



# **BREWARRINA SHIRE COUNCIL**

## **PUBLIC INQUIRY No. 2**

### **REPORT**

**29 April 2008**

**John Davies**

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## **EXECUTIVE SUMMARY**

On 24 August 2007, the Minister for Local Government, the Hon Paul Lynch MP, appointed me to conduct a Public Inquiry into Brewarrina Shire Council. I was to inquire, report and provide recommendations as to whether all civic offices at Brewarrina Shire Council should be declared vacant. In doing so, I was to have regard to Council's performance since 2 December 2005, particularly in relation to the following matters:

- The Council's relationship with the local community, and in particular the local Aboriginal community and the Ngemba Community Working Party.
- The capacity of the Council to conduct meetings in accordance with statutory requirements.
- The Council's performance in establishing and maintaining appropriate systems and policies to deliver efficient and effective governance of the Council area and in managing Council's finances.

I was also to have regard to any other matter that may impact on the effective administration of the Council area and/or the working relationships between the Council, councillors and its administration.

This is the second Public Inquiry held into Brewarrina Shire Council in recent years. The first, conducted by Commissioner Ross Woodward, reported on 2 December 2005. The Commissioner did not recommend that the Minister immediately declare all civic offices in the Council vacant. However, he made 94 separate recommendations of which 89 applied to the Council.

It soon became apparent to the Department of Local Government that the Council was struggling to implement the recommendations. The Department appointed an Executive Officer to assist the Council with the implementation of the recommendations. The Minister also appointed a Mentor to provide guidance to councillors in the exercise of their roles. This second Public Inquiry

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has been held in response to concerns raised by the Mentor and Executive Officer about the Council's performance.

After seeking and obtaining initial written submissions and making numerous requests for documents and other evidence from the Council and other organisations, I held hearings at Brewarrina over four days in November 2007. The transcript of the hearings was subsequently provided to certain affected parties and they were invited to make rebuttal submissions in response to the evidence given at the hearings.

I then prepared a draft analysis of the evidence considered by the Inquiry. A copy of this was provided to affected parties, who were invited to make submissions in relation to it. Having considered these submissions, I proceeded to finalise this report.

I have made the following findings:

- Council appears to enjoy a good relationship with the local community including the local Aboriginal community and with key community stakeholders.
- Council continues to have a poor relationship with the Ngemba Community Working Party. While certain actions of the Council may have contributed to this, the underlying cause of the difficulties in the relationship between the two organisations lie with the apparent inability of the Community Working Party to acknowledge Council's role and the resource limitations it operates under and an apparent reluctance to constructively engage with it.
- There has been a steady improvement in the manner in which Council meetings have been conducted since 2 December 2005. Meetings are conducted in an orderly and efficient manner and generally in compliance with the Act and Regulation.

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- While the Council has improved its performance in relation to establishing and maintaining systems and policies, there remains substantial room for improvement. However, there is no evidence to suggest that Council will be unable to sustain the improvement of the last two years. Ultimately, the key to sustaining and building on the improvements of the last two years is Council's capacity to recruit and retain a general manager with the necessary knowledge, skills and experience to successfully guide that process.
  - Council's current financial position is sound.
  - The internal dynamics of the organisation are sound. Councillors have good working relationships with each other and staff. There is no evidence of factionalism within the organisation and it was apparent from their evidence that there is a sense of internal cohesion and shared purpose amongst both councillors and staff.
  - Councillors were able to demonstrate a clear understanding of their roles in their evidence.
  - There is no evidence to support the view that councillors had failed to satisfactorily manage the performance of the former General Manager.
  - Like other organisations in the area, Council faces difficulties in recruiting and retaining suitably qualified staff. This appears to have impacted on its performance and on its capacity to implement the recommendations of the first Public Inquiry.
  - All levels of the Council had a poor relationship with the Mentor and Executive Officer appointed to assist it to improve its performance. However there is no evidence to support the view that Council set out to be uncooperative with them. The evidence suggests that the relationship was not well managed. There is no evidence to suggest that Council lacks the capacity to continue to work with the Department of Local Government to improve its performance.

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While the evidence considered by this Inquiry has identified a number of areas where Council's performance remains deficient, in my opinion, there are no compelling grounds that would support a recommendation that all civic offices in the Council be declared vacant. However I have made a number of recommendations requiring action by both the Council and the Department of Local Government to assist the Council to address its deficiencies and facilitate and support ongoing improvement within the organisation.

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## INTRODUCTION

This is my report as Commissioner concerning the Public Inquiry (“the Inquiry”) held under section 740 of the *Local Government Act 1993* (“the Act”) into Brewarrina Shire Council (“the Council”) and is presented to the Minister for Local Government.

## TERMS OF REFERENCE

On 24 August 2007, the Minister for Local Government, the Hon Paul Lynch MP, appointed me as Commissioner to hold a Public Inquiry into the Council.

The Terms of Reference authorised for the Inquiry are:

*To inquire, report and provide recommendations to the Minister for Local Government as to whether all civic offices at Brewarrina Shire Council should be declared vacant.*

*The Inquiry will have particular regard to:*

1. *The adequacy of Council’s performance since the release of the Public Inquiry report into Brewarrina Shire Council dated 2 December 2005, in particular in addressing the following issues of concern identified in the report:*

- *Council’s relationship with the local community and in particular its relationship with the local indigenous community and the Community Working Party*
- *The capacity of the elected Council to effectively conduct council meetings in accordance with the requirements of the Local Government Act 1993, the Local Government (General) Regulation 2005 and Council’s code of meeting practice and*
- *The performance of Council’s administration in establishing and maintaining appropriate systems and policies to deliver efficient*

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*and effective governance of the council area and in managing Council's finances including appropriate control of expenditure and undertaking appropriate revenue raising activities.*

2. *Any other matters that warrant mention, particularly when it may impact on the effective administration of the Council area and/or the working relationships between the Council, councillors and its administration.*

*The Commissioner may make other recommendations as the Commissioner sees fit.*

## **ASSISTANCE TO THE COMMISSIONER**

Ms Cathy Collins was authorised by me to assist in the conduct of the Inquiry under the provisions of section 12 of the *Royal Commissions Act 1923*.

## **PROCEDURAL MATTERS**

### **Notice of the Inquiry**

Public notice of the Inquiry was published in the Dubbo *Daily Liberal*, the Bourke *Western Herald*, the *Sydney Morning Herald*, and the *Daily Telegraph* in early September 2007. The notice of the Inquiry was also published in the Council operated newspaper, the *Brewarrina News*, in late September 2007. The notice included the Terms of Reference. The notice invited submissions relevant to the Terms of Reference. A notice of hearings was subsequently advertised in the local newspapers.

Information related to the Inquiry was published on a dedicated website. The information included the Inquiry's Terms of Reference, a copy of the notice of hearings, a detailed information paper outlining the Inquiry's procedures and the publicly available submissions. I also wrote to Council and requested that the notice of Inquiry and notice of hearings be displayed at Council's offices, the library and other community facilities in the local government area and that copies of the information paper be made available at those sites.

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The Mayor and the then General Manager were notified in writing of the Inquiry. Letters were also issued to each of the councillors with a copy of the notice of Inquiry and information paper.

### **Requests for submissions and other evidence gathering**

Councillors were invited to make a submission relevant to the Terms of Reference of the Inquiry. A similar letter was sent to the then General Manager, Mr Sunil Prakash, inviting submissions from Council, from the General Manager on his own behalf and from Council staff. Similar letters were also sent to each of the community working parties, both community facilitators and other community groups. Submissions were also sought from relevant Federal and State agencies including the Department of Aboriginal Affairs, the Department of Premier and Cabinet, the NSW Ombudsman and the Independent Commission Against Corruption. The Inquiry also wrote to the Federal and State Members.

Submissions were required to be lodged by 12 October 2007. However, submissions received after this date containing information relevant to the Terms of Reference of the Inquiry were accepted. In total, the Inquiry received 42 written submissions, from Government agencies, community organisations and individual members of the community. These were published on the Inquiry website.

The Inquiry also wrote to Council making 71 requests for documentary evidence relating to a range of matters relevant to the Terms of Reference of the Inquiry. The Inquiry subsequently wrote to Council on several further occasions during the Inquiry making further document requests. The Inquiry also made informal requests for documents from Council.

Prior to the hearings, I undertook an inspection of a number of Council and community sites, facilities and infrastructure in Brewarrina that were referred to in submissions and other evidence received by the Inquiry. The Mayor and Council's legal representative accompanied me on those inspections.

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The Inquiry also wrote to the Department of Local Government inviting a submission and requesting access to all documents held by the Department relating to Brewarrina Shire Council. Following the hearings, the Inquiry wrote to the Department again seeking access to certain documents that were not registered in its document management system. The Inquiry also wrote to the Department requesting that it prepare an assessment of the following:

- Council's State of the Environment report
- Council's Social Plan
- Council's current financial position.

The Department's Policy Branch prepared the first two of these assessments. The Department's Finance Branch prepared the financial assessment.

The Inquiry also wrote to the Department of Aboriginal Affairs seeking documents mentioned in evidence given at the hearings. The Department of Aboriginal Affairs had not made a submission to the Inquiry.

The Inquiry has also made enquiries with other agencies. Where I have relied on this evidence, I have disclosed it in this report.

I have also made enquiries with certain individuals who for contractual and professional purposes cannot disclose information publicly. Information provided in those discussions is confidential and has not been disclosed in this report. Where I have been unable to disclose evidence, I have not relied on it. The information disclosed in these discussions was sought for the purposes of verifying certain evidence given at the hearings.

### **Legal representation**

Council, as a corporate entity, resolved to retain Mr Tony Simpson of Tony Simpson & Co to act for it. Ms Jenny Barker, the Chair of the Ngemba Community Working Party and Mr Bill Palmer, the Community Facilitator

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retained a barrister, Mr Gregory Jones, to act for them. I granted leave to both legal representatives to appear at the hearings.

After the hearings, Messrs Shaw Reynolds Bowen & Gerathy wrote to me to advise that they acted for the Mentor, Mr Vic Smith.

### **Procedure at hearings**

Hearings were held at Brewarrina Local Court over four days from 13 to 16 November 2007. The hearings were well attended by members of the community.

24 witnesses gave evidence at the hearings. These included the Department of Local Government representative, (the Executive Officer), councillors, staff, representatives of community organisations, individual members of the community and the local State Member.

A witness list was posted on the morning of the first day and a witness list for the following day was posted on the preceding afternoon. Copies of the witness list were not provided in advance to either legal representative. This is because Brewarrina is a small community and I wanted to ensure that evidence given by members of the community was spontaneous.

Evidence was given under oath or affirmation. Evidence had to be relevant to the Terms of Reference of the Inquiry. I retained discretion to refuse evidence that was not relevant.

During the hearings, I asked questions of witnesses in relation to matters relevant to the Terms of Reference. Cross-examination of witnesses was permitted only by my leave. Cross-examination was only permitted where I was satisfied that it was necessary to assist me to better understand issues or where I was satisfied that natural justice could not be achieved otherwise. I granted leave to the two legal representatives present to cross-examine witnesses.

I indicated in my opening speech that I would not allow cross-examination to be used for the purpose of rebutting evidence or putting a counter-argument. As

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will be discussed below, there were other means offered and available to affected parties for doing this.

I decided that the hearings ought to be conducted without undue formality to ensure that witnesses were able to give evidence freely in an environment that they felt comfortable in and that was culturally appropriate.

The rules of evidence did not apply to the hearings. Importantly, given the absence of a number of key witnesses discussed below, this meant that hearsay evidence was admissible for the purposes of the hearing. However issues of hearsay may be relevant in determining the weight of evidence.

### **Relevance**

Three submissions received questioned the relevance of certain evidence given at the hearings. One submission received raised questions about the relevance of evidence given by members of the community. To assist the Inquiry to address the first of the Terms of Reference, it was necessary to hear evidence that shed light on the broader community context in which the issues between the Council and the Ngemba Community Working Party have arisen and to gauge community attitudes towards both organisations. Given the first of the Terms of Reference, it was appropriate that members of the community, in whose interests this Inquiry has been held, were permitted to express their views on matters relevant to the Terms of Reference.

Another view put in these submissions was that any evidence given at the hearings that related to the conduct of persons other than Council was, by definition, irrelevant to the Terms of Reference of this Inquiry. In my view, where evidence given at the hearings shed light on matters relevant to the Terms of Reference of this Inquiry, it will be relevant to those Terms of Reference irrespective of whether it relates specifically to the conduct of Council or not.

### **The power of this Inquiry to make findings**

Section 740(1) of the Act empowers me to inquire and report on the following:

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- any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council, and
  - any act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.

On my reading of section 740 and relevant case law, (in particular, *Brinsmead v Commissioner Tweed Shire Council Public Inquiry* [2007] NSWSC 246 (22 March 2007), *Balog v ICAC* [1990] HCA 28; (1990) 169 CLR 625 and *Penrith Rugby League Club v Brown* [2004] NSWSC 932; (2004) 63 NSWLR 13), it is beyond my power to make findings with respect to matters or conduct that fall outside the terms of section 740(1). However, as I have indicated above, on my reading of the relevant case law, this does not preclude me from considering evidence relating to the conduct of persons other than the Council, councillors or Council staff that sheds light on matters relevant to the Terms of Reference of this Inquiry, or from addressing and making findings of fact with respect to such evidence in my report.

Where, evidence considered by this Inquiry has raised questions in relation to matters or conduct falling outside the terms of section 740(1) and/or the Terms of Reference of this Inquiry that, in my opinion, warrant further consideration, I have referred those matters or conduct to the relevant person or authority for their consideration and any appropriate follow up action.

### **Attendance of witnesses**

Prior to the hearings, the Inquiry wrote to a number of persons requesting that they appear to give evidence at the hearings.

A number of people were unable to give evidence at the hearings.

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Sadly, shortly after the announcement of the Public Inquiry, the late Mayor passed away.

A few weeks later, Council's then General Manager, Mr Sunil Prakash resigned. Mr Prakash was requested to attend the hearings. During the course of the hearings, it became apparent that Mr Prakash had failed to attend. Mr Prakash has also not provided any written submissions to the Inquiry.

I also wrote to Council requesting the attendance of a number of staff. The then acting General Manager, Mr John Keenan, subsequently contacted me to advise that two staff members would be unable to attend as they would be away during the week in which the hearings were held. These were the Human Resources Officer, Ms Lisa Marshall and the Manager Tourism and Economic Development, Ms Fran Carter. However, both Ms Marshall and Ms Carter have provided written submissions to the Public Inquiry instead which have been posted on the Public Inquiry website.

The Inquiry also wrote to all the currently serving councillors and requested their attendance at the hearings. I excused one councillor, Cllr Wayne Neale, from attending because his attendance at the hearings would have caused undue hardship to him.

The Inquiry also wrote to former councillor Stan Kirby requesting a written submission and later that he appear to give evidence. The Inquiry did not receive a written submission nor heard from Mr Kirby. Nor did he appear at the hearings to give evidence.

The Inquiry also wrote to various community organisations and individual members of the community who had made written submissions to invite them to speak to their submissions.

The Inquiry also wrote to the Mentor, Mr Vic Smith requesting that he provide a written submission to the Inquiry and to appear at the hearings to give evidence in support of his submission. Mr Smith subsequently wrote to me seeking to be excused from attending the hearing on personal grounds and provided a written

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submission instead. I excused him from attending on the grounds identified in his letter.

### **Procedural fairness**

Towards the end of the hearings, I gave witnesses the opportunity to make oral submissions to respond to or rebut evidence given earlier in the hearings. A number of witnesses took this opportunity.

Mr Jones, Mr Palmer's and Ms Barker's legal representative, made a formal submission requesting that I hold further hearings to allow the Executive Officer and Mentor the opportunity to give evidence in response to and rebuttal of the evidence that had been given against them. In responding to that submission I made the following observations:

- Mr Smith had been invited to appear to give evidence and had requested to be excused from attending.
- Ms Medcalf had appeared on the first day of the hearing but had since left town.
- Had both been in attendance they would have been given the same opportunity to respond to or rebut evidence that had been provided to everyone else.
- In my opinion the requirements of procedural fairness would be met if Mr Smith and Ms Medcalf were provided with a copy of the transcript of the hearings and given an opportunity to respond in writing.

In my closing speech I indicated that it was my intention to provide a copy of the transcript of the hearings to the Council and to any other persons whose rights or interests may be affected by the Inquiry and provide them with an opportunity to make a written submission in response to the evidence given at the hearings. I subsequently provided copies of the transcript to the following parties and invited them to make a written submission:

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- Council (with a request that copies be provided to each councillor) and its legal representative
  - Mr Sunil Prakash
  - The Department of Local Government
  - Ms Carole Medcalf, (the Executive Officer)
  - Mr Vic Smith, (the Mentor)
  - Ms Jenny Barker and her legal representative
  - Mr Bill Palmer and his legal representative

Recipients of the transcript were advised that it was to be treated as confidential. This is because the transcript was prepared solely for the purpose of assisting me to prepare my report and I wished to minimise any risk of undue prejudice that may be caused by publication of the transcript.

Due to delays in receiving the transcript, it was not issued to affected parties until 11 December 2007. In order to accommodate the Christmas/New Year period, affected parties were given until 18 January 2008 to provide their written submissions. All parties subsequently sought further extensions which were granted.

Submissions were received from all affected parties except Mr Prakash by 8 February 2008. These were posted on the Public Inquiry website.

In addition to inviting Council to prepare a submission in response to evidence heard at the hearings, I also invited the acting General Manager, Mr Glenn Schuil to make a submission based on his assessment of the situation he found at Council and evidence heard at the hearings and identify what steps he proposed to take to address any deficiencies.

As part of the Inquiry process, on 31 March 2008, I issued a draft analysis of evidence to affected parties and invited them to make submissions in relation to

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it prior to my finalising this report. A copy of the draft analysis of evidence was made available to Council and each of the councillors, and any other parties whose rights or interests I considered may be directly affected by the outcome of the Inquiry and their legal representatives. Copies were sent to all parties who were invited to make rebuttal submissions in relation to the transcript of the hearings. While Council and its legal representative, Mr Sunil Prakash and the Department of Local Government received full copies of the draft analysis of evidence, other parties were only provided with those portions that addressed evidence that was potentially adverse to them.

I received submissions from all parties other than Mr Prakash and the Department of Local Government. I have considered those submissions in preparing this final report.

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## FINDINGS

As Commissioner, I was appointed to inquire, report and provide recommendations to the Minister for Local Government as to whether all civic offices at Brewarrina Shire Council should be declared vacant. In doing so I was required to have regard to two specific Terms of Reference. This section of the report details my findings in relation to each specific Term of Reference and my recommendations to the Minister.

### TERM OF REFERENCE 1

*The adequacy of Council's performance since the release of the Public Inquiry report into Brewarrina Shire Council dated 2 December 2005, in particular in addressing the following issues of concern identified in the report:*

- Council's relationship with the local community and in particular its relationship with the local indigenous community and the Community Working Party*
- The capacity of the elected Council to effectively conduct council meetings in accordance with the requirements of the Local Government Act 1993, the Local Government (General) Regulation 2005 and Council's code of meeting practice and*
- The performance of Council's administration in establishing and maintaining appropriate systems and policies to deliver efficient and effective governance of the council area and in managing Council's finances including appropriate control of expenditure and undertaking appropriate revenue raising activities.*

In relation to Council's relationship with the local community and in particular its relationship with the local indigenous community and the Ngemba Community Working Party, I have made the following findings:

- 
- Council appears to enjoy a good relationship with the local community including the local Aboriginal community.
  - Council appears to enjoy a good relationship with key community stakeholders such as the Goodooga Community Working Party and the Goodooga/Lightning Ridge Community Facilitator and other community groups. The Weilmoringle Community Working Party was invited to make a submission and has raised no issues with the Public Inquiry.
  - Council continues to have a poor relationship with the Ngemba Community Working Party. However, this is not necessarily indicative of its relationship with the Brewarrina Aboriginal community, which, as stated above, appears to be a good relationship.
  - Certain actions of the Council may have contributed to its poor relationship with the Ngemba Community Working Party. However, the underlying cause of the difficulties in the relationship between the two organisations lie with the apparent inability of the Ngemba Community Working Party and the former Brewarrina/Weilmoringle Community Facilitator to acknowledge Council's role and the resource limitations it operates under and an apparent reluctance to constructively engage with it.

In relation to the capacity of the elected Council to effectively conduct Council meetings in accordance with the requirements of the Local Government Act 1993, the Local Government (General) Regulation 2005 and Council's Code of Meeting Practice, I have made the following findings:

- There has been a steady improvement in the manner in which Council meetings have been conducted since 2 December 2005. Meetings are conducted in an orderly and efficient manner and generally in compliance with the Act and Regulation.

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- While the meetings attended by the Mentor and Executive Officer were chaotic and disorderly, this cannot be attributed to the conduct of any councillor.
  - There are a number of ongoing concerns in relation to the conduct of meetings. These include the failure to give public notice of meetings in accordance with the requirements of Council's Code of Meeting Practice and the failure to fully comply with the Act in closing meetings to members of the public.
  - The attendance of some councillors at meetings has been poor due to ill health. However, the councillors concerned have indicated that they are unlikely to stand for re-election at the next local government elections and it is unlikely that this issue will impact on Council beyond that point.

In relation to the performance of Council's administration in establishing and maintaining appropriate systems and policies to deliver efficient and effective governance of the Council area and in managing Council's finances including appropriate control of expenditure and undertaking appropriate revenue raising activities, I have made the following findings:

- Council has improved its performance in relation to establishing and maintaining systems and policies since 2 December 2005. However there remains substantial room for improvement. In particular:
  - There remain a number of areas of minor statutory non-compliance in relation to Council's Management Plan, Social Plan and State of the Environment Reports.
  - Council lacks a number of 'best practice' components to its planning and reporting framework including an overarching strategic plan, an asset management system and a long term financial plan.

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- Council has, until recently, failed to prepare quarterly Management Plan reviews as required under the Act. Not only does this constitute a breach of statutory requirements but also a significant failure in the governance of the organisation.
  - While Council now has a reasonably comprehensive governance and policy framework, there remain a number of gaps.
  - Notwithstanding this, there is no evidence to suggest that Council will be unable to sustain the improvement of the last two years. There is also no evidence to suggest that the governing body has been an impediment to that improvement.
  - Ultimately, the key to sustaining and building on the improvements of the last two years is Council's capacity to recruit and retain a general manager with the necessary knowledge, skills and experience to successfully guide that process.
  - Council's current financial position is sound. However, it confronts the following challenges:
    - While Council has been diligent in seeking to recover outstanding rates and charges, the percentage of rates and charges outstanding remains high due to the impact of the drought, demographic decline and economic stagnation.
    - Council is highly dependent on grant funding. It has sought to improve its performance in securing and managing grants by creating a grants officer position. However, to date, it has been unable to fill that position.

## **TERM OF REFERENCE 2**

*Any other matters that warrant mention, particularly when it may impact on the effective administration of the Council area and/or the working relationships between the Council, councillors and its administration.*

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In relation to Term of Reference 2, I have made the following findings:

- The internal dynamics of the organisation are sound. Councillors have good working relationships with each other and staff. There is no evidence of factionalism within the organisation and it was apparent from their evidence that there is a sense of internal cohesion and shared purpose amongst both councillors and staff.
- Councillors were able to demonstrate a clear understanding of their roles in their evidence.
- There is no evidence to support the view that councillors had failed to satisfactorily manage the performance of the former General Manager.
- Like other organisations in the area, Council faces difficulties in recruiting and retaining suitably qualified staff. This appears to have impacted on its performance and on its capacity to implement the recommendations of the first Public Inquiry.
- All levels of Council had a poor relationship with the Mentor and Executive Officer appointed to assist it to improve its performance. However there is no evidence to support the view that Council set out to be uncooperative with them. The evidence suggests that the relationship was not well managed. There is no evidence to suggest that Council lacks the capacity to continue to work with the Department of Local Government to improve its performance.

## **RECOMMENDATIONS**

While, the evidence considered by this Inquiry has identified a number of areas where Council's performance remains deficient, in my opinion, there are no compelling grounds that would support a recommendation that all civic offices in relation to the Council be declared vacant.

The evidence considered by this Public Inquiry suggests that the fundamentals of the organisation are sound. In particular I have had regard to the following:

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- Councillors have a good understanding of their role.
  - Councillors enjoy good relationships with each other and staff and all levels of Council work well together and share a sense of common purpose.
  - Council meetings are conducted in an orderly and efficient manner and generally in compliance with statutory requirements.
  - Council appears to have a good relationship with the community, including the Aboriginal community, and appears to enjoy its support.
  - Council's financial position is sound.

Council has made significant progress in improving its performance in the period since the first Public Inquiry and there is no evidence to suggest that that improvement cannot be sustained. As stated above, there is no evidence to suggest that the governing body has been an impediment to that improvement. Nor is there any evidence to suggest that Council lacks the capacity to continue to work with the Department of Local Government to improve its performance.

Accordingly, I recommend that all civic offices in relation to Brewarrina Shire Council not be declared vacant.

As I have indicated in my findings, there remains room for improvement in Council's performance. I have identified a number of deficiencies in Council's performance in the body of this report. Also, Council has indicated that it intends to complete the Department's Promoting Better Practice Checklist to identify other areas where it needs to improve.

In order to facilitate and support this improvement I make the following recommendations to be implemented by the Council:

1. That Council implement any outstanding recommendations of the first Public Inquiry.

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2. That within 28 days of receiving this report, Council submit the following to the Department of Local Government:
    - a. A completed Promoting Better Practice Review checklist, and
    - b. An action plan identifying the following:
      - i. the steps it intends to take to address any gaps or deficiencies identified in the checklist and this report and the outstanding recommendations of the first Public Inquiry, and
      - ii. timeframes for their implementation.
  3. That within six months of submitting the completed checklist and action plan, Council submit a progress report on the implementation of its action plan to the Department of Local Government.

I make the following recommendations to be implemented by the Department of Local Government:

4. That the Department appoint a liaison person to provide guidance and assistance to the Council in the implementation of its action plan.
5. That within 12 months of receiving the Council's completed checklist and action plan, the Department conduct a further Promoting Better Practice Review of the Council to verify the implementation of the action plan and to identify any other ongoing deficiencies.

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## **ANALYSIS**

This section of the report provides the analysis on which my findings are based.

## **CONTEXT**

### **The Brewarrina LGA**

The Brewarrina local government area (LGA) is located in northwestern New South Wales. It covers an area of 19,188 square kilometres. It runs to the Queensland border in the north and is bordered by Walgett and Warren Shire Councils in the east, Bogan Shire Council in the south and Bourke Shire Council in the west.

The Brewarrina township is the largest population centre in the LGA. Other population centres in the LGA include the villages of Goodooga, Weilmoringle, Angledool and Gongolgon.

There has been a decline in population in the LGA over the last ten years. As of the 2006 census, the population of the Brewarrina LGA was 1,944 persons. This compares to 2193 persons in 1996 and 2056 in 2001.

A significant percentage of the population is Aboriginal or Torres Strait Islander. According to the 2006 census, 59.5% of the population was Aboriginal or Torres Strait Islander. This compares to the national average of 2.3%. This percentage has increased since 2001, when 53.5% of the population was Aboriginal or Torres Strait Islander.

The population is young compared to the national average. 9.4% were 0-4 years (compared to the national average of 6.3%), 17.6% 5-14 years (compared to 13.5%), 15.3% 15-24 years (compared to 13.6%), 39.8% 25-54 years (compared to 42.2%) 8.7% 55-64 years (compared 11.0 %) and 9.1% 65 years or over (compared to 13.3%).

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The local economy is principally sustained by agricultural industries, namely, wool and livestock, and to a lesser extent cotton and wheat growing. These industries have been hit hard by drought in recent years.

According to the 2006 census, 21.8% of the labour force was employed in agricultural industries. 11.1 % of the labour force is employed in school education. Local Government is a significant employer. 9.2% of the labour force is employed in local government. 5% is employed in hospitals and 4% in adult community and other education.

25.8% of the workforce is employed as managers, 17.3% as labourers, 14.5% as professionals, 13.4% as community and personal service workers, 8.4% as technicians and trades workers, 7.5% as clerical and administrative workers, 5.8% as machinery operators and drivers and 2.6% as sales workers.

The LGA has a high unemployment rate. The unemployment rate in 2006 was 12.2% compared to the then national rate of 5.2%.

The LGA is comparatively disadvantaged in socio-economic terms. Median individual income is \$316 per week compared to the national median individual income of \$466 per week. Median household income is \$713 per week compared to \$1,027 nationally. Median family income is \$760 per week compared to \$1,171 nationally.

### **The Council**

The elected body of Brewarrina Shire Council currently comprises of 12 councillors. However, with the passing of the late Mayor and the resignation of Cllr Stan Kirby, there are currently only ten serving councillors. Council has sought a reduction of councillor numbers and, as of the next local government election, will have 9 councillors.

The current Mayor is Cllr Matthew Slack-Smith. The current Deputy Mayor is Cllr Wulf Reichler. Both were elected to their positions on 21 September 2007.

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Of the 12 councillors who held office prior to the resignation of Clr Kirby and the passing of the late Mayor, five were Aboriginal. These included, the late Mayor, Clr Stephen Gordon, Clr Ron Mason, Clr Stan Kirby and Clr Mark Brown.

Council employs 60 staff. 40.9% of staff are Aboriginal.

The current acting General Manager is Mr Glenn Schuil. Mr Schuil is substantively employed at Penrith City Council. Mr Schuil was appointed on the advice of the Department of Local Government and the Local Government and Shires Associations to act in the position while Council recruited a new General Manager. Mr Schuil commenced his role in late November 2007. Council has since recruited a new General Manager. The new General Manager is Ms Glenda Tasker. She will commence her duties with the Council on 19 May 2008.

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## HISTORICAL BACKGROUND

### The Promoting Better Practice Review

The Department of Local Government first identified concerns about the performance of Brewarrina Shire Council when it undertook a review of the Council in early June 2005 as part of its Promoting Better Practice Review Program. The review team found a number of deficiencies in the manner in which Council exercised its functions. These included the following:

- Failure to implement the Model Code of Conduct
- The incorrect application of the provisions of the *Local Government Act 1993* (the Act) relating to the closure of Council meetings
- Failure by councillors to understand their roles and responsibilities
- The absence of any long term planning
- Lack of confidence in the then General Manager
- Poor staff morale and difficulties in attracting and retaining staff
- Inefficient practices in attracting and managing grant funding
- Incorrect procedures applied to certain matters
- A poor relationship and lack of consultation with the Aboriginal community and in particular the Ngemba Community Working Party
- Non-compliant pecuniary interest returns
- Failure to redetermine the organisational structure in breach of the Act
- A deficient governance framework
- An apparent failure to classify Council land and the absence of plans of management for community land as required under the Act

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- The poor condition of Council assets.

### **The First Public Inquiry**

As a result of the concerns identified by the review team, on 22 June 2005, the then Minister for Local Government, the Hon. Tony Kelly MLC appointed Mr Ross Woodward, the Deputy Director General of the Department of Local Government, to hold a Public Inquiry into the Council under section 740 of the Act.

The Terms of Reference of that Public Inquiry (“the first Public Inquiry”) were as follows:

*“To inquire, report and provide recommendations to the Minister for Local Government on the efficiency and effectiveness of the governance of Brewarrina Shire Council.*

*The Inquiry will have particular regard to:*

- 1. Whether the elected representatives fully understand their role and responsibilities and have adequately, appropriately and reasonably carried out their responsibilities in the best interests of all ratepayers and residents.*
- 2. Whether the practices and procedures adopted by the Council in the conduct of its meetings comply with the Local Government Act 1993, the Local Government (Meetings) Regulation 1999 and the Council’s adopted Code of Meeting Practice, and whether the Council’s adopted Code of Meeting Practice itself complies with the Act and Regulation.*
- 3. Whether the Council’s other policies and codes in relation to its governance adopted under the Local Government Act and Regulations comply with the Local Government Act and Regulations.*

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4. *The appropriateness of the procedures and processes adopted by Council in relation to its environmental planning responsibilities, including their application to the Council's own projects.*
  5. *The appropriateness and efficacy of the relationship between elected representatives and Council staff, and between council, the community and other Commonwealth and State Government agencies providing funding or services in the council area.*
  6. *Whether there has been adequate annual or longer term planning for the provision of services by Council within its local government area.*
  7. *Whether the elected representatives are in a position to adequately direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil the Charter, provisions and intent of the Local Government Act and otherwise fulfil its statutory functions.*
  8. *Whether the Council has exercised prudent financial management and control; and*
  9. *Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the working relationships between the council, councillors and its administration.*

*The Commissioner may make other recommendations as he sees fit, including whether all civic offices in relation to the Council should be declared vacant.”*

The Commissioner's report was issued on 2 December 2005. Amongst other things, the Commissioner made the following findings:

- That some councillors appeared not to have a clear understanding of their role and responsibilities and were unable to distinguish between policy making and operational matters.
- That councillors appeared to lack a strategic vision for the Shire.

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- That Council meetings were not being conducted in accordance with the Act.
  - That Council had failed to implement the Model Code of Conduct within a reasonable period of time.
  - That Council had failed to comply with its statutory obligations in its management of community land as evidenced by the fact that some of that land had been leased without community consultation and that Council had failed to adopt plans of management for that land.
  - That the relationship between some councillors and the then General Manager was strained.
  - That the relationship between Council and the community had broken down as evidenced by the poor relationship between Council and the Ngemba Community Working Party.
  - That Council had poorly managed grant funding.
  - That Council's social plan was incomplete and failed to comply with the Department of Local Government's guidelines.
  - That Council had set aside insufficient funds to bring its assets up to a satisfactory standard.
  - That Council had an unsatisfactorily high level of outstanding rates and charges, insufficient working capital, an operating deficit before capital items with no provision to cut costs, a low level of reserves for infrastructure replacement and had overpaid accounts.
  - That a staff member was undertaking secondary employment without authorisation.
  - That a councillor who was a contractor had failed to deal with conflicts of interests in satisfactory manner.

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- That councillors had failed to manage the performance of the then General Manager in a satisfactory manner.

The Commissioner did not recommend that the Minister immediately declare all civic offices in the Council vacant. However, he made 94 separate recommendations of which 89 applied to the Council. The Commissioner recommended that unless the Council was able to implement all of the recommendations, the Minister declare all civic offices in relation to the Council vacant. The Commissioner further recommended that:

- 1. Council immediately work to implement all the relevant recommendations in this report;*
- 2. Council implement all the relevant recommendations in this report by 31 May 2006;*
- 3. Council be required to provide the Department of Local Government with a monthly status report on the progress of implementing the recommendations;*
- 4. A representative from the Department of Local Government undertake an onsite review of the council's progress shortly before 31 May 2006;*
- 5. The Department of Local Government consult with the Aboriginal Community Working Parties, particularly the Ngemba Community Working Party, and the River Towns Project Community Facilitator on the relationship between the council and the community; and*
- 6. The Minister retain the ability to declare all civic offices in relation to the council at any time until 31 July 2006.*

### **Monitoring the implementation of the recommendations arising from the first Public Inquiry**

On 12 December 2006, the late Mayor wrote to the then Minister for Local Government, the Hon. Kerry Hickey MP requesting that he nominate a

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departmental officer as a liaison person to assist in the implementation of the first Public Inquiry's recommendations.

On 30 January 2006, the Director General of the Department of Local Government, Mr Garry Payne, replied advising that he had appointed Mr Richard Murphy of the Department's Investigations and Review Branch as a liaison officer. He provided an action plan relating to the implementation of the recommendations and requested that it be completed by 17 February 2006. He requested that Council provide a report to the Department using the action plan template and supporting documentation on a monthly basis.

The Department's files indicate that Council subsequently submitted completed action plans on a monthly basis as required up to August 2006.

On 1 February 2006, the late Mayor wrote to the Director General advising that Council's then General Manager, Mr Jack Garside had resigned as of 9 January 2006. The late Mayor advised that he had called an extraordinary meeting of Council for that day where it resolved to appoint the acting Director Technical Services, Mr Sunil Prakash as acting General Manager.

On 15 February, the Department of Local Government wrote to each of the community working parties and the Community Facilitator seeking feedback on their relationship with the Council as recommended by the first Public Inquiry. As far as I can ascertain, none responded.

On 7 April 2006, the then Minister for Local Government, the Hon. Kerry Hickey MP, wrote to Council advising that on the advice of the Department of Local Government, he had extended the deadline for the Council to implement all the recommendations of the first Public Inquiry from 31 May 2006 to 31 July 2006. He further advised that if he were not satisfied with Council's performance at any time prior to 30 September 2006, he would consider the recommendation to declare all civic offices in Council vacant.

During the period to 31 May 2006, the departmental liaison officer visited Council on three occasions, on 13 March 2006 and again on 23 May and 26

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May 2006. In early June 2006, he prepared a submission for the Director General which provided a general overview of Council's performance subsequent to the first Public Inquiry and discussed possible options. In the submission, the departmental officer expressed the following concerns about Council's progress:

*The council has not developed detailed action plans to address certain recommendations, as it was advised to do. The council now finds itself in a situation where it has not commenced implementing some recommendations. Other recommendations have not been addressed properly and as a consequence, the council may not be able to demonstrate full implementation of the Inquiry's recommendations by 31 July 2006.*

*The May progress report shows that many of the straightforward recommendations have been addressed. However, you will note from my annotations that I have concerns about the level of progress in relation to several recommendations. There are also evidentiary thresholds to be met by the council, in relation to those recommendations it claims have been addressed or that are considered by it to be no longer relevant.*

From 25 to 28 July 2006, two departmental officers, Mr Murphy and Mr Paul Terrett visited Council to review its progress prior to the 31 July deadline for compliance. The officers met with the former General Manager, the late Mayor, some councillors, the Brewarrina/Weilmoringle Community Facilitator, and the chairpersons of the Ngemba and Goodooga Community Working Parties and the Regional Manager of the Department of Aboriginal Affairs.

The Department subsequently wrote to Council on 11 August 2006 providing a copy of its assessment of the Council's implementation of the first Public Inquiry's recommendations prepared for the Minister's consideration. That assessment indicated that Council had not complied with 54 of the recommendations. Council and individual councillors were given 21 days to make submissions to the Minister in response to the Department's assessment.

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On 25 August 2006, Council wrote to the Minister disputing the assessment and provided a response to each of those areas the Department had determined it had failed to comply with a recommendation.

In his submission to the Minister in response to the Council's response, the departmental liaison officer, Mr Murphy, made the following observations:

*I have reviewed the council's comments on the department's assessment. Having done so, I remain of the view that the assessment is an accurate description of the council's performance in implementing the recommendations as at 31 July 2006.*

*While the council comments that the assessment on some of the recommendations was "nitpicking and hypercritical", it significantly does not generally dispute the accuracy of the findings in relation to those recommendations in its letter to the Minister. It could be argued it believes that the benchmarks implicit in the department's assessment are too high.*

*While the Minister should give due consideration to the comments made by council, it is clear that there remain a number of significant issues that council must address if it is to meet the reasonable expectations of the Government and the community generally. That said, the council has and is continuing to make progress.*

*Issues that still need on-going attention are numerous and include councillor training, public land management, state of environment reporting, management of its assets and infrastructure, financial management, the filling of vacant positions, community relationships, management planning, completion of a new social and community plan and records management.*

.....

*Council claims it has progressed the implementation of a number of the recommendations "as fast as possible". However, the evidence of council's progress (or lack there of as at 31 July 2006) suggests that this is not the case.*

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In its submission, the Department outlined a number of options. These included the following:

- Appointment of an Administrator
- Retention of the Council and appointment of an executive officer or mentor
- Retention of the Council and close monitoring of the council's performance
- Take no action

On 19 September 2006, the then Minister, the Hon. Kerry Hickey MP, wrote to Council to advise it of his consideration of the Department's and Council's submissions. He said that while he noted Council had implemented some recommendations and was working towards the implementation of others, there were a number of areas council needed to address if it were to meet the reasonable expectations of the Government and the community. However he was not satisfied that all civic offices in the Council should be declared vacant. He said that Council must have due regard to ongoing advice and direction from the Department and that he expected the Council to continue to report on its progress in implementing the recommendations to the Department on at least a quarterly basis. He advised that he had asked the Department to continue to monitor Council's performance.

On 26 September 2006, the late Mayor and the former General Manager, Mr Sunil Prakash, met with the Minister. None of the participants in that meeting were available to give evidence about what was discussed at that meeting. However, in his evidence, Clr Slack-Smith gave evidence that the late Mayor told him that the Minister was very angry. He said the Minister raised concerns contained in a briefing from the Department of Aboriginal Affairs.

I have obtained a copy of the briefing in question from the Department of Aboriginal and reviewed its contents. That Department has advised that as the

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material contained in the briefing is Ministerial advice and prepared in confidence that it not be publicly disclosed. It is my intention to respect that request and not disclose the contents of the briefing. However issues discussed in the briefing that are relevant to the Terms of Reference may be addressed in this report.

On 29 September 2006, the then Minister wrote to Council informing it that he intended to provide it with a further 6 weeks from 1 October 2006 in which to demonstrate that it was making reasonable progress in implementing the recommendations of the first Public Inquiry. He advised that he had asked the Department of Local Government to make a further assessment of Council's progress after this period. He indicated that he reserved the right to recommend to the Governor that all civic offices at the Council be declared vacant.

Two departmental officers, Mr Paul Terrett and Mr Wayne Trudgen, visited Brewarrina from 13 to 15 November 2006. They met with the former General Manager, the late Mayor, the Brewarrina/Weilmoringle Community Facilitator, the chairpersons of the Ngemba and Goodooga Community Working Parties, representatives from non-Aboriginal groups and the Regional Manager and Director General of the Department of Aboriginal Affairs.

The Department subsequently prepared an assessment of Council's performance in implementing the recommendations. The Department found that implementation of 30 recommendations was yet to be completed.

On 21 November 2006, the Department wrote to the Council providing a copy of its assessment and invited it and each Councillor to make a submission responding to the Department's assessment to the Minister by 8 December 2006.

On 1 December 2006, Council wrote to the then Minister addressing each of the outstanding recommendations. It indicated that it believed it had implemented 8 of the 30 recommendations the Department had identified as incomplete. In relation to the remainder it advised of action taken to progress implementation.

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In its assessment of the Council's response, the Department disputed its claim to have completed 8 of the 30 outstanding recommendations. However based on its assessment of the Council's response it revised its assessment of the total of outstanding recommendations to 28.

In its assessment of the Council's response, the Department noted the following:

*Council claims it has progressed the implementation of a number of the recommendations "as fast as possible". However, the evidence of council's progress suggests that this is not the case. This lack of progress in part reflects poor understanding of the significance of each of the recommendations. Further, council have not put to the Department a revised timetable to address the recommendations.*

The Department also observed:

*While there are fewer recommendations incomplete, many are of great significance to the operations and governance of council.*

*Issues that still need on-going attention include councillor training, state of environment reporting, management of its assets and infrastructure, financial management, the filling of vacant positions, community relationships, management planning, completion of a new social and community plan and records management.*

In a further submission to the then Minister, the Department identified further concerns not previously identified in the Public Inquiry. These included the following:

- Costs associated with the Brewarrina levee bank litigation
- Fresh issues relating to Council's relationship with the Ngemba Community Working party
- Lack of fraud control

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- Lack of asset management planning
  - Lack of senior staff
  - Ongoing issues relating to failure to submit grant funding applications

In its submission to the then Minister, the Department outlined the same options previously given to the Minister for further action to address Council's ongoing failure to implement the recommendations of the first Public Inquiry.

In a further submission attached to the above two submissions, the Director General, Mr Garry Payne offered his thoughts on the options available to the Minister:

*At this stage I am not prepared to support dismissal. I would prefer to see if Council can be guided or mentored through its problems.*

*This could be approached from two aspects.*

*Mr Vic Smith is the administrator at Walgett. Mr Smith is part time and therefore available to advise and coach Brewarrina Councillors and the administration on local government practices and procedures. From the other side, I could make a departmental officer available for say two weeks each month for six months to fix the administrative problems.*

### **The appointment of the Executive Officer and the Mentor**

On 23 February 2007, The Director General appointed Carole Medcalf, a Senior Investigations Officer with the Department's Investigations and Review Branch, as Executive Officer.

In a memorandum dated 23 February 2007, the then Manager of the Investigations and Review Branch advised Ms Medcalf that the terms of her appointment were to be as follows.

1. *The Department of Local Government has agreed to provide an officer to act as an Executive Officer to the council to provide*

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*direction, support and guidance in ensuring that council administration is able to more effectively address the recommendations in the Public Inquiry.*

2. *The role will be for a period of 6 months. The Executive Officer is expected to spend an initial period of two weeks at council and will thereafter spend one week per month at council, as well as spending a further week per month working with council from the department's offices in Nowra.*
3. *The salary and subsistence allowance costs of the Executive Officer will be met by the Department, but Brewarrina Shire Council will meet the costs of travel (including car hire, airfares and sundry travel expenses).*
4. *Council has been told it must demonstrate support for and compliance with the directions and advice given by the officer, and the council mentor (Mr Vic Smith). Council has been told failure to do so will result in a further review of council's situation and further action.*

The Executive Officer commenced her appointment at Council, visiting Brewarrina for an initial two-week period in March 2007 and continuing to visit each month until July 2007.

On 19 April 2007, Mr Vic Smith was appointed as Mentor to Brewarrina Shire Council by the Minister for Local Government, the Honourable Paul Lynch MP.

On 1 May 2007, the Director General wrote to Mr Smith to advise him of his role. That role was described in the following terms:

*To assist [Council], it was agreed that the department would provide administrative/management support on a part time basis and that the Council's elected representatives would receive advice and direction from an experienced local government practitioner.*

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From his appointment, the Mentor visited Brewarrina monthly, attending the April, May, June and July 2007 Council meetings.

While the late Mayor was informally advised of the arrangement, it would appear there was a delay in formally notifying Council of the arrangement. It would appear that this was because the caretaker period that preceded the NSW State election had prevented the Minister from formally appointing Mr Smith until 19 April 2007. On 4 April, the Executive Officer sent the following email to the Director General:

*Just to remind you that the GM and individual councillors have raised several times the lack of official notification of Vic Smith's appointment as Mentor and mine as Executive Officer. (Mind you it hasn't stopped them accepting the services provided or directions given). Can I suggest that a letter notifying them of both be sent as soon as possible. Vic and I are both intending to be back there the week of the 16 April so if it could go before then that would be great.*

On 15 May 2007, the Director General wrote to Council to formally notify it of the appointments of the Executive Officer and Mentor. In that letter, the Department described their roles in the following terms:

*You will recall that in order to assist the council, the Department arranged for one of its officers to provide managerial and administrative assistance on a part time basis for up to six months. That officer is Carole Medcalf and she has already commenced.*

*In addition, the current Administrator at Walgett, Mr Vic Smith has been engaged to provide advice and assistance to the Council, particularly the elected representatives. Mr Smith has had substantial experience as a councillor and Mayor and is well placed to provide Council with the support and advice the department believes is necessary.*

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*Both Mr Smith and Ms Medcalf will report to me on a regular basis and I will ask for their recommendations in terms of future action at the end of their six month assignment.*

*I need to stress that the Council's performance needs to improve markedly in that period.*

*As you would appreciate, the Council needs to provide civic leadership and represent all interests in the community. Internally, the administration of council's financial, human resource and operational functions needs to show a maintained improvement.*

*I hope that [these] arrangements are sufficient to ensure Council is able to meet its statutory, community and social obligations in a timely and efficient manner. Accordingly, I would expect councillors and senior staff to provide all the necessary assistance to Mr Smith and Ms Medcalf and that their advice is properly considered.*

In her quarterly report prepared in June 2007, the Executive Officer identified the following concerns about Council's performance:

*...the General Manager has failed to respond to requests for information or to complete tasks, appears to provide little or no leadership, has displayed an uncertain grasp of some areas of council's operations and is not progressing satisfactorily the implementation of the Public Inquiry recommendations for which he has direct, as opposed to overall, responsibility. As at the end of June 2007, action to implement 26 recommendations is incomplete, and in the case of 10 of these recommendations, this situation gives rise to significant concern. In relation to 2 recommendations where implementation is complete, there are concerning indications of ongoing problems with compliance.*

*The General Manager is charged with the financial management of council but appears unwilling or unable to make financial decisions that seek to increase revenue and/or decrease expenditure. Council also appears willing to allow him to manage its finances in this manner.*

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*In addition, there is clear evidence that neither the General Manager nor councillors as a group, have undertaken the significant work required to improve and build the relationship with the Ngemba Working Party and other members of the community and it is the belief of the Mentor and myself that they are unwilling to do so. The evidence indicates the General Manager and Council have gone out of their way to maintain the rift between the Working Party and themselves.*

*Council and its General Manager appear to be lacking in their ability to satisfactorily manage their relationships with the Community Working Party. The complaints they raise are in the main those caused by the actions of the General Manager.*

*Finally, events have overtaken this report but it would be remiss not to make comment on the ability of the councillors to manage the General Manager's performance. When some of the areas of concern identified in this report related to the General Manager's performance were raised with Council and the suggestion made that they should consider terminating his contract and seek their own legal advice as to the process, councillors became hostile and defensive.*

*Advice provided to the General Manager by either the Mentor or the Executive Officer, which is misrepresented or inaccurately interpreted, can be seen as an indication of a person struggling to perform.*

*Councillors, charged with a responsibility to represent their community's best interests, have an obligation to examine these concerns and act in the best interests of their community.*

*This Council has failed to do that. Council has also previously been in a position of failing to deal with its General Manager's performance. Council appears to be lacking in its ability to perform satisfactorily as an employer as required under its charter.*

In her report, the Executive Officer made the following recommendation:

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*It is the recommendation of the Executive Officer that the Director General advise the Minister to authorise a Public Inquiry under section 740 of the Local Government Act 1993 as soon as possible in the best interests of the Brewarrina community and council staff. The Terms of Reference might include Council's implementation of the recommendations of the previous public inquiry, its relationship with the Ngemba Community Working Party in particular and its lack of proper planning and processes.*

In a submission prepared for the Minister in support of this recommendation, the Executive Officer identified the following specific concerns:

- Council's relationship with the community remained unsatisfactory, with continuing strains evident, in particular in its relationship with the Ngemba Community Working Party.
- Council minutes were at times inaccurate, incorrect and uninformative despite months of intensive work and scrutiny designed to achieve improvements.
- Councillors appeared not to understand the difference between their personal interest and the interests of the community, resulting in a recent possible pecuniary interest breach that had been notified to the Department.
- Discussions between the Executive Officer, the Mentor and councillors regarding concerns over the former General Manager's performance resulted in the majority of councillors threatening to resign.
- During the subsequent three-week period the former General Manager refused to supply the Department with any information on progress being made on the implementation of the Public Inquiry recommendations.
- One councillor had since resigned during a Council meeting. Another left the same meeting, leaving Council without a quorum, meaning the

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meeting then had to be adjourned and Council business was left unattended to.

- Council appeared to exhibit a hostile attitude towards change and a lack of capacity to manage the then General Manager, who in turn had difficulty in managing the staff.
- Council's financial position remained of significant concern.
- There were ongoing failures by Council at a senior level to properly manage inter-governmental relationships around issues such as securing grant funding for important local initiatives.

In her submission, the Executive Officer stated that a second Public Inquiry was warranted for the following reasons:

- a) A public inquiry conducted under section 740 of the Act can act to send a clear message that action is finally being taken to address community and staff concerns.*
- b) The issues of concern primarily relate to the elected council and the conduct of councillors individually and collectively. A section 740 inquiry arms the Minister with a means of dealing with that conduct by seeking that all civic offices be declared vacant should the evidence before the inquiry justify it.*
- c) The community has previously expressed a number of concerns about Council and its governance. A public inquiry would provide a forum to allow all community members the opportunity to voice any ongoing concerns. Doing nothing will leave any existing significant community concern unresolved.*
- d) Any prolongation of the current unsatisfactory situation may result in a loss of morale among staff and further frustration at the community level.*

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### **Implementation of the recommendations of the first Public Inquiry**

Given that a second Public Inquiry has been called with its own Terms of Reference, non-compliance by Council with recommendations made by the first Public Inquiry will not necessarily, in itself, constitute grounds for a recommendation by this Public Inquiry that all civic offices in the Council be declared vacant. However evidence of ongoing non-compliance with those recommendations may nevertheless be relevant to the Terms of Reference of this Public Inquiry.

As a preliminary matter, I would observe that the initial six-month timeframe given to the Council to implement the recommendations of the first Public Inquiry was somewhat optimistic given the number and nature of many of the recommendations made. It would appear that the Department of Local Government subsequently recognised this as reflected in the decision to grant extensions and later to appoint the Mentor and Executive Officer to assist with the implementation of the recommendations.

In its submission to this Public Inquiry, the Department of Local Government annexed a table that outlines its assessment of Council's compliance with the recommendations of the first Public Inquiry. It should be noted that the table refers to the situation in June 2007 and therefore predates this Public Inquiry by some months.

In preparing his submission to this Public Inquiry, the Council's current acting General Manager, Mr Glenn Schuil, undertook an assessment of the recommendations the Department identified as being outstanding in the attachment to its submission. The outcome of this assessment was included in a table that formed an attachment to his submission. That table appears in Appendix 1 to this report. The table contains a detailed summary of the actions taken to implement each of the recommendations the Department contended were outstanding.

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On Mr Schuil's assessment, 32 of the recommendations have been completed, 15 recommendations have not been finalised though there is a plan or strategy in place for the finalisation of the recommendation, 6 recommendations will continue to be ongoing and 3 recommendations have not been completed to date.

