

**Local Government Reform Program -
Promoting Better Practice**

challenges improvement innovation good governance

REVIEW REPORT

BYRON SHIRE COUNCIL

SEPTEMBER 2006

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1. ABOUT THE REVIEW

1.1 Review objectives

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

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

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

1.2 Review process

The review process was developed after extensive research into council performance measurements in Australia and overseas. There are essentially five steps in a review - preparing, assessing, checking, analysing and reporting. The review team examines local circumstances in order to understand the pressures on council and how the council has sought to manage that environment.

The process involves a Department of Local Government (DLG) review team evaluating the effectiveness and efficiency of the council's operations and giving feedback. This involves checking compliance, examining appropriate practices and ensuring that council has frameworks in place to monitor its performance.

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

1.3 Byron Shire Council Review

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

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

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

Senior Investigations Officers Aleksandra Valda and Carole Medcalf conducted the on-site component of the review from 27 February to 3 March 2006.

The on-site review involved a meeting with council's mayor and general manager, conducting interviews, attending a councillor briefing session and council meeting and the review of a number of council's policies and other documents and visits to a number of council facilities/worksites. Council was invited to comment on a draft

review report, and its comments are set out in this report. The final report has been amended to take account of council's comments, where appropriate.

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

2. EXECUTIVE SUMMARY

The present General Manager of Byron Shire Council took up this position in March 2003, following a number of years of experience in the NSW local government sector. Prior to this time, council had a history of a high turnover of general managers, both permanently appointed and acting. This had led to a feeling of disruption within the organisation, the results of which the current General Manager seems to have dealt with successfully.

Council has also experienced a significant financial deficit over a period of time prior to the 'Rates to Recovery' program. This program is based on approved special rate variations for different purposes, such as infrastructure and community services; infrastructure and biodiversity conservation; general income; infrastructure and recurrent services. The review team noted that all levels of council have been working hard to overcome the financial shortfall of a decade ago.

Council currently operates with a reasonable level of legislative and statutory compliance throughout the organisation.

The enthusiasm with which elected councillors demonstrate their interest in the affairs affecting the community is obvious. However, the review team was somewhat disappointed with the lack of strategic leadership by the elected council and their involvement in council's day-to-day management. This is demonstrated in some councillors getting 'bogged down' in the details of running the shire; in disagreements with each other over operational issues; and in councillors' strongly expressed dissatisfaction with the performance of some council employees.

It appeared to the review team that this hand-on approach, which some councillors believe best serves the interests of the communities they represent, may be at the expense of the 'bigger picture' – the current council does not seem to provide a firm strategic direction for the council.

In order for council to overcome the problems stemming from the involvement of councillors in operational matters and obvious division among them, it is imperative that council's aspirational paper, the *Green Print*, which is the 1996 amendment to

the council's 1988 Local Environmental Plan, be developed into a proper strategic plan or strategy map that would provide a longer-term, firm direction for the council in all areas of operation.

At present some of this direction is met in the short-term through council's management plan, which is a sound operational document following current best practice in management planning. Management plans should have a strategic as well as operational component. However, the department, through its Local Government Reform Program - Promoting Better Practice, has noted a surprising number of councils spend insufficient time developing and implementing a clear, comprehensive and longer-term strategic plan. This leaves those councils ill-prepared to meet the challenges of the future for their areas (such as an ageing population, skills shortages and environmental challenges like water shortages and natural resource management). Once developed, the strategic plan/map should serve as a framework for the integration of other specific plans the council has developed.

Council should also take steps to make better use of council meetings to focus on strategic and policy issues and to make more appropriate use of staff time. Council needs to pay particular attention to the way it conducts its meetings to ensure effectiveness and efficiency. In light of some observed councillor behaviour, it is imperative that council continues with the formation of the conduct committee as a matter of urgency.

The Department of Local Government requires council to take immediate corrective action on the matters identified in the report relating to the formulation of strategic direction and the relationship between councillors and council staff. The department expects the council to substantially rectify these areas of concern within six months and report to the department at the end of this period.

Byron Shire Council faces a number of challenges in the coming years. In addition to strategic leadership, the longer-term future of council's infrastructure and financial sustainability seem to be the key challenges. The need for a long-term asset management strategy, linked to financial planning, is imperative. Failure to address these challenges would place council's future sustainability at risk. The long-term

plan should identify the future needs of the shire, as well as rationalisation of assets and infrastructure that may be surplus to council's requirements.

The majority of council's operations are performing well. Council has also been actively exploring opportunities for alternative revenue sources.

There are also some areas that council needs to address to improve its performance. Council needs to pay attention to its internal controls and, particularly, improvement of development application processing times. Having said that, it is acknowledged that council, at the time of review, is actively taking a number of positive steps to rectify its poor record in terms of development application processing times.

While council has a consultation network and undertakes its statutory obligations in this regard, it has not formulated community service standards to underpin both its strategic and operational direction in a robust way.

Council also faces a future challenge with its ageing workforce. This is demonstrated by council's employee leave entitlements being cash funded to 45% by internally restricted reserves. Council needs to develop a workforce plan to identify specific changes that may occur in workload in particular work groups and determine strategies for the acquisition and transfer of skills. This may include opportunities for apprenticeships, cadetships and traineeships (already undertaken in the planning area); strategies for re-training and up-skilling of the existing staff.

3. RECOMMENDATIONS

Strategic direction

1. Council's strategic aspirations contained in the *Green Print for Sustainable Future* (which forms part of the Byron LEP 1988) should be developed into a specific, realistic strategic plan/strategy map as a matter of urgency.
2. Any strategic plan/map should address all areas of council operations (not just land planning and development issues).
3. Any strategic plan/map should set the direction for achieving council's aspirations, i.e. how the council envisages it should get there.
4. Any strategic plan/map should be used to assist council with the integration and necessary adjustments to a number of its existing specific plans (including the council management plan) and guide the development of and be the basis for comparison for any new plans and detailed strategies.
5. In preparing the strategic plan/map council should use as a guide the discussion paper recently issued by the department: *Fitting the Pieces Together: Integrated Planning and Reporting by NSW Local Councils*.
6. The development of the strategic plan/map should be the responsibility of the elected body, in conjunction with the general manager.
7. Any strategic plan/map needs to specify the responsibilities of the elected and operational bodies.
8. Specific updates on achievements against the strategic plan/map should be accurate, address the period they are referring to and clearly reflect the accountability for achievements.
9. Council should conduct at least every four years a structured unmediated assessment of the profile and views of its communities such as a community survey

to inform its priorities concerning its current and future services. This would also assist the operations of council's committees.

Governance

10. A continuous improvement refresher session that would further clarify the various aspects of councillors' roles and responsibilities should be organised for elected members and relevant council staff.

11. A refresher training session on councillors' roles and responsibilities should be facilitated by officers of the department who have not been directly involved in the review process, and should use actual examples from the council context.

12. Council should consider posting on its website the publication produced by the department in 2002: *"So you are thinking of becoming a Local Government Councillor..."* prior to the next local government election with a view to educating potential candidates about local government and ensuring that they hold realistic expectations of what their role will be if elected.

13. Council should consider the option of adopting a more flexible approach to resourcing its operations such as thinking in terms of functional areas rather than linking functions to individual officers. To this effect, council should consider the benefits of additional training for the existing staff, as well as re-training, cross-training and multi-skilling of the existing incumbents.

14. Council should make the best use of regional partnerships to effectively and efficiently deliver on its more complex priorities. Such partnerships should have clear objectives and be regularly evaluated against these objectives.

15. The process of forming the conduct committee should continue and a committee should be constituted as a matter of urgency. In addition, council should set the criteria for referring matters to the committee and develop guidelines for committee operations.

16. Council should continue to strike an appropriate balance between councillors' rights to access to information and both councillors' and staff members'

responsibilities to conduct themselves in a manner that does not obstruct the ongoing operations of council.

17. Councillors should make every effort to reduce the length of council meetings and to make them more efficient and less demanding on staff time.

18. Councillors should adopt other more effective and resource-efficient ways of conducting business and achieving outcomes using processes that council already has in place, instead of raising issues through notices of motion.

19. The Mayor should consider consulting other mayors on strategies for effective and efficient chairing of meetings.

20. The Mayor should consider attending a workshop offered by the Local Government and Shires Associations on effective chairing.

21. Council should consider strategies for shortening discussions in meetings such as conducting briefing sessions for councillors before council meetings to brief them on the agenda items.

22. Council should consider holding public sessions separate to council meetings in order to keep meetings shorter and more efficient until such a goal is reached.

23. Council should develop a gifts and benefits register for the use of elected members and council staff.

24. Council should consider formulating and adopting a set of customer service standards (a guarantee of service) that would set a level of expectation within the community, and assist in the refining of guidelines for staff performance.

25. Reporting of complaints to management and council should include, where warranted, evidence of recommendations for changes to relevant council procedures or policies that are the subject of the complaint.

26. Council should consider developing more detailed guidelines for the disposal of assets, including land assets.
27. Council should consider the benefit of adopting a formal statement of business ethics, which would complement council's statement of values and that would be available on council's web site and would form part of council contracts.
28. Council should continue to develop the disaster recovery/business continuity plan to an agreed timeframe.
29. Council should continue with the development of a common plan for information management, records and geographical information system to the previously agreed timeframe (the plan is expected to be developed by June 2006 for implementation in 2006/07).
30. Council should develop an internal audit program as a matter of priority.
31. Council should develop a system for identification and management of fraud risks; staff should be kept up to date on emerging risk areas and on proven strategies for properly managing them.
32. Council should cross-reference its protected disclosures policy with the complaints management policy.
33. Council should consider providing ongoing refresher training to both councillors and staff on protected disclosures.
34. Council should consider the benefits and cost effectiveness of a single reference point for all relevant legislative changes.
35. Council should ensure designated persons' pecuniary interest returns are lodged in an accurate and timely manner. Council should use the information provided in the department's circular 04/16 and the pecuniary interest manual to prepare information for staff and councillors to assist them in completing their returns.

Regulatory functions

36. Council should organise further mediation training for staff, especially those on the development assessment panel.

37. Council should continue to work on strategies that will bring the development applications processing time within the council group and State average.

38. Council should consider organising basic training in legislative provisions relating to land use and planning for councillors as part of their induction training.

39. Council's supplementary State of Environment report should include a section on the consultation undertaken.

40. Council should use the good principles of its enforcement and prosecution policy as a model for developing an overarching policy to which specific requirements relevant to specific areas may be added.

41. Council should continue with its good efforts in the area of companion animals management.

Asset and financial management

42. Council's long-term financial plan should integrate with other council plans, including its asset management plan and social plan so that future needs of the shire are identified and assets and infrastructure that may be surplus to council's requirements rationalised.

43. Council should consider the costs of investing in infrastructure renewal in the medium term against the potential costs of failing to do so over the long term and allocate resources accordingly.

44. Council should continue to move away from its current responsive practices to a more proactive approach to the management of its assets by assessing the condition

of its assets and prioritising the necessary works, as part of an overall strategic asset management strategy.

45. Council should continue to maintain a disciplined approach in the cycle of reviews of its assets.

46. Council's asset management plan should include any potential rationalisation of assets.

47. Council should consider the benefits of transferring the building assets management function to the Asset Management Services directorate (from the Corporate and Community Services directorate) so that regular maintenance of such assets can be incorporated into the overall plan. The appropriate section can then regularly oversee the actual maintenance without duplication of resources and supervision.

