

challenges improvement innovation good governance

Local Government Reform Program - Promoting Better Practice

FOCUSSED REVIEW REPORT

WAKOOL SHIRE COUNCIL

MARCH 2005



dlg

Department of Local Government

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ABOUT THE REVIEW

Focussed Review objectives

The Local Government Reform Program - Promoting Better Practice is a review process that has a number of objectives for the focussed review strategy:

- to generate greater compliance to legislation across local government
- to provide an 'early intervention' option for councils experiencing operating problems
- to promote good governance and ethical conduct principles
- to enable the department to use review information to feed back into its work in identifying necessary legislative and policy work for the local government sector.

Focussed Review process

Focussed reviews are short reviews on specific areas of council activities that have been identified as a result of an analysis of council's information and data. These reviews use the same tools for identifying and analysing performance as the full reviews. This means that even though the department spends much less time with the council undergoing a focussed review, it still has the tools to get the best possible benefit out of the process.

Focussed reviews involve the department working with several councils in a region at one time. After completing the practice checklist, the council spends a day or two with departmental staff on site carrying out focussed checking. The focussed review has a greater compliance focus than the full review strategy.

There are essentially five steps in a review - preparing, assessing, checking, analysing and reporting. The review team examines local circumstances in order to understand the pressures on council and how the council has sought to manage that environment.

In order to review council it is necessary to examine its performance across a range of functions. A number of modules of a practice checklist have been developed to assist council in assessing its functions and checking its compliance. Council's response to the checklist is used as a guide for the on-site review and tests how council has set about delivering its priorities and measuring its achievements.

It is expected that this type of review will be limited to some aspects of council operations. As such, it will not provide an in depth or overall picture of council operations. The results of the review may, however, provide an indication of matters needing attention across aspects of council operations.

Wakool Shire Council Review

Wakool Shire Council was asked to complete a checklist of key council practices. The completed checklist was analysed by the review team prior to commencing the on-site review process.

Senior Investigations Officer John Canadi and Senior Finance Officer Scott Wallace comprised the review team who conducted an on-site review of council on 6 and 7 December 2004.

The on-site review consisted of a briefing with the Mayor and General Manager, conducting interviews with other council staff and the review of a number of council's policies and other documents.

1. RECOMMENDATIONS

Governance

1. Council should establish a statement of values. *(Refer to the ICAC publication entitled “The first four steps – Building organisational integrity”)*.
2. Council should review and adopt, with additions particular to the council if necessary, the Model Code of Conduct. *(Refer to the Department of Local Government Circular to Councils, no 04/63)*.
3. Council should develop and adopt a statement of business ethics to communicate both internally and externally the ethical standards that council abides by and expects others to abide by when doing business with council. *(Refer to the ICAC publication: developing a statement of business ethics)*.
4. Council should examine the costs and benefits of establishing an internal audit function. Given the council’s, size consideration should be given to contracting for this function or to sharing this function with other councils.
5. Council should develop and adopt a policy on fraud prevention control *(Refer to ICAC: Fighting Fraud – Guidelines for State and local government (2002), NSW Audit Office: Fraud control – developing an effective strategy (1994) and Standards Australia: AS8001-2003 Fraud and Corruption Control)*.
6. Council should conduct routine fraud risk assessments as part of its risk management responsibilities.
7. Council should ensure for all tender processes that:
 - a record is kept on the relevant tender file, confirming that the tenders in question were opened in accordance with clause 16 of the Local Government (Tendering) Regulation.
 - the relevant tender file contains a copy of the tender requirements including the proposed term of supply for the goods and services.

- the advertisement relating to a particular tender is kept on the relevant file.
 - tender documents are kept on the relevant tender file.
 - documents provided to tenderers include information relating to the need for tenderers to refrain from interaction with councillors.
 - the documented tender assessment criteria and matrix is kept on file.
 - tenders are both time and date stamped.
8. Council should develop and adopt a policy on legislative compliance.
9. Council should expand on its expenses and facilities policy by including financial limits on expenses, where necessary. *(Refer to the Department of Local Government Circular to Councils, no 04/62).*
10. Council should provide training to councillors in relation to their roles within council (as prescribed by the Local Government Act 1993) and provide on going training in particular areas of need.
11. Council should develop and adopt a communications devices policy that incorporates council's e-mail and telephone policy. The communications policy should also cover the use of mobile phone, internet, personal digital assistants, facsimiles, scanners and photocopiers. *(Refer to the NSW Premier's policy and guidelines for the use by staff of employer communication devices).*
12. The grounds for closing council meetings must be set out in accordance with the requirements of section 10D of the Act and recorded in council's minutes.
13. Council should have a constitution or charter setting out membership, functions and delegations for its section 355 committees. It is also suggested that section 355 committees have procedure or operational manuals and that the membership be subject to a code of conduct. *(Refer to the Guideline to*

the Model Code of Conduct, Department of Local Government Circular to Councils, No 04/63)

