perceived as unable to do so.

In those circumstances, it is necessary that some other expertly qualified body exercise these functions.

Recommendation:

That councils refrain from considering and determining major development proposals, where they are the proponent.

That such development proposals be referred to the Department of Planning:

- **for assessment by that Department, or**
- **to an independent assessor drawn from an independent panel of specialist assessors established by the Department of Planning, or**
- **another local council, identified by the Department of Planning, that has the capacity to both assess and be seen to be capable of assessing the proposal independently.**

5.1 The Inquiry Process

The Inquiry has considered the evidence presented by Port Macquarie-Hastings Council including its right of reply submission. The Inquiry notes council's statement in its Submission in Reply regarding natural justice but reminds Council of the additional time the Commissioner made available to allow Council to prepare its main submission and the additional two weeks of hearing to accommodate the extensive list of Council nominated witnesses.

The Commissioner also granted leave for a number of Council witnesses such as Mr Milburn to appear on a number of occasions and they were provided a significant amount of time to provide their oral evidence. Further the time from close of oral presentation to final right of reply submission was a longer period than that identified in the Commissioner's address at the preliminary hearing and longer than normally allowed at other s740 Inquiries.

The amount of evidence provided to the Inquiry is substantial and the majority of the evidence was relevant to the Terms of Reference. Mr Miles, Council's solicitor, in his summation on Thursday 13 December 2007 (included in Council's Right of Reply Submission) stated:

It is opportune to submit to you at this point, Commissioner, that what the Minister did not ask this Inquiry to do was to in effect carry out a de facto prosecution of the Council – that is, the Minister did not ask this Inquiry to undertake a microscopic examination of every single piece of evidence which in some way it may be suggested indicates some guilt or wrongdoing on part of the Council in relation to its decision to proceed with the Glasshouse. I specifically ask the Inquiry not to do that. Your task must involve your taking a much

broader approach and looking at all the evidence as a large and complete picture, rather than small one-off parts of the evidence.

As Commissioner, I am of the same view as Mr Miles. It is important to focus on evidence as a large and complete picture which the Inquiry has done. But for the Inquiry to understand and judge the total canvas it has been necessary to gather and consider the multitude of evidence which makes up the total canvas. The Inquiry in developing a concluded view in regards to the Terms of Reference does not rely on a single dot on the canvas but the multitude of dots which make up the evidential canvas.

The Inquiry also chose not to allow individuals to be mistreated or unfairly criticized. For example, the hearings being used to get a free kick at the Mayor or any other person. In the majority of cases, the residents were exemplary in their behaviour and fair in their approach to the opposite view.

The findings of the Inquiry do not relate to a particular Councillor or a particular officer. The General Manager established in his submission on behalf of the Executive group to the Inquiry that the Management Team was as one and so the Inquiry's recommendations refer to the Management Team, not to any individual officer who may be mentioned because of his role in the process.

5.2 Summary of Findings:

- 1. Whether the Council exercised prudent financial and project management regarding the planning and development of the infrastructure project known as "The Glasshouse".**

Part A The Project's Costs

- It is clear that the costs of the project grew dramatically from 2002 onwards.
- Council's Quantity Surveyors provided a significant number of reports between 2002 and 2006 detailing the increases in construction costs and their makeup.
- The addition of the Ritz Arcade site brought with it the acquisition costs and the increased construction costs arising from the increased footprint of the Glasshouse.
- Consultants' fees also grew in line with increases in construction costs.

Part B Council's Internal Controls

- The Council failed to bring together the diverse skills of its senior managers and staff.
- The various departments within Council have and continue to operate in isolation.
- The Council failed to involve its Corporate and Business Services in an effective role in the budget and other financial aspects of the Project.

Part C The Budget

- If the Council failed to adopt a budget prior to 1.8.05, Council failed to exercise prudent financial and project management until the anticipated cost of constructing the Glasshouse had reached \$28.665 million and project cost, had risen to \$36.749 million.
- Council's Quantity Surveyors provided warnings from 2002 onwards that the building could not be constructed within Council's budgets.
- The Council was advised throughout the cost planning process that the construction cost was in excess of its budget.
- The Council failed to take adequate steps to review the project during this process to ensure that the project could be undertaken within its budget.