Community and consultation

48. Council should continue to take any opportunity in the future to negotiate a Memorandum of Understanding about relevant local issues with the local Aboriginal community.

49. Council should prepare a recreational facilities plan to meet the future recreational needs of the community.

Workforce relations

50. Council should address the workloads of its workforce in terms of amount of work/ work expectations and in terms of who has responsibility for what duties.

51. Council should implement as soon as possible the outstanding actions from the draft Action Plan resulting from the employee survey and ensure the necessary adjustments for change in its workforce continue to be made.

52. Council should organise additional training for supervisors and employees regarding the standard of behaviour required in the workplace.

53. Council should also consider implementing a long-term workforce plan that would identify overall staffing needs for the council into the future, particularly in the context of the age of the council's workforce.

4. CONTEXT

The Byron Shire is located on the Far North Coast of NSW, approximately 800 kilometres north of Sydney and 200 kilometres south of Brisbane. It covers an area of 556 square kilometres. Tweed Shire Council borders the Shire to the north, Lismore City Council to the west and Ballina Shire Council to the south.

The population is 30,724 (Source: ABS, 2004) who live in a number of towns and villages in the shire. The annual population growth rate is 2% with a rate base of 13,800.

The main industries in the shire are tourism and agriculture with home-based businesses playing a major role in income generation for the artistic and knowledge communities that exist in the shire. (Source: council website)

An estimated 1.7 million tourists visit the area each year, enjoying local beaches, national parks, and unique marine reserves and exploring the rural countryside. Tourism brings an estimated \$306 million in revenue to the area, contrasted with an estimated \$110 million in Commonwealth payments (people on unemployment benefits and pensions) and approximately \$54 million (1999) related to the agriculture industries of the area. (Annual Report 2003-2004)

Council maintains approximately 496 kilometres of rural and urban roads throughout the LGA with a significant amount of traffic related to tourism impacting on its roads.

Byron Shire Council is faced with substantial issues in managing the LGA. A relatively small rate base, significant development issues from time to time, a disparate population and the large numbers of tourists impact on local infrastructure. Its sensitive coastal environment provides an environmental management challenge that local government may be under resourced to meet.

5. COUNCIL'S AMBITIONS, PRIORITIES AND FUTURE FOCUS

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

5.1 Strategic direction

Byron Shire Council advised the review team that its strategic intent and delivery objectives are articulated in the *Byron Shire Council Green Print for a Sustainable Future* (*Green Print* in future text). The document could not be presented to the review team at the time of the review because it could not be found. There is no electronic copy of the document on council's systems. Instead, the review team was presented with a flyer providing information to the community on the implementation of strategies set out in the *Green Print*.

Subsequent discussion with council revealed that the document referred to as *Green Print* forms part of the Byron Local Environmental Plan 1988 (Amendment No. 58). While the 1988 LEP sets the context and points to the need to take into consideration issues such as social and economic impact when determining land plans and assessing development applications (which in 1988 must have been quite innovative), considering the purpose for which it was produced, it can only address a limited part of council operations.

Strategic land use planning required under the *Environmental Planning and Assessment Act 1979* is best integrated with a holistic strategic plan for each local government area which is then operationalised through the council management plan and Local Environmental Plan.

The *Local Government Act 1993* was amended recently to allow councils to apply to the Minister to vary their general income for a period of up to seven years. As part of their application, councils need to demonstrate that they have prepared a 10-year financial plan. In order to prepare an appropriate financial plan, it is suggested that

the council needs to have undertaken a strategic planning process to cover at least a similar timeframe, if not longer.

It is essential that council aspirations contained in the *Green Print* be developed into a specific, realistic strategic plan/strategy map as a matter of urgency. (Recommendation 1)

Such a plan/map should offer leadership to the local community and to council's own services by clearly defining council's longer-term objectives (i.e. it would enable the council to more specifically articulate where it envisages it would like to see itself in the long-term).

The strategic plan/map should address all areas of council operation and link those areas. (Recommendation 2)

To enable council to prioritise its resources accordingly, the plan/map should set the direction for achieving its aspirations, i.e. how the council envisages it should get there. (Recommendation 3)

A strategy plan/map addressing all areas of council operations should assist council with the integration and necessary adjustments to a number of its existing specific plans (including the council management plan); it would also guide the development of and basis for comparison for any new plans and detailed strategies. (Recommendation 4)

On the issue of integration of council's various strategic and business planning instruments, there is scope for continued improvement in integrating various council plans. Council should refer to the discussion paper recently issued by the department: *Fitting the Pieces Together: Integrated Planning and Reporting by NSW Local Councils*. This is available on the department's website. (Recommendation 5)

The formulation of the strategic plan/map should be the responsibility of the elected body, in consultation with the general manager. (Recommendation 6) The strategic plan/map should specify the different responsibilities of the elected and operational bodies. This would enable the elected body to reflect on evidence of

development/improvement in a strategic, rather than day-to-day operational manner. (Recommendation 7) The implementation of the plan is the responsibility of the general manager and council staff.

The review team would also like to make an observation that the inability to locate the *Green Print* poses a question of its usefulness.

With respect to the Green Print update, while informative and well presented, it is unclear how the updates contained within it relate to the original paper. It is also unclear which period the update refers to. For example, the update reports on completion of a number of council plans and place strategies some of which do not directly relate to land use or the processing of development applications.

The review team recommends that if council wishes to continue to produce specific documents providing updates on achievements against its longer-term ambitions and aspirations contained in a strategic planning document, such updates should be accurate, address the period they are referring to and clearly reflect the accountability for achievements. (Recommendation 8) Reference to accountability is essential to reinforce the strongly expressed feelings of accountability to the electorate by council officials interviewed during the review.

5.2 Management plan

Each year council is required to prepare a draft management plan with respect to its activities for at least the next 3 years and its revenue policy for the next year. Sections 403 and 404 of the *Local Government Act* (the Act) require certain particulars to be included in council's draft management plan.

In addition, section 407 of the Act requires the general manager to report to the council within 2 months after the end of each quarter as to the extent to which the performance targets set by the council's current management plan have been achieved during that quarter.

Council's management plan, covering the period 2005 – 2008, is a sound operational document that identifies the organisation's short to medium-term key objectives,

strategies for achieving those objectives, principal activities and specific actions, realistic and measurable performance indicators against agreed targets, and other information relevant to the context of planned services, such as the responsible section and manager for a particular activity.

Council planning and management documents refer to the key principles of:

- sustainable settlement,
- prosperous economy,
- protection of natural waterbodies,
- resilient community,
- coastal management,
- infrastructure assets,
- effective and efficient regulation,
- revenue and resourcing and
- conservation of biodiversity.

However, the review team found it difficult to relate the strategies and activities elaborated on in the council's management plan to the *Green Print* (this is reflected in the previous discussion and Recommendation 1).

In addition to a detailed management plan, council prepares a brief overview paper that succinctly captures the essence of the plan and provides a budget overview, in addition to summarising the strategic philosophy of the council, its main projects and activities, plans and works. It also provides elected councillors' and council contact information.

Quarterly reviews of council's management plan focus on set outcomes and have clear performance indicators against which council's performance in achieving outcomes is measured. Quarterly reviews are clearly set out and easy to comprehend. The general manager also provides council with a detailed summary of achievements and highlights for the quarter and a quarterly budget review.

The management plan and annual updates on achievements are available on council's web site.

5.3 Determining priorities

Clarity about what council's priorities are (and are not) is important for the achievement of its ambitions. It is also important that council's priorities are clearly communicated internally and externally. Clarity about priorities enables council to apply its resources in a manner that would match its priorities.

As indicated in the previous section, a clear strategy plan/map would enable council to more clearly determine its operational priorities and communicate these to its communities.

The review team was advised that as part of the process of determining operational priorities a number of planning workshops for councillors and relevant council staff are organised at the commencement of each council term. Additional workshops are also held linked to specific budget cycles.

However, the review team noticed that council has not conducted any community surveys that would underpin the development of the strategic plan.

The review team considered that council would benefit from a more structured, unmediated assessment of the profile and views of its communities such as that provided by a community survey to inform its priorities concerning its current and future services. (Recommendation 9.) Any reluctance on the part of councillors or staff to have council conduct such a survey should be set aside in view of the obvious benefit of obtaining direct community feedback.

Such consultation would assist the council to reach agreement in determining specific priorities. The recent interim report into the sustainability of local councils commissioned by the Local Government and Shires Associations¹ supports the review team's view.

“Local government services should meet the needs and priorities of the community within the agreed role of local government. Such services should be delivered in a

¹ LGSA, March 2006, *Are Councils Sustainable? Interim Report: Findings and Options*, Sydney.

relevant, effective, prudent and cost efficient manner. Each local council should identify the needs and priorities of its residents by conducting not only public meetings, but also objective and representative opinion polls that ascertain the views of citizens not active in local affairs.” (LGSA, 2006:12)

6. DELIVERING AND ACHIEVING

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

Following the [Overview](#) (6.1), this section looks in detail at the various practices in the areas of:

- Governance (6.2)
- Planning and regulatory functions (6.3)
- Asset and financial management (6.4)
- Community and consultation (6.5) and
- Workforce relations (6.6)

6.1 Overview

A sound direction in terms of what a council aims to achieve through clearly defined ambitions, priorities and focus enables it to deliver on its priorities. In this regard, the review team looked at council's capacity and at the skills it needs to achieve its priorities, the clarity of council's officials about their responsibilities and accountabilities, the use of partnerships to effectively deliver complex priorities and the mechanisms council has in place to enable the measuring and management of performance.

Overall, the review team noted that all levels of council have been working hard to overcome the financial shortfall of a decade ago.

The review team also noted an awareness of challenges for the council in both local and broader operational and political and economic contexts, the willingness to resolve those challenges, and the high visibility in the community of the council and the elected representatives.

The review team considers that there is sufficient capacity and generally adequate systems within council to deliver sound performance to its communities and to improve performance where required. The review team also observed that council's capacity to improve on the delivery of services depended in large part on the clarity of roles of the elected body and council employees and on the willingness to perform within the scope of those roles.

The recommendations made in this report are intended to assist council to strengthen its capacity to deliver and continue to improve, and to more clearly delineate between the strategic focus of the elected body and the operational role of the council.

6.1.1 Structures and processes

Council adopted its current organisational structure in November 2004. Council structure is reviewed every year as part of the budget considerations. The general manager prepares regular organisational resources reports to council that include considerations of how any new initiatives may be funded.

The current organisational structure is intended to provide a framework for appropriate, effective and efficient delivery of services to communities.

There seems to be a clear delineation between the service provision and regulatory functions within the organisational structure. Council has also put in place several appeal mechanisms for reviewing decisions. It has also built appropriate 'checks and balances' within its processes for ensuring prudential operation (for example in the area of procurement and tendering).

Following a period of considerable instability for the council due to budgetary shortfall on the one hand and, on the other, a procession of a number of (both permanently appointed and acting) general managers for a prolonged period of time, council's current general manager appears to be putting the organisational structure to the best functional use, as well as developing and implementing policies to ensure the organisation pursues agreed outcomes while keeping costs as low as possible and at the same time ensuring careful financial management and statutory

compliance. The outcomes are being regularly reported against agreed targets to the council and the public.

