

**REPORT OF INVESTIGATION**

**OF**

**KYOGLE COUNCIL**

**CONDUCTED UNDER**

**SECTION 430**

**OF THE**

**LOCAL GOVERNMENT ACT 1993**

**April 2006**



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## EXECUTIVE SUMMARY

This report results from an investigation into the Kyogle Council, undertaken under section 430 of the *Local Government Act 1993* (the Act).

Kyogle Council has been the subject of complaints to the Department of Local Government regarding its administrative management, its role as custodian of community assets and its governance.

The terms of reference authorised for the investigation were:

*To investigate and report on:*

- 1. Whether the council's administration and management has met its responsibilities under the Local Government Act 1993 and has fulfilled its other statutory functions.*
- 2. Whether council, as custodian and trustee of public assets and funds, has exercised an appropriate standard of management.*
- 3. Whether council has acted in the best interests of the community and has fulfilled its responsibilities by resigning as the Reserve Trust Manager of 25 Crown Reserves. Whether council has acted appropriately in its management of Crown land.*
- 4. Whether the conduct of councillors, senior officers and council staff has resulted in efficient, effective and appropriate governance for the Kyogle Council.*
- 5. Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationship between council, councillors and its administration.*

The investigation team found:

- There are a number of breaches of statutory and regulatory requirements, including breaches of the *Local Government Act 1993*.
- There appear to be significant procedural and administrative inadequacies in the way council conducts its business.
- On the material available, it appears that the performances of the then General Manager, the then Human Resources Manager and the Director Planning, Environmental and Community Services are cause for serious concern.
- Most councillors do not appear to be aware of their responsibilities in relation to declaring pecuniary and non-pecuniary interests.
- Council's decision to resign as Trust Manager of 26 Crown Reserves has exposed council to significant liability issues and left the community without adequate community asset management for the area.

- Council has not followed the required development assessment procedures for some development applications including Crown development applications.
- There are aspects of the administration of Kyogle Council that have not been operating effectively or efficiently, especially in the areas of occupational health and safety, its Code of Conduct, its motor vehicle policy and its Register of Delegations.
- The conduct of councillors, the then General Manager and senior staff has, in some instances, been breathtaking in its bold disregard of proper processes, policy requirements and statutory obligations.
- Council was aware, due to the previous section 430 investigation and findings, of the necessity to properly manage the General Manager. It has failed to do so yet again, with serious consequences both for council and for the community.
- Absent council's dismissal of the General Manager and the resignation of the Human Resources Manager since this investigation commenced, it was our intention to make recommendations regarding council's need to review the performance of these officers. In light of these events, such recommendations are no longer necessary.

The investigation team has made a number of recommendations in the body of this report. Detailed recommendations can be found on pages 86 to 89 of this report. It is worth noting that since the commencement of the investigation the general manager's employment contract has been terminated.

It is also worth noting that there remain a number of pecuniary interest allegations against three councillors. As all of the pecuniary interest returns from Kyogle Council were lodged after the required date, a decision on how to proceed will need to be made shortly – this is the subject of a recommendation in the report.

Further, the recommendation to the Minister that a public inquiry be held is based in part on the number of outstanding matters still to be investigated, which are included in the fifth term of reference section of the report. The findings throughout the report indicate that the behaviour of council as a governing body has been deficient in a range of areas, not least of which has been the management of the general manager.

Considering its past experience, there is cause for concern that some eight years after the previous section 430 investigation that council finds itself in a similar position with its lack of control over the direction and management of council's affairs.

It is worth noting that following the 1997 section 430 investigation council dismissed the General Manager. The employment of a new General Manager does not appear to have addressed some of the underlying issues. Council's financial problems were resolved to a certain extent by the new general manager adopting a course of abrogation of council's community responsibilities, in particular regarding the management of Crown Land in

order to address the financial crisis council faced at the time of his employment.

The 1991 section 430 investigation was instigated following council's decision to allow a ratepayer not to pay rates when no exemption was available. This occurred against the advice from council's solicitor, the Shire Clerk and the Deputy Shire Clerk.

The current investigation has shown that council has sought legal advice on many occasions and on some occasions has failed to pay attention or been selective in what it has acted upon. Some of the more important matters have been referred to in the body of the report.

Council's decision to resign its responsibilities as Trustee of some of the Crown land in Kyogle is an essential part of their financial recovery plan. It is important to see how council will remain financially viable should it take up management of all or some of the Crown land at issue as this is an essential part of council's role.

## **REPORT RECOMMENDATIONS**

It is the recommendation of the investigation team that the Minister for Local Government order Kyogle Council to complete the actions contained in this report under the heading "Immediate Actions for Council".

AND

It is the recommendation of the investigation team that the Director General of the Department of Local Government act upon the recommendations contained in this report under the heading "Actions for the Department of Local Government".

AND

It is the recommendation of the investigation team that the Minister for Local Government authorise a public inquiry into Kyogle Council under section 740 of the *Local Government Act 1993*.

## LIST OF COUNCILLORS AND STAFF

<u>Councillor</u>	<u>Position</u>	<u>Elected</u>
Ernie Bennett	Mayor	1995
Peter Lewis	Deputy Mayor	2004
Patsy Nagas	(former Deputy Mayor)	2004
Bryan Hannigan	(former Senior Town Planner)	1995
Jeffrey Marriott		2004
Lindsay Passfield		1999
Ian Kirkpatrick		2004
Jim O'Neill		2004
David Liska	(former Deputy Mayor, Shire President and Mayor)	1991

<u>Staff Member</u>	<u>Position</u>	<u>Employed</u>
Kenneth Davies	General Manager (absent during the investigation)	11/5/98
Arthur Piggott	Director Corporate Services (Acting General Manager during the investigation)	18/4/94
Scott Turner	Director Planning, Environmental and Community Services	16/12/96
Frank Winter	Director Technical Services	20/10/97



## **INVESTIGATION SCOPE**

### **Introduction**

1. This is a report of the departmental representatives concerning an investigation under section 430 of the *Local Government Act 1993* (the Act) into Kyogle Council.

### **Kyogle Council Area**

2. Kyogle Council is located approximately 805 km north of Sydney and is reported to be home for 9,673 residents. (1) ABS as at June 2003.
3. The area covers 3589 square kilometres and provides support to pastoral pursuits, local businesses and some industry.

### **Investigation Catalysts**

4. Kyogle Council has been the subject of complaints from residents to the Department of Local Government regarding its administrative, financial and industrial management as well as regarding the conduct of some members of council's staff and of some councillors.
5. Representations from the local member, Mr Thomas George MP, on behalf of local residents, raised issues of concern with the Department of Local Government about council's capacity to function effectively.
6. Complaints to the Department of Local Government about council's handling of its management of Crown Reserves land and other community activities raised issues about council's apparent lack of engagement with the community in council affairs.

### **Authorisation of the Investigation**

7. On 11 October 2005 the Director General of the Department of Local Government authorised an investigation pursuant to section 430 of the Act in respect of Kyogle Council.
8. On 11 October 2005 the investigation team was appointed. Each investigator was authorised as a departmental representative to conduct the investigation and to report to the Minister and the Director General on the results of the investigation. (Attachment 1)

### **Departmental Representatives**

9. The Departmental Representatives are:

Carole Medcalf, Senior Investigations Officer  
Susan Hartley, Operations Officer

## Terms of Reference

10. The terms of reference are to investigate and report on:
- ❑ Whether the council's administration and management has met its responsibilities under the *Local Government Act 1993* and has fulfilled its other statutory functions.
  - ❑ Whether council, as custodian and trustee of public assets and funds, has exercised an appropriate standard of management.
  - ❑ Whether council has acted in the best interests of the community and has fulfilled its responsibilities by resigning as the Reserve Trust Manager of 25 Crown Reserves. Whether council has acted appropriately in its management of Crown land.
  - ❑ Whether the conduct of councillors, senior officers, and council staff has resulted in efficient, effective and appropriate governance for the Kyogle Shire Council.
  - ❑ Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationship between council, councillors and its administration.

## Powers of Departmental Representatives

11. The departmental representatives have all such powers available to them as departmental representatives in respect of an investigation under section 430 of the Act, whether arising pursuant to the Act, or otherwise. Without limiting this, the departmental representatives have power and authority to make such recommendations in their report, arising out of their investigation and the terms of reference, as they consider appropriate.

## Sources of Information

12. The investigation team made two visits to Kyogle Council. The first was from 17 October 2005 to 21 October 2005 and the second was from 22 November 2005 to 24 November 2005.
13. This report is based on evidence generated from:
- ❑ Information volunteered in direct and phone interviews with 7 councillors and 1 former councillor, 15 current and 4 former staff members, 17 community members, representatives from 5 other government departments and 1 Member of Parliament;
  - ❑ Information volunteered by 3 union officials from the United Services Union (USU);

- ❑ Information provided in written form by councillors, current and former staff members and community members;
- ❑ Council documents;
- ❑ Departmental documents;
- ❑ Visits to particular sites within Kyogle Council's boundaries by the departmental representatives; and
- ❑ Submissions received from council and individuals named in the report in response to invitation to comment on extracts of the draft investigation report.

### **Constraints on the Investigation**

14. Constraints on the investigation included the inability of the investigation team to interview the General Manager because of his notified absence on 12 October 2005, due to a medical condition. He remained on leave for the duration of the investigation.
15. The failure of the General Manager to return council's laptop computer meant that the departmental representatives were unable to ascertain from council records whether the General Manager had been performing his duties in a manner that would satisfy his contractual and legal obligations to council.
16. The General Manager's employment with Kyogle Council was terminated effective 22 December 2005.
17. The Human Resources Manager was interviewed on the first visit to council by the investigations team. He was unable to be interviewed on the second visit because of his notified absence on 21 November 2005, due to a medical condition. His absence was authorised to commence on the 11 November 2005 and extended until the 17 December 2005, which appears to be the full extent of his sick leave entitlements.
18. It appears that the Human Resources Manager also attended work between 11 November and 18 November, contrary to the medical certificate produced. Council subsequently advised the departmental representatives that he tendered written notice of his resignation from his position with council effective on 16 December 2005.
19. Too many issues have arisen in the course of this investigation to be covered in this report and allow a timely presentation of the report to the Minister and the Director General. Those issues of a lesser, but not insignificant nature, have been included in the final term of reference section of the report.

## **Audience**

20. The report is presented to the Minister for Local Government and the Director General of the Department of Local Government, and copied to council, pursuant to the terms of section 433(1) of the Act.

## **Post Report Responsibilities**

21. Pursuant to section 433(3) of the Act this report must be presented at the next meeting of council after the report is received.
22. Pursuant to section 434(1) of the Act council must, within 40 days after presentation to it of the report, give written notice to the Minister of the things done or proposed to be done to give effect to any recommendations contained in this report.