Part D Council's Budget Control

- Council was to exercise budget control through the Project Control Group.
- The Project Control Group comprised of the Mayor, the General Manager, Mr Milburn and the Project Architect.
- The role of the Project Control Group was fundamental to the project, embodying Council's representatives and the consultants.
- Council's representatives were the mouth, ears and eyes of Council, it:
 - Communicated Council's views
 - Authorized variations
 - Communicated the construction and other budgets
 - Heard the issues raised by the consultants, and,
 - Viewed the plans provided from time to time.
- The Project Control Group was the interface between Council and the consultants so far as Council was concerned.
- Like other Council representatives, the Mayor had a functional role on the Project Control Group.
- The evidence does not support a view that the Mayor had a role as an "observer".
- The Project Control Group appears to have been fully aware of the budget problems.
- The Mayor and senior staff had a responsibility to advise Councillors of this significant concern.
- A number of Project Control Group members appear not to have discharged this obligation.
- Council's representatives on the Project Control Group had a responsibility to advise the consultants of council's budgets.
- Council's representatives on the Project Control Group had a responsibility to ensure that Council's budgets were implemented.
- The failure to advise the consultants of Council's budgets and to ensure they were implemented lead to the project team working to a different construction budget.

- Despite the massive increases advised by Council's Quantity Surveyors, this advice does not appear to have been communicated to the Councillors.
- For over 2 Years Council received advice that the prospective costs of constructing the Glasshouse was significantly over budget.
- Responsible staff failed to report this matter, nor did they raise concerns.
- Responsible staff had a duty to ensure that this issue was brought to the Councillors' attention.

Part E The Role of the Councillors

- The cost of constructing the Glasshouse was not an "operational" issue to be addressed by staff but a fundamental issue for the Council to deal with.
- Councillors sought to distance themselves from the role of Project Control Group.
- Councillors demonstrated little interest in obtaining information regarding issues being dealt with by the group and did not attempt to seek out this information.
- Councillors demonstrated a similar disinterest in obtaining details of, or seeking out the Quantity Surveyor's advices.
- Councillors have attempted to cover over the role of the Mayor on the Project Control Group.

Part F The Role of the General Manager and Staff

- Reports to Council's meetings failed to include, or take into account \$2.2 million in escalation.
- The effect of this failure meant that persons reading the reports would incorrectly assume that the current cost of construction was \$2.2 million less than the estimates provided by Council's Quantity Surveyors.
- Council's corporate body has a very restrictive view of the role the elected body can have in overseeing the process utilized to deliver the Glasshouse project. Thereby, denying Councillor's the ability to perform their duties.

Part G The Budget Cap

- Councillors Sharpham, Prussing and Nardella failed to incorporate existing escalation of \$2.2 m when proposing a construction cost cap.
- The failure to incorporate the escalation to the date of the cap misled the community.
- The “capped” budget adopted by the Council did not represent the likely cost of constructing the Glasshouse.

Part H The 2004 Decision to Proceed

- The Commissioner agrees that in year 2000 there was community support for Council to develop a cultural centre within the Port Macquarie Hastings area.
- Council corporate body has a very restrictive view of the role the elected body can have in overseeing the process utilized to deliver the Glasshouse project. Thereby, denying Councillor’s the ability to perform their duties
- The information supplied by the corporate body to the new Councillor’s Workshop on 2 June 2004 was incomplete.
- Councillors at the workshop were not appraised of the lower cost alternatives endorsed by the previous council.
- Councillors at this workshop were not advised of the opportunities forgone by the removal of the retail shops fronting Hay Street.
- Councillors were not appraised of the alternative design facing Clarence Street they were unaware of the ability to remove the danger of heavy vehicle(s) accessing through a piazza in Hay Street.
- Councillors were not advised of the increased cost associated with earlier decisions made by the senior staff between 2002 and 2004.
- Councillors were not formally advised that council management were aware of the constraints of the Civic Centre site due to its impact on the amenity of the Ritz Arcade flats.