On my assessment of the actions described in the table prepared by Mr Schuil, and other evidence considered by this Inquiry, I concur with this view. However, issues associated with the implementation of a number of individual recommendations will be addressed in greater detail elsewhere in this report with reference to the Terms of Reference of this Public Inquiry.

The three recommendations that Council has conceded it has not completed are recommendations 33, 48 and 50. Council has made the following submissions in relation to the implementation of these recommendations.

Recommendation 33 (which is referred to as recommendation 39 in the first Public Inquiry report) related to Bre Lucerne. Bre Lucerne uses treated effluent from the Brewarrina sewage works for irrigation purposes. It uses privately owned land, Crown land and Council owned land for the operation. Recommendation 39 required the following in relation to Bre Lucerne:

*That council identify when the council provided the council owned land and crown land for the discharge of sewage. If the provision of that land was after the introduction of the Local Government Act 1993, then application should be made to the relevant Minister under section 60 of the Act to allow the discharge of the sewage.*

In relation to recommendation 33, Mr Schuil states:

*Recommendation 33 concerning Bre-Lucerne is a matter which I think may take a considerable amount of time to resolve. Council's staff had a meeting with representatives of Bre-Lucerne on 18 January 2008. I was present at this Meeting and during the Meeting it became obvious that "an arrangement" may have been made some time ago between the Council and the previous owners*

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*of the Bre-Lucerne about “exchanging” land that they owned which now forms part of the Council’s levee bank / road over the levee for land that Bre-Lucerne were, and have used for some time for their operations. A review of the Council’s Files does not lend any support to this contentious issue.*

*Following this Meeting the Council has been given a lead that a Solicitor from Nyngan may have been working on the legalities of “exchanging” the parcels of land and the Council’s staff are currently following up on this issue. Ultimately, I believe this matter will need a resolution of the Council, perhaps after obtaining legal advice on the matter.*

Recommendation 48 (referred to as Recommendation 54 in the first Public Inquiry report) requires the following:

*That the general manager undertake a review of expenses, with a view to reducing unnecessary expenditure, but without significantly impacting service delivery.*

Council's failure to implement this recommendation will be addressed in detail as part of my discussion of expenditure control elsewhere in this report.

Recommendation 50, (referred to as recommendation 56 in the first Public Inquiry report) requires the following:

*That council significantly increase its provision for infrastructure.*

In relation to recommendation 50, Mr Schuil states:

*I am aware that the Council has approved a 10 year plant replacement program, but it appears as though there has not been sufficient work to-date in addressing this area in general. The Council at its Meeting in November 2007 resolved to agree to have a Strategic Planning Workshop on 11 & 12 February 2008. I am pleased to report that a Consultant has been engaged to facilitate this Workshop. I expect that an outcome from this Workshop will be to develop an action plan which will examine the cost of maintaining its infrastructure. I also expect that the Workshop will be used by the Council’s staff as a “springboard”*

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*for the preparation of a Strategic Plan and for the Council's next Management Plans.*

The issue of asset management planning is addressed in greater detail below.

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## **COUNCIL'S RELATIONSHIP WITH THE LOCAL COMMUNITY**

### **Issues identified in the First Public Inquiry**

The First Public Inquiry identified the following issues in relation to the relationship between the Council and the community:

- The poor relationship between the Council and the Ngemba Community Working Party and the Goodooga Community Working Party.
- The failure by Council to satisfactorily secure and appropriately manage grant funding in relation to a number of community projects.

### **Community context**

#### **Community governance arrangements**

##### ***The Murdi Paaki COAG Trial***

In November 2000, the COAG agreed that all Governments would work together to improve the social and economic wellbeing of Indigenous people and communities. The COAG decision recognised that the commitment by Commonwealth and State/Territory Governments to Indigenous issues is spread across many agencies and programs, with the result that activity is often fragmented.

In April 2002, COAG agreed to trial new ways of working with Indigenous communities in up to ten regions across Australia. In doing so, it agreed two approaches were necessary:

- Governments must work together better at all levels and across all departments and agencies.

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- Indigenous communities and Governments must work in partnership and share responsibility for achieving outcomes and for building the capacity of people in communities to manage their own affairs.<sup>1</sup>

One of the trial sites selected was the Murdi Paaki region in north-western New South Wales.

Government involvement in each of the COAG Trials around Australia is coordinated by one Commonwealth Government agency and one State/Territory Government agency. The lead agencies in the Murdi Paaki region are the Commonwealth Department of Education, Science and Training (DEST) and the NSW Department of Education and Training (DET).

On the community side, the Murdi Paaki Regional Assembly is participating in the COAG Trial at the regional level and community working parties at the individual community level. Together, these two structures constitute the primary mechanisms for Indigenous community governance in the Trial site.

### ***Community Working Parties***

As indicated above, community working parties are the primary mechanism for representation and consultation at the community level in the Murdi Paaki COAG Trial.

There are sixteen community working parties in the Murdi Paaki region. Three of these are located in the Brewarrina LGA. These are the Ngemba, Goodooga and Weilmoringle Community Working Parties.

The former Murdi Paaki Regional Council established community working parties as vehicles for community liaison relating to the planning and provision of housing under the Aboriginal Community Development Program. Membership of the working parties was 'refreshed' at the commencement of the

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<sup>1</sup> *Evaluation of the Murdi Paaki COAG Trial* Prepared for the Office of Indigenous Policy Coordination by Urbis Key Young 26 October 2006 at p2

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COAG Trial and they now deal with a wide range of issues affecting the community and its relationships with government bodies. In particular community working parties deal with issues related to the planning and delivery of government services.<sup>2</sup>

Essentially, the purpose of community working parties is to provide a framework for engagement between all levels of Government and Aboriginal communities and a governance structure to facilitate the alignment of Government service and program delivery with community priorities.

Community working parties continue to form a key component of the strategy of the Murdi Paaki Regional Council's successor body, the Murdi Paaki Regional Assembly, to build capacity in Aboriginal communities. The *Terms of Reference for the Establishment of Community Government Structure (Community Working Parties)* describes the role of community working parties in that strategy as follows:

*CWP's are viewed by MPRA and both Commonwealth and State Governments as the peak representative body in each community and are the engagement framework for the provision of services and programs.*

*MPRA advocates that all service providers engage the Aboriginal community through the CWP's in order to ensure that there is community participation in determining the services and programs that are to be delivered and the method in which those services are to be delivered.*

*CWP's will not be incorporated bodies; they do not have an operational role, but will provide objective independent advice and the strategic direction on behalf of their community.*

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<sup>2</sup> *Evaluation of the Murdi Paaki COAG Trial* Prepared for the Office of Indigenous Policy Coordination by Urbis Key Young 26 October 2006 at pp 5-6

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In the case of the Ngemba Community Working Party, this role is formalised under a Shared Responsibility Agreement between it, the Council, and the COAG lead agencies.

The agreement, which is not legally binding, is intended to provide a basis for cooperation and partnership between community representatives and all levels of Government. The objectives of the agreement are described as being to:

- *Establish partnerships and share responsibility for achieving measurable and sustainable improvements for Indigenous people living in the Ngemba community;*
- *Support and strengthen local governance, decision making and accountability of all parties; and*
- *Learn from a shared approach – identify what works and what doesn't and apply lessons to future approaches both at the community level and more broadly.*

The agreement puts in place the following arrangements:

- *The NCWP is acknowledged as the peak community governance body and the primary point of Indigenous community contact in the Ngemba community; and*
- *At the Murdi Paaki Regional level – the Murdi Paaki Regional Council (the Council) is acknowledged as the peak regional body and primary point of Indigenous community contact*

*The responsibility for ensuring the NCWP continues to be representative of the Indigenous community in Ngemba lies with the NCWP.*

...

*The NCWP and the Governments recognise the need to ensure that the views of the wider community are taken into account.*

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The agreement sets priorities for different levels of Government and in an attachment to the agreement identifies how the parties intend to implement their respective responsibilities, sets performance indicators and establishes specific feedback and monitoring mechanisms. While Council is a party to the agreement, the agreement does not appear to impose any specific obligations on it.

### ***The Murdi Paaki Regional Assembly***

The Murdi Paaki Regional Assembly is chaired by Mr Sam Jeffries. Mr Jeffries is an independent Chair elected by the Assembly. Membership of the Regional Assembly consists of the Chairs of each of the sixteen community working parties in the Murdi Paaki region.

The Assembly initially operated on an interim basis alongside the Murdi Paaki Regional Council as a regional planning forum. In July 2005, the Commonwealth Government abolished ATSIC and its 35 associated regional councils including the Murdi Paaki Regional Council. A month later, on 1 August 2005, the Commonwealth and New South Wales Governments signed a Shared Responsibility Agreement which recognised the Murdi Paaki Regional Assembly and its constituent community working parties as the peak regional Indigenous community structure in the Murdi Paaki region of western New South Wales.

Like the community working parties, the Assembly is unincorporated and does not handle funds. The Assembly's focus is to determine regional priorities for Governments and service providers to align their service delivery arrangements with the needs of Aboriginal people and their communities.<sup>3</sup>

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<sup>3</sup> *"True Community Control" The Murdi Paaki Regional Assembly: Indigenous Governance in Action* Sam Jeffries and George Menham (unpublished) 2007 at p11

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### ***Community facilitators***

The role of community facilitator was created under the Murdi Paaki Partnership Project.

The Murdi Paaki Regional Assembly and the Commonwealth and NSW Governments signed a Shared Responsibility Agreement establishing the Murdi Paaki Partnership Project on 26 October 2005. The Project was initiated in response to concerns identified by Indigenous communities in the Murdi Paaki region that the lack of suitable locally-based technical and professional support was a significant barrier to their ability to interact and liaise with Governments and negotiate agreements to improve services. The Murdi Paaki Partnership Project is designed to strengthen the operation of community working parties through the provision of such support by ten community facilitators (or one for every two CWPs in the region).<sup>4</sup>

There are two community facilitators in the Brewarrina LGA. Mr Bill Palmer supports the Brewarrina and Weilmoringle communities. Ms Rebel Black supports the Goodooga and Lightning Ridge communities. Lightning Ridge is in the Walgett LGA.

At the local level, community facilitators are employed by local host organisations, with support from a local reference group comprised of community working party members and representatives of the community, business and government (including local government where possible). In the case of Brewarrina and Weilmoringle, the Reference Group comprises of the Council, the Ngemba Community Working Party and business.

Employment of facilitators is triggered once communities have a completed Community Action Plan in place and is subject to the approval of the community working party. The Brewarrina/Weilmoringle Community Facilitator, Mr Palmer,

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<sup>4</sup> *Evaluation of the Murdi Paaki COAG Trial* Prepared for the Office of Indigenous Policy Coordination by Urbis Key Young 26 October 2006 at p9

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is employed by Northern Star Aboriginal Corporation. The General Manager of that organisation, Ms Jenny Barker is also the Chairperson of the Ngemba Community Working Party.

In correspondence to the Public Inquiry, Mr Palmer described his role as Community Facilitator as follows:

- *Facilitate the ongoing implementation, and where necessary the development of, key Community Action Plans, Shared Responsibility Agreements, Crime Prevention Plans, and community projects. With particular emphasis on increasing community participation and ensuring an ongoing integrated planning process between the service provider network, the business and community sector.*
- *Assist in the development of community processes and structures essential to providing the community and in particular Local Government, Aboriginal and Youth leaders with the capacity and the resilience to respond to and influence the course of economic and social change.*
- *In partnership with the service provider network ensure a consistent focus on improving the coordination, streamlining, and the alignment of locally based and outreach services to community need.*
- *Implement strategies that build on the strong working relationship between Local Government, the Community Working Party, the business community, State and Australian Government agencies and the broader community in responding to economic and social challenges.*
- *In consultation with key community and government stakeholders promote a collaborative leadership approach in responding to community issues.*
- *Develop processes that reliably inform and engage the broader community in considering new ideas / innovations and participating in the implementation of initiatives / solutions.*

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## **Community attitudes to the Ngemba Community Working Party**

As is perhaps reflected in the Terms of Reference of this Inquiry, the Department of Local Government has tended to see the relationship between Council and the Ngemba Community Working Party as a barometer for the relationship between the Council and the Brewarrina Aboriginal community. Given the role of community working parties, this is a reasonable and appropriate assumption to make. Such a view is also consistent with the framework governing the relationship between service providers and local Aboriginal communities established under the COAG Trial and associated Shared Responsibility Agreements.

However, evidence considered by this Inquiry calls into question the extent to which the views of the Ngemba Community Working Party can be seen to be representative of the views of the local Aboriginal community and the level of support it actually enjoys from that community.

This is illustrated in part by the response to a petition in support of the Council that was circulated around Brewarrina in late 2006. The petition was framed in the following terms:

*This petition is in support of the Brewarrina Shire Council's elected councillors who represent the people of the Brewarrina Shire, both Aboriginal and non-aboriginal. The Brewarrina Working Party is only a minority of aboriginal people who manipulate and refuse to have an annual general meeting for its people to decide on who they want to represent them. For many years the working party has made decisions without any discussions with the aboriginal community and we believe now it's time for democracy – a system that the Shire Council supports – “For the people by the people”.*

The petition was endorsed by 355 persons. On its face, this represents a significant percentage of the Brewarrina community.

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In evidence given at the hearings, Ms Jenny Barker, the Chairperson of the Ngemba Community Working Party, suggested that the reason so many people signed the petition was because it had been misrepresented to them.

*...there was a petition that went out and it was taken to the RSL club and people were asked to sign it because they said it was to do with the takeaway of the alcohol and there were not one word on the petition about alcohol. Its all about the community supporting council...*

The petition was organised by Mr Elwood Clarke. In evidence given at the hearings, Mr Clarke explained that his decision to organise the petition was prompted by support for a ban on takeaway alcohol by members of the Ngemba Community Working Party. However he denied that the petition had anything to do with the proposed ban:

*..that wasn't mentioned in the petition, but the petition was solely about that we as an aboriginal community do not have any confidence in the working party itself or those that are in the working party and over 300 people signed that and the reason being why I did that is like when I go away for a land council meeting, I'll go away and I'll talk for the people, for what we want in this town and that comes from the heart. That's why I put that petition out because I don't think that the working party has the authority to go ahead and do the things against a lot of people's wishes. They have never consulted anybody in the community about it, they don't go out, they don't see the people, none of them even walk down the street and say, "Come on, we'll just have a little yarn in the park here", you know? Let's get something going in the town. You know, they're there for the community. I wouldn't even call it - well, I just refer to it as a working party because as a community it does nothing for it.*

When Ms Barker's suggestion that the petition had been misrepresented to people as being about the takeaway ban was put to Mr Clarke, he was adamant that people signed it because they "*had no confidence in the working party*". Mr Clarke said that if anyone could not read it, he read out the petition and explained it to them.

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It is conceivable that given that the petition was circulated against the backdrop of the proposed ban on takeaway alcohol, that this could have served to inflate the number of people prepared to put their signatures to it. Under cross-examination, Mr Clarke conceded that he could have discussed the takeaway ban at that same time as he got signatures for the petition.

However, it seems clear from the written submissions received by this Public Inquiry, together with evidence given at the hearings that the petition reflects the attitudes of sections of the local Aboriginal community towards the Ngemba Community Working Party.

In her evidence, Ms Penny Johnson made the following observations about the Ngemba Community Working Party:

*I think that the working party has fallen away to a very, very small core people and on some levels I respect them for showing up week by week in trying to deal with some of the imposed business that the government is, you know, putting on our community. We have that many bureaucrats that come through this community, if they all stopped and spent some money in our community would be a lot better off as well but they don't. But I just think that we've got a structure with the community working party where they are not accountable and transparent in some level and their behaviour is questionable at times and I think that Mr Simpson raised that point earlier, that there is a reputation for the working party to be fiery and unreasonable and I've seen how questions can be thrown at people that – it's not easy to deal with.*

Other witnesses echoed Ms Johnson's views. Ms Grace Beetson in her evidence stated:

*To my understanding the community working parties were set up to alleviate the factionalism that there was within aboriginal communities where families were controlling boards and services within the community, and this forum was a forum that was being set up to take over from ATSIC when ATSIC was being phased out and we were informed that this forum would allow all aboriginal*

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*people to be able to be involved in consultation in relation to issues that affect the aboriginal people of this community and as previously mentioned, there were about 75 members of the community working party when it first was set up. I was one of those members and so were a few of the other people who are in this room today. Since then there's been quite a few changes, not to what I believe as fair processes, where current membership of the community working party is very controlled and selective people are able to participate in that forum and very serious and pressing programs or projects are happening from the direction of these people which I don't feel is a true representation of the aboriginal community of Brewarrina.*

These views were echoed in submissions made and evidence given by other members of the local Aboriginal community. It was also apparent at the hearings that these views were also shared by a majority of persons present in the gallery who indicated their support by applauding the evidence.

The level of community support for the Ngemba Community Working Party is further illustrated by evidence of its declining membership and poor attendance at meetings. Evidence given at the hearings indicated that membership of the Ngemba Community Working Party has declined by more than half from over 70 to 31. The Chairperson, Ms Barker, gave evidence that the quorum of meetings of the Community Working Party, which was eight, had to be changed to 5 because it was unable to get this number to attend its meetings. The meeting held prior to the hearings on 7 November 2007 started late because it lacked a quorum. Other evidence heard by the Inquiry indicates that this is not the first occasion this has happened.

It falls outside the Terms of Reference of this Public Inquiry to examine the causes or merits of the community attitudes to the Ngemba Community Working Party reflected in evidence given to this Inquiry. However, for the purposes of this Inquiry, this evidence is significant for two reasons. Firstly, as indicated above, it calls into question the extent to which the state of the relationship between Council and the Ngemba Community Working Party can be seen as

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indicative of the state of the relationship between Council and the local Aboriginal community. Secondly, it illustrates the challenges faced by Council in seeking to consult with the local Aboriginal community in circumstances where the body established for the specific purpose of assisting service providers to set priorities and meet the needs of that community is seen by significant sections of that community as unrepresentative.

### **The relationship between Council and the Ngemba Community Working Party and the Community Facilitator**

#### **A preliminary observation**

A significant proportion of the Department of Local Government's initial submission to this Inquiry is devoted to addressing the relationship between Council and the community. In addressing this issue, the Department appears to have relied heavily on the observations of Mr Bill Palmer, the Brewarrina Weilmoringle/Community Facilitator. This was driven in part by Recommendation 7 of the first Public Inquiry. That recommendation provides as follows:

*Unless the council is able to implement all of the relevant recommendations contained in this report, the Minister declare all civic offices in relation to the council vacant.*

Commissioner Woodward further recommended that:

*If the Minister accepts recommendation 7, then it is also recommended that...[t]he Department of Local Government consult with the Aboriginal Community Working Parties, particularly the Ngemba Community Working Party, and the River Towns Project Community Facilitator on the relationship between the council and the community*

As described in the Department's submission, this monitoring process was undertaken as follows:

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*The Executive Officer requested, by email on 3 July 2007 that the [former] General Manager provide any letters, reports or other documentation that he had instigated with a view to improving the relationship; notification of any meetings, phone calls or other interactions that he had instigated with a view to improving the relationship and a list of any meetings of the Community Working Party CWP and the MP3 Reference Group that he had attended with a copy of reports he had made or provided at those meetings.*

...

*The [former] General Manager responded on 6 July 2007. A response was also sought from the community facilitator of the Murdi Paaki Partnership Project Brewarrina- Weilmoringle by email on 10 July 2007 to which a response was received on 20 July 2007.*

A review of the Department of Local Government's records indicate that the Executive Officer obtained a response from the Community Facilitator by sending him by email a copy of Council's response and inviting him to comment on it.

Mr Palmer's comments were never put to Council for a response. This represented a departure from the Department's previous practice in its dealings with the Council, as described above. This has meant that this Public Inquiry has been the first opportunity Council has had to respond to the concerns identified by Mr Palmer.

The Department's submission to this Inquiry addressing the Terms of Reference relating to Council's relationship with the community appears to suggest that it has uncritically relied on Mr Palmer's comments.

### **Interpersonal issues**

In submissions to this Inquiry and in evidence given at the hearings, evidence was given of a number of interpersonal issues between Council and the

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Ngemba Community Working Party and its Chairperson, Ms Jenny Barker, and the Community Facilitator, Mr Bill Palmer. These are addressed below.

***The Ngemba Community Working Party's understanding of its role in relation to Council***

It seems apparent from their evidence and submissions to this Inquiry that many of the issues of concern identified by Ms Barker and Mr Palmer and their legal representative relate to the merits of resource allocation decisions made by the Council.

There are a number of examples of these, including:

- The installation of security cameras in the main street
- The establishment of an alternative caravan park
- The resourcing of the youth centre
- The maintenance of the tennis courts
- The arrangements for taking on trainees

It is the responsibility of the elected councillors to determine resource allocation priorities in consultation with their community through the management planning process. In doing so, they will be obliged to mediate a range of competing demands by different sections of the community for the allocation of resources. Often they will be unable to meet the needs or expectations of everyone in the community. Ultimately, it will be a matter for the community to pass judgement on the performance of their elected councillors at the ballot box.

In the cases of small councils such as Brewarrina with limited resources servicing the needs of a comparatively disadvantaged community the task of managing the various and often competing demands of the community will be more challenging than it will be for a large well-resourced metropolitan council.

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Under the COAG framework for the Murdi Paaki region and the shared responsibility agreement, the Ngemba Community Working Party, together with the other community working parties are key stakeholders in this consultation process. The efficacy of this consultation process in relation to the Ngemba Community Working Party is examined below.

It is the role of the community working parties under this framework to provide guidance to the Council in the allocation of resources. However, it is not the role of the community working parties to dictate to the Council how it should allocate those resources. Inevitably, there will be instances where the Council will be unable to meet needs identified by community working parties, either because it lacks the resources to do so, or the Council's limited resources will be required elsewhere.

It seemed apparent from the nature of the concerns raised by Ms Barker and Mr Palmer in their evidence and the line of questioning followed by their legal representative, that they do not recognise this. For example when asked what her understanding of Council's obligations under the shared responsibility agreement were, she replied that it was to:

*[Support w]hatever we have; education, housing and to work with us and to make these things happen for our people who are - we are the most disadvantaged town in New South Wales I'm told, and I think our population is, you know - the indigenous population is way above, you know. It's about 70 per cent in town so I would've thought that working with council we would have a really good relationship and Ngemba community working party, which is a peak body seen by the community - by the government, but that was a total - we would get all this done, you know. We worked very hard early in the years to put our plan together back in '98/'99 and in February 2000 it was finished and all our needs and our aspirations were in that plan and that is a plan that we want to work with as a community to address all those issues in that plan.*

This view is supported by evidence given by the Chairperson of the Murdi Paaki Regional Assembly, Mr Sam Jeffries. Mr Jeffries facilitated a mediation between

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the Council and the Ngemba Community Working Party to resolve their differences. Mr Jeffries observed that the Ngemba Community Working Party appeared not to understand what its role was:

*I think that what the working party, the community working party, from my perspective as a facilitator, what I believe was where they were not - I suppose the word "wrong" is not right but where they may have entered into an area which wasn't exactly their role. It was about advocating or taking up an operational role of an organisation...*

Mr Jeffries went on to elaborate on this elsewhere in his evidence. According to Mr Jeffries, community working parties should have a purely strategic role:

*I think once you get out of that strategic role and concentrate on the operational side of things I think you are then defeating the purpose about what you're there for or getting involved into an area that I think that you have no jurisdiction or no responsibility around and I liken it to a bit of - it's no good of trying to argue over things that you have no control over - so I think that those things are where working party have entered into what I consider to be an operational role about arguing with the council to employ trainees, which I believe was a discussion that could have happened between the employing organisation, Northern Star Aboriginal Corporation, and the shire to have the - and not cause the tension between the working party and the shire - the strategic relationship. That's what I mean about what the difference is in those things.*

On my assessment, this misunderstanding has contributed significantly to the ongoing difficulties in the relationship between the Council and the Ngemba Community Working Party.

### ***Poor communication at Community Working Party meetings***

Ms Barker and Mr Palmer raised concerns about the manner in which the former General Manager, Mr Prakash participated in meetings of the Community Working Party. Mr Palmer's concerns in this regard are quoted in the Department of Local Government's submission to this Inquiry:

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*Council has a standing delegation for a report on Council activities. The common response to most questions posed by the CWP was "I don't know anything about that, I'll look into it and get back to you". The [former] General Manager rarely if ever brought that information back to the CWP. As a non-voting member the General Manager and Councillors are not required to actively participate in discussions unless specifically requested to or as part of their delegation. Most often their delegation was disappointing as the CWP did not receive answers to questions it had.*

In her evidence, Ms Barker echoed these concerns:

*...we have a standing delegation where council comes to our meetings every month, we meet regularly. The last one was every month. Council have a standing delegation there. The general manager must attend it always, sometimes there was Councillor Brown there. Councillor Slack-Smith was coming quite regularly in the beginning and then for some unknown reason he didn't come. Also Councillor Geddes was coming along, and when we would ask questions to council about what was going on, the answer was, "I don't know. We'll get back to you", and this went on and on and on. It was very frustrating to the members of the working party meeting because every time we'd ask something we couldn't get an answer and of course the members become every hostile towards the council...*

In his evidence, Mr Jeffries, the Chairperson of the Murdi Paaki Regional Assembly stated that he had attended two meetings of the Ngemba Community Working party, where the former General Manager, Mr Prakash presented reports. Mr Jeffries observed that at one of the meetings Mr Prakash failed to provide sufficient information:

*One part where he reported back which, in my view, he didn't give enough answers to the community working party and they were unsatisfied with that and they made that quite clear. But in the other meeting I think that Sunil gave a report which was just a normal and I think it was informative but it may not have*

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*been the answer that the working party wanted but I believe he done the right thing by giving the report as it was.*

As alluded to by Mr Jeffries, there is some evidence to support the view that dissatisfaction with reports Mr Prakash gave to Community Working Parties in part stemmed from the fact that attendees did not like the answers he provided. In her evidence, Ms Barker described the response of members of the Community Working Party to a Council proposal to seek grant funding for a new caravan park:

*It was about the caravan - one incident was the caravan park. We were interested in what was going on at the caravan park and we were asked - we asked the [former] general manager what was happening with the - why wasn't money being put into the caravan park and we were told that there was going to be a application put in for \$6 million to build a new caravan park down on the river, down near the big bridge, and they want to have cabins and treehouses, and you know, and we said, "Well, you know, we weren't consulted about this and we don't believe that that's a very suitable place because of the floods and we've got a completely good facility up here that can be upgraded." I think there are 30 powered sites, and we couldn't see any reason why they couldn't put the money into our existing caravan park and it was right near the pool and it was up the end of town what we call as a good part of the town. So the working party members did not agree with council with that venture.*

In her submission to the Public Inquiry, Council's Manager Tourism and Economic Development, Ms Fran Carter described what happened at the particular meeting, held on 26 July 2006:

*Council tried to explain about the caravan park and how it does not work in its existing location for many reasons[. T]he Working party were simply not interested in listening to Council and more to the point that they just wanted to argue with Council no matter what was said. The [former] General Manager was accused twice of being racist because Council would not agree to let permanent visitors reside at the existing caravan park, under the Council's policy. It was*

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*later noted to Council from people that attended the meeting that Council should have walked out and not tolerated the abuse.*

Ms Carter's submission states that Council subsequently decided not to pursue the caravan park application in the face of the ongoing hostility to the proposal by the Community Working Party.

Other evidence heard by the Inquiry also indicates that members of the Community Working Party expressed their dissatisfaction with reports provided to meetings with open hostility. In his evidence, Council's then acting General Manager, Mr John Keenan described a meeting he attended on 7 November 2007. In his evidence, Mr Keenan described it as a meeting he would not want to go through again. Mr Keenan described the response he received when the issue of the proposal to install security cameras was raised at the meeting in the following terms:

*It was - the people that know me in this room, I'm pretty placid and yeah, it wasn't a pleasant experience. It was a quite excitable meeting, more than excitable actually...*

In his evidence, Cllr Mark Brown described how, the former General Manager, Mr Sunil Prakash was subjected to racial comments at meetings. Cllr Brown was sufficiently concerned about the behaviour to ask Mr Prakash whether he wished to continue to attend the meetings. According to Cllr Brown:

*I approached Sunil after the meeting and said you don't need to attend these meetings. I said I'd rather take an A4 bit of paper to the meetings and taking them back full of Council, let them decide on them meetings, if you feel intimidated. He said "No, it's all right, it's all right". That's just the way he was.*

Similarly, in her June 2007 quarterly report, the Executive Officer stated that she and Mr Prakash were forced to leave the March 2007 meeting of the Community Working Party after it degenerated into a heated argument among Working Party members.

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In her evidence, a member of the community, Ms Penny Johnson, who attended several meetings of the Community Working Party, described the way in which members communicated with Council officials at meetings and appeared to suggest that this may have impacted on the manner in which answers were provided:

*It's the way that some of the more vocal members of the working party structure their sentences, structure their questions to people so that they're not asking questions, they're actually implying that people aren't doing the right thing or they're antagonistic in the way that they ask questions of people so it's putting people on the defensive immediately and putting them in a very threatening position on how to answer things so at that meeting there was a question - I think there was the former general manager was asking for support from the community working party, that they had been having some sort of a relationship. It mightn't have been a good one but at least they were trying to work together and it was the way that that opposition and rejection of council's request for some sort of support by the community working party happened...*

Under cross-examination by Council's solicitor, the Chairperson of the Ngemba Community Working party, Ms Jenny Barker agreed that meetings may get loud, that members may become angry out of frustration and that people may talk at once. While she disagreed that the conduct of members could be described as "abusive" she subsequently conceded that what could be seen as "loud" as distinct from "abusive" may be a matter of personal interpretation. Ms Barker also conceded that such conduct could result in Council officials becoming reluctant to attend meetings.

The Inquiry has been provided with a copy of the Murdi Paaki Region Community Working Party Code of Conduct. The Code requires members to show respect for people. In particular, it states that, *"Members of the public and colleagues are to be treated fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations."* The Code also

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prescribes rules for the orderly conduct of meetings. The conduct described in evidence given to this Inquiry would appear to be inconsistent with these rules.

Ms Barker sought to justify such conduct as being the way Aboriginal people “go on”. In her evidence, Ms Johnson, who is Aboriginal, responded directly to this statement:

*...sorry to contradict you, Jenny, but I don't believe all aboriginal people conduct themselves in a way that's hostile. I don't believe that that's true. I think that we have been - aboriginal people have been dealing and doing business for a long, long time and they don't have to do it in a manner that is hostile, antagonistic and really just so rude and that's what happened at the meeting and I really felt sorry for the representatives of the council at that time too.*

There may be some justification to the concerns expressed by Ms Barker and Mr Palmer about the adequacy of the former General Manager's performance at meetings of the Ngemba Community Working Party. However, as described above, evidence considered by this Inquiry would tend to suggest that this could be due, at least in part, to the manner in which those meetings are conducted.

As Chairperson, it is within Ms Barker's power to ensure meetings of the Ngemba Community Working Party are conducted in a manner that is conducive to open and respectful communication between participants by ensuring that meetings are conducted in an orderly manner and that respect is shown to all attendees. In circumstances where Ms Barker is apparently unwilling to exercise her responsibilities as Chairperson in this regard, I do not believe that she can reasonably complain about inadequate communication by the former General Manager or any other Council official attending meetings of the Ngemba Community Working party.

It should be noted that Council has since moved to improve its performance in this area. The current acting General Manager, Mr Glenn Schuil has adopted the practice of writing to Ms Barker, in her capacity as Chairperson, after Council meetings to advise her of the outcome of the meeting. Council has also

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made a standing invitation to Ms Barker, as Chairperson, to address Council at its monthly meetings.

In my opinion, the Ngemba Community Working Party can also assist in facilitating improved communication with Council by:

- Ensuring its meetings are conducted in an orderly manner and that appropriate respect is shown to all attendees
- By giving Council advance notice of questions it wants to be answered to assist those Council officials attending in providing accurate and informative responses
- By providing the agenda and draft minutes of the previous meeting in advance of meetings
- By identifying 'action items' in minutes of its meetings to assist Council in identifying what further action is required of it arising from the meeting.

***Consultation between Council and the Ngemba Community Working Party and the Community Facilitator***

The Department of Local Government's initial submission to this Inquiry quotes concerns raised by Mr Palmer about inadequate consultation by Council in relation to its Social and Community Plan 2006-10 ("Social Plan"). Mr Palmer raised similar concerns about consultation in relation to the Management Plan and State of the Environment Report. These concerns were raised in response to Council's advice to the Executive Officer about compliance with recommendation 47 of the first Public Inquiry.

The full text of the relevant portion of Mr Palmer's response is reproduced below. Council's advice is italicised. Mr Palmer's response is in italics and bold:

*There was extensive consultation between Council and Community Working Party on objectives and programmes to be integral part of Brewarrina Social Plan.*

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***There was one two hour session with the CWP chair on the contents of the Social Plan. To this day the draft Social Plan has never been tabled at a CWP meeting nor has the CWP received a copy of it. (neither has the facilitator)***

*General Manager advised Community Working Party members with regard to the importance of Council's Management Plan and State of Environment Report and requested active participation and involvement by the party membership.*

***This was requested at a CWP meeting but no date was determined for CWP to be briefed on Plans nor have input into them. This could occur only if CWP attended the public meeting which coincided with the briefing on the completed Plan of Management for the Fishtraps.***

At the hearings Mr Palmer gave evidence to the effect that the only consultation Council did with him in relation to its Social Plan was by way of a two-hour meeting Mr Keenan had with him. Mr Palmer further stated that he did not get to say much in the meeting. Mr Palmer also gave evidence that Council had a public meeting in relation to its Management Plan but that as this occurred on the same day as a Community Working Party meeting, he was unable to attend. Mr Palmer was unable to recall whether he raised concerns about any clash in the scheduling of the meetings.

In her initial submission to the Inquiry, Ms Barker echoed Mr Palmer's concerns:

*Given the agreed recognition of the CWP as the peak community governance body and primary point of Indigenous contact, no effort has been made by Council to present plans eg Management Plan, Social Plan, State of the Environment Plan at CWP meetings nor arrange special briefings for the CWP. The CWP Chair had one hour of input into the Social Plan and is still waiting for a copy of the plan despite repeated requests for a copy.*

In evidence she gave at the hearings, Ms Barker stated that she too had a meeting with Mr Keenan about the Social Plan that went for one or two hours.

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She also said that she did not have much opportunity to discuss the plan at the meeting.

Ms Barker's and Mr Palmer's above evidence is not supported by other evidence considered by the Inquiry. The Inquiry has obtained from Council all documents held by it relating to the development of its Social Plan, Management Plan and State of the Environment Report.

A review of documents provided to the Inquiry in relation to consultation on the Social Plan indicates the following

- In developing the Social Plan, Mr Keenan reviewed the Ngemba Community Working Party Action Plan as well as action plans for the Goodooga and Weilmoringle communities to provide the basis of the format of the Aboriginal and Torres Strait Islander needs and actions section of the plan together with those of the broader community.
- Mr Keenan also reviewed the minutes of Community Working Party meetings to identify areas of concern.
- On 7 July 2006, Council wrote to a number of key stakeholders including Mr Palmer, to invite them to join a steering committee to assist in the compilation of the needs analysis and identify sources of information to be incorporated in the Social Plan.
- On 1 August 2006, Council held the first meeting of the steering committee. The minutes indicate that Mr Palmer attended.
- On 16 October 2006, Council held the second meeting of the steering committee. The minutes indicate that Ms Barker, who was not previously a member, attended. Mr Palmer sent his apologies.
- On 15 November 2006, Council held a public meeting in the community hall to seek community input into the draft Social Plan.

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- Between 12 September and 20 November 2006, Mr Keenan made three attempts to arrange a meeting with Ms Barker to discuss the Social Plan. A meeting was finally held on 23 November 2006.
  - In November 2006, Mr Keenan held a two-hour meeting with Mr Palmer to discuss the Social Plan.
  - On 25 November 2006, Council wrote to a number of key stakeholders including Ms Barker and Mr Palmer providing a copy of the draft Social Plan and inviting submissions. Both Mr Palmer and Ms Barker maintain they did not receive a copy of this. However Council has retained copies of the covering letter to each of the recipients. Each of these contains handwritten annotations as to their mode of delivery. The handwritten annotation to the letter to Ms Barker indicates that her copy was hand delivered to Northern Star and a similar annotation to the letter to Mr Palmer indicates that his copy was hand delivered to the Brewarrina Business Centre.
  - Copies of the draft plan were also placed on Council's website and on public display at Brewarrina Goodooga and Weilmoringle.
  - While Council received a detailed submission from the Goodooga/Lightning Ridge Community Facilitator, Ms Rebel Black, it received no submission from Mr Palmer. Nor did it receive a submission from Ms Barker.

On 20 July 2007, Council adopted the final version of its Social Plan after making amendments to the draft in response to Ms Black's submission and suggestions by the Executive Officer.

It is unclear why Council has failed to provide Ms Barker and Mr Palmer with copies of the Social Plan in response to their requests. However, the Social Plan is available on Council's website. In evidence, Mr Palmer indicated that he had access to the internet and had accessed Council's website for other purposes. It is unclear why it had not occurred to him or Ms Barker to obtain a

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copy of the Social Plan from there. Whatever the reasons may be, Council has since furnished them with a copy.

In relation to the State of the Environment report, in evidence given at the hearings, Council's Environmental Health and Building Manager, Mr Francois Vanderberg, indicated that he effectively recommenced the consultation process for the 2005/06 State of the Environment Report in February 2007 in response to concerns raised by the Executive Officer. At the hearings, Mr Vanderberg described the consultation process used in developing that report as follows:

*What I did is end of February I started, basically, back at square one. I wrote letters to the community working parties, schools, Brewarrina Business Centre. I think it was about 11 letters, 12 letters I sent out to community groups like Country Women's Association. I informed them that council is going to put a draft document together and we invite any submissions or comments on that. I didn't receive any so I basically compiled a draft report, the draft report was basically the old report where all the problems were fixed up. Then I wrote letters again and with all the letters I placed ads in the newspaper as well on that. I went ahead and notified them that the draft report was ready for inspection and that they can make comments on that, I don't have to receive any. Then, finally, arranged for a community meeting as a final opportunity to make inputs into it and nobody attended that meeting and I did the final report.*

A status report prepared by Mr Vanderberg on 12 October 2007 indicated that Council undertook the following consultation in relation to the development of the subsequent 2006/07 State of the Environment Report:

- In August 2007, Council wrote to a number of key stakeholders including the Ngemba Community Working Party seeking submissions on its new State of the Environment Report. Curiously, while Council wrote to the Goodooga/Lightning Ridge Community Facilitator it omitted to write to Mr Palmer. Council received no submissions and proceeded to prepare the draft report.

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- In September 2007, Council sent a copy of the draft State of the Environment Report to the same organisations it originally sought input from, including the Ngemba Community Working Party, and invited submissions.
  - In October 2007, Council advertised the draft State of the Environment Report in the local newspapers and notified that a public meeting would be held on 5 November 2007 to allow public input into the report. Copies of the draft report were made available for inspection in Brewarrina, Weilmoringle and Goodooga.

In relation to the development of the Management Plan a review of documents provided to the Inquiry indicate that Council undertook the following consultation process:

- At the commencement of the process, in February and March 2007, Council placed two advertisements in the local newspaper seeking public input into the process.
- Council subsequently held a public meeting on 1 May 2007 seeking public input into the Management Plan. Despite being advertised in the local newspaper, the meeting was apparently poorly attended.
- In May 2007, Council advertised the draft Management Plan in the local newspaper. The advertisement invited submissions and indicated that copies of the draft Management Plan were available for inspection at Brewarrina, Weilmoringle and Goodooga.
- In May 2007, Council wrote to a number of key stakeholders, including both Ms Barker and Mr Palmer, providing a copy of the draft management plan, inviting submissions. Mr Palmer maintains that he did not receive this, (as he also did with respect to the draft Social Plan).
- Neither Mr Palmer nor Ms Barker made any submissions in relation to the draft Management Plan. Mr Palmer indicated that he received his

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copy too late to make a submission. However, it should be noted that the draft Management Plan had also been available for inspection at the Council's administration building over the road from the Brewarrina Business Centre where Mr Palmer worked. As stated above, this had been advertised in the local newspaper.

I do not believe that Ms Barker's and Mr Palmer's complaints about the extent to which Council consulted with them in relation to its Social Plan, State of the Environment Report and Management Report can be sustained in the face of the above evidence. That evidence shows that Council specifically sought their views in relation to the preparation of each of those documents (though it did not seek Mr Palmer's views in relation to the State of the Environment report.)

Having said that, I believe that Council's consultative process could be improved by the following:

- The development of a formal consultation strategy
- Reviewing the efficacy of public meetings as a means of obtaining public input
- Exploring options for better targeting key demographic groups and geographically remote population centres within the LGA.

I note from his submission to the Inquiry, that Council's current acting General Manager, Mr Glenn Schuil, has indicated that, at the instigation of the Mayor, Clr Slack-Smith, Council intends to develop a formal consultation strategy.

***“Attacks” on the legitimacy of the Ngemba Community Working Party***

The Department of Local Government's initial submission to this Inquiry quotes the following concerns identified by Mr Palmer:

*When the CWP was asked by Cr Brown to endorse that Council had met Recommendation 41 in October 2006, the CWP stopped short of a vote of no confidence in Council (copy of letter attached). The CWP's position was clearly*

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*spelt out in this letter. Council, instead of working to rectify the situation, stopped attending CWP meetings claiming that the CWP was unrepresentative of the Aboriginal Community and proceeded to circulate a petition of support for Council and denigrating the CWP under the guise of 'stopping a takeaway alcohol ban'. This led to on two occasions of the NSW Department of Aboriginal Affairs having to fund mediators to bridge the rift between the CWP and Council. On both occasions the [former] General Manager was adamant that the CWP was unrepresentative and that Council would form its own 355 Committee to receive representative Aboriginal input into Council issues.*

The issue of the petition in support of Council has been touched on above. In her evidence, Ms Barker said that when she confronted the former General Manager, Mr Prakash about the petition, he denied any involvement by Council in preparing or circulating the submission:

*I spoke to the [former] general manager about it and he said, "I had nothing to do with that petition". He said, "All I did was I faxed it away to DAA", Department of Aboriginal Affairs and I said, "You had one of my trainees go and deliver that petition during working hours, getting names on the petition and you are responsible for my trainee", you know. He said, "I don't know nothing about it". I said, "Well, you ought to supervise that trainee so that council has that input into that position", as far as I'm concerned.*

Evidence heard by the Inquiry confirms that Council was not involved in the preparation or circulation of the petition of support. As indicated above, Mr Elwood Clarke, a Council trainee, prepared and circulated the petition. In evidence, Mr Clarke explained what prompted him to do so. This is discussed above. In his evidence Mr Clarke indicated that he did the petition *"from the heart"*. Mr Clarke said that the former General Manager knew nothing about the petition. He did not discuss the petition with anyone at Council, he did not show it to anyone at Council and he did not receive any support or assistance from anyone at the Council in preparing it. Mr Clarke said that he typed up the

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petition on a Council computer during his lunch hour. He said that he circulated the petition out of hours.

Ms Barker's evidence indicates that Mr Prakash sent a copy of the petition to the Department of Aboriginal Affairs. The Department of Local Government's records indicate that a copy was also sent there. In my opinion it was appropriate for Mr Prakash to send a copy to both agencies. In the case of the Department of Aboriginal Affairs, this was because it touched on matters falling within its areas of responsibility. In the case of the Department of Local Government, the petition was relevant to its monitoring of recommendations arising from the first Public Inquiry.

In relation to the proposal to establish a section 355 committee to liaise with the Aboriginal community, Ms Barker expanded on the concerns identified by Mr Palmer in her evidence to the Inquiry. According to Ms Barker:

*...the establishment of a 355 committee is not appropriate. It is divisive and panders to a minority who choose not to participate in the working party and we found yesterday that council in February has already established that committee after advice from our working party regional chairperson. Council has been proven that it is choosing to disregard the shared responsibility agreement and in doing so is not a partner.*

The current Mayor explained the motivation for establishing a section 355 committee as follows:

*We do have an obligation to consult with the local community. There are people in this town, believe it or not, that do not get on with the working party and want to be consulted. We just have to consult with them. I don't want to denigrate the working party in any way, we will consult with them or whatever, but we have to consult with the rest of the community and people have to realise that. Whether it's through that committee or whatever if that's been canned it's probably three months enacted now, so it's probably out of date. We are happy to do whatever the community thinks really. That was an attempt by Sunil to satisfy a request,*

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*and by Ted, to get the whole community involved - we just tried to reach the whole community I guess*

In his evidence, Mr Jeffries appeared to share the view that the establishment of a section 355 committee would be divisive. He stated that he advised the late Mayor against setting up a such committee:

*I did advise the mayor, the previous mayor, and the [former] general manager and the other councillors that they would be - they are asking for conflict if they do not - if they have that sort of consideration in their mind about establishing a 355 committee when there is an obvious process in the community that they can use.*

My review of the minutes and business papers of Council meetings indicates that contrary to all parties' apparent understanding, Council never in fact resolved to establish a section 355 committee. It merely contemplated it.

The genesis of the issue goes back to the Council meeting of 27 October 2006. At that meeting, Council received the petition referred to above. In response to the petition, Council resolved as follows:

*That the General Manager take the appropriate action in regards to the petition in consultation with Councillors.*

At its meeting of 24 November 2006, the former General Manager reported back to the Council in relation to its above resolution. In his report, the former General Manager advised that he had sent the petition to the Department of Aboriginal Affairs and the Department of Local Government and that he had attended a meeting with the Director General of the Department of Aboriginal affairs to discuss concerns arising from it. He was awaiting a formal response from that Department. The former General Manager made the following statements in his report:

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*Council understands that the Working Parties perform a very important role in any community, and it should be noted also that Council has a very good working relationship with the Goodooga and Weilmoringle Working Parties.*

*Council supports the Working Party principle but in this case Council wants to make certain that the Ngemba Community Working Party actually represents the wishes and [a]spirations of the Aboriginal community.*

The former General Manager indicated that in the event that Council failed to receive a satisfactory response from the Department it should consider establishing a section 355 committee to advise Council on matters affecting the Aboriginal community and that Council should also explore the establishment of other liaison committees to advise on matters affecting other sections of the community such as the farming and business communities.

At its meeting of 24 November 2006, Council adopted the following recommendation:

- 1. Council investigate the possibility of establishing four Committees under Section 355 of the Local Government Act 1993 to advise Council on matters of special interest in the areas of Brewarrina Township, Brewarrina Rural Area, Aboriginal Community and the Business Community.*
- 2. The General Manager provide a report to the January 2007 Council meeting with possible Charters for these Committees.*

The former General Manager subsequently reported back to Council on the issue at its meeting of 23 February 2007. Much of the former General Manager's report focuses on the establishment of the Brewarrina Business Alliance. In relation to the establishment of an Aboriginal community liaison committee, the former General Manager indicated that a draft charter for such a committee had been circulated for review. He also stated that Council had had some discussions with the Ngemba Community Working Party about it improving and widening its consultative process. He indicated that Council

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awaited the Community Working Party's response to those discussions. He also indicated that Council would need to develop a methodology to achieve this in partnership with the Ngemba Community Working Party.

At its meeting of 23 February 2007, Council adopted the following resolution:

*That the Mayor advise the Chairperson of the Ngemba Community Working Party of Council's willingness to help develop strategies to improve and widen community participation in the Working Party's consultative process.*

In my opinion, Council's above actions represent a reasonable and appropriate response to circumstances in which it was presented with a petition that, on its face, suggested that a sizeable section of the local Aboriginal community had concerns about the performance of the Ngemba Community Working Party. However, the establishment of a section 355 committee as a rival consultative body would have been potentially divisive and could have served to undermine the role of community working parties locally as part of the regional consultative architecture established under the COAG Trial and the Shared Responsibility Agreement. Council has indicated in its submissions that it does not propose to pursue the idea further. Council subsequently advised that it rescinded the resolution of the meeting of 24 November 2006 at its meeting of 22 February 2008.

Notwithstanding this, Council will still have to address the need to develop an effective means of consulting with the significant sections of the local Aboriginal community who feel that the Community Working Party does not represent their interests.

***Council's role in the suspension of funding for the Community Facilitator's role***

The Department of Local Government's initial submission to the Inquiry identifies the following concern about the relationship between Council and the Ngemba Community Working Party:

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*....the Executive Officer...attended a meeting of the MP3, the facilitator's management group and also attended by the [former] General Manager where the Ngemba Working Party chairperson raised a matter of concern about the actions of the [former] General Manager regarding the facilitator.*

*The [former] General Manager was asked if he had raised concerns with the Premier's Department representative about the facilitator. He agreed that he had provided that information at a meeting in Dubbo instead of first raising those concerns with the management group (of which he is a member) and which was the normal process. He gave no explanation for doing so.*

*Following the meeting in Dubbo, the funding payment for the facilitator's position was stopped and the Working Party had to stand him down for a two week period due to lack of funds. The Working Party was understandably upset at the [former] General Manager's behaviour and its consequences.*

*The [former] General Manager's concerns related to an expression of his own view about how the facilitator should be accountable. This is, of course, a matter for the Working Party to determine, which they have to their satisfaction.*

Mr Palmer's rebuttal submission to this Inquiry indicates that, contrary to the Executive Officer's apparent belief, the decision to suspend funding was made independently of any concerns being raised by Council about Mr Palmer's employment arrangements.

Mr Palmer's submission indicates that while he received a copy of a draft of the proposed employment contract in June 2006 and a final version of an employment contract in August 2006, he declined to sign it until 16 July 2007. Mr Palmer indicated his reasons for declining to sign the contract in his evidence given at the hearings. However, it would appear that he was alone amongst the ten Community Facilitators in the Murdi Paaki region in doing so.

In his submission, Mr Palmer quotes from a letter dated 22 March 2007 from Ms Jo-Anne Lawrence of the Department of Premier and Cabinet to Ms Jenny

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Barker in her capacity as General Manager of Northern Star Aboriginal Corporation, Mr Palmer's prospective employer:

*...It is understood that Mr Palmer is unwilling to sign the contract but has given verbal consent to signing a work place agreement. You will recall that I presented you with the e-version of the agreement in January 2007 which can be completed and electronically sent to The Office of the Employment Advocate. As soon as the agreement is sent it is automatically lodged.*

*It has been a requirement of all auspices for the Murdi Paaki Partnership Project that working agreements / contracts are formalised and signed off by their respective Community Facilitators. As this request is outstanding for some time I would ask that this be finalised within two weeks of receipt of this letter. Until such time as we have confirmation that the agreement has been signed, quarterly payments will be withheld. As you will appreciate this office is under some pressure to ensure compliance by all parties to the project and would ask that this matter is given your immediate consideration.*

On 16 April 2007, Ms Barker replied reiterating concerns about the employment contract Mr Palmer was required to sign. Ms Barker went on to complain that funding was being withheld and that Northern Star was unable to carry the wages for the project and that Mr Palmer would be suspended from the end of the week.

Ms Lawrence replied on 17 April 2007. She stated the following:

*Under the terms of the agreement as articulated in the Memorandum of Understanding (MoU) signed in February 2006, Northern Star Aboriginal Corporation was entrusted to provide a service to achieve certain outcomes which were central to the Murdi Paaki Partnership Project's establishment in Brewarrina. As part of that service it is expected that the employment arrangements for the Community Facilitator are aligned to the conditions experienced by the other nine Community Facilitators. The purpose being that the Community Facilitator has a clear understanding of their role,*

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*responsibilities and their obligations as determined under the terms of the agreement.*

*The particular employment terms are matters between Northern Star and the Community Facilitator to resolve. However, concern has been expressed within the Reference Group that the absence of formal employment arrangements has meant that the accountability of the Community Facilitator, through Northern Star, has effectively limited the role of the Reference Group in providing advice and feedback on behalf of the community.*

Ms Lawrence went on to advise:

*In respect of the withholding of payment you [ie Ms Barker] will recall our conversation on Thursday 12 April where we discussed the letter in question. It was agreed in our conversation that payments would not be stopped, and you gave an undertaking to have the Community Facilitator's employment arrangements formalised before the next meeting.*

*As a contrary position now appears to have been indicated in your letter of 16 April, your advice is now sought, as a matter of urgency, on when you will formally resolve the employment arrangements so that effective accountability arrangements are in place.*

In his evidence, Mr Palmer stated that the former General Manager did not discuss his concerns about his employment arrangements with him or raise them at Reference Group meetings. However a document held in Council records that appears to form part of a letter from Ms Barker to the Department of Aboriginal Affairs, suggests that Mr Prakash raised his concerns, at least, with Mr Palmer's employer, Ms Barker on a number of occasions. In that document, Ms Barker complains:

*We would meet as a Reference Committee and as auspice privately with the Facilitator and the GM – agree on a course of action and I would then receive threatening phone calls from the GM after each meeting, saying unless the Facilitator signed the contract within the week they would look for a new*

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*Facilitator. It got to the stage that I was so distressed, I contacted Premiers and asked for intervention. I was told that this was not the discussion Premiers had had with the GM but Premiers did not intervene or try to change the situation. In fact they actively took the side of the Council, informing us that this was not a COAG project and did not focus on the Aboriginal community and we were only one of the partners. It has become obvious to us that Premiers and Council are in collusion to “control” this project and we do not understand why, as our Facilitator has been one of the most successful and was used to further fund the MP3.*

The evidence suggests that the need for Mr Palmer to enter into formal employment arrangements with Northern Star Aboriginal Corporation was not “an expression of the [former General Manager’s] own view about how the facilitator should be accountable” but a formal requirement of the Murdi Paaki Partnership Program and a precondition to the receipt of funding under that program. As a member of the Brewarrina and Weilmoringle Reference Group, the former General Manager was quite within his rights to raise his concerns with the Department of Premier and Cabinet that this formal requirement had not been met.