## **Investigation Context**

23. Firstly, this report acknowledges the traditional owners of the land within the Kyogle Local Government Area. The Gidabul, including the Bundjalung people, and Gidabul, are the main peoples of the area.
24. Section 8 of the *Local Government Act 1993* sets out the charter for councils in NSW. They are required to be efficient and effective, act with due consultation and provide adequate, equitable and appropriate services. They are to be community leaders, promote, provide and plan for the needs of children in their community and to be responsible employers.
25. Each council is a body corporate with responsibility for administration and good government of the area over which it has responsibility. Councils are required to operate within the legislative framework established by the NSW Parliament. The *Local Government Act 1993* sets out the major powers, functions and responsibilities of councils.
26. Councils are custodians/trustees of public monies, land and assets and should effectively account for and manage those funds. They are also to facilitate the involvement of councillors and staff members in the processes of decision making about the expenditure of funds and the direction of the council. The Department of Local Government monitors financial performance to ensure councils are effectively and responsibly managing those assets to ensure the ongoing viability of council.
27. Councils should ensure they act consistently where an activity of the council is affected and that it keeps the local community and the State government informed about its activities.
28. Councils play a vital role in local communities, enabling them to grow and develop in a healthy, prosperous way. They provide essential services and facilities, they plan for the future and they regulate many activities.

29. Councillors, as elected representatives, are responsible for exercising leadership for the benefit of their communities. However, it is essential that the community have an opportunity to contribute their views and ideas. It is expected that councillors are both accessible and willing to meet with community constituents. It is essential that the community have confidence in their elected representatives.
30. Kyogle Council has been the subject of three section 430 investigations in the last fourteen years. The first investigation was conducted by the Department of Local Government in 1991 and focused primarily on the appropriateness of council's abandonment of rates.
31. Council received advice from its legal representatives and from the then General Manager that it could not write off the rates owed by one of its ratepayers. Despite the advice, council voted to write off the rates. At that time, those councillors who supported the rates being written off were surcharged following the investigation. None of the current councillors were involved.
32. Kyogle Council's financial position was the subject of the second section 430 investigation in April 1997. The investigation primarily focused on the establishment of the Kyogle Business Unit and its impact on council's operations, other processes and financial management.
33. The investigation found that the Kyogle Business Unit was established outside of specific regulatory requirements that council is obliged to observe. We raise this for information at the outset of the report but will return to this matter more fully in the body of the report. Three of the current councillors, Bennett, Hannigan and Liska, were on council at the time of that investigation.
34. Council's financial situation as a result of the establishment and contract with Atens Pty Ltd, a contract company, to manage Kyogle Business Unit was seriously undermined.
35. One of the recommendations from the 1997 section 430 report was to institute a Public Inquiry. However, no Public Inquiry was conducted. The findings of that investigation indicated a contravention of some provisions of the *Local Government Act 1993* related to delegations and to the willingness of the elected representatives to accept unquestioningly the (then) General Manager's reporting on matters.
36. Another of the recommendations was for council to manage the (then) General Manager's poor performance around this issue.
37. Mr Ken Davies commenced employment with Kyogle Council as General Manager subsequent to the 1997 investigation. References in this report to the General Manager refer to Mr Davies. Council's financial position has significantly improved over the last several years during Mr Davies' employment.

## TERM OF REFERENCE 1

### **Whether council's administration and management has met its responsibilities under the *Local Government Act 1993* and has fulfilled its other statutory functions**

#### **ANALYSIS**

##### **Delegations**

38. Section 380 of the Act requires that each council must review all its delegations during the first 12 months of each term.
39. The departmental representatives were not advised of the date the current council (elected March 2004) reviewed its delegations of authority, but they were required to review them by March 2005 in order to meet the statutory requirements.
40. However, the register of delegations is dated July 2005. Therefore council has either breached the requirements of section 380 or has reviewed its delegations on two occasions since the 2004 local government elections.
41. Irrespective of any review of its delegations, council's register contains a number of errors and/or omissions.
42. Section 377(1) of the Act gives council the power to delegate. A council may, by resolution, delegate the General Manager or any other person or body (not including another employee of the council) any of the functions of council with certain exceptions.
43. Council's Register of Delegations of Authority dated July 2005 (pages 3 and 4) contains advice to council in relation to matters, which cannot be delegated by Council. Council's delegations register does not include the following dot points listed in section 377 of the Act: -
  - The appointment of the General Manager
  - The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*
  - Any function under this or any other Act that is expressly required to be exercised by resolution of the council (Attachment 2)
44. The Register includes the provision that the council cannot delegate the power of council under section 455 in relation to attendance at meetings. Section 455 of the Act has been repealed.

45. The Register contains no reference to section 377 (2), which provides that council may, by resolution, sub-delegate to the General Manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council.
46. The Register contains no reference to the requirement that a council may not delegate any function under this or any other Act that is expressly required to be exercised by resolution of the council.
47. Council's Register of Delegations of Authority (page 9) delegates to the General Manager "*The functions of the Councils [sic] specified in the Local Government Act 1993, and its regulations, cognate and Related Legislation; and other legislation under which council has powers, authorities duties and functions; and council's adopted codes, policies and procedures.*" There is no reference to the exclusion of any functions that expressly requires a resolution of council.
48. The Register (page 16) does not give delegations to the then Human Resources Manager, who commenced employment with the council in November 2004. The delegation is still in the name of a previous incumbent for the position, Mr Shawn Anthony Hore. Ideally, the delegations should be made to the position rather than the occupant of the position.
49. Section 380 of the *Local Government Act 1993* requires council to review its delegations within twelve months of taking office. The review has obviously not been conducted with proper care.
50. Council's Register of Delegations of Authority (page 9 – Schedule 2 – (2) (iii) delegations to the General Manager) - contains the provision that the General Manager shall exercise the functions herein delegated in accordance with and subject to each and every policy of the council.

### **General Manager's Motor Vehicle**

51. The General Manager approved the purchase of three Caprice V8 Sedans, from July 2004 to September 2005, for his use.
52. Council's vehicle policy notes that the vehicles provided under this policy shall not exceed the "luxury" car price threshold as set down by the Australian Taxation Office. The Australian Taxation Office "luxury" car price threshold is currently \$57,009.00 (inclusive of GST). (Attachment 3)
53. In addition, council's vehicle policy provides that eight cylinder (V8) cars and/or sports cars are not to be provided under this policy unless specifically identified in the budget and/or the Management Plan.
54. No specific provision is made for the purchase of a V8 car in council's 2004/2005 Management Plan. (see council's website).

55. The three Caprice V8 vehicles approved by the General Manager and ordered for his use included extras (sun roof and global positioning system – GPS) paid for by council. For example, the extras on the vehicle ordered on 7/09/05 were valued at \$5,045.46 and the total cost of the vehicle was \$59,350 (inclusive of GST). This is above the luxury car tax threshold. (Attachment 4)
56. The vehicles provided to and used by the General Manager have been purchased in contravention of council's vehicle policy that excluded the purchase of V8s and in contravention of the General Manager's delegation of authority requiring him to comply with council's policies as contained in Schedule 2 – (2) (iii) of Register of Delegations of Authority.
57. Additionally, as at June 2005, the General Manager's current car is listed on council's insurances with a value of \$59,000, which is also in excess of council vehicle policy requirements. (Attachment 5)
58. Council failed to take action in relation to the General Manager's actions in the purchase of three V8 vehicles over a period of approximately 14 months that do not comply with the requirements of its vehicle policy.
59. A council may not delegate the voting of money for expenditure on its works, services or operations.
60. The General Manager authorised money to be spent on the provision of additional items for his vehicles not included in the budget or in council's Management Plan.

### **Development Applications**

61. Section 378 of the Act permits the General Manager to delegate any of the functions of the General Manager other than this power of delegation.
62. The General Manager may sub delegate a function delegated to the General Manager by the council to any person or body (including another employee of the council).
63. Council's Register of Delegations of Authority (page 34) grants to the Director of Planning Environmental and Community Services the authority to determine development applications lodged under Part 4 of the *Environmental Planning and Assessment Act 1979* and other broad delegations in relation to development assessment and approval matters. (Attachment 6)
64. The Director of Planning Environmental and Community Services is currently only required to refer a development application to the Council where a development application has been nominated by a Councillor



- for referral to and determination by council and where a development application has an estimated value exceeding \$2 million.
65. Council rarely sees or determines any development application lodged. The Director of Planning Environmental and Community Services estimated that approximately 99% of development applications are determined without council consideration.
  66. Council is provided with a table of reviewed, approved and outstanding developments, reproduced in its business paper in relation to those applications.
  67. The Director of Planning Environmental and Community Services in exercising this delegation has determined that development applications will be assessed and determined by a group called “the Development Management Panel”(DMP). The composition of the DMP has been unknown to many residents who have asked for the names of the panel and had not received an answer until the commencement of this investigation.
  68. According to the Director of Planning Environmental and Community Services the DMP has operated on an informal basis and no minutes have been kept of its deliberations.
  69. Without any minutes of the panel’s meetings, there is a lack of transparency, or access to information available to applicants, councillors or staff about the DMP’s processes and how development applications are assessed.
  70. Councillors appear to be largely unaware of the conditions of consents issued by the council, leaving them unable to respond to the concerns of its residents where questions about development applications and consents are raised.
  71. Councillors also appear to be largely unaware of objections made in relation to the majority of the development applications. As council rarely sees a report on an application, it is unable to give consideration to submissions made on such applications or to give due consideration to the views of its community in relation to the impacts of developments which directly affect them.
  72. Council’s Register of Delegations of Authority does not delegate authority to the Director of Planning Environmental and Community Services to determine Crown development applications in accordance with section 116C of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
  73. Council has received three development applications from Resitech (a service agency of the Department of Housing). To date two development consents have not been dealt with in accordance with the

- requirements of section 116C of the EP&A Act. Resitech is an internal service provider to the Department of Housing.
74. The Muli Muli Local Aboriginal Land Council is constituted under the *Aboriginal Land Rights Act 1983* (NSW). The Resitech applications are part of an ongoing program of upgrading facilities in the Muli Muli community by the Department of Aboriginal Affairs.
  75. Resitech, as a service agency of the Department of Housing, was engaged by the Department of Commerce to help deliver outcomes to the Muli Muli community required by the Department of Aboriginal Affairs.
  76. Section 116C of the EP&A Act provides that a consent authority, in respect of a Development Application made by or on behalf of the Crown, must not refuse or impose a condition on the consent without the written consent of the Minister for Planning or the applicant. Council should not have issued conditions to Resitech, without reference to the Minister.
  77. The applications relate to the demolition of a community hall, the erection of a new hall, installations of a sign and bus shelter, the relocation of three dwellings and the construction of one new dwelling.
  78. The actions of council and the Director of Planning Environmental and Community Services in disregarding the Crown status of Resitech have resulted in development consents imposing conditions that have not been agreed by the applicant or the Minister.
  79. While Resitech continues to attempt to resolve these outstanding matters with council, it is unable to commence building the three houses or the new community facility for the Muli Muli Aboriginal Community near Woodenbong.
  80. The Director of Planning Environmental and Community Services then sought legal advice from Stone and Partners in relation to the Crown status of Resitech.
  81. A copy of legal advice provided to the departmental representatives refers to an earlier advice to council dated 11 December 2003, which was not provided.
  82. The Director of Planning Environmental and Community Services indicated that council received the legal advice on 20 January 2004. It is unclear who authorised the earlier legal advice to be sought or why. (Attachment 7)
  83. The advice from Stone & Partners provided states that *“There are a number of factors which indicate that Resitech could be the Crown for the purposes of the EP&A Act. These factors include:*