6.1.2 Values

Organisational values are part of a framework of organisational integrity. They are an important way in which the leaders of an organisation can communicate to the rest of the organisation and the broader community what the organisation stands for.

Council commenced developing the broad concept of its values in 1996 in the *Green Print*. Council's management plan contains a set of values, which the council adopted. Council revisits values as community expectations change; for example, council added innovation and identity to the list of values guiding the operations of Byron Shire Council to council's management plan 2004-2008. More detailed guiding principles underpin council values. The principle of ecologically sensitive sustainability seems to be central to council decision-making.

6.1.3 The strategic role of councillors

Under section 222 of the Act the elected councillors (including the Mayor) comprise the governing body of Council. Section 223 sets out their role, which is to "direct and control the affairs of the council in accordance with this Act". Policy making and review is a key function of the elected councillors under section 232 of the Act.

Councillors are expected to have a strategic view of council activities, while the effective and efficient day-to-day operation of council is the responsibility of the general manager. The day-to-day operational management should be undertaken within the policy and objectives framework provided by councillors.

Councillors' roles are clearly explained in council's management plan and in its relevant policies. Also, the principles of delineation of roles are explained in the council's code of conduct.

However, the review team observed on a number of occasions where some Byron Shire councillors involve themselves a great deal in the day-to-day operational matters of the council.

From discussions with councillors, from the desktop assessment of the minutes of the past council meetings and from observation of the proceedings at the council meeting which the review team attended on 28 February 2006 (council meetings are discussed in more detail later in the report under the [Governance](#) heading), the review team noted that councillors seemed to be focussed on operational matters and on their mistrust of staff's capacity to perform satisfactorily, especially in responding to direct requests from councillors.

In response to the review team's question about their view of a strategic direction for council, some councillors were unable to see past the operational issues. Some councillors expressed very strongly their feelings that council staff did not sufficiently support councillors' hands-on involvement in various issues. Councillors appear to believe that such hands-on involvement best serves the interests of the communities they represent.

Although the council employees interviewed did not directly raise it, it became obvious to the review team that such atmosphere makes the work of council staff more difficult. Also, such operational environment is not conducive to the effective and efficient operation of any organisation. Notwithstanding this pressure, council staff appear to work towards the implementation of the management plan.

As indicated in the previous discussion on strategic weaknesses, it seems that councillors' preoccupation with minor, short-term and operational issues may be at the expense of the 'bigger picture'. From discussions with some councillors, from the observation of discussions in the council meeting the review team attended, it appeared that some councillors believe they had been elected solely to represent the interests of particular communities, rather than of the whole community.

One example of councillors' involvement in a matter of an operational nature (rather than strategic) is an allegation that the employment of a particular staff member did not follow due processes. This was brought up in discussions with the review team. Staff employment is clearly an area in the province of the general manager –the general manager is responsible for the staffing issues within the organisational structure set by the council. Any concerns about staffing issues, including selection

and appointment of staff, should be directed to council's general manager. The review team looked at several employment processes, including the one that was brought to their attention, and found that the due processes were followed.

Yet another example is that of a councillor circulating an email to all staff containing the councillor's views about an enforcement issue. A copy of the councillor's email to all council staff was then sent to the editor of a local newspaper. The department has sighted this communication. Actions such as this put pressure on council staff, especially those involved in the implementation of a particular practice to decide 'who's the boss'. – The councillor's behaviour is inappropriate considering the responsibility to instruct staff belongs to council's general manager and her delegated representatives.

What matters most in this example is (a) that the elected representative believes it is appropriate to send messages with personal views on operational matters to all staff (rather than using an agreed channel for raising concerns about more strategic matters); (b) that the elected members may have an expectation that the operational matter can be changed through the method of councillors' direct intervention and (c) that further pressure is placed on staff by the decision of the councillor to make such 'instructions' public. Actions such as this may be the subject of the council's [conduct committee](#) should there be a complaint about the breach of the code of conduct.

The review team has been advised that there have been over 600 email requests by councillors about a range of issues in the last 12 months. The usefulness of this level of intervention to the effective and efficient council operations is questionable.

While it is appropriate for councillors to seek to represent the concerns of individual constituents and their local communities by raising issues that have a more immediate or local impact, it is equally important that they do not lose sight of long term issues and considerations or the bigger picture. Councillors also need to recognise that they do not merely represent the interests of a particular community, but also of the local government area as a whole. To this end councillors need to be able to develop a strategic plan/map and to consider matters within the context of the council's strategic framework.

The review team considers that, in addition to the already recommended development of a clearer strategic plan/map, the elected members would benefit from a continuous improvement refresher training session that would further clarify the various aspects of councillors' roles and responsibilities. (Recommendation 10)

To this effect, the review team suggests that officers of the department who have not been directly involved in the review process facilitate such session or sessions using the actual examples from the council context. (Recommendation 11)

The review team believes that a clearer delineation of roles and the willingness to accept and work with such delineation would assist council with overcoming signs of a culture of mistrust between elected councillors and council staff and contribute to more effective and efficient council operations.

In November 2002 the department produced "*So you are thinking of becoming a Local Government Councillor...*" – a publication intended to assist people who may be considering standing for election as councillors. Byron Shire Council should consider posting this publication on its website prior to the next local government election with a view to educating potential candidates about local government and ensuring that they hold realistic expectations of what their role will be if elected. (Recommendation 12)

Another observation the review team would like to make is that council seems to link its functions to specific officers. This may create a situation where council's ability to conduct its operations and deliver depends on its particular officers. It is also questionable whether the function can be delivered in that officer's absence.

While appreciating the need for and importance of appropriate staff numbers and structures for council's ability to deliver, the review team would suggest that council should adopt a more flexible approach and consider its operations in terms of functional areas, rather than individual officers. (Recommendation 13) Such an approach may lead council to consider organising additional training for the existing staff, as well as develop strategies for re-training, cross- training and multi-skilling of existing incumbents.

Council appears to be using some partnerships in the planning and delivery of more complex matters. It participates on several regional fora and seems to be open to initiatives from the State government, Commonwealth government and the non-government sector. The review team recommends that Council should make the best use of regional partnerships to effectively and efficiently deliver on its more complex priorities. Such partnerships should have clear objectives and be regularly evaluated. (Recommendation 14)

6.2 Governance

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

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

- *Ethics and code of conduct*
- *Risk management and internal controls*
- *Council’s decision-making processes*
- *Monitoring and review*
- *Legislative compliance*

6.2.1 Code of conduct

Section 440 of the Act requires councils to adopt a code of conduct to be observed by councillors, members of staff and delegates of council. The code of conduct must be consistent with the Model Code of Conduct, which was produced by the department. A code of conduct adopted by councils may supplement the provisions of the Model Code; such provisions must also be consistent with the Model Code. Section 440(3) requires a council to review its code of conduct within 12 months after each ordinary election.

Byron Shire Council adopted its current code of conduct on 22 February 2005. The provisions of council's adopted code appear to generally reflect the substance of those contained in the model code, while containing some supplementary provisions that also appear to be consistent with the model code.

The current councillors received training on its then adopted code of conduct at their induction training, and further training following the adoption of council's current code of conduct. Council staff should also undergo training in the code of conduct as part of their induction training.

The review team was advised that council has been in the process of setting up the conduct committee and developing a set of procedures for the operation of the committee, in accordance with the model code. The review team recommends that this process should continue and that a committee be constituted as a matter of urgency. (Recommendation 15) Clear conduct committee procedures should provide guidance on the role and purpose of the committee, its membership and proceedings as well as criteria for assessing matters before the committee.

6.2.2 Councillor – staff interaction

Council has a comprehensive policy on councillor-staff interactions. This policy is available to all councillors and staff. Councillors receive training on the policy as part of their induction. However, as discussed under the subheading '[The strategic role of councillors](#)' above, the review team observed that some councillors appear to be unclear about their role as councillors, despite having the role of a councillor clearly stated in the legislation, in council policies and in the current management plan.

In addition to the provision of refresher training for councillors regarding their strategic role, the conduct committee is a proven mechanism for dealing with suspected breaches of council's code of conduct, including in relation to councillors' interaction with staff. In this regard, it may be worth observing that council does not necessarily require a complaint to initiate action under its code of conduct. Through the conduct committee, council can discourage breaches of the code of conduct. Such action will also serve an educative function in reinforcing to councillors their obligations under the code.

6.2.3 Access to information by councillors

Some of the councillors the review team spoke with felt they were not being provided timely and accurate information by council staff. They were particularly concerned with what they considered to be delays in the provision of information; councillors also indicated they felt the information provided was inadequate.

At the same time, a number of staff interviewed by the review team commented on the number of requests for information made by some councillors; on the expectation that the information would be provided immediately; and on the impact this was having on staff's work.

The review team observed that council had a comprehensive policy on councillors' access to information. The team was also informed that access to information forms a significant part of councillors' induction training.

Councillors enjoy the same rights as other members of the community to access documents held by council under section 12 of the *Local Government Act*. While it is important that councillors can access the information that is necessary to enable them to exercise their responsibilities as elected representatives of the community and to information necessary to enable them to perform civic duties, it should also be noted that the general manager is entitled to put in place appropriate processes and protocols based on the legislation and council policies that would enable: (1) councillors to exercise their rights and responsibilities and (2) councillors to do so in a structured way so that requests for information do not obstruct the ongoing operations of the council. (Recommendation 16) Council should seek to strike a balance between councillors' reasonable entitlement to access information and the need to ensure such information is provided in a structured and controlled way.

6.2.4 Council meetings

The review team inspected the minutes of a number of council and committee meetings. It also attended the ordinary council meeting on 28 February 2006.

It has been observed that council meetings tend to last all day, and on occasions for several days. The 'record' in this regard, according to council staff, is 29 hours (4 business days in 2003 during the previous term of council). The meeting attended by

the review team was an all day event with some of the business being adjourned until the following week.

The review team noted that before council meetings staff undertake extensive assessment of all motions put by councillors and other issues in business papers. Sometimes several sections of council must consider the matters raised in notices of motion from the corporate, financial, planning, management plan, asset management, community etc. perspectives, depending on the nature of the matter.

In addition to the extensive preparation of information in the lead up to council meetings to support councillors decision making, senior council staff attend council meetings and are available to answer questions by councillors at any time.

During the ordinary council meeting of 28 February 2006 attended by the review team, discussions were long-winded and sometimes repetitive. One issue was discussed for an extended period of time despite a resolution for a different action having been passed at the previous meeting, again after protracted discussion.

Council staff ensure the essential record of the meeting is made on a projection screen and agreed at the time of the meeting. This practice is supported. The review team also observed that in addition to the official record of the meeting produced by the council, the Mayor typed her own detailed record of the meeting proceedings. The value of such practice is questionable. The review team considers that this parallel minute taking stands in the way of the Mayor's capacity to effectively chair the meeting and keep efficient time. It also raises the question as to what impression the Mayor's action gives regarding the organisation head's trust in council processes.

The department is aware of other, larger councils' meeting practices, where three committee meetings and an ordinary council meeting are completed in around 4 hours.

