

capacity building good governance improvement

Promoting Better Practice Program

REVIEW REPORT

KU-RING-GAI COUNCIL

JANUARY 2010



Division of Local Government
Department of Premier and Cabinet

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EXECUTIVE SUMMARY

The review was undertaken by two (2) officers from the Department of Premier and Cabinet's Division of Local Government. The onsite component of the review took place in July 2009 and was preceded by a self assessment process, which required the Council to complete a comprehensive checklist and collate evidence as to the current state of its plans, systems and processes.

Two years ago, Council's General Manager decided to use the PBP checklist to identify gaps in Council's systems and practices and then set about closing them. There is clear evidence (from the few gaps we noted in conducting this review) that this has been a very successful initiative.

Our intent in writing the report was to focus attention on better practice (from which others can learn) and those aspects of Council's operations which warrant priority attention. Given this, the report does not focus on the vast majority of Council practices. These generally appear to be of a good standard. Our overall assessment is that the Council is generally performing well but there remain some important issues that the Council needs to address as it looks to the future.

The review identified many examples of better practices which would be of interest to other Councils with a similar demographic. Of particular note are the manner in which Council is approaching strategic planning, its community consultation and communication practices, its use of the corporate intranet as a communication/knowledge management tool and its salary system. These and other better practices are detailed in the report.

Notwithstanding the better practices we identified, the review has identified a number of improvement opportunities that the Council needs to consider as a priority. A failure to address these matters will place the Council at risk. The report provides details of these so that the Council can give them due consideration.

At the time of the onsite component of the review, we noted some specific matters in relation to Council's decision making processes that need to be corrected. Issues to be addressed include the need to review Council's adopted Code of Meeting Practice, the operation of the Planning Committee and ensuring compliance with section 10D of the Act (in regard to closing meetings to members of the public).

Council's response to the draft report indicates Council has already attended to some of the matters that needed attention.

From a strategic perspective it is important for councillors to having ongoing regard, when making decisions, to the provisions of any adopted policies and plans. The investments made by Council in developing sound policies and plans is put at risk if Council makes decisions that don't have due regard to the adopted position of Council.

Since being elected, the Council has tried a number of different approaches to facilitate informed decision making on the part of councillors, most notably, the creation of a General Committee made up of all councillors and the use of workshops. While there are procedural and statutory issues that need to be considered when using the different approaches to briefing councillors, we commend Council for its efforts in this regard and its willingness to change its approach in light of its experience and feedback that it has received.

Council has adopted a policy position which recognises the broad range of risks it is exposed to and the importance of assessing and treating those risks. However, there remains significant work to be done for Council to extend the practical application to areas beyond insurable risks, which have been the typical focus of many councils when it comes to applying risk management techniques. Such risks include those that pose a threat to Council's reputation, the need to ensure ongoing compliance with existing and new statutory requirement, minimising the possibility of fraud/corruption, financial and workplace hazards.

The Council staff we spoke during the review appear to be very committed to continuing to support the current positive direction of the organisation. The staff were almost universally enthusiastic about the organisation and their work. We observed a good level of teamwork and rapport among the senior management team.

While Council should be proud of the progress it has made there is a now a need for the Council to adopt a new business improvement framework which will help maintain a momentum for achieving business excellence.

1 ABOUT THE REVIEW

Review objectives

Promoting Better Practice (PBP) reviews have a number of objectives. The objectives include generating momentum for a culture of continuous improvement and the promotion of good governance and ethical conduct. The reviews are designed to act as a "health check", giving confidence about what is being done well and helping to focus attention on key priorities.

Review process

The process involves a review team from the Department of Premier and Cabinet's Division of Local Government (DLG) evaluating the effectiveness and efficiency of the Council's operations and giving feedback.

There are essentially five (5) steps in a typical review - preparing, assessing, checking, analysing and reporting. The completion of a comprehensive self assessment checklist by the Council is a key element in all PBP reviews.

The review team takes a risk based approach targeting its resources to areas identified as core matters to be examined as part of a PBP review and those matters considered to be important having regard to the circumstances of an individual council. It does not examine every aspect of a Council's operations.

All reviews look for compliance with statutory requirements, examine for appropriate practices and check what frameworks the Council has in place to monitor its performance. All reviews seek to identify better and noteworthy practices.

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 scope of this report is limited to documenting those areas the review team identified as:

- exceeding good practice (referred to as better practice)
- important processes in need of improvement or further development
- otherwise noteworthy (for reasons detailed in the body of the report).

Ku-ring-gai Council Review

The review was undertaken by a DLG review team made up of a Senior Investigations Officer and an experienced Legal Officer.

The Council was asked to complete a comprehensive checklist/questionnaire about key Council practices. The review team examined the Council's responses to the checklist and a range of other source documents prior to visiting Council. This work was undertaken to gain a preliminary understanding of the circumstances of Council and how the Council has been responding.

The on-site component of the review took place in July 2009. It involved initial interviews with the Mayor and the General Manager, interviews with a cross-section of staff, observation of a Council committee meeting, individual meetings with four (4) councillors, a review of Council policies and other documents and visits to Council's main works depot and some localities in the area.

The review team also met with representatives of the Department of Planning and the Chairperson of the Ku-ring-gai Planning Panel. The scope of the review did not extend to reviewing the Planning Panel.

A draft report was provided to Council for review and comment. Council's corporate response has been generally included in this report. This has resulted in some minor changes being made and some additional information being included.

2 ABOUT THE COUNCIL & THE LOCAL AREA

In this section of the report, we only outline some specific matters about the current circumstances of the Council and the areas that were particularly important in making our findings and recommendations. The Council provides comprehensive information about the Ku-ring-gai Local Government Area (LGA) on its website and in various planning documents produced by it. We have not reproduced this information for the sake of brevity, but we commend it to the reader seeking a broad understanding of the context in which the Council operates. Those currently involved with the Council will already have such an understanding.

Location

The location of the LGA and its geography are key factors in gaining an understanding of the circumstances of Council. It is a physically attractive location with some remnant urban bushland and many attractive streetscapes. It is fringed by three (3) national parks (Lane Cove, Garrigal and Ku-ring-gai).

It is relatively close to the Sydney CBD with ready access to public transport. It has a number of town centres located on the “North Shore” railway line; this has been a factor in its identification as a possible location for higher density housing.

Its desirability as a place to live is reflected in the relatively high price of residential real estate compared to some other parts of the Sydney metropolitan area.

Land use

Land use is a key issue and one that has been the subject of significant attention in recent times. The Council’s website notes that the area displays a wide variation in landscape and wildlife with significant areas of urban bushland identified as having high conservation status. Of the residential area, 95 per cent is occupied by low-density housing; the remainder is designated to business and other uses.

The making of a new Ku-ring-gai Town Centres Local Environmental Plan (LEP) is imminent (it is currently with the Minister for Planning for approval). The making of this plan will bring with it rezoning that will allow higher density and commercial

developments. The development of this plan has been a contentious issue and one which has had significant resource and governance implications for the Council.

There is a very high use of private certifiers by developers compared to other local government areas.

Changing Demographic

The making of a new Ku-ring-gai Town Centres LEP and the development that will follow, will give rise to a rapid increase in the population of the LGA and likely changes to the age demographic. The population is expected to increase by as much as 30% over the next 20 years.

The Council will need to be mindful of this, particularly in regard to its role in regulating land use and in relation to its role as a provider of infrastructure and community services.

Balancing the competing short term political imperatives and long term strategic imperatives is an ongoing challenge. Action on this matter is pivotal to the functioning of Council and its requirement to plan for current and future populations.

Public Land Reclassification

The making of the new LEP will bring with it the need for Council to consider whether its current land holdings are appropriately classified. At the time of the review, the Council was engaged in community consultation to address this issue. Since 2005 this has been identified by staff and the Department of Planning as a priority.

The Elected Council

Council is divided into five (5) wards, each represented by two (2) councillors. The current Council has a mix of experienced and new councillors and equal numbers of male and female councillors. Five (5) of the councillors are first term councillors. Four (4) were elected at the 2008 local government ordinary election and one (1) at a by-election held in May 2009.

Three (3) of the councillors have served previously as Mayor. The Mayor is elected annually by the councillors and there have been three (3) different Mayors in the last

three (3) years and eight (8) changes in the Mayoralty in the last ten (10) years; the Mayoralty changed during the course of the review. This year's elections for Mayor and Deputy Mayor resulted in tied votes, with the result being then determined by the drawing of lots.

Council staffing/structure

Council's General Manager was appointed to the role in 2006. Council recently reviewed his performance and offered him a new contract for five (5) years.

The structure is divided into five (5) directorates: Community; Corporate; Development and Regulation; Operations; and Strategy.

The organisational structure was last reviewed earlier this year, with some changes made. In particular, we noted the reallocation of the bush care function to the Strategy Directorate. That Directorate's increased natural environmental focus was reflected in the name change from Strategy to Strategy and Environment.

Infrastructure

Council has recently built a new depot and purchased a significant amount of additional open space in the last two years, to meet the needs of the developing town centres. While this is commendable, much of the Council control/owned infrastructure is relatively old. The need to replace or renew aging infrastructure is a key issue to be addressed by Council, particularly given the prospect of having to serve a larger population with different needs.

The quality of the working environment in the Ku-ring-gai Council Chambers and Customer Service Centre needs to be considered by the Council in its strategic planning. Some work areas appeared to be very crowded and staff amenities we observed were old and not of the standard one might expect to see in a modern office environment. The relocation of the Operations staff following completion of the depot in November 2009 may allow Council the opportunity to address this.

3 SUMMARY OF KEY FINDINGS

In this section of the report we have summarised better practices and the areas of improvement we have identified. Further details about the basis for these findings are available in the relevant sections of the report. This summary does not include findings that do not fall into these two (2) categories – these are dealt with in the body of the report as “other significant observations”.

It should be noted that the report does not provide detailed specific recommendations. Council needs to give due consideration to the areas for improvement that have been noted. Having done so, we anticipate Council will take action to address these matters.

Each area for improvement noted in this section of the report has been annotated with a risk rating of high or medium. Any areas of improvement rated as low risk to Council have not been included. Information on the risk rating is included in the Appendix.

Note: Council, in responding to the draft report, made a number of comments about these key findings. These comments have not been included here but have generally been reproduced in the relevant section in the report.

KEY FINDINGS

COUNCIL’S STRATEGIC POSITION

Better practices

- Processes being used to develop a long term strategic plan.

Areas for improvement

- Adoption of Strategic Plan 2030, commitment to its achievement and development of a resourcing strategy and delivery program to support its achievement. **(High)**
- Adoption of a business improvement framework that facilitates continuous improvement and which maintains a focus on achieving business excellence. **(Medium)**

GOVERNANCE

Better practices

- A comprehensive range of resources, policies and information to assist councillors to fulfil their roles.
- Good processes for identifying service standards and managing complaints.
- A comprehensive reporting framework to inform the community of its activities.
- Council's intranet being used to facilitate communication and knowledge sharing within the organisation.
- Self assessment using PBP tools to identify improvement opportunities.

Areas for improvement

- Ongoing councillors' training and development. **(Medium)**
- Decision making/meetings processes. **(High)**
- Regular review, analysis and treatment of potential risk exposure within its procurement and disposal practices. **(Medium)**
- More extensive use of risk management techniques. **(Medium)**
- Customising its adopted Code of Conduct. **(Medium)**
- One councillor continues to have significant unresolved concerns about Council's finances and governance. **(Medium)**
- Council must have due regard to its adopted policies and plans when making decisions. **(Medium)**

PLANNING AND OTHER REGULATORY PRACTICES

Better practices¹

- A high percentage of development applications are determined by staff (using delegated authority).
- Notification practices and other development related correspondence are of a high standard.

¹ Council, in commenting on the draft report, suggested that its vegetation mapping project should be listed as a better practice. It has commented that *"This and other environmental programs related to Council's planning functions are recognised by industry as best practice."* We did not assess these programs in any depth during the course of the review – see further comment about this in the body of the report.

PLANNING AND OTHER REGULATORY PRACTICES continued:

- Team approach to the inter-related processes of strategic planning, land use planning, development assessment and regulation of development.

