



BROKEN HILL CITY COUNCIL

PUBLIC INQUIRY

REPORT

13 December 2006

Hon David Simmons OAM

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EXECUTIVE SUMMARY

On 21 September 2006, the Minister for Local Government, the Hon Kerry Hickey MP, appointed me as Commissioner to hold a public Inquiry into the Broken Hill City Council.

I was to inquire, report and provide recommendations as to whether all civic offices at Broken Hill City Council should be declared vacant. In doing so, I was to have particular regard to the conduct of councillors, their relationships with staff and whether councillors have adequately, appropriately and reasonably carried out their roles and responsibilities in the best interest of all ratepayers and residents.

Prior to my appointment, the council had been the subject of complaints to the Department of Local Government and other external agencies. Earlier this year, the council was the subject of a Promoting Better Practice (“PBP”) review that provided the council with 71 recommendations. The council had received 3 warnings as to the need for it to resolve its problems, including one made in the PBP report.

As a result of the council’s failure to satisfactorily address the department’s concerns, the department recommended to the Minister that a public inquiry be held into council.

As part of the Inquiry, extensive documentation was obtained from council and the Department of Local Government, public submissions were received, public hearings were held and persons affected by the Inquiry were allowed to make oral and written submissions in reply.

Having now completed the Inquiry, I have found that:

- Relationships among councillors and between the councillors and staff have been irretrievably damaged by the inappropriate conduct of councillors.
- There have been numerous inappropriate interactions between some councillors and council staff.

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- Councillors generally demonstrated that they had a good theoretical knowledge of their roles and responsibilities. However, the evidence suggests some councillors, on occasions, have been either unable or unwilling to apply that knowledge in the proper exercise of those roles and responsibilities.
 - There have been frequent acts of disorder during council meetings.
 - Councillor Kennedy's behaviour at, and immediately after the March 2006 Corporate Services Committee meeting appears to have been of such a serious nature as to potentially warrant suspension pursuant to the misbehaviour provisions of the *Local Government Act*. Council has failed to deal with the incident in a timely fashion.
 - Mayor Page failed to demonstrate he has the capacity to fulfil his role in a proper manner.
 - Councillors failed to demonstrate a capacity to achieve a sustained improvement in their conduct and meetings, even though they have had the benefit of training and advice.
 - The council's final submission to the Inquiry lacks credibility.

While the conduct of Councillor Kennedy has been extremely damaging, all of the councillors must share the collective responsibility for the failure of the council to respond to his conduct in an appropriate manner.

The flawed manner in which the council has implemented the Model Code of Conduct for Local Councils in NSW has contributed to the problems it has experienced.

The findings section of this report details my formal findings in regards to the terms of reference. The analysis section of the report discusses the relevant evidence. An appendix provides extracts from the transcript of the March 2006 Corporate Services Committee meeting.

The council, in its final submission to the Inquiry stated “*we can and must do better if we are to develop a better model of local government for our community*”. However, the “*Moving Forward Agreement*” submitted by council was not adopted unanimously and I am not convinced that there is a consensus amongst the councillors as to what is required for the council to be able to sustain a satisfactory standard of performance.

The course of action suggested by council must be considered in light of council’s inadequate response to the department’s warnings and the other concerns raised with it.

While I have given due consideration to the improvement strategies suggested by council and others in their submissions, having regard to the evidence available to me, I do not believe the council has the capacity to overcome the legacy of the conduct of its councillors since the council was elected in March 2004.

I have recommended that all civic offices at Broken Hill City Council be declared vacant and that an Administrator be appointed for a minimum period of three years.

It is clear to me that a minority of councillors played a more active role in creating the circumstances that warrant the dismissal of the council. However, all councillors must share a collective responsibility for allowing the council to be captured by the actions of individual councillors.

I wish to acknowledge those people and organisations that participated in the Public Inquiry by way of oral and/or written submissions. I particularly thank the council staff that agreed to appear at the hearings when requested by me to do so. I appreciate this may have been a difficult process for them as residents of Broken Hill and as loyal employees of council.

I must also acknowledge the very valuable assistance I received from the officers assisting the Public Inquiry, Mr John Davies, Mrs Penelope McKay and Mr Richard Murphy.

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 Broken Hill City Council (“the council”) and is presented to the Minister for Local Government.

TERMS OF REFERENCE

On 21 September 2006, the Minister for Local Government, the Hon Kerry Hickey 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 Broken Hill City Council should be declared vacant.

The Inquiry will have particular regard to:

- 1. The conduct of the elected representatives of council (whether individually or collectively as the governing body of council) including their relationships with senior and other staff of council.*
- 2. Whether the elected representatives fully understand their roles and responsibilities and have adequately, appropriately and reasonably carried out their roles and responsibilities in the best interest of all ratepayers and residents.*
- 3. Any other matters that warrant mention, particularly when it may impact on the effective administration of the council area.*

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

While the term “*senior staff*” has a specific meaning in the *Local Government Act*, for the purposes of this Inquiry, I considered the term to have a wider meaning referring to the relative status of the staff member in the organisation.

ASSISTANCE TO THE COMMISSIONER

Mr John Davies, Mrs Penny McKay and Mr Richard Murphy were 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

Public notice of the Inquiry was published in the *Adelaide Advertiser*, the *Sydney Morning Herald*, the *Barrier Daily Truth* and *Barrier Miner* newspapers in late September 2006. 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 two 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.

The Mayor and 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. Councillors were invited to make a submission relevant to the terms of reference of the Inquiry. A similar letter was sent to the general manager inviting submissions from him and from council staff. The former General Manager, Mr James Hall was also invited to make a submission.

Officers assisting the Inquiry wrote to council on a number of occasions asking for certain documentary evidence in relation to matters relevant to the terms of reference. The Inquiry also sought information relevant to the terms of reference from the Department of Local Government, the Independent Commission Against Corruption and the NSW Ombudsman.

Submissions were required to be lodged by 20 October 2006. However, submissions received after this date containing information relevant to the terms of reference of the Inquiry were accepted. The General Manager, Mr Frank Zaknich, lodged separate submissions on behalf of council as a corporate entity and on behalf of staff. Most councillors made submissions. Mr Hall, the former General Manager and a former councillor, Ms Pam McRae, also made submissions. A number of members of the public also made submissions.

Procedure at hearings

Preliminary hearings were held from 30 October to 1 November and from 6 to 8 November 2006. This was essentially an evidence gathering exercise.

There was a further recall hearing on 27 November 2006 to hear oral submissions in reply, to the written submissions and the evidence heard in the preliminary hearings.

During the preliminary hearings, the officers assisting the inquiry and myself asked questions of witnesses in relation to matters relevant to the terms of reference. Cross-examination of witnesses by any other party was permitted only by my leave.

I indicated in my opening speech that cross-examination would not be automatically permitted and 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 indicated that I would not allow cross-examination to be used for the purpose of rebutting evidence or putting a counter-argument. As will be discussed below, there were other means offered and available to affected parties for doing this.

Prior to the hearings, I received an application from the council to be represented by Mr Wal Robinson and Mr Gerry Holmes. I granted leave to Mr Robinson and Mr Holmes to appear as council's representatives. I also granted leave to Mr Holmes to cross-examine witnesses on a number of occasions.

Clr Tom Kennedy sought leave to cross-examine witnesses on several occasions. On each of those occasions I declined his application, on the grounds that he was effectively seeking to rebut the evidence of the witnesses.

Evidence during the hearings 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, the Inquiry heard from the Mayor, all the current serving councillors and the General Manager. The Inquiry also heard from the former General Manager, Mr Hall and a former councillor, Ms McRae. A number of key senior staff and the chairperson of council's OH&S committee were also asked to provide evidence. The Inquiry also heard from a number of members of the community, where they made a request to be heard by the Inquiry and where I considered they had information that may be relevant to the terms of reference.

At the hearing on 27 November 2006, councillors were invited to make oral submissions in reply. Clr Algate and Clr Kennedy accepted the invitation. I also invited any other person whose interests were potentially adversely affected to seek leave to make an oral submission in reply. Mr Grahame Kelly, on behalf of the United Services Union, and Mrs Pam McRae sought, and were granted leave to make an oral submission.

Procedural fairness

In my opening speech, I indicated that I would allow all councillors or their representatives the opportunity to make oral or written submissions in reply to evidence heard during the course of the hearings. I indicated I would prefer such submissions to be made in writing and advised that these submissions could be made at any time during the hearing.

I subsequently indicated that written submissions in reply would be accepted until 1 December 2006. Any other person whose interests were potentially adversely affected also had the opportunity to make written submissions.

To assist in making submissions, a copy of the transcript of the preliminary hearings was provided to council, each of the councillors and Mr Hall. In providing a copy to council, the officers assisting the Inquiry asked that it be made available to staff who gave evidence should they request to see it. Mrs Pam McRae requested access to the transcript during the hearing on 27 November 2006 and access was granted.

As part of the Inquiry process I asked the officers assisting me to prepare a submission containing an analysis of the evidence available to the Inquiry. A copy of their submission was made available to council, each of the councillors and Mr Hall, in advance of the recall hearing on 27 November 2006. In doing so, councillors and Mr Hall were again advised of the opportunity to make an oral and/or written submission in reply.

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 Broken Hill City Council should be declared vacant. In doing so I was required to have regard to three 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 conduct of the elected representatives of council (whether individually or collectively as the governing body of council) including their relationships with senior and other staff of council.

Relationships among councillors and between the councillors and staff have been irretrievably damaged by the inappropriate conduct of some councillors.

There have been numerous inappropriate interactions between some councillors and council staff.

There have been frequent acts of disorder during council meetings.

Councillor Kennedy's behaviour at and immediately after March 2006 committee meeting appears to have been of such a serious nature as to potentially warrant suspension, pursuant to the misbehaviour provisions of the Act. Council failed to deal with the incident in a timely fashion.

TERM OF REFERENCE 2

Whether the elected representatives fully understand their roles and responsibilities and have adequately, appropriately and reasonably carried out their roles and responsibilities in the best interest of all ratepayers and residents.

Councillors generally demonstrated that they had a good theoretical knowledge of their roles and responsibilities. However, the evidence suggests they are

either unable or unwilling to apply that knowledge in the proper exercise of those roles and responsibilities. This was particularly apparent from councillor involvement in operational matters, the manner in which the council implemented its code of conduct and in the use of the media.

Mayor Page failed to demonstrate that he possesses the capacity to fulfil his role in a proper manner.

The flawed manner in which the council has implemented the Model Code of Conduct for Local Councils in NSW has contributed to the problems it has experienced. While the conduct of one councillor has been extremely damaging, all of the councillors must share the collective responsibility for the failure of the council to respond to his conduct in an appropriate manner.

TERM OF REFERENCE 3

Any other matters that warrant mention, particularly when it may impact on the effective administration of the council area.

There is a level of community concern over the apparent conflict among councillors and between councillors and staff.

It is clear that the ongoing conflict between councillors and certain staff has been reflected in their respective comments to the media about each other. This, together with the reporting of the manner in which council meetings are conducted, has served to undermine public confidence in the council. The responsibility for this lies with the councillors and former General Manager and not the media.

Councillors have failed to demonstrate a capacity to achieve a sustained improvement in their conduct and meetings even though they have had the benefit of training and advice.

The council's response to the Inquiry lacks credibility. There is no consensus amongst the councillors as to what is required for the council to be able to sustain a satisfactory standard of performance.

Based on the impact of councillor behaviour since being elected in March 2004, the lack of such a consensus will continue to adversely impact on the effective administration of the council area and continue to undermine public confidence in the council, if it is not dismissed.

RECOMMENDATION

Having regard to my findings, I recommend that:

1. All civic offices at Broken Hill City Council should be declared vacant as soon as possible.
2. An Administrator be appointed for a minimum period of three years.

In recommending a lengthy period of administration, I have been mindful of the damage that has been done to relationships between council and key managers and the need for the organisation to be given sufficient opportunity to heal. I have also been mindful of the damage that has been done to council's reputation and community confidence in it. A period of at least three years will be required to allow an Administrator and the new General Manager to review and oversee the implementation of appropriate strategies to address the challenges facing the organisation and the community as a whole, and to repair key relationships within the organisation and between the council and the community.

ANALYSIS

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

BACKGROUND

Community Satisfaction

The Inquiry obtained copies of the community surveys undertaken by council in each of the last two years. The surveys show an apparent loss of confidence in council by the community and concern about councillor infighting.

The 2005 survey was conducted during the first week of June. The 2006 survey was conducted during the first week of July. Micromex Research, which is an independent consultancy firm, conducted the surveys. The surveys were based on a random sample of 300 residents.

In 2005, 35% of respondents expressed some degree of dissatisfaction with council's overall performance. This increased to 49% in 2006. In a follow up question in 2006, those respondents who were dissatisfied were asked the main reason for feeling that way. The survey report states the most significant reason given was "*too much infighting*".

In the 2005 survey, of those persons who were dissatisfied or very dissatisfied with the performance of council, 71% recorded infighting as the main area of concern. This represented 25% of the total sample. This rose to 85% (27% of the total sample) in the 2006 survey.

Survey respondents were asked what they believed to be the current highest priority issues within the Broken Hill City Council area. In 2005, councillors working together rated as the 6th highest priority with 11% of responses. In 2006, this had risen to the 2nd highest priority, with 17.3% of responses.

Some witnesses appearing before me suggested that the methodology used in conducting the surveys was in some way flawed, citing the use of leading questions. However, it is noted that the council itself clearly had confidence in

the firm conducting the survey; council used its services in 2003, 2005 and 2006. I also note that the report on the 2006 survey states that *“Interviewing was conducted in accordance with IQVA (Interviewer Quality Control Australia) Standards and the Market Research Society Code of Professional Conduct.”*

Complaints to the Department of Local Government

The Inquiry has had access to Department of Local Government (the department) files relating to Broken Hill City Council. They indicate that over the course of the last four years, the department received a number of complaints that appeared to point to the fact that the council was becoming increasingly dysfunctional.

In 2002, Mr Hall’s predecessor as General Manager, Mr Kelvin Matthews raised concerns that despite numerous attempts to advise Mayor Page on his role, the Mayor continued to interfere in day-to-day operations of the council. Mr Matthews sought a section 430 investigation of council.

Following the March 2004 election, and in particular from late 2004 onwards, the number of complaints increased. The department received correspondence arising from a number of incidents and issues including:

- Cllr Algate’s complaints to the NSW Ombudsman about an attempt by the Mayor and then General Manager, Mr Hall, to counsel him for inappropriate interaction with council’s art gallery manager and subsequent media comment by Mr Hall and Cllr Algate in relation to the matter.
- The Mayor’s actions in distributing the Ombudsman’s correspondence to other councillors and the release of the correspondence to the media.
- Cllr Algate’s code of conduct complaint against the Mayor, about the release of the Ombudsman correspondence and the manner in which Mr Hall dealt with the complaint.

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- Complaints made against Cllr Kennedy under council's code of conduct and Cllr Kennedy's subsequent actions in making numerous complaints against councillors and staff.
 - The manner in which council implemented its code of conduct.
 - Concerns about Mr Hall's action in writing to other councillors objecting to the inclusion of Cllr Kennedy and Cllr Algate on his performance appraisal committee.

In response to this correspondence, the Deputy Director General of the department wrote to council on 26 September 2005 and issued the following warning:

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

The Deputy Director General of the department concluded the letter with this statement:

I ask you to draw to the attention of all councillors my expectation of an immediate and sustained improvement. I would ask that you table a copy of this letter at council's next meeting.

Council considered the department's letter at its ordinary meeting of 2 November 2005. Council endorsed a response from the Mayor, which was issued on 4 November 2005. That response effectively blamed two unnamed councillors and what he referred to as the "draft code of conduct" (i.e the Model Code of Conduct) for the problems faced by council. The Mayor said the two councillors had been in conflict with the council since their election, did not follow meeting procedure and repeatedly made negative comments about other council officials in the media. The Mayor claimed, "*In terms of Council's code of*

conduct process, one Councillor in particular is involved with over 120 breaches, totalling 27 complaints and there is no doubt this is politically driven against fellow Councillors and staff". When departmental officers subsequently inspected council's code of conduct files, this statement was found to be incorrect.

The Promoting Better Practice Review and council's response

In light of the concerns arising from correspondence received by the department and local media coverage, the department decided to conduct a Promoting Better Practice (PBP) review of the council. This process involves a departmental review team evaluating the effectiveness and efficiency of the council's operations and giving feedback.

Two departmental officers conducted the on-site component of the review from 23 to 27 January 2006. The on-site review involved a meeting with the Mayor and Mr Hall, conducting interviews with the councillors, staff and community members, attending a councillor briefing session and council meeting and the review of a number of council's policies and other documents and visits to council facilities/worksites. Feedback was provided to the council at the time of the onsite review.

A draft review report was prepared and forwarded to council on 2 May 2006 for consideration and comment. The report made a number of observations relevant to the terms of reference of this Inquiry. In particular it observed:

- *"The review team was disappointed at the poor leadership shown at the political level. It is clear that many councillors are getting bogged down in the detail of running the council and fighting with each other. Many councillors appeared to be unable to see past the current conflicts and provide a positive strategic direction for council."*
- *"Many of the councillors the review team spoke to appeared to lack a clear understanding of their role or their obligations under the council's code of conduct. Councillors were unable to demonstrate an*

understanding of council's strategic direction and many appeared to be unable to focus on the 'big picture'."

- *"Council meetings are chaotic and council appears to routinely struggle to get through its business efficiently. It is clear that council needs to pay particular attention to the way it conducts its meetings to ensure efficiency, effectiveness and transparency."*
- *"Current councillor in-fighting is having an adverse impact on staff morale and producing a culture of 'them and us'. It is also evident that there is a divide between council's indoor and outdoor staff producing a culture of distrust and lack of unity to achieve council objectives. This needs to be addressed as a matter of priority. The review team has made some recommendations for strategies to address this area of concern, such as the establishment of a consultative committee, conducting an employee survey and utilising the "Business Excellence Program."*

Council formally responded to the draft report on 29 May 2006. The department considered the councillors' response (as distinct from that provided by council as a corporate entity) to be unsatisfactory insofar as it pointed to an ongoing failure to recognise their role and obligations.

In the period subsequent to the onsite PBP review, there were a number of significant developments that suggested that despite having the opportunity to learn from the review, the situation at the council was deteriorating further. In particular:

- Clr Steve Baker wrote to the department raising concerns about issues arising from his attempt to seek access to information on Mr Hall's expenses.
- A meeting of council's Corporate Services Committee on 21 March 2006 degenerated into a shouting match between Clr Kennedy and the Chair, Clr Wayne Lee, and later between Clr Kennedy and Mr Hall. Clr Kennedy alleged there had also been a physical altercation between him and Mr

Hall and subsequently made a complaint to the police and sought an AVO against Mr Hall.

- There were a number of issues arising from council's decision to advertise the General Manager's position including the decision by Cllr Pam McRae to resign from council.

In response to these concerns, the Director General of the department, Mr Garry Payne, wrote to the Mayor on 18 April 2006 warning that if the ongoing conflict was not resolved, he would consider authorising an investigation under section 430 of the Act or recommending to the Minister that a public inquiry under section 740 be held.

Cllr Lee wrote to the department in May 2006 to express concern about the council's slow response to his code of conduct complaint about Cllr Kennedy's conduct at the 21 March 2006 meeting of council's corporate service committee. In his letter, he expressed concern that the Mayor had indicated a preference to have Cllr Algate on the conduct committee, contrary to the requirements of the Model Code of Conduct.

In response to these concerns and the councillors' response to the draft report, the final Promoting Better Practice review report, issued by the department on 26 June 2006, included the following comment by the Director General:

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

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

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

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

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

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

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

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

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

This is the only time the Director General has considered it necessary to include such comment in a PBP report. It is indicative of the department's view as to the seriousness of the issues.

On 11 August 2006, the department received council's response to the Director General's comments. The response did not directly address the matters council was requested to deal with within the 28 day period.

In relation to the two complaints relating to the March 2006 meeting of the corporate service committee, the council responded that they were to be dealt with on 4 August 2006. In effect, the matters had not been dealt with in the specified period.

In relation to the second matter, council resolved to include additional independent persons on its conduct committee. However, it did not make any

resolution in relation to the councillor membership of its committee in the instance of the Deputy Mayor not being able to participate. In his response to the Director General, the Mayor again asked for clarification of the conduct committee's membership under the Model Code of Conduct, despite this information having been previously provided several times.

The Mayor's response failed to address the remaining three items raised by the Director General. However in relation to the last item, the Mayor requested that the Director General provide *"benchmark parameters to assist Council in their understanding and discharge of their role in decision making"*.

On 1 September 2006, the Mayor wrote to the Director General advising of the outcome of the council meeting of 30 August 2006, which considered the report of the meeting of the conduct committee of 4 August 2006. The conduct committee recommended that no action be taken on the conduct matters.

The review team identified a number of concerns about council's consideration of the matter, namely:

- The report lacked specific details of the allegations being considered by the conduct committee.
- One of the complainants, Cllr Lee, contacted the department advising that he did not attend the committee meeting, as he was not in Broken Hill and had been unable to give evidence.
- The General Manager, Mr Hall, wrote to the department expressing a number of concerns about the way the committee had dealt with the matter and its findings.
- A transcript and recording of the council meeting revealed some confusion on the council's part as to the committee's recommendations.
- The Mayor restricted councillors from having a full debate of the conduct committee minutes.

Inexplicably, the Mayor wrote to the department again on 6 September 2006 providing a transcript of council's ordinary meeting of 30 August 2006. In the letter, he advised of the following:

I wish to reiterate comments made in my earlier letter regarding the actions of certain councillors and their impact on their fellow councillors and Council employees. I have no doubt that the tape of the meeting and the transcript will reinforce the issues raised in the complaints to the Conduct Committee. Unfortunately the problems identified there and in the Promoting Better Practice Review Report continue to exist and council is struggling to address them.

