challenges improvement innovation good governance

Local Government Reform Program - Promoting Better Practice

REVIEW REPORT

BROKEN HILL CITY COUNCIL

JUNE 2006

Department of Local Government

dlg

TABLE OF CONTENTS

1. ABOUT THE REVIEW 3

2. EXECUTIVE SUMMARY 6

3. DIRECTOR GENERAL'S COMMENT 10

4. RECOMMENDATIONS 12

5. CONTEXT 21

6. COUNCIL'S AMBITIONS, PRIORITIES AND FUTURE FOCUS 23

7. DELIVERING AND ACHIEVING 29

6.1 Governance 29

6.2 Regulatory Functions 57

6.3 Asset & Financial Management 66

6.4 Community & Consultation 76

6.5 Workforce Relations 83

8. COUNCIL'S RESPONSE 91

1. ABOUT THE REVIEW

Review objectives

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

- ·to generate momentum for a culture of continuous improvement and greater compliance across local government
- to provide an 'early intervention' option for councils experiencing operating problems
- to promote good governance and ethical conduct principles
- to identify and share innovation and good practice in local government
- 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.

Reviews act as a "health check", giving confidence about what is being done and helping to focus attention on key priorities.

Review process

The review process was developed after extensive research into council performance measurements in Australia and overseas. 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.

The process involves a Department of Local Government (DLG) review team evaluating the effectiveness and efficiency of the council's operations and giving

feedback. This involves checking compliance, examining appropriate practices and ensuring that council has frameworks in place to monitor its performance.

The results of reviews are analysed and fed back to the elected council, the Director General of the Department of Local Government and the Minister for Local Government.

Broken Hill City Council Review

Broken Hill Council was asked to complete a strategic management assessment and a comprehensive set of checklists about key council practices. The review team examined these and a range of other source documents prior to visiting council, in order to gain a preliminary understanding on the pressures on council and how the council has sought to manage that environment.

The strategic management assessment tool asked council to respond to four critical questions:

- How has council determined its ambitions and priorities?
- How do these ambitions and priorities drive the council's services and resources?
- How does council use its corporate capacity and systems to drive forward the organisation in an ambitious, challenging yet managed way?
- How does council measure the progress it is making with its agenda to ensure that its priorities are delivered and that service improvement is achieved?

Paul Terrett and Lyn Brown conducted the on-site component of the review from 23 to 27 January 2006.

The on-site review involved a meeting with council's mayor and General Manager, conducting interviews with councillors, staff and community members, attending a

councillor briefing session and council meeting and the review of a number of council's policies and other documents and visits to council facilities/worksites.

A draft review report was prepared and forwarded to Broken Hill City Council on 2 May 2006 for consideration and comment. Council formally responded to the department on 29 May 2006. Council's corporate response to the draft report is included in section 8 of this report (page 91).

This report details the review's findings and recommendations. The department expects councils to formally respond to the review process, to prepare an action plan to address agreed issues and to provide progress reports on the implementation of the action plan.

2. EXECUTIVE SUMMARY

Broken Hill City Council faces a number of challenges in the coming years. Failure to address these challenges will place council's future sustainability at risk. These challenges include the leadership at the political level, the level of financial sustainability, the decline of the mining industry in the area, management of council's infrastructure, population decline, ageing of its community and effective engagement with its community.

While council has a sound approach to its strategic and operational planning, these plans require better integration and more extensive indicators to enable council to measure its performance. The need for a long-term financial strategy is imperative.

The review team was disappointed at the poor leadership shown at the political level. It is clear that many councillors are getting bogged down in the detail of running the council and fighting with each other. Many councillors appeared to be unable to see past the current conflicts and provide a positive strategic direction for council.

Many of the councillors the review team spoke to appeared to lack a clear understanding of their role or their obligations under the council's code of conduct. Councillors were unable to demonstrate an understanding of council's strategic direction and many appeared to be unable to focus on the 'big picture'.

There are some aspects of council's organisation that are performing well. This includes its records management, tendering and procurement practices and the way delegations are handled. However, there are also some critical areas that council needs to address to improve its governance standards. Council needs to pay particular attention to its risk management and internal control activities, its meeting procedures, complaints management and written returns of interests.

Council meetings are chaotic and council appears to routinely struggle to get through its business efficiently. It is clear that council needs to pay particular attention to the way it conducts its meetings to ensure efficiency, effectiveness and transparency.

The council has adopted strategies to effectively deal with development applications, through extensive use of delegated authority. Council has a regular program of review of its planning instruments and is proposing to update its land use strategy in conjunction with a review of its Local Environmental Plan. Council should ensure that its environmental planning is integrated with its management and operational plans. While council has an active program of checking compliance it should ensure that this program is underpinned by documented policies and procedures.

Council has reported operating deficits after capital items for the past 5 financial years. Council's failure to address its long-term financial sustainability will, in coming years, place extensive pressure on the council. The elected body appears to lack the understanding necessary to seriously address this concern. There is evidence of unfunded pay increases to staff and a lack of adherence to financial policies.

Council must develop a long-term financial plan that is integrated with its other long-term plans. This includes its social plan and asset management plan. The long-term plan should identify the future needs of the city, as well as rationalisation of assets and infrastructure that may be surplus to council's requirements. Council should be prepared for the expected reduction in income from mining rates by developing a long-term rates strategy that takes this into account. Council should also be exploring opportunities for alternative revenue sources.

Council is a large provider of human services to the Broken Hill community and has obtained accreditation under ISO 9001 for many of these services. A recent audit report gave an overall result of excellent for these services. This is an area of excellence for Broken Hill City Council.

While council has a consultation policy and undertakes its statutory obligations in this regard, there is not a robust process of engaging with members of the community. Council should develop a range of methods for including the community in its processes. Council needs to also develop customer service standards across all council services and these should be monitored and reported on.

Given the area's ageing population is increasing at a significant rate, council needs to consider ways to raise the awareness of this issue across all sections of council. Building upon strategies in its social plan and using the Ageing and Place Framework developed by the Local Government and Shires Association, council should prepare long term strategies to meet current and future needs for older people.

Current councillor in-fighting is having an adverse impact on staff morale and producing a culture of 'them and us'. It is also evident that there is a divide between council's indoor and outdoor staff producing a culture of distrust and lack of unity to achieve council objectives. This needs to be addressed as a matter of priority. The review team has made some recommendations for strategies to address this area of concern, such as the establishment of a consultative committee, conducting an employee survey and utilising the "Business Excellence Program".

The review team has expressed concern about the potential financial impact on council of the recently renegotiated industrial agreement and whether or not council fully considered all of the agreement's requirements.

The council faces a future challenge with an ageing workforce. Succession plans have been included in the plans of various work groups. However, council needs to develop a workforce plan to identify specific changes that may occur in workload in particular work groups and determine strategies for the acquisition and transfer of skills. This should include increased opportunities for apprenticeships, cadetships and traineeships. Council already has a proactive program of employing cadets, apprentices and trainees and this should continue.

Due to the remoteness of Broken Hill, networking and professional development of staff is costly in terms of time and resources. Council has an opportunity to utilise its sister city relationship with Bankstown City Council to exchange staff for work experience and professional development.

The Department of Local Government requires council to take immediate corrective action on the matters identified in the Director General's Comment (Part 3 of this

report) and report to the department within 28 days of receiving this report. The department expects the council to have substantially implemented the recommendations in this report within six months and report to the department at the end of this period. Should the council fail to act on the matters identified in the Director General's Comment and the report recommendations, the department will consider taking further action to resolve the issues identified in this report.

3. DIRECTOR GENERAL'S COMMENT

The Department of Local Government has been monitoring council's performance over the past 12 months. Many of the concerns that have been raised with the department are highlighted in this report.

The department's concerns have arisen from continuing complaints it has received that disclose evidence of significant conflict within the governing body of council. I have brought these concerns to council's attention previously. I continue to be concerned about the possible misuse of council's code of conduct processes by councillors in order to make politically motivated attacks on other councillors and staff, and with council's inability to use the code as it is intended to impose appropriate standards of behaviour on all councillors.

Council's apparent inability to effectively manage these matters continues. This is evidenced by deficiencies in the way it has dealt with, and continues to deal with, complaints under its code of conduct. Council has previously been warned of the consequences of failing to act in the best interests of the council and the people of Broken Hill. Failure to observe these requirements adversely affects both the integrity of council and the reputation of local government generally.

As I have previously made clear to council, I expect the Mayor and all councillors to be committed to a high standard of behaviour expected of persons in local government, and view with great concern councils that do not act in the best interests of the community. The time and efforts of councillors are best directed to this end, rather than to internal disputes.

I continue to be deeply concerned that the present operations of the council do not meet the reasonable expectations the community has regarding councillor behaviour and suggest that council is not dealing with issues in accordance with its charter. This Promoting Better Practice report has highlighted the continuance of processes and conduct that are below the standard expected.

Every councillor must contribute to the corporate effort to achieve council's goals and to provide community leadership. Without this, council staff has no guidance and cannot function effectively in serving the community.

The level of disputation within the elected body is doing nothing to build confidence in the capacity of the council to serve its residents and ratepayers, and it also undermines the reputation of the local government sector. While I hope that the recommendations in this report are able to help councillors work together in the interests of the community, I will consider recommending to the Minister that a section 740 inquiry be held if the ongoing conflict in council is not resolved.

To this extent I require that council, within 28 days of receiving this final report:

- determines the two code of conduct complaints relating to the March 2006 meeting of the Corporate Services Committee and provides a full report to the department on the outcome of these matters
- resolves to amend the membership of its conduct committee to comply with the requirements of the Model Code that specifies the membership of the conduct committee. The only councillors who may be members of the committee are the Mayor and a replacement for the Mayor or General Manager if there is a complaint by or against the Mayor or the General Manager (usually the Deputy Mayor)
- ensures that all committees of council have clearly defined terms of reference that identify the function of each committee
- ensures that all pecuniary interest returns are updated in accordance with departmental circular 04/16 and the pecuniary interest guidelines (available on the department's website)
- demonstrates a marked improvement on the part of all councillors in their understanding and discharge of their role in decision making.

4. RECOMMENDATIONS

Strategic

1. Council should ensure that the strategies in the management plan are also reflected in the operational plan.

2. Council should consider whether it would be more effective to dispense with the operational plan and revise the management plan to incorporate the detail provided in the operational plan.

3. Council should ensure that all its long term plans are integrated into its strategic plan.

4. Council could improve what is already a sound approach to its strategic and operational planning by ensuring that all its plans are linked to the operational plan as identified in the flow chart (see page 21) and as exemplified by the social and community, disability and cultural plans.

5. Council should develop a long term financial strategy that supports its strategic direction and addresses the following issues:
   - a reduction in future deficits
   - an improvement in council's efficiency
   - investigation of alternative sources of revenue
   - the rationalisation of assets
   - a long term rates strategy

6. Council needs to adopt more extensive performance indicators across the organisation that measures its performance against its objectives and goals.

7. Council's executive should implement a more stringent process for regular monitoring of and reporting on the implementation of the objectives and strategies in the management and operational plans. This could be achieved by a standing item on management meeting agendas.

8. Councillors should undertake further education on their role and responsibilities.

Governance

9. Council should undertake an awareness campaign to ensure that all staff and councillors are aware of their obligations in relation to receiving gifts.

10. Council should implement an audit program to ensure that delegations are being exercised appropriately.

11. Council should ensure that it has one integrated records management system.

12. Council should review the recommendations from the corruption resistance review undertaken in 2001 and work towards their implementation as a matter of priority.

13. Council should ensure that complaints and customer requests are separately identified.

14. Reports should be provided to senior managers and council on a regular basis on council's complaint handling activities so that trends can be identified and monitored.

15. Council should review and update its complaints management policy.

16. Council should ensure that it implements its communication strategy contained within its complaints management policy.

17. All councillors and designated persons should update their disclosure of interest returns immediately to ensure that they comply with the legislated requirements.

18. Council should review the number of council officers who are designated persons to ensure that delegated decision makers in key areas are designated persons.

19. Council should review the current councillor expenses and facilities policy (councillors support policy) to ensure it is comprehensive.

20. Council should provide its section 355 committees with a procedure or operations manual that outlines what is expected of them, including information on council's code of conduct.

21. Council should revise its organisation structure to ensure that it is consistent with the council resolution.

22. Council should ensure that its closed meeting agenda specifically indicates the relevant item of business to be discussed.

23. In deciding whether or not a matter should be discussed in closed session, council should apply the requirements of section 10D of the Act, including the public interest test.

24. Council should ensure that the entire minutes of its meetings are available to the public and contain the resolutions made by council in closed session.

25. Councillors should ensure that the nature of any interest is disclosed for both pecuniary and non-pecuniary conflict of interests and this is recorded in the minutes.

26. In the interests of maintaining order at council meetings, council needs to enforce the disorder provisions of the *Local Government Act* and Regulation and council's code of meeting practice and take any appropriate follow up action under its code of conduct.

27. The Mayor should consider consulting other mayors for advice and strategies for maintaining order at meetings.

28. To minimise the amount of time spent at meetings debating the minutes of previous meetings, council should consider trialling a process by which the minutes are typed directly onto a computer and displayed on a screen during the meeting.

29. Information on the procedures for participation in council's public forum session should be provided to the public. It is suggested that this information, at the least, is made available on council's website, in the business papers and displayed at the council chambers and library.

30. Council should consider amending the public forum policy to provide:

- that council at all times retains the discretion to refuse a person the opportunity to address council under its public forum process.
- that a person committing an act of disorder for the purposes of the *Local Government Act* and Regulation and council's code of meeting practice may be required to leave the meeting.
- a process by which a person's opportunity to address council under the public forum process may be suspended for any acts of disorder or breaches of the public forum rules.
- a process by which a person may be banned from addressing council under the public forum process for repeated acts of disorder or breaches of the public forum rules.

31. Council should review the function of each of its 'standing committees'.

32. Chairpersons of council 'standing committees' should ensure that the business discussed at committees is in accordance with their committee's documented function.

33. Council should consider more efficient ways of dealing with committee reports.

34. The General Manager should ensure that all staff receive training in the new code of conduct.

35. Council should develop and adopt criteria to be used by council's General Manager and the conduct committee in assessing allegations of breaches of the code of conduct.

36. Council should develop guidelines for the operation of its conduct committee as a matter of urgency.

37. Council should give further consideration to the composition of its conduct committee to provide assurance to all parties involved that complaints are being dealt with in a fair and proper manner.

38. Councillors expressing their own view to the media should specify that they are not speaking on behalf of council unless authorised to do so.

39. Councillors and council staff should be provided with information and briefings in relation to their obligations in dealing with council information.

40. Council should reconsider reducing the number of councillors to 9 (including the Mayor).

Regulatory functions

41. Council should explore the options provided by recent amendments to the Environmental Planning and Assessment Act 1979, that have enabled councils to enter into planning agreements and to set fixed contribution levies, and the benefits they could contribute to the provision of infrastructure arising from development in the City.

42. Council should take advantage of the requirement to review its LEP to include a review of the City of Broken Hill Strategy Plan 1983 and ensure that its land use and other infrastructure planning is consistent and integrated with council's strategic plan.

43. In the preparation of future State of the Environment Reports council should take into account:

- inclusion of information about gaps in data and environmental information in the comprehensive report (or if there are none, make this clear)
- inclusion of more comprehensive actions to be taken by council that can then be included in the management plan
- evidence of community consultation or involvement of the community in monitoring changes in the environment.

44. Council should review its companion animals management plan to ensure that it is comprehensive, contains strategies and meets its obligations under the *Companion Animals Act 1998*.

45. Council should develop a local orders policy that specifies the criteria that the council will take into consideration in determining whether or not to give an order.