While council is entitled to deliberate more extensively, all day meetings and meetings that extend over several days are not considered to be the most effective and efficient way of conducting council business. It ties up staff operational time and

there is no measurement that better results are delivered to the community compared to councils with more efficient meeting practices.

The review team would like to recommend that councillors make every effort to make council meetings considerably shorter, more efficient and less demanding on staff's time, as well as their own. (Recommendation 17)

In addition, councillors should consider other, more effective and resource efficient, ways of conducting business and achieving outcomes, such as raising issues at the time existing review processes that council has in place, instead of raising issues at other times through notices of motion. (Recommendation 18) For example, if a councillor proposes the creation of a particular position within council's organisational structure, this should be done when the organisational structure is reviewed, or through the budget and management plan processes.

The Mayor may wish to consider consulting other mayors on strategies for more effective and efficient chairing of meetings (Recommendation 19). The Mayor may also wish to consider attending a workshop offered by the Local Government and Shires Associations on effective chairing of meetings. (Recommendation 20)

Council should also consider strategies for shortening discussions in meetings, such as conducting briefing sessions for councillors before council meetings to brief them on the agenda items, or any other alternative. (Recommendation 21)

With respect to public participation in meetings, council has a process in place to allow residents affected by proposals before council the opportunity to address council directly. Public participation is governed by formal rules that are available on council website. From the meeting attended by the review team, inspection of council minutes and discussion with councillors and staff the review team reached a view that council has struck a good balance between the need to enable public participation in meetings and for this participation to occur in an efficient and orderly manner.

The review team recommends that council consider holding public sessions separate to council meetings in order to keep meetings shorter and more efficient until such a goal is reached. (Recommendation 22)

6.2.5 Gifts and benefits policy/register

Council has a policy on gifts and benefits, but no gifts and benefits register. The review team recommends that a gifts and benefits register be established for the use of elected members and council staff. (Recommendation 23)

6.2.6 Complaints handling

An effective complaints handling system is an essential part of the provision of quality council services. It is one method of measuring customer satisfaction and provides a useful source of information and feedback for improving services.

Council has a general complaints handling procedure and a separate internal policy for dealing with and recording complaints and requests for service.

The general complaints handling procedure was last reviewed in 1996. It is noted that one of the objectives of the procedure provides for the establishment of an internal Ombudsman to whom council customers can refer matters with which they are dissatisfied. At the time of the review (2006), council did not have any such function. While the establishment of the Ombudsman is a matter for council to determine, the dated procedure has lead the team to conclude that council's system of regularly reviewing its policies and procedures to ensure currency and accuracy could be more rigorous.

Within the customer request and complaints stream, the two functions are clearly differentiated. The policy includes two levels of review and provides for urgent requests. The policy also provides for oral requests, which are recorded on the council's document management system (DOCs). Complaints and general feedback can also be lodged electronically via a pretty straightforward form. Council monitors complaints and requests for service handling.

However, the review team noticed that the council does not have service standards (also known as a guarantee of service). A guarantee of service generally covers broader areas than complaints handling and meeting requests for service, but these two areas form a significant part of this type of service commitment and requires the two way understanding: council's knowledge of customers' expectations and vice versa – customers' clear understanding of what they can expect from the council in terms of service delivery and problem solving.

A guarantee of service should set out some key performance standards for the most frequently used services. The adoption of customer service standards sets a level of expectation within the community, in addition to refining the guidelines for staff's performance. While performance standards and performance measures are defined in some sections of the council, such as in some areas of the Planning, Development and Environmental Services directorate, the development of a comprehensive mechanism would assist with councillors' strategic orientation and with a measure of council's performance in the complaints handling and overall customer service area. (Recommendation 24)

The review team further recommends that the reporting of complaints to management and council include, where warranted, evidence of recommendations for changes to relevant council procedures or policies that are the subject of the complaint. (Recommendation 25)

6.2.7 Tendering, procurement and disposal and contract management

Council has tendering, procurement and contract management policies that follow the guidelines of the NSW Department of Commerce.

In practice, purchasing of goods and services is organised mainly electronically, with the system (Authority) containing a number of clearance levels.

Council policy covers emergency ordering procedures, open tendering, selective tendering through expressions of interest and listing of recognised contractors methods, pre-qualified purchasing procedures, and takes into consideration the principles of national competition policy.

Contract administration is done on a project basis containing a number of risk-based clearances at critical points before progress payments are approved or contract variations requested. Council officers are receiving appropriate training to enable them to ensure that all matters pertaining to contract administration are adhered to.

The disposal of lands and goods policy contains only general principles. The review team recommends that council should consider developing more detailed guidelines for the disposal of assets, including land assets. (Recommendation 26)

The policy should distinguish between the processes used for the disposal of assets of no commercial value and those with commercial value. It may be appropriate that the policy provide some guidance on, or examples of, what commercial value means.

6.2.8 Public access to information

Councils are required to make their documents available for inspection free of charge under section 12 of the *Local Government Act* unless they are exempt under that section, or the council is satisfied that allowing access would, on balance, be contrary to the public interest. Councils are entitled to impose reasonable photocopying charges for reproducing documents under this section. Where the general manager or other person refuses access to a document, they must provide their reasons for doing so in writing to the council. Those reasons must be publicly available. Council must review the restriction within 3 months of access being refused.

Council has a commendable 'open access' policy for public access to council information. The policy has broad application and is supported by a procedure that assists council staff, especially front counter staff, to locate all documents that are to be publicly available pursuant to section 12(1) of the Local Government Act.

As a matter of principle, all requests for information under the Freedom of Information Act are first assessed for applicability of the provisions of Section 12 of the Local Government Act.

Council charges no fees to inspect documents but imposes photocopying charges.

6.2.9 Records management and privacy management plan

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

Council has an electronic records management system that staff appear to be aware of and use. Business rules have been developed for the system. Council has a system for ensuring items entered into the system are dealt with in a timely fashion. Outstanding matters are brought to the section or general manager's attention and raised at line managers' meetings.

Council has a comprehensive Privacy Management Plan. All staff are made aware of the need to apply the principles of the *Privacy and Personal Information Protection Act 1998 (PPIPA)* as part of their induction training. From then on, line managers are responsible for the management and application of the privacy principles. In more complex matters, council legal services get involved. There have been no breaches recorded concerning the protection of privacy and personal information.

6.2.10 Statement of business ethics

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

Council currently does not have an adopted statement of business ethics, but conveys the message as to its ethical standards in letters that are sent to tenderers together with other tender documentation.

The review team believes that council would benefit from adopting a formal statement of business ethics that would complement council's statement of values. The document should cover key issues around the values council stands for and what external parties need to be aware of in doing business with council. It should

also include the key issues about acting appropriately during tendering processes and contain references to the gifts and benefits and conflict of interests provisions of the council's code of conduct. Council may consider including in the statement the reasons why external parties should comply with the statement and detailing how external parties will be informed of the statement. The statement should be made available on council's website and would form part of council contracts. (Recommendation 27)

6.2.11 Risk management and business continuity

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

Councils are exposed to a wide range of risks as a consequence of their diverse functions. The significance of specific risks will vary from council to council.

Byron Shire Council has risk management plans covering a range of activities, both insurable and uninsurable. The plans provide a framework to proactively identify and manage generic and specific risks so that ethical behaviour and practice can be promoted. The plans have been reviewed recently.

The council is in the process of developing a disaster recovery/business continuity strategy and expects to have it in place by the end of June 2006. The review team recommends the development of the plan continue to agreed timeframe. (Recommendation 28)

6.2.12 Information technology protocols

Council has reviewed its information technology strategic plan and has well defined protocols for the use of computers and other communication devices. This is consistent with the Australian/New Zealand Standard 7799 and with the Premier's

direction for management of IT. This practice is encouraged and supported by the review team.

Relevant council staff told the review team that council is in the process of scanning all hard copy plans and diagrams, as well as all paper files and is also working on having one common plan for information management, records and geographical information system. It is anticipated that the plan will be developed by June 2006 for implementation in 2006/07. The review team recommends that this undertaking continues. (Recommendation 29)

Systems are also being developed for electronic lodgement of development applications. This issue is discussed in more detail under the [Regulatory functions](#) heading below.

6.2.13 Internal controls

Internal audit and control provides for systematic scrutiny of organisation's systems and performance. It assists in proactively ensuring that standards are met and established procedures followed.

Byron Shire Council does not currently have a proactive preventative audit program, but conducts assessments of its activities and systems as they are implemented, especially in the finance and procurement areas. Gaps in terms of policies and procedures are addressed as they arise. This is considered to be a reactive approach. The review team has been advised that some thought has been given to forming a council audit committee, but that it did not proceed.

The review team considers that council needs to develop an internal audit program as a matter of priority. (Recommendation 30) One of the known good practices is that the internal auditor reports directly to the general manager.

The development of internal audit processes is also important as council does not appear to have undertaken any fraud risk assessment. Nor does it have a fraud control policy or strategy.

While individual areas have protocols, it is important that fraud risks are identified and managed effectively and that staff are kept up to date on emerging risk areas and on proven strategies for properly managing them. Council should address this issue as a priority. (Recommendation 31)

6.2.14 Councillor expenses and facilities

A policy on the payment of expenses and provision of facilities to the Mayor, Deputy Mayor and councillors is a requirement under section 252 of the Local Government Act. Byron Shire Council has a detailed, recently reviewed policy for the payment of councillors' expenses and provision of facilities to councillors. It complies with departmental advice contained in circular 04/60.

6.2.15 Committees

Byron Shire Council has an elaborate system of standing and special purpose, advisory and section 355 committees to facilitate communication with its communities. It also participates on 22 regional committees.

Committees provide input and expertise in the management of specific functions and places. They seem to have clear terms of reference addressing the issues of membership and responsibilities. Council uses committees as a primary reference group. Councils that do so face the on-going challenge of ensuring the committees are representative. One strategy to ensure representation may be to use committees as an element in an overarching consultation strategy. To this effect the review team reiterates its recommendation that council conducts a community survey to assist to identify issues which can be used by committees in their operations and to assist them to monitor their overall effectiveness. (Recommendation 9 refers)

6.2.16 Delegations

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

6.2.17 Protected disclosures

The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting people from reprisals that might be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

Byron Shire Council has a comprehensive protected disclosures policy. The policy was last reviewed in 1996. As noted earlier, council should establish a regular policy review program to ensure the accuracy of information and currency of the requirements. The internal audit strategy may assist with this function in a proactive way.

The review team also noticed that council's complaints management policy does not make reference to the making of protected disclosures. In the interests of ensuring that protected disclosures are treated as part of the broader complaints system, it is recommended that protected disclosures policy be cross-referenced with the complaints management policy. (Recommendation 32)

Staff are provided with some training on protected disclosures as part of the induction process. However council may consider providing ongoing refresher training to staff on protected disclosures. (Recommendation 33)

6.2.18 Legislative compliance

A fundamental principle of good public administration is that public officials comply with both the letter and the spirit of applicable law. No public official has an unfettered power or discretion. To facilitate compliance with legal requirements, councils and their senior staff should ensure that:

- management commitment to compliance is clear and unequivocal;

- the legal requirements which apply to each activity for which they are responsible are:
 - identified (including updates reflecting changes to the law), and
 - documented (preferably in detail, but as a minimum by reference to relevant provisions);
 - all staff are kept fully informed, briefed and/or trained about the key legal requirements relevant to their work;
 - staff are made aware of the potential repercussions of non-compliance with legal requirements that apply to them; and
 - record keeping systems and practices that capture evidence of compliance and non-compliance are in place.

