

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

challenges improvement innovation good governance

**REVIEW REPORT**

**GOSFORD CITY COUNCIL**

**December 2005**



**Department of Local Government**

## TABLE OF CONTENTS

<b>1.</b>	<b>ABOUT THE REVIEW</b> .....	<b>4</b>
1.1	Review objectives .....	4
1.2	Review process .....	4
1.3	Gosford City Council Review .....	5
<b>2.</b>	<b>EXECUTIVE SUMMARY</b> .....	<b>6</b>
<b>3.</b>	<b>RECOMMENDATIONS</b> .....	<b>7</b>
<b>4.</b>	<b>CONTEXT</b> .....	<b>12</b>
4.1	Overview of the Gosford City Council .....	12
<b>5.</b>	<b>COUNCIL’S AMBITIONS, PRIORITIES AND FUTURE FOCUS</b> .....	<b>14</b>
5.1	Council’s strategic focus .....	14
5.2	Relations between councillors and staff .....	15
<b>6.</b>	<b>DELIVERING AND ACHIEVING</b> .....	<b>17</b>
6.1	Governance .....	17
6.1.1	Governance – the policy role of the councillors .....	17
6.1.2	Governance – council’s need to consider guidelines and advice from oversight agencies .....	18
6.1.3	Governance – internal reporting of legislative or regulatory non-compliance .....	19
6.1.4	Open meeting issues .....	19
6.1.5	The council code of meeting practice .....	20
6.1.6	Meeting practices – the “recommittal” of items .....	20
6.1.8	Governance – the disclosure of gifts and benefits .....	20
6.1.9	Records management and retrieval issues .....	21
6.1.10	Governance – pecuniary interest disclosures and returns .....	21

6.1.11	Governance – the management and reporting of complaints .....	22
6.1.12	Governance – ethics and values.....	26
6.1.13	Governance – risk management and internal controls.....	26
6.2	Planning & Other Regulatory Functions.....	27
6.2.1	Notification of development applications.....	27
6.2.2	The need for review of the council’s planning instruments.....	27
6.2.3	Section 94 developer contributions issues.....	29
6.2.4	Development assessment issues - general .....	30
6.2.5	Conflicts of interest in handling development applications – council as applicant and consent authority .....	31
6.2.6	Legal costs incurred in appeals to the Land and Environment Court..	32
6.2.7	Determinations of DAs contrary to staff advice and recommendations .....	33
6.2.8	Environmental management.....	33
6.2.9	Plans of management for community land.....	34
6.3	Asset & Financial Management .....	35
6.3.1	Overview of financial position .....	35
6.3.2	Financial performance issues .....	35
6.3.3	Interim audit issues .....	36
6.3.4	Tendering issues .....	37
6.3.5	Issues relating to the granting of financial assistance to third parties .	38
6.4	Community & Consultation .....	39
6.4.1	Community information and consultation .....	39
6.4.2	Keeping the community informed – the council website.....	40
6.4.3	Keeping the community informed – the annual management plan..	40
6.4.4	Ethnic affairs matters.....	41
6.5	Workforce Relations .....	42
6.5.1	Summary .....	42
6.6	The Peninsula Regional Leisure Centre .....	44
<b>7.</b>	<b>COUNCIL’S RESPONSE .....</b>	<b>47</b>

**Appendix 1: Draft Review Report Comments 30 June 2005**

## **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.

### **1.2 Review process**

The review process was developed after extensive research into council performance measurements in Australia and overseas. The review process is based upon a range of models including:

- the UK Audit Commission council inspection model
- the ICAC corruption resistance reviews
- LGMA/ICAC governance health check
- LGMA financial health check
- previous programs conducted by the Department of Local Government.

Promoting Better Practice is designed to encourage improvement in the way councils conduct their activities and to ensure good governance. Promoting Better Practice is also about monitoring performance of councils.

Reviews also have a wider role in the development of local government services across the State and identifying the need for future action or legislative change by the department.

A full review involves a 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.

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 reality is that a review can only ever “scratch the surface” of council operations. Analysis of the corporate self-assessment and the practice checklists, as well as the activities undertaken during the review visit, give reviewers a reasonable picture of the council’s operations and future strategic direction.

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

### **1.3 Gosford City Council Review**

Gosford City Council was asked to complete a corporate self-assessment and a checklist of key council practices. The completed self-assessment and checklist were analysed by the review team prior to commencing the on-site review process.

Mr Robert Bulford, Executive Officer (Reform Program) and Mr Warwick Francis, Senior Policy & Research Officer, comprised the review team. The review team conducted an on-site review of the council from 8 to 12 November 2004.

The review was based on council’s response to the self-assessment of its corporate arrangements and capacity. This assessment asked council to respond to four critical questions of its capacity to improve:

- What is council trying to achieve?
- How has the council set about delivering its priorities?
- What has the council achieved/not achieved to date?
- In the light of what the council has learned to date, what does it plan to do next?

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

The on-site review consisted of a briefing for council’s senior staff, a separate briefing for the Mayor, the collection of a large amount of information and materials, including copies of council documents on certain particular matters and projects that had come to the department’s attention, and the review of a number of council’s policies and procedures, and other documents.

## 2. EXECUTIVE SUMMARY

The review team visited council in the week of 8 November 2004, for the purpose of conducting a review of the council's operations and performance.

Before the visit, the review team looked at a large amount of information about the council available already in the department and from the council website. The review team also obtained further information from the council, including responses to a self-assessment questionnaire.

During the visit the review team interviewed the General Manager and his directors, plus a number of other key members of the council staff, and collected a large volume of information and materials.

The review team has identified a number of areas of possible improvement, which are reported on in more detail in this report. The review team has also made a number of recommendations for improvement and attention by the council. These are collected together in section 3 of this report.

One of the review team's key areas of concern is in relation to council's complaints handling and management. One important recommendation is for the council to move to ensure that it captures information and provides that information, as well as an analysis of it, to management and to the elected councillors. This will likely go a long way to improving council's complaint handling, and in council's responsiveness to its ratepayers and its community.

The review team also has concerns about council's handling of its proposed Peninsula Regional Leisure Centre at Woy Woy. This project has blown out in cost and scale from that first envisaged. There is evidence available to the review team and the department of a number of possible inadequacies in its management.

The review team also has some concerns about council's performance in the strategic land use planning and development assessment area, and again a number of recommendations have been made for improvement here. Many of these are issues that relate to the Peninsula Regional Leisure Centre.

### 3. RECOMMENDATIONS

The following recommendations have been made for action by council. All are dealt with and explained in other sections of this report. They are collected here, for convenience, and by way of a summary or checklist.

1. Council should adopt and implement, as soon as possible, a comprehensive policy on the provision of information to and interaction between councillors and staff. In so doing, council should be guided by the Model Code of Conduct for Local Councils in NSW recently published by the Department of Local Government. See section 5.2 of this report.
2. Council should take steps to ensure that it has a systematic means of properly considering and acting upon all guidelines and advice issued from time to time by local government oversight agencies such as the Department of Local Government, the Ombudsman, and the Independent Commission Against Corruption. See section 6.1.2 of this report.
3. Council should adopt and implement, as soon as practicable, a policy and procedure for the internal reporting of legislative or regulatory non-compliances. See section 6.1.3 of this report.
4. If it has not already done so, council should promptly ensure that the version of its Code of Meeting Practice that is posted on its website is the most recent and up-to-date version. See section 6.1.5 of this report.
5. Council should revise its meeting practices to ensure that it correctly follows and reflects the Act, the Local Government (Meetings) Regulation 1999 and its Code of Meeting Practice, and should discontinue its practice of “recommittal” of votes on items on its agenda. See section 6.1.6 of this report.
6. Council should either comprehensively review and revise its code of conduct in respect of its policies and required procedures on the receipt and the disclosure of gifts and benefits, or adopt and implement a new and separate comprehensive and appropriate policy and procedure on such matters. See section 6.1.8 of this report.
7. Council should review and if necessary revise its records management and retrieval system and practices to ensure it can duly and promptly meet its obligations under such sections as section 12 of the Act, as well as under other legislation, such as the Freedom of Information Act. See also section 6.3.4 of this report.
8. Council should also ensure that all of its staff are familiar with and adequately trained in the use of its records management and retrieval system. On this and the previous recommendation see also section 6.1.9 of this report.

9. Council should ensure that all persons who are required under the pecuniary interest provisions of the Act to lodge returns of interests are made aware of their obligations to lodge returns that are complete and accurate in all respects,. Legibility is also an important aspect, as well as the proper initialling and verification of amendments or alterations to returns. See section 6.1.10 of this report.
10. The Department of Local Government should consider what action, if any, needs to be taken to investigate or otherwise deal with possible inadequacies in certain returns of interest detailed in the report. See the same section of this report.
11. The General Manager should provide advice and training to staff as to the importance of their responsibilities in respect of the disclosure of conflicts of interest and pecuniary interests, and in the related disclosure of interests in returns lodged with the council. See again section 6.1.10 of this report.
12. Council should comprehensively review its complaints handling policies and procedures. The current policy is not adequate, and the current published practices and procedures do not appear to adequately reflect the most recent guidelines and advice from the NSW Ombudsman on the topic.
13. Council should implement appropriate procedures for the recording of complaints, their analysis, and their reporting to council management and to the elected body.
14. Council should adopt and implement council's foreshadowed formalised complaints management system, the accurate reporting of customer service actions, the creation of a central database of customer service knowledge, including complaints, and the creation of a link between customer service reporting and corporate performance improvement programs.
15. Council should take steps to make sure that council's community is aware of its complaints handling policies and procedures. Council should have available an appropriate brochure or leaflet outlining these in simple and readily understandable terms, which should be available from council's customer service centres, libraries and other points of contact between council and its ratepayers and community. See generally section 6.1.11 of this report on this and the immediately preceding recommendations.
16. Council needs to adopt and implement, as soon as practicable, an overall strategic plan as a framework for its land use planning. See section 6.2.2 of this report.
17. Council needs to adopt and implement, as soon as practicable, a council approved program for the review and updating of its planning instruments. See the same section of this report.