Areas for improvement

- Council has a process that allows a single councillor to effectively delay the determination of a DA by “calling it up” for consideration by the full Council. **(Medium)**
- Adopt, implement and monitor a compliance/enforcement policy. **(Medium)**

ASSET AND FINANCIAL MANAGEMENT

Better practices

- An asset management policy that provides a sound framework for the strategic management of Council’s assets.

Areas for improvement

- Long term financial planning. **(Medium)**
- Asset management practices and the provision of new/improved infrastructure. **(Medium)**
- Reporting and oversight of Council’s business activities. **(High)**
- Information technology strategy. **(Medium)**

COMMUNITY, COMMUNICATION AND CONSULTATION

Better practices

- Social and community planning.
- Community participation and consultation.
- Council encourages and co-ordinates a high number of community volunteers across a wide range of activities.
- Provision of aged and disability services, children’s services, and youth services.

COMMUNITY, COMMUNICATION AND CONSULTATION continued:

Areas for improvement

- Council's community facilities are struggling to meet current needs of the area's aging population. **(Medium)**²
- While Council's Annual Report is of a high standard, the 2007-08 report did not address some of the statutory reporting obligations **(High)**

WORKFORCE RELATIONS

Better practices

- Council has a workforce plan which demonstrates a sound understanding of the workforce planning process and its importance to the achievement of Council's strategic objectives.
- Council has developed an innovative *Salary System* that appears to satisfy all of the stakeholders.
- Council was able to demonstrate that it makes use of employee attitude surveys to evaluate and inform the development of its workforce relation practices.

Areas for improvement

- Council does not have a comprehensive OH&S Plan. **(Medium)**
- Council needs to ensure that any "enterprise" agreement it enters into is properly executed and registered. **(High)**

² Council believes that this should be a high priority not a medium priority. Council is best placed to determine this. Council, in commenting on the draft reported stated that "Council needs to make some decisions now both in terms of the long term model, Contributions Plan and asset rationalisation to allow Council to achieve those longer terms goals."

4 COUNCIL'S STRATEGIC POSITION

This part of the review focussed on Council's strategic intent and how it has involved its communities and other stakeholders in developing long term strategic plans. The review assessed the clarity of Council's strategic direction, whether its plans reflect a shared and realistic vision and its overall approach to corporate planning. Monitoring and reporting progress to promote continuous improvement was also an integral consideration in regard to Council's performance in this area.

A new planning and reporting framework for NSW local government has been introduced to improve local Councils' long term community planning and asset management, as well as streamline reporting to the community.

The new framework aims to improve the sustainability of local communities by encouraging Councils, residents and State agencies to work together on long term plans and appropriate delivery programs. Community strategic plans will be supported by a long term financial strategy (resourcing strategy), asset management plan and workforce strategy. The framework is set out in the following diagram.

Diagram 1: Proposed planning and reporting framework



4.1 Better practices

Strategic Planning

Council is well advanced in the development of a long term strategic plan. At the time of the review, the Draft Strategic Plan 2030 had been on exhibition. This plan and our related discussions with staff provided us with assurance that Council staff

have a sound understanding of the concepts of integrated planning and the underpinning processes. Furthermore, we observed the implementation of those processes.

Of particular note is the long term focus, the obvious commitment to the Council's adopted values and the community engagement strategy that has informed the development of the draft plan. Council advised that it made a conscious decision to use a cross-generational approach and there is clear evidence of it having done so.

While over time we believe the practices we observed will become good practice, we believe in the context of the sector at this time, they warrant the "better practice" label. Council's approach to cross-generational community consultation is a positive exemplar for other councils, all of which will be required to put such processes in place.

Self assessment using the PBP Checklists

Two (2) years ago, Council's General Manager decided to use the PBP checklist to identify gaps in Council's systems and practices and then set about closing them. There is clear evidence (from the absence of gaps we noted in conducting this review) that he has been successful. This is better practice because it provided the Council with an effective and efficient way of gaining an understanding of its strategic position and areas in which it could improve.

4.2 Areas for improvement

Further work on strategic plan

While we have commended Council for its work in developing the Strategic Plan 2030, further work needs to be done to improve the plan and support its implementation. When we raised these matters with Council staff, they were generally able to demonstrate they were aware of the issues and that Council was addressing them.

Most fundamental of the areas for improvement is the need for the elected Council to adopt the draft plan after due consideration and commit to making progress towards its achievement. For the plan to have meaning, it will require the elected Council to have regard to it when it makes decisions. This will only occur if councillors understand and value the processes that have informed its development.

While the plan captures community aspirations, it clearly lays out the challenge for councillors and staff to develop a resourcing strategy and realistic delivery program for the remainder of this term. The extent of this challenge should not be underestimated and there is still significant work to be done.

In section 5.3 of this report, we discuss Council's approach to asset and financial management. These are two of the areas where Council still needs to make some long term strategic decisions.

Adoption of a new business improvement framework

While Council should be proud of the progress it has made using the PBP self-assessment process and in preparing for this review, there is a need for the Council to adopt a new business improvement framework which will create a momentum for achieving business excellence. There are a number of such frameworks that the Council could consider.

4.3 Other significant observations

The number of changes in the Mayoralty

Council has made frequent changes to its Mayor (eight changes in the last ten years). It could be argued that this is evidence of a healthy democratic process and that the changes have provided the opportunity for several councillors to bring their own particular skills to the role. However, Council needs to be mindful that such frequent changes could also have negative consequences.

New Mayors face an inevitable learning curve when they take up the role. Different Mayors will approach the role differently and the changes in approach could be disruptive until councillors and staff adjust to the difference. Mayors are frequently involved in developing and maintaining relationships with key stakeholder groups and such relationships may conceivably benefit from less frequent changes in the Mayoralty.

In raising this issue we make no comment on the relative merit of councillors who have held the office of Mayor.

4.4 Council response

The reviewers noted an area for improvement as being the *“Adoption of Strategic Plan 2030, commitment to its achievement and development of a resourcing strategy and delivery program to support its achievement.”* Council’s comment in response to this finding in the draft report was *“It is recognised that Council has not linked its funding strategy to its strategic plan and as such should remain a matter of high importance.”*

In responding to the draft report, Council challenged the statement which asserted that Council needed *“better information”* to make long term strategic decisions. Council commented that *“It was understood from the dialogue with the DLG representatives that they believed the tools and information had been made available to allow for informed decision making.”* And that *“it was not an issue that the model needed to be improved but rather that elected officials needed to make decisions to firm up what would be achieved”*.

4.5 Reviewers’ further comment:

While the Financial Model was not subject to detailed examination as part of the review, we noted that it appears to have been well thought out; it contemplates a large number of the variables which one might expect to see used in such a model and as such, it draws on a large data set – we make no criticism of the Model per se. Our concern is that the information on which the Model relies could and will be improved as Council gathers more information about the condition of its assets and as Council makes decisions about its assets and the services it provides to the community.

5 DELIVERING AND ACHIEVING

This part of the review focussed on examining key structures, systems and processes involved in delivering the stated outcomes of Ku-ring-gai's management plan. This included considering the means by which Council:

- governs its day to day operations
- undertakes its planning and regulatory obligations
- manages its assets and finances
- involves the community, and
- recruits and retains its workforce.

5.1 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 local government sector 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.

5.1.1 Scope of review

- *Ethics and values*
- *Management planning*
- *Procurement, disposal & tendering*
- *Privacy management*
- *Code of conduct*
- *Communication devices*
- *Disclosure of pecuniary interests*
- *Risk management, legislative compliance & internal control*
- *Council's decision-making processes, including delegations and conduct of meetings*
- *Support for councillors*
- *Records management*
- *Access to information*
- *Complaints handling*
- *Information technology*
- *Expenditure on legal advice and litigation*

5.1.2 Overview of Ku-ring-gai Council's governance practices

Overall, the elected Council appears to be functioning in a reasonable manner, particularly having regard to the mix of new and experienced councillors and the clearly divided views among the councillors as to who should be the Mayor and the Deputy Mayor (noting that the current holders of these offices were determined by the drawing of lots following a tied vote).

At an operational level we formed a view that Council has many effective governance systems and processes in place. Our review has identified some improvement opportunities which are outlined in this section of the report.

5.1.3 Better practices

Councillor Development and Support

Council provides a comprehensive range of resources, policies and information to assist councillors to fulfil their roles.

Council has developed an informative councillor intranet site called "Councillor Net". Notable features of the site include a list of approved staff contacts (in accordance with Council's policy on interaction with staff), a calendar of events including Council and committee meetings, press clippings, and the opportunity to provide feedback on site content. Councillors have access to a well resourced councillors' library of relevant publications.

Council conducted a comprehensive two-day Councillor Induction Program. This program was delivered by the General Manager and other senior staff. It provided considerable opportunity for councillor input by way of questions and topics. Although voluntary, all councillors attended the program.

The majority of councillors interviewed and those who completed and returned the councillor surveys considered that the training and support provided to councillors was adequate and that they were well supported by staff.

Council has adopted a policy on the payment of expenses and the provision of facilities to the Mayor, Deputy Mayor and councillors, as required by section 252 of the Act. The policy complies with the relevant legislation and the Division's

guidelines. It incorporates the good practice of defined limits for a range of common expenses and makes provision for expenses for the special needs of councillors (e.g. disability).

Complaints Handling and the Use of Service Standards

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

Council has good processes in place for identifying its service standards and for managing complaints.

Council adopted a Complaints Handling Policy in 2001. It is presently under revision and for this purpose a draft revised policy has been prepared. The draft takes into account guidelines issued by the NSW Ombudsman and Council's adopted code of conduct.

Council uses service standards as one of its key strategies. It has developed a service standards manual which defines its service commitments. The standards provide for managing customer feedback by way of recording comments, compliments, and managing and recording complaints in accordance with Council's Complaints Policy. The standards form part of the generic outputs of all position descriptions. Staff are measured annually on compliance through individual performance reviews. At an organisational level, Council conducts customer surveys to measure community satisfaction on a range of its services as a means to improve service planning and delivery.

Council has an Internal Ombudsman as part of its complaints handling arrangements. The Ombudsman is an avenue of last resort when issues have not been effectively resolved by a manager or director.

Council's new draft Complaints Policy contains ground rules for Council staff and complainants to enable Council to provide a high standard of service to complainants while meeting its occupational health and safety and duty of care obligations to its staff.

Risk Management, Legislative Compliance and Internal Control

Council has appointed a full-time Internal Ombudsman whose role includes:

- corruption prevention by providing induction and ongoing training for staff in regard to Council's adopted code of conduct
- providing probity and ethical advice to councillors, General Manager and staff
- assisting in the development and improvement of Council procedures and policies, and
- the oversight of Council's risk management strategies.

The commitment of a full-time staff resource to these functions demonstrates that the Council recognises the importance of good governance and the need for proper resourcing of it. In making this observation of better practice, it should be noted that we are not making an observation about the merit or otherwise of having an internal ombudsman.

Reporting practices

Council has developed a comprehensive reporting framework to inform the community of its activities. It incorporates extensive use of KPIs and makes use of benchmarks. Council's annual report goes beyond good practice and compliance with section 428 of the *Local Government Act 1993*, which requires councils to produce an annual report.

Council has adopted the Global Reporting Initiative for sustainability reporting. Sustainability reporting is a form of value reporting where an organisation publicly communicates its economic, environmental, and social performance.

Council's reports on its performance are readily accessible; an audio summary of the annual report is available on Council's website, along with a large print version.

Such high quality reporting contributes to good governance because it focuses attention on what has been achieved; it makes Council accountable for measuring and communicating what is achieved and, as such, it facilitates the assessment of Council performance by both internal and external stakeholders.

Use of Corporate Intranet

We were very impressed with the quality of Council's intranet and more importantly, the manner in which it was being used to facilitate communication and knowledge sharing within the organisation. Some of the better practices we observed included the widespread use of the intranet, the scope and depth of information which could be readily accessed using the intranet and the opportunity for staff to provide feedback to management via the intranet and evidence of this feedback being acknowledged and responded to by management.