My enquiries with Ms Lawrence have confirmed that the decision to suspend funding was made independently of any concerns being raised by Council, by the steering committee of the Murdi Paaki Partnership Project which comprises of representatives of the Federal and State funding bodies.

***Council’s decision to withdraw from the Brewarrina Weilmoringle Reference Group***

Mr Palmer has a standing delegation at Council meetings to provide a report in his capacity as Community Facilitator. At its meeting of 18 May 2007, after Mr Palmer sent his apologies, Council resolved as follows:

*That Council write a letter to the Premier’s Department stating that Council wishes to sever its relationship with the Brewarrina/Weilmoringle Reference*

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*Group due to the lack of attendance at the Council meetings from Bill Palmer or reporting back to Council. Council fully supports the Goodooga/Lightning Ridge Reference Group.*

*Council also supports and is committed to the concept of the Community Working Parties.*

The motion was adopted unanimously.

In his evidence, when asked why he thought Council unanimously adopted that resolution, Mr Palmer said that the current Mayor told him that *“It was a pretty hot meeting and you weren’t there and we took it out on you”*

In his evidence, Cllr Slack-Smith, who moved the motion, explained that he did so out of frustration at the fact that Mr Palmer had failed to provide Council with minutes of reference group meetings and his poor attendance at Council meetings:

*In some ways yes, that was a hasty resolution that. In the council minutes for the 12 months before there's only four - the reference group, I was on it originally and it was meant to meet monthly. There are only four sets of minutes in the council minutes for the calendar year before since, I think, July 07 through to May. Just for that past year, a little while from memory July, August, September. Then there was a bit of a transition period, I think when we were going into the MP3. I had a meeting, there's minutes for a meeting there in January and then there were no other minutes in the council business papers - you have a copy if you look at them - it was only four times through to May. I didn't know at that time when we did that resolution that Bill had been stood down...Yes, so and he'd only been to, I think, six council meetings in that previous time to address us. I'd no idea, I just lost all contact or anything with what the reference group was doing, and it wasn't coming back to council. Bill - that was the reason for the recommendation. I was also again probably overstepping the mark to try to get a result, because I wanted him back and we all wanted reports, we wanted - it was just going to continue on, whichever way,*

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*so and I feel it did, it has brought something to a head regarding that, anyway. With the meeting with Councillor Mason, which is the meeting you are referring to with Bill before, Bill said that there had been meetings in I think February, March and April. I said, "Is there minutes, can you give me minutes" and he undertook to do that. I rang him up about it and I still haven't got those minutes.*

It should be noted that in his evidence, Mr Palmer indicated that he hadn't attended the April meeting because it coincided with the period in which he was stood down. He was absent from the May meeting when the resolution was adopted because he was on leave.

Clr Slack-Smith denied Mr Palmer's suggestion that the resolution had been adopted in frustration at what had occurred at the May 2007 meeting. According to Clr Slack-Smith his frustration was just at the *"lack of reporting. He's the facilitator, it was not even lack of attendance, it was just a lack of reports. He can send them by carrier pigeon if he wants, I don't care how I get it but I want to know what's happening."*

The Reference Group meets monthly. A review of the agendas of Council meetings indicates that the minutes of only the following meetings of the Reference Group have been tabled at Council meetings; 22 February, 12 May, 26 July, 28 September and 25 October 2006 and 10 January and 28 February 2007.

A review of the Minutes of Council meetings indicate that to May 2007, Mr Palmer had only attended 8 of the previous 18 Council meetings. He only attended 2 of the following 5 meetings.

Furthermore, a review of the minutes of Council meetings indicates that the May 2007 meeting was not the first occasion that Council expressed its frustration at Mr Palmer's non-attendance at Council meetings. The minutes of the Council meeting of 25 August 2006 indicate that a letter was tabled from Bill Palmer regarding his apologies from attending the Council meeting and discussions were held regarding the matter. The minutes indicate that Council expressed its

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disappointment at Mr Palmer not attending the Council Meeting and noted that he had only attended three meetings that year.

While Council's frustration with Mr Palmer is perhaps understandable in the circumstances, its actions in adopting the above resolution represented a somewhat pointless and counterproductive gesture. It would have been more appropriate for Council to first raise its concerns directly with Mr Palmer and to give him an opportunity to address those concerns before taking the action it did.

Mr Palmer responded to the resolution by lodging a complaint with the former General Manager under the Code of Conduct. Council's response to that complaint will be addressed elsewhere in this report. Mr Palmer's legal representatives also wrote to Council threatening legal action.

At an extraordinary meeting of 9 October 2007, on the advice of its legal representative, Council resolved to rejoin the Brewarrina/Weilmoringle Murdi Paaki Reference Group. The resolution provided as follows:

*That Council re-joins the Brewarrina/Weilmoringle Murdi Paaki Reference Group and takes an active part in meetings. The Premier's Department is to be advised of this decision immediately.*

In his evidence and subsequent rebuttal submission, Mr Palmer questioned the validity of the original resolution to withdraw from the Reference Group and the subsequent resolution to rejoin. Mr Palmer's concerns can be summarised as follows:

- That as the initial resolution dealt with "issues of a personal nature", the matter should have been dealt with in a closed meeting.
- That the motion had been moved without prior notice
- That the motion to rejoin was adopted without the first resolution being rescinded.

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In relation to the first of the above issues, there are no grounds under section 10A of the *Local Government Act 1993*, that would have permitted closure of the meeting to consider the matter in question. The matter was appropriately dealt with in an open Council meeting.

In relation to the second of the above matters, the first resolution arose from a standing item that was on the agenda of the meeting, namely Mr Palmer's delegation in his capacity as Community Facilitator. As the motion directly related to an item that was already before Council, it was permissible under clause 241(2)(a) of the *Local Government (General) Regulation 2005*.

In relation to the third of Mr Palmer's concerns, it should be noted that the second resolution does not seek to overturn or alter the first resolution and the two are not in conflict with each other. The first resolution was *to sever [Council's] relationship with the Brewarrina/Weilmoringle Reference Group*. The second was *to re-join the Brewarrina/Weilmoringle Murdi Paaki Reference Group*. Even if it were to be argued that the two resolutions were in conflict with each other, as the Department of Local Government states in its *Meetings Practice Note*, while the normal means of altering a council decision is by way of rescission motion, there is no requirement under the *Local Government Act* that a decision be altered by these means.

### **Other issues identified by Mr Palmer**

The Department of Local Government's submission raises a number of other issues identified by Mr Palmer that could not be characterised as being interpersonal in nature. These generally relate to service delivery or resource allocation decisions by the Council. For the reasons outlined above, I do not propose to address these here. However, two of the issues raised appear to suggest that Council has impeded or undermined two projects that would have been of benefit to the community. I have addressed these issues in detail below.

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### **Aboriginal traineeships at Council**

The Department's initial submission to the Inquiry quotes concerns identified by Mr Palmer about Council's participation in a project that involved taking on Aboriginal trainees. According to Mr Palmer:

*...the major project was... a strategy to employe(sic) 12 Aboriginal trainees on Council. ...Council would not take on trainees unless 100% of their wages were covered and would not commit to employment outcomes at the completion of the traineeships. The Australian Department of Employment and Workplace Relations (DEWR) policy at that time, and currently, is that employers cover 20% of the wages component and guarantee at least 50% employment at the end of the traineeships (not necessarily with Council).*

*After nearly two years negotiations.... the program should go ahead as a pilot for the whole Barwon Darling Alliance with the Council contributing only 5% towards wages and ensuring that at least 50% of trainees would find employment at the completion of the traineeships within or external to Council.*

*As the traineeships were starting, the [former] General Manager without warning declined to be the host employer as previously arranged in the ...application, placing the project in jeopardy. ...Council has not only been an impediment to the process but has actively tried to derail it several times.*

Ms Barker elaborated on Mr Palmer's concerns in her evidence. She recounted the history of the project as follows:

*For two years or 18 months, we were - we had an application into the Department of Employment and Workplace Relations, with the previous general manager and the deceased mayor, where we had a meeting and we agreed with Northern Star to get ten or 12 trainees put through the Brewarrina council with the support of Northern Star and the Department of Employment and Workplace Relations. Council agreed to be the host, the employer at that time because that was needed for - and they also agreed that we would try and get the outcomes for those four trainees. It may have been not – all important with*

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*council, but council certainly agreed, that at the end of the traineeships we would have outcomes for those 12 trainees...*

Ms Barker explained that in terms of achieving “outcomes” for the trainees, the Council would either employ the trainees or assist those it did not employ in securing employment elsewhere.

Ms Barker went on to state that Council subsequently refused to be the employer for the trainees:

*That took 18 months to get through. When it was agreed, and we were ready to start off the traineeships, the then general manager said, “No, we are not going to be the employees”...He gave a reason first that the worker’s compensation. I said, “It’s not going to cost you a cent for worker’s compensation. That’s covered”. Then he said something else about – there’s worker’s comp and something else, and I said, “No, it’s not going to cost you anything. All you have to do is put them on your books and supervise them”, and he said, “No. The council is not going to become the employer”...*

In her submission to the Public Inquiry, Council’s Human Resources Officer, Ms Lisa Marshall denied that Council had ever agreed to be the employer and, acting on the advice of the Local Government and Shires Associations’ Industrial Relations Unit, had insisted instead on being the ‘host employer’. The full reasons for Council reluctance in being the employer are disclosed in a memorandum Ms Marshall prepared for the then General Manager on 26 October 2006. Given the trainees commenced employment on 24 July 2006, it would appear that these issues arose sometime into their employment.

In summary, Council’s concerns were as follows:

- Council did not have the positions to be filled by the trainees vacant within its organisational structure. In order to employ the trainees, Council would be required to create the positions. Council has 60 employees. Council would effectively have had to expand its workforce

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by 20% in order to accommodate the trainees. This would require an organisational restructure of the Council.

- If the trainees left the employment of the Council over the course of the traineeship, as did in fact happen, Council would be left with a number of vacant positions in its organisational structure.
- Given Council had a minimal management structure, it would be required to create and recruit additional management positions to supervise the trainees or amend current positions to increase wages to reflect increased responsibilities as required under the Award.
- Council would carry superannuation, workers compensations and other liabilities in relation to the trainees.
- Given the trainees were being paid above award, Council may be obliged to increase the pay of its other employees to match the pay scales of the trainees.

Access Group Training became the employer of the trainees and was responsible for overseeing the trainee program through the traineeship.

Council initially contributed 4% of the funding for the program in its first year and subsequently increased this to 9% in the following year. However, Council has been required to invest further resources in terms of management and supervision of trainees.

To date, Council has employed two of the trainees and two have obtained employment elsewhere. In her submission, Ms Marshall indicated that she believed the remaining trainees will gain fulltime employment within the LGA either with the Council, or elsewhere.

One of the trainees, Mr David Kirby made a submission to the Inquiry in support of the Council. In his submission, Mr Kirby wrote:

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*I would like to take this opportunity to express my gratitude towards Council and Northern Star Aboriginal Corporation, the opportunity that they have given to me and now others should be commended. The Traineeship given to me paved the way for a further 10 trainees, in which there was great success. There are only four trainees remaining, ready to complete yet another certificate. Three out of the six that left their employment with the Council went into the mainstream workforce after having built the confidence to pave their own road for success.*

Another trainee, Mr Elwood Clarke, gave evidence at the hearings. Mr Clarke said of the traineeship:

*It's given me a great opportunity, not only working for the council but also, you know, like I talk to people not only - that travel around Australia but also travel around the world and the experience, you know, has given me - meeting people from other places and telling them about my culture, my people, you know, and when I'm speaking to them it gives me a great sense of pride in what I'm doing.*

The evidence indicates that having sought expert advice, Council had legitimate concerns about being the employer of the trainees. In the circumstance it was not unreasonable for Council to decide not to take the trainees on directly as employees. Similarly, given Council's limited resources, it was prudent for it to limit the level of its financial contribution.

However, the evidence indicates that Council has demonstrated its ongoing commitment to the program by becoming the 'host employer', providing the necessary management and human resources support to make it a success, increasing the size of its financial commitment to ensure that the project continued into its second year and offering fulltime employment to two and possibly, more of the trainees.

### ***The Phoenix Project***

The Department's initial submission to the Inquiry identifies concerns about the Council's participation in a project to obtain grant funding for local projects

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under the Sustainable Regions Program. The Department again quotes from Mr Palmer. The Department states:

*The Phoenix Project was an application for funding to Department of Transport and Regional Services under the Sustainable Regions by a partnership of local businesses, council and the CWP. Council in its response indicated that there was a lot of team work between council and the CWP in putting together the Phoenix Project application for Sustainable Regions.*

*The facilitator's response indicated that*

*"the initial idea had come from the CWP Chairperson and that 62 business people and community members attended the community meeting to discuss an umbrella project....The only dissent (for an umbrella project) being from Councillors and the [former] General Manager."*

*The application was prepared conjointly between the Brewarrina Business Centre and Council with input from local businesses.*

*"The proponents were informally advised that the Phoenix Project would not be successful if it pursued \$6 million...and...that it need to reconsider its application to around \$3 million. The facilitator called for all proponents to develop a staged approach that cut each of their budgets in half without prioritising. The [former] General Manager flatly refused to either prioritise or develop a staged approach and insisted that the application be submitted for \$6million leaving the Sustainable Regions Committee to prioritise the components."*

*It appears that representatives of DOTARS had made the Sustainable Regions position clear to the proponents of the project in a meeting where it was recommended that the project budget be reduced to \$3million. Council has already received its rejection letter for its part of the project as have a number of business operators. The facilitator, with assistance from the Executive Officer and a council staff member has resubmitted an amended council proposal as well as proposals from the businesses.*

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The grant application in question was made under the former Federal Government's Sustainable Regions Programme administered by the Department of Infrastructure, Transport, Regional Development and Local Government. According to its website, the Sustainable Regions Programme assists regional communities to address priority issues they have themselves identified. The Programme offers a planned, integrated approach to regions facing economic, social and environmental change. Assistance under the programme is currently provided to ten regions. The Brewarrina LGA is one of 25 LGAs in the Darling Matilda Way region which covers western Queensland and New South Wales.

The Darling Matilda Way region has been allocated funding of up to \$21 million until 30 June 2008. The Darling Matilda Way website describes the approach of the Darling Matilda Way Sustainable Region Advisory Committee to allocating this funding as follows:

*The Darling Matilda Way Sustainable Region Advisory Committee sees this programme as an opportunity to support projects that will provide an on-going legacy for the community and is particularly looking for project proposals that will contribute to the longer term economic sustainability of the region. The Committee is principally seeking projects:*

- *that will be larger investments requiring Sustainable Regions programme funding in the order of \$500,000 to \$5 million;*
- *that will have an impact beyond the local area;*
- *that will address one or more of the regional priorities;*
- *that demonstrate a capacity to provide substantial secondary benefits either through employment or other value adding to the region; and*
- *that may be a viable alternative to the traditional industry base of the region.*

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It would appear that the suggestion that Brewarrina prepare a joint submission for funding under the sustainable regions program came from representatives of DOTARS as it then was and the Darling Matilda Way Sustainable Region Advisory Committee. A meeting was held to discuss the submission on 8 September 2006 facilitated by representatives from DOTARS. At the meeting, it was agreed that a representative group would meet at the Brewarrina Business Centre on 11 September 2006 to:

- progress a funding request to the Darling Matilda Way Sustainable Region Advisory Committee to enable the development of a 'whole of Brewarrina' tourism/accommodation plan that would take into account existing plans under development as well as a review and update of the 2000 Brewarrina Masterplan (town centre development strategy), and
- form the basis of an ongoing tourism committee for Brewarrina

It would appear that Mr Brett Stevenson of the Brewarrina Business Centre coordinated the preparation of the funding request. As a result of the September 2006 meeting, expressions of interests were separately submitted for all the proposed projects seeking funding but under the umbrella of the Brewarrina Phoenix Project. The total value of the funding sought for the Brewarrina Phoenix Project was \$6,466,688. This represented a significant proportion of the total \$21 million available to the Matilda Darling Way under the Sustainable Regions Programme.

Council's component of the application sought \$3,300,000 to assist in the implementation of the town centre development strategy contained in the 2000 Brewarrina Masterplan. This represented the largest component of the application.

In his rebuttal submission, Mr Palmer states that after the February 2007 meeting of the Darling Matilda Way Sustainable Region Advisory Committee, he received a telephone call from Mr Michael Cooper of DOTARS, conveying the committee's concern that the Brewarrina Phoenix Project's funding request was

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excessive and that proponents would need to prioritise projects to an amount that did not exceed \$3 million.

A meeting of the proponents was held and Mr Palmer conveyed Mr Cooper's concerns. There was a discussion about how the size of the application could be reduced. The alternatives suggested were that individual components of the application be prioritised or that a staged approach be taken whereby proponents cut their bids in half. Mr Cooper from DOTARS spoke to the meeting by speaker phone and explained the committee's reasoning. Mr Cooper has told the Inquiry that at no time did he advise the Council to reduce the size of its bid.

Mr Palmer suggests that Council's then General Manager, Mr Prakash was adamant that Council would not reduce its bid and insisted that it should be left to the Darling Matilda Way Sustainable Region Advisory Committee to prioritise the components of the Brewarrina Phoenix Project bid. According to Mr Palmer, given Mr Prakash's reluctance, all the other proponents felt they had no option but to proceed with this option.

In her submission, Council's Manager Tourism and Economic Development, Ms Carter, explained the reasoning behind the former General Manager's reluctance:

*The stakeholders had to discuss options of how we could cut back one another's budgeted applications, but felt they were not in a position nor qualified to discuss one another's projects especially with projects being commercial in confidence.*

On their face, the reasons identified by Ms Carter for Council's reluctance to seek to prioritise or reduce bids including its own do not appear to be unreasonable.

Funding was subsequently granted to two components of the Brewarrina Phoenix Bid, the Aboriginal Museum proposed by the Brewarrina Business

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Centre and a Motel Dormitory complex proposed by the Brewarrina Business Centre and Indigenous Business Australia. Council's component was refused.

In his evidence Mr Palmer indicated that he believed that a reduced bid of \$3 million would have been more successful. The basis for his assertion was that DOTARS had indicated that a bid of this size would have been more reasonable. In his rebuttal submission, Mr Palmer, expressed this view more strongly:

*That Council, whilst publicly supporting initiatives and proposals of the CWP, eg the Motel and Tourism experience, and the proposals from the other proponents, which all had strong community support, appear to have undermined these by continuing to pursue an unrealistic path that had every possibility of jeopardising all the community endorsed priorities should be of concern to the Commission of Inquiry.*

There is no evidence before this Inquiry that would support the above conclusions. My discussions with Mr Cooper have confirmed the following:

- While the Phoenix Bid Project application was submitted as an umbrella bid, it comprised of a number of individual components that were not dependent on each other for funding.
- Ultimately, each component of the project succeeded or failed on its merits based on an assessment against the above criteria. The same criteria would have been applied to projects even had the size of their bids been halved as proposed by Mr Palmer. The approach proposed by Mr Palmer would have made no difference to the success of individual components or to the success of other components of the application.
- On my assessment of each of the components of the project, it seems open to question whether a number of them, including Council's proposal, met the Darling Matilda Way Sustainable Region Advisory Committee's above funding criteria.

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- That Council's reluctance to reduce the size of its bid did not jeopardise other components of the project, is perhaps best demonstrated by the fact that two other components of the bid were successful.

### **Council's attempts to resolve issues with the Ngemba Community Working party**

#### ***Mediation between Council and the Ngemba Community Working Party***

In response to the petition referred to above, Ms Jody Broun, the Director General of the Department of Aboriginal Affairs, visited Brewarrina on 14 and 15 November 2006. She met with the then General Manager, Mr Prakash and the late Mayor and the Ngemba Community Working Party.

As a result of that meeting, the Department of Aboriginal Affairs arranged a mediation process between the Council and the Ngemba Community Working Party.

In January 2007, the Department of Aboriginal Affairs engaged Jalay Consulting ("Jalay") to undertake stage one of a mediation process. Jalay worked with both Council and the Community Working Party for two weeks prior to holding a mediation workshop on 31 January 2007. At the workshop it was agreed to hold a further workshop. Prior to the second workshop the late Mayor and Ms Barker, in her capacity as Chairperson of the Community Working Party, met on 2 to 3 occasions to work through issues of contention. At the request of the Director General of the Department of Aboriginal Affairs, the Chairperson of the Murdi Paaki Regional Assembly, Mr Sam Jeffries facilitated the second workshop.

Mr Jeffries prepared a report on the outcomes of the process. Mr Jeffries described these as follows:

*Coupled with unpacking the issues, roles and responsibilities were outlined to ensure greater understanding of what each others functions are, but also to*

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*understand each others capacity levels, specifically the Shire's legal parameters.*

*Both groups agreed the importance of each other as key governance structures in their community and agreed that it was unworkable and not in the best interests of the community to continue to have conflict between each other.*

...

*After 4 hours of mediation it was agreed by the meeting that both the Ngemba CWP and Brewarrina Shire will re-establish their long-standing strategic relationship of the past, to work in partnership together for the progressive development of the township of Brewarrina.*

*If there is the potential for major conflict to arise between the groups in the future, the process of the Ngemba CWP Chairperson and Brewarrina Shire Mayor should meet in the first instance to decide and agree on a course of action to resolve the potential conflict.*

*The outcome was agreed and accepted by all who attended the workshop on that day.*

Mr Jeffries went on to make the following observation in his report:

*As recently as the 24<sup>th</sup> May 07, I spoke with both the Ngemba CWP Chairperson and the Mayor about the relationship and how it is progressing, both responded positively and saw no issues what so ever that may have potential to impact on the positive relationship between the groups.*

*By all accounts, the ongoing relationship remains unquestionable and can only be considered as a good practice model for the other communities to consider.*

In its submission to this Inquiry, the Department of Local Government suggested that the mediation related solely to the personal relationship between Ms Barker and the late Mayor as distinct from the strategic relationship between the Council and the Community Working Party:

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*On 4 June 2007 the Mayor and Deputy Mayor met with the Mentor and the Director General. A letter from Sam Jeffries, Chairperson Murdi Paarki Region was given to them, stating that the relationship between Council and the Ngemba Working Party was good and should be used as a model for other communities...*

*Communications between the Executive Officer and the Chairperson, Ngemba CWP indicated that the relationship that was discussed with Mr Jeffries was the personal one between the Chairperson and the late Mayor that had been subject to mediation and which she believed had improved as a result of the mediation. She also said that the problems that had existed between herself and the Mayor may have been hampering some efforts to improve the relationship between council and the CWP but they were not the only aspect of that relationship which needed work.*

Mr Jeffries' report clearly indicates that the parties to the mediation process were the Council and the Community Working Party not the late Mayor and Ms Barker. Correspondence between the Department of Aboriginal Affairs and Council also clearly indicates that the relationship the mediation was intended to improve was the one between the Council and the Community Working Party. Ms Barker in her submission to this Inquiry also refers to the mediation as being between the Ngemba Community Working Party and Council.

While Mr Jeffries considered that the mediation had been successful, in her evidence, Ms Barker took a different view. That the mediation was not successful is perhaps best demonstrated by the ongoing difficulties in the relationship between Council and the Ngemba Community Working Party.

***The current Mayor's attempt to improve the relationship between Council and the Ngemba Community Working Party***

In his submission to the Public Inquiry, the new Mayor, Clr Mathew Slack-Smith, spoke of his commitment to improve the relationship between Council and the Ngemba Community Working Party:

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*As Mayor, I intend to work closely and co-operatively and in consultation with community groups including the Ngemba [Community] Working Party. I, or my delegate, will attend all Ngemba [Community] Working Party meetings. I believe this relationship needs to be strengthened and I have already had a very productive meeting with Ngemba [Community] Working Party Chairman, Jenny Barker where M/s Barker outlined the two major concerns needed to be dealt with. I left that meeting with the belief that there is a strong commitment by both of us to working together.*

In his evidence at the hearings, Clr Slack-Smith expanded on his reasons for meeting with Ms Barker and the outcome of the meeting:

*Well Tony Simpson and I went down there. We just wanted to - yes see what the issues were really. I'd just become Mayor, I just wanted to find out the issues... I was more worried about the issues really, what were the issues. She said there were two main issues. One was the street cameras and the other was Bill. I said Bill was simple because we were going to rejoin the reference group, so. I was going to put it through as a mayoral minute. It was actually done at an extraordinary meeting that was called for another reason and Tony suggested "If you're going to do it bring it forward."*

In her evidence, Ms Barker was dismissive of Clr Slack-Smith's attempts to resolve the differences between the Council and the Ngemba Community Working Party:

*...on one occasion he's come on his own. He's come with Mr Simpson on another occasion and had a talk and I don't think they should be consulting me. They should be coming to the meeting and consulting the meeting. I'm only one person, even though I'm the Chair, you know. It's not a Jenny - what they all think it is. It's not a Jenny affair. They should have respect and recognition for the other community working party members and by doing that I don't think they're showing respect for those other aboriginal members.*

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When it was suggested to Ms Barker that the fact that the Mayor had taken the trouble to meet with her to try and discuss the differences between the parties may indicate a willingness to engage and resolve the problems between them, Ms Barker responded:

*Well, I wouldn't see it as a willingness. I think they were coming in to pry and see what I had in my submission and what I was going to talk about and what - but that's only me and I tell it the way it is. That's the type of person I am but I enjoy the talk with them, you know, and I joke around with them and things like that.*

The above evidence would suggest that Clr Slack-Smith, upon becoming Mayor, had met with Ms Barker in a genuine attempt to identify the issues between the Council and the Ngemba Community Working Party and to resolve them. Ms Barker's response to that gesture, as reflected in her evidence quoted above, suggests a reluctance on her part to engage in a constructive dialogue with the Council. This perhaps suggests why, despite two mediation workshops, the relationship between the Council and the Ngemba Community Working Party remains poor.

### **The relationship between Council and other key community stakeholders**

#### **The relationship between Council and the Goodooga and Weilmoringle Community Working parties**

The Public Inquiry wrote to both the Goodooga and Weilmoringle Community Working Parties and invited them to make submissions.

Ms Melinda Gibbs, the Acting Chairperson of the Goodooga Community Working Party made the following submission:

*[The former General Manager] Mr Prakash often attended our meetings and was always honest, cooperative and open to suggestions from our Community.*

*During his term Goodooga received more support from Brewarrina Shire Council than they had under [the] previous General Manager.*

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*We were disappointed to learn of his resignation as we had a good relationship we felt that with his guidance and support Goodooga was moving forward.*

*We would also like to offer our support to the Brewarrina Shire Councillors.*

The Inquiry received no response from the Weilmoringle Community Working Party. Mr Palmer is also the Community Facilitator for the Weilmoringle Community Working Party. However, at the hearings, when asked what the relationship was like between the Weilmoringle Community Working Party and Council, Mr Palmer seemed unable to provide a definitive response.

### **The relationship between Council and the Goodooga/Lightning Ridge Community Facilitator**

The Public Inquiry also wrote to Ms Rebel Black, the Goodooga/Lightning Ridge Community Facilitator and invited her to make a submission.

In her submission, Ms Black offered the following observations:

*In my opinion, the relationship between the [former] General Manager and the people of Goodooga (the only community I am at liberty to comment on with experience) was exceptional. Indeed, from many of the resident's perspective the best they had experienced in many years.*

*Mr Prakash always made himself available for discussion with the community and often attended the Community Working Party meetings where he would gather information as much as he would offer it. Mr Prakash availed his staff to the community and often brought senior staff members with him to Goodooga to discuss issues of contention.*

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*I personally had an excellent working relationship with Mr Prakash, he was always available for me to discuss issues regarding Goodooga and was ready to take action on many of them.*

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Ms Black outlined a number of areas where Council has provided assistance to the Goodooga community and other outlying communities.

Ms Black went on to state:

*In relation to the Brewarrina Shire Council, I have met with them perhaps three times during my 16 months of employment and have found them all to be supportive of the Goodooga projects and they have been eager to see progress, particularly with the Bowling Club and the Goodooga Cooperative.*

*Both Councillors Ron Mason and John Burke [the Goodooga based councillors] are active members of the Goodooga community and are able to represent the concerns of the residents.*

*I can confirm that the people of Goodooga that I work with were happy with the leadership in Brewarrina Council and were seeing positive outcomes for their community for the first time in many years.*

### **Community attitudes to Council**

The evidence considered by this Inquiry suggests that the Council enjoys support within the community. This was reflected in part in the response to the petition in support of the Council circulated around Brewarrina in late 2006. As described above, that petition was endorsed by 355 signatures, which, on its face, represents a significant proportion of the population of Brewarrina.

This support was apparent from the outset of this Inquiry. After the Public Inquiry was announced a public rally was held in support of the Council that was well attended by members of the community.

This support was also reflected in submissions made to the Public Inquiry by members of community and community organisations and in evidence given by members of the community at the hearings. The majority of written submissions received by the Inquiry were supportive of the Council. This support was also reflected in the attendance of members of the community at the hearings. As described above, the hearings were well attended by members of the

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community. The Council appeared to enjoy the support of a majority of those who attended throughout the hearings who demonstrated that support on a number of occasions by applauding the evidence of those who spoke in favour of the Council.

A representative sample of the evidence given by members of the Aboriginal community is quoted below. It was apparent from that evidence, that members of the Aboriginal community viewed the fact that Council had had an Aboriginal Mayor and the level of Aboriginal representation on the Council with pride. Many of the members of the Aboriginal Community who gave evidence questioned the level of scrutiny being applied to the Council and some linked it to the fact that it had had an Aboriginal Mayor.

In his submission, a Council trainee, Mr David Kirby wrote:

*Overall I consider the Department of Local Government should be commending Council for its support to the community through tough times and the work that it is doing and has done under such tight circumstances. Over the last four years it is a shame that Council and its Administration especially has had little chance to show what changes they could have made because of the enormous strain. I hope that the commission can take into consideration the positive outcomes that Council have made and for once give them a positive out come.*

These sentiments were echoed by Ms Penny Johnson in her evidence:

*I think that they're trying. With the inquiry, the first inquiry, they had I think about 90 boxes to tick. It was a big ask and I think they've come through them, I think, I'm not too sure, but I think my general understanding is that they are coming through and trying to tick some of those boxes. That has been discussed here today about some of the things that they are trying to do and trying to make better and I was compelled to write to this inquiry because I feel that they have been under a lot of scrutiny and that's why I guess I'm here today and I think to our former general manager, I think that he inherited a lot of probably administrative chaos from the previous manager as well, so I mean, these are*

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*all things that actually compound and run parallel to one another and which can cause some problems for council.*

In her evidence, Ms Dianne Hardy said that from her perspective Council had a good relationship with the community:

*I think it's a very good relationship. You know, I mean, well, like - from what I perceive and what I see it as, like, I've lived in Brewarrina all my life too as well and I've got nothing - I've got no complaints about the Brewarrina Shire Council and I'm sure they're trying to do the best with what resources that they possibly do have. Like - I'm surprised just like everyone else; how come there was an inquiry that was called into the Brewarrina Shire Council, you know, and like it said, us as aboriginal community of this community of Brewarrina because when you look out at - it just seems strange we're just at the point in time when - at the time when we had aboriginal electives, you know, to the council, to local government and then, you know, I want to use this terminology, that we had a black mayor and he was excellent and I believe that he did - you know, he had leadership, you know. He had skills, he had very good communication skills, he was very effective. He was apologetic, you know, he was - you name it he did all those things. I mean, I've got nothing but compliments for him and as I - like I said, as I perceive it that he did an excellent job and he did fulfil his role to the best of his ability and then I do acknowledge all the aboriginal council that we did have... Like I said, they've probably just like every other organisation too, you know, with limited resources and just have to work with what they have to possibly can for, you know, to try to deliver the best delivery of service that they can and to, I suppose, to expect outcomes, you know. I mean, at the end of the day that's all they want is a better delivery of services and then to be able to have the communication, you know, open...*

In her evidence, Ms Grace Beetson, also paid tribute to the late Mayor:

*I've just mentioned just previously that, you know, the council relationship in Brewarrina have not always been good and over the years people and families that have come from this community have worked tirelessly to ensure that a lot*

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*barriers can be broken and I think that we can give a lot of credit to Teddy, the late Teddy Simpson, you know. Teddy made us proud as aboriginal people to see us have an aboriginal mayor for starters. The commitment that he had to the aboriginal people of Brewarrina as a whole was commendable. It's unfortunate he's not here to go through this with you and I feel that this review has come about because of his involvement in the first review, which I sat through, and I find it a bit puzzling as to why such an intensive review has taken place in relation to the shire council, especially in the term of office of an aboriginal mayor when, like I previously mentioned, I've lived in Brewarrina all of my life and the Brewarrina council has been here for as long as I can remember, when I was a little girl, which was quite some time ago, and to my knowledge I don't know whether there was ever reviews conducted before. You know, there may have been but not to the extent of a review such as this one and especially one that has been supposedly brought about by a group of aboriginal people.*

### **Written submissions by community organisations**

A number of community organisations made written submissions to the Public Inquiry. These were all supportive of the Council.

The Brewarrina Rural Lands Protection Board is the elected representative of 225 rateable holdings within the Brewarrina LGA. In his submission, the Chairman of the Brewarrina Rural Lands Protection Board, Mr Robert Wason, stated:

*It is the opinion of the Brewarrina RLPB that the general public of the Brewarrina Shire are, in the majority, satisfied with the performance of the duly elected Council and its administration and can see no positive benefit from any proposed changes to the current system.*

The Walgett Aboriginal Medical Service Co-operative Limited is the manager of the Brewarrina Aboriginal Health Service (BAHSL) under an arrangement with

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the Board members of that service. In his submission, Mr George Fernando, the Chairperson of the Board of Directors, wrote:

*Directors of both Boards have met with Council personnel and other health and community agencies at regular Brewarrina/Bourke Shire Health Forums. These Forums are in response to community requests for a combined meeting of local stakeholders to be held for the delivery of local programs and services.*

*The Shire invited BAHSL to participate in planning meetings held in 2007 to discuss local based Dental Services which they negotiated with a University located in Queensland who could supply senior dental students to be rotated at Brewarrina to undertake oral health care for members of the community.*

*The Shire also assisted with supplying offices for a local Doctors surgery to conduct a General practice business at Brewarrina. BAHSL have been extremely fortunate to benefit from this arrangement by working collaboratively with the Doctors in the provision of quality health care to clients, and conducting health promotion projects.*

*These initiatives demonstrate the commitment of Brewarrina Shire Council to work with Aboriginal people and Aboriginal organisations.*

Dr Ross Lamplugh, the owner of Ochre Health Group, which provides medical staff to Brewarrina and manages the Barwon River Medical Centre also made a submission to the Inquiry. Dr Lamplugh wrote:

*Throughout the term of our involvement in Brewarrina (since 2002) the Brewarrina Shire Council has been one of the more responsive and pleasant shires we have dealt with.*

*They have been involved in the provision of accommodation and motor vehicle to the doctors, and have assisted with renovations to a second house when this was required for an extra doctor moving to town. They have provided maintenance and improvements at times.*

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Ourgunyah Women's Incorporation provides support and accommodation to Aboriginal women and children escaping domestic violence, sexual abuse and or are homeless and in crisis. In her submission, the Chairperson, Ms Dianne Hardy wrote:

*Over the past 4 years, especially since the inception of the [late] Aboriginal Mayor...and an increase in Aboriginal Councillors on the Council – relationships between Brewarrina Shire Council and the Indigenous Community have improved dramatically, both in their response to community issues as well as the employment of Aboriginal staff, not only in labour positions but also in office positions.*

....

*In my involvement with Council I have, always found the Management, Staff and Councillors to be helpful and professional in their service delivery and making time for discussion and support regarding community issues.*

*Myself and our Manager Ms Grace Beetson have on a number of occasions been given an opportunity to address council meetings on urgent issues pertaining to our much needed service for this community.*

*Council has provided us with letters of support in our endeavours to enhance our services. Councillors have also attended meetings with us with various members of Parliament in support of our improving our services for this community.*

### **Community Attitudes to the dismissal of the Council**

I asked each of the witnesses that appeared at the hearings whether they considered that Brewarrina Shire Council should be dismissed. A sample of the responses of members of the community who appeared as witnesses are quoted below.

Ms Penny Johnson responded as follows:

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*No, I don't think they should be dismissed simply because, as I pointed to in my submission, is that we have a high turn out of aboriginal people in this town at the polling booth and if we - if you could adjourn to 24 November in ten days time [the Federal election date] you will see that. We have a lot of aboriginal people that continue and proudly vote in this town. Like I said in my submission, during the '80s there was a huge campaign to get people on the roll and they turn out, you know, and I'm proud of that because that opportunity, that voice wasn't there up until probably that point in time, you know. Even in the '70s aboriginal people didn't really have a voice that Jenny was talking about but that campaign worked in the '80s and we have a high turn out and those people vote in local elections so for that reason I don't think that they should be dismissed. I think we should be just trying to keep working with our elected body - with our elected councillors and it's also a role for them to show younger people who might be wanting to engage in public office that its a worthy and notable thing to do and experience in their life to do.*

Ms Grace Beetson responded as follows:

*I believe that as a community as a whole, we need to work together to ensure that we maintain services for Brewarrina. We have had too many services over the years close down. Our local government is very imperative to the development of any community and I feel that through the negotiation and talking to each other we can break down more barriers and focus on developing this community for Brewarrina, not only for ourselves but for the whole of the community.*

Ms Dianne Hardy responded as follows:

*Brewarrina Shire Council should not be dismissed. We cannot afford to lose another service, especially an essential service like the Brewarrina Shire Council. There is such a need for it, you know, and like what I've heard, there is room for improvement like people are saying, but it's about all the resources we have in this community and working together. It's got to be a uniformed approach for anything to work, you know, but until - around the table...you*

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*know, we have to - you know, that's where it's got to be fixed up, that representation that sits around that make the decisions that's impacting upon our community is imperative, you know, but it needs to be addressed, you know, and it's quite evident that council is willing, you know, and they're determined to make it work. They want to work. They want to see changes.*

Towards the end of the hearings, the late Mayor's daughter, Ms Elizabeth Simpson took the opportunity to make an oral submission. She spoke about her father, the need for cohesion within the local community and shared responsibilities:

*The one thing that he [the late Mayor] never wanted was acknowledgment but he brought a vast amount of experience to the table at council and certainly he probably needed to learn a lot of things, as did other councillors in Local Government, and I think we talked about shared responsibility agreements and what they mean. It is not only a responsibility of council it is a responsibility of Local Government, Aboriginal organisations and this community. It is not just the blame of the council. We can't take the blame. Council cannot take the blame for everything. People have got to start working together.*

*We've got a wonderful community here where we've got enough experienced people, we've got enough qualified people, we've got people that know what the cultural issues are and the values in this community, and we've got to start getting back to the table and working on those issues together. I think the amount of respect that's in this community we've got to get back to that because it is one of the most unique communities in Brewarrina where I know that Aboriginal people are employed in a number of businesses in this town. That just didn't get there just because of the fighting from the Aboriginal people it also got there from the commitment from non-Aboriginal people in the businesses.*

*I think that Brewarrina Shire Council should not be dismissed and I think that we've got to get back together at the table and start working on things.*

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## **Conclusions**

The evidence considered by this Inquiry appears to indicate that Brewarrina Shire Council generally enjoys a good relationship with the community, including the Aboriginal community. This is reflected in part in the response to a petition circulated in support of the Council in late 2006. It is also reflected in the submissions and evidence given in support of the Council to this Inquiry.

The evidence considered by this Inquiry also suggests that Council enjoys a good relationship with most key community stakeholders including the Goodooga Community Working Party and the Goodooga/Lightning Ridge Community Facilitator and other community organisations. There is insufficient evidence to enable me to form any conclusions about Council's relationship with the Weilmoringle Community Working Party, but that organisation has been invited to make a submission to the Inquiry and no issues have been raised by it.

The evidence suggests Council continues to have a poor relationship with the Ngemba Community Working Party and the Brewarrina/Weilmoringle Community Facilitator. However, evidence considered by the Inquiry suggests that a significant section of the local Aboriginal community considers that the Ngemba Community Working Party does not represent its views. In view of this, the fact Council continues to have a poor relationship with that organisation cannot necessarily be seen to be indicative of its relationship with the local Aboriginal community. Indeed, as stated above, other evidence considered by the Inquiry suggests that this is a good relationship.

Undoubtedly certain actions by Council, such as its decision to withdraw from the Brewarrina/Weilmoringle Murdi Paaki Reference Group have contributed to its poor relationship with the Brewarrina Weilmoringle Community Facilitator and the Ngemba Community Working Party. However, in my opinion the underlying causes for the ongoing difficulties in the relationship between the two organisations lie with the apparent inability by the Ngemba Community Working Party and the Community Facilitator to acknowledge Council's role and the

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resource limitations it operates under and an apparent reluctance to constructively engage with it.

Evidence before the Inquiry demonstrates that Council has made several attempts to repair its relationship with the Ngemba Community Party. There is no evidence before the Inquiry to suggest that these efforts were made in anything but good faith. In my opinion, the success of the future relationship between Council and the Ngemba Community Working Party will be dependent on the preparedness of Ms Barker and other members of the Community Working Party to embrace Council's efforts to improve the relationship.

In relation to Council's relationship with the Community Facilitator, I understand that Mr Palmer has resigned since the hearings. It is to be hoped that his replacement enjoys a better relationship with the Council.

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## **THE CONDUCT OF COUNCIL MEETINGS**

### **Issues identified in the First Public Inquiry**

The first Public Inquiry identified a number of issues associated with the conduct of Council meetings. These included the following:

- Failure to give adequate public notice of ordinary and extraordinary meetings
- That agendas of meetings failed to identify in sufficient detail matters to be considered at meetings
- That Council dealt with operational issues in meetings
- Failure to appropriately adjourn meetings where Council lacked a quorum
- Various issues associated with the closure of Council meetings to members of the public
- Insufficient information in the minutes of meetings
- The need for procedures addressing public participation in Council meetings

### **Regulatory context**

The manner in which council meetings are to be conducted is prescribed under the *Local Government Act 1993* and the *Local Government (General) Regulation 2005 (the Regulation)*.

### **Code of Meeting Practice**

Under section 360 of the Act, a council may adopt a code of meeting practice that incorporates the provisions of the Regulation and may supplement them with provisions that are not inconsistent with them.

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Council has adopted a code of meeting practice under section 360 of the Act. Council adopted this at its meeting of 30 June 2006 having publicly exhibited the draft Code of Meeting Practice as required under section 361 of the Act.

Council's Code of Meeting Practice in effect comprises of the provisions of the Regulation relating to the conduct of meetings. These have been supplemented with the following:

- An order of business for meetings
- Requirements for public notice of meetings
- Guidelines and request form for members of the public to address Council meetings.

I note that Mr Gerry Holmes, a consultant engaged by Council to review the conduct of its meetings, has recommended that Council review its Code of Meeting Practice to take into account the full range of issues addressed in the Department of Local Government's *Meetings Practice Note*. Council's current acting General Manager has indicated that he intends to do this prior to the end of his secondment.

### **Notice of meetings**

As stated above, the notice requirements for meetings are prescribed under Council's Code of Meeting Practice.

Council's Code of Meeting Practice requires that notice of Council meetings will be published in one of three local newspapers and displayed at various locations in the LGA and on Council's website. The minimum notice time provisions are one week for ordinary meetings and 4 days for extraordinary meetings.

Clause 232 of the Regulation, which is incorporated in Council's Code of Meeting Practice, states that notice of more than one meeting may be given in

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the same notice. This means that Council could give notice of all ordinary meetings for the coming year after the meeting dates had been determined.

The Inquiry requested that Council provide copies of all public notices of all Council meetings, including extraordinary meetings, held since 2 December 2005, and advertisements placed with respect to such meetings.

The documents supplied by Council would suggest that while meeting dates are posted on Council's website, notice of meetings are placed in local newspapers as required under the Regulation and the Code of Meeting practice in an ad hoc manner. As far as I can ascertain, only three meetings have been properly notified in local newspapers.

Given the public notification of meetings represents the means by which councils invite public participation in and scrutiny of their meetings, this represents a significant failure by Council to meet its obligations in this respect.

Council's current acting General Manager has indicated that he has since addressed this by advertising upcoming meetings in the March edition of the *Brewarrina News* and put in place measures to ensure that future meetings and their locations are advertised in that newspaper.

### **Agendas and business papers of meetings**

Agendas of Council meetings are sufficiently detailed to enable the identification of the precise nature of the business to be dealt with at Council meetings. The agenda also, in most instances, includes details of matters to be dealt with in closed sections of meetings as required under section 9(2A) of the Act and clause 240(4) of the Regulation. However, I have identified two instances, the agendas for the meetings of 27 January and 28 July 2006, where this has not occurred.

Under clause 240(3) of the Regulation, the general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting. This is so councillors have

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sufficient time to prepare for the meeting. This need is perhaps greater in an area like Brewarrina where the elected councillors are dispersed over large distances and remote locations.

It would appear that agendas and business papers are distributed well in advance of Council meetings often by as much as four weeks.

A review of business papers indicates that they include the following:

- Draft minutes of Council and committee meetings for adoption
- Minutes of external committees such as community working parties and Murdi Paaki reference groups
- Staff reports
- Status report on actions taken on Council resolutions
- Local government circulars
- A schedule of correspondence coming into the organisation over the previous month.
- The General Manager's diary schedule

One observation I would make of the business papers is that the staff reports tend to be light on detail. In my opinion, the councillors would benefit from having more information to assist their decision-making. However, there has been an improvement in this under the current Acting General Manager. The acting General Manager has advised that he is endeavouring to address this through the Council's management group.

### **Commencement of meetings**

Council meetings are scheduled to commence at 10 am.

Prior to 30 June 2006, meetings were scheduled to start at 9 am. Between 2 December 2005 and 26 May 2006, no meeting started on time. The earliest a

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meeting started was at 9.10, 10 minutes late. The latest start to a meeting was the meeting of 26 May 2006, which started at 10.15, 1 hour and 15 minutes late.

There was some improvement in the punctuality of meetings once the commencement time was shifted to 10 am. However, there were 10 occasions over the 17 ordinary meetings between 30 June 2006 and 2 November 2007 when the meeting started more than 5 minutes late. Generally, these meetings started between 10 and 20 minutes late.

### **Attendance at meetings**

While most councillors are diligent in their attendance at council meetings, a significant minority have poor attendance records. Cllr Jenny McLellan has attended only 7 of the 28 ordinary and extraordinary meetings held between 16 December 2006 and 21 September 2007. Cllr John Burke has attended 16 of those meetings. Cllr Stephen Gordon attended 15 meetings. Cllr Ronald Mason attended 19 meetings. In nearly every instance, absent councillors have given apologies which Council has resolved to accept.

In her evidence at the hearings, Cllr McLellan stated that she had missed so many meetings because she had had to nurse her husband who was ill in Newcastle. Asked whether she had considered resigning, Cllr McLellan replied:

*Well not - if it had been - if it had been right in the early stages, if we'd just been elected, I wouldn't have been able to continue, but as we're coming up to an election and he was deceased only recently, but I said if it was early days I would have had to resign.*

Both Cllrs Burke and Gordon explained in their evidence that they had missed a number of meetings because of illness.

Cllr Mason explained his absence from Council meetings as follows:

*Some of it like I just said to you was family issues. There was other times, other meetings I had to attend to. I'm probably admitting here now I'm putting some*

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*other organisation before council but it was more important and those meetings would have been more important for the community to have some say in it.*

With 12 elected councillors, the quorum for meetings is seven. Council has had a quorum at every meeting since 2 December 2005. However, as will be discussed in more detail below, at the meeting of 29 June 2007, Council lost its quorum and the meeting had to be adjourned. The meeting started with 8 councillors in attendance. However, at 11.45 am, Clr Stan Kirby resigned and walked out of the meeting leaving 7 councillors in attendance. At 1.10 pm, after a disagreement with the Mentor, Clr Clare Kesby walked out of the meeting and Council lost its quorum.

Clause 233 of the Regulation prescribes the process to be followed when a meeting loses its quorum. The meeting must be adjourned to a place and a time fixed by the chairperson. The general manager is also required to record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

The minutes of the meeting indicate that while the Chairperson, the then Deputy Mayor Clr Slack-Smith, correctly adjourned the meeting, he failed to fix the date, time and place where the meeting would resume. While the minutes record the circumstances giving rise to loss of quorum, the names of councillors present are not recorded.

In fairness to Clr Slack-Smith, it should be noted that it was his first meeting in the Chair and that this was a highly unusual situation that more experienced Chairs would rarely have to deal with. It should also be noted that the Mentor and Executive Officer were present and were apparently unable to assist him to comply with these requirements.

Council's quorum remains 7 even with the passing of the late Mayor and resignation of Clr Kirby. This will mean that the remaining 10 councillors will

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need to be more diligent in attending Council meetings in the future to ensure that Council maintains its quorum.

Section 254A(2) of the Act provides that if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to the councillor that relates to any period of absence that is in excess of 3 months.

*Council's Policy for Payment and Reimbursement of Expenses Incurred by, and Provision of Facilities to the Mayor, Deputy Mayor and Councillors*, adopted under section 252 of the Act requires councillors' fees to be paid independently of whether or not they attend ordinary meetings of Council. This is inconsistent with section 254A and will need to be amended to reflect that provision. Council has indicated that the policy is due for review and that it will address this issue when it does so.

On my assessment, only one councillor, Cllr McLennan, has been absent from ordinary Council meetings for a period that exceeds 3 months. Despite the above provision of Council's section 252 policy, Council's records indicate that she was not paid councillor's fees for the period she was absent that exceeded 3 months, as required under the Act.

### **Order of business**

Under clause 239 of the Regulation, at a meeting of a council (other than an extraordinary meeting), the general order of business is as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix the general order of business) as fixed by resolution of the council. As described above, Council's Code of Meeting Practice prescribes an order of business. The order of business may be altered if a motion to that effect is passed. Such a motion can be moved without notice.

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A review of the minutes indicates that since 2 December 2005, with the exception of the meetings of 18 May, 29 June and 20 July 2007, Council meetings are generally conducted in accordance with the prescribed order of business. The meetings where they were not will be discussed in greater detail below.

At a meeting of 27 January 2006, Council allowed Mr Palmer's report to be brought forward in the agenda without a resolution. However in other cases where matters were brought forward out of order with the prescribed order of business, such as the meetings of 17 August and 21 September 2007, Council did so correctly by way of resolution.

Council appears to get through its business at meetings reasonably efficiently. Of the 21 ordinary meetings of Council between 2 December 2005 and 21 September 2007, 10 were completed in under 3 hours, 9 were completed in between 3 and 4 hours and only 2 meetings exceeded 4 hours in length.

Council held 6 extraordinary meetings in the period between 2 December 2005 and 21 September 2007. This is not an unusually high number of extraordinary meetings and indeed, could be seen as quite low in the circumstances, given that in that period, Council has had to deal with the loss of two general managers, the passing of the Mayor, the settlement of major litigation and two public inquiries.

### **Maintenance of order at Council meetings**

All witnesses giving evidence at the hearings agreed that, with the exception of the meetings of 18 May and 29 June 2007, Council meetings were conducted in an orderly manner. This is confirmed by my review of the minutes of meetings held since 2 December 2005. As stated above, I intend to address issues arising from the meetings of 18 May and 29 June 2007 in detail below.

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### **Dealing with operational matters at Council meetings**

One of the issues identified by the first Public Inquiry was the tendency by councillors to raise operational matters in Council meetings. This is not uncommon in local government, and councillors will often raise residents' concerns in council meetings by way of questions without notice or as general business.

Under section 232 of the Act, councillors are required (as a group) to direct and control the council's affairs, allocate resources, and determine and review the council's policy and performance. Councillors should not involve themselves in the day-to-day administration of council. This is the responsibility of the general manager. As an extension of this, councillors should not raise operational matters in council meetings.

A review of the minutes of meetings since 2 December 2005 indicates that this practice continued for a time after the first Public Inquiry. The minutes indicate that councillors used the adoption of the minutes and the general business section of meetings to discuss and ask questions about operational matters.

Councillors also on a number of occasions used the general business section of meetings to move and adopt motions without notice. The general business section of meetings should not be used to avoid the notice provisions of clause 241 of the Regulation. As the Department of Local Government's *Meetings Practice Note* states:

*That clause enables all councillors and the public to be aware, by reading the agenda, of matters that will be raised at each meeting. It also enables councillors to give careful thought to any pecuniary interest or conflict of interest they might have in a matter, rather than having to hastily confront an issue during the meeting.*

The Practice Note suggests that where a councillor seeks to have a matter arising from general business considered by the Council, notice should be given to the general manager in the usual way. The general manager can include the

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item on the agenda for the next meeting, and make sure that the relevant staff prepare any necessary background documents or reports. If the matter is genuinely urgent, it could be dealt with under clause 241(3) of the Regulation.

At the meeting of 24 March 2006, the then General Manager, Mr Prakash raised concerns about the councillors' practices in this regard and suggested that the issues raised in the general business section of the meeting ought to have been dealt with by way of the councillor's request from.

Despite this, the practice continued until the meeting of 26 May 2006 when two officers from the Department of Local Government attended the meeting. That meeting was the last at which operational matters were raised and motions without notice moved in the general business section of the meeting. Both practices appear to have ceased.