- *Resitech is either part of the NSW Department of Housing or the Corporation - it does not matter which one because both are the Crown under the EP&A Act” and*
  - *“The Department and the Corporation are both subject to ministerial control (a matter very relevant in the Prospect County Council case).”*
84. He continues, *“However, there are other considerations which support an argument that Resitech is not the Crown for the purposes of the EP&A Act. In this respect I make the following comments:*
- *The Department and the Corporation are, by specific legislative provisions, within the definition of public authority which might entitle them to the privileges and immunities of the Crown. Resitech is not specifically identified as an agency with that benefit.” And,*
  - *“There is no express ministerial control over Resitech (although this might be established on further enquiries with Resitech).”*
85. He concludes, *“Kyogle Council may form the opinion that the Resitech DA should be assessed under Part 4 of the EP&A Act. Regrettably there is no clear and unequivocal authority to deny Resitech the privileges of the Crown... If council continues to deny that Resitech enjoys the privileges of the Crown, Resitech may seek a declaration in the Land and Environment Court....”*
86. The legal adviser may have been able to be more authoritative had he been provided with, or referred to, a copy of the letter dated 10 December 2003 from Resitech to the Director of Planning Environmental and Community Services which states, *“Resitech is legally part of the NSW Department of Housing. Although it is presented as an independent organisation, it has no statutory existence of its own, and operates under the provisions of the Housing Act 2001...Its operating profit returns to consolidated revenue.”* Further, *“Resitech could cease to exist as a separately-marketed entity by Ministerial decision, and this would not require a legislative change to occur.”* (Attachment 8)
87. Council apparently chose to assess the DA under Part 4 of the EP&A Act despite the legal advice and its prior knowledge of matters referred to by its adviser and issued consent accordingly, thereby opening itself to action in the Land and Environment Court. To date, Resitech has chosen to try to resolve this matter without reference to the Land and Environment Court.
88. On 16 February 2004, council issued a consent in contravention of section 116C of the EP&A Act. (Attachment 9)
89. In a letter from Resitech, dated 23 February 2004 council was requested to delete or make alterations to certain conditions in the consent. For example, condition No 15 of the consent, requires the

- applicant (Resitech) to design and construct a solution to enable the treatment and ongoing management of effluent produced on or discharged from the site.
90. Council did not take any action to address these requests for modification of the consent. (Attachment 10)
  91. On 17 May 2004 the Director of Planning Environmental and Community Services wrote to council's solicitor requesting he *"write to the Minister for Housing the Honourable Carl Scully MP on behalf of Council identifying that Resitech is misleading the Minister in that the Development Application has been determined with conditions and attach a copy of the development consent for the Minister's information."* (Attachment 11)
  92. The Director of Planning Environmental and Community Services is not authorised to sign correspondence on any matter directed to the council's solicitors. He is specifically excluded from doing so in council's Register of Delegations.
  93. The Director of Planning, Environmental and Community Services is also not authorised to make, on council's behalf without reference to council, allegations of misleading conduct by an agency to a Minister.
  94. Council's response to the draft Report extract advised that the General Manager had instructed the Director Planning, Environmental and Community Services that the development applications were not to be treated as Crown applications and not to consider amending the applications as requested by Resitech.
  95. It appears that only one of the three development applications was referred to council. In its determination council failed to have regard to section 116C of the EP & A Act 1979 and in issuing the consent council has breached the section of the Act.
  96. It is unclear whether council, or its senior staff, in making or recommending the decision to disregard section 116C of the EP&A Act, considered that it was potentially exposing itself and therefore its community to unnecessary costs in defending a matter in the Land and Environment Court.
  97. It is not demonstrated that either council or the Director of Planning Environmental and Community Services considered these detrimental impacts adequately in deciding to treat this consent outside of the proper procedures required for Crown applications.
  98. It is also unclear what benefit council thought it would make in determining the applications in this manner.
  99. Council issued the second development consent to Resitech on 7 October 2005. This application appears to have been determined by

the Director of Planning Environmental and Community Services, without reference to council and again in contravention of section 116C of the EP&A Act, his delegations and council's obligations.

100. Resitech again drew its Crown status to council's attention in a letter dated 14 October 2005 and requested amendment to, and deletion of, certain conditions. (Attachment 12)
101. In discussion with the Director of Planning Environmental and Community Services on 24 November 2005 he indicated that he would not be willing to amend the conditions without additional legal advice indicating he do so. He also appeared to be unaware that the legal advice already received by council could already be interpreted that Resitech is a Crown authority.

### **Business Papers and Conduct of Meetings**

102. Section 367 of the *Local Government Act 1993* requires the General Manager to send to each councillor, notice of the time and date of each council meeting and the business proposed to be transacted at the meeting.
103. These provisions do not require all reports and other documents relating to items on the agenda to be supplied before the meeting. For example, there may be confidential documents that the General Manager may withhold under section 9(2A) of the Act and the reports may not be available until just prior to the meeting.
104. Section 375(1) of the Act requires that council *must ensure that full and accurate minutes are kept of the proceedings of a meeting of the council.*
105. Council minutes for a significant proportion of its meetings have not fully and accurately documented proceedings. The investigation team has, at times, been unable to follow the proceedings of council because of inadequate minute taking, the provision of oral reports and no documentation of these oral reports in the minutes or any business paper.
106. A significant proportion of council minutes contain the following resolutions "that council receives and notes the report".
107. For example, the minutes of ordinary council meetings held on 19 & resumed on 26 September 2005 contains 34 received and noted resolutions and are not minuted accurately. (Attachment 13)
108. Clause 254 (a) and (c) of the Local Government (General) Regulation 2005 requires the General Manager to ensure that the minutes include details of each motion moved at the meeting and whether the motion was passed or lost.

109. Clause 259 (3) of the Local Government (General) Regulation 2005 requires that a council must ensure that a report of the proceedings (including any recommendations) is recorded in the minutes. However, council is not taken to have adopted a report until a motion to adopt is moved and passed.
110. During the investigation, several interviewees stated that the General Manager presented business orally on occasion and no business papers were provided.
111. Council's consideration of its organisational restructure was cited as an example of such oral "business papers". There is no record of the report in the minutes, just that the report be received and noted. (Attachment 14)
112. Another interviewee stated that business papers were always supplied for council's ordinary business, but not necessarily for other business.
113. In the interests of integrity, transparency and accountability of a council's decision making processes, it is appropriate that matters be presented to council in the form of a written report as part of council's business papers where possible. This is particularly relevant to significant council decisions, which may have a major financial impact such as an organisational restructure.
114. It may sometimes be acceptable for an oral presentation to be provided in place of a written report. However, this is exceptional and should only occur in limited cases, for example in urgent situations.
115. There is an obligation for council staff to provide full and timely information to councillors about matters they are dealing with. Councillors have an obligation to examine and understand all the information provided to enable them to make decision on matters in accordance with council's Charter.

### **Northern Rivers Australian Technical College**

116. In relation to the Northern Rivers Australian Technical College (NRATC) proposal, council considered a Tender on 20 June 2005. The Tender for funding had already been lodged with the relevant Federal body, as had a previous Expression of Interest, neither of which had been reported to council. (Attachment 15)
117. A more detailed Chronology of this matter is attached at Appendix A.
118. Point 6.2 of the business plan lodged by council with the Tender states a board of directors will operate the NRATC by way of an incorporated company limited by guarantee and will be a non-profit entity.

119. Section 358 of the *Local Government Act 1993* requires that Council must not form or participate in the formation of a corporation or entity without the Minister's consent.
120. In their 30 November 2005 response to the departmental representatives, council advised "*Council does not believe that there has been any breach of Section 358 of the Local Government Act 1993 as a result of the General Manager lodging, or directing to be lodged on Council's behalf, firstly an Expression Of Interest (EOI) and then a tender document for the project....as no corporations or other entities had been formed. The submission merely indicates the proposed structure that may be set up if the proposal were to proceed.*" (Attachment 16)
121. The Business Plan lodged with the council's tender, Table 8.1 on page 34, indicates that if council is successful in obtaining funding for the NRATC, it will form the separate entity "*Immediately on notification of successful ATC proposal*".
122. The tender is to be awarded by early 2006. In consideration of council's statement regarding the immediate formation of a company upon receiving advice of its success. Council does not appear to have given any consideration to the need to obtain the Minister's approval prior to participating in the formation of this limited company, in accordance with section 358, or to the ramifications to the council and this project if the Minister refused to grant his approval. (Refer to paragraph 32)
123. In the Kyogle Council Newsletter of July 2005 is the following statement "*The venture [the Technical College] will be operated by a company limited by guarantee .....*" (Attachment 17)
124. The statements in the tender document and the council newsletter do not give weight to its statement that the "*submission merely indicates the proposed structure that may be set up if the proposal were to proceed*". While council may not have commenced formal action to form the separate entity, the Tender and the newsletter indicate it clearly intended to do so.
125. The report and minutes of the council meeting make no reference to the matter of the formation of the board in relation to section 358. The limitations of council reports and minutes are referred to elsewhere in this report and this particular item is used as an example of those limitations.
126. The tender was presented to the council as an attachment to a confidential business paper to the ordinary council meeting held 20 June 2005. The recommendation by the General Manager that council receives and notes the report was adopted. (Attachment 18)
127. The tender was for a \$20 million project. The only information provided to councillors about the proposal was in the form of a copy of the tender

- document lodged and that was provided as a separate attachment to the business paper.
128. The General Manager's report to the closed session of the meeting on 20 June 2005 was oral, the content of which was not minuted or recorded.
129. Section 10A (2) of the Act lists matters that may be considered in closed meetings. They are confined to:
- *personnel matters concerning particular individuals, other than Councillors*
  - *the personal hardship of any resident or ratepayer,*
  - *information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,*
  - *commercial information of a confidential nature, that would, if disclosed:*
    - i. prejudice the commercial position of the person who supplied it, or*
    - ii. confer a commercial advantage on a competitor of the council, or*
    - iii. reveal a trade secret.*
130. The submission for a grant had already been lodged by council staff and was reported to the closed meeting. The reason given for the matter being considered in closed session was section 10 A (2) (d) relating to matters which may prejudice the commercial position of council, confer a commercial advantage on a competitor of council or reveal a trade secret.
131. The closing date for the submissions was the date the submission was lodged, which was prior to the council meeting. Section 10A does not apply.
132. On 18 July 2005 the NRATC was the subject of a further report put forward as "urgent business without notice."
133. The Local Government (General) Regulation 2005, clause 242, states that business may be transacted at a meeting of a council even though due notice of the business has not been given to the councillors if a motion is passed to have the business transacted at the meeting.
134. No such resolution is recorded in the minutes.
135. Neither does this appear to have been a matter put forward by the Mayor in accordance with Clause 243 of the Local Government (General) Regulation 2005. No details of matters discussed were recorded in the minutes. The item was only received and noted.