14. Council should develop an implementation plan for the complaint handling policy which includes:
- a. identifying who is responsible for dealing with complaints and how they are handled;
 - b. training for staff in complaint handling;
 - c. the reporting of complaints data to senior management and council;
 - d. how the community will be informed of council's complaint handling procedures, and
 - e. specified service standards for responding to the public. *(Refer to the NSW Ombudsman publication: Complaint Handlers' Toolkit)*

Asset and Financial Management

15. Council should investigate the development of a rating hardship policy.
16. Council should investigate the development of a pensioner rates and charges reduction policy.
17. Council should develop and adopt a policy in respect of the use of external contractors for major services.
18. Council should develop and adopt an asset disposal policy *(Refer to the Independent Commission Against Corruption publication "No excuse for misuse")*.
19. Council should seek to implement a revaluation of its roads asset class.

20. Council's Wakool Water business should ensure that its project contracts stipulate that there is a requirement for its customers to make regular instalment payments to council based on the project's level of completion.
21. Council's Wakool Water business should review its project management practices so as to ensure that its calculation of project cost estimates are accurate when providing tenders for project work.
22. Council's Wakool Water business should instigate adequate debt recovery action so as to minimise its outstanding debtors position.
23. Unless Wakool Water can generate a certain level of appropriate and reasonable sales income from the completion of project contracts for the period up to 30 June 2006, then council should discontinue involvement in this business.

Community and Consultation

24. Council should consider providing information that assists members of the public to access information under council's policy and information on how to lodge a complaint or comment with council.
25. Council should develop and adopt a written Guarantee of Service policy (*Refer to the Management Planning for NSW Local Government Guidelines – NSW Department of Local Government*).
26. Council should use the "Cultural Planning Guidelines for Local Government" to assist it in developing and adopting a cultural plan.
27. Council should develop and adopt strategies to deliver on its economic development overview report.

Planning & Other Regulatory Functions

28. Councils should ensure that where a planning consultant is used (particularly in implementing the new planning reforms and flow on amendments to council strategic documents) the consultant engaged is independent, unbiased and has avoided or appropriately managed any conflict of interest on the consultant's part.

Workforce Relations

29. Council should consider adopting a long-term workforce plan that looks at the staffing need of each section of council and allocates staff according to workload and priorities.

2. CONTEXT

Wakool Shire Council was originally constituted in 1906. The council has retained its current boundaries since 1956. It has a population of 4896 as at 30 June 2002. The council had average growth over an 5 years period to 30 June 2003 of –0.09%. Six councillors represent the population.

Wakool Shire Council is situated in the Southern Riverina district of New South Wales. It is about 800km south west of Sydney and it is about 450km north of Melbourne. The council's neighbouring shire councils are Balranald, Hay, Conargo and Murray. It is also bounded to the south by the Murray River.

Wakool Shire Council covers an area of 7549 square kilometres. It is predominately irrigated rural land in nature, with its main pursuits being devoted to the agricultural industry. The council boundaries encompass the main townships of Barham, Moulamein, Tooleybuc and Wakool.

3. DELIVERING AND ACHIEVING

3.1 Governance

“Corporate governance refers to all the means by which entities are directed and controlled” (Standards Australia, HB401-2004:12). Corporate governance is important because it enhances organisational performance; manages and minimises risks; increases the confidence of the community and the industry in the organisation; ensures that an organisation is meeting its legal and ethical obligations; and assists in the prevention and detection of dishonest or unethical behaviour.

A review was conducted of a range of aspects of council’s governance practices including:

- *Ethics and values*
- *Risk management and internal control*
- *Council’s decision-making processes*
- *Monitoring and review*
- *Access to information*

What is working well

Central Murray Regional Waste Management Group

The Central Murray Regional Waste Management Group covers the Victorian council areas of the Shire of Gunnarwarra, Shire of Lodden, Shire of Buloke, rural City of Swan Hill and the NSW Shire of Wakool.