- Councillors were not formally advised that the owners of the Ritz Arcade were willing to comply with Council's order to remedy fire risks

Part I The Relationships Between Councillors and Staff

- The evidence demonstrates that Council in 2002 wrestled the project out of Deutsche's control and then the Council focussed on an iconic building with a piazza between the Glasshouse and the Garrison building
- Councillors were not given an opportunity to manage the change in the Project .
- Councillors were not provided with costed options for them to exercise their functions.
- Councillors were misled that the project was fully funded and the operational cost would not impact on other services.
- Councillors were provided with a divisive supporting argument relating to the money spent on Parks and Garden, Sport and alleged Council's previous under-funding of the arts.
- The elected body did not demand staff to provide support information to make a considered decision.
- Council since 2002 has not exercised control over the changes to the project scope for the benefit of Port Macquarie Hastings community.

2. Whether the Council properly considered what impact the Glasshouse project would have on the ongoing ability of Council to provide adequate, equitable and appropriate services and facilities to the community.

- Despite Council's evidence that the Glasshouse project has been included in financial modelling since 2003 and the building appeared in Council's 10 year rolling works program from 2003/04, there's no evidence before the Inquiry that Council took into account all costs of the centre, both current and future or how they addressed the escalating costs of the project.

- The Inquiry considers that a considerable portion of the special rate variation of 2004 and 2005 granted to overcome a backlog will be utilized on only the Glasshouse project.
- The Council's Rolling Works Project allows the increase in the Glasshouse costs to be accommodated without identifying the affect on the other essential projects.
- The Inquiry considers the \$500,000 subsidy has not been updated to accommodate significant charges and cost increases within the project.
- Port Macquarie-Hastings Council is unlikely to have fully appreciated the financial risk of staging shows from Sydney Theatre Company.
- The Manning Centre to stage the same Sydney Theatre Company show is required to charge up to twice the Glasshouse ticket prices even after running a lower cost operation.
- Comparisons of operating expense of the Glasshouse with Albury facility indicates the Glasshouse costs are being budgeted at a lower amount.
- Council by treating the Glasshouse Theatre as a community facility denies community and Councillors access to its financial position including profit or loss as shows.
- Based on project cost of Glasshouse the performing arts component (theatre) costs approximately \$30 million.
- For Port Macquarie-Hastings Council to provide its community with a true understanding of the operating costs of the Glasshouse theatre, it needs to declare the ACEC a 'business activity' in accordance with, 'Pricing and Costing for Council Business – A Guide to Competitive Neutrality' as many NSW councils operating a similar facility have done, and report on the activity in their annual financial statements (Special Purpose and Financial Reports – Income Statement of other Business Activities).
- Council has no provision in its operating budget for major maintenance, plant replacement or upgrades. Yet council estimates the expected

useful life of the Glasshouse to be 30–40 years (Submission 605 p70), presumably as being fit for purpose as a leading theatre.

- It is evident that to maintain the building at AA rating and continue to attract premium events and thereby sustain essential income, capital upgrades and maintenance will be essential.
- Despite this strategy, and Council’s assurances in Briefing Note 47 (p1) that the “Glasshouse Business/Operational Plan was developed in line with all Council’s business plans”, no allowance was made for asset management and replacement expenditure in the Glasshouse operational budget or in Council’s 10 year ‘Rolling Works Plan’.

3. Whether the Council properly consulted and engaged with its community and exercised appropriate openness and transparency in its decision making for approving and undertaking the Glasshouse infrastructure project.

- The Act anticipates that both members of the public and users of facilities should be involved in a council’s processes.

Part A The Joint Venture

- Port Central’s proposal provided the substance for the project to proceed
- The corollary to the joint venture was that the Council could not pause to seek the Community’s views.
- If the Council chose to pursue the joint venture, consultation was out of the question.
- When Council chose to pursue the joint venture, it adopted a communication strategy to explain its decision.
- The Commercial confidentiality of the joint venture with Port Central had removed the wider community from involvement in the project.