### **Declarations of interests**

#### **Regulatory context**

#### ***Obligations relating to pecuniary interests at meetings***

Section 451 of the Act imposes the following obligation on councillors in relation to pecuniary interests they may have in relation to matters they deal with in council meetings:

- (1) *A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is present at a meeting of the council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.*
- (2) *The councillor or member must not be present at, or in sight of, the meeting of the council or committee:*
  - (a) *at any time during which the matter is being considered or discussed by the council or committee, or*

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- (b) *at any time during which the council or committee is voting on any question in relation to the matter*

Section 442 of the Act defines a pecuniary interest as follows:

- (1) *For the purposes of this Chapter, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.*
- (2) *A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section 448.*

Section 443 of the Act provides that a person will have a pecuniary interest in a matter before council if the interest in question is the interest of a 'related person':

- (1) *For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:*
- (a) *the person, or*
- (b) *the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or*
- (c) *a company or other body of which the person, or a nominee, partner or employer of the person, is a member.*

### ***Obligations relating to non-pecuniary conflicts of interests at meetings***

Councillors obligations in relation to non-pecuniary conflicts of interests are regulated under the Model Code of Conduct. The Model Code defines a non-pecuniary interest as follows:

*A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership*

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*of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).*

The Model Code imposes the following obligations on council officials in managing non-pecuniary conflicts of interests:

*6.11 If you have a non-pecuniary conflict of interests, you must disclose the nature of the conflict. If this is in a meeting, do so as soon as practicable. If you have declared a non-pecuniary conflict of interests you have a broad range of options for managing the conflict. The option you choose will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. You must deal with a non-pecuniary conflict of interests in at least one of these ways:*

*6.12 It may be appropriate that no action is taken where the potential for conflict is minimal. However, council officials should consider providing an explanation of why they consider a conflict does not exist.*

- Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.*
- Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer).*
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply (particularly if you have a significant non-pecuniary conflict of interest).*
- Include an independent person in the process to provide assurance of probity (for example, for tendering or recruitment selection panels).*

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## **Management of pecuniary conflicts of interests**

A review of the minutes of Council meetings since 2 December 2005 indicates two potential breaches of the pecuniary interests provisions of the Act.

The first occurred at the ordinary meeting of 29 June 2007. At that meeting, Council resolved as follows:

*That the minutes of the Tourism, Development & Heritage Committee Meeting held on Friday 15 June 2007 be received as information and the recommendation adopted.*

The recommendation was that Council donate \$1000 to the Brewarrina Business Awards.

Clr Brown is the Chairperson of the Business Alliance. In circumstances where the Business Alliance had a pecuniary interest in a matter before Council, Clr Brown will have an interest in relation to the matter for the purposes of section 442 as a result of the operation of section 443. Given the donation was intended to be the prize money to be handed on to a third party, it would seem open to question whether the Business Alliance did in fact have an interest in relation to the matter. However, it could also be argued that the receipt of the \$1,000 donation relieved the Business Alliance of the obligation of providing this sum itself in which case it would constitute an interest.

In any case, at the following meeting of 20 July 2007, at the adoption of the minutes for the meeting of 29 June 2007, Clr Brown made the following disclosure which is recorded in the minutes:

*Councillor Mark Brown requested that it be noted that he missed declaring a pecuniary interest in the recommendation of the minutes of the Tourism, Development & Heritage Committee held on 15 June 2007 as he is the Chairperson of the Business Alliance and participated in the voting of the following motion.*

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The former General Manager subsequently reported the matter to the Department of Local Government. The Director General has since written to Council to advise that while he considers that Clr Brown may have breached the pecuniary interests provisions of the Act, he has exercised his discretion not to investigate the matter under section 463(1)(b) of the Act.

A second potential breach of the pecuniary interest provisions of the Act occurred at the meeting of 2 November 2007. At that meeting, Council considered a proposal to grant a lease to an organisation in which a councillor was an officeholder. The minutes of the meeting indicate that the councillor correctly declared a pecuniary interest in the matter and disclosed the nature of the interest. However the minutes appear to indicate that having done so, the councillor remained in the Chamber and participated in discussion on the matter potentially in breach of section 451(2).

I have written to the Department of Local Government to notify it of this potential breach.

Apart from these two cases, a review of the minutes indicates that councillors have otherwise, been correctly declaring pecuniary interests and leaving the meeting as required under section 451(1). However, I note that in some instances, in declaring an interest in matters, some councillors are either failing to disclose the nature of the interest as required or providing insufficient information to enable the nature of the interest to be readily identified from the minutes.

### **Management of non-pecuniary conflicts of interests**

My review of the minutes suggests that councillors are generally declaring non-pecuniary interests appropriately. Again, in some instances, some councillors are failing to disclose the nature of the interest which they are also required to do in relation to non-pecuniary interests.

It should be noted that where councillors have a non-pecuniary interest in a matter before council, they are not necessarily obliged to leave the meeting,

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though in some circumstances it may be necessary for them to do so to appropriately manage the conflict as required under the Model Code of Conduct.

The minutes appear to indicate that where councillors have declared non-pecuniary interests in relation to matters before council, they have tended not to leave the meeting. In all cases, the potential for conflict has been minimal and so this was not inappropriate. However councillors should remain mindful of the fact that in certain circumstances, they might be obliged to leave the meeting in order to appropriately manage some types of non-pecuniary conflicts of interests.

### **Closure of Council meetings**

#### **Regulatory context**

Under section 10A of the Act, council meetings may only be closed to members of the public to discuss or receive information in relation to certain types of matters. These matters, prescribed under section 10A(2), are as follows:

- personnel matters concerning particular individuals (other than councillors),
- the personal hardship of any resident or ratepayer,
- information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- commercial information of a confidential nature that would, if disclosed:
  - prejudice the commercial position of the person who supplied it, or
  - confer a commercial advantage on a competitor of the council, or
  - reveal a trade secret,
- information that would, if disclosed, prejudice the maintenance of law,

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- matters affecting the security of the council, councillors, council staff or council property,
  - advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
  - information concerning the nature and location of a place or an item of Aboriginal significance on community land.

Where a council closes part of the meeting to the public, the grounds on which that part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

- the relevant provision of section 10A (2) relied on to close the meeting,
- the matter that is to be discussed during the closed part of the meeting,
- the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

If a council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, under clause 259 of the Regulation, the chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.

### **‘Closed council meetings’ versus ‘committee of the whole’ – a question of terminology**

Under the former *Local Government Act 1919*, councils closed meetings by resolving into ‘committee of the whole’. A number of councils, including

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Brewarrina, have persisted with this practice despite the repeal of the 1919 Act. This was commented on in the First Public Inquiry.

The term 'committee of the whole' carries another specific technical meaning under the current Act and Regulation. Under section 373 of the Act, a council may resolve itself into a committee to consider any matter before the council. The conduct of proceedings in 'committee of the whole' is regulated under clause 259 of the Regulation. Where council resolves itself into committee of the whole the rules relating to the number and duration of speeches are suspended thereby effectively allowing free and open discussion on a matter before the council.

The difference between 'closed council' meetings and 'committee of the whole' is addressed in the Department of Local Government's *Meetings Practice Note*:

*The closed part of a council meeting could be referred to as 'closed council' but not as a 'closed committee'. While the words 'meeting in committee' are sometimes used to refer to an organisational meeting in closed session, that is, with non-members and the public absent, this is not the case with councils.*

*Section 10A of the Act makes it clear that both councils and council committees (made up of councillors only) can close parts of their meetings. If a council closes part of its meeting, it still remains part of the council meeting — with the rules of debate being the same as for open meetings.*

*Only if a council resolves itself into the 'committee of the whole' under clause 259 of the Regulation, does part of the council meeting become a committee meeting. The committee of the whole remains open to the public unless the council closes it to discuss one of the matters referred to in section 10A(2) of the Act. The only advantage of a council forming a committee of the whole is to overcome the limits on the number and duration of councillor speeches referred to in clause 250 of the Regulation.*

It should be noted that there is nothing to prevent a council from closing a council meeting and resolving into committee of the whole, provided it complies

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with the Act in doing so. The benefit of resolving into committee of the whole is to allow freer discussion of the matter before council in circumstances where this may be required. In such circumstances, the minutes should indicate that council is meeting in 'closed committee of the whole'. However where there is no need for open discussion of the matter, a council should be able to deal with a matter in closed council simply by resolving to close the meeting under section 10A. Indeed, the first Public Inquiry implicitly acknowledged this, recommending that the *"general manager give advice to the councillors of the difference between closed session and committee of the whole and that it is not necessary to resolve into committee each and every time council resolves into a closed session"*.

### **Closure of meetings to 30 March 2007**

A review of the minutes of Council meetings between 2 December 2005 and 30 March 2007, indicates that Council struggled to comply with the requirements of section 10A in closing meetings for some time after the conclusion first Public Inquiry.

Rather than repeating the same mistakes each time, Council was extraordinarily inconsistent in the manner in which it closed meetings. For example, at the ordinary meeting of 16 December 2006, in closing the meeting:

- Council resolved to 'suspend standing orders' and to go into committee of the whole
- The minutes misdescribe the grounds for closure referring to a 'personal' matter rather than 'personnel' matter, (something that is a persistent error).
- The minutes fail to describe the matter being discussed.
- The minutes fail to disclose the resolution/recommendation made in closed committee of the whole. Council adopted a simple resolution to adopt the recommendation of the committee.

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At the following meeting of 27 January 2006:

- Council did not resolve to suspend standing orders, but resolved into committee of the whole.
- The minutes again misdescribe the grounds for closure under section 10A(2)(a) and refer to incorrect grounds. The correct grounds were those under 10A(2)(b) which relate to the personal hardship of a ratepayer.
- The minutes fail to describe the matter to be discussed.
- The minutes failed to disclose resolutions/recommendations made in closed committee of the whole. Again Council simply resolved to adopt the recommendation of the committee of the whole.

However, the minutes indicate that Council's practices in closing meetings improved over time. From November 2006 onwards, Council's closure of meetings was nearly fully compliant. Furthermore, in closing meetings, Council simply resolved to do so under section 10A rather than also resolving into committee of the whole. However, one area of ongoing non-compliance was Council's failure to disclose, in relation to those grounds where it was required, why closure would be, on balance, in the public interest. This is a common error, but one that Council needs to be mindful of.

It should be noted that this improvement coincided with the training provided to Council by Mr Gerry Holmes on meeting procedure in November 2006.

A review of the minutes of meetings between 2 December 2005 and 30 March 2007, including those for closed meetings of the committee of the whole and closed sections of council meetings, indicates that in every case, valid grounds existed for the closure of the meeting.

### **Public participation in Council meetings**

Council has supplemented its Code of Meeting Practice with procedures that allow members of the public to address Council meetings.

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A review of the minutes of meetings indicates that members of the public have been permitted to do so on a number of occasions.

### **Minutes of Council meetings**

Section 375 of the Act requires a council to keep full and accurate minutes of a council meeting.

The Regulation provides that the following matters must be included in the minutes of council meetings:

- Details of each motion moved at a council meeting and of any amendments (cl.254(a)).
- The names of the mover and seconder of each motion and amendment (cl.254(b)).
- Whether each motion and amendment is passed or lost (cl.254(c)).
- The circumstances and reasons relating to the absence of a quorum together with the names of the councillors present (cl.233(3)).
- The dissenting vote of a councillor, if requested (cl.251(2)).
- The names of the councillors who voted for a motion in a division and those who voted against it (cl.251(4)).
- A report of the proceedings of the committee of the whole, including any recommendations of the committee (cl.259(3)).

The Act provides that the following matters must be included in the minutes of council meetings:

- The grounds for closing part of a meeting to the public (s.10D).
- The report of a council committee leading to a rescission or alteration motion (s.372(6)).

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- The disclosure to a meeting by a councillor of a pecuniary interest (s.453).

On the question of how much detail should be contained in the minutes, the Department of Local Government's *Meetings Practice Note* makes the following observations:

*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.*

On my assessment, there are instances, discussed above where the minutes of Council meetings have not complied with some of the above requirements including:

- Failure to disclose the names of the councillors present after the loss of quorum at the meeting of 29 June 2007.
- Failure to report the proceedings of the committee of the whole, including recommendations of the committee.
- Failure to comply with the requirements of section 10D.

Apart from these instances, on my assessment, the minutes of Council meetings are generally compliant.

I note that at the meeting of 18 May 2007, the Mentor raised concerns that the minutes of the meeting were not a true and accurate record of proceedings on the basis that they did not use the words "moved by", "seconded by" and "carried" in relation to resolutions of the Council.

The Regulation does not actually require that these specific phrases be used. Clause 254 of the Regulation merely requires that the minutes contain the

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names of the mover and seconder of each motion and amendment and whether each motion and amendment is passed or lost.

The minutes of Council's meetings disclose the names of the two councillors who moved and seconded each motion. This is a practice that is also used by other councils. It would be apparent to anyone reading the minutes that the first councillor named was the mover of the motion and the second councillor named, the seconder. The minutes also state in relation to each motion that it has been 'resolved'. To my mind this clearly conveys that the motion was passed.

### **The conduct of the meetings attended by the Mentor and Executive Officer**

The Department's initial submission to this Inquiry indicated the following concerns about the meetings attended by the Mentor and Executive Officer:

*The Mentor and the Executive Officer attended Council meetings between March and July 2007. The meetings were often conducted outside the requirements of the Local Government Act 1993 and the Local Government (General) Regulation 2005.*

....

*Council meetings have been disruptive and resulting in turmoil during the period of the appointments despite Council giving the assurances of cooperation given to the Director General and to the Minister. At the conclusion of the May Council meeting the majority of councillors threatened to resign.*

....

*At the June Council meeting one councillor resigned mid meeting. Another left the meeting, leaving Council without a quorum, a meeting that had to be adjourned and business left unattended to.*

The Mentor echoed and elaborated on these concerns in his submission:

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*In May, the Executive Officer and I spoke to council about our concerns related to the performance of the [former] General Manager prior to the May council meeting and suggesting that council consider seeking legal advice about terminating his contract. At the next council meeting, the majority of councillors threatened to resign...*

*At the June council meeting, one councillor resigned mid meeting, handing in a typed written letter that had obviously been prepared prior to coming to the meeting. Another left the meeting, ostensibly after an altercation with me about her viewing council's meeting as a joke, but also in part because she had a personal engagement in Moree at that time and chose to go which she has now admitted to. Her departure left council without a quorum, a meeting that then had to be adjourned and council business unattended to.*

The Executive Officer elaborated on her concerns in her evidence before the hearings. Asked to describe her impressions of how meetings were conducted, the Executive Officer responded:

*The first few that I attended were not done in compliance with the requirements of council. They were not conducted in the required fashion. There were a number of occasions - when once the mentor came on board, there are a number of occasions where he had to step in and correct processes and procedures and obviously that was his role and not mine, but as observer that was certainly what I saw.*

Asked in what regard the meetings were not compliant, the Executive Officer responded:

*Discussion not being undertaken in the required process so – motions not being moved and seconded properly, some of the minutes were inaccurate but not corrected properly when we went back to them the following meeting, closed sessions being called “Committee of the whole”. Committee of the whole, as some people would be aware, is where council stops being a formal council and has a discussion amongst themselves but in public so that people can hear the*

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*discussion that council is having around particular issues and those committee of the whole meetings were quite often recorded instead of closed meetings - where they should've been closed meetings. Those sorts of things – closed meetings being meetings of council where the public doesn't have access to the discussion.*

Asked whether meetings were conducted in an orderly fashion, the Executive Officer replied:

*A number of them were and a number of them weren't and part of the disorderliness was objections to matters that the mentor was raising, part of the - mostly that was why they were unruly.*

In his evidence, Clr Slack-Smith provided an account from his perspective of the conduct of the May and June 2007 meetings attended by the Mentor and Executive Officer. Clr Slack-Smith said that Council tried to comply with the Mentor's recommendations, even when they thought they were strange:

*...most of their recommendations we did. Their recommendations - we even did things we thought strange, like dropping standing orders to let Carole speak. We did that on four occasions at one meeting at the very start of it to bring forward stuff so they could leave at 1 o'clock that they wanted to talk about. I didn't know at the time, we were going on the wise advice of the mentor, but that sort of apparently went out of the Act in 1993 before the new Act came in.*

Council expressed concern at the time about whether the advice given by the Mentor was correct. On 25 May 2007, the late Mayor drafted a letter to the Director General of the Department of Local Government raising concerns about the conduct and performance of the Mentor and Executive Officer. For reasons that will be discussed below, the letter was never sent. In the letter, the late Mayor raised concerns about the Mentor's advice on meeting procedure:

*Mr Smith has twice advised Councillors that they may introduce items without notice at Council meetings. This advice is contrary to recommendations of the*

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*Inquiry and totally against Local Government circular number 07-14 27 April 2007 regarding Council Meeting Practice – Business Without Notice.*

Clr Reichler also raised concerns about whether the Mentor's advice was correct in his evidence.

Clr Slack-Smith chaired the meeting of 29 June 2007 that ended in disorder. Clr Slack-Smith described how he followed the Mentor's instructions even if it disrupted the order of business dealt with at Council meetings:

*...what it [the suspension of standing orders] did was break up the order of the meeting, that particular one which I think was the June meeting. Ted had called in sick, I got the chair with about 1.5 hours notice. I got there, was given the papers and he said, Vic said "Here's them here, can we suspend standing orders." So I said, "Okay, suspend standing orders." He said, "It's to let Carole talk," and I said, "Okay, if you say so." So we did that and that happened on three to four occasions.*

Asked whether he found the practice of suspending of standing orders to allow the Executive Officer to speak and bringing items forward to be disruptive, Clr Slack-Smith replied:

*Wouldn't you? Of course it's disruptive. We've got an agenda, we've got a flow, we've got people coming in to give reports. They're dragging reports out of the back of the papers to bring to the front so that they can leave about half past 1.00 because they've got to catch a flight out of there. Yes, of course it's disrupting. It's not only disrupting, you know we were there before Councillor Kirby resigned for some time while Carole spoke in these dropping of standing orders - I think it was getting towards lunchtime. Yes, it's unnerving, difficult meetings to chair on half hour's notice anyway and not know what he wants to talk about or what they want to do.*

Clr Slack-Smith went on to describe how the June meeting ended in disorder:

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*That came about - well Councillor [Kesby] would know that off by heart and again I wasn't even sure, chairing the meeting away there. Vic said something, I don't know what, Clare said something like "You've got to be joking." He immediately bristles up, as he does, and he says, "You think this is a joke, this is not a joke" but the exact words you'd have to get off Clare. Anyway they got into a verbal discussion over joking and she said, "You're getting a bit carried away, taking it too far" and he said "No I'm not" and he continued to yell at Clare and she said, "I'm out of here" and she just walked out. Carole Medcalf went after her to get her, couldn't have tried too hard. Clare didn't leave the town, he said in his submissions she had to go to a gun shoot, that's where she was going, but she didn't leave town until half past 4.00 that afternoon. She was going to a gun shoot but it wasn't then. She was there for the duration of the meeting. She only left because of the altercation with Vic Smith.*

In her evidence, Clr Kesby provided an account of the circumstances that prompted her to walk out of the meeting of 29 June 2007:

*Okay, we started and suspension of standing orders, I don't know the terminology to use, but that was the terminology Vic Smith used, it was - occurred numerous times through the actual minutes being read, other minutes being read, and it was not being productive. We started at 10 o'clock. At 1 o'clock we still had not started the reports. Three hours. By that stage I - we were about to go into the reports and Mr Smith suspended standing orders again to go back to a item that had been previously considered and which I noticed a couple of Councillors just rustle, like didn't - thought "No, this is not right", and I stood up and said "This is a joke. We have an agenda, why don't we stick to it?" to which Vic Smith replied "I am not a joke" in a tone that absolutely I thought well, I didn't say you're a joke, I didn't - and he just berated me, which at the time I was frustrated, I'd had enough, picked up my report and said "Well, I'm going. I'm not here to be spoken to like that", and I walked out. It was - it was just, yeah, devastating that I had voiced an opinion on the way the meeting was being run and it was unproductive. I was going away that afternoon, I had mentioned it, I was intending to go away - leave after school*

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*finished and we didn't get away until 4.30, which was, you know, later than I expected. So yeah, I was going away, but to me that wasn't - that was my private time and I have never asked to be – for meetings to hurry up in the previous times. I have left to go and pick the children up from school. Other than that, I have never actually asked for a meeting to be hurried up because I had to go away, and I felt it unfair that he made a big deal out of that, especially when they had the meeting – had to leave to go to fly home. I can't see the difference in their, what they did to what I was doing.*

In his evidence, Clr Slack-Smith said that the Mentor yelled a “couple of times” at each Council meeting he attended.

In her evidence, Clr Kesby also raised concerns that the Mentor and Executive Officer caused the draft minutes of meetings to be withheld from the business papers meaning councillors did not have an opportunity to read over them before meetings. Clr Kesby believed the Mentor and Executive Officer caused the draft minutes to be withheld in order to demonstrate to the councillors what they perceived to be the then General Manager's incompetence:

*Minutes were being withheld from Councillors, and they would be brought to the Council meeting just to show what - this is what your general managers done or hasn't done or how the minutes are done, instead of correcting them - having them corrected - sent out to Councillors at the time, and having Council read them and have time to mull over them.*

In his rebuttal submission, the Mentor responded to criticism of his conduct in Council meetings as follows:

*As mentor, I did not chair the Council meetings, nor did I participate in the substantive business conducted at the meetings. References in the transcript [of the hearings] to my “intervention” or “interference” at meetings must be interpreted to mean my pointing out to Councillors when they digressed from correct meeting procedure or when I recommended that Council move to suspend standing orders to go off record to discuss matters. It was always open*

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*to the Councillors to disregard my comments and recommendations, and to suspend and resume standing orders as they saw fit. It was always open to the Council to adopt a code of meeting practice that incorporates the regulations and supplements those regulations with provisions that are not inconsistent with them. (Local Government Act s360.)*

### **The suspension of standing orders**

As discussed above, evidence considered by the Inquiry suggests that the Mentor required Council to “suspend standing orders” to permit himself or the Executive Officer to speak. The evidence of the councillors and the minutes of the meetings indicate that this happened frequently at the meetings the Mentor attended.

I had not heard of that term being applied in the context of council meetings before, but I understand that it was used under the old *Local Government Act 1919* to suspend the formal rules of meeting procedure. In effect, the suspension of standing orders performed the same function as resolving into ‘committee of the whole’ does under the current Act.

It should be noted that the Mentor did not introduce the practice to meetings of Brewarrina Shire Council as was suggested in evidence at the hearings. A review of the minutes of meetings from 2 December 2005 onwards, indicates that Council suspended standing orders to close meetings on 16 December 2005, 28 April and 25 August 2006. However, this was the last meeting at which it did so and Council appeared to have abandoned the practice until the Mentor reintroduced it at the meeting of 18 May 2007.

In his rebuttal submission, the Mentor defended the practice in the following terms:

*Ms Medcalf in her answers...makes reference to council's code of meeting practice and the regulations. To my knowledge Brewarrina Shire Council has not adopted its own code of meeting practice. Under the Local Government Act, 1993 section 360(2) it is not obligatory that Council adopts a code of meeting*

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*practice but nevertheless the regulations apply. Part 10 of the Local Government Act (General) Regulation, 2005 (sic), sets out regulations for Council and committee meetings. The fact that the regulations are silent as to the procedural aspect of how Council once in the process of meeting, may move itself off the record and into general discussion, and then back on the record in formal meeting, does not draw the conclusion...that a Council is not able to suspend and subsequently resume standing orders.*

*In mentoring the Council, the suspension of standing orders during a Council meeting enabled me to discuss aspects of meeting procedure with the Councillors, which is what I did. It was also appropriate for Council to suspend standing orders at its meeting to receive and discuss information from the Executive Officer, Ms Medcalf, as referred to in the evidence of Councillor Slack-Smith...and Clr Kesby....*

On my assessment, the Mentor's above comments would appear to be incorrect in a number of respects. In particular:

- Council does have a Code of Meeting Practice which was in force at the time the Mentor was assisting the Council.
- As discussed above, the Act and Regulation are not silent on how a council can suspend formal meeting procedure to allow general discussion. They permit councils to resolve into committee of the whole to do so.
- Neither the Act or Regulation permit the 'suspension of standing orders' as contemplated by the Mentor. Given the Act and Regulation prescribes procedures that allow councils to resolve into committee of the whole to permit general discussion, these are the procedures that councils must follow in doing so.
- Where a council resolves into committee of the whole, only the rules relating to the number and duration of speeches are suspended. The other rules governing meeting procedure will continue to apply. The mere

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fact that a council has resolved into committee of the whole, for example, would not permit someone other than a councillor to participate in the discussion of an item before the council or to raise issues not directly relevant to the matter before council, (such as questions of meeting procedure) as part of that discussion, (though questions of procedure can be raised by councillors with the Chair as a point of order at any time in a meeting).

- A more appropriate mechanism to allow the Mentor to offer advice on questions of meeting procedure to the councillors as a group as he described above, would be by way of an adjournment of the meeting. Alternatively he could have offered that advice directly to the Chair as general managers often do.
- Council officers often present reports in relation to matters before a council and answer questions from councillors in relation to it. There is no need for a council to resolve into committee of the whole, (or suspend standing orders for that matter) to enable them to do so.

### **Review of the minutes of the Council meetings attended by the Mentor and Executive Officer**

A review of the minutes of the Council meetings attended by the Mentor and Executive Officer confirms that they were often chaotic. They also lend support to the descriptions given by Clrs Slack-Smith and Kesby in their evidence of the manner in which those meetings were conducted. I have described below key incidents that occurred in those meetings as disclosed in the minutes for the purpose of conveying the dynamics of the meetings in question and to address procedural issues arising from them.

Before doing so, it is perhaps appropriate that I deal with the suggestion made in the Department's rebuttal submission that the minutes do not represent an accurate record of meetings and therefore cannot be relied on as evidence. As will be discussed in greater detail below, it is apparent from the minutes of the

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meetings they attended, that both the Mentor and Executive Officer were vigilant in identifying what they considered to be inaccuracies in those minutes. The Department's rebuttal submission refers to the fact that the Mentor and Executive Officer were obliged to "painstakingly" correct the minutes at each meeting they attended. Therefore, I do not accept that the minutes do not represent an accurate record of those meetings.

Furthermore, in the absence of any evidence to the contrary, I am unable to conclude that the minutes of those meetings that were not attended by the Mentor and Executive Officer do not accurately reflect the manner in which those meetings were conducted.

***Ordinary meeting of 30 March 2007***

The ordinary meeting of 30 March 2007 was the first meeting attended by the Executive Officer. The meeting preceded the appointment of the Mentor. I have been unable to identify any procedural deficiency in the conduct of that meeting from the minutes.

***Ordinary meeting of 27 April 2007***

The ordinary meeting of 27 April 2007 was the first meeting attended by the Mentor.

The minutes indicate that in relation to an item relating to attendance at the Shires Association of NSW Annual Conference, in response to a request for his advice, the Mentor stated that it was advisable the former General Manager not attend. It is unclear from the minutes why he took this view. In response to that advice the Council resolved to amend the motion permitting the former General Manager's attendance to preclude him from attending.

In relation to resolution 079/07 to close the meeting:

- Having previously abandoned the practice, Council reverted to resolving to go into 'committee of the whole' to close the meeting. The minutes appear to suggest that this was on the advice of the Mentor.

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- The motion correctly identified the grounds for closure but failed to disclose the matter to be considered or why closure was in the public interest.
  - The recommendations made in closed committee of the whole are not disclosed in minutes. Council simply resolved to adopt the committee's recommendations.

The minutes of the committee of the whole indicate that the recommendation was amended on the advice of the Mentor to preclude the former General Manager, Mayor and Deputy Mayor from participating in negotiations in settlement of litigation.

***Ordinary meeting of 18 May 2007***

Both the Mentor and Executive Officer attended the Ordinary Meeting of 18 May 2007. They left at 1.06 pm, 40 minutes before the end of the meeting to catch a flight.

At 10.15, 5 minutes after the start of the meeting, Council resolved to close the meeting and 'suspend standing orders' to discuss the former General Manager's performance. The former General Manager and the Executive Assistant left the meeting but the Mentor and Executive Officer remained in attendance. The matter was not identified in agenda and there was no resolution to deal with matter at the meeting or a ruling of urgency from Chair as required under clause 241 of the Regulation. The grounds for closure referred to in the resolution are those prescribed under section 10A(2)(a) but the minutes misdescribe the matter as a "personal" rather than a "personnel" matter. The matter to be discussed, the former General Manager's performance, is disclosed as required.

The meeting was closed for 1 and a half hours. At 11.46 Council resolved to reopen the meeting but no resolution was adopted. The Council did not resolve to resume standing orders.

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Despite this, 3 minutes later, at 11.49 Council again resolved to “suspend standing orders” and closed the meeting. The second resolution closing the meeting had the same deficiencies as first. On this occasion, the former General Manager, Executive Assistant, Mentor and Executive Officer all left the meeting. The meeting was closed for an hour. Council resolved to reopen the meeting at 12.50. Again no resolution was adopted. Again Council did not resolve to resume standing orders.

Other evidence considered by the Public Inquiry, indicates that the meeting was closed to allow the Mentor and Executive Officer to raise further concerns about the former General Manager’s performance. The Mentor and Executive Officer had already informally met with councillors two days earlier to discuss their concerns. This will be discussed in greater detail below. In total, nearly 3 hours of the meeting was taken up with this issue which was not on the agenda for the meeting. It is not clear why the matter had to be dealt with as a matter of urgency at that meeting. In my opinion, it would have been more appropriate to adjourn the meeting to discuss the concerns or to have discussed them with councillors after the meeting. If a decision of Council was required, it would have been open to councillors to call a separate extraordinary meeting to deal with the matter.

Immediately after Council reopened the meeting, it dealt with the draft Management Plan. It is unclear from the minutes why it was dealt with at this stage of the meeting. The agenda indicates that it was to be dealt with as part of the Finance Manager’s report. It may have been brought forward to deal with concerns raised by the Executive Officer in relation to the draft Management Plan at the meeting two days earlier. Again, this will be discussed in greater detail below. There was no resolution to bring the item forward as required.

Clrs Slack-Smith and Brown moved a motion to defer consideration of the draft Management Plan to a later date practical for discussion. This may have been in response to the Executive Officer’s concerns. It should be noted that given the Management Plan needs to be placed on public exhibition for 28 days and

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adopted before 30 June, there was limited time available for such further consideration to occur. Sensibly, Clrs Kirby and Burke successfully moved to amend the motion to adopt the draft Management Plan and defer discussion until after the exhibition period if necessary by way of holding an extraordinary meeting.

Council then proceeded to deal with the minutes of the ordinary meeting of 27 April 2007 and the meeting of the committee of the whole held on the same day. The minutes indicate that the Mentor recommended that these not be adopted as they were not a true and accurate record of proceedings on the basis that they did not state "moved by", "seconded by" and "carried". As discussed above, the Regulation does not actually require this and on my assessment, the minutes complied with requirements of Regulation. Instead of simply resolving to adopt the minutes as amended as is normally the practice, Council resolved to defer adoption of the minutes to the next meeting. They were subsequently adopted at the meeting of 29 June 2007.

The next item concerned a report by the Group Manager Corporate and Community Services relating to the waiving of fees for use of a sports field. This also appears to have been brought forward in the agenda without resolution. The Mentor advised that there should be consideration of the financial impact before waiving the fee. However the officer's did in fact address the financial implications. In effect it was proposed to waive the fee for one year with a review for subsequent years. The total cost to Council was \$475. Council subsequently resolved to defer the item to the next Finance Committee meeting with a further report.

Later in the meeting, as part of the General Manager's report, Council dealt with the costs associated with the levee bank litigation. However, on the advice of the Mentor and Executive Officer, Council resolved to defer the matter to the next meeting

Later in the meeting, Council considered what is described as an audit management letter. This in fact related to an interim audit conducted by

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Council's auditors. This was not on the agenda for the meeting but was tabled as a late item on the suggestion of the Mentor. Given this related to an interim audit and in the absence of any issues arising from it that required the urgent attention of the Council, it is unclear why this item could not simply have been dealt with at the next Finance Committee meeting. There was no resolution that the matter be dealt with at that meeting and there was no ruling by the Chair that the matter was a matter of urgency. Council subsequently resolved that the matter be deferred to the next Finance Committee meeting once the full auditor's report was received.

In relation to the report of the Manager Tourism and Economic Development, on the advice of Mentor, a number of other items were considered as late items. Again the items did not appear in the agenda and there is no resolution that the matters be dealt with at that meeting or a ruling by the Chair that they were matters of urgency. The items in question included the following:

- A report on the proposed sister city youth exchange visit 2007
- A report on a proposed lease of Goodooga Bowling Club to Goodooga Cooperative Limited
- A memo to all councillors regarding the application for Australian Government Community Water grants
- Establishment of a partnership with the NSW Cancer Council
- Enquiries to Police on crime increases and police presence in Goodooga.

It is unclear why the Mentor considered these items required the urgent attention of Council. Despite the documents being tabled, there was no resolution by Council to receive the items for information.

After the Mentor and Executive Officer left the meeting, as discussed above, Council resolved to write to the Premier's Department stating that Council

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wished to sever its relationship with Brewarrina/ Weilmoringle Reference Group due to the non attendance by Mr Palmer at Council meetings.

The minutes also indicate, as described by Clr Slack-Smith above, that six councillors announced that they wished it to be noted that they were considering resigning as councillors. The councillors included the late Mayor, former councillor Stan Kirby, and Clrs Brown, Neale, Slack-Smith and Burke.

### ***Ordinary meeting 29 June 2007***

After the adoption of the minutes of the meetings of 27 April 2007, the Mentor suggested that the item on the levee bank litigation be brought forward in the agenda. There was no resolution by Council to bring it forward. The minutes indicate that the Mentor stated that he and the Executive Officer had held discussions with Council's solicitor in relation to the matter.

The minutes indicate that Council was 'in committee' to deal with the matter but Council did not resolve into committee of the whole. Despite the fact that Council had not resolved into committee of the whole it subsequently resolved to adopt *"the recommendations of the committee of the whole regarding the Levee Bank Case"*.

Council correctly resolved to close the meeting citing the correct grounds under section 10A(2) and disclosed the matter to be dealt with. Council also resolved to suspend standing orders. There was no subsequent resumption of standing orders. Council correctly disclosed its resolution adopted in the closed section of the meeting in the minutes.

The next item concerned the confirmation of minutes of the meeting of 18 May 2007. The agenda indicates that these were to be tabled at the meeting and were therefore not included in the business paper. As discussed above, the Mentor and Executive Officer apparently caused these to be withheld from the business papers because of apparent errors. This meant, as stated by Clr Kesby, that councillors did not have an opportunity to consider them prior to the meeting.

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In its rebuttal submission, the Department states that it did not receive draft minutes of meetings until the Wednesday afternoon prior to the Friday morning meeting and that there was insufficient time to raise problems with the minutes prior to meetings. However the Department's records indicate that the draft minutes of the ordinary meeting of 18 May 2007 were registered in the Department's records management system on 30 May 2007 and amended the same day, well before the meeting of 29 June 2007 where they were to be adopted.

The minutes indicate that the Mentor disputed the accuracy of the minutes based on the following:

- that they failed to record that the motion moved by Clr Reichler relating to the pharmacy lease agreement lapsed for want of a seconder, and
- the wording used to describe Clr Kesby's objection to the item relating to signatories to Council's bank account.

For reasons that are unclear, the amended minutes were not adopted until later in the meeting.

The minutes indicate that a request was made to bring forward the item relating to Mr Palmer's complaint and threat of defamation action. Again there was no resolution to bring the item forward.

Again, the minutes indicate that Council was 'in committee' to deal with matter but Council did not resolve into committee of the whole. Despite the fact that Council had not resolved into committee of the whole it subsequently resolved to adopt the recommendation of the committee of the whole.

The resolution to close the meeting cited the correct grounds for closure and identifies the matter to be considered. The Council also resolved to suspend standing orders. However, there was no subsequent resumption of standing orders.

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In the closed section of the meeting, the Mentor complained that Council's solicitor had obtained advice from senior counsel without authorisation from the Council. The former General Manager indicated that he had authorised this.

Following this item, Cllr Stan Kirby tendered his resignation and left the meeting.

The agenda indicates that the minutes of the Finance Committee meeting were to be tabled at the meeting and were therefore not included in business paper. It would appear that, like the minutes of the previous ordinary meeting of Council, the Mentor and Executive Officer caused these to be held back. It is unclear why they did so. Again, this meant that the councillors had no prior opportunity to consider them before the meeting. In this case this was particularly problematic given that it contained a number of recommendations in relation to the Management Plan which had to be adopted at that meeting.

The Mentor raised several concerns about the draft Management Plan. In particular:

- He enquired about a proposed increase in rent for staff and questioned how Council would attract staff
- He advised that the recommendation should include the adoption of the 3.4% increase for rates announced by the Minister
- He enquired about the charges for use of a sporting oval and suggested that Council needed to consider whether all sporting groups could afford the fee.

After Council adopted the draft Management Plan, the Mentor asked about the consultation process and requested that all correspondence sent out be provided to him and Executive Officer

At this point in the meeting, the Mentor requested that the item concerning the levee bank litigation be brought forward as he and Executive Officer had to leave at 1pm. As described above, Council had in fact already dealt with that matter after acceding to an earlier request by the Mentor to bring it forward. The

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minutes of the subsequent meeting indicate that the Mentor stated at that meeting that he made this further request because he wanted to make it clear how the extra costs were to be allocated.

Council resolved to bring the matter forward in line with the Mentor's request. However Clr Neale objected to the fact that the Mentor and Executive Officer were leaving early. The then Deputy Mayor, Clr Slack-Smith, who was chairing the meeting pointed out that the matter had already been dealt with earlier in the meeting. The Mentor replied that he wished to be clear that Council understood what had been voted on earlier. Council resolved to suspend standing orders to hold discussions. The minutes indicate that Clr Kesby then left the meeting "*due to a heated discussion with the Mentor*". The meeting was then adjourned due to a lack of quorum. In the minutes of the subsequent meeting Clr Kesby stated that she wanted it noted that she felt the meeting had become unproductive as the agenda was not being followed.

***Adjourned ordinary meeting of 29 June 2007 held on 20 July 2007***

The adjourned ordinary meeting of 29 June 2007 was held at 9am on 20 July 2007, prior to the start of the ordinary meeting of 20 July 2007.

12 minutes into the meeting at 9.12 am, Council resolved to suspend standing orders. General discussion followed for 15 minutes about matters of procedure and various other unrelated matters. During the discussion, the former General Manager indicated that he had failed to give notice of the adjourned portion of the meeting. At the end of the discussion, Council resolved to open the meeting. It had not been closed. There was no resolution to resume standing orders.

The Mentor then requested that Council resolve to appoint the Executive Officer to the former General Manager's performance review panel. The item was not on agenda. While Council resolved to bring the matter forward as a matter of urgency there was no separate ruling by the Chair that the item was a matter of great urgency. Nor was there a subsequent resolution by Council to actually

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appoint the Executive Officer to the former General Manager's performance review panel.

In relation to an item on funding of Brewarrina levee remedial works, the Mentor enquired where the funding was coming from.

In relation to the item relating to the outcome of the mediation between Council and the Ngemba Community Working Party, (discussed above), the former General Manager's submission referred to the letter from the mediation facilitator, Mr Sam Jeffries, that indicated the relationship between Council and the Ngemba Community Working Party was positive. The minutes indicate that the Executive Officer participated in discussion on the item stating that Ngemba Community Working Party Chair did not agree with the outcome described in letter.

#### ***Ordinary meeting of 20 July 2007***

The ordinary meeting of 20 July 2007, immediately followed the adjourned meeting of 29 June 2007, starting at 10.17 am.

The minutes indicate that shortly after the start of the meeting, Council resolved to suspend standing orders and closed the meeting to discuss the former General Manager's report relating to a number of policies for adoption by Council. This item appears to have been brought forward in the agenda without a resolution. Furthermore the resolution to close the meeting does not comply with the requirements of section 10D. The item to be discussed was not disclosed and the resolution does not state the grounds relied on to close the meeting. Indeed, it seems unlikely that grounds existed for closure given the nature of the matters discussed.

Council discussed a number of matters in the closed section of meeting. The former General Manager indicated that the policies for adoption would be divided into policies and procedures as some were operational in nature and that the policies would be dealt with in a policy workshop. There was no resolution to this effect.

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The Mentor also discussed what were described as the minutes of the meeting of the 'committee of the whole' on 29 June 2007 in the closed section of the meeting. The Mentor suggested that references to 'committee of the whole' be changed to 'closed meeting of Council'. As discussed above, it is unclear whether or not council had in fact resolved into committee of the whole at that meeting. The Mentor also requested that the statement "*Councillor Wayne Neale objected to the Mentor and the Executive Officer leaving early*" be amended to "*Councillor Wayne Neale objected to the Mentor and the Executive Officer leaving at the approximate finishing time of the council at 1.00 pm*". The Mentor also requested that the minutes be amended with the statement "*Councillor Clare Kesby leaves the meeting due to a heated discussion with the Mentor*" changed to "*Councillor Clare Kesby leaves the Council Chambers*".

After Council resolved to reopen the meeting, Council adopted the amended minutes of the ordinary meeting. As indicated above, Clr Kesby indicated that she wanted it noted that she felt the meeting had become unproductive as the agenda was not being followed. The Mentor explained that he wanted the levee bank matter brought back because he wanted to make it clear how the extra \$200,000 of costs was to be allocated.

On the suggestion of the Mentor, Council resolved to amend the minutes of the "committee of the whole" to "closed meeting of Council".

Within 15 minutes of having reopened the meeting, Council again resolved to "suspend standing orders" and close the meeting to deal with two items. Neither of the items in question was notified in the agenda. There was no resolution to deal with the items and no ruling by the Chair that they be dealt with as matters of great urgency.

There is one resolution to close the meeting to deal with both items. The resolution closing the meeting identifies the grounds for closure as section 10A(2)(a) (but again misdescribes these grounds as being "personal" rather the "personnel") and section 10A2(g). The resolution identifies one of the matters to be dealt with, namely the levee bank case but fails to identify the other. Given

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what was discussed in the closed section of the meeting, arguably, grounds existed for closure under section 10A(2)(a) and (g). In relation to the levee bank case, the resolution fails to disclose why closure of the meeting was, on balance, in the public interest as required. The resolutions adopted in the closed section of the meeting are not reported in the minutes of the open section of the meeting.

### **Observations on the conduct of Council meetings attended by the Mentor and Executive Officer**

The above assessment of the evidence considered by the Inquiry in relation to the conduct of the meetings attended by the Executive Officer and Mentor suggests the following:

- The manner in which those meetings were conducted was not typical of the manner in which Council normally conducts its meetings.
- While it is true that the Mentor did not Chair the meetings in question, it is apparent from the minutes and evidence given at the hearings, including the evidence of the Executive Officer, that he exercised a significant degree of control and direction over the manner in which those meetings were conducted.
- Despite being appointed to advise Council on meeting procedure, the Mentor was apparently unaware throughout his period of appointment that Council had adopted a Code of Meeting Practice governing its meeting procedures.
- The Mentor apparently regularly intervened in discussion on substantive matters before Council and actively participated in that discussion, often 'suggesting' or 'advising', and in some cases, effectively directing councillors on how they should exercise their vote on matters before Council.

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- The Mentor apparently disrupted the order of business to be dealt with at Council meetings by insisting that matters be brought forward in the agenda, without the required resolution, in order to accommodate his and the Executive Officer's travel plans.
  - The Mentor apparently incorrectly advised Council on the suspension of standing orders and, as evidenced by the conduct of the meetings that he attended, apparently either incorrectly advised or failed to correctly advise Council on such matters as resolving into committee of the whole to allow general discussion, the procedure for closing meetings, how to raise matters that were not notified in the agenda and how to bring forward or defer matters in the agenda.
  - The Mentor and Executive Officer apparently caused draft minutes to be withheld from Council business papers.
  - The Mentor apparently yelled at councillors at meetings. On one occasion this apparently prompted a female councillor to walk out of a meeting.

On the basis of the above observations, I do not believe any adverse inference can be drawn from the evidence of the manner in which the meetings attended by the Mentor and Executive Officer were conducted in relation to the capacity of councillors to effectively conduct meetings in accordance with statutory requirements.

### **The conduct of Council meetings since 20 July 2007**

A review of the minutes of Council meetings held following the departure of the Mentor and Executive Officer to 2 November 2007 indicates a significant improvement in the conduct of meetings.

Meetings generally correctly followed the order of business set in the agenda. On most occasions where items of business were brought forward or deferred in the agenda, such as occurred at the meetings of 17 August, 21 September

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and 2 November 2007, Council correctly did so by way of resolution. However, there was one instance, at the meeting of 17 August 2007, where Council brought an item forward in the agenda concerning the levee bank litigation without a resolution.

However, while there was some improvement in the closure of meetings, Council has continued to fail to correctly meet all the requirements under the Act. For example, at the ordinary meeting of 17 August 2007, Council resolved to close the meeting to discuss the levee bank litigation. Correctly, Council simply resolved to close the meeting. However, Council relied on the incorrect grounds for closure (s10A(2)(c)). Given the nature of the matters discussed, the meeting should have been closed under section 10A(2)(g). The resolution also failed to disclose the public interest. While the minutes identify the matter to be discussed, the resolution adopted in the closed section of the meeting was not reported in minutes of open meeting.

A further concern related to the fact that Clr Kesby raised an unrelated matter in the closed section of the meeting that was not on the agenda. It is doubtful that grounds existed that would have permitted the matter to be dealt with in a closed meeting in any case. There was some discussion about the matter but Council adopted no resolution.

However, at the next meeting, an extraordinary meeting held to consider the former General Manager's performance review, Council met all requirements in closing the meeting. The only defect was that Council again misdescribed the grounds as being "personal" rather the "personnel".

## **Conclusions**

The evidence considered by this Inquiry supports the view that the Council meetings attended by the Mentor and Executive Officer were chaotic and disorderly and did not comply with the requirements of the Act and Regulation. However the evidence indicates that this was not typical of the manner in which

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Council meetings are normally conducted and cannot be attributed to the conduct of any councillor of Brewarrina Shire Council.

The evidence also indicates that, apart from those meetings, there has been a steady improvement in the manner in which Council meetings have been conducted since 2 December 2005. Meetings are conducted in an orderly and efficient manner and generally in compliance with the Act and Regulation. There are however a number of ongoing concerns, namely the failure by Council to give proper public notice of its meetings in accordance with the requirements of its Code of Meeting Practice and its apparent inability to meet the requirements of the Act and Regulation in closing meetings. However these are issues that can be easily remedied without the need to resort to the dismissal of the elected body of Council.

The attendance of some councillors at meetings has been poor due to ill health. However the councillors concerned have indicated that they are unlikely to stand for re-election at the next local government elections. It is therefore unlikely that this issue will impact on Council beyond that point.

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## **SYSTEMS AND POLICIES AND THE MANAGEMENT OF FINANCES**

### **Issues identified in the First Public Inquiry**

The first Public Inquiry identified a number of issues associated with the Council's systems and policies and the management of its finances. These included the following:

- Delay in adopting a compliant Code of Conduct
- Deficiencies in the Management Plan, Social Plan and State of the Environment Report
- Failure to comply with statutory requirements in the management of Council owned land
- Failure to adopt an EEO Management Plan
- Deficient pecuniary interest returns
- No records management policy
- Poor financial management as evidenced by the following:
  - An unsatisfactorily high level of outstanding rates and charges
  - Insufficient working capital
  - An operating deficit before capital items with no provision to cut costs
  - Low level of reserves for infrastructure replacement
  - Overpaid accounts

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## **Planning and reporting framework**

### **Integrated planning and reporting**

The Department of Local Government sees a council's planning and reporting framework as comprising the following documents:

- A long term strategic plan (which is not currently a statutory requirement)
- Its Management Plan (as required under section 402 of the Act)
- Its Social Plan (as required under clause 200 of the Regulation)
- Its State of the Environment Report (as required under section 428(2)(c) of the Act)
- Quarterly reviews of Council's performance under the Management Plan (as required under section 407 of the Act)
- Annual Reports (as required under section 428 of the Act)
- Local Environmental Plans (prepared under the *Environmental Planning and Assessment Act 1979*)
- Plans of Management for land classified as community land (as required under section 35 of the Act)

As reflected in its *Fitting the Pieces Together: Integrated Planning and Reporting by NSW Local Councils* discussion paper issued in December 2005, *A New Direction in Local Government* position paper issued in October 2006 and *Integrated Planning and Reporting for NSW Local Councils* options paper, issued in November 2006, the Department of Local Government is seeking to promote an 'integrated' approach to the exercise by councils of their various planning and reporting functions.

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## **Strategic planning**

### ***Regulatory context***

While the Department considers the development of a long-term strategic plan to represent good practice, there is currently no statutory requirement for councils to undertake long term strategic planning.

In its *Fitting the Pieces Together: Integrated Planning and Reporting by NSW Local Councils* discussion paper issued in December 2005, the Department described the benefits of long term strategic planning as follows:

*Management plans should have a strategic as well as operational component. However, the department, through its Local Government Reform Program - Promoting Better Practice, has noted a surprising number of councils spending too little time developing and working under a clear, comprehensive and longer-term strategic plan. This leaves councils ill-prepared to meet the challenges of the future such as an ageing population, skills shortages and environmental challenges like water shortages and natural resource management.*

*The need for an integrated strategic plan or umbrella document for each local government area was also identified by a review of the former PlanFIRST project. The Plan Making Taskforce recommended that the Minister for Local Government be requested to encourage councils to prepare a long term strategic plan for every local government area in NSW and to update the department's Management Planning Guidelines.*

*This recommendation recognises that strategic land use planning required under the Environmental Planning and Assessment Act 1979 is best integrated with a holistic strategic plan for each local government area which is then operationalised through the council management plan and Local Environmental Plan.*

### ***Corporate vision***

Council has adopted the following:

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- A vision statement
  - A mission statement
  - What it terms as “key directions” relating to each area of its operations, namely governance, corporate services, engineering services and environmental services
  - A statement of core values

These are articulated in its Management Plan and Annual Report. However they are not posted on Council’s website.

### ***Strategic planning by Brewarrina Shire Council***

Brewarrina Shire Council does not currently have a long-term strategic plan. However, Council has undertaken two strategic planning exercises in 2000 which were referred to in evidence at the hearings.

In 2000, Council engaged an urban design team to assist in the preparation of a strategic plan for the redevelopment of the Brewarrina CBD. This resulted in the development of the *Brewarrina Masterplan* in December 2000. It should be noted however that this was essentially an exercise in town planning and not a strategic planning exercise of the type contemplated by the Department.

In April 2000, Council held a two-day strategic planning workshop for councillors and staff facilitated by a consultant. The workshop resulted in the identification of four strategic goals centred on economic development, town improvement, crime prevention and drug and alcohol abuse and the development of an action plan in relation to each goal. While this exercise could have formed the basis for the development of a strategic plan, no such plan was subsequently developed.

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**Strategic planning workshop arranged by the Mentor and Executive Officer**

The Department of Local Government's initial submission raises concerns about the performance of the councillors at a strategic planning workshop the Mentor and Executive Officer arranged for them.

*The Mentor and the Executive Officer arranged to meet with councillors and the [former] General Manager to start working on such a plan. The difficulties associated with councillors providing ideas and suggestions at the meetings raises questions about the capacity of Council to provide necessary guidance and direction. The Executive Officer requested that the [former] General Manager continue to work with councillors to develop Council's strategic direction, which he agreed to do. It appears that no subsequent meetings have been held.*

The Executive Officer elaborated on these concerns in her evidence at the hearings:

*One of the things we did or tried to do with the councillors was council is required to have a strategic plan in place to say, "This is where we want to take the community in the next ten to 15 years", and this council doesn't have any such plan. It doesn't have the beginnings of any such plan so one of the things that the mentor and I did was to sit down with the councillors and to talk about what they might look at. The responses that we got from the councillors in the initial meeting clearly demonstrate that they didn't understand what we were asking and so we asked in a variety of ways, and I think it was very clear that there was either a reluctance or an inability to try and envisage what they wanted or to express what they wanted Brewarrina to look like in another ten or 15 years, whether they - and how they saw they could get to that point. So those were the difficulties and we tried a number of strategies and we talked across a number of areas and we finally started to get some of those down in the second meeting. At the conclusion of that second meeting, when it was clear we hadn't progressed nearly as far as we ought to have done in those two*

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*sessions, I turned to the [former] general manager, who had also been present in those two sessions, and asked him to ensure that he continued that process with the councillors and that they continued to document it and to my knowledge that hasn't happened.*

In his evidence, Clr Slack-Smith was scathing about the workshop:

*Sorry, I laughed. That was a joke. Strategic plan in relation to the management plan - she did nothing about that first one, she knew nothing about the Main Street, she knew nothing. Council didn't even know what they were there for in the end, or even the beginning. There was nothing given to them on paper, nothing given in writing. She was there for about one to two hours and then she started to get a little bit off the idea at the end of it. No, that's why I feel sorry for you if you go into one of those situations. You go anywhere like that and people ask you, "Do a ten year strategic plan." "What for?" "For the community for the future 10, 20 years. You've got two hours." I really do have to laugh.*

Asked whether the Executive Officer had explained what a strategic plan was and what purpose it should serve, Clr Slack-Smith replied:

*Again poorly. What she said was it was about linking the strategic plan into the management plan. Very good, okay, it's already there. I see street cameras sitting there in the main street. Then she said, "What are your wishes, what do you want to see for this town?" ... She said that was going to be the first of some meetings, well she threw her hands up after the first one. The council has been totally confused, no idea what she was even on about for half of it. I've got to say that.*

Clr Kesby also found the workshop confusing:

*Honestly I was very bamboozled by it. You know at the time her explanation wasn't there, it was very, very confusing and to be honest with you I, yeah, I couldn't - it wasn't explained in a term - terms of understanding it and she asked for a wish list, what we wanted, and yeah, it was very confusing at the time and*

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*subsequently there was no follow-up of it and no report or record of that, that I received as such anyway.*

Asked whether she understood that it was a strategic plan she was working on, Cllr Kesby replied:

*Yes, I understood that, but it's - yeah, it was very confusing in how she presented it and I mean Ms Medcalf at the time.*

Under cross-examination, the Executive Officer agreed that she had not supplied councillors with background reading material prior to the workshop to assist them to understand the purpose of a strategic plan and where it fits into a council's other planning and reporting functions.