The Group is a statutory body established under the Victorian Environmental Protection Act 1970. The Group has established a business plan and an action plan to provide direction and vision for the action of the group over the next five years.

It is encouraging to see these councils working proactively and cooperatively with local government, the private sector, the community, Eco Recycle and the Victorian Environmental Protection Agency, to achieve sustained reduction in waste and improvements in the management of residential waste systems.

Challenges to improve

Organisational Integrity

Organisational integrity is more than just preventing corruption or having a written code of conduct. It is when an organisation's operational systems, corruption prevention strategies and ethical standards are fully integrated to achieve the organisations' purpose.

To further assist and enhance the council in developing and promoting organisational integrity through a statement of values, council should review the ICAC publication entitled "The first four steps – building organisational integrity". (*Recommendation 1*).

Code of Conduct

Section 440 of the Act requires that every council must adopt a code of conduct to be observed by councillors, members of staff and delegates of council. Section 440(3) requires a council to review its code of conduct within 12 months after each ordinary election.

Council must adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW pursuant to section 440 of the Local Government Act.

The Model Code of Conduct has been issued via the Department of Local Government Circular to Councils, no 04/63. Staff and councillors should be made aware of it and it should be made available on council's website. (*Recommendation 2*)

Pecuniary Interest

The Local Government Act sets out the parameters that must be adhered to when councillors and staff have a conflict between their public duty and private interests that constitutes a pecuniary interest. The Act requires that councillors and designated staff complete and lodge disclosure of pecuniary interest returns. It is important that councillors and staff observe these requirements, as to not do so has the potential to seriously undermine the community's confidence in the integrity of local government and the decision-making processes.

It is important that councillors and staff who are identified as designated persons complete the pecuniary interest returns accurately and within the statutory timeframe. Councillors and designated persons should ensure that the address of companies, real property and family trusts in which they have an interest and are properly identified on the return.

Statement of business ethics

Council has business relationships with the private sector but does not have a statement of business ethics to guide these relationships. A statement of business ethics is important because it clarifies the working relationships with the private sector. A statement of business ethics can be an excellent tool for raising private sector awareness of public sector values. (*Recommendation 3*)

Internal Audit

Internal audit provides for systematic scrutiny of an organisation's operations, systems and performance. It assists in ensuring that service standards are met, data records are accurate and complete and established procedures are being followed. An internal audit function will only contribute to an organisations' corruption resistance if corruption risk management strategies are subject to regular auditing and if auditing findings are used to improve the effectiveness of those strategies. Internal audit is separate from an external audit.

Council should develop and adopt an internal audit program and establish an internal audit committee. Council will need to consider the costs and benefits of such a program and committee in determining how to action this recommendation. *(Recommendation 4)*

Fraud Control

Fraud is a crime involving the dishonest obtaining of a financial or other benefit by deception. The benefit might be of a direct value or it might be an indirect value. Fraud wastes scarce funds and resources and can damage an organisation's reputation and competitiveness.

It is important that fraud risks are identified and managed effectively and that staff are kept up-to-date on emerging risk areas and on proven strategies for properly managing them.

Council should develop and adopt a fraud prevention strategy. *(Recommendations 5 & 6)*

Tendering

During the course of the review process, the review team was advised that council had a number of contracts that exceeded the \$100,000 threshold previously prescribed by section 55 of the Local Government Act 1993. We were further advised that council had utilised the tendering process in relation to these contracts. These contracts include the design and construction of the 1.2 ML water storage tank at Wakool, and the design, supply and component delivery of the Niemur River Road Bridge project.

The review team reviewed the files relating to these tenders and found that in the main, the tendering requirements as prescribed by the Act and the Local Government (Tendering) Regulation 1999 had been followed. However, the review team did note the following records were in some respects less than better practice in this area:

- No record of evidence of council decision regarding either “open” or “selective” tendering methods being kept on the tender file.
- No record of any other “invitation to bid” being kept on the tender file.
- No record of copies of documents provided to tenderers, which specified whether instalments were payable, or the criteria on which tenders would be assessed, or whether formal tender documents were required. Nor did the records include information on interaction between council and tenderers.
- No record of staff that were involved in preparing and issuing tender documents being kept on the tender file.
- No record of declarations of conflicts of interest for staff being kept on the tender file.
- No record of written communications between tenderers and council staff being kept on the tender file.
- The record of the tender being opened in regard to clause 16 of the Local Government (Tendering) Regulation was not kept on the relevant tender file.
- No record of the documented tender assessment criteria and matrix being kept on the tender file.
- No record of the tender assessment’s panel members.
- No record of communication between potential tenderers and panel members.