Effective internal communication is an important element in facilitating the maintenance of good governance within an organisation. It is needed to ensure staff are aware of what is expected of them and to facilitate them having the requisite information they need to do their jobs. It is also important as it facilitates management being informed as to performance of the organisation.

Note: While Council now has a high quality intranet, it continues to make a large amount of "hard copy" information available to councillors. Council and councillors should monitor whether this is sustainable and/or necessary given the availability of information on the intranet.

5.1.4 Areas for improvement

Councillor Development and Resourcing

The majority of councillors who completed the councillor surveys identified a desire for additional training even though they indicated that the training they had received was adequate. We did not see evidence that Council had an ongoing program to identify and meet councillor training needs.

The Division encourages councils to continue to provide opportunities for their councillors to keep abreast of developments in those areas that are most likely to be beneficial for carrying out their role within the organisation. Further, it is important for each individual councillor to critically review his or her skills and knowledge and commit to ongoing development over their term as a councillor.

Council should develop and adopt a councillor training and development plan each year based on needs analysis. This should ensure that councillors have access to

training and professional development opportunities that suit their needs and those of the Council. Council may find assistance in this regard in the Division's "*Councillor Induction and Professional Development Guide*".

The provision of ongoing training and development opportunities that are undertaken as a group may also assist Council in promoting team building and informal forums to exchange ideas and experience.

A key element in councillor training should be the employment and performance management of the General Manager. This is not to suggest we have particular concerns about these processes, but rather recognises the importance of these activities to the overall functioning of Council.

Council Decision-Making Processes

We have identified a number of ways in which Council should improve its decision making processes.

Particular attention should be given to:

- being diligent in ensuring that its decision making forums operate strictly in accordance with the relevant statutory provisions and Council's adopted Code of Meeting Practice
- Ensuring Council's Code of Meeting Practice is consistent with the Act and Regulation
- Restricting the use of questions without notice at Council meetings to matters which are being properly considered at the meeting. Questions about unrelated matters should not be allowed.
- Revising the order of business of meetings to prioritise those matters that can be dealt with quickly
- Ensuring compliance with section 10D of the Act (in regard to closing meetings to members of the public)
- Reviewing the manner in which the Planning Committee is operating.

Code of Meeting Practice:

There are several provisions of Council's Code of Meeting Practice that appear to be inconsistent with either the Act or the Regulation. They are:

- Clause 2.6.2 which infers that a councillor who is in the public gallery at a Council meeting is not present at the meeting
- Clause 3.7.4 which limits the number of motions that a councillor may put to a meeting
- Clause 5.5.2 which infers that Council may by resolution prohibit a councillor from attending a committee meeting
- Attachment A which provides that the order of business at Council meetings shall include “Business without Notice” and “Questions without Notice”.

Council should review these provisions.

Questions without notice at Council meetings:

Council maintains a standing item on the agendas for its meetings under which councillors may put questions without notice to councillors and Council staff. We have recommended that the Council review how it deals with this item to ensure that it is not used as a tool to probe other councillors or staff on matters outside the proper business of the council meeting.

Clause 249 of the Regulation allows questions to be put to councillors through the Mayor and to staff through the General Manager. The Regulation effectively provides that questions during a council meeting should be in relation to business before council. Having an agenda item “questions without notice” is inconsistent with clause 241 of the Regulation, which requires notice be given of matters to be discussed at council meetings. Clauses 1.4.10, 1.4.11 and 2.5 of the Division’s *Meetings Practice Note* provide information on questions at council meetings. This matter was also addressed in Council Circular 07/14, issued by the former Department of Local Government.

Order of Business at Council meetings:

Many matters at council meetings will be determined without debate or question because they involve the adoption of a staff recommendation which is straightforward and non-controversial in nature. Council should consider adopting a practice that allows such items with unanimous support to be identified as early as possible in the meeting and then consider a motion to adopt the relevant recommendations/motions as a single matter. This will avoid undue delay where all

councillors agree with officers' recommendations. It will also allow officers not required to be present to answer questions to leave the meeting earlier than would otherwise be the case.

We noted that Council's current practice involves councillors being asked to individually nominate matters they consider can be adopted without debate; essentially what we are suggesting is that the Council modify this process by asking councillors to nominate those matters they want dealt with as separate items. This will require councillors to give prior consideration to those matters which they wish to debate or ask questions about, which is good practice.

Closure of meetings to members of the public:

When deciding to close part of a meeting to the public, Council is required by section 10D of the Act to state the grounds for closing the meeting and the reasons why it is not in the public interest to discuss the matter in an open meeting.³ A review of the minutes of recent Council meetings indicates that Council is failing to comply with these requirements.

Operation of the General Committee:

Our review of the operation of the General Committee gave rise to a number of serious concerns. At times, both councillors and staff appeared to be under the misapprehension that meetings of the General Committee were the equivalent of meetings of Council. This was evident at the meeting attended on 28 July 2009 in that resolutions were passed in the name of Council and one item on the agenda (although withdrawn during the course of the meeting) recommended the fixing of a fee, which is a non-delegable function of Council.

While we note that Council has dissolved the General Committee, the manner in which it operated suggests to us that Council needs to be particularly diligent in ensuring that its decision making forums operate strictly in accordance with the relevant statutory provisions and Council's adopted Code of Meeting Practice.

As noted elsewhere in this report, the Division recently published a revised Meetings Practice Note. We commend this publication to Council's attention.

³ There are some limited exceptions to this requirement.

Council's Planning Committee:

We are also concerned about the operation of Council's Planning Committee. This Committee, whose members are councillors, was established under clause 260 of the Regulation. Consequently, its meetings must be conducted in accordance with the requirements of Part 10 of the Regulation. It was noted that:

- there appear to be no formal minutes of the Planning Committee meetings held on 1 and 30 July 2009 which meet the requirements of clause 266 of the Regulation
- there is nothing shown on the agenda for the meeting of the Planning Committee of 30 July 2009 to indicate that the Committee would consider confirming minutes of the previous meeting of the Committee held on 1 July 2009, as required by clause 266 of the Regulation.

Public participation in council meetings:

Council allows members of the public to address meetings of Council and its committees on any item in the business paper and other matters of a general nature or interest to Council or the community (subject to very limited exceptions). While we accept that this may assist in engaging members of the public in Council's decision-making processes, it gives rise to concern in two respects.

Council permits members of the public to table documents in the course of their address. This gives rise to the potential for complex, inaccurate and/or misleading information being put before Council, without sufficient time for proper assessment of the information.

While it is always open to Council to delay making a decision on such matters until the information has been assessed and considered, doing so may detract from efficient (and timely) decision-making. Modifying the current practice to require persons to tender documents a set time period prior to the meeting would allow for proper appraisal of the material.

Secondly, there is no constraint upon members of the public addressing a meeting about an item which has already been the subject of public consultation. Allowing further submissions outside the advertised public consultation process is fraught with danger, particularly where such a process is required by legislation.

Where there has been a public consultation process, the item of business will invariably be accompanied by either a committee or staff report summarising the submissions and providing comment on those submissions. Allowing members of the public to address Council or a committee outside the public consultation process may well compromise the integrity of that process and the overall process of reaching a proper decision on the matter.

Council should consider revising its procedures in regard to public participation at Council and committee meetings in light of these concerns.

Procurement, Tendering and Disposal Practices

Councils should regularly review and analyse potential risk exposure within their procurement and disposal practices. This needs to be done to minimise financial loss through non-compliance. A risk analysis should be undertaken every two years as part of the internal audit program.

Council's Purchasing, Policy and Procedures Manual (December 2004) is out of date. Among other things, it refers to the Local Government (Tendering) Regulation 1999, which has been repealed. Council has developed a draft procurement policy which is supplemented by three draft companion procedures that will make up the suite of Council's procurement documents. Council needs to ensure that the draft policies and procedures are adopted and implemented.

Council's draft Procurement Policy and the three draft companion procedures (Purchasing, Engagement of Consultants, and Tendering) are comprehensive. The draft policy gives an overall procedural approach to procurement and tendering and provides guidance as to which of the procedures are applicable in given circumstances.

The companion procedures charge Council's Internal Ombudsman and Internal Auditor with the responsibility of auditing and investigating Council's procurement practices.

The draft Procurement Policy supports Council's commitment to a sustainable future and the need for Council to play a leadership role in advancing long term social and environmental sustainability.

Council has no assets disposal policy. However, it has developed a draft policy which is presently under consideration. The draft policy describes the disposal process, considerations to be taken into account and the methods of disposal for particular types of assets.

The adoption, implementation and monitoring of these policies should see Council achieve better practice. In the meantime, Council should monitor this as an area for improvement.

Risk Management, Legislative Compliance and Internal Control

Council has adopted a policy position which recognises the broad range of risks Council is exposed to and the importance of assessing and treating those risks. However, there remains significant work to be done for Council to extend the practical application to areas beyond insurable risks which have been the typical focus of many councils when it comes to applying risk management techniques.

Internal Audit:

Council has been slow to consider and implement the Internal Audit Guidelines, which were issued by the former Department of Local Government in October 2008.

It is proposed that the committee be an independent advisory committee to Council with its members having a relevant knowledge base. The Internal Auditor will report directly to the committee. The Internal Ombudsman will act as an advisor and provide administrative support to the committee.

It is intended that the role of the committee will, among other things, be to approve and review Council's Internal Audit Charter, ensure the independence of the internal audit function, review and authorise internal audit plans and receive and review internal audit reviews and reports.

Fraud Control:

Council does not have a fraud control policy or strategy.

Council has yet to undertake a systematic fraud risk assessment. The Australian Auditing Standard 210 (AIS210) requires all external auditors to obtain a written

representation from management that the organisation has systems to deal with fraud risks.

Code of conduct implementation

We noted that Council has adopted the Model Code of Conduct as its code. While the Model Code provides for certain matters in regard to the handling of code of conduct complaints, it does not address all the potential matters that Council may need to consider when adopting its own code, having regard to the particular circumstances of the Council.

The range of matters that the Council should consider is canvassed in the Code of Conduct Guidelines, which were published by the former Department of Local Government and which are available for download on the Division's website. We commend these Guidelines for Council's further consideration.

In particular, we suggest that the Council give consideration to strengthening the provisions and procedural guidance to protect the identity of complainants. The complainant's name should only be disclosed to the subject of the complaint where it is essential to the proper investigation of the complaint. The *Protected Disclosures Act 1994* provides guidance on when the disclosure of a complainant's identity may be necessary. Such provisions are important in circumstances where Council officials or members of the public may be reluctant to make a complaint because of a fear of retribution.

Managing the concerns of individual councillors

We noted that one councillor has had significant concerns about the governance (and finances) of Council. While it has not been the purpose of this review to examine each specific concern raised by this councillor, we should point out that the report generally indicates Council is performing well. This review process and the taking of timely action to address the areas for improvement noted in this report should prompt the councillor to reassess his overall concerns about Council.

Councillors are well placed to raise concerns about Council with their fellow councillors and Council's General Manager. However, having done so, councillors need to have proper regard to both the advice of the General Manager/senior staff and any decision of Council made in relation to those concerns.

If the individual councillor continues to be concerned about Council, there clearly needs to be action on the part of the councillor, the other councillors and Council's senior staff to ensure the concerns of one councillor do not adversely impact on the overall governance of Council and/or consume a disproportionate amount of limited Council resources.

Having due regard to adopted policies and plans

During the review, the Division became aware of a Council decision to purchase a property for open space for more than it was valued and contrary to advice from staff that the purchase was not consistent with adopted Council policies/plans. This is concerning and would warrant further intervention if further evidence comes to attention to indicate a pattern of such decision making. While we did not conduct an extensive review of past decisions made by the Council viz a viz their consistency with adopted plans/policies, we believe the potential risks in such decisions warrant mention here, albeit on the basis of the one decision that has been brought to our attention.

5.1.5 Other significant observations

Council Decision Making Processes

Council holds its ordinary meetings twice monthly, on the second and fourth Tuesdays of each month.

Council reviews its Code of Meeting Practice on a regular basis. The current code, which replaced its 2005 code, was adopted on 9 June 2009 and is scheduled for review in three years.