The department made a recommendation to the Minister for Local Government that a public inquiry be held into council under section 740 of the Act, having regard to council's failure to attend to the matters the Director General required it to address and the fact that after three warnings (including the comment in the PBP report) the council was still apparently unable to resolve the problems it faced.

COUNCILLOR TRAINING

The Inquiry examined whether a lack of councillor training may have been a causal factor in the current situation faced by Broken Hill City Council. While the Inquiry has not been able to reach a definitive view on the quality of training delivered to councillors, it is apparent that the council has afforded the councillors a range of training opportunities. However, the training offered does not appear to have been part of a structured training program. As noted later in this report, all the councillors were able to demonstrate to the Inquiry a theoretical understanding of their role and it is not unreasonable to conclude that the training opportunities afforded to councillors may have contributed to this.

The council does not appear to have kept records of what training has been undertaken by individual councillors. Such records would have been of

assistance in considering what role training (or lack of it) may have had in the behaviour of individual councillors.

The fact that councillors were able to demonstrate a theoretical understanding of their role, yet still engaged in contrary behaviours may suggest that councillor training should not be seen as the panacea for all concerns about the manner in which councillors fulfil their role.

Information given to candidates

The council held a free seminar on becoming a councillor prior to the March 2004 elections. Records provided by the council indicate that a seminar, presented by the Local Government and Shire Association (LGSA) of NSW was held on 7 February 2004. The council provided information on the content of the seminar. Topics included the role and responsibilities of a councillor, working relationships between councillors, the mayor, the general manager and staff, and the code of conduct.

Council also made available to candidates a copy of a LGSA publication "*Becoming a Councillor*". It provides information on a wide range of matters including the role and responsibilities of a councillor, working relationships between councillors, the mayor, the general manager and staff, and code of conduct.

It is positive to note that council as a corporate entity made an attempt to ensure that prospective candidates had the opportunity to be made aware of the role and responsibilities of being a councillor prior to being elected.

Councillor induction training

Council's former General Manager reported to the Policy and General Committee of council on 29 January 2004, on the subject of councillor induction training. He indicated in his report that training for all newly elected councillors, including those who had served previously had been organised for 1 May 2004 and 2 May 2004. The report stated, "*It is essential that all newly elected*

councillors attend the training, particularly the Sunday half day session with senior managers". Records provided by council indicated that the General Manager sent a memorandum to the newly elected councillors on 8 April 2004 that confirmed that the training was to be run.

The program outline for the "*Elected Life*" workshop scheduled for 1 May 2004 indicated that its content included councillor role and responsibilities (including community consultation responsibilities; attendance at council meetings, your relationship with the general manager and staff) and "*Meeting Procedure*". The course included other matters as well. While it is admirable that council organised this workshop, it is clear that the extent of the content to be covered would have limited the depth to which councillors could explore relevant issues.

Subsequent training

Council has provided ongoing training for councillors on a range of topics.

- In November 2004, council provided training to councillors and senior staff on the role of the Mayor, Deputy Mayor, councillors, general manager and senior staff, conflict of interests issues and effective and fair meeting procedures.
- In December 2004, Mr Gerry Holmes provided training on meeting procedures.
- On 29 August 2005, council held a code of conduct workshop for councillors. Records of the workshop indicate that councillors discussed the status of the conduct committee, the committee process, keeping minutes, the composition of the conduct committee and dealing with breaches. The workshop ran from 6.30 pm to 7.40 pm. Council records indicate that all councillors attended except Clr Tucker. Clr Lee arrived late at 6:47 pm and Clr Kennedy left the workshop early, at 6:50 pm.
- Council held a further workshop on 25 September 2005 to formulate a code of conduct specific to its needs. To assist councillors, the former general

manager provided councillors with a copy of the *Facilitator's Guide and Educational Resource for the Model Code of Conduct for Local Councils in NSW* issued by the department.

- In December 2005, council held a 1-day training program on "*Meeting Practice and Chairing Meetings*".
- In January 2006, council held a training session for councillors on the *Privacy and Personal Information Act* and the *Workforce Surveillance Act*.
- On 23 March 2006, council held an evening workshop for councillors covering the code of meeting practice, privacy and committees.
- In April 2006, council arranged a presentation to councillors on the NSW planning system.
- On 31 May 2006, council resolved to invite a well-recognised team building presenter to Broken Hill to help build better relations between council and management and employees.

Training undertaken by the Mayor

The Mayor confirmed during the hearings that he had attended a workshop on the roles and responsibilities of elected councillors in November 2004, a series of workshops on meeting procedures and skills in 2005, a course on the chairing of the meetings, a course on planning for councillors, code of conduct training and the privacy legislation course.

COUNCILLORS' ROLE

Regulatory context

The roles of the mayor, councillors and the general manager are defined under the *Local Government Act 1993*. The roles of the mayor, councillors, the general manager and council staff are further defined in the Model Code of Conduct. Council's current code of conduct is based on the Model Code.

Council's *Interaction Between Councillors and Staff Policy* also reflects the statutory definitions of the roles of the mayor, councillors and general manager.

Councillors' understanding of their role

At the preliminary hearing, all of the councillors demonstrated a strong theoretical understanding of their role. Most councillors also demonstrated a good understanding of the strategic issues affecting council and of council's strategic and management planning processes.

In its report, the department's PBP review team expressed concern that councillors were inappropriately involving themselves in matters that could be characterised as operational in nature.

There is evidence to suggest that there is a substantial gap between councillors' understanding of their role and the manner in which they conduct themselves in relation to operational matters.

Staff, in their submission to the Inquiry complained of a lack of commitment to, and an understanding by councillors of their roles and responsibilities, as well as an ongoing tendency to widely interpret these to suit a particular agenda or situation.

In their submission, staff identified the following specific concerns in relation to councillors:

- there is a lack of focus on strategic issues
- there is a lack of awareness of the importance of long term planning
- there is a lack of awareness and understanding of the broad range of services that the organisation provides to the community
- there is little if any regard to the long term and cumulative effects of council decisions

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- there is a degree of council decision making which is uninformed and made without reference to, or that disregards the clear advice of council's professional officers
 - there is a tendency by councillors to micromanage the organisation and not leave operational matters to the General Manager
 - there is an ongoing lack of confidentiality in councillors' dealings with confidential matters
 - it is difficult to implement council decisions as they are often undermined by councillors, who do not support the majority decision.

In their evidence, a number of senior staff complained of a tendency by councillors to 'micro-manage'. In her evidence, council's tourism manager, Ms Fiona Ellis provided an example of this:

...they just were very hands on, they wanted to become involved in what I would see from my management career as being micro management issues, as to when the streets were weeded and when the footpaths were cleaned, and all those sorts of things rather than the bigger picture of strategic direction for the city... From the very first council meeting I attended which was November 2005, the tourism figures were continually questioned, how the figures were formulated, that they were inaccurate, that they needed to be continually justified, even down to the extent of me providing in recent months tally sheets so that councillors could actually count the dashes and dots on the paper themselves. I was at a loss to understand why this was happening when the figures had been collated in that way for the last 15 years, but that was one example in my area where it was micro managed.

The Mayor, in his evidence, appeared to acknowledge this. On the final day of the preliminary hearings, he conceded that the Public Inquiry had been:

...an opportunity for this council to fully understand their roles and their responsibilities, and I think it is an opportunity for this council to conduct the

meetings and the commitment that the councillors give to the council in a more informed approach. I think this Inquiry can help this council go forward with a better understanding of the Act and the way the council should operate.

The Mayor also acknowledged that councillors do become involved in operational matters and that this raised issues in terms of the relationship between councillors and staff:

Some of the councillors that don't have a good relationship is understandable, they view their roles and their responsibilities in a way where they see what is happening, and what could be happening and as a concerned councillor, they are concerned about making sure that the council does supply good services to the city, they are concerned about whether it is being done in the right way, the appropriate way. So a lot of the issues is by councillors making sure that the council is running the way it should, concerned, so I think that does leads to some of the issues between councillors and staff.

While Cllr Kennedy was able to demonstrate in his evidence a proficient understanding of the role of a councillor as defined under the Act, elsewhere in that evidence, he appeared to take the view that the only limitation on what could or could not be considered by the elected body of council was one of legality. In that evidence, Cllr Kennedy appeared not to contemplate the possibility that while a resolution of council may be legal, the elected body's consideration of the matter may still be inappropriate, given the respective roles of councillors and the General Manager as defined by the Act:

The role of a councillor is to represent the ratepayers and represent the ratepayers' interests, it also is to set policy for council. And when we say policy, that doesn't just include the policies that are written, the written policies of council, it really is any resolution of council, the Act has a lot of grey areas, but there is one black and white area and it is black and white, that any resolution of council if it is not illegal or doesn't breach the Act must be implemented by the General Manager as soon as practicably possible, and it has now been put into

the General Manager's contract, and if resolutions are continually not followed, then now council has a trigger mechanism to do something about it.

Clr Kennedy went on to add:

As I said earlier there is grey areas, and if there is a grey area, then the black and white area which is council resolution takes it over. Unless it has been tested in court then it is a grey area, I don't think council could move a motion for – actually I think council as long as it doesn't breach the Act, then it is up to the General Manager to say that that - the General Manager or the Mayor to say that that may be an illegal motion, then a legal opinion is not good enough, it has to be a precedent set in law, or unless it is ruled out of order, then council has the prerogative to move any resolution in council, and the General Manager must implement it.

The department's PBP review team identified the negotiation of an industrial agreement with the Barrier Industrial Council ("the BIC") in relation to council staff as an example of where councillors stepped outside of their prescribed roles with potentially adverse consequences. In the PBP Report they stated:

"it is concerning that councillors are taking an active role in the day-to-day operation of the council, that is the negotiation of the detail of the agreement, at the exclusion of professional staff ... The agreement negotiation committee should consist of representatives with appropriate qualifications to negotiate industrial agreements. The negotiations need to be made in the context of council's financial position, service requirements and direction set by the management plan ... It is concerning that council has formally agreed to a number of employment conditions without full understanding of the ramifications for the organisation and how these changes may prejudice council and its employees.

It should be noted that the resolution to form the committee of councillors was adopted unanimously. No councillors apparently recognised that it was inappropriate to be directly involved in such negotiations.

In their response to the draft report, councillors rejected the review team's concerns. Councillors believed that as they have overall responsibility for the financial management of the council, they should have been involved in the negotiation of the agreement.

In their evidence, the Mayor and Clrs Algate and Kennedy continued to justify the involvement of councillors in negotiations with the BIC on the basis that this was the historical practice. In doing so, they appear not to recognise that while this may have been an appropriate practice under the former *Local Government Act 1919*, under the *Local Government Act 1993*, this is no longer an appropriate role for the Mayor or any other councillor.

Clr Kennedy characterised the situation as one of the 'grey areas' referred to in his earlier evidence that was made 'black and white' by virtue of a lawful council resolution.

Of particular concern was the Mayor's suggestion that senior staff could not be trusted to undertake negotiations on an agreement in which they had an interest:

One of the huge concerns that I have that senior staff - when I say senior staff, are part of the agreement ...they receive all the conditions that the council agreement delivers. So for the senior staff to negotiate their own agreement, I don't think it would be appropriate.

The Mayor subsequently acknowledged that the General Manager did not benefit from the provisions of the industrial agreement.

Another area where councillors have intruded into operational matters is through the activities of its *Special Projects Working Group*.

At its ordinary meeting of 26 April 2006, council resolved to form a special projects working group to be chaired by Clr Baker, comprising of Clrs Kennedy, Algate, Tucker, Steer and Page. The stated purpose of the committee was to

“address all ratepayer complaints or requests and formulate recommendations for consideration at the following full council monthly meeting”.

At its first meeting on 24 May 2006, attended by all six councillors, the special projects working group unanimously adopted the following resolutions:

- That weeds and rubbish on the footpaths and nature strips at Kanandah Road Industrial Estate be referred to the attention of the June meeting of the Technical/Environmental Services Committee.
- That Broken Hill Council be provided with a report on computer operating systems and the cost of the current system.
- That all ratepayer requests suggestions and complaints, not relating to staffing issues, be referred to the Special Projects Committee for consideration and action.
- That the public be advised via council’s Saturday newspaper advertising, to contact council’s special projects committee should they have problems, complaints or ideas they would like addressed by council.
- That council’s then general manager, James Hall, empower all staff so that they can have a positive influence on their workplace and its direction.
- That the storm water drain at the southern end of Creedon Street be cleared, as due to the build up of silt, local residents are experiencing a backup of stormwater in the area.

It is inevitable that residents will approach their elected representatives with concerns or suggestions about operational matters. Consistent with their representative functions, councillors should forward these to the general manager for his or her consideration and any follow up action he or she considers appropriate. However, for councillors to require resident complaints to be referred to them *“for action”* and to actively encourage residents to do so, by

placing advertisements in the media, represents an unacceptable intrusion by councillors into operational matters.

Given the respective roles of councillors and the general manager as defined in the Act, day to day operational matters should not be the subject of deliberations and decisions at council and committee meetings.

In response to concerns raised in the PBP report, the special projects working group no longer exists. However, the resolutions are indicative of what the group became involved in and it highlights how the councillors involved perceived their role.

In his evidence Clr Baker still does not appear to recognise that much of the business dealt with by the special projects working group was operational in nature. Clr Baker maintained that the committee was not intruding into operational matters as it was not directly issuing directions to work crews:

...a lot of the issues were along the lines of a ratepayer requesting a problem with a tree that possibly needed pruning, a pothole in a road, it might have been an idea about developing new business, the committee met with the Barrier Industrial Council or members of the committee to discuss a proposal to encourage new business to town, and those sorts of things aren't operational in the sense that councillors weren't then going to the tree lopping team and saying, go to this address and lop this tree, that has never happened.

Similarly, in his evidence given at the recall hearings, Clr Kennedy insisted that the above matters were legitimately considered by the special projects working group as they were in fact policy matters. Given the nature of the matters identified above, this view is demonstrably incorrect.

Another example of a situation in which councillors failed to demonstrate a clear understanding of their role is the council resolution adopted at the ordinary meeting of 31 May 2006, in relation to the transfer of a lease for the vermiculture site at council's landfill. At the meeting, it was moved that two councillors together with council staff should meet with representatives of the

company to renegotiate the lease. Council subsequently unanimously resolved that the councillors attend the negotiations as observers. Irrespective of whether the councillors were directly involved in the negotiations or were there as observers, the councillors' involvement represents an inappropriate intrusion into an operational area. As Cllr Kennedy conceded in his evidence, by their mere presence, the councillors influenced the negotiation process.

What is particularly concerning is the reasoning that underpinned the motion that councillors be involved in the negotiation process. Cllr Kennedy, the mover of the motion explained his reasons as follows:

The reason I put my hand up and believe that councillors should have been present was because I had no faith in the Manager Environmental Services, Peter Oldsen, to act in the best interests of the council or the community.

Nowhere is the apparent ongoing inability by some councillors to understand their role more apparent than in their interaction with and relationships with staff. This issue is discussed later in the report.

The exercise by the Mayor of his ceremonial functions

One of the roles of the Mayor prescribed under section 226 of the Act is “to carry out the civic and ceremonial functions of the mayoral office”.

One of the submissions received by the Inquiry from the Mayor's former secretary, Jennifer Evans, raised serious concerns about the Mayor's capacity to fulfil this role in a satisfactory manner. Ms Evans was employed as the Mayor's secretary from August 2004 to August 2006.

Ms Evans was particularly concerned about the manner in which the Mayor conducted citizenship ceremonies. In her submission, Ms Evans explained that there are specific requirements for the conduct of Citizenship Ceremonies

Ms Evans stated that the Mayor insisted on having citizenship ceremonies in his office and refused to follow the correct procedures. He would not accept advice that the manner in which he was conducting the ceremonies was not correct.

Ms Evans described the way in which the Mayor conducted citizenship ceremonies as follows:

Before each Ceremony, I would take the Queens Portrait and Australian Coat of Arms into the Mayor's Office and display them appropriately.

I would escort the new citizen into the Mayors Office and introduce them. The Mayor would simply say "this is just a quick Ceremony", hand them a Pledge card and then say "you just read this out after me". On completion, he would shake their hand and say "congratulations mate, you're an Aussie, now all that's left is for you to have a beer with me" – every single time.

He would hand them their Citizenship Certificate and medallion and have a brief chat regarding where they are from, do they like Broken Hill etc and then it was all over. As the Ceremonies were mostly conducted in early afternoons, the vast majority rejected the Mayors offer for a drink. Each Ceremony lasted approximately five minutes.

The Mayor gave evidence that appeared to confirm some of the above observations:

When people come to my chamber to have their naturalisation ceremony done, it is displayed with friendship, the Broken Hill culture. We go through what your rights are. In the middle of the day some people have had a cup of tea, a cup of coffee. If it is late in the afternoon, yes, they are offered a drink of beer or alcohol. If it is late in the afternoon, like 4.30, 5 in the afternoon. On 99 per cent of the occasions that people are offered a cup of tea, they either accept a cup of tea - a few weeks ago that different people came in which were from the hospital and they enjoyed a glass of wine with the Mayor in the upstairs meeting room. But 99 per cent of the time when I do go through the pledge, and when the pledge is completed, I always say "Congratulations, now you are an Aussie." The other part of it doesn't take place, and 99 per cent of the time the people are not offered a drink of beer, that's not true and not correct.

Former councillor, Pam McRae also gave evidence on the manner in which the Mayor exercised his ceremonial functions:

... it was Australia Day several years ago now, when a lady, there was only one naturalisation ceremony that day and the lady was called up to the stage, and the whole ceremony went something like, good day, lovey, how are you? Read this after me, congratulations lovey, you are now an Aussie, go and sit down, and the lady whispered something in his ear, and he said ... (the lady) wants to go to church at 9 o'clock, well you just go when you are ready lovey.

To me that was appalling, the State member was sitting in front of me and he was just about under his chair in embarrassment, and I think that was the last naturalisation ceremony on Australia Day. Everybody in the hall was absolutely appalled.

Another instance was the Carnivale, the first time, I think it was about the first speech that the Mayor made which I suppose gives him a little bit of lee-way, he actually forgot what he was making the speech about on the day, and I was standing at the back of a crowd of about 2000 people and people were just hiding their heads, and saying what have we done...

Clr Cutjar provided the example of the Mayor's conduct at the June Bronhill funeral:

I wouldn't have expected anyone to get up and say "It gives me great pleasure to be here today," at a funeral. A state funeral with the Deputy Prime Minister in attendance. That to me is the ceremonial. Then to go on and say, "I asked two people to give me a speech, to write me up speeches, but I am not going to do anything, I'm going to speak from the heart," and rambled on from everything else except what we were really there for, until the end of his speech.

COUNCILLOR RELATIONSHIPS WITH STAFF

Regulatory context

The Act and the Model Code of Conduct (the Model Code) define the roles of and relationships between council officials. The council also has an *Interaction Between Councillors and Staff Policy* that prescribes protocols for interaction between staff and councillors. However, the procedures for dealing with complaints under the policy are different to those prescribed under the Model Code.

Section 440 of the Act permits councils to adopt provisions that supplement the provisions of the Model Code. These may be more onerous than those contained in the Model Code but will have no effect to the extent that they are inconsistent with the Model Code.

Given council's *Interaction Between Councillors and Staff Policy* purports to regulate conduct that is also regulated under the Model Code, to the extent that it is inconsistent with it, the provisions of the Model Code will apply. This is an issue that the council has had difficulty in coming to grips with as indicated by the manner in which it dealt with complaints about breaches of that policy. The conduct committee formed a view that such breaches were beyond its jurisdiction.

Relationship between councillors and the former general manager

The ongoing conflict between the former General Manager, Mr James Hall and a number of councillors is a recurrent theme in correspondence received by the department in relation to council.

In his evidence, Mr Hall referred to 'difficulties' he had with certain councillors. Initially, he only had difficulties with Clr Kennedy and Clr Algate, but from 12 months ago he said he began to also have difficulties with Clr Baker. He described these 'difficulties' as "*essentially personal attacks in the media, attacks at council meetings, unrelenting really*".

Both Mr Hall and Cllr Kennedy gave evidence that they enjoyed a good relationship during Cllr Kennedy's first term on council. Cllr Kennedy gave evidence that the relationship deteriorated after he made a protected disclosure to ICAC in August 2004. However Cllr Kennedy also gave evidence that prior to this, he had a number of concerns about Mr Hall's performance in terms of his knowledge of the Act, council's operations, meetings procedure and the implementation of council's resolutions. Cllr Kennedy said that he gave Mr Hall the benefit of the doubt at first but became concerned when there was no improvement after 12 months.

Mr Hall gave evidence that his relationship with Cllr Algate began poorly. When Cllr Algate was a candidate for election to council, he requested information about councillors' travel expenses. Mr Hall said he inadvertently gave him incorrect information. Cllr Algate gave evidence that he asked a question about the accuracy of the figures from the gallery at a council meeting four weeks prior to the election and was humiliated by Mr Hall:

I was, as I said I was humiliated, it was indicated that I was a fool, I knew nothing about the council's operation, I didn't have access to the figures, and a whole host of other things.

The relationship deteriorated further following an incident early in Cllr Algate's term as a councillor when Mr Hall, in the presence of the Mayor, counselled Cllr Algate for inappropriately interacting with a member of staff.

Mr Hall gave evidence that his relationship with Cllr Baker deteriorated after Cllr Baker sought access to information about Mr Hall's personal expenses:

...when I was out of the town Councillor Baker went into the finance department, and pressurised one of the accounting people to show my expenses on the computer, and I believe there was a bit of surfing. But he didn't really get the information he wanted. When I returned I found out about that, and I basically sent him a letter stating that you know this is incorrect procedure to handle it in this manner, and he then went into the media and made a

number of statements which were defamatory, defamatory, and that is when I took legal advice, and I sent him a lawyer's letter warning him that unless I had an apology I was going to take this matter further. He did apologise, and subsequently I produced all my expenses, and I think it is true to say there was no glaring abnormality about the expenses.