- While the public was aware of Council's resolution to enter into the Heads of Agreement, they were not aware of the cost and other relevant issues.

Part B Consultation Post Joint Venture

- When the joint venture with Port Central came to an end, the Council had developed a project brief and refined its plans to such a stage that it could sign off that they met the project's brief.
- When the Council resolved to go it alone, it had the opportunity to consult with its community.
- Rather than consult with its community, the Council chose to consult with stakeholder groups and provide information to the wider public.
- Council's paradigm of maintaining effective communications with its community fails to recognise that communication is neither equivalent to nor does it meet Council's statutory obligation to duly consult with its community.
- In late 2003 the Council sent a brochure to its community, it was the first and last time that the community could comment on:
 - The concept and its components
 - The location of the Glasshouse
 - Issues such as parking
 - The capital and ongoing costs
- By 2003 the Council, despite its protestations otherwise, had selected the site and had determined what was to be built, and at what cost.
- When members of the public raised concerns following the in late 2003, the Council dismissed them.

- Council's dismissal of public concerns reinforces the view that the council did not intend to engage the community, but merely to provide information to it.
- The public was neither informed of the proposal to add the Ritz Arcade site, nor was it informed of the prospective cost increase.
- The Council failed to consult the wider community before making its decision to proceed with the project.
- To the extent that the Council involved the public, this involvement was de-facto and, no doubt, driven by the communication strategies, first adopted in early 2002.
- There is no doubt that the Council closely consulted with the local arts community.
- Council sought and obtained significant advice from a wide range of industry providers.
- There are some clouds hanging over council's portrayal of its level of consultation with the industry.

Part C Council's Response to Community Concerns

- The Council initially ignored concerns raised by the community following the brochure and the display of the model.
- The Council adopted a number of strategies to meet criticism of its processes, none of which were consultative in their nature.
- The Council sought out and actively used supporters to respond to critics.
- The Council has, on a great number of occasions, provided misleading and/or inaccurate information in reports and other material available to the public.

- The Council has embarked on a course of denigrating those who it sees as opposed to the project.
- Consultation with the wider community cannot occur where opponents are singled out and denigrated for having and for expressing views contrary to those of the Council.
- The Council did not consult with its community, rather, it put in train a number of communication strategies that it would portray as consultation.

4. Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the management of and working relationships within Council.

The Commissioner may make such other recommendations as he sees fit.

Part A Governance

- Council has allowed its staff to organise support for its role of developer of the Glasshouse thereby compromising their role as regulator.
- The Inquiry considers the Port Macquarie Hastings community support spending on the arts but questions the fit for purpose of the Glasshouse to accommodate the wider community.
- Councillors were not advised that to proceed with the Civic Centre site they would need to address the Ritz Arcade problem until after a number of significant milestones to develop the Civic Centre site had occurred.
- Council is understating its annual subsidy to the Glasshouse by not including the 3% provision for major maintenance as set out in its adopted benchmarks document “Oh What a Beautiful Stage”. This amounts to an understatement of \$1.26 million pa.

- Council staff failed to gain Councillor approval to scope changes which enabled staff to report a \$12 million saving to a project that still increased in cost.
- Council's approach to car parking for the Glasshouse demonstrates the fundamental conflict council has in dealing with being the developer and the regulator. A review of the history of the project demonstrated Council's inability to handle this conflict.
- Port Central car park apart from the 200 council spaces belongs to the businesses of Port Central and council has no right to plan on using this space for the Glasshouse without the owner's agreement.
- The information supplied to Councillors in the DA process and at their workshop was unreliable and unrealistic.
- The Inquiry after considering the assumptions used by TTM for realistic car parking needs of the Glasshouse calculated a figure equivalent to that required by the Kooloonbung site.
- Council staff have sought to minimize car parking needs as a rapacious developer might.
- Pedestrian barriers need to be erected along both sides of the route from Clarence Street to the loading dock adjacent to the entry of Port Central Shopping Centre.