Council has established five reference committees to support its decision making process. They are the Community, Heritage, Open Space, Sustainability Reference Committees and the Planning Committee. They have been established as a means by which interested residents and experts can play an active role in the formulation of Council's policy direction and practice.

Council's business papers appear to be of a high standard. It publishes its meeting agenda, business papers and minutes on its website.

In the course of this review the meeting of the General Committee which was held on 28 July 2009 was attended by the review team. The meeting had good community attendance in the public gallery. The meeting was reasonably well controlled by the then Mayor, despite conflict arising between one councillor and the Mayor over several local issues.

We noted that on 25 August 2009 Council reviewed the operation of the General Committee and resolved to dissolve it and revert to twice monthly Council meetings. Had it not done so, we would have used this report to raise questions about the need for the Committee (given that it is open to the Council to resolve into Committee of the Whole at any time to allow for briefings and less formal discussions between councillors and staff).

Communication devices

Council has recently adopted policies governing the use of Council's computer system, mobile telephones, and office equipment. Among other things, these policies are designed to assist councillors and staff in understanding and meeting their obligations under Council's adopted code of conduct.

Review of policies

We observed evidence of a comprehensive policy review program. In 2007, an action plan was developed to address a policy review backlog. Generally Council has a well developed policy framework. Council policies are available for viewing on Council's website. We have suggested in the previous section of this report that Council give consideration to the development of a new business improvement framework. The ongoing review of policies and processes should be considered as part of this.

Pecuniary interest returns

Council's pecuniary interest returns were of a high standard. We examined the returns for all of the councillors and a number of senior staff. While we did not test their accuracy, we noted that all returns appear to have been lodged by the required dates and all the required sections of the returns appear to have been completed.

Record keeping practices

At the time of the review, Council was in the process of re-implementing its electronic records management system (ERMS). This is noteworthy because the system it uses (TRIM) has been used by the Council for some time, but the Council had identified that it was not being used in a manner which was consistent with good record keeping practices. It is commendable that Council is addressing this matter. While Council is clearly working on improving its record keeping practices this is a core activity which warrants on-going monitoring/internal audit review.

Legal services

Since the 2002/2003 financial year Council's development related legal costs have steadily declined from \$2.2 M to \$1M. This has been attributed to, among other things, better management of the assessment process.

Council has an in-house lawyer. While many councils would not have the need for in-house legal counsel, having such a position places the Council in a good position to manage its significant outsourcing of legal services, as well as having ready access to internal advice as and when required.

Following an expression of interest process, Council has appointed a panel of external lawyers for the provision of legal services. This is good practice having regard to the scope and volume of legal services purchased by the Council.

Privacy management

Council has a Privacy Management Plan that is comprehensive in its scope. We noted evidence of recent review (August 2008) and that Council has consulted with the Privacy Commissioner prior to adopting the revised plan. Council is well placed to deal with any privacy related concerns. This is good practice. Council needs to ensure that it monitors the implementation of the plan.

Legislative Compliance

Council's in-house lawyer is responsible for monitoring all new relevant legislation, reporting to Council where necessary. The allocation of this specific responsibility to an appropriately qualified member of staff is noteworthy, but Council also needs to be mindful of ensuring all relevant staff are aware they too have the responsibility of

monitoring the legislation applicable to their work to ensure that their practices remain compliant.

5.1.6 Council response

Council made a number of specific comments on our key findings. Council's comments have been reproduced hereunder. Some minor editing of Council's comments has been undertaken by the reviewers where it was necessary to provide context for the comment. Where necessary, further commentary from the reviewers have been provided to address issues raised by the Council.

In regard to the finding about the need for Regular review, analysis and treatment of potential risk exposure within its procurement and disposal practices, Council's response was *"Council has recently undergone a robust process of workshopping to best understand its needs in relation to its procurement policies and practices. A team of 11 operational and governance staff members conducted four (4) half day workshops as part of that process. The result was a new suite of policy and procedures which we believe are best practice for this particular organisation and will give guidance to all staff for the foreseeable future. The new Ku-ring-gai Council Procurement Policy was resolved by Council during October 2009 and the three (3) companion procedures, being Tendering, Engagement of Consultants and Purchasing, are currently being approved through the General Manager and Directors.*

The Tendering Procedure has already been reviewed again since the Division of Local Government recently released its Tendering Guidelines for Local Government to ensure the two (2) documents are consistent.

The three (3) companion procedures mentioned are to be rolled out to staff supported by a comprehensive training package which will be delivered to all relevant staff within Council. This will begin with a training course presented to all Managers at an upcoming Managers workshop early in 2010. Soon after, the package will be rolled out at the operational level, after feedback from the management team."

Council's positive response to this important matter is noted. We have retained a reference to this issue in our Summary of Key Findings as there continues to be some work to be done.

In regard to the finding about the need for More extensive use of risk management techniques, Council's response was *"Council's Internal Ombudsman conducted a risk gap analysis as part of our approved internal audit plan. Information from that analysis and information provided during the DLG - PBP has led to the organisation commissioning a risk management consultant to undertake an Enterprise Wide Risk Assessment. To that end the consultant company interviewed all Directors and the GM and has identified a number of areas for improvement within Council. They are currently drafting a Risk Management Policy and Framework for Council and staff are actively participating with the consultants to this end. This is with a view to putting a Risk Management Policy to Council for resolution early in 2010 and then commencing a process of implementation of the Framework. A working party of Managers from all identified risk areas is being implemented which will drive the implementation of the framework within this organisation."*

In regard to the finding about the need for Customising its adopted Code of Conduct, Council's response was *"Council has adopted the Division of Local Government Model Code of Conduct during 2008. The Code of Conduct will be reviewed early in 2010 to ensure it meets the ongoing needs of Council and your organisation's Model Code of Conduct guidelines."*

In regard to the finding that One councillor continues to have significant unresolved concerns about Council's finances and governance, Council has asked for clarity on how this should be dealt with. It expressed concern that the statement implies nothing has been done to deal with the 'unresolved concerns'. Council commented that *"this is demonstrably not correct"*.

In response to the Council comment on the draft report, we wish to clarify that it was not our intent to infer that nothing had been done to address the unresolved concerns; our point was to draw attention to the significant ongoing impact the councillor's concerns are having on the Council. At the time of the onsite review, it was not apparent to us that any actions taken on the part of the councillor, other councillors or Council staff had been very effective in resolving the concerns or

mitigating the adverse impacts of these concerns on the Council. In stating this, we express no view about the merit or otherwise of the concerns or the action taken other than to restate they do not appear to have resulted in an acceptable outcome for any of the stakeholders.

In regard to the request for clarity as how this matter should be dealt with, we have made some straightforward suggestions in the body of the report. Essentially, these relate to the need for the councillor to reassess his overall concerns about Council; the need for councillors to put their concerns before their colleagues using the meeting process, and then be prepared to accept the collective decision of the Council and the need for councillors to have due regard for professional expertise of the General Manager and senior staff, and demonstrate this by working with them in a reasonable manner.

Having provided these suggestions, we then went on to state that “If the individual councillor continues to be concerned about Council ...there needs to be further action to ensure the concerns of one councillor do not adversely impact on the overall governance of Council and/or consume a disproportionate amount of limited Council resources”. Such action might include reviewing the adequacy of protocols for councillor/staff interaction and promptly dealing with any alleged breaches of the code of conduct, by making a complaint and ensuring such complaints are determined in accordance with the Council’s adopted code of conduct.⁴

In addition to the aforementioned comments about the key findings, Council also made some further comment about specific matters dealt with in this section of the report.

In regard to Councillor Development and Resourcing Council commented that “Given the current attendance of Councillors to briefings, it may be challenging to develop a sound training and development program for them. This being said, I believe many staff are well positioned to offer seminars to Councillors and others on emerging and current projects. Many of these projects are presented in other forums, such as industry conferences. This is often a problem of perception of many organisations

⁴ It should be noted that the review did not examine the appropriateness of the individual councillor’s conduct, merit of his concerns or for that matter, Council’s response. Such an examination was beyond the scope of this review and this was made clear at the time of the onsite component of the review.

that fails to recognise the skill in house and would rather rely on externals to provide knowledge.

It is Council's intention to expand upon the existing Councillor induction and training programs by developing and adopting a more comprehensive Councillor training and development plan each year based upon a needs analysis. This may include group training so as to promote team building."

In response to the Council comment, we note that ultimately, the responsibility for attending training rests with the individual councillor. If such training addresses a need, councillors might reasonably be expected to attend. We agree with the view that in a Council the size of Ku-ring-gai, it is likely that Council staff will have the expertise to be able to deliver relevant and high quality seminars. We note Council's intentions to address this matter.

In regard to Code of Meeting Practice Council commented that *"Council's Code of Meeting Practice was reviewed at the Council Meeting held on 24 November 2009. It is to be placed on public exhibition in February 2010."* It advised that *Clause 2.6.2 (Councillor in the public gallery)* and *Clause 5.5.2 (Councillor prohibition on attendance at committee meeting)* will be deleted prior to the revised Code being placed on public exhibition.

In response to our comment in respect of clause 3.7.4 of the Code of Meeting Practice (Notices of Motion), Council has resolved to change that clause to read *"Councillors should not submit more than two (2) Notices of Motion to a meeting unless justifiable urgent circumstances exist."* While we note the action taken by Council, we remain concerned about the constraint. We encourage Council to refer to clause 5.2.4 of the DLG's recently updated *Meeting Practice Note* for advice on this matter. It points out that councillors may put forward as many motions as they wish. However, in doing so, they need to balance their civic responsibility for representing the interests of their community with their obligation to use council's resources effectively and efficiently.

In response to our comments about Business without Notice being a regular item at Council Meetings, Council commented that *"the standard Council Meeting agendas clearly indicate that this item is subject to clause 241 of the Regulation. This clause*

permits business to be dealt with without notice in certain circumstances. Council is of the strong view that it does not abuse this provision of the Regulation. The inclusion of the item in the standard Council Meeting agenda merely indicates where in the order of business such matters may be considered if necessary. In the circumstances Council would see no justification in removing this item from the standard agenda.” We accept that Council’s position on this matter is appropriate and reasonable.

Council acknowledged our comments in relation to Questions without Notice. It advised that Council considered this matter at its meeting on 24 November 2009 and decided to retain the existing arrangements. Given Council’s position on this matter, we can only reiterate we do not consider it is good practice to have such an item on the agenda. The purpose of the notice requirements in respect of questions is to ensure all councillors and the public are aware, by reading the agenda for a meeting, of what matters will be considered by Council at that meeting. This promotes consistency, openness and transparency in the conduct of Council meetings.

In relation to the comments about the Order of Business at Council meetings and the early adoption of unanimously supported staff recommendations, Council advised that this will be discussed with councillors and can be updated at the time the revised Code of Meeting Practice is adopted.’

In regard to our comments about the Closure of meetings to members of the public Council has responded by stating that *“Council has a strong commitment to open decision making and always strives to limit the amount of business it deals with in closed session. Where it is anticipated that an item will need to be dealt with in closed session detailed reasons are given in the staff report. It is acknowledged that at times due to the complexity of the business being dealt there is a need for additional information to be given to the public about the reasons for going into closed session. Council will address this situation at future meetings.”*

In response to our comments about the Operation of the General Committee, Council advised that it had noted them and that the Committee has since been disbanded.

In response to our comments about the Operation of the Planning Committee Council advised that changes have already been put in place to ensure that the Committee now operates in full compliance with the Act and the Regulation.

Council noted our comments in relation to public participation in Council meetings and provided the following response. *“Clause 8 of Council’s Procedures for Addressing a Meeting states that Speakers are encouraged to leave notes of their speech for follow-up or review action. Generally Council does not encourage people to table more complex documents at a meeting that will require detailed assessment before a decision can be made. Council acknowledges that there is the potential for delays if complex documents are lodged at the final stage of a decision making process. Council also acknowledges that there can be issues associated with people making addresses at a meeting when a matter has already been through a public consultation process. It is proposed that Council review these two matters to determine whether a policy change should be made.”*

In response to our comments about the Procurement, Tendering and Disposal Practices, Council has advised that *“Procurement, Tendering and Disposal Practices”* was adopted by Council on 20 October 2009 and was further refined following the release of the DLG’s tendering guidelines in October 2009. It also advised that the draft Asset Disposal policy will be submitted to a Council meeting shortly for adoption.