Council should ensure that all tenders comply with better practice tendering.
(*Recommendation 7*)

Legislative Compliance

A fundamental principle of good public administration is that public officials comply with both the letter and spirit of applicable law (be it statutory or common law). No public official has an unfetter power or discretion.

To facilitate compliance with legal requirements, councils and their senior staff should ensure that:

- Management commitment to compliance is clear and unequivocal;
- The legal requirements which apply to each activity for which they are responsible are:

- Identified (including updates reflecting changes to the law), and
- Documented (preferably in detailed, but as a minimum by reference to relevant provisions);
- All staff are kept fully informed, briefed and/or trained about the key legal requirements relevant to their work;
- Staff are made aware of the potential repercussions of non-compliance with legal requirements that apply to them, and
- Record keeping systems and practices that capture evidence of compliance and non-compliance are in place.

Essentially there are two areas that a policy on legislative compliance could cover. The first is in regard to implementation. When legislation changes, council should have a system in place to ensure that, where necessary, steps are taken to ensure that action complies with the amended legislation. The second area is in regard to a review process. Council should review its current processes to ensure that that it is complying with legislative requirements. This aspect could be incorporated with an internal audit function, where periodic examinations are conducted into key operational areas.

Council should develop and adopt a policy supporting legislative compliance.
(Recommendation 8)

Expenses and facilities policy

Section 252 requires council to adopt a policy concerning the payment of expenses and the provision of facilities to councillors in relation to the discharge the functions of civic office.

Council has adopted an expenses and facilities policy. However, council should expand on the policy by identifying appropriate financial limits on expenses.
(Recommendation 9)

Training of councillors

An induction program and on going training scheme for councillors is an important aspect for the education of all councillors. Such training ensures that councillors are up to date with changes in legislation and general procedures in that area of local government. Council should formulate or organise an induction program for new councillors in the future. It is also suggest that councillors be involved on an ongoing relevant training program, where possible. (*Recommendation 10*)

Communications devices policy

Communication devices in local government are provided for business use. Public officials are accountable for the manner and purpose for which these devices are used. There is therefore a need for local government to have appropriate guidelines in place.

Although council has a policy on the use of e-mail and telephone, council is encouraged to expand and adopt a policy that covers all communication devices including the usage of e-mail, telephone, mobile phones, internet, personal digital assistants, facsimiles, scanners and photocopiers. Council is encouraged to use the NSW Premier's policy and guidelines for the use by staff of employer communication devices. (*Recommendation 11*)

Closure of Meetings

As a general rule, meetings of the council and its committees are required to be open to the public. Where council determines that a matter should be dealt with in confidential session, section 10 of the Local Government Act 1993 outlines the requirements for this determination.

Based on our review of council's minutes, council considers a number of confidential issues and only closes that part of the meeting relating to the confidential item. From our review of the recent confidential items, the reasons for closing the meeting fall within the requirements of section 10A(2) of the Act. While this seems reasonable, the council incorrectly identified the closure of the meetings under section 10A(3). The grounds for closing council meetings must be set out in accordance with the

requirements of section 10D of the Act and recorded in council's minutes. *(Recommendation 12)*

Section 355 committees

Section 355 committees are an important way in which council exercises its functions. Council has a number of s355 committees. In order to assist the committees operations, Council should develop a constitution or charter setting out membership, functions and delegations for each of these committees. It is also suggested that s355 committees have procedure or operational manuals and that the membership be subject to council's code of conduct. *(Recommendation 13)*

Complaint handling

An effective complaint handling system is an essential part of the provision of quality council services. It is one method of measuring customer satisfaction to provide a useful source of information and feedback for improving the council's service.

Council is yet to develop a corporate approach to complaint management. Council should develop an implementation plan for its corporate complaint handling policy. By establishing clear guidelines and procedures for the handling of complaints, the council will be in a better position to improve services. Council should consider adopting a guarantee of service for responding to correspondence (including complaints). *(Recommendation 15)*

3.2 Asset & Financial Management

Under its charter, council has a responsibility to raise funds for the purposes of carrying out its functions. This can be achieved by the fair imposition of rates, charges and fees, borrowings and grants. The council is also the custodian and trustee of public assets and must effectively account for and manage these assets.

