

challenges improvement innovation good governance

Local Government Reform Program - Promoting Better Practice

FOCUSSED REVIEW REPORT

LOCKHART SHIRE COUNCIL

NOVEMBER 2004

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1. ABOUT THE REVIEW

Focussed Review objectives

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

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

Focussed Review process

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

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

Focussed reviews are short reviews focussing on specific areas of council activities that have been identified as a result of an analysis of information relating to the council and its performance. These reviews use the same tools for identifying and analysing performance as the full reviews. This means that even though the department spends much less time with the council undertaking a focussed review, it still uses the tools to itself get the best possible benefit out of the process.

Focussed reviews involve the department working with up to three councils in a region at one time. After completing the practice checklist, the departmental staff spends a day with council on site carrying out verification checking. The council will receive a summary of the key issues identified during the review. The focussed review has a greater compliance focus than the full review strategy.

There are essentially five steps in a review - preparing, assessing, checking, analysing and reporting. The review team examines local circumstances in order to understand the pressures on council and how the council has sought to manage that environment.

It is expected that this type of review will be limited to some aspects of council operations. As such, it will not provide an in depth or overall picture of council operations. The results of the review may, however, provide an indication of matters needing attention across aspects of council operations.

Lockhart Shire Council Review

Lockhart Shire Council was asked to complete a checklist on key council policies and practices. The completed checklist was analysed by the review team prior to commencing the on-site review process.

Senior Investigations Officers Keith Coates and Paul Terrett comprised the review team. They conducted an on-site review of council on Thursday 23 September 2004. In order to review council it is necessary to examine its performance across a range of functions. A number of modules of a practice checklist have been developed to assist council in assessing its functions and checking its compliance. Council's response to the checklist is used as a guide for the on-site review and tests how council has set about delivering its priorities and measuring its achievements.

The on-site review consisted of a briefing for council's General Manager and Mayor, conducting interviews, attending a councillor briefing session and reviewing a number of council's policies and other documents.

2. EXECUTIVE SUMMARY

Lockhart Shire Council is broadly complying with its statutory obligations and appears to meet its obligations under the council's charter as is required under section 8 of the Local Government Act 1993.

The council works well with its community and recognises the needs of the local area, with all councillors appearing to work for the betterment of the Lockhart Shire area.

Some work is needed in improving practices in areas such as fraud control, risk management, disposal and procurement, record management and tendering. It is noted that these areas were also concerns in other Riverina councils. Council may consider addressing these areas on a regional basis through the Riverina East Regional Organisation of Councils (REROC).

Financially, council is in a satisfactory position. Strategic planning has not been a priority of the council and council needs to consider its long term planning requirements and goals. (*Recommendation 1*)

The council is a small operation and is to be commended for its ability to identify and address problems and to meet its statutory requirements, through the councillors, staff and the community working together.

The review team was impressed by the comprehensive way that the council appears to have met its obligations under the Local Government Act.

3. RECOMMENDATIONS

1. Council should develop a strategic plan and long-term financial plan.

Governance

2. Council should provide information to councillors and designated staff on the completion of pecuniary interest returns to ensure they are completed accurately and in a timely way. Council should ensure it uses pecuniary interest forms that comply with the Regulation. *(Refer to the department's circular 04/16: Pecuniary Interest Returns)*
3. Council should develop a statement of business ethics to communicate both internally and externally the ethical standards that council abides by and expects others to abide by in doing business with council. *(Refer to the ICAC publication: Developing a statement of business ethics)*
4. Council should examine the costs and benefits of establishing an internal audit function. Given the councils size consideration should be given to contracting for this function or to sharing this function with other councils.
5. Council should develop a risk management plan that provides a framework to proactively identify and manage generic and specific risks.
6. Council should conduct routine fraud risk assessments as part of its risk management responsibilities.
7. Council should conduct a risk assessment of council's procurement and disposal procedures.
8. Council should develop an assets disposal policy.
9. Council should develop a records management plan and business continuity plan that reflects the requirements of the State Records Act 1998. The

business continuity plan should include consideration of the risk of the loss of development application information. The council should review its document disposal procedures to comply with the General Disposal Authority (GDA10) “Local Government Records and Destruction of Records, A practical guide”, revised December 2003.