18. Council needs to adopt and implement a single, comprehensive and up to date local environment plan and related planning instruments (such as a contributions plan) to cover the whole council area, so that it can avoid the need for piecemeal and resource consuming spot rezoning. See sections 6.2.2 and 6.2.3 of this report.
19. Council needs to take steps to implement a sustained and general improvement in the timely processing of development applications, including ensuring that the General Manager and his staff are provided with appropriate resources for the purpose. See section 6.2.4 of this report.
20. Council needs to provide appropriate information to applicants about the right to seek a review of council determinations in respect of development applications under section 82A of the Environmental Planning and Assessment Act 1979. See section 6.2.4 of this report.
21. Council needs to adopt and implement an appropriate system for reporting and investigating reports of non-compliance or unauthorised development. The public also need to be informed about how to report suspected non-compliances or unauthorised development. See again section 6.2.4 of this report.
22. Council needs to adopt and implement a compliance program to ensure that it is notified of all swimming pools in the council area, and that such pools comply with the Swimming Pools Act 1992. See again section 6.2.4 of this report.
23. Council needs to adopt and implement an appropriate system for dealing with and managing its competing roles where it is both landowner and/or applicant on the one hand and consent authority on the other. See section 6.2.5 of this report.
24. Council needs to adopt and implement an appropriate policy and procedure for ensuring that, in all cases where determinations are made by council's elected body contrary to staff recommendations and advice, reasons are given and duly minuted. See section 6.2.7 of this report.
25. Council should adopt and implement an appropriate pro-active program of monitoring compliance with environmental requirements in its area. See section 6.2.8 of this report.
26. Council needs to introduce and keep an appropriate centralised register for all plans of management of community lands or other public lands under its control and management. See section 6.2.9 of this report.
27. Council needs to take steps to ensure that copies of its plans of management of community lands are available at its customer service

- counters for public inspection and sale, as required under section 43 of the Act. See also section 6.2.10 of this report.
28. Council needs to review and, as appropriate, revise its policy in respect of the recovery of outstanding rates and charges. See also section 6.3.2 of this report.
  29. Council should as soon as possible adopt and implement an appropriate single, council-wide asset management plan in respect of its assets. Appropriate funding for depreciation and for asset and infrastructure maintenance and replacement should be provided for as part of that plan and as part of the annual council management plan and budget. Again see section 6.3.2 of this report.
  30. Council needs to ensure that regular – at least annual – interim audits are duly conducted in respect of its operations and finances and that the results of these audits are reported back to the council, through its General Manager. The timely and appropriate consideration and implementation of recommendations in any such report should also occur as part of that process. See section 6.3.3 of this report.
  31. Council should give due consideration to centralising its tendering procedures or at least the management or control of such procedures and that persons with appropriate qualifications and experience are engaged for that purpose. See section 6.3.4 of this report.
  32. Council needs to ensure that it complies with its obligations under section 356 of the Act when granting financial assistance to third parties. See section 6.3.5 of this report.
  33. Council needs to ensure that its website contains up to date and accurate copies of its policies and relevant documents. See section 6.4.2 of this report.
  34. Council needs to ensure that its annual management plan and annual reports contain complete, accurate and informative information and details of the matters that the Act and relevant regulations require. See section 6.4.2.2 of this report.
  35. Council needs to provide adequate and appropriate services and facilities for those members of its community who may not be from an English speaking background. See section 6.4.4 of this report.
  36. Council should arrange for an independent review of the management of its Peninsula Regional Leisure Centre project, to examine, among other things, the adequacy of project and budget management, the adequacy of council's role as consent authority and the process for keeping the public informed of the project and of dealing with public complaints about the project.

37. Council should provide a comprehensive report to the department of its progress in implementing these recommendations, on a quarterly basis until such time as the department otherwise advises.

## **4. CONTEXT**

### **4.1 Overview of the Gosford City Council**

Gosford City Council is one of two large regional councils on the Central Coast, north of Sydney. It is located midway between Sydney and Newcastle. It is bounded on the north by the Wyong Shire and the Cessnock City local government areas. In the west lies the Hawkesbury Shire and to the south and south-west are Baulkham Hills Shire, the Hornsby Shire and the Pittwater local government areas.

The Gosford City local government area covers an area of 940 square kilometres and has an estimated resident population as at 30 June 2003 of 162,533. It has been a very fast growing area, with a population of only 131,100 in 1992, though the rate of population growth appears to have levelled off in recent years.

The council has ten councillors. At the March 2004 local government elections, six new councillors were elected, joining four councillors who were re-elected and who served as councillors between 1999-2004. Of the ten councillors, two are Liberals, two Labor and two represent the Central Coast First party. In addition there are three independents and one Greens member.

The Mayor is a person elected by his or her fellow councillors. Between 2001 and 2004 the Mayor was Cllr Robert Bell, an independent. In 2004 the Mayoralty passed to the long serving Cllr Malcolm Brooks, a Liberal.

Council has, for some years, faced a situation of shifting political allegiances, with no one political grouping having a majority. Historically this has caused divisions and some dislocation to council's operations. The anecdotal evidence is that since the 2004 elections, these problems of the past have largely been overcome. This remains to be seen.

Council meets, in one guise or another (it forms itself into committees to deal with certain aspects of its business), at least once each week. Council's committee structure has recently been reviewed, with some committees being renamed or reorganised and some committees ceasing to operate.

As of 30 June 2004, council employed 980 full time equivalent staff. Following an organisational restructure in 2002, council has a structure that comprises the General Manager and seven directors reporting to him. All directors (as well as the General Manager) are senior staff, within the meaning of that term in section 332 of the Local Government Act 1993. This was an increase in the number of senior staff positions from that previously applying.

Gosford City Council is a category 7 council, according to the classification of NSW councils adopted and used by the department. Category 7 councils are described generally as "a developing LGA on the margin of a developed or regional urban centre". Gosford's neighbour, Wyong Shire Council is also a category 7 council, as are two other neighbours, Hornsby Shire and Baulkham Hills Shire Councils.

For the 2003-2004 financial year, council's revenues from ordinary activities amounted to some \$157.491 million. Council has achieved substantial operating surpluses, both before and after capital items, over the past seven years. Council's operating surplus for the 2002-2003 year was \$13.014 million (before capital items) and \$30.247 million (after capital items) and the corresponding figures for 2003-2004 was \$7.350 million and \$33.481 million, respectively. The surplus before capital items for 2003-2004 was \$7.753 million, but is the lowest figure in the past five financial years.

## **5. COUNCIL'S AMBITIONS, PRIORITIES AND FUTURE FOCUS**

### **5.1 Council's strategic focus**

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

Council has a current corporate plan drawn from the results of community surveys, workshops with the community and workshops with staff. This plan has a duration of four years. Importantly, council is also currently developing Gosford Vision 2025, which is a strategic planning vision. Council should place considerable emphasis on involving councillors in this development process. It is one of the elected council's most important responsibilities to determine and oversee council's overall strategic direction.

In discussions with the General Manager and his directors, these senior officers identified a number of critical issues and challenges facing the Gosford City Council. But the review team was also told that there was optimism that these challenges could be met, with the new group of councillors elected in March 2004 seemingly working together well, and working well with staff.

The first and most fundamental critical issue facing the council relates to the population growth pressures in the council area, particularly in the context of the council's population cap policy. This is a policy implemented by the previous group of councillors but that is continuing. The shortage of undeveloped residential land in the council area has meant that future development will focus on medium density housing.

The current population of the council area is about 163,000. Council believes that, under existing zoning arrangements, the population could likely increase to about 169,000. At current rates of growth this figure could be reached by 2011. The review team was told that the population cap policy did not take account of growth potential in the existing residential zonings. However, the review team understands that the present group of councillors is re-examining the matter, through such strategic programs as the State Government's Metropolitan Strategy and the Central Coast Review.

Council develops and maintains a capital works program. This, again, has a life of four years. Council separately reported that it has a longer term capital works program. There are clear links between council's anticipated population and growth pressures and the future demands on capital works. This, combined with council's ongoing obligations to report on the condition of existing infrastructure, underlines the importance of links between council's capital works program and its anticipated future challenges.

The population and development pressures in turn present challenges to the council in terms of managing its environment and ensuring that development that is

approved and to be allowed is environmentally sustainable (the latter aspect being one of council's charter obligations), as well as in ensuring that council has the resources and provides the appropriate services for this growing population, and provides the necessary road infrastructure and so on. There is also a need to find and generate local jobs, rather than having a commuter based population, living in the council area, but travelling to Sydney to work each day. Council has responded to the growth in that part of its population that comprises young people (0-14) and the frail elderly (over 75) by greatly expanding the youth and aged services it provides. This response, particularly to the critical emerging challenge of an ageing population, is pleasing.

Council has recognised the need to address sustainability and is preparing an integrated document entitled "Sustainability Report 2004", which includes the council State of the Environment Report and Community and Cultural Plans.

The review team was also told that the key pressures facing council are how to balance all these critical issues, particularly in the context of the present draft Action Plan for the Central Coast, as well as the impacts of drought and contingency planning, affecting not just water but other issues as well.