Clr Baker offered a different perspective on the incident:

Well, I went to the Mayor to request the information, the Mayor said that I was within my rights to request, to have the information supplied, the General Manager disputed that fact. I went to council meetings to ask when the information would be forthcoming, I was continually denied. And it ended up with the General Manager, the Mayor rang me for probably five days prior to last Christmas, informing me that the General Manager was taking legal action against me. That never happened, the General Manager sent a threatening personal letter under his signature as Broken Hill City Council General Manager. But apparently it had nothing to do with council, it was personal, but he did sign it as the General Manager, threatening me with legal action if I should continue to request the information. Obviously he felt that there must have been something embarrassing in the report. Interestingly enough after Christmas the report was made public, it wasn't confidential, as I assumed it shouldn't be, and there was some I guess questionable expenditure in there, but nothing that was too untoward. I was basically following up a request from a ratepayer.

As the above evidence about Mr Hall's threats of legal action against Clr Baker suggests, Mr Hall made a significant contribution to the deterioration of his relationship with Clrs Kennedy, Algate and Baker by needlessly antagonising them. Other examples of Mr Hall's provocative behaviour includes:

- Comments to the media on the outcome of Clr Algate's complaint about him to the NSW Ombudsman on 16 December 2004 which included a statement that *"I don't think it's the Broken Hill tradition to go dobbing on people"*.

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- The manner in which he dealt with complaints made by and against Cllr Kennedy under the code of conduct.
 - A letter he issued in July 2005 to all but two councillors, Cllrs Kennedy and Algate, objecting to their inclusion on his performance appraisal committee on the basis that they had previously made complaints about him under the code of conduct and to ICAC and the Ombudsman.
 - Issuing a media release in January 2006 attacking Cllr Baker.
 - An incident in a meeting in the Mayor's office on 20 July 2006, in which, according to Cllr Algate and the Mayor, Mr Hall said to Cllr Algate words to the effect: *"The council staff all hate you, absolutely hate you! The staff feel that you are a stupid, bitter and twisted person who is bitter because you were a failed council officer and I share those views!"*

While Mr Hall may have contributed to the poor relationship he had with Cllrs Kennedy, Algate and Baker, it would seem from the evidence that those councillors behaved with undisguised hostility towards Mr Hall in council and committee meetings.

A number of councillors gave evidence that this hostility was manifested in a tendency to constantly challenge answers provided by the General Manager in meetings. Former councillor, Ms Pam McRae gave evidence that Cllrs Kennedy, Algate and Baker would deliberately seek to provoke Mr Hall at meetings:

I actually think that he was deliberately pushed into a position where he lost his cool, and he said things that he probably shouldn't have said. At one council meeting I had the displeasure of sitting ... in between Councillor Kennedy, Councillor Baker and Councillor Algate, and they actually scored themselves on how much they upset him for the night, and I just thought that was appalling.

While this evidence was disputed, it is apparent that by the end of his employment with council, the relationship between Mr Hall and certain councillors had degenerated to a point where it had become poisonous. At his

last council meeting on 26 July 2006, the minutes indicate that Cllr Lee sought approval from the Chair to say farewell to Mr Hall. While the Mayor acceded to this, Cllr Baker insisted that it would need to be the subject of an urgency motion. When Cllr Lee subsequently expressed appreciation to Mr Hall and extended best wishes for him and his family, Cllr Kennedy drew council's attention to the fact that a journalist at the local television station was also leaving Broken Hill and a member of staff employed in the visitor information centre had resigned and that they too should be acknowledged.

Decision to advertise the position of general manager

The council resolved to advertise the position of general manager and subsequently decided not to reappoint Mr Hall upon the completion of the term of his contract. The Inquiry considered this matter having regard to the terms of reference.

In his evidence, Mr Hall suggested that the decision by council to advertise his position was somehow linked to a deal between the Mayor and the minority councillors. There is no evidence to support this view. On the contrary, the evidence of a number of councillors indicates that there was widespread concern about Mr Hall's capacity to fulfil his role effectively, arising from his lack of knowledge and experience of local government and his ongoing tendency to criticise council and councillors in the local media. It is apparent that these concerns were raised on a number of occasions during the appraisals of the General Manager's performance.

According to Cllr Turley the General Manager's use of media was identified as being of concern by the LGSA, which oversaw the appraisal process:

... it was a concern of the performance review, and it was actually identified by the LGSA who actually assisted in monitoring the review that is on-going, his behaviour was on-going. In the first review it wasn't as big an issue to me, because I thought at times you needed to defend yourself in the media, so when the ... LGSA staff member pointed out that this was actually a breach of

protocol and due process, it was evident that we needed to try and address that.

According to Clr Turley, the issue of Mr Hall's use of the media was raised in three appraisal reviews. When he continued to engage in this behaviour, the issue was raised in a council meeting. At its ordinary meeting of 30 November 2005, council unanimously resolved *"that the General Manager be given an official warning to refrain from criticising Councillors and criticising Council decisions."*

Despite this, as indicated above, two months later, in January 2006, Mr Hall issued a media release entitled *"General Manager Requests a Fair Go"*, criticising Clr Baker.

Section 334 of the Act confers on councils the power to appoint a general manager. The decision by council to advertise the position of general manager was one that lay within its discretion. There would appear to have been legitimate reasons that underpinned that decision. On balance, there is no evidence to indicate that the recruitment process for the general manager's position, which was overseen by the LGSA, was conducted in an inappropriate manner.

However, the decision to advertise the general manager's position has proved to have had a divisive impact both within council and more broadly across the community. A number of members of the community wrote to the Department of Local Government objecting to the decision. A petition was also circulated amongst staff and members of the community in support of Mr Hall. A number of staff attended the ordinary council meeting of 28 June 2006, apparently to support the General Manager. In his initial submission to the Inquiry, Clr Algate complained that during that meeting:

"...a group of James Hall supporters, (about 15 relatively junior staff) jeered, shouted and booed when I raised and was speaking on a matter concerning a council staff member using council resources during council hours to telephone

council employees on leave, rostered days, maternity leave etc to call into council's office to sign a petition of support to retain James Hall, this was long after the council had made a decision not to short list Mr. Hall for the position. The mayor did nothing to restore immediate order."

Clearly such conduct is inappropriate, representing an act of disorder and is potentially in breach of a number of provisions of the code of conduct.

Relationship between councillors and the current general manager

While there is evidence to suggest there is a positive relationship between the current general manager and councillors, it is of concern that the relationship between Clr Kennedy and the new general manager appears to be strained.

At the ordinary council meeting of 25 October 2006, Clr Kennedy attacked Mr Zaknich. When called on to apologise, he proceeded to sarcastically apologise for *"the terrible way Mr Zaknich had behaved towards him."*

In his submission dated 16 November 2006, Clr Kennedy criticised Mr Zaknich, stating he had already made a number of mistakes. In particular, Clr Kennedy criticised Mr Zaknich for the way in which he put together the staff submission to this Inquiry and the manner in which he dealt with the code of conduct complaint against Clr Kennedy about his conduct in the Corporate Services Committee meeting of 21 March 2006. Of particular concern are Clr Kennedy's comments that suggest that he has been talking to outdoor staff about Mr Zaknich's performance. Clr Kennedy indicated that he had, *"been informed by a number of council employees he is yet to introduce himself to anyone at the council yard. They have already started to make derogatory remarks about Frank. Frank has put too much trust in the inner circle of management."*

Relationship between councillors and staff

Council's senior staff are an important conduit between the governing body and operational arm of the organisation. A strong and cooperative working relationship between councillors and senior staff is therefore vital to the ongoing

effective operation of a council. Evidence heard by the Inquiry points to an irretrievable breakdown in the relationship between councillors and senior staff at council.

The staff submission to the Inquiry expressed concern that *“...a range of events and occurrences over an extended period of time involving the conduct of and conflict between elected councillors and Council staff has meant a breakdown in good working relationships and has detrimentally impacted on the ability of the organisation to achieve its stated vision, mission and to live to its core values.”*

In their submission, staff identified the following concerns:

- There is a lack of respect for professional staff
- Their professional integrity and credibility is often placed into question (publicly) and they find it difficult to maintain pride in their work
- Morale and confidence in their own work suffers as a result
- They find it difficult to report objectively and without “fear or favour”
- They find it difficult to retain or engender trust or respect in the elected body
- They are constantly subjected to the “backwash” from conflict between elected councillors in the media
- They are often as a result, the target of misplaced accusations by members of the public
- There is decreasing interest (notwithstanding an ongoing desire) as a result, in rebuilding good working relationships with the councillors
- They are concerned that their employer is as a result, unable to maintain a positive, safe and healthy working environment and one free of harassment, bullying and inappropriate interactions between councillors and staff

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- Their employer will be unable to retain and attract skilled employees in such an environment particularly where the local government industry sector is already suffering an acute skills and staff shortage.

In their evidence, many senior staff endorsed these views, referring to a breakdown in the relationship between councillors and staff and commenting on a level of distrust shown by some councillors towards senior staff and a lack of respect for their professional opinion.

Council's human resources manager Ms Lyn Treleven, who had been employed by council for nearly 16 years, commented in her evidence on the deterioration of the relationship between councillors and staff:

In my position as human resources manager I have had to deal with staffing matters in relation to, in this context we are here today, in respect of councillors and staff. I have seen a change in the amount of involvement of councillors in staffing matters. They are probably the worst - the issues that I found most different. I found there has always been a huge respect of councillors, and most staff always working towards that relationship between councillors and staff, and now I see a distinct division between the two.

Ms Treleven went on to comment on a lack of respect shown by some councillors towards staff:

I believe that over the, particularly the last couple of years, there has been an increase of questioning of staff, ability, of credentials, of why they get paid certain amounts of money, I have seen for myself when I have come to council meetings the attacks continually on the General Manager. I have personally been involved with the situation with a particular councillor and I have also had to deal with staff as a result of an incident involving a particular councillor.

The former councillor, Ms Pam McRae, commented on the questioning of staff in her testimony:

Ms Fiona Ellis came to this council some 12 months ago as the tourism manager, and there is constant interference in what she does, whether she should be going to various conferences or whatever, and it just seems to be constant questioning of her every move to the point where she is quite distressed, she was actually on stress leave a little while ago. It is not good, it doesn't look good for the staff, it doesn't feel good for the staff to know that their manager is under that sort of stress.

In her evidence, Ms Ellis indicated that while she contemplated taking stress leave, she did not take it after deciding, “*not to give in*”.

Ms Ellis recounted an incident in which she inadvertently gave incorrect tourism numbers to council:

...in one instance I did make a mistake, and unfortunately I didn't realise not having been here for that period, that incorrect figures had been given and it was almost as if I had blasphemed the Pope, it was simply a clerical error and human error, and when you have humans working for you human error happens, but it was made definitely into a mountain of almost the implication that I was trying to intentionally mislead council, and it wasn't, it was simply wrong figure in wrong column.

Ms Ellis went on to describe how Cllr Kennedy having congratulated her, withdrew his congratulations and the impact this had on her staff:

... the reaction of Councillor Kennedy at the time was very virulent and he staunchly withdrew his congratulations for tourism, not realising that while he may have been having a go at me he was also hurting the 23 people that are part of my department, but it was as if a terrible thing had been done...

In her evidence, Ms Ellis described the impact this treatment of senior staff had on other staff:

I think it is very difficult, particularly being a senior manager of council, when staff managers see their senior managers being treated in a manner that they

don't think is ideal, they then wonder what voice they have. Because if the senior manager can be treated like that, then if you are a little bit further down the food chain, then what hope do you have to be listened to? So I think that that has probably been the root cause of some of the lack of spontaneity and enthusiasm.

Cllrs Baker, Algate and Kennedy gave evidence to the hearing after the senior staff had completed giving their evidence. Cllr Baker offered the following perspective on the perceptions by staff, in relation to the way they are questioned by councillors:

...the previous General Manager encouraged councillors to debate senior managers in committee meetings, and it is a process that I didn't think was ever very good ...there has been times when we have been openly encouraged to debate senior staff, that obviously causes conflict because then the senior staff become quite political in the fact that they could get a feel of whether certain councillors are or aren't going to support their recommendation and they may seek to gain the numbers, so to speak.

Mr Hall's evidence in relation to staff attendance at council meetings tends to support the veracity of Cllr Baker's perspective:

I encouraged middle managers to come along (to meetings) as well, because reports pertaining to their area were discussed, and I thought it would be good of them to take some more responsibility. But I also thought it would be an exercise in trying to build a better relationship between staff and councillors. Some of the councillors made comments about when I first did it they thought that I was trying to get the numbers on my side, but that certainly wasn't my intention at all. So with the committee meetings, generally we had the senior manager, and the middle managers of that particular area, and then when it came to the council meeting, there would generally only be the senior managers, but possibly six to eight other staff members would attend out of interest. I should say that none of those meetings were compulsory, so the staff

didn't have to attend committee, or didn't have to attend council meetings apart from senior staff.

From Cllr Kennedy's perspective, staff were not intimidated by his manner or the tone of his questioning, but by his knowledge and honesty:

I have no doubt that the staff feel intimidated, knowledge will always intimidate people. My understanding is the rules will intimidate people. My honesty will intimidate people...

Cllr Kennedy's own evidence in relation to the incident involving Fiona Ellis suggests that the aggressive tone of his questioning may have caused her some distress:

The staff believe they are not being respected because most of their complaints were because they were questioned on reports. They put reports before council for discussion and when they are questioned, when the reports are questioned, because I refused to question staff, when the reports are questioned they take some sort of offence. The manager of tourism, for example, one of the reports that was questioned, was in fact when I brought up that the figures had been changed ... to NSW tourism. I said, "How can councillors be informed in such a manner to know how the trends of tourism up or down, how can we make policy decisions on tourism?" The manager of tourism began to debate the issue, and I called a point of order through the Chair and said, "I am not debating staff, I am here to debate councillors. We make the decisions." I know the manager of tourism took offence to that because she stated in her evidence she took offence to that. She also took offence because she went out the front crying. I don't know why someone would go out the front crying just because they are being told that's not - they haven't even been told. I have debated in council saying - I moved a motion saying that I wanted councillors' figures as they had always been.

The Inquiry heard evidence that council's senior staff held a perception some councillors did not trust them. There is evidence to suggest that their perception is accurate.

Clr Kennedy, in his submissions to the Inquiry, in response to the evidence given by staff to the Inquiry, discloses an open and personal hostility to them. In those submissions, he personally attacks council staff, questioning their competence and integrity.

The evidence given at the hearing suggests that this distrust of staff in part drove the involvement of councillors in operational matters. Asked directly whether he trusted staff, Clr Kennedy responded:

No, I do not. No, I won't say that. I do not trust the majority of the council staff that gave evidence before this Commission. I trust a lot of council staff and I trust the word that they say, I trust what they say to me, I don't automatically believe it, but I do trust it.

Elsewhere, Clr Kennedy commented:

I don't like to be in the same room alone with council staff, I don't trust them, I don't trust what they are going to say, I don't always believe what they say. I know for a fact what they say happens in the meetings regularly does not happen.

In their evidence, Clrs Baker, Kennedy and Algate explained the staff submission to the Inquiry and the evidence given by senior staff as having been orchestrated, by senior staff.

Clr Baker referred to a concerted campaign by a minority group of senior staff who, together with members of the community had set out to discredit the council. Clr Baker indicated that he believed council's human resources manager was the ringleader:

I think that we have a situation with some senior managers that are certainly ringleaders and encouraging other staff to follow their ideals and beliefs. I think

there's members of the community that have certainly gone in that direction, that have put out a concerted effort to discredit the council with no substance to many of their claims.

Clr Algate explained the staff submission to the Inquiry in the following terms:

I would say that I would blame not exclusively, but predominantly, those staff officers that were here today and last Wednesday, those people who had some significant input to criticising councillors, and criticising - generally getting off their chest all sorts of things. It seems obvious to me from what I have heard, and it is only hearsay, so it may not hold any water, that allegedly nobody other than a handful of people on the top floor of the council's admin building, had any input to the council's submission. And the reason I find that if it is a fact, and I believe there is some merit because I know certainly that some people who I have spoken to from the outdoor staff particularly, a couple that have come to me, put it that way, have said that they haven't been asked anything, they haven't had any input, and in fact they don't necessarily agree with what has been suggested.

Asked to explain the staff submission, Clr Algate referred to a loss of respect by staff for councillors over the previous two and a half years:

I feel that the former General Manager tended to encourage staff to disregard councillors or not show them the respect that was becoming of their station. I have never seen in my lifetime staff address councillors in the way some staff have. And that sort of approach must be bred somewhere along the line

In his evidence, Clr Kennedy referred to a 'gang element' within the council. Asked whom he was referring to, Clr Kennedy identified the human resources manager, Lyn Treleven, the operations manager, Peter Schindler, the chair of council's OH&S committee, Gary Schindler and Peter Miranda:

The organisation had been become a very sick organisation, staff without a doubt - there is a real Mafia type gang element - not Mafia as in the Mafia, but that is how it could be perceived - within council. I believe a lot of people were

scared of this little inner circle of managers, they are scared to stand out and speak against them.

The current General Manager was asked if he had any reason to believe that the views expressed by council staff have been contrived in any way. He responded *“No, quite the opposite.”* It should be pointed out that the staff who gave evidence at the hearings did not volunteer but were requested to do so by the Inquiry.

As reflected in the submission made to the Inquiry by the United Services Union, the views expressed in the staff submission may not necessarily reflect the views of all staff. However, the current General Manager, Mr Frank Zaknich, gave evidence that indicates all staff had the opportunity to contribute to the submission before it was made.

In their evidence, both Clrs Kennedy and Algate gave evidence that they enjoyed a good relationship with outdoor staff as distinct from indoor staff. Asked to describe the relationship between councillors and staff, Clr Kennedy gave the following response:

Well, again it is a very, it is a generalisation, you are putting staff in as one complete body. They are individual people who have alliances and allegiance to different people. I could say without a doubt that the council staff in the yard and three-quarters of the administration building is very supportive of Councillor Algate, myself and Baker, and have a great distrust probably for the other eight councillors. As for the people that gave evidence, it is quite clearly it is the opposite for them.

Clr Algate offered the following perspective:

... when I was an employee on the council, I got on very well with most of the outdoor staff, not everybody, but most of the outdoor staff. I thought I was well accepted by most of the indoor staff, as I said to you earlier I am not so sure now.

Asked how the relationship between councillors and senior staff could be repaired, Clr Baker gave the following response:

I think to change the culture you have got to change the people and to change the people you have to change the people.

In his response, Clr Kennedy suggested:

...it is quite clear that staff must at all times show the respect councillors are due and not criticise the body. Their first allegiance is to the council as a whole, the councillors are the governing body, the councillors first allegiance is not to the council as a body but to the community. So the way forward is counselling, disciplinary action, and if there is no change to that behaviour, then dismissal.

Staff attendance at meetings/council's response to OH&S concerns

A number of staff gave evidence that indicated that attendance at council meetings was not something they look forward to. One staff member described meetings as “embarrassing”. Another described them as “distressing”.

The council's corporate service committee meeting of 21 March 2006 appears to have had a considerable impact in shaping staff attitudes to council meetings and councillors. As described below, that meeting degenerated into altercations involving Clr Kennedy and Clr Lee and Clr Kennedy and Mr Hall.

Council's human resources manager, Lyn Treleven had to deal with the impact of the meeting on staff. She gave the following account of the relevant evening and its aftermath:

I was working late, and Jim Leary, the Assistant General Manager at that time came into my office after the meeting and he was visibly upset. He was crying and basically saying, I don't know how much more of this I can take. I then pretty much followed him and Cheryl around to the General Manager's office. Councillor Steer from my memory was there as well, Judy Parr and Fred Banning. And they were all visibly shaken, Judy was crying, Cheryl was crying

and physically looked quite ill. So I had a group of more senior staff who were pretty much in a state of turmoil

The next day Ms Treleven stated that she:

... asked those council officers who attended to perhaps as part of the healing process to write their feelings down and also because I had been put on notice the night before, the Mayor had told the General Manager that Councillor Kennedy and Baker had gone down and lodged an alleged assault by James on Councillor Kennedy. I could foresee that perhaps this was going to become a legal matter, and the staff needed to put down I believed what happened as soon as possible after the event. They did that, however, one thing that came out of that was that they wanted me to keep the information as confidential as I could. They didn't want their statements for fear of retaliation I guess, that they didn't want their statements for public knowledge in any way. So I kept them myself. The main issue there was the staff wanted to know what can we do to stop this in the future. At the end of it was considered that I believed it was an occupational health and safety matter, and that there is an obligation to have a safe working environment for all staff, emotionally as well as physically, and that I believed that we should put our feelings to the occupational health and safety committee.

At the time Gerry Holmes was at council providing I think to the councillors a Code of Conduct on meeting or training, one or the other. I then spoke with Gerry Holmes, and he was willing to discuss the matter with me. He also requested that he speak to each of the individual members, which he did, and from that and the advice that he then provided to me I prepared a report for the occupational health and the safety committee and pretty much from there the OH&S committee took it over and tried to address the issues.