46. Council should develop a compliance and enforcement policy.

47. Council should provide information to the public on how to report matters of non-compliance.

Asset and financial management

48. Council should re-examine the financial costs and benefits of expanding its city boundaries and any other benefit this expansion may have on the city and the western division.

49. Financial information provided to councillors should be presented in such a manner that it is comprehensive and easily understood.

50. Council should again consider the costs and benefits of employing a specialist grants officer.

51. Council should develop business plans for all of its business activities.

52. Council should implement a total asset management system to ensure that it has an empirical basis for determining what funding will be required to maintain, replace and enhance assets when needed.

53. Council should prepare an asset management plan that includes any potential rationalisation of assets and a maintenance program.

54. Council should identify a position that is responsible for ensuring that departments liaise on asset management and that there is integration of the management of all of council's assets.

55. Council should develop an IT strategy and business plan. As part of this process it should develop a way of assessing the value for money that it gets from its investment in IT.

56. Council should utilise available technology to improve efficiencies (such as professional development of staff, asset management).

57. Council should review its existing procedures and develop policies for the granting of financial assistance, loans and grants.

58. Council should investigate the development of a rates hardship policy.

Community and consultation

59. Council should include a copy of its audited financial reports in its annual report and ensure that a copy of the annual report is provided to the Department of Local Government by the due date.

60. The social and community plan should contain information on the needs assessment process as well as the outcome.

61. The social and community plan should include specific timeframes for actions and performance criteria by which to measure achievement.

62. Council should develop a comprehensive, organisation-wide community consultation policy and framework that provides a range of opportunities for community input into council's planning and decision making processes.

63. Council should develop customer service standards for all of the services it provides.

64. Once developed, council should monitor and report on its customer service standards to ensure accountability to the community and to provide feedback to the council.

65. Priority strategies to meet current and future needs for older people should be determined on an annual basis and incorporated in council's management plan and budget, the business plans of each department and the work plans of individual officers. Progress in relation to these priorities should be reported on a quarterly basis via the performance appraisal system and management plan reports as well as annually in council's Annual Report.

Workforce relations

66. Council should ensure employee training is provided on key topics, such as code of conduct and protected disclosure procedures, across all departments of the council.

67. Council should continue to implement strategies that promote a co-operative approach for staff to work together to achieve council's goals (such as provided in the Business Excellence Program).

68. Council should regularly conduct employee attitude surveys, and act on them.

69. Council should develop a workforce strategy to address its future employment needs, particularly in relation to the age of its workforce.

70. Council should review its Equal Employment Opportunity Management Plan to ensure that future plans include:

- information on when the plan was adopted and reviewed,
- specific targets and performance criteria,
- a description of the method used to develop the plan,
- definitions of key words or a glossary, and
- a statement about corporate ownership of the policy.

71. Council should consider using its sister city relationship with Bankstown City Council to provide reciprocal development opportunities for staff.

5. CONTEXT

The City of Broken Hill is unique because of its location. It is located in the western half of NSW and lies in the centre of the sparsely settled NSW outback. It is close to the South Australian border and midway between the Queensland and Victorian borders. Because of its location and close links with South Australia, it operates on Central Australian Time. The nearest large population centre is Mildura in Victoria, 300kms to the south. The City only covers an area of 179 square kilometres. The City is surrounded by Western Lands that are administered by the Department of Natural Resources.

As of July 2004, there were 10,119 rateable properties. The 2001 census identified a population of 20,274 persons. Since 1971 the population has declined by nearly one third. However, in recent years the rate of decline has slowed and the population has stabilised. The population's median age has increased from 33 years in 1991 to 40 years in 2001. The number of people aged 60 years or over is 5% higher than the state average. The indigenous population makes up approximately 5.1% of the City's population. At the 2001 census, the number of persons born overseas was only 4.5%.

Broken Hill is world renowned for its mining industry, with mines being a part of the industry of Broken Hill for over a century. Currently, there is only one mine still operating. Recently a mineral sands treatment works has been established in Broken Hill, which has created new job opportunities. The retail industry is also a large employer in the area. Tourism is an area that is undergoing further development as an alternative to the mining industry.

Broken Hill City Council has twelve elected representatives. The Mayor is popularly elected and the council does not have wards. Council has a full council meeting once a month and has four standing committees that meet in the week prior to the council meeting; Corporate Services, Environmental Services, Technical Services and Policy and General.

Council employs 230 full time equivalent staff (as at May 2006). Council's structure has six departments. The four departments of Environmental Services, Tourism, Infrastructure and Assistant General Manager report directly to the General Manager. Two departments, Corporate Services and Human Services report to the Assistant General Manager. However, in terms of executive management meetings, the managers of all six departments attend.

In 2004/05, council's budget for expenditure on ordinary activities was approximately $25.4 million. Council reported a deficit before and after capital items in 2004/05 and has incurred deficits before and after capital items in the past 5 years. Council reported a deficit for 2004/05 of $3.37 million after capital items.

Council determined 465 development applications in 2004/05 (State of the Environment Supplementary Report 2004/05) with a mean time for determining development applications of 4 days. This compares well to similar councils, which have an average of 43 days.

6. COUNCIL'S AMBITIONS, PRIORITIES AND FUTURE FOCUS

This part of council's assessment focussed on: clear ambition; a focus on communities and services; ownership of problems and willingness to change; a shared and realistic vision; a sustained focus on what matters; improvement integrated into day to day management; flexibility and innovation; capacity and systems to continue to deliver performance improvement.

Council has developed a strategic plan, management plan and an operational plan. Council's original strategic plan had a focus of five years (see further comment below) while the management plan identifies activities to be conducted for the next three years. The operational plan is focussed on objectives for a year. The operational plan provides a budget estimate by program for three years.

Council underwent a strategic planning process that involved conducting a community survey and a strategic planning workshop for councillors and senior staff to identify the key result areas to 2010. The strategic plan is in the process of being revised and a copy of this was provided to the review team while on site. The revised strategic plan has been the subject of a further workshop and is yet to be adopted by council. This plan provides goals to the year 2020.

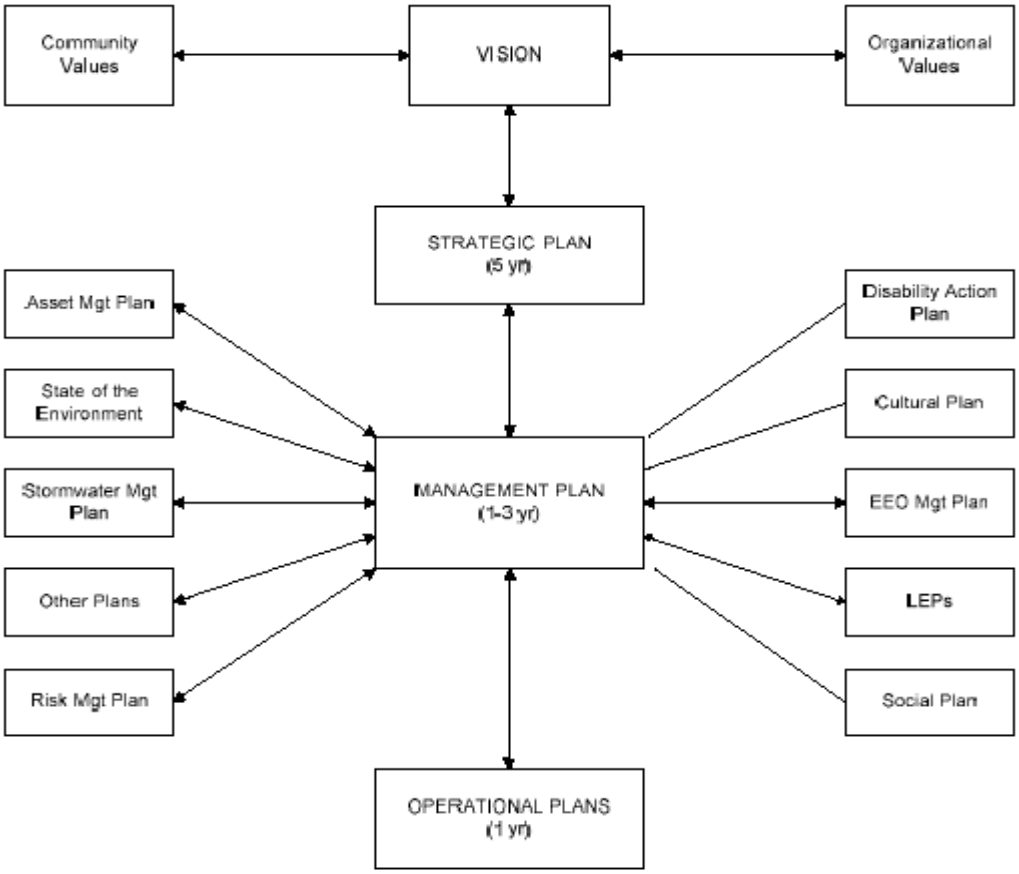
A strength of council's process in developing its strategic plan was the identification of obstacles that need to be addressed by council in order to achieve its vision and aspirations. The five key result areas for council action have been derived from the identification of council's aspirations at its planning workshop and the community's aspirations through the community survey. It is clear how each of the obstacles has been addressed in the goals developed for each key result area. These goals are then represented in council's management plan.

It is more difficult to see the management plan strategies in the operational plan. For example, under the goal of "a vibrant and prosperous lifestyle" council has identified a strategy to facilitate economic development. This strategy is not reflected in council's operational plan. The programs proposed under this goal mainly focus on tourist related activities. It is also clear from its performance report for the first

quarter of 2005/06 that council is reporting on its performance in relation to the operational plan. Given that council has an obligation to the community to report on its performance against the management plan, it is important that the strategies identified in the management plan are reflected and acted upon in council's operational plan. (Recommendation 1)

Council should also consider whether it would be more effective to dispense with the operational plan and revise the management plan to incorporate the detail provided in the operational plan. In this way it can be sure that its objectives, goals and strategies are consistent. (Recommendation 2)

Despite the difficulties discussed above, the revised strategic plan, management plan and operational plan are fairly well integrated. They are, in the main, a good example of linking broad and long-term objectives to specific actions. The flow chart below identifies how the plans should work together.



Source: Broken Hill Management Plan 2005/06

A good example of the integration of council's plans is its social and community plan, disability action plan and cultural plan. These plans identify the relevant program area of the operational plan that incorporates each of the goals and means in the plans. The flow chart (page 21) indicates that they link to the management plan, however, the plans primarily link to the operational plan. This adds further argument for the need to consolidate the management and operational plans. On the whole, it is easy to see where the actions of these plans are incorporated in the operational plan.

It is not as evident that other council plans are integrated into the management or operational plan as identified by the flow chart. Specifically the actions to be taken in response to the State of the Environment Report are difficult to find in the operational plan. Partly this is due to the absence in the report of specific issues and actions to be taken by council. (See further comment in regulatory section) Council could improve what is already a sound approach to its strategic and operational planning by ensuring that all its plans are linked to the management or operational plan and as exemplified by the social and community, disability and cultural plans. (Recommendation 3 and 4)

One of the biggest challenges facing council is its long-term financial sustainability. As presented further in this report, council has reported operating deficits in each of the last five years. Council's auditor has expressed the view that this signifies little progress towards long-term sustainability. Council's financial strategy should include actions to reduce future deficits. Further, a legacy of the mining industry in Broken Hill is the acquisition of significant infrastructure and the cost of maintaining these assets. This has placed a financial burden on the council as much of this infrastructure is now needing or will shortly need replacement.

Council's auditor has also commented that council may need to consider reducing service levels to lower operating expenditure. Serious consideration needs to be given to council's current financial position and the introduction of strategies to improve efficiency.

Council needs to consider a long-term financial strategy that supports its strategic direction and, at the least, enables council activities to be sustainable. It is imperative that council undertakes this action as part of its strategic planning. (Recommendation 5)

An important part of council's planning is the monitoring of its performance in achieving its objectives. Council has developed some performance measures in its management and operational plans. However, these are not extensive and do not measure all its activities. As discussed above, some of the strategies identified in the management plan, although they have a performance measure, are not represented in the operational plan and therefore are not reported upon.

Some plans do not contain performance indicators, such as the cultural plan and the disability action plan. Additionally, performance indicators that are developed need to be realistic and measurable and address how council is performing against its objectives and goals. Council needs to adopt performance indicators across the organisation to ensure a best value approach to services is developed. These need to be more extensive than the measures that are currently in place. (Recommendation 6)

The General Manager has reported within two months after the end of each quarter on the extent to which the performance targets set by the current management plan have been achieved during that quarter as required by section 407 of the *Local Government Act*. However, as discussed above, council is reporting against its operational plan and not its management plan. This may be somewhat confusing for the community.

Council's executive meets weekly and meetings are held with other managers on a monthly basis following the council meeting. There is no formal agenda for the executive meetings. The review team was advised that the meetings do not specifically discuss progress against the performance indicators that have been set in the management or operational plans.

Council's executive should have a more stringent process in place for regular monitoring of and reporting on their performance. Progress on the implementation of the management/operational plans should be an agenda item at executive meetings at least monthly. (Recommendation 7)

The strategic role of councillors

Under section 222 of the Act the elected councillors (including the Mayor) comprise the governing body of Council. Section 223 sets out their role, which is to "direct and control the affairs of the council in accordance with this Act". Section 232 expands on this, indicating that the role of a councillor is, as a member of the governing body, to do four key things, one of which is "to play a key role in the creation and review of the council's policies and objectives". Making and reviewing policy is a key function of the elected councillors.

Councillors are required to have a strategic view of council activities. The Act provides that day-to-day operation of council is the responsibility of the General Manager. This is undertaken within the policy and objective framework provided by councillors. The General Manager is generally responsible for the efficient and effective operation of the council's organisation. This includes appointing staff in accordance with the organisation structure and resources approved by council, directing and dismissing staff and day-to-day management.

It is evident that many councillors involve themselves in the day-to-day business of council. In discussions with the review team, councillors were primarily focussed on operational matters and the current friction between councillors, between councillors and staff, and between councillors and the local member. When asked about their view of a strategic direction for council, many were unable to see past the current conflict. Despite this, council staff are working towards the implementation of the strategic plan that has been developed by the councillors with them.

It is clear that many councillors are getting bogged down in the detail of running the council rather than focussing on setting the frameworks within which staff operate. The review team has reviewed the minutes from the past twelve months and

attended one meeting of council. (Further comment on this is provided in the next section of the report.) An example of operational detail that should not be discussed by councillors is the content of job descriptions. The General Manager is responsible for the staffing of council within the organisational structure set by the council. Councillors should not be debating the roles and responsibilities of individual staff.

Councillors would benefit from further education on their role and responsibilities. (Recommendation 8) Council has advised that considerable amounts of education have been provided to councillors in the past. All councillors need to apply this learning to their behaviour and ensure they are acting in accordance with their role as defined in the Local Government Act.

7. DELIVERING AND ACHIEVING

This part of council's assessment focussed on: capacity and systems to deliver performance improvement; defined roles and responsibilities and accountabilities; delivery through partnership; modern structures and processes; strong financial management; resources follow priorities; performance information; risk managed appropriately; open to external challenge.

6.1 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.

Various aspects of council's governance practices were reviewed including:

- *Ethics and values*
- *Risk management and internal control*
- *Council's decision-making processes*
- *Monitoring and review*
- *Interaction between councillors and staff*

What is working well

Statement of business ethics

A statement of business ethics is a statement of values directed at raising private sector awareness of public sector values. This is important because strong working relationships with the private sector are an essential part of building an efficient and cost-effective public sector.

Council has adopted a code of business practice that incorporates a statement of ethical principles and a statement of business ethics. The statement of business

ethics clearly identifies what private sector parties can expect from council and what council expects of them. The review team observed that the statement of business ethics is included in tendering information packages. Council requires council contractors to abide by the statement of business ethics and has identified the consequences to contractors of not complying with council's ethical requirements.