A review was conducted of a range of aspects of council's practices in the areas of:

- *Financial management*
- *Asset management*
- *Insurance*

Overview of financial position

Council generated an operating surplus after capital items of \$1,580,000 for 2003/2004. Council has budgeted for a cash surplus for 2004/2005.

Council currently possesses a weak liquidity position. Its unrestricted current ratio was 1.02 as at 30 June 2004, which is below the recommended minimum level of 1.5. Council had no unrestricted or internally restricted reserves as at 30 June 2004, but rather was improperly utilising its externally restricted reserves, by the amount of \$66,000, which was highlighted in council's 2003/2004 audit report.

Council's road infrastructure currently appears to be in a deteriorated position. Its written down value, when compared to the total valuation level, equated to 53%, which represents a low level for this asset class. However this level may increase with council's planned implementation of a new asset management system and a bridge replacement program.

Outstanding rates and charges have been reduced to 7.5% and it is anticipated that this rate will decrease to 7% by utilising proposed debt recovery action.

Council receives 52.56% of its total income from grants and contributions. This is principally from two sources, Financial Assistance Grants and RTA contributions. While there is no indication that this income will be reduced, if either of these income types were reduced then council would face significant financial challenges.

What is working well

The condition of council's stormwater drainage, water supply and sewerage infrastructure appears to be adequate, as the written down value, when compared to the total valuation level, for these asset classes fall between the 60 - 81% level as at 30 June 2004.

Council's debt recovery process appears to be adequate for a rural council, as it has reduced its outstanding rates and annual charges over the past year to 7.5% as at 30 June 2004. The department recommends that rural councils maintain this level to be below 8% at year end.

Long term financial planning

Council possesses a five-year financial budget and capital works program that assists in providing council with a long-term financial forecast. Council is forecasting an increase in its working capital position of \$1.2 million over the next five years.

Challenges to improve

Rates hardship policy

Section 577 of the Local Government Act 1993 allows council to extend concessions to avoid hardship in relation to its rates and charges. Council does not have a rates hardship policy in place. Given the demographics of the area there appears to be a need for council to consider adopting such a policy. (*Recommendation 15 & 16*)

Use of external contractors

It is important that council have a policy in respect of the use of external contractors for major services, to ensure transparency of the decision-making and to prevent bias from being present in the choice of a certain contractor. (*Recommendation 17*)

Asset disposal policy

It is important that council have a policy in respect of the disposal of its assets, to ensure transparency of the process and to prevent bias from being present in the determination of asset sale prices and recipients. (*Recommendation 18*)

Valuation of roads, bridges and footpaths

Council has not engaged an independent professional valuer to value roads, bridges and footpaths for some years. The review team encourages council to have this valuation reviewed, as well as utilising the asset class's depreciation rate.

The failure to have updated valuations can impact on the reliability of financial reporting and decision making. (*Recommendation 19*)

Sustainability of Wakool Water

Wakool Water is a business activity undertaken by council in providing the design and construction of water and wastewater treatment and reticulation facilities to internal and external customers. Council commenced the business' operations in 2001. Council's 2003/2004 annual report states "the business is in its development phase and has not generated the returns anticipated in 2003/04 with an operational deficit of \$573K". The report further states "this loss has placed financial stress upon all council functions and its operations will need to be closely monitored into the future".

Wakool Water continues to incur operating losses. Council also outlaid \$1.1M for the cost of constructing the business's factory building. These factors have contributed to council's poor financial position, particularly its liquidity. Council's general fund has been under pressure in recent years to finance the funding shortfall caused by Wakool Water on an ongoing basis. Council's 2003/2004 independent audit report mentions "we report that the final accounts for 2004 show that Wakool Water has consumed \$800K of Council's working capital, \$330K of general fund internally restricted reserves and loan funds of \$585K, a total consumption of \$1,715K. This is compared to the budgeted total consumption of \$11K".

The continued poor performance of Wakool Water resulted in the qualification of council's 2003/2004 financial statements. Council's auditors state "in our opinion it is highly improbable that the business activity will be able to continue as a going concern and we therefore believe that the going concern basis should not be used in respect of the business activity's balances".