Given the circumstances, I do not believe any adverse inferences can be drawn from the fact councillors were confused by the workshop. In my opinion, the workshop may have been more productive had the councillors been provided with the Department of Local Government publications referred to above and an example of another council's strategic plan and other management planning and reporting documents to demonstrate integrated planning and reporting in practice, in advance of the workshop.

### ***Strategic focus of the councillors***

In their evidence at the hearings, most Councillors were able to demonstrate a strategic grasp of issues affecting the Brewarrina LGA. In particular:

- Cllr Slack-Smith spoke about the need for community cohesion, law and order, the improvements to the streetscape of Brewarrina, road infrastructure and the tourism potential of a sealed road to Goodooga and the motel
- Cllr Ron Mason, a councillor from Goodooga, also spoke about the potential economic benefits of sealing the road to Goodooga and on to the Queensland border

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- Clr Wulf Reichler spoke about improved service delivery and access to transport
  - Clr Clare Kesby talked about the remoteness of the location and Council's reliance on grant funding
  - Clr John Burke talked about the impact of the drought on the business community
  - Clr Angus Geddes spoke about the impact of the drought and interstate water management on the community
  - Clr Stephen Gordon spoke about challenges faced by the Aboriginal community in participating in the white system
  - Clr Mark Brown spoke about improvement in the streetscape of Brewarrina, road maintenance, the challenges of getting State and Federal Government service providers to commit to meeting the needs of the community and promoting tourism and other economic activities

***Council's current strategic planning exercise***

At its meeting of 2 November 2007, after the commencement of this Public Inquiry, but prior to the hearings, Council resolved to hold a strategic directions and planning workshop. This was subsequently held on 11 and 12 February 2008.

I would suggest that the Council defer any further action on the development of a strategic plan pending the release of draft guidelines on the issue by the Department of Local Government in the interest of ensuring compliance with those guidelines.

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## **Management plan**

### ***Regulatory requirements***

Under section 402 of the Act, councils are required to adopt a Management Plan each year with respect to:

- the council's activities for at least the next 3 years, and
- the council's revenue policy for the next year.

The contents, public consultation on and adoption of Management Plans are prescribed under the Act and Regulation. The Department of Local Government has also issued guidelines to assist councils in the preparation of Management Plans.

### ***Council's current management plan***

In its initial submission to this Public Inquiry, the Department made the following criticisms of the Council's Management Plan as it currently stands:

*The Plan is divided into sub-programme areas that contain Objectives. Some of these were not objectives and the performance measures to indicate Council's achievements in meeting those objectives often did not relate to the item they were located against.*

*It bears little resemblance to a document on which Council could depend to inform the community about its activities for the next year nor was it done in consultation with anyone. It was cut and pasted from the previous year's noncompliant report, with some date and other insignificant changes. The Executive Officer indicated its non-compliance. The [former] General Manager did little apparent work on the document unless supervised by the Executive Officer.*

*As Council is required to conduct public meetings, where the document is available to be discussed and viewed, it was necessary to at least make the document understandable, to make a connection between an Objective and its*

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*performance measure/s and to be able to make some connection to other plans that Council has developed.*

As described above, other evidence considered by this Inquiry does not support the Department's view that the Management Plan was not "*done in consultation with anyone*". In summary, that evidence indicates that Council:

- placed two advertisements in the local newspaper seeking public input into the process at the start of the process.
- subsequently held a public meeting on 1 May 2007 seeking public input
- advertised the draft Management Plan in the local newspaper and invited submissions
- wrote to a number of key stakeholders, providing a copy of the draft Management Plan and inviting submissions.

My examination of the Management Plan has shed light on another of the Department's above criticisms that the "*objectives often did not relate to the item they were located against*". It would appear that the dot points appearing in the "key performance indicators" column of the plan are slightly out of alignment with the goals they relate to in the "sub-programme goals" column. This is a minor formatting issued that can easily be corrected and does not impact on the integrity or clarity of the document.

However, on my assessment of the Management Plan, I would make the following general observations:

- It is a reasonably effective document in terms of outlining Council's day-to-day operations and immediate to shorter term goals. However the plan lacks a strategic or long-term focus in so far as it contains no sub-programs that are geared towards achieving long-term goals. This is essentially symptomatic of Council's lack of a strategic plan to inform the goals set in its Management Plan.

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- Some of the sub-program goals do not have key performance indicators.
  - Some of the key performance indicators are not clearly defined or fail to identify clear timeframes.
  - Some of the sub-program goals are in fact key performance indicators in themselves and should appear in that column against a more broadly defined goal.
  - While the Management Plan contains references to Council's other plans and reports, as will be described in more detail below, many of the issues or goals identified in those plans are not reflected in it.

I have identified the following areas, where the Management Plan does not strictly comply with statutory requirements:

- The Management Plan does not identify environmental protection activities arising from its previous State of the Environment comprehensive and supplementary Reports as required under clause 199 of the Regulation
- In relation to Council's activities relating to the management of stormwater, sewerage and waste, the Management Plan does not address the requirements of clause 198 of the Regulation particularly those requiring the Council to identify relevant characteristics of the area and Council's evaluation of possible methods of dealing with any relevant pressures, problems and issues.
- The schedule of fees and charges contains a \$31 'research fee' in breach of the requirements of section 12 to provide documents free of charge. Council has advised that it intends to delete this fee from its next management plan. Council has also advised that staff are not aware of this fee ever having been applied.

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## **Quarterly reviews**

### ***Regulatory requirements***

Under section 407 of the Act, the general manager must report to a council within 2 months after the end of each quarter as to the extent to which the performance targets set by the Council's current Management Plan have been achieved during that quarter.

### ***Quarterly reviews undertaken by Council***

Council's records appear to indicate that it has only produced one quarterly management review in the period between 2 December 2005 and 22 February 2008. Not only does this indicate that Council has repeatedly failed to comply with the requirements of section 407, this represents a significant failure in the governance of the Council. The quarterly management review represents a key accountability mechanism that enables the organisation, its governing body and the broader community, to judge the Council's performance in meeting the goals set in its Management Plan.

The failure by the councillors to identify this omission represents a serious failure in the exercise of their responsibilities as councillors.

It would appear Council has now recognised this omission and I note that management plan reviews for the quarters ending on 30 September and 31 December 2007 were included in the business papers for the meeting of 22 February 2008. The acting General Manager has advised that procedures have now been put in place to ensure that the Council receives a review of its Management Plan every quarter as required under the Act.

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## **Annual report**

### ***Regulatory requirements***

Under section 428 of the Act, councils are required to prepare an annual report within 5 months of the end of each financial year. The contents of annual reports are prescribed under the Act and Regulation.

### ***Council's current annual report***

Council's 2006-7 Annual Report is a reasonably comprehensive document that clearly reports on Council's performance in meeting the targets set in its Management Plan. However there are a number of areas of possible minor non-compliance with statutory requirements, namely:

- The Annual Report possibly fails to disclose the cost of the provision of certain facilities or the payment of certain costs to councillors as required under clause 217 of the Regulation. However, it is unclear to what extent this is due to the fact that these facilities and expenses were not in fact provided to the councillors.
- The former General Manager's remuneration package does not disclose the value of non-cash benefits as required under clause 217. I understand that the Council provides the General Manager with accommodation and possibly other non-cash benefits.
- The report on Council's performance in relation to access and equity activities, required under clause 217, lacks sufficient detail.
- The Annual Report fails to provide a comparison of actual stormwater management services with projected stormwater management services as proposed in the Management Plan and a statement of reasons for any difference as required under clause 217.

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## **Social plan**

### ***Regulatory requirements***

Councils are required to adopt a Social and Community Plan under clause 200 of the Regulation. The Department of Local Government has issued Social and Community Planning and Reporting Guidelines to assist Council's in the preparation of these plans.

### ***Council's current social plan***

I have requested the Department of Local Government's Policy and Review Branch to prepare an assessment of Council's current Social Plan for me. The Policy and Review Branch possesses considerable expertise in this area. The full assessment is reproduced in Appendix 2 of this report.

The Department's Policy and Review Branch has identified the following concerns with Council's current Social Plan:

- Despite the fact it is a 5-year plan until 2010, most of the recommended activities are simplistic with an expected completion date of 2007 or ongoing. The plan lacks sufficient detail as to how issues are to be progressed over the 5-year period, or how the plan will be updated in the intervening period.
- The plan does not describe the consultation Council undertook in preparing the plan.
- There is no articulation of the strategies Council intends to adopt to involve the community in ongoing review and development of the plan. This is important, as there are many aspects of the plan still under development and subject to review in 2007. Such strategies could include the development of MOUs with Community Working Parties. There is no evidence that future planning is sufficiently integrated into Council's planning processes, and that there are structures in place to

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give the plan momentum. Council has since advised that it has established a committee to review the plan.

- As discussed above, there are references to the plan in Council's Management Plan. However they are generic references and do not constitute an Access and Equity Statement in accordance with the Guidelines. Actions in the Management Plan refer to the ongoing maintenance of existing Council community facilities and programs but do not pick up the valid strategic issues raised in the Social Plan.
- As described above, reporting on access and equity activities in the 2007 Annual Report does not comply with requirements.

## **State of the Environment Report**

### ***Regulatory requirements***

Councils are required to prepare a State of the Environment Report under section 428(2)(c) of the Act. Councils are required to prepare a comprehensive State of the Environment Report for the year ending after each election and may prepare either a comprehensive or supplementary report for every other year. The contents of comprehensive and supplementary State of the Environment Reports are prescribed under the Act and the Regulation. To assist councils with the preparation of State of the Environment Reports, the Department of Local Government issued State of the Environment Reporting Guidelines in January 2000.

### ***Council's State of the Environment reporting***

I have requested the Department of Local Government's Policy and Review Branch to prepare an assessment of Council's State of the Environment reporting for me. The Policy and Review Branch possesses considerable expertise in this area. The full assessment is reproduced in Appendix 2 of this report.

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The Department's Policy and Review Branch has identified the following concerns:

- Council appears not to understand the different requirements for comprehensive and subsequent annual supplementary reports. The last comprehensive report cannot be clearly identified. It should be noted however, that this is an issue that predates December 2005.
- Council, while providing evidence that it has attempted to involve the community in the compilation of the 2007 supplementary report, it has not been effective in doing so and it has not considered the required role of the community in ongoing monitoring. Council has not presented a strategy to develop this in the future.
- Council has not demonstrated an ability to effectively engage the Aboriginal community in environmental management, even though the Aboriginal community comprises 45% of the population and has existing structures that Council can access.
- While covering each of the environmental sectors, the 2007 supplementary report does not address all key issues, some of which have been presented in the 2005/2006 and 2006/2007 reports. Actions presented are limited, reflecting existing operations. There is no strategic focus identifying longer-term goals, actions, timeframes and performance measures.
- Data presented is minimal and reflects a point in time only. There is no attempt at producing longitudinal data that will enable trends to be identified even when Council holds such data.

The 2007 supplementary report advises that the next comprehensive report is due in 2008/09. Council has advised that it intends to participate in the preparation of a Regional State of the Environment Report in partnership with the Western Catchment Management Authority.

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## **Local Environmental Plan**

Council has made a joint funding application with Bourke and Central Darling Shire Councils to the Department of Planning for the preparation of a new LEP that complies with new planning law requirements. Council has been successful in its application. Council has been given until 2011 to prepare an LEP that complies with the new requirements.

## **Policy and Governance Framework**

### **Policy review**

The first Public Inquiry recommended that Council undertake a complete and thorough review of its policies, processes and practices to ensure that they are appropriate and to improve them where necessary.

In its submission, the Department identified the following concerns about the manner in which Council reviewed its policies:

*Council did not have a policy register at the commencement of the Executive Officer's placement. The Records Clerk was asked by the Executive Officer to compile all Council's policies in a central document. Some of the most urgent policies that a Council would ordinarily have in place were identified in the first Inquiry. Those policies were discussed with the [former] General Manager and then with the Group Manager Corporate and Community Services.*

*The [former] General Manager showed no inclination to participate in the development of policies with the exception of the Tendering Guidelines. The task was allocated to the Group Manager Corporate and Community Services. Guidance and direction was provided by the Executive Officer over the course of a number of meetings. Tasks were set by the Executive Officer and priorities established with the Group Manager. The policy development schedule was set by the Executive Officer and developed by the Group Manager.*

*All existing Council policies were then reviewed by the Executive Officer in conjunction with the Records Clerk. Most of the policies are either not current or*

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*fail to address the needs of a multi million dollar organisation which has community accountability requirements as well as regulatory and statutory requirements. Councillors appear to be unaware of the parlous state of affairs of the impact of being without guiding policies for its governance as well as the reality of the state of affairs regarding Council's policies.*

*When these matters were raised with councillors, some were of the view that having policies in place that were developed in the 1990's was adequate for matters that had undergone significant changes since that time. It is apparent that Council has not reviewed its policies to reflect changes in statutory requirements and ever changing needs of the community and therefore that Council is exposed to a substantial risk in its operations.*

*The Group Manager (CCS) organised a set of policies to be presented at the July 2007 council meeting. The Mentor, Executive Officer and at least one councillor made comment that the policies were not up to a reasonable standard either in content or in presentation. The [former] General Manager was required to withdraw the draft policies for further work and they are still to be re-presented to Council.*

Council has disputed the statement that it did not have a policy register at the time the Executive Officer commenced her placement. Council has stated that it did have a policy register but has acknowledged that the Executive Officer worked with the Council's Group Manager Corporate and Community Services and Records Officer to improve the design of the register.

Council has also disputed the statement that the former General Manager, "showed no inclination to participate in the development of policies". Evidence given by the Group Manager Corporate and Community Services on the process followed in reviewing Council's policies would tend to support this view.

In his evidence at the hearings, Council's Group Manager Corporate and Community Services, Mr John Keenan, stated that he started the process of reviewing Council's policies after he commenced employment at Council in

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October 2006. However, the effort became more concerted after the appointment of the Executive Officer:

*...when I first come there one of the issues I saw we've had policies that hadn't been looked at for some time, contrary what was in the submission. We did have a policy register and there was up-to-date policies in it but it hadn't been maintained on an ongoing basis. We didn't have a person who was maintaining, which you should be doing. I took that role on about October last year and started to, you know, see which ones were up-to date and which ones weren't and tried to get - like everyone does, you don't reinvent the world. You go out and have a look at what other councils have got so I downloaded a lot from other councils and then tried to find out what was the best ones. That - I got sidetracked off that probably just after Christmas when there was a few other issues come up. I just went back to it occasionally and it wasn't until the executive officer come and she spoke to me about it that we sort of kick-started a combined and unified sort of effort to get a forward policy framework together, I suppose, and which we did. We started doing that from that time onwards and that was one that I worked pretty - almost exclusively with the executive officer, though she was involved with the [former] general manager as well and the records manager who was putting it together in a new format, so we went through that whole process.*

....

*... the actual policies were actually put together by council, by myself - principally myself, and Sunil [the former General Manager] with help from other staff, the appropriate staff to be involved in it, and we started just putting it together with the idea that we would update and put - initiate new policies, update ones that were out of date and delete ones that weren't in any more and that started, I think, around about May last year - May this year, rather, it may be April. It culminated us putting together about ten policies to go through all in one month, the month of June, and it didn't go through.*

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Asked why the policies were not adopted at the June meeting, Mr Keenan replied:

*Well, first of all it run into the problem of - that was when we had a disorganised council. We had to adjourn half of it to the next month and the next month the executive officer and the mentor asked us to take the entire ten out of the meeting.*

Asked why the Mentor and Executive Officer had requested that the policies be withdrawn, Mr Keenan replied:

*They considered that they weren't either true policies or they had - there was parts of the policies shouldn't be in there and so we removed all ten of them, although in my opinion probably should've been no more than about two but at that time we weren't in a position to argue. We took all ten back out of the - and put them back in. Subsequently went through and they were approved in October as subsequent - at a subsequent meeting they were approved with modifications.*

Mr Keenan stated that he was required to make minor changes to the policies:

*Changes weren't monumental but some changes they needed to be reformatted....Mostly it was changing words because many of the policies we pulled out were in fact policies that - I'd gone into other councils and spoke to them and they sent me their policies and all I did was change it for our particular requirements and some of them are very big councils who are, I would think, pretty right and we even pulled some of them out because at this stage we weren't going to argue with any - just take the whole ten out so there was never a statement there was something wrong with all of them. There was something wrong with some of them but mostly it was the issue between the procedural part of the policy and the policy part of it and there is a difference in it. What we didn't do was word it properly, we didn't structure it up.*

After the policies were withdrawn from the July meeting of Council, Mr Keenan organised a policy workshop for councillors and senior staff:

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*In between we had a policy workshop - we conducted a policy workshop for all of councillors and senior staff to show them what policies are about, quite a comprehensive one which I sort of compiled and Sunil, the [former] general manager, reformatted it and we did a PowerPoint presentation on it which was quite good, in fact. It's as good as I've seen anywhere and that was in between so it was to teach the difference between a policy and a procedure and that type of thing.*

On my assessment, the documents produced for the policy workshop including the PowerPoint presentations and supporting documents are impressive. PowerPoint presentations were held on the following:

- The formatting of policies
- Guidelines for the development of Council policies
- The understanding and use of Council policies

Various support materials were also produced for the workshop including a proposed template for Council policies and guidelines on understanding, development and use of Council policies.

As a result of the policy workshop, Council put in place a streamlined process for the development, review and the staged adoption of policies. According to Mr Keenan:

*As a result of the policy workshop, I designed a new policy format that was partly to do with executive officer, I'm not saying it was entirely mine. We developed a framework from the format and then - which went to that workshop and all the policies now basically follow that same format and we've now got a procedure - I think we put through ten at the next meeting, I think six or eight went through the meeting after that, this next meeting there's going to be about eight so we've got an accelerated program of policy approval now and the structure - we put a structure around this. We put a structure around it whereby we created a policy officer which was needed – one person doing it and not two*

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*people doing it and the next one doing it differently, so I'm the policy officer now. So all policies have got to come through me, basically and then we have a policy group which is the general manager, myself and the group manager of engineering and any other councillor - any other staff that we feel is necessary. We agree on the policy and then it goes to - the policy then goes to council so it goes through a stage process so that we do have an effective system of ensuring that policies are out there, they're correct and before council will see them, it's a bit hard for councillors to absorb looking at half a dozen policies at a council meeting, even if you're given forward notice and some of them were as much as eight to ten pages long. It's pretty hard to absorb so we were doing them in stages and doing it correctly, we believe, as correctly as we can do it, so that's the stage we're at now.*

Asked whether there were further policies to be reviewed, Mr Keenan replied:

*Yes, all the time, it's an ongoing exercise. You can't do them all. You can't put them all through council, even if you can do them because it just wouldn't be – that's not effective management, that. It's not effective management, put them through just because they've got to go through. You've got to put them through so that everyone understands what they're doing. The timeframe is meant to have, maybe you know, as many as 50 approved by the middle of next year which will largely – we're putting the most urgent ones through now. None of them is affecting operations but its ones we should have in place that was - in most cases they were there but needed changing. In other cases they weren't there and they needed to go in but none of them were affecting operations but they are needed.*

A review of the agenda and minutes of Council meetings indicates that Council has maintained and, indeed, increased the momentum of the development and adoption of new policies following the departure of the Executive Officer and Mentor.

A review of Council's current policy manual (as of November 2007) indicates that Council now has a reasonably comprehensive governance and policy

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framework in place. Council has indicated that it adopted three more policies at its December 2007 meeting and that additional policies have been prepared for adoption at the April 2008 Council meeting.

I do not propose to provide a detailed critique of each of the policies here. However I would make the following observations about the format of the policy manual and a number of key issues arising from my review of the policies:

- Policies should indicate the date on which they were last reviewed. Council has indicated that policies will indicate this when they are reviewed.
- While the policy template developed in the policy workshop represents good practice, it appears that it is not being consistently applied to the policies currently being developed by Council. Some of Council's recently adopted policies do not describe the purpose of the policy, a policy statement, policy principles, the application of the policy or define responsibilities.
- As described above, Council's *Policy for Payment and Reimbursement of Expenses Incurred by, and Provision of Facilities to the Mayor, Deputy Mayor and Councillors*, adopted under section 252 of the Act requires councillors' fees to be paid independently of whether or not they attend ordinary meetings of Council. This is inconsistent with section 254A and will need to be amended to reflect that provision.
- Council's complaints policy does not contain references on how complaints alleging breaches of the code of conduct are to be dealt with.
- Council's complaints policy requires the reporting of alleged breaches of the pecuniary interest provisions of the Act to Council. Such matters should be referred to the Department of Local Government and should not be reported to Council. The Model Code of Conduct precludes conduct issues being raised in Council meetings unless in accordance with the procedures prescribed under that Code.

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- Under Council's complaints policy, the Mayor is nominated as the reviewing officer for complaints that were dealt with at first instance by the General Manager. This would potentially require the Mayor to deal with operational issues which is inappropriate. The Mayor's complaint handling role should be limited to the role prescribed for the Mayor under the Model Code of Conduct.

While Council now has a reasonably comprehensive governance framework, there remain a number of gaps:

- Council does not have a gifts and benefits policy to supplement its Code of Conduct. Council has indicated this will be presented to the April 2008 Council meeting.
- While Council has a risk management policy, it appears not to have a comprehensive risk management framework in place to support it.
- Council does not have a business continuity plan.
- Council does not have an internal audit program. While it may be beyond Council to resource an internal audit program on its own, it may be open to Council to explore sharing such a program with neighbouring councils.
- Council does not have a system in place for ensuring legislative compliance.
- Council does not have a policy governing access to information by the public.
- Council does not have an internal reporting policy under the *Protected Disclosures Act*.

It should be noted however that Council is still in the process of reviewing its policy and governance framework. In Council's rebuttal submission, the current acting General Manager indicated that he intended to complete the

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Department's Promoting Better Practice Review checklist to identify gaps that need to be addressed.

During the hearings, Mr Keenan indicated in his evidence that Council had not developed a program to provide councillors and staff training on Council's new policies. However, in Council's rebuttal submission, the current acting General Manager indicated that he intended to organise training sessions on these. He has subsequently advised that he has done this.

### **Code of Conduct**

Under section 440 of the Act, councils are required to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct issued by the Department of Local Government. A council may supplement the provisions of the Model Code but may not adopt provisions that are inconsistent with it. However a provision will not be inconsistent if it is more onerous than the Model Code.

As well as prescribing standards of conduct to be observed by council officials, the Model Code prescribes procedures for dealing with complaints under the Code.

Under the Model Code, councils are required to establish a conduct committee comprising of the Mayor, general manager and at least one person independent of the council to deal with complaints against councillors and the general manager. Where a complaint is made against the Mayor or general manager, the Deputy Mayor or another councillor designated by council will take their place on the committee.

The Department has issued guidelines to assist councils in implementing their code of conduct.

Council has adopted a Code of Conduct that is consistent with the Model Code. Council adopted its current Code of Conduct at its meeting of 29 June 2005.

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However, I note that in doing so, Council did not establish a conduct committee. If it has not established a conduct committee since, Council should do so.

Since 2 December 2005, the General Manager has received 3 complaints under the Code of Conduct.

The first of these was Mr Palmer's complaint about the resolution by Council at its meeting of 18 May 2007, to sever its relationship with the Brewarrina/Weilmoringle Murdi Paaki Reference Group. The former General Manager exercised his discretion to decline the complaint. In doing so, he wrote to Mr Palmer giving as a reason for his decision that the Council was obliged to be open and accountable for its decisions and that the resolution had been prompted by concern at the infrequency of his attendance at meetings and reporting to Council.

In my opinion this represents an appropriate exercise of the General Manager's discretion to decline a complaint under the Code of Conduct. While I question the merits of the Council's decision, the resolution in question was dealt with appropriately in an open Council meeting and represented a legitimate exercise of Council's discretion on reasonable and appropriate grounds. It is difficult to see how the adoption of the resolution represented a breach of the Code of Conduct.

The second matter concerned allegations that a councillor had the keys to a depot and had inappropriately given fuel to a passing motorist. The complaint was apparently made by the Executive Officer. Council's records on the complaint are poor. A memorandum from the former General Manager to the Executive Officer indicates that the former General Manager instigated an investigation of whether the councillor had keys to the store. This revealed that he did not hold the keys in question. The memorandum indicates that the former General Manager intended to investigate the other matter further. There is no other record relating to this investigation. However, the Executive Officer's quarterly report recounts the full history of the matter:

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*Prior to the June meeting a detailed allegation about one of the councillors was made to me by a member of the community. The allegation related to the councillor providing fuel from council's ... depot at no cost to a truck driver who had run out of fuel.*

*I referred the matter to the [former] General Manager who has recently received Code of Conduct training. He discussed a course of action that involved speaking to the councillor. He made the trip to Goodooga and informed me that having spoken to the councillor he was satisfied that the councillor had no key to access the depot and therefore could not have provided the fuel.*

*Shortly after speaking to the [former] General Manager I received an irate phone call from the councillor. When asked if he was suggesting that complaints about staff and councillors not be investigated he calmed down. I then asked if he had ever given fuel to passing motorists.*

*He responded that there was only one time and proceeded to describe an incident that matched the allegation with the exception that it wasn't a car but a truck. The councillor acknowledges going to the depot and getting a 44 gallon drum of petrol for the truck driver. He says staff enabled him to access the fuel. No record appears to be made of the event.*

*He also says that the truck driver returned the 44 gallon drum of petrol to his front verandah which he promptly returned to the depot. No record appears of this event either.*

On the information provided, it would appear that the councillor in question merely facilitated, with the assistance of Council staff, a loan of Council fuel to a motorist in difficulty. The fuel was returned. In any other location, the councillor's conduct may have been questionable. However, the councillor's conduct is understandable given the circumstances and the remoteness of the location. In the circumstances, it was reasonably open to the former General Manager to decline to refer the matter to the Conduct Committee. However,

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Council should consider developing a formal procedure for dealing with such situations in the future.

In declining to refer the matter to the Conduct Committee, the former General Manager was obliged to write to the complainant, in this case the Executive Officer, and give his reasons for doing so. He appears not to have done so. Indeed, the poor record keeping in this case is of concern. The handling of Code of Conduct complaints should be well documented. Council should maintain records of the complaints, any investigation conducted in relation to them and any decision including reasons for the decision.

The third matter arose from the second matter. A young receptionist at Council complained when the councillor the subject of the second complaint swore during the course of a conversation with her. According to a memorandum prepared by the Human Resources Manager:

*Cr ... proceeded to use foul language during this conversation (For example he advised that he wouldn't be attending the F\*\*\*\* meeting as he had just been accused of stealing F\*\*\*\* petrol and he definitely wouldn't be attending to talk to that F\*\*\*\* woman (referring to Carole Medcalf – DLG). During the entirety of this conversation Cr. ... used a number of obscenities that need not be repeated (none were directed at [the receptionist] but were however found to be offensive).*

It would appear that the staff member withdrew the complaint after the councillor in question explained his actions to her.

## **Pecuniary interests returns**

### ***Regulatory context***

Under section 449 of the Act, councillors and designated persons are required to complete and lodge with the general manager, a pecuniary interest return within 3 months of becoming a council official and within 3 months of 30 June of each year. Council is required to maintain a register of pecuniary interests

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returns and to table pecuniary interest returns at the first meeting after the last day for lodgement.

The matters required to be disclosed in pecuniary interest returns are prescribed under the Regulation.

***Compliance with requirements relating to the completion and lodgement of returns***

I have undertaken a review of the most recent pecuniary interest returns lodged with the Council. While the standard of returns is generally good, my review has indicated the following deficiencies:

- While all returns have been completed on time, there is no evidence of their having been formally received. The section on the return indicating the date received and who received them has not been completed. However, Council has advised that a schedule is included on the front of the register that records the date that returns are received.
- Two returns fail to disclose a return date.
- Not all the returns identify the correct return period they relate to.
- Some returns fail to correctly disclose the nature of interests in real property.
- Some returns fail to identify the address of employers as required.
- Some returns fail to identify the address of corporations in which interests and positions are held, and some fail to disclose the nature of the interest or position held in the corporation.
- Some returns possibly fail to disclose rental income received from multiple residences.

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The returns were not tabled at the first ordinary Council meeting after the last day for lodgement, which was held on 2 November 2007. However returns were tabled at the subsequent meeting on 14 December 2007.

## **Human resources management**

### **Strategic workforce planning**

All councils are exposed to a number of workforce issues, such as:

- the shortage of specialised skills in certain areas
- an ageing workforce
- a change in workload for certain sections as the council's and government priorities change
- increased career opportunities outside the area.

In Brewarrina Shire Council's case, these challenges are accentuated by its remote location, its limited resources and its reliance on grants to fund staff positions.

There is no current statutory requirement for councils to develop long-term workforce plans. However, the Department of Local Government considers it to be good practice for councils to develop a long-term workforce plan that looks at the staffing needs of each section of a council and allocates staff according to workload and priorities. The long-term plan should also address the issues of:

- the council's ageing workforce
- the provision of a plan of succession for key positions, and
- increase opportunities for apprenticeships, cadetships and traineeships to address these concerns.

Council does not currently have a long-term workforce plan in place. Given the challenges it faces in recruiting and retaining staff, (which will be discussed in

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greater detail below), there is a particular need for it to develop and implement such a plan.

A human resources strategy can integrate and guide the Council's overall human resources effort, particularly in the areas of recruitment and retention and staff training and development. A strategy of this kind may be stand-alone or may be integrated into the Council's overall corporate strategy. The key is to ensure that, consistent with Council's view on the future direction of the organisation, planning is underway to support that direction at the human resources level. Such a strategy is a key part of effective modern strategic management. Its importance is underlined by the requirement for councils to report annually in the management plan on their human resource activities.

Council has advised that its Human Resources Officer is currently developing a strategic plan that addresses issues such as long-term workforce planning, career development and succession planning and traineeships and apprenticeships.

### **Other human resources policies, plans and systems**

As part of its review and development of new policies, Council has adopted a reasonably comprehensive suite of human resources policies.

However there appear to be some gaps. Council appears not to have a formal documented process governing performance assessment. I understand from other evidence that Council does have a performance management process in place. Council also appears not to have a structured training plan in place for staff.

Council has adopted an EEO Management Plan as required under section 354 of the Act. However, the plan is basic and does not meet all statutory requirements. In particular, it does not provide for the revision and amendment of the plan. The EEO Management Plan establishes an EEO advisory committee. Council's Award Consultative Committee performs this role. I note however from the documents relating to the former General Manager's

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performance agreement that concerns had been raised that the EEO Management Plan had not, at that time, been fully implemented.

While Council has an OH&S committee, it appears not to have established a formal framework for the identification and treatment of OH&S risk. Council has advised that it is currently in the process of recruiting an OH&S/Risk Officer. It anticipates that the position will undertake activities such as the implementation of risk management plans, the review of Council's risk management policy and framework, regular risk and safety inspections of Council's premises and worksites and the enforcement of the Council's OH&S policies, procedures and relevant legislation.

### **Organisational structure review**

Section 333 of the Act provides that a council may re-determine its organisational structure from time to time. However the organisational structure must be re-determined within 12 months after any ordinary election of the council.

Council has redetermined the organisational structure twice since the first Public Inquiry. At its ordinary meeting of 25 August 2006, Council resolved to redetermine its organisational structure based on a flattened management structure. The delivery philosophy that informed the redetermined structure was described in the report to Council as follows:

*...to systematically develop and implement an Organisational Structure based on Council's Functional needs, Council's Work output requirements will need to be classed into Sub-Programs. Management will need to determine in consultation with the stakeholders a desirable level of service for the Sub-Program within funding limitations. Once this level of service and cost limits are determined then the most efficient and effective delivery mode has to be established. All Sub-Programs need common and similar delivery resources and functional support requirements should be bundled into Programs. Programs are to be labelled according to the management expertise required*

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*and functional delivery processes to be packaged into a group activity and categorized as a department. A head of each department is to be a Group Manager responsible for the efficient and effective delivery of all Sub-Programs within the designated Group.*

The report went on to argue that Council would be better placed to implement this delivery philosophy with a flattened management structure in place:

*It is the considered view that as long as any proposed changes to the management structure are in accord with the above principles, the new organisational structure will be more efficient and effective than the present. This will also reduce the management wages bill of Council. The objective of the restructure is not only to have proficient management but to also free resources for more infrastructure development and outdoor works. The core issue in the proposal is that the Brewarrina Shire Council cannot afford nor does its size justify a management structure consisting of three layers of management.*

On its face, this would appear to be a rational approach given the size of the Council and the limited resources it has at its disposal.

The organisation appears to have undergone a further restructure in March 2007 at the instigation of the Executive Officer. There appears to be no published rationale for the further restructure. However, it appears to have restored the three-tiered management structure that the previous restructure removed. It also created a number of new positions, namely, those of Manager Community Services, Economic Development/ Grants Officer and Aboriginal Liaison Officer. While there is a strong argument for the first two positions, I question the need for the latter given there is already a framework in place for consultation with the Aboriginal community via the community working parties and community facilitators.

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## **Delegations**

Under section 377 of the Act, a council may delegate all but a few functions to its general manager. These may in turn be delegated by the general manager to staff under section 378.

The power of delegation is an important tool that assists council officers to carry out the functions of a 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.

My review of the staff delegations indicates they have been recently reviewed. The former General Manager reviewed the delegations in conjunction with the Human Resources Officer in early 2007. Delegations were updated again on the appointment of the current acting General Manager.

## **Consultative and OH&S committees**

Clause 25a of the *Local Government (State) Award* requires each council to establish a consultative committee and for it to meet regularly.

The constitution of Council's Award Consultative Committee requires meetings to be held at least once every three months. The Award Consultative Committee met regularly throughout 2006, meeting in February, March, April, May, July, twice in September and in December. In 2007, meetings were held in February, March, May, August, September, October and December 2007.

OH&S committees are required to be established under section 17 of the *Occupational Health and Safety Act 2000*. The constitution of Council's OH&S Committee states that "*There will be regular a monthly meeting planned for the second Friday of each month, unless the committee decides otherwise. The interval between meetings will not exceed (3) three months*". Council's OH&S committee appears to have met infrequently in 2006. The Inquiry holds minutes for March and August 2006. In 2007, meetings were held in March, June, August, October and December.

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## **Land management**

### **Regulatory context**

Under section 53 of the Act, councils are required to maintain a land register of all land vested in it or under its control. The information a council is required to record in its land register is prescribed under that section.

Councils are required under section 25 to classify all public land, as defined under the Act, as either 'community' or 'operational'. The Act imposes restrictions on how councils can deal with land classified as community land.

Councils are required to prepare Plans of Management for all land classified as 'community' land. The Act and Regulation impose certain requirements on how councils prepare Plans of Management and what matters must be addressed in them.

A council can reclassify its land, but the requirements for the reclassification of land from 'community' to 'operational' are more onerous. To do so, councils are required to do so by way of the preparation of a Local Environmental Plan under the *Environmental Planning and Assessment Act 1979*. As part of that process, councils are required to hold a public hearing into the reclassification.

To assist councils in meeting their obligations in relation to the management of public land, the Department of Local Government has issued Practice Note No. 1 - Public Land Management.

### **Issues arising from first Public Inquiry and issues identified in the Department's submission**

As indicated above, the first Public Inquiry identified a number of concerns relating to Council's land management practices. It made a number of recommendations, including the following:

- That Council reclassify any land as operational that is not being used for community purposes.

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- That Council prepare a land register in compliance with section 53.
  - That Council prepare a Plan of Management for community land.

In its initial submission to this Public Inquiry, the Department identified the following concerns:

*After the first Public Inquiry, Council put together a Land Register that was forwarded to the Department prior to the first visit of the Executive Officer. A departmental officer reviewed the register and found a number of inaccurate/incorrect entries. These included insufficient information about licences or agreements, inaccurate classifications eg community land classified as operational and vice versa, no information in areas where information is required and incorrect usage of community or operational land.*

*During an early visit to council, the Executive Officer went through the information, with the Environmental Health Manager who was then given the task of making the alterations and of readying the changes to community and operational land for council's approval. The completed land register is a much more detailed and accurate document although some small mistakes remain to be adjusted.*

*The [former] General Manager, however, has failed to complete the process and the changes to operational and community land use remains incomplete some 4-5 months later. He has also failed to prepare plans of management for community land for which Council is responsible.*

### **Council's land register**

On my assessment, Council's land register complies with the requirements of section 53. However, I agree with the Department's assessment that there are a number of minor errors, mostly relating to inconsistencies in the manner in which information is recorded.

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## **Reclassification of land**

Council is well advanced in the process for reclassifying 34 parcels of land from community to operational. Council held a public hearing into the reclassification and has prepared and exhibited a draft LEP reclassifying the land. Council adopted the draft LEP at its meeting of 23 November 2007 and forwarded a report to the Director General of the Department of Planning as required under the *Environmental Planning and Assessment Act 1979*. Council has advised that the Minister for Planning gazetted the amendment to the Council's LEP on 20 March 2008.

However, I have noted from Council's land register that there are two parcels of land that are proposed to be reclassified, namely the Red Hill gravel pit and Goodooga airport, that have not been included in the draft LEP.

## **Plans of Management for community land**

Council adopted Plans of Management for most of its community land at its meeting of 27 October 2006. Council has met statutory requirements in preparing, advertising and holding public hearings in relation to the Plans of Management. The content of the Plans of Management comply with statutory requirements.

Council's land register indicates that a Plan of Management is under preparation in relation to 4 other parcels of land, all of which are parks. In his evidence, Council's Environmental Health and Building Manager, Mr Francois Vanderberg indicated that he was currently preparing a generic Plan of Management for these. He indicated that he believed this would be completed by the middle of 2008.

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## **Asset management**

### **Regulatory context**

Currently there is no statutory requirement for councils to have an asset management system. However the Department of Local Government considers it to be good practice.

This is likely to change. In its *A New Direction for Local Government* position paper, the Department has foreshadowed that it may soon be a mandatory requirement for councils to have an asset management system:

*It is proposed to introduce an asset management system, which is consistent with the national framework. It will be informed by the work of the Infrastructure Task Force outlined above but is likely to include:*

- *Requirements for councils to have a long term asset management plan linked to a long term financial plan (at least 10 years);*
- *Condition assessment service levels determined in consultation with the community;*
- *Standardised reporting/terminology;*
- *A phasing in period with support tools;*
- *Peer review (rather than audit).*

*The framework will link to the integrated planning project with any planning and reporting requirements incorporated into the new planning system.*

### **Council's development of an asset management framework**

Council has recently adopted an asset management policy, but does not currently have an asset management framework in place to support it. However Council has a ten-year plant replacement strategy in place.

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It would appear however, that Council is taking preliminary steps to develop an asset management system. At the hearings of this Inquiry, Mr Suneil Adihikari, Council's Group Manager Engineering Services described the steps Council was taking to developing an asset management framework:

*We recently, the council passed an asset management policy and based on that we have subscribed - based on my discussion with the neighbouring Shires we have subscribed to a programme called [NAMS.PLUS] and most of the senior staff, like myself and the finance manager, we are going to attend a series of workshops. I believe it's a web based system where council can make their own asset management plans. So we are going to go through that process.*

NAMS.PLUS Asset Management is an initiative of the Institute of Public Works Engineering Australia (IPWEA) to assist councils to develop a 'core' asset management plan and implement sustainable asset management practices. These include an asset management plan covering a period of 20 years, a long-term financial plan and a sustainable funding plan covering at least 10 years.

NAMS.PLUS comprises of a suite of templates and guidelines based on the IPWEA International Management Manual developed for councils by IPWEA using the IPWEA International Infrastructure Management Manual.

However, Council should defer taking any further steps in developing its asset management system, pending the issue by the Department of Local Government of draft guidelines on the issue, to ensure consistency with those guidelines.

## **Financial management**

### **Council's current financial position**

I have requested the Department of Local Government's Finance Branch to prepare a financial profile of Brewarrina Shire Council. This is attached at Appendix 2 of this report.

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Council's financial position is sound and has been for some time. The operating result for the financial year 2007 was a surplus of \$1.318 million as compared with \$1.856 million in the previous financial year 2006. In the financial year 2005 the operating result was a surplus of \$.666 million and in the financial year 2004 the operating result was a surplus \$.364 million. There have been solid positive returns in their operating results for past two financial years.

The operating results before grants and contributions provided for capital purposes were surpluses of \$1.286 million in 2007 and \$.374 million in 2006.

In terms of its liquidity and cash position, Council's unrestricted current ratio (UCR) was 2.16 (down from 2.82 in 2005/06). The UCR measures the adequacy of working capital and the ability to satisfy obligations in the short term. It does not include externally restricted activities such as water, sewer or specific grants. A good UCR is considered to be greater than 2.

Council's unrestricted cash was \$2.786 million (up from \$2.283 million in the previous year).

Council's position in relation to its Rates and Annual Charges Outstanding percentage (RACO%) is addressed below.

In 2006/07 Council's Debt Service Ratio (DSR) was good at 3.44% (up from 1.88% in 2006 and 2.07% in 2005). Council's DSR currently demonstrates a manageable level of debt. This indicator assesses the degree to which revenues from ordinary activities are committed to the repayment of debt. A DSR of less than 10% is good. A DSR ratio from 10% to 15% is considered borderline and a DSR or more then 15% is considered to be a concern.

Council has total loans outstanding of \$ 1.353 million. Council has no new loans raised in the 2006/07. It has not applied for any loans in 2007/08.

The Department has identified concerns with Council's cash management strategy. The Council has over \$ 4.9 million in Deposits at Call and Short Term Deposits, but has no monies in its Bank Account as at the 30 June 2007. The

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Council has a Bank Overdraft of \$ 476k. The problem is that in general the interest payable on a Bank Overdraft is greater than the interest received on Deposits at Call and Short Term Deposits. Therefore there is an overall cost to Council in maintaining this strategy. The Department has recommended that Council maintain a sufficient level of funds in its bank account to meet its day-to-day purchasing needs. Managing and maintaining a sufficient balance in their Bank Account can easily fix this problem.

In its response to the draft analysis of evidence, Council explained that the overdraft in question related to a cheque that was drawn for the levee bank settlement following the Council meeting of 29 June 2007 that was unrepresented as at 30 June 2007. Council has advised that this was done at the insistence of the Executive Officer that the cheque be issued before the end of the financial year.

The Department has also identified concerns with the level of Employee Leave Entitlements (ELE). This is cash funded by 29% by internal restricted reserves. This is considered to be high (20% would be considered to be reasonable).

In terms of infrastructure maintenance, the written down value (WDV) of Council's assets for 2006/07 period are as follows: Roads, Bridges and Footpaths 64%, Storm Water Drainage 25%, Water Supply Network 52% and Sewerage Network Infrastructure 64%. A number of Council's WDV's are above that considered by the Department to be cause of concern (i.e. below 50%).

Council's estimated annual maintenance for 2006/07 was \$1.7 million, whilst the amount spent on annual maintenance was \$1.5 million. This is a satisfactory result as the amount budgeted for and amount spent on annual maintenance are similar.

Council's estimated costs to bring assets to satisfactory condition were \$ 14.4 million in 2006/07. Council's estimated costs to bring assets to satisfactory condition were \$ 14.6 million in 2005/06. There has been a reduction in Council's estimation of bringing their asset portfolio to a satisfactory condition.

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The Council has submitted their financial statements on time in the past 2 years.

Council's auditors have commented that its overall financial position, when taking into the account the financial indicators, is satisfactory. The auditors also state that the accounting records of the Council have been kept in accordance with the requirements of Division 2 of Part 3 of the *Local Government Act 1993*.

### **Business Activities**

Council has declared 2 business activities: Water Supply Business and Sewerage Business.

Both the Water Supply Business and Sewerage Business had a surplus result before and after capital amounts.

### **Revenue raising**

Council's Rates and Annual Charges Outstanding Percentage (RACO%) was very poor at 20.75%. In previous years the Council's RACO% was less than 20%. The RACO% assesses the impact of uncollected rates and charges on liquidity and the efficiency of debt recovery. In 2004/05 the average amount overdue was 7.3% for rural councils.

Undoubtedly this can be attributed in part to factors such as the drought, demographic decline and economic stagnation.

It would appear Council has acknowledged that this is an issue for some time. In mid 2006, Council retained a debt collection agency to recover outstanding rates. In June 2006, the debt collection agency issued letters to 93 ratepayers with the result that 39 paid their outstanding rates in full, 37 made arrangements to pay in instalments and 17 are the subject of ongoing recovery action.

Of the 1181 rates notices issued in 2006/07, 931 (79%) have a balance less than \$50, with 71% paid in full. There are 16 assessments considered to be

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irrecoverable and Council is looking to hold an auction under section 713 of the Act.

34% of the rates and charges outstanding at 30 June 2007 belong to two organisations comprising of 8% of the total assessments. Council is currently negotiating instalment arrangements with the organisations.

Council has sent out reminder letters to 20 ratepayers who have not paid all their 2006/07 rates. Council has indicated that if it does not receive replies to these, they will be referred to the debt collection agency for further action.

### **Securing grant funding**

Brewarrina Shire Council, like other regional local government bodies, is dependant upon grants and contributions for revenue to meet its operational needs. Grants and contributions for operating purpose for the financial year was \$4.730 million. The percentage of revenue before capital items attributed to grants and contributions for operating purposes is 58%.

There has been an increase in the level of grants and contributions for operating purposes against total revenue before capital items for the financial year 2007. In 2005/06 this percentage was 51%. In 2004/05 it was 55%. In 2003/04 it was 50%.

The Department sees this reliance upon grants and contributions as fiscally unhealthy and may impact upon Council's financial sustainability in the medium to long term. I concur. However it is difficult to see how Council's revenue base can be expanded given the geographical and economic conditions it operates under.

To assist in more effectively securing grant funding, Council has created a position within the organisation of Economic Development/Grants Officer. It was unable to fill the position when it advertised it. In his evidence, Mr John Keenan, Council's Group Manager Corporate and Community Services explained the reasons for this:

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*...we're not offering a lot of money. We can only offer it from the money that's available. It involves skills and experience and it's a combination of skills and experience and lack of adequate wages doesn't exactly sort of go and fill those jobs very quickly but that's the story of regional councils in remote areas, unfortunately.*

In its rebuttal submission, Council advised that it had since been approached by someone interested in performing the duties of this position and had readvertised the position. Council is currently negotiating with its preferred applicant to fill the position. It is hopeful it will be able to fill the position within the next month.

### **Control of expenditure**

The first Public Inquiry recommended that the General Manager undertake a review of expenses with a view to reducing unnecessary expenditure, but without impacting on service delivery. It should be noted that this recommendation was prompted by concerns that Council had, at that time, made operating deficits before capital items for three of the previous five years. As discussed above, Council's financial position has since improved.

Notwithstanding this, it would appear that this recommendation has not been formally acted on. As discussed above, in his rebuttal submission, the current acting General Manager explained the reasons for this:

*I have been advised with the staff vacancies, and perhaps an element of confusion as to who may have been responsible for implementing this recommendation, has resulted in a delay in implementing this recommendation. I have already spoken with the Council's Group Manager Corporate and Community Services on the importance for action to be undertaken on this Recommendation immediately. The Council's Mayor has also stressed to me the importance of timely and effective action being taken on this recommendation. I will be taking particular interest in ensuring that action is progressing on this Recommendation.*

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The acting General Manager has flagged that Council intends to move from quarterly reviews of expenditure to monthly reviews:

*At the moment the Council's staff undertake a review of the Council's income and expenditure, as required, every quarter and report to the Council the findings of this review. I intend to see implemented a more frequent review of the Council's finances, I favour a monthly review. I am aware that the Council's Group Manager Corporate and Community Services has flagged to me already that it is his intention to commence undertaking monthly reviews of the Council's income and expenditure. I support this approach and will be encouraging that this accountability process be implemented as soon as possible.*

Council has since advised that its Group Manager Corporate and Community Services is undertaking a review of the current expenditure and reporting process and intended to report on this to the May 2008 Council meeting. The review will address monthly financial reporting, a review of expenditure procedures, compliance with the budget and the timing of payments.

### **Long term financial planning**

There is currently no statutory requirement for councils to undertake long term financial planning. However the Department of Local Government considers it to be good practice and requires councils to prepare 10 year financial plans in support of special variation applications.

Council does not currently undertake long term financial planning. However, I note that the development of a long-term financial plan forms part of the NAMS.PLUS programme that Council has subscribed to.

### **Conclusions**

It is apparent from the above analysis of Council's policies and systems that progress has been made since the first Public Inquiry. However, it is equally apparent that there is still substantial room for improvement.

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It should be noted that many of the deficiencies identified above are minor in nature and can be relatively easily remedied without the need to resort to the dismissal of the elected body of Council. It should also be noted, that, based on my experience of other councils through conducting reviews under the Department of Local Government's Promoting Better Practice Review program, deficiencies of the type I have identified above are not untypical of those seen in other councils of a similar size and dealing with the same issues faced by Brewarrina arising from limited resources and the shortage of suitably skilled staff.

It should also be noted that while there are a number of areas of statutory non-compliance, the most serious being the failure to undertake quarterly management plan reviews, the more substantial deficiencies identified above relate to Council's failure to comply with best practice. This is reflected in the failure to adopt a long-term strategic plan, an asset management plan, a workforce strategy and to undertake long-term financial planning. It should be acknowledged that because of their limited resources and access to the necessary expertise, it will inevitably be more challenging for small remote councils like Brewarrina to undertake projects of this nature than it will be for larger metropolitan and regional councils.

This is not to say that councils such as Brewarrina should not aspire to meet best practice. It would appear that Council has taken preliminary steps towards achieving this, holding a strategic planning workshop for councillors, and subscribing to a program for the development of an asset management system and long term financial plan. However, as I have suggested above, Council should defer further action on these pending the Department's release of draft guidelines addressing these processes.

I have seen no evidence to suggest that Council will be unable to sustain the improvement it has achieved over the last two years. Nor is there any evidence to suggest that the governing body has been an impediment to that improvement. The evidence considered by this Inquiry indicates that councillors

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have actively supported the steps taken by staff to improve Council's policies and systems. Ultimately, the key to sustaining and building on the improvements of the last two years is Council's capacity to recruit and retain a general manager with the necessary knowledge, skills and experience to successfully guide that process.

Having said that, as I have indicated above, I consider Council's failure to undertake quarterly management plan reviews to be of great concern. This did not only constitute a breach of statutory requirements but also a serious failure in the governance of the organisation. While I note that Council has resumed preparing quarterly management reviews, I consider it to be of particular concern that councillors apparently failed to identify this omission. This suggests that councillors have failed to apply the requisite degree of diligence to the exercise of their responsibilities.

This is an area where the governing body of Council clearly needs to improve its performance. Councillors should not allow the fact that they should not intervene in operational matters to serve as an excuse to abrogate their other statutory responsibilities. These include the responsibility to review the performance of the Council and its delivery of services, and the management plans and revenue policies of the Council.

In its rebuttal submission, Council indicated that it intended to complete the Department's Promoting Better Practice Checklist to identify areas where it needs to improve. In this report, I have recommended that it submit the completed checklist to the Department of Local Government together with an action plan identifying the steps it intends to take to address these gaps and the deficiencies I have identified in this report and timeframes for addressing them. I have also recommended that the Council submit a six-month progress report on the implementation of its action plan to the Department of Local Government. I have recommended that after 12 months, the Department conduct a further Promoting Better Practice Review of the Council to verify the implementation of the action plan and to identify any other ongoing deficiencies.

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## **OTHER MATTERS**

### **Internal relationships**

#### **Relationships within Council**

At the time the hearings of this Public Inquiry were held, Brewarrina Shire Council was an organisation under extreme stress. The Council had recently lost its leadership. The previous Mayor had passed away and the former General Manager had resigned. The Council was facing its second public inquiry in two years.

Many organisations would collapse under the weight of these pressures. Observing the staff and councillors giving the evidence at the hearings, I was impressed by the inherent strength of the organisation as reflected by the sense of cohesion and common purpose by all who gave evidence.

While the Council suffered from a certain degree of factionalism in the past, it was apparent from the evidence given at the hearings, including evidence given by the Executive Officer, that since the first Public Inquiry, the governing body had become more cohesive and that all the councillors have worked well together over the last two years. Councillors stated in their evidence that they enjoyed a good relationship with their fellow councillors.

Councillors also indicated that they enjoyed a good relationship with staff and expressed support for the work done by staff. Staff giving evidence also described their relationship with councillors as being good. I asked all staff who gave evidence whether they thought the Council should be dismissed. All expressed strong opposition to this.

The councillors also appeared to enjoy a good personal relationship with the former General Manager, Mr Prakash. The issue of Council's performance management of Mr Prakash will be addressed in detail below.

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## **Councillors' understanding of their role**

### ***Regulatory context***

The respective roles of council officials are defined under the *Local Government Act*.