In response to our comments about the Risk Management, Legislative Compliance and Internal Control, Council made the following comment. *“Risk Management, Legislative Compliance and Internal Control - Phase 1 of the development of a risk management policy, strategy and framework is complete. This involved input from the GM and all directors. It resulted in a report which identified where Council was positioned in relation to risk management and direction on a way forward. Consultants have been engaged for stages 2 and 3. The end result will be the implementation of being a risk management framework supported by a policy and strategy that will be considered by Council.”*

Our comments on Council’s record keeping practices were revised after considering Council’s comments on the draft report. Council was concerned that our comments were *“fairly critical of Council’s use of TRIM”* and went on to state that *“The TRIM*

upgrade was in fact just to introduce the latest version of TRIM into the organisation. It was never necessarily recognising or acknowledging that as suggested here the use of TRIM fundamentally was meeting Council's record keeping practices. Council maintains that it meets its minimum statutory obligations at best." In response to Council's comment we wish to clarify that it was not our intention for our comments to be interpreted as being critical of the use of TRIM. The choice of such systems is a matter for Council.

5.2 DEVELOPMENT CONTROL & OTHER REGULATORY FUNCTIONS

Regulation is important to achieving a wide range of social, economic and environmental goals. 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 given the statutory and legal framework that governs them. The proper exercise of its regulatory powers is integral to preserving public trust in the Council.

5.2.1 Scope of review

A review was conducted of a range of aspects of Council's planning and regulatory practices, including:

- *Council's planning instruments and policies*
- *Council's relationship with the Ku-ring-gai Planning Panel* ⁵
- *Development assessment*
- *Compliance and enforcement practices*
- *Environmental management*
- *Swimming pools*
- *Companion animals*

5.2.2 Overview of land use planning, development assessment and regulatory practices

Historically, the Council processes one of the highest volumes of development applications in the State. The value of those applications is also one of the highest in the State. There is a very high use of private certifiers to issue construction certificates. Council is involved in a relatively large number of appeals.⁶

The Council recognised the need to improve its performance in this area of its operations some time ago and set about developing and implementing a comprehensive improvement strategy; we observed evidence that it has been highly successful.

⁵ The scope of the review did not encompass a detailed examination of the operation of the Ku-ring-gai Planning Panel. Such a review is beyond the jurisdiction of the Division.

⁶ Local Development Performance Monitoring: 2007-08, NSW Department of Planning, November 2008.

While the Council has many effective planning and regulatory systems in place, there remain some significant land use matters for the Council to address over the course of this term and into the future.

The making of the Ku-ring-gai Town Centres LEP is imminent. The making of this plan has been the subject of contention among parts of the community, the Council and the State Government. According to the Council, the LEP provides re-zonings for an estimated 3,600 new units in the six town centres, as well as expanded retail and commercial development and new facilities including parks, libraries and community centres. At the time of the review, the Council was considering a development control plan (DCP) to support the implementation of the LEP. The issue of reclassification of community land also continues to be unresolved.

The Ku-ring-gai Planning Scheme Ordinance (as amended) dates back to 1971. It is currently the primary planning instrument governing land use in the LGA. Over the next two years the Council will need to focus on the development of a consolidated LEP for the area to replace the dated planning ordinance.

Notwithstanding the processes Council has in place, we expect that the Council and external agencies will continue to get complaints about this aspect of Council operations. The consideration of development applications in areas experiencing significant redevelopment and/or in areas where land values are relatively high can reasonably be expected to generate competing perspectives on the merit of specific proposals assessed by the Council. Both conditions apply in the Ku-ring-gai LGA.

Land use planning, development assessment and regulatory practices are very significant processes for Ku-ring-gai Council, albeit that there has been a recent decline in the number of development applications being assessed (as a consequence of the economic downturn). As this aspect of Council operations will continue to be challenged, its performance should be subject to ongoing monitoring by the Council.

5.2.3 Better practices

Use of delegated authority

Council reported that 95% of development applications are determined by staff (using delegated authority). This is commendable, as it can facilitate timely and

objective decision making. It also suggests that the elected Council has a good understanding of its primary role in determining policy matters and matters of strategic importance. While we commend Council for achieving this level of maturity in the DA process, we noted with some concern that a single councillor can effectively negate better practice by calling up a matter for determination by the full Council. This is discussed later in this section of a report as an area for improvement.

Notification practices and other development related correspondence/publications

As part of the review we examined a range of correspondence and publications used by the Council to communicate to applicants and other interested parties, such as persons being notified about DAs. We were very impressed with the standard and content of these documents. They were highly informative about the process, while at the same time being easy to understand. The documents demonstrate a commitment to both effective communication and transparent decision making.

Teamwork within Council

Strategic planning, land use planning, sustainability and environment, development assessment and regulation of development are interrelated processes. During our short time with Council we had the opportunity to meet, collectively and separately, with key staff from these disciplines. We observed a high level of mutual respect and understanding of the need for a team approach to such matters.

5.2.4 Areas for improvement

Call up processes

Council's current "call up" process allows a single councillor to intervene in the timely determination of a development application, even though the application otherwise meets the criteria to be determined under delegated authority. We believe there is merit in Council modifying this process to prevent an individual councillor being able to delay the determination of a matter.

The current call up process inevitably delays the determination of a DA because it necessitates the preparation of a report for the Council, then giving notice of that

report in the business paper and waiting for the next meeting of the Council for the matter to be considered.

The delay in determining the called up DA can give rise to a situation where the Council loses the capacity to determine the matter. This can occur because the deemed refusal provisions could be triggered, giving the applicant the right to go to the Land and Environment Court. The delay might also trigger the matter becoming one for determination by the Ku-ring-gai Planning Panel depending on how long the initial assessment has taken.

Council has adopted a significant policy framework that enables its officers to determine a high percentage of matters in a manner consistent with that framework. We can see no reasonable basis for Council to continue with a practice that allows an individual councillor to circumvent the proper operation of that framework.

While noting this is an area for improvement, we recognise that the power to determine development applications is first vested in the elected Council and in no way do we suggest that the elected Council should not be able to exercise this power in appropriate circumstances.

We recommend that Council strengthen the process to:

- place a greater onus on councillors calling up applications to provide proper reasons for doing so
- for the councillor to call up the matter at an early stage in the assessment process
- to require a minimum of two councillors to call up the matter (this being consistent with the requirement that a motion have a mover and a seconder prior to being considered by the Council).

In requiring councillor/s to provide reasons for calling up the matter, this should not require them to indicate a position on the merit of the application, but rather demonstrate why they consider the application is not one which should be determined by the officers having regard to the provisions of the relevant delegation.

We noted that Council's current call up provisions do require the councillor to state the reason that the matter is to be referred to the elected Council for determination.

They also require that such reasons must be related to a substantive issue and be consistent with the matters to be assessed when determining applications. In addressing this area for improvement, Council may wish to undertake its own review of the call ups that have been made since the last Council election in September 2008 to identify the extent to which the existing requirements have been complied with, having particular regard to reasons (if any) provided. Council might also wish to consider whether Council's determination of the matter was any different to what the officers were recommending (and if not, whether the call up process added value to the determination).

Compliance policy

At the time of the review the Council had not adopted a compliance/enforcement policy. We noted that Council has issued 656 orders in the last two years. This is a very large number compared to other councils we have reviewed. This level of enforcement action highlights the need for, and importance of, having a sound policy framework to guide the exercise of Council's enforcement powers. Council provided us with a draft "Compliance Policy". Council needs to ensure that it adopts, implements and monitors a policy to govern this aspect of its operations. Council has been working on a draft policy and it may be that this matter has been addressed prior to finalisation of the review.

5.2.5 Other significant observations

Mean determination times

As noted earlier, the Council determines a relatively large number of DAs and the value of the developments determined are also relatively high compared to other councils. It is notable then that the Council has been able to achieve better than average determination times.

The following information is drawn from *Local Development Performance Monitoring: 2007-08*, which is published by the Department of Planning:

- In 2007-08 the mean gross determination time for DAs was 74 days and 58 days for s96 modifications. By comparison, Ku-ring-gai's times were 68 days and 47 days respectively. The net mean determination time for DAs was 42 days.

- The Council achieved the 4th shortest gross mean determination time for commercial / retail / office development in the Sydney Region.

These outcomes have been achieved notwithstanding the relative complexity of the planning instruments the Council has to administer. The making of a new comprehensive LEP should see the Council well placed to make further improvements in its performance.

Working relationship between Council and the Ku-ring-gai Planning Panel

We observed evidence of a good working relationship between the operational arm of Council (i.e. Council staff) and the Ku-ring-gai Planning Panel. This is noteworthy because the Panel and Council have been able to develop and maintain this relationship, notwithstanding that there has clearly been a divergence in views between the governing body of Council and the Panel on certain matters. It suggests willingness on the part of the Council and Panel to work in a cooperative manner and recognition on the part of the councillors of the difficult situation staff are faced with (having to both meet the needs of the governing body and the Panel).

Very high use of private certifiers

Council provided information that indicated that it is controlling only 17% of the building sites in the area (the remainder being in the hands of private certifiers). Council is seeking to manage this situation by promoting itself as a service provider and reallocating staff from certification work to development compliance.

Partnership with NSW Food Authority

Changes to the regime governing food shop inspections, as manifested in a new formal partnership with the NSW Food Authority, has seen the Council nearly double the total number of food shop inspections undertaken compared to five years ago. Council produces a newsletter “Cuisine in Ku-ring-gai” to help inform food business operators about the NSW food legislation. The sample newsletters provided were attractive and easy to understand.

Swimming pools

There are a large number of private swimming pools in the area. In response to requests for the issue of building certificates and to address complaints, Council

issued 88 orders in 2007-08, an increase of 27 over the previous year. Council needs to consider whether it should adopt a routine inspection program of all backyard swimming pools.

Companion animals

Council has a Companion Animals Management Plan which it adopted in 2006. It is good practice that councils have such a plan. We noted evidence of a recent review of the plan which included a report on the status of strategic actions identified in the plan. We noted that Council previously had a Companion Animal Advisory Committee, which was disbanded following the Council elections in September 2008. The establishment of such a committee was identified as a strategic action in the Plan. Given this, Council may need to evaluate whether not having such a specialised committee is adversely impacting on this area of its operations.

Councils are required to report certain companion animal related matters to the Division. Council has been reporting as required, indicating an awareness of its obligations.

Council's companion animal euthanasia rate was 30% compared to approximately 48% across NSW in 2007/08. This suggests that Council is pursuing proactive strategies to avoid unnecessary euthanasia of seized animals. Council has contracted a local veterinary hospital to house and euthanase sick and dangerous animals as required.

5.2.6 Council response

Council noted the following key findings / actions required:

- *Adopt, implement and monitor a compliance / enforcement policy.*
- *High number of Orders issued as compared to other Councils.*
- *Very high number of private certifiers – 83% of construction sites under care of private certifiers.*
- *Food Inspection programme active.*
- *Private swimming pool inspection programme active with regulatory action where appropriate.*

- *Companion Animals Management Plan current and active. Disbanding of Companion Animals Management Committee, whose being, was identified as a strategic action under the plan may be adversely impacting on this area of operations.*

Council provided the following comments in response to the draft report:

Compliance Policy

“Council at its meeting of 8 December 2009 resolved to place its draft Compliance Policy on public exhibition for a period of 28 days, commencing 1 February 2010, and after the conclusion of the exhibition period, a report comes back to Council for adoption of the policy.

It is expected that the policy will be formally adopted by end of March 2010. In the interim, staff refer to the policy as a guide to enforcement actions.”

High number of regulatory Orders

“This criticism seems unjust. Compliance and Regulatory officers are active and professional in their tasks, utilising appropriate regulatory actions in their duties.