The policy also provides guidance on how council will deal with the requirements of National Competition Policy, including the handling of competitive neutrality complaints.

Gifts and benefits policy and register

Council officials at some stage in their career may be offered a gift or benefit in the course of their work. The gift or benefit could be offered innocently in good faith, or offered in an attempt to influence the council official.

If council officials accept a gift or benefit, this can give rise to feelings of obligation on their part towards the giver. It can also create perceptions that they are or will be influenced because of the gift or benefit.

It is therefore important that councils develop policy and procedures to guide and assist council officials in dealing with gifts and benefits. From 1 January 2005 councils are required to maintain a gifts register to, record, as a minimum, the receipt of gifts of more than nominal value.

Council has a gifts, benefits and bribes policy that was last amended in 2003. The policy clearly identifies what is considered to be a benefit and a gift of nominal value and gives examples. The policy identifies that all gifts or benefits that are received in the course of a councillor or employee's duties must become the property of the council and be recorded in council's gift register.

The review team viewed council's gifts register. There were few entries in the register and all entries were made by staff. Council should ensure that all staff and councillors are aware of what constitutes a gift and of the associated requirements. (Recommendation 9)

Delegations

The power of delegation is an important tool that assists council officers to carry out the functions of council in an effective and timely manner. Delegations need to be made in accordance with sections 377-381 of the Local Government Act and continually reviewed to ensure they remain current.

The standard of council's delegations register is high. The delegations are comprehensive and clear. An index is provided at the front of the register and any requests to update delegations are maintained at the back of the register. Each staff member is issued with a list of applicable delegations. Delegations are reviewed at least annually.

Council's process could be improved by requiring staff to sign that they have received their delegations. Additionally, council should record when the delegations have been reviewed to provide an audit trail. Council should implement an audit program to ensure that delegations are being exercised appropriately. (Recommendation 10)

Procurement and tendering

Council has a purchasing of goods and services policy and a disposal of assets policy. The disposal policy provides for a range of options for the disposal of assets, including public tender, public auction, public expression of interest and invited quotes.

Council's purchasing of goods and services policy was last updated in 2005. Although council considered the recent changes in the Local Government Act that increased the tender threshold to $150,000, it decided to keep the tender threshold at $100,000. The policy is clear and the processes are transparent with adequate controls.

Obtaining three quotes, verbal or written, may not guarantee that best value is obtained, or that the procurement process is not subject to improper practices. However, it may provide a record that a transparent process has been followed and

can be scrutinised to ensure that quotes are genuine and disturbing trends are not emerging that may suggest favouritism or collusion.

Council has reviewed its tendering compliance and has identified a number of deficiencies, principally the failure to record details of the advertising of the tender. Council has taken corrective action and shows clear internal controls in the tendering process. Council is encouraged to continue the practice of periodically reviewing its tendering and procurement process.

Records management

Council is required to make and keep full and accurate records of its activities in accordance with section 12 of the State Records Act 1998. Council must establish and maintain a records management program that conforms with best practice standards and codes.

Council has a records management policy that effectively meets the operational business needs and accountability requirements applicable to the organisation. The policy applies to all council business including electronic documents. The policy incorporates information about, and procedures for, community access to records under section 12 of the Local Government Act. Council has had a disaster recovery and continuity business plan since 1999. This is in the process of being updated.

Currently many council divisions maintain separate record systems, some paper based and others electronic. Council has identified this as a problem particularly in relation to duplication, consistency and access. Council is considering moving to a property based filing system for the entire records management system. Council should ensure that its record management systems are integrated. (Recommendation 11)

Challenges to improve

Corruption prevention

In June 2001, Broken Hill City Council was one of the first councils in NSW to undergo a corruption resistance review with the Independent Commission Against Corruption. Council was provided with a corruption resistance implementation plan with a number of recommendations for further action. The review team was provided with a copy of this review and the implementation plan.

During the review it became apparent that council exposes itself to the possibility of fraud and lacks a number of controls to eliminate or prevent fraud occurring in some parts of council's operation. For example, council undertook its last systematic fraud risk assessment in October 2003 and does not have an on-going internal audit program.

It is noted that many of the actions identified in the corruption resistance implementation plan have not been implemented or have only recently been the subject of work by council. Council is encouraged to review the recommendations from the corruption resistance review and work towards their implementation as a matter of priority. (Recommendation 12)

Risk management and internal control

Risk management is about the systematic identification, analysis, evaluation, control and monitoring of risks. While risk cannot be entirely eliminated, councils should aim to establish a risk aware culture and to continually work towards establishing structures, processes and controls that cost effectively reduce the council's risk profile and thereby protect the interests of council, the public and other key stakeholders. There should be a balance between the cost of managing risk and the benefits expected from engaging in an activity that has inherent risks.

Councils are exposed to a wide range of risks as a consequence of their diverse functions. The significance of specific risks will vary from council to council. A risk management plan should provide a council with a framework to proactively identify, communicate and manage generic and specific risks.

It is important that council considers the development and implementation of a risk management plan to minimise the likelihood of negative events that could have otherwise been foreseen and thereby managed or avoided. Such a plan should extend beyond those risks that are insurable.

Council has had a risk management policy since October 2003 and has recently developed a risk management framework. At its meeting on 24 January 2006, council resolved to adopt an implementation plan put forward by council's risk management committee and as proposed in council's framework document. The review team acknowledges this work and encourages council to continue its work in implementing a robust program for managing risks facing its organisation.

Complaints 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.

There are a number of attractive elements to council's complaints policy. The policy provides for a three-tiered approach that involves resolution of complaints at the front line where possible with one level of internal review. Council defines complaints in a simple and straightforward way, however it does not distinguish them from requests for service. Council should ensure that it is able to distinguish between complaints, regular correspondence and requests for service. (Recommendation 13)

There are some areas of improvement for council to make. The most important is that council is making limited use of complaints information. Council should include, as part of its complaints procedures, regular reports on complaint handling. This should not only include the number of complaints, but the progress and outcome of these. (Recommendation 14)

Additionally, council's policy should identify performance targets for turnaround of complaints and direction to staff on how complaints and outcomes will be recorded. The policy was last updated in 2002 and should be reviewed. (Recommendation 15)

Council's policy identifies how it will be communicated to the public, to employees and volunteers and to councillors. The review team was unable to find sufficient evidence of the implementation of this communication strategy, other than the community can make complaints on council's website. Council should ensure that it fully implements the communication strategy identified in its complaints management policy. (Recommendation 16)

Disclosure of interest returns

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 constitute pecuniary interests. The Act requires that councillors and designated staff complete and lodge written disclosure of interest returns. It is important that councillor and staff returns 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.

We conducted a review of disclosure of interest returns for councillors and reviewed a number of the returns of council's senior managers. While the standard of the staff returns was generally high, the councillor returns were generally poor and require improvement. Councillors appear to need more support in this area.

The following deficiencies were identified in the councillor returns:

- Half of the councillor returns were lodged late – between 6 and 21 days late
- One return had incorrect dates, in that it had been completed in advance and identified that it was for a period for the coming year
- One return was not dated
- One return does not cover the full period required
- The full details of companies and employment, including relevant addresses, were omitted from a number of returns
- In one return the nature of interest in property was unclear

- In many cases, the blank areas of the returns had not had 'nil' entered as required.

These deficiencies were brought to the attention of council's General Manager by the review team while it was on site. It was suggested that some councillors needed to complete additional returns to ensure that they correctly reflected the period to which they related.

The Local Government Pecuniary Interest and Disciplinary Tribunal has pointed out the need for councillors (and designated persons) to give due care and attention to the accuracy, detail and content of the disclosures required in returns. It is important that councillors and staff who are identified as designated persons complete the disclosure of interest returns accurately and in a timely way. Council could use the information provided in the department's circulars 04/16 and 05/24 to prepare information for councillors and staff to assist them in completing their returns.

In council's response to the draft report, councillors requested specific examples of non-compliance to be more clearly highlighted. The list of deficiencies in returns has been provided in this report. Each individual councillor should be able to identify the deficiencies of their return by using this list.

In addition, the department has issued a circular (04/16) that has a worked example of a return of interests. The department has recently placed Pecuniary Interest Guidelines on its website that should provide further assistance to councillors. The Director General has now requested all councillors and designated persons to update their disclosure of interest returns to ensure that they comply with the legislated requirements. (Recommendation 17)

It is important that council carefully consider which staff are required to lodge interest returns. When doing so, it is important to strike an appropriate balance between the cost and inconvenience of completing returns with the benefits in terms of accountability from having council staff declare relevant interests.

It is evident at Broken Hill that many council officers who are delegated decision makers are not required to complete a return. It is surprising that planning staff and regulatory staff, other than the relevant manager, are not designated persons. Council should review the number of council officers who are designated persons to ensure that delegated decision makers in key areas complete returns. (Recommendation 18)

Councillor expenses and facilities policy

A policy on the payment of expenses and provision of facilities to the mayor, deputy mayor and councillors is a requirement under section 252 of the *Local Government Act*.

Council last amended its councillor support policy in 2004. The policy covers basic requirements in relation to the provision of facilities and payment of expenses. There are some notable exclusions. There is no reference made to the availability of facilities such as computer, telephone and facsimile for councillors. The review team was advised that councillors had previously been provided with computer, telephone and facsimile facilities but these were not used.

The policy does not include information on travel expenses for councillors, but rather refers to a further council policy 'Travel on Council Business Policy'. It is suggested that the provisions that relate to councillors' travel should be included in the councillor support policy. Mayors, deputy mayors and other councillors can only be reimbursed for expenses and provided with facilities, in discharging the functions of civic office, in accordance with this policy. Council should review the current policy to ensure it is comprehensive. (Recommendation 19)

Section 355 committees

Section 355 committees are an important way in which council exercises its functions. Council has identified that it has 19 section 355 committees. The committees have received information that sets out their functions and delegations. However, the committees do not appear to have any procedure or operations manuals, nor do the members receive any training from council. Additionally, the

committees have not been made aware of their obligations under council's code of conduct, nor have they received copies of council's code.

The review team was advised that there are councillor representatives on each of these committees and council officers assist committees where there are problems. Council is in the process of developing a manual to assist these committees in their operation.

As these committees are exercising functions of council delegated to them, they have obligations to conduct their activities in accordance with legislative requirements. Council should provide its section 355 committees with a procedure or operations manual that outlines what is expected of them, this should include information on council's code of conduct. (Recommendation 20)

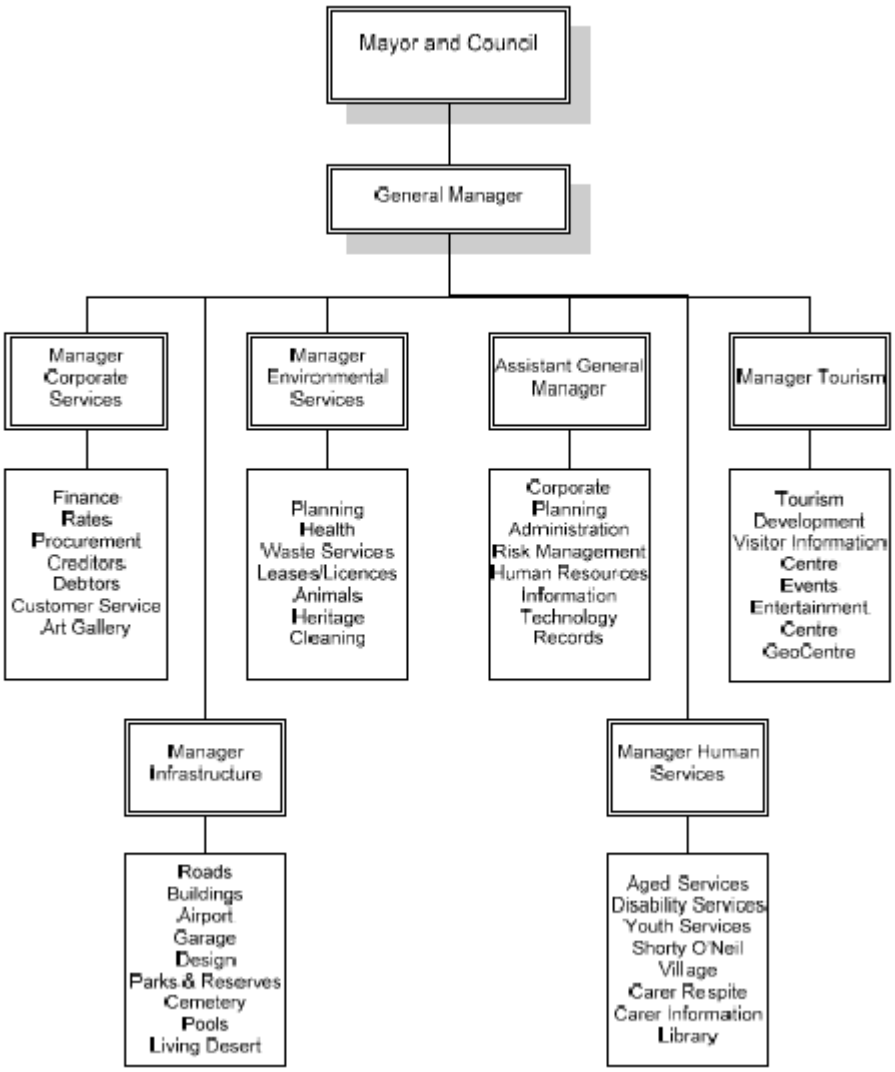
Organisation structure

It is the councillors' role collectively as the governing body to determine the organisation structure, the positions within that structure that are senior staff positions and allocate resources towards the employment of staff. The council may re-determine the organisation structure from time to time but must re-determine it within 12 months after any ordinary election of the council.

Council reviewed its organisation structure in August 2004. The review team was provided with a copy of council's organisation structure (see diagram page 36). The representation of the structure in the flow chart is at odds with the decision made by council. The General Manager presented a report to council that recommended that the Manager Corporate Services and the Manager Human Services report directly to him. This is represented in the flow chart. However, council approved the Assistant General Manager retaining responsibility for the Manager Corporate Services and Manager Human Services. (Recommendation 21)

Additionally, the discussion about the organisation structure took place in closed session. Section 10A provides when council may close so much of the meeting to the public as to discuss matters that are listed in section 10A(2). The council may close its meeting to discuss personnel matters concerning particular individuals

(other than councillors) (section 10A(2)(a)). The intention is to provide for discussion on "particular individuals" and this does not mean the determination of the organisation's structure. The council should have discussed any matters relating to particular individuals in closed session, but had a debate in open council in relation to the organisation structure. Further comments and recommendations on council's meeting procedure are outlined later in this report.



Broken Hill City Council organisation structure 2004

Council meetings

Closed 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 outlines the requirements for this determination.

The review team examined council's minutes for the past 12 months as well as attending a meeting of council. The process for council to close part of its January 2006 meeting to the public was confusing to say the least. There appeared to be confusion on the part of the Mayor and staff as to the procedures for going into a closed session. It appeared that the first item of business to be conducted in closed session was dealt with in open council. However, this was of little use to the public as they were not privy to what was included in the report on this item, as it had been presented to councillors in the confidential section of the business paper. There was confusion about closing the meeting to the public and those of us in the public gallery were unsure whether or not we had to leave. The council should have taken a short break to enable the public gallery to be cleared before moving into closed session.

