



**BREWARRINA SHIRE COUNCIL**

**PUBLIC INQUIRY**

**REPORT**

**2 DECEMBER 2005**

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## EXECUTIVE SUMMARY

- 1 Brewarrina Shire Council was the subject of a Promoting Better Practice (“PBP”) review conducted by the Department of Local Government. The review was conducted between 31 May 2005 and 3 June 2005.
- 2 The PBP review involved the evaluation of the effectiveness and efficiency of the council’s operations. The review revealed a number of serious deficiencies in council’s operations. The PBP review was only partly completed as the deficiencies found at council were of such serious concern. The former Minister for Local Government, the Hon Tony Kelly MLC, announced a Public Inquiry into the council as a result of the council’s deficiencies.
- 3 The Inquiry was announced on 22 June 2005. Mr Kelly appointed me, Ross Woodward, the Deputy Director of the Department of Local Government, as the Commissioner of the Inquiry under Section 740 of the *Local Government Act 1993* (“the Act”).
- 4 The terms of reference are comprehensive, but in general require that I inquire into the governance of the council and the public’s confidence in the council.
- 5 As part of the Inquiry, document discovery was undertaken at the council, public submissions were called for, a public hearing was held and persons affected by the Inquiry were allowed to lodge a written submission.
- 6 Having now completed the Inquiry, I have found that:
  - There is a widespread and systemic failure to observe the provisions of good local government administration and governance.
  - There are a number of breaches of the Act and associated Regulation.
  - There are procedural inadequacies that directly result from the way council administration manages council finances and has dealt with a number of matters.
  - Some councillors are not aware of their role and responsibilities.
  - Council has not followed the required classification for public land.
  - The relationship between the council and the key Aboriginal organisation for Brewarrina has deteriorated.
  - There is an inability by the general manager to get projects off the ground.

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- There has not been adequate annual or longer term planning for the provision of services by council within its local government area.

7 I have made a number of recommendations in the body of this report. A summary of the recommendations and findings can be found under the heading “findings” in this report.

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## INTRODUCTION

8 This is my report as Commissioner concerning the Public Inquiry (“the Inquiry”) held under section 740 of the Act into Brewarrina Shire Council (“the council”) and is presented to the Minister for Local Government.

### **Terms of Reference**

9 On 22 June 2005 the former Minister for Local Government, the Hon Tony Kelly MLC, appointed me as Commissioner to hold an Inquiry into the council.

10 The Terms of Reference authorised for the Inquiry are:

*“To inquire, report and provide recommendations to the Minister for Local Government on the efficiency and effectiveness of the governance of Brewarrina Shire Council.*

*The Inquiry will have particular regard to:*

- 1. Whether the elected representatives fully understand their role and responsibilities and have adequately, appropriately and reasonably carried out their responsibilities in the best interests of all ratepayers and residents.*
- 2. Whether the practices and procedures adopted by the Council in the conduct of its meetings comply with the Local Government Act 1993, the Local Government (Meetings) Regulation 1999 and the Council’s adopted Code of Meeting Practice, and whether the Council’s adopted Code of Meeting Practice itself complies with the Act and Regulation.*
- 3. Whether the Council’s other policies and codes in relation to its governance adopted under the Local Government Act and Regulations comply with the Local Government Act and Regulations.*
- 4. The appropriateness of the procedures and processes adopted by Council in relation to its environmental planning responsibilities, including their application to the Council’s own projects.*
- 5. The appropriateness and efficacy of the relationship between elected representatives and Council staff, and between council, the community and other Commonwealth and State Government agencies providing funding or services in the council area.*

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6. *Whether there has been adequate annual or longer term planning for the provision of services by Council within its local government area.*
  7. *Whether the elected representatives are in a position to adequately direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil the Charter, provisions and intent of the Local Government Act and otherwise fulfil its statutory functions.*
  8. *Whether the Council has exercised prudent financial management and control; and*
  9. *Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the working relationships between the council, councillors and its administration.*

*The Commissioner may make other recommendations as he sees fit, including whether all civic offices in relation to the Council should be declared vacant.”*

#### **Assistance to the Commissioner**

- 11 Mrs Jo Kous and Mr John Canadi were authorised by me to assist in the conduct of the Inquiry under the provisions of section 12 of the *Royal Commissions Act 1923* and were involved in various phases of the Inquiry process.

#### **Procedural matters**

- 12 Public notice of the Inquiry was published in the Dubbo Daily Liberal, the Daily Telegraph and the Western Herald in early July 2005. Advertisements advising the location and scheduled times for hearings were also published in these newspapers in early September 2005.
- 13 Information on the Inquiry was also posted on a dedicated Internet web page.
- 14 Letters were issued to all councillors and the general manager advising of the timetable for the lodgement of submissions and the intention to hold hearings. They were also provided information on the procedures and other details of the Inquiry.
- 15 Information for the lodgement of submissions was provided for distribution at the post offices and the grocery stores in the Shire. I also conducted a number of radio interviews informing the community of the Inquiry and inviting them to lodge submissions.



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- 16 In carrying out the Inquiry I received written submissions from various Government departments, council, some council staff and members of the community. In addition, copies of council documents such as, but not limited to, financial accounts, minutes of council meetings and related business papers were reviewed.
- 17 Public hearings were held in Brewarrina on 11, 12 and 13 October 2005. Councillors, council staff and representatives of the Brewarrina community gave evidence at those hearings. The hearings were tape recorded for the purposes of providing me with a transcript.

**Procedure at hearings**

- 18 Section 740 (2)-(4) of the Act set out the powers of the Commissioner in the following terms:

*(2) For the purposes of any inquiry under this section, any person appointed to hold the inquiry has the powers, authorities, protections and immunities conferred on a commissioner, and:*

*(a) if the person is the only person appointed to hold the inquiry—on a sole commissioner, or*

*(b) if the person is one of two or more persons appointed to hold the inquiry and has been appointed as chairman of the inquiry—on a chairman of a commission,*

*by Division 1 of Part 2 of the Royal Commissions Act.*

*(3) The provisions of sections 27A and 27B of the Local Courts Act 1982 apply to any witness or person summoned by or appearing before the person so appointed in the same way as they apply to witnesses and persons in proceedings under that Act.*

*(4) The provisions of the Royal Commissions Act 1923 (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.*

- 19 The procedures adopted in an Inquiry of this nature are not fixed and the Commissioner is given a wide discretion. At the outset I indicated my preference for the Inquiry to proceed on an informal basis as far as possible.

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### ***The Inquiry's emphasis on the current elected body***

- 20 The Inquiry gave emphasis to the term of the elected body that has held civic office since April 2004. In limited instances, reference in this report is made to the term of the previous elected body.

### ***Right of reply***

- 21 The Terms of Reference call upon the Commissioner to inquire and provide recommendations to the Minister on the efficiency and effectiveness of the governance of the Council.
- 22 Given the breadth of matters that the Inquiry could explore, adverse comments or recommendation concerning councillors and council staff might be made. While the Inquiry reports to the Minister, only findings and recommendations might be acted upon. As such, the Inquiry sought to conduct its proceedings in a manner that afforded natural justice to those who may be adversely affected, including councillors and both current and former council officers.
- 23 Councils were given an opportunity to raise any issue at the end of their period of questioning in the hearings. Time was also set aside on the last day of the public hearings for both the mayor and the general manager to reply to matters that had been raised during the hearings.
- 24 A further 21 day period up until 3 November 2005 was provided to any person affected to provide a written submission. Council was provided with a copy of the hearings transcript and was given an additional extension to 21 November 2005 for a supplementary right of reply. I have taken the submissions received into consideration.

### ***Council's concerns about procedural fairness***

- 25 Council raised a number of procedural fairness matters which are addressed in this section.

### ***The Promoting Better Practice Review Program submission***

- 26 Between 31 May and 3 June 2005 officers from the Department of Local Government undertook a review of Brewarrina Shire Council as part of its PBP review program. During the review major areas of concern arose. The review was partly completed and a submission based on the officers' preliminary findings was provided to me as the Commissioner of the Public Inquiry. A copy of that submission was provided to the council.

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*Authors of the submission not called to give evidence at the public inquiry*

- 27 The authors of the above-mentioned submission were not called to give evidence at the public inquiry. It is not mandatory for a public inquiry conducted under section 740 of the Act to call the authors of every document to provide evidence at the public hearing.
- 28 As mentioned, the submission had been provided to council. Therefore, council should have been aware of the issues raised. Furthermore, council's own submission to the Inquiry addressed each of the issues raised in the submission. In addition, information gathered during the document discovery stage of the Inquiry either confirmed or refuted the allegations raised in the departmental submission.

*Suppressed submissions*

- 29 Four public submissions were suppressed, as the information contained within them were likely to identify the author and, on balance, I considered that it was not appropriate to release the submissions. This did not prejudice council as the relevant issues were raised in other submissions and in the hearings. Council's own submission to the Inquiry covered many of the relevant issues that were raised in the suppressed submissions. Therefore, I have placed little weight on the content of these four submissions.

*Cross-examination*

- 30 The procedures adopted in an Inquiry of this nature are not fixed and the Commissioner is given wide discretion. At the outset I indicated in the public hearing my preference for the Inquiry to proceed on an informal basis as far as possible. It was also made clear at the beginning of the hearing that I preferred written right of replies to issues raised.
- 31 On the day of the hearing a solicitor presented himself as representing the council, having been purportedly appointed by the mayor and the general manager. The solicitor was given an opportunity to address the Inquiry on the first day of the hearing. However, he declined to avail himself of that offer at that time.
- 32 It subsequently came to light that the solicitor had no proper authority from the council to speak on its behalf. Therefore, it was not appropriate for the solicitor, who had no authority, to speak on behalf of the council or to cross-examine witnesses at that time.
- 33 On the last day of the public hearings both the general manager and the mayor were given an opportunity to raise any issue they wished. Both used that opportunity to raise issues and clarify matters that were raised during the hearings.

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- 34 Council was also provided with a full transcript of the hearing. Council was given 38 days to provide me with a submission in reply. Council's submission addressed various issues raised in the hearing and was taken into consideration for this report.

### ***Post hearings procedures***

- 35 The Inquiry adopted the view that where issues required further clarification following the conclusion of the public hearings, it should seek appropriate information in order to assist the Inquiry.

### ***Council background***

- 36 Brewarrina Shire is located in the north west of New South Wales and covers an area of 19,188 square kilometres. The northern border of the Shire is the southern border of Queensland. To the west is the Shire of Bourke and to the east the Shire of Walgett. The nearest major population and regional centre is the city of Dubbo which is a little under 400kms to the south east of the Brewarrina township.
- 37 The township of Brewarrina, on the Barwon River, is the main population centre in the Brewarrina Shire, with approximately 1200 persons. This includes the population of several Aboriginal reserves that form part of the township. The township of Goodooga to the north is the second largest population centre with a population of approximately 300 persons.
- 38 The majority of the Shire consists of rural properties engaged mostly in the production of wool and grazing. There have been recent movements into grain and cotton farming.
- 39 According to the 2001 census statistics, Brewarrina Shire has a population of 2,060 persons, with 54.4% identified as being Aboriginal (state average is 1.69%). However, it was advised that the actual Aboriginal population may be as high as 70% of the population but this is not represented in census statistics as, it was suggested, many of the indigenous people do not participate in the census collection.
- 40 Based on the census statistics, the population is quite a young one. 30% of the population is aged less than 25 years, with a further 33% aged between 25 and 44 years and only 8.4% of the population being aged 65 years and over. The census statistics indicate that the area's population is declining, with a decrease of 9% since the 1991 census.
- 41 The council has 12 councillors. It employs 54 equivalent fulltime staff. The general manager is the only position designated as senior staff pursuant to the definition stated within the Act. In addition, there are three management positions that are directly responsible to the general manager. Those management positions are Director Technical Services, Director Corporate Services and Manager, Environmental Health and Building Services.

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## FINDINGS

- 42 I make the following findings in relation to each Term of Reference. My examination of each of the individual issues is contained in the analysis section of the report.
- 43 *Terms of Reference 1: Whether the elected representatives fully understand their role and responsibilities and have adequately, appropriately and reasonably carried out their responsibilities in the best interests of all ratepayers and residents.*
- 44 The proper role of councillors historically has been to reflect community desires. It is acknowledged that some councillors have a direct connection with the community by being involved in business and/or being part of community activities and participating in social events.
- 45 However, the Act provides that a councillor's role includes the overall responsibility for establishing and guiding policies, allocating resources, setting service delivery standards and overseeing the council's performance.
- 46 Some councillors do not appear to have a clear understanding of their role and responsibilities. They do not appear to be able to distinguish between policy making and operational matters. It is acknowledged that since the announcement of the Inquiry, council has dealt with fewer operational matters.
- 47 Councillors should concentrate on policy making and strategic planning for the Shire. Councillors have involved themselves in minor administrative matters that should be dealt with by the general manager in the day-to-day operations of the council.
- 48 I am not convinced that the councillors have a strong strategic vision for the Shire. It is acknowledged that the Shire may be disadvantaged and is currently affected by the drought, but it appears that councillors have not made positive steps forward. It appears that the Shire has stagnated rather than moving forward for the good of the community.
- 49 **Recommendation 1: That the Department of Local Government and the Local Government and Shires Associations develop a compulsory professional development course for all councillors on the role and responsibilities of councillors. This should be provided within six months of a councillor being elected.**
- 50 *Terms of Reference 2: Whether the practices and procedures adopted by the Council in the conduct of its meetings comply with the Local Government Act 1993, the Local Government (Meetings) Regulation 1999 and the Council's adopted Code of Meeting Practice, and whether the Council's adopted Code of Meeting Practice itself complies with the Act and Regulation.*

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- 51 Meeting procedures contribute to good public decision-making and increase a council's transparency and accountability to its community. The Act and the meeting regulation provide certain procedures that must be followed in council and committee meetings.
- 52 All councillors, staff and community members participating in council meetings must act with good intentions and behave to the standard of conduct expected by the community. These standards have been identified as integrity; leadership; selflessness; objectivity; accountability; openness; honesty and respect. Meetings must be run fairly and the procedures used should improve decision-making.
- 53 I am not satisfied that the procedures at council meetings are being conducted in accordance with the Act and the associated Regulation. It is the responsibility of the mayor and the general manager (to a certain extent) to ensure that meeting procedures are conducted correctly. There has been a failure of the mayor and the general manager in this regard.
- 54 Recommendation 2: That the Department of Local Government issue a practice note to councils on meeting procedures.**
- 55 *Terms of Reference 3: Whether the Council's other policies and codes in relation to its governance adopted under the Local Government Act and Regulations comply with the Local Government Act and Regulations.*
- 56 Council failed to adopt the Department of Local Government's code of conduct within a reasonable period of time. This is despite the department issuing a circular to all councils advising them of the Model Code of Conduct.
- 57 Despite realising its mistake council did not adopt the Model Code of Conduct until it was brought to the general manager's attention by the Department of Local Government's Promoting Better Practice review team.
- 58 It is unacceptable for professional staff of council to make such a fundamental error. It highlights both the general manager's and the councillors' lack of understanding and appreciation of governance procedures.
- 59 It is also concerning that there appears to be non-compliance with the Act and Regulation in regard to number of mandatory documents. The council lacks an equal employment management plan, the council's social and community plan and the council's management plan also need improvement.