The Inquiry obtained statements made by staff in relation to the incident. These confirm the veracity of Ms Treleven's testimony. The following is a sample of comments made by staff about the personal impact of the incident:

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- *“In the longer term, I am not certain that I can continue in my current position. The sense of frustration and stress created by various events involving Councillor Kennedy in particular have led me to question my desire to continue working with the Broken Hill City Council.”*
 - *“I just feel powerless about this because nothing will change and I will continue to be subject to this sort of behaviour and effects of it by Cllr Kennedy at meetings.”*
 - *“This incident has left me feeling hesitant towards Councillor contact....I still feel frightened and fragile”*
 - *“As a committed member of council, I believe I work diligently to enhance the relationship between councillors and staff, and therefore do not believe I should be subjected to this sort of behaviour.”*
 - *“Although not directly involved in the incident, I continue to feel quite shaken by the experience for several days”.*

As Ms Treleven indicated in her evidence the incident was reported to council’s OH&S committee. The OH&S committee issued a memorandum to the general manager on 6 April 2006 raising concerns about the impact of councillor behaviour on staff. Amongst other things, the committee made the following recommendations:

- That the General Manager forward the committee’s concerns to the attention of the Mayor
- That the General Manager seek from the Mayor the following commitments:
 - That the matter be raised with council
 - That chairpersons of committees of council be reminded of their obligations to ensure the meetings are conducted in accordance with the Code of Meeting Practice

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- That councillors seeking to intimidate staff be brought to order immediately
 - That the General Manager advise staff that should they feel intimidated at meetings they may leave immediately
 - That council consider the presence of security personnel at meetings

The General Manager responded on 13 April 2006 advising that he had forwarded the committee's concerns to the Mayor and had advised staff that should they feel intimidated at meetings they may leave immediately. While the General Manager is responsible for staff matters, it was appropriate that he refer the concerns to the Mayor as requested by the committee given that he is in a position to directly influence the conduct of meetings in his capacity as Chair.

A further memorandum from the General Manager dated 2 June 2006 indicates that the Mayor sought the advice of the LGSA in relation to the committee's concerns. According to the memorandum, the following advice was provided:

- That council has an obligation under the *Occupational Health and Safety Act* to provide a safe working environment for all council employees. Where council is in breach of these, a claim may be made against it.
- That the matter should not be dealt with in an open section of the meeting as it concerned "personnel matters" for the purposes of section 10A of the Act.
- That the matter should be referred to the conduct committee for investigation and the development of suitable guidelines that ensure that working arrangements are safe.

The incident was referred to the conduct committee after Cllr Lee and Cllr Kennedy made complaints. However it does not appear that it was investigated. The manner in which the conduct committee dealt with the matter is discussed later in this report. The Mayor's response to the issues raised with him was

inadequate having regard to the serious nature of the matter. It should be noted that it is part of council's charter to be a responsible employer.

It would appear council staff continue to feel anxious about attending council meetings. As discussed below, there were a number of acts of disorder at the last ordinary meeting of council, held on 25 October 2006. In her evidence, Lyn Treleven indicated that she felt compelled to leave the meeting after witnessing Cllr Kennedy's acts of disorder:

It was Councillor Kennedy mainly, but it was being supported by Councillor Baker and sometimes Councillor Algate. Councillor Kennedy just kept bringing up points of order, bringing up amendments, saying he could stay there until 1 o'clock in the morning with amendments if I wanted to. At one stage I believed that Councillor Kennedy should have been ejected, and I had had enough by then, I could see that some, a staff member was upset again, and I was starting to get agitated again, and I just decided, look, I really should leave. I then went out the back and listened to the debacle from out there.

Interaction between councillors and staff

The Inquiry has evidence that suggests that councillors and staff routinely behave in a manner that is inconsistent with their obligations under the Model Code in terms of their interaction with each other. The evidence also suggests that breaches have not been acted on, that some councillors will often seek to promote the cases of staff that approach them in relation to staffing matters and that attempts to reinforce with staff their obligations have been resisted by councillors.

In a small, isolated community like Broken Hill, maintaining appropriate relationships between councillors and staff can be challenging. Cllr Turley identified these challenges in her evidence:

Sometimes, one of the issues for us is that unlike if I lived in Ashfield or some of the bigger councils that I may not know the staff, where the issues are the staff may live next door to you, they maybe someone you have been drinking with

and often you hear issues, that may raise, try to raise alarms bells for you, so I think that some of the councillors often are caught out with some of those issues of close proximity and more community issues.

Given the geographical context and the potential for the blurring of roles in relationships between council officials, it is of paramount importance that all council officials are aware of their obligations under the Model Code in terms of their interaction with each other and that appropriate boundaries are maintained.

Evidence heard at the hearing suggested that councillors have directly contacted non-senior staff in relation to council business, in breach of their obligations under the Model Code.

Mr Hall, in his evidence identified several instances in which councillors had done so. The first concerned an incident involving Cllr Algate and council's then art gallery manager, Ms Jacqui Hemsley. Mr Hall stated that Ms Helmsley approached the deputy general manager in tears about the incident. In his evidence, Cllr Algate gave the following account of the incident:

...what actually happened, if you can give me the time, a prominent member of the Broken Hill community, a prominent business member of the Broken Hill community, asked me after I was elected would it be correct that the council's art gallery manager would have to go and borrow \$22,000, take out a personal loan in her name for \$22,000 to meet the shortfall for what was then called the Region Festival, given that the council was a major sponsor in that particular festival and the council had councillors on that particular committee. My answer to that particular ratepayer was, it doesn't sound right to me, but I will endeavour to find out. I still feel to this day that it was not so much a council issue as a personal issue, but I didn't know the art gallery manager at the time, Ms Jacqui Hemsley, and I really still don't know her, but I happened to be in the ABC studio waiting room one particular morning, and Ms Hemsley come in and I knew her by sight, so I introduced myself to her, and I just asked her, is it true that you had to go and borrow X amount of dollars, and she said, yes, it is. And

that was - at that time that was about the extent of the conversation, except that the matter of James Hall came up, because I had suggested that it seemed funny to me that the council wouldn't be supportive of guaranteeing the shortfall because the council was a principal player in it, and she said, no, that's not the case, the council had subsidised the matter to the tune of \$5,000 and after that the council wanted nothing to do with it. And Ms Hemsley made a comment about James Hall, which indicated to me at the time that she thought James Hall was supportive of her. And I admit that I perhaps should not have made any comment, but with hindsight I now know that it would have been better not to, but I did make comment and I said well, don't be fooled by the fact that James, you think James Hall is a supporter of yours, he has written some very nasty things about your abilities, and I left it at that. Anyway, then this particular issue blew up. I was persecuting, harassing, questioning junior members of staff about their own personal affairs, about their own ability to pay or not pay, it was an absolute nonsense, and to this day it hasn't been resolved, but I have been found guilty.

Ms Hemsley made a file note of the incident. In the file note she stated:

Approached by Cllr Algate in the waiting lounge of the ABC Radio station at 9.20 am. Did not recognise him at first and he then introduced himself. He then asked me what I thought of council's GM as Councillor Algate said it was awful that the GM should debase and speak badly of staff at council meetings. He said that I was one of them and that he had my full support. I said that I don't believe it and that I had a good relationship with my managers and that if I was stuffing up they would tell me straight.

He then asked if I had taken a personal loan to pay for the REGEN debt. I said it was none of his business what I do financially outside council. He kept pushing the issue until I said that it is not council's decision or concern.

I left and was pretty upset. I called Jim Leary and told him what had just happened. He was not impressed and was very supportive. Then contacted James Hall who was also supportive and advised me to do the file note.

The file note goes on to record that a second councillor inappropriately contacted her to discuss the incident:

On the night of the 23rd, Councillor Darriea Turley called me and said she knew what had happened. I talked to her about the issue.

The file note indicates that, contrary to Clr Algate's stated belief that Clr Turley initiated the complaint against him, it was in fact Ms Hemsley who initiated the complaint. Not only were Clr Algate's actions in approaching Ms Hemsley inappropriate in terms of his obligations under the Model Code, Ms Hemsley's file note indicates that she perceived his approach to be unwelcome and persistent and that it caused her distress.

The second incident referred to by Mr Hall concerned Clr Baker's actions in approaching the accounting department for information about Mr Hall's personal expenses. The incident was also referred to in evidence given by Mr Anton Franze, council's corporate services manager.

Mr Franze gave evidence that Clr Baker approached the person acting in his position while he was on leave, seeking information about the General Manager. Mr Franze gave evidence that the normal process would have been to obtain this information through the general manager.

Clr Baker offered the following perspective on the incident:

There was a situation where I was led to believe that there was some untoward or excessive discretionary expenditure from the General Manager. I was a bit unsure of how we needed to get that information. I spoke to one of the finance people to say, to find out whether if I requested such information would it be available, or is there such a thing as a discretionary expenditure? He said to me yes, it was at the time when the Corporate Services Manager was actually on leave, I went to see him, I didn't realise he wasn't there, because at that time we were encouraged to go to the staff to ask if those sort of things - I never instructed that staff member to supply the information, I then went to the Mayor and asked the Mayor what - the staff member actually said to me that if you

want the information you have to get the Mayor to request it in writing. So I went to the Mayor and followed it up from there. What ensued was nothing more than a disgrace.

Neither Cllr Algate nor Cllr Baker appeared to acknowledge in their evidence that it was inappropriate to approach the staff members in question.

Evidence given by a number of persons suggested that the Mayor was also guilty of inappropriate interaction with non-senior staff. In his evidence, council's corporate services manager, Anton Franze complained that the Mayor had on more than one occasion, telephoned rates staff to request that they come to his office to address queries by ratepayers. Mr Franze observed that the normal practice is for such enquiries to be put through the general manager.

Evidence given by Ms Evans, the Mayor's former secretary was consistent with Mr Franze's evidence. In her testimony she said:

... there was a ratepayer in the Mayor's office complaining about the rates, and the Mayor asked me to get someone from rates up in his office now. The manager corporate services was in meeting, so I advised the Mayor that wasn't possible. He said "Get me someone from rates". So I rang – I am not sure of the title, senior rates officer possibly, and she came up to the Mayor's office. And I am not sure what happened after that, but I just felt that that was inappropriate, because the ratepayer was in the Mayor's office and it was very confronting. You are not given the opportunity to research the ratepayer's complaint to have the correct answers for them, or explanations for things. And I just, I think that people should go through the right channels first, and there was a lot of - the Mayor would invite people to his office quite often to fix things.

In his evidence, the Mayor, indicated that he often called staff at the manager level to his office to address ratepayers concerns but denied that he ever called non-senior staff to his office. He later conceded that on one occasion he had called a senior rates clerk to his office.

Mr Franze said that he had raised concerns about this with the former General Manager and directly with the Mayor. He said that while the Mayor acknowledged his concerns it did not change his ways. The Mayor disputed this evidence.

A number of other claims about the Mayor, made in an anonymous submission by a member of staff, were put to the Mayor. The Mayor denied all but one of these. As the claims were made anonymously and cannot be tested, in the face of the Mayor's denial, no weight has been given to them. However, in his evidence, the Mayor admitted to one of the claims, namely that he had spoken to the manager of the Shorty O'Neill Village to assist the daughter of a friend get a job there. He said that he did so with the former General Manager.

Evidence from Clr Algate and Clr Kennedy suggested that non-senior staff regularly contacted them to discuss concerns about individual staffing issues, in breach of the Model Code and council's *Interaction Between Councillors and Staff Policy*. There is no record of the two councillors having reported the staff members to the General Manager for not complying with the Model Code.

In his evidence Clr Algate stated that when staff approached him about such matters, he lent them a sympathetic ear but told them he could not directly assist them. However, Clr Algate indicated that on one occasion, he did intervene raising the matter in a council meeting and then directly with the person's manager:

I had a visit by a number of outdoor employees, not altogether, at separate times, I think they were all working independently, they had concerns about some issues that were going on in the, what we call the yard, at the works depot, or in the city, but by works depot employees. ... I think about four or five people came to me, and it was all within about five or six days. And it was just prior to that Technical Services meeting, and I told each and every one of those people that as a councillor and in accordance with the separation of duties between councillors and staff, I was powerless to take their case on board and do anything about it. I advised each of them that I could listen to their claims,

but it was incumbent on them to raise those issues with their immediate supervisor, and if they didn't get a satisfactory hearing from their immediate supervisor, that they then attempt to go up the chain. What I found was that each of the four or five people had said that they had previously done precisely what I had said, and I said, well, really, I can't help you, you have got to go and do it again. They were most dissatisfied with that, and I think I lost a bit of respect, but that's the way it is. Having said that, I dwelled on one or two of the issues, and one that concerned me greatly was the fact that there were three council employees, and I don't know who they are, outdoor staff, who had AVOs against each other and there was some considerable animosity, and one of those employees had allegedly while driving a council truck attempted to run down another one of those three who was on a rostered day off when that person left a chicken take away establishment in Oxide Street. And two of the people who reported it to me, one said he was in the vehicle, and another one said that he was with the other employee who had to jump onto the median strip, dash onto the median strip to save himself. I thought that given the seriousness of what - there was a suggestion that the person who had attempted to run that other person down was seriously affected by drugs. I don't know if this was right, wrong or otherwise. But I felt at the time after giving it some further consideration that I had a duty of care and an obligation to raise it at the meeting. I didn't go into any detail, and I spoke to the manager of Technical Services, or the manager of Infrastructure after the meeting and gave more specific details. It was interesting that the manager of Infrastructure at the time said that he didn't know anything about it, but then a few days later I found out that that same manager had already appeared in court over the AVO issue, so I was a little bit disturbed.

Asked how he found out that the manager had already appeared in court over the AVO, Cllr Algate said he had spoken to an indoor staff member about it.

Asked whether he thought it was inappropriate for him as a councillor to discuss such matters with staff, Cllr Algate acknowledged that it was not appropriate. However, he went on to add:

But I am not about to offend people and send them away, I will give them a sympathetic ear, but what I have tried to describe to you is that is about all they get from me. If I was to act on behalf of some of the complaints I hear I am sure some of them are not correct. But if I was to act on them I certainly would be breaching my position as a councillor. I have deliberately closeted pretty much what people have told me, and told those same people that they would have to follow due process and go through the grievance or their own immediate supervisor, and have it considered in the appropriate manner, I can't help them.

Asked whether he intended to continue to lend a sympathetic ear, Clr Algate responded “*I won't offend if anybody comes to me with a complaint*”.

It would appear from his submission to this Inquiry that Clr Algate continues to discuss staffing issues with staff. In his submission, Clr Algate indicated that he spoke to a number of staff about the staff submission to this Inquiry. Clr Algate stated:

*Sadly, from what I hear from council employees, both internal & external, it appears to be a fact that very few staff actually had an opportunity to contribute to the so called staff submission. Furthermore it is my understanding that many employees **do not** support the views contained in the submission. Once again management has created a further divide as a result of the absence of consultation! (Evidence – Interview a cross section of employees.)*

Asked who he had spoken to, Clr Algate responded:

I spoke to three outdoor employees and one, two indoor employees...

Asked whether he thought that it was appropriate to be discussing the staff submission with those people, Clr Algate responded:

Probably not, but I thought - once again I thought it was good to hear the other side...

In his evidence, Clr Kennedy also indicated that he enjoyed a good relationship with sections of council staff. Asked how this relationship manifested itself, Clr Kennedy responded:

...staff come to me, and they do come to me, I make no, I don't pretend they don't, they do come to me and I believe probably because they have an empathy with me. They know the pressure and what has happened to me, the attacks I have been under and they believe that they can come to me because the same thing is happening to me. So people use me as a washboard for example to get out their grievances.

Clr Kennedy stated in his evidence that staff approached him with grievances once or twice a week. Asked whether he ever referred a council employee to their industrial representatives over the matters they raised with him, Clr Kennedy responded:

Initially I used to mention that, but as people become more and more familiar with me, and knew they could come to me and their confidence would be kept, they were more than happy to come down, and a lot of their complaints were against their direct managers who they had to report the issue to, and their manager.

Asked what he would do with staff grievances, Clr Kennedy responded:

I really don't know what you can do with it. I do, I do in my own way try to take care of that sort of stuff, and I will do it in subtle slow ways, and that is why people come to me. I don't sit on it, I don't not do anything. I put pressure where pressure is needed. I don't let the other side - and you asked do I trust them. No, I don't. And I don't let the other side know what cards I am holding.

Evidence heard by the Inquiry indicates that on at least two occasions Clr Kennedy has been directly involved in staff grievance procedures.

Ms Treleven recounted an incident in which Clr Kennedy sat in on a grievance procedure as a support person for a former member of staff. Ms Treleven gave

evidence that she felt threatened when Clr Kennedy and the employee first arrived.

In his evidence, Clr Kennedy acknowledged that his presence at the grievance procedure would have been intimidating but offered the following explanation for this:

Look, without a doubt it intimidates people when they have got something to hide, if they have got nothing to hide it can't intimidate people, people shouldn't be worried about any witness, if you have got nothing to hide or you are not doing any wrong doing why would you feel intimidated, or why would you have any problem with any person being there to witness a procedure?

In a submission in response to Ms Treleven's evidence, Clr Kennedy offered the following rationalisation for his attendance at the grievance procedure:

I have had many employees of council approach me complaining about the way Lyn Treleven handles grievance complaints. They have even implied that Lyn is corrupt. They believe there is little group within council that is protected by Lyn and the inner circle of managers. If the commissioner was to do a brief survey of council employees, he would find Lyn Treleven is council's most hated employee. They even refer to council's picnic day as the 'Lyn Treleven memorial day.' Lyn believes I am a threat to some perceived power she has.

In his evidence Clr Kennedy indicated that he saw no problem with his sitting in on the grievance procedure. Clr Kennedy justified his attendance on the grounds that the grievance procedure allowed the attendance of a witness, that council no longer employed the employee at the time of the procedure and that he was representing the interests of a ratepayer. This again reflects an expansive misreading of his role by Clr Kennedy. Irrespective of the employment status of the employee, the meeting concerned a staffing matter. As such it was inappropriate for Clr Kennedy to attend.

The Mayor permitted the meeting to proceed with Clr Kennedy in attendance. This also suggests the Mayor was unclear on what was appropriate.

The Inquiry also heard evidence of an incident in which the Mayor had become directly involved in a staffing matter. Council's operations manager, Mr Peter Schindler, gave evidence that he was called to the Mayor's office, with the general manager, to discuss concerns his staff had with his appointment to his position. According to Mr Schindler:

The Mayor had been out and spoken to some staff on the job that weren't happy with my appointment to the position of operations manager. The Mayor made the comment to the General Manager to put to me that the blokes felt I was just a gardener...

Mr Schindler went on to add:

I would suggest that the Mayor possibly takes on board the opinions of staff over his management at times.

When this was put to the Mayor he responded that he could not recall the incident. However elsewhere in his evidence, he indicated that outdoor staff had approached him out of working hours with staffing grievances. The Mayor also indicated that if council had a management team that treated the workforce in a manner that the council considered to be poorly, he was sure it would be dealt with at a council meeting.

The only action taken against a councillor for inappropriate contact with a staff member took place in 2004. This involved Mr Hall informally raising concerns with Cllr Algate about the incident involving Ms Jacqui Hemsley. Cllr Algate subsequently complained to the NSW Ombudsman about this matter.

Council provided the Inquiry with a copy of a letter received from the NSW Ombudsman in relation to the complaint. The letter, which was drafted by Mr John Davies, (currently one of the officers assisting the Inquiry) expressed a number of concerns about the manner in which council had dealt with Ms Hemsley's complaint. The NSW Ombudsman's letter stated:

...while I can certainly understand why you (Mr Hall) and the Mayor may have wanted to deal with this matter informally, given the potential seriousness of the conduct alleged, I believe it may have been more appropriate to deal with the matter formally under council's Interaction Between Councillors and Staff Policy (the policy) and code of conduct. This would not merely have been a more effective means of investigating and, if appropriate, disciplining conduct which, on its face, appears to be a breach of the code and policy. It would also have served to educate councillors and staff alike about inappropriate interaction between councillors and staff, the inappropriate disclosure of confidential information and the need to adhere to council's code of conduct and policies.

As it is, while apparently acknowledging that this conduct constituted a breach of the code of conduct and policy, Cllr Algate has wholly rejected the legitimacy of the action taken by you and the Mayor to informally counsel him about that conduct, in turn portraying your actions as 'bullying'. This outcome can scarcely be encouraging for other councillors or staff members wishing to report breaches of the code of conduct in future.

There is nothing to suggest to the Inquiry that the council took on board the advice provided. As indicated above, no action has been taken with respect to any of the other incidents described above.

While Mr Hall did issue a memorandum to all staff with their payslips reminding them of their obligations under council's *Interaction Between Councillors and Staff Policy*, councillors by their subsequent actions, effectively undermined his efforts.

The Mayor appeared to have a philosophical objection to the approach adopted by Mr Hall and the Model Code. His stated view is that staff should be able to approach councillors with their grievances. In his evidence the Mayor lamented the impact he perceived Mr Hall's memorandum had on the culture of the organisation:

I have been on this council for 10 years, I have approached by many outdoor staff to say they have been poorly dealt with, outside of working hours what I have seen over the last three years some of the outdoor staff are terrified, terrified to talk to a councillor, I find that unBroken Hill, unprofessional and unacceptable.

Asked why outdoor staff were terrified to talk to councillors, the Mayor responded:

Because of the memos that have been sent to them over a period of last three years to say you cannot approach councillors, and you can't do this, and you can't do that, you will be reprimanded, that has never been the culture of this city, and I would like to think it doesn't continue in the future.

The Mayor went on to add:

... we need to have a General Manager that has respect for that workforce, not to terrorise them, not to make the outdoor workforce too frightened to talk to anyone else, that is not appropriate.

Documents supplied by council indicate that Cllr Algate made comments in the media that suggested that under the *Interaction Between Councillors and Staff Policy*, staff could be disciplined or dismissed on the basis of an unproven allegation. Cllr Algate made similar comments in the evidence he gave to the Inquiry.

Cllr Algate's concerns were apparently prompted by the General Manager's memorandum to staff. The memorandum reflected the wording used by the relevant provision of council's policy, which stated, "*An alleged breach of this policy by an employee may result in disciplinary action and/or dismissal.*"

While the relevant provision of council's policy was undoubtedly poorly worded, it certainly did not indicate that staff could be dismissed or disciplined on the basis of an unproven allegation. Nor is this an inference that can be reasonably drawn from that wording.