The role of the Mayor is defined under section 226. The role of the Mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office

The role of councillors is defined under section 232 of the Act. The role of a councillor is, as a member of the governing body of the council:

- to direct and control the affairs of the council in accordance with this Act
- to participate in the optimum allocation of the council's resources for the benefit of the area
- to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions
- to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

The role of a councillor is, as an elected person:

- to represent the interests of the residents and ratepayers
- to provide leadership and guidance to the community
- to facilitate communication between the community and the council

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The role of the general manager is defined under section 335. The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council. The general manager has the following particular functions:

- the day-to-day management of the council
- to exercise such of the functions of the council as are delegated by the council to the general manager
- to appoint staff in accordance with an organisation structure and resources approved by the council
- to direct and dismiss staff
- to implement the council's equal employment opportunity management plan.

### ***Councillor training***

Council has arranged training for councillors on two occasions since the first Public Inquiry.

In February 2006, Council arranged a two-day workshop for councillors on a range of issues relevant to the exercise of their functions. I understand that two councillors failed to attend this. One councillor missed the first day and three, the second.

In November 2006, Council arranged another two-day workshop for councillors on issues relevant to the exercise of their functions. On 1 December 2006, the workshop facilitator, Mr Gerry Holmes, wrote to the then General Manager, Mr Prakash providing a report on the workshop. In his report he stated that all councillors attended both days.

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### ***Councillors' understanding of their roles***

At the hearings, I asked each of the councillors to explain their understanding of what their roles were and put different scenarios to them that required them to apply that understanding.

All councillors were able to demonstrate in their evidence a good understanding of their role, including their role in relation to operational matters. All councillors were also able to demonstrate knowledge of the systems Council has put in place to allow councillors to raise operational issues with staff. This will be examined in detail below.

### **Interaction between councillors and staff**

The interaction between councillors and staff is regulated under the Model Code of Conduct. Council has supplemented the provisions of the Model Code of Conduct with a policy governing the *Provision of Information to Councillors and the Interaction between Councillors and Staff*. Council adopted this at its meeting of 14 December 2007.

One concern I have with the policy is that the provisions relating to the reporting of breaches are inconsistent with the reporting provisions of the Model Code of Conduct. Of particular concern, the policy requires the reporting of breaches to Council without reference to the Conduct Committee. This would potentially represent a breach of the Model Code which precludes conduct issues being reported at Council meetings without first being referred to the Conduct Committee. Council should amend the policy to require breaches to be dealt with in accordance with the procedures prescribed under the Model Code of Conduct.

After the first Public Inquiry, Council implemented a system of councillor request forms to allow councillors to raise operational matters such as works requests with staff in a manner that is consistent with their obligations under the Model Code of Conduct. A review of councillor request forms submitted and the database of councillor requests maintained by Council indicate that councillors

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regularly use the system to raise operational matters. In their evidence, staff confirmed that this was the case.

## **Recruitment and performance management of the former General Manager**

### **Regulatory context**

Section 338 of the Act requires councils to employ the general manager and other senior staff of a council under contracts that are performance-based.

The Director-General of the Department of Local Government may, by order in writing, approve one or more standard forms of contract for the employment of the general manager or other senior staff of a council. Councils are required to employ persons under such a standard form of contract.

The Director General has issued a Standard Contract of Employment for General Managers that general managers must be employed under.

The Standard Contract of Employment for General Managers (the Contract) prescribes the process for the performance management of general managers. It also prescribes the conditions under which a general manager's employment may be terminated.

Under the Contract, the following is required in relation to the performance management of general managers:

- Within 3 months of the commencement date, a performance agreement setting out agreed performance criteria must be signed between the General Manager and the Council
- Within 2 months of the signing of the performance agreement, the General Manager must prepare and submit to Council an action plan, which sets out how the performance criteria are to be met
- Annually, the General Manager's performance must be reviewed having regard to the performance criteria in the agreement

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- Annually, the performance agreement must be reviewed and varied by agreement between the General Manager and Council.

To assist councils in the performance management of general managers, the Department of Local Government issued Local Government General Manager Performance Management Guidelines in August 2007.

Clause 10.3.4 of the Contract, prescribes the requirements a council must meet to terminate a general manager's contract for poor performance. That clause states that the contract may be terminated before the termination date by the council giving 13 weeks' written notice to the employee, or by termination payment under subclause 11.2 where the council:

- has conducted a performance review, and
- concluded that the employee has not substantially met the performance criteria or the terms of the performance agreement.

Clause 10.4.1 prescribes the conditions under which a council may summarily dismiss the general manager:

*10.4.1 Council may terminate this contract at any time and without notice if the employee commits any act that would entitle an employer to summarily dismiss the employee. Such acts include but are not limited to:*

- (a) serious or persistent breach of any of the terms of this contract,*
- (b) serious and willful disobedience of any reasonable and lawful instruction or direction given by Council,*
- (c) serious and willful misconduct, dishonesty, insubordination or neglect in the discharge of the employee's duties and functions under this contract,*
- (d) failure to comply with any law or Council policy concerning sexual harassment or racial or religious vilification,*

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(e) *commission of a crime, resulting in conviction and sentencing (whether or not by way of periodic detention), which affects the employee's ability to perform the employee's duties and functions satisfactorily, or in the opinion of Council brings Council into disrepute,*

(f) *absence from the business of Council without Council approval for a period of 3 or more consecutive business days.*

The Performance Management Guidelines issued by the Department of Local Government offers the following guidance on when it would be appropriate for a council to invoke the above clauses:

*Resolving performance difficulties is a critical part of performance management systems. While there may be cases where immediate action is necessary, it is generally expected that termination of a contract on the basis of poor performance would be the last resort and would only be considered when:*

- *A formal review (including direct personal discussion) has been undertaken against a signed performance agreement*
- *The General Manager has been unable to meet the required performance measure in relation to one or more strategic objectives which were identified at the time of signing the performance agreement as critical and achievement of these strategic objectives was demonstrably within the General Manager's control and available resources and/or the General Manager has not performed position responsibilities in a satisfactory manner*
- *The General Manager was advised in writing and in person of the review outcome*
- *The General Manager had not identified any difficulties in the achievement of these targets to the required standard over the period under review, or, if a difficulty had been identified, remedial action had*

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*been agreed, supported by the council, but not followed by the General Manager*

- *The General Manager has been given an opportunity to respond formally to the identified performance difficulty, and to rectify the situation within a reasonable period of time and has been unable to do so*
- *This review confirms the performance difficulty*
- *The Council/General Manager does not consider that any further remedial action or developmental program would result in improved performance.*

### **Recruitment of the former General Manager**

On 9 January 2006, following the first Public Inquiry, the then General Manager, Mr Jack Garside resigned. At its extraordinary meeting of 9 January 2006, Council resolved to appoint the acting Director Technical Services, Mr Sunil Prakash, as acting General Manager.

In her evidence at the hearings, the Executive Officer revealed that the Council had sought the advice of the Department of Local Government on the appointment of an acting general manager, but subsequently rejected that advice:

*My understanding is council did seek advice from the department about the appointment of a new general manager and the department advised that there were a number of - there was at least one former general manager with a proven track record who was interested in coming out and assisting council to try and get its affairs in order, for a period of time, and who knew - who was familiar with systems, he was familiar with the processes, who was familiar with the procedures, and council chose to appoint the recent general manager who had no experience as a general manager, in my understanding of it, who was an engineer, and who had been in place for six months.*

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Asked whether he was aware that the Department had offered this advice, the current Mayor, Clr Slack-Smith replied:

*No I wasn't, I didn't know about that. No we weren't, I don't think councillors were aware. I found that Ted actually came back to us when Vic and Carole came up and he said "I think I may have stuffed up a bit." He was told of a fellow yes, and he said then and Gary Payne brought this up down at the Wentworth Hotel, so I do know about it now, but Ted forewarned me about that before we went down, forewarned the council. So no I don't think the council was aware, I wasn't.*

Asked why he thought the late Mayor rejected the Department's advice, Clr Slack-Smith replied:

*Ted was very clever, he could see maybe that Sunil was the type of person we needed at this particular time, you know, and Ted liked to let things happen that he wanted to happen, like that we could record and stuff like that and build real relationships with the community. That was a real big criticism, the first one, and to us the community was not diminishing any other priorities but a lot of the departmental plans...you know all the sections there. That takes time to get through and it's a slow process and, you know, we didn't really have the staff to be able to do that. We needed a more community person, someone who could get the roads done at the same time and still working on some of this. Yes, and Sunil was doing it and I think in those ways Sunil was very good but in the other ways, in the governance like you said, I would agree he had his shortcomings.*

At its ordinary meeting of 28 April 2006, Council resolved to engage the Local Government and Shire Association's Employment Solutions to assist in the recruitment of the new general manager.

Following the recruitment process, at its extraordinary meeting of 12 July 2006, Council resolved to appoint Mr Prakash as the new general manager. On the same day, Council and Mr Prakash executed an employment contract based on the Department's Standard Contract for general managers.

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At its meeting of 27 October 2006, Council resolved to retain Employment Solutions to assist in monitoring and reviewing the General Manager's performance.

### **Concerns about the performance management of the former General Manager**

The Department's initial submission to this Inquiry raised the following concerns about the performance management of the former General Manager:

*Council has clearly failed to manage the [former] General Manager's performance. Given that the first Inquiry found a similar situation existed with the then General Manager, it must be concluded that council is unaware of its employer and management responsibilities or chooses not to exercise them.*

The Executive Officer elaborated on these concerns in her evidence before the hearings:

*I think if councillors were aware of what their roles and responsibilities required, they managed a general manager's performance by making sure they have access to all the information that they need to make informed decisions on behalf of their community. I don't believe these councillors did that. I think at the time the mentor and I made the recommendation in to the [May] meeting of councillors, that they consider the [former] general manager's performance, their reluctance to do that was an indication of a view that they would support the man rather than look at the performance, and that was an issue for both the mentor and the department.*

The Executive Officer went on to elaborate on what happened in the May meeting where she raised her concerns about the former General Manager's performance:

*That meeting was actually a very hostile meeting. It was a closed meeting, obviously, and the [former] general manager and the executive assistant were not present, so it was a discussion between the mentor, myself and the*

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*councillors. The councillors were quite hostile to both mentor and myself. It was an extremely volatile, argumentative meeting from my recollection. I listed a range of things that in my view the [former] general manager was failing to undertake at that time and the councillors didn't want to address the issues at all. They simply wanted to express their support for the [former] general manager. Admirable in some circumstances, but in these circumstances extremely foolish given that at the previous public inquiry councillors, same group of councillors, had already been told that their management of the previous general manager had been less than satisfactory, so when the department and the mentor are saying your management of this current [ie the now former] general manager is less than satisfactory and his performance is less than satisfactory, I would have thought that paying attention was one of the key responses and it was not a response we got.*

#### **Advice on the termination of the former General Manager's contract**

The former General Manager's first performance review was scheduled to occur on 10 May 2007. Council had arranged with Mr David Taubman to attend to facilitate the performance review.

Prior to the performance review, the Executive Officer and Mentor requested that Council postpone it. In its rebuttal submission, the Department explained they did so because it had become apparent to the Executive Officer and Mentor that the former General Manager was "*struggling to perform his duties adequately*". The Department added that, taking into account Council's experience with the previous General Manager and the possibility of a large financial cost being incurred by the Council, the Executive Officer felt obliged to disclose her concerns to the councillors prior to the review taking place.

According to the Department:

*The Mentor and Executive Officer requested that they be able to meet with Councillors prior to May 16. Councillors indicated that they would not be able to attend a third meeting in such close proximity to the already scheduled two*

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*meetings, (the assessment and Council meetings). Eventually, the assessment meeting was postponed and the Mentor and Executive Officer met with Councillors.*

This account is not entirely consistent with other evidence considered by this Inquiry. Firstly, and most obviously, the performance review was scheduled for 10 May and not 16 May 2007.

Secondly, in a letter addressed to the Director General dated 25 May 2007, the late Mayor wrote:

*At the Brewarrina Shire Council meeting held at Weilmoringle on 27 April 2007, Mr Smith stated that the performance review of Council's General Manager Mr Sunil Prakash set down for 10 May 2007 should not take place as he wanted to address Councillors prior to any performance review of the General Manager.*

In his evidence before the hearings, the current Mayor, Clr Slack-Smith, provided a similar description of the circumstances in which the performance review was postponed. Clr Slack-Smith agreed that the request to postpone the performance review was made at the Council meeting of 27 April 2007:

*[The Mentor] said he wanted to have a meeting with the councillors before [the former General Manager] had a performance assessment. Sunil's performance assessment was set down for May 10th. They could not have a meeting with us until May 16th. So Ted had to ring David Taubman and put it off who advised strongly against it because it was against - he was authorised as an employee and should have a performance assessment.*

The Mentor and Executive Officer subsequently met with the councillors on 16 May 2006. At that meeting, the Executive Officer provided copies of the former General Manager's contract and performance agreement to the councillors and listed matters the former General Manager was responsible for and had not completed. In his letter to the Director General, the late Mayor identified a number of the matters of concern raised by the Executive Officer. These included the following:

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- That several items in the draft Management Plan which was due to be approved for public exhibition at the Council meeting two days later had not been costed.
  - That the former General Manager had failed to advise councillors of his absences from council.
  - That no other staff member had been given the delegation to act as general manager in the General Manager's absence.

In relation to the draft Management Plan, the Executive Officer has conceded in her evidence and the Department has acknowledged in its rebuttal submission that the draft Management Plan had in fact been fully costed.

In relation to the former General Manager's absences, the General Manager's monthly diary schedule is attached to the business papers of each meeting.

In relation to the delegation to another staff member to act as general manager in the General Manager's absence, at its meeting of 24 November 2006, Council had resolved to:

*...endorse that Mrs. Linda Hutchinson, the Manager Finance take on the temporary position of Acting General Manager, with the same delegated authority as the General Manager, while Sunil Prakash, General Manager is away on leave for more than a week.*

In his letter, the late Mayor said the councillors were greatly disturbed and concerned by what they heard.

At the following Council meeting, held 2 days later on 18 May 2007, as described above, at the request of the Mentor, standing orders were suspended so that he and the Executive Officer could address the Council on the former General Manager's performance. In his letter, the late Mayor stated that the Executive Officer raised concerns about the state of Council's financial records:

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*At this meeting Ms Medcalf openly stated that she did not understand Council's financial statements in their format. She then proceeded to give financial advice in relation to the levee settlement.*

As the late Mayor observed in his letter, Council had only recently received an audit report from its auditors, Spencer Steer, dated 4 May 2007, stating that Council's financial records had been appropriately maintained. As discussed above, in their audit report dated 31 October 2007, which is published in Council's annual report, Spencer Steer found that Council's accounts had been prepared in accordance with Australian equivalents to International Financial Reporting Standards (AIFRS) and the Local Government Code of Accounting Practice and Financial Reporting.

In his letter, the late Mayor said that at the Council meeting, the Mentor and Executive Officer advised the Council to terminate the former General Manager's contract:

*At the Council meeting on 18 May 2007 both Mr Smith and Ms Medcalf advised strongly that Council should terminate the General Manager Sunil Prakash's contract. Mr Smith indicated strongly that if Council did not do this at this time he would report to the Minister that Council was not co-operating with his recommendations and that Council could be dismissed. This recommendation was based largely on misinformation and mistruths, and Council could not agree. We feel this advice is premature particularly in regard to the General Manager's contract dated 17 July 2006 and in his performance.*

The evidence of councillors that were present at the meeting indicated that they appeared to share the perception that what was being asked of them was to immediately dismiss the former General Manager.

In their rebuttal submissions, both the Department and the Mentor deny that they advised the Council to terminate the former General Manager's contract. The Department states:

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*Neither the Executive Officer nor Mr Smith told Council at any stage during their appointments that Council should terminate the [former] General Manager's contract. Both people always told Council that it should consider the performance issues raised, the [former] General Manager's contract and that Council should seek its own legal advice about those matters prior to any performance assessment.*

In his rebuttal submission, the Mentor said that he made two recommendations to councillors with regard to the former General Manager's performance review:

- a) *I suggested that the Executive Officer be a member of the performance panel; and*
- b) *I advised Councillors to obtain legal advice as to the consequences and ramifications of terminating the [former] General Manager's contract of employment, prior to expiration of the term of that contract.*

However, in his initial submission to this Inquiry, the Mentor stated:

*In May, the Executive Officer and I spoke to council about our concerns related to the performance of the [former] General Manager prior to the May council meeting and suggesting that council consider seeking legal advice about terminating his contract.*

The Mentor went on to add:

*It is of concern that despite examples of the [former] General Manager's inability to perform, they the Council, were in May 2007, reluctant to seek legal advice on the question of terminating his contract. However, at the performance review of his contract, some three months later, they found his work to be unsatisfactory.*

In her evidence at the hearings, in response to a question by Council's legal representative, the Executive Officer agreed:

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*We indicated that they should seek legal advice about dismissing the [former] general manager, yes.*

Elsewhere in its rebuttal submission, the Department states:

*The [former] General Manager's failure to perform his duties and the Executive Officer's obligation to indicate the necessary improvements required, meant that matters finally came to a head in May 2007 when the Executive Officer and the Mentor met with Councillors to recommend Council seek legal advice about the termination of the [former] General Manager's contract.*

Similarly, in her quarterly report of June 2007, the Executive Officer raised the following concern about the councillor's performance management of the former General Manager:

*Finally, events have overtaken this report but it would be remiss not to make comment on the ability of the councillors to manage the General Manager's performance. When some of the areas of concern identified in this report related to the General Manager's performance were raised with Council and the suggestion made that they should consider terminating his contract and seek their own legal advice as to the process, councillors became hostile and defensive.*

On 23 May 2007, at around the same time as she was preparing her quarterly report, the Executive Officer sent the Director General an email in which she indicated that she thought grounds existed that warranted the summary dismissal of the former General Manager.

That the Mentor and Executive Officer sought to have the former General Manager's performance review postponed to enable them to communicate their view to the councillors together with the fact that the Executive Officer held the belief that grounds existed that warranted his summary dismissal would tend to support the perception of councillors that it was the Mentor's and Executive Officer's expectation that this should occur prior to the former General Manager's performance review.

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Both the Executive Officer and Mentor have denied making any threats that the councillors would face dismissal themselves if they failed to comply with their request. However, a number of councillors contradicted this in their evidence.

Clr Reichler said:

*I admit that I lost respect for both, both of them at the June meeting when they basically tried to blackmail Council "If you do not dismiss your general manager, you will be dismissed yourself" in plain open language, no maybe, would be, perhaps.*

It should be noted that the alleged comments were made at the May meeting, not the June meeting.

In his evidence, Clr Slack-Smith said that these threats were made on several occasions:

*Vic Smith said "You have to do as I say" - because of the constant threat of - Vic Smith was using the Minister's voice saying, "If you don't do what I say I will tell the Minister directly to sack you."*

Asked if the Mentor used those words, Clr Slack-Smith said that he did. Asked how often he used those words, Clr Slack-Smith replied:

*He has used those words, yes. He will say not but yes, he used it like two to three times, at least.*

In her evidence, Clr Kesby suggested that Council was coerced in its performance management of the former General Manager:

*That process had a lot of pushing from [the Executive Officer] and it was basically she spoke over what Council wanted and it came back to the fact that if you don't sack him, you'll go as Council.*

As will be discussed below, Clr Geddes also gave evidence that such a direct threat was also made to him.

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It would appear that the Executive Officer and Mentor subsequently sought to raise their concerns about the former General Manager's performance with individual councillors. In its rebuttal submission, the Department stated that after the May Council meeting when a number of councillors threatened to resign, the Mentor and Executive Officer determined to meet with all Councillors either individually or as a group, to discuss the issues of the former General Manager's performance.

In his evidence, Clr Brown described a conversation he had with the Mentor prior to the June Council meeting:

*He rang me up the day of the big blow in June some time, he rang up at 8 o'clock in the morning. I said "No worries mate, I'll be there", and I said - I walked up there and he opened the door, "Let me in", and he walked behind his counter and I said "This is funny. This bloke hasn't" he said "I'm Vic Smith" and he walked behind the desk and ... shook me hand and he said "We've got a problem", and I said "Yeah, in what way?", he said "You and the Council have got a problem" He said "You got to get rid of the general manager", and I said "Hey brother", I said "David Hicks is a terrorist and he got a fair trial" That's the exact words I said to him. I said that's the exact words I said to him because... anyway, we started talking there for a while and he started talking about his performance review. He said "We've got to sack him today. I want him sacked today" That's the exact words, he said "I want him sacked today", and I said "No, I wouldn't sack him today".*

In his rebuttal submission, the Mentor denied using these words to Clr Brown.

In June 2007, the Mentor and Executive Officer also visited Clrs Burke and Mason in Goodooga and Clr Geddes on his property. They met with Clrs Burke and Mason together. Clr Mason described the discussion at the meeting as follows:

*So they came up to Goodooga, we had a meeting there and then conversation was quite nice for a while and I was getting the impression that they were*

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*working around the GM so I, sort of, stood back, took a step back and looked a little closer at it and then I got the impression they were trying to remove the GM. So in that sort of way I felt I shouldn't be on my own here, the conversation should be taking place with all councillors. So I shut down. Not completely shut down, I just said to them "I'd sooner be having this conversation with the councillors being present."*

Clr Burke described the meeting as follows:

*I just thought to meself "Well, they've come up here for one reason, to get us to put up a bill to sack Sunil". They were having trouble talking apparently to other Councillors wouldn't talk to them, and they apparently said "Yeah, come up and see us" and I said "Yeah, no worries", and I said "Do you mind if Ronny [Mason] and I see you together?" because I thought "I want some backup here, I'm not coming to this on me own". Anyway, we met at the bowling club and yeah, I thought it was pretty ordinary. I couldn't understand those two. I thought mentor means to help and she kept telling us how she was here to help us and you got that way you weren't game to talk to them.*

Clr Geddes described his meeting with the Mentor and Executive Officer as follows:

*I met with them, I think, the same day that the Goodooga Councillors met with them and they just said "Look, basically the upshot was, you know, either you people get rid of Sunil Prakash or we're going to get you sacked". I said "Okay, well that's fair enough, I've taken it on board". They didn't worry me. I just thought - I'll take it on board and that's that.*

In its rebuttal submission, the Department denies that the Executive Officer told Clrs Burke, Mason and Geddes that the Council should sack the former General Manager. The Department said that the advice of the Mentor and Executive Officer to the councillors was *"that Council needed to review the [former] general manager's performance after they had considered the issues raised and talked to their legal representative."*

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Clr Geddes also said that the Executive Officer and Mentor sought to persuade him to organise a meeting of councillors *“with a view to getting rid of the [former] general manager”*.

In its rebuttal submission, the Department acknowledged that the Mentor and Executive Officer discussed with each other in the presence of Clr Geddes a need to organise a meeting of councillors to discuss the performance of the former General Manager. The Department said that there was no expectation that Clr Geddes would organise any meeting, *“just that it needed to occur”*. The Department also indicated that the Mentor and Executive Officer requested the late Mayor to organise such a meeting and that it never happened.

In his letter to the Director General, the late Mayor expressed the following objections to the suggestion to dismiss the former General Manager:

*We feel this advice is premature particularly in regard to the General Manager’s contract dated 17 July 2006 and in his performance.*

*The contract clearly states the need for performance reviews. Mr Smith’s advice is against all sense of natural justice and fairness and all rules of contract and employment.*

In their evidence, a number of the councillors explained their reasons for resisting the suggestion that they terminate the former General Manager’s contract. In his evidence, Clr Slack-Smith echoed the late Mayor’s concerns:

*Considering Vic’s strong Labor leanings you wouldn’t think he’d be so dictatorial about sacking someone, anyway without understanding the rules of contract.*

Clr Kesby expressed the view:

*...everyone’s entitled to a fair go and, you know, we had to give him a review, we had to let him speak. His opinion and how he saw things for that fair go to occur.*

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In his evidence, Clr Brown said that he raised the following concerns with the Mentor in response to his alleged suggestion that the councillors sack the former General Manager:

*“He’s got a performance review I think in a few days”, or a few weeks or whatever it is, and I said “Let him get through the performance review. If he doesn’t meet the standard” - because I, I quite like him. I liked him as a bloke and that, but it’s business a bit different, but I rejected it. I said “No, I’ll wait”. I even made a comment...what the issues about. I said “It cost a lot of money in regards to legal advice at the time” and I said “It could cost Council a lot of money. We’re just going through a lev[ee] case, we don’t want another lev[ee] case”, and I said I’d rather wait until the review and just how he measures up. I didn’t want to sack him. I didn’t want to sack a man in my life unless there was a reason, and at the time there wasn’t a reason, he explained it to me.*

Contrary to the Mentor’s suggestion in his rebuttal submission, Clr Brown’s reference to the levee bank case would tend to indicate that his concerns about cost related to Council’s potential exposure arising from litigation rather than the cost of legal advice.

### **Performance review of the former General Manager**

The former General Manager’s performance review did not occur until 31 July 2007. In his evidence, Clr Slack-Smith explained the reason for the delay:

*...by the time David Taubman could be organised, he couldn’t have done it earlier again because he is a busy man too, was about 17 July I think. That was set down for Sunil’s performance review which was when Vic wanted it, I guess.*

At the adjourned Council meeting of 29 June 2007, held on 20 July 2007, the minutes record that the Mentor *“requested that Council move a motion to appoint the Executive Officer Carole Medcalf to the panel for the General Manager’s Performance Review”*.

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Asked what had prompted, the Mentor to request her appointment to the panel, the Executive Officer explained:

*The mentor suggested to councillors during the council meeting prior that I be appointed to the panel, given the issues that both he and I had raised*

In its rebuttal submission, the Department elaborated on the reasons for the appointment of the Executive Officer to the panel:

*The Executive Officer's role in the performance review was to provide any additional corporate knowledge to the councillors, having worked with the [former] General Manager on a day to day basis, to help the Council with its deliberations, which she did.*

In his evidence, Clr Slack-Smith said that councillors were concerned that the inclusion of the Executive Officer on the panel would be unfair to Mr Prakash. Asked whether, the LGSA facilitator, Mr Taubman, expressed any views on the process, Clr Slack-Smith replied:

*No, the only concern he expressed was that he thought it was most unusual that the department would want Carole there.*

Evidence considered by the Inquiry suggests that there was some confusion over the composition of the panel. In his initial submission to the Inquiry, the Mentor stated:

*In addition, Council appeared to be unable to manage the [former] General Manager. This is evidenced by the decision of council where the Executive Officer was added to the panel of people to undertake the [former] General Manager's performance review. The composition of the panel was discussed at the council meeting as being the Mayor, Deputy Mayor and a representative of the LGSA as well as the Executive Officer. This position was agreed to unanimously.*

*Approximately two hours after the meeting had concluded, the Executive Officer was given a copy of an internal memo sent by the Acting Mayor, to all*

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*councillors requesting they all attend the performance review. This was contrary to the earlier discussion. The Minutes (which have been found to be inaccurate for the period of tenure of the Executive Officer and the Mentor) say nothing of the composition of the panel and as a result all councillors (or as many as possible) were requested to be in attendance*

The Executive Officer echoed these concerns in her evidence at the hearings:

*...the panel at that time, as we understood it, and certainly as one of the councillors described it, was the mayor and generally speaking this is the panel that is in existence, is the mayor, the deputy mayor, the LGSA representative, and I was to be appointed as a fourth representative. Now, that, like many other things, was not documented accurately in the minutes so the minutes don't accurately reflect that discussion but there was discussion from at least one councillor who indicated that I was to be in addition to that panel and not instead of any of those members. Council then adjourned and went to lunch, the councillors and a number of staff members, as is their want, and after the lunch break I was in my office at council and I received a copy of a memo from the deputy mayor saying that all of council - all of the councillors would now be members of the panel as well as myself and the LGSA representative. It's yet another example of how council in the view of the department, and certainly the mentor, that council was from time to time quite able to change its decisions following the official council meeting.*

In his evidence, Clr Slack-Smith denied that it was the intention of the Council to have a panel comprising of only the Mayor, Deputy Mayor, LGSA representative and Executive Officer. Clr Slack-Smith said it had been the intention to include all councillors on the panel reflecting the fact that all councillors had participated in the recruitment process. However, in his evidence, he also appeared to suggest that the decision to include all councillors may have been prompted in part by concerns about the inclusion of the Executive Officer on the panel:

*They seemed to have the idea that it was only the mayor and the [former] general manager and the deputy mayor that was going to be on the panel.*

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*Considering the mayor was pretty ill I find that a bit funny, anyway we probably didn't know how ill he was so maybe we thought he might be better by then. Anyway, it was always the intention of the whole council, there is nothing that I can remember coming out - I don't know what councillor you've discussed it with or whatever - he whispered something in my ear saying "the panel" and I said "Yes" and he said "The general manager" and I said "No he's got ..(not transcribable).. He said "Is there mayor and deputy mayor" and I said "Yes and so are the rest of the councillors." So I don't know if he got it from that or what but he was in my ear when a lot of people were talking about this panel, well just after they were ready to put Carole on. Anyway, after that I sent out the notice to call the panel straight away for the meeting for the performance review. They had the date, time and we put the whole council in it, as it was understood it was, with myself, David Taubman, it was always the whole council. And more so David felt considering the nature of what this could be ..(not transcribable).. Carole which he thought was most unusual. We thought it was almost to the stage of being unusually unfair to Sunil.*

The review of the former General Manager's performance was carried out by the then Deputy Mayor, Cllr Slack-Smith, Cllr Reichler, Cllr Geddes, Cllr McLellan, Cllr Brown, Cllr Kesby, Cllr Burke, Cllr Neale and the Executive Officer on 31 July 2007. The late Mayor, Cllr Gordon and Cllr Mason were unable to attend. Cllr Kirby had recently resigned from Council. Mr Taubman of Local Government Employment Solutions facilitated the review.

The review was based on an assessment of the managerial objectives and 31 specific responsibilities set out in part one and the 13 strategic objectives set out in part two of the former General Manager's 2006/07 performance agreement.

The review format consisted of the former General Manager providing a comprehensive presentation to the Council on his efforts over the past 12 months. He also provided a hard copy document with a full self-appraisal on both parts for reference during the session. The Council, without the former

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General Manager present, then assessed each of the performance measures as set out in part one and part two of the performance agreement document. This was followed by a discussion of both parts with the former General Manager present.

The review panel made the following assessment of the former General Manager's performance:

*Overall, the Council would like the concerns set out in this agreement progressed by the GM over the next 6 months or earlier. The Council feels that the performance of the GM has been less than satisfactory over the past 12 months based on some of the more serious issues raised today. Greater progress needs to be made by the monitoring session to lift the overall rating to satisfactory. The Council acknowledged that the GM has been good at engaging with the community. It should be recognised that he inherited no senior staff when he began the role. He has tried to make improvements and handle a number of difficult issues in that time. The engineering department has been operating effectively over the past 12 months. However, administratively major efforts need to be made. The public inquiry recommendations should be a major focus for the GM in relation to his Part Two projects for the 2007/2008 review period.*

The former General Manager provided the following response to the Council's above assessment:

*Council has made a statement to the effect that the performance of the General Manager has been less than satisfactory over the last 12 months based on some of the more serious issues which have been raised by the Department's Executive Officer. It is my view that this statement is based on the personal opinion of the Executive Officer and her views rather than being based on the facts. In light of this, Council should consider the following facts before making a final determination:*

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- *Due to the lack of Management staff within the Council I was required to perform various managerial functions outside of the scope of my position until February 2007, which was equivalent to approximately 8 months of the year.*
  - *Due to the requirements of the Public Enquiry of the Brewarrina Shire Council my workload was increased to perform the required functions in response to the enquiry.*
  - *The concerns raised by the Department's Executive Officer also required extra time and resources in an effort to alleviate these concerns and to respond as desired.*

*In summary I would like to request that council reconsider its comment that my performance has been unsatisfactory. After reviewing all of the facts and my response it is my view that this performance review should be amended by Council from 'Unsatisfactory' to 'Satisfactory'. After due consideration if Council wish to maintain the view that my performance has been unsatisfactory over the past 12 months I would like to indicate that this is equivalent to Council seeking an application of provision 10.3.4 of the General Managers Contract of Employment by Council which was implemented in July, 2006.*

Evidence given by councillors suggested that the Executive Officer dominated the performance review process. In his evidence, Clr Reichler said:

*That assessment was dominated by the executive officer. Councillors as a whole had very, very little input, very little. I did not agree with that assessment at all and I said so too.*

Clr Kesby said:

*That process had a lot of pushing from [the Executive Officer] and it was basically she spoke over what Council wanted..*

Clr Burke said:

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*We were dominated by those two people. That was a bit upsetting, yeah. You know, we just went through it best we could.*

Clr Geddes said:

*I think the outcome was skewed marginally by the executive officer because she was a very strong personality and she had a forceful argument that day and basically I agreed with it, but I think it would have been different if she hadn't been there. There would have been a different outcome.*

The Executive Officer's own observations of the process and its outcome lends some support to these perceptions:

*I think the conclusion was a satisfactory conclusion. I would be concerned that that panel, without myself and perhaps without the LGSA representative present, would've come to the same conclusions but the performance is demonstrable so it's very difficult to see how they could've come to any other conclusion but I'm reasonably sure that they would've.*

It should be noted for the record, that I have also made enquiries with Mr Taubman about the recruitment and performance management processes. However given those discussions were conducted on condition of confidentiality, I am unable to disclose the content of those discussion here.

The Executive Officer's role in the performance assessment process is reflected in the panel's report where a number of her comments are recorded separately to those of the Council.

There are a number of areas identified in the performance assessment report where the former General Manager's performance demonstrably fell short of the targets set in his performance agreement. However the assessments of the former General Manager's performance against some of the management objectives appear to be somewhat subjective and are not supported by evidence or specific examples.

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Of greater concern is the fact that the former General Manager's response to the report, and indeed, other evidence considered by this Inquiry, suggests that a number of the criticisms made were apparently incorrect. These include:

- Comments about consultation on the preparation of the management plan
- Comments that Council did not have a performance management system in place
- Comments about the former General Manager's failure to discipline staff.

Notwithstanding my above concerns, given the former General Manager had demonstrably failed to meet a number of targets set in his performance agreement, in my opinion it was reasonably open to the Council to assess his performance as unsatisfactory. Some councillors acknowledged this in their evidence.

In his evidence, Clr Slack-Smith observed:

*What really was the less than satisfactory outcome in my view was the fact that there were things written in part 2, dates that you had to do things by, which are going to be those things you asked about before when I did it, that had not been completed. He was brought into the room and we asked him and he said it was basically due to the lack of staff but, notwithstanding that, he did write those things and the fact of staff was taken into account. Because of the way these reviews are done, and he's got to meet these performance things in our mind, we come out of it with a less than satisfactory - this was explained to him and he actually took it.*

Asked what he thought the outcome of the performance review would have been without the intervention of the Mentor and Executive Officer, Clr Slack-Smith replied:

*Same thing, he didn't meet the requirements.*

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In her evidence, Clr Kesby said that she felt the former General Manager was given “a fair go” at his performance review. Asked whether she thought the outcome would have been the same without the intervention of the Mentor and Executive Officer, she replied:

*I don't - I couldn't - I can't answer that. Situations happen. It's - yeah, I can't answer it, I'm sorry. It's not – it's surmising.*

In his evidence, Clr Geddes said that he agreed with the outcome. However when asked what the outcome may have been had the Executive Officer not been present, he replied:

*It probably would have been more positive towards Mr Prakash.*

Clr Geddes went on to add:

*I think because we all liked him, it may have been overly positive and then I do think probably [the Executive Officer] gave a different perspective to it than had it all been more Councillors sitting there.*

In his evidence, Clr Brown said:

*Well, he set the goals. He set the goals. He set his own level. He sort of set his own bar, as one would speak. He never - he never met them.*

Other councillors offered a different perspective on the process. Clr Reichler stated outright that he disagreed with the outcome. Clr Burke said he did not “entirely” agree with it, “but went along with it”.

### **Resignation of the former General Manager and the appointment of the current acting General Manager**

Following the announcement of this Public Inquiry, the former General Manager resigned. At an extraordinary meeting held on 9 October 2007, Council resolved to accept his resignation.

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After seeking advice from the Department of Local Government and Mr David Gibson of the Local Government and Shires Associations, Council appointed Mr Glenn Schuil as acting General Manager, while it recruited a new general manager. Mr Schuil was seconded from Penrith City Council where he is Senior Governance Officer. Mr Schuil was previously employed by the Department of Local Government as a Senior Investigations Officer. Mr Schuil has previously been seconded to act as general manager at a number of other Councils including Central Darling Shire Council, Hawkesbury River County Council and more recently Lachlan Shire Council.

Council has since recruited a new General Manager. The new General Manager is Ms Glenda Tasker. I have been advised that Ms Tasker has previously held the positions of Director of Finance and Administration at Bland Shire Council and Central Darling Shire Council. Ms Tasker will commence her duties with the Council on 19 May 2008.

### **Conclusions**

I am unable to conclude on the evidence before this Inquiry that Council failed to satisfactorily manage the performance of its former General Manager.

In my opinion, councillors were right not to dismiss the former General Manager prior to his performance review. Council would have needed to do so under clause 10.4.1 of his contract. No grounds appeared to exist under that clause that would have permitted Council to act. Had it done so, Council may have been acting in breach of the contract and in a manner that was inconsistent with industry standards for the performance management of general managers as reflected in the Department of Local Government's Guidelines. Council would also have potentially exposed itself to the risk of legal action by the former General Manager.

Furthermore, in the circumstances, it is doubtful that grounds existed for the termination of that contract after the performance review under clause 10.3.4 without first giving the former General Manager an opportunity to address the

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issues identified in the performance review as suggested in the Department's guidelines.

In relation to the performance review process, in my opinion the decision to appoint the Executive Officer to the performance review panel was problematic. Given that the Executive Officer had spent the previous two months advising the Council to seek legal advice with a view to dismissing the former General Manager, her involvement in the performance management process potentially exposed it, and by extension the Council, to a claim of bias.

It should be noted however that it was readily apparent from the report that the former General Manager had not met a number of his performance targets. Four of the eight councillors who participated in the process acknowledged this in their evidence and expressed support for the outcome. One councillor was ambivalent and another opposed the outcome. Two councillors have not commented on it. Given this and the fact that Council received advice and assistance from an employment specialist from the LGSA in the conduct of the performance review, I am unable to conclude on the evidence that the process would have been conducted in a less satisfactory manner or that the outcome would have been different had the Executive Officer not participated in the process.

### **Capacity to attract and retain staff**

It was apparent from evidence considered by this Inquiry that a key issue impacting on Council's capacity to perform its functions is the difficulty it faces in recruiting and retaining suitably qualified staff. Following the first Public Inquiry, the Council lost most of its senior staff. In its initial submission Council identified a number of key positions within the organisation that had remained vacant for extended periods of time and the impact that this had had on the exercise of its functions. These positions included the following:

- Director Corporate Services, (vacant from January 2006 to January 2007)

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- Senior Youth Development Officer, (vacant from April 2006 to September 2006 and January 2007 to March 2007 when the position was replaced with the Manager Community Services position)
  - Manager of Community Services, (vacant since March 2007. This position was subsequently filled during the hearings.)
  - Grants Officer/ Economic Development Officer, (Currently vacant. This position has never been filled although Council, having readvertised the position, is currently negotiating with its preferred applicant to fill the position)

Council has only been able to fill a number of key senior staff positions over the last 18 months:

- Mr John Keenan commenced in his role as Group Manager Corporate and Community Services in January 2007. He was engaged as a consultant from August 2006 to January 2007.
- Mr Francois Vanderberg commenced in his role as Manager Environmental Health and Building in November 2006. He worked on a part time basis from November 2006 to July 2007.
- Mr Suneil Adihikari commenced in his role as Group Manager Engineering Services in February 2007.
- Council's current Human Resources Officer, Ms Lisa Marshall commenced employment at Council in June 2006.

It is apparent that these vacancies have not only impacted on Council's capacity to exercise its functions, but also on its capacity to implement the recommendations of the first Public Inquiry. While the increased impetus in implementing these recommendations from the start of 2007 may be attributed in part to the appointment of the Executive Officer, I note that it also coincided with the recruitment of staff to key positions responsible for implementing those recommendations.

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Another factor impacting on the performance of Council's functions is that because of the small staff numbers and the wide array of regulatory functions Council is required to exercise, staff are required to be 'masters of all trades'. This was particularly apparent from Mr Vanderberg's evidence. Mr Vanderberg described his role as follows:

*I'm health, building, planning, building maintenance. You name it, I do it.*

It should be noted that the difficulties faced by Brewarrina Shire Council in recruiting and retaining suitably skilled staff is not unique to that organisation. It would appear to be a challenge faced by other organisations in the area. I note that at the Council meeting of 19 January 2007, Mr Michael McCosker, the Director of Administrative Services for DOCS addressed Council on plans for the relocation of the existing office and the building of a new DOCS Office in the business precinct. Brewarrina was described as a "unique challenge". Reference was made to "the problem of attracting qualified staff and keeping staff in the town."

## **Relationships with other councils**

### ***Sister City Relationship with Warringah Council***

As addressed by the first Public Inquiry, Council has a sister city relationship with Warringah Council. That Inquiry recommended that Council re-establish and foster its sister city relationship with Warringah Council.

This Inquiry wrote to Warringah Council inviting it to make a submission. In its submission, Warringah Council advised that in December 2005, it offered assistance in terms of administrative advice and support in responding to the recommendations of the first Public Inquiry. At its meeting of 24 February 2006, Council acknowledged Warringah's offer of assistance. Warringah's previous General Manager, Mr Stephen Blackadder, attended Brewarrina to share with elected members the benefits of developing a long-term community plan and to provide practical assistance and direction in placing Council's then draft

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Management Plan on exhibition. Warringah also supplied advice and support on the administration of grants, disposal of assets and tendering guidelines.

While, it is apparent that Council has made some use of the relationship with Warringah, given the nature of Warringah's offer of assistance, in my opinion, more could have been done to seek its assistance in implementing the recommendations of the first Public Inquiry.

### ***Relationships with other councils***

It was apparent from the evidence given by staff at the hearings that they routinely sought advice or assistance from staff at other councils in developing or reviewing policies and procedures and in meeting statutory planning and reporting requirements.

As discussed above, Council has made a joint funding application with Bourke and Central Darling Shire Councils to the Department of Planning for the preparation of a new LEP that complies with new planning law requirements. Council has advised that the application has been successful.

Council has also advised that it intends to participate in the preparation of a Regional State of the Environment Report in partnership with the Western Catchment Management Authority.

Notwithstanding this, it would seem that there is scope for enhanced cooperation with neighbouring councils. Given the resource and staff limitations that Council labours under and the likelihood that neighbouring councils confront similar challenges, it would seem that there may be some benefit to Council and its neighbours in exploring the potential for a formal strategic partnership with neighbouring councils to facilitate the sharing or pooling of resources and staff, to coordinate planning on a regional level and to enhance the capacity to attract grant funding.

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## **Relationships with Government agencies**

The Public Inquiry wrote to a number of Federal and State Government agencies inviting submissions relevant to the Terms of Reference. The Inquiry received responses from a number of agencies, including the Ombudsman and the ICAC. These responses disclosed no issues that warranted consideration by this Inquiry. The Ombudsman and the ICAC advised that they had received no complaints about the Council.

## **The capacity of the Council to work with the Department of Local Government to improve its performance**

### ***The roles of the Executive Officer and Mentor***

As discussed above, the Executive Officer was appointed by the Department of Local Government “*to provide direction, support and guidance in ensuring that [the] council administration is able to more effectively address the recommendations in the Public Inquiry.*” The Mentor was in turn appointed by the Minister to provide such support and assistance to the elected body.

The circumstances that prompted the appointment of the Executive Officer and Mentor are described at length above. At the hearings, the Executive Officer described the steps taken to assist the Council as follows:

*My appointment was for an eight-week period over a four month period of time and those - that eight weeks was undertaken by me on a two weekly basis each month initially for the first two months, and then a one week period followed by another two week period and another one week period. During that time I worked with the [former] general manager and a number of staff members of council to try and address some of those matters and they included but weren't - I mean it didn't just stop at these matters, but they included looking at workforce management issues, say, for example, trying to make sure that council staff were employed in - under the required legislative and statutory award requirements, and companion animal management was another issue, financial management was another issue that I dealt with, land register and*

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*policy development, management plan, social plan, state of the environment report, all of those things are actually things that council is required to have in place by the department and by the legislation.*

Asked about the Mentor's role, the Executive Officer replied:

*Mr Smith started to attend council meetings from April of this year and his role was to assist council meetings to firstly start to comply with their requirements. So council's meetings were documented incorrectly in a number of instances prior to the appointment and I have to say continue. Council's meetings were conducted outside of proper processes. Councillors show a lack of knowledge of what they were supposed to do as councillors and Mr Smith's role was to try and correct some of those things and assist them to understand some of those things better.*

Given their roles, the relationship between the Council administration and elected body with the Mentor and Executive Officer potentially represented a key one in terms of its potential to enhance Council's capacity to exercise its functions in relation to the administration of the Council area. However, the evidence considered by this Inquiry tends to support the view that this relationship was a poor one.

***The Department's concerns about the Council's failure to cooperate with the Mentor and Executive Officer***

In its initial submission to this Inquiry, the Department complained of the Council's failure to cooperate with the Mentor and Executive Officer:

*Council agreed to co-operate with the appointments of the Mentor and the Executive Officer. Understanding that Council's unsatisfactory conduct required substantial change is a basic premise of understanding the appointments. Neither the Mentor nor the Executive Officer views the behaviour of the councillors as co-operative. Neither could the [former] General Manager be described as co-operative.*

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*Suggestions made by either the Executive Officer or the Mentor often resulted in long arguments about minor matters with more substantial matters remaining unaddressed as well as the rejection of advice provided by the Mentor and the Executive Officer. The [former] General Manager on occasion did not do what he is required to do and when councillors were advised of this they did not take any action.*

*The [former] General Manager's refusal to provide information for a period of time during the appointment has already been mentioned. During that time he also instructed staff not to communicate directly with the Executive Officer, regardless of the projects that might have been being undertaken. Such actions could hardly be described as co-operative. His priorities do not accord with the efficient and effective running of an organisation.*

...

*By contrast, mention needs to be made of the co-operation received by the Executive Officer from most of the staff of council below the level of General Manager. Some staff members were clearly keen to improve their work practices and interested in learning more about how Council should be operating. The results in those areas of Council's operations speak volumes and clearly demonstrate those who worked well and co-operatively and those who didn't.*

The Executive Officer elaborated on these concerns in her evidence at the hearings:

*Council, I have to say - when I refer to council I refer to councillors and the [former] general manager in particular in terms of their senior management being the people responsible for leading council - showed - the idea of the appointment initially was to act cooperatively with the mentor and the executive officer. In the first instance, that that cooperation might've been present for a very short period of time. It very quickly disappeared and it was quite a hostile environment in terms of trying to manage any sort of change. It has to be*

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*recognised that council was required to make those changes. It wasn't and isn't functioning as it's required to. In order to make those changes people have to make - to show willing to change some of their behaviours and their actions and that - both the mentor and myself experienced a lot of resistance to any of the changes that we wanted to implement, not from the staff necessarily but certainly from management.*

### **Council's understanding of the roles of the Mentor and Executive Officer**

Advice on the appointments of the Executive Officer and Mentor was first conveyed to councillors at the ordinary meeting of 23 February 2007. The minutes of that meeting recount the following discussion about the appointments:

*Discussions were held regarding this matter including the outcome of the Brewarrina Public Inquiry. The Mayor stated that the Department had been in contact and that the decision had been made regarding Council. All elected positions of this Council would not be declared vacant.*

*The Department has nominated one of the Department's Staff to assist Council with the development of policies. The Department has also nominated a consultant to advise Councillors with regard to procedures with the cost of the consultant to be shared between the Department and Council.*

*Councillor Matthew Slacksmith stated that he would like to thank the Mayor Ted Simpson, the General Manager Sunil Prakash and all the Staff of Council for their efforts during the Inquiry.*

*The Mayor stated he would also like to thank the General Manager Sunil Prakash and all of the Staff for their efforts.*

As described above, Council appears not to have been initially, formally notified of the appointments. It would appear that the former General Manager and several councillors raised concerns about this with the Executive Officer. On 4 April 2007, she sent the following email to the Director General:

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*Just to remind you that the GM and individual councillors have raised several times the lack of official notification of Vic Smith's appointment as Mentor and mine as Executive Officer. (Mind you it hasn't stopped them accepting the services provided or directions given). Can I suggest that a letter notifying them of both be sent as soon as possible. Vic and I are both intending to be back there the week of the 16 April so if it could go before then that would be great.*

In his evidence, Clr Slack-Smith said that he and the late Mayor sought further clarification on the roles of the Mentor and Executive Officer at a meeting with the Director General at the Wentworth Hotel in Sydney on 4 June 2007. According to Clr Slack-Smith, the Director General:

*... explained Vic was there to mentor the councils in policies and procedural matters. Not to dictate what to do, just mentor and guide them through the meetings. Carole was there to assist and he was also there to write a report as part of his commission on the future of local government in the western shires. They were two main thrusts of his appointment. Carole was simply there to be sent to implement the recommendations of the inquiry. That was her brief.*

Asked whether he thought they fulfilled these roles, Clr Slack-Smith replied:

*In ways I do. We did listen to Vic and Carole and Francois [Vanderberg] had a good working relationship. She was smart enough in that office and whatever there, it's when they tried to get involved in a bit of town politics and they come back to the council, and they didn't just come back to the council on a friendly basis and say, "Let's talk about this" or try to get the parties together, they came back and said that and they got met with that. That will happen in this town.*

During the hearings, I asked staff what their understanding of the role of the Executive Officer was. Mr John Keenan, Council's Group Manager Corporate and Community Services, described his understanding of the role of the Executive Officer in the following terms:

*I wasn't real sure, to tell you the truth. When she arrived I didn't know. I think the decision was made in January, when she was to come, I believe so, I've*

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*read that way, anyway, and she arrived in April or something like that. In between there was no-one else - that she was coming, and what she was going to do and it wasn't until she basically was there that we become aware of it and I never even knew her role until actually we have a staff meeting on every Wednesday morning and she told us. Sunil had indicated at this previous staff meeting, or at a previous one, that there was - that this person is coming but didn't really say what exactly her role was. I never got it in writing and then she come on and she laid it out in no uncertain terms who she was. I can't think of the exact words now but it was basically saying, like, I'm here, you know, I'm here to go and get things done and it's almost like - we come away, those present, and I'm pretty sure if you'd call them in no uncertain terms that she was saying that she's the boss, you know, or she was in that - she didn't use those words and I can't give you the exact words she used but she told us in no uncertain terms and she repeated it to me several times over, you know, she'll get things done, you know, its going to happen, you don't have to go back to the general manager. If it's got to be done, we'll get it done, and I believe that was probably her role but I would have liked to have seen it in writing. I'd like to see it sort of out in a thing - you know, spelt out but maybe it wasn't to go past general manager....*

...

*She was saying that she had the authority to make things happen and she did, as I mentioned a couple of them. She went right across and got things happening where I would've had to go through a - I would've had to go through a process of getting approval for something, she just cut straight across it...*

Asked whether he understood what the Executive Officer's role was, Mr Francois Vanderberg, Council's Public Health Manager, replied:

*Not 100 per cent. I thought somebody from the department was helping us to accomplish all the outstanding issues that were basically from the first [!]nquiry and basically just before she finished I became aware of the fact that she's*

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*actually some sort of executive officer above Sunil Prakash but I never realised that until basically the last month or so.*

Mr Vanderberg also referred to the fact that the Executive Officer explained her role to staff at a staff meeting:

*Yes, one staff meeting we had she actually said that she is the one that is executive officer, she is basically above the general manager.*

Asked whether the Executive Officer's alleged description of her role to staff and, in particular her position relative to the former General Manager, was consistent with his understanding of that role, Clr Slack-Smith replied:

*No, my understanding of her role was she was there, the GM was still the boss of the staff and that she was there to assist in the recommendations of the [I]nquiry and that could be assisting the GM, assisting the staff. Vic was also there to help the GM with the other side of the procedure matters.*

In its rebuttal submission, the Department gave the following account of what the Executive Officer said at the staff meeting in question:

*When she spoke at a staff meeting about her role she indicated that she was there to provide assistance, guidance and direction to staff including the General Manager. She also indicated that if she was working alongside someone acting outside of regulatory or legislative requirements that it would not be her practice to wait until she had time to confer with the General Manager about that but rather to inform the staff member directly of the correct requirements as a matter of practicality. The [former] General Manager was present at the meeting and raised no objection.*

### **Support for the recommendations of first Public Inquiry**

At the hearings, I asked councillors what their opinion was of the recommendations made by the first Public Inquiry. Clr Slack-Smith replied as follows:

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*I didn't mind them. You know we've got problems and like now, as you can see, we're not hiding problems. We have problems, we're open about them and we just want to work and fix them and whoever you put in here anyway, if it's not us, they're still going to have to do the same thing anyway, so you know.*

Clr Mason replied as follows:

*We needed a little bit of polishing up to be done on us and like the mayor said we've learned, learned a lot. I feel we've just about achieved all those recommendations. There might be one or two that needs to be finished off but I think it's improved the style of us as councillors and brought us more update in what's happening in the local government.*

Clr McLennan replied:

*Well, I thought we'd carried out most of the [recommendations], but it kept coming back and come back that we hadn't and I think when the previous general manager resigned, I mean we carried out all of the ones that we could and I think we carried out most of the recommendations, so I must admit I was really surprised when a second inquiry was ordered.*

Clr Reichler said:

*We complied with the vast majority of the recommendations out of the first inquiry and I might add there's at least two of them in that we were supposed to do, which is illegal to do.*

Clr Geddes replied:

*I think some of them were well-founded. I thought some of them were bureaucratic and could have been sorted out in an inter-officer or interdepartment general manager way, like zoning land from operational to whatever it is. I mean, I don't think that really - I don't think there needed to be an inquiry over that.*

Clr Gordon replied:

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*It's only a nit-picking job. You know, how all of a sudden there's six black fella on the shire and you get these recommendations. Why didn't they investigate them years ago if they wanted to...*

Clr Brown replied:

*No, I read through them. I actually read through them, like you know. I thought it was good because if we didn't really approve the recommendations, we'd be right up, all the nation would have brought us up to like a standard of art. I always said once we read the recommendation, we'll improve and we went through a few more years on our hands, three or four recommendations there now and we'll deal with them when - I think when this inquiry is over, ... things that have been put in front of us, they'll work themselves out. I think they will.*

It should be noted that the implementation of the recommendations of the first Public Inquiry was reflected in the strategic objectives the former General Manager was required to meet under his performance agreement. As discussed above, in his performance review, the former General Manager was assessed in his performance review as having failed to meet a number of these objectives.