Council currently has a system in place whereby section managers pass on information about legislative changes to staff. This system captures some of the key elements of legislative compliance outlined above.

The review team recommends council consider whether a better practice may be for a central person or area to assume the responsibility for keeping abreast of all new enactments of and amendments to legislation that impact on council operations, activities and the duties of individual council staff. This officer could actively review the State Government Gazette, the Local Government Association Circulars and circulars from government departments; maintain and update all relevant loose-leaf services; collate relevant information; and provide guidance and reference points to council senior management and staff affected by amendments and the introduction of new legislation. Any changes to the work performed should be reflected in the relevant position description.

Councillors expressed a view that information concerning relevant legislative changes would also assist them in the discharge of their responsibilities.

The review team recommends that council consider the benefits and cost effectiveness of having a single reference point for all relevant legislative changes. (Recommendation 34)

6.2.19 Written returns of interest

The Act requires that councillors and designated staff complete and lodge written disclosure of interest returns.

The Local Government Pecuniary Interest and Disciplinary Tribunal (PIDT) has pointed out the need for councillors (and designated staff) to give due care and attention to the accuracy, detail and content of the disclosures required in returns. The department has also consistently emphasised the need for care and attention in detail in completing returns. Circulars to council 05/24 and 04/16 are particularly relevant.

The circulars and statements of relevant decisions by the PIDT can be found on department's home page <http://www.dlg.nsw.gov.au>. It is important that councillors and designated staff observe these requirements as to not do so has the potential to seriously undermine the community's confidence in the integrity of local government and council's decision-making processes.

The review team inspected pecuniary interest returns submitted by councillors and the general manager for the period 1 July 2004 to 30 June 2005.

All but one of the returns inspected were submitted on time, though one councillor's return was undated. The quality of the returns varies. Deficiencies in the returns inspected include the following:

- 'nil' source of income specified in a large number of returns and no addresses for employer,
- no name of the person lodging the return,
- one return lodged late,

It is important that councillors and staff who are identified as designated persons complete pecuniary interest returns accurately and in a timely way. Council should use the information provided in the department's circular 04/16 and the pecuniary interest manual to prepare information for staff and councillors to assist them in completing their returns. (Recommendation 35)

6.3 Regulatory Functions

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

Following the [Overview \(6.3.1\)](#), this section looks in detail at a range of council regulatory practices in the areas of:

- [Council's planning instruments and policies \(6.3.2\)](#)
- [Development assessment \(6.3.3\)](#)
- [Environmental management \(6.3.4\)](#)
- [Enforcement practices \(6.3.5\)](#)
- [Companion animals \(6.3.6\)](#)

6.3.1 Overview

Environmental considerations, together with attention to social and economic matters, are at the core of council's aspirations for a sustainable future of its communities. The focus of the council elected in 2004 has been the implementation of the *Green Print*. As previously indicated, the *Green Print* forms part of the Shire 1988 Local Environmental Plan. The ideas and principles contained in the *Green Print* have been elevated to the status of council's strategic plan.

The new council has adopted a precautionary approach to environmental management and further development. Resistance to development pressures is an important facet of realising council's vision of sustainability.²

Council has innovative enforcement practices aimed at achieving the balance between:

- the upholding of the various aspects of law and order for its communities as determined in council's strategic orientation;
- conducting educating community; and
- enacting the principles of procedural fairness in its dealings with community.

² This orientation is expressed on page 8 of council's 2005-2008 management plan.

6.3.2 Council's planning instruments and policies

Byron Shire Council Local Environmental Plan was adopted in 1988; the plan has since undergone a number of reviews resulting in amendments; the LEP was last amended in November 2005.

In response to recent changes to the planning regime in NSW council has undertaken to review its planning instruments to accommodate the new requirements. Byron is in the group of councils required to conform with the new LEP template within three years. Council is in the process of preparing the new shire-wide LEP.

It is important that councils exercise their land use planning powers in an integrated way. Such an approach can help ensure that all relevant issues are taken into account.

Council also has a number of individual settlement strategies for Mullumbimby, Bangalow, Brunswick Heads, Byron Bay and a rural settlement strategy. The new draft environmental plan for the Byron Bay area was on exhibition at the time of review. The plan is available from the council front desk, libraries, community access points; documents can also be downloaded from the council's web site.

Planning considerations form part of the assessment of notices of motion by councillors. Council's management plan integrates the state of the environment summary and actions.

The review team also noted council's initiative to more strongly integrate social planning with the land use planning and development assessment processes. (The latter will be discussed in more detail under the [Development assessment](#) sub-heading below). This is commended as good practice.

Examples of council's acknowledgement of the need to integrate its activities include the work council is undertaking to examine issues of affordable housing in the council area, and efforts to balance tourism activity in the Byron Bay area with residential amenity issues.

In terms of structure and functional responsibilities, within council's Planning, Development and Environmental Services directorate the planning strategy and the development applications streams are clearly separated, with necessary information being shared between sections. Council's planning function was reviewed in 2004, resulting in the current structure of the directorate.

6.3.3 Development assessment

The NSW Department of Local Government's comparative information publication indicates that during the period 2001/02 to 2003/04 the mean time taken by council to consider development applications was about 90 days. In comparison, the group average was 43 days and the State average was 53 days.

Council is aware of its shortfall in this regard and is considering, and putting in place, strategies to improve its processes in order to shorten the assessment time of development applications. To this effect council's Planning, Development and Environmental Services directorate is actively monitoring the development assessment times. The processing times have shown a slow but steady reduction from 94 days in 2002/03, to 87 days in 2003/04 and 83 days (according to council's own records) in 2004/05. In relation to the average times, the bulk of time is spent on more complex applications.

Council has commenced a project that explores which elements of the development applications processing can be shortened, simplified or run in parallel, without compromising on the quality of the assessment process. A part-time officer (3 days a week) has been dedicated to this project. Consideration is also being given to the option of expanding the types of exempt and complying developments. In addition, council is working on developing a system for electronic lodgement and tracking of development applications. While the progress is welcome, council still has a significant amount of work to do in this area.

With the employment of a legal coordinator, council has managed to dramatically cut down on a number of appeals before the courts. Council staff interviewed suggested that staff would benefit from further mediation training, especially those on the development assessment panel. (Recommendation 36)

The review team recommends that council continue to work on strategies that will bring the development processing time within the group and the State average. (Recommendation 37)

Council staff have suggested that, for the purpose of reducing development application processing times, it would also be beneficial for councillors to undergo basic training in legislative provisions relating to land use and planning as part of their induction training. The review team supports this suggestion. (Recommendation 38)

Council staff have advised that 94% of development applications are dealt with under delegated authority.

Originating in the *Green Print*, council is in the process of developing a structured process for social impact consideration as an integral part of its development assessment process. Council is mindful that the additional process should not negatively impact on development application processing times.

In articulating the social impact DCP, council distinguishes between events (both one-off events and regular events such as shows and festivals), and developments (the latter distinguishing between larger developments and individual houses). Consideration will be given to both the positive and negative impact of events and developments; and applications will be assessed for: community amenity, values, social cohesion, community safety, access to services, demography, local economic development and employment/access to opportunities.

Council currently employs 17 staff in specialist planning positions with no vacant positions at the time of the review. Council is aware of the pressures on its planning staff due to competing community expectations with respect to development and has put in place staff retention and development strategies, such as the continuing mentoring process of junior planning officers. Council's practice and results in this area appear impressive.

Council is aware that other approaches may be required in order to retain experienced planning staff. To this effect, council has considered the benefits of a more flexible remuneration system for its planning section and other areas where the shortage of staff may stand in the way of meeting outputs and outcomes in an effective and efficient manner.

6.3.4 Environmental management

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

Byron Shire Council's report is comprehensive and well presented. It meets the requirements of the Act and department's guidelines and addresses all necessary environmental areas.

The report includes regional comparisons and strategies and identifies actions, priorities and status tables that can be used (and are being used) in the management planning process.

The supplementary report focuses on Byron Shire using regional indicators. This practice is supported. The department's guidelines encourage reporting on a regional basis, recognising that many environmental issues are regional in nature and require regional action; regional co-operation can reduce the time and resources involved in preparing the report; and government authorities and bodies often collect information on a regional basis, rather than on a local government basis.

The department's guidelines also emphasise the importance of community involvement (including environmental groups) in monitoring changes to the environment over time. The guidelines suggest that councils consult their community

through state of the environment working groups. From the information presented in the report council seems to engage parts of the community in environmental management, for example, through landcare groups.

The review recommends that the supplementary report could include a short section on consultation, as it is not clear what this involved other than the community representatives on the SoE report committee. (Recommendation 39)

In view of council's orientation towards the ecologically sustainable development policy, the report has particular focus on sustainability issues. Councillors interviewed during the review have signalled the intent to give the State of Environment Report a more strategic focus with the report becoming part of an integrated environmental management system.

6.3.5 Enforcement

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

Councils must deal with allegations of unlawful and non-compliant activities in an appropriate manner. This includes dealing with prohibited or unauthorised activities; and activities that are contrary to the terms of a consent, licence, approval, or other instrument of permission issued pursuant to lawful authority.

Failure to properly deal with such allegations, in addition to being poor administrative practice, could expose a council to liability for compensation and the expense of litigation. The way in which councils exercise their enforcement powers also plays an important part in the public perception of councils.

The enforcement practices of councils must be resolute and demonstrate fairness and transparency. They must reflect the position taken by the council regarding particular issues. An enforcement policy must deal with the manner in which the council will carry out its functions, the procedural steps that may be involved, the

circumstances in which council will institute court proceedings and the manner and circumstances when discretion may be exercised.

Byron Shire Council has a sound enforcement and prosecutions policy for unauthorised development; the policy follows the enforcement guidelines prepared by the NSW Ombudsman. The policy appropriately identifies relevant 'heads of considerations' (being legal, community and personal) and provides a number of tests in the determination process and several actions ranging from 'no action', through 'educative', 'negotiation', 'awaiting determination approval' to 'infringement notice', 'notices/orders', 'injunction' and 'prosecution'. This practice is commended.

The review team recommends that the good principles of the enforcement and prosecutions for unauthorised development policy be used as a model for developing an overarching enforcement and prosecution policy to which specific requirements pertaining to specific areas may be added. (Recommendation 40)

Councillors determine council's enforcement priorities. Once a year, linked to the annual budget cycle, councillors are presented with a detailed explanation of the areas of concern and invited to determine annual enforcement priorities. This informs the resource allocation for the enforcement section, in addition to activities that constitute the meeting of council's statutory obligations. In this way, several 'crackdowns' have occurred over the years, with varied intensity in different areas such as illegal backpackers premises, squatting on beaches, unapproved use of outdoor dining.

Another commendable action by the council in the area of ensuring compliance has been the establishment of the compliance action panel which assists council in the consideration of appropriate enforcement action (listed in the previous text), particularly in the areas of making of dangerous dogs declarations by the council; determinations under sections 149A-149G of the Environmental Planning and Assessment Act 1979 (building certificates for buildings erected unlawfully) and local court actions.