Council's general fund will have to continue funding the shortfall if Wakool Water continues to incur annual funding deficits. However council's finances are finite. As council's 2003/2004 audit report states "council has some limited capacity to continue supporting this loss making activity through loan and overdraft borrowing, however council does not have the financial resources to underwrite the significant inherent commercial risks associated with the activity".

Council itself has recently documented concerns about poor management and the lack of good process. Those concerns include:

- A business plan for the venture had not been prepared and no indication was made of expected milestones and positioning for the business, nor indication of the longer term resources required to operate it.
- Agendas for the council committee formed for Wakool Water were poor, lacked information and detail.
- Record keeping for such meetings were also poor as were the recorded minutes.
- There was a lack of or complete disregard of financial delegations by key personnel at Wakool Water.
- Placing orders with preferred companies without observing tendering requirements or seeking alternative quotations.
- Contract variations for Wakool Water projects had occurred, but few had been signed off by the client.
- A disregard for the purchasing limitation applicable to personnel.
- Bids for specific jobs were lodged without reference to the Wakool Water Committee or subsequently changed without consultation or approval.

- Documentation associated with all jobs was poor and in many instances there were no contracts.
- Poor debtor control.
- Proper human resource process was not observed, positions were not advertised and there was no open or transparent selection process used for appointments.

It will be necessary for council, as it acts on the recommendations in this report (especially recommendations 3 – 7) to ensure it is in a position to avoid a repeat of these system failures.

Council is currently forecasting that Wakool Water will generate \$7.9M sales income in 2004/2005, of which 99.7% consists of income raised from eight major contracts. Of these, five contracts had appeared to be formally ratified as at December 2004, and these contracts are expected to generate \$7.06M income. Wakool Water is required to complete these project stages before it is entitled to collect this income. Wakool Water should ensure that its contracts stipulate that there is a requirement for its customers to make regular instalment payments to council based on the project's level of completion, to assist in maintaining council's level of cash flow. (*Recommendation 20*)

Wakool Water has previously displayed weaknesses in calculating costs in its budgeting process. Council's 2003/2004 audit report states "council's financial position has been severely undermined by the failure of the business unit to derive the predicted project profits and by capital expenditures well in excess of its 2003/2004 budget". In relation to the construction of the Wakool Water factory in Barham, its initial cost estimate was \$400K in council's 2003/2004 original budget. This estimate was later increased to \$580K in the September 2003 budget review. However the final cost of the factory construction was approximately \$1.1 million, which is a significant cost increase from its initial forecasts. Council did not prepare a capital expenditure review for this project, which is not in accordance with the requirements stipulated in the department's circular 97/55.

Wakool Water has also previously displayed weaknesses in calculating project estimate costs when tendering for project work. It is crucial that this estimating process is accurate, as the projects' estimated profit margins arise from the sales income exceeding these estimated costs. Wakool Water had incurred an operating loss of approximately \$300K when acting as a sub-contractor on the Yerong Creek project in the Hume Shire during 2003/2004. Wakool Water should ensure that its calculation of project cost estimates accurately reflect all cost impacts when tendering for project work. (*Recommendation 21*)

Wakool Water needs to ensure that it possesses a minimal outstanding debtors position at any time, so as to improve the business's liquidity. It had an outstanding debtor balance of \$1.967M as at 30 November 2004, of which \$1.647M had been outstanding for more than 90 days. This reflects poor financial management, and Wakool Water should be instigating debt recovery action so as to minimise this outstanding balance. (*Recommendation 22*)

Council embarked on the Wakool Water enterprise as an opportunity to raise additional income. The reverse has occurred. Unless council is confident that the business can generate sufficient income (at least to cover all operating costs), council should discontinue its involvement in the business. Sale of the business as a going concern should be considered. (*Recommendation 23*)

3.3 Community & Consultation

A council's charter requires that a council:

- Provides services after due consultation
- Facilitates the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and coordination of local government
- Actively promotes the principles of multiculturalism
- Plans, promotes and provides for the needs of children, and
- Keeps the local community and State government informed about its activities

The review of council's activities in this area looked at:

- *The social and community plan*
- *Community participation*
- *Cultural planning*
- *Reporting to the community and keeping the State government informed about its activities*
- *Tourism and economic development*

What is working well

Social and community plan

Council's social plan has been developed to assist council to take into account community needs in the provision and advocacy of appropriate and accessible services and facilities. The social plan was adopted by council in 2000. As the first social plan for the shire, the document provided a record of current service provision and identified needs to be used as the basis for ongoing dialogue with the community, regional and state stakeholders.