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- 60 *Terms of Reference 4: The appropriateness of the procedures and processes adopted by Council in relation to its environmental planning responsibilities, including their application to the Council's own projects.*
- 61 The Act requires that all public land be classified and for that land to be governed by a plan of management Clause 6(7) of Schedule 7 to the Act states that any land that may be classified by resolution under sub clause (3) and that is not classified within one year after the relevant commencement is taken to have been classified as community land.
- 62 Community land cannot be leased without proper community consultation. Community land cannot be sold. Council has leased a variety of properties without community consultation. It is also in the process of selling community land.
- 63 Council does not have a plan of management for community land.
- 64 Such actions show a lack of understanding by the councillors and council management in the proper management of public land.
- 65 It is also noted that the council does not have a section 94 contributions plan. Such a plan would assist council in providing for infrastructure in the future.
- 66 *Terms of Reference 5: The appropriateness and efficacy of the relationship between elected representatives and Council staff, and between council, the community and other Commonwealth and State Government agencies providing funding or services in the council area.*
- 67 The relationship between some councillors and the general manager appears to be strained. A minority of councillors stated they do not have confidence in the general manager and they have concerns about his performance. However, it is acknowledged that other councillors were satisfied with the performance of the general manager and did have confidence in him.
- 68 The relationship between the council and the Brewarrina Aboriginal community appears to have broken down. The relationship has not been good since November 2004. A letter from the Ngemba Community Working Party to the council giving a vote of no confidence in the general manager particularly highlights this.
- 69 Another letter from the Ngemba Community Working Party highlights the poor relationship with the council when it requested that it cease being the trustee for the Aboriginal Cultural Museum because of a lack of progress with the Aboriginal community, among other things.

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- 70 It is acknowledged that since the public hearing of the Inquiry was held, the Ngemba Aboriginal Community Working Park has attempted to repair the relationship with the council and council appears to be responding positively. Nevertheless, it is concerning that it took a Public Inquiry to get the two parties together in an effort to repair the relationship.
- 71 It is noted that there appears to be a lack of ability by the general manager to get projects off the ground. There are numerous grants that the council has applied for, only to be withdrawn or remain unspent for an extended period of time. As a result the community has missed out on valuable services and facilities.
- 72 *Terms of Reference 6: Whether there has been adequate annual or longer term planning for the provision of services by council within its local government area.*
- 73 Council has adopted a social and community plan that is incomplete and inadequate. It does not comply with the Department of Local Government's guidelines. In the 12 months that the plan has been in operation, there has been little progress.
- 74 Brewarrina has a large Aboriginal population. The social and community plan addresses Aboriginal issues by making reference to the Brewarrina Community Action Plan. The Ngemba Community Working Party did not adopt that plan until very recently. The council's social and community plan was essentially without an Aboriginal strategy for almost one year.
- 75 The written down values of council's infrastructure assets is considered to be good. However, council's 2003/04 financial statements state that \$10.220 million was required to bring those assets to satisfactory condition (the figure at 30 June 2005 is not yet available). Council has only managed to set aside \$1.134 million in the 2003/04 financial year for infrastructure. Council has increased this to \$1.245 million for infrastructure for the 2004/05 financial year. This is considered inadequate.
- 76 *Terms of Reference 7: Whether the elected representatives are in a position to adequately direct and control the affairs of council in accordance with the Local Government Act 1993, so that council may fulfil the Charter, provisions and intent of the Local Government Act and otherwise fulfil its statutory functions.*
- 77 While council has a vision for the community, no councillor was able to adequately tell the Inquiry what the vision was. The vision does not appear to relate to the community or be attainable.



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78 I am not convinced that council is able:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants; and
- to be a responsible employer.

79 *Terms of Reference 8: Whether the Council has exercised prudent financial management and control.*

80 Council has:

- an unsatisfactorily high level of outstanding rates and charges,
- insufficient working capital,
- an operating deficit before capital with no provision to cut costs,
- low level of reserves for infrastructure replacement,
- has overpaid accounts.

81 *Terms of Reference 9: Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the working relationships between the council, councillors and its administration.*

82 During the Inquiry it was revealed that a staff member was also a regular contractor to council for similar work for which he was employed. Council does not appear to have a record of authorisation under section 353(2) of the Act.

83 During the Inquiry it was found that a councillor was also a regular contractor to council. That councillor was involved in committees and

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was aware of projects that council was considering and for which he subsequently obtained contracts with council for some of those projects.

- 84 Councillors should be aware that dealing with a matter at council and then subsequently working on the matter on a personal contractual basis could give rise to a perceived conflict of interest which must be dealt with under the council's code of conduct.
- 85 **Recommendation 3: That the Department of Local Government report to the Minister on options on how to manage councillors and council staff being a contractor to the council for which they work.**
- 86 Council appears to assess tenders based on financial issues, without taking into account any other issue. Value for money is questionable when a council does not assess tenders on non financial issues.
- 87 The general manager has taken a large amount of time off work for personal matters. It is alleged that the mayor gave authorisation for the leave. However, there appears to be no record of the authorisation, other than the general manager's personal diary of absences. Until this issue was raised in the Inquiry, there was no record of many absences on the general manager's personnel record.
- 88 **Recommendation 4: That the standard contract for general managers include a clause allowing termination of employment where the general manager has been absent from the business of council for three consecutive business days without authorisation. Any guidelines issued for the standard contracts should state that the general manager of a council should present a quarterly return of all absences to the council.**
- 89 *Terms of Reference 10: The Commissioner may make other recommendations as he sees fit, including whether all civic offices in relation to the Council should be declared vacant.*
- 90 There are a number of operational matters that council should rectify. These have been discussed in this report under the heading "analysis". The analysis is quite comprehensive, but the list is by no means exhaustive. Further work needs to be done by council to implement policies, processes and practices in an effort to address the shortcomings at council.
- 91 **Recommendation 5: That the council address each of the recommendations identified under the heading "analysis" in this report.**
- 92 During the course of the Inquiry there was a recurring theme expressed during the hearings relating to a lack of confidence in the general manager. The concerns ranged from a lack of ability to

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effectively manage staff, to communicate, consult and engage with Aboriginal groups in the community and to get projects off the ground.

93 It is acknowledged that some councillors consider that the general manager's performance is satisfactory and they have confidence in him.

94 Councillors are aware of performance issues raised against the general manager. However, I see no attempt by council to address the problems. Instead, I see a poor performance appraisal being overturned and a salary increase given without justification.

**95 Recommendation 6: Council should immediately address and deal with the question of the apparent poor and unsatisfactory performance of the general manager.**

96 It is the elected body that is ultimately responsible for overseeing the general manager's work performance. It is clear that the elected body is unable to determine what measures to take to rectify the performance issues raised with the general manager in accordance with the provisions of the employment contract.

97 The community is suffering and the council remains static. These issues have been identified in the "analysis" of this report. Council has had ample opportunity to address the issues. However, I propose that council be given further opportunity to address the issues raised in this report.

**98 Recommendation 7: Unless the council is able to implement all of the relevant recommendations contained in this report, the Minister declare all civic offices in relation to the council vacant.**

99 If the Minister accepts recommendation 7, then it is also recommended that:

1. Council immediately work to implement all the relevant recommendations in this report;
2. Council implement all the relevant recommendations in this report by 31 May 2006;
3. Council be required to provide the Department of Local Government with a monthly status report on the progress of implementing the recommendations;
4. A representative from the Department of Local Government undertake an onsite review of the council's progress shortly before 31 May 2006;
5. The Department of Local Government consult with the Aboriginal Community Working Parties, particularly the Ngemba Community Working Party, and the River Towns Project Community Facilitator on the relationship between the council and the community; and
6. The Minister retain the ability to declare all civic offices in relation to the council at any time until 31 July 2006.

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## ANALYSIS

### TERMS OF REFERENCE NO. 1

*“Whether the elected representatives fully understand their role and responsibilities and have adequately, appropriately and reasonably carried out their responsibilities in the best interests of all ratepayers and residents.”*

#### ***The role and responsibility of councillors***

100 The Act requires that councillors as a group direct and control the council’s affairs, allocate resources, determine policy, and monitor the council’s performance. As individuals, councillors communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council (s.232 of the Act).

101 The Act makes it clear that the general manager is responsible for the day-to-day operations of council. Under s.335(2) of the Act the general manager has the following particular functions:

- the day-to-day management of the council,
- to exercise such of the functions of the council as are delegated by the council to the general manager,
- to appoint staff in accordance with an organisations structure and resources approved by the council,
- to direct and dismiss staff,
- to implement the council’s equal employment opportunity management plan.

102 Based on the material available, some councillors do not appear to fully understand their role and responsibilities as members of the elected body. Few councillors at the Inquiry hearings were able to adequately identify the role of a councillor. This is unsatisfactory.

**103 Recommendation 8: That each councillor undertake appropriate professional development training on the role and responsibility of a councillor as soon as possible.**

#### ***Council’s involvement in operational issues***

104 Based on a number of minutes perused, it appears that councillors spend an amount of time at each meeting focussing on operational, day-to-day issues.

105 It should also be noted that these issues are not included on council’s meeting agenda. As such, unless they are deemed to be of an urgent nature, council should not consider them.

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- 106 The general manager should have procedures in place to enable councillors to bring these operational issues to his attention.
- 107 Recommendation 9: That the general manager initiate a system, such as a written complaint form, to allow councillors to bring operational issues to his attention rather than at council meetings.**

***Councillors' involvement in operational committees***

- 108 Council has established a consultative committee in accordance with the Local Government (State) Award 2004. The membership of this committee includes three councillors. The deputy mayor chairs this committee.
- 109 The aim of the consultative committee is to provide a forum for consultation between council and its employees. The functions of the consultative committee are about day-to-day management issues such as award implementation, training, job redesign, performance management systems and hours of work.
- 110 Council should be represented on this committee by its general manager or his/her nominee/s. Due to the day-to-day operational issues considered by this committee it is inappropriate for councillors to be members of consultative committees generally.
- 111 It is noted that the councillors resigned from the committee when the Department of Local Government brought the matter to the council's attention.
- 112 Additionally, council has one Occupational Health and Safety Committee. The membership of this committee includes two councillors.
- 113 Again, it is arguable that the functioning of this committee is operational and not policy making or strategic. Therefore, it is inappropriate that councillors are members of this committee, generally.
- 114 It is noted that the councillors resigned from the committee when the Department of Local Government brought the matter to the council's attention.
- 115 Recommendation 10: That the general manager review each of the committees that councillors are members of to determine whether they are operational in nature. Where they are, councillors should resign from such committees.**
- 116 Recommendation 11: That the general manager create a charter for each council committee.**

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### ***Cheque warrants***

- 117 On 26 October 2004 council considered a circular issued by the Department of Local Government on cheque warrants.
- 118 The circular reinforced the fact that the warrant contains personal information that is not to be supplied to the public. Council noted the information.
- 119 Warrant information was presented to councillors as part of their agenda papers up until April 2005.
- 120 Council considered that the warrant information was not illegal. It raised this matter formally at the Local Government and Shires Associations Western Division Mini Conference.
- 121 There appears to be little acceptance by the councillors of the advice provided by the Department of Local Government on the issue of cheque warrants.

### ***The mayor's appointment of a solicitor for the public hearings***

- 122 As previously mentioned, the Inquiry was announced on 22 June 2005. From then until the hearings, council was not legally represented. On the day of the hearing, a solicitor presented himself as representing the council, having been purportedly appointed by the mayor and the general manager.
- 123 When questioned, the general manager advised that he did not appoint the solicitor.
- 124 When the mayor was questioned, he advised that he had appointed the solicitor just a few days before the hearing. He had telephoned several councillors who agreed to the appointment. When questioned further it was revealed that this issue had not been discussed at a council meeting. Additionally, the council had not resolved to appoint a solicitor, the council had not resolved to delegate powers to the mayor to appoint a solicitor and the mayor's own delegated power did not identify any powers to allow him to appoint a solicitor.
- 125 The mayor claimed that the appointment of the solicitor was valid, as the mayor had delegated power to spend up to \$10,000 for "works". The appointment of a solicitor cannot be considered "works" for the council.
- 126 It is questionable whether the mayor has a good understanding of his own delegated powers.

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127 **Recommendation 12: That the mayor review his delegated powers to ensure he is fully aware of them and their appropriate use.**

128 **Recommendation 13: That the council review the mayor's delegated powers to ensure that they remain appropriate.**

***Misleading information from the mayor to the community***

129 On 20 October 2005 the mayor wrote an article in the Brewarrina News criticising the public hearing and complaining that the council was denied the right to legal representation. The mayor's statement is misleading.

130 On the first day of the Inquiry a solicitor who purported to represent the council was given an opportunity to speak at the hearing, to which he replied that he did not wish to avail himself at the present time. The mayor was present at the Inquiry when that occurred.

131 It subsequently came to light that the solicitor had no proper authority from the council to speak on its behalf. It was not appropriate for the solicitor, who had no authority, to speak on behalf of the council.

132 **Recommendation 14: That the mayor ensure that further statements made to the community and the media are factually correct.**

***Perceived conflict of interest***

133 A conflict of interest exists when a person could be influenced, or a reasonable person would perceive that a person could be influenced by a personal interest when carrying out public office.

134 While it is acknowledged that it is advantageous to have a member of a committee who has knowledge and expertise in that area that the committee is involved, it is not appropriate for the committee member to take advantage of the knowledge gained in committees for personal gain or profit.

135 Clr Burke is a member of the Plant Committee, the Roads and Traffic Committee and the RTA Regional Consultative Committee.

136 Clr Burke is a director and shareholder in a company that is involved with trucks and can provide haulage services.

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137 The company has done a large amount of work on a contract basis for council. These jobs included work on Brenda Road. It appears that no conflict of interest was declared when this matter went before council.

**138 Recommendation 15: That all councillors familiarise themselves with the code of conduct and declare either a conflict of interest or a pecuniary interest in appropriate circumstances.**

### ***Over-representation***

139 Brewarrina Shire Council currently has twelve councillors. In comparison with other councils in their group, as listed in the Department of Local Government's comparative data collection (which totals thirty nine councils), Brewarrina is one of only 4 councils in that grouping with twelve or more councillors.

140 The majority of councils in this group have, for example, nine councillors or less. Currently, councillors receive fees of \$5875 per annum. If council reduced its elected representatives to seven, this equates to savings of \$29,375 per annum on the current fee rate.

141 Further, Brewarrina has one elected representative for every 172 persons, whereas the average for their group is one elected representative for 419 persons. Brewarrina has the lowest population for the group and the highest representation. On that basis, council should only consist of five councillors.

142 It should also be mentioned since April 2004 only eight councillors on average attended ordinary council meetings.

143 Therefore, the question must be posed, does the community need so many councillors? This question may be answered by way of council's consideration of the matter before the expiry of the one off opportunity for any council to apply to the Minister for Local Government for approval to reduce the number of councillors on the council without holding a constitutional referendum.

**144 Recommendation 16: That council immediately resolve to reduce the number of councillors from 12 to 7.**

### ***Other matters in the report***

145 The majority of matters identified in this report relate directly to whether the elected representatives fully understand their role and responsibilities and whether they have adequately, appropriately and reasonably carried out their responsibilities in the best interests of all ratepayers and residents.