136. Council has had eight extraordinary meetings within the last 12 months. An extraordinary meeting can only be called in accordance with section 366 of the Act which requires that if the Mayor receives a request in writing signed by at least two councillors, the Mayor must call an extraordinary meeting of the council. Council can also resolve to meet outside its scheduled meeting times.
137. A number of these meetings were not called by the Mayor in accordance with section 366 or by council resolution but were called by the General Manager who is not authorised to do so. Councillors do not appear to have raised this issue successfully with the General Manager.
138. One of the most pertinent examples follows the lodgement of a Notice of Motion by Councillor Lewis on 9 August 2005 of a confidential item of business for the next council meeting to be held on 15 August 2005.
139. The motion reads: *“That Kyogle Council forthwith terminates the employment contract of its current general manager Mr. Ken Davies as per the conditions stated in his contract for early termination and employs a new general manager.”* (Attachment 19)
140. Several hours after receiving the Notice of Motion the General Manager called an extraordinary meeting of council for 10 August 2005 to deal with it. The General Manager is not authorised to do so.
141. Councillor Lewis’s letter to Thomas George MP dated 28 September 2005, draws attention to the General Manager’s action, and then indicates that he asked the Mayor if the General Manager had the authority to do so. (Attachment 20)
142. He continues that the Mayor indicated that he didn’t think the General Manager had that authority either but the General Manager advised him that he was entitled to call the meeting.
143. Due to his absence, the General Manager was unable to answer questions. As his absence was established as sick leave the investigation team was somewhat constrained in its attempts to obtain information from him.

### **State Records Act 1998**

144. The *State Records Act 1998* defines a "record" as any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means any record made and kept, or received and kept, by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office.

145. *In the State Records Act 1998*, a public office includes a council or county council under the *Local Government Act 1993*.
146. State Records NSW policy “Electronic Messages as Records” states that electronic messages are records and are to be captured and maintained as records into an identifiable record keeping system. Electronic Records are to be effectively managed and are to be appropriately accessible and protected. The management of Electronic messages as records must be supported by internal policies, procedures and guidelines. (Attachment 21)
147. Kyogle Council’s Records Management Plan (page 6) states “*Any information sent by an individual by e-mail is not generally regarded as an official notification from Council. Staff are to avoid the use of e-mails in place of a written response whenever possible.*” (Attachment 22)
148. Further, “*If an individual is sent an email that he or she feels needs to be registered this e-mail is to be forwarded to the Records Officer for formal registration, or registered by the individual receiving the e-mail.*” And “*Out-going documents created electronically internally are generally registered by the staff member generating the document, or the relevant secretary.*”
149. Council’s Record Management Plan appears to contain requirements that are contrary to the *State Records Act 1998* definitions.
150. However, council’s Email and Internet Usage Protocol (page 2 - 3.1) provides that the computer and telecommunications systems of the council belong to the council and may only be used for authorized business purposes, although minimum personal use is permissible. (Attachment 23)
151. Council’s Email and Internet Usage Protocol (page 3 – 3.3) further provides that emails should be regarded in the same way as conventional, non-electronic forms of correspondence and must be treated with the same consideration as any other form of communication.
152. The provisions contained in this protocol appear to contradict the references made to electronic messages contained in council’s Records Management Plan.
153. However, they do appear to comply with the State Records Act.
154. Council operates an electronic document management system “Dataworks” to record and register incoming and out going documents. However, not all documents, for example all emails sent to or generated by council staff, are available on Dataworks.

155. Council has a server on which staff emails are stored electronically whether or not they are registered into its document management system (Dataworks).
156. Not all of the General Manager's e-mails are registered on data works.
157. Neither are the General Manager's e-mails available on council's server, as they are stored on the hard drive of the lap top computer provided to the General Manager for use at home.
158. Council also operates a paper personnel file system for its staff files.
159. On 13 October 2005 the departmental representatives requested a current copy of the General Manager's contract. The General Manager's executive assistant did not have a copy of the contract and indicated that she had requested the contract from the HR manager.
160. The General Manager indicated from home on 13 October 2005 that he would send a copy of the contract. A copy of the General Manager's original contract and covering letter was faxed to the Department of Local Government on 13 October 2005. (Attachment 24)
161. Council had no copy of the General Manager's contract on his personnel file.
162. For the purposes of the State Records Act, a person is taken to have control of a record if the person has possession or custody of the record or has the record in the possession or custody of some other person. An entitlement to control of a record is an entitlement to possession and custody of the record (including by having it in the possession or custody of some other person).
163. Section 37 of the State Records Act deems a record is "astray" for the purposes of this Act if it is owned by the State or an agency of the State but is not under the control of the public office responsible for the record (except as a result of being under the control of the Authority or of some other person with lawful authority).
164. Section 21 (c) of the State Records Act states that a person may not take or send a State record out of New South Wales.
165. Council's General Manager resides in Queensland. Council's laptop computer provided to the General Manager is also located in Queensland.
166. It appears that a significant number of official state records have gone 'astray'. At the onset of this investigation, departmental representatives requested the General Manager to provide specific records from council's laptop computer. (Attachment 25)

167. The General Manager did not provide the records requested but instead sent a printout of the email screen with selected messages incompletely identified. (Attachment 26)
168. On the second visit to council, the departmental representatives repeated the request to the acting General Manager, requesting the computer in order to retrieve the documents. The acting General Manager sent a fax on 22 November 2005 to the General Manager requesting the computer be returned to council by COB Thursday 24 November 2005. (Attachment 27)
169. By COB Thursday the General Manager had not returned the computer. The acting General Manager sent another fax on 25 November 2005 with the same request.
170. The General Manager's industrial consultant responded by letter on 28 November 2005 asking under what authority her client is required to return the computer. (Attachment 28)
171. The Mayor sent another fax to the General Manager on 29 November 2005 requiring the General Manager to return the computer.
172. By 2 December 2005 the General Manager had still not returned the computer. To this end, council has failed to comply with the requirements of this investigation under section 431 (1) (c) & (d) of the *Local Government Act 1993* "to produce to the Departmental representative any document that is in that person's custody or under that person's control, and to grant to the Departmental representative such authorities as may be necessary to enable the Departmental representative to gain access to any document that is in the custody or under the control of any bank, building society, credit union or other person."
173. On 16 December 2005, the General Manager reported to council the computer had been stolen from his car on Monday 12 December 2005 and that he had reported it to the police.
174. On 22 December 2005 council terminated the General Manager's contract of employment in accordance with the requirements of the contract.
175. Records sent or received in the course of a person's official duties should be treated as official records. For public offices, the State Records Act deems those records to be State records.
176. As records of government agencies, electronic messages, like records in other formats are subject to legislation such as the *Freedom of Information Act 1989*.

177. Courts, royal commissions, auditors and other people or bodies, including departmental representatives of the NSW Department of Local Government, may also require these records.
178. *The Freedom of Information Act 1989* (FOI) refers to an agency's documents. Council is an agency under the FOI Act. The definitions of "documents" and "agency's documents" contained in section 6 of the FOI Act includes emails.
179. The e-mails registered in council's document management system and those located on its server are captured under FOI. The definitions in the FOI Act also capture e-mails contained on the hard drive of the council's laptop used by the General Manager.
180. Council's public officer does not have access to the General Manager's hard drive and would therefore be unable to comply with a request under the FOI Act for access to any record located on this computer.
181. Section 12 of the Act requires council to provide access to council documents. Section 12(6) refers to council's other documents.
182. As council's Record Management Plan requires employees to use the body of their email messages to send information rather than an attached Word document, this could also reasonably include access to e-mails contained on the hard drive of the General Manager's computer.
183. These documents are not available for consideration by the public officer in relation to any request received by council under section 12(6) of the Act.
184. During the investigation, the acting General Manager (Director of Corporate Services) stated that not all legal opinions obtained by council were held on council's document management system (Dataworks). Without access to the computer used at home by the General Manager, the departmental representatives could not ascertain where these documents were held.

### **Code of Conduct and Conduct Committee**

185. The Model Code of Conduct for Local Councils 2004 section 10.8 requires council to establish a conduct committee comprising the Mayor, the General Manager and at least one person independent of council. Council adopted the Model Code of Conduct and established its conduct committee on 21 February 2005.
186. Any enquiries made about an allegation by the General Manager, an independent person or the conduct committee are required to follow the rules of procedural fairness.

187. Procedural fairness requires that the person/s against whose interests a decision may be made, should be made aware of any allegations and the substance of adverse comments.
188. They must be provided with reasonable opportunity to put their case, and the enquirer must hear all parties, make reasonable enquiries and ensure no party is involved who has a direct interest.
189. Finally, the enquirer must act fairly and without bias and conduct the enquiries without delay.
190. At the 18 July 2005 ordinary council meeting, closed business items 15.3,15.4 and 15.5, the General Manager made allegations about Councillor Lewis' behaviour in his interactions with a staff member being inappropriate. (Attachment 29)
191. The General Manager also stated to council that he believed that Councillor Lewis had breached the Code of Conduct and council's policy, Provisions of Information to and Interactions between Councillors and Staff.
192. No conduct committee meeting had been held and Councillor Lewis had indicated to the General Manager that he needed some time to put together a considered response to the General Manager's allegations, which had come to him via a series of emails from the General Manager.
193. Councillor Lewis responded to the allegations on 22 July 2005. (Attachment 30)
194. On 9 August 2005 the General Manager sent a memo to Councillor Peter Lewis concerning Councillor Lewis' communications with council's Economic Development Officer (EDO) in June 2005 and copied it to the conduct committee. (Attachment 31)
195. To date this matter has not been dealt with, contrary to the requirements of section 10.11 which requires that council's conduct committee must either
  - Determine not to make enquiries into the allegation and give the reasons in writing
  - Make enquiries to determine the particular factual matters, or
  - Engage an independent person to make enquiries into the allegation and give the reasons in writing.
196. Council has done none of these things.
197. At the 15 August 2005 ordinary meeting of council, the General Manager gave a report at item 10F.17 related to a column in the local newspaper written by Councillor Lewis'. The report made four recommendations to council. (Attachment 32)

198. On 23 August 2005, the General Manager wrote to the editor of the newspaper stating:

*“In relation to that report Council decided:*

- 1. That Council cautions Councillor Lewis that he has no delegated authority to make comment on behalf of Council.*
- 2. That Council cautions Councillor Lewis to ensure he keeps separate his private interests as an employee of the CTC and his public interests as a councillor.*
- 3. That Council writes to the Kyogle TKN [The Kyogle News] advising that the column which was attributed to Cr Peter Lewis was not authorised by Kyogle Council.*
- 4. That any future columns which the newspaper runs attributed to Cr Peter Lewis also are not authorised by Kyogle Council.”* (Attachment 33)