10. Council should develop a gifts and benefits policy and establish a gifts register.

11. Council should review its tendering practices to ensure they comply with the tendering requirements of the Local Government Act 1993 and the Local Government (Tendering) Regulation 1999. In particular council should ensure compliance with clause 19 of the Regulation. *(Refer to the Department of Local Government: Competitive Tendering Guidelines (1997) and the ICAC publication: “Taking the con out of contracting” (2001)).*

12. Council should ensure for all tender processes that:

- a record is kept on the relevant tender file, confirming that the tenders in question were opened in accordance with clause 16 of the Local Government (Tendering) Regulation.
- the relevant tender file contains a copy of the tender requirements including the proposed term of supply for the goods and services.
- the advertisement relating to a particular tender is kept on the relevant file.
- tender documents are kept on the relevant tender file.
- documents provided to tenderers include information relating to the need for tenderers to refrain from interaction with councillors.
- tenders are both time and date stamped.

Assets and Financial Management

13. Council should complete the development of its long-term financial plan, taking into account the following considerations:

- a. alternative sources of revenue

- b. long term rates strategy (rating structure, special variations etc)
- c. long term borrowing needs and debt service ratio
- d. investment strategies
- e. the alignment of its long-term financial plan with other strategic directions such as asset management, social and strategic plans

14. Council should investigate the development of a rates hardship policy under section 577 of the Act.

Workplace relations

15. Council should develop a workforce strategy to address its future employment needs particularly in relation to the age of its workforce.

16. Council should adopt a secondary employment policy.

4. CONTEXT

Lockhart Shire Council was created in 1906. It is represented by 9 councillors in three wards. It is situated 62 km south-west of the regional city of Wagga Wagga in the Riverina.

Covering an area 2942 square kilometres, Lockhart Shire's main towns and villages include Lockhart known as "the Verandah Town", The Rock, Yerong Creek, Pleasant Hills and Milbrulong.

It had a population of 3,552 as at 30 June 2002 and has had an average population declined of -0.41% annually over the last 5 years. 20.46% of the population are aged over 60 of these 31.65% are pension and benefit recipients.

Within the boundaries of the Lockhart Shire exists some of the "safest" dryland farming area in NSW. With innovative and up to date farming techniques, producing high yielding crops including wheat, canola, triticali, lupins, oats and peas.

The area is also prominent for the production of wool, fat lambs and pigs, as well as stud sheep and cattle.

Lockhart Shire is a general purpose rural council and the majority of its expenditure is associated with roadworks.

Council also operates three sewerage schemes, two swimming pools, a caravan park, a native bushland reserve (Galore Hill), aged persons accommodation, youth flats, five garbage depots and a variety of town parks and other amenities. The council is also involved in land development.

The total revenue for 2002/2003 was \$7,264,000 which is raised from the following

sources:	Rates and charges	23.91%
	User charges	8.01%
	Interest	3.44%
	Grants	47.79%
	Contributions	14.62%
	Other revenue	2.23%

5. DELIVERING AND ACHIEVING

Overview

There is clear evidence that the council complies with statutory obligations and meets the council's charter under section 8 of the Local Government Act 1993.

There is a culture of co-operation between the staff and elected representatives and councillors understand their central role in setting council's strategic direction and policy making.

The council understands its resource limitations and strives to find solutions to problems. This is shown in its strategic alliances with other councils in the Riverina region. For example, it shares a town planner with Urana Shire Council and, in the absence of an engineer in Urana Shire Council has provided Lockhart's personnel to meet this role. This long history of resource sharing is now being formalised with the signing of a Memorandum of Understanding with the other councils in the REROC area.

The council addresses its needs for the present but some attention on strategic planning is needed for council to ensure it is well positioned into the future and defines a vision for the shire area. This could address such areas as business development, infrastructure replacement, tourism opportunities and major capital works. This plan should be integrated into other more detailed plans such as asset maintenance, land use and population.

Council is investigating other sources of income such as a proposed nursing home and aged care facility at The Rock. The shire has some tourist potential, however the lack of accommodation has limited this activity. It protects its heritage and has developed a DCP to complement existing heritage architecture.