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## **TERMS OF REFERENCE NO. 2**

*“Whether the practices and procedures adopted by the Council in the conduct of its meetings comply with the Local Government Act 1993, the Local Government (Meetings) Regulation 1999 and the Council’s adopted Code of Meeting Practice, and whether the Council’s Code of Meeting Practice itself complies with the Act and Regulations.*

### ***Meeting procedures generally***

- 146 Meeting procedures contribute to good public decision-making and increase council’s transparency and accountability to its community. The Act and provide certain procedures that must be followed in council and committee meetings.
- 147 All councillors, staff and community members participating in council meetings must act with good intentions and behave to the standard of conduct expected by the community. These standards have been identified in the model code of conduct as integrity; leadership; selflessness; objectivity; accountability; openness; honesty and respect. Meetings must be run fairly and the procedures used should improve decision-making.

### ***Meeting procedures used by council***

- 148 Council’s adopted code of meeting practice is the Regulation. Accordingly, the council’s code is consistent with the relevant Part of the Act and the Regulation as they are one in the same.

### ***Public notice of ordinary council and committee meetings***

- 149 Councils must give public notice of the time and place of ordinary council and committee meetings (s.9 of the Act). The notice must be published in a local newspaper, indicating the time and place of the meeting (cl.234 of the Regulation).
- 150 Notice can also be given in other ways if they are likely to come to the public’s attention, for example, by a list or poster at the council’s office or the library. More than one (1) meeting may be advertised in a public notice.
- 151 Although no time period has been set between giving public notice and holding the meeting, it is expected that enough notice would be given so that the public can find out when and where the council is meeting.

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- 152 Council appears to have not given proper public notice of its meetings by not publishing the required detail in a local newspaper. Interested members of the public may therefore be unaware of the time, and place of the council meetings and therefore not given an opportunity to attend council meetings.
- 153 Recommendation 17: That the general manager ensure that proper public notice of ordinary and committee meetings be published in a local newspaper.**

***Format for council agendas***

- 154 The agenda for council meetings must indicate all business arising from a former meeting; any matter that the mayor intends to put to the meeting; and any business of which 'due notice' has been given (cl.242 of the Regulation).
- 155 A review of council's agenda's from April 2004 to August 2005 shows that they are inadequate. The agendas for that period do not clearly identify the matters to be considered by the council. This is particularly evident for matters that council considers in closed session.
- 156 Agendas should also specifically identify all matters that council is scheduled to consider at its meeting. By doing so, the community should be fully informed of the business the council will consider at its meeting. There are instances where council has discussed matters that are not on the agenda and have not been introduced by an urgent motion.
- 157 Recommendation 18: That the general manager ensure that agendas for council meetings clearly identify all matters to be considered by the council.**

***Length of meetings***

- 158 Council holds its ordinary council meeting once a month. Occasionally it has held extra ordinary meetings.
- 159 The length of time that the council holds its ordinary meetings appears to be excessive. Since at least April 2004 each ordinary meeting was held for the majority of the day. During the meetings a large amount of the issues considered related to day-to-day operational matters.
- 160 Recommendation 19: That council cease dealing with operational matters at council meetings. Such matters should be brought to the general manager's attention outside of the meeting.**

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### ***Lack of public notice for extraordinary meetings***

- 161 Public notice must be given on the time and place of council and committee meetings (s.9 of the Act).
- 162 Council held five extraordinary meetings from April 2004 to October 2005. It appears that no public notice was given for the meetings. Members of the public were therefore not given an opportunity to attend those meetings.
- 163 Recommendation 20: That the general manager ensure that appropriate notice is given for extraordinary meetings.**

### ***Procedures required when there is a lack of a quorum***

- 164 A quorum is the minimum number of councillors necessary to conduct a meeting. This minimum is set so that decisions are made by an appropriate number of councillors. Provided a quorum of councillors is present, council business can go ahead. If a quorum is not reached and maintained, the meeting cannot be held.
- 165 Clause 235 of the Regulation provides that a council meeting must be adjourned if a quorum is not present within half an hour after the meeting is due to start. Adjournment can also happen at any time during the meeting when a quorum is not present.
- 166 The meeting must be adjourned to a time, date and place fixed by the chairperson or (in his or her absence) by the majority of the councillors present or (failing that) by the general manager.
- 167 On 26 May 2004, 23 June 2004, 27 July 2004 and 29 June 2005 the mayor adjourned the ordinary council meetings for lack of a quorum (Evidence Table 1-4). No specific time, date and place were identified for the resumption of the adjourned meeting. The mayor appears to be unaware of the proper procedures required for the adjournment of council meetings.
- 168 Recommendation 21: That the mayor become familiar with, and use when appropriate, the proper procedures for adjourning a meeting when there is a lack of quorum.**

### ***The use of proxy votes***

- 169 According to cl. 235 of the Regulation, a councillor cannot participate in a meeting of a council unless personally present at the meeting. On 20 February 2004 proxy votes from councillors who could not be present at the council meeting were used. It is acknowledged that the decision made at that time was purportedly by the previous council.

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- 170 However, the present council has used proxy votes on at least one occasion. That occurred when the Roads Committee used faxed votes when it considered the extension of the doctor's surgery (Evidence Table 5).
- 171 It is contrary to the legislation to allow a councillor who is not personally present at a meeting to participate in that meeting.
- 172 Recommendation 22: That the general manager formally advise each councillor that according to cl. 235 of the Regulation, a councillor cannot participate in a meeting of a council unless personally present at the meeting.**
- 173 Recommendation 23: That the mayor not accept proxy votes in the future.**

***Resolutions to close the council meeting to the public***

- 174 It is up to council to decide whether a matter is to be discussed during the closed part of a meeting (s.10A(2) of the Act). In deciding this, the council would be guided by whether the item is in a confidential business paper. However, even if the item is in a confidential business paper, the council could decide to disagree with this assessment and discuss the matter in an open part of the meeting.
- 175 Parts of council and committee meetings should be closed to the public only in the circumstances provided under section 10A of the Act. Matters of a personal or confidential nature, which do not come within the circumstances provided in section 10A, cannot be discussed in the closed part of a council or committee meeting (where the committee is made up of councillors only).
- 176 Council resolutions to move into closed session usually quote the provision s.10A(2)(a) of the Act as the grounds for closing that part of the meeting and quote that as "matters of a personal nature concerning particular individuals and matters of a commercial nature".
- 177 Council does not appear to understand the purpose of 10A(2)(a). Section 10A(2)(a) relates only to matters and information relating to personnel matters concerning particular individuals. This relates to individual staff matters.
- 178 Examples of matters that council considered in closed session include:
- 22 February 2005 – resolution 300/05 – that council hold its meeting on 18 March and that it attend the Senior Citizens luncheon (Evidence Table 6)

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- 18 March 2005 and 22 April 2005 – discussions about the signing of a lease for the Goodooga Bowling Club and Brewarrina Pharmacy (Evidence Table 7 & 8).
  - 29 June – plans for a new toilet block be prepared (Evidence Table 9).

179 It is difficult to justify reasons why such matters should be held in a closed session of council. In addition, it indicates a clear misunderstanding of the meaning of section 10A.

**180 Recommendation 24: That council meetings only be closed in exceptional circumstances as allowed under sections 10A-10D of the Act.**

***Resolutions made in closed session to be made public***

181 Resolutions or recommendations made at a closed part of a council or committee meeting must be made public by the chairperson of the meeting as soon as practicable after the closed part of the meeting has ended (cl.255 and cl.271 of the Regulation). This would usually be done by an oral or written statement.

182 If the meeting is a committee meeting, the resolutions or recommendations must also be reported to the next meeting of the council (cl.271 of the Regulation). If the meeting is a closed meeting of the committee of the whole, its recommendations must be reported to the open council, usually at the same meeting. The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes (cl.261 of the Regulation).

183 While the discussion in the closed part of a meeting remains confidential, the separate nature of a resolution or recommendation allows it to be made public immediately after the closed part of the meeting has ended.

184 The resolution or recommendation could be phrased in such a manner as to protect a person's identity or other confidential details (for example, stating an assessment number instead of the person's name or giving the general locality of land to be purchased instead of the precise address). This enables the public to know what the council or committee has decided at the closed part of the meeting without revealing confidential information.

185 Council does not make its resolutions in closed sessions public. The general public are therefore unaware of council's decisions in closed meetings.

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- 186 Recommendation 25: That resolutions or recommendations made at a closed part of a council or committee meeting be made public by the chairperson of the meeting as soon as practicable after the closed part of the meeting has ended (cl. 255 and cl. 271 of the Regulation).**

***The difference between closed session and committee of the whole***

- 187 The closed part of a council meeting could be referred to as ‘closed council’ but not as a ‘closed committee’. While the words ‘meeting in committee’ are sometimes used to refer to an organisational meeting in closed session, that is, with non-members and the public absent, this is not the case with councils.
- 188 Section 10A of the Act makes it clear that both council and council committees (made up of councillors only) can close parts of their meetings. If a council closes part of its meeting, that part still remains part of the council meeting with the rules of debate being the same as for open meetings.
- 189 Only if a council resolves itself into the ‘committee of the whole’ under clause 261 of the Regulation, does part of the council meeting become a committee meeting. The committee of the whole remains open to the public unless the council closes it to the public to discuss one of the matters referred to in section 10A(2) of the Act. The only advantage of a council resolving itself into the committee of the whole is to overcome the limits on the number and duration of councillor speeches referred to in clause 252 of the Regulation.
- 190 When council resolves itself into closed session it also resolves itself into committee of the whole. It does not appear that the councillors or the general manager understand the difference between closed session and committee of the whole. It is not necessary to go into committee of the whole each and every time council resolves to go into a closed session.
- 191 Recommendation 26: That the general manager give advice to the councillors of the difference between closed session and committee of the whole and that it is not necessary to resolve into committee each and every time council resolves into a closed session.**

***Concerns about the number of closed sessions***

- 192 Open decision making is an important part of local government and should be the rule rather than the exception. The ability of the public and media to attend and observe council and committee meetings — witnessing the deliberations and decisions of elected representatives — is essential for achieving better standards of councillor

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accountability. This is recognised by the legislation, which encourages open decision-making at council meetings.

193 Council discusses a large amount of business in closed session and sometimes conducts more than one closed session in a meeting. The matters to be discussed in closed session are not identified on the agenda for the meeting. Members of the public are therefore unaware of matters proposed to be discussed in closed session and the outcome of those discussions.

**194 Recommendation 27: That council resolve itself into closed session only in exceptional cases as prescribed by sections 10A-10D of the Act.**

### ***Signing of minutes***

195 The minutes of council and committee meetings must be signed by the person chairing the meeting at which they are confirmed (s.375 of the Act and cl.268 of the Regulation). It is important that there are safeguards against the pages of the minutes being substituted or tampered with. One way of achieving this is to have all the pages of the minutes signed by the chairperson. This could be done manually; by means of a rubber stamp signature; or by electronic signature.

196 Once they have been confirmed at a subsequent meeting of the council the minutes must be signed by the person presiding at that subsequent meeting (s.375(2) of the Act and cl.268(2) of the Regulation). The mayor does not sign all the minutes as soon as they are confirmed.

**197 Recommendation 28: That the minutes of council and committee meetings be signed by the person chairing the meeting at which they are confirmed.**

### ***Meeting minutes do not show required information***

198 The Regulation provides that the following matters (in addition to other matters) must be included in the minutes of council meetings:

- Details of each motion moved at a council meeting and of any amendments (cl.256(a)).
- The names of the mover and seconder of each motion and amendment (cl.256(b)).
- Whether each motion and amendment is passed or lost (cl.256(c)).

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199 A review of the council minutes from April 2004 to August 2005 show in many cases a report is “received and noted” and “for council information”. However, there is no council resolution to that affect. There is little point for a report being considered by the council if no decision is made on them. At the very least council should resolve to receive and note the report for council information.

**200 Recommendation 29: That when matters come before council for information, it resolve to receive and note the matter for council information.**

***Absences by councillors during council meetings***

201 A review of council minutes from April 2004 to August 2005 shows that councillors frequently leave the chamber. While it is acknowledged that councillors may need to leave the chamber for short absences, frequent absences may cause disruption to the council business. Such absences should be kept to a minimum.

**202 Recommendation 30: That the mayor and general manager ensure that all councillors are aware that short term absences during council meeting should be kept to a minimum.**

***Speaking at a council meeting***

203 On 23 November 2004 the mayor advised a delegation from the Ngemba Community Working Party that was in attendance at the council’s ordinary meeting that “according to Local Government Law delegation wishing to speak to Council must send notification of what issues they wish to raise” (Evidence Table 10).

204 Neither the Act nor the associated Regulation states that notification must be given to speak at a council meeting. It is a matter for council as part of its code of meeting practice, if it has one, to determine the procedure it wishes to adopt before allowing a person to speak at a council meeting. It is noted that council has not adopted a code of meeting practice. It therefore relies on the relevant meeting clauses of the Regulation, which as stated, is silent on the procedure for allowing a person or delegation to speak at a council meeting.

**205 Recommendation 31: If the council wishes to have a procedure for members of the public to speak at a council meeting, then it will need to that adopt a code of conduct with those procedures included in it.**



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### **TERMS OF REFERENCE NO. 3**

*“Whether the Council’s other policies and codes in relation to its governance adopted under the Local Government Act and Regulations comply with the Local Government Act and Regulations.”*

#### **Code of conduct**

- 206 Amendments to the Act require all councils to adopt a new model code of conduct. It took effect on 1 January 2005. The Department of Local Government issued a draft code of conduct in October 2004 and a final code of conduct in December 2004.
- 207 Section 440(3) of the Act requires councils to review their code of conduct and make such changes as it considers appropriate within 12 months of each ordinary election.
- 208 On 22 February 2005 council reviewed its code of conduct (Evidenced Table 11). The code of conduct reviewed was one issued by the Department of Local Government in 1994. Council considered the document and made no changes. No formal resolution was made to adopt the document (Evidence Table 12).
- 209 On 18 March 2005 council staff provided a new code of conduct that had been issued by the Department of Local Government entitled “Model Code of Conduct for Local Government in NSW”. It should be noted that the business paper presented to council states that they had re-adopted its (old) code of conduct at its meeting on 22 February 2005 (Evidence Table 13). As previously mentioned, council made no resolution concerning its old code of conduct. It is therefore not correct for council staff to say that the old code of conduct was re-adopted.
- 210 At its meeting of 18 March 2005 it was proposed that the council review the model code of conduct. It was also proposed that the code of conduct be brought back to council at its next meeting for discussion.
- 211 The model code of conduct was not brought back to council for discussion until 29 June 2005 following the on site visit of the Department of Local Government’s Promoting Better Practice review team. Only at that meeting did council finally resolve to adopt a code of conduct (Evidence Table 14 & 15).
- 212 On 22 April 2005 a councillor reported to council his attendance at a Local Government and Shires Associations workshop on “The New Disciplinary Regime for Local Government Councillors and Council Staff”. Following this, that councillor did not raise any issue about the council’s previous consideration of the out of date code of conduct (Evidence Table 16).

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- 213 It is concerning that:
- The wrong code of conduct was provided to council for its February 2005 meeting.
  - Council staff were of the view that the old code of conduct had been re-adopted, despite no resolution to do so.
  - The model code of conduct was finally adopted three months after it should have been.
  - A councillor who attended a course on the model code of conduct did not raise concerns that council had not considered or adopted the correct model code of conduct.