Part B Ancillary Issues

- The Council failed to undertake the function of determining the development application for the Glasshouse by properly considering it. It also failed to exercise a reasonable degree of care and diligence in carrying out its functions.
- Projects, such as the Glasshouse have significant long-term consequences. Projects, such as the Glasshouse have the potential to pit a council's aspirational goals against its duties as an independent determinant of the development application that will facilitate that goal.

- The interplay between a council's aspirations and its duties may (as they did in the Glasshouse project) conflict.
- Councils must appropriately resolve any conflict or incompatibility between their aspirational interests and the impartial performance of their public and professional duties as an independent determining body.
- Where a council has committed itself to a significant aspirational goal it may be unable to impartially perform its duties as an independent determining body, or may be perceived as unable to do so.
- In those circumstances, it is necessary that some other expertly qualified body exercise these functions.

5.3 Conclusions

- Council, represented by both the Councillors and staff, have failed to demonstrate adequate diligence when dealing with the financial management of the project, in particular they have:
 - Failed to adequately acquaint themselves with the project and particularly its costs.
 - Failed to impose adequate financial controls over the project.
 - Failed to recognise and consider the financial and other implications of the substantive changes to project brief.
 - Failed to ensure rigor in Project Control Group.
 - Excused their failures upon the basis that financial issues were “operational issues” falling outside their role.

- Council represented by both the Councillors and staff have failed to demonstrate prudent project management.
- When one reviews Council's Right of Reply as presented by Mr Miles it is difficult to see the current Council learning from its past mistakes.
- Council in 2004 and 2005 needed a special rate increase to catch-up with a broad range of general fund infrastructure and maintenance jobs with the Glasshouse being but one of the projects.
- Council revenue is controlled by rate pegging and the Glasshouse Project has required an extra \$20 million plus as well as a larger operating subsidy.
- Council has never been in control of the Glasshouse cost both capital and operation.
- Essential and discretionary services are being impacted on by the uncontrolled escalation of the cost to build the Glasshouse.
- The operations of the Glasshouse will adversely impact on the provision of works and services from the General Fund.
- Considering the real cost of operating the Glasshouse the centre will require a major amount of community subsidy even if it were able to attract major shows and conferences 365 days a year.
- All of the evidence leads to the inevitable conclusion that the Council failed:
 - To involve its community in the planning and funding for the Centre
 - To consult the wider community, preferring the views of the Project Reference Group, and industry providers
- The Council refused to recognise and consider community concerns and:

- Denigrated individuals criticising the project
 - Provided misleading and/or incorrect information
 - Improperly used its support group to campaign against critics, rather than to adopt proper consultation policies
- Council's communication strategies have driven its processes and have both overtaken and subverted genuine community consultation.
 - Ultimately, the Council refused to waiver from its perception of the project.
 - The Councillors failed to fulfil their role as elected persons and, particularly, to facilitate communication between the community and the council.
 - Ultimately, the Council has failed to provide a facility for its community, after undertaking due consultation. In so doing, the Council has failed to meet its charter.
 - Councillors have not had enough accurate information to make a considered decision in regards to the approving of the Glasshouse to be built on the Civic Centre site.
 - The majority of Councillors have failed to demand their right to accurate and complete information regarding the development of the Glasshouse on the Civic Centre site.
 - The community has been constantly misled by Council regarding the Glasshouse and its development on the Civic Centre site.
 - The Glasshouse Theatre and Conference centre cannot generate enough income to cover its long term costs of operations under the current decision making processes.
 - The annual financial shortfall when all legitimate costs are considered will consume the bulk of the 2004 and 2005 special rate variations.

5.4 Recommendations

Recommendation 1

On the basis of all of the evidence available to the Inquiry it is recommended that the Minister recommend to the Governor that all civic offices of Port Macquarie-Hastings Council be declared vacant.

Recommendation 2

It is recommended an independent administrator be appointed for a full term from the date that all civic offices are declared vacant.

Recommendation 3

It is recommended that the Minister consider implementing changes to the way that Councils deal with their own significant proposals and the provision of independent determination of the development applications for these proposals.