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 industry in the organisation; ensures that an organisation is meeting its legal and ethical obligations; and assists in the prevention and detection of dishonest or unethical behaviour.

Good Governance

Councillors appear to have a clear understanding of their roles within council. It is also apparent that there is an excellent working relationship between the elected body and council staff.

Council has also strategically identified the need to provide facilities for the aging population within its area. In this regard, council is planning to develop an eighty-bed nursing home at The Rock. Council has also identified long-term strategies to address its aging workforce (as discussed below).

Pecuniary Interest

The Local Government Act sets out the parameters, which must be adhered to when councillors and staff have a conflict between their public duty and private interests that constitutes a pecuniary interest. The Act requires that councillors and designated staff complete and lodge disclosure of pecuniary interest returns. It is important that councillors and staff observe these requirements, as to not do so has the potential to seriously undermine the community’s confidence in the integrity of local government and the decision-making processes.

We conducted a review of pecuniary interest returns. Generally they were satisfactory. However, some returns did not stipulate street addresses for properties and some councillors’ returns did not have addresses for employers. It was also noted that councillors used incorrect forms, which do not comply with the Regulation. The standard of the returns varied. The Local Government Pecuniary Interest Tribunal has pointed out the need for councillors (and designated staff) to give due

care and attention to the accuracy, detail and content of the disclosures required in returns.

It is important that councillors and staff who are identified as designated persons complete the pecuniary interest returns accurately and in a timely way. Council could use the information provided in the department's circular 04/16 to prepare information for staff and councillors to assist them in completing their returns.
(Recommendation 2)

Code of conduct

Section 440 of the Act requires that every council must adopt a code of conduct to be observed by councillors, members of staff and delegates of council. Section 440(3) requires a council to review its code of conduct within 12 months after each ordinary election.

Council adopted its code of conduct in 2000. Council will need to review its code of conduct in line with recent amendments to the Local Government Act, which provide for a mandatory Model Code of Conduct for Local Councils in NSW issued by the Department of Local Government.

Statement of business ethics

Council has business relationships with the private sector but does not have a statement of business ethics to guide these relationships. This is important because strong working relationships with the private sector are an essential part of building an efficient and cost-effective public sector. A statement of business ethics can be an excellent tool for raising private sector awareness of public sector values.
(Recommendation 3)

Risk management and internal control

A risk management plan provides council with a framework to proactively identify and manage generic and specific risks so that ethical behaviour and practice can be promoted.

Council does not have an overall plan to guide its risk management activities. It does not have a fraud policy nor has it carried out a fraud risk assessment. It does not have a procurement policy that assesses risk. There is no systematic scrutiny of council's operations, systems and performance through internal audit. *(Recommendations 4,5, and 6)*

Council does not have a disposal policy guiding the disposal of its assets. The failure of council to adopt such a policy increases the risk it will fall victim to corrupt practices. *(Recommendations 7 and 8)*

Record keeping and information technology

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

It is noted that the council disposed of records at the Lockhart tip. Council should be mindful of the State Records requirement for the general disposal of local government records (GDA10) *General Disposal Authority – Local Government Records and Destruction of Records – A Practical Guide* which defines that the method of destruction of paper records is via shredding, pulping or burning.

A business continuity plan should apply to council's physical records as well as electronic records. We encourage and support the development of a records management plan that particularly reflects the requirements of the State Records Act 1998. *(Recommendation 9)*

Gifts Register

No gift and benefits policy exists and there is no gift register. Council is encouraged to develop a gifts and benefit policy. In developing the policy, it should have regard for the ICAC publication, *Gifts, Benefits or Just Plain Bribes (1999)*. *(Recommendation 10)*

Council Meetings and reporting

Council business papers and minutes comply with the Local Government Act and regulations. The annual report and management reports show good compliance with the statutory requirements.