The panel comprises at least three council officers, two of whom must be of a relatively senior level. Panel meetings are open to the public with the person who is

the subject of any compliance matter being able to make written representation to the panel. Oral representation can also be made before the consideration of the matter by the panel (the person cannot be present during the consideration).

The panel's decisions must be unanimous. Where a decision cannot be reached, the matter is referred to the Director Planning, Development and Environmental Services for final determination.

There is no formal system of providing information to the public on how to report suspected non-compliance. A normal complaints system is used for such reporting; additional information is provided to members of the public who call about matters concerning suspected non-compliances.

Council's food safety program has been stepped up by an increased rate of inspections in recent years due to the cooperation program with the Food Safety Authority.

Private swimming pool safety (pool fencing) is managed well at the building department level for new constructions, but reactively for older pools. In this regard, council relies on information received by neighbours on suspected non-compliance with Swimming Pools regulation. Council has advised that the number of recorded non-compliances in this area has been minimal. Council may wish to consider the benefits of establishing a planned swimming pool inspection program.

Graffiti removal has been another area where there has been only a small number of incidents recorded in the Byron Shire Council area. Council does not have a structured graffiti removal program. Should the issue become more widespread, council may consider establishing such program.

Following the evaluation of the successful New Year's Eve street event, council is in the process of developing the events policy that will draw on the Premier's guidelines. It is anticipated that the policy will be developed by the end of June 2006. The review team commends this process and encourages the development of events policy.

With respect to programs for monitoring compliance with environmental requirements, council has been in the phase of turning around the culture of its community through education before an enforcement program is developed. Council may wish to consider establishing such program to support its efforts in the area of environmental management.

6.3.5 Companion animals

Council has a companion animals management plan and companion animals management committee with two council representatives participating. Council offers discounted microchipping services, especially for pensioners, while being mindful that this is an important source of income for local vets.

Council also works closely with friends of the pound in seeking alternatives to unnecessary euthanasia of seized animals; and it holds animals longer than the minimum statutory period of seven and fourteen days.

Council's companion animals management program has an education component that has resulted in a large number of returns of seized animals to their owners. Council is also aware of and pays particular attention to the issue of lost visitors' animals, with a high return rate in this area as well. Council provides off-leash dog exercise areas and holding facilities for cats.

On a related subject, council has been active in a 'bird buddies' program in the Belongil Creek area resulting in the survival of two chicks of an almost extinct species.

The review team recommends the continuation of the good efforts made by the council in the area of companion animals. (Recommendation 41)

6.4 Asset & Financial Management

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

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

- [Overview of Financial position \(6.4.1\)](#)
- [Asset management \(6.4.2\)](#)
- [Crown lands management \(6.4.3\)](#)
- [Information Technology \(6.4.4\)](#)

6.4.1 Overview of financial position

Operating Results & Trends

Overall, council's financial position has strengthened in recent years. Council has incurred operating deficits before capital items for at least the past 5 years. The amount of the deficit before capital items has increased from \$473K in 2002/03 to \$2.206M in 2004/05. Results after capital items have ranged from surpluses of \$3.608M in 2000/01 to \$9.731M in 2002/03.

Table 1 – Budgeted vs. Actual Results

Year	Before Capital		After Capital	
	Budget	Actual	Budget	Actual
2004/05	\$434K	(\$2.206M)	\$8.164M	\$8.711M
2003/04	\$321K	(\$1.456M)	\$14.451M	\$7.659M
2002/03	\$2.075M	(\$473K)	\$10.274M	\$9.731M

The main reason for the variance in result before capital in 2004/05 was a loss from disposal of assets of \$2.342M.

Liquidity and Cash Position

The unrestricted current ratio (UCR) measures the adequacy of working capital and the ability to satisfy obligations in the short term. It does not include externally restricted activities such as water, sewer or specific grants. A good UCR is the one greater than 2. A ratio of 1.5 to 2 could be of concern if other indicators are not adequate. A ratio of 1.5 or less is considered unsatisfactory. Council's UCR for 2004/05 was 2.70. For the periods 2003/04, 2002/03 and 2001/02 it was 2.21, 1.75 and 1.15 respectively.

Council's unrestricted cash for the periods 2004/05 was \$1.280M; for 2003/04 it was \$1.037M; and for 2002/03 it was \$508,000.

The Rates & Annual Charges Outstanding Percentage (RACO%) assesses the impact of uncollected rates and charges on liquidity and the efficiency of debt recovery. Fees are not included in this ratio. A benchmark for city and coastal councils is less than 5% while a benchmark for rural councils is less than 10%. Council's RACO in 2004/05 was 5.89%; this represents a decrease from 7.45% in 2003/04 and 12.33% in 2000/01.

The Debt Service Ratio (DSR) assesses the degree to which revenues from ordinary activities are committed to the repayment of debt. A DSR of less than 10% is good. A DSR ratio from 10% to 15% is considered borderline and a DSR; more than 15% is considered to be of concern. Council's DSR in 2004/05 was 6.37%, which represents a decrease from 10.09% in 2002/03.

Council's employee leave entitlements are cash funded to 45% by internal restricted reserves. A percentage of 20% is considered adequate in this respect, unless there are extraordinary circumstances, such as the ageing workforce. The higher percentage is due to the council's consideration of the age of its workforce.

Section 94 contributions

Section 94 contributions are separately identified in council's systems; they are linked to the finance system. The majority of funds go towards open space, including some relating to improvements and embellishment of the existing open spaces. In planning for section 94 contributions council is also mindful of the increase over time on maintenance of new assets. Council therefore tries to make open spaces as low maintenance as possible as funds received under section 94 are limited.

Auditor's Comments

"Council should continue to improve general fund's operating result before depreciation to provide and maintain capital works and infrastructure (principally roads and drainage) and repay liabilities. Currently council relies heavily on capital grants and contributions to achieve this end."

“We commend council on the strategy of reserving savings on legal fees, however we also highlight the need for council to continue to accurately assess its likely legal costs when setting future financial budgets.”

“..In addition to annual reassessment of the useful life of major infrastructure assets, council’s management is currently considering other asset management issues such as regular revaluations and better financial planning based on an improved understanding of the cost of maintaining each asset throughout its useful life.”

“...Councils needs to assess its infrastructure requirements and develop strategies to ensure the long term viability (ability to provide services) of its assets.”

“...Whilst council’s systems of internal control require some improvements, we did not encounter significant breakdowns.”

Compliance with the Accounting Code

For 2004/05 Council was compliant with the accounting code.

History of Special Variations and Loans Outstanding

Council received a special variation increase of 9.46% ongoing in 2005/06 for infrastructure and community services, 15.5% (13.5% ongoing, 2% for 4 years) in 2004/05 for infrastructure and biodiversity conservation, 13.6% ongoing in 2003/04 for general income and 8.78% ongoing in 2002/03 for infrastructure and recurrent services. The above percentages include the general variation percentage.

The Local Government and Valuation of Land Amendment (Water Rights) Act 2005 may have a limited impact on council.

Total loans outstanding as at 30 June 2005 were \$20.084M. New loans raised in the 2004/05 financial period were \$8.490M. Loan funds were for the following projects: Caravan Parks Council \$1.3M, Caravan Parks Crown \$1.4M, Brunswick Heads Beautification \$90,000 and Sewerage Subsidised Schemes \$5.7M.

Comparisons with similar councils

The department publishes comparative information annually. For comparison purposes councils are grouped with similar councils. Byron Shire Council is a Group 4 council – URM (Urban-Regional-Medium). The following table compares Byron Shire Council’s performance to other Group 4 councils.

Table 2 - Comparative Information 2003/2004

Indicator	Byron Shire Council	Group 4 average	NSW average
Average rate per residential	\$518	\$611	\$605
Outstanding rates, charges and fees	9.20%	5.3%	6.2%
Current ratio (unrestricted)	2.21	2.40	51 council in this category
Debt Service Ratio	6.46%	6.61%	46 councils in this category
Average charge for domestic waste	\$165	\$168	\$207

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

Business Activities

Council has declared 4 business activities: Water, Sewer, Crown Caravan Park and Council Caravan Park. Crown Caravan Park produced a deficit before and after capital amounts following the transfer of land, building and infrastructure upon resignation of Council as Reserve Trust Manager of Broken Head Caravan Park. Council has in place business plans for its business activities.

Timeliness of Submission of Financial Statements

Council has submitted its financial statements on time for the last 3 years.

Additional sources of revenue

Council has adopted the philosophy that there should be no new borrowings unless there is additional income. In recent years, it has realised additional income through parking fees, footpath dining fees and parking infringement notices.

Long-term financial planning

Council conducts forward financial planning based on 8-year plans.

Council holds budget workshops to brief and involve councillors prior to the draft budget coming before council. All councillors are involved in this process. The information provided to councillors is comprehensive and relatively easy to understand enabling councillors to determine the management plan priorities for the coming year. Council's long-term financial plan should integrate with other council plans, including its asset management plan and social plan so that future needs of the shire are identified and assets and infrastructure that may be surplus to council's requirements rationalised. (Recommendation 42) Asset management is discussed in more detail under the following heading.

6.4.3 Asset management

Infrastructure Maintenance

The written down value (WDV) of Council's assets for 2004/05 period are as follows:

- Roads, Bridges & Footpaths 51%,
- Stormwater Drainage 51%
- Water Supply Network 66% and
- Sewerage Network Infrastructure 65%.

The department considers that WDV below 50% may be cause for concern.

Council's estimated costs to bring assets to satisfactory condition were \$80.250M in 04/05.

Estimated annual maintenance was \$3.913M whereas programmed maintenance was \$3.255M. Internally restricted funds set aside for infrastructure replacement for the same period amounted to \$611,000. Gaps between estimated and programmed maintenance have the potential to pose significant long-term challenges for council. This is one of the issues council is aiming to address as part of its financial planning. In doing so, council needs to weigh the costs of investing in infrastructure renewal over the medium term against the potential costs of failing to do so over the long term. (Recommendation 43)

Strategic asset management

Council is currently developing an asset management strategy. The Asset Management Group has been formed as the first step in moving towards the development of an integrated asset management system. Director Asset Management Services, Director Water and Management Services and Manager Financial Services participate on this group to ensure that the various sections of council are focussed on the same result, form linkages between different areas of council operations in the area of asset management and share responsibility for the management of council assets. This is an important move as the lack of a strategy would mean the council is not planning for its asset requirements, and is not able to seek funds to address asset shortfalls.

Since the formation of this group, council has been looking at moving from a current responsive to a more proactive approach to the management of its assets by assessing the condition of its assets and prioritising the necessary works. In the past and currently, inspections have been conducted mainly in response to customer requests. Council expects that the assessment of asset condition and the formulation of the plan should be completed within the next 18 months. The review team was advised that councillors were informed of the proposed program in a workshop and were supportive of it. The review team strongly encourages that this work continues and remains on schedule. (Recommendation 44)

On the subject of the condition of assets, and in the absence of a common universal criteria of 'satisfactory', council has adopted its own standard of what could be considered 'satisfactory' with respect to its different assets. For example, a narrow road will be considered 'satisfactory' if it remains a narrow road that is in a good condition, that performs what it is supposed to do, to the satisfaction of customers (i.e. a reliable narrow road).