After the General Manager issued his memorandum to staff, at the ordinary council meeting of 23 February 2005, Clr Algate submitted the following notice of motion that was seconded by Clr Cutjar and carried unanimously:

That the Council's Interaction Between Councillors and Staff policy be revised as a matter of urgency. Further, that no action be taken by Council's management as a result of that policy in respect to the possible dismissal and/or application of disciplinary action against employees until such time as the policy review is complete.

That correspondence be forwarded to all council employees advising them that they will not be subject to disciplinary action and/or dismissal in respect to any "alleged" breach of Council's Interaction Between Councillors and Staff policy.

By undermining Mr Hall's attempts to reinforce with staff their obligations in relation to their interaction with councillors, the elected body of council has created an environment in which staff apparently feel free to approach councillors with their grievances against management.

Councillors, despite apparently being fully conversant with their roles, have inappropriately intervened in matters falling outside their role. By intervening in staffing issues in the manner described above, councillors have effectively undermined their own management, further damaging the relationship between the governing body and senior staff and exacerbating divisions within the organisation. These are not the actions of a responsible employer.

MEDIA COMMENT

The PBP review team observed that "*Councillors often have their fights in the media and this has led to numerous complaints under council's code of conduct.*" They went on to state that "*councillors, whether they agree or not, are bound by the resolutions of council. In this regard, councillors should not undermine the decisions of council in the media*". The review team also raised concerns about the leaking of confidential information to the media stating, "*It*

was evident that information was being used as a tool in a campaign of negativity.”

A review of media coverage of council from the commencement of the current term to its receipt of the draft PBP report in May 2006 confirms that the concerns expressed in that report are valid. Furthermore, it was not only councillors who used the media to attack other council officials. As indicated above, the former General Manger, Mr Hall often criticised councillors and council in the media.

Documents provided by council indicate that the PBP review was not the first time concerns about media comment have been raised with council by an external agency. In response to a complaint by Cllr Algate about comments made by Mr Hall about him in the local media, Mr Davies, while with the NSW Ombudsman, wrote to both Cllr Algate and Mr Hall on 12 April 2005 expressing concerns about the comments they had made about each other in the media. Mr Davies expressed the following concern:

...council officials as a general rule should refrain from publicly making negative personal reflections on each other or comments that could otherwise be interpreted as such. Such conduct can only serve to undermine public confidence in individual councils and local government as a whole.

Unfortunately councillors and staff continue to use the media to criticise each other. Since May the following comments have been reported in the local media:

- Comments by Cllr Lee on 5 June that it would be a “great injustice” if Mr Hall was not short listed for his position.
- A report in the Barrier Daily Truth on 30 June that a statement had been sent to it from the council’s administrative centre about a statement of support for Mr Hall from staff.

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- A letter from Clr Kennedy on 19 July blaming the failure by majority councillors and former councillor Pam McRae to ensure that staff followed council resolutions for the 71 recommendations made in the PBP report.
 - Comments by Clr Algate on 25 July that he was fed up with senior staff making inappropriate comments to each other about him.
 - Comments by Clrs Lee and Kennedy on 2 August about staff morale.
 - Comments by the Mayor on 5 August that he thought rescission motions were 'rude'.
 - A letter by Clr Baker on 1 September criticising the Mayor.
 - Comments by Clr Lee on 5 September about the outcome of his code of conduct complaint against Clr Kennedy.
 - A letter from Clr Kennedy on 22 September following the announcement of the Inquiry calling for the Mayor, not council to be sacked.
 - Comments by the Mayor on 23 September blaming Clr Kennedy for the Inquiry.
 - A letter from Clr Kennedy on 26 September criticising comments the Mayor had made about him on 23 September.

It is inevitable that as elected representatives, councillors will have their comments in relation to issues affecting the council reported in the media. It is also important to acknowledge that as elected representatives, councillors are politicians and as such, may legitimately use the media to comment on the policy positions of other councillors. However, where councillors use the media to make personal attacks on their fellow councillors or staff, this can serve to undermine community confidence in the council and local government as a whole.

It is often difficult to make a clear distinction between what represents legitimate comment and a personal attack. By failing to address this issue appropriately under its code of conduct, council has lost the opportunity to identify what is and is not acceptable in terms of media comment.

It is clear that the ongoing conflict between councillors and certain staff has been reflected in their respective comments to the media about each other. This, together with the reporting of the manner in which council meetings are conducted, has undoubtedly, over an extended period of time, served to undermine public confidence in the council and given rise to the perception of in-fighting that is reflected in the results of council's last two community surveys.

In his evidence at the recall hearing, Clr Kennedy defended his "right" to continue to "*undermine any resolution of council*" and the right of councillors to express their opinions to the media in the instances described above. This tends to suggest that Clr Kennedy, at the very least, is unlikely to moderate his conduct in this respect.

DISCLOSURE OF INTERESTS RETURNS

The PBP report found there were some critical areas that council needed to address to improve its governance standards. One of these areas was the standard of the written returns of interests council officials are required to make pursuant to section 449 of the Act. The form of these returns is prescribed by the *Local Government (General) Regulation 2005*.

The Director General's comment in the PBP report indicated that council needed to ensure that all pecuniary interest returns were updated in accordance with departmental circular 04/16 and the pecuniary interest guidelines that are available on the department's website. Recommendation 17 in that report was that "*All councillors and designated persons should update their disclosure of interest returns immediately to ensure that they comply with the legislated requirements.*"

The Inquiry obtained copies of the councillors' return of interest forms for the periods 1 July 2004 to 30 June 2005 and 1 July 2005 – 30 June 2006.

It does not appear that any of the councillors updated their disclosure of interest returns for 1 July 2004 to 30 June 2005 in accordance with the recommendation contained in the PBP report.

However, the standard of the returns lodged by councillors for the period 1 July 2005 – 30 June 2006 is generally much improved compared to the previous year. An examination of the returns lodged by most councillors did not identify any apparent omissions or a lack of understanding of what they needed to disclose. However the Mayor's return was deficient.

An examination of the Mayor's return for the period 1 July 2005 – 30 June 2006 identified that he has an interest in a retail nursery, some home units and a farm. He confirmed these interests at the public hearing. The return does not disclose that the Mayor received any income from these interests in the period.

The Mayor was asked about these apparent omissions at the public hearings. He indicated that the nursery business had not opened for over 12 months but conceded that it may have operated in the period covered by his most recent return of interests i.e. 1 July 2005 – 30 June 2006. This suggests that there may have been income from that source that should have been shown by the Mayor in his return. The Mayor's wife subsequently claimed that the business last operated in 2004 but no evidence was tendered to support the claim.

The Mayor confirmed that at least some of the home units owned jointly by himself and his wife were rented but denied he received any income from the properties, claiming his wife received the rent. He subsequently conceded that he is entitled to receive a share of the rent and that the rental income goes into a joint account. This suggests that there may have been income from that source that should have been disclosed in the Mayor's return.

The Mayor indicated that the farm in which he has an interest "*is a huge loss*". He indicated that the farm has alpacas. The Mayor indicated in a response at

the public hearing that he considers income and profit to be synonymous. Given this apparent lack of understanding of the difference between the two, it may be that some income was earned from the operation of the farm. If this was the case, the Mayor should have disclosed the farm and the nature of its operation as a source of income. The Mayor's wife subsequently wrote to the Commissioner indicating the farm is not a commercial enterprise.

It is also apparent that the Mayor has not made a disclosure in relation to a camera he won at a local government conference. This is discussed in the next section of this report.

The Mayor acknowledged in evidence he was aware of the concerns that had been raised by the department about pecuniary interest returns. He also acknowledged that prior to lodging his most recent return he had been given a copy of departmental advice that explicitly deals with the issue of the need to disclose both the ownership of properties and income from property. This same advice also contained a suggestion to seek independent advice where a councillor was in doubt as to his or her obligations.

GIFTS AND BENEFITS

Clause 7.1 of the Model Code stipulates that a council official must not seek or accept a bribe or other improper inducement, or, by virtue of their position, acquire a personal profit or advantage that has a monetary value other than a token value.

Councillors are also required to disclose gifts with a value in excess of \$500 in their written returns of interests.

A copy of council's gifts and benefits register was obtained. It contains only three entries. Two of these related to gifts received in 2004 and one in 2005. It is surprising that council officials have only been offered gifts on three occasions over a two-year period, suggesting that not all gifts and benefits may have been declared.

A submission made to the Inquiry indicated that the Mayor won a \$600 camera when attending a local government conference in his capacity as Mayor. Had he not been a councillor or Mayor, he would not have been at the conference and therefore not have received the camera. The Mayor confirmed he had won a camera and when asked about its value he said *“from memory it was around \$500”*. He went on to state, *“It wasn't a gift, Mr Commissioner, it was a raffle that I won. It was not a gift.”*

A gift is defined in the *Local Government (General) Regulation 2005* as a *“a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.”*

The receipt of the camera should have been disclosed both in the council's gifts and benefits register and in the mayor's annual written return of interests.

CONDUCT OF MEETINGS

One of the key functions exercised by councillors in their capacity as members of the governing body of council is their participation in council meetings. Council meetings are the forum in which decisions on key policy and strategic matters are made. They also represent an important accountability mechanism as reflected in the requirement under the Act that council meetings be open to the public, except in limited circumstances.

For a council to exercise its functions effectively and to meet its obligations to the community it serves, it is vital that council meetings are conducted in an orderly and efficient manner. The failure to conduct a council meeting in an orderly manner also has the potential to erode community confidence in the council and in the local government sector as a whole.

Regulatory context

The manner in which council meetings are to be conducted is prescribed under the Act 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 regulations and supplements it with provisions that are not inconsistent with them. Council has adopted a code of meeting practice under section 360 of the Act.

One concern identified in evidence given to the Inquiry in relation to council's code of meeting practice is that it contains a provision that allows the mover of a motion to speak to a motion before it is seconded. This is inconsistent with clause 246 of the Regulation, which provides that a motion or an amendment cannot be debated unless or until it has been seconded, and clause 250, which limits the number of speeches a mover can make on a motion. Cllr Tucker raised a concern about this when council was considering amendments to the code of meeting practice. The PBP review also raised concern about this practice. However the council resolved to include the provision in its code.

Observance of procedure at meetings

The PBP review team attended the ordinary council meeting held on 24 January 2006. In its report, the review team observed that councillors failed to demonstrate an understanding of the requirements of council's code of meeting practice. The review team also observed that council appeared to struggle to get through the business before it in an efficient manner and that there were a number of instances where the chair appeared to lose control of the meeting.

The review team indicated that it observed the following:

- Councillor declarations of interest did not disclose the nature of the interest

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- In some cases names of movers and seconders of motions were not called by the Mayor making it difficult for the minute taker to record
 - Councillors were speaking without motions before the chair
 - Councillors were allowed to debate a motion before it had been seconded
 - Councillors were allowed to speak more than once on a motion
 - Councillors acted as though they were in a committee meeting, specifically, often speaking without formal motions, not identifying who was speaking for or against a motion and speaking more than once on a matter
 - Meeting procedures were not formal in that councillors did not stand to speak (although it was demonstrated by Cllr Kennedy, during the recall hearing, that standing to speak was difficult because of the positioning of the meeting room's microphones)
 - The meeting often 'lost its place' and the participants were confused about where the meeting 'was up to'
 - The voting on matters was not recorded correctly in that councillors who are present at the meeting and do not vote are considered to have voted in the negative
 - The Mayor debated items from the chair
 - The public forum process was conducted in accordance with the proposed amended code of meeting practice and this caused some confusion
 - There was a lack of clarity and confusion around the process of moving into closed session
 - Councillors continually interrupted each other with points of order and often did not speak through the chair

The review team also observed that the majority of councillors appeared to be prepared to let a small number of councillors capture the forum. In his evidence at the recall hearing, Clr Kennedy indicated that he was one of the councillors the review team identified as having 'captured the forum'. He defended his conduct in doing so in the following terms:

On any council in any government you will have councillors, politicians, any forum you have people that are better than others at capturing the forum. And just because those councillors are good at capturing the forum, they shouldn't be criticised for that, and the people that are not capable shouldn't be criticised either.

A review of the minutes of council and committee meetings held between January 2005 and January 2006 lends support to many of the above observations and indicates that many of these practices routinely occurred in council and committee meetings.

Shortly before the meeting attended by the review team, council held a training session for councillors on meeting procedure, run by Mr Gerry Holmes in December 2005.

The minutes of council meetings held in 2006 appear to indicate that this training together with the PBP review have to some extent led to improved meeting practice at council. For example the minutes of the meeting of 24 January 2006 indicate that in considering the adoption of the minutes, the Mayor ruled that he would no longer accept questions in that section of the meeting on business dealt with at the previous meeting. From the February meeting on, councillors began to disclose the nature of any interests declared.

However the minutes also betray the fact that some deficiencies remain. For example, the minutes of the meeting of 22 February 2006 indicate that Clr Kennedy spoke several times on one item, Clr Baker spoke on a motion he had moved without a seconder and one motion was seconded twice. The minutes of the meeting of 29 March 2006 indicate that there was extended debate on an

item without a formal motion having been put. The minutes of the meeting of 31 May 2006 indicate that a motion was put to the vote without a seconder and that the Mayor miscounted the vote on another item incorrectly declaring it lost.

While the minutes suggest there has been improvement, they are not a verbatim account of the proceedings of council meetings and do not necessarily tell the full story. Transcripts of the Corporate Services Committee meeting of 21 March 2006 and the ordinary meeting of 30 August 2006 suggests that council meetings continue to be conducted in a dysfunctional manner.

The transcript of the meeting of 30 August 2006, for example, indicates that, having declared a motion to adopt the minutes carried, the Mayor proceeded to accept an amendment from Clr Kennedy and put it to the vote. After the amendment was lost, the Mayor proceeded to put the original motion to the vote a second time, despite the fact it had previously been carried. Before the vote was taken, Clr Kennedy attempted to have the minutes amended despite the fact they had already been adopted. After extended debate between the Chair and Clr Kennedy and numerous points of order against the Chair by Clr Kennedy, the Mayor put Clr Kennedy's amendments to the vote a second time, before Clr Baker pointed out that both Clr Kennedy's amendment and the motion had already been dealt with and the motion carried.

All witnesses agreed that council meetings were chaotic and generally did not comply with appropriate meeting practice. In his evidence at the recall hearing, Clr Kennedy denied that he had said that "*all meetings were chaotic*" but went on to concede that "*at times chaos did prevail*". The Mayor in his opening evidence attributed the manner in which he approached the chairing of meetings to his desire to promote freedom of speech:

...in our city, in regard to chairing meetings in our city because our city has a long history of a very vocal community, a very strong community in regard to freedom of speech and our rights, we take them very serious, so in regard to our meetings you will see people come along in the gallery that have strong

opinions, and we have always carried out our meetings so they have their right of speech and their beliefs, what they believe in.

Most witnesses attributed that manner in which meetings were conducted to the Mayor's poor chairing skills and failure to apply correct meeting procedure. Cllr Cullenward made the following comments about the Mayor's approach to chairing:

...while I respect his idea about free speech, democracy is a flawed institution, and it survives on rules. And allowing the rules to be laid to one side at times, it's not helped his position, it's not helped council as an elected group or the elected representatives' position, and probably has made life difficult for some of the council's staff from time to time.

Cllr Lee also blamed the Mayor's poor chairing of meetings for much of the behaviour that occurred in them:

The main cause I feel is the chairmanship of council, but I would probably have to say equally the way in which certain councillors seem to abuse poor leadership. So they get away with whatever they want to say, whenever they want to say it, interrupting, not going through the Chair, speaking directly to staff members or abusing other councillors or just bringing up motions that can be wrong or irrelevant, or bringing up motions or an amendment when there is already a motion on the books and things are just not - so I just think there is an abuse because the Chair can't keep control of the meeting.

However, Cllr Turley in her evidence also acknowledged that council's meetings, by their nature were difficult to chair:

Look, you know, at the end of the day I think that the chairing of meetings is an issue and I think that the Mayor has often said it is about freedom of speech, but also I think we have got into a position where we actually have been given too much leniency. The other issue, it was spoken of to me by a Mayor who came to observe one of our meetings, is that that is a hard meeting to Chair. So I think that you need to be fair about some of those issues.

A number of councillors also attributed the Mayor's poor chairing of meetings to the former General Manager's lack of local government knowledge and experience, which limited his capacity to offer assistance and guidance to the Mayor. A number of councillors commented on an improvement in council's compliance with meeting procedures since the new General Manager started. Cllr Cullenward who chairs one of council's committees observed:

I can only speak from being a chairman of one of council's standing committees. It is nice having the General Manager sitting beside you reminding you that the Code of Meeting Practice and the Act say certain things about how the meeting procedure should operate, and certainly as the chairman it has made my job easier, as a chairman, and I have been chairman of council standing committees on and off now since I was first elected, I've never had any problems either.

However, in her evidence, former councillor, Ms Pam McRae identified the problem with the Mayor's chairing of meetings as not merely being due to his lack of knowledge about meeting procedure, but also his unwillingness to accept advice:

I have not had any confidence in the Mayor since he first became the Mayor. I felt that - he said yesterday that he believes in freedom of speech, and we all believe in freedom of speech I am sure, but there is a limit to how much freedom of speech, he never followed the rules of meeting procedure in as much as even sometimes in the public gallery he would allow a member of the public to speak for half an hour or more at a time on the subject without stopping them. And it didn't matter what they were talking about, he would just let them go on and on and on, they would become abusive, he would say, now come on, mate, you should know better. ... I spoke to the Mayor on many occasions about my concerns about how things were going and the conduct at meetings and things like that. I was a member of Rostrum at that time, and I suggested he come along to a few Rostrum meetings to get a better understanding of meeting procedure, he said I don't need that. Any time I

attempted to give him advice, and I don't know whether my advice was worthy or not, but any time I attempted to give him advice he would say, listen, I am the Mayor, you are not, and that was his attitude.

She went on to observe that *"On many occasions when Kelvin Matthews was the General Manager, as well as when James Hall was the General Manager, they would attempt to give him advice during a council meeting when things were getting out of control, and he would just wave them aside"*.

In light of this, it is open to question whether the Mayor will make effective use of the expert advice Mr Zaknich could offer.

In his evidence, Clr Baker described the Mayor as a 'tactical' Chair. Some support for this view can be gained from evidence given by Clr Lee:

When I first started my term as councillor and I was with Councillor Kennedy, Algate and McRae, the Mayor just about saw us as an enemy. I think that strained relationships to start off with. I mean just recently three months back and for six months there was an alliance formed between Councillor Kennedy, Algate, Baker, Steer and the Mayor, and if I wanted to say something in council in those meetings, most of the time I was cut off by the Mayor, and Councillor Tucker also had a similar problem, and then things changed around a few months ago when again the Mayor seemed to change sides.

In her evidence, former councillor Pam McRae complained of similar treatment in her final meeting, suggesting some councillors in favour with the Mayor were allowed to make comments about the former general manager but when she attempted to defend the former general manager *"the Mayor ruled me out of order, eventually saying if I said anything else he would throw me out of the meeting"*

In fairness, it should be noted that it is unclear from both Clr Lee's and Ms McRae's evidence whether they were in fact engaged in acts of disorder and that the Mayor was making a legitimate ruling on that conduct.

Clr Kennedy gave evidence on the existence of an alliance between certain councillors and the Mayor and the influence of the alliance on council meetings. This tends to support the above observations of ‘tactical chairing’:

... the alliance was going on was most of the time it was very orderly. It was mainly because in discussions that we had when we would have our get together, I said to the Mayor if anyone is breaking the rules I will call the point of order, I will explain what the point of order is, and you can make a ruling. And that happened and it worked, and it stopped councillors from frustrating the Mayor ...

Whatever the truth of this may be, in his evidence, the Mayor acknowledged that he had been a poor Chair:

...in the past I have believed in freedom of speech and yes, I accept that I should have been a stronger chairman, it has led to people conducting themselves in a disorderly manner, and I have given a commitment that that won't happen in the future. I strongly believe in the freedom of speech, but it hasn't been a success on this council and it has to change.

However the evidence available to the Inquiry must give rise to significant doubt about the Mayor’s ability to change having regard to the training he has had, the advice that has been offered to him, the written guidance that has been available to him, his stated reticence of sitting in judgement on his peers, his apparent willingness to allow his chairing to be influenced by political alliances and his apparent lack of regard for the need to comply with the code of meeting practice and the code of conduct.

Adoption of minutes

The PBP review report observed that a significant portion of the meeting attended by the review team was taken up with a debate over the accuracy of the previous meeting’s minutes. It also found this was not unusual for council. However, it would appear that the January meeting marked the beginning of

some improvement in the way council dealt with the minutes of previous meetings.

As mentioned earlier, at the January meeting the Mayor indicated that in future, he would not accept questions on business conducted at the previous meeting. The minutes of subsequent meetings indicate that while questions were occasionally asked, this practice has largely ceased.

In his evidence, Clr Cutjar attributed the absence of debate over the minutes to an alliance the Mayor struck with Clrs Kennedy, Baker and Algate:

...it was quite funny that come the first council meeting after the so-called alliance was put together, there was not one question in reference to the minutes. Yet we would go through anything up to half an hour arguing, not changes to the minutes and not that the minutes were correct, but what was recorded in the minutes. But once that alliance was up, for two meetings there was not one question on the minutes. You knew when the alliance was finished, because there was questions asked about the minutes.

While it would appear that the minutes of meetings since January have been adopted with minimal debate, there have been some notable exceptions to this, which must create some doubt over the capacity of the council to sustain the improvement in the absence of a dominating alliance of councillors.