### ***2005/08 Management plan***

- 214 Council's management plan is discussed under the heading "terms of reference no. 6."

### ***Social plan***

- 215 Council's social plan is discussed under the heading "terms of reference no. 6."

### ***Equal employment opportunity ("EEO") management plan***

- 216 Section 345 of the Act requires councils to implement an equal employment opportunity management plan. The objective of this plan is to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital status and disability and to promote equal employment opportunity for women, members of racial minorities and persons with disabilities.
- 217 Council does not have an EEO management plan despite referring to one in its EEO policy. The EEO policy itself, while it outlines the bare framework for what should be included in an EEO management plan, contains no information about specific programs, actions, goals or targets that would be expected in an EEO management plan and is therefore no substitute for one. The only elements of an EEO management plan that the policy does contain include identification of a responsible officer for the plan's implementation and basic review process information.
- 218 The EEO extract from the 2003/2004 Annual Report contains no information about activities undertaken by the council to implement its EEO management plan. On the positive side the Annual Report does contain some detail of current levels of employment of NESB, ATSI and disabled EEO target groups. However, the potential usefulness of this data is lost in the context of no benchmarks or comparison with levels of employment of these EEO target groups in previous years to indicate change over time.

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219 Council does not meet its legislative responsibilities in EEO management. The council needs to develop an EEO management plan with clear programs, actions, responsibilities, and goals and report clearly on the implementation of these in its Annual Report.

**220 Recommendation 32: That the general manager prepare a complying Equal Employment Opportunity Management Plan for consideration by council.**

***State of environment (“SoE”) report***

221 Environmental management is one of the key roles of local government. It is uniquely placed to identify and report on local environment issues and take action to reduce the threats to the environment and to make our communities more sustainable.

222 A local SoE report provides a summary of the attributes of the local government area and the human impacts on that environment. It also provides a public record of the activities of government, industry and the community in protecting and restoring the environment.

223 A review of council’s SoE report has identified a number of shortfalls:

- There is no overview of the regional context or the local government area.
- There is no mapping either at the regional or the local level.
- There is only statewide mapping of native vegetation disturbance and salinity.
- There is insufficient relevant discussion of the background to the environmental sectors.
- There is insufficient assessment of the impact of important local processes such as land clearing.
- There is material missing from the document, eg Table 6 (pp21).
- The discussion on recycling and reuse (pp38) states that investigation results “should be available for the 2003/2004 State of the Environment Report”.
- The environmental sector condition summary table (pp7) is simplistic, and inconsistent in some sectors with the discussion in the report. For example, for water the current condition assessment in the summary is “good” despite significant problems discussed such as excessive water extraction, river salinity and general deterioration of water quality (pp23).
- There is little connection between the Response discussion and the development of a list of action items to be included in the council’s management plan.
- The stated environment policy is weak and simplistic as is the references to the Council Environmental Management plan and the Shire’s Environmental Objectives.

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- There appears to be little new useful data since the 1998/99 report, and there is little mention of changes since the last supplementary SoE report.

224 In summary the document is unfocussed, carelessly written and compiled and gives no sense to the reader that the council really understands the environmental impacts occurring or has a coherent plan to deal with them in the future.

**225 Recommendation 33: That the general manager prepare a complying State of Environment report for consideration by council.**

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## TERMS OF REFERENCE NO. 4

*“The appropriateness of the procedures and process adopted by Council in relation to its environmental planning responsibilities, including their application to the Council’s own projects.”*

### **Land management issues**

226 Section 25 of the Act requires a council to classify all public land under its control. Pursuant to section 26 of the Act there are two classifications for public land. These classifications are “community” and “operational”.

227 Section 27 of the Act stipulates two ways to classify public land:

- by way of a local environmental plan, or
- by resolution of the council under sections 31, 32 or 33 of the Act.

228 In relation to public land under the control of the council, it appears that:

- council has not classified land by its local environmental plan, and
- the public land under council’s control has not been classified by way of council resolution.

229 Clause 6(2) of Schedule 7 stipulates that on the commencement of Part 2 of Chapter 6 of the Local Government Act, the land comprising a public reserve, land subject to a trust for a public purpose, land dedicated under section 94 of the *Environmental Planning and Assessment Act 1979*, land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space, and land controlled by council that is vested in the corporation constituted by section 8(1) of the *Environmental Planning and Assessment Act 1979* is taken to have been classified as community land.

230 Clause 6(3) of Schedule 7 states that within one year after the relevant commencement, the council may, by resolution, classify, as community land or operational land any public land that is vested in or under its control and that is not classified by sub clause (2).

231 Clause 6(7) of Schedule 7 states that any land that may be classified by resolution under sub clause (3) and that is not classified within one year after the relevant commencement is taken to have been classified as community land.

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- 232 Land acquired by council after 1 July 1993 other than land to which the *Crown Lands Act 1989* applies and land that is acquired for the purpose of a road must be classified as community land or operational land either before council acquires the land or within three months after its acquisition: section 31(2) of the Local Government Act.
- 233 Any land acquired by council that is not classified by the end of the three month period is taken to have been classified under a local environmental plan as community land: section 31(2A) of the Local Government Act.
- 234 Public land is defined in the Local Government Act dictionary as “any land (including a public reserve) vested in or under control of the council, but does not include:
- A public road, or
  - Land to which the *Crown Lands Act 1989* applies, or
  - Land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or
  - A regional park under the *National Parks and Wildlife Act 1974*.”
- 235 As council has not classified land under its local environmental plan and as there is no evidence to suggest that any resolutions to designate public land have been voted upon by council, it appears that all of the public land within the Shire, other than the exceptions defined by the dictionary, is currently classified as community land.
- 236 Recommendation 34: That all public land use in the Shire be assessed and that land which is being used for purposes other than community land purposes be reclassified as operational land.**
- 237 Section 45(1) of the Act states that a council has no power to sell, exchange or otherwise dispose of community land. An exemption exists under section 45(4) which states that section 45 does not prevent a council from selling, exchanging or otherwise disposing of community land for the purpose of enabling that land to become, or be added to, a crown reserve or to become land that is reserved or dedicated under the *National Parks and Wildlife Act 1974*.
- 238 Pursuant to section 45(1) of the Act, council has no power to sell any of the land under its control unless such land was first classified as operational. Based on the available evidence, this classification does not appear to have taken place.
- 239 Council has leased property without appropriate community consultation. Council is also in the process of negotiating the sale of community owned land.

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**240 Recommendation 35: That no public land be leased, licensed or sold without first being reclassified as operational land.**

241 Council is required to prepare a draft plan of management for community land pursuant to section 36(1) of the Local Government Act. It does not appear that council has developed a plan of management for community land.

242 The use and management of community land is to be regulated by a plan of management. Until a plan of management is adopted, the nature and use of the land must not change.

243 Based on the evidence provided it would appear that council has breached sections 45(1) and 36(1) of the Local Government Act.

**244 Recommendation 36: That the general manager prepare a plan of management for council's consideration.**

245 Section 53 of the Act also prescribes that council must maintain a land register for public land. Council staff consider that a rates register is sufficient as a land register. However, section 53 has specific requirements.

**246 Recommendation 37: That the general manager prepare a land register for public land in compliance with section 53 of the Act.**

***Demolition of 5-7 Doyle Street, Brewarrina***

247 At council's ordinary meeting held on 20 February 2004 it was decided to purchase the property 5-7 Doyle Street, Brewarrina. There was no quorum for the meeting and faxed votes were accepted. It is acknowledged that that occurred prior to the current term of the elected body.

248 The purchase of the property was for the balance of outstanding rates. The sale had an extended settlement date of 16 February 2005. The sale has yet to be completed.

249 A building was on site. Council sought and received advice from the owners of the building for demolition. Council demolished the building. No development application was lodged for the demolition. The Inquiry was told at the public hearings that a Notice had been signed on the same day of the demolition. A search of the council records by council staff could not locate that Notice.

250 It appears that council demolished a building without proper authority and at its own expense.

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### ***Lack of a section 94 contribution plan***

- 251 If a consent authority is satisfied that a development, the subject of a development application or of an application for a complying development certificate, will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant consent to that application subject to a condition requiring the dedication of land free of cost and/or the payment of a monetary contribution. This is known as a section 94 contribution plan.
- 252 Councils should use their section 94 contribution plan to make sure that appropriate contributions are being collected and spent on infrastructure.
- 253 The NSW Department of Aboriginal Affairs recently implemented an Aboriginal Community Development Program against a Housing and Social Plan. \$12 million was allocated to Brewarrina to build/purchase 57 houses/units and implement infrastructure necessary to make the two Aboriginal reserves, West Brewarrina and Barwon 4, equivalent to the rest of the town.
- 254 Such additional housing will put added pressure on council's already depleted infrastructure such as roads, water, sewerage, parks, and gardens.
- 255 Council does not have a section 94 contribution plan and therefore is unable to charge any contributions for new developments. Considering that the additional housing being build for the Aboriginal community, it is questionable how council will fund the extra pressure on infrastructure in the future.
- 256 It should also be mentioned council is unable to ask for a special rates variation until they have made sure that developer contributions are properly collected and applied.
- 257 By not having a section 94 contribution plans, council will have to fund public amenities and public services with its already stretched funds.
- 258 Recommendation 38: That the general manager prepare an appropriate section 94 contribution plan for the Shire for council's consideration.**

### ***Bre Lucerne***

- 259 Bre Lucerne (formally West Bre) uses treated effluent from the Brewarrina sewage works for irrigation purposes. It uses privately owned land, crown land and council owned land for the operation. It is



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said that the owner of the property has used the treated effluent for the past 30 or so years.

- 260 It appears that the operation does not have approval to use the crown or council land. It is said that the use of the council land has only occurred in the past few years. However, I am not in a position to prove this one way or the other.
- 261 Section 60 of the Act requires that council must get approval from the Minister for Utilities if it provides sewage from its area to be discharged, treated or supplied to any person.
- 262 Recommendation 39: That council identify when the council provided the council owned land and crown land for the discharge of sewage. If the provision of that land was after the introduction of the Local Government Act 1993, then application should be made to the relevant Minister under section 60 of the Act to allow the discharge of the sewage.**
- 263 It is noted that the council provides the treated effluent to Bre Lucerne free of charge. Considering that the treated effluent is financially benefiting the owner/lessee, it is suggested that council charge a reasonable fee for the use of the treated effluent. This should provide council with another source of funds rather than relying on its small rate base and grant money.
- 264 Recommendation 40: That council charge a reasonable fee for the use of treated effluent.**
- 265 A plastic pipe has been placed in council's treated effluent outfall pipe that goes from its holding dams into the river and allows the discharge of treated effluent when necessary. It is acknowledged that council does not use that outfall pipe as the treated effluent is used for irrigation. However, in the event that it is required to use its outfall the pipe is currently obstructed. Council has taken no steps to clear the obstruction.
- 266 Recommendation 41: That obstructions in council's effluent outfall pipe be removed.**
- 267 As mentioned, council owned land is being used for irrigation purposed. In recent years, irrigation pipes have been installed without proper authority. That land is community land, but is being used for operational purposes and is in the process of being sold. Council is not in a position to sell the land until it is reclassified as operational land by way of it Local Environment Plan or following public consultation.
- 268 Recommendation 42: That council classify council owned land and crown land currently being used for irrigation purposes as operational land if the irrigation continues.**

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## TERMS OF REFERENCE NO. 5

*“The appropriateness and efficacy of the relationship between elected representatives and Council staff, and between council, the community and other Commonwealth and State Government agencies providing funding or services in the council area.”*

### ***Relationship between the council and the general manager***

- 269 A minority of councillors have said in the public hearing that they do not have confidence in the general manager. Councillors have complained that the general manager does not provide full and complete information for them to make a fully informed decision.
- 270 It is acknowledged that other councillors stated that they do have confidence in the general manager.
- 271 It is noted that there have been issues raised about the general manager’s performance in his performance appraisal, yet he is rewarded with pay increases, one of which was completely unsubstantiated.
- 272 The relationship between the council and the general manager appears to be unusual given some councillors concerns and the fact that the general manager is being financially rewarded regardless of performance issues that are raised.
- 273 Some issues about the general manager’s performance and his financial rewards are identified under the terms of reference number 9.

### **Relationship between the council and community**

#### ***Ngemba Community Working Party***

- 274 Council is a signatory to a shared responsibility agreement between the Commonwealth Government, New South Wales Government and the Ngemba Community Working Party (representing the Aboriginal community in Brewarrina). The objectives of the agreement are to:
- establish partnerships and share responsibility for achieving measurable and sustainable improvements for Indigenous people living in the Ngemba community,
  - support and strengthen local governance, decision making and accountability of all parties, and
  - learn from a shared approach – identify what works and what doesn’t and apply lessons to future approaches both at the community level and more broadly.

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- 275 All signatories of the agreement agree that the Ngemba Community Working Party is acknowledged as the peak community governance body and primary point of Indigenous contact in the Ngemba community.
- 276 All signatories to the agreement state they are committed to achieving better outcomes for Indigenous Australians and improving the delivery of services.
- 277 The relationship between the Ngemba Community Working Party and council is at a very low point. This is evidenced by a letter dated 23 May 2005 sent to the mayor that expresses a vote of no confidence in council's general manager. This issue is discussed below under the heading "Letter of no confidence in the general manager".
- 278 The poor relationship between the Ngemba Community Working Party and the council is further highlighted by the Community Working Party's letter to council advising that it wanted council to transfer the trusteeship of the Aboriginal Cultural Museum due to lack of progress, among other things. This issue is discussed below under the heading "Aboriginal Cultural Museum - transfer of trusteeship".
- 279 Recommendation 43: That the general manager or his nominee attend each of the Ngemba Community Working Party meetings.**

***Goodooga Community Working Party***

- 280 A councillor is the chairperson of the Goodooga Community Working Party. It is noted that in the public hearing the chairperson of the community working party acknowledged that it was achieving more with State and Federal Governments than with the council.
- 281 Recommendation 44: That the general manager or his nominee attend each of the Goodooga Community Working Party meetings.**

***Weilmoringle Community Working Party***

- 282 Little information was obtained in regard to the relationship between the Weilmoringle Community Working Party and the council. Comment on this relationship is limited to say that council representatives have attended the community working party meetings, at least occasionally.
- 283 Recommendation 45: That the general manager or his nominee attend each of the Weilmoringle Community Working Party meetings.**

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### ***Chamber of Commerce***

- 284 It is only in recent months that the Chamber of Commerce has established itself. Prior to that it was inactive for sometime – possibly years. Council is involved in its meetings. It is acknowledged that there are few businesses established in Brewarrina township. However, that is all the more reason to get all business people and council involved in the Chamber of Commerce.
- 285 There appears to be very little involvement in economic development of the area. Council should work with the Chamber of Commerce to promote business and services within the Shire. It was only at the public hearings of the Inquiry that it was announced that the Chamber of Commerce still existed.
- 286 As an organisation with an interest in economic development it is concerning that the council did not take the lead to ensure that the Chamber of Commerce meets regularly to discuss strategies and ideas to improve the economic development possibilities of the Shire.
- 287 Recommendation 46: That the general manager or his nominee attend each of the Chamber of Commerce meetings, if requested.**

### ***Loss of the Aboriginal Cultural Museum grant***

- 288 On 24 February 2005 the Department of Communications, Information Technology and the Arts (DCITA) offered council \$151,624 in funding for the restoration of the Aboriginal Cultural Museum to an operational status. The standard 45 days was given for council to sign the agreement.
- 289 The funding agreement was not signed. Instead, the general manager wrote to DCITA on 9 March 2005 querying the funding agreement. Among the issues raised were additional funding for council for an allowance of about \$20,000 for operational costs and an administration charge of 5% of the proposed capital works.
- 290 As the funding agreement was not signed, council did not receive the funding offered by the DCITA.