Tendering

During the course of the review process, the review team looked at two files relating to recent tenders for the sealing of roads and the replacement of a loader. The review team found that in the main, the tendering requirements as prescribed by the Local Government Act 1993 and the Local Government (Tendering) Regulation 1999 had been followed. However, the review team did note the following concerns:

- The record of the tender being opened in accordance with clause 16 of the Local Government (Tendering) Regulation was not kept on the relevant tender file.
- No record of all requests for tender documents was kept on the tender file.
- The tender documents did include information on interaction between council and tenderers, including prohibition on contacting councillors.
- No copy of the relevant advertisement was kept on the tender file.
- The tenders were only date stamped and not time stamped.

In relation to the loader contract, the review team noted that council finalised an open tender process at its meeting of 21 June 2004 by resolving to accept a tender from Westrac Pty Ltd for the purchase of a Caterpillar loader at the tendered price of \$215,000.00. At the same meeting, council resolved to award Westrac Pty Ltd the tender for the supply of a Caterpillar road grader.

Council's minutes of its meeting on 19 July 2004 indicate that following council's decision to award the tender contract to Westrac Pty Ltd for both machines,

council's Manager of Technical Services entered into negotiations with a representative from Westrac Pty Ltd to reduce the overall purchase price of both items and include additional equipment in relation to the loader purchase (a four in one bucket in lieu of the standard unit).

The review team understands that at the meeting of 19 July 2004, council resolved to “endorse the revised tenders” for both items. The review team is concerned that this action leaves council open to speculation as to whether price reductions were offered prior to the acceptance of a particular tender.

Council should also be mindful of clause 19 of the Local Government (Tendering) Regulation 1999, which states that council, after considering the tenders submitted for a proposed contract, *must* either accept the tender that appears to be most advantageous or decline to accept any of the tenders.

This clause further stipulates (at sub-clause 2), that council must ensure that every contract it enters into as a result of a tender accepted by the council is in accordance with the tender (modified by any variation under clause 17). It should be noted that clause 17 of the Regulation provides for the modification of tenders *before* the acceptance of any of the tenders. In the present case, it appears that council has accepted the terms of the two tenders in question and then entered into contracts that essentially reflect terms amended during subsequent negotiations and not those contained within the tender document as originally submitted by Westrac Pty Ltd. (*Recommendations 11 and 12*)

5.2 Planning & Other Regulatory Functions

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

Enforcement

The review team found evidence that councils policies have been implemented and the Infringement Notices have been issued when necessary. A program exists for the inspection of food outlets and other areas of council operations.

Local Roads Classification and Maintenance

Lockhart Shire Council has adopted a policy on "Local Roads Classification and Maintenance" with an associated road hierarchy.

The policy requires the grading of roads on a "condition basis", rather than by specifying a time interval between maintenance treatments.

This policy clearly identifies that any residence on a rural property will be provided with a Gravel Class 2 road as a minimum standard.

The policy also directs that, as resources permit, the council undertake a program of installing "Dry Weather Road Only" signs on unconstructed and earth formations as well as "No Through Road" signs at appropriate locations.

Lockhart Paving

A number of shop verandahs within Lockhart's Urban Conservation Area had seriously deteriorated due to neglect of maintenance and a few shops either had steel cantilevered verandahs or no verandahs at all prior to commencement of restoration. Council encouraged all owners of shops situated within the Lockhart Urban Conservation Area to construct, restore and paint their shop verandahs by means of a monetary incentive. The maximum incentive grant of \$500 was payable to each shop owner (regardless of the shop frontage width) for authentic

painting/signwriting work provided a minimum of \$500 was spent by each shop owner for their verandah/awning restoration work.

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 these assets.

Overview of financial position

Council has budgeted for a break-even budget and a zero debt strategy. Council had a deficit of \$410,000 from all activities for 2002/2003 this compares with a \$357,000 surplus in the previous year. The auditor has commented that council needs to achieve operating surpluses for long term financial stability.

Outstanding rates and charges have been reduced from 9.01% and it is anticipated that this rate will drop this year to 4.24% with the removal of a number of bad debts through recovery action.

Council receives 62.4% of its total income from grants and contributions. This is principally from two sources, Financial Assistance Grants and RTA contributions. It is noted that should either of these be reduced the council would face significant financial challenges. Council receives grants and contributions for the Woodhaven Hostel and its bushfire and emergency services as well.