One of the key issues impacting on council and its operations is the shortage of planners, as well as professional staff in some other areas, such as child care. This is a local government wide phenomenon. Council advised that the General Manager and his staff have, in the last 6 months before the review visit, completed a review of the resources needed in the development area and identified a need for more resources.

As is noted later, the review team recommends that council proceed with a citywide planning instrument. In this regard, the Gosford Vision 2025, which is expected to produce a draft city vision by August 2005, will provide a basis for the necessary work to be done in the strategic planning area. Council needs to ensure it integrates this vision into all key strategies across its functions.

## **5.2 Relations between councillors and staff**

The review team heard from some sources about poor relations between councillors and staff, impacting adversely on the performance of and public confidence in council. It would appear, however, that this was more of an issue in respect of the group of councillors elected in 1999, rather than the current group elected in March 2004.

One manifestation of this related to threats of legal action in respect of alleged defamation by the General Manager and a staff planner against Cllr Robert Bell. It is a serious matter if the Mayor (as he then was) is in so serious conflict with the General Manager and other senior staff that it comes to that level. However, the situation is said to have largely been overcome since the 27 March 2004 elections and in particular since the election of the present Mayor, Cllr Malcolm Brooks.

Confrontational attitudes between councillors and staff are unfortunate and inappropriate. The Department of Local Government and the Independent

Commission Against Corruption issued a joint publication in March 1997 entitled *Under Careful Consideration: Key issues for local government*. Those guidelines contain a model policy on the provision of information to and interaction between councillors and staff that the review team notes that council has not apparently seen fit to implement, in any form. This has largely been reflected in the recent Model Code of Conduct for Local Councils in NSW and the accompanying Guidelines issued by the department in December 2004.

In council's response to the review checklist and questionnaire the review team sent out at the commencement of the review process, council advised that it did in fact have a policy on councillor staff interaction. But the only document that the team's attention was drawn to, and which is copied on the council website, is a very short and largely uninformative one page document, being Policy No. A1.04 and entitled Administrative Arrangements/Communication with Staff. This policy does not go as far as *Under Careful Consideration* contemplates. Council should address this by developing a more comprehensive policy.



## 6. DELIVERING AND ACHIEVING

### 6.1 Governance

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

A review was conducted of a range of aspects of Gosford City Council’s governance practices including:

- *Ethics and values*
- *Policy making and review*
- *Risk management and internal control*
- *Council’s decision-making processes*
- *Monitoring and review*
- *Complaints handling practices and procedures, including the monitoring and reporting of complaints and the management of those complaints*
- *Council’s code of conduct and policies and procedures in respect of the disclosure and declaration of gifts and benefits*
- *Council’s management of pecuniary interest responsibilities and the returns of interests required to be lodged by various persons with council under the pecuniary interest provisions of the Act.*

#### 6.1.1 Governance – the policy role of the councillors

Under section 222 of the Act the elected councillors comprise the governing body of council. Section 223 sets out their role, which is to “direct and control the affairs of the council in accordance with this Act”. Section 232 expands on this, indicating that the role of a councillor is, as a member of the governing body, to do four key things, one of which is “to play a *key role* in the *creation and review* of the council’s policies and objectives and criteria relating to the exercise of the council’s regulatory functions”. So, policy making and review is a key function of the elected councillors.

Gosford City Council’s website, as inspected by the review team shortly before the visit to council in the week of 8 November 2004, provides evidence of a considerable number of council documented policies, covering a wide range of issues. However, most of those documents were expressed to have expired in September.

The review team was told about steps then under way to conduct a major review of all the council policy documents, given that, following the local government elections in March 2004, a new group of councillors, some of them particularly serving for the first time, comprised the elected body.

The evidence appears to indicate that council only reviews its policies on an annual or even four yearly basis. Councillors were due to attend a “Special Strategy/Policy

Workshop” (on 11 November 2004), and the review team was provided with a copy of a report to the councillors for this purpose. The 11 November meeting was due to consider all council policies.

Copies of these were provided to the councillors as early as 24 September 2004, in “four bound booklets”, comprising the policies, with suggestions for change already made by the relevant directors. Councillors were invited to “make any comments or to field [ask?] questions regarding the policies by 15 October 2004”, a date that gave them only three weeks to do so. In effect, councillors were being asked to undertake the task of reviewing all council’s policies in one hit and at one and the same time.

Such an approach is not likely to produce a considered or appropriate result. The task was simply too daunting, particularly for those councillors only elected for the first time in March 2004. It turned out that that there was too much other business at the meeting of 11 November 2004 for the policies to be considered. The matter has been delayed, and the review team has noted advice on council’s website (the same advice that tells council’s community that its policies remain in force) that the Strategy/Policy Workshop was scheduled for February 2005.

At council’s meeting held on 8 March 2005, council considered the work of the Strategy and Policy Workshop held on 17 February 2005. At the workshop, councillors made recommendations on nearly 50 council policies. Council resolved to put changes on public exhibition for 28 days. It would appear that council dealt with all policies in one hit, even if councillors had the benefit of more time to read and consider them. Council needs a more considered and structured approach to this key task in the future.

### **6.1.2 Governance – council’s need to consider guidelines and advice from oversight agencies**

As one of several oversight agencies for local government, the Department of Local Government issues guidance and advice to local government from time to time on compliance and good practice matters. The other oversight agencies are, of course, the Independent Commission Against Corruption and the NSW Ombudsman. Those agencies equally issue guidelines and advice from time to time.

A council should take this advice into due consideration. Council does not appear to fully appreciate this. Indeed, there is evidence council fails to take account of guidelines and advice issued from time to time by the department and the other relevant oversight agencies.

The General Manager told the review team that all incoming correspondence, guidelines and publications received from oversight agencies are, in accordance with council’s records handling procedures, referred to him in the first instance. This is good, as it ensures that the head of the council administration is made aware of such important documents and information.

It is also clear that council does act on some of this material. For example (see below), council has adopted a statement of business ethics and a policy on the interaction between councillors and staff. But the benefit of this material at other

times appears not to impact on council operations. For example, the council tendering policy is written in such a way that clearly fails to take into consideration a number of recent guidelines and publications issued by the Independent Commission Against Corruption. Council also provided evidence to demonstrate that council had in fact received various select or nominated publications and guidelines issued in recent times by the department and the Independent Commission Against Corruption. What the review team was not satisfied with was the sense there appeared to be an understanding and acceptance that those documents might require council to review and change council policies affected by those documents. Council should adopt a systematic means of properly considering and acting upon all such guidelines and advice.

### **6.1.3 Governance – internal reporting of legislative or regulatory non-compliance**

In its response to the review checklist and questionnaire issued to council shortly before the visit, council advised that it had no system for the internal reporting of legislative or regulatory non-compliances. Council said it does have a system for reporting of fines, penalties or prosecutions against council. Council needs to address this and ensure that it does have a policy and system to cover the former.

### **6.1.4 Meeting issues**

Council has recently moved to adopt a new “electronic agenda paper system”, called “Minutes Manager”. This system is designed to ensure that council’s computer system is used to “electronically generate and action all tasks associated with the agenda paper: from first generating the report; collating reports into the agenda paper; preparation and completion of the minutes of the council meeting; to the creation and tasking of council resolutions. It also produces an electronic minutes book as an end result.” At the time of the department’s review visit, this system had been operational, but not for long. It remains to be seen how well it operates in practice. If it delivers what it promises, it may well be a model for other councils to consider and emulate.

The Act provides for a system of open and transparent local government. Important provisions in that regard are the open meeting provisions of Part 1 of Chapter 4 of the Act, at sections 9 to 11. Meetings can only be closed to the public in limited circumstances set out in section 10A of the Act, and the department has issued guidelines on this topic. Section 10D (1) requires that the grounds on which part of a meeting is closed to the public must be stated in the decision to close that part of the meeting, and must be recorded in the minutes of the meeting.

An examination of the minutes and reports relating to meetings of Gosford City Council showed that council was not complying with the requirements of section 10D (1) in relation to its minutes. Council has been recording the grounds for the closure, or rather proposed closure, in the reports/business papers/agenda for the meeting in question, but these grounds were not being repeated in the minutes, as section 10D (1) requires. The review team discussed this matter with the responsible council officers during the visit, and the review team notes that it had a swift and positive

response, indicating that council would change its minuting practices to ensure that it was in compliance.

### **6.1.5 The council code of meeting practice**

The conduct of meetings is governed by various provisions in the Act and the Local Government (Meetings) Regulation 1999, supplemented by the council's own code of meeting practice. Before the visit to council, the review team obtained a copy of code of meeting practice off the council website. However, this document was not the most up to date version. If council is to post such important documents on its website (and this is to be encouraged), then council must ensure that the posted version is the most recent one and is kept up to date.

### **6.1.6 Meeting practices – the “recommittal” of items**

The review team also noted in council's minutes two examples of where a vote taken at one part of a meeting was “recommitted” at a later time. That is, the vote was taken again, sometimes with a different result, perhaps because someone was out of the room on the first occasion. The review team sought clarification about this from council officers. The review team was advised that the practice was a long standing one, hailing apparently from 1987.

While the department's legal advice is that what council is doing in this regard is probably, strictly speaking, lawful and effective, the review team is nonetheless concerned that this practice be discontinued in the interests of openness and transparency,. The Act and council's code of meeting practice speak only in terms of resolutions passed, by means of a vote at a council meeting, being capable of being overturned by going through the formal procedure of a “rescission motion”. The review team considers that council should follow that procedure, and cease using a “recommittal” process that is not referred to or contemplated by its own code.

### **6.1.8 Governance – the disclosure of gifts and benefits**

Many councils maintain a gifts register, and make it readily available for public inspection. This is clearly in the interests of open and transparent local government, and consistent with a council's charter obligations under section 8 of the Act.