Council's agenda should clearly identify the items that are to be dealt with in closed session. Council's agenda for the meeting on 24 January 2006 listed three confidential matters. They were titled:

1. *MANAGER ENVIRONMENTAL SERVICES REPORT NO. 1/06 – DATED JANUARY 05, 2006 –* ***CONFIDENTIAL***
2. *MANAGER ENVIRONMENTAL SERVICES REPORT NO. 06/06 – DATED JANUARY 12, 2006 –* ***CONFIDENTIAL***
3. *MAYORAL MINUTE NO. 1/06 – DATED JANUARY 12, 2006 –* ***CONFIDENTIAL***

This is insufficient. The listing on the agenda needs to identify the matter that is to be discussed in closed session and the reasons why. The review team was advised that the listing in the January meeting was different to usual practice. The council has recently introduced an electronic business paper program and was having some teething problems. The review team looked at the agendas for the September 2005, November 2005 and the February 2006 meetings and noted that the reasons why the meeting was to be closed were provided. However, none of these agendas

identified the nature of the items to be dealt with. Council should refer to the department's 'Meetings Practice Note', November 2005 for further information.

Council responded to the draft report by stating that it had taken action on this matter. The review team examined the agenda for council's May 2006 meeting and identified that a description of the subject matter of the confidential item was contained in the text. This subject matter description is very general. Confidential items should be listed in the agenda in the same way as other matters. For example, and in comparison to the above listed confidential matters for the same meeting, a report in the ordinary business agenda is listed as:

> *16. MANAGER ENVIRONMENTAL SERVICES REPORT NO. 5/06 – DATED JANUARY 05, 2006 – FUTURE USE OF ALMA POOL SITE (B7/13)*

This description specifically indicates the relevant item of business to be discussed. The confidential items should be identified in the same way. This is important because under clause 252 of the *Local Government (General) Regulation 2005*, the public have a right to make representations as to whether the part of the meeting should be closed. In order to do this, the public need to know what the item of business is about. Council should ensure that its closed meeting agenda specifically indicates the relevant item of business to be discussed. (Recommendation 22)

Where council determines that a matter should be dealt with in closed session, sections 10A to 10D of the *Local Government Act* outline the requirements for this determination. In deciding whether or not a matter should be discussed in closed session, council should apply the public interest test as required by section 10D(2)(c). (Recommendation 23)

Council indicated in its response to the draft report that it is now applying these requirements. However, a review of the April 2006 minutes shows that the public interest test is still not being applied.

Additionally, council should make available to the public the resolutions made in its closed meetings. A review of council's minutes for the past 12 months shows that the

resolutions from closed sessions are *"bound separately with the relevant reports, and held by the General Manager".* While the minutes include a list of the confidential items with a note from the General Manager as to the relevant section of the Act that applies and then a plain English summary of council's decision, this is not the resolution that was passed by council. The plain English summary would certainly suffice to report to the public, once the meeting is opened, on the outcome of council's closed session, in accordance with clause 253 of the *Local Government (General) Regulation 2005*. However, this is not sufficient for the minutes. The publicly available minutes should include the resolutions made by council in closed session as required by clause 254 of the Regulation. (Recommendation 24)

Conflict of interest declarations

There are two types of conflict of interest that a council official can have in a matter: pecuniary and non-pecuniary. Pecuniary interests are regulated by Chapter 14 Part 2 of the Act. Non-pecuniary interests are regulated by section 440 of the Act and the Model Code of Conduct for Local Councils in NSW.

Section 451 of the Act requires that pecuniary interests in a matter before council are disclosed, including the nature of the interest. The council official with the interest must not be present at, or in sight of, the meeting at which the matter is being considered, discussed or voted on. The Model Code requires, as a minimum, that the nature of non-pecuniary conflict of interests are disclosed. The action taken by a council official following this will depend on the official's assessment of the circumstances and significance of the interest.

It is evident from a review of the minutes that councillors disclose their interests. When the interests are disclosed, the councillors generally leave the meeting. Councillors should make it clear when disclosing an interest as to whether or not it is a pecuniary or non-pecuniary interest. Additionally, the councillors are not disclosing the nature of their conflict of interests. The nature of the interest should be disclosed for both pecuniary and non-pecuniary conflict of interests and this should be recorded in the minutes. (Recommendation 25)

Meeting procedures

A key document covering council's decision-making is its code of meeting practice. Council's code of meeting practice was last reviewed in June 2004. Council is currently in the process of reviewing and updating this code. It has engaged the services of a consultant to assist in this revision. A copy of the draft proposed amended code was provided to the review team. Additionally, the review team attended a workshop session with the consultant and councillors on the code of meeting practice. This was very worthwhile and should provide the councillors with a clear understanding of the provisions in the amended code. Council was in the process of placing the amended code on exhibition for public comment.

The amended code of meeting practice incorporates the provisions of the Act, Regulation and Model Code of Conduct and supplements these with provisions related to council's own circumstances. Both the draft amended code and current code provide appendices for the order of business, deputations to council committees and conduct of the public forum session at council meetings.

The review team was able to observe the conduct of the council meeting held on 24 January 2006. It appeared that there was little understanding in implementing the requirements of the code of meeting practice. Council appeared to struggle to get through the business before it in an efficient manner and there were a number of instances where the chair appeared to lose control of the meeting. The review team observed the following:

- Councillor declarations of interest did not disclose the nature of the interest
- In some cases names of movers and seconders of motions were not called by the mayor making it difficult for the minute taker to record
- Councillors were speaking without motions before the chair
- Councillors were allowed to debate a motion before it had been seconded
- Councillors were allowed to speak more than once on a motion
- Councillors acted as though they were in a committee meeting, specifically, often speaking without formal motions, not identifying who was speaking for or against a motion and speaking more than once on a matter

- Meeting procedures were not formal in that councillors did not stand to speak
- The meeting often 'lost its place' and the participants were confused about where the meeting 'was up to'.
- The voting on matters was not recorded correctly in that councillors who are present at the meeting and do not vote are considered to have voted in the negative
- The mayor debated items from the chair
- The public forum process was conducted in accordance with the proposed amended code of meeting practice and this caused some confusion
- There was a lack of clarity and confusion around the process of moving into closed session.

Numerous people the review team spoke to including staff, councillors and members of the public described the meeting as orderly compared to other recent meetings. The minutes and transcripts of other meetings would tend to support that observation. The review team was also advised that the January meeting was one of the shortest meetings held.

It is apparent that meeting procedures generally need improvement. All councillors have a responsibility for ensuring that the code of meeting practice is followed, not just the chairperson. However, the chairperson, in this case the Mayor, has the primary responsibility for ensuring that procedures are followed and order is maintained. The review team observed councillors continually interrupting each other with 'points of order' and often did not speak through the chair. The review team observed a councillor debating a staff member during the meeting. This should not have been allowed to occur.

Councillors have a responsibility to behave professionally in and out of council meetings. Councillors should maintain good working relationships with each other and staff and act in a manner appropriate to their civic status. This would include orderly behaviour and complying with rulings from the chair at council meetings. Council's code of meeting practice and code of conduct identify the standards and responsibilities imposed on councillors by the Act, the Regulation and the Model

Code. Acts of disorder committed by councillors during council or committee meetings may amount to misbehaviour, leading to censure by the council or suspension.

Most councillors, with the exception of one, had attended the briefing workshop on the code of meeting practice immediately prior to the January meeting. It was therefore surprising to find councillors exhibiting a limited understanding of the procedures required to participate in the meeting. Points of order were over-used and difficult for the chair to rule on. The majority of councillors appeared to be prepared to let a small number of councillors capture the forum.

Maintaining order in such an environment would test even the most skilled chair. However, a good start would be enforcing the disorder provisions of the *Local Government Act* and Regulation and council's code of meeting practice and taking any appropriate follow up action under its code of conduct. (Recommendation 26*)*

The Mayor may also wish to consider consulting other skilled and experienced mayors for advice and strategies for maintaining order at meetings. It is suggested that the Mayor could use council's sister city relationship with Bankstown Council in this regard. Additionally, the Mayors from councils such as Dubbo, Penrith and Urana could be approached. (Recommendation 27)

A significant portion of the meeting the review team attended was taken up with a debate over the accuracy of the previous meeting's minutes. The minutes of other meetings suggest that this has also happened at other meetings. The review team was advised that less time was taken over the minutes at the January meeting than usual. Some of the councillors in question expressed the view that the minutes were not a true and accurate copy of the proceedings of the meeting as they often did not reflect comments made by them.

Additionally, general discussion was allowed on the business outlined in the minutes of the previous meeting while considering a motion to adopt the minutes. It is not usual practice at local government to have business arising from minutes. Most councils follow up on business through reports from staff. This ensures that

information on action taken, or to be taken, is on the public record. Oral discussion does not constitute a long-term public record. It also is difficult for a minute taker to record lengthy oral information accurately and should be avoided where possible.

Section 375(1) of the Act requires a council to keep full and accurate minutes of council meeting proceedings. Subject to legislative provisions and any directions from the council, it is up to the General Manager to decide how much detail is to be shown in the minutes. Although the minutes should contain enough detail to make the council's decisions understood, they are not meant to be a detailed transcript of council proceedings nor a record of the behaviour of individual councillors. They should record the recommendations of staff and committees, the substance of motions and amendments, the movers and seconders of motions and amendments and whether or not these are passed or lost and, if required, general information or explanation on matters for discussion.

In the interests of minimising the amount of time spent at meetings debating the minutes of previous meetings, council may wish to trial a process by which the minutes are typed onto a computer and displayed via a data projector on a screen during the meeting. (Recommendation 28)

Council responded to the draft report that this option had previously been considered and is not planning to introduce this method of recording minutes in the short term. This method of recording minutes has been undertaken successfully in a number of councils, for example Bogan and Campbelltown, and council should trial this approach.

The department has released a Meetings Practice Note (Practice Note No. 16). A copy of this practice note could be provided to all councillors.

In council's response to the draft report, councillors expressed a view that they had received conflicting advice on whether or not motions had to be seconded before being debated. The Regulation is quite clear on this matter. Clause 246 states that a motion or an amendment cannot be debated unless or until it has been seconded. There are two exceptions to this: mayoral minutes and a motion that an amendment

or motion be now put. Council's code of meeting practice cannot be inconsistent with the Regulation.

Public forum

Council's code of meeting practice currently provides for two public forum sessions at each council meeting. One is held following the adoption of the minutes and a further forum is provided towards the end of the meeting after questions without notice. Council is intending to limit this to one session under its amended code of meeting practice.

The current policy in relation to the public forum sessions identifies that preference is given to those persons wishing to speak on a matter on the agenda for that meeting. It further identifies that only two speakers are allowed to speak per subject. The policy also provides a time limit for each speaker. It is clear from council's minutes that these requirements are not adhered to. It was evident from the minutes that the public forum sessions were long and any number of speakers were allowed on a subject. The review team was also advised that the public forum session is often disorderly. However, it appears that the members of the public present at the meeting on 24 January behaved appropriately.

Members of the public who participate in council's meeting are subject to the rules of council's code of meeting practice and should be made aware of this. Council's website identifies that members of the public can speak at the meeting but does not provide the public with the rules that govern this privilege. Additionally, information about the procedures that govern the public forum should be made available to the public before the meeting. This could be included at the front of council's business papers, information displayed at the library and council's administration centre and on council's website. (Recommendation 29)

Notwithstanding the above comments, council should if possible retain oral public participation as a valuable means by which residents can have a positive input into council decisions that affect them. Having said that, a balance needs to be struck between this and the need for council meetings to be conducted in an efficient and orderly manner.

Council's current policy for the public forum appears to strike this balance. However, in view of the past problems with the process, council may wish to consider amending the policy to provide:

- that council at all times retains the discretion to refuse a person the opportunity to address council under its public forum process.
- that a person committing an act of disorder for the purposes of the *Local Government Act* and Regulation and council's code of meeting practice may be required to leave the meeting.
- a process by which a person's opportunity to address council under the public forum process may be suspended for any acts of disorder or breaches of the public forum rules.
- a process by which a person may be banned from addressing council under the public forum process for repeated acts of disorder or breaches of the public forum rules. (Recommendation 30)

Council committee process

Council operates four 'standing committees' that meet in the week prior to the council meeting; Corporate Services, Environmental Services, Technical Services and Policy and General.

Many councils operate a committee system, 'standing committees', whereby the committee forum provides for more extensive discussion on matters to be decided by council. These committees report their recommendations to council for a decision. These committees comprise only councillors and are a way of streamlining council decision-making processes.

At the meeting of January 2006 there was an attempt to refer an item of business back to all of council's committees for further deliberation. The efficiency of this action is questionable. Committees of council should have clearly defined functions and only business relating to that function should be discussed. It is therefore inappropriate, inefficient and ineffective for each committee to discuss the same business. The chance that committees could come up with opposing

recommendations is high. Minutes from committee meetings also indicate that items introduced to some committees may be inappropriate in relation to their function.

Council's committees should only concern themselves with the business relating to their function. The chairpersons of each of these committees have a responsibility to ensure that only appropriate matters are deliberated and reported on. There is a need to ensure that there is improved efficiency in the committees' operations and that they have clear terms of reference and adequate powers of delegation to improve decision-making. The functions of each of council's four standing committees should be reviewed to ensure that their functions have been clearly defined. This review may result in a re-alignment of council's committees. Additionally, the business discussed by council's committees should be monitored to ensure it is appropriate. (Recommendation 31 and 32)

It was also obvious at council's meeting in January that council did not have an efficient method of dealing with the reports from its committees. One practice that can streamline the conduct of dealing with reports is to provide councillors with the opportunity to identify items in the report that they may wish to speak on and then have the remainder of the report recommendations dealt within one motion. In this way, the matters where there is consensus are resolved quickly and there is an ordered approach to debating the remainder of the items. Council should consider more efficient ways of dealing with committee reports. (Recommendation 33)

The review team has noted that since the draft report was issued council has reviewed its committee process and combined its committees so that it now has two standing committees, being the Technical and Environmental Services Committee and the Policy and General/Corporate Services Committee.

However, at the same time, council has established a new committee called the Special Projects Working Group. The membership of this group is councillors and therefore its procedures are subject to the provisions of the Regulation and the code of meeting practice. This means that public notice has to be given of the meetings and copies of agendas and associated business papers are also required to be made available to the public.

The review team has viewed the minutes from the first meeting of this group held on 24 May 2006. The group has passed a resolution that *"…committee recommendations be ratified at the next full meeting of council."* The committee may make recommendations for council's **consideration**, however, unless the committee has been given delegation to make decisions on specific matters, the recommendations should not be for ratification.

Councillors should be mindful of the requirements of clauses 240 and 241 of the Regulation in relation to items of business that can be discussed at council and committee meetings.

Code of conduct implementation

The council's code of conduct adopted under the Local Government Act is important because it assists councillors and council staff to understand the standards of conduct that are expected of them.

Broken Hill City Council adopted the Model Code of Conduct for Local Councils in NSW. The implementation of the Model Code of Conduct has been somewhat problematic for Council. To council's credit, it has provided training for all councillors on the code of conduct. However, training has not been provided for all staff. Council should use the facilitator's guide provided by the Department of Local Government to assist in this process. (Recommendation 34)

The application of the code has been difficult for councillors. The implementation of the code has resulted in numerous complaints to the General Manager and Mayor in relation to allegations of various breaches of the code of conduct.

A review was undertaken of the complaints file and the review team ascertained that there were between 34 and 37 single complaints. It was difficult to ascertain the exact number. However, it is relevant to observe that an allegation of a number of breaches of the code on a single matter in one complaint letter should be considered as one complaint. The number of complaints reviewed is at odds with press articles that indicate that the number of complaints were substantially higher; in one instance

"…about 50 complaints have been lodged with City Council's Code of Conduct committee." (Barrier Daily Truth 30 June 2005) and in a further instance *"…the lion's share of the 120 complaints facing the committee…"* (Barrier Daily Truth 1 Oct 2005).