### ***Aboriginal Cultural Museum – transfer of trusteeship***

- 291 On 8 April 2005 the Ngemba Community Working Party wrote to council with the following concerns (Evidence Table 17):
- The length of time it took to erect the security fence (8 months)
  - The unreasonable eight weeks delay in allowing structural engineers to assess scope of works on the museum;

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- The unreasonable delay in signing the structural works contract with the Indigenous Co-ordination Centre (ICC);
  - The incomplete protection of museum assets, namely the audio visual material and old artefacts.

292 The Ngemba Community Working Party requested that the council transfer its trusteeship of the Aboriginal Cultural Museum. Council finally resolved to relinquish its trusteeship on 28 October 2005.

***Letter of no confidence in the general manager***

293 On 23 November 2004 a delegation from the Ngemba Community Working Party addressed council. It provided a letter to the mayor expressing a vote of no confidence in council's general manager (Evidence Table 18).

294 The vote of no confidence was in recognition of the lack of progress being made in the community generally and with the Aboriginal community in particular.

295 The Inquiry hearings confirmed that there has been animosity between the Ngemba Community Working Party and the council since November 2004. There appears to have been no attempt to repair that relationship until an offer by the Ngemba Community Working Party invited the councillors to attend a BBQ (Evidence Table 19). It is noted that the invitation was after the Inquiry hearings during which the relationship issues were raised. It is also noted that the council did not initiate the offer.

296 The Ngemba Community Working Party advised the Inquiry of the outcome of discussions with councillors at the BBQ (Evidence Table 20) and that council wants to move forward and repair the relationship between the two organisations.

**297 Recommendation 47: That the general manager and the council make every effort to enhance the relationship between the general manager, the council and the Ngemba Community Working Party.**

***General manager's attendance at the Ngemba CWP meetings***

298 There is an open invitation to the council to attend the Ngemba Community Working Party meetings. It is expected that to maintain a good working relationship between the two organisations and to be kept fully informed of matters concerning the community working party, the council should send a senior council representative to each community working party meeting.

299 Representatives from the council have seldom attended the Ngemba Community Working Party meetings.

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## Relationship between the council and government agencies

### *Funding for the council's youth centre*

- 300 The council entered into a funding agreement with the NSW Premier's Department on 16 October 2003 for specific projects and the employment of a Senior Youth Programs Officer. As a result of an unfair dismissal claim brought against the council by the person formally appointed as the Senior Youth Programs Officer, the council requested that NSW Premier's Department allow it to hold back a relatively small amount of funds from the grant for settlement of that dispute.
- 301 The NSW Premier's Department considered that the funds from the grants should not be used for the settlement of the dispute as it breached the terms of the funding agreement. Nevertheless, the NSW Premier's Department consented for the funds to be used by the council in the settlement of the dispute.
- 302 The NSW Premier's Department also stated that the council had failed to comply with its reporting and other obligations under the funding agreement.
- 303 As a condition of the use of the funds for the settlement of the dispute, the NSW Premier's Department required all unspent funds in relation to the Senior Youth Programs Officer position to be returned to the department.
- 304 The NSW Premier's Department also advised that once some specific projects had been completed, which had already been funded, the funding agreement would cease.
- 305 The council refunded \$52,027.91 from a grant of \$76,968.00 as a result of the dispute.

### *Bus shelter grant*

- 306 On 9 March 2005 the Minister for Transport granted \$16,000 to council for the construction of a bus shelter through its Country Passenger Transport Infrastructure Grants Scheme. The grant provided that when the project was within 90 days of commencement the funds could be deposited into Council's account.
- 307 On 24 June 2005 council received the grant monies. The project had not commenced within 90 days of the funds being deposited.
- 308 **Recommendation 48: That the general manager report to the Minister for Transport that:**
- **the bus shelter had not been commenced within the prescribed 90 days of receipt of funding,**

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- the progress of the bus shelter, if any, and
  - the reasons for the delay.

### ***Toilet Grant***

- 309 In September/October 2003 the existing public toilets in Memorial Park were demolished on the grounds of their dilapidated condition.
- 310 On 13 July 2004 the NSW Premier's Department approved a \$33,000 grant for the construction of toilets in Brewarrina. One of the terms of the conditions of the grant was for the funds to be spent within 6 months of receipt. Council received the grant on 22 July 2004. That grant has not been spent to date and Brewarrina still remains without a public toilet block.
- 311 Recommendation 49: That the general manager report to the NSW Premier's Department:**
- that the grant received for the construction of toilets in Brewarrina had not been spent within the prescribed 6 months of receipt of the grant,
  - the progress of the toilet block, if any, and
  - the reasons for the delay.

### ***Tennis court grant***

- 312 In March 2004 council received \$20,000 from the Department of Tourism, Sport and Recreation as part of the Capital Assistance Program. The grant was for the upgrading of existing tennis courts to a multi-purpose sports venue. The total project cost was \$45,890. Work on the tennis court was required to commence within nine month of the announcement of the grant program. The grant funds are required to be completed within two years. Council was required to find the additional funds for the project.
- 313 The terms and conditions of the grant provide that the grant may be withdrawn if the funds have not been spent within two years. No substantial works have been commenced on the tennis courts.
- 314 The delays in the use of the grants monies are unacceptable. The community is missing out on the use of the facility. The council should consider refunding the money to the department so that the funds can be reallocated to a council that is more committed to providing community facilities.
- 315 Recommendation 50: That the general manager report to the Department of Tourism, Sport and Recreation:**
- that the grant received for the upgrade of tennis courts in Brewarrina had not been spent within the prescribed time limit,

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- the progress of the tennis court upgrade, if any, and
  - the reasons for the delay.

### ***Funding for the Brewarrina Community Drug Action Team***

- 316 The NSW Premiers Department granted funding of \$3000 for the Brewarrina Community Drug Action Team in the 2001/2002 financial year. Council apparently allocated the monies to the wrong account.
- 317 The NSW Premier's Department accepted the council's explanation, but asked that the monies be refunded to another organisation. That request was made on 24 January 2004.
- 318 The NSW Premier's Department again wrote to the council requesting the refund of the grant on 18 April 2005. The grant was not refunded at that time. The department then wrote an email on 31 May 2005 requesting the funds be refunded. Council refunded the grant on 30 June 2005.
- 319 It is unacceptable that grant monies not be refunded in a timely manner when requested by the original provider.

### ***Withdrawal of Elders Grant***

- 320 A total grant of \$50,000 by the NSW Attorney General's Department to fund the Elders Council (\$17,200) and the Young Leaders Program (\$32,800) was offered to council in April 2003. The department did not receive all the documents required from council in order pay the grant.
- 321 The original grant application suggested that the Elders Council would work with the criminal justice system, the school system and families to support young people who had contact with the criminal justice system, and/or were at risk due to truancy or drug and alcohol abuse. Subsequently the Circle Sentencing program and a Community Justice Group have been introduced in Brewarrina, which addresses the needs that the Elders Group intended to address.
- 322 The department created a new funding and performance agreement for the Young Leaders program to the value of \$32,800 and this was again offered on 23 September 2004. Council was required to return the appropriate documents to the department. It did not. As a result the department then rescinded the offer.
- 323 The council does not appear to be committed to providing social services to the young people of the Shire.



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## TERMS OF REFERENCE NO. 6

*“Whether there has been adequate annual or longer term planning for the provision of services by Council within its local government area.”*

### ***Management plan 2005/08***

324 The council’s management plan is the strategic mechanism in which such planning, policy making and management may take place. The management planning effort should translate the strategic direction of council into strategy plans.

325 The council’s 2005/2008 the management plan was reviewed at council’s extraordinary meeting held on 30 May 2005. The management plan was adopted on 29 June 2005.

The management plan appears to be deficient in the following areas:

- It does not state the community profile. The Department of Local Government prefers that it does.
- There are non-specific objectives, targets and performance measures.
- It does not provide a statement of the means by which the council proposes to achieve its targets (s.403, dot point 3). Statements of means are action orientated and describe what the council will do to achieve its objectives and targets.
- There appears to be no priority to capital works to be conducted.
- The majority of capital works are in the 2004/05 year and small amounts in 2005/06. There are no capital works scheduled for 2006/07.
- It does not identify activities of a business or commercial nature to be undertaken by the council. Yet for the previous management plan, council identified plant ownership and operation and private contracting as business undertakings.
- There is no asset replacement program to be implemented by the council (s. 403(2), dot point 3).
- There is no statement for the sale of assets to be conducted by the council (s. 403(2), dot point 4).

**326 Recommendation 51: That the management plan be amended in compliance with the Act for council’s consideration.**

### ***Required capital expenditure for infrastructure***

327 This matter is discussed under the heading “Low levels of reserves for infrastructure replacement”.

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### ***The council's social plan***

- 328 The Regulation requires all councils to develop a social and community plan, at least once every 5 years, to meet the needs of the residents of their area. This plan must be prepared in accordance with guidelines issued by the Department of Local Government (cl.200(2)).
- 329 Council must include an access and equity activity statement in its management plan. This statement must include the priority access and equity activities from its social and community plan (cl.200).
- 330 Also drawing on council's social and community plan, council must also include the following information about their access and equity activities in its annual report:
- A comparison of the actual and projected performance of its access and equity activities during that year, including the reasons for any differences (s.426(2)(b) and cl.217(1)(d)(i).)
  - Details of activities outlined in the council's management plan or arising from the council's social/community plan or from other sources, and undertaken by the council during the year to develop and promote services and programs that provide for the needs of children (cl.217(1)(c)); young people; women; older people; people with disabilities; Aboriginal and Torres Strait Islander people; people from culturally and linguistically diverse backgrounds (s.428(2)(j)); other groups in the community identified by councils as having special needs; and the general community.
- 331 Overall, council's social plan is extremely limited. It does not meet the mandatory requirements set out in the *Social and Community Planning and Reporting Guidelines (DLG, December 2002)*. There are a number of gaps, for example, strategies/recommended actions have not been developed for all mandatory population target groups and assessment and recommended actions are not identified for all issues listed in Strategies.
- 332 Over 50% of the Shire's population is Indigenous – yet this Strategy section very weak.
- 333 The structure of the main body of the plan – the Strategies – appears to identify key issues for a particular target group/area and corresponding needs assessment (under Issues and Gaps) and recommendations (for actions). However, this section contains little evidence of how it was developed and shows limited coherence or consistency.

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- 334 Some of the information under particular strategies appears confused, for example on page 15 “Strategy for People with Disabilities” (PWD) notes most services are provided through Home and Community Care program and lists, under Issues and Gaps, that none were identified by health care professionals at this time. This seems unlikely and possibly other sources should have been consulted in the needs assessment for PWD. Given this section of the plan cross-references with the Strategy for Older People, it may have been useful to include the relevant issues and actions in this section as well. Also, Brewarrina Youth Centre is listed under Strategy for Children but not Strategy for Young People.
- 335 Many of the recommendations do not demonstrate that the council has a clear and consistent understanding of its role and responsibilities for social planning. For example, while it is generally recognised that councils may have limited resources to undertake direct community service provision, councils have a role in leadership, facilitation and partnerships. However, the plan’s recommendations may be considered relatively passive on the whole. The recommendations could have included actions that council undertakes as a direct service provider, for example, the Health Strategy could have included council’s public health activities (as evidenced in the Draft Management Plan 05/08).
- 336 Implementation (through the Management Plan) and reporting (through the Annual Report) is generally poor. There are few, if any linkages between these two documents and the Social Plan that are apparent. For example, the Annual Report 03/04 states: “All planning processes involved extensive community consultations ensuring, as far as possible, these strategic plans reflect the opinions of the community members and adequately address needs and expectations.” (original emphasis, p 15). This is not apparent, evidenced or cross-referenced in the Social Plan dated October 2004.
- 337 The plan generally lacks consistency and meaningfulness.
- 338 The development and presentation of the Social Plan would have benefited from reference and use of the DLG’s *Social and Community Planning and Reporting Guidelines and Manual* both of which are available from [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).
- 339 Recommendation 52: That the general manager develop and prepare a new social and community plan that complies with the Act and the relevant guidelines for community consultation and for council’s consideration.**

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## TERMS OF REFERENCE NO. 7

*“Whether the elected representatives are in a position to adequately direct and control the affairs of council in accordance with the Local Government Act 1993, so that council may fulfil the Charter, provisions and intent of the Local Government Act and otherwise fulfil its statutory functions.”*

340 Councils are guided by a charter containing a number of principles, as provided by section 8 of the Local Government Act. There are a number of examples identified throughout this report where it appears that council has not met its obligations under the following principles:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively. Examples identified in this report, but not limited to, include:
  - Loss of funding for the council’s youth centre,
  - Lack of progress on using the bus shelter grant,
  - Lack of progress on using the toilet grant,
  - Lack of progress on using the tennis court grant,
  - Withdrawal of the Elders Grant.
- to exercise community leadership. Examples identified in this report, but not limited to, include:
  - The role and responsibility of councillors,
  - Over representation,
  - Poor relationship with the Ngemba Community Working Party.
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development. Examples identified in this report, but not limited to, include:
  - Poor state of environment report,
  - Land management issues,
  - Lack of a section 94 contributions plan.
- to have regard to the long term and cumulative effects of its decisions. Examples identified in this report, but not limited to, include:
  - Councillors making decisions without knowledge of all relevant information.

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- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible. Examples identified in this report, but not limited to, include:
    - Failure to accept a grant for the Aboriginal Cultural Museum,
    - The transfer of the Aboriginal Cultural Museum trusteeship,
    - Low levels of reserves for infrastructure replacement,
    - Overpayment of accounts.
  
  - to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government. Examples identified in this report, but not limited to, include:
    - Poor meeting procedures
  
  - to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants. Examples identified in this report, but not limited to, include:
    - Unsatisfactory high level of outstanding rates and charges.
  
  - to be a responsible employer. Examples identified in this report, but not limited to, include:
    - Lack of an EEO management plan,
    - Inappropriate employment practices,
    - Workers compensation issues,
    - Level of sick level,
    - Lack of process to account for absences.

341 The above-mentioned examples and their recommendations are discussed throughout this report.

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## TERMS OF REFERENCE NO. 8

*“Whether the Council has exercised prudent financial management and control.”*

### ***Analysis of financial accounts***

- 342 Operating surplus is the difference between revenues and expenses. According to council financial accounts, the council's operating surplus from ordinary activities before capital items for the 2004/05 financial year was \$395,000.
- 343 The purpose of the unrestricted current ratio is to assess the adequacy of working capital and the ability to satisfy obligations in the short term of the unrestricted activities of council.
- 344 Council's unrestricted current ratio of 2.83 is satisfactory. However, there is a high level of outstanding rates and charges at 16%. It should be noted that the Department of Local Government's acceptable outstanding rates percentage for rural council's is 10%.