In their joint guidelines issued in March 1997 and entitled *Under Careful Consideration: Key Issues for Local Government*, the department and the ICAC noted the desirability of maintaining such a register.

The self-assessment checklist and questionnaire sought information on whether Gosford City Council maintains a gifts register. The review team was advised that council does not, but council also indicated that “any notifications are registered in the records system”.

Council also told the review team that it had a gifts and benefits policy and procedure, but that this was not a stand-alone document. Council advised it was contained in the code of conduct. There are some provisions in that document on that topic.

Council's code of conduct at the time of the review contained no useful guidelines or advice as to how to handle particular situations or particular gifts or benefits, other than to flag that certain types of gifts, dubbed "token gifts", may be acceptable. These matters are now dealt with in some length in the new Model Code of Conduct for Local Councils in NSW (issued in December 2004) and the accompanying Guidelines.

Using the Guidelines and various Independent Commission Against Corruption publications on the matter (such as *Gifts, benefits or just plain bribes? Guidelines for public sector agencies and officials*) council should provide some greater level of guidance for staff in this area.

#### **6.1.9 Records management and retrieval issues**

The review team sought information and documents concerning staff disclosures or declarations of gifts and benefits. This was to test council's assurances that notifications can be captured and traced. Council's records management or documents handling and storage system is called "Dataworks". This is an electronic or computer based system, designed to replace the need for a paper based system and to overcome retrieval problems that such a system might be subject to from time to time.

However, retrieval of such documents from that electronic system proved in a number of instances not to be as easy or straightforward as might have been expected.

These records retrieval problems may be no more than teething type problems in relation to the use and management of the seemingly sophisticated council records system. No doubt, council will be taking steps to ensure that staff are adequately trained in the appropriate procedures, and duly adhere to them.

#### **6.1.10 Governance – pecuniary interest disclosures and returns**

The review team concluded that council is managing the important issue of pecuniary interest returns and disclosures (except in relation to possible issues arising in respect of disclosures made in some returns of interests) well. Council's code of conduct contains material about pecuniary interests that is not correct and does not accurately reflect the provisions of the Act relating to pecuniary interests.

But the review team also sighted a good amount of useful materials and information that council supplies to its councillors to ensure that they are aware of their statutory obligations. These include copies of printouts of the relevant provisions of the Act, as well as a brochure that reproduces advice and guidelines issued by the department in the form of circulars to councils, about the completion of written returns of interests (under section 449) and pitfalls commonly encountered.

Council also has an efficient system in place for sending out reminders to councillors and others who need to lodge returns under section 449, as well as a follow up system nearer the due date, and council officers have a good system in place for

checking that all returns have in fact been lodged, properly signed and so on, by the due date. Council officers also receipt the forms, register them into the council document system, and file them in the register of returns, all in accordance with the statutory requirements and the department's guidelines on such matters.

The actual content of the return forms, that is to say the information disclosed in them, is the responsibility of the person whose return it is. Staff handling the returns have no responsibilities to check for accuracy or completeness of the information in the returns. The review team noted some instances, including in returns of councillors, where the information provided would appear to be incomplete.

For example, most councillors and others appeared to appreciate the need to disclose interests in real estate, not only where the property in question is the place of residence, but also where it is an investment property. Some returns did not fully disclose sources of income where that source was in the form of rent. A return that is missing relevant information is likely to be false or misleading.

Where an interest in real estate is disclosed, then a sufficient description of the address needs to be given so that that parcel of land might be able to be identified by persons examining and inspecting the return. The review team noted one instance where an interest in real estate was simply described by street name with no number. It is open to question whether a proper description has been provided. The review team noted other instances of a lack of detail in relation to councillor interests in corporations.

In a number of other instances, the forms were completed in such a manner that the information provided was in some respects illegible. This defeats the object of the form, and raises questions as to the seriousness with which the person completing the form regards that exercise.

In a number of instances the review team noted that amendments were made to the form, presumably by the person who lodged it, before that lodgement took place. Such amendments should be initialled by the person who made them. The review team took this up with the council officer who deals with and receives the form, and it is one area that staff can assist on, in the same way as checking to see that the return has been properly signed.

More attention to detail is required by those at council lodging returns of interests under section 449. Council has provided to these persons all the information they need to be able to complete their returns fully and accurately. Further departmental guidance is available on this topic, and council should make sure all councillors and designated officers have available to them a copy of Circular 04/16.

### **6.1.11 Governance – the management and reporting of complaints**

In 2003-2004 Gosford City Council was the most complained about council in New South Wales based on statistics maintained by the department, as well as the NSW Ombudsman. As noted in section 1.3 of this report, the review team therefore paid particular attention in the review to examining council's records, policies, practices and procedures.

As is noted in the department's annual report for that year, a large number of complaints in respect of one council may be caused by a number of factors. In 2003-2004 council was the subject of 88 complaints recorded by the department. The number of complaints logged in respect of Gosford City Council was by far the largest number for any single council, and was more than double, by a considerable margin, than the number two council on the list.

Of the total of 88 complaints, 36 complaints related to planning and development matters, of which 22 (or 25% of the total) related to what appeared to be a single issue or project – the Spurbest development proposal in the Gosford CBD. The next largest number of complaints, 5 in all, related to the proposed Regional Leisure Centre at Woy Woy.

When the department's complaints statistics were publicly released by the Minister for Local Government and his office, the Mayor was reported as in effect dismissing the complaints and their implications for council. However, for the record, the Mayor presented a quite different picture when the review team met with him to brief him on the visit and review process.

As part of the review, council was asked whether it had a complaints handling policy or procedure. Council's answer was recorded as "yes". Council also advised, on the other hand, that it had *not* trained all staff in the application of council's complaints handling policy and procedure, and that its management does *not* prepare and receive regular reports on the number, progress and outcome of complaints.

If councils better manage complaints, then it is quite likely that the volume of complaints that need to be recorded by the department would reduce commensurately. This may be an over-simplification of the situation, but at its heart lies a truth that councils in general frequently fail to understand.

The NSW Ombudsman has consistently emphasised in its publications over the years that complaints are an important and useful management tool. If a council has no procedure for recording, analysing and reporting on the number, progress and outcome of complaints, then it clearly lacks a key management tool that will aid it in its efficient and effective performance and in its discharge of its governance and charter obligations.

But there is also evidence that council is moving towards improving its management of complaints. KPMG Consulting conducted an audit in 2001 designed to "conduct a high level performance review to assess the efficiency and effectiveness of ... council's current operating structure, systems and processes delivering council's services to its community" (report p. 7).

The report pointed out (at p. 5 of the Executive Summary) that:

... the focus of [the] report is on how to improve the services to the Gosford City Council community.... The review was instigated by ... council to explore opportunities to improve customer focus and to enable services to be more responsive and better geared to satisfying community needs. It had the full co-operation of council's General Manager, in particular, as well as councillors and Directors. ...

Council needs to ensure that it has the structures, the management and the staff in place to enable it to be customer responsive, to *operate effectively with a greater focus on accountability*, team work, co-operation and resource sharing across the organisation. [emphasis added]

The report noted (p. 6):

If adopted, it is acknowledged that the recommended changes in this report will take at least two years to implement and will require careful project management and a staged approach ...

The evidence gathered by the review team during the visit shows that council would appear to have implemented many of the key recommendations in the report. But council still has quite a way to go in implementing a number of other recommendations and doing something effective about some of the key concerns and issues that were showcased in the report.

There is evidence that Gosford City Council has gone to a considerable amount of trouble in improving community satisfaction with the delivery of services. But there is still evidence of problems in terms of general community satisfaction with council's performance as a whole.

Council's consultants, Hunter Valley Research Foundation (HVRF), in a report of October 2002, noted (at p. 14) a significant decrease in community satisfaction in three areas, including "managing Gosford CBD's appearance and layout", and this was also one of five areas of dissatisfaction recorded. Another was the topic of residential development. These two issues correspond largely to the key areas identified in the review team's analysis of the complaints to the department and Minister, and are sentiments repeated in council's 2003-2004 annual report, where the results of council's community surveys are noted.

HVRF also identified, in a matrix of importance versus satisfaction levels, that "long term planning and vision" and "community involvement in council's decision-making" were issues where "urgent attention [was] required", while only slightly below this were issues such as "managing residential development".

In August 2003, council adopted a Customer Service Strategy and a number of Customer Service Action Plans. One of the three key overall objectives of the Strategy document was to "buil[d] the capacity to implement and deliver a customer service strategy that is focused on accountability, performance improvement and best practice" (p. SF307). The report also noted that one of a number of "key elements of successful customer service strategies" is "an IT based complaint management system [which] is essential to meet the NSW Ombudsman's requirements" (SF 308). At pp. SF309 - 310 it is stated that:

Throughout the customer service strategy development process a number of areas have been identified as key opportunities for improvement.

These include:

...



- The implementation of a formalised complaint management system
- ...
- The accurate reporting of our customer service actions
- The creation of a central database of customer service knowledge
- The creation of a link between customer service reporting and corporate performance improvement programs
- Increasing awareness of the organisation and its services to the community
- Developing a better understanding of the organisation's customers and their expectations and needs.

At p. SF315 of the same report, it was also stated:

It is recommended that Gosford City Council publish its customer service standards to the community and become accountable for its service performance. A customer service charter ... [was recommended].

After the report was considered and approved by the workshop, and then its Review Committee, council adopted the Strategy and Action Plans. The review team found no evidence on the council website of any customer service charter.