199. He continues, *“While it is noted that you publish a general disclaimer on page 2 of the TKN relating to Conditions of Advertising and any Inclusion it is doubtful that this would cover the TKN in the event of any claim for libel, slander or any defamatory comment made by a contributor to the TKN. You may wish to have this checked with your lawyer(s).”*
200. The appropriateness or otherwise of Councillor Lewis’ column in the local paper had not been referred or considered by council’s conduct committee at the time of the August meeting or at the time of this investigation.
201. This appears to be a breach of the requirements of section 10 of the Code of Conduct, by both the General Manager and council, notwithstanding council’s rights under section 440G of the *Local Government Act 1993* to censure a councillor.
202. Any councillor is still entitled to procedural fairness under the requirements of that section notwithstanding that the General Manager’s actions and advice to council were incorrect.
203. The departmental representatives raised a number of questions in their letter to council dated 17 November 2005 concerning the operations of the Conduct Committee. Council’s letter in reply dated 30 November 2005 refers to legal advice sought by the General Manager, which he then referred to both the Minister and the Department of Local Government for consideration. Council did not receive a written response to that letter dated August 2005.
204. The legal advice dated 22 August 2005 indicates that there may be *“a substantial problem with conflicts of interest in relation to this Committee.”* The advice then goes on to (potentially) exclude the Mayor, the General Manager and his (solicitor’s) own (nominated) role

as the independent person despite acknowledging the requirements for the composition of a conduct committee being clearly laid down in the Model Code of Conduct at 9.5. (Attachment 34)

205. Council and the General Manager appear to have disregarded the regulatory requirements of the Code of Conduct with regard to the operations of the Committee.

### **Complaints Handling Policy and Procedures**

206. The Department of Local Government Practice Note 9 (published 1 August 1994) Complaint Management in Councils point 2.5 suggests that all council staff, whatever their job, should be trained to know and apply council's complaints policy and procedures.
207. Kyogle Council has no complaints handling policy or procedures.
208. Council staff can use the action request activity on their Dataworks system to track responses to requests. However, this activity does not provide sufficient indication of the resolution of complaints, time taken or recommendations for system changes to act as a successful or useful substitute.
209. In addition, council is unable, using this method, to make it clear to clients/customers whom they should approach if they wish to complain, the time in which they can expect a response or what can happen if council is unable to resolve the complaint.
210. Notwithstanding council's lack of a complaints policy or procedure, several complainants, who were interviewed, have made repeated complaints about particular matters. Each of those complainants makes reference to council's failure to respond to continued requests for action over a period of time.

### **Occupational Health and Safety**

211. In 2001, the NSW Industrial Relations Commission fined Kyogle Council \$159,500 following the death of an employee, who fell from a timber bridge he was repairing. Evidence provided by WorkCover NSW indicated that the system being used contravened all relevant Regulations and Standards, including council's own safety standards. (See IRC 4932/01 and Attachment 35)
212. Another accident in 2002 resulted in a substantial payment in compensation to the injured worker.
213. Occupational Health and Safety (OH&S) Regulation (clause 22(1)) requires an employer to ensure that consultation arrangements are set up and that if consultation is to be undertaken by means of an OH&S committee. The employer must consult on a range of matters including:  
*"(e) the arrangements for any OH&S committee meetings including*



*frequency, (f) procedures for meetings and (h) training of committee members.”*

214. Council’s Occupational Health and Safety Committee last met in September 2004. Council acknowledges in its November 2005 letter to the departmental representatives at point 1, “that there has been a significant gap in the OH&S committee regular meeting schedule, with no meeting of that committee held between October 2004 and August 2005.” The committee is supposed to meet on a bi-monthly basis.
215. At 1(b) page 2 of its letter, council states that “*There are circumstances including changes in HR management and a significant period of time leading up to the appointment of a replacement HR manager in November 2004, that have contributed to a lapse in the normal schedule of the OH&S Committee meetings*” as well as the resignation of the OH&S Officer sometime in 2004.
216. Although that may go some way to explaining how the delay occurred, the HR manager was appointed in November 2004 and no meeting has occurred since. Additionally, the obvious lack of attention to some of the regulatory and legislative requirements indicates that council is not meeting its obligations as an employer and that the General Manager, HR manager and other council employees are not meeting their obligations either.
217. The General Manager has responsibility for ensuring these processes are continued in the absence of an officer with the responsibility specifically delegated to their position.
218. Section 8 (1) of the *Occupational Health and Safety Act 2000* requires employers to ensure the health, safety and welfare at work of all the employees of the employer. That duty extends to (1) (a) ensuring that any premise controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health and in (1) (e) providing adequate facilities for the welfare of the employees at work.
219. Council’s work depot has no separate women’s toilet facilities despite three women working at the depot. Apart from obligations under section 8 of the Act, Section 18 of the OH&S Regulations indicates:
- *An employer must ensure that appropriate amenities are available for all of the employer’s employees while they are at work*
  - *The appropriateness of amenities is to be determined having regard to all of the circumstances of the case, including the following:*
    - *the nature of the work undertaken at the place of work*
    - *the size and location of the place of work*
    - *the number of men and women at the place of work*

220. Further, section 18(3) states, *“In this clause amenities means facilities provided for the welfare or personal hygiene needs of persons and includes toilets, rest rooms, shelter sheds, seating, dining rooms, change rooms, provision of drinking water, lockers and washing facilities.”*
221. Council does not appear to have an inspection process in place or to have conducted inspections of its various workplaces on an ongoing basis. However, council’s response to the draft report extract indicated that they had conducted a risk assessment prior to work commencing at the pools.
222. The investigation team visited council’s pools at Woodenbong and Bonalbo. Swimmers have reported receiving electrical shocks on entering/exiting the pools, which caused council to seek an engineer’s report.
223. On 11 March 2005 council obtained an engineer’s assessment of the Woodenbong pool.
224. The assessment indicated a high level of risk of electrocution (death or multiple deaths) on nine items. (Attachment 36)
225. At the 21 March 2005 Ordinary Meeting, Councillor Passfield referred to the closure of the Woodenbong Pool, due to electrical problems and subsequent lack of power supply to the amenities block of the adjacent camping ground.(Attachment 37)
226. The Director Planning, Environment and Community Services advised, in response, that he was calling for quotations and envisaged works to be undertaken within the next few weeks.
227. At the 18 April 2005 Ordinary Meeting, Councillor Lindsay Passfield again asked if there was a possibility that the works on the pools would not be completed before the opening of the swimming season. (Attachment 38)
228. The Director of Planning Environmental and Community Services advised, in response, that the works would be completed before the swimming pool season commenced later this year.
229. The assessment of Woodenbong pool then formed part of a risk assessment of Kyogle and Bonalbo pools, which were investigated and tested, following a period of seeming inactivity, on 5 October 2005.
230. In interview on 20 November 2005, the Director said that at a meeting between himself, the Mayor and the General Manager, the General Manager had commented that if the opening of the pool was delayed then the works could be done which would meet the safety problems. However, council would then make operational cost savings including

- delaying the payment of penalty rates increases, payable under the state award, to pool staff during the operational season.
231. Council has had to refund monies to those community members who purchased season swimming tickets due to the late opening of the pool (in Kyogle or Bonalbo) and failure to open at Woodenbong.
232. Work at the pools commenced in September 2005, just prior to the start of the swimming season in October. The work required the removal of concrete around the pools, removal and re-laying of pipes, the earthing of all metal fixtures associated with the pool and the relaying of concrete as well as some cosmetic work.
233. Kyogle pool had opened prior to the second visit of the departmental representatives in November 2005. At that time the other two pools were still closed.
234. Occupational Health and Safety Regulation Clause 10 requires an employer to assess the risk of harm to the health or safety of any employee arising from any hazard identified in accordance with the Chapter, or any other person legally at the employer's place of work (maximum penalty Level 4).
235. The *Occupational Health and Safety Act 2000*, section 20 requires employees to *co-operate with his or her employer or other person so far as is necessary to enable compliance with any requirement under this Act or the regulations that is imposed in the interests of health, safety and welfare on the employer or any other person.* (Maximum penalty 45 penalty units for previous offender or 30 penalty units in any other case).
236. On Wednesday 23 November 2005, the departmental representatives visited the site of the Woodenbong pool. The departmental representatives were not challenged about their presence on site nor were they asked to identify themselves. When they were inside the pool grounds they volunteered their identification.
237. On site there was no barricading off of the pool site, or the holes made by removal of concrete and manhole covers or the pipe holes. There were no visible signs indicating caution on the site. There appeared to be little or no observation of OH&S requirements.
238. One council worker was using industrial strength waterproofing glue, without gloves and without eye or breathing protections. Little safety equipment was in evidence on the entire site.
239. Later that day, the departmental representatives visited the Bonalbo pool site where conditions were much the same. These matters were raised with the Director, Planning, Environmental and Community Services. He was unaware of the conditions of the sites.

240. In its November letter page 3, council states that it conducts site-specific OH&S inductions. As no OH&S risks are identified at the pools it is unlikely that adequate inductions have been conducted at either of the pool sites.

### **Threat against the General Manager**

241. In April 2005, the General Manager was made aware of a threat made by an employee, to a third party “that somebody should slit his throat”. The General Manager took out an Apprehended Violence Order at Lismore Court against the individual who made the threat following his being made aware of the threat.
242. The General Manager notified Councillor Lindsay Passfield and Councillor Jeff Marriott, two of the three councillors who are members of his performance committee in May 2005 and asked them to keep the matter confidential, which they did. The third member of his performance committee, the Mayor, Councillor Ernie Bennett, was not notified.
243. Neither the General Manager nor the two councillors notified his employer (council) of the incident.
244. The HR Manager, who was aware and had informed the General Manager of the threat, also failed to notify the threat to council.
245. The General Manager reported the threat to the 17 October council meeting in a report titled Meeting with Minister for Local Government (advised to council) and Minister for Lands (not advised to council) 30 September 2005. It was the first time that the other councillors were aware of the threat to the General Manager. The departmental representatives were present at that meeting. (Attachment 39)
246. Following the October meeting council called for a risk assessment of the threat to the General Manager.

### **FINDINGS**

247. There are major aspects of the administration of Kyogle Council where council is not operating effectively or efficiently. These include but are not limited to the operation of its Code of Conduct, its management of records and the provision of information to the community and the accountability that flows from appropriate management practices which council does not have.
248. Councillors and senior staff appear to be unaware, or unable to understand, the requirements of the Code of Conduct. As such, some councillors are now the subject of allegations of a breach of the pecuniary interest provisions of the *Local Government Act 1993* and others are the subject of allegations that are matters for a well managed Conduct Committee to consider.