The extensive debate associated with the adoption of the minutes at the August meeting discussed earlier coincided with the end of the apparent alliance between Clr Page and others. It is also telling that council proved incapable of reaching agreement on the minutes of the Corporate Services Committee meeting of 21 March 2006 and had to resort to adopting a transcript of that meeting as its minutes.

Councillor behaviour at meetings

A review of the minutes of council meetings from January 2005 indicates numerous incidents involving councillor behaviour that could be characterised

as 'acts of disorder' for the purposes of the *Local Government (General) Regulation 2005*. Examples of disorder include:

- Failure by councillors to show appropriate respect to the Chair by debating and abusing the Chair and refusing to comply with directions
- Abuse of councillors by the Chair
- Councillors engaging in heated discussion and abuse of each other and members of the gallery
- Attacks on the general manager
- Councillors raising issues about staff and other councillors in council meetings that ought appropriately to have been pursued under the code of conduct process
- An attempt by one councillor to move a censure motion against another without having gone through the code of conduct process
- Attempts by councillors to raise staffing matters in open council meetings that ought appropriately to have been dealt with in closed sessions
- Repeated groundless points of order

In his evidence, Clr Tucker complained that rather than promoting freedom of speech at meetings, this behaviour and the Mayor's failure to act on disorder inhibited it and limited his capacity to exercise his representative function effectively:

When you are trying to speak an issue where a couple of council meetings back 71 points of order were called, they were reported in the newspaper. In the confidential area of that meeting was discussion about removal of the staff in the tourist information centre. I attempted on five occasions to ask the question of the Mayor, and on each occasion that I started asking that question a point of order was called by Councillor Kennedy on me. The Mayor asked what the point of order was, he said I had no right to discuss that, the Mayor overruled it and

then asked me to speak, I attempted to speak again, the same point of order was called. I mean when it is called on you five times you think how am I going to get out of this, how do I get this question through? If the Mayor allows that to happen, it makes it very hard for me to get the question answered that I was attempting to do. Now that's one example of where I felt intimidated, disgusted, and there has been other opportunities where I have tried to ask questions and been howled down, points of order called, long speeches given over the top of what you are trying to bring to council, yes, you feel intimidated.

These concerns were echoed by other councillors, many of whom described the manner in which debate was conducted in council meetings as 'unhealthy'.

While it would appear that a number of councillors are guilty of having committed acts of disorder, most witnesses identified Cirs Kennedy and Baker as being particularly disruptive in council meetings.

In his evidence Cir Baker acknowledged that he had a 'muscular' approach to his advocacy of issues of concern to him stating, *"I am loud and opinionated, but that is why I was elected. You know, people want a strong voice on the council"*.

Cir Baker admitted that he took advantage of the Mayor's poor chairing of meetings:

I think that at times the meetings are disorderly and the Mayor does have some control problems with meeting procedures, and I guess ruling, he feels obviously very strongly about democracy and he allows people to have their say and unfortunately when they overstep the boundaries he lets them continue. And as I have said before if one councillor is going to be allowed to overstep the boundary, far be it for me to stop when I feel that I should if he is not prepared to stop me. He is there to Chair the meeting, he is there to keep it under control, it is really not my job.

Cir Baker went on to observe that the training he and the other councillors had received on appropriate meeting practice had not served to alter his behaviour:

It has been quite well said at training, and there has been training where Gerry Holmes was there, that he has actually said that councillors are allowed to talk for way way too long. It has been brought up time and time again. Now, if I am passionate about an issue I will talk until the cows come home, and if no one is going to jump in and rule me out of order, or I think you have had a fair go, let's move on, well then I am going to continue putting my argument, and I think fairly.

Asked whether he had ever overstepped the bounds of acceptable debate, in his response Cllr Baker responded as follows:

If I have I have never been ruled. If that is the case. I mean I have never been the subject of a Code of Conduct complaint. I have never been ruled disorderly. I have never had any concerns like that raised against me to council meetings, so if I am to learn that I am doing the wrong thing, then it has to be pointed out that I am doing the wrong thing, it is human nature if you are not being told you are doing the wrong thing you believe you are doing the right thing.

Cllr Baker's evidence clearly indicates he knows what the rules are. What he appears to be saying is that he won't comply with the rules unless someone makes him. Cllr Baker's comments typify the malaise that has afflicted the council as reflected in the refusal by some councillors to conduct themselves appropriately in meetings and ensure that others do the same. It also suggests an unwillingness to acknowledge and accept personal responsibility.

The minutes, recordings and transcripts of council meetings confirm that Cllr Kennedy frequently engages in behaviour that could be characterised as acts of disorder. While the incidents that occurred in the Corporate Services Committee meeting of 21 March 2006, (which was chaired by Cllr Lee) are unusually extreme, the transcript of that meeting offers an example of the disruptive and potentially intimidating behaviour and open defiance of the Chair that often typifies Cllr Kennedy's conduct in meetings as reflected in the minutes, recordings and transcripts of other meetings. Relevant portions of the transcript are reproduced as an Appendix to this report.

The Corporate Services Committee meeting degenerated into an altercation between Cllr Kennedy and Cllr Lee. After the meeting there was a further altercation between Cllr Kennedy and Mr Hall. Cllr Kennedy subsequently filed a complaint to police against Mr Hall, alleging that he assaulted him. In his statement to the police, Cllr Kennedy gave the following account of the end of the meeting. His description of his own behaviour in that statement indicates that it was completely unacceptable:

During the meeting I questioned the General Manager James Hall about an answer given in relation to a question, which I believed was inappropriate. As a result I saw the General Manager's face go red, and he made a response to me I believe was belittling. There were points of order made by Councillor Ray Steer to have me removed from the meeting, which I told the Chairman Wayne Lee was wrong, and that he could only ask for an apology. Councillor Lee stated I should make an apology for saying "Blah Blah" to Councillor Steer, which I apologised for. There was further business conducted, then it went to general business. I request that we move to confidential, which means everyone except Councillors and the General Manager leave the meeting. The Chairman, Councillor Lee refused to go into confidential and closed the meeting. I walked from my table to Councillor Lee's table which is on the way out, and told Councillor Lee that it was totally illegal, that I would be reporting him to the Local Government, and that he would be hearing from my lawyer.

After speaking to Councillor Lee I was about to leave when the General Manager James Hall, who had been on the other side of the room, walked up to me and side bumped me with his right shoulder. He approached so that we were facing each other, and from within a foot he moved his body swinging to the left so that his right shoulder hit me front on the chest. His face was about two inches from my face and he was yelling "I am sick of you. I am sick of you threatening staff and councillors" and "I'm here to put a stop to it" or words to that effect. I moved back about a metre to get away from him. He walked forward to about four inches from my face. I said to him, "I won't be threatened, and I won't be assaulted". He then poked me in the chest twice with his left

index finger and said, "We won't be putting up with you anymore, we have had enough of you." The push of his index finger forced me back about two feet. I said, "That's assault and I don't have to put up with it". At this time Councillor Lee had approached and was standing twenty centimetres from my face, and said, "We are all sick of it, we are going to make sure we take care of you this time." I was surrounded by about four other people at this time and felt threatened by the whole situation.

I began towards the door to leave, and called Councillor Lee a "poof". When I was about one metre outside the front door I felt a bump on my left shoulder. I turned and saw that the General Manager had followed me outside and again bumped me with his right shoulder. The General Manager said, "You are finished". I called the General Manager a "cunt". He said, I will skin you alive. I will get you Kennedy. You are finished this time". I then said, "The full wrath of James Hall". He said, "You certainly will". I then got into my vehicle which was across the road, and drove to the Police Station. Councillor Steven Baker also came to the Police Station.

Clr Kennedy subsequently sought an apprehended violence order against Mr Hall. No such order was issued.

Statements made at the time by a number of staff that were present at the meeting suggest that when Clr Kennedy approached Clr Lee, he did so in a threatening manner and that they believed Mr Hall intervened to prevent a physical altercation. No one saw any physical contact between Clr Kennedy and Mr Hall. This was confirmed by Mr Hall in his evidence.

Whatever the truth of the incident may be, behaviour of the type described above has served to undermine community confidence in council as reflected in the results of the last two community surveys conducted by council. As discussed earlier in this report, it has also had an enduring emotional impact on staff.

Asked about his behaviour in meetings, Clr Kennedy indicated that he liked to use sarcasm:

I use sarcasm without a doubt. Sometimes it is not deliberate, sometimes it is, I just try and stick a bit – very rarely said with malice, a lot of the times it is said with more in trying to get a bit of a laugh and ease, get a bit of tension out of the meeting.

Asked whether he thought he made a positive contribution to meetings, Clr Kennedy added:

Sometimes some people might feel, individually might feel a little picked on I suppose, but it definitely gets the gallery involved...Councillors will always debate how they believe is appropriate. I play up to the media, I will make sure that I am one of the councillors that is noticed more than any other councillor. By my very nature the media do take notice of me because of what I am willing to say and I won't adjust the way I do things. So to say that it has a negative effect, I would hope not. Other councillors might say differently. If another councillor was doing that to me it wouldn't have a negative effect on me, in fact it would give me some sort of interest and give me motivation to have a light hearted happy more friendly debate rather than a serious, what you would call probably a nasty debate.

While Clr Kennedy appeared to acknowledge that he used “the full extent of the rules”, he insisted that he stayed within the rules of debate. He stated:

I use the rules, the full extent of the rules that I have before me, I try not to break the rules, I am a stickler for the rules. I don't like it when other people break the rules, and I am more than happy to call the point of order.

Evidently, Clr Kennedy’s knowledge of the rules of debate does not extend to his obligations to respect the Chair. Clr Kennedy admitted to routinely and deliberately provoking the Mayor:

...the Mayor does lose his cool pretty easily, if you want him to lose his cool you can easily do it from within the rules, you don't have to break the rules to have the Mayor lose his cool, and I am not the only councillor that knows how to do that, Councillor Trevor Cutjar is very good at doing it, probably Councillor Cutjar and myself are by far the best at doing it. And I know the rules, and I use the rules to call points of order on Councillor Cutjar to stop the Mayor from being becoming flustered.

Clr Kennedy went on to add:

... it is not just about getting motions passed and resolved in the best interests of the community. At the same time you must expose how people are performing and how they are reacting to the public, so they have a fair understanding of what these people are actually like. If you were to ask most people what they thought of the Mayor even just before the election, or even just after the election, they would say, oh, he might not be the best at what he does but he has got Broken Hill at heart. If you asked a lot of them now what they thought of the Mayor, a common response would be he is not very bright, you know, and that was because I deliberately exposed his shortcomings at meetings.

Asked whether he thought this approach was helpful in terms of the orderly conduct of meetings, Clr Kennedy responded:

Well, if someone can't handle their composure and they lose control, that is really something for them to address. If they need to get psychological help or whatever, then that is what they should do, or counselling or whatever. If you are easily provoked, then of course councillors are going to do it. You are out there, you are vying for the vote of the community, and you will do what is required to look the best of all your fellow councillors.

Asked whether he thought this would contribute to perceptions of disorder, Clr Kennedy responded:

Contributes to a perception of disorder for sure, but it actually isn't disorderly, it is more theatrics than disorderly conduct.

Asked how the gallery would perceive this, Clr Kennedy responded:

The gallery see it as Ron picking on me, which is never good for Ron. It doesn't come across well when someone loses their cool. The person that loses their cool always looks the worst even if they are in right. If you lose your cool, you don't look very professional and that is what they base their opinion on rather than what actually happens.

It would appear that Clr Kennedy's strategy of deliberately provoking the Mayor to make it look like he was picking on him had some success. In her evidence, former councillor, Pam McRae, observed that the Mayor contributed to perceptions of disorder as a result of his behaviour in the Chair:

The Mayor didn't seem to have the ability to keep the meeting under control, in the end he would be yelling abuse at whoever it was that was out of control, and bringing in things that were totally irrelevant to the meeting, what about what you said last week or something which was totally irrelevant and just brought the Mayor down to the same level as everyone else.

Ms McRae, observed that Clr Kennedy was the subject of the Mayor's abuse:

Often Councillor Kennedy was the subject of bad abuse and I didn't agree with that. If Councillor Kennedy upset the Mayor which he could do fairly frequently, he would suddenly start screaming abuse about what you said at a recent meeting or somewhere else, and turn the whole thing around, so it looked as though Councillor Kennedy really was the bad boy, whereas the Mayor should have stopped it all before it got to that stage.

In his evidence, the Mayor acknowledged that he was responsible for the maintenance of order in meetings:

If a councillor comes into this chamber with the intent on being disorderly, yes, I have a responsibility to call that councillor to order, and then I have a

responsibility if it continues to make sure that councillor is put out of the meeting.

However, the Mayor also acknowledged that he had never expelled anyone from a meeting for disorder and that he should have done so in the past. Elsewhere in his evidence, the Mayor said he found it difficult to pass judgment on his fellow councillors when he was in the Chair.

Nowhere is this more evident than in the farcical manner in which the ordinary council meeting of 30 August 2006 was conducted, as recorded in the transcript of that meeting. Every time the Mayor ruled Cllr Kennedy out of order, Cllr Kennedy would call a point of order against the Mayor. On Cllr Kennedy's insistence, the Mayor would step down from the Chair to allow the Deputy Mayor, Cllr Steer, to assume the Chair to make a ruling on Cllr Kennedy's point of order.

In his evidence, the Mayor gave numerous assurances that he would get tough on disorderly conduct in the future. He appeared to indicate this was a responsibility he would share with the eight majority councillors, (with Cllrs Kennedy, Baker and Algate presumably representing the other three). It is unclear precisely what role the Mayor had in mind for the eight majority councillors in this regard:

The meetings could have been conducted and should have been conducted better than they were due to my belief that freedom of speech that didn't lead to a very good outcome for this council, and I have already said that in the past. But now procedures have been changed. We - when I "we", all of us now are prepared, the eight of us are prepared to not put up with any disorderly conduct, whether it is towards the workforce or fellow councillors, and we have made a complete turnaround.

However the conduct of the last ordinary council meeting, held on 25 October 2006, after this Inquiry was announced, appears to offer little hope for

improvement. A recording of that meeting indicates the following occurred at the meeting:

- Clr Kennedy and, to a lesser extent Clr Baker, repeatedly argued with the Chair
- Clr Kennedy attacked the Mayor, the General Manager and a number of other councillors
- Clr Kennedy moved a series of unlawful motions and asked questions for the express purpose of preventing council from attending to the business before it, namely a censure motion against him.
- Clr Kennedy repeatedly made points of order to prevent other councillors from making points of order against him
- Clr Kennedy commented that the meeting was a *“kangaroo court”*, said that he had *“no respect for the Chair”*, and that the general manager’s behaviour was *“unacceptable”*.
- Clr Kennedy asked the Chair whether he *“would prefer it if I took a bullet to the head”*.
- When called upon to apologise to the General Manager, Clr Kennedy apologised to the general manager for *“the terrible way he (the General Manager) has behaved tonight”* and insisted that the Act did not require his apology to be sincere.
- Clr Kennedy challenged the Chair to rule him out of order and later showed open defiance to the censure motion.

While the Mayor called Clr Kennedy to order several times, he was allowed to continue to disrupt the meeting. The Mayor indicated that he was reluctant to expel Clr Kennedy from the meeting. He offered the following explanation:

Well, we had another issue on the agenda, in regard to the hotel, the Palace Hotel. There was half the gallery full of people from the hotel that weren't happy

with the Mayor's decision in regard to the hotel. They were outside. Two councillors in here screaming and yelling, "Go to the media. Blame the Mayor. I will second the no confidence motion in the Mayor." All this stuff is coming from councillors. My understanding was if I put one of them outside it would have made the situation worse.

What is of particular concern is that Cllr Kennedy has subsequently admitted that he deliberately engaged in the acts of disorder in order to test the Mayor's willingness to expel him from the meeting. In his evidence given at the recall hearing, Cllr Kennedy made the following admissions:

Councillor Page made statements to the media beforehand that he was going to actually have councillors expelled. I was testing the ability of the Mayor and did deliberately cause acts of disorder at that meeting. I totally expected to be expelled from the meeting, was prepared to be expelled from the meeting. I would have had no problem of being expelled from the meeting... I thought I would be expelled, and was prepared to be expelled, and probably should have been expelled.

Cllr Kennedy's conduct at the October council meeting has served to expose an ongoing unwillingness by the Mayor to challenge his conduct in meetings. The fact that Cllr Kennedy has been permitted to continue to behave in this manner unchallenged tends to indicate that there is little prospect for improvement in the circumstances of council.

CODE OF CONDUCT

The PBP report on council states, *"Many of the councillors the review team spoke to appeared to lack a clear understanding of their role or their obligations under the council's code of conduct"*.

One of the concerns the Director General identified in his comment in the final PBP report was *"the possible misuse of council's code of conduct processes by councillors in order to make politically motivated attacks on other councillors and staff, and with council's inability to use the code as it is intended to impose*

appropriate standards of behaviour on all councillors.” He referred to deficiencies in the way the council has dealt with, and continues to deal with, complaints under its code of conduct.

The Inquiry examined these matters by considering evidence on council’s implementation of the Model Code. The evidence suggests that council has not implemented its code of conduct effectively or efficiently and that, as a consequence, its code of conduct process lacks credibility. The failure to implement the code explains in part the current circumstances of council.

The Mayor has blamed the code of conduct for the problems faced by council, describing it as a “disaster” and stating it has had a negative impact on relationships between councillors. However, in his own testimony, he conceded, *“a lot of councils have put the effort in to come up with a workable document, and we can”*. Given that all of the councils around the state are required to adopt a code of conduct consistent with the Model Code, it is telling that the councillors of Broken Hill City Council have not been able to work together to implement its code successfully.

It is also evident that the council faced conduct issues prior to its flawed implementation of the Model Code. For example, in an article published in a local newspaper on 2 February 2005, the Mayor wrote, *“The first council meeting of the year proved to be very disappointing in terms of the conduct of a small number of councillors. This is not acceptable and the new Code of Conduct to be effective from March should ensure the disruptive minority are brought to heel.”*

In the Mayor’s testimony, he suggested that the council’s isolation was a factor in its not being able to take advantage of the experience of neighbouring councils, to come up with a better approach to dealing with code of conduct matters. However, he subsequently conceded that there were ways he could have overcome that issue. For example, it is apparent that his recent email to councils around the state has resulted in him being provided with what he describes as the workable documents developed by others.

The Mayor indicated in his testimony he was aware of the departmental guidelines that were available to assist council but stated, *“when we tried to work along those guidelines it was unworkable”*. There is little evidence to support a claim that council made significant use of the guidelines.

The council’s corporate submission in reply (adopted by council on 16 November 2006) contained the following statements on councillor conduct:

“Beyond question some of the material before the Commissioner in regards to the conduct of the elected representatives will not reflect credit on to the elected representatives. The corporate position of Council is to acknowledge that the past behaviour of the elected representative should have in many instances been of a higher standard.” It also states *“Council does not wish to engage in an exercise of allocating responsibility for past practices ... Of more concern to council is to put in place arrangements which will raise the standard of behaviour on the part of elected representatives”*.

The evidence available to the Inquiry suggests that arrangements were in place that should have been sufficient for council to deal with the issues it was encountering, had it the will and inherent capacity to do so. The council has had a code of meeting practice, a code of conduct, access to professional advice, workshops and training. The council has had three warnings of the need to lift its game. It has had the benefit of a PBP review.

The evidence discussed in this section of the report and elsewhere lends little credence to council’s claim that it can improve. It suggests that the best arrangements put in place by council will now not be able to overcome the legacy of past failures and damaging conduct.

Background

The requirement for all councils in NSW to have a Code of Conduct dates back to 1994. In 2004, the *Local Government Act 1993* was amended to require councils to adopt a code of conduct that incorporated the provisions of a Model

Code prescribed by the regulations. The Model Code came into effect on 1 January 2005.

Council adopted the Model Code in February 2005. It subsequently resolved to vary the Model Code by adding additional independent members to its conduct committee.

On at least two occasions the council passed resolutions that indicated an intention to formulate a code of conduct specific to the council's needs. However, it appears the only customisation undertaken was to add additional independent members to the conduct committee.

Guidelines were published by the department in December 2004, to assist councils with the implementation of the Model Code. The guidelines contain information on the role, development, implementation and review of the code of conduct. The guidelines also provide optional better practice suggestions, some examples and a list of relevant resources.

The department contracted *Local Government Learning Solutions*, the training arm of the Local Government and Shires Associations, to develop a Model Code of Conduct Education Package. The inquiry heard evidence that the council has a copy of the facilitator's guide that was part of the package and had distributed it to councillors.

The department issued a circular (05-58) to councils in October 2005 to assist councils with issues that arose with the implementation of the Model Code.

The council advised the department on 6 October 2006 that 51 complaints had been made under the code of conduct since the Model Code came into effect on 1 January 2005. It advised that 32 were about the conduct of councillors and 19 about staff.

Councillors made 46 of the complaints and staff made 5. The PBP review reported that one councillor had made most of the complaints. It is apparent that Cllr Kennedy has been the most prolific complainant.

The council advised that most of the complaints included allegations of multiple breaches, citing the examples of *“meeting misbehaviour, harassment, use of council resources, staff/councillor interaction, (breaches of) media and other council policies.”*

Ten of the complaints were subsequently withdrawn. The council advised that the General Manager declined 7 complaints at the outset, 2 were *“dismissed by Mayor”*, 20 were referred to the conduct committee and 12 were apparently referred for *“outside advice”*.

According to council, five of the complaints referred to the conduct committee resulted in a censure and 15 resulted in no action being taken. Cllr Kennedy is the only councillor to be censured by council. He has been censured twice. Council resolved to give notice of its intention to censure him for a third time, in relation to the March 2006 corporate services meetings, but that resolution was rescinded.