Recommendation 4

It is recommended that the Administrator have regard to the issues raised in this report.

6. VOLUME 2 - ATTACHMENTS

- A-1 DLG Submission – Sub #316
- A-2 ABC Regional News 23.1.08
- A-3 PM News 8.2.02
- A-4 PM News 23.2.05
- A-5 Council Meeting 9.5.05
- A-6 PM News 3.2.06
- A-7 PM News 4.8.06
- A-8 PM News 16.10.06
- A-9 Council Report 1.10.02 – PM Regional CC
- A-10 Letter from TZG 20.1.04
- A-11 Council Report 25.11.02
- A-12 Rider Hunt letter 26-8-04
- A-13 CC Redevelopment Site Planning Advisory Group
- A-14 Council Briefing Note 59 + Council report 21.1.08
- A-15 Email Leahy to Milburn 24.11.06
- A-16 Council Meeting 17.11.03 – Regional Cultural Facility
- A-17 Council Report 2.6.04 – Councillor Workshop
- A-18 Council Report 26.4.05 – Acquisition Ritz
- A-19 Council Meeting 18.8.03
- A-20 Council Report 1.8.05 – Reg'l CC Contributions Plan – Item 27
- A-21 Council Meeting 9.5.05 – Item 22
- A-22 Letter from Root Projects – 20.6.05
- A-23 Council Report 30.5.05 – loans 2004/05
- A-24 Council Briefing Note 61 – Root Projects submission questions
- A-25 Project review Meeting – Report on VM Workshop
- A-26 Sub 660
- A-27 Letter from C&B 21.8.06 – re estimate for work
- A-28 Letter from C&B 21.8.06 - estimates
- A-29 PCG Meeting Minutes - 18.10.04
- A-30 Project Review Meeting – 20.1.05
- A-31 PCG Meeting Minutes 20.10.05
- A-32 Council Report 1.8.05 NOM – Cultural Centre – Item 34
- A-33 Council Report 28.6.05 – Cultural Centre update
- A-34 Council Report 28.6.04 – CC development
- A-35 Letter from Rider Hunt 26.8.04
- A-36 Letter from Rider Hunt 28.11.02
- A-37 PCG Meeting 18.10.04
- A-38 David Hanly Plans – May 2000
- A-39 Powell, Dodds and Thorpe plans - 2001
- A-40 Council Report 11.11.02 – PM Regional Cultural Facility

- A-41 Council Report 2.6.04 – Councillor Workshop
- A-42 Closed Council Meeting – 21.1.08
- A-43 Report to Inquiry – Moreton Bay Management – 30.11.07
- A-44 Council Briefing Note 56 – Response to Moreton Bay
- A-45 Council Briefing Note 47 – Operational Plan Review
- A-46 Agris Celinskis – response to draft business plan – April 2006
- A-47 Glasshouse Operational Modelling & Budget for 2008/09
- A-48 Root Projects – Strategic Directions Report

VOLUME 3 – REFERENCE MATERIAL

- R-1 PMHC Submission to s740 Inquiry (Sub #605)
- R-2 PMHC Submission 605 – Attachments
- R-3 PMHC Submission 605 – Project Chronology documents
- R-4 PMHC Submission 605 – Issues Papers
- R-5 PMHC Submission 605 – Reports to Council
- R-6 Hearing Transcripts
- R-7 PMHC Submission in Reply (Sub #801)
- R-8 Other Reference Material
 - Council Briefing Note 30 – Car Parking
 - Council Meeting 18.11.05 – Traffic Advisory
 - Council Meeting 23.1.06 – Item 32
 - Parking Survey – Action for Truth - 30.11.07
 - Parking Survey - PMHC – August – additional data
 - Parking Survey – Port Central – 11.12.07
 - Parking Survey results – PMHC – 29.11.07
 - Port Macquarie News article – 31.1.00
 - Port Macquarie News article – 9.5.05
 - TTM Traffic Engineering report dated 21.1.02
 - TTM Traffic Engineering report dated 25.10.04
 - TTM Traffic Management Plan – Truck Access – 7.9.05