249. The manner in which council meetings are conducted is not in accordance with legislative requirements and expected standards. The Mayor does not control or conduct the meetings in an acceptable manner. The minutes are not an entirely true or accurate record and the behaviour of the General Manager, as recorded, demonstrates, on occasion, contempt towards the elected representatives and, through them, the community.
250. The elected representatives have almost, without exception, allowed that to occur. The only real demonstrated resistance to that has been Councillor Peter Lewis who has tried to open up council's activities. On other rare occasions, individual councillors have tried to address some of their community's concerns.
251. In addition, the General Manager has called meetings of council, without the authority to do so, and used those meetings for his own gain in matters pertaining to his own employment. Councillors have allowed this to occur.
252. The General Manager and senior staff of council, as recorded in the Minutes, have repeatedly taken questions 'on notice' and councillors or members of the community are found many months later still asking the same questions. The matters raised in this report are but some of the examples found by the departmental representatives.
253. Councillors do not appear to have any control over this behaviour.
254. Council meetings are not fully documented in a significant proportion of its minutes. The investigation team has, at times, been unable to ascertain the proceedings of council because of inadequate minute taking, the provision of verbal reports and no documentation of verbal reports in the minutes or any business paper.
255. Council's failure to keep accurate records of its council meetings extends to specific areas of council's activities. Councillors consider few planning matters that council deals with. Staff, under delegation, determined approximately ninety nine percent of all applications. This can be and often is, an efficient use of councillors' limited time to consider a range of council activities. However, there is a point at which it stops being an efficient use of time and becomes an abrogation of their responsibilities as a consent authority.
256. It is apparent that Kyogle Council is either at that point or has already crossed the line. The Departmental Representatives have not seen any development applications appear for discussion in council Minutes, after the council elections in March 2004.
257. No decision that council will operate in that manner has been sighted in the Minutes provided. Several councillors have asked questions requesting more information about development matters and again,

senior staff failed to provide them with the information and, on 18 July 2005, told them there was no statutory obligation to do so and information would continue to be provided in the same (inadequate) manner.

258. The Director Planning, Environmental and Community Services, who thought it was not necessary, failed to keep records of meetings where applications from the public were considered and as a result is unable to demonstrate consistency or impartiality when challenged, as has occurred during this investigation.
259. Again, councillors have not followed through on requests for the provision of information.
260. Ordinarily, council's failure to monitor compliance of consent conditions would also be a matter to be considered in the same manner. In this instance, in the last major reorganisation of council, the current Director Planning, Environmental and Community Services took on a larger portfolio with a reduction in staff numbers.
261. It is the view of the Departmental Representatives that the division is under resourced and would therefore be unlikely to be able to conduct proper activities in this regard. With the Director being the only qualified planner and only one other member to meet with applicants, travel the area and view sites it is unlikely that compliance matters could be dealt with as well.
262. Council's internal record keeping policies have been demonstrated to be inconsistent with each other thereby ensuring that one or other of them is inconsistent with statutory requirements.
263. The General Manager has kept council records at his residence, away from councillors and council staff, making it unlikely that council can comply with its obligations under the *Freedom of Information Act 1989* and section 12 of the *Local Government Act 1993*.
264. Council's delegated authorities have been misused on significant occasions and not observed at other significant moments. Again, councillors have not assumed control or demanded the information from either the General Manager or senior staff in such a manner that the information has been provided.
265. Council policies have been disregarded to such an extent that community members are able to ascertain that something is not right about the way some staff and councillors are behaving. Council's vehicle policy is a glaring example of this.
266. Occupational health and safety is another, far more serious example. Council has had, in the recent past, some serious incidents and a death of an employee that indicate a disregard for these matters. Council continues to disregard these matters at its peril.

267. The manner in which council has dealt with, and continues to deal with the issue of potable water to the Muli Muli and Woodenbong communities is deplorable. Money has been available for some considerable period and the resolution has also been available for some period but the matter remains as an unsatisfactory situation (see paragraphs 572 - 579).
268. Council staff have, on several occasions, sought legal advice for what would appear to be commonsense matters. Councillors do not always appear to be aware of these matters even when they relate to council's own areas of responsibility.
269. Although the legal advice provided on occasion has been technically correct, it does not appear to take into account council's role and responsibilities under the Charter. The legal advice is also dependent on the brief provided which does not always appear to have included all relevant information.
270. The Pecuniary Interest returns of all of council's elected representatives and designated persons were completed incorrectly and were all lodged after the required date.
271. Combined with a number of allegations of breaches of the pecuniary interest provisions of the *Local Government Act 1993* by at least three councillors, this is cause for concern about the appropriateness of some councillors' behaviour.
272. The declining state of the pools in Woodenbong and Bonalbo has not occurred overnight and demonstrates years of neglect. Council has not mitigated its public liability and in our view, may have substantially increased its risk.

## TERM OF REFERENCE 2

### **Whether council, as custodian and trustee of public assets and funds, has exercised an appropriate standard of management**

#### **ANALYSIS**

273. Council's Charter requires that it 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.

#### **Community and Operational Land**

274. The Director Planning, Environmental and Community Services, in interview, stated that in 1986 Council resolved to prepare a Local Environment Plan, but is yet to do so. The Preamble to Part 2 - *Public Land Local Government Act 1993* "requires all land vested in a council (except a road or land to which the *Crown Lands Act 1989* applies) to be classified as either "community" or "operational".

275. At the commencement of the Act in 1993, certain lands were automatically classified community land. This included land held by councils with an open space zoning.

276. The Director of Planning, Environment and Community Services indicated to the Departmental Representatives that council did not have any open space zoned land.

277. Consequently after the commencement of the *Local Government Act 1993*, which required council to classify its public land as community or operational, council classified certain lands as operational by way of a resolution in July 1994. This was done seemingly without reference to the actual use of the land at the time of its classification based on the community halls and other community facilities located on those parcels of land at that time.

278. The Director Planning Environment and Community Services indicated to the Departmental Representatives that council has "about 8" parcels of community land in their generic community land Plan of Management.

279. According to a report at item 15.3 to council on 15 August 2005, council's Plan of Management for Community Land was adopted in July 1996. This is confirmed on the face page of the document provided. (Attachment 40)

280. The Plan of Management for Community Land 1996 (the only one provided to the investigation) has 20 parcels listed. (Attachment 41)



281. It does not include the land on which community halls are located, for example the Bloore Street hall used by the scouts.
282. Council has classified various lands as operational, in conflict with their use by the community.
283. It appears that council has also failed to review its plans of management in relation to categorisation as required by section 36 (4) and (5) of the *Local Government Act 1993* and clause 101 of the Local Government Regulation.
284. Council was required to amend its Plan of Management for Community Land to effect categorisation of that land in accordance with the *Local Government (Community Land Management) Act 1998*.
285. The Department of Local Government issued a circular to councils on 16 May 2000 that included a copy of the revised (May 2000) Practice Note 1 – Public Land Management. Point 4.4 of the Practice Note details minimum requirements for plans of management.
286. Council's generic community land Plan of Management adopted in July 1996 does not appear to have been amended in accordance with the requirements of the *Local Government Act 1993* and council has not met the requirements in relation to categorisation of its community land.
287. Council has considered the disposal of land currently in use by the community (Scout Hall) albeit classified as operational, to a private developer for a commercial purpose.
288. Council has commercial activities (retail premises) operating under commercial lease in the "Memorial Hall", a School of Arts Building. The use of this building for retail activities appears to breach Sections 5 and 6 of the *Trustees of Schools of Arts Enabling Act 1902*.
289. Council has land on which its public halls are located, classified as operational land although these halls are used by the public and have been since well before the implementation of the Act in 1993. Their use by the community for this duration of time does not lend itself to their classification as operational land.
290. *The Local Government Act 1993* provides that operational land is land that is held as a temporary asset or as an investment, land that facilitates the carrying out of council functions or land not open to the general public, for example a council works depot or administration building. Operational land can be readily disposed of.
291. Council's classification of its public halls as operational land is not appropriate and not in accordance with the, requirements or spirit of the Act, or council's obligations to its community.

292. Due to these inaccurate classifications, council has avoided its obligations to have plans of management in place and consult with its community in relation to the development of those plans and the use, management and enhancement of these facilities.
293. Council's actions in classifying these types of land as operational have contributed to the problems in its dealings about the Bloore Street Hall referred to in more detail elsewhere in this report.
294. The General Manager, in a report to council on 15 August 2005, failed to provide proper direction to council in relation to the Bloore Street Hall's appropriate classification and to issues relating to land classification generally.
295. In this report, the General Manager states, "*The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means*".(see also paragraph 390)
296. He then advised council that a community land Plan of Management was adopted on July 15, 1996, which identified those public lands under council control as either operational or community land.
297. He continues, "*Operational land would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a council of its functions or land which may not be open to the general public such as a works depot or council garage.*"
298. The General Manager then states, "*Therefore council may dispose of this land if it wishes to.*" The property referred to has a scout hall located on it. Council has owned the land since 1939 according to the title documents obtained by the departmental representatives and the scouts have used the hall continuously.
299. It is difficult to see how the General Manager could determine that land owned since 1939 and still in use by the local scout group is land held either as a temporary asset or not open to the general public.
300. The preamble to Part 2 of the Local Government Act, continues, "*Community land must not be sold (except in the limited circumstances referred to in Section 45 (4)). The purpose of classification is to identify clearly that which should be kept for use by the general public (community) and that land which need not (operational). 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.*"
301. The General Manager's advice that this site is shown as operational land in council's generic community land Plan of Management is

- incorrect. Such plans of management only contain and relate to a council's community land.
302. As the land is classified as operational land albeit inappropriately, it is not contained in the council's generic community land Plan of Management. The Bloore Street hall is recorded in council's Land Register not in its community land Plan of Management, as indicated by the General Manager. (Attachment 42)
303. It should also be noted that the register of council land provided to the departmental representatives does not comply with the requirements of section 53 of the *Local Government Act 1993*.
304. Council's land register does not include any reference to the title information of land.
305. Council's action in attempting to dispose of land that is inappropriately classified as operational could be viewed as a failure to meet its obligations contained in its charter in section 8 of the Act.
306. Taken in conjunction with council's management of Crown Lands, council's mismanagement of its community assets and land some years after is a matter of grave concern.