In relation to the assessment of the condition of roads for which it is the roads authority, council has adopted the indicators developed by the Institute of Public Works Engineers Australia as its best practice and has used this condition consistently.

To support council's efforts in this regard, the review team recommends maintaining a regular review of its assets (Recommendation 45).

Council's asset management plan should also include any potential rationalisation of assets. (Recommendation 46)

Council may find the following publication useful in developing such a plan: *'Asset Management Policy, Strategy and Plan: Guidelines for Developing an Asset Management Policy, Strategy and Plan, Department for Victorian Communities, August 2004.'*

The review noted that different departments share responsibility for the management of council's assets. For example, the management of some of the properties owned by the council (such as community halls) is located in the Corporate and Community Services directorate. While there appears to be a culture of information sharing between the sections, the review team suggests that consideration should be given to allocating the negotiations of contracts over the use of council buildings and swimming pools to the Corporate and Community Services directorate, and allocating the function of the management of building assets to the Asset Management Services directorate so that the regular maintenance of such assets can be incorporated into the overall planning and the actual maintenance can be regularly overseen by the appropriate section without duplication of resources and supervision. (Recommendation 47)

6.4.4 Management of crown lands

Council administers 206 licences related to its Crown Lands responsibilities. The major areas are caravan parks, of which there are four parks on Crown Land and two on council land, swimming pools and public reserves/recreation fields. It also includes community halls and public toilets.

Income turnover for the caravan parks has been more than \$5 million annually, which is a significant part of council's income.

Council's parks have ageing infrastructure and council had adopted a five year budget for replacement of the necessary infrastructure. The review team

understands that the Department of Lands has resumed responsibility for management of four caravan parks and the Clarkes Beach Kiosk on Crown land owing to concerns about management of these facilities. It is not known what budget impact this will have on council, but it may be significant.

Council has mapped its public toilet locations and has twelve community halls for which it is responsible. There is a program of rolling works and upgrades in place, which along with condition assessments of each hall, forms a strategy document for management of the halls. The review team also sees this as an example of a well managed area of council's responsibilities.

A further example is council's allocation of \$500,000 for upgrading Mullumbimby Civic Hall, the completed works on Bangalow Hall and the a new community hall at South Golden Beach.

6.4.5. Use of Information Technology

As indicated above, council has a comprehensive information systems/technology strategy in place to support its corporate goals and is continuously reviewing the system to reflect the changing nature of technology.

As indicated previously, council has integrated and created interfaces between some of its applications and is working on the creation of a standard operating environment.

In terms of security, council has an off site storage and a fireproof storage on-site, and is in the process of developing a business continuity plan that will establish strategies to enable it to continue operations in case of a disaster. These practices are commended.

6.5 Community & Consultation

A council's charter requires that a council:

- Provides services after due consultation

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

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

- *Council's involvement of the community in decision making*
- *Social and community plans*
- *Affordable housing initiative*
- *Being accountable to its communities*
- *Library services*

6.5.1 Social and Community Plans

Byron Shire's Social Plan 2004-2009 submitted to the department includes the required essential components of demographic profile and a needs assessment of various groups within the community such as children, young people, women, older people, people with disabilities, Aboriginal and Torres Strait Islanders and people from culturally and linguistically diverse backgrounds. In addition, council identified other target groups such as homeless and transient people, gay, lesbian and transgender people.

In line with council identifying needs in its local communities, council should continue to take any opportunity in the future to negotiate a Memorandum Of Understanding with the local Aboriginal community about relevant local issues (Recommendation 48).

Council's plan is available on its web site and it also provided an assessment of the effectiveness of its previous social plan and indicated the social plan is cross - referenced with its Community Safety Plan.

However, recommended actions from the social plan should be clearly indicated in access and equity statements in council's management plan and council needs to

clearly indicate in the text of the plan when it was last modified as no date appears on it.

6.5.2 Community consultation

The community should be consulted during the development of the annual management plan. It is another opportunity for council to engage with the community regarding its current and future work plans.

The Act requires the council to give public notice of its management plan after it is prepared and place it on public exhibition, for not less than 28 days. The council is required to take into account any submissions its receives on the draft management plan. Council's draft management plan was on exhibition during the review process. It has been noted elsewhere in this report that the review team found it difficult to relate the management plan to any broader strategic document. Consultation with the community in those circumstances could be an effective process to focus council's activities.

6.5.3 Affordable housing

Council has made considerable progress towards developing and implementing a comprehensive affordable housing strategy. Council is to be commended for its initiative in this area. Such activities are in line with state government planning frameworks as is consideration/development of an ageing population strategy that has also featured in council's activities.

Although the review team has earlier commended council for its community hall work, the team has not seen evidence of similar work regarding recreational facilities. Council should prepare a recreational facilities plan to meet the future recreational needs of the community. (Recommendation 49)

6.5.4 Library Service

Council provides a library service in Mullumbimby, Byron Bay and Brunswick Heads. Council actively promotes the library service. Council is also a member of the

Richmond Tweed Regional Library Services, which provides access for Shire residents to libraries in adjoining council areas (Ballina, Tweed, Lismore) and which provides a mobile library service to villages and towns within Byron Shire, namely Federal, Ocean Shores and Suffolk Park. Mullumbimby library is located in a relatively new space next to council's administrative offices and is an expanded service from the previous operation. There is also a capacity for growth and readership has increased since the new facility opened.

6.6 Workforce Relations

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

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

- *Overview of the organisation*
- *Recruitment and selection processes*
- *Consultative committee*
- *Dispute resolution and grievance management processes*
- *Staff attitude survey*
- *Staff training and development*
- *Occupational health and safety*
- *Human resources strategy and workforce planning*

The review team did not undertake a comprehensive review of council's workforce relations' practices. However it did examine the council's approach to reviewing its organisational structure, recruitment and selection processes, its consultative committee and its approach to equal employment opportunity and training.

6.6.1 Overview of the organisation

Byron Shire Council has a workforce of 271 Full Time Equivalent people at the time of the review. Council has one large works depot located relatively close to the town centre of Byron Bay as well as the administration building in Mullumbimby.

Council's actual salary expenditure for the year 2004-2005 was \$12,252,968 and their salary expenditure at the time of the review was on budget. The overtime budget was 4.7% of total wages and salaries for the year, which is not excessive.

Results from council's 2004 staff attitude survey indicate that council has a highly qualified workforce and that staff turnover is not high. Council's response to the self assessment checklist for the review indicate that council's workforce is predominantly aged between 25-54 years of age, with women making up just over one third of the workforce.

6.6.2 Recruitment and selection processes

Council's recruitment and selection processes were examined. Files contained comprehensive information in relation to the selection process. The papers on the file evidenced processes that appeared to be of an appropriate standard. The quality of the process shows that council has considered its statutory obligations in this area and that it understands the importance of the process to the organisation.

Council provides prospective applicants with written information of the job application process. This is commendable as many applicants may be unfamiliar with public sector recruitment practices and it can help council by ensuring qualified applicants are encouraged to apply and that when they do, that they supply council with the information it requires.

The review team was provided with a copy of council's "Application for Employment" form. Council's recruitment and selection processes are well documented and their staff training activities appears to be of a good standard.

6.6.3 Consultative committee

Council's consultative committee meets regularly and keeps accurate records. At the time of review, representatives indicated that issues raised through the committee are generally dealt with in a reasonable and timely manner, with the exception of staff appraisals. Council has since addressed this matter.

6.6.4 Occupational health and safety (OH&S)

The review did not involve a comprehensive audit of council's occupational health and safety practices. However, the review team gained some insight into how council is addressing its responsibilities in this area by examining council's OH&S Policy Statement, the OH&S Committee minutes and meeting with an OH&S committee representative on site.

All employers have a duty to consult with their employees pursuant to the Occupational Health and Safety Act 2000 (the "OHS Act") and the Occupational Health and Safety Regulation 2001 (the "OHS Regulation"). Consultation should be viewed not just as a legal requirement, but also as a valuable means of improving the employer's decision-making about health and safety matters.

The OHS Act provides choices on how consultation can occur. Council has chosen to establish an OHS Committee as a means of consulting its employees. An OHS Committee is a good option where there is a desire for a representative group to come together in a co-operative way to improve the employer's systems for managing health and safety. Council's OHS committee appears to be operating effectively after being restructured in 2005. The committee's work on a working from home policy in the current employment climate will be a useful guide in managing changes in the workplace.

It is worth noting that it is only appropriate for councillors to play a role on the OH&S committee when it is clearly agreed by all parties on the OH&S committee. A person is not eligible to be an employer representative on an OHS Committee unless the person has authority to act on behalf of the employer in OHS matters at the place of work. This is clearly beyond the role of a councillor.

6.6.5 Staff attitude survey

The Staff Attitude Survey 2004 summary provided by council indicates that employees felt a lack of ownership of their work, as they were sometimes unable to see projects through to completion. In addition, some staff interviewed indicated that in 2006 this is still the case. Staff consultation should become part of council's

regular activities. Workloads need to be addressed both in terms of amount of work/ work expectations and in terms of who has responsibility for what duties. (Recommendation 50)

As has been mentioned elsewhere in this report, councillors and senior staff are unclear about their roles and responsibilities. So it is no surprise to find that reflected at other levels in the organisation, as reported by some staff interviewed. It is important that roles and responsibilities are clearly defined and agreed upon in order for council to function as it is required to by the *Local Government Act 1993*.

6.6.6 Staff training

The results of the survey indicate that a significant amount of training of supervisors and managers is needed in order to change some of the workplace culture that is impacting on council's growth as an organisation. The 'us and them' mentality that can exist between indoor and outdoor staff (a matter that was commented upon by some employees at Byron Shire Council) suggests council needs to consider some team building, some communications skills development and some recognition and reward strategies.

Staff consultation should become part of council's ordinary way of working in order for employees to utilise their skills and experience fully and for council to benefit from same. Those actions still outstanding from the draft Action Plan for the survey should be implemented as soon as possible to ensure council continues to make the necessary adjustments for change in its workforce. (Recommendation 51)

6.6.7 Industrial disputes

In the last five years council has had four industrial disputes that have progressed to the external formal stage i.e. lodgement of a dispute with the Industrial Relations Commission (IRC), all of which have then been resolved outside the IRC. In addition, the human resources staff have dealt with a further ten staff grievances, either themselves or by way of independent mediation. This indicates a good level of negotiation and mediation skills and a general willingness to work through issues on the part of staff and management.

Also some cause for concern is that all of the grievances lodged were harassment claims that would appear to indicate a lack of understanding of acceptable behaviour in the workplace. Although council has provided some training, further training for supervisors and employees may go some way to changing people's understanding of what standard of behaviour is required in the workplace. (Recommendation 52)

6.6.8 Human resources strategy

All councils are exposed to a number of workforce issues, such as:

- the shortage of specialised skills in certain areas, such as in the area of planning
- an ageing workforce
- a change in workload for certain sections as council's and government priorities change
- increases in career opportunities outside the area.

All councils should develop a long-term workforce plan that looks at the staffing needs of each section of council and allocates staff according to workload and priorities. The long-term plan should also address the issues of:

- council's ageing workforce,
- the provision of a plan of succession for key positions, and
- increase opportunities for apprenticeships, cadetships and traineeships to address these concerns.