One councillor has lodged over 80% of these complaints. An analysis of these complaints indicates that some of these are about procedural matters and do not necessarily relate to the conduct of an individual, but allege a lack of procedure. For example, a complaint made about the findings of the conduct committee and a complaint that the General Manager failed to follow the requirements of the code of meeting practice when giving notice of an extra-ordinary meeting. These complaints should be responded to by the General Manager as general complaints, not dealt with under council's code of conduct.

Council is having difficulty with the processes required by the code of conduct and has been criticised for this. Some of the criticisms of the process have foundation. Council's processes would be improved by developing and adopting criteria to be used by council's General Manager and the conduct committee in assessing allegations of breaches of the code of conduct as suggested in the department's Guidelines for the Model Code of Conduct for Local Councils in NSW. These criteria should identify the factors that the General Manager and committee must take into account in determining whether or not to refer the matter to the conduct committee in the case of the General Manager, or enquire into an allegation in the case of the committee. (Recommendation 35)

Council's conduct committee has made two reports to council. Council has censured one councillor on two occasions. If council is concerned about the persistent or serious misbehaviour, it is open to council to use the provisions of the amendments to the Local Government Act to refer matters to the Director General of the Department of Local Government. These provisions can be used where council believes that an individual councillor's behaviour has been disruptive over a period, and involved more than one incident of misbehaviour during that period, and the pattern of behaviour is of such a sufficiently serious nature as to warrant the councillor's suspension.

According to council's file, and at the time of the review, there had not been a complaint lodged with the General Manager or Mayor since October 2005. The review team was advised that breaches of the code of conduct may still be occurring, however, councillors and staff have given up lodging complaints because of previous problems with the process. It subsequently came to the review team's attention that a complaint was lodged with council on or about the 30 January 2006. The Guidelines for the Model Code recommend that councils develop guidelines for the operation of their conduct committees. Guidelines for the operation of the conduct committee would provide complainants and those complained about with greater certainty about the processes to be followed. Council should develop such guidelines as a matter of urgency. (Recommendation 36)

Some councillors expressed concern about the perceived bias of council's conduct committee. The Model Code provides that council's General Manager and Mayor must be members of the conduct committee unless there is a complaint by or against them. Council has appointed one independent to its committee, a local legal representative. It was suggested to councillors and the General Manager by the review team that council may wish to consider having additional independent representatives on the committee in order to address this perception.

Another method of dealing with the independence issue is to engage a person independent of council to undertake the enquiries into complaints. A suggestion has previously been considered by council to expand the committee by including one additional representative of each of the complainant and subject's choosing on the committee. Council needs to give further consideration to the composition of its conduct committee to provide assurance to all parties involved that complaints are being dealt with in a fair and proper manner. (Recommendation 37)

Since drafting the report the review team has become aware that council has appointed **additional councillors** onto the conduct committee chosen by the complainant and the person subject of the complaint. This does not comply with the provisions of the Model Code of Conduct. While council can appoint additional independent persons to the conduct committee and these persons could be chosen

by the complainant and subject if council so wishes, these persons cannot be other councillors. The only councillors who may be members of the committee are the Mayor and a replacement of the Mayor or General Manager if there is a complaint by or against them (usually the Deputy Mayor). Council should immediately amend the membership of its conduct committee to comply with the requirements of the Model Code. (See Director General's comment section)

Councillor conduct/interaction

One of the concerns raised by many people that the review team spoke to was the perception that councillor conduct was a major issue at Broken Hill City Council.

The 2005 community satisfaction survey identified in fighting between councillors as an issue facing council. Of those people who were dissatisfied with council's performance (35% of the sample), a high percentage (71%) indicated that "too much infighting/council not working together" as the main reason for their dissatisfaction. It is clear from this survey that the community's perception of, and confidence in, council is affected by councillor conduct.

All the councillors that the review team spoke to (11 in total) expressed concern at the degree of conflict between councillors. Many, while providing support for the Mayor, identified his handling of meetings as contributing to this problem. Additionally, concern was raised that many councillors, including the Mayor, released information to the media before a decision was reached by council.

Councillors often have their fights in the media and this has led to numerous complaints under council's code of conduct. A healthy democracy should consist of a freedom to express opinions publicly, provided they are made within accepted standards. This debate may also consist of constructive criticism and the right of individuals to disagree with majority decisions.

However, councillors, whether they agree or not, are bound by the resolutions of council. In this regard, councillors should not undermine the decisions of council in the media but use the correct processes provided by the Act and Regulation in raising concerns and debating issues in the correct forum.

Council currently has a media relations policy that applies to councillors and staff. In accordance with council's media policy only the Mayor, General Manager and selected senior staff are able to speak to the media on behalf of council.

The review team noted that some councillors provide a regular column to the local newspaper with their view on the outcome of council meetings. Other councillors are critical of this column as in their view it does not represent their perception of the meeting outcomes. Any councillors who provide information on council activities to the local media should make it clear that they are providing their own view and not speaking on behalf of council. This should be explicit at the beginning of any article. (Recommendation 38)

Since the draft report was issued to council, an altercation occurred at council's Corporate Services Committee meeting in March 2006 that resulted in a report to the local Police. This incident has resulted in two complaints lodged with council's conduct committee. Council has been slow to deal with these complaints. Council has repeatedly failed to adequately deal with code of conduct matters. The department requires council to report on the process and outcome of examining the latest complaints. (See Director General's comment Section 3)

Confidential information

Overall, the use of information by councillors and staff is problematic. Concerns were raised with the review team about the misuse of information. The review team was advised that confidential information was routinely made available to the media and the local state member's office. The review team acknowledges that this concern is real. It was evident that information was being used as a tool in a campaign of negativity. All persons should treat information about council cautiously and in accordance with their responsibilities. The Model Code of Conduct deals with the use of information in some detail. This includes the requirement that councillors and council staff do not use confidential information with the intention to improperly cause harm or detriment to the council or any other person or body.

If council wishes to make its confidential information available to the media and local member, then it can do so following proper consideration of the issue and a resolution to this effect. Council may wish to consider this option. If council chooses to allow others to have access to confidential information, then it has a responsibility to ensure that these persons are aware of their obligations in dealing with this information. This arrangement should be guided by a protocol that sets out these obligations.

The leaking of confidential information undermines council's decision making processes and leads to a loss of confidence in council's ability to manage its affairs. While the overarching tenet of the *Local Government Act* is that council has open and transparent processes, there are times when there are legitimate reasons for maintaining the confidentiality of information. Councillors and council staff should be provided with information and briefings in relation to their obligations in dealing with council information. (Recommendation 39)

Number of councillors

Council currently has twelve councillors. The Local Government Act 1993 has been amended to enable councils for a limited period to apply to the Minister for Local Government for a reduction in the number of councillors. Public notice must be given of the application and submissions may be made to the council. An application from council must be made by 30 June 2006.

In comparison with other councils in their group (a total of 32 existing councils), as listed in the department's comparative data collection, Broken Hill is one of at least half of the councils in that grouping with more than 10 councillors. The average number of councillors for the group is 10. The majority of councils in that grouping with a similar population to that of Broken Hill have 9 councillors. Given that Broken Hill's population has declined, it should again consider reducing the number of councillors. The review team suggests that 9 councillors, including the Mayor, would be consistent with the average of its grouping. (Recommendation 40)

Council advised in its response to the draft report that a decision has been made to reduce the number of councillors to 10, including the Mayor. However, council has

not provided any additional information to the department in relation to this reduction at the time of finalising this report. A councillor resigned from council at the end of March 2006, which will require a by-election to be held by the end of June 2006 unless council obtains Ministerial approval to reduce its numbers.

6.2 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.

A review was conducted of a range of aspects of council's regulatory practices including:

- *Council's planning instruments and policies*
- *Development assessment*
- *Environmental management*
- *Graffiti removal*
- *Enforcement practices*

Overview

Council has dealt with a consistent number of development applications over the last three years: 471 in 2003, 452 in 2004 and 486 in 2005 (report to council February 2006). Many of the applications are not complex and the number of new dwellings is a small proportion of the applications. The number of new dwellings increased from 11 in 2002/03 to 21 in 2004/05.

Council does not currently have, nor has it had, section 94 contributions plans. The council has previously considered the issue and decided against developing any plans. This is largely because there is a view that new infrastructure is not required as the area is well developed in terms of infrastructure, rather, the current infrastructure needs consolidation. Broken Hill also has a defined boundary and low growth. New large developments, such as the recently opened Bemax plant, have been carried out subject to the requirement to upgrade and maintain infrastructure as part of their conditions of consent. Council is also concerned that the levying of development contributions may discourage development in Broken Hill.

While council's viewpoint is acknowledged, council must provide for the extension and augmentation of its assets. It is unable to levy a contribution towards this renewal from any new developments if it does not have contributions plans in place. Council always has the discretion to waive or reduce contributions if it has a plan in place. Alternatively, recent amendments to the Environmental Planning and Assessment Act 1979 have enabled councils to enter into planning agreements and to set fixed contribution levies. Council should explore these options and the benefits they could contribute to the provision of infrastructure. (Recommendation 41)

Council provided additional comment on this recommendation in response to the draft report. The review team acknowledges council's viewpoint regarding the issues it faces with infrastructure to support a population much greater than its current and projected population and has modified the recommendation to ensure that council can act on opportunities for contributions from developers for the appropriate development of infrastructure.

Council is constrained in its expansion as it is surrounded by Western Lands that are under the control of the Department of Natural Resources. All of council's sporting grounds are crown land and are under council's care and control. Due to council's declining population, the area has more recreational assets than it requires. This creates problems for council in that it is required to compulsorily acquire reserves from the Department of Natural Resources if it wishes to redevelop this land. In one instance provided to the review team, it took 14 months to receive a consent from Natural Resources for council to acquire the reserve. The review team was told that this was a common timeframe.

What is working well

Planning instruments

Council currently has one Local Environmental Plan (LEP1996) that covers the entire city area. Council also has a number of development control plans in place (DCPs).

Council is required by section 73 of the Environmental Planning and Assessment Act 1979 (EP&A Act) to keep its planning instruments and policies, such as local

environmental plans and development control plans, “under regular and periodic review”.

Council will be reviewing its LEP, like all councils in NSW, in accordance with the changes to the EP&A Act. The review team was advised that council is currently listed on the three-year timetable within which to complete this process, but has applied for an extension of a further two years. Council undertook a planning exercise in 1983 resulting in the City of Broken Hill Strategy Plan 1983. The review of the LEP is seen as an opportunity to review and update this plan that included strategies on the issues of land use, drainage, traffic management, parking and economic development. The review team encourages this. This is also an opportunity to ensure that council’s land use, and other infrastructure planning is integrated with council’s strategic plan. (Recommendation 42)

A review of a sample of council’s DCPs indicates that it has a program of regular review of these instruments. The plans reviewed identify the relevant amendment dates. For example, council adopted an “Exempt and Complying Development” DCP on 28 Sep 2005 that replaces earlier plans adopted in 1999, 2000 and 2002.

Council also has a notification policy in relation to its development application assessment process: Development Control Plan No 5. The policy is currently in the process of being reviewed and prepared for submission to council. The review team was provided with a draft copy of the updated DCP. This policy is comprehensive and provides staff with clear guidance on the notification and consultation required for the various development applications.

Development assessment

Council indicates that 95% of its development applications (DAs) are dealt with under delegated authority. The criteria for referring DA decisions to council includes two or more objections and matters that may be politically sensitive.

Council has a computerised system for lodging and tracking development applications. When council makes a request for further information, the system automatically stops counting the number of days the application has been with

council. Additionally, the system has a 14-day and 28 day checking system to ensure DAs are being processed efficiently.

Council deals with a reasonable number of development applications, 488 in 2003/04 (Department of Local Government Comparatives 2003/04) within an extremely efficient time, a mean time of 4 days. This compares well to councils within its group that have an average of 43 days. It should be noted that on average that grouping of councils dealt with 971 applications in that year. However, the mean time compares extremely well with other councils in this grouping that dealt with a similar number of applications as Broken Hill City Council. Council acknowledges that many of the DAs are not complex. However, it is clear that council has an efficient assessment and processing system in place.

Swimming Pools

Councils have a range of functions imposed on them by and under many Acts and laws. One of these Acts is the Swimming Pools Act 1992 that confers on council the responsibility to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which the Act applies that are within its area, and to promote awareness within its area of the requirements of the Act in relation to swimming pools.

Council has identified backyard swimming pools as complying development in its DCP 9 – Exempt and Complying Development. Council maintains records that date back to the mid 1960's that identify the location of all backyard pools. Council maintains a register of pool owners. Additionally, council uses aerial photography to map pool locations. The council area has approximately 480 backyard pools.

Council has required isolation fencing for pools since the mid 1960's and in this regard was ahead of its time. Council has an active awareness campaign including writing letters to pool owners and placing advertisements in local newspapers. Council also issues swimming pool certificates when properties are sold.

Challenges to improve

State of the Environment Reporting

Since 1999 councils have been required to report on the state of the environment in their areas through State of the Environment (SOE) Reports, reporting on the main environmental issues facing local government areas. The reports must address 8 environmental sectors and include major environmental impacts and related activities. The Local Government Act requires councils to prepare a comprehensive report the year following each council election or otherwise to provide a supplementary report in each of the intervening years. These reports must identify any new environmental impacts since a council's last report and update the trends in environmental indicators that are important to each environmental sector.

The department has issued guidelines that emphasise the involvement of the community (including environmental groups) in monitoring changes to the environment over time. The guidelines suggest that councils consult their community through State of the Environment working groups.

The council's report is generally an adequate and well-written report that addresses all necessary environmental sectors. Information is presented in clear sections and subsections. There is particularly comprehensive information on non-Aboriginal heritage and biodiversity activities of council.

The report utilises the pressure/state/response model well. However, the state/response categories are collapsed together for some sectors and the information is mostly presented in long, unbroken paragraphs, making it difficult to identify specific council responses. Council responses may be more accessible if presented as dot points or in table form as in stormwater responses in table 5.1 in council's 2004 SOE report.

The 2004 comprehensive report does not identify gaps in relevant information. The 2005 supplementary report provides little interpretation of data and there is no reference in the report to the environmental impact of council activities. There is no

mention in the report of engagement with the community in preparing the report or implementing the projects.

The reports would benefit from a summary of issues and future directions or actions to be included in council's management plan. As discussed previously in this report, there needs to be clearer integration between this report and actions to be taken in the management plan. A summary of future actions could provide a clearer reference point for actions in the management plan.

While the overall standard of reporting is good, there are some issues that bear improvement, generally as follows:

- future comprehensive reports need to discuss gaps in information and data (or if there are none, make this clear)
- inclusion of more comprehensive actions to be taken by council that can then be included in the management plan
- the report needs to identify community consultation that has taken place in preparing the report and implementing the projects. (Recommendation 43)

Companion Animals

The primary aim of the *Companion Animals Act 1998* is to provide for the effective and responsible care and management of companion animals. The adoption of a local companion animal management plan assists council in achieving a balanced relationship between companion animals, humans and the environment. Such a plan also provides council with an opportunity to identify the future direction of these services and strategies to meet the challenges faced in the provision of these services.

Council adopted a companion animals management plan on 24 January 2006. The plan primarily deals with the issue of the number of dogs and what will happen if council receives a complaint. A report to the environmental services committee identifies that council impounded 924 dogs in 2005. This is an increase on the previous year of over 70 dogs. The review team was advised that approximately 900 of these dogs were euthanased.

Council's companion animals management plan should identify strategies that council will pursue in meeting its obligations under the *Companion Animals Act*. This includes, but is not limited to, community education, enforcement, environmental and community amenity strategies. Council also has an obligation under section 64 of that Act to seek alternatives to that of euthanasia and if practicable, adopt any such alternatives. The current plan has no strategies at all. Strategies should be linked to, and monitored through, the council's management plan.