The Model Code places the onus on council to deal with code of conduct complaints in the first instance. It gives rise to various specific responsibilities for different council officials and council as the elected body. All council officials need to understand the code and their respective responsibilities if they are to be able to exercise them in a proper manner. This issue is discussed in the next section of the report.

Understanding of the code of conduct

The Inquiry examined the question of whether councillors understood the code and their roles and responsibilities in relation to the code. It did this by considering what training councillors had received, the evidence gained during the hearings and documentary evidence on the manner in which the council implemented the code. The evidence on the extent of councillors' understanding of the code and their responsibilities in implementing the code is mixed.

One of the stated purposes of the Model Code is to assist council officials to *“understand the standards of conduct that are expected of them”*. The

introduction to the Model Code states *“It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.”* The Model Code is written in the first person, which reiterates this.

The Inquiry considered evidence that indicates councillors have had the opportunity to attend training in the provisions of the code of conduct. Council’s former general manager wrote to the department on 20 December 2005 and stated *“Local Government Learning Solutions were requested to present two workshops on this matter to Broken Hill City Councillors and this occurred.”* At the public hearings, the Inquiry heard evidence from councillors and one of its training providers, which confirmed training had been offered and attended by at least a simple majority of councillors. It is noted that council did not process complete records of which councillors had attended what training.

Council has censured only one councillor for breaching the code of conduct. However, as discussed elsewhere in this report, there is evidence to suggest other councillors have engaged in conduct inconsistent with their obligations under the Model Code.

As discussed above, the Inquiry heard testimony from a number of councillors that indicated they felt it was appropriate for them to meet with council staff and listen to concerns about employment matters. There has been other evidence of councillors wanting to be present when council staff conducted contractual negotiations and cases where one councillor was present when council staff dealt with a grievance. These behaviours suggest that the councillors involved have a level of disregard for the provisions of the Model Code and in particular clause 10.8, which deals with inappropriate interactions. An alternative explanation is that that they don’t fully understand it.

It is important to note that staff have no doubt been responsible for initiating some of the interaction between councillors and staff. Although staff have been provided with written advice on the issue, it is noted the PBP review found that code of conduct training has not been provided to outdoor staff. It may be that

part of the reason for the extent of the interaction is that the outdoor staff do not understand why such contact is not permitted.

The Mayor made several references in his testimony that inferred that he considered the Model Code to be a “*draft*”. He was asked whether he was aware of the statutory status of the Model Code. He responded “*Well I have read it on many occasions, so I am aware of what the document contains. What the intent is and how it should be dealt with.*” He went on to state that his understanding “*is that the State Government would like to see councils deal with a lot of their own issues in house, that (the) document was produced so if you do have a problem that it can be dealt with by your council. I think the intent was to give the ability to your council to deal with your problem before it went any further.*”

This suggests that the Mayor had an understanding of what was expected of him and council. However some of his actions and other responses given in his oral testimony give rise to significant doubt about the depth of his understanding and his capacity to fulfil his role in implementing the code. This is particularly significant given the Mayor’s leadership responsibilities and the requirement for the Mayor to be a member of the conduct committee.

The Model Code provides that the conduct committee has no role in dealing with complaints about staff below the level of General Manager. This is a fundamental issue that goes to the heart of the councillors having no role in operational staffing matters. Notwithstanding this, the Mayor confirmed that he had participated in a code of conduct committee that considered a complaint made by Councillor Kennedy against Mr Kym Fuller, council’s former tourism manager. Although the committee eventually realised it was not appropriate for it to be dealing with the matter, this should have been apparent to the Mayor prior to the initial meeting and he should have acted to prevent the committee dealing with it. It is noted however, the former General Manager, Mr Hall also erred in referring the matter to the conduct committee in the first instance.

During the public hearings, the Mayor was still not able to correctly describe the conduct committee's role in dealing with complaints about staff i.e. that it has no role except where the complaint is about the General Manager. The Mayor was asked what the Model Code of Conduct says about dealing with complaints about council staff other than the General Manager. He responded, *"that when the complaint comes it will go to the General Manager, and then he can say yes or no whether it is dealt with. But from day one it has been very unclear whether the Code of Conduct (committee) has any roles and responsibilities in regards to the management. My understanding is it can be dealt with senior management, but not below there."* When asked about the basis for that understanding, he responded, *"It's what I have read in the Code of Conduct."* He was asked whether he believed the Model Code of Conduct is not clear about who should deal with staff complaints. He responded, *"It is not"*.

He was asked what he would do if he had a concern that a council staff member had breached the Model Code. His response was *"Well, it would have to depend on what the breach is, if it was only a trivial breach I wouldn't comment, but if it was a serious one I would mention it to the General Manager, and that is the General Manager's role to look after the workforce"*. However he went on to state if it related to *"a senior official"* the conduct committee would deal with it. He went on to clarify whom he defined as a senior official and he said it *"is the General Manager, and the top three that is normally on a council, which are contract employees that don't come under the agreement with the unions."*

It is now 22 months since the Model Code has come into effect. The Mayor has attended training. The Mayor has had the opportunity to learn from the erroneous manner in which the complaint about the former tourism manager was handled. He claims to have read the code many times. Yet he was not able to provide correct responses on the fundamental issue of how to deal with complaints about staff.

The Mayor also suggested in his evidence that it was his role to decide if complaints about the General Manager should be referred to the conduct

committee. The Model Code confers no such discretion on the Mayor. The Model Code clearly states at section 10.4 *“Where you believe the general manager has failed to comply with the code, you should report the matter to the Mayor ... who will report the matter to the conduct committee”* (emphasis added). The council recently responded to a survey undertaken by the department indicating that the Mayor has dealt with 2 complaints against the General Manager by declining them and not referring them to the conduct committee as required under clause 10.4.

The Inquiry was provided with a copy of Mayoral Minute 13/06 in which the Mayor suggested that the council amend its code to include a provision for vexatious complaints. It is clear from the Minute that the Mayor did not comprehend that the provisions of the Model Code (particularly sections 5.1 and 5.6) could be used to deal with the conduct he was describing as a vexatious complaint.

Clr Kennedy lodged nine separate complaints dated 15 May 2005, three about council’s former tourism manager, Mr Kym Fuller, two about the conduct of the former General Manager and four about the conduct of different councillors. In all of the complaints, he makes the statement *“I haven’t had a chance to read council’s code of conduct”*. This must raise some doubt as to his level of understanding of the code at that time. Given the code had, at that time, been in effect for over four months and adopted by council, it is surprising the councillor claims not to have read it.

Although there is significant evidence to indicate that Clr Kennedy ultimately did read the code (his complaint about Clr Lee dated 7 July 2006 quotes from it extensively), the content of that complaint suggests that his understanding of the code was still deficient some 18 months after the Model Code came into effect. For example, his complaint about Clr Lee alleges a breach of one of the key principles that the code is based on. As pointed out in the department’s Circular 05-58, the key principles are a statement of the ethical underpinnings of the Model Code and do not in themselves represent specific standards of

conduct that can be breached. In his complaint about Cllr Lee, Cllr Kennedy also raises concerns about the conduct of the General Manager after the meeting but states, *"I am not sure of the relevance of this as it was after the meeting"*. Cllr Kennedy appears not to have recognised, at the time he made the complaint, that the code of conduct also applied to the conduct of council officials outside of meetings.

What is of particular concern however is Cllr Kennedy's view, expressed in his evidence given at the recall hearing, that councillors are not bound by the code of conduct if they have not read it or do not understand it. Based on this reasoning, Cllr Kennedy appeared to suggest that Broken Hill City councillors were not obliged to comply with the code of conduct and that, as a result, none had in fact breached it:

...under law you cannot be held responsible for anything if you haven't read it, or had the chance to read it, or understand it, and I am sure both the officers assisting the Inquiry would be fully aware of the fact that until a councillor has been made aware of the Code of Conduct and what is required in that Code of Conduct, they are not bound by that Code of Conduct under law. I refer the Commissioner to the statement in the Department of Local Government's correspondence: "Council should require all officials to sign a statement that they have received, read and understood their obligations under the code of conduct." This has never happened, and councillors are not bound by the Code of Conduct until they fully understand it."...

It is an important thing, and it goes back to whether councillors had really broken any parts of the Model Code of Conduct, considering by the statements of the officers assisting the Commissioner they have made it quite clear that most councillors do not understand it. If most councillors say they do not understand it, and in fact have not even read it, then you could probably say that we are not bound by it or are not obliged to act in accordance with it, and they are the rules of law.

Needless to say, these views are incorrect. It is unclear to what extent Cllr Kennedy's erroneous views have informed his conduct.

Recently the council's conduct committee met to deal with a complaint made by Cllr Baker. It commented that complaints such as that made by Cllr Baker are frivolous and a waste of time. If the committee's view is accepted, it must cast some doubt on Cllr Baker's understanding of the code.

The Inquiry also examined the manner in which council implemented the code of conduct including the nature of the complaints made under it, the manner in which they were dealt with and the conduct of councillors. This examination provides further insight into the extent of councillor understanding of the code of conduct and is discussed in the following sections of this report.

Conduct committee – composition

The Model Code (section 10.8) provides that:

Council will establish a conduct committee that will consist of the Mayor, the general manager and at least one person independent of council. The independent representative/s should comprise council's nominated legal adviser or other independent person/s of appropriate standing. In the instance of a complaint being made by or against the Mayor or the general manager, the Deputy Mayor, or another councillor who has been designated by council, will take the place of the Mayor or general manager on the committee.

Notwithstanding this straightforward provision, the Inquiry found evidence to indicate that the process of constituting council's conduct committee has been far from straightforward.

The current General Manager indicated in his testimony he had had difficulty determining who is on council's conduct committee. This should not be taken as a criticism of his ability. Rather it is indicative of the convoluted and problematic manner in which council deliberated on that matter.

It would appear that council initially intended to draw from a panel of three legal representatives to fulfil the role of the independent member. However, council records suggest that this did not occur because all the members of its panel, except for Mr Andrew Boog of Austen Brown Boog Solicitors, declined to be involved.

Council considered a motion on 31 August 2005 (moved by Clr Kennedy and seconded by Clr Algate) to appoint two additional councillors to the conduct committee (one councillor nominated by the 'accused' and one by the 'accuser'). Given the provisions of clause 10.8 of the Model Code, such a motion was unlawful and should have been ruled out of order. The motion had been moved at a previous meeting, referred to a committee meeting and discussed at a councillor workshop, prior to being considered on 31 August 2005. Given this, one must question the then General Manager's and the councillors' collective ability to comprehend the provisions of the Model Code.

On 20 July 2006, council resolved to invite a panel of 9 community members, in addition to Mr Boog, to sit on the conduct committee. In addition to the General Manager and Mayor, conduct committees are now to include three independents, including one nominated by the 'accused' and one by the 'accuser'.

The conduct committee recently met to deal with a complaint made by Clr Lee against Clr Kennedy and one by Clr Kennedy against Clr Lee. The General Manager considered he was unable to sit on the committee in good faith (having regard to the apparent animosity between himself and Clr Kennedy) and Clr Algate was selected to replace him on the committee.

The Inquiry attempted to verify that Clr Algate had been correctly appointed to the conduct committee. However, the relevant council minutes do not record that the motion to appoint Clr Algate was put. When the current General Manager was asked about the status of the decision to appoint Clr Algate, he responded, "*it was not a decision*". In raising this issue, the Inquiry does not wish to infer any criticism about Clr Algate's decision to participate per se.

Rather it is raised to further illustrate a pattern of ineptitude on council's part in dealing with issues related to its code of conduct and its meetings.

Conduct committee – training and procedures

The membership of council's conduct committee has changed over time. It is apparent that the committee has operated without clear written procedures and without any significant training being provided to its members, on their specific duties as members of the committee and the processes they were required to follow. The lack of training and procedures is significant given the important role of the committee and its changing membership.

For example, Cllr Algate in his testimony, when commenting on his involvement as a member of the conduct committee indicated that:

Judgements were made generally on the basis that we should be mindful of the expectations of the Code of Conduct, we should also be mindful of the council's general policies, and I must say that perhaps some of those independent people are not terribly familiar with council's policies, and I don't profess to know all about them either because there are literally hundreds and hundreds of pages of policies."

The Model Code provides that a council's conduct committee is responsible for dealing with complaints referred to it by the council's General Manager (where these relate to the conduct of councillors) and complaints about the General Manager (which must be referred to the committee by the Mayor). In response to a survey undertaken by the department in September 2006, council's General Manager responded that the conduct committee has not worked well.

The department's Circular 05-58 succinctly describes the options available to the conduct committee when a complaint is reported to it. It states, "*When a matter is reported to the conduct committee, it has the discretion to determine whether or not to make enquiries into the allegation. Where the committee determines not to make enquiries, the committee must give the complainant the reasons in writing.*" Where it determines further enquiries need to be made it can

undertake these itself or engage a person external to council with relevant expertise to do so or provide advice to assist the committee.

The Inquiry has not been able to find any record to indicate that the guidelines or Circular 05-58 were provided to the independent members of the conduct committee.

The Model Code guidelines and the department's Circular 05-58 both stated that councils should develop procedures to guide the operation of their conduct committee. The council did not formally adopt procedures until a council meeting on 16 October 2006 and these lack detail.

It is noted that the conduct committee did have the benefit of Mr Boog's legal expertise. However in the interests of ensuring a fair and transparent process, council should have developed formal documented procedures and made these available to all parties prior to proceedings. The absence of such procedures represents a fundamental failure by council to identify what it needed to have in place for its conduct committee to operate fairly and effectively.

There is evidence that the council had difficulty in comprehending the need to schedule its conduct committee meetings at times when the parties could reasonably attend. It dealt with some matters without adequately hearing from all of the parties. For example, on one occasion, a meeting was scheduled to consider complaints against Clr Kennedy, on a date that coincided with the anticipated birth of his third child. On another occasion, the committee chose to deal with complaints involving Clr Lee on a date he was unable to attend. The Model Code prescribes that the person or persons making enquiries into a code of conduct breach must *"hear all parties to a matter"*.

Clause 10.13 of the Model Code states *"Council's conduct committee must decide whether a matter reported to it discloses a prima facie breach of this code. The conduct committee will report its findings, and the reasons for these findings, in writing to the council, the complainant and the person subject of the complaint."*

On one occasion, the conduct committee reported its findings to council without providing its reasons for those findings.

On no occasion did the conduct committee seek statements from third parties. It is difficult to see how the conduct committee could have exercised its investigative function effectively without doing so, given the nature of some of the complaints refer to it. Nowhere is this more evident than in the committee's consideration of the allegation of serious misbehaviour concerning Clr Kennedy. This is discussed in more detail later in this report.

A report of the conduct committee suggests that on 28 June 2005 and 12 July 2005, the committee allowed Clr Algate to be present as an observer. In his evidence at the recall hearing, Clr Kennedy indicated he also brought a witness on a previous occasion. While the Inquiry has not canvassed the merits or otherwise of allowing an observer to be present, there does not appear to have been an observer present on other occasions. No explanation has been offered for this inconsistency in approach. It was noted that when the committee met on 12 July 2005, an objection was raised about Clr Algate's presence.

The next section of this report discusses the manner in which the conduct committee dealt with some of the complaints made pursuant to council's code of conduct.

Code of conduct - complaints

In assessing whether council has dealt with complaints made under its code of conduct appropriately, it is necessary to consider the requirements of the Model Code. This requires enquiries made by the conduct committee to follow the rules of procedural fairness. The Code, at clause 10.8 states:

The enquirer must:

- *inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them*

-
- *provide the person/s with a reasonable opportunity to put their case*
 - *hear all parties to a matter and consider submissions*
 - *make reasonable enquiries before making a recommendation*
 - *ensure that no person is involved in enquiries in which they have a direct interest*
 - *act fairly and without bias, and*
 - *conduct the enquiries without undue delay.*

The evidence considered by the Inquiry indicates that the manner in which council has dealt with code of conduct complaints has been seriously flawed. A consequence of this is the apparent loss of confidence in the process by councillors and staff.

The PBP review team indicated in their report that they had been told, *“councillors and staff have given up lodging complaints because of previous problems with the process.”*

If breaches of the code are not reported, council cannot deal with such breaches. The failure to deal with breaches could lead to a person concluding that inappropriate conduct is acceptable. Not only does this promote such conduct, it serves to further discourage people from making complaints about it. Evidence heard by the Inquiry indicates this is what has happened at council.

Council reported to the department that in one case, it took 50 weeks to resolve a complaint. This is hardly consistent with an obligation to *“conduct the enquiries without undue delay”*.

Such delays also undermine confidence in the process. This was evident in Cllr Algate’s actions in withdrawing a complaint he made against the Mayor. At the hearing he was asked what prompted him to withdraw the complaint. He responded, *“at the time I was of the view that given that 11 months had elapsed, and the complaint had never been heard, I mean what is the point?”*

It would appear that by March 2006, Clr Algate had lost faith in council's ability to deal with code of conduct matters appropriately. He wrote to the Director General expressing concern about the conduct of the then General Manager and the Mayor. He concluded his letter with the statement, "*if there is to be an improvement or change in the matter in which Broken Hill City Council operates it will certainly not result from any internal influence!*" It is apparent he saw no point in making a further complaint locally.

Clr Algate was not the only council official to have lost faith in council's capacity to deal with matters internally as evidenced by the following:

- Clr Baker raised concerns with department in January 2006
- Clr Lee raised concerns with the department in May 2006
- The former General Manager regularly contacted the department
- Clr McRae felt compelled to resign her position as a councillor
- A number of councillors made representations to the local state member of Parliament about their concerns.
- In giving evidence on the way the conduct committee had dealt with complaints against him, Clr Kennedy indicated that he had "*no faith in the integrity of that body*"

While this report does not canvass in detail all of the complaints that have been made pursuant to council's code of conduct, it is informative to contrast the manner in which the conduct committee dealt with complaints initially with those it has dealt with more recently.

It would appear from the information available to the Inquiry that the first complaints dealt with by the conduct committee included a complaint by a member of staff against Clr Kennedy, a complaint by Clr Kennedy against the same member of staff, a complaint by Clrs Cutjar, Seward, Turley and

Cullenward against Cllr Kennedy and a complaint by Cllr Kennedy against those councillors.

As mentioned earlier, the conduct committee should not have deliberated on the complaint against the staff member. It does not appear to have repeated this mistake but, based on the Mayor's evidence of his understanding of the Model Code, there is a potential for this mistake to recur.

The conduct committee appears to have had its first meeting on 25 May 2005 to consider a complaint. The parties to that complaint were Mr Kym Fuller and Cllr Kennedy. Prior to the hearing, there were exchanges of correspondence between Mr Hall and the two parties to the complaint.

In one letter, Cllr Kennedy indicated to the General Manager that he felt "*there is already a degree of bias*". In that letter, he asked for a copy of a transcript of a radio interview that was relevant to the matter. Mr Hall initially refused to supply a copy, even though it was available. It was not unreasonable for Cllr Kennedy to be concerned about this. It is noted that a transcript was supplied the day before the hearing, only after Cllr Kennedy sent a further letter requesting it.

The Inquiry obtained a copy of email sent by Mr Hall to Mr Fuller, on the morning of 25 May 2005. In the email, Mr Hall appears to express a view to Mr Fuller on the relative merits of matters to be considered by the conduct committee:

- 1. Your complaint against Councillor Kennedy is fine. Councillor Kennedy is claiming your complaint against him and the Media Policy is not specific.*
- 2. The complaint against yourself by Councillor Kennedy. He has been advised that they are too general in nature. I agree with your comments. His response is that I am biased!*

As a member of the conduct committee, it was inappropriate for Mr Hall to express such views to one of the parties to the complaint. This tends to indicate

partiality on the part of Mr Hall and suggests that he had prejudged the matter without having heard from both parties.

The conduct committee made adverse findings against Cllr Kennedy but it did not provide reasons, contrary to the requirement of the Model Code. Cllr Algate indicated in his evidence that he expressed concern about this at the time:

“I was most outspoken about the finding that was brought down to council about the first Councillor Kennedy complaint where he was found guilty ... the report that came to the council gave no reasons why he had been found guilty”.

Significantly, Cllr Algate claimed in his testimony that he was the only councillor to raise this concern.

Cllr Algate made the further valid observation in his evidence that *“if I am to learn from that experience, I need to know specifically what part of the policy, the code or the Act has been breached, and how.”* This didn't occur and as such, it represents a failure on council's part to use the Model Code for one of its stated purposes i.e. to help council officials to *“understand the standards of conduct that are expected of them”*.

The conduct committee met on 28 June 2005, to deal with complaints made by and about Cllr Kennedy. This was the day Cllr Kennedy's third child was due to be born. Cllr Kennedy had previously advised the General Manager he would be unable to attend in the period around that date. In spite of this, the committee still went ahead with its meeting and formed a view the complaint made by Cllr Kennedy was unfounded and that the complaint against him warranted censure. This was documented in a report signed by all three members of the conduct committee.

Subsequently, on the 30 June 2005, Mr Hall sent a facsimile to Mr Boog to advise him *“The Mayor did not put the Report of our findings to the Council Meeting and we now intend inviting Councillor Kennedy to front the Committee in July.”* It was prudent for the committee to take the opportunity to hear from Cllr Kennedy, but the need for this should have been apparent to the committee

prior to convening on 28 June 2005. It also raises concerns about who was determining the committee's processes.

The conduct committee heard from Clr Kennedy on 12 July 2005. However, given it had clearly already formed a view before hearing from him, it is open to question whether it met its obligations to afford procedural fairness.

Council records indicate that, on the recommendation of the conduct committee, the council resolved to censure Clr Kennedy and require him to apologise. It also decided to dismiss the complaint made by Clr Kennedy against the other councillors. However, the Inquiry noted the conduct committee report provided to council in relation to this matter was not much better than the committee's first report. It is difficult to see how council could have made a properly informed decision on the basis of the scant information provided in the conduct committee report.