### ***Working Capital***

- 345 Working capital is the difference between current assets and current liabilities. It measures the enterprise's ability to meet current obligations and commitments.
- 346 Council's liquidity has improved in 2004/05. The unrestricted current ratio in 2004/05 was satisfactory at 2.83. This was up from 2.07 in 2003/04.
- 347 The council's unrestricted cash had improved in 2004/05 to \$286,000 from \$26,000 in 2003/04. Council's auditor has commented in 2003/04, *“...we are of the opinion that available working capital as at 30 June 2004 was insufficient and that level should be in the vicinity of \$800,000.”* The auditor has made similar comments in the past. Even with the improvement, council's level of unrestricted cash is borderline.
- 348 Recommendation 53: That the general manager increase its available working capital to an acceptable level.**
- 349 The rates and annual charges coverage ratio is only 17%. Operating grants and contributions accounted for 55% of total operating income in 2004/05. Council's rates are much lower than the group averages and since 1994/95 council has only applied for one special rates variation (19.28% was granted in 1999/00).

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### ***Operating deficit before capital***

- 350 Council has made operating deficits before capital items for three of the last five years. This is not a major issue as a number of councils fail to fund depreciation from operating income. Council did manage to return surplus results after capital items in four of the past five years.
- 351 According to council's 2005/06 budget, council has budgeted for a deficit before capital of \$1.607 million and a surplus after capital of \$16,000. Council's operating result before capital items depends largely on the amount of operating grants and contributions received each year. One way to improve the results would be to take significant cost cutting measures.
- 352 Recommendation 54: That the general manager undertake a review of expenses, with a view to reducing unnecessary expenditure, but without significantly impacting service delivery.**

### ***Unsatisfactory high level of outstanding rates and charges***

- 353 This area has been a consistent problem for council with the percentage being above 10% each year since 1996/97. The outstanding percentage for 2004/05 is 16%. The third quarter budget review for 2004/05 revealed that council is now utilising an external debt collector to assist in collecting aged debts (greater than 90 days). The issue of high rates and charges outstanding and low general level of income is not unique to Brewarrina Shire as a number of councils have the drought impacting upon debt collection.
- 354 Recommendation 55: That council reduce its outstanding rates and charges.**

### ***Low levels of reserves for infrastructure replacement***

- 355 In economically depressed times, and with a diminishing population (according to ABS) and therefore reduced annual grants, it is understandable that council may not be able to provide all the facilities that are needed for a community such as Brewarrina. However, it should be expected that facilities that exist are fully maintained and that council would do its utmost to obtain other funding grants to maintain/build other facilities.
- 356 The written down value of council's infrastructure assets is considered to be good. However council's 2003/04 financial statements state that \$10.220 million was required to bring those assets to satisfactory condition (the figure at 30 June 2005 is not yet available). Council has only managed to set aside \$1.134 million in the 2003/04 financial year for infrastructure. Council has increased this to \$1.245 million for infrastructure for the 2004/05 financial year. This is considered to be inadequate.

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**357 Recommendation 56: That council significantly increase its provision for infrastructure.**

***Levee bank case***

358 Legal action continues in relation to the construction of the Brewarrina township levee bank as council contends that the contractor did not perform the levee construction according to project specifications. A certificate of completion was not provided for the contracted works. The contractor has sued council for outstanding monies. A large amount of money is outstanding to the contractor for works. Council may also potentially be liable for further monies in costs if council were to lose the case.

359 A \$703,000 bank guaranteed payment is repayable to council if council wins the case. Council's legal costs to date total over \$1 million. Several million dollars of works is likely to be required to bring the levee up to an acceptable standard. Capital works appear to have been cut back during the year to fund legal costs in the case. Legal costs will continue to adversely impact on council's liquidity position.

360 Council has not disclosed in the 2004/05 financial statements the \$230,000 bank guaranteed payment that council has provided in this legal case. Council also has not disclosed any contingent liability if council loses the case or the counter claim.

**361 Recommendation 57: That the \$230,000 bank guarantee be accounted for in the council's 2004/05 financial statements.**

**362 Recommendation 58: That council account for any contingent liability that may exist in regard to the Levee Bank case in its 2004/05 financial accounts.**

***Swimming pool contract***

363 Council invited tenders for the management of the Brewarrina & District War Memorial Olympic Pool Complex. Tenders closed on 31 August 2004. The notice of the tender stated that the contract was to commence on 20 September 2004 and was to run for one to seven seasons, by arrangement between the successful contractor and the council.

364 Council did not receive a tender for the management of the pool complex.

365 A council staff member requested Lowmac Enterprises to lodge a quotation with council for the management of the pool. Lowmac Enterprises lodged the quote. The quote is undated and not signed nor stamped received by the council.



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- 366 On 28 September 2004 a business paper was presented to the council advising it that one application for the management of the pool complex had been received (Evidence Table 23). That report stated that the proposed contract was for \$80,000.
- 367 It is noted that the report states that the quote was received as an expression of interest as opposed to a tender.
- 368 The report makes no mention of the length of the contract period. The report reads as if the contract is for one year.
- 369 The council resolved to delegate to the mayor, the general manager and the Director of Technical Services to finalise the swimming pool management contract.
- 370 On 20 October 2004 the contract between the principals of Lowmac Enterprises and the council was signed for the management of the swimming pool complex. The lump sum price was \$80,000.
- 371 The contract commenced on 29 September 2004 (ie prior to the signing of the contract) and was for one season. The contract also allowed for the contract to be extended for a further seven single years by the contractor exercising an option. The contract does not appear to give the council an option to not accept the option.
- 372 There does not appear to be any evidence that the councillors were aware of the council's potential liability of up to \$640,000 (ie \$80,000 X 8). As a result of the lack of information provided to the council, it was not possible for the councillors to have regard to the long term and cumulative effects of its decision as required under council's charter (s.8, dot point 6).
- 373 Considering that the contract had a potential value of up to \$640,000 and that Lomac Enterprises had not lodged a tender, best practice would have to been for council to manage the pool itself (if staff had the appropriate skills, experience and qualification) or for the tender to be readvertised.
- 374 It is noted that the previous manager of the pool was paid \$25,000. There can be little justification for the substantial increase in management fees to Lomac Enterprises.
- 375 It is also noted that it appears that council is paying Lomac Enterprises more that \$80,000 for the management of the swimming pool. The amount paid to Lomac Enterprises for one year from 29 September 2004 was \$87,272.76.

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**376 Recommendation 59: That council seek legal advice to determine any avenue to make alternative arrangements for the management of the swimming pool.**

**377 Recommendation 60: That the general manager instigate action to recover the overpayment of the contract from Lomac Enterprises.**

***The use of previous council employees as contractors***

378 At various times a previous council employee is contracted by council to supply a grader to council. The grader is not owned by the former employee, but is supplied by a third party. The hire of the grader from the former employee is the second most expensive rate compared to other contractors.

379 Council is required to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible. There can be little justification of the hiring of equipment, which has been hired from another party and where council has previously hired equipment directly from that third party, and which is the second most expensive in comparison to other contractors.

**380 Recommendation 61: That the general manager contract only those entities that are able to provide value for money for the services provided to council.**

***Purchase of equipment***

381 The general manager authorised the purchase of a \$25,000 street sweeping machine in 2004. It is alleged that this purchase was not included in council's budget for the year and that the machine was purchased on behalf of Northern Star Aboriginal Corporation, the successful tenderer in the street sweeping contract. It should be noted that the agreement between council and Northern Star stipulated that Northern Star was to provide and be responsible for all of its own equipment and labour.

382 Council's performance review of the general manager dated 22 February 2005 indicates that council had concerns about certain processes being undertaken by the general manager including the purchase of the sweeping machine. Further, the general manager's delegations only authorise the purchase of equipment, materials and services in accordance with council's policies and budget. It is evident on perusal of council's budget for the year 2004/05 that no provision had been made for the purchase of this capital item.

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***Medical centre additions – over payment***

- 383 At its ordinary meeting held on 26 May 2004, Council approved the extension to the Doctor's surgery. HH & J Lukas was one of three builders that had submitted a quote to council for the work. HH & J Lukas was the successful applicant.
- 384 HH & J Lukas submitted a quote of \$75,300 excluding GST for the work. The council approved for a lump sum payment of \$75,300 (Evidence Table 22). The council's general manager wrote to HH & J Lukas advising of the successful quote and the contract is a fixed lump sum of \$75,300 (Evidence Table 23). There is no formal contract for the Medical Centre additions in council's files.
- 385 The amount paid to HH & J Lukas (excluding additional works) was \$75,300 plus GST of \$7,530. The GST appears to be an over payment. At the very least the general manager should have come back to council for approval to pay the additional amount.
- 386 It is noted that council requested additional works to be conducted at the time of the alterations to the medical centre. One of those additions was for a ramp to the entry of the centre. That ramp was not identified on the original approved development plans. It is of concern that the absence of the ramp was not picked up at the assessment stage of the development application.
- 387 Recommendation 62: That the general manager instigate action to recover the overpayment from HH & J Lukas.**

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## TERMS OF REFERENCE NO. 9

*“Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the working relationships between the council, councillors and its administration.”*

### ***Council's organisation structure***

388 Pursuant to section 333 of the Act, council must re-determine its organisation structure within 12 months of an ordinary election. Council last reviewed its organisation structure in September 2003. Council is currently not in compliance with this obligation. It is also evident that the structure is out of date.

389 Since the Inquiry has been announced, several vacant positions were advertised internally and filled. Another position is being advertised. Those positions are based on the outdated organisational structure.

**390 Recommendation 63: That the general manager prepare another organisation structure for council's re-determination before filling any more positions.**

### ***Upgrade of Technical Officer's position***

391 The Technical Officer's position in the council's Engineering Department was upgraded from grade 6 to a grade 12 in September 2004. There was no formal review of the position, nor was the position advertised. The incumbent remained in the position after the upgrade.

392 The position was apparently upgraded because senior council staff were concerned that the incumbent had been offered another position elsewhere and was considering leaving. This is not a legitimate reason for upgrading a position. While the duties of that position may have changed over time, it is more appropriate to formally review the duties of the position.

393 More than one year after the upgrade, the employment contract for the position has yet to be signed.

### ***Employing people without formal advertising***

394 At least two people have been employed directly into positions without a formal selection process. A former personal assistant to the general manager was appointed directly to the position by the general manager and the Manager, Environmental Health and Building was directly appointed to the position after about one year temporarily in the position.

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395 It is difficult to justify council being an equitable and responsible employer when it continues to rely on an outdated organisational structure and its employment practices, at least in some cases, are inappropriate for a public sector organisation.

**396 Recommendation 64: That the general manager ensure that all vacant positions to be filled are properly advertised and acceptable applicants are formally interviewed.**

***Performance review of the former Director of Technical Services***

397 On 30 November 2004 the general manager and a representative from the Local Government and Shires Associations undertook a performance review of the former Director of Technical Services.

398 The former Director of Technical Services advised the Inquiry that in his view the performance appraisal was agreed to and finalised.

399 On 7 March 2005 the general manager e-mailed the former Director of Technical Services a copy of his amended performance appraisal. (Evidence Table 24). The amendments were done without consultation with the former Director of Technical Services.

400 The e-mail states that it was the council that amended the performance appraisal. The amendments related to downgrades.

401 The Inquiry was told during hearings that the council did not review the performance appraisal.

402 It is concerning that the general manager advised a staff member that council had reviewed their performance appraisal when it had not been.

***Delegations***

403 Section 378 of the Act provides that the general manager may delegate powers to any person or body. The general manager has delegated powers to the positions of Finance Manager and the Director of Technical Services.

404 The general manager has not delegated any power to the Manager, Environment, Health and Building. Such a position requires necessary powers in order to adequately fulfil the duties of the position.

**405 Recommendation 65: That the general manager provide delegations to appropriate staff.**

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## **Workers compensation**

- 406 There are 54 fulltime equivalent staff employed at council. Worker's compensation claims for recent employees shows that there were 10 employees that have had some type of injury that resulted in a claim. This means 18.5% of the council workforce has had some type of workers compensation claim.
- 407 Three employees have not returned to work, two are back to normal duties and five are on restricted duties. The majority of injuries have been incurred by the outdoor staff and relate to physical injuries.
- 408 In order to minimize the number of worker's compensation claims, a protective clothing and equipment policy is being updated. This policy was previously withdrawn from council's policy manual. It is anticipated that the updated policy will be reviewed by the Occupational Health and Safety committee prior to going to the council for adoption.
- 409 Council has advised that it is also in the process of undergoing a review to ensure it covers all appropriate areas including safety, discrimination and harassment issues.
- 410 Council anticipates that both items will be completed before the end of the year and all staff will be re-inducted. It is noted that these initiatives were only introduced after the announcement of the Inquiry.
- 411 It has only been in recent times that the council management has been made aware of the current status of worker's compensation issues. It has been identified that there are two areas in which the council could apply additional effort. They are:
- Prevention: ensuring that obvious safety precautions are taken and education on the benefits of exercise.
  - Claim management: reinforcing adherence to the limits and restrictions in return to work plans and creating a cooperative attitude with the workers.
- 412 Council management has also been advised that there needs to be:
- More attention paid to every individual claim;
  - More attention to the prevention of initial injuries;
  - More attention to the prevention of re-injury or exacerbation of the injury;
  - A cultural change within the organisation.

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413 These matters should have been dealt with on an ongoing basis. It should not take the announcement on an Inquiry to initiate actions. It is most concerning that council appears to be reactive in many areas including addressing workers compensation issues.

414 It is acknowledged that there has been progress in getting council's insurer to assess worker's compensation claims.

**415 Recommendation 66: That the general manager instigate appropriate action with a view of assisting employees on worker's compensation and reducing the number of claims.**

#### ***Sick leave***

416 For the financial year 2004/05 there was 4,579 hours of sick leave taken by council employees that cost \$85,665.21. This represents about 3.5% of total wages.

417 Council management does not appear to be addressing the high level of sick leave.

**418 Recommendation 67: That the general manager instigate action to address the level of sick leave.**

#### ***Failure to follow council's directions***

419 At council's extraordinary meeting held on 12 July 2004 council resolved that road works for Brenda Road go to tender (Evidence Table 25).

420 Council staff did not tender out the work for Brenda Road. Instead a combination of staff and contractors undertook the work.

**421 Recommendation 68: That the general manager ensure that all council resolutions are acted on in a timely manner.**

#### ***Tourism and Economic Development Strategy and Management Plan***

422 It appears that some councillors and the general manager are of the view that tourism is the way of the future for the Shire. Council has a Tourism and Economic Development Strategy and Management Plan. It was reviewed in August 2004.

423 A review of the plan shows that the council is concentrating on tourism with economic development integrated. A further review of the plan shows that very few of the strategies have been acted on. It is questionable how council can rely on tourism when its own strategies do not appear to be working.

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424 It is acknowledged that since the announcement of the Inquiry a new tourism and management plan with achievable targets is in the process of being written.

***Sister city relationship***

425 Council has a sister city relationship with Warringah Council since 2000. Since 2003, activity has been irregular.

426 Since the Inquiry has commenced, Warringah Council has come forward and made an offer to assist council in providing staff, internet services, and advice on processes and practices. Council should take up the offer of assistance and re-establish a good working relationship with its sister city.