The review team was advised that there had been previous attempts to adopt a companion animals management plan that reflected the best practice aspects of plans from other councils. However, there appears to have been reluctance by council to adopt any regulation of animals. This is largely due to political pressure from community members. Council should be reminded of its obligations under the Companion Animals Act. Section 6A(1) of this Act states:

> *A council is required:*
>
> *(a) to promote awareness within its area of the requirements of this Act with respect to the ownership of companion animals, and*
>
> (b) *to take such steps as are appropriate to ensure that it is notified or otherwise made aware of the existence of all dangerous and restricted dogs (including dogs that might reasonably be considered to be the subject of a declaration by the council under Division 6 of Part 5) that are ordinarily kept within its area.*

The companion animals management plan should at the very least identify the ways in which council is going to meet its obligation in section 6A(1). The review team was advised that council conducts animal de-sexing days and takes out advertisements on companion animal issues and responsible dog ownership as the need arises. Additionally, council has its own written procedures that govern the impounding of animals that contains information such as micro-chipping and returning of animals to their owners. Council's companion animals management plan should include actions that reflect and guide activities council is already undertaking. (Recommendation 44)

Enforcement and compliance

In the exercise of their functions under the Local Government Act and various other Acts, councils are required to ensure compliance and, where necessary, take enforcement actions.

Councils must properly deal with allegations about unlawful or non-compliant activities, which include activities that are prohibited or unauthorised, or contrary to the terms of a consent, licence or approval, or other instrument of permission issued pursuant to lawful authority. Failure to properly deal with such allegations, quite apart from being poor administrative practice, could expose a council to liability for compensation and the expense of litigation. The way in which councils exercise their enforcement powers also plays an important part in the public's perception of councils. Alleged inconsistencies in responses to non-compliance issues are a major source of complaints about councils.

The enforcement practices of councils must be resolute and demonstrate both parity and transparency. They must signal the position taken by the particular council regarding such issues. It is good practice that councils and other agencies with such powers set out in a considered way a policy to be used to ensure rational and consistent decisions are taken. An enforcement policy must deal with the manner in which the council will carry out its functions, the procedural steps that may be involved, the circumstances in which council will institute court proceedings and the manner and circumstances when discretions may be exercised.

The council has not adopted an enforcement policy. Council has a policy that provides guidance to staff where the administration fee may be waived for the serving of a notice under the *Protection of the Environment Operations Act 1997*. This is not an enforcement policy as described above.

It is clear that council has an active program of checking compliance and reports annually on the inspections undertaken. There are also notices served by council, so it is clear that it undertakes enforcement action when necessary. However, council does not have a local orders policy, made under section 159 of the Act, to guide the decision-making about the giving of orders. For example, it is clear from council's

recently adopted companion animals management plan that there are certain criteria that must be taken into consideration in determining whether or not to give an order to reduce the number of dogs/cats on premises. Criteria for this and other circumstances that may require orders to be issued should be contained in a local orders policy. (Recommendation 45)

The review team was advised that council has a three strikes approach to non-compliance. It will follow up orally and in writing in the first instance and only issue an order if this is not responded to. Any recommendation for legal action would be referred to council for consideration. These steps may not be followed in the case, for example, of public safety issues. Council should document its policy and procedures in relation to dealing with non-compliance issues. The NSW Ombudsman's enforcement guidelines may be a useful resource in developing this policy. (Recommendation 46)

Further, council does not provide information to the public on how to report non-compliance and alleged breaches of various approvals or instruments. Given its statutory obligation in areas of public health and safety, the council should ensure that the residents of Broken Hill City are properly informed as to how they may report alleged breaches and non-compliance. This will enable council to more effectively monitor these key areas of responsibility and thus reduce the risk of non-compliance for residents. (Recommendation 47)

6.3 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*
- *Financial planning*
- *Asset management*
- *Rates*
- *Use of technology*
- *Financial assistance to others*

Overview of financial position

Council has reported operating deficits after capital items for the past 5 financial years. This ranged from $2.5 million deficit to a $3.6 million deficit.

Council needs to be mindful that the operating deficits may be an indicator that the council is not generating sufficient revenue to provide for on-going asset maintenance and replacement. It could also be an indicator that council needs to closely review the current scope and level of its activities, to ensure that they can be funded. The need for council to identify alternative funding sources is significant. (Recommendation 5)

In 1980 mining rates represented 52.4% of total rates, whereas in 1993 they represented 47.6%. In 2005/06 mining rates represent 24.6% of a total rate income of $2,620,079. Further reductions in income from mining rates are likely as a result of mine closures.

Residential and business rates will continue to rise sharply to take up the lost income from the mining rates. Should the mines continue for a longer period council will still undergo challenges in affording its current level of expenditure without some major

rationalisation and review. It is not apparent that the current council has given serious consideration to council's long-term financial sustainability.

In 2000/01 council was granted a special variation to offset the loss of rate income caused by the closure of the Potosi Mine. Council at that time proposed the following strategy to overcome the future decline in mine rate income:

- *"A savings of $480,000 per annum over 3 years by reduction in staff from natural attrition*
- *A savings of up to $90,000 per annum by capping donations to 1% of rate income and adopting a donations policy*
- *A reduction in various items and dividends from commercial operations totalling $167,000 per annum within 2 years*
- *An orderly disposal of assets no longer required*
- *A renegotiation of council's industrial agreement to achieve savings*
- *Consideration of the formation of a co-operative to provide services to council and government agencies in the region."*

The special variation was granted by the Minister at the time with the understanding that the council would undertake actions to implement the above strategy. The review team found evidence that only some of these measures had been completed or undertaken.

Under current council projections, the council may have an accumulated deficit by 2010/11 of $8.811 million rising substantially to $25.212 million by 2014/2015, if mining rates cease in 2011/12.

In 1996, the council proposed an expansion of the council's boundaries to address the financial demands on the city and pressures imposed on the city by surrounding residents and services. Council felt that it could then legitimately fight for such issues as the Darling River, Silverton, illegal dumping, feral animal control, regional environmental and health issues, etc which are outside its current boundaries.

In was proposed in the 1973 Barnett Report of the Committee of Inquiry into Local Government areas and administration in NSW to amalgamate Broken Hill with all lands west of the Darling River within the vicinity of Wilcannia and Menindee together with the unincorporated area of the Western Division.

The 1996 proposal acknowledged that it was likely that any new mining operations will occur outside the city boundaries, with any new mining operation not contributing to the finances of the city. Council should re-examine the financial costs and benefits of expanding its city boundaries and any other benefit this expansion may have for the city and the western division. (Recommendation 48).

The review examined the comments made by council's auditors. They wrote to council stating *"…this significant increase [in deficits] indicates little progress has been made towards long term sustainability. Councils long term financial planning should include reducing deficits"*

They added, *"depreciation…management indicated that most infrastructure expenditure is expensed as maintenance...in our view the infrastructure expenditure that improves the life of an asset should be capitalised...would mean that operating expenditure and therefore the deficit would be reduced...unfunded depreciation gap would also reduce"*

"Council has been increasing residential rates to off-set decreases in commercial rate revenue. Any further reductions...may require the use of the internally restricted funds to balance the budget...service levels may need to be reduced to lower operating expenditure."

"We understand that council has agreed to a $4m swimming pool upgrade...further pressure on council's long term financial sustainability."

Council's failure to address its long-term financial sustainability will, in coming years, place extensive pressure on the council.

There appears to be a lack of understanding within the elected body to seriously address this concern. There is evidence of unfunded pay increases to staff and a lack of adherence to financial policies, for example, in providing donations to community organisations. Additionally, the review team was advised that in 2004 council had considered a wide range of options for revenue generation and all of these had been rejected.

Council evidently held budget workshops to brief and involve councillors prior to the 2005/06 draft budget coming before council. It is important that all councillors are involved in this process. Also, the information provided to councillors should be easy to understand and comprehensive in order for them to be able to determine the priorities for council's management plan for the coming year. (Recommendation 49)

Councillors should be mindful of making decisions within the context of the policies and budget that they have developed. Councillors are accountable to the community for decisions to be financially responsible and made within the parameters of the budget.

Long term financial planning

The review team is concerned that despite council applying the Local Government Financial Health Check and undertaking briefing sessions for councillors on finance and budget setting, the councillors lack an understanding of the potential financial problems facing the city. Council must develop a long-term financial plan. This plan should integrate with other council plans including its social plan and asset plan to identify future needs of the city and to rationalise assets and infrastructure that may be surplus to council's requirements. (Recommendation 5)

Long-term rates strategy

Council has applied for a number of rating special variations in recent years. Council needs to review its rating structure as part of its long-term financial planning process. This will ensure that rating policy meets council's costs over the long-term and provides a strategic approach to the spread and structure of rates. (Recommendation 5)

Comparisons with similar councils

The department publishes comparative information annually. For comparison purposes councils are grouped with similar councils. Broken Hill City Council is a Group 4 council. The following table compares Broken Hill's performance to other Group 4 councils. While the council has positive results in most indicators the unique position of Broken Hill in obtaining rates from the mining rates has historically advantaged the city.

Table 1 - Comparative Information 2003/2004

Indicator	Broken Hill	Group 4 Average
Average rate per residential	$526	$611
Outstanding rates, charges and fees	7.67%	5.3%
Current ratio (unrestricted)	3.81	2.40
Debt Service Ratio	Nil	6.61%
Average charge for domestic waste	$113	$168

*Further comparative information and an explanation of the indicators are available in the DLG publication "Comparative Information on NSW Local Government Councils 2003/2004".

Budgeted v. actual results

Council has reported a deficit before capital items in 2004/05 of $3.49 million compared to budgeted deficit of $6.927 million. The main reason for the more favourable variance was the decrease in materials and contracts of $2.522 million. During the period 2003/04 and 2002/03 the actual results after capital items were a deficit of $2.6 million and $2.5 million compared to a budgeted deficit of $5.015 million and $5.617 million respectively.

The review team noted that the last material differences (comparison of actual results against budgeted results) reported to council was November 2005. It is a requirement of the Local Government (General) 2005 clause 202 to monitor any variances in the budget on a monthly basis. This is in addition to the quarterly reporting that is required (clause 203). This issue was raised with staff while the

review team was on-site and a report on material differences was presented to council's meeting on 22 February 2006.

Liquidity and cash position

Council's unrestricted current ratio (UCR) for 2004/05 was 3.68. For the period 2003/04 and 2002/03 it was 3.81 & 3.35 respectively. The UCR measures the adequacy of working capital and the ability to satisfy obligations in the short term. A good UCR is greater than 2.

Council's unrestricted cash for the periods 2004/05, 2003/04 & 2002/03 were $1.431M, $370,000 and $207,000 respectively. The Debt Service Ratio (DSR) in 2004/05 was Nil due to council having a debt free policy.

Income streams

In 2004/2005 the percentage of revenue from rates and annual charges was 49%, user charges 14%, interest income 4% and grants and contributions 33%. These have remained relatively stable for the last five years with income rising from $18,455 million in 2000/01 to $21,920 in 2004/05.

Council currently does not take full advantage of seeking and obtaining grant funding. All grants are sought by frontline staff who may not be fully aware of funds available. The review team was advised that council had previously considered the employment of a grants officer. A grants officer will further assist in seeking funds to achieve council's goals and assist in liaisons with state and federal authorities. Council could seek advice from other councils, such as Shellharbour City Council, in regard to their success and experience in employing a grants officer position. Council should re-consider the employment of a grants officer to seek grants and assist in the completing of grants applications. (Recommendation 50)

Business activities

Council has identified 7 business activities in the review checklist, namely Entertainment Centre, Garage, Tourist & Travellers Centre, Caravan Park, Shorty O'Neil Village, Airport and Commercial Waste. The Entertainment Centre, Tourist &

Travellers Centre and Airport all made losses after capital items in 2004/05. Council does not have business plans for any of these businesses. (Recommendation 51)

Asset Management and Infrastructure Maintenance

Asset management is a systematic process to guide the planning, acquisition, operation and maintenance, renewal and disposal of assets. Its objective is to maximise asset service delivery potential and manage related risks and costs over their entire lives.

Based on the information provided with council's 2004/2005 financial statements, council's infrastructure assets are in a satisfactory condition. The written down value (WDV) of council's assets for 2004/05 period are as follows:

Roads, Bridges & Footpaths	63%
Stormwater Drainage	36%

The department considers that a WDV below 50% may be cause for concern. Council's estimated costs to bring assets to satisfactory condition were $20.427 million in 2004/05. Estimated annual maintenance was $2.661 million, whereas program maintenance was $2.943 million. Internally restricted funds set aside for infrastructure replacement in 2003/04 was nil.

It is open for individual councils to determine what they consider is a "satisfactory" standard for their assets. There is also potential for councils to make changes to what they consider "satisfactory" from year to year. It was beyond the scope of the review to comment on the accuracy of council's condition assessments and the associated costings. Nor has the review assessed the consistency of council's approach from year to year. Notwithstanding this, it is clearly important for council and the community to be mindful of accuracy and consistency, when preparing and considering the reports on the condition of assets.

It should be noted that council has stated it is aware of the need to improve the quality of the data it has about the condition of its infrastructure, especially the condition of its stormwater drainage assets. Council needs a total asset management system to ensure that it has an empirical basis for determining what

funding will be required to maintain, replace and enhance assets when needed. (Recommendation 52)

A legacy of the mining industry in Broken Hill is the acquisition of significant infrastructure and the cost of maintaining these assets. This has placed a financial burden on the council as much of this infrastructure is now needing or will shortly need replacement.

Council must commence working towards a long-term asset strategy. The lack of a strategy has meant the council has not planned for its asset requirement, nor has it been able to seek funds to address any asset shortfall. Council should prepare an asset management plan that includes any potential rationalisation of assets and a maintenance program. (Recommendation 53) Council may find the following publication useful in developing such a plan: *'Asset Management Policy, Strategy and Plan: Guidelines for Developing an Asset Management Policy, Strategy and Plan, Department for Victorian Communities, August 2004.'*

The review noted that different departments share responsibility for the management of council's assets. However, there does not appear to be a culture of information sharing and teamwork among those involved. Council should identify a position that is responsible for ensuring that departments liaise on asset management and that there is integration of the management of all of council's assets. (Recommendation 54)

Technology

Council is in the process of reviewing its information technology (IT) needs in the finance area. Through the review it was identified that the IT system lacks the ability to integrate council's functions fully. Many of the council's functions are dependant on links to other business functions. Broken Hill City Council, in addition to expanding and upgrading its finance, needs to develop an IT strategy and business plan that caters for the broad needs of the council.

Council should consider developing a mechanism whereby it can assess the value for money that it gets from any investment in IT. In addition, council should

incorporate, or link, the management of its information and communications technology assets and its asset management planning. (Recommendation 55)

Council should also consider utilising technology to provide staff with networking and professional development opportunities. This can include better utilisation of the Internet, interactive learning packages, teleconferencing and video conferencing. (Recommendation 56)

Financial assistance to others

Section 356 of the Local Government Act prescribes the requirements to provide monies to others. It was noticed throughout the review that council provided financial assistance contrary to this section.

An example of this was the provision of a loan to the Broken Hill YMCA in August 2005 for an amount of $160,000. While conditions were placed on the YMCA no evidence could be found that the council placed this loan on public notice for 28 days as required by section 356(2).

Council is encouraged to review its existing procedures and develop policies for the granting of financial assistance, loans and grants. Council should adhere to these policies when allocating funds. (Recommendation 57)

Public Swimming Pool

In discussions with councillors the present position of the council swimming pool was raised. As the swimming pool will represent a significant public and community asset, it warrants separate consideration and comment.

At the time of the review the council was considering expending $4 million on a public swimming pool. The review team is aware of the comment by council's auditor that such expenditure will place pressure on council's long-term financial sustainability. The pool appears to have evolved from a long held desire to provide this facility. The review team will not address the advantages of one proposal over another. However, the team is concerned that the financial burden on this single

project will jeopardise the council's long-term financial position and its ability to provide or improve any other significant asset or facility.