The following table details actions:

Act	2007	2008	Variance
EP&A Act Section 121	62	88	26 increase from 2007
Food Act	0	13	13 increase from 2007
Impounding Act	9	70	61 increase from 2007
Local Government Act S 124	39	34	5 decrease from 2007
Local Government Act S 125	0	0	
Noxious Weeds Act	32	60	28 increase from 2007
POEO Clean Up Notice	22	18	4 decrease from 2007
POEO Prevention Notice	7	20	3 increase from 2007
POEO Noise Control Notice	0	0	
POEO Noise Abatement Notice	0	0	
Rural Fires Act	0	0	
Swimming Pools Act	61	88	27 increase from 2007
CAA Nuisance Dog	10	15	5 increase from 2007
CAA Dangerous Dog	2	4	2 increase from 2007
CAA Nuisance Cat	0	2	2 increase from 2007
	244	412	168 increase from 2007

It should be noted that the compliance and regulatory section was generally fully staffed and expanded within 2008, compared to previous years which greatly assisted in our ability to adequately respond to concerns and programmes.

The increase in Orders under EP&A Act was attributed to the increasing demand by PCAs active in our area, whom demand orders are issued on sites where compliance by other means has been ineffective. This demand for Orders by external sources together with in-house activities associated with the increased larger style construction activity in the area has seen the growth in total number of Orders issued.

One should be mindful that Orders are but one of our tools. In the 2008 year, 297 Penalty Infringement Notices were also issued for breach of development approvals.

The Food Act orders provisions were fully implemented in 2008 as a result of changing staff, and a more rigorous and professional approach to regulating food premises in accordance with the NSW Food Authority partnership.

Impounding Act Orders increased as a direct result of the increase and lack of tolerance by Council for unauthorised advertising structures in the area. Our vigilance and regulatory action generally sees a quick response from the perpetrator.

Orders issued in respect of Noxious Weeds were due to active programmes across Council in our bushland interface areas. Council has an active programme of visiting properties immediately adjoining bushland and educating occupiers about the need to rid properties of invasive and noxious weeds. The 60 Orders issued were only as a result of the failure of the occupiers to respond to the lengthy educational approach.

Orders issued in respect of the Protection of Environment Operations Act, prevention provisions, are directly attributed to our actions in preventing or minimising water pollution via sediment escape from building sites. The Ku-ring-gai area contains much high quality natural fauna and flora, with many tributary creeks, the eco systems of which are generally in satisfactory order and their preservation is considered important. Within 2008, 85 separate penalty infringements were issued for non compliance, representing fines to a total of \$122,250.00

In response to Council comment, we should point out that we have at no time been critical of the high number of orders issued. In the draft report and in this final version, we noted the high number to highlight the importance of Council having an adopted policy on compliance and enforcement.

High number of private certifiers

“Council has for a number of years noticed a growing trend of local property owners to choose private certifiers over council certifying services. This shift in dynamics has led to many difficulties and confusion in the general public, with Council being directly responsible for just 17% of the work at the end of the 2008/09 financial year.

In an attempt to stem this flow and reverse the trend, a specialty marketing brochure was recently developed that promotes Council’s in-house certifying services. The preliminary results of this marketing programme has seen Council’s market share rise to 21%, during the period July 2009 to end of November 2009.”

Food Inspection Programme

“Council continues to work in partnership with NSW Food Authority. Our inspection programme remains on track and in accordance with the Authority’s guidelines. Council continues to develop and release information brochures aimed at increasing the general food handling safety standards for all persons involved in the preparation and sale of food.”

Private swimming pool inspections

“Council maintains an active programme in inspecting private swimming pools at the time of Building Certificate applications. Orders are issued if non compliance is found. Our activity in this area is considered meritorious, given the recent enquiry into private swimming pool safety / toddler drowning. “

Council’s comment has been noted. Nevertheless, Council should have a proactive approach to the routine inspection of swimming pool compliance. The report has been altered to suggest that Council considers adopting a routine inspection program.

Companion Animals Management

“Council’s decision to disband the Companion Animals Committee has not been without affect on companion animal management, especially in the development of policy concerning companion animal matters. The Committee had been a worthwhile sounding board and input base for policy and programme development. The membership also provided a ready network of volunteers keen to assist Council in public education programmes concerning cats and dogs. The hosting of such a committee is considered industry best practice.

The void will be particularly noticed in 2010, during which time Council is required to develop a new 5 year companion animal’s management plan. The current Open Space Reference Committee does not adequately address the needs of the companion animals management.

Animal impounding services are envisaged to become problematic in the near future with the pending retirement and closure of current service provider and a lack of suitable alternatives within the local area.”

In response to the Council’s comment, we should point out that this matter clearly warrants further consideration by the Council.

Matters not covered in the draft report

Office Accommodation

“Although the Department of Local Government officers undertook an inspection of the office accommodations of Development & Regulatory services and verbally advised of their opinion that same was sub standard, nothing has materialised in the report. It is considered appropriate that such should be included in the final report.”

During the onsite component of the review, we did note that some work areas were very crowded, in particular the area occupied by the rangers on the top floor. This matter was not addressed in the draft report given that Council had indicated that it was aware of the issue. Council is in the process of relocating some Operations staff to new accommodation in Pymble; this may provide the opportunity to address some of the conditions we observed.

Vegetation mapping project

Council, in commenting on the draft report, suggested that its vegetation mapping project should be have been identified in this report as a better practice. Its comment went on to state that *“This and other environmental programs related to Council’s planning functions are recognised by industry as best practice.”* In response to this suggestion from Council, we should point out we did not assess these programs in any depth during the course of the review and as such, have not included the programs as a better practice finding. Given Council’s comment, other councils may wish to contact Ku-ring-gai Council if they think there is potential for them to learn from Council’s approach. There is extensive information on Council’s website.

5.3 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 those assets.

The ongoing challenge for the Council is to ensure that it has the financial resources to maintain and improve services and infrastructure in accordance with the community strategic plan and its adopted delivery program. At the same time, the strategic plan and delivery program need to be informed by accurate information about Council's financial resources.

5.3.1 Scope of review

A review was conducted of a range of aspects of Council's asset and financial management practices, including:

- *Financial management*
- *Asset management, including land assets, plant replacement and capital works*
- *Information technology strategy*

5.3.2 Overview of asset and financial management practices.

Council has made progress in this area of its operations, having previously been the subject of monitoring by the former Department of Local Government because of concerns about its finances.

Council has been generating operational surpluses in recent years, albeit that the amount of the surplus has been trending downwards over the last three financial years. The result for 2008/09 was helped by an advance payment of the Financial Assistance Grant quarterly instalment payment of \$725,000.

Council's 2008/09 financial report was qualified due to the auditor's concern about the valuation of investments; Council holds \$7M in Collateralised Debt Obligations (CDO) securities. Council's Auditors have indicated that Council's overall financial

position was, in their opinion, satisfactory, subject to the possibility of further investment write downs.

We noted that Council has a long term financial plan and a significant amount of financial and asset related data. It is pursuing a strategy to build its working capital and at the time of the review, Council staff were working with the elected Council to gain direction as to future management of Council's finances and assets. This is important work that needs to be brought to fruition.

5.3.3 Better practices

Asset management policies

Council has recognised the importance of having a sound policy framework in place to govern its assets. Council adopted an Asset Management Policy in February 2009 and recently adopted a policy on the Acquisition and Divestment of Land. While we have noted this as better practice, we should also note that Council needs to demonstrate ongoing commitment to implementing and being guided by the policies and plans that are adopted. Given the changes that will occur in the area, it will be incumbent on the current and future Council to make decisions having regard to the adopted policies/plans and resist the temptation to vary from this course as a response to short term political imperatives.

While Council has a sound asset management policy to build upon, asset management and the provision of infrastructure are areas where Council can improve. Council is aware of this. We discuss this further in the next part of the report.

5.3.4 Areas for improvement

Long term financial planning

While we note that Council has developed a long term financial plan with multiple scenarios, we believe there is scope for further development of this plan once Council has completed its Asset Management Audit (see *other significant observations*). There is a need for ongoing engagement with the elected Council to seek direction as to which of the four financial cases it wants to pursue (notwithstanding that there will be ongoing utility in alternative cases being

considered). In making this observation in the draft report, it was not our intent to infer that the three “non-preferred” financial cases should be disregarded.

Asset management and the provision of new/improved infrastructure

Council has acknowledged that there are areas of its operations where it needs to provide new and/or improved infrastructure. In February 2006 it conducted a review of its property portfolio with a view to developing strategies to identify and address the infrastructure gaps. While we acknowledge the value and importance of this foundation work, there is still work to be done on the development of strategies.

Council pre-empted the asset management planning requirements mandated in the transition to *Integrated Planning and Reporting* by commissioning a comprehensive review of its assets. The consultant’s report on this review is highly informative and should be used as an ongoing reference document by Council staff and councillors.

We noted that the consultant’s review found *that although Ku-ring-gai Council has made substantial progress in improving its asset management capability in recent years, there were a number of areas that still need to be addressed to help improve the management of infrastructure assets*. The consultant’s report then goes on to document the areas where improvement is required.

While we observed evidence that Council is making progress in addressing the issues raised in the report, it was beyond the scope of our review to make findings on the extent of progress achieved to date. However, it is apparent to us that much work still needs to be done. We commend Council for its progress; it needs to be diligent in monitoring its performance on this key issue.

Reporting and oversight of Council’s business activities

Table 1 below shows the operating results after capital for Council’s businesses activities.

Table 1: COUNCIL BUSINESSES - OPERATING RESULTS AFTER CAPITAL

	2008/09 \$000	2007/08 \$000	2006/07 \$000
Children's Centre	20	11	-98
Art Centre	-177	-163	-115
Swimming Pool	-60	-104	-99
Trade Waste	394	496	500
Gordon Golf Club	105	131	216
Turrumurra Golf Club	124	60	19
Tennis Courts	112	180	225
Commercial Leasing	-32	-564	-569
Nursery	-58	-21	-48

Council does not report any current assets or liabilities for these businesses. We are also concerned about a possible lack of consistency in the reporting of costs and income for the businesses. Council needs to review the allocation of costs to these businesses so that it can then determine the true position and performance of the businesses.

There is insufficient information in the management plan and annual report to facilitate the proper oversight of these businesses by the Council. The significant variations in some of the results warrant explanation.

Council needs to have due regard to the application of National Competition Policy to its businesses.

Information Technology Planning

As mentioned in the overview of this section, the use of information technology is pervasive in all modern organisations and brings with it the need to make significant investments in information technology infrastructure. While we noted examples (such as Council's Intranet) where Council is making extensive and effective use of its network architecture, we did not find evidence of a well developed, documented strategy for the use of information and communication technologies.

It appears that Council needs to give further consideration to the role information technology will have in the future delivery of services and in the management of the

organisation. This work needs to then be reflected in future business cases for investments in information technology and systems.

5.3.5 Other significant observations

Rates structure

Council's average residential rates are the highest in the DLG comparative group (DLG Group 3) and 32% above the average. Council's average business rates are close to the lowest in the comparative group average and 35% below the average.

Coordinated focus on strategy and delivery

In recent years the organisation has made changes to its structure which effectively split responsibility for long-term planning for all Council's services, activities and facilities (Strategy) and delivery/maintenance of assets (Operations).

While there are clearly any number of structural arrangements that can be used by councils, the Asset Management structure adopted by Ku-ring-gai appears to be working well. According to the Director of Operations, the delineated roles have allowed his directorate to focus on efficient service provision.

We were concerned that the establishment of the delineated roles might have given rise to conflict and inefficiencies in asset planning and management. However, we observed a high level of respect between staff of different directorates and specifically, evidence of the work of different directorates being used to inform the work of others. This suggests that Council will be successful in achieving the strategic intent of dividing the functions.

Relocation of Council Depot/Workshop

Council recently acquired a building at the Pymble industrial estate adjacent to a site that it already owned. It is developing the site and building as a modern depot/workshop and base for its Operations directorate. This in turn has allowed it to sell the site of its current depot (which is strategically located on the rail corridor) for an aged care development. We visited the current depot site and it is clearly in need of renewal and while it has served the Council for many years, it has some inherent

constraints. It is noteworthy that Council has had the foresight and operational capacity to address this.