### **Bloore Street - Kyogle Seniors Centre Project**

307. Council owns land described as Lots 1 & 3 DP 1071134 at Bloore Street, Kyogle. The land contains a scout hall also described as the Bloore Street Hall. Council has had ownership of this site since 1939 and the scout hall has been in existence for decades.
308. Health and Community Care Flexible Services Inc (HACC) and the Kyogle Sub-Branch of the Returned Services League (RSL) approached council with a plan for the re-development of the Bloore Street Hall and a part of the surrounding lands.
309. The plan was to establish a Seniors Centre and community facilities.
310. A more detailed chronology is provided in Appendix B of the report.
311. A presentation was made to the public access section of the ordinary meeting of council on 21 June 1999, by a representative of HACC in relation to a submission made to council for a Seniors Centre Project.
312. On the 20 August 1999, Director Planning, Environment and Community Services wrote to HACC, confirming that council resolved that it supports, in principle, the concept of a Seniors Centre proposed to be located at the Bloore Street Hall. Council acknowledged the benefit to the community of such a facility and that it supported HACC to see the project come to fruition.(Attachment 43)

313. In October 2000, a development application was lodged by Casino/Kyogle HACC Flexible Services Inc and signed on behalf of council by the General Manager.
314. The application is for a community building (redevelopment of the existing hall). The proposed use is the creation of a Seniors Community Centre and hall for use by other sections of the Kyogle community. The proposal included the establishment of a “Dementia Garden” on part of the land on which the hall is situated.
315. The development application was approved on 20 December 2001. Copies of the community survey results were lodged with this application and it is clear from this and from the success of fund raising activities the project had significant support from the Kyogle Community.
316. HACC and RSL Kyogle committed \$230,000 towards the proposal in May 2001. Council’s contribution was to be a building and land component, \$10,000 and legal costs for the preparation of documentation to establish a separate company to hold title to the land and operate it via a management committee structure. (Attachment 44)
317. The Local Lions Club raised \$21,000 for the project, the Northern Rivers District of the Lions Club committed \$20,000 and the Australian Lions Trust offered up to \$15,000 on a dollar for dollar basis.
318. At the ordinary meeting of council on 16 May 2001, council resolved to agree in principle to the transfer of the land title to an incorporated association.
319. It is worth noting that neither council nor its representative in a letter dated 12 July 2001 to council, appear to have considered any possible implications of section 358 of the *Local Government Act 1993*, precluding it from forming or participating in forming a corporation without ministerial approval.
320. At the ordinary meeting of council on 18 July 2001, council resolved to approve the recommended “ownership” model for the Kyogle Seniors Community Centre management structure proposed by its solicitor.
321. During the period from November 2003 to November 2004, little or no progress appears to have occurred except for the circulation of documents to all parties and amendments were sought.
322. In interview, HACC and RSL representatives indicated that during this period they continued to liaise with the Director Planning, Environmental and Community Services, who consistently expressed his frustration with council’s solicitor’s progress.
323. On 20 December 2003 the development consent lapsed. No formal notification was made to either RSL Kyogle or HACC.

324. Local government elections occurred in March 2004. Five new councillors were elected to Kyogle Council.
325. On 9 November 2004 HACC wrote to council requesting an extension for the development application. A copy of this letter was retrieved from council's electronic records management system. (Attachment 45)
326. The letter includes a note from the Director of Planning Environmental and Community Services that *"No response required. Meeting on November 16, 2004 with HACC and RSL confirmed previous physical commencement on the development site prior to the lapsing of the Development Application 2001-64"*.
327. The representatives from HACC and the RSL advised, and it was confirmed by the Director of Planning Environmental and Community Services, that a meeting was held on 16 November 2004 between the Director of Planning Environmental and Community Services and HACC and RSL representatives.
328. At the meeting, HACC and RSL representatives inquired about the currency of their development. When the Director of Planning Environmental and Community Services checked the development application file, he determined that the development consent had in fact lapsed almost 12 months ago.
329. HACC and RSL representatives have stated that the Director then recommended that they take a photo of a sod turning and provide a backdated letter. If they provided these, then the development would be considered to have been commenced before the application lapsed.
330. HACC and RSL representatives have stated they asked the Director how he could justify a back dated letter and he said, *"you have seen what my office is like"*.
331. A photo and a letter backdated to 11 December 2003 were then provided by HACC. (Attachment 46)
332. The following day, 17 November 2004, HACC and RSL representatives met with the Director and the General Manager.
333. The discussions in the meeting were not in dispute at the time of writing this report. In his response to the draft report extract, the Director Planning, Environmental and Community Services has denied that he made some of the comments attributed to him. The departmental representatives have since verified the following matters and are satisfied to leave the matter as reported.
334. HACC and RSL representatives stated that they had arranged six prior meetings with the General Manager that had all subsequently been

- cancelled by the General Manager. They were advised that the General Manager did not get involved in these types of matters.
335. The Director could not confirm the exact number of meetings requested and subsequently cancelled but confirmed that he was aware that a number of requested meetings with the General Manager had been cancelled.
336. According to HACC & RSL representatives, the General Manager expressed a lack of knowledge of the progress of the proposal and requested an update at the meeting of 17 November 2004.
337. He reaffirmed council's commitment to the proposal and undertook to instruct council's solicitor of the urgency of the project. The General Manager said council would proceed with pipe work prior to Christmas.
338. HACC and RSL representatives state that they raised the matter of their development consent lapsing. They indicated that the General Manager closed the development application file and said, that issue is closed and won't be discussed again.
339. The Director Planning, Environmental and Community Services confirmed that HACC and RSL representatives had raised the issue and that the General Manager closed the file and waved the question away.
340. In an email to council's solicitors dated 18 November 2004, the General Manager refers to the meeting of 17 November 2004. The email indicates that the HACC representative advised they were now in a position to commence building work and therefore completion of the agreement was needed. (Attachment 47)
341. In a letter dated 2 December 2004, HACC provided an update regarding the project. The letter states that they look forward to the completion of the legal documentation currently being processed by council's solicitors.
342. On 3 December 2004, the RSL/HACC's solicitor unexpectedly received verbal advice from council's solicitor, that council no longer required a shareholding in the holding company and would secure equity by way of a mortgage.
343. There is no resolution of council giving effect to this advice from council's solicitor. There is also no resolution from council for the General Manager to investigate a completely different proposal for the Seniors Centre Project.
344. Council received a letter dated 6 December 2004 from its solicitors confirming that he understood council is willing to allow the Seniors Centre to use the land for various community purposes, for no charge, provided that council's interests are not compromised or prejudiced and

- that no commercial gain is made out of council's generosity. (Attachment 48)
345. On 7 December 2004 council's solicitor again wrote to HACC/RSL's solicitor stating, "*My client would like to explore the option of granting to your client a long term lease*". There had been no previous discussion about a lease and there is no resolution from council seeking consideration of a long-term lease. (Attachment 49)
346. In yet another letter dated 10 December 2004 to HACC/RSL's solicitor, council's solicitor states "*Council requested in a meeting with your clients on 16 November 2004 up to date information in relation to the proposals for the land, the sources of funding for developments and activities on the land....*". (Attachment 50)
347. Council's solicitor's second letter dated 10 December 2004 to HACC/RSL's solicitor states "*Council acknowledges your client's resistance to the lease proposal and is willing to explore the mortgage proposal*". (Attachment 51)
348. Point 2 of the second letter of 10 December 2004 states: "*Your client's nominated company would purchase the land for \$237,000.00 (plus GST)*". Point 3 states: "*Council would loan to your client the full amount of the purchase price*".
349. There is no resolution from council in relation to any proposal for a mortgage or loan in relation to this matter.
350. The proposal is part of a report to a closed session of council on 13 December 2004. The reason given for the report being confidential was "10A(2)(d) Commercial information of a confidential nature".
351. The report does not appear in the business papers and no written report was given to councillors. No background information was provided for the new councillors. The report states that the General Manager will speak to this item and he gave an oral report only. It was the first time the new council considered the Kyogle Senior Centre Project.
352. The Minutes of the Meeting held on 13 December 2004 record that council received and noted the information reported to council on Kyogle Seniors Centre. There is no authorisation in the minutes for any action nor is there any record of a decision of the council or any direction from the council or authorisation given to the General Manager in relation to the seniors centre proposal. (Attachment 52)
353. Following a telephone conversation between council's solicitor and the solicitor acting for the RSL, the solicitor for the RSL/HACC wrote a letter dated 15 December 2004 to the council's solicitor, which states in part "*...there is a significant shift in the Council's approach to this project.*

*That shift has been from a joint community project arrangement to the provision by Council of a commercial arrangement”.*

354. The letter further notes *“There is over \$200,000 willing to be spent by R.S.L. and H.A.C.C., which will be lost to the Kyogle Community if a suitable arrange [sic] cannot be reached. I have considered a further idea upon which I seek your thoughts (as I am still yet to discuss fully with my clients). Supposing we proceed with the lease, can we compromise on the valuation of Council’s contribution...”.* (Attachment 53)
355. On 15 December 2005 council received a letter from its solicitors, which states, *“You will see from John Gibson’s Solicitor’s letter that his clients are contemplating the lease proposal”.* This letter contradicts the advice contained in the letter that the matter had not been discussed. This letter recommends a further meeting with the RSL. (Attachment 54)
356. On 10 January 2005, a meeting was arranged. The RSL and HACC representatives attended council. The General Manager wanted to cancel the meeting, as council’s solicitor could not attend. HACC/RSL representatives did not bring legal representatives and requested that the meeting proceed.
357. All parties agreed on the desirability of returning to the original model. There was no discussion of a lease or mortgage because there was unanimous agreement to return to the original model.
358. A further meeting was to be held with RSL NSW and its legal representative and council’s legal representative on 20 January 2005.
359. Contrary to the understanding of the purpose and context of that meeting, the General Manager and Director of Planning Environment and Community attended and instead of discussing the existing documentation and agreed point of returning to the original model, discussion appears to have centred on promoting a lease.
360. On 21 January 2005, council’s solicitor wrote to the RSL/HACC solicitor, stating the general intention was for council to allow HACC and RSL to use the premises *“for little or no charge....if that community use was to cease which is not contemplated by any party then the proposal would revert to a normal commercial arrangement”.*
361. There is no resolution from council authorising pursuit of a lease.
362. On 2 February 2005 HACC wrote to council and requested a copy of all correspondence relating to the centre project and raised the following concerns:
- HACC were the original proponents of the project and applicants for the DA;



- Requesting HACC have direct representation in all negotiations, and advising that the RSL NSW does not act for HACC;
  - The meeting on 20/1/05 was only an opportunity for the State Councillor of NSW RSL to advise council's solicitor of the way NSW RSL had evolved the original model of ownership of the land and hall in to an acceptable model that is currently in operation in NSW;
  - The meeting was held contrary to the purpose stated;
  - The General Manager and the Director Planning, Environmental and Community Services were in attendance and the meeting did not discuss the original model but pursued the lease proposal;
  - HACC was advised third hand of the content and outcome of the meeting;
  - HACC trusts council did not deliberately re-set the agenda without consultation and that the lack of direct correspondence relating to the meetings outcome was an oversight of council.
363. On 22 February 2005 the General Manager responded by letter rejecting the request for copies of the correspondence. The General Manager did not refer the reasons for his decision to council in writing, nor make his reasons publicly available. He made no reference in his response to the *Freedom of Information Act 1989*. Nor does he refer HACC to council's public officer to discuss seeking access to council's documents by those means, all of which is required by section 12A (1) and (2). (Attachment 55)
364. On 2 March 2005 HACC wrote to councillors expressing their grave concerns regarding the project.
365. Council did not respond to this letter or take steps to address any of the matters raised in the letter.
366. On 21 March 2005 representatives of RSL and HACC addressed the public access session of council. A third party also attended to take notes of the address and questions asked by councillors and the General Manager.
367. The Minutes of that meeting indicate Councillor Liska asked them, "*How do you intend to protect this community asset forever and a day for the people of the Kyogle Council area? That is something which you need to consider and provide an answer to Council*". (Attachment 56)
368. In the week following this address, as they had not received a response to the matters raised at the council meeting, HACC representatives contacted the General Manager. In interview they stated that the General Manager said, "*Council did not consider the matters raised within (y)our address during the process of their meeting, and I have no intention of responding to any the matters or approaches in any form or manner*".