**427 Recommendation 69: That council re-establish and foster its sister city relationship with Warringah Council.**

***Brewarrina Fishtrap Developments Co Ltd***

428 The Brewarrina Fishtrap Developments Company was formed to construct and operate a motel facility in Brewarrina. Funding for the construction of the motel had not been secured. The development was estimated to cost \$6.5 million, requiring a minimum of \$4.0 million of grant money.

429 The corporation was formed without Ministerial consent as required under section 358 of the Local Government Act. When the Department of Local Government drew this to council's attention it subsequently submitted details to the department in accordance with section 358. It is obvious from these actions that there is a lack of understanding of the procedures that were required.

430 Over \$30,500 was spent on a valuation report and an economic and social impact study as well as legal fees to establish the company. It is acknowledged that some of the money spent was received as grants. However, the money was spent before council gained approval for the establishment of the company from the Minister for Local Government.

431 It is concerning that public money can be spent on such a poorly researched project when that money could have been used for more basic infrastructure and services for the community, for example, building a public toilet block.

**432 Recommendation 70: That the council refrain from spending additional money on the fishtraps motel project.**



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### ***Failure to act on council resolution***

- 433 Council resolved at its meeting on 22 April 2005 to withdraw from the project and wind up the Brewarrina Fishtrap Developments Co Ltd. The reasons cited were the lack of interest and support for the project and the lack of attendance of members at the project meeting on 24 March 2005.
- 434 According to the Australian Securities and Investment Commission the company is still in existence.
- 435 It is concerning that a council resolution is not acted on within a reasonable time frame. It is most concerning that a company in which council is involved still exists, despite not being given proper approval by the Minister for Local Government.
- 436 Recommendation 71: That the secretary, which according to the ASIC records, is the general manager, cause the company to be deregistered as a matter of priority.**

### ***Aboriginal Cultural Museum fence***

- 437 Council is the trustee for the Aboriginal Cultural Museum. It advertised for quotations for the supply and erection of a fence for the museum. Quotations were required to be lodged with the council by 10 May 2004.
- 438 Four quotes were received. No quote was received before the due date. A quote from HH & J Lukas was accepted. It was the last quote received. That quote, as well as others, did not identify an approximate delivery date.
- 439 Council was informed of the proposed erection of the fence at its ordinary meeting held on 26 May 2004 (Evidence Table 26). At that meeting council did not make a resolution to authorise the approval of a quote or for the erection of the fence. The matter was simply "for council's information".
- 440 The council received a grant for the construction of the fence from the Aboriginal and Torres Strait Islander Services (ATSIS) to the value of \$61,600. One of the terms and conditions that ATSIS imposed on the procurement for capital items or services greater than \$5000 is that value for money be obtained through fair and open competition.
- 441 The HH & J Lukas was not the cheapest quote provided. There were further concerns raised by the Ngemba Community Working Party that the fence took some 8 months to build.

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- 442 It is noted that the council wrote to HH & J Lukas concerned about the length of time that it took to build the fence.
- 443 It appears that council has not acted in the best interests of the beneficiaries of the trust. It did not obtain approval from the full council to build the fence, it accepted a more expensive quote for a similar product offered by others and it was not proactive enough in ensuring that the fence was constructed within a reasonable time frame.
- 444 The actions of the council in regard to the Aboriginal Cultural Museum cast doubt on its ability to manage projects on behalf of others, particularly the Aboriginal community.
- 445 It should be noted that the Aboriginal Cultural Museum has not been open to the public during the entire time council has been the trustee. There appears to be no progress in opening the museum.

### ***The naming of “Weir Park”***

- 446 At council’s ordinary meeting of 18 March 2005 council considered the naming of Weir Park (Evidence Table 27). This is a park located at Brewarrina near the weir on the Barwon River and has some Aboriginal significance. It overlooks the weir and the start of the 40,000 year old heritage listed Aboriginal fishtraps and hence is a significant cultural site.
- 447 The discussion of this matter was not identified on council’s agenda for its meeting. Nor was there a business paper for it. There was no consultation with the community and there was no adequate research conducted to verify the name of the park. Resolution 317/05 on the matter states that council reiterates the previous resolution of the 1970’s, but no resolution has been provided to council to verify that there was such a resolution.
- 448 While it is acknowledged that locals may know the true name of the park, it is concerning that council did not advise the community of the naming or re-naming of the park. By not doing so the community may be unnecessarily offended.
- 449 Recommendation 72: That the general manager undertake further appropriate research, which includes locating the resolution from the 1970’s, to establish the correct name of “Weir Park”.**

### ***Tenders generally***

- 450 Clause 178 of the Regulation says in part that a council must “accept the tender which, having regard to all the circumstances, appears to it to be the most advantageous...”. A council must decide the criteria for assessment of each tender based on this principle.

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- 451 There appears to be a tendency for some local councils to rely on price as the main criterion when evaluating tenders or quotations. While price is a crucial factor, it is important to remember that price alone is not always a reliable indicator of value for money. If price is the sole criterion that is taken into account during the selection process, a council runs the risk that contracts are awarded without guarantee of service or quality.
- 452 Other non-price factors that may be relevant to the evaluation of tenders or quotations include: quality of service, reliability, ongoing service and support, experience, qualification of personnel, previous work performance, and the financial stability of the bidder.
- 453 Selection criteria based on all factors that will be taken into account during the evaluation process should always be developed prior to the calling of tenders or quotations and included in the bid documentation. It is also important that the evaluation process is clearly documented.
- 454 Council does not appear to have documented any selection criteria used for recent tenders other than financial criteria.
- 455 Recommendation 73: That the general manager prepare tendering guidelines for council's consideration.**

***Tender for the construction of offices at council's works depot***

- 456 Council called for tenders for the construction of new office accommodation at council's works depot. The tender provided a standard tender application form to be used.
- 457 HH & J Lukas was a tenderer for the job. The HH & J Lukas tender clearly shows that the tender of \$171,000 includes provisional items valued at \$24,820 (Evidence Table 28).
- 458 The tender was considered at council's ordinary meeting held on 27 May 2005. Financial analysis of the tenders received shows the provisional items as an additional item (Evidence Table 29). This overvalues the HH & J Lukas tender by \$24,820 plus GST.
- 459 Council resolved to accept the tender from HH & J Lukas for an amount of \$215,402. This is \$27,302 more than what HH & J Lukas actually tendered.
- 460 A letter was sent to HH & J Lukas informing them that they were the successful tenders.

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- 461 The tender documents also provided that telephone installation and computer cabling should be identified separately. The HH & J Lukas tender does not. As a result those two items are likely to be an additional cost to council. That information was not provided to council to allow it to make a fully informed decision.
- 462 Each of the other tenderers provided a firm commencement date and an expected completion date. The HH & J Lukas tender did not. Accordingly, the construction time is unknown. It is noted that the completion times provided by the other tenderers was not provided to the council (Evidence Table 31).
- 463 Considering the lengthy delays that occurred in relation to HH & J Lukas's construction of the fence for the Aboriginal Cultural Museum fence, it is concerning that HH & J Lukas were not required to provide a firm commencement and completion date.
- 464 There is some concern that the HH & J Lukas is a non complying tender, yet it was presented to council as a complying tender. Considering the fundamental errors with this tender, it is also concerning that the tender was recommended for approval. It is further concerning that the council approved a tender that was the second most expensive tender provided.
- 465 Recommendation 74: That council consider rescinding its resolution accepting the HH & J Lukas tender for the council's works depot offices. Council must ensure that any decision it makes in this matter does not expose itself to any legal action.**
- 466 Recommendation 75: That council re-evaluate the need to construct offices at the works depot at this point in time. Council should particularly consider the financial impact in building the offices.**

### ***Pecuniary interest returns***

- 467 A review of pecuniary interest returns identified that some returns were deficient in that they did not stipulate sufficient detail, they:
- did not state the involvement in companies,
  - did not give proper details of companies,
  - did not give all details of involvement in property,
  - did not state 'nil' in a section without any entries,
  - were not dated or were dated incorrectly.
- 468 The failure of councillors to give due care and attention to the accuracy of the content of the disclosures required in returns has the potential to seriously undermine the community's confidence in the integrity of local government and the decision making processes.

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469 These deficiencies highlight the lack of understanding by councillors and staff of the pecuniary interest provisions of the Act.

**470 Recommendation 76: That each councillor and designated officer thoroughly review their 2004/2005 pecuniary interest returns to ensure that all necessary information is disclosed. Where changes are required, new pecuniary interest returns should be lodged immediately.**

### ***Records management***

471 Council does not have a records management policy and as such it may be in breach of section 12 of the State Records Act 1998. Additionally, there is no records disaster recovery plan or disposal schedule. This leaves council vulnerable to more significant disruption should a significant event impact on council operations.

472 It is noted that files relating to Bre Lucerne have gone missing. This was identified several years ago. Since that time, no processes or procedures have been implemented to secure files.

**473 Recommendation 77: That the general manager instigate policies, processes and practices to ensure that the council complies with the State Records Act 1998.**

### ***Use of current employee as a contractor***

474 A current member of staff is employed by council as a road worker. That member of staff also operates a business on contract basis to supply and operate roadwork equipment. Council already owns the roadwork equipment that the member of staff can supply. Council regularly contracts the member of staff for the supply and operation of the staff member's roadwork equipment.

475 Council has no secondary employment policy. Council records do not show that permission was granted by the general manager for the employee to also engage in secondary work as required by section 353(2) of the Act.

476 A member of staff must not engage, for remuneration, in private employment or contract outside the service of the council that relates to the business of the council or that might conflict with the member's council duties unless he or she has notified the general manager in writing of the employment or work.

477 The general manager may prohibit a member of staff from engaging, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's duties.

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- 478 It would be difficult for the member of staff to claim that there was no conflict of interest between the staff member's employment duties, council's own business operations in regard to roadwork and the staff members external road work contracting business.
- 479 The general manager is aware of the use of the staff member as a contractor to council, but has not taken appropriate action in terms of section 353 of the Act. This matter should be addressed as matter of priority.
- 480 Recommendation 78: That the general manager cease using contractors who are also council employees and who do not have appropriate authorisation under section 353 of the Act.**
- 481 Recommendation 79: That any council employee who lodges a request to engage in secondary work be critically reviewed in terms of section 353 of the Act.**
- 482 Recommendation 80: That the general manager prepare a secondary employment policy for council's consideration.**

***The Royal Arms invoice for a Canon projector***

- 483 The general manager and his wife are the registered proprietors of the business name "Royal Arms". Royal Arms is a restored historic coach station, which provides accommodation and meals.
- 484 On 15 June 2004 Royal Arms issued an invoice to the council for the payment of a Canon projector to the value of \$5,574.00 (Evidence Table 30). An invoice from an external supplier was not provided.
- 485 The general manager and the Finance Manager explained at the Inquiry hearings that the invoice from Royal Arms was paid by the council as part of the general manager's salary sacrifice. The general manager's summary of income for the financial years ended 30 June 2004 confirms this.
- 486 Recommendation 81: That the general manager immediately provide council's Manager, Finance with the original purchase receipt from the external supplier for the canon projector for its records.**

***The Royal Arms business***

- 487 As mentioned the general manager is in partnership with his wife in the Royal Arms. The Royal Arms is an accommodation cottage located at Nimmitabel, near Cooma.

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- 488 The general manager has identified on his pecuniary interest returns that he received income from the Royal Arms. The business name Royal Arms is also registered in the name of the general manager and his wife.
- 489 The general manager claims that another person is managing the business and it is under contract for sale. No documentary evidence of this has been received.
- 490 It is noted that the general manager spends an amount of time in the Cooma area. It is acknowledged that the general manager claims that he is spending time caring for a relative while in the Cooma area.
- 491 The general manager stated in the Inquiry hearings that he sometimes does the washing up in the business. However, it is noted that he was also involved in organising advertising for the business (Exhibit Table 31).
- 492 It is unclear what the general manager's role is in the business, if any.

#### ***Pet Tours new business***

- 493 The general manager has recently embarked on a new business enterprise. Three companies were formed in December 2004. Two websites were also formed for pet tours and the sale of pet products. It is acknowledged that the Internet websites were in the establishment phase.
- 494 It is noted that full details of the companies were not identified in the general manager's current pecuniary interest return.
- 495 It is also acknowledged that the general manager stated that he did not work on these new business enterprises during council business time. It is inconclusive whether that is the case or not.
- 496 It is unclear whether the general manager received income from the companies or not. If he did, then council is required to approve the additional remunerated work under section 353(1) of the Act and it has not. This matter is inconclusive.

#### ***The Wright Bros Aircraft Project Inc***

- 497 The Wright Brothers Aircraft Project is the construction of a full size working replica of the Wright Brothers plane. It was constructed in Narromine, near Dubbo. It is noted that the general manager has spent some time in Narromine and Dubbo for various reasons.
- 498 The general manager has identified, in his pecuniary interest returns since he became the general manager, that he is the business manager for the organisation and receives income from it.

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499 When questioned further about this matter at the Inquiry hearings, the general manager advised that he did not receive income from the association.

500 It is unclear whether the general manager received income from the association or not. If he did, then council is required to approve the additional remunerated work under section 353(1) of the Act and it has not. This matter is inconclusive.

***Use of council staff for private business***

501 Prior to the launch of the Wright Brothers aircraft, the general manager used council staff to help prepare for it. He claims that the council staff did it voluntarily and for only a couple of hours.

502 The use of council staff for private business is not appropriate.

***Upgrade of general manager's performance appraisal***

503 On 17 May 2004 the mayor and a representative from the Local Government and Shires Associations reviewed the general manager's performance.

504 The general manager's performance was considered to be of "some concern". As this was not a satisfactory rating, the general manager was not entitled to a salary increase. The mayor wrote to the general manager on 26 May 2004 to that effect (Evidence Table 32).

505 On 26 May 2004 the general manager wrote to the mayor in response to his letter. The general manager considered that the review outcome did not acknowledge the legacy of matters that he inherited or his work in other areas (Evidence Table 33)

506 The general manager's performance appraisal was considered by council at its meeting on 23 June 2004. There was no notice of the matter, it was not on the agenda and there was no business paper. It is also noted that the matter was considered when 8 of the 12 councillors were in attendance at the meeting.

507 Council amended the ratings of the general manager's performance appraisal. There was no council resolution to the effect that the performance appraisal was satisfactory (Evidence Table 34).

508 On 22 July 2004 the mayor wrote to the general manager advising that the performance appraisal was amended, which translated into a "satisfactory" assessment. As such the general manager received a salary increase (Evidence Table 35).



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- 509 The mayor's letter to the general manager also states that "at its meeting on 26 June 2004 unanimously resolved that the rating be amended". The minutes do not record such a resolution.
- 510 The appropriateness of reviewing the general manager's performance appraisal at a council meeting without proper notice and when only 8 of the 12 councillors are present is questionable. All councillors should have been given an opportunity to consider the matter, particularly considering that the appraisal raised performance issues and was considered to be of "some concern".
- 511 It is further noted that no resolution was made to allow the performance appraisal to be amended as "satisfactory", yet the salary increase was allowed. It is considered that without such a resolution overturning the poor performance appraisal, the general manager was not entitled to the salary increase.