The process for developing the social plan involved consultations, (public forums, meetings, focus groups and interviews), review of previous consultations and existing planning documentation, literature search, compilation of statistical profile and development of strategies.

Council has advised that it is in the process of rewriting its social plan.

Community feedback

Council uses a range of methods to obtain feedback from its community. Council consults the community on planning and policy issues. Additionally, council conducts briefing sessions in the community to provide residents with the opportunity to raise and discuss issues directly with councillors and council staff.

Council has a number of section 355 committees that regularly meet and include members from the community. This highlights the council's willingness to involve the community in council activities.

Council has acknowledged that the community needs to be better informed about what council is achieving and is considering the engagement of professional staff to assist in the development and implementation of a communications strategy.

Tourism

Council has recognised the importance of tourism in the area, particularly along the Murray River. The council subsidises a tourism organisation called Golden Rivers Tourism. The organisation is jointly subsidised by Gannawarra Shire Council in Victoria, CluBarham as well as members from industry across the region that has vested interests in tourism. The council also has its own Tourism Office at Barham. Council advised that it provided \$47,000 to tourism programs in the past year. Council appears to be satisfied with the activities of Golden Rivers Tourism.

Challenges to improve

Council's website

Council has a user-friendly website. There are a number of council policies that would be of interest to the community that are currently not contained on the website. Council should consider providing a list of its policies on its website so that members of the community are aware of the policies that council has developed.

Council should consider providing information that assists members of the public to access information under council's policy and information on how to lodge a complaint or comment with council. (*Recommendation 24*)

Customer service standards

Customer service levels (also known as guarantees of service) set out some key performance standards for the most frequently used services. The highlighting of customer service levels sets a level of expectation within the community, as well as sets guidelines for staff performance. Customer service levels are different to strategic indicators. They reflect an informal contract with the community in relation to the standards for routine services.

It is important to monitor and report on achievement in relation to service levels to ensure accountability to the community and provide feedback to the council.

Council is encouraged to develop a written guarantee of service policy (*Refer to the Management Planning for NSW Local Government Guidelines – NSW Department of Local Government*). (*Recommendation 25*)

Cultural Plan

Cultural planning aims to provide opportunities for all individuals and communities to be included in the State's cultural life. Local councils are well placed to support cultural expression at the local level.

The Ministry for the Arts and Department of Local Government have issued guidelines that outline the principles that underlie cultural planning and provide a practical framework to help councils develop and implement effective cultural plans.

Council is part of a collaboration of eleven councils known as "South West Arts". Activities that the organisation conducts include visiting artists, art projects, practical skills development workshops, youth theatre workshops, touring exhibitions, school based projects, public festivals.

Council's cultural plan is out of date. Council is encouraged to review its plan. Council should use the "Cultural Planning Guidelines for Local Government" to assist in developing and adopting a cultural plan in its review. (*Recommendation 26*)

Economic development

Council considers that successful regions are those that have focused their future on growth and diversity through export and trade. Council considers that success requires regions to create a world-class business environment in which businesses will want to invest and in which those businesses can clearly see a secure future.

Council has committed to a program of economic development, which it believes will benefit all sections of the community and place the shire area at the forefront of economic activity in the south western region of NSW.

Council has undertaken some work on economic development and has produced an overview report. The report provides for a number of recommendations that the council believes will assist the shire in economic development. However, strategies need to be developed to assist with the implementation of those recommendations. (*Recommendation 27*)

3.4 Planning & Other Regulatory Functions

Council exercises regulatory functions in relation to a range of activities within its area. The efficiency and probity of council's regulatory functions is important for effectively managing council's responsibilities and for preserving public trust in council and its staff.

Regulation is important to achieve a wide range of social, economic and environmental goals.

The use of planning consultants and possible conflicts of interest

The review team found evidence of councils' use, for strategic planning matters as well as specific advice on developments of a consultant planner who had previously acted for developers in the council area.

The use of consultants is an important means by which councils perform their functions. This is particularly so for those councils which lack staff with the necessary skills and expertise in particular areas. Consultants are often used in the planning area for strategic planning issues such as Local Environmental Plans, Development Control Plans, Section 94 Contribution Plans and land demand studies, environmental impact studies to name a few. Councils also use planning consultants to provide advice on or to assess particular development applications.