It was brought to the review team's attention that, since the review was conducted, council has resolved to spend no more than $2 million for the building of a new pool. However, the team is also aware that there is disagreement among councillors on the pool issue and this decision may be subject to change. Councillors are reminded to be aware of council's long-term financial sustainability when making this decision.

Rates hardship policy

The review team was advised that approximately 1 in 3 residential ratepayers in the Broken Hill area receives a pensioner rebate for their rates. Given the ageing demographic of the population, the potential for the number of rebates to further increase is high.

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 58)

6.4 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 methods council uses to involve and determine the views of its community*
- *Access to information*
- *Social and community functions of council*
- *Annual reporting*
- *Cultural planning*
- *Ethnic affairs obligations*
- *Reporting to the community and keeping the State government informed about its activities*

Overview

Council is a large provider of community services to the Broken Hill community. It currently manages services for the aged, people with disabilities, youth and carers as well as general and outback library services and an art gallery. Additionally, council has a program of providing financial assistance to individuals and organisations under section 356 of the *Local Government Act*. In 2004/05 this amounted to $131,909.

Broken Hill City Library was awarded the Local Government and Shire Associations Local Government Cultural Award in 2005 for excellence of the operation of the library's outback letterbox library service. Additionally, council's Art Gallery was short listed for a Cultural Award in 2005. The Art Gallery did win the Heritage Award 2005

for a conservation built heritage project over $500,00 from Energy Australia and the National Trust.

Council's community service operators regularly communicate with their customers by way of newsletters. This includes newsletters for users of the disability services, youth services, and aged and carer services. Council does not have a general newsletter for its ratepayers and residents, although this is identified as a strategy for implementation in 2006.

What is working well

Community survey

Council conducts an annual community survey, which includes specific feedback on council's performance, including its customer service performance. There is evidence that results are important indicators for council. The results from the 2005 survey were used to inform council's recent strategic planning process. Council reports on the results of this survey in its annual report.

Council as a community service provider

Council is a large provider of human services to the Broken Hill community. It currently manages services for the aged, people with disabilities, youth and carers. These services are well integrated and many operate from the one facility (with the exception of youth services).

Council obtained accreditation for the provision of its disability services, community aged care services, Far West Commonwealth Carer Respite Centre and Commonwealth Carelink Centre Far West under AS/NZS ISO 9001:2000 in August 2003. ISO 9001 is a compliant business management system that offers a comprehensive framework on which to build processes that help ensure key business objectives are achieved.

In October 2005 SAI Global undertook an audit of the corporate management, disability services and community programs and recommended continued

certification to ISO 9001:2000. The audit report gave an overall result of excellent and noted that the services "demonstrate a sound commitment to quality and an ongoing improvement of their management system". The following was a notable strength of the services:

"Once again Community Services is commended for their team approach to the delivery of services and of particular note during the audit, was the caring attitude of staff toward service users."

In addition, council staff have received training to enable them to audit their own processes in accordance with the ISO standards. Staff have also developed an electronic quality management system that underpins the ISO process. The embracing of the accreditation process by council community service staff gives an assurance that the community is receiving quality services that are regularly reviewed for improvement. This is an area of excellence for council.

Challenges to improve

Annual report

Council is required to prepare an annual report of its activities within 5 months of the end of each financial year. Section 428 of the Local Government Act requires that council furnish a copy of its annual report to the Minister. Council is required to submit its annual reports to the department by 30 November each year. Council is required to include a copy of the audited financial report in its annual report. A summary of council's financial position is not sufficient. Council submitted its annual report late in two of the last three years. Additionally, a review of council's annual report identifies that it does not include a copy of the audited financial report in its annual report. (Recommendation 59)

In its response to the draft report council advised that it felt that it reported all the relevant audited financial reports in its annual report and that it had submitted this information to the department on time. Council is required to provide a full copy of its audited financial reports in its annual report, not just a summary of this information.

The submission of the reports on time relates to the submission of annual reports, not financial reports. The recommendation has been modified to clarify this.

Social and community planning

The Local Government (General) Regulation 2005 requires all councils to develop a social/community plan at least once every five years to meet the needs of the residents of their area. This plan must be prepared in accordance with guidelines issued by the department. Aspects of the social/community plan must be reported in council's management plan and annual report.

The department has not previously received a social and community plan from council. The plan was obtained from council's website. It includes information on the demographic profiles of the community as well as a needs assessment. The plan contains an appendix that outlines the consultation that has occurred in identifying community needs. All target groups are included in the identified needs, as well as men as an optional group. Although the needs for target groups are identified, information on the process undertaken and the outcome would be a useful inclusion in the plan. (Recommendation 60)

The plan contains no assessment of the previous social plan, although the planning process identifies that a review was undertaken. Strategies in the plan are fairly comprehensive, however, timeframes are general. The plan does not contain any performance criteria. (Recommendation 61)

The plan is readable and accessible to the community on council's website. The plan contains references to the operational plan. Generally the strategies integrate, however, there are examples where the references quoted in the social and community plan do not match the strategies in the management or operational plan. For example, key result area 7 in the social plan on safety does not correlate with some of the references in the operational plan. There has been previous discussion in this report (see section 5) in relation to strategies in the management plan not being reflected in the operational plan. However, despite this, it is easy to identify most of the goals of the social and community plan in the operational plan.

Community participation

Council has a number of committees established under section 355 of the *Local Government Act* that regularly meet and include members from the community. Council conducts two public forum sessions at each of its monthly meetings. The review team observed one such session, which was not very effective in its contribution to council's decision making. This practice is currently being re-assessed by council.

Council has a community consultation policy but this has not been updated since 2001. This policy is not comprehensive. There is evidence that council undertakes consultation with its community as required by its statutory obligations. For example, the public exhibition of council's management plan. Council supports a youth council that provides it with advice on youth matters. The only response received by council to the draft management plan 2005/06 was from the Broken Hill City Youth Council. There is no evidence of a robust process of engagement with members of the community.

Council is encouraged to develop an organisation-wide community consultation policy and framework to guide its practice. This should be comprehensive and provide greater opportunity for community participation than that provided by putting documents on exhibition for comment or attendance at the public forum section of council's meetings. (Recommendation 62)

Customer service standards

Customer service standards (also known as guarantees of service) set out some key performance standards for the most frequently used services. The highlighting of customer service standards sets a level of expectation within the community, as well as providing guidelines for staff performance.

Council does not currently have customer service standards for all of its services. Council's website contains a reference to a guarantee of service. However, this is a very general approach to identifying the standards customers can expect of council. It would be more relevant if each council department identified the standards

customers can expect of their services and made those available to their customers. It is important that once these are developed they are monitored and reported on to ensure accountability to the community and to provide feedback to the council. (Recommendations 63 and 64)

An ageing population

Responding to and planning for the major changes and service demands that will be created by Australia's ageing population is a major challenge for all levels of government.

Between 2004 and 2022 the population of the Broken Hill area is projected to decline in size. Some of this will be related to the migration-related loss of young people.

In terms of the mean population age, Broken Hill City is NSW's 18th oldest local government area. By 2022 it will be its 11th oldest. Approximately 18.3% of the council population is currently aged 65+ years, and this is projected to grow to 27.8% by 2022. At an average increase of .52 percentage points per year, this 'force of ageing' is substantially faster than that projected for most of NSW (eg 0.33 for Total NSW and .43 for NSW Balance). The council's population aged 85 and over is also projected to increase from 2.2% to 3.9% of the population (*Population Ageing in New South Wales and its Local Government Areas*, Dr. Natalie Jackson, Director, Demographic Analytical Services Unit, University of Tasmania).

The impact on the demand on services, facilities and infrastructure will be significant and will impact on virtually all aspects of council's operations.

The Local Government and Shires Associations have produced *Planning the Local Government Response to Ageing and Place*. This paper is intended to offer a framework to assist councils to begin to plan for the population ageing unique to their area by:

- providing information on what is happening with general population trends and access to population projection information for each local government area,
- providing information on the existing and likely diversity amongst older people,

- providing evidence on what population ageing means for all roles that councils performs, and
- encouraging councils to examine their numbers and proportion of older people and their rate of population ageing, in conjunction with the evidence on impacts, to identify what roles they may need to change and when.

The department encourages councils to use this paper in its planning process.

Council's social plan includes some strategies for older people. However, it was not evident to the review team that council has integrated strategies across its various function areas to address this challenge. Council did inform the review team that it is in the process of developing an ageing strategy. This will be important as there are labour market implications of the combined effect of the migration-related loss of young people and the exit from the workforce of those reaching retirement age. Broken Hill's total working age population is projected to fall from its current 62% of the population to around 57% by 2022. (*Population Ageing in New South Wales and its Local Government Areas*, Dr. Natalie Jackson, Director, Demographic Analytical Services Unit, University of Tasmania)

Given that the age of council's population is increasing at a significant rate, council needs to consider ways to raise the awareness of this issue across all sections of council. Building upon strategies in its Social Plan and using the Ageing and Place Framework developed by the Associations, council should prepare long term strategies to meet current and future needs for older people.

Priority strategies should be determined on an annual basis and incorporated in council's management plan and budget, the business plans of each department and the work plans of individual officers. Progress in relation to these priorities should be reported on a quarterly basis via the performance appraisal system and management plan reports as well as annually in council's Annual Report. (Recommendation 65)

6.5 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.

A review was conducted of a range of aspects of council's workplace relations practices including:

- *Job descriptions and job evaluation*
- *Recruitment and selection processes*
- *Employee remuneration*
- *Equal employment opportunity*
- *Staff development*
- *Grievance management*
- *Occupational health and safety*

Overview of the organisation

All employers have legislative responsibilities in relation to their staff. The Local Government Act imposes additional requirements on councils. Importantly, a council's charter requires it to conduct itself as a responsible employer.

The Council adopted its current organisational structure in August 2004. As required by section 333 of the Act council reviewed and redetermined the structure within 12 months of its last ordinary election.

Council has 244 equivalent full-time staff. Staff comprise:

- 45.59% women
- 7.27% with physical disabilities

The proportion of male to female staff indicates that, while female staff comprise almost 50% of the workforce, there is a marked imbalance in the ratio of males to females in the "outside" staff area, where males make up 100% of the workforce.

Council identified in the completed checklist that it did not have staff who identify as of Aboriginal and/or Torres Strait Islander background. The council is exploring

opportunities for providing greater opportunities for Aboriginal people. However, it is clear that the true figure of staff members who are Aboriginal is understated. It is estimated that the number of Aboriginal people employed by council is approximately 5%. These employees are primarily in trainee positions.

Council's Human Resources Manager is primarily responsible for most workforce relations activities. She has indicated that the council has developed a relationship with the union representing staff. She advised that the council attempts to pre-empt and to deal with potential issues before they become disputes.

Industrial agreement

The council is currently negotiating a new industrial agreement (Broken Hill City Council Consent Award 2005) with the Barrier Industrial Council. As at the time of the review the agreement had not been ratified.

During the review the council was unable to substantiate the legal standing of the industrial agreement and why some conditions under this agreement fell below the current Local Government (State) Award 2004. The review team is of the opinion that, as a minimum, council employees should enjoy the conditions of the state award that apply to most other NSW councils. The review team is advised that council is investigating the legal standing of this unregistered industrial agreement and seeking advice on the impact, if any, of the federal industrial laws.

The General Manager advised the review team that he is on the negotiation panel for the new industrial agreement in an advisory capacity only and that the Human Resources Manager is no longer a party to the negotiation. At its meeting on 5 April 2005, council resolved *"that Council form a Committee of Councillors and the General Manager (and also senior staff to be called upon as necessary); to further negotiate the Industrial Agreement with the Barrier Industrial Council"*. This appears to be at odds with the General Manager's understanding of his role in the process. Nevertheless, it is concerning that councillors are taking an active role in the day-to-day operation of the council, that is the negotiation of the detail of the agreement, at the exclusion of professional staff.

The councillors' role will be to make the decision on the agreement following the presentation of the negotiated outcome. The agreement negotiation committee should consist of representatives with appropriate qualifications to negotiate industrial agreements. The negotiations need to be made in the context of council's financial position, service requirements and direction set by the management plan. The General Manager is the appropriate person to be negotiating the detail of the agreement.

It is important to remind councillors of their role and that direct negotiation on employee conditions is not encouraged. It is concerning that council has formally agreed to a number of employment conditions without full understanding of the ramifications for the organisation and how these changes may prejudice council and its employees. For example, at its meeting on 5 April 2005, while it was still negotiating the terms of the industrial agreement, council granted employees a 4% wage increase that was backdated to November 2004.

The review team is concerned about the potential impact of the industrial agreement and whether or not council has fully considered all of the agreement requirements.

What is working well

Apprenticeships and traineeships

Council currently employs 25 cadets, apprentices and trainees. In 2006 council has employed an additional 5 trainees and 1 cadet.

Human Resource Policies and Practices

Council has well documented procedures in place to manage its human resource needs.

Council is to be commended on its recruitment and selection policy and procedures. Selection and recruitment is transparent and selection is clearly on merit in accordance with section 349 of the Local Government Act. Recruitment is well documented, with the ranking of candidates and reasons for selection outlined on relevant files.

Occupational Health & Safety (OH&S)

The review did not involve a comprehensive audit of council's occupational health and safety practices. The review team noted that council does have an OH&S Committee. The council reports that it has substantially reduced the number of injuries, resulting in a reduction in compensation claims and a reduction in insurance premiums.

Council has adopted an Occupational Health and Safety Policy and conducts systematic and incidental reviews of OH&S risk assessments. All activities within council, where injury is deemed to be foreseeable, are governed by council's Arion HR management system. Council's OH&S Committee conducts regular workplace inspections.

Challenges to improve

Division between indoor and outdoor staff

It was evident during the review that a divide exists between indoor and outdoor staff. This division, real or otherwise appears to be a barrier for the organisation in achieving council goals. Staff equity throughout the council is important to motivate staff and avoid a "them and us" culture.

It was noted that some essential training has not been provided to outdoor staff, for example, code of conduct training. Council should ensure employee training on key topics, such as the code of conduct and protected disclosure procedures, is provided across all departments of the council. (Recommendation 66)

The council is encouraged to work towards removing the divide between indoor and outdoor staff through implementing work practices that require a co-operative approach. To change the current culture council should continue with current strategies such as the relocation of staff to the depot site or administrative building; joint staff training; and using "Business excellence" models in tackling problems and implementing solutions. (Recommendation 67)

Employee attitude survey

The council has not conducted an employee attitude survey to ascertain staff morale or areas of concern. Throughout the review, the issue of the level of staff morale was raised with the review team and council is strongly encouraged to conduct an employee attitude survey. (Recommendation 68)

Concerns were raised with the review team about the potential misuse of information from an employee attitude survey. The review team acknowledges that this concern is real. All persons involved should treat information from such corporate introspections as a way of moving forward and improving council operations. Information gained in this way to assist in identifying areas for improvement should not be used in a campaign of negativity.

Workforce planning

While council has a low staff turnover and has been able to attract experienced, quality staff, it is exposed to a number of workforce issues such as:

- an ageing workforce
- a change in workload for certain sections as council's and government priorities change
- increase in career opportunities outside the Broken Hill area.

Council faces a future challenge of an ageing workforce. There are labour market implications of the combined effect of the migration-related loss of young people and the exit from the workforce of those reaching retirement age. Broken Hill's total working age population is projected to fall from its current 62% of the population to around 57% by 2022. (*Population Ageing in New South Wales and its Local Government Areas*, Dr. Natalie Jackson, Director, Demographic Analytical Services Unit, University of Tasmania)

Succession plans have been included in the plans of various work groups. However, council needs to develop a workforce plan to identify specific changes that may occur in workload in particular work groups and determine strategies for the

acquisition and transfer of skills. This should include increased opportunities for apprenticeships, cadetships and traineeships. (Recommendation 69)

Equal employment opportunity (EEO)

Section 334 of the Local Government Act states that councils are "to promote equal employment opportunity for women, members of racial minorities and physically handicapped persons in councils". In accordance with section 345, council is also obliged to "prepare and implement an equal employment opportunity management plan".