***General manager's salary 15% higher than the next reporting officer***

- 512 On 25 January 2005 council resolved to increase the salary of the general manager to 15% above the salary of the Director of Corporate Services (Evidence Table 35).
- 513 There was no performance review associated with the salary increase. There is no justification for the general manager's salary to be a minimum of 15% above the level of remuneration for any reporting officer and there was no business paper associated with this matter.
- 514 It is inappropriate for the salary of the general manager to be tied in percentage terms to the remuneration of a reporting officer. An obvious conflict of interest arises as the general manager can provide a good performance appraisal to a reporting officer, who then gets a salary increase, and where the general manager's salary is tied in percentage terms to that officer, the general manager's salary automatically increase. It appears that the council did not consider this as an issue when it approved the general manager's salary package always being 15% higher than the next reporting officer.
- 515 Action to reverse council's decisions should be considered in light of any exposure to possible legal action.
- 516 Recommendation 82: That the council consider rescinding resolution 270/05 and reducing the general manager's salary to the level it was prior to that resolution.**

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### ***Access to the general manager's contract***

- 517 It was alleged that councillors were unable to gain access to the general manager's contract of employment. It is noted that the contract was made available to councillors after the Promoting Better Practice review team from the Department of Local Government raised it as an issue.
- 518 A contract of employment for the general manager of a council is a contract between two parties: i.e. the general manager and the council. Both parties should have a copy of the contract. In particular the council should have a signed copy of the contract on the general manager's personnel file. In addition, copies of performance appraisals completed should also be placed on the general manager's personnel file.
- 519 A general manager should only be able to gain access to his own personnel file under the supervision of another person, such as the human resources manager.
- 520 Considering that the general manager is responsible to the council, the general manager's personnel file should be available for inspection by councillors, under the supervision of another person such as the human resources manager.
- 521 The general manager's contract of employment and his performance appraisals were not on his personnel file. This is not acceptable.
- 522 Recommendation 83: That a copy of the general manager's contract of employment be placed on his personnel file held by council.**
- 523 Recommendation 84: That a copy of the general manager's performance appraisals and associated records be placed on the general manager's personnel file held by council.**

### ***The general manager's absences***

- 524 Since at least May 2004 the general manager has been off site from council for over 30% of the business days. It is acknowledged that the general manager has attended various conferences and meetings off site. However, there is a large amount of time that has been identified as leave. Such leave includes, flex time, special leave, sick leave and annual leave. It is concerning that for much of that leave, there was no council record. It was not until the Inquiry identified this as an issue, that the general manager's leave entitlements were adjusted retrospectively.

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**525 Recommendation 85: That the general manager instigate appropriate practices to ensure that all staff absences are recorded in council's records.**

***Sick leave and special leave***

526 The general manager's employment contract states that special leave may be granted to the general manager by the council to provide care and support to a person who is ill and may be deducted from the employee's current accrued sick leave entitlement.

527 The contract states in clause 8.5.1 that the council is to grant the special leave. The general manager says that he obtained the authority from the mayor for the leave. It does not appear that the mayor has the authority or delegation to grant such leave. It appears that the mayor has not kept records of his approval of leave for the general manager.

528 Clause 8.5.2 of the employment contract allows special leave to be applied to sick leave. Clause 8.4.1(c) states that "proof of illness to justify payment will be required for absences in excess of two days".

529 The general manager has provided information that shows that 380 hours were taken since January 2004 in actual sick leave and carers leave. In limited instances the general manager provided proof of illness for his personal sick leave and some special leave. It does not appear that the general manager has provided adequate proof of illness when he took special leave in each and every case.

530 Council should undertake a full and complete audit of all leave taken by the general manager. That leave which cannot be justified in accordance with the contract of employment conditions should be immediately reversed and debited to annual leave entitlements.

**531 Recommendation 86: That the general manager's special leave be granted only by the council as required by the employment contract.**

**532 Recommendation 87: That special leave applied for by the general manager only be applied to sick leave entitlements where appropriate documentation is provided as required by the employment contract.**

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### ***Excessive sick leave***

533 As mentioned the general manager has advised he took actual sick leave and carers leave of 380 hours. From when the employment contract was signed up until 16 October 2005, the sick leave entitlement is 262.5 hours. It appears that sick leave has been taken in excess of the general manager's entitlement. Accordingly, all excess sick leave, which is at least 117.5 hours, should be debited to annual leave.

**534 Recommendation 88: That all excess sick leave taken by the general manager be debited to his annual leave entitlement.**

### ***Flex time***

535 The general manager has acknowledged that 26 days have been taken in either full or part time flex time since January 2004. The contract of employment does not provide for flex days to the general manager.

536 It is noted that the general manager is of the view that he is entitled to flex days because of the amount of work that he puts in. However, it is also noted that the employment contract, in clause 7.1 clearly states that "the employee shall work such hours as are reasonable and necessary to carry out the responsibilities of the position as set out in the position description..."

537 Considering that the general manager's employment contract does not allow for flex days, all flex days that the general manager has taken over the entire contract period should be reversed and converted into annual leave.

**538 Recommendation 89: That all flex time taken by the general manager be debited to his annual leave entitlement.**

### ***Working from home***

539 Council does not have a working from home policy. It does not appear that council has authorised the general manager to work from home for business purposes. It is noted that the general manager has on several occasions worked away from council on the same day that he took part special leave or part flex time. It is noted that the general manager was in the Cooma area when working from home. It is inconclusive whether the general manager was actually working from home on those days.

**540 Recommendation 90: That the general manager cease working from home until such time as a policy on working from home is approved by council.**

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**541 Recommendation 91: That the general manager prepare a working from home policy for council's consideration. Such a policy must include authorisation from either the council or the mayor, under delegation, to approve the general manager working from home.**

***Unaccounted days absent***

542 Despite the general manager providing a list of absences to the Inquiry, there are still an excessive number of days that are unaccounted for.

543 These days are 5 July 2004, 7 July 2004, 29 July 2004, 4 August 2004, 13 August 2004, 19 August 2004, 9 November 2004, 1 December 2004, 3 December 2004, 28 December 2004, 29 December 2004, 5 May 2005, 4 July 2005, 5 July 2005.

**544 Recommendation 92: That the general manager justify to council at the first council meeting after this report has been issued his whereabouts for the unaccounted for days. Those absences that have not been adequately justified should be debited to the general manager's annual leave entitlement.**

***Inconsistent absent days***

545 There are a number of days where the general manager has provided the Inquiry with information that appears inconsistent with other information regarding his absences. These days include:

- 27 August 2004. The general manager advised he was in meetings in Dubbo, but it appears he was in the Cooma area.
- 1 September 2004. The general manager advised that he was at a Local Government and Shires Associations conference. However for the following two business days there is no record of his absences.
- 2 February 2005. The general manager advised that he attended a Rural Fire Service meeting in Dubbo. It appears that it took all of the next day to return back to Brewarrina.
- 14 and 15 February. The general manager advised that he was on part day flex and part day working on these days. It is noted that there was extensive travel on the far north coast of New South Wales and into Queensland during that time.

***Accountability of general managers***

546 It is important for all general managers to be on site and visible to staff and the community. While it is acknowledged that general managers do need to leave council for meetings, conferences and various types of leave, they should still be fully accountable for their whereabouts.

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- 547 All leave should be approved strictly in accordance with the contract of employment and the council's own processes and policies. That may mean that the general manager will have to get the mayor, under delegation, to sign leave forms. Where the mayor has not been given authority under the contract to approve leave or where the council has not give delegated authority to the mayor to approve leave, the council will be required to approve leave. All leave should be properly and accurately recorded against the general manager's leave record.
- 548 To ensure full accountability of all general managers, it is suggested that they be required to present to the council a quarterly return justifying all absences for that quarter.
- 549 Recommendation 93: That the general manager be required to provide council with a list justifying all business day absences, including part business days, off site for the previous quarter. The first quarter being from 1 October 2005 to 31 December 2005. The list should be provided to council on the first available council meeting after the end of the quarter.**

***Further action by council required***

- 550 This report has identified a number of cases where council's policies, processes and practices are not sufficient. It has not reviewed every aspect of council's operations. It is suggested that the general manager undertake an entire review of its policies, processes and practices to improve them and rectify any problem issues. Council may find that the following publications are of assistance, but it should not be limited by these publications:
- Governance Health Check: - self audit guide to good governance in local government, Local Government Managers Association NSW.
  - Management Planning for NSW Local Government Guidelines, NSW Department of Local Government.
  - Corporate Government (AS 8000-2003 to AS 8004-2003), Standards Australia.
- 551 Recommendation 94: That the general manager undertake a complete and thorough review of the council's policies, process and practices to ensure that are appropriate and to improve them, where necessary.**

## EVIDENCE TABLE

No	Date	Issue	Description
1	26 May 2004	Procedures required when there is a lack of a quorum	Page 1 of the minutes of the ordinary council meeting held at Brewarrina on Wednesday 26 May 2004
2	23 June 2004	Procedures required when there is a lack of a quorum	Page 1 of the minutes of the ordinary council meeting held at Brewarrina on Wednesday 23 June 2004.
3	27 July 2004	Procedures required when there is a lack of a quorum	Page 1 of the minutes of the ordinary council meeting held at Brewarrina on Wednesday 27 July 2004.
4	29 June 2005	Procedures required when there is a lack of a quorum	Page 1 of the minutes of the ordinary council meeting held at Brewarrina on Wednesday 29 June 2005.
5	26 May 2004	The use of proxy votes	Report of the general manager submitted to the ordinary council meeting held on 26 May 2004, item A11-8-1, extensions to Doctor's surgery.
6	22 Feb 2005	Matters considered in closed sessions of the council meeting	Minutes of the committee of the whole of the council held at Brewarrina on Tuesday 22 February 2005, recommendation 300/05, re council to attend Senior citizen luncheon
7	18 Mar 2005	Matters considered in closed sessions of the council meeting	Minutes of the committee of the whole of the council held at Brewarrina on Tuesday 18 March 2005, re recommendation 322/05, council to find out who has the keys to the Goodooga Bowling Club lease and find out why the lease has not been signed.
8	22 April 2005	Matters considered in closed sessions of the council meeting	Minutes of the committee of the whole of the council held at Brewarrina on Tuesday 22 April 2005, re recommendation 347/05 - council sign and seal a lease for the Brewarrina pharmacy.

No	Date	Issue	Description
9	29 June 2005	Matters considered in closed sessions of the council meeting	Minutes of the committee of the whole of the council held at Brewarrina on Friday 29 June 2005, re resolution 430/05 - council take no further action in relation to a previous resolution regarding a toilet block and for new plans for the toilet block be prepared.
10	23 Nov 2004	Speaking at a council meeting	Page 10 of the minutes of the council's ordinary council meeting held on 23 November 2004 re the mayor's advise about the procedures to be followed for speaking at a council meeting.
11	22 Feb 2005	Code of conduct	Page 2 of the report of the Finance Manager as submitted to the ordinary council meeting held at Brewarrina on 22 February 2005 re code of conduct, delegations to general manager and meetings regulations.
12	22 Feb 2005	Code of conduct	Page 7 of the minutes of the ordinary council meeting held at Brewarrina on Tuesday 22 February 2005 re item C13-5 – code of conduct.
13	18 Mar 2005	Code of conduct	Page 7 of the report of the general manager as submitted to the ordinary council meeting held at Brewarrina on Friday 18 March 2005 re item 17 - code of conduct.
14	29 June 2005	Code of conduct	Page 2 of the report of the general manager as submitted to the ordinary council meeting held at Brewarrina on Wednesday 29 June 2005 re item C13-5 - code of conduct.
15	29 June 2005	Code of conduct	Page 3 of the minutes of the ordinary council meeting held at Brewarrina on Wednesday 29 June 2005 re item C13-5 – code of conduct.
16	22 April 2005	Code of conduct	Page 7 of the minutes of the ordinary meeting of the Council of the Shire of Brewarrina held at Brewarrina on Friday 22 April 2005, “report from councillors”.



No	Date	Issue	Description
17	8 April 2005	Aboriginal Cultural Museum – transfer of trusteeship	Letter from the Ngemba Community Working Party dated 8 April 2005 to the council requesting that the trusteeship of the Aboriginal Cultural Museum be transferred.
18	Nov 2004	Letter of no confidence in the general manager	Letter from the Ngemba Community Working Party advising the mayor about the vote of no confidence in the general manager.
19	14 Oct 2004	Letter of no confidence in the general manager	Letter from the Ngemba Community Working Party inviting councillors to a BBQ after the Inquiry hearings.
20	2 Nov 2004	Letter of no confidence in the general manager	Letter from the Ngemba Community Working Party advising the Inquiry of the outcome of discussions with councillors at its BBQ.
21	28 Sept 2004	Swimming pool contract	Report by the Director of Technical Services to the council at its ordinary meeting of 28 September 2004.
22	26 May 2004	Medical centre additions – over payment	Page 4 of the report of the general manager submitted to the council's ordinary meeting held on 26 May 2004.
23	12 May 2004	Medical centre additions – over payment	Letter from council to HH & J Lukas advising of the success quote for the proposed additions and alterations to the Brewarrina medical centre and stating the contract is for a fixed lump sum of \$75,300.
24	7 Mar 2005	Performance review of the former Director of Technical Services	E-mail from the general manager to the then Director of Technical Services, advising him that council had reviewed and downgraded his performance appraisal.
25	12 July 2004	Failure to follow council's directions	Resolution 99/04, page 3 of the minutes of the council's extra ordinary meeting held on 12 July 2004.
26	26 May 2004	Aboriginal Cultural Museum fence	Page 7 of the minutes of the council's ordinary council meeting held on 28 September 2004.
27	18 Mar 2005	The naming of "Weir Park"	Page 7 of the minutes of the council's ordinary council meeting held on 18 March 2005.

<b>No</b>	<b>Date</b>	<b>Issue</b>	<b>Description</b>
28	19 April 2005	Tender for the construction of offices at council's works depot	Tender from HH & J Lukas for the construction of new office accommodation at council's works depot.
29	27 May 2005	Tender for the construction of offices at council's works depot	Page 1 and 2 of the minutes of the council's ordinary council meeting held on 27 May 2005 when it considered the construction of new office accommodation at council's works depot.
30	15 June 2004	The Royal Arms invoice for a Canon projector	Invoice from Royal Arms for a Cannon projector valued at \$5,574.
31	22 April 2004	The Royal Arms invoice for a Canon projector	Email from aaatourism to the general manager concerning the advertisement for the Royal Arms
32	26 May 2004	Upgrade of general manager's performance appraisal	Letter from the mayor to the general manager advising that his performance appraisal was rated as of "some concerns".
33	26 May 2004	Upgrade of general manager's performance appraisal	Letter from the general manager to the mayor raising concerns about his downgraded performance appraisal.
34	23 June 2004	Upgrade of general manager's performance appraisal	Page 3 of the minutes of the committee of the whole meeting of the council held at Brewarrina on Wednesday 23 June 2004.
35	22 July 2004	Upgrade of general manager's performance appraisal	Letter from the mayor to the general manager confirming that the council had upgraded his performance appraisal.
36	25 Jan 2005	General manager's salary package 15% higher than the next highest reporting officer	Page 1 of the minutes of the committee of the whole meeting of the council held at Brewarrina on Tuesday 25 January 2005.