Drainage

Council has been working to address flooding in urban areas. In 2003 it undertook a study which identified that potentially 1,000 properties could be subject to flooding. It undertook a Catchment Study to identify capacity and quality issues with its drainage network. Council indicated that this work has allowed it to identify priority issues and problems that need to be addressed. In 2004, Council adopted a Policy for Drainage Works. It is currently collecting a Stormwater levy which is generating revenue of \$880K per annum. It is allocating \$550K of this to increase capacity to address high priority flooding issues while at the same time building reserves. This work is noteworthy because it demonstrates that Council has identified a core service issue that needed to be addressed and it has been working towards achieving a better outcome for a number of years.

5.3.6 Council response

Council has advised us that *“Available working capital has been steadily increasing and is on target to be at \$3.8M in 2012/13 in accordance with Council’s external auditors’ recommendation.”*

In response to our commentary about the need for ongoing engagement with the elected Council to seek direction as to which of the four financial cases it wants to pursue (notwithstanding that there will be ongoing utility in alternative cases being considered), Council commented that *“This has been done through a series of workshops, briefings, presentations etc. It is also worth noting that we firmly believe that there is significant benefit in keeping the four (4) cases at this stage as it will assist with the decision making process for Councillors.”* As indicated in our original commentary, there is utility in keeping the alternative business cases under consideration.

Council has also made the point that there is a sound rationale for having the four business cases and in fact there is a single base case and three future cases which build upon it which address the inclusion of different options for the future. Council acknowledges the need for it to adopt and pursue a long term financial plan.

Council responded to our commentary on IT strategic planning by advising that *“Work has commenced on further developing our IT Strategic Plan. It has been decided that the most effective approach will be to outsource some of the work. As a result we have contacted various companies to obtain quotes regarding getting assistance with the development of a revised IT strategic plan.”*

In the draft report we commented on Council’s rate structure but failed to comment on Council’s efforts to restructure rates. Council, in its response to the draft report commented on this omission, stating that *“When the reviewers were at Council they made a number of observations about the fact that it (the restructure) was innovative, provided equity and was best practice in terms of the way it had been done with Councillors.”*

While we have noted Council’s comments about the changes it has made to its rate structure, we acknowledge adjusting rates structures can be inherently difficult and politically fraught, given there are inevitably winners and losers. We commend the Council for being proactive in reviewing its rate structure and for being mindful of the need to address the apparent equity issues.

Special rate variation

We provided information in the draft report on the procedure adopted by Council in applying for a special rate variation. Following comment from Council and discussion on this matter, this information was deleted from the final report. Information about this issue was previously conveyed to Council and it is our view that the issue does not need to be reported on in this report.

5.4 COMMUNITY & CONSULTATION

A council's charter requires that a council:

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

5.4.1 *Scope of review*

A review was conducted of a range of aspects of Council's community and consultation practices, including:

- *The methods Council uses to involve and determine the views of its community*
- *Ageing Population*
- *Social and community functions of Council*
- *Annual reporting*
- *Customer service standards*

5.4.2 *Overview of community and consultation practices*

This is an aspect of Council operations where it excels. It has a comprehensive approach to community consultation and councillors appear to be well connected with constituents, notwithstanding the relatively large population of the area. Council demonstrates a genuine commitment to communicating effectively with its community.

5.4.3 *Better practices*

Social and Community Planning

Council adopted the Ku-ring-gai Community Plan 2005-2009 in May 2006. The Plan is well presented and shows evidence of being based on a sound developmental

process. It is comprehensive in its scope, includes a solid demographic profile based on ABS data and strong evidence of integration of strategies across Council functions and divisions. There is evidence of a commitment to community consultation both in the preparation and implementation of the Plan.

Council has also worked in partnership with a number of other councils and organisations to produce the *Northern Sydney Aboriginal and Torres Strait Islander Social Plan 2007-2011*. This plan is well researched and presented. It contains collaborative strategies to address issues of social justice for Aboriginal communities in the region.

Community Participation and Consultation

Council has demonstrated a strong commitment to consulting and engaging with its community for the purpose of providing the community with adequate, equitable and appropriate services and facilities. In this regard it employs a range of initiatives which include:

- a robust Access and Equity Policy, adopted in May 2009, to foster the inclusion of the increasing number of its residents from diverse cultural and linguistic backgrounds in its communication and consultation processes
- a Community Consultation Policy and attendant comprehensive Community Consultation Guidelines, both of which were adopted in June 2008
- a Resident Feedback Register, comprised of randomly selected residents who are reflective of the general demographic characteristics of the community to provide feedback on important and topical issues
- four reference committees (Open Space, Heritage, Community, and Sustainability) all of which are comprised mainly of community representatives
- the opportunity for residents and interested parties to address meetings of Council and its committees
- Ku-ring-gai Youth Council, which has been established to advise Council on issues affecting youth
- a user friendly and extremely informative website

- a range of extremely well produced and informative publications such as “Ku-ring-gai Update” and “Ku-ring-gai E-News”, brochures promoting Council events, activities, services, facilities and educational materials.

Provision of Community Services

Council demonstrates a keen commitment to address the needs of its residents in the provision of aged and disability services, children’s services, and youth services.

It provides an impressive array of educational, recreational, cultural and general entertainment programs for a wide cross-section of its community. These include:

- For children: school holiday programmes with a variety of activities
- For youth: a youth leadership programme, Youth Week, the Fitz Band Comp and the Art for Teenagers Program
- For Seniors: Spring into Action, Seniors Week Festival and the Ku-ring-gai Monthly Senior Seminar Program
- For the community in general: Active Ku-ring-gai Programme, Australia Day Concert, Festival on the Green, Twilight Concert in the Parks Series, Ku-ring-gai Garden Festival, Festival of Wildflowers.

These programs are well publicised both on Council’s website and in high quality print media such as brochures, posters and Council’s regular publications which include Parent Newsletters, Ku-ring-gai Update and the Ku-ring-gai Council E-News.

Council actively seeks feedback from participants in its programs to measure their satisfaction with events and inviting suggestions for improvement.

The programs attract a very high attendance rate and generate positive and supportive feedback from participants.

Use of volunteers

Council encourages and co-ordinates a high number of community volunteers across a wide range of activities. This is particularly evident with the 1200 plus bushcare volunteers and strong participation of volunteering in social support services such as community transport and activities for the elderly.

Customer Service Standards

Council demonstrates a very strong commitment to providing quality service as a core value in its service delivery. Its “Providing a Service to Customer’s Policy” is published on its website.

In its Customer Satisfaction Survey conducted in June 2008, Council customer service was rated very positively. It is commendable that Council measures customer satisfaction.

5.4.4 Areas for improvement

Integration of the Social and Community Plan

There is a lack of integration of the Social and Community Plan with the Management Plan and the Annual Report⁷. It is difficult to find clear mechanisms for monitoring and evaluation. Although the Plan identifies priorities, no timeframes have been set. These issues should be resolved when Council implements the new integrated planning and reporting framework, which has been introduced by the Local Government Amendment (Planning and Reporting) Act 2009.

Ageing Strategy

An ageing population will give rise to the need for a significant increase in community facilities that meet the needs of older people.

Council’s Community Facilities Strategy acknowledges that all types of Council’s community facilities are struggling to meet current needs of the area’s ageing population. In particular it notes that:

- Council’s senior citizens centres are small, outdated and require refurbishment or renewal
- Council’s existing facilities for general activities, programs and meetings are limited by space, poor amenities and are predominantly used for children’s activities at popular times leaving little space for daytime activities for adults, particularly older people.

⁷ Council has responded by pointing out that “specific objectives relating to the Community Plan are directly linked to each staff member’s Work Plan through their Key Performance Indicators.”

In line with the recommendations contained in the Community Facilities Strategy, Council should:

- in the short term, increase the utilisation of its existing facilities by maximising the functionality of those facilities to facilitate them being used by a range of different user groups, and
- in the longer term, develop new community facilities, provide flexible multi-purpose facilities that maximise the sustainable use of limited resources and which are capable of responding to the varied and changing needs of a range of groups within the community, rather than the needs of individual target groups.

Annual Report

Council's 2007-2008 Annual Report meets legislative reporting requirements except to the extent that it was deficient in regard to the provision of:

- a statement of its activities to implement its EEO Management Plan, as required by section 428(2)(n) of the Act
- details of programs to promote services and access for people with diverse cultural and linguistic backgrounds in a manner that is consistent with the principles of multiculturalism, as required by section 428(2)(j) of the Act
- a report on Council's performance in relation to access and equity activities to meet residents' needs outlined in Council's management plan, as required by clause 217(1)(d)(i) of the Regulation. (In this regard it is noted that the Report refers to an attachment which does not accompany the Report.)

It is noted that the annual reporting format will change as a result of the new integrated planning and reporting framework. Notwithstanding these reporting deficiencies, Council has clearly undertaken activities that could have been reported upon.

5.4.5 Other significant observations

Annual Report

Council has produced an excellent summary of its 2007-2008 Annual Report. The Report, accompanying documents and Summary are easily located on Council's website. The annual report is available in a range of formats.

5.4.6 Council response

Council's response to the draft report noted that we had failed to include comment on the Council's commendable use of volunteers. This had been addressed in this final version of the report.

Council also had a concern about the validity of our finding about the omission of certain matters from its Annual Report for 2007/2008. We reviewed our finding and maintain that it is accurate. In stating this, we note that Council has subsequently published its Annual Report for 2008/2009. We encourage Council to check this report, to ensure that it included all of the required information. If it does not, this would indicate a need for Council to develop an improved review/checking mechanism for future reports.

5.5 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.

5.5.1 Scope of review

- *Human resources strategy and workforce planning*
- *Employee attitude surveys*
- *Job descriptions and job evaluation*
- *Recruitment and selection processes*
- *Equal employment opportunity*
- *Occupational health and safety*
- *Secondary employment*

5.5.2 Overview of the organisation

The Council has a well developed human resources strategy and practices, with the exception of its human resources information system (HRIS). It has developed a salary system in consultation with its staff which appears to meet the needs of both the organisation and its workforce. It has a functioning Consultative Committee and an Occupational Health and Safety (OH&S) Committee. It has recently reviewed the resourcing of OH&S and allocated new staff resources. There is a need for these resources to be directed to the development and implementation of a corporate plan to ensure the maintenance and improvement of OH&S.

5.5.3 Better practices

Workforce Planning

Council has a workforce plan which demonstrates a sound understanding of the workforce planning process and its importance to the achievement of Council's strategic objectives. While Council's workforce planning process is still in its early stages of development, the documentation provided to us shows that Council's commitment to workforce planning extends beyond rhetoric and that it is well placed to take advantage of the investment it is making in workforce planning.

Council's workforce planning process has a clearly defined purpose – *to position Council for optimum use of its human resources to meet current and future stakeholder needs.*

The objectives of its workforce planning process include proactively identifying and planning for potential changes and contingencies that may impact on the achievement of its stated goal of having the right people in the right jobs at the right time. The objectives also recognise that an effective workforce plan can be a branding tool and Council clearly intends to make use of it to attract and retain staff.

Council has adopted a sound set of principles that underpin its process – the most important of which is the explicit recognition that “workforce planning is a process, not an event”. The principles also recognise the importance of current and reliable data, the need for resourcing of the plan, the need for review/evaluation. The plan explicitly refers to the role of workforce planning as part of the integrated planning and reporting process.

We noted evidence that Council developed its workforce planning process in a consultative manner. A steering committee was established which included representatives from across Council. This is an important better practice, as it can not only contribute to the quality of the process (through drawing on a range of perspectives), but also help engender ownership of the process by line management.

The plan is informed by a risk analysis that contextualises the concept of risk in terms of Council's workforce and which recognises different types of risks.

The plan demonstrates that Council has undertaken an initial review of its workforce using the aforementioned risk analysis process to identify jobs which warrant priority attention.

The plan documents key issues in relation to knowledge management and the attraction and retention of key staff.

The plan incorporates schedules which detail action items for the coming year, as well as issues that will need to be accounted for in the intermediate (5 years) and longer term (10 years).