Council has developed an EEO Management Plan that includes an EEO policy statement, information about the legislative framework including the benefits of an effective EEO framework, results of an EEO survey conducted in 1997 and strategies. The integration between this plan and other council plans, policies and procedures is obvious. For example, council's recruitment and selection procedures include many references to council's EEO policy and practices.

It was unclear when council's EEO Management Plan was adopted or reviewed and this information needs to be included in the plan. Council's plan could be improved by providing specific targets and performance criteria, a description of the method used to develop the plan, definitions of key words or a glossary and a statement about corporate ownership of the policy. (Recommendation 70)

Consultative committee

Council has not established a consultative committee or other committee in accordance with the Local Government (State) Award 2004. While the council is not covered by the award it is important that a committee is established to provide a forum for consultation between council management and employees. The functions of the consultative committee are about day-to-day management issues such as award implementation, training, job redesign, performance management systems and hours of work.

The review team is advised that the establishment of such a committee has been included in the new award agreement that is yet to be ratified by council. The membership of council's committee should be the General Manager or his nominee/s. Due to the day-to-day operational issues considered by this committee, it is inappropriate for councillors to be members of consultative committees. Employee representatives should include both indoor and outdoor staff.

Staff development

Council is in a unique position in that it is somewhat isolated with its nearest neighbouring council some distance away. This makes sharing of practices between councils problematic, in that networking and professional development of staff is costly in terms of time and resources. All council staff should be provided with opportunities to develop their expertise and to see or hear what other councils do. This contributes to keeping them up to date with industry changes, learn efficient and effective ways of working and contributes to their professional development. No council should be an island.

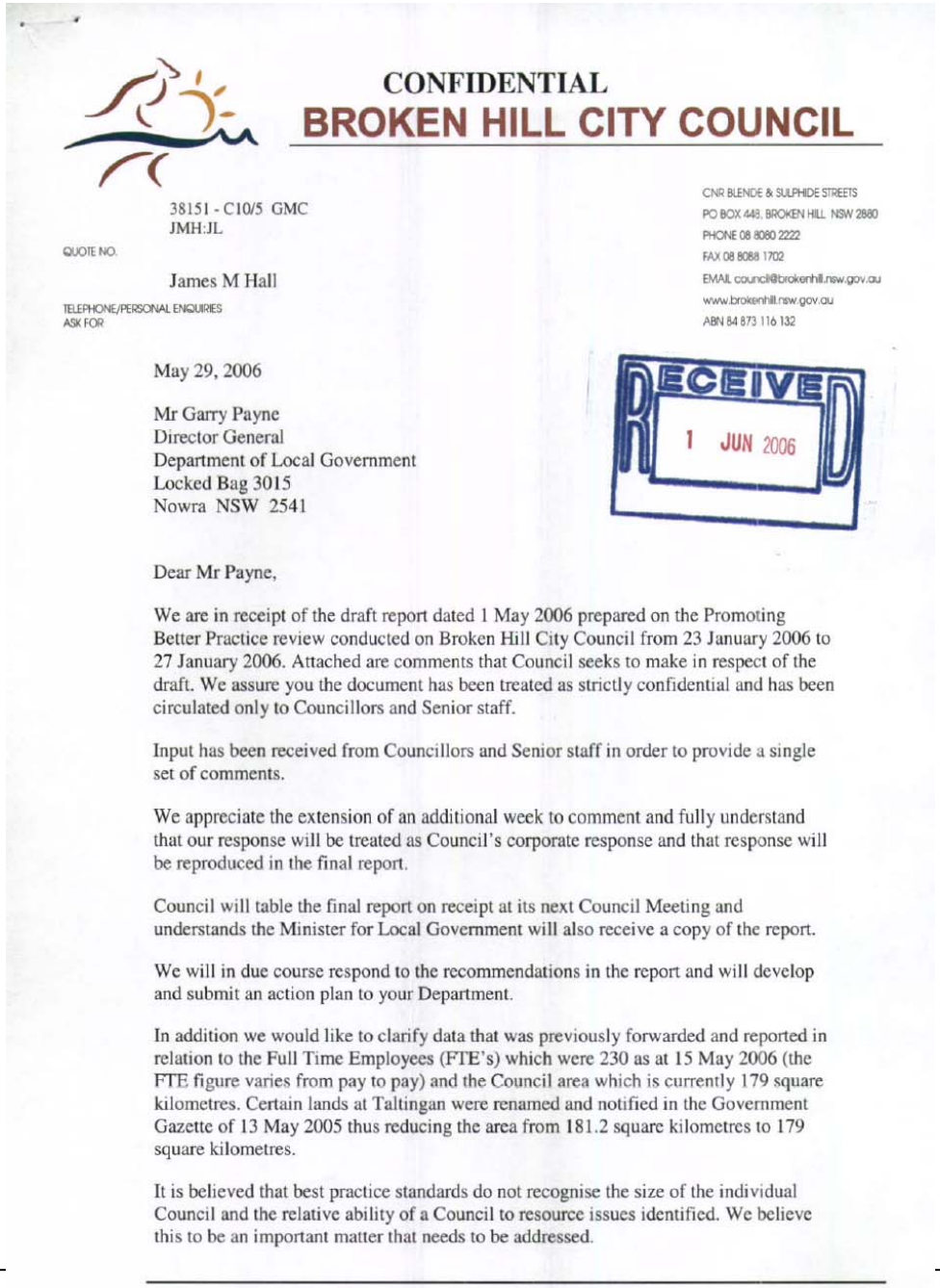
While council provides opportunities for employees to attend conferences and seminars, some staff expressed a view that this is not as effective as it could be. Council has asked for regular reports on HR activity that includes travel and training that staff undertake. This level of detail is not the councillor's responsibility. It is the responsibility of council's General Manager to manage the staff. This includes decisions about staff travel and development within the budget provided by council. This level of scrutiny hampers the development of staff as they are reluctant to ask to attend or participate in opportunities that arise.

Council has an opportunity to utilise its sister city relationship with Bankstown City Council to exchange staff for work experience and professional development. For example, with the introduction of the International Accounting Standard and changes in current accounting and asset management practices, the finance branch would benefit from development opportunities by spending time at a large metropolitan council. In this way they could examine current work practices and implementation of finance systems and standards. Equally, if this was an exchange process, Bankstown City Council staff would benefit from experiencing the way Broken Hill

provides its services. Council should consider using its sister city relationship with Bankstown City Council to look at some reciprocal arrangement of staff exchange. (Recommendation 71)

8. COUNCIL'S RESPONSE

Council responded to the draft report on 29 May 2006. Council responded to a number of areas of the report as well as making comment on all the recommendations in the report. Some of the comment on the recommendations provided information on what action council intends to take or has taken. This information is not reproduced in this report and should be incorporated in the action plan that council is required to complete after it has tabled the review report. Council's response or concerns regarding sections of the report are reproduced and addressed hereunder.



CONFIDENTIAL
BROKEN HILL CITY COUNCIL

38151 - C10/5 GMC
JMH:JL
QUOTE NO.

James M Hall
TELEPHONE/PERSONAL ENQUIRIES
ASK FOR

CNR BLENDE & SULPHIDE STREETS
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RECEIVED
1 JUN 2006

May 29, 2006

Mr Garry Payne
Director General
Department of Local Government
Locked Bag 3015
Nowra NSW 2541

Dear Mr Payne,

We are in receipt of the draft report dated 1 May 2006 prepared on the Promoting Better Practice review conducted on Broken Hill City Council from 23 January 2006 to 27 January 2006. Attached are comments that Council seeks to make in respect of the draft. We assure you the document has been treated as strictly confidential and has been circulated only to Councillors and Senior staff.

Input has been received from Councillors and Senior staff in order to provide a single set of comments.

We appreciate the extension of an additional week to comment and fully understand that our response will be treated as Council's corporate response and that response will be reproduced in the final report.

Council will table the final report on receipt at its next Council Meeting and understands the Minister for Local Government will also receive a copy of the report.

We will in due course respond to the recommendations in the report and will develop and submit an action plan to your Department.

In addition we would like to clarify data that was previously forwarded and reported in relation to the Full Time Employees (FTE's) which were 230 as at 15 May 2006 (the FTE figure varies from pay to pay) and the Council area which is currently 179 square kilometres. Certain lands at Taltingan were renamed and notified in the Government Gazette of 13 May 2005 thus reducing the area from 181.2 square kilometres to 179 square kilometres.

It is believed that best practice standards do not recognise the size of the individual Council and the relative ability of a Council to resource issues identified. We believe this to be an important matter that needs to be addressed.

CONFIDENTIAL

Councillors have raised a number of matters in relation to the Report that are hereby tabled:

- Industrial Relations Negotiations
  Councillors believe as they have an overall responsibility for the financial management of Council that they should be involved in the negotiation of the agreement.

- Operations
  Councillors are requesting specific examples be provided which clearly shows their interference in day to day operations of the management of Council.

- Meeting Procedures
  Councillors believe they have received contrary advice from the Department of Local Government, Local Government and Shires Association and trainers supplied from the Association. For example in terms of the Code of Meeting Practice there is some confusion as to whether motions must be seconded before debated or whether a mover can speak to gain a seconder.

- Interest Returns
  Councillors would request specific areas of non compliance are more clearly highlighted and suggest that the Department forward a "draft" return for their information and future guidance.

- Standing Committees
  Councillors believe that General Business in Standing Committees should be available for any topic they wish to raise and not necessarily be related to the Committee's documented function.

- Management and Operating Plan
  Councillors are not convinced that combining these documents is a positive step in terms of obtaining ratepayers input as it is voluminous and more difficult to understand.

Yours sincerely

JAMES M HALL
GENERAL MANAGER

The review team has examined these comments from councillors. Additional information has been provided in the report in relation to the strategic role of councillors, meeting procedures, disclosure of interest returns and standing

committees. Recommendation 17 in relation to disclosure of interest returns has been changed to a matter requiring immediate action.

Recommendation 8

Agreed, however it should be stated Council has previously arranged for a considerable amount of further education for Councillors on their role and responsibilities and this will continue.

A comment of councillors' understanding and discharge of their role has been made in the Director General's comment.

Recommendation 22

This has already been revised and when Council determines to discuss matters in closed session, it identifies the subject of each matter that is to be discussed and the reasons why they are being discussed in closed session.

The review team examined the agenda for council's May 2006 meeting and identified that a description of the subject matter of the confidential item was contained in the text. This subject matter description is very general. Confidential items should be listed in the agenda in the same way as other matters. Additional text has been added into the report to explain what is required and the recommendation modified to clarify this.

Recommendation 23

This is now being applied and Council will apply the requirements of Section 10D of the Act, including the public interest test when deciding whether or not a matter should be discussed in closed session.

A review of the April 2006 minutes shows that the public interest test is still not being applied.

Recommendation 28

Agreed that this is an option. However, the time spent in debating previous meeting minutes at the Council Meeting has substantially decreased. This option has been previously considered and it is not envisaged it would be introduced in the short term.

This method of recording minutes has been undertaken successfully in a number of councils, for example Bogan and Campbelltown, and council should trial this approach.

Recommendation 32

This has been enacted and Chairpersons of Council Standing Committees are ensuring that the business discussed at Committees are in accordance with their committees' documented function. As mentioned in the covering letter Councillors would like information provided as to why business cannot be more general.

Additional information has been provided in the report in relation to council's committees.

Recommendation 37

Agreed and Council is presently giving further consideration to the composition of its Conduct Committee to provide assurance to all parties involved that complaints are being dealt with in a fair and proper manner.

Additional information has been provided in the report in relation to the composition of council's conduct committee and the process for dealing with conduct matters.

Recommendation 40

Council has requested the number of Councillors be reduced to 10 (including the Mayor).

Additional comment on this issue has been made in the report.

Recommendation 41

The Department of Planning Practice Notes issued in July 2005 provides guidance on the implementation of Section 94 Contribution Plans for Councils. The following sections are of particular interest:

- The central question in assessing the suitability of using Section 94 as a public finance mechanism is whether a public facility is required to offset the impacts of development.
- Section 94 charges are targeted to new development and incoming population rather than a general tax across the whole community.
- Nexus is the relationship between the expected types of development in the area and the demonstrated need for additional public facilities created by the developments.
- The identification of the relationships between expected development and demand requires an assessment of growth and development and current levels of public amenities and services in the catchment.

The population of the City of Broken Hill has declined every census year from 33,000 in 1952 to a current population of 20,000 people. All current recognised predictions are that the population will continue to decline at around 0.5% per year for the foreseeable future. Although there is some anecdotal evidence that the population may have stabilised, the next census figures will not be available until mid 2007.

Discussions with the Department of Planning have indicated that they are unaware of any Local Government Area that has a declining population, that has Section 94 Plans in place.

The type of facilities that are usually funded by Section 94 Contributions are community facilities, open space and parks, car parking, cycle ways etc.

It should also be noted that the last two recreational facility studies conducted by Council have indicated that there is an excess of recreational facilities in the City, mainly due to this population decline. Also, the last parking study conducted in the Central Business District indicated that there are 2000 available parking spaces; with a maximum peak demand of only 900. Other public facilities such as libraries and community centres have been closed by Council over the last 30 years due to this decline in population.

Council is of the opinion that it would be extremely difficult to establish the nexus between new developments in the City and increased demand for public amenities and services given these circumstances.

The review team acknowledges council's viewpoint again and has modified the recommendation to ensure that council can act on opportunities for contributions from developers for the appropriate development of infrastructure.

Recommendation 43

Council acknowledges the involvement of the community in monitoring changes to the environment over time. Council has attempted to engage the various stakeholders in this process, however has been unsuccessful to date. Council will undertake further engagement processes to enable responses to be provided.

The comments in relation to the formatting of the document is noted and can be changed accordingly.

In response to the "gaps in data" mentioned in the 2005 Report, Council is unaware of any such gaps. It should be noted that gaps were identified in SOE from 1994 to 1999, however the continued improvement of the document by conducting various studies, has meant that these gaps no longer exist. Council requests that any perceived gaps be identified.

The comments regarding the integration of the SOE and Council Management Plan are noted and steps will be taken to ensure greater integration occurs.

This recommendation has been modified.

Recommendation 59

This recommendation is not understood. We report all the relevant audited financial reports in our Annual Report together with the Auditor's statement and a copy is provided to the Department of Local Government within the due date.

Council is required to provide a full copy of its audited financial reports in its annual report, not just a summary of this information. The submission of the reports on time relates to the submission of annual reports, not financial reports. The recommendation has been modified to clarify this.

Recommendation 61

Time frames are already provided for all new actions. Actions that do not have time frames are ongoing and we are merely continuing to do what we currently do. Performance indicators are added when the actions from the Social and Community Plan are included in the relevant Management Plan.

Acknowledged.

Recommendation 66

We believe this is based on misinformation. Our data shows that training is fairly evenly spread although Human Services has more training because of independent funding. It is doubted that there are many Councils that do as much training as our Council, especially considering the cost involved. A new performance indicator has been introduced to the Management Plan for all full time and permanent part time staff to receive a minimum of 2.5 days per year training across all departments of Council.

The comments in the report related to key training areas such as code of conduct and protected disclosure procedures. The review team was advised that many outdoor staff had not received training in these areas. The recommendation has been reworded to make this clarification. The review team is aware that council undertakes training across the organisation and wishes to ensure that this training encompasses key topics.