The appointment of planning consultants should be either via the tendering provisions of the Local Government Act 1993 (if the value of the total work to be performed is over the tendering threshold) or via council's procurements policy. If council consistently uses planning consultants, they should establish a panel of planning consultants to be used when necessary. Such a panel could be established via the selective tendering method. If a panel is established, it should be reviewed and re-advertised every three years. The method used to engage planning consultants should be open, transparent and free from bias.

The method used to select a consultant should ensure that the successful tenderer has the skills and competencies required to advise council. Council should also ensure that it receives value for the public money spent on such advice/services.

Council should also be aware of and manage potential conflict of interests on the part of planning consultants. A conflict of interest may arise where the planning consultant (or the firm in which that person is involved with) is also a consultant for a developer(s) in the local government area. Planning consultants with links to developers should not be engaged to undertake strategic planning advice for councils for land in which their clients are or may be interested.

It is also inappropriate to use a planning consultant to provide advice on a particular development application, where that same consultant (or firm) has provided advice to the developer for the development application. The perception of the independence of such advice is highly questionable.

In line with the planning reforms announced by the State Government, councils will need to prepare new local environment plans. Such a review may also require changed to other council strategic planning documents. Council should ensure that where a planning consultant is used in the new planning reforms and flow on amendments to council strategic documents, the consultant engaged is independent, unbiased and will provide advice in the public interest. (*Recommendation 28*)

Planning staff recommendations and council decisions

Council is responsible for determining development applications for the council area. In most instances, councillors have limited knowledge or expertise in planning matters. For this reason councils delegate authority for planning matters to the general manager. The general manager in many cases delegate such powers to appropriate planning staff.

From time to time council may determine planning matters. In order to assist councillors in their decision-making requirements for planning matters, councillors rely on planning staff and engage consultants as well as legal practitioners to provide

advice in regarding planning matters. Such advice should be considered as expert advice and not disregarded lightly.

Council staff, consultants and legal advisers engaged to provide advice on development applications is best placed to provide proper planning advice. Given the limited experience and knowledge of planning matters for most councillors, councillors should not take such expert advice and the recommendations lightly.

It is quite concerning that Wakool Shire Council has given approval to at least one development application that, according to staff recommendations, was in contravention of council's own planning strategies and guidelines. It is incumbent on council in making such a decision to spell out why and to have satisfied itself of the risks council may be exposed to as a result.

Council as the unbiased and independent consent authority

It is of paramount importance that council not only is an impartial consent authority for planning matters, but also be seen to be impartial. Council's role as a consent authority is to regulate development in the public interest.

Development applications are required to be evaluated in accordance with section 79C of the Environmental Planning and Assessment Act 1979. There are a number of matters that the council as the consent authority must take into consideration when assessing a development application. Those matters include, but not limited to, the environmental planning instrument, development control plans, the impact of the development, suitability of the development, submissions received in response to the development and the public interest.

The review team noted that council had taken a active interest in supporting a large tourist development. However, planning advice raised some concerns about whether the development was allowable in the current zone. Council resolved among other things to investigate all planning avenues to assist with the development.

The regulatory role of the council is to assess the development application. It is the role of the developer to investigate all planning avenues to assist the council in its evaluation of the development application. It is of some concern that Wakool Shire Council appears to be taking an active interest in allowing the development despite planning advice to the contrary.

In determining development applications, it is essential that councillors are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means councillors must ensure that no action, statement or communication between themselves and applicants or objectors conveys any suggestion of willingness to provide concessions or preferential treatment. *(Refer to the Department of Local Government Circular to Councils, no 04/63, Model Code of Conduct for Local Councils)*

3.5 Workforce Relations

Councils have a number of legislative responsibilities in relation to their role as an employer. Council is required to conduct itself as a responsible employer.

Staffing

Wakool Shire Council has identified that approximately 15% of its workforce is over the age of 55 (13 of 88 staff). The staff work well together and have a professional approach to their work.

The consultative committee is representative of the organisation and provides for two way communication between management and staff.

Selection and recruitment is transparent and selection is clearly on merit in accordance with section 349. Recruitment is well documented, with the ranking of candidates and reasons for selection outlined on relevant files.

Workforce planning

Wakool, like many types of council, is exposed to a number of workforce issues, such as the shortage of specialised skills in certain areas, such as in the area of planning.

Council needs to consider a long-term workforce plan that looks at the staffing need of each section of council and allocates staff according to workload and priorities.

(Recommendation 29)