Salary system

The Local Government (State) Award 2007 requires councils to introduce a salary system to complement the skills-based structure and rates of pay of the Award. The Council was able to demonstrate that it had recently redesigned its salary system in consultation with line management, unions and employees. While it was not within the scope of our review to test the compliance of the system with the Award, we did observe that employees and line managers commented very favourably about the new system. They indicated that it was easy to understand, well documented and that the required reviews were being conducted. We have chosen to highlight it as a better practice because the development and implementation of salary systems has historically been a challenge for many councils and this Council appears to have developed an innovative solution that satisfies all of the stakeholders.

Employee attitude surveys

Council was able to demonstrate that it makes use of employee attitude surveys to evaluate and inform the development of its workforce relation practices. At the time of the review, it was working with other councils to make use of common questions and thereby facilitate benchmarking. It is the commitment to undertaking successive reviews and move towards using the surveys for benchmarking that indicated to us that Council is achieving better practice.

5.5.4 Areas for improvement

Development of a comprehensive OH&S Plan

While Council has recognised the importance of ensuring the occupational health and safety of its workplaces (by recently employing two staff members to support this function), it does not have a comprehensive OH&S Plan. The development of such a plan will help ensure that Council has identified potential hazards. The plan should focus attention on the development and implementation of strategies to mitigate those hazards and provide a means of senior management monitoring the OH&S performance of Council.

Registration of Enterprise Agreement

Council indicated that it entered into an agreement with the unions in 2007 but that this agreement was not registered. Council is negotiating a new agreement which it intends registering. It is important to the enforceability of such agreements that they be registered in accordance with due process.

5.5.5 Other significant observations

Industrial relations strategy

The Council's self assessment indicated that there has been no industrial disputation in recent times. During the course of the review we enquired about this and were informed that this was not always the case, but that in 2006 Council identified the need to address the matter and developed an industrial relations strategy to do so. We met with the Chairperson of Council's Consultative Committee who commented favourably on management/worker relations and confirmed that the Committee was meeting on a regular basis. This reflects good practice on the part the Council.

Appointment of OH&S officer at works depot

Council has recently appointed a *Safety Officer* whose primary role is to support the outdoor workforce in managing the hazards they are exposed to. While it is commendable that Council is making this commitment to the safety of its staff, we make the observation that this position cannot and should not assume the responsibility for maintaining a safe work environment – this must remain with the managers, supervisors and employees performing the work.

Lack of a Human Resources Information System

Council does not have a dedicated computerised human resource information system/module that it uses. While we have stopped short of flagging this as an area for improvement, we would encourage Council to consider how it currently manages and uses information about its workforce and individual employees. The needs of Council's line managers, as the ones vested with the day to day management of the workforce, should be considered along with the needs of Council's planning processes (which need to be informed by accurate information about trends in Council's workforce demographic and the skills/talents that Council has and requires).

Management of the General Manager's Employment/Performance

The proper management of the General Manager's employment/performance is a key function of the elected Council. We noted that the General Manager has been engaged using the standard contract and that his performance was reviewed earlier this year with the assistance of an independent consultant. We were satisfied that Council's practices in relation to this key matter were in order.

5.5.6 Council response

Lack of a Human Resources Information System

Council has commenced implementation of the training and development module in Tech One, and are projecting the implementation of the Tech One OHS module later this financial year.

APPENDIX 1 – RISK RATING - AREAS FOR IMPROVEMENT

The areas for improvement noted in this report have been assessed for a priority ranking based on the following risk analysis.

		CONSEQUENCE		
		Significant <i>Significant risk to the operations of council and if not addressed could cause public outrage, non-compliance with council's statutory responsibilities, severe disruption to council's operations and council's ability to meet its goals.</i>	Moderate <i>Moderate risk to the operations of council and if not addressed could cause adverse publicity, some disruption to council's operations and council's ability to meet its goals.</i>	Minor <i>Minimal risk to the operations of council, little disruption to council's operations and will not limit council's ability to meet its goals.</i>
LIKELIHOOD	Almost certain	High	High	Medium
	Possible	Medium	Medium	Low
	Rare	Medium	Low	Low

Priorities for recommendations: <i>(based on application of risk analysis)</i>	Risk categories could include:
<ul style="list-style-type: none"> • High • Medium • Low 	<ul style="list-style-type: none"> • Reputation • Compliance with statutory requirements • Fraud/corruption • Financial • Legal liability • OH&S

APPENDIX 2 - NEW/REVISED PLANS, POLICIES & STRATEGIES

In commenting on the Governance section of this report, Council also provided a list of plans, policies and strategies adopted and considered for exhibition by Ku-ring-gai Council from July 2009 to December 2009 which it considered relevant to that section. The list is clear evidence of a Council which is continuing to be proactive in its review of its practices.

Rates & Charges Recovery Policy including eligible pensioners' reductions policy

Report: 7 July 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.05.pdf>

Policy:

http://www.kmc.nsw.gov.au/resources/documents/Rates_and_Charges_including_eligible_pensioner_reduction_Recovery_Policy.pdf

Sundry Debtors Recovery Policy

Report: 7 July 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.05.pdf>

Policy:

[http://www.kmc.nsw.gov.au/resources/documents/Sundry_Debtors_Recovery_Policy.pdf_\(2009_094685\).pdf](http://www.kmc.nsw.gov.au/resources/documents/Sundry_Debtors_Recovery_Policy.pdf_(2009_094685).pdf)

Acquisition and divestment of land policy

Report: 7 July 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.08.pdf>

Policy:

http://www.kmc.nsw.gov.au/resources/documents/Acquisition_and_Divestment_of_Land_and_Policy.pdf

Disaster Recovery and Business Continuity Plan

Report: 7 July 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.13.pdf>

Plan:

http://www.kmc.nsw.gov.au/resources/documents/Disaster_Recovery_Plan.pdf

Amendment to the Management Plan

Report: 14 July 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptemc14July2009GB.01.pdf>

General Committee Structure

Report: 8 September 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Sept2009GB.04.pdf>

Acquisition and divestment of land policy

Report: 8 September 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Sept2009GB.06.pdf>

Policy

[http://www.kmc.nsw.gov.au/resources/documents/Acquisition and Divestment of L and Policy.pdf](http://www.kmc.nsw.gov.au/resources/documents/Acquisition_and_Divestment_of_L_and_Policy.pdf)

Draft LEP (Town Centres) 2008 deferred matters Lindfield and Turramurra

Report to Planning Panel: 9 September 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptkpp9Sept2009GB.01.pdf>

Climate change policy

Report: 13 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc13Oct2009GB.08.pdf>

Policy:

http://www.kmc.nsw.gov.au/resources/documents/Climate_Change_Policy.pdf

Proposed land reclassification:

Report: 13 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc13Oct2009GB.09.pdf>

Community Strategic Plan

Report: 13 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc13Oct2009GB.10.pdf>

Plan:

<http://www.kmc.nsw.gov.au/www/html/3225-draft-strategic-plan-2030.asp>

Procurement Policy

Report: 13 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc20Oct2009GB.011.pdf>

Policy:

http://www.kmc.nsw.gov.au/resources/documents/Procurement_Policy.pdf

Miscellaneous Lands Generic Plan of Management

Report: 7 July 2009 - draft for exhibition

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.12.pdf>

Draft plan:

<http://www.kmc.nsw.gov.au/resources/documents/attomc7July2009GB.12-A.pdf>

Report for Adoption: 20 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc20Oct2009GB.08.pdf>

Adopted Plan

<http://www.kmc.nsw.gov.au/www/html/3514-miscellaneous-lands-plan-of-management.asp>

Council Chambers Plan of Management

Report: 7 July 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.10.pdf>

Draft Plan:

<http://www.kmc.nsw.gov.au/resources/documents/attomc7July2009GB.10-A.pdf>

Report for adoption: 20 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc20Oct2009GB.08.pdf>

Adopted Plan

<http://www.kmc.nsw.gov.au/www/html/3512-council-chambers-plan-of-management.asp>

Draft Bushland Reserves Plan of Management

Report

<http://www.kmc.nsw.gov.au/resources/documents/rptomc20Oct2009GB.07.pdf>

Adopted Plan

<http://www.kmc.nsw.gov.au/www/html/1746-bushland-reserves.asp>

Ku-ring-gai Arts Centre Plan of Management

Report: 7 July 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.11.pdf>

Draft Plan:

<http://www.kmc.nsw.gov.au/resources/documents/attomc7July2009GB.11-A.pdf>

Report for adoption 20 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc20Oct2009GB.10.pdf>

Adopted plan 20 October 2009

<http://www.kmc.nsw.gov.au/www/html/3515-ku-ring-gai-arts-centre-plan-of-management.asp>

Policy for the payment of expenses and provision of facilities to Councillors

Report: 11 August 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc11Aug2009GB.04-Amended.pdf>

Report: 13 October 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc13Oct2009GB.03.pdf>

Policy

<http://www.kmc.nsw.gov.au/resources/documents/attomc13Oct2009GB.03-01.pdf>

Adoption report

<http://www.kmc.nsw.gov.au/resources/documents/rptomc10Nov2009GB.02.pdf>

Adopted policy

[http://www.kmc.nsw.gov.au/resources/documents/Policy for the Payment of Expenses and Provision of Facilities to Councillors ..pdf](http://www.kmc.nsw.gov.au/resources/documents/Policy%20for%20the%20Payment%20of%20Expenses%20and%20Provision%20of%20Facilities%20to%20Councillors%20..pdf)

Policy for the management of community and recreation land facilities

Report: 2 November 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc10Nov2009GB.05.pdf>

Adopted policy

[http://www.kmc.nsw.gov.au/resources/documents/Policy for Management of Community and Recreation Land and Facilities.pdf](http://www.kmc.nsw.gov.au/resources/documents/Policy%20for%20Management%20of%20Community%20and%20Recreation%20Land%20and%20Facilities.pdf)

Code of meeting practice

Report: 24 November 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc24Nov2009GB.03.pdf>

Draft code:

<http://www.kmc.nsw.gov.au/resources/documents/attomc24Nov2009GB.03-B.pdf>

Amendment to Ku-ring-gai Draft LEP Town Centres 2009

Report to Ku-ring-gai Planning Panel: 2 December 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptkpp2Dec2009GB.03.pdf>

Disposal of Household Clinical Waste

Report: 7 July 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc7July2009GB.14.pdf>

Draft Policy:

<http://www.kmc.nsw.gov.au/resources/documents/attomc7July2009GB.14-01.pdf>

Draft Ku-ring-gai Development Control Plan (Town Centres) 2009

Report: 28 July 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptqcm28July2009GB.01.pdf>

Policy

<http://www.kmc.nsw.gov.au/resources/documents/attomc11Aug2009GB.04-01.pdf>

St Ives Showground and Precinct Draft options paper

Report: 1 December 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc1Dec2009GB.04-Amended.pdf>

Draft Ku-ring-gai Town Centres Public Domain Plan

Report: 8 December 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Dec2009GB.02.pdf>

Draft Ku-ring-gai Town Centres Parking Management Plan

Report: 8 December 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Dec2009GB.03.pdf>

Draft Plan

<http://www.kmc.nsw.gov.au/resources/documents/attomc8Dec2009GB.03-03.pdf>

Sports Facilities Plan of Management

Draft report 8 December 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Dec2009GB.04.pdf>

Adopted Plan

<http://www.kmc.nsw.gov.au/resources/documents/attomc8Dec2009GB.04-01.pdf>

Compliance policy

Draft report: 8 December 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Dec2009GB.13.pdf>

Draft policy:

<http://www.kmc.nsw.gov.au/resources/documents/attomc8Dec2009GB.13-01.pdf>

Local Approvals Policy

Draft Report: 8 December 2009

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Dec2009GB.14.pdf>

Draft policy:

<http://www.kmc.nsw.gov.au/resources/documents/attomc8Dec2009GB.14-01.pdf>

Long term financial plan

Report: 8 December 2009:

<http://www.kmc.nsw.gov.au/resources/documents/rptomc8Dec2009GB.15.pdf>