The review team examined council's existing complaints handling policy. It needs to deal with more than what might be described as "maladministration". Moreover, the definition of that term in the document leaves a lot to be desired. It says that "maladministration is where person/s have suffered a detriment because of a fault on the part of council". This is far too narrow a definition, and its needs thorough review. People are entitled to complain to council even if they haven't suffered a personal "detriment". Complaints may also legitimately be made about matters relating to council's performance that go beyond issues of maladministration.

The policy also includes advice to staff as follows: "DON'T APOLOGISE UNLESS council is DEFINITELY AT FAULT and that has been authorised by person (sic) with the delegation to do so". It sends quite the wrong message, particularly in light of a recent fact sheet issued by the NSW Ombudsman on apologies.

Council's existing policy is not a policy or procedure document aimed at guiding council's ratepayers and community as to how they might make complaints and how they can expect their complaints to be dealt with. For example, it should welcome complaints, noting their value to council in reviewing its performance and so on. It is clear to the review team that the document needs a substantial overhaul, and not the minimalist approach of the recent review of the document.

It is clear from a number of documents provided to the review team for the purposes of the review that there is a recognition and commitment from at least some staff at council that there is a need for action in respect of an adequate complaints handling system and policy. When the review team interviewed the Manager – Customer Services (together with his boss, the Director, Community Services) he told the review team that he recognised the need for a proper system for recording and dealing with complaints, but that council still did not have one, and that while he was trying to do something about it, the introduction of such a system was not high on the list of priorities.

It appears that the “Dataworks” records management system does not track correspondence to see if it has been replied to, that it does not assist managers in being able to see what correspondence is outstanding, nor does it provide information as to the length of time correspondence is taking to be dealt with. These are basic essentials of a proper system, and council needs to address this quickly.

At a special meeting of the Mayor, General Manager and senior managers (the Mayor and Senior Management Group) held on 11 January 2005, the group considered a report as to how council was dealing with the problem of being named in the NSW Ombudsman’s most complained about council list. The minutes of the meeting report that the information presented was to be noted, and that the General Manager should “continue to monitor complaints to the NSW Ombudsman involving council”. Council needs to do more than monitor complaints to other agencies – it needs to effectively manage complaints at the local level.

#### **6.1.12 Governance – ethics and values**

Council has a range of important and valuable elements of a good framework of ethics and values for staff and councillors to observe and take note of in the course of their duties.

These include the existence of an explicit set of values, the promotion of these values in a range of settings and the existence of a statement of business ethics. This later publication is important in ensuring that the contractors with whom council deals are made aware of the council’s commitment to ethical practice.

Council should regularly monitor the extent to which council staff understand and reflect these values and ethical principles in their work. The Independent Commission Against Corruption has resources that councils can use to survey and review staff attitudes in this area.

#### **6.1.13 Governance – risk management and internal controls**

Council has a well-developed range of policies and programs to deliver appropriate risk management and internal control. The council has an internal audit program, and a position of internal auditor. An internal audit function is extremely important for a council of Gosford City Council’s size and complexity.

Council has a risk management plan and a fraud control policy/strategy. As noted earlier, the management of gifts and benefits is an area where council should improve its operations, particularly in light of the new requirement in the Model Code of Conduct for council to now maintain a gifts register.

## **6.2 Planning & Other Regulatory Functions**

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

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

- *Council's planning instruments and policies*
- *Development assessment*
- *Section 94 plans*
- *Environmental management*
- *Plans of Management of Community land*

### **6.2.1 Notification of development applications**

Council has taken the opportunity under section 72 of the Environmental Planning and Assessment Act 1979 of adopting a notifications development control plan (DCP). The evidence is, moreover, that council has been keeping that DCP under periodic review. Council resolved to amend the DCP most recently at its meeting of 20 April 2004. The amendment was to provide for the need to notify where council receives an application for review of a decision on an application pursuant to section 82A of that Act.

Council will now advertise a section 82A application in the same way as it did for the original application, and not merely notify those persons who lodged objections to the original, as some councils limit themselves to. Council's position is considered to be a good one, and is in the interests of more open and transparent decision making, in accordance with council's Charter obligations.

Council will need to be mindful, however, to continue to keep its DCP regularly under review, and duly monitor and consider guidelines and other publications issued from time to time on such matters by bodies such as the Department of Local Government, the Independent Commission Against Corruption and the Department of Infrastructure, Planning and Natural Resources (DIPNR).

### **6.2.2 The need for review of the council's planning instruments**

There has been a perception that the council has been under-performing in the area of land use/strategic planning. Planning instruments have been described as outdated and inappropriate. The absence of a local environment plan (LEP) for the council area as a whole has caused some concern. It was claimed that council indecision and the lack of adequate planning guidelines and statutory instruments has stifled development and growth in the Gosford CBD. The Minister for Infrastructure and Planning, the Hon Craig Knowles, called in the strategic planning powers of council for the Spurbest site in the Gosford town centre in September 2003 after agitation from commercial interests, the local press and sections of the

local community. The Minister directed council to draw up a new town strategy plan for the Gosford CBD under the direction of an independent planning consultant.

Council is required by section 73 of the Environmental Planning and Assessment Act 1979 to keep its planning instruments and policies, such as local environmental plans and DCPs, “under regular and periodic review”. The evidence available to the review team raises serious questions as to the adequacy of council’s performance in this regard.

In response to the pre-visit review checklist and questionnaire, council advised the review team that it does not have an overall strategic plan as a framework for its land use planning and also does not have a council approved program for the review and updating of local environment plans (LEPs) and other planning instruments.

Council is still operating under a complex web of often quite dated, ad hoc or piecemeal planning instruments. Despite being exhorted to review this situation from time to time and move to a new and single comprehensive local government area wide planning instrument by DIPNR (or its predecessors), council has failed to do so. The time has come for council to address this major shortcoming.

Council’s failure to move in a timely and appropriate fashion to comprehensively review the appropriateness of its planning instruments for its Gosford Central Business District, was, at least on one view, a key reason behind council’s loss of strategic planning powers in respect of the important Spurbest site. It was similarly a reason behind the steps taken by the Minister for Infrastructure and Planning at the same time to step in and direct council to take measures in respect of its strategic planning for its Gosford CBD in general. On the other hand, the review team was told that the Spurbest development is the only example in recent times of the Minister having to intervene in this way.

In discussions with staff, the review team formed the opinion that a number of serious attempts have been made to develop new planning instruments, including development of an LEP to replace the existing *Gosford Planning Scheme Ordinance 1968*. However, for various reasons, they were not fully implemented.

For example, staff prepared a review of planning controls and an urban design master plan for the Gosford town centre in 1998/99, together with an amending LEP and DCP. These were exhibited but the DCP was not subsequently adopted by council. The LEP (no 364) was gazetted on 27 November 1998. A *Review of Strategic Directions for the Revitalisation of Gosford City Centre* was prepared, together with a draft Action Plan, and adopted by council in November 2002. Subsequently various committees were established by council to guide the development of planning controls for the CBD, including “The Living City” chaired by the then Mayor.

Many of the problems surrounding the delays in the Spurbest development consent process appear to result from the councillors of the time continuing negotiations direct with the developer in regard to design parameters which did not remain consistent. There was also significant disagreement between councillors over

development controls for this project, which did not accord with earlier resolutions of council.

Mr John McInerney, an independent town planner appointed by the State Government, has subsequently worked with council planning staff with input from the Government Architect, and a new comprehensive strategic development plan for the CBD and the Spurbest site has now been completed.

The failure to conduct a proper and comprehensive review of the council planning instruments has meant that council staff are having constantly to deal with ad hoc amending planning instruments. This is not a good result. The review team was told that there had been over 400 such amendments handled in recent times. Clearly there is a need to step back and conduct a strategic overview. As noted earlier, the Gosford Vision 2025 project is a key driver for this process.

#### *What is working well*

Recent intensive work undertaken by the land use planning staff in connection with controls for the Gosford CBD has demonstrated a high level of technical competence and an ability to deliver within a tight timeframe. Previous problems seem to have resulted from a lack of consistent direction and support from the previous group of councillors. Staff indicated that the policy direction and working arrangements with the newly elected councillors were very good and were a significant improvement on the former situation.

Previously much staff effort was taken up, as noted above, on consideration and reporting for applications for rezoning of individual properties (spot rezoning). These draft LEPs tended to direct council's limited planning resources away from urgent major strategic work. The new council has apparently agreed that individual applications for rezoning be set aside to allow a more strategic assessment of their claims in line with the requirements of the new LEP.

Council has recently been awarded a state planning award for the development of a state of the art 3D modelling package. This work has provided an excellent planning tool for visualising and analysing future urban development and in particular development within the Gosford City CBD.

### **6.2.3 Section 94 developer contributions issues**

One of the reasons for the failure of council to rationalise and update its many and often quite dated planning instruments is claimed to be related to council's ability to collect developer contributions for the purpose of funding public amenities and services. Section 94 of the Environmental Planning and Assessment Act 1979, as it currently stands, regulates how council can go about attaching conditions to a development approval for such purposes. Some of council's planning instruments predate these provisions.

Council, as a policy matter, clearly recognises the value of having section 94 contributions collected from developers (see report to the council meeting of 3 February 2004, relating to the proposed council submission to the section 94 review

taskforce). So it seems surprising, therefore, that the present planning instrument, and related contributions plan, for the key Gosford CBD contain no provision for such contributions in respect of matters other than car parking.

Certainly, council was moving in February 2003 to plug this gap (item SF.007 at council's Strategy/Policy Workshop of 25 February), and it is noted that this DCP was adopted with effect from June 2003. But council needs to take action to comprehensively address this issue.

#### **6.2.4 Development assessment issues - general**

The review team discussed development assessment issues with the Director Development and Health Division, and key members of her staff.