### **The relationship between the former General Manager and the Executive Officer**

In her evidence at the hearings, the Executive Officer described her relationship with the former General Manager as follows:

*At best it could probably be described as polite and at worst it could probably be described as hostile.*

Asked to provide examples of that hostility, the Executive Officer replied:

*Quite often there was a passive aggressiveness from the [former] general manager at the time and by that I mean an indication from the [former] general manager of either the mentor or myself asking him why things had not been completed or where things were - a report for those things - for particular*

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*actions should be given to council at the next council meeting and why hadn't he prepared that report, and there were a number of things that you would expect from a general manager to go to council and his response was to shrug his shoulders and indicate that he didn't have a reason or he wasn't prepared to give a reason or some of those sorts of things and that was not on one occasion, that was on several occasions to both the mentor and myself. There were other occasions where my understanding is the [former] general manager had given some staff members an indication that I was there to provide advice only and they could take or leave the advice and that isn't the case. The case that – arrangement between the department and the council was that where direction was needed, particularly with regard to statutory and regulatory requirements, the direction was to be taken and the directions weren't taken and the [former] general manager indicated to staff that they didn't have to take them despite the fact that to not take them meant that council staff continued to operate outside their obligations.*

Asked on what basis she understood that the former General Manager had given a direction to staff that they did not have to follow her directions, the Executive Officer replied:

*A number of staff came to me and said, "We don't have to listen. You can tell us what you like but if we don't like the advice we don't have to listen", and I said, "If it's advice, you're quite right. If it's a direction you're not."*

In her evidence, the Executive Officer also suggested staff had told her that the former General Manager gave instructions to staff to 'wait her out':

*It was clear that some of the instructions that were given to staff prior to my arrival were not about cooperation but in fact were about waiting out the department - the departmental appointment of myself, until I'd gone and then it would be business resumed as usual which is of concern to me given that the business that was being undertaken prior to my appointment was less than satisfactory.*

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In his evidence, Clr Slack-Smith maintained that the former General Manager had sought to cooperate with the Mentor and Executive Officer, but acknowledged he could be stubborn. His comments tend to lend weight to the Executive Officer's observation about him being 'passive aggressive':

*Sunil was trying to co-operate with them. If she recommended something- he was probably stubborn about some things and he took a backward seat...*

In a written submission to the Inquiry, Ms Lisa Marshall, Council's Human Resources Officer offered the following observations about the manner in which the relationship between the former General Manager and Executive Officer evolved over time:

*In my position as mentioned I spent a great deal of time with Carole and over the time her attitude began to change. This was especially in respect with her relationship with the [former] General Manager. Initially the GM and Carole were working relatively well together. Carole was requesting information from the GM and he was obliging. After a while the GM began to question some of the information that Carole was requesting and this of course raised doubts as to whether or not Carole was in fact trying to assist Council.*

*At this point the mood shifted and there was a sense of resistance between both Carole and the GM. Carole did not like the fact that the GM was querying her requests and the GM did not like the fact that Carole was requesting information that he felt was irrelevant to her being here. This began the cycle of defiance and the relationship started to go downhill fast.*

*In mid May the GM requested that any information required by Carole be requested in written form, just so we could keep track of what requests and what type of requests were being made. The GM advised all staff that had any contact with Carole that they were to get any requests in writing. Initially we were under the belief that Carole was here to help but she very quickly began to get involved in many operational issues. One of the biggest problems was that Carole wanted to make the decisions where in my opinion both Carole and the*

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*GM should have been discussing the issues and reaching a well informed decision that was agreed by both parties. I think this breakdown in communications was very damaging to the relationship & Council.*

*In early June, 2007 one of the issues that became a turning point in the relationship between the GM and Carole was in relation to the position of Tourism Manager. This was an issue that I was also involved in with both the GM and Carole. The contract for the Tourism Manager was about to expire in mid June 2007 and Carole wanted to advertise the position. As per my discussions with Carole it was also her aim to reduce the wages for this position and she believed we could do so if we were to advertise. The GM felt that this matter should not have involved Carole. At this stage, we sought advice from both the Union and the Local Government Shires Association. Since the employee had applied for a 12 month contract with possible extension both parties agreed that the employee could be automatically appointed into the permanent position without advertising.*

*Therefore, based on this advice the GM provided the employee with a letter of offer with my assistance and she was appointed into the role. This was done a few days prior to a visit from Carole and prior to the expiry of the contract. Upon Carole's return she asked about the role and I advised Carole what action had been taken. She was furious and saw this as the ultimate step of defiance from the GM. This was Carole's last visit to the Shire.*

*During this time both Carole and the GM appeared to be very civil towards one another although it was obvious to me that it was under duress. However, once this issue with the Tourism Manager happened the relationship changed and communication between the two became more heated. I think, where they could they tried not to deal with one another face to face, however this is just my observation. Carole did however; advise me that she had discussed her relationship with the GM and some of the matters that were happening within Council with Vic Smith.*

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Following the Council meeting of 18 May 2007 where the Executive Officer provided councillors advice on the dismissal of the former General Manager, the relationship between the Executive Officer and former General Manager deteriorated rapidly. In its rebuttal submission, the Department describes the relationship as becoming “hostile” after that meeting. Some support for this view can be derived from the fact that following that meeting, the former General Manager apparently refused to supply documents requested by the Executive Officer. The Department refers to this in its initial submission to the Inquiry. According to the Department’s submission:

*During the period following [the May] meeting, the [former] General Manager refused to supply the Department with any information on progress being made on Council’s activities despite three emailed requests on 22 May, 25 May and 28 May. It appears that councillors may have been aware of his behaviour.*

A review of the Department’s documents confirms that the Executive Officer sent an email to the former General Manager on 22 May 2007 requesting certain documents. She requested that these be supplied “asap”. The Executive Officer sent a further email on Friday 25 May 2007 making a second request for the documents. The email makes reference to the fact the Director General had spoken to the former General Manager about the matter and indicated that he was to provide her with the information. On Monday 28 May 2007, the Executive Officer sent a third email requesting the documents. It would appear that the former General Manager began to respond to the requests for the documents from Thursday 31 May 2007.

In his evidence at the hearings, Clr Slack-Smith provided the following explanation for the former General Manager’s actions:

*He knew then that Carole and Vic were trying to sack him and he didn't want to give nothing to Carole. He got really upset, thought he was treated unfairly, yes.*

In his evidence, Clr Slack-Smith said that the councillors were unaware that the former General Manager had been withholding the documents until Thursday

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31 May 2007. As soon as they learnt this, they instructed the former General Manager to provide the documents:

*It was during the period when the councillors were considering their resignation and we weren't aware of it really because Carole hadn't told us, Gary Payne hadn't rung us telling us he was withholding information. No one had rung and told the councillors. So anyway Ted and I found out that on the Thursday, I think Ted told him on the Friday on the day that [David] Gibson [of the LGSA] descended and I think that could have been sent on the Monday. So he actually withheld that for a period of ten days, a couple of weekends or something.*

As described above, the former General Manager began to provide the documents on Thursday 31 May 2007.

### **Relationship between other Council staff and the Executive Officer**

In her evidence, the Executive Officer described her relationship with Council staff in the following terms:

*Generally speaking most of the staff below the level of general manager were quite cooperative. Some of them were reluctantly cooperative but never the less they cooperated. There are a number of staff who indicated a willingness and an interest in learning how better to do the job that they were required to do and there were a number of staff who were obviously not that interested in improving their performance but would make an effort, yeah, but generally speaking most of the staff were below the level of general manager were very cooperative, or not very cooperative but were cooperative and willing.*

In its rebuttal submission prepared by Council's current acting General Manager, Mr Glenn Schuil, Council rejected the suggestion that staff had been hostile to the Executive Officer:

*Contrary to what Ms Medcalf has stated, the Council's staff are of the opinion that they were not aware of any hostility between the Council's staff and Ms Medcalf. I have been advised from the Council's staff that it was more of being*

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*confused at the direction the events were heading from the visits by Ms Medcalf, particularly towards the end of her assignment with the Council.*

Evidence considered by the Inquiry indicated that Council's Environmental Health and Building Manager, Mr Francois Vanderberg had worked closely with the Executive Officer. At the hearings, I put to him the allegation that Council had been uncooperative. He replied as follows:

*I worked very well with Carole. We had a few meetings, I did what she asked me to do. We never had arguments whatsoever. My experience of her is we had very good working relations.*

In her written submission, Ms Lisa Marshall, Council's Human Resources Officer, said that she also spent a large amount of time dealing with the Executive Officer on a number of issues. She described in some detail how that relationship changed over time. She described how, despite the demands being made of them by the Executive Officer, staff were cooperative:

*I understand the volume of work that is required to be done within the Human Resources area but certain functions of the role (especially payroll and ad hoc issues) take up a large portion of my time, therefore the extra requirements from Carole during this time did place extra stress on my role and increased the hours I spent doing the role.*

*I believe that in the beginning when the Executive Officer was appointed to assist Council, she truly was trying to help. The staff were also very eager [to] work with Carole under her guidance for the betterment of the Council. Carole appeared to work well with the staff in the beginning and staff were providing the information she required. However, from conversations we held together she was doubtful of a few employees especially in respect to the skills they had to do the job.*

*I am aware that there is a resistance to change with some of the employees but I do not think you can make some of the assumptions that she made about the staff without knowing the whole picture and understanding how each role has*

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*been functioning and will function in the future. Some of her assumptions were correct especially in regards to one employee. She had mentioned that the employee should have more responsibility and I agreed on this point and it was already something I had discussed with the Manager responsible for this employee.*

*I did not disagree with all that Carole advised, some of her points were valid and I agreed. She did have a strong concern that we were lacking leadership skills within our management structure. I strongly agreed with this point but it is something that is going to take time and I don't think these types of changes can be implemented overnight. This is a part of our process and I think that with time and the work being put into the structure I think this is achievable.*

Ms Marshall went on to describe how the mood began to change after tensions surfaced between the Executive Officer and former General Manager:

*During the time of the Executive Officers visits I am aware that extra stress was placed on staff. They were all trying to carry out their daily duties but also trying to provide whatever information was necessary to help Carole. However, the mood drastically changed when staff picked up on the vibes between the GM and Carole. Staff were still willing to provide information and did so as soon as possible but they were hesitant in talking with Carole and in some cases almost appeared to be frightened of what questions she might ask them. During this time I had numerous staff members discussing their concerns with me.*

*As time passed staff began to make their own opinions of Carole. This was either as a result from what others had said or from direct dealings with Carole. I also think that nearer to the end of the Executive Officers visits the relationship between Carole and the GM was very obvious and a large number of the staff did not believe that she was here to help.*

*A major concern for staff as a result of the inquiry was that they may possibly lose their jobs. No matter what was said to staff they always had this fear in the back of their minds. Therefore, they were worried that Carole may have been*

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*trying to get rid of their positions and were sceptical of Carole's intentions. This became evident when somehow staff became aware of the discussions around the Finance Manager role. People were under the impression that the employee in the Finance Manager role was going to lose her job and that this could happen to others. This issue actually had to be dealt with by the Executive Officer. Carole was made aware of staff concerns over this issue and had to address the issue in a staff meeting to inform staff that she was not trying to force the Finance Manager out of her position and that her job was safe.*

In his evidence, Mr John Keenan, Council's Group Manager Corporate and Community Services provided a similar description of how the deterioration in the relationship between the Executive Officer and former General Manager impacted on staff morale:

*In the very early stages it seemed to be this was all a cooperative, we were all working together to get things done. It seemed to be that after that incident at the meeting where - I think - I don't know who asked - the executive officer requested councillors to sack the [former] general manager. Perhaps I'm not putting it in the right words, but that meeting, May I think it was, I think after that - after that there was a distinct - you can understand it, too. After that there seemed to be a distinct sort of change ... I think there was perhaps level of suspicion in everything that was being requested by the CEO after that, the EO, the executive officer after that. You know, there was this - is this all out to go and - to get me or whatever it may be, you know. It didn't change the work we done but it did create the environment. With councillors, I don't know. I think they all felt that coming out of that I think there was a feeling, and I'm only just talking of myself, there was a feeling that, you know, this didn't seem to - it was maybe it was unfair, maybe we don't know enough about what's going on, it was all that type of thing, but I can't talk personally on that one. But internally yes, it did create a pressure and other levels of staff which they didn't know what was going on either. It wasn't telegraphed at all, after or before. No-one knew what it was about. No-one said this is what we're trying to do because of this so it was just a lot of people trying to - sitting around - staff was wandering*

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*around dazed for about two months trying to figure out what's going on in this council. Someone's trying to sack our general manager, we don't know why, and we've got - then we've got all these changes going on that's - that I said suddenly stopped happening. It was - there seemed to be this teaching phase stopped and there was stage where, you know, someone was just taking over what they were doing and I'm talking - I won't try to talk for the rest of the staff but that was the general across the board at all level of staff felt that.*

### **The relationship between the councillors and the Executive Officer and Mentor**

The evidence considered by this Inquiry suggests that the relationship between the councillors and the Executive Officer and Mentor began to deteriorate following the meeting of 16 May 2007 called by the Mentor and Executive Officer to raise concerns about the former General Manager's performance.

The evidence considered by this Inquiry suggests that there were a number of factors that contributed to a growing sense of distrust by the councillors of the Mentor and Executive Officer. These included:

- Concern at what the councillors perceived to be an attempt by the Mentor and Executive Officer to exert pressure on them to dismiss the former General Manager
- Frustration at what they saw as the Mentor and Executive Officer's disruption of Council meetings.

These issues are addressed in detail above.

Another factor in the deterioration of the relationship was a dispute between the Mentor and two of the Aboriginal councillors over Council's failure to make an acknowledgment of country at meetings. The Mentor raised concerns about this with the late Mayor at the meeting with councillors on 16 May 2007. The Mentor referred to this in his initial submission to this inquiry:

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*I asked a question of councillors as to why they did not have a Welcome to Country or recognize the Traditional Owners of the Land prior to council meetings, only to be met with verbal abuse for having the audacity to ask such a question.*

In his evidence, Clr Slack-Smith described how the Mentor got into an argument over the issue with the late Mayor and another Aboriginal councillor, Clr Stan Kirby:

*...what happened was Vic and Carole got into an argument with Stan [former councillor, Stan Kirby] and Ted [the late Mayor]. They wanted to introduce this welcome to country. That was one thing. Stan objected strongly to this in unison with Ted. I was thinking how can anyone get an argument over welcome to country? Anyway somehow Vic and Carole managed to do it. Stan said "You give me back my country and I'll welcome you to it." That was one thing he said. Then they said, "Well how about the recognition of traditional owners." Ted didn't want to offend the M tribe on that side of the river and the N this side of the river or the other ones as to which traditional owners he could nominate. Anyway they got into an argument and Ted felt that they were having a go at them racially ...they felt very strongly about changing things for aboriginal people and not to let the government get away with just a simple welcome to the country.*

*Anyway, Stan's words "Give me back my country". I welcome you to it. Then they got into this argument and in the end Vic and Carole apologised to Stan.*

Clr Slack-Smith went on to describe how the late Mayor and Clr Kirby subsequently formed the belief, that the Mentor and Executive Officer were deliberately undermining the Council because it had an Aboriginal Mayor:

*Then Ted [the late Mayor] rang me and he and Stan [Kirby] - I don't believe this is right but they felt, Ted definitely felt in his heart at some stages during this, that since he became the aboriginal mayor he went straight into the first inquiry and had never been left alone for the whole duration of the time that he had*

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*been aboriginal mayor he reckoned the government or someone was having a real big shot at trying to undermine his thing as the first aboriginal mayor or something. I don't personally necessarily believe that but you should know it because that is what Ted tells at different stages. He rang me and told me that and he said "I think I've worked out what's happening" and I said "What?" He said, "It's a giant plot." ... Anyway out of that grew an intense hatred almost by Stan for Vic, particularly, and Carole. I know Ted rang me once and said he'd just had a phone call from Vic Smith telling him, "You've got to sack Sunil, just sack him." You can't do that without performance reviews and he put Ted in a rotten spot and Ted rang me about that and he just reckoned everyone was trying to put him in a real bad spot...*

These tensions erupted two days later at the Council meeting of 18 May 2007. The minutes of that meeting record that at the end of that meeting, after the Mentor and Executive Officer had departed, a number of councillors made the announcement that they wished it to be noted that they were considering resigning as councillors. The councillors in question were the late Mayor and Cllrs Kirby, Brown, Neale, Slack-Smith and Burke.

In his evidence, Cllr Slack-Smith described what prompted the councillors to make this announcement. According to Cllr Slack-Smith, the idea to resign was initiated by Cllr Kirby:

*Councillor Kirby come to the [18 May 2007] meeting and we got through that. That was with the resignation and Councillor Kirby said then, he said "I'm going to resign" and then Ted [the late Mayor] threw his hat in the ring. Actually probably me, I said "I feel passionate enough about this, this is going nowhere, we're totally confused by these people, they tell us things, they change their mind, they backtrack, they retrack, you know all the time they are yelling at us to do the right thing and we try, we are doing it, we are doing public forums, we're dropping stand[ing] orders even for them, so they can talk at the meetings which is not proper." But we were doing those things on Vic's advice and it was just total frustration all around the council and then Ted said he was going, yes,*

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*so anyway we sort of sorted out - actually they were all going and I sometimes step over the mark to get to a point, because they were going to resign. So I went there too and then I got them to settle down and see the meeting out. Then, by the time the meeting ended we were considering resignation and then by the Monday we'd had a few things right. I do that sometimes, I find it's easier to bring something to a head and you've got to overstep the mark and then find out with people what could possibly happen if they did and then they see the full ramifications and then they'll step back a bit.*

Clr Slack-Smith's above evidence suggests that there was some discussion about resignation prior to the end of the Council meeting when the councillors made their announcement. Clr Brown's evidence indicates the discussion about resignation occurred on the second occasion the meeting was closed when the Mentor and Executive Officer were asked to leave the meeting.

*Well, actually, as soon as the Council meeting started, I asked the meeting to be closed and [the Executive Officer] get out. I discussed it at length with the other Councillors. To my knowledge they didn't know they had been approached too and asked to leave the meeting and they kept sending messages in to tell us that they had to catch a plane and I said that's not interest, with this man's livelihood and career's on the line. I said the plane's not the issue. We closed the meeting. Councillors had a separate meeting. Then it was decided that we'd complete the meeting.*

Asked what prompted him to threaten to resign, Clr Burke said:

*The two who wanted to sack Sunil and I didn't agree, that he hadn't done anything wrong. You just can't sack people when they don't do nothing wrong. I was upset over it.*

In her evidence, Clr Kesby stated that she initially considered resigning but then changed her mind and asked for her name to be taken from the list. Asked what had prompted her to consider resigning, Clr Kesby replied:

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*...it was just frustration with the way it was going, the way the mentor, the EO were – they weren't or they appeared not to be working for Council and the belief I had when they were appointed was they were there to assist Council with the recommendations of the previous inquiry with governance and getting plans, et cetera, and get us back on our feet. As time went on that became less obvious, And it's very hard to trust someone when you don't know what their agenda is.*

In his evidence, Cllr Slack-Smith described how the councillors intended to meet the following Monday, 21 May 2007, to discuss the threat to resign. However, by the time of the meeting, most of the councillors had changed their minds:

*A lot of them in their own heads virtually, probably hadn't had to be talked out of it. We were going to have a meeting on the Monday or Tuesday, me and the councillors and at that meeting I think seven decided to stay, four were then considering. We rang Gary Payne and said we still had a quorum that were staying on, he accepted that. The four that were reconsidering were Ted Simpson, Stan Kirby, Mark [Brown]. Ted rang me Wednesday night and said he was coming back - well not coming back but he was going to stay on.*

However, as referred to above, the late Mayor drafted a letter of complaint to the Director General about the Mentor and Executive Officer. The letter was dated 25 May 2007 but was never sent. In the letter, the late Mayor identified as being of “prime concern” the “incompetence and the motives of Mentor Mr Smith and Department of Local Government appointed Executive Officer Ms Carole Medcalf.” In the letter, the late Mayor complained about the conduct of the Mentor and Executive Officer relating to their advice on the termination of the former General Manager’s contract and in relation to meeting procedure. The letter concluded as follows:

*Brewarrina Shire Council was under the impression that both Mr Smith and Ms Medcalf had been sent to assist Council to complete outstanding recommendations of the Inquiry. They appear to have acted contrary to the mandate of their appointments. Council is very disappointed with their attitude.*

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*Brewarrina Shire Council reiterates its willingness to work with your Department to resolve these issues.*

The letter was never sent because it was overtaken by subsequent events. Nine days later, on 4 June 2007, the late Mayor and Clr Slack-Smith met with the Director General of the Department of Local Government at the Wentworth Hotel in Sydney to discuss their concerns. The Mentor also attended the meeting. In his evidence, Clr Slack-Smith said that he and the late Mayor went to the meeting with the intention of asking the Director General to remove the Mentor and Executive Officer because *"they were getting too disruptive and causing trouble"*. Clr Slack-Smith said that instead, the Director General said, *"Can we just move on from this"*. Clr Slack-Smith went on to describe the meeting as follows:

*Gary Payne said that and he said, "Can we agree to just shake hands and just start again." He said he didn't want to take Carole Medcalf out, he didn't want to take Vic Smith out. Vic Smith was a ministerial appointment anyway. It was putting Gary in a probably difficult position as well and council, like you know, he might sack us that day, we probably thought [w]e could ... resign - but we came back because really we got elected for the duration and we do have a responsibility that comes with that. So that's why. Anyway we go down to this meeting and we got up, all shook hands and agreed to move on from that and I didn't have any more arguments with Vic. Whatever he said, standing orders, we just did. That was the only we were told he should take his advice, so we did.*

Clr Slack-Smith said that in the spirit of 'moving on', the late Mayor's letter of complaint was never sent.

Despite this, as described above, the next Council meeting, held on 29 June 2007, was as difficult as the May meeting. At that meeting, Clr Kirby resigned mid meeting and walked out. Clr Slack-Smith described what prompted him to do this:

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*Yes, at the June council meeting we're doing the standing orders, dropping standing orders for about the third to fourth time. Stan Kirby just got up, pulled a bit of paper out of his pocket and said, "I'm out of here." Handed it up to Sunil, Vic Smith leant across to say "Give it to me, I'll take that" and Stan Kirby glared at him and said "I'm not giving this to you" and walked out. Stan told me if he stayed there he felt he would have punched him, so that's why he resigned. Yes that was the resignation.*

The Inquiry wrote to Mr Kirby inviting him to attend the hearings to give evidence. He did not do so.

Clr Kirby's resignation letter does not shed any light on his reasons for resigning.

As described above, the same meeting ended in disorder when the Council lost its quorum after Clr Kesby walked out after a verbal altercation with the Mentor.

#### **The provision of the draft minutes of the ordinary meeting of 18 May 2007 to Mr Bill Palmer**

As described above, at its meeting of 18 May 2007, Council resolved as follows:

*That Council write a letter to the Premier's Department stating that Council wishes to sever its relationship with the Brewarrina/Weilmoringle Reference Group due to the lack of attendance at the Council meetings from Bill Palmer or reporting back to Council. Council fully supports the Goodooga/Lightning Ridge Reference Group.*

*Council also supports and is committed to the concept of the Community Working Parties.*

As described above, the Executive Officer sent an email to the former General Manager on 22 May 2007 requesting a number of documents including a copy of the draft minutes of the May meeting. She sent two further requests on 25 and 28 May 2007. As discussed above, the Executive Officer subsequently

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received a copy of the draft minutes and registered them into the Department's document management system on 30 May 2007.

The Department's records indicate that Mr Palmer subsequently contacted the Executive Officer by email on 6 June 2007 raising concerns about the resolution. In her email response of the same day, the Executive Officer advised him to make a complaint under the code of conduct.

On the same day, Mr Palmer sent an email to the former General Manager making a complaint about the resolution under the code of conduct. On 18 June 2007, his solicitor wrote to Council threatening legal action.

As described above, the draft minutes of the meeting of 18 May 2007 were not included in the business papers for the following meeting of 29 June 2007 and were not provided to councillors prior to the meeting. The councillors only received the minutes at the meeting itself. The draft minutes had therefore not been placed in the public domain prior to that date.

As described above, Council dealt with the matter of Mr Palmer's threatened legal action at the meeting of 29 June 2007 in closed session. At the following meeting of 20 July 2007, Clr Kesby requested clarification on how Mr Palmer had received the minutes for the meeting of 18 May 2007 when the councillors did not receive them until the Council meeting of 29 June 2007. In her evidence, Clr Kesby described the concerns that prompted her to raise this:

*One lot of minutes were the [May] meeting where we didn't receive until the June meeting. Yeah. They, which was noted in the agenda of the meeting, and in the meantime Mr Palmer received a - got the minutes, we didn't know how, and his solicitor had them, which instigated the defamation case, and I asked the question "Well, how come he's got the minutes, unconfirmed, ungratified minutes before Councillors?". So that was - I asked for that to be investigated, how these minutes turned up.*

Clr Kesby went on to describe what happened after she raised the matter:

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*I ... asked in closed Council, closed part of the meeting, as the minutes that – I've asked where these minutes have of come from. Ms Me[d]calf [the Executive Officer] said "I'm willing to talk to you". I let it go. It came up again and I asked her again. She wouldn't talk to me, wouldn't say a word. So I said "Well, I'd like an investigation as to where these minutes have come from". I said there could be a breach of protocol in the way these minutes have been handled since Council had not received them until the meeting.*

In its rebuttal submission, the Department disputes Clr Kesby's description of her conversation with the Executive Officer. According to the Department:

*Clr Kesby did ask the Executive Officer more directly in the June Council meeting if she had provided the Minutes to the Facilitator. The Executive Officer's response was No. Rather than refusing to answer, she denied providing the material.*

In response to Clr Kesby's concerns, Council resolved as follows:

*That the General Manager be authorised to investigate how the Facilitator received the minutes of the Council Meeting held on 18 May 2007 before the Councillors as they were not distributed to Councillors before the 29 June 2007 Council Meeting.*

At the following meeting of 17 August 2007, the minutes indicate that the matter was raised again. The minutes describe the following discussion:

*Councillor Clare Kesby requested clarification on the investigation of the minutes being received by the Facilitator.*

*The Deputy Mayor questioned the Facilitator on how he had received the minutes and he failed to comment.*

*The General Manager stated that the only person to receive the minutes, before the General Manager received a complaint from Mr Bill Palmer with regarding Code of Conduct, was the Executive Officer.*

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In his cross examination of Mr Palmer at the hearings, Council's legal representative put the question to Mr Palmer again of how he received the draft minutes of the meeting of 18 May 2007:

*SIMPSON: In relation to that situation, the minutes of the council meeting hadn't been distributed. How did you find out about the resolution?*

*A. I decline to answer that.*

*COMMISSIONER: Q. I'd like you to answer that question, thank you.*

*A. The minister placed it on the website. [I assume Mr Palmer intended to refer to Council here]*

*SIMPSON: No, I meant to say it had not been posted on the website prior to - it had been adopted by the time he responded to the situation. It had only been placed on the website after they had been adopted or they hadn't been. I press the question.*

*COMMISSIONER: Q. I'd like to know the answer, thank you.*

*A. Am I obligated to do that?*

*Q. Yes, you are.*

*JONES: Perhaps he might have an excuse.*

*COMMISSIONER: Q. Can you provide your reasons why you don't wish to?*

*A. I was - you know, I was alerted that a motion had been made and I had concerns about how it was made and the - you know, that it was defamatory. I requested a copy--*

*Q. What are your concerns about responding to Mr Simpson's question?*

*A. You know, where it came from I don't think is particularly relevant.*

*Q. I think it is. I'd like to hear your response.*

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*A. Okay. I had heard that the motion had been passed. There was - it had already filtered around town. I contacted Ms Medcalf and a copy of it arrived on my fax and I can't tell you where it came from. There was no header on it.*

*Q. What was your discussion with Ms Medcalf?*

*A. That I had concerns about it and that I would like to have seen a copy of the minutes.*

In his rebuttal submission, Mr Palmer provided more information about the circumstances in which his discussions with the Executive Officer about the matter occurred. He indicated that he contacted the Executive Officer after he found out about the resolution on the following Monday, 21 May 2007, having heard that Council had passed a 'no confidence motion' in him. Apparently, Clr Brown had told people within the community of the resolution, something Clr Brown confirmed in his evidence before the hearing. According to Mr Palmer:

*My phone call to Ms Medcalf was actually to censure Ms Medcalf and Mr Smith for allowing any motion to occur for which no notice had been given. Ms Medcalf informed me that they were not in attendance at that part of the meeting even though this is not recorded in the minutes.*

Mr Palmer's evidence would tend to lend weight to the councillors' suspicions that the Executive Officer provided Mr Palmer with the draft minutes.

It should be noted that draft minutes, once included in the business papers become a public document. Accordingly, by their nature, they are not necessarily confidential documents. It should also be noted that in this case, Clr Brown had already disseminated information about the resolution in question in the public domain.

Notwithstanding this, Council's legal representative made the submission at the hearings that the Council saw the Executive Officer's alleged actions as a betrayal of trust and evidence that she was acting in a partisan fashion. In my opinion, that view was not unreasonably formed.

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## Conclusions

As stated above, the relationship between the Council and the Mentor and Executive Officer was an important one in terms of the opportunity it offered the Council to improve its performance.

The evidence considered by this Inquiry suggests that this relationship had broken down by May 2007. The submission of the Department and the Executive Officer is that this can be attributed to the Council's unwillingness to cooperate with the Mentor and Executive Officer.

There is little or no evidence to support the view that the Council set out to be uncooperative with the Mentor and Executive Officer. It appears the Council initially saw the appointments of the Mentor and Executive Officer in a positive light and that councillors and staff sought to cooperate with them as best they could. In particular I note the following:

- Most councillors recognised the need to implement the recommendations of the first Public Inquiry and supported the implementation process. That support was reflected in the fact that the implementation of recommendations was included as performance measures in the former General Manager's performance agreement.
- In their evidence, the staff said that they complied with the Executive Officer's directions even when it placed a considerably heavier workload on them.
- In his evidence, Clr Slack-Smith said that councillors cooperated with the Mentor's instructions in meetings even when they thought they were strange. The minutes of meetings tend to support this. In all but two cases, the councillors acceded to the Mentor's requests. In the two instances where the councillors did not comply with these requests (namely the suggestion that they seek legal advice with a view to dismissing the former General Manager and the request that councillors bring back the item relating to the levee bank case at the meeting of 29

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June 2007 which had already been dealt with at that meeting), the councillors had legitimate grounds for resisting the requests.

- On 4 April 2007, the Executive Officer advised the Director General by email that the Council was being cooperative and was accepting the services provided and directions given by her.

There are a number of instances where, taken in isolation, Council's conduct could be characterised as uncooperative. These include:

- The threat to resign at the end of the Council meeting of 18 May 2007
- The former General Manager's refusal to provide documents requested by the Executive Officer
- The attempts by the Council to have the Executive Officer and Mentor removed
- The manner in which the Council meeting of 29 June 2007 ended in disorder

However, these incidents must be viewed within the context in which they occurred. On balance, the evidence considered by this Inquiry tends to suggest that the relationship between the Council and the Mentor and Executive Officer was not well managed.

The evidence suggests that prior to the meeting between the Mentor and Executive Officer and councillors on 16 May 2007, the relationship between the Executive Officer and former General Manager had become strained. Ms Marshall's evidence suggests that from mid-May, the former General Manager began to question the requests being made by the Executive Officer, requiring them to be made in writing and that the Executive Officer in turn resented this intrusion. Ms Marshall also referred to the Executive Officer's interference in what she described as "operational matters" and the fact that she made decisions without reference to the former General Manager in circumstances where such decisions should have been made in consultation with him. In my

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opinion, conflict between the Executive Officer and former General Manager was inevitable in circumstances where two different and apparently competing sources of authority operated within the same organisation. It is unclear to what extent this conflict gave rise to subsequent events.

It would appear that the pivotal event in terms of the breakdown in the relationship was the suggestion made by the Executive Officer and Mentor that the Council seek legal advice about dismissing the former General Manager. As discussed above, the evidence suggests the Mentor and Executive Officer made this suggestion to councillors, both collectively and individually on a number of occasions. As discussed above, there appeared to be no grounds that would have supported the immediate termination of the former General Manager's contract. The dismissal of the former General Manager in such circumstances would have been potentially legally unsustainable and inconsistent with appropriate practice.

The evidence considered by this Inquiry suggests that the actions of the Mentor and Executive Officer in this regard had the effect of undermining confidence in them across the whole organisation. In particular:

- The councillors began to question the competence and motives of the Mentor and Executive Officer.
- It diminished any remaining potential for a workable relationship between the Executive Officer and the former General Manager.
- It adversely impacted on staff morale. Staff apparently began to distrust the Executive Officer, fearing for their own jobs.

The evidence suggests that the relationship between the councillors and the Executive Officer and Mentor was placed under further strain by what the councillors perceived to be the Executive Officer's and Mentor's disruption of Council meetings. Some of the Aboriginal councillors also apparently resented the Mentor's advice in relation to an 'acknowledgment of country' and saw his interference as racially insensitive. The evidence also suggests that suspicion

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that the Executive Officer may have provided a copy of the draft minutes of the meeting of 18 May 2007 to Mr Bill Palmer which he in turn used to threaten legal action against the Council, further undermined the councillors' confidence in her.

In my opinion, the Council had legitimate concerns about that manner in which the Executive Officer and Mentor sought to exercise their roles and the impact it had on the organisation. However, the manner in which the former General Manager and some councillors sought to raise those concerns, (in the case of the former General Manager by withholding documents requested by the Executive Officer and in the case of some councillors by threatening to resign), was counterproductive and only served to undermine their case and potentially damaged the reputation of the Council. Notwithstanding this, in my opinion, the Council was quite within its rights to raise its concerns with the Department of Local Government with a view to having them addressed.

It should be noted that in relation to the actions of the former General Manager in withholding documents, there is no evidence to support the view that he did so with the support and knowledge of the councillors and the evidence heard by this Inquiry indicates that when they learnt of this, the late Mayor and Cllr Slack-Smith prevailed upon him to provide the documents in question to the Executive Officer.

In conclusion, the evidence considered by this Inquiry suggests that the difficulties in the relationship between the Council and the Executive Officer and Mentor can be explained by the particular circumstances of that relationship. There is no evidence to suggest that Council lacks the capacity or would be otherwise unable or unwilling to continue to work with the Department of Local Government to improve its performance.

## APPENDIX 1

### Actions taken by Council to implement recommendations of the first Public Inquiry

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| 2  | Recommendation<br>That each councillor undertakes appropriate professional development training on the roles and responsibilities of councillors as soon as possible.             | DLG Assessment & Comments - June 07<br><b>Complete provided all councillors have now attended training</b>  | Comments as at 8 February 2008<br><b>Although not fully implemented, plans are in place to complete this recommendation.</b> It is understood that 2 Councillors (Cirs Gordon and McLellan) were unable to attend the training sessions that was organised last year. Individual training sessions will be held with these two Councillors at the conclusion of a Council Meeting.<br><b>Completed.</b> A Councillor request form has been operational since mid 2007.  |
| 3  | That the General Manager initiates a system, such as a Written Complaint form, to allow councillors to bring operational issues to his attention rather than at council meetings. | <b>complete and ongoing</b>   | <b>Completed.</b> Council is of the view that all Councillors have a working knowledge of the Code of Conduct, as well as their responsibilities under the pecuniary interest provisions of the Local Government Act 1993. The current Acting General Manager has considerable knowledge of Councillors' responsibilities pertaining to both pecuniary / non-pecuniary interests and plans to submit an Information Report to the Council Meeting scheduled for 22 February 2008 detailing Councillors' obligations under the Local Government Act regarding pecuniary / non - pecuniary interests.   |
| 9  | That all councillors familiarise themselves with the code of conduct and declare either a conflict of interest or a pecuniary interest in appropriate circumstances.              | <b>Incomplete-</b> Although there have been declarations of interest (conflict) at the recent meetings because of councillors' roles in the organisations there is still clearly a lack of complete understanding about the requirements of the Code of Conduct.<br>The Executive Officer has requested the Pecuniary Interest returns on 2 visits but has yet to have them provided. | <b>Completed.</b> Council is of the understanding that a copy of all Councillors' Pecuniary Interest Returns for the period ending 30 June 2007 have been provided to the Department. If this is not the case, a copy will be made if a request is made for a copy of the Pecuniary Interest Returns.<br><b>Completed.</b> As the Department will be aware the former Minister for Local Government approved the Council's request to reduce the number of Councillors from 12 to 9 commencing from the Council Elections to be held in September 2008. As the Commissioner will be aware, the issue of the number of Councillors on the Council was raised during the Public Inquiry Hearings. From a review of the Transcript it appears that the Mayor, Cnr. Slack-Smith, Cnr. Mason, Cnr. Kesty, Cnr. Burke, Cnr. Geddes and Cnr. Gordon provided the Inquiry with their views / rationale of why the Council decided to leave the number of Councillors to 9. A review of the Councillors' replies to the specific question about reducing the number of Councillors from 9 to 7 was not supported by all of the Councillors who gave evidence. A common thread of the evidence provided was that if the Council reduced the number of Councillors it may potentially reduce the Indigenous representation on the Council. |
| 10 | That council immediately resolve to reduce the number of councillors from 12 to 7.  | <b>Incomplete-</b> Council may wish to reconsider its representation numbers 9 to 7 should the opportunity arise again in view of its inability to obtain a quorum at a number of meetings and difficulties interesting people in the community on taking on leadership roles   |   |

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|    | Recommendation   | DLG Assessment & Comments - June 07  | Comments as at 8 February 2008   |
| 18 | Those council meetings are closed in exceptional circumstances as allowed under sections 10A-10D of the Act.   | <b>Incomplete</b> - Councilor training has not been completed as Mr Holmes provided different information at the additional training sessions than at the first session and 2 councillors were unable to attend due to ill health.             | <b>Completed</b> .Following the training that the Council received on Council Meeting procedures, the Council is complying with the legislation when it has closed Council Meetings. It is noted that two Councilors were not able to attend the training session provided. The material that was discussed during the training session has been provided to these two Councilors and the Acting General Manager has spoken to both Councilors of the importance of complying with the legislation when Council closes Council Meetings.   |
| 20 | That the General Manager gives advice to the councillors of the difference between closed sessions and committee of the whole and that it is not necessary to resolve into committee each and every time council resolves into a closed section. | <b>Complete but of concern</b> - At the April 2007 meeting council appeared to have some difficulty deciding the difference between a closed session and committee of the whole.   | <b>Completed</b> . This position is now clearly understood by Councilors on the difference between Closed Sessions and Committee of the Whole. Notwithstanding this comment, I believe that this like many operational issues will be subject of on-going advice from the current Acting General Manager and future General Managers.  |
| 22 | That the minutes of council and committee meetings be signed by person chairing the meeting at which they are confirmed.   | <b>To be checked regularly</b>   | <b>Completed</b> . A procedure has been implemented whereby the Minutes of previous Committee and Council Minutes are presented at the following Meeting for signature by the Chairperson.   |
| 25 | If council wishes to have a procedure for members of the public to speak at a council meeting, then it will need to adopt a code of meeting practice with those procedures in it.  | <b>Complete but of concern</b> - Council still unaware in April strategic planning session about public access. Confusion about public access and councillor's speaking without notice was apparent from councillors and GM.                   | <b>Completed</b> . Council adopted at its Ordinary Council Meeting held on 30 June 2006 a Code of Meeting Practice that includes procedures for members of the public to address Council Meetings.   |
| 27 | That the General Manager prepares a complying State of the Environment report for consideration by council.  | <b>Incomplete and of concern</b> - A new and inexperienced staff member has been assigned to complete this report. The GM will need to assist in the preparation of this report and strict timeliness for its preparation should be agreed to. | <b>Completed</b> . Although the comment has been made that the Council's staff member is inexperienced, page 271 of the Transcript for the Public Inquiry (15th November 2007) details that Mr Vanderberg has had 15 years experience working as a Health Inspector in South Africa. I am aware that the Council's former General Manager assisted the Manger Environment Health & Building in the compilation of a new State of Environment Report. That Report was reviewed and all issues were resolved and the Report was accepted by the Department of Local Government. From a review of the Department's Submission to the Second Public Inquiry I think the general criticism of the Council's SOE Report was an alleged lack of consultation with the community. In the preparation of the SOE for 2007/2008 the Department can be assured that the community (and environmental groups) will be engaged, as per the requirement of clause 220 of the Local Government (General) Regulation 2005. |

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| 28 | That all public land use in the Shire is assessed and that land which is being used for purposes other than community land purposes be reclassified as operational land. | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008  |
| 29 | That no public land be leased, licensed or sold without first being reclassified as operational land.  | Draft LEP has been deferred for 2 years in accordance with negotiations with DGP conducted by the Executive Officer   | <b>Not completed, but on track.</b> The Council received advice in December 2007 that the Minister for Planning had made \$100 000 (following a joint funding application) available to assist Bourke, Central Darling and this Council to complete a new LEP. It is proposed that the new LEP will be finalised by 2011. |
| 30 | That the General Manager prepares a plan of management for community land for council's consideration  | As per Dec 06 with additional comments of the need for council to prepare a new lease on the swimming pool rather than a contract as currently exists.  | <b>Not completed, but on track.</b> The intent behind the Department's recommendation of re-classifying land is nearing finalisation. The swimming pool is currently operated under licence and the Minister's approval from the Department of Lands.   |
| 31 | That the General Manager prepares a plan of management for community land for council's consideration  | <b>Incomplete-</b> Council has still not completed its reclassification process and as such is not in a position to have this recommendation completed. It is somewhat misleading to say it has been developed. | <b>Not completed but on track.</b> As stated earlier the Council's reclassification of both community & operational land is advancing. Plans of management are in place for community land leased such as the Chemist shop and the Goodooga Bowling.  |
| 32 | That the General Manager prepares a land register for public land in compliance with section 53 of the Act   | <b>Incomplete-</b> As per Rec 28, the Land Register needed some amendments made to it, some of which are still to be completed.   | <b>Completed.</b>   |
| 32 | That the General Manager prepares as appropriate section 94 contribution plan for the Shire for council's consideration  | <b>Incomplete-</b> This is nearing completion. GM to prepare a report and draft policy proposal. Council's proposed policy needs to be viewed.  | <b>Not completed, but on track.</b> A Report was presented to the Council Meeting held on 26 October 2007 on a "Draft proposal - timeframe for the preparation and implementation of section 94A Development Contributions Plan. The proposal sees the implementation of a Contributions Plan by August 2008.             |

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|    | Recommendation  | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008  |
| 33 | That council identify when the council provided the council owned land and crown land for the discharge of sewage. If the provision of that land was after the introduction of the Local Government Act 1993, then application should be made to the relevant Minister under section 60 of the Act to allow the discharge of the sewerage | <b>Incomplete and of concern-</b> Council has been unable to identify specific dates. However, a statutory declaration has been provided indicating pre-1993 usage of Crown land. It appears that council land was 'exchanged' for use of Bre Lucerne dam as council required 3rd sewerage pond. (EP&A Act) | <b>Not completed.</b> As the Department is aware, this issue was raised during the First Public Inquiry. The Council's Senior Staff had a Meeting with representatives of Bre- Lucerne on 18 January 2008. Issues that were raised during that Meeting involve the alleged "arrangement" that the Council undertook with the previous owners of the land, whereby the Council used a small parcel of Bre-Lucerne's property to accommodate the Council's Third sedimentation pond. There appears to be little written correspondence over the "exchange" of land that happened perhaps in the early 1980's. Although there appears to have been a delay in implementing this recommendation, I will endeavour, with the assistance of the Council's other senior staff to resolve this matter in a timely manner. Initially the Department's concerns related to the requirement to obtain approval for the discharge of the sewage and enquires will be made with the relevant Government Authorities to determine if approval is required. Ultimately, the issues that Ms Ritsson has raised with the Council over the alleged "arrangement" for the "exchange" of land between the Council and the then owners may be the subject of legal advice and a resolution of the Council. |
| 34 | That council charge a reasonable fee for the use of treated effluent.   | <b>Complete-</b> Council has taken the advice of the Executive Officer and instituted a charge compatible with operator's potential ability to pay and calculates advantage to council in having reasonable usage of effluent at no cost to it.   | <b>Completed.</b> As the Department is aware, the Council's Management Plan for 2007/2008 reduced the fees that were charged. As mentioned in Recommendation 33, the Council's staff met with Ms Ritsson on 18 January 2008. At this Meeting Ms Ritsson raised concerns at the cost of receiving the treated effluent. This matter will be subject of further discussion in the preparation of the Council's draft Management Plan for 2008/2009.   |
| 35 | Those obstructions in council's effluent outfall pipe are removed   | <b>Complete</b>   | <b>Completed.</b>   |
| 36 | That council classify council owned land and crown land currently being used for irrigation purposes as operational land if the irrigation continues.   | <b>Incomplete-</b> LEP not currently relevant as delayed 2 years  | <b>Not completed, but on track.</b> The land that is currently used for the discharge of sewage effluent is also included in the list of land to be reclassified as operational. In respect of the Council's LEP, the Department of Planning has approved a 2 year extension for repeal of the current LEP. Funding has been received to assist with the preparation of the Council's new LEP. This should be finalised by 2011.  |
|    |   | No land tenure report made available. Council's initial reclassifications have not been correct and are in the process of being corrected. At April meeting, council approved the change of one parcel of Operational land to Community land.   | <b>Not completed, but on track.</b> The Youth Centre was reclassified from operational land to community land   |

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| Recommendation   | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008   |
|  | <p>Proposed that approval to advertise proposed changes from Community to Operational be sought at May meeting did not occur.</p> <p>Environment and Health Manager (rather than Utilities Manager) position description developed, advertised and appointed.</p> | <p><b>Not completed, but on track.</b> As the Department is aware, the Amendment LEP is currently with the Department of Planning. This LEP will see the reclassification of 23 parcels of land.</p> <p><b>Completed.</b> It would seem that the Council used to refer to the position of Works Manager as the Utilities Manager. The position of Works Manager has a position description completed, and is currently on advertisement as the previous incumbent has resigned.</p>  |
| <p>41 That the General Manager and the council make every effort to enhance the relationship between the General Manager, the council and the Ngemba Community Working Party (CWP)</p> | <p><b>Incomplete and of concern-</b> Although some attempts have been made to improve the relationship with the Working Party the relationship continues to be difficult.</p>   | <p><b>On-going.</b> I think it is fair to say that the Council cannot state that it has completed this recommendation, as I believe it is an on-going commitment that the Council has on improving the relationship. The Council's Mayor, Cllr Slack-Smith, Cllr Brown, the Acting General Manager and the Group Manager Corporate and Community Services attended the Working Party Meeting held in December 2007. Council is continuing to improve its relationship with the Working Party. It is not aware of any significant issue that will make our relationship more difficult. The Council was pleased to hear that Mrs Jenny Barker during the Hearing of the 2nd Public Inquiry stated (page 456 of the Transcript) that "The Working Party is one issue and I don't believe and I don't want the Council sacked on that issue because I believe that we can move forward". A comment that has been expressed during the Hearing on a number of occasions was that at these Meetings of the the Ngemba Community Working Party the former General Manager allegedly advised the Meeting that he had "taken a matter on board and that he would get back to the Working Party". It was alleged that the former General Manager did not get back to the Working Party as he had allegedly agreed to which led to an element of frustration by the Community Working Party Members. During my tenure as Acting General Manager if a matter is raised at a Community Working Party Meeting and I cannot provide a reply at that time, I can state with confidence that I will provide a written reply to the next Community Working Party Meeting. In the event that the answer was urgent I will contact the Chairperson, Mrs Jenny Barker with my answer. In connection with the Council's Resolution to establish 4 Committees (including an Aboriginal Community Committee) under Section 355 of the Local Government Act, the specific Committee that is the cause of some concern by the Community Working Party has never been actioned by the Council and / or the staff. At this stage I propose to submit a Report to the 22 February 2008 Council Meeting recommending that the Council rescinds its previous Resolution to establish this Committee.</p> |

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| Recommendation   | DLG Assessment & Comments - June 07  | Comments as at 8 February 2008   |
|  | Council recently voted to sever its relationship with the Community Working Party facilitator.   | <b>Completed.</b> Council did not sever its relationship with the Community Working Party facilitator but with the Brewarrina / Weilmoringle Reference Group. Council has advised the Premier's Department of its intention to renew the relationship with the Reference Group, as resolved by the Council. The funding for the position of Community Facilitator for Weilmoringle and Brewarrina ceases on 30 January 2008. At a Reference Meeting held on 11 December 2007 Ms Jo-Anne Lawrence from the Premier's Department asked the Mayor, Cllr Slack-Smith whether the Council was able to fund the position of Community Facilitator until the external review was undertaken by the Federal Government of the Community Facilitator positions throughout the Region. At this stage I advised the Mayor that as 14 December 2007 was a Council Meeting I could prepare a Report for the Council's consideration of this proposal to fund the Community Facilitator position for up to 3 months pending the outcome of the external review. Council resolved at this Meeting to adopt the recommendations which essentially were to consult with the community on this proposal. Currently "Iyers" have been placed in a number of locations throughout the Shire of the Council's proposal, and a Public Notice will be placed in the local newspaper of the Council's proposal. This matter will be considered by the Council at the next Council Meeting on 22 February 2008. |
| 43 That the General Manager report to the NSW Premier's Department: That the grant received for the construction of the toilets in Brewarrina had not been spent within the prescribed 6 months of receipt of the grant<br>The progress of the toilet block, if any, and<br>The reasons for the delay. | As the recognised representative body the Working Party's concerns about the General Manager's interference at a departmental level in the operations of the facilitator have recently been raised as a matter of unacceptable behaviour.<br><b>Completed-</b> The toilets have been completed at an approximate cost of \$120,000 and are operational. They were recently re-painted. Costs are astonishing as they are not much different from the cost of building a house. | <b>Completed.</b> If this statement refers to the severing relationship with the Reference Group, this was a resolution of the Council, not a decision of the former General Manager. If this statement is referring to the submission of a copy of the petition that had been sent around the Town, I can only state that I understand that this was undertaken purely to keep the Department of Local Government and the Department of Aboriginal Affairs informed that the community was not happy with the Working Party.<br><b>Completed.</b> Approximate cost of toilets were \$82,270 (not \$120,000)   |

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| <p>44</p> <p>Recommendation</p> <p>That the General Manager report to the Department of Tourism, Sport &amp; Recreation</p> <p>That the grant received for the upgrade of tennis courts in Brewarrina had not been spent within the prescribed time limit. The progress of the tennis court upgrade, if any, and the reasons for the delay.</p> | <p>DLG Assessment &amp; Comments - June 07</p> <p><b>Complete but ongoing.</b> Although work has been completed and the report written, the on going management of the tennis courts remains an issue of contention between council and the community. Hours of operation, lighting, cost of hire, security and accessibility are the main causes for concern</p> | <p>Comments as at 8 February 2008</p> <p><b>Not completed, but on track</b> The tennis courts are currently being used by the community at no fee. Essentially this is due to holes constantly being cut in the wire fence surrounding the tennis courts making it impossible to control the use of the tennis courts. Courts are now being used at no cost to the Department of Sport &amp; Recreation and the community in connection with the lights for the tennis courts. I am aware that this issue has been raised by the Community Working Party on a number of occasions with the Council's staff and also this matter was raised on a number of occasions during the Public Hearing that there is no lights working at the tennis courts. Given the concerns raised about the fact that there are no lights working at the tennis courts, and at the Bowling Green, I submitted a Report to the Council Meeting held on 14 December 2007 for lights to be installed at both locations. I am pleased to report that the Council adopted this recommendation. The actual installation of the lights is dependent upon the availability of the local Electrician to undertake this work and the generosity and the availability of a cherry picker from Country Energy. I am aware that lights have been installed at the Bowling Green, but at this stage the lights at the tennis courts have not been installed. Given the extent of damage to the power board at the tennis courts, this is not a small task and will take the Electrician a considerable amount of time. I should mention that the Acting General Manager is in constant communication with the local Electrician advising him of the need to install these lights as a matter of priority.</p> |
| <p>45</p> <p>That the management plan be amended in compliance with the Act for council's consideration.</p>  | <p><b>Incomplete, ongoing and of concern.</b> Council's current capacity to complete this recommendation is in doubt.</p>   | <p><b>Completed.</b> Although the Acting General Manager was not present while the Executive Officer was at the Council, the Council's Group Manager Corporate and Community Services has advised me that the Executive Officer had considerable input into the Council's Management Plan for 2007/2008. I have been advised that one of the changes that the Executive Officer made to the previous Management Plan was to remove the Council's Objectives from the Document. Given that the Council's staff were taking guidance from the Executive Officer if specific areas were pointed out where there may have been a deficiency in the Management Plan then I am sure that these would have been implemented. Having said that, I am aware that the former General Manager and the Executive Officer did not necessarily "see eye to eye" on some issues so perhaps these are the issues that the Executive Officer / the Department is referring to. In the Council's defense, the Group Manager who had some involvement in the preparation of the Management Plan is unaware of being made aware of any deficiencies within the Document. Council can achieve this recommendation with guidance from the Department of Local Government and our Sister City- Warrngah Council. Council has discussed this issue with Warrngah as a potential matter requiring assistance.</p>  |