It is relevant to note that the initial complaints considered by council concerned the issue of comments made in the media. This issue subsequently proved to be a contentious one. Had the reasons for the initial findings against Clr Kennedy been well documented and debated, the council as a collective entity may have been able to advance its understanding of this important issue.

The manner in which council dealt with the initial conduct committee report was farcical. Council considered that report on two occasions. On the first occasion, the meeting had to be adjourned due to a lack of a quorum. This was because the councillors who had complained about Clr Kennedy were unsure if they had a conflict of interest in relation to the matter. On the department's advice that they did not have a conflict, those councillors participated in consideration of the matter when it came before council on the second occasion.

On the second occasion council considered the report, the council failed to comply with the requirement to give proper notice of its intention to consider the matter, in breach of section 440G of the Act. As a result, the censure motion was invalid for the purposes of the misbehaviour provisions of the Act.

While it was open for council to resolve to censure Clr Kennedy (if it gave proper notice) it was also open for it not to do so. It could have resolved that he be counselled and/or decided to take other action as detailed in the code. It is not clear to the Inquiry as to why the council considered the initial code of conduct breaches were of such seriousness to warrant a censure.

It would be useful for the department and councils to consider the circumstances in which different levels of sanction would be appropriate. It may be appropriate for the department to issue guidelines on this issue. In future, it is suggested conduct committees should at the very least provide an explanation for any recommended sanction.

Most recently, the conduct committee met on 4 August 2006 and dealt with a number of complaints. The first complaint dealt with was by Clr Baker against Clr Cutjar. It is noted this complaint was made on 4 April 2006 and therefore, it took over 4 months to be considered. The conclusion reached by the committee was that the breach, if any, was of such a minor nature as to not require any further action from either the committee or council. It does not reflect positively on council that it took so long to deal with such a matter.

The committee also considered a complaint against the then General Manager, Mr Hall. This complaint was made on 27 February 2006. Given Mr Hall was the subject of the complaint, the primary responsibility for this delay must rest with the Mayor.

The other matters dealt with by the committee on 4 August 2006 related to conduct that occurred at council's Corporate Services Committee meeting on 21 March 2006. Clr Lee made one of the complaints, alleging that Clr Kennedy's conduct at the meeting constituted serious misbehaviour. The conduct committee determined that on the evidence presented, no conclusions were able to be drawn on the behaviour complained about.

On 30 August 2006 council considered a mayoral minute in which the Mayor purported to table a report of the conduct committee's meeting of 4 August

2006. The report so tabled was labelled “draft only” and it is not clear as to whether it had been agreed to by all of the members of the committee. Council resolved to refer the report to the department rather than make a substantive decision on the complaints.

Over two months later, on 18 October 2006, the council considered the report again, only to defer consideration to a subsequent meeting.

The council finally dealt with the report on the conduct committee’s meeting of 4 August 2006 on 25 October 2006. Council resolved on the basis of a Mayoral minute to give notice of its intention to censure Cllr Kennedy at the following meeting of council. The failure by council to deal with such conduct in a more timely fashion can only be described as an appalling dereliction of duty particularly given the OH&S concerns that had been raised about the same incident.

It is significant to note that the Mayor was a member of the conduct committee and then was the author of a Mayoral minute that was highly critical of that committee’s findings. Cllr Algate commented on this in his testimony:

“Even though the Mayor voted unanimously with the other four people on the Code of Conduct meeting night, he then went away and some two months later voted the opposite - brought down a Mayoral minute which destroyed the credibility of everybody that sat on that committee.”

While on the face of the evidence available to this Inquiry, Cllr Kennedy behaviour on 21 March 2006 warranted censure, the conduct committee’s handling of the matter must raise serious doubt about the Mayor’s capacity to fulfil his role as a member of the conduct committee. It is noted that the conduct committee apparently relied primarily on the transcript of the meeting and Cllr Kennedy’s oral submission. It is difficult to comprehend why the Mayor failed to alert the independent members of the committee to the availability of statements made by staff that were present at the meeting.

The Inquiry noted that Cllr Algate was a member of the conduct committee on this occasion and that he was aware that Cllr Kennedy had made a statement to the police that contained information about what occurred on the night of the meeting. It is not clear why Cllr Algate apparently did not alert the committee that this information may have been available to it. Cllr Kennedy indicated that he would have been prepared to supply a copy of this to the committee.

Cllr Algate said he did not see it as being his responsibility to alert the committee to the existence of the police statement. Given the committee's role in making enquiries and establishing the facts of a matter before it, it was incumbent on Cllr Algate and all other members of the committee to bring to the committee's attention any information relevant to that matter.

On the evidence available to the Inquiry, it is difficult to comprehend why the committee did not undertake or arrange a proper investigation into the matter. Such an investigation is clearly contemplated by the Model Code and it could have provided the committee with the information it needed to make a proper finding.

That aside, it is difficult to comprehend how the committee was unable to conclude that the code of conduct had been breached, given that it had a copy of the transcript of the Corporate Services Committee meeting, portions of which are reproduced in the Appendix to this report.

In oral testimony, the current General Manager conceded that the council's system for reporting complaints "*clearly needs improvement*". He said that while there was an administrative system to support the handling of code of conduct complaints "*it certainly wouldn't be to the standard that I would expect for it to be in place.*"

In the absence of an efficient administrative support system and of documented procedures to guide the operations of the conduct committee, it is not surprising that the council has taken so long to deal with complaints. Some the responsibility for this must rest with the former General Manager and council's

advisors. Ultimately however, the elected council must also accept the responsibility for the failure to properly implement the code.

What is of particular concern is that council has apparently been unable to learn from its mistakes. Council has received over 50 complaints since the Model Code came into effect. However, it does not appear to have used its experience to significantly improve the way it has dealt with complaints.

Misuse of the Complaints Process

There is evidence to suggest that some complaints made under the code of conduct were not motivated by a genuine concern about a possible breach of the code and as such could be regarded as being frivolous and vexatious.

Clr Kennedy claimed in his testimony that he had been threatened with the claim that *“the Code of Conduct was the tool that they were going to use to silence disobedient councillors or councillors that wouldn't tow the line, and that is what they did. It was harassment”*.

On 6 May 2005, council's former tourism manager lodged a complaint about Clr Kennedy. On 13 May 2005, four councillors made a complaint about Clr Kennedy's conduct. In response, between 15 May 2005 and 2 June 2005, Clr Kennedy made complaints that contained allegations of twelve separate breaches of the code of conduct. His complaints included complaints about the former tourism manager and all of the councillors who had made complaints about him.

None of the allegations against the councillors were found to warrant any further action. The complaint against Mr Fuller did not proceed, as he had ceased to be a council employee.

In his testimony, Clr Kennedy admitted that *“the initial few complaints”* made by him were prompted by the fact that complaints had been made against him. He wanted to demonstrate to the people who had made the complaints, the impact

the complaints had on him. He said, *“They (his complaints) were there to just point out what they were doing to me as much as anything else.”*

SUBMISSIONS IN RESPONSE

As part of the Inquiry process, I asked the officers assisting me to prepare a submission containing an analysis of the evidence available to the Inquiry. This forms the basis of the analysis section of this report. A copy of this was made available to council and to each of the councillors and Mr Hall. They were all given an opportunity to respond by way of oral and/or written submissions.

Of the councillors, only Clrs Algate and Kennedy took the opportunity to respond to the officers’ submission at the recall hearing. Where required, the analysis section of this report has been amended in response to issues raised by their submissions. The Inquiry has received no written submissions from the other councillors individually or Mr Hall, in relation to the officers’ submission.

Council responded to the officers’ submissions by referring to an earlier submission it prepared at the conclusion of the preliminary hearings. This addressed the evidence given at the hearings and the issues it identified as arising from that evidence. Council’s submission appears to have implicitly identified similar concerns to those identified in the officers’ submission.

With respect to the first specific term of reference for this Inquiry, council’s submission makes the following observation:

Beyond question some of the material before the Commissioner in regards to the conduct of the elected representatives will not reflect credit on to the elected representatives. The corporate position of Council is to acknowledge that the past behaviour of the elected representatives should have in many instances been of a higher standard. There are a number of factors which contributed to this situation. Council does not wish to engage in an exercise of allocating responsibility for past practices. Of more concern to council is to put in place arrangements which will raise the standard of behaviour on the part of elected representatives and also to maintain it at a high level.

With respect to the second of the terms of reference, council observed:

It is submitted by Council that the elected representatives have a good fundamental grasp of their roles and responsibilities. However, that is not to suggest that there is no opportunity for improvement in this area. An additional consideration is of course the application of the knowledge. The elected representatives acknowledge that while the majority have attended a range of professional development opportunities organised that they would benefit from re-visiting the information.

Council concluded by observing:

It is accepted by Council that in the past few years the elected representatives' performance has at times been an issue for the Department and the community. The airing of the issues in the Public Inquiry has provided the opportunity to recognise the importance of setting and achieving higher standards of governance. It is also the strong belief of Council that the elected representatives have both the capacity and the commitment to improve.

Council has proposed a number of strategies for delivering this improvement. These include the following:

- Councillors signing an agreement which will articulate their commitment to improved working relationships
- The Mayor's participation in a mentoring program involving the Mayors of two other councils
- Relying on the local government knowledge and experience of the current general manager
- Reminding councillors that they are not to involve themselves in staffing issues and to review the policies relating to councillor / staff interaction
- Discontinuing the involvement of councillors in industrial negotiations
- Providing a further professional development program for councillors

Unfortunately, based on the evidence, I am not satisfied that council is capable of achieving the necessary improvements in the performance of its councillors.

Council has previously received three warnings from the Department of Local Government about its performance. Aspects of its performance have also been the subject of adverse comment by other organisations, such as the NSW Ombudsman. After each warning it has expressed a commitment to improve. Unfortunately, it has consistently proven to be incapable of delivering that improvement.

Councillors have had ample training on their obligations and roles in the past. Most demonstrated a strong theoretical understanding of the respective roles of councillors and the General Manager in their evidence to the Inquiry. Unfortunately, that evidence also demonstrates an ongoing inability to apply that knowledge correctly. This appears to be driven in part by organisational cultural factors but seems largely to be driven by the personalities of certain councillors.

Some councillors, and in particular Cllr Kennedy, remain unwilling to acknowledge that their conduct has been inappropriate. This casts some doubt over council's ability to affect a change in those councillors' behaviour.

While it seems clear that the new General Manager currently enjoys widespread support amongst most councillors, I have noted with concern that Cllr Kennedy has now attacked him on a number of occasions in council meetings and appears to have discussed his performance with staff in a way that appears to have been calculated to undermine his authority. This raises a concern that the history of conflict between some councillors and the previous General Manager will repeat itself.

While the proposal for councillors to sign an agreement designed to articulate a commitment to improved working relationships is a positive step, the circumstances in which this was considered at the extraordinary meeting of 16 November 2006 does not inspire confidence that this improvement can be

achieved. In particular I have noted that at that meeting, one councillor, Clr Lee, not unreasonably indicated he could not in good conscience sign the agreement, as he did not believe the council could work together. Another councillor, Clr Kennedy sought to link his support for the agreement with support for a rescission motion he lodged in relation to an earlier decision by council to give notice of its intention to censure him. He subsequently walked out of the meeting after he was ruled out of order, threatening that if the he was censured he would get the council sacked.

Acts of disorder have continued at council meetings even after this Inquiry was announced. Acts of disorder occurred at the ordinary meeting of 25 October 2006 and, as described above, at the extraordinary meeting of 16 November 2006. This was held after the preliminary hearings of this Inquiry had been completed. Despite the concerns identified at the hearings and acknowledged in council's submission, acts of disorder continue to go unpunished and council meetings continue to be disrupted by Clr Kennedy.

Evidence heard by this Inquiry indicates that the relationship between councillors and key staff has irreparably broken down. That evidence has shown that much of this damage has been caused by the behaviour of a small number of councillors. Unfortunately those councillors demonstrated an ongoing contempt and distrust for certain staff in their evidence to this Inquiry. Nowhere is this more clearly illustrated than in Clr Kennedy's submissions to this Inquiry, in response to the evidence given by council staff. In those submissions, he personally attacked those staff questioning their competence and integrity. It is difficult to see how the relationships between councillors and senior staff can be repaired while councillors hold such attitudes.

APPENDIX 1

TRANSCRIPT - CORPORATE SERVICE COMMITTEE MEETING – 21/3/05

The transcript of the Corporate Services Committee meeting of 21 March 2006 records the following exchange that occurred when the former general manager began to speak to indicate his agreement with Clr Kennedy's concerns over the administration of council's donations budget:

Clr Lee: Ah...General manager...would you like to say something?

James Hall: Ah through the Chair...look I don't often agree with Councillor Kennedy but on this instance I...totally agree with him...um..you know each year we...we do have this problem...

Clr Kennedy (interrupting): I take offence to that...I take total offence to that...

Clr Steer (over the top): Point of order...point of order

Clr Kennedy (interrupting): No...no...I'm calling a point of order...I'm calling a point of order...the fact is...

Clr Lee (interrupting): You didn't call a point of order...you didn't call a point of order...

Clr Kennedy (interrupting): Well I'm calling a point of order now...the fact is...

Clr Lee (interrupting): You're overruled

Clr Kennedy:...the General Manager...the General

Clr Lee: (interrupting): ...you're out of order

Clr Kennedy: Ohhh...get...get your rules fucking straight Councillor Lee...the fact is...

Clr Steer: (interrupting): Point of order Mr Chairman...

Clr Kennedy: The fact is...that the General Manager just started off...

Clr Lee: You're out of order Councillor Kennedy...

Clr Kennedy: ...that he doesn't agree with Councillor Kennedy very often...that's not an appropriate statement...and it shouldn't start off like that...

Clr Steer: Point of order Mr Chairman...can you give the meeting some control please...

Clr Lee: What's your point of order Councillor Steer?

Clr Steer: ...and I'll have that on ma...noted in the book...in the minutes of the meeting too...is this going to continue on...or are we going to do something about this?

Clr Kennedy: (inaudible in background) ...be a hero...

Clr Lee: Can you refrain from criticising...

Clr Kennedy: I can do what I like...

Clr Lee: ...other Councillors...No you can't do what you like...

Clr Kennedy: Yes I can...

Clr Lee: Refrain from criticising other Councillors...

Clr Kennedy: You can't tell me what to do...rule me out of order...

Clr Lee: I've just told you...

Clr Kennedy: ...rule me out of order...

Clr Lee: You're out of order...

Clr Kennedy: Right...done...that's all...that's all you have to do...

Clr Lee: Ah...Mr Hall...

Clr Steer: Point of or...Mr Cha...

Clr Lee: ...would you like to continue speaking...

James Hall: Yes...thank you Mr Chair...

Clr Kennedy (interrupting): Now I'll call a point of order...I'm allowed a point of order...you don't...

Clr Lee (interrupting): What's the point of order Councillor Kennedy?

Clr Kennedy: The point of order is the General Manager started off...with an abuse of a Councillor by saying I don't agree with Clr Kennedy very often...

Clr Lee (interrupting): Overruled...

Clr Kennedy (interrupting): Hey...no no...

Clr Lee: Mr...

Clr Kennedy (interrupting): ...you hear my point of order before you rule...

Clr Lee: I just heard it...

Clr Kennedy: ..don't interrupt me...right...the fact is you've started off with you don't agree with councillor Kennedy very often...you shouldn't be criticizing councillors...the fact is...keep your comments to...ah what's going on in meeting not your personal vendetta against me...

Clr Steer: Point of order Mr Chairman...please if this is going to cont...

Clr Kennedy (in background): You keep your personal vendettas in your pants too...

Clr Lee: Councillor Kennedy...

Clr Steer: Can I have a rep...can I have Councillor Kennedy removed from this Council Chamber please?

Clr Kennedy: On what grounds Councillor Steer?

Clr Steer: Insulting other Councillors...

Clr Kennedy: No no...he's called me out of order...all he has to do is ask me to apologise...he can't have Councillors removed.

Clr Steer: Well the other point is too...he won't apologise...so can we get a ruling on it...

Clr Lee: Can you apologise to Councillor Steer?

Clr Kennedy: For...on what...for what?

Clr Lee: For criticising

Clr Kennedy: What did I criticise him...I'd like to know...before I apologise for whatever I criticised him for...well what have I criticised him for?

Clr Lee: The way you...um...

Clr Kennedy: Get it right cause its on tape...get it right...because you're...

Clr Lee: Just let me...

Clr Kennedy:...get it right...go...

Clr Lee: You can apologise for the way you were detrimental in the way you spoke to Councillor Steer...

Clr Kennedy: Tell me what it was and I'll apologise...I'm not apologising...

Clr Lee: the groaning type thing that you did...

Clr Kenendy: What...what did I do...

Clr Lee: I'm not going to continue on...you apologise...

Clr Kennedy: I have a to know what...what do you want me to apologise for...

Clr Steer: Mr Chairman can you have the minutes read by the Secretary...please...and see what was said...

Clr Kennedy: We don't keep minutes to that degree Councillor Steer.

Clr Steer: ...as Cheryl was writing down...

Cheryl: I'm writing notes...I'm writing notes Councillor Steer but not in the formal record...

Clr Lee: I've already said what it was Councillor Kennedy...

Clr Kennedy (interrupting): No...you cannot say I've acted...

Clr Lee: You criticised...

Clr Kennedy:...in a detrimental fashion...I wanna know what I've said so I can apologise...

Clr Lee: Going err errr...to ah...

Clr Kennedy: I'm sorry that I ...Steer...I went err err.

Later in the meeting Clr Kennedy sought to have Clr Steer removed from the meeting:

Clr Kennedy: Move Councillor...ah Steer be removed from the meeting for disorderly conduct.

Clr Lee: On what grounds?

Clr Kennedy: I just gave it...I'd like it recorded.

Clr Lee: On disorderly conduct?...I didn't see any disorderly conduct...so I won't remove him.

Clr Kennedy: Ah...sorry...you should rule my motion out of order because ah...its an illegal motion...as you should have re...remo...ruled...Councillor Steer's motion out...they're illegal motions...you're going to Chair the meeting...learn the meeting procedures.

Clr Lee: I'm learning very quickly thank you Councillor Kennedy...

Clr Kennedy: Yeah that's why I teach ya...

Clr Lee: ...I appreciate your input...

Clr Kennedy:...ya don't seem to learn much at the five or six Gerry Holmes meetings.

Clr Lee: It would have been nice if you were there to see.

Clr Kennedy: Well...as you see...I don't need...

Clr Lee: I'm not going to have an...

Clr Kennedy:...I don't need to go...cause I understand it...

Towards the end of the meeting, Clr Kennedy sought to make another point of order:

Clr Kennedy: Point of order...point of order...

Clr Lee: What's your point of order Councillor Kennedy?

Clr Kennedy: We're at Committee Meetings...we don't all go to the same Committee Meetings...I'd like to hear the...hear the answer...I'm not on Technical services...ah the report is in Technical Services...but I'm very interested in the answer.

Clr Lee: Well if you'd like to do that...then you can contact the General Manager some time during the week...

Clr Kennedy: I'm at a meeting and I will...

Clr Lee: You're overruled...

Clr Kennedy:...be reporting this to the Department as well...you have to...you have

Clr Lee: You're overruled...

Clr Kennedy:...you have to have a reason to overrule...you're not Hitler...you're not Ron...

Clr Kennedy: ...There is no need to criticise other people either...

Clr Lee: There is no need to criticise other people either...

Clr Lee: you...no...I can criticise who I like...

Clr Lee: You're out of order...

Clr Kennedy: ...you're not...no...you're out of order...

Clr Lee: Do not criticise people...especially when they're not here...

Clr Kennedy: I move a motion that Chair be st...stood aside...and a Chairman be appointed so we can deal with this matter...the Chairman is out of order...move a motion...

Clr Lee: I won't accept that motion..

Clr Kennedy: No...and you...no that's a motion of di...dissent from your decision...

Clr Lee: Has anybody got any other General Business?..

Clr Kennedy: I move a motion of dissent...from your decision...from your de...from your ruling...I move a motion of dissent...second it Steve...you have a right to know the answer...fu..

Clr Lee: Do you have a seconder?

Clr Baker: Yeah I'll second it...I'll second it for the purposes of a procedural motion...yeah

Clr Kennedy: It is a procedural motion...and the fact is you're wrong.

Clr Lee: We'll vote on it then...al those in favour?...Against?...overruled.

Clr Kennedy: I'd like it recorded that ah...procedures are not being followed at this meeting.

Clr Lee: Any other General Business?

Clr Kennedy: Ah...I have Confidential General Business I wanna deal with...when all other General Business is dealt with..

Clr Lee: Is this pertaining to Corporate Services ah...Clr Kennedy?

Clr Kennedy: This...don't start...

Clr Lee (interrupting): Is this pertaining to Corp...Services Councillor Kennedy?...well..

Clr Kennedy: No...I'm asking...its Confidential and if I say it here...I'm breaching rules...right...so I wanna speak to the Confidential...

Clr Lee: I'm asking you a question...does it contain to Corporate Services...the Corporate Services Committee...

Clr Kennedy: You'll find out...it's General...we're entitled...

Clr Lee: Yes I know...

Clr Kennedy:...it's General Business...you'll find General Business...

Clr Lee: General Business is only this Committee...is Corporate Services Committee...

Clr Kennedy: ..you'll find General Businesses...no...no...you're wrong...you're wrong...if you're going to start to gag...I'll move one notice of motion...

Clr Lee: Well I'll call you out of order Councillor Kennedy...don't answer the question...we're not going into ah...camera...so I declare the meeting closed at ah...6.08 pm

Clr Kennedy: I request...I request a copy of this tape...I request a copy of this tape...you have just stopped me from...have...ah...going to...

Clr Lee: You're out of order again Tom...

Clr Kennedy: ...You...