##### *Background*

Many of the complaints about council handled by the department involved development consent issues. Outside the Gosford CBD, and in particular the Spurbest site, most development complaints involved residential building proposals. Council faces a difficult environment for residential building assessment in the council area. Virtually all large and/or readily developed detached housing sites have been taken up. As a consequence, residential DAs tend to be medium density development or individual houses on sites that have major issues to be resolved, such as views, native vegetation, geotechnical issues due to steeply sloping landform and bushfire issues.

Clearly, this situation has had a significant impact on the processing of DAs. At the time of the review visit, council had over 800 applications still to be resolved. Council told the review team that 97.2% of all DAs are dealt with by staff under delegated authority. Approvals are currently being processed at a slightly higher rate than those being received. It should be noted that with 4,000 development applications per annum, Gosford has the third highest number of DAs determined in the State.

Staff have expressed concern over the workload and council has apparently responded through the provision of additional staff resources to address the significant backlog of applications. The division is currently being reorganised to allow a more strategic approach to the workload.

##### *What is working well*

The council has a probity unit (Development Assessment Unit) within the Development and Health Division to provide an independent review of consent decisions on key projects and provide a quality control on the output of the division. The unit is staffed by a senior planner and a building surveyor, who both have manager status, and one support staff. Both senior planners are on staff rather than contract. The unit addresses the consent review of all projects that have a value exceeding \$7 million and applications that have three or more unresolved objections. The unit also vets applications referred to council for determination by councillors before they are considered by the elected body of council. The unit also utilises an

electronic monitoring system that charts the progress and performance of the division in regard to the processing of DAs and construction certificates.

### *Challenges to improve*

A general improvement in the processing of the backlog of DAs is needed. It was claimed that current average figures for the processing of DAs was 70 days and construction certificates was 36 days. The review team notes that the department's annual Comparative Information publication for 2003-2004 indicates that council's performance in terms of mean time in calendar days for determining DAs in that period was 40.17, an improvement of some 12.3% over the previous year. If what the review team was told about the current year is correct, it would appear that council's performance has deteriorated sharply, and this clearly needs addressing.

Council told the review team that it does provide a review process for DAs, or rather determinations of DAs, under section 82A of the Environmental Planning and Assessment Act 1979 and section 100 of the Local Government Act 1993. Council does not provide information to applicants about the availability of reviews. Council needs to address this, particularly given the large number of determinations made by staff under delegation.

Council also told the review team that it does not have a separate system for reporting and investigating reports of non-compliance or unauthorised development. Nor does council provide information to the public on how to report suspected non-compliance and unauthorised development. Given that such issues are frequently the source of concerns in the community and the subject of complaints, whether to council or the department or its Minister and so on, it seems that council is failing in its governance and regulatory obligations and responsibilities in not having such a system, which at least provides an early warning system to council, and council needs to address this.

Equally, the review team was told that council has no compliance program to ensure that it is notified of all swimming pools in the council area, and that such pools comply with the Swimming Pools Act 1992. This, too, needs to be rectified.

### **6.2.5 Conflicts of interest in handling development applications – council as applicant and consent authority**

It has for many years been the advice and recommendation of key regulatory agencies such as the Independent Commission Against Corruption that councils need to put into place appropriate procedures and mechanisms for dealing with the situation where council may be both applicant and determining authority on a matter. Unfortunately, and despite this clear advice, Gosford City Council has consistently failed to do so.

The review team sought advice at the opening meeting with the General Manager and his directors as to whether council had a policy or procedures in place to manage this issue. The review team was told that council did not. The review team was also told that "the issue hasn't arisen". But, in the course of the review a number of examples were noted where council was in fact both the applicant and

consent authority on DAs, frequently in circumstances where the proposal was controversial or not acceptable to at least some sections of the community. The response from the management team clearly demonstrated a lack of awareness and understanding as to this important governance issue, let alone as to what the Independent Commission Against Corruption has consistently said on the matter. This needs addressing.

Gosford's controversial and continuing Peninsula Regional Leisure Centre at Woy Woy is a particular case in point. This project was the subject of a number of complaints to the department in 2003-2004, and council's failure to ensure that it both managed and was seen to manage its manifest conflicts of roles, and therefore to adopt an open and transparent process, is disappointing. There are various ways in which such conflicts may be managed, and these are explained in Independent Commission Against Corruption publications such as the *Taking the Devil out of Development* series. None was adopted by Gosford.

Council needs to take immediate steps to ensure that it has the necessary policies and procedures in place so that it can appropriately manage such situations and conflicts for the future. Unless and until it does so, council cannot even begin to comprehensively and adequately manage its equally poor performance in respect of complaints handling and avoidance.

#### **6.2.6 Legal costs incurred in appeals to the Land and Environment Court**

Council is incurring relatively high amounts in respect of legal expenses incurred in appeals to the NSW Land and Environment Court. It must at the same time be noted that council is clearly aware of this issue, and is taking steps to address the matter. Nonetheless, with the amount of land in the council area available for further development ever diminishing, pressures will remain for the development of environmentally sensitive and other marginal locations, inevitably leading to council having to make difficult decisions, which may not be acceptable to some. The challenge for council is to manage this situation in a manner that does not unnecessarily lead it to involvement in expensive Court cases.

In the 2002-2003 year, according to the department's Comparative Information publication, council already had the highest legal expenses amongst Group 7 councils. The percentage of council's total planning and development costs that related to legal expenses was 16.40%. The group average was 7.96%. The next highest after Gosford was Baulkham Hills at 10.21%. It could be argued that Gosford's expenses are disproportionate with its fellow group 7 councils. Council's costs incurred in relation to Land and Environment Court appeals have been steadily increasing in the last seven years. Its total costs in this regard for 2003-2004 amounted to the not inconsiderable sum of \$1,228,727.

A report went to the councillors at their meeting of 24 August 2004, which noted that "council is in the process of reviewing its legal related processes and is considering all available options in order to reduce legal costs in 2004/05". A common area of concern in respect of local government legal costs is where costs are incurred by what might be termed political decisions, taken by the elected body, to fight cases in the court, against the advice of professional staff and legal advisers.



However, on the basis of the information provided to councillors at that meeting, there would appear to be no evidence that this is a particular problem at council. Only in one instance was an appeal to the court lost where the elected body went against the recommendation of the staff to approve the DA in question. While there were six cases where a decision, contrary to the staff recommendations, was taken by the elected body landed council in court, council won one of the cases, one was settled with consent orders and the other three were apparently withdrawn by the applicant. Only 16% of all appeals to the court were lost by council. This was also an improvement on the 20% of the previous year.

### **6.2.7 Determinations of DAs contrary to staff advice and recommendations**

One of the key recommendations of the Independent Commission Against Corruption in its *Taking the Devil out Development* publications is that, where the elected body of council determine development applications contrary to the recommendations and advice of the council professional staff, reasons for the decision should be stated and documented in the minutes of the council meeting concerned. See the *Position Paper* at p.10, which speaks of the need for this, at least where the decision is to approve, contrary to the recommendations of staff. General administrative law principles would appear to require that a decision to refuse, contrary to staff recommendations to approve, would require the giving of reasons.

Gosford City Council has, as an adopted and published policy (D8.02, adopted first in 1993), a requirement that reasons be given, but only in the case of a refusal contrary to the recommendations of the director concerned. This is a good start.

In the interests of openness and transparency, council should consider amending this policy to require that reasons be given in the case of any determination in respect of a DA that goes against the staff recommendations and advice to the councillors. This would build on the excellent foundations of council's existing policy and improve it.

The council policy only appears to require that the reasons should be stated in the advice given to the applicant and/or objectors (see Environmental Planning and Assessment Act 1979 section 81 and in particular subsection (3) of that section). In accordance with the recommendations of the Commission, the policy should also stipulate that the reasons should also be stated in the minutes of the council meeting concerned. The separate council policy number A1.14 goes some of the way in this regard.

The review team is satisfied that council is, in all cases, clearly complying with the terms of these two policies as they presently stand. The review team noted various examples of this.

### **6.2.8 Environmental management**

*What is working well*

Council has presented the comprehensive State of the Environment Report for 2004 as a Sustainability Report. The review team considers this to be a better practice approach to environmental reporting. As well as reporting on environmental indicators as required by legislation, the report examines indicators for the local economy and society. The report is predicated by a section addressing governance and leadership and the management structure and policies that council has adopted to support sustainability in its community and in particular to integrate the environmental, economic and social/cultural practices in delivering its programs and services.

### *Challenges to improve*

Council told the review team that it does not have a pro-active program of monitoring compliance with environmental requirements in the council area. This needs to be addressed, and is but another instance of several where the review team has noted that council appears not to have the necessary and appropriate policies and procedures in place to be able to discharge its regulatory and other responsibilities in that regard, and to be seen to do so.

### **6.2.9 Plans of management for community land**

The review team inspected various examples of plans of management (POM) for council owned community land. These POMs were undertaken in three broad categories that included geographic POMs (*Coastal Open Space System*), generic POMs (eg *Foreshore Parks, Sportsgrounds* etc) and specific (*Kibble Park, Caroline Bay* etc). The various POMs have been structured within a Land Management Program prepared by the Property Services Unit.

There was no single centralised register for POMs, nor were there copies of the POMs available at the counter for public inspection and sale (as required by section 43 of the Act). Various POMs were held in individual directorates of council. The review team was told that it is intended that the Property Management system of council will be integrated with the corporate system in the future. POMs had been prepared for all areas and were generally competently undertaken although the *Kibble Park POM* had not been revised to reflect current development nor the lease or licensing arrangements in place within the park.

Council has developed a register of council owned buildings, a land register and a lease schedule and register. Examples of these systems were inspected, including a detailed Lease Schedules Report for footpath dining and licensing arrangements for a period exceeding 5 years.