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| Recommendation | DLG Assessment & Comments - June 07  | Comments as at 8 February 2008   |
|                | <p>This first community consultative meeting re: draft of the Management Plan 2007/2011 was held on 1 May 2007 with 4 members of the public in attendance.</p> | <p>I am aware that the Executive Officer was of the opinion that the Council did not consult widely enough with the draft Management Plan for 2007/2008. In the preparation of the Council's Draft Management Plan for 2008/2009 the Council will incorporate a more wider focused consultation process. One of the matters that the Mayor, Cllr Slack-Smith has drawn to my attention when I commenced as the Council's Acting General Manager is the need for the Council to consult with the Community at a much more greater level when the next years' draft Management Plan is being prepared. The Mayor has requested that work commence on the preparation of a Consultation Policy / Procedure. It is planned that this will commence and hopefully be implemented in time for the consultation with the Community of the Council's Draft Management Plan for next year. I am aware that the Council advertised the fact that it was going to have a Public Meeting to discuss the draft Management Plan and only 4 people turned up. I do not think that the level of participation by the Community at a Public Meeting to discuss a draft Management Plan is an issue that is accountable for. If the Meeting was appropriately advertised, and I have no reason to doubt that it wasn't, I suggest with respect that this is a matter for the community if they wish to have their input in this process. Having said that I can see that the Council could have held "focus" consultation meetings, for example with the Goodooga / Lightning Ridge Murdi Paaki Reference Group, the Brewarrina / Weilmoringle Murdi Paaki Reference Group and the Brewarrina Aboriginal Ngemba Community Working Party to ascertain the views of these Groups / Party.</p> <p><b>Completed.</b> As highlighted earlier, the Executive Officer had carried out changes to the Council's draft Management Plan before it was presented for adoption. I understand that the phrase may have been used by the Executive Officer that the Management Plan was essentially a "cut and paste" job from the previous years' Management Plan. While there may be an element of truth in that statement, if the Executive Officer had concerns with the Document, to the best of my knowledge these were not raised with the Group Manager. The Council has engaged a Facilitator to undertake a Strategic Planning Workshop on 11 and 12 February 2008. I am hopeful that what is gained from this Workshop can be used as a basis for the Council's draft Management Plan for 2008/2009. The Council was aware that there was an inadvertent error in the fees &amp; charges that were advertised. These fees and charges were subsequently amended in the Management Plan.</p> |

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| 46 | Recommendation  | That the General Manager develops and prepare a new social and community plan that complies with the Act and the relevant guidelines for community consultation for council's consideration.   | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008   |
| 47 | That the General Manager increase council's available working capital to an acceptable level. | The social plan is still lacking in some of the major areas of concern such as Aboriginal needs, aged care and youth. The social plan has not been well integrated into the Management Plan except by intervention from the Executive Officer, where it has been integrated at the most basic level. | Incomplete and of concern- Little or no attempt has been made to conduct the detailed examination indicated by council in the 5 months since the last assessment. | Completed. As the Department is aware the Council's Group Manager Corporate and Community Services had the predominant role in the preparation of the Council's Social and Community Plan for 2006/2010. Although the recommendation is critical of the level of consultation that the Council had with the community, I understand that there was wide-spread consultation with the Community and this has been submitted to the Department previously (copy enclosed for the Department's information). The Council is commencing an update on the current Social and Community Plan and will consider options that are available to increase the level of consultation with the community. The Council's Group Manager has advised that the Executive Officer did make some suggestions regarding the Social Plan, particularly to ensure that there were links with this Plan to the Council's Management Plan. While the Group Manager believes that adequate links have been included within the Social Plan to the Management Plan this issue will be looked in the preparation of the updated Social Plan to see whether this can be enhanced.<br><br><b>Completed.</b> See attached report. The Council's Social and Community Plan always had links to the Council's Management Plan on advice of the Executive Officer. This integration was improved at the recommendation of the Executive Officer. |
|    |   |  |   | Completed the recommendation. As the Council has previously advised the Department, the Council's external Auditors Spencer and Steer in their Audit Report of the Council's Annual Financial Statements of Accounts for the period ending 30 June 2007 advised, in connection with the Council's Working Capital that "The Accumulated Working Capital Balance as at 30 June 2007 was, in our opinion, satisfactory after taking into consideration the nature and level of the internally restricted assets (reserves) that have been set aside". I am aware that a copy of this full Audit Report has been previously made available to the Department by the Council. For the Department's information, the Public Inquiry Report extracted parts of the Council's Auditor's Report for the period ending 30 June 2004 where a comment was made that the Council's Working Capital should be in the vicinity of \$800,000. As the Department will be aware the Council's level of Working Capital for the last two financial years has been \$826,000 and last year was \$795,000 which I would consider to be "in the vicinity of \$800,000".   |

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|    | Recommendation  | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008  |
|    |   | Budget does not adequately inform council staff, councillors or any interested party about the current financial position. Neither the GM nor the Finance Manager answer basic questions in a reasonable timeframe  | This is a fairly emotive comment. If the reference here is intended to state that the Council's Management Plan / Budget does not advise various stakeholders of the Council's financial position, then the Council is unaware that this is the case. The Council's Finance Manager has advised me that as far as she can recall no one has complained to the Council about the state of the Council's financial position and the format of the Financial Statements for that matter. In discussions with the Council's Finance Manager she cannot recall the Executive Officer / the Department raising specific concerns with the format of the financial statements. Had these particular concerns been brought to the Council's Finance Manager's attention then maybe these issues could have been assessed by the Council's staff at the time. Currently the Council's financial position is reported quarterly to the Council. The Council's Group Manager Corporate and Community Services is considering a proposal of initiating a new budget review proposal which will look at a review of the financial position on a monthly basis. Given the time lag between the comment that neither the former General Manager and / or the Council's Finance Manager answer basic questions in a reasonable amount of time, and the lack of evidence and specifics, I do not think that further comment is required at this stage. However, I would point out that in my position as Acting General Manager I intend to provide a reply to any question that is raised by a member of the public and or a Government Agency within a reasonable time period. |
| 48 | That the General Manager undertake a review of expenses, with a view to reducing unnecessary expenditure, but without significantly impacting service delivery. | <b>Incomplete and of concern-</b> As the financial management is unclear it is impossible for council to rein in expenditure in any meaningful way. Council consistently undercharges, doesn't charge or pay unnecessary amounts with regard to its facilities. | <b>Not completed.</b> This is one particular area that the current Mayor has asked the Acting General Manager to review. At present the Council is undertaking a review of its income and expenditure (30 Dec. review). Although it is noted that this review is not the review of finances that the Department was recommending, I think it is fair to say that not enough consideration may have been given to the implementation of this recommendation. I understand that the Council's staff have undertaken specific reviews of expenditure, eg. cost control over road projects; looking at the potential benefits with Hunter Procurement; the intent behind the recommendation has not occurred on a holistic basis to-date. I am expecting that the Council's Group Manager Corporate & Community Services will need to drive this process.   |
|    |   | During the General manager's performance assessment he indicated that although it was one of his performance measures, he had not conducted a review of expenditure. Councillors have not raised this as an issue with him.                                     | <b>Not completed.</b> This aspect is currently being reviewed by the Council's Finance Manager and the Group Manager Corporate and Community & Services.  |
| 49 | That council reduce its outstanding rates and charges   | <b>Complete and satisfactory-</b> Council continues to re-coup some of its outstanding rates through the collections agency.  | <b>Completed.</b> As the Department will appreciate, the affects of the drought and the socio-economic environment make it a complex situation to recover rates to an acceptable level. Council has commenced using the services of a Collection Agency to assist in the reduction of rate arrears  |

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|    | Recommendation   | DLG Assessment & Comments - June 07  | Comments as at 8 February 2008  |
| 50 | That council significantly increase its provision for infrastructure.  | <b>Incomplete and of concern</b> - Council's financial management has meant that any increase in infrastructure is unsystematic. Of concern would be its ability to increase provision for infrastructure when it is unable to determine how it will pay current legal bills for example.  | <b>Not completed at this stage.</b> As Council detailed in its submission to the 2nd Public Inquiry, the Council's Group Manager Engineering has the responsibility for the preparation and maintenance of the Council's Assets Register. It is acknowledged that this is an area that the Council needs to devote some considerable attention over the short term to ensure that its assets do not deteriorate, and that there is a planned maintenance regime in place. Council has developed a 10 year plant replacement program and this is regularly reviewed by the Council's Technical Services Committee. |
| 52 | That council account for any contingent liability that may exist in regard to the Levee Bank case in its 2004/05 financial accounts. | <b>Incomplete and of concern</b> - Council's financial obligations in this matter are far from concluded. A current offer of approx \$457,000 has been made through council's solicitor to the other party. Just prior to the June meeting, council's solicitor indicated that a response had been received indicating a further \$200,000 (approx) is being sought which include interest and other matters. Council's GM has had to amend his reports to council on this matter at least 3 times due to incorrect information. | <b>Completed.</b> An amount of \$565,000 was agreed on and paid in final settlement of legal fees. As provided previously the Council's Auditor has provided advice that the guarantee need not be disclosed.   |
| 54 | That the General Manager instigates action to recover the overpayment of the contract to Lowmac Enterprises.                         | Remedial work is still to be undertaken on the levee. The GM indicated that initial discussions are underway with departmental staff from Water and Energy and the possibility exists of some assistance with remediation cost. Nothing has been received in writing regarding remedial works.   | <b>In progress.</b> The Council's Group Manager Engineering has been in discussions with staff from Government Departments regarding remedial improvements to both the levee and a possible evacuation route.   |
|    |  | <b>Complete</b> - A letter has been sent requesting payment. In line with GST legislation.   | <b>Completed.</b>   |

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|    | Recommendation   | DLG Assessment & Comments - June 07  | Comments as at 8 February 2008   |
| 57 | That the General Manager prepares another organisation structure for council's redetermination before filling any more positions                   | <b>Complete</b> - Further changes have been made to the organisation structure at the suggestion of the Executive Officer to minimise management costs and maximise the opportunities for council to obtain funding grants from a wide range of sources.   | <b>Completed</b> A new Organisational Structure was approved by the Council on 30 March 2007   |
| 58 | That the General Manager ensures that all vacant positions to be filled are properly advertised and acceptable applicants are formally interviewed | <b>Complete and ongoing</b> - Vacant positions have been filled. Some of the position descriptions have been developed and proper recruitment procedures are being followed.   | <b>Completed</b> Council is committed to the principles of Equal Employment Opportunity and advertises all positions that are vacant. Council's staff are following the guidelines set out in the Brewarrina Shire Council Recruitment Policies & Procedures Document. All vacant positions follow the correct recruitment practice.   |
| 59 | That the General Manager provides delegations to appropriate staff.  | <b>Incomplete</b> - As new staff take up vacant positions the delegations will need to be updated which has not been done as at June 2007.   | <b>Completed</b> A review of delegations was carried out last year and a complete list of Delegations are currently up to date and in a folder. This was completed on 30 July 2007. The delegations of new staff are reviewed and updated when vacant positions are filled.  |
| 60 | That the General Manager instigates action with a view of assisting employees on worker's compensation and reducing the number of claims.          | <b>Incomplete</b> - All staff have undertaken some manual handling training. Some monies have been received by council from its insurer. Some long term claims have been finalized but some additional claims have been made. Council outdoor staff do not always comply with OH&S requirements thereby exposing council to risk. Council does not address this matter despite having it raise several times by the Executive Officer. | <b>Completed, but acknowledge that this is on-going.</b> The Council has been completing a quarterly Workers' Compensation Report on all cases since August 2005. Reports were provided to the General Manager on the following dates: 12/08/2005, 17/8/2005, 17/2/2006, March 07, June 07 & September, 2007. The Human Resources Officer has been working with the Council's Risk Officer in an effort to reduce claims and costs of claims. Although this Officer has subsequently left the Council, a review of the Organisation Structure is being contemplated to look at an expanded role of this position to also include building maintenance so that a structured approach is undertaken. Council engaged an external consultant in March 2007 to provide training in this area and to assist in the process of reducing and managing claims. The Human Resources Officer also attended a training course in October 2007 run by AIMS (Active Injury Management Specialists) on How to Manage Workers Compensation Premiums. The Group Manager Engineering during his weekly Meetings with his staff (that include both the Rural & Town Supervisors) stresses the importance of the staff complying with Occupational, Health and Safety procedures. |
|    |  | The OH&S committee has met and dates have been set for future meetings for the year. Inspections need to be carried out as some work areas have potential safety risks evident.  | <b>On-going.</b> The Council's OH & S Committee met in December 2007 and the Minutes of that Meeting were tabled at the Council's Ordinary Meeting held on 14 December 2007. The next scheduled Meeting of the Committee is planned for early February 2008. One issue that the Committee needs to commit further attention to is a planned inspection program of Council's facilities and buildings. Training is currently being organised for two members on the Committee who have not had their compulsory OH&S training   |

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| Recommendation  | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008   |
| 61 That the General Manager instigates action to address the level of sick leave.             | <p>The roof of the admin building leaks in wet weather around lighting and above work desks. A report has recently been received from the CH&amp;S officer and the GM will need to make a decision about how the situation will be rectified</p> <p><b>Incomplete and ongoing</b>- A report in June 2007 indicates some decrease in the taking of sick leave.</p> <p>Some staff should have received counselling about their use of sick leave and its impact on other staff. However, GM appears reluctant to undertake staff counselling without prompting.</p> | <p><b>Completed.</b> Work has been completed regarding a leak in the Council's Community Centre and in the Council's Human Resources Officer's Office. As acknowledged earlier this is an area where the Council can improve on a more structured approach to building maintenance. The Council is currently looking at an expanded role in the position of Risk Officer to look at the Council's assets, particularly in relation to the maintenance of these assets.</p> <p><b>Completed.</b> The Council's HRO has provided a quarterly Sick leave report since July 2006 to the Council's General Manager. Reports have been provided on the following dates: 19/7/07 (1/7/06 to 31/12/06), 30/3/07 (1/4/07 to 18/3/07), 3/7/07 (01/05/07 to 30/6/07) and from 1/7/07 to 30/9/07). The HRO has developed these reports and has been completing a Sick Leave spreadsheet each fortnight with payroll to ensure this remains updated and current.</p> <p><b>Not completed, but on-going.</b> Employees who take more than three periods of sick leave are given a letter advising that for future sick leave they will require a Doctor's certificate. At this stage Council has not felt the need to counsel any particular staff member in regards to Sick leave taken. Human Resources does carry out welfare checks on any staff member that has long periods of sick leave (i.e. more than one week at a time). It is also acknowledged that the distance that the Council has from major Centres adds to the extent of sick leave as some staff may need either to travel / accompany a family member to a location for treatment.</p> |
| 63 That council re-establish and foster its sister city relationship with Warringham Council. | <p><b>Incomplete.</b> Council has made no attempt to foster his relationship since these initial steps were undertaken. Executive Officer has contacted Warringham General Manager to request assistance with financial operations and Warringham are considering the request.</p>  | <p><b>On-going.</b> Contact has been with Officers from Warringham Council on how Council can best take advantage of the Sister City relationship that exists. During 2007 the Council's staff received information from the Council in areas such as policy formulation, records management and a grants register. The Warringham Council's General Manager has recently written to the Council's Acting General Manager advising that his Council's staff are there to assist if required. This potential level of assistance will be stressed to all staff at the next Council's internal staff meeting as an area where external expertise may and should be tapped into. From an exchange of students point of view, this area has continued to thrive, with 5 High School students from the area visiting Warringham in late January 2008 for a week. This is an excellent opportunity for the local students to experience City life and to share their own country experiences with the students from Warringham Council's area.</p>   |

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| 66 | <p>Recommendation</p> <p>That the General Manager undertake further appropriate research, which includes locating the resolution from the 1970s, to establish the correct name of 'Weir Park'.</p>   | <p>DLG Assessment &amp; Comments - June 07</p> <p><b>Incomplete-</b> Council has not undertaken any further action to comply with this recommendation. In addition, this area has now been recognized as part of a state heritage area and it is recommended that the park be more appropriately named. The GM is reluctant to address this matter as Barbwire is the grandfather of a current serving councillor</p> | <p>Comments as at 8 February 2008</p> <p><b>Not completed but a strategy has been devised to implement this recommendation.</b></p> <p>to . Appropriate research has been undertaken into this matter. From a review of the Council's Minutes, it would appear that on 22 November 1983 the Council's Baths and Brewarrina Town Area Committee resolved (1002/83) to change the name of Weir Park to "Barbwire Williamson Park". This resolution was subsequently adopted (1023/83) by the Council at the Ordinary Meeting held on 25 November 1983. As highlighted within the Public Inquiry Report the Council at its Ordinary Meeting held on 18 March 2005 resolved (317/05) to "reiterate the previous resolution of 1970's and that the Weir Park be known as "V. J. Barb Wire Williamson Park". I should point out that I have been advised that a staff member has previously researched the Council's Minute Books during the 1970's, but was unsuccessful in actually locating a specific Resolution to name this Park as "Weir Park". I have made verbal enquiries with the Secretary of the Geographical Names Board and he has advised that the Council has only two "Parks / Reserves" officially named by the Board those being the Culgoo National Park and the Brewarrina Common. Given the legislative requirement under the Geographical Names Act for the Council to apply for the naming of a Reserve, I will prepare a Report to the Council's Meeting of 22 February 2008 detailing the process that the Council has to do to regularise this matter. Given that the Council has more than two Parks / Reserves named, research will be undertaken to take the opportunity to "officially" name all of the Parks / Reserves within Brewarrina Shire Council. Prior to submitting this matter to the Council I will submit a Report to the Brewarrina Ngemba Community Working Party seeking the Community Working Party's comments on the Council's proposal.</p> |
| 70 | <p>That each councillor and designated officer thoroughly interest returns to ensure that all necessary information is disclosed. Where changes are required, new pecuniary interest returns to ensure that all necessary information is disclosed. Where changes are required, new pecuniary interest returns should be lodged immediately.</p> | <p><b>Incomplete-</b> Although the Executive Officer is still to view the forms, the conversations with the relevant officer indicate that some of the same problems still exist</p>  | <p><b>Completed.</b> All Pecuniary Interest Returns for the period ending 30 September 2007 have been lodged by the required time and have been tabled at the Council Meeting on 14 December 2007. In the event that the Department still requires a copy of these Pecuniary Interest returns a copy can be made available to the Department.</p>  |

|    |   |   |  |
|----|---|---|--|
| 71 | That the General Manager investigates policies processes and practices to ensure that the council complies with the State Records Act 1998.   | DLG Assessment & Comments - June 07   | Comments as at 8 February 2008   |
| 77 | That the General Manager instigates appropriate practices to ensure that all staff absences are recorded in council's records.  | Incomplete- Council has made attempts to comply in certain areas of its record keeping. However, knowledge of State Record Act requirements is limited. Some training of administration staff is warranted.   | Not completed, but a strategy is in place. The Acting General Manager is aware that all Councils are required to comply with the State Records Act. In terms of actual implementation of recordkeeping policies and procedures the Council's Records Officer has undertaken the following records training since her commencement with Council in March 2006. 19/10/06 Records Management for Councils, 15/5/07 Companion Animals (Registration, procedures, companion animals & dangerous dogs), May 07 – Aug 07 Diploma of Local Govt. Administration, 25/5/07 – Code of Conduct, 6/8/07 Implementing General Disposal Authority 10 – local government records & 7 & 8/8/07 Records Management Fundamentals. I should point out that the Council's Records Management Policy has been adopted by Council in September 2007. Although the Council has adopted a Records Management Policy it is acknowledged that further work is required to ensure that the provisions of the State Records Act are being complied with. The Council intends to have dialogue with both Warrngah Council and Penrith City Council to determine a strategy to ensure that the Council complies with the State Records Act. |
| 78 | That a copy of the General Manager's performance appraisals and associated records be placed on the General Manager's personnel file held by council.   | Incomplete- Current GM's contract is on his personnel file. Performance appraisal to be conducted in 2007.  | Completed. The former General Manager's Contract of Employment is currently in the Human Resources Officer's Office. As the Department is well aware, the current Acting General Manager has been seconded from Penrith City Council to fulfil the responsibilities of the General Manager's position for a period of up to six months. The Council resolved at an Ordinary Council Meeting on 23 November 2007 to second Mr Schull to this position for a period of up to six months. A letter of offer to the Acting General Manager was sent to Mr Schull and a confirmation letter of acceptance was received by the Council. Details of this arrangement are located on the Council's Human Resources Officer's Office.   |
| 79 | That the General Manager instigates appropriate practices to ensure that all staff absences are recorded in council's records.  | Incomplete- Council's system is still lacking in internal control mechanisms.   | Completed. Attendance Records are kept for the Outdoor staff by the Supervisors. Attendance Records for the Indoor Staff are kept by the Human Resources Officer. Any individuals requesting leave (as per the Brewarrina Shire Council HR Leave Policies) must complete a PINK leave form (attach any relevant documentation), get this signed by their Supervisor and then give the form to Payroll. All leave taken is monitored during the payroll process and letters are sent to staff if required (more than 3 absences of sick leave; no leave form submitted but the Council is aware that the staff member had a days leave).  |
| 88 | That the General Manager undertakes a complete and thorough review of the council's policies, processes and practices to ensure that they are appropriate and to improve them, where necessary. | Incomplete and of concern- Council's progress in complying with this recommendation was initially slow and insufficient. A timeline for working through the development of policies has been developed. Implementation of policies has not been adequately addressed. | Not completed but a process has been developed and this is on track. Council has a Development Plan for the review and adoption of policies. As the Department is aware when the Executive Officer was with the Council in mid 2007 she worked closely with the Council's Group Manager Corporate and Community Services. Following from this a Policy Manual has been prepared which includes a thorough listing of all Policies that the Council has adopted and the status of those Policies. The Council's Mayor has asked the Council's Acting General Manager to review the process that the Council has in place with the preparation of Policies and this will be presented to the Mayor in February 2008. From my observations the Council now has adopted a far ranging supply of Policies since these were commenced in the middle of 2007.   |

## APPENDIX 2

### The Department of Local Government's assessments of the Social and Community Plan, State of the Environment reporting and Council's financial position



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Locked Bag 3015 NOWRA NSW 2541

OUR REFERENCE **Doc ID:** A124831  
YOUR REFERENCE  
CONTACT **Wayne Trudgen**  
02 4428 4213

Mr John Davies  
Commissioner  
Brewarrina Shire Council Public Inquiry  
Locked Bag 3030  
NOWRA NSW 2541

11 JAN 2008

Dear Mr Davies

I am writing in reply to your letter of 3 December 2007 regarding your request for assessments of Brewarrina Shire Council's Social Plan and State of the Environment Report and a financial profile of Council.

Please find attached assessments of the Social Plan (attachment 1) and SOE report (attachment 2) completed by the Department's Policy and Research Branch, and a financial profile completed by Finance Management Branch (attachment 3).

I trust this information will be of assistance. Please contact the respective Branch Managers directly should you have further questions about the information provided.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Garry Payne'.

**Garry Payne AM**  
**Director General**

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## Brewarrina Shire Council Social Plan Assessment

### Compliance with Mandatory Requirements

#### Current Social Plan:

(Refer Guidelines p 6)

- submitted to department on time
- submitted to department late
- not received by department

#### See comment

- duration of plan is clearly documented & not greater than 5 years.

#### Essential Components:

(Refer Guidelines B4 p 15 - 16)

- Demographic profile
- Need assessment
  - Evidence of development using participatory process
  - Mandatory target groups identified and needs assessed
  - Children (0-11yrs)
  - Young People (12-24yrs)
  - Women
  - Older People (i.e. Aboriginal people aged 45yrs & over and non-Aboriginal people aged 55yrs and over)
  - People with disabilities (includes people living with HIV)
  - Aboriginal and Torres Strait Islander people
  - People from culturally and linguistically diverse backgrounds
  - Optional target groups (as listed below)

- Assessment of effectiveness of previous social plan
- Recommended Actions See Comment**

#### Other Requirements:

(Refer Guidelines p 17)

- Plan is readable and accessible to the community, councillors and council staff
- Plan is cross-referenced to other relevant plans (as listed below) **See comment**

#### Implementation of Social/Community Plan:

(Refer Guidelines p22-24)

- Recommended actions from social plan are included in access and equity statement in management plan.
- Access and equity statement includes the following:
  - refers to the existence of the social/community plan or related planning documents
  - states the date the social/community plan was last modified
  - provides details of how to obtain copies of social/community plan and any related planning documents

- x identifies the recommended actions in the social/community plan that will be implemented in the following year/s
- x includes a brief explanation of why there is no activity identified against a mandatory target group, if this is the case
- x for each listed activity, identifies whether the proposed activity was identified in the social/community plan or another plan
- x includes performance targets for each activity
- x provides detailed information about each activity (i.e. purpose, nature and enough info to enable effective monitoring of implementation of activity)

**Reporting Access and Equity Activities:**  
(Refer Guidelines p28)

- x Annual report includes a comparison of the actual and projected performance of Council's access and equity activities during the year, including reasons for any differences
- Annual report includes details of activities undertaken by Council to promote services and programs that provide for the needs of:
  - ✓ Children
  - ✓ Young People
  - x Women
  - x Older People
  - x People with disabilities
  - ✓ Aboriginal and Torres Strait Islander people
  - x People from culturally and linguistically diverse backgrounds
  - x Other groups in the community identified by councils as having special needs
  - ✓ The general community

**Evidence of Better Practices:**

- ✓ Plan contains an executive summary
- x Plan outlines methodology used to develop plan
- ✓ Plan is available on Council's website
- x Council has developed/considered a housing strategy – may include principles of affordable housing
- x Council has developed/considered ageing population strategy.
- x Council has considered State govt agency planning frameworks – may be state-wide or local planning priorities – or consulted with key government agencies
- x Council engaged in a regional planning process with other councils (Refer Guidelines p 18) or evidence council has consulted with neighbouring councils to address issues of regional significance
- x Integration of Plan across council functions/divisions
- x Plan contains clearly identified timeframes for actions
- x Plan contains clear mechanisms and timeframes for monitoring and evaluation, including when the Plan will be reviewed

- 
- ✓ Council has established consultative or advisory committees (e.g.s377) as ongoing community consultation (as listed below) or evidence of regular/appropriate mechanisms for consulting range of community groups
  - x Plan details consultations conducted in the development of the Plan

Overall Comments:

Brewarrina Shire Council's Social Plan has been reviewed on two prior occasions, the last being in November 2006. At that point a number of improvements in the planning were acknowledged and a range of issues identified where further improvement was required in order for the plan to comply with the mandatory requirements of the *Social and Community Planning and Reporting Guidelines (DLG 2002)*. At that stage the plan was in draft form and yet to be approved by Council. (See attachment 2)

This further review is completed at the request of Mr John Davies, Commissioner, Brewarrina Shire Council Public Inquiry.

The following documents were reviewed:

- Brewarrina Shire Council Social and Community Plan 2006 / 2010
- Brewarrina Shire Council Draft Management Plan 2007 / 2011
- Brewarrina Shire Council Annual Report 2007 (Note: the Annual Report was obtained from Council's website and was dated 14 December 2007. It appears that the Department has not received this Report at the time of the review.)
- Additional documentation provided by Council to the Commissioner

Council approved the Social and Community Plan 2006 / 2010 on 20 July 2007 and the plan is available on Council's website.

The current review indicates that the Plan is still not compliant and significant concerns remain in the following areas:

- This is a 5-year plan until 2010. Most of the recommended activities are simplistic with an expected completion date of 2007 or ongoing. The plan lacks sufficient detail as to how issues are to be progressed over the 5-year period, or how the plan will be updated in the intervening period. (Refer: Social and Community Planning and Reporting Guidelines page 16).
- The plan talks in general about consultation with Aboriginal Working Parties, other stakeholders and the forming of a Social Planning committee. Little detail is provided about the consultation that took place. However, the additional documentation provided demonstrates that the process has been thorough and supports the issues identified in the Plan. Briefly detailing the consultation undertaken would have added further integrity to the report. (Refer: Social and Community Planning and Reporting Guidelines pages 14 – 15).
- More significantly there is no articulation of the strategies Council intends to adopt to involve the community in ongoing review and development of the plan. This is important, as there are many aspects of the plan still under development and subject to review in 2007. Such strategies could include the

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establishment of a section 355 committee and the development of MOUs with Aboriginal Working Parties. There is no evidence that future planning is sufficiently integrated into Council's planning processes, and that there are structures in place to give the plan momentum. (Refer: Social and Community Planning and Reporting Guidelines pages 8 - 9).

- There are references to the plan in Council's Management Plan. However they are generic references and do not constitute an Access and Equity Statement in accordance with the Guidelines. Actions in the Management Plan refer to the ongoing maintenance of existing Council community facilities and programs but do not pick up the valid strategic issues raised in the Social Plan. (Refer: Social and Community Planning and Reporting Guidelines pages 22 - 23).
- Reporting on access and equity activities in the 2007 Annual Report does not comply with requirements. (Refer: Social and Community Planning and Reporting Guidelines page 28).

In summary the adopted plan establishes a good framework for future development. However the effectiveness of the plan will be dependent on integration with other Council processes, structured community input and the development of measurable specific strategies aimed at addressing the issues identified. Little improvement is evident since the November 2006 review.

#### **Recommendation**

For the consideration of Mr John Davies, Commissioner, Brewarrina Shire Council Public Inquiry, if approved.

**Wayne Trudgen**  
Principal Policy Officer  
19 December 2007

## Attachment 2

## STATE OF THE ENVIRONMENT REPORT CHECKLIST

Name of Council: **Brewarrina Shire Council**

|   | Act/General Reg         |  |                             |
|---|-------------------------|--|-----------------------------|
| 1. Comprehensive report issued at least following election (i.e. 2000, 2004, 2009) for some councils this will vary depending on when their election was held | s428(2)(c)<br>cl 224(1) | Yes  | No x                        |
| 2. <b>Comprehensive report</b> in relation to each environmental sector:  | cl 221(1)(a)            | Yes <input type="checkbox"/>                           | No x                        |
| ❖ Draws on environmental data from other councils   | cl 221(1)(b)            | Yes <input type="checkbox"/>                           | No x                        |
| ❖ Identifies and applies appropriate environmental indicators   | cl 221(1)(c)            | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/> |
| ❖ Considers and applies the pressure-state-response model (cl 221(2) provides an explanation of this)   | cl 222(a)               | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/> |
| ❖ Outlines the condition of each environmental sector (see below for environmental sectors)   | cl 222(1)(b)            | Yes <input type="checkbox"/>                           | No x                        |
| ❖ Comparison of statement of the condition of each environmental sector with last report  | cl 222(1)(c)            | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/> |
| ❖ Includes relevant background information for each environmental sector  | cl 222(1)(d)            | Yes <input type="checkbox"/>                           | No x                        |
| ❖ Specifies relevant environmental indicators for each environmental sector   | cl 222(1)(e)            | Yes  | No x                        |
| ❖ Reports major environmental impacts and related activities for each environmental sector  | cl 222(1)(f)            | Yes  | No x                        |
| ❖ Identifies gaps in relevant information and indicates way in which missing information is to be obtained for each environmental sector                      |                         |  |                             |
| 3. Supplementary report issued other than following election year   | cl 224(2)               | Yes <input type="checkbox"/>                           | No x                        |
| 4. <b>Supplementary report:</b>   |                         |  |                             |
| ❖ Identifies new environmental impacts since last report  | cl 223(a)               | Yes <input type="checkbox"/>                           | No x                        |
| ❖ Updates trends in environmental indicators important to each environmental sector (see below for environmental sectors)                                     | cl 223(b)               | Yes <input type="checkbox"/>                           | No x                        |
| 5. Supplementary and comprehensive reports may include  | cl 225(1) & (2)         | Yes <input checked="" type="checkbox"/>                | No <input type="checkbox"/> |

|   |                  |  |  |
|---|------------------|--|--|
| information relating to the region  |                  |  |  |
| 6. If information relating to the region, report indicates parts that relate solely to the council's own area | cl 225(3)(a)     | Yes <input type="checkbox"/>                           | No <input checked="" type="checkbox"/> |
| 7. Report includes information about following environmental sectors:   | s428(2)(c)       | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
| ❖ Land  |                  |  |  |
| ❖ Air   | s428(2)(c)(i)    | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
| ❖ Water   |                  |  |  |
| ❖ Biodiversity  | s428(2)(c)(ii)   | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
| ❖ Waste   |                  |  |  |
| ❖ Noise   | s428(2)(c)(iii)  | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
| ❖ Aboriginal heritage   |                  |  |  |
| ❖ Non-Aboriginal heritage   | s428(2)(c)(iv)   | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
|   | s428(2)(c)(v)    | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
|   | s428(2)(c)(vi)   | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
|   | s428(2)(c)(vii)  | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
|   | s428(2)(c)(viii) | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
| 8. Report includes following for each environmental sector:   |                  |  |  |
| ❖ Management plans  | s428(2)(c)(ix)   | Yes <input type="checkbox"/>                           | No <input checked="" type="checkbox"/> |
| ❖ Special council projects  | s428(2)(c)(x)    | Yes <input type="checkbox"/>                           | No <input checked="" type="checkbox"/> |
| ❖ Environmental impact of council activities  | s428(2)(c)(xi)   | Yes <input checked="" type="checkbox"/><br>See comment | No <input type="checkbox"/>            |
| 9. Evidence that council has used department guidelines in preparing state of the environment report          | cl 220(a)        | Yes <input checked="" type="checkbox"/><br>See         | No <input type="checkbox"/>            |

|  |           | comment                      |  |
|--|-----------|------------------------------|--|
| 10. Evidence that council has consulted the community, including environmental groups                                      | cl 220(b) | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 11. Evidence that council involved the community, including environmental groups, in monitoring changes to the environment | cl 220(c) | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 12. Report is readily understandable   | cl 220(d) | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

### Background

A draft of Brewarrina Shire Council's State of the Environment Report (SOE) was first reviewed in November 2006, following a visit to Brewarrina with a member of the Department's Investigation and Review Branch. A copy of this review is attached (Tab 2). It is understood that issues raised at that time were passed on to Council staff for consideration.

In order to obtain an up to date copy of the SOE, Brewarrina Shire's website was first consulted on 26 November 2007. The website displayed a document with a comment that it was draft and under review. This document appeared to be similar to the document reviewed in November 2006. The website was again consulted on 28 November 2007. On this occasion a different document was displayed with a comment that it was draft and open for public consultation. The website was again consulted on 13 December 2007. On this occasion a document entitled "State of Environment Report 2006-07" was displayed without further comment other than a contact name and number. This appeared to be the same document displayed on 28 November.

Subsequently the Department's records were checked and it was determined that Council had mailed a copy of the Supplementary State of the Environment Report 2006 - 2007 to the Department on 27 November 2007 with a letter advising that Council had adopted the report at its ordinary meeting on 23 November. This raises a number of issues that will be discussed later in this review.

It is difficult to determine when Council last submitted a Comprehensive SOE. The Department holds an SOE dated November 2004. The Department also holds a report titled State of the Environment Report Revised 2005/2006. This report is marked as a draft and appears to be the same document reviewed in November 2006, and the same as the document observed on Council's website on 26 November 2007.

The following additional documents have been supplied by the Commissioner:

- State of the Environment Report 2006/2007 – Draft. It is not clear whether this is a comprehensive or supplementary report.
- Status Quo Report on the 2006/7 State of the Environment Report

The Brewarrina Shire Council Annual Report 2007 was also consulted. (Note: This Annual Report was obtained from Council's website and dated 14 December 2007. It appears that the Department has not received this Report at the time of the review.)

The basis of this review is the recently received 2007 Supplementary Report. As appropriate, references will be made to earlier documents. For the purpose of this review the SOE submitted in November 2004 is treated as the Comprehensive SOE in order to provide a point of reference.

#### **Compliance with the Legislation and Department of Local Government Guidelines**

The review of this report has again shown that Council has not complied with the requirements of the legislation and the Department of Local Government's State of the Environment Reporting Guidelines, published January 2000. The following are specific areas of concern:

- **Annual Reporting** (page 10 of the Guidelines)

Councils are required to report annually. A Comprehensive SOE is required in the year following the Council Election. Supplementary SOEs are required every other year. Brewarrina was required to submit a Comprehensive SOE by November 2005 and subsequently an annual Supplementary Report by 30 November each year.

It appears that Council has not formally submitted an SOE between November 2004 and November 2007. Draft SOEs have been made available for 2005 and 2006 but there is no evidence that Council has formally adopted them. The Comprehensive Report cannot be clearly identified.

The 2007 Supplementary SOE advises that the next Comprehensive Report is due in 2008/09. Council advises its intent to participate in the preparation of a Regional SOE in partnership with the Central West Catchment Management Authority (CMA). It should be noted that this is not the appropriate CMA. The appropriate CMA is the Western Catchment Management Authority. It appears this is a typographical error as the Council Annual Report that appeared on Council's website in mid December refers to the correct CMA. This reflects a lack of attention to detail, and damages the integrity of the Report in the eyes of the community.

- **Environmental sectors** (page 10 of the Guidelines)

While the report covered each of the environmental sectors, little comparative data is provided and it is not possible to assess environmental trends in the Shire and the impact of Council activity on these trends. Further comments are provided below in the section addressing each of the environmental sectors.

- **Pressure State Response Model** (page 13 and 19 of the Guidelines)

Council has attempted to use the Pressure / State / Response model. While Council appears to have an adequate understanding of environmental pressures impacting generally on the Shire, it has not sufficiently identified the issues it needs to address and articulated how it is going to do this within the resources it has available.

- **Involving the Community** (page 16 of the Guidelines)

Lack of community involvement in the preparation of the SOE and involvement of the community in ongoing monitoring of environmental issues was identified as an issue in the November 2006 review.

The most recent Supplementary SOE does not address the requirements for community involvement in its preparation. It appears a draft SOE was available on Council's website prior to 26 November with a note advising that it was under review. Public comment was not sought. It appears that a revised draft was placed on the Council website on about 28 November 2007 seeking public comment but this was after Council had adopted the report on 23 November.

Advice provided by Council to the Commissioner in an undated report titled "Status Quo Report on the 2006/7 State of the Environment Report" indicates that the draft SOE was to be placed on Council's website for public comment. It is not clear which draft this refers to. It is possible that there may have been a delay in placing an amended draft on the website seeking public comment, resulting in it appearing after Council had adopted the report. While this may simply be an error in website maintenance, it gives rise to an interpretation that Council is seeking public input into a report that it has already adopted.

Information provided by Council to the Commissioner advises that formal input into the Report was sought from schools, Aboriginal Working Parties, the Brewarrina Business Centre, Brewarrina Hospital, the Country Women's Association and the Goodooga Community Facilitator. Council advises that no responses were received.

This lack of response indicates that Council has not developed an effective strategy to engage the community in SOE reporting or ongoing management of environmental issues. This lack of response may also indicate that the community does not see value in contributing to council work in this area.

As a minimum Council is required to outline in the adopted report what it has done to engage the community. Council has not done this. Council should also develop and publish a proposed strategy to build community involvement in environmental issues. This strategy should move beyond the traditional practice of displaying and distributing draft reports for comment. Strategies commonly used by other councils include community surveys, engagement with Landcare groups, development of environmental programs with local schools and other community groups, establishing council advisory committees and holding issues specific focus groups.

- **Supporting Data** (page 10 of the Guidelines)

The guidelines require that data be provided that establishes environmental trends, places current issues in context and sets agreed standards for future performance. The data provided in the report reviewed is not sufficient to meet these criteria. Further comments are provided under each environmental sector below.

- **Integration with Management Plan** (page 25 of the Guidelines)

The guidelines require that there be clear linkages between the SOE and Management Plan. An attempt has been made to establish these linkages with the 2006 Management Plan for land, water, waste and heritage. In the main these linkages are operational, focussing on the maintenance of Council operations. There is little evidence that Council has identified those environmental areas requiring improvement; and set strategic goals, developed actions to meet these goals and

identified appropriate measures of progress made to address these environmental areas.

- **Presentation of the SOE**

The SOE is poorly formatted, with an inconsistent use of subject headings and headings often being placed at the bottom of pages. There are some typographical errors. These formatting issues impact on the integrity of the report and ability of the local community to clearly understand the issues being presented.

### **Environmental Sectors**

- **Land**

This section of the report provides a brief generic description of some of the land use issues facing the Shire focusing on the pastoral and irrigation industries present, land clearing and road construction. No data is presented establishing land use trends or identifying significant environmental land based issues that Council needs to address.

The report makes generic comments about difficulty gathering land-clearing data but does not put forward a strategy to address this issue.

The report comments on the importance of road building projects in order to manage dust and ensure all weather road linkages between isolated communities. However, no data is presented to chart progress and no plans are outlined for future road construction.

The section also advises that Council intends to develop a new LEP by 2011 in partnership with Bourke and Central Darling Shire Councils, and to reclassify some community land as operational land. However, the section does not discuss the environmental significance of these planning matters in sufficient detail.

There are a range of issues canvassed in previous draft reports that have not been included in the 2007 Supplementary Report. These include:

- o Impact of development and the falling population of the Shire
- o Impact of Tourism
- o EPA licensed sites
- o Contaminated land. (It is noted that the 2004 report identified nine sites. The 2005 and 2006 draft reports discuss the need for the development of plans of management for contaminated sites. The 2007 report includes one sentence referring to contaminated sites complying with EPA guidelines. There is no consistency in the thread of council reporting, hence the community is provided with no useful information about the number of contaminated sites and their risk to the community.)
- o Salinity
- o Land degradation

The issue of salinity and land degradation may be beyond the resources of the Council to address, however the SOE should state this. It would be reasonable to expect Council to develop a strategic approach to address other issues over which it has control.

- **Air Quality**

The population and geographic location of Brewarrina is such that air quality is not a major issue for the Shire. As such Council's response in the 2007 report is considered appropriate with the following exception.

Council has appropriately identified the impact of its own activity on air quality and greenhouse gas emission. Council has provided data for energy consumption for 2006/2007. However data for previous years has not been provided hence it is not possible to establish whether energy consumption is rising or falling. This should be easy to do. Further, there is no analysis to suggest whether energy savings are possible or targets set for energy saving over coming years.

It is noted that previous draft reports included measures of motor fuel consumption. These measures were in dollar value, hence it is not possible to determine whether increasing costs were a result of price rises or increased consumption. Comments were offered in November 2006 suggesting that a better measure would be litres consumed. It is noted this remains on council management plan as an issue to be addressed, but this measure has been omitted from the 2007 report and it is unclear why.

- **Water**

Water is a critical issue for the Shire as it is dependent on river flows for water supply and agricultural production. Water supply has been seriously impacted by the drought. The 2007 Report provides an adequate discussion of council activity in managing this resource, with an emphasis on the safety aspects of water management. Appropriate data is presented. However this data is for 2006/07 only, hence it is not possible to establish trends.

The emphasis of the 2007 SOE is generally about the impact of drought. While this is understandable, the area is characterised by extremes of weather fluctuation and the impacts of storm events and floods needs to be managed.

It is noted that the 2007 Management Plan and the draft 2006 SOE include a broad reference to the need to develop a storm water drainage improvement and education program. However, these references do not include detail about what is to be done, when it is to be done and any measures to quantify the issues, establish trends or determine future performance. The 2007 SOE is silent on this other than a brief reference. This needs to be addressed.

Similarly, the 2007 Management Plan highlights the need to rehabilitate and repair the levee bank. The 2007 SOE does not address this issue. Further, there is nothing to advise the local community about how serious this issue is and what needs to be done to protect the local community in the event of a flood. (Note: This issue was raised in the 2006 review.)

- **Biodiversity**

This section in the 2007 SOE is brief and simply lists threatened species. It does not articulate Council's approach to managing biodiversity in the Shire.

The 2006 Draft SOE raised generic issues related to weeds, feral animals, tree preservation, border quarantine; and provided more extensive descriptions of threatened species and rangelands conditions. No previous year data is presented that enables trends to be established. Simple actions are articulated but no goals, detailed actions or performance measures are provided. It is not known why the baseline work completed in the 2006 report was not transferred to the 2007 SOE.

It is acknowledged that biodiversity matters fall largely within private land or land managed by other authorities. Council's role in relation to such land is limited as are its resources. However, Council has an obligation to manage biodiversity issues on land it controls. There is no evidence that this has been considered.

- **Waste**

This section of the report is generally well presented and it is clear what Council is doing to manage waste issues. However no previous year data is presented hence it is not possible to establish trends. Clear actions for the future are articulated but no timeframes for completion, or performance measures are provided.

- **Noise**

Noise is not a significant issue and generally this section of the report is well presented. No previous year data is provided. The section acknowledges the need for this to be addressed, but does not articulate how this will be done.

- **Heritage**

- **Aboriginal Heritage**

The 2007 SOE summarises the work undertaken by a heritage advisor. The report appropriately recognises the significance of two State Heritage Register listings and the fact that important Aboriginal heritage information has been lost.

The text of the report makes the following comment "Contact has been made with the Aboriginal Working Party and will be followed up when time allows." (Page 36). It should be noted that Aboriginal history is still primarily retained as an oral tradition. Council does not appear to appreciate that engaging with working parties, Elders, other Aboriginal leaders and other Aboriginal organisations should be a priority. Not only do they hold important information, they can provide realistic, cost effective advice about the best ways to protect this heritage. Further, local Aboriginal people consider themselves to be the custodians of this heritage and expect this level of consultation.

The section includes some proposed actions. However, it is considered that some of these should be reconsidered, in order to engage local communities in heritage management. The actions do not have time frames or performance measures.

Note: in September 2007 the Department published *Engaging with Local Aboriginal Communities: A Resource Kit for Local Government in New South Wales*. This kit provides further information that will be of value to Council in the future.

o **Non Aboriginal Heritage**

The 2007 SOE includes limited information on this issue. Some specific heritage sites are identified with a general outline about what needs to be done to preserve these sites. No detailed planning is evident in this area that specifies tasks, time frames and performance measures. Council priorities are not identified.

### **Summary**

In summary the review has indicated that:

- Council appears to not understand the differing requirements for Comprehensive and subsequent annual Supplementary reports. The last Comprehensive report cannot be clearly identified. While draft reports exist for 2005/2006 and 2006/2007, they do not appear to have been adopted by Council.
- Council, while providing evidence that it has attempted to involve the community in the compilation of the 2007 Supplementary SOE report, has not been effective in doing so and it has not considered the required role of the community in ongoing monitoring. Council has not presented a strategy to develop this in the future.
- Council has not demonstrated an ability to effectively engage the Aboriginal community in environmental management, even though the Aboriginal community comprises 45% of the population and has existing structures that Council can access.
- While covering each of the environmental sectors, the 2007 Supplementary Report does not address all key issues, some of which have been presented in the 2005/2006 and 2006/2007 draft reports. Actions presented are limited, reflecting existing operations. There is no strategic focus identifying longer-term goals, actions, timeframes and performance measures.
- Data presented is minimal and reflects a point in time only. There is no attempt at producing longitudinal data that will enable trends to be identified even when Council holds such data.

### **Recommendation**

For the consideration of Mr John Davies, Commissioner, Brewarrina Shire Council Public Inquiry, if approved.

**Wayne Trudgen**  
Principal Policy Officer  
20 December 2007

## Brewarrina Shire Council Financial Year 2006 - 2007

### Background

This report is a financial profile of Brewarrina Shire Council, which is based on their 2006 – 2007 financial reports. The financial profile has been prepared in response to a request from the Commissioner of the Brewarrina Shire Council Public Inquiry.

### Operating results and trends

The **operating result** for the financial year 2007 was a surplus of \$1.318 million as compared with \$1.856 million in the previous financial year 2006. In the financial year 2005 the operating result was a surplus of \$.666 million and in the financial year 2004 the operating result was a surplus \$.364 million. There have been solid positive returns in their operating results for past two financial years.

The **operating results before grants and contributions provided for capital purposes** were surpluses of \$1.286 million in 2007 and \$.374 million in 2006.

**Grants and contributions** for operating purpose for the financial year was \$4.730 million. The percentage of revenue before capital items attributed to grants and contributions for operating purposes is 58%. There has been an increase in the level of grants and contributions for operating purposes against total revenue before capital items for the financial year 2007. Please refer to Table 1.

**Table 1: Percentages of Grants and Contributions to Revenue**

| Financial Year |      |
|----------------|------|
| 2006/07        | 58%* |
| 2005/06        | 51%* |
| 2004/05        | 55%* |
| 2003/04        | 50%* |

\*Grants and contributions for operating purposes divided by the total revenue before capital items.

Please note that like other regional local government bodies, Brewarrina Shire Council is dependant upon grants and contributions for revenue to meet their operational needs. This reliance upon grant and contributions is fiscally unhealthy and may impact upon their financial sustainability in the medium to long term.

**Table 2: Budgeted vs. actual results**

|         | Before Capital |             | After Capital |             |
|---------|----------------|-------------|---------------|-------------|
|         | Budget         | Actual      | Budget        | Actual      |
| 2006/07 | \$285K         | \$1.286mill | \$495K        | \$1.318mill |
| 2005/06 | \$341K         | \$374K      | \$2.239mill   | \$1.856mill |
| 2004/05 | (\$493K)       | \$395K      | \$286K        | \$666K      |
| 2003/04 | (\$55K)        | (\$267K)    | \$792K        | \$364K      |

Referring to table 2, the main reason for the variance from budget to actual in 2006/07 was additional income received from the RTA Single Invitation Contract \$531K and an increase of interest and investment revenue of \$167K compared to the budgeted amount.

#### **Liquidity and cash position**

Council's unrestricted current ratio (**UCR**) was 2.16 (down from 2.82 in 2005/06).

The **UCR** measures the adequacy of working capital and the ability to satisfy obligations in the short term. It does not include externally restricted activities such as water, sewer or specific grants. A good **UCR** is considered to be greater than 2.

Council's **unrestricted cash** was \$2.786 million (up from \$2.283 million in the previous year).

Rates and Annual Charges Outstanding Percentage (**RACO%**) was very poor at 20.75% in previous years the Council's **RACO%** was less than 20%.

The **RACO%** assesses the impact of uncollected rates and charges on liquidity and the efficiency of debt recovery. In 2004/05 the average amount overdue was 7.3% for rural councils.

In 2006/07 Council's Debt Service Ratio (**DSR**) was good at 3.44% (up from 1.88% in 2006 and 2.07% in 2005). Council **DSR** currently demonstrates a manageable level of debt.

This indicator assesses the degree to which revenues from ordinary activities are committed to the repayment of debt. A **DSR** of less than 10% is good. A **DSR** ratio from 10% to 15% is considered borderline and a **DSR** or more than 15% is to be considered to be a concern.

Council has **total loans outstanding** of \$ 1,353 million.

Council has no new loans raised in the 2006/07. Council has **not applied for any loans** in 2007/08.

The Councils cash management strategy is of a concern, the Council has over \$ 4.9 million in Deposits at Call and Short Term Deposits, and the Council has

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no monies in their Bank Account as at the 30 June 2007. The Council has a Bank Overdraft of \$ 476k. The problem is that in general the interest payable on a Bank Overdraft is greater than the interest received on Deposits at Call and Short Term Deposits. Therefore there is an overall cost to Council in maintaining this strategy.

The Council should maintain a sufficient level of funds in their bank account to meet their day-to-day purchasing needs. Managing and maintaining a sufficient balance in their Bank Account can easily fix this problem.

Employee Leave Entitlements (ELE) is cash funded by 29% by internal restricted reserves.

This is to be considered high (20% would be considered to be reasonable).

#### **Infrastructure maintenance**

The written down value (WDV) of Council's assets for 2006/07 period are as follows: Roads, Bridges and Footpaths 64%, Storm water Drainage 25%, Water Supply Network 52% and Sewerage Network Infrastructure 64%.

A number of Council's WDV's are above that considered by DLG to be cause of concern (i.e. below 50%).

Council estimated annual maintenance for 2006/07 was \$1.7 million, whilst the amount spent on annual maintenance was \$1.5 million. This is a satisfactory result as the amount budgeted for and amount spent on annual maintenance are similar.

Council's estimated costs to bring assets to satisfactory condition were \$ 14.4 million in 2006/07. Council's estimated costs to bring assets to satisfactory condition were \$ 14.6 million in 2005/06. There has been a reduction in Council's estimation of bringing their asset portfolio to a satisfactory condition.

#### **Auditor's Comments**

Council's overall financial position, when taking into the account the financial indicators is satisfactory.

The auditor's state the accounting records of the Council have been kept in accordance with the requirements of Division 2 of Part 3 of the Local Government Act, 1993.

#### **Special Variations**

Council has not applied for a special variation in rates in the past 5 years.

#### **Business Activities**

Council has declared 2 business activities: Water Supply Business and Sewerage Business.

Both the Water Supply Business and Sewerage Business had a surplus result before and after capital amounts.

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**Timeliness of Submission of Financial Statements**

The Council has submitted their financial statements on time in the past 2 years.