Council should investigate the availability of grants for other services. Council should consider working with other councils in the region to identify grant monies for other services on a regional basis.

Long term financial planning

Council demonstrates an understanding of its financial limitations. However council should develop a long term financial plan. (*Recommendation 13*)

Alternative sources of revenue

Council currently relies heavily on rates and grants as its sources of income. Over time this will increase the rate burden on ratepayers if alternative sources of revenue are not identified.

Long-term rates strategy

Council needs to review its rating structure as part of its long-term financial planning process. This will ensure that rating policy meets council's costs over the long-term and provides a strategic approach to the spread and structure of rates.

Rates hardship policy

Section 577 of the Local Government Act 1993 allows council to extend concessions to avoid hardship in relation to its rates and charges. Council does not have a rates hardship policy in place. Given the demographics of the area, there appears to be a need for council to consider adopting such a policy. (*Recommendation 14*)

Linking of strategic plans

Council has commenced setting strategic directions for its area and its organisation. It is important that the financial direction of the council is aligned to its strategic objectives. Therefore, the development of council's long-term financial plan should support its strategic direction.

Reserves

Council does not have a generic capital works reserve but establishes reserves for identified future needs to reduce the need for borrowing. As at 30 June 2004 council has \$2,587,000 fully funded internally restricted reserve. Of this \$532,000 is for Employee Leave Entitlements representing 92% of the liability. In addition, council has \$1,367,000 of fully funded externally restricted reserves.

Council needs to take a strategic approach to identify future capital works and other areas requiring significant capital reserves in conjunction with the development of council's long-term financial planning.

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

Council's community focus

Overall, Lockhart Shire Council has a strong community focus. Council's social plan meets the requirements of the department's guidelines and there is evidence that the social planning process is linked to council's management planning process. The community consultation processes undertaken has underpinned council's planning. Council is reviewing its social plan and has included information about the social plan in its annual report and management plan in previous years.

Community feedback

Council uses a range of methods to obtain feedback from its community. Council regularly consults the community on planning and policy issues. Additionally, council conducts briefing sessions in the community to provide residents with the opportunity to raise and discuss issues directly with councillors and council staff.

Council keeps its community informed through the production of an annual report that is available to all residents.

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. In this regard, council should be commended for the following:

- The consultative committee is representative of the entire organisation.
- Selection and recruitment is transparent and selection is clearly on merit in accordance with section 349. Council also complies with section 344 in promoting equal employment opportunity.
- Recruitment is well documented and selection committees are used. There is also an internal appeal process available.
- Council has a positive induction program and a plan as required by the Local Government (State) Award has been developed.
- The council has a proactive approach to Occupational Health and Safety with the OH & S Committee members carrying out inspections and managers/supervisors assessing worksites on a regular basis. Training is given to all staff and contractors.

Council has also identified the fact that approximately one quarter of its workforce is over the age of 55. To prevent these skills being lost from within organisation, council is planning to recruit a number of trainees, who can eventually replace the retiring workers and also retain knowledge from these experienced staff.

Sharing workers

This council should be commended for its co-operative approach in sharing staff with other councils. This is seen as good practice in benefiting councils working together. Currently Lockhart Shire Council shares its Manager, Environmental Services and Engineer with Urana Shire Council. It also shares a Road Safety Officer with other councils in the Riverina East region.

Council is not afraid to seek services of other councils to solve problems. For example, the use of Wagga Wagga Shire Council officers to carry out companion animal compliance throughout the shire.

Workforce planning

Lockhart, like many councils, is exposed to a number of workforce issues, such as:

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

Council needs to consider a long-term workforce plan that looks at the staffing needs of each section of council and allocates staff according to workload and priorities.

The long-term plan should also address the issue of council's ageing workforce and increase opportunities for apprenticeships, cadetships and traineeships.

(Recommendation 15)

Secondary Employment

Section 353 of the Local Government Act states the requirements for both the general manager and staff in relation to secondary employment. Section 353 (1) stipulates that a general manager must not engage in outside employment or contract work without the approval of council.

A policy regulating this area would give greater clarity and transparency to decisions on secondary employment. *(Recommendation 16)*