Council should provide a central register of POMs and make available copies of all POMs to the public for inspection and sale. Council should also ensure that where leases and licences are applied to community land, the relevant POMs reflect these arrangements.

### **6.3 Asset & Financial Management**

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

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

- *Financial management*
- *Asset management*
- *Tendering*

#### **6.3.1 Overview of financial position**

As noted at section 4.1 of this report, for the past seven years council has achieved substantial operating surpluses, both before and after capital items.

#### **6.3.2 Financial performance issues**

In conjunction with the operating result, there are a number of other measures, some of which outlined in the department's Comparative Information publication, which should also be considered.

Council's unrestricted current ratio for 2002-2003 was 1.59:1, and a lower 1.29:1 in 2003-2004. An unrestricted current ratio of less than 1.5:1 is generally considered to be unsatisfactory. The PWC audit report (for the year ended 30 June 2004) indicates that council's unrestricted current cash and assets were nil.

Council's General Manager and directors advised the review team that council's policy is to put all its money into internally restricted reserves, thereby minimising unallocated cash. This commercial approach to managing cash flow, although not meeting the department's expectations regarding liquidity benchmarks, is supported by council and has not led to any immediate disadvantage. Council will need to undertake ongoing close monitoring and internal monthly reporting on cash flow and liquidity indicators.

The percentage of rates and charges outstanding as at 30 June 2003 was 7.92% and a lower 7.67% for 2003-2004. While these figures are an improvement on the position in previous years, they are still considered to be higher than that recommended for this type of council. But, provided council charges interest on these unpaid rates, the overall impact on council's financial position is likely to be small.

With the elimination of rates and charges owing from pensioners, council advised that the adjusted figure at June 2004 was 3.75%. Following a review of the statutory financial statements, the department's Finance Management Branch was advised that council's policy on the recovery of outstanding rates and charges owing by pensioners has been reviewed and that in the future, council will take recovery action where necessary. Given council's ageing population, and the socio-economic status

of much of those persons, this is an important issue for council to address. It is important that council show improvement in this area over the coming few years.

In its audit report for 2002-2003 PWC made adverse comments in respect of the method used by council to value its land and buildings for the purpose of disclosure in its financial statements. However, this issue was not raised in the 2003-2004 audit report, and the audit report for both years stated that the financial statements were free from material misstatement.

The review team was provided with a copy of a letter and other documents evidencing valuations undertaken by the NSW Department of Lands for 2003 and 2004. At 1 July 2003, the land value of some categories of rateable lands had increased substantially. The information provided shows that the total value over all categories increased by some 64.25%. The review team is not satisfied that the information provided meets the concerns previously raised by PWC.

Council's 2004-2008 Management Plan discloses that council conducts at least two activities of a business or commercial nature, namely the Niagara Park Shopping Centre and the Somersby Industrial Park. Council's water and sewer operations are also businesses, particularly for National Competition Policy purposes. Council should formalise business plans for each of the entrepreneurial business enterprises it operates.

Council currently has no Asset Management Planning system, but advises that it is considering the implementation of one. Council has no general policy on the replacement of assets.

The review team noted from council's annual report for 2003-2004 that the council concedes that it needs \$26.5 million to maintain its roads to their current standard, but that it is only budgeting for expenditure on this of \$11.631 million. When the review team questioned the General Manager and his directors about this, they admitted it was a problem. This situation is reflected widely across the sector. But these shortfalls suggest that council needs to do more to effectively manage its assets for the benefit of its ratepayers and community.

### **6.3.3 Interim audit issues**

In addition to the annual end of year financial statements audit, council's auditors undertake an audit covering internal controls and other accounting matters. These are reported to council in an annual "Management Letter". As part of the review, the review team sought copies of the Management Letters for the last two years. However, council only provided the review team with the letter for the year ended 30 June 2002 (PWC letter of 22 July 2002).

Council advised that the reason for this was that "no formal letter for that year [2002-2003] was given to council as most of the issues were documented in the 2001/02 management letter". In the 2002 Management Letter, PWC drew to council's attention "a number of matters arising which may be of benefit to you [the General Manager] in enhancing the control environment of your organisation". .

For the purposes of the review and visit the review team sought evidence that council had taken on board the concerns and suggestions made by PWC, and taken appropriate and timely action to address outstanding concerns. During the visit, the review team was provided with advice to the effect that all the concerns had allegedly been addressed.

But emailed comments from PWC passed on to the review team during the review process showed that PWC was apparently still not satisfied on some matters that it had identified some two years before, despite “significant improvements” on some items. PWC also noted in their email that at the time of their May 2004 visit “most issues raised [in their 2002 letter] were only just beginning to be actioned”.

Council’s General Manager and senior staff need to address the matter. Council must ensure that appropriate and prompt steps are taken to have appropriate audits, and appropriate reporting of such audits, undertaken in a timely manner.

#### **6.3.4 Tendering issues**

The review team also examined a number of aspects of council’s tendering policies and practices and procedures.

Council’s policy contains a requirement that “in all cases, if cheaper quotes are not accepted then clear reasons for the decision must be written on the RGS”. This will go a long way towards ensuring openness and transparency. Council does not, of course, have to accept the quote that is lowest in dollar terms, and there may be good reasons why a higher dollar quote is accepted, as clause 19 (1) (a) of the Local Government (Tendering) Regulation 1999 contemplates.

The review team also inspected the council tender box that clause 15 of the Regulation, as well as council’s policy, requires be maintained. Clause 15 (2) provides that council must ensure that, whenever the council’s office is open for business, its tender box is kept in a place that allows tenderers who wish to do so to deposit their tenders personally. Council is not in compliance with this requirement. The review team noted that the box, when inspected (in about the middle of the day) was located behind the customer service counter.

The council tendering policy also provides for a noticeboard on which information regarding tenders is to be placed. The review team inspected that noticeboard. Clause G on p. 3 of the Policy provides that “notification of the closing date and time is to be placed on front foyer noticeboard by the Manager – Supply Services”. The review team saw no evidence of this being complied with, and when the review team asked about the matter were told that such a notice is put up *after* the closing date.

The review team was told that council’s tendering processes are not centralised to particular officers on staff, or controlled or oversighted by particular officers. In fact, some tendering processes are handled by contractors or consultants. Council must have a mechanism and procedures in place to ensure that its management can be satisfied that it is meeting all its obligations and carrying out proper, open and transparent procedures.

This can best be done if the oversight role is centralised and undertaken by an officer or officers who have experience in these matters, rather than being solely handled by the directorate or department that is the ultimate purchaser of the goods or services in question.

The review team examined two sample contracts in respect of which the review team specifically examined documents were those relating to the construction of the Erina Town Hall and the purchase of cash collection services.

The review team has some concerns, based on this review, about the extent to which council is complying with the Local Government (Tendering) Regulation. For example, the report for the confidential meeting of 27 April 2004 to consider the tenders on the Erina Hall project notes that the reason for the confidentiality was “clause 20 (1) [of the] Local Government (Tendering) Regulations, [which] requires that the tender not be disclosed”. There is no such clause in the current version of the Regulation, and indeed no such provision. The current version is that issued in 1999, in accordance with the legislative requirements that subordinate legislation (regulations) be reviewed and updated every few years. The same error appears in the report and minutes of the council meeting of 27 April 2004 (item FS.C) relating to the tender for cash collection services. There is a similar wrong reference in the council tendering policy.

### **6.3.5 Issues relating to the granting of financial assistance to third parties**

There would appear to be issues arising as to whether council is meeting its obligations under section 356 regarding the granting of financial assistance to third parties, provided certain procedural and public consultative processes are followed. For example, council has over the past few years provided loans to various Surf Life Saving Clubs in its area. But there appears to be no evidence that section 356 has been complied with in respect of such financial assistance – council’s management plan appears not to have anything in it about specific programs of financial assistance in this regard; nor does there appear to have been public notice or advertising and consultation in accordance with section 356 (2), and the staff reports to councillors on the loans make no mention of either source of compliance with section 356, let alone of the section itself.

Council needs to be mindful of its obligations under section 356 when considering the provision of financial assistance to others, whether in the form of grants, donations, loans or other means.

## 6.4 Community & Consultation

A council's charter requires that a council:

- provides services after due consultation
- facilitates the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- actively promotes the principles of multiculturalism
- plans, promotes and provides for the needs of children, and
- keeps the local community and State government informed about its activities.

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

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

### 6.4.1 Community information and consultation

Council has a website with a wealth of information and a large number of council policy and other documents on it. Council's website is, of course, but one means by which council can communicate effectively with its community and ratepayers and keep them informed. Some concerns, however, in relation to the content and layout of the website in this regard, are noted below. Council acted very promptly after the visit to address most, if not all, of those concerns.

A very successful and comprehensive program of community involvement and consultation was conducted by the council in the preparation of the Community and Cultural Plans. Over 2500 and 1500 members of the public were involved in the preparation of the Community and Cultural Plans, respectively.

As noted earlier, council has embarked on a detailed and complex program for determining community satisfaction with its performance. Council's customer service strategy and customer service action plans all represent imperfect but important steps towards better communication with the council's residents.

Gosford also conducts a regular Community Congress with Wyong Council on a biannual basis as a further mechanism for engaging in the local and regional community. The most recent Community Congress had over 300 participants.

#### **6.4.2 Keeping the community informed – the council website**

Some aspects of council's website, and the information available on it, require some attention by council, to ensure that it provides timely and accurate and complete information, that is not misleading, to its community and ratepayers. Certain aspects of the review team's concerns were discussed with council during the visit, and it is pleasing to note that council accepted the review team's suggestions and comments graciously and acted positively and promptly on them, very soon after its visit week concluded, and before the preparation of this report.