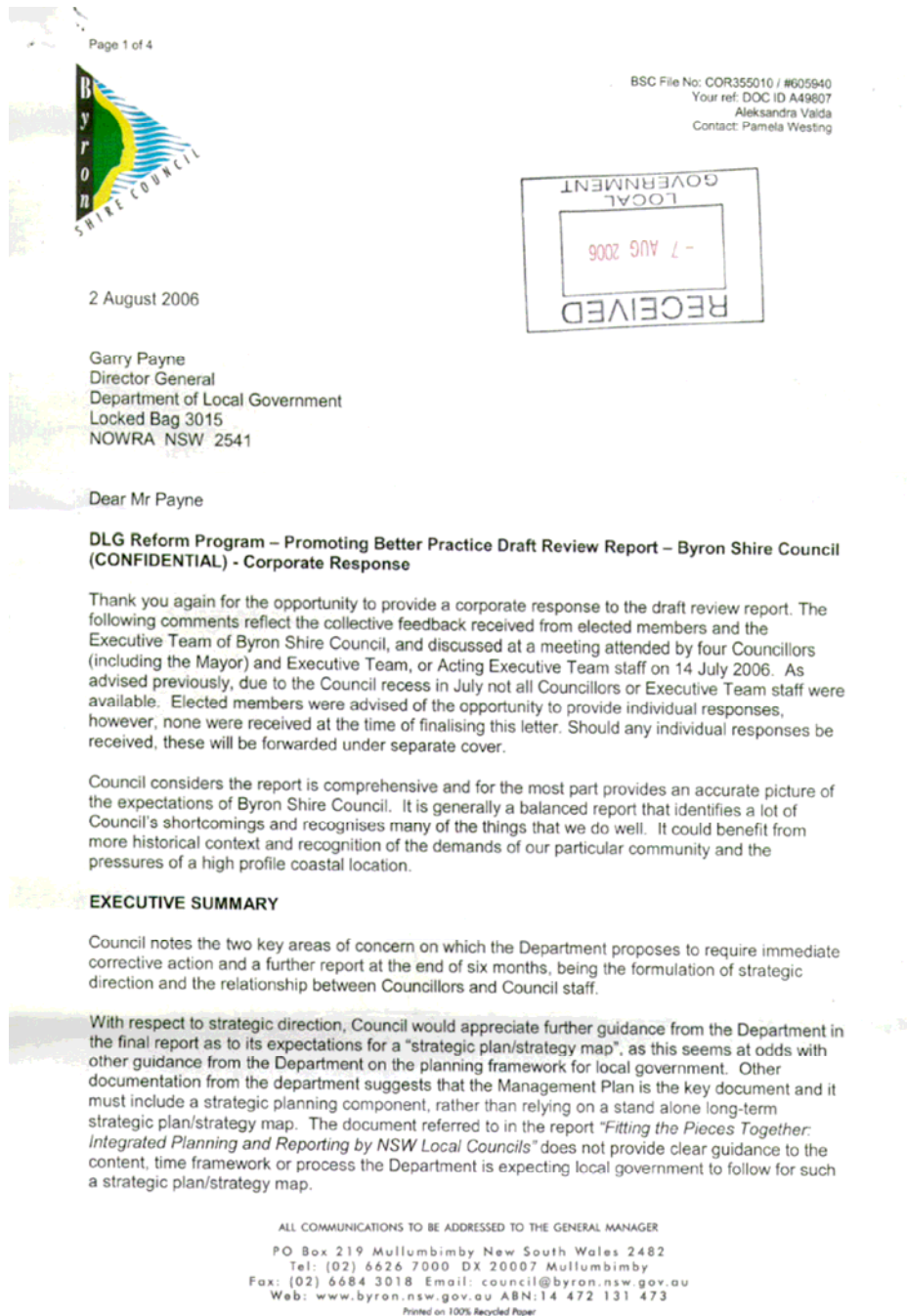
A human resources strategy can integrate and guide council's overall human resources effort, particularly in the areas of recruitment and retention and staff training and development. A strategy of this kind may be stand alone or may be integrated into council's overall corporate strategy. The key is to ensure that, consistent with the council's view on the future direction of the organisation, planning is underway to support that direction at the human resources level. Such a strategy is a key part of effective modern strategic management. Its importance is underlined

by the requirement to report annually in the management plan on council's human resource activities (section 403 (2)).

Council should consider implementing a long-term workforce plan that would identify overall staffing needs for the council into the future, particularly in the context of the age of the council's workforce (Recommendation 53).

7. COUNCIL'S RESPONSE

Council's responses to the draft report were received on 30 June and 7 August 2006. A number of areas addressed in the draft report have been addressed by the council or are in the process of being addressed. This practice is commended. The achievements should be reflected in the action plan. Council's response to the draft report is reproduced below.



- *Recommendation 16:* It is agreed that the establishment of the Conduct Committee needs to be addressed as a matter of urgency. Council sought two independent community/legal representatives through open advertising, but this was not successful. We are currently progressing discussions with regional partners to make up the Committee membership.
- *Recommendation 17:* Council has policies and procedures clarifying that Councillors are entitled to equivalent access to information as members of the public, plus access to any other information required to exercise their responsibilities. The DLG could further clarify Councillors' entitlement to information through guidelines and/or regulations, as the relevance of information requested to Councillor responsibilities is not always immediately obvious, and this can be a source of contention between some Councillors and the General Manager. Council can also help inform the public about how to make sure Councillors receive information intended for them.
- *Recommendation 18:* Council already keeps an electronic database that registers all Councillor requests for information, responses given, and the time taken to respond, and a report is provided to Councillors monthly. Council will review options for further improving this system, but at first glance a requisition book would seem to be a step backwards given the technology available today.
- *Recommendation 23:* Briefing sessions for councillors have in the past not been considered effective, for a number of reasons. They could be more effective if the purpose and structure of briefings was clear. Council will review how to manage briefing sessions better with a view to improving meeting efficiency and effectiveness.
- *Recommendation 24:* Council adopted a revised Code of Meeting Practice on 29 June 2006 (following exhibition of the draft policy as amended) to exclude public access and question time from its formal meeting. Public access will now occur prior to each Ordinary meeting on matters related to the agenda, and questions without notice from members of the public will follow public access.
- *Recommendation 25:* Council has not permitted acceptance of gifts or benefits to date, except for token amounts, per the previous Code of Conduct, and this practice has negated the need for a register. However, a gifts and benefits register in accordance with the Model Code of Conduct adopted in February 2005 is now being arranged, and it is proposed that respective policies and procedures will be reviewed and communicated to staff and councillors.

Regulatory functions

- *Recommendation 40:* Councillors received one and a half days' training in the legal aspects of planning and compliance after the last election, and have updates from time to time as legislation changes.

Asset and financial management

- *Recommendation 44:* Council has resolved to develop a long term financial plan and has initiated a Finance Working Group of Councillors and relevant staff.
- *Recommendation 45:* Council adopted long-term infrastructure plans in Water and Sewer and is in the process of developing such plans for other infrastructure assets.

Community and consultation

- *Recommendation 50:* Council has a Heads of Agreement with the Arakwal People, and will review that at the completion of Stage 2 of the Indigenous Land Use Agreement. Byron Shire was the first council in the state to develop an agreement with Native Title Claimants. Council has also resolved to develop a protocol for consultation with the Aboriginal community, and employs an Aboriginal Projects Officer.

Workforce relations

- *Recommendation 56* - it is noted there is no recommendation 56 in the draft report.

6.1.3 The Strategic Role of Councillors

Page 26: Regarding use of emails, Council does have procedures and protocols regarding Councillors use of information and use of emails generally. Council would not like to see further identifying information in the report, but requests the Department to double-check the information cited in paragraph 2 of page 26.

6.2.15 Committees

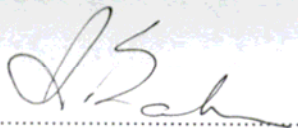
- This section needs to be clearer regarding the concerns relating to committees and to consultation generally. It seems to recommend that a community survey be carried out to assist to identify issues with committees.
- Council has resolved to carry out a review of committees, and has itself identified a number of concerns with committees that are not reflected in the report. These include consistency of resourcing and reporting minutes and recommendations, effectiveness, roles and terms of reference, demand on resources, accountability and other issues.

6.6.6 Development Assessment

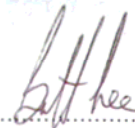
- *Page 47* - electronic lodgement and tracking of development applications - Council has now commenced online tracking of development applications through its website, and intends to provide further e-services for applicants and residents.

I trust this feedback will be taken into consideration, and look forward to receiving the final report. Should you require any clarification in relation to the above, please contact the General Manager on 02 6626 7179.

Yours sincerely



Cr Jan Barham
Mayor



Brett Lee
Acting General Manager

8. SUMMARY- WHAT'S WORKING WELL & CHALLENGES

COUNCIL'S PRIORITIES AND FOCUS

What is working well

- Good management plan.
- Use of partnerships.

Challenges to improve

- Formulation of a firm strategic direction for the shire.
- Need to establish community views for determining strategic and operational priorities.
- Certain functions associated with particular positions.

GOVERNANCE

What is working well

- Structures and processes.
- Separation of powers.
- Developed set of values.
- Code of conduct.
- Tendering/procurement procedures.
- Public access to information.
- Records management.
- Privacy management.
- IT practices.
- Councillor expenses and facilities policy and practices.
- Committees.
- Delegations.
- Legislative compliance.
- Timely reporting.

Challenges to improve

- Strategic role of councillors.
- Pressures on council staff.
- Conduct committee.
- Pecuniary interest returns.
- Effectiveness and efficiency of council meetings.
- Gifts register.

- Service standards (guarantee of service).
- Statement of business ethics.
- Development of business continuity plan.
- Internal audit function.

REGULATORY

What is working well

- Work on compliance with planning reforms.
- Integrated approach to planning.
- Strategies to retain skilled planning staff.
- Environmental management and reporting.
- Compliance and enforcement policies and practices.
- Event management experience being translated into policies.
- Companion animals management practices.

Challenges to improve

- Development assessment times.

ASSET AND FINANCIAL MANAGEMENT

What is working well

- Improved liquidity and cash position.
- Improvement in outstanding rates and charges.
- Improvement in debt service ratio.
- Longer-term consideration on the use of section 94 contributions.
- Timely reporting.
- Consideration of additional/alternative sources of revenue.

Challenges to improve

- Strategic asset management planning related to longer-term financial strategy and social planning.
- Infrastructure maintenance.
- Rationalisation of assets.

COMMUNITY, COMMUNICATION AND CONSULTATION

What is working well

- Council's Social Plan meets the required essential components of the department.

- Council's community hall refurbishment program appears to be well on track and has, in conjunction with the community, provided first class facilities in Bangalow, Ocean Shores, South Golden Beach and Brunswick.
- Council's affordable housing strategy/work is well developed to this point in time.

Challenges to improve

- Develop a recreational facilities plan.

WORKPLACE RELATIONS

What is working well

- Consultative committees.
- Grievance handling.

Challenges to improve

- Outstanding actions from the draft action plan.
- Improved understanding of acceptable behavioural practices in the workplace.
- Long-term workplace planning.