Before the visit the review team spent some time examining the extensive range of information and documents available on council's website. In respect of council business papers, meeting agendas and staff reports to councillors for the purposes of their formal council meetings, council maintains an extensive library, on its website, and that this covers not only the current year, but also a number of prior years.

However, the review team found some difficulty in finding, with ease, council's minutes of its meetings. The review team eventually realised that they were to be found under the "meeting reports", a title that is not readily identifiable as being a source of council meeting minutes, nor one, in its experience, commonly in use in the industry. The review team raised this matter with senior council officers during the visit, and note that the matter was addressed very soon after having concluded the week's visit.

The review team also noted from the same part of the website that in some cases, going back to documents some months old, the versions of minutes that were posted were still the original draft versions. Council needs to ensure that when it deems it appropriate to post a draft version of a council report, agenda, business paper or set of meeting minutes on its website, that the website is monitored and kept up to date on a regular basis, and that as and when the final versions become available and are approved by council these replace the draft versions on its website.

#### **6.4.3 Keeping the community informed – the annual management plan**

Two of the means by which a council can discharge its charter obligations to keep its community adequately informed about its activities, and to involve its community in its activities and local government in general, are the annual management plan and annual report. It is one thing for a council to satisfy the detailed information and content requirements of those documents as set out in the Act and relevant Regulations. But it is another as to whether the council presents those documents and that information in an informative and user-friendly fashion. This is an area on which local government in general in the State frequently performs poorly, and Gosford City Council is, in a number of respects, no exception.

In a report of October 2002 from council's own consultants, Hunter Valley Research Foundation, it was noted that council's performance on its management plan and related Corporate Strategic Plan and State of the Environment Report were not good. At p. 27 it was reported that:



More than half of the respondents who were aware of the [management] plan had either no understanding of it or only a little understanding. Less than one in ten of respondents who had heard of the plan thought that they had a good understanding of the plan. These respondents provided a similar result when asked about how well council has kept them informed on the progress of the City Management Plan. Again half of these respondents perceived that they had not been kept well informed.

The review team encourages council to address this matter as part of its ongoing efforts to ensure the community is appropriately informed of its activities and services.

#### **6.4.4 Ethnic affairs matters**

In its response to the review team's pre-visit questionnaire and self-assessment checklist, council provided the review team with certain responses and information which would appear to indicate that council is not adequately providing for those members of its community who are from a migrant or non-English speaking background.

Council told the review team that it does not have an Ethnic Affairs Priority Statement. Council does not have publications available in languages other than English, and does not provide, or facilitate access to, community language translation services for telephone callers. Council needs to address the need for the provision of such facilities and services for its community.

## **6.5 Workforce Relations**

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

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

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

### **6.5.1 Summary**

Council has a range of structures in place to assist it to properly manage its workforce. These include a human resources strategy to guide council's overall workforce program, a policy/procedure framework, an active consultative committee, and procedures for guiding selection processes.

Council has an internal appeals process, which is an important means of ensuring greater accountability in the selection process by opening it up to review. Council has a process of ensuring job descriptions are maintained and made available to relevant staff.

Council appears to have a detailed induction program for new staff. This covers important ethical issues as well as dealing with job specific and corporate information.

Council would appear to have a well developed system for meeting its obligations as an employer under the Occupational Health and Safety Act. These include an overarching policy, a rehabilitation policy, a system of OH&S committees and a process for ensuring assessments are made at a business unit level on OH&S risks.

### **6.5.2 Consultative committee**

As noted earlier, it is important that councillors have a clear understanding of their role. One aspect of council operations where councillors have a very limited role is in relation to staffing. With the exception of the review of council's organisational structure and the employment of the General Manager, councillors have virtually no role in this area.

It is therefore surprising that council has two councillors on its consultative committee, a committee established to ensure ongoing consultation between staff and management on operational issues affecting staff. This is not conducive to a clear understanding of the proper role of councillors in respect of staffing matters.

The council is encouraged to cease this practice and to review the make up of its consultative committee accordingly.

## 6.6 The Peninsula Regional Leisure Centre

This report deals separately with this major council project because it is the subject of a considerable number of concerns spanning across the spectrum of issues already covered under the previous headings of section 6 of this report.

The concerns raised with the department were generally about an alleged flawed assessment process, poor community consultation and poor financial control and management. There were a number of concerns raised about the acoustic performance of the building and the impact on surrounding houses.

The department's examination of this project and council's performance in respect of it has been based on the information and materials gathered by the review team, and in particular the at times select information and materials provided to the review team by council, during the course of the review.

Based on this review, the department believes council should arrange for an independent audit of the management of its Peninsula Regional Leisure Centre project to examine, among other things, the adequacy of project and budget management, the adequacy of council's role as consent authority and the process for keeping the public informed of the project and of dealing with public complaints about the project.

The following particular concerns arise in respect of council's performance in respect of this project:

1. The appropriateness of council assessing its own development and other applications, when it is both the applicant and consent authority. This was particularly so in respect of the Peninsula Regional Leisure Centre. Concerns may arise in this situation as to a conflict of roles as both applicant and consent authority. Council's consultants engaged to undertake an ultimately unsuccessful facilitation process between council and concerned members of the community noted this concern.
2. A council employee issued the construction certificate for the project. There are some indications of pressure being put on that officer on the matter by others at council. There are other potential aspects of concern in relation to the issue of that certificate.
3. Conflicts of roles were also noted in an internal audit report from council's internal auditor (who also happens to have considerable construction industry experience). Concerns were expressed about the blurring of roles of consultant designer for the project and of construction manager, both being fulfilled by the same firm of consultant architects. Questions arise as to the appropriateness of council's responses to and management of these concerns. Cost escalations and public liability risks may, amongst other things, be the result of a failure to do so.

4. The consultant architect was appointed under a contract, apparently after some sort of tendering process was undertaken, despite the fact that his expected fees were estimated to be less than \$100k. However, this was based on the then projected cost of the whole project of less than \$2 million, and after various design changes and expansions of the scope of works, the project now stands as a \$25 million project. The architect's fees earned to 23 July 2004 amounted to \$1.239 million, out of an expected \$1.718 million at the end of the project. Questions therefore arise as to whether there should have been a further tendering process and whether there was a sufficient review of the position and engagement of the architect undertaken. The evidence indicates that while council considered a report in late January 2003, at a time when all the revised design work was just about then complete, it was persuaded that it did not need to tender further, and could proceed immediately to revise and confirm the architect's appointment, in reliance on the extenuating circumstances exemption from tendering under section 55 (3) of the Local Government Act 1993. Similar questions appear to arise in respect of council's appointment of a consultant quantity surveyor.
5. Council appears to have followed an expressions of interest process for the two main items in relation to the project, being the construction of the building and the supply of pool water filtration equipment. In doing so, it appears to have followed clause 9 of the Tendering Regulation. When, however, it next moved to invite formal tenders from those companies selected as successful lodgers of expressions of interest, it is unclear whether council followed the requirements of clause 9(4).
6. Clause 9(4) gives council two options. Council can either invite tenders from all applicants, or such of them as council considers will be able to fulfil the requirements of the proposed contract, or decline to invite tenders from any of the applicants. Council got 16 applications for the main building contract. On 24 June 2003, council determined to invite tenders from 6 of them. From a later staff report to the councillors, it would appear that the consultant architect recommended that 2 other firms be added to that list. Neither firm had originally lodged expressions of interest. The staff report went on, after noting that fact, to recommend that these two firms be invited [also] to tender, and this is what council resolved to do. The later staff report is extremely brief and provides no explanation for the recommendation and therefore no explanation for the basis for this action. In the result 4 tenders were apparently received, two from firms on the original list, and two from the supplementary list. A firm on the supplementary list won the contract.
7. It is unclear whether the community has been given sufficient information that the project cost, which now stands at \$21.7 million. This figure excludes additional costs of the project, including consultants' costs, of \$2.8 million, and an additional \$1.05 million to be spent on consequential and necessary road works in the vicinity of the proposed Centre. The community appears not to have been kept informed about these additional costs.

8. There are also questions over council's efforts to keep its community adequately informed in relation to its proposals generally for the Centre, including about the proposal itself, council's DA for the project (including various amendments to that DA and approvals already granted), council's notification of affected residents, and the budget for the project.
9. It is unclear whether council's use of restricted funds in its Sewer Fund, which are being used for the project, would amount to a breach of sections 409 and 410 of the Act. This entails only a relatively minor proportion (about \$400k) of the total funding for the project.
10. Council had department approval in principle for a loan of \$14.7 million, part of which was to be applied to fund the construction of the Centre. That approval was subject to conditions. But it is unclear whether council had duly complied with all aspects of the loan approval, and in particular with the need to conduct a full Capital Expenditure Review, as per Circular 97/55, and to cover all aspects of that Review, as outlined in that Circular.
11. A question also arises as to council's reliance on section 96 of the Environmental Planning and Assessment Act 1979 to authorise what would appear to be more than minimal changes to the DA and previous development consents for the Peninsula Regional Leisure Centre.

## **7. COUNCIL'S RESPONSE**

By letter dated 30 June 2005, the General Manager advised the Director General of council's response to the draft report. This response also included detailed comments against the recommendations of the draft review report. These comments advised of minor errors in the numbering of recommendations. These errors have been corrected in this final report. The council comments also referred to some factual errors in the draft report. Where appropriate these errors have also been corrected in this report.

It is also acknowledged that a large number of the report recommendations have already been actioned or are currently being addressed by council since the issue of the draft report.

The council's Draft Review Comments including the General Manager's covering letter are at Appendix 1.