369. The representatives then state *“We were approached by a councillor, specifically not representing council, but with the knowledge of the General Manager, to explore possible opportunities to progress the proposal...This councillor proposed that a perpetual lease might accommodate all of our needs...We were prepared to discuss developing that concept, as a result, another meeting with the General Manager was arranged specifically to address this option”*.
370. HACC/RSL representatives identify the Councillor who made this approach as Councillor David Liska. He does not appear to have been authorised by council to make this approach on council’s behalf.
371. HACC and RSL representatives attended a meeting arranged with the General Manager on 5 April 2005. At this meeting the perpetual lease proposal was not considered acceptable to the General Manager. However, they were able to negotiate a lease under terms acceptable to the group and this was communicated to council’s solicitors.
372. At this meeting according to the notes provided by HACC and RSL representatives, the General Manager advised them that council wishes to finalise this business ...and that if they could not achieve an outcome at this meeting he would write a report for consideration at the next council meeting. Whatever resolution came from that meeting would be council’s final offer, which if not accepted by HACC and RSL would cause council to terminate all further negotiations on the Seniors Centre proposal.
373. There is no council resolution authorising this ultimatum being issued by the General Manager only a resolution from council supporting the project.
374. The notes state the General Manager advised that council would seriously consider selling the asset if a realistic offer was made and that council considered the value of the asset to be the land value only as the building had no effective value.
375. There is no resolution from Council, indicating its willingness to sell the land, or any consideration of its continued use as community premises.
376. After this meeting HACC and RSL representative’s state, *“We determined to provide several elected members with a copy of our notes.... The General Manager was made privy to our endeavours... and issued a verbal warning that ‘to do so would be disastrous to (y)our cause”*. They described his tone of voice as being threatening.
377. The RSL and HACC representatives retrieved or requested that the councillors destroy the notes before opening them.
378. They state that *“We then received the documentation resulting from the latest negotiations, our concerns had been confirmed; there had been onerous conditions imposed that were not acceptable to us and the*

*methodology of establishing council's equity had been altered to include an aspect that we had previously rejected."*

379. Council considered a report in open and closed sessions of the ordinary meeting of 18 April 2005. Council resolved to prepare a draft lease.
380. On 16 May 2005, a letter signed by the Director of Planning Environmental and Community Services advised HACC that their development consent has lapsed. The consent had in fact lapsed in December 2003. The consent was the same one for which the Director had requested and received a backdated letter from HACC. (Attachment 57)
381. In the letter dated 16 May 2005, the Director stated *"Council is desirous of insuring [sic] that all transactions involving public land are transparent. It is council's consideration that the "sod turning" works on the site do not constitute physical commencement of the site...."*
382. This letter informed HACC (the applicant) it would need to lodge a new application with a statement of environmental effects should they wish to pursue the development of the site.
383. Council considered a confidential report from the General Manager who recommended on 18 July 2005 that as no response has been received to council's letter of 30 May 2005, *"that it is not in council's interest to compel the proposed lessees to take what is a very generous offer"*.
384. Council resolved that:
1. Council receives and notes the report Kyogle Seniors Centre Update July 2005. That Kyogle Council writes to the proponents for the Kyogle Seniors Centre outlining that
    - i. it has strongly supported "in principle" the Kyogle Seniors Centre Project including providing a site option
    - ii. it continues to support the concept, including bringing together the interested parties to negotiate away of moving this project forward and
    - iii. it has expended considerable resources leading up to the preparation of the lease agreement to further the project.
  2. That council requests a response from the proponents of the Kyogle Seniors Centre advising of their intentions within 14 days to enable council to make a final decision in relation to the matter.
  3. Kyogle Council release a media release on its position in relation to the Kyogle Seniors Centre. (Attachment 58)
385. On 25 July 2005 the General Manager sent an email to council's solicitor and the RSL/HACC solicitor, advising of the resolution of July 2005.

386. HACC responded on 28 July 2005 by letter accepting that council can make a determination on the matter and reconfirmed HACC/RSL commitment to the proposed Seniors Centre
387. A confidential report to the ordinary meeting of council on 15 August 2005 by the General Manager reproduces his comment to the meeting of July 2005, which stated, *“Based on the advice I have received from council’s solicitor, I now advise council that it is not in council’s interest to compel the proposed lessees to take what is a very generous offer”*.
388. He continued, *“In addition, council now has another party who has expressed interest in this land (refer separate report in the Confidential Business Paper)”*.
389. The next item on the business paper was a request from a private company seeking to purchase the site for commercial use. The report presented to the council a request from a developer to obtain an option to purchase the Bloore Street site.
390. This report stated that the land is operational land and therefore council may dispose of the land if it wishes to do so. Council resolved the General Manager was authorised to conduct discussions, contrary to previously expressed concerns about the need to protect a community asset. (Attachment 59)
391. An email from the General Manager to the Director Planning, Environmental and Community Services indicates that the General Manager and the Mayor had discussions with the developer on 7 September 2005. The Mayor’s recollection is that the meeting occurred on 29 August 2005. It is clear the meeting occurred.
392. On 16 August 2005 the General Manager advised the solicitors acting for council and the RSL/HACC of council’s resolution not to proceed with a lease.
393. On 24 August 2005 the solicitor acting for RSL/HACC wrote to council: *“We still regard the Bloore Street site as our preferred option and would like council to advise us of whether they are prepared to consider proceeding along the line of the original resolution of July 2001. .... We ask if Council, in order to substantiate the valuation of \$237,000, would provide us with copies of all valuations of the Bloore Street land sought by council during the period of negotiations.... We seek this information in order to determine whether negotiating the purchase of the Bloore Street site is an alternative option which should be considered by the community”*. (Attachment 60)
394. On 19 September 2005 the response from RSL/HACC was put to Council. No response to this correspondence has been received.

395. There was at least one other development application that would also have provided an asset to the Kyogle community that was treated in a similar manner. It is referred to in the final term of reference section.

## **FINDINGS**

396. The planning aspects of council's operations indicate council has no draft LEP and appears to have classified land incorrectly thereby failing to properly manage public land. Council's failure to adopt a shire wide LEP leaves it significantly disadvantaged in terms of long-term management of development and the management of public assets in its control.
397. Furthermore, council appears to have little idea of what the community's assets are or how to manage them properly. Apart from many assets being recorded inadequately in council records, there are also many that have fallen into disrepair.
398. From interviews, telephone complaints, and written complaints received, it is apparent that council's relationship with its community is strained. Some of that strain could be attributed to council's perceived and real failure to manage community assets or to engage the community in a useful way.
399. To frustrate, stall and turn away community members who wish to work productively with council, as has occurred with the Kyogle Seniors Centre Project, is detrimental to the community and to council. Councillors, who initially supported this project whole-heartedly, adopted, without question, the path taken by the General Manager.
400. On reading council's Social Plan, combined with council's actions regarding handing back the Crown Reserves in the area, there appears to be a lack of significant community infrastructure owned and/or maintained by council.
401. The reported behaviour of the Director Planning, Environmental and Community Services in agreeing to falsify documentation, the General Manager's initial acquiescence and the later turnaround by both managers is of a serious nature and should be addressed by council.
402. The reported behaviour of the RSL/HACC representatives in agreeing to falsify documentation is of a serious nature.
403. In accordance with section 11 of the *Independent Commission Against Corruption Act 1988* the departmental representatives have requested that the Director General notify the Independent Commission Against Corruption (ICAC) of a possible breach of section 8 of the ICAC Act by these council officers and the representatives of both HACC and RSL Kyogle.

404. Council's failure to see to fruition an agreed project of significant benefit to the community, such as the Bloore Street project, is an indication of its loss of control of the organisation. Further, having expressed concerns about a potential loss of the facility for the community, to acquiesce to the General Manager's changed plans for the site and agree to sell the facility to a developer demonstrates a lack of integrity in its decision making processes.

### TERM OF REFERENCE 3

**Whether council has acted in the best interests of the community and has fulfilled its responsibilities by resigning as the reserve trust manager of 25 Crown reserves and whether council has acted appropriately in its management of Crown land.**

#### ANALYSIS

405. A more detailed chronology of this matter is attached at Appendix C.
406. Councils, as part of their charter, are 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.
407. Council, also as part of its charter, is to have regard to the long term and cumulative effects of its decisions.
408. Following a council resolution made on 18 May 2002, council resigned as Trust Manager from Crown Reserves for which it was trustee on 21 May 2002. This involved 25 Crown Reserves, because the status of another Crown Reserve was unclear. (Attachment 61)
409. Correspondence went between council and the Department of Lands where the status appeared to change several times. Finally, council resigned from the last Crown Reserve on 26 September 2005, making a total of 26 Crown Reserves which council has stopped managing on behalf of the community.
410. Council's action in handing back Crown Reserve Land appears to be in keeping with the requirements of the section 96(1) of the *Crown Lands Act 1989*, in that its resignation was made in writing under seal to the relevant Minister. A copy of the letter of resignation was also forwarded to the Regional Manager at the Office of the Department of Land and Water Conservation (now Department of Lands). (Attachment 62)
411. On 15 January 2002, the General Manager through Council's solicitor sought legal advice from senior counsel regarding whether council could resign as manager of its Crown Reserves for which it was Trust Manager.
412. In his instructions, the General Manager gives some insight into his reasons for transferring the reserves. He states, "*....given that the concept of reserve trusts involves a desire by the State Government to set aside lands for public recreation and public use. ....It also seems an arrangement, which on the one hand provides kudos to the State Government, but on the other hand disadvantages local government, because local government picks up the responsibility for trusteeship,*

*management, the cost associated with management, and the ultimate sting in the tail with respect to liability, associated with the growing tendency of users of those facilities to sue local councils under public liability policies for all manner of things”.*

413. He continued, *“If the State Government wishes to provide facilities for the community then it is arguable that the State Government should be prepared to fund the operation and management of those facilities, not ‘pass the buck’ to local councils for the funding to be provided by residents domiciled in the local government areas in which the facilities are located...Accordingly Council would like to obtain definitive advice from Senior Counsel as to whether council can resign its position as trustee and trust manager, in any situation that it deems appropriate.”* (Attachment 63)
414. The Crown Reserves handed back included areas with significant community facilities such as a caravan park, a playground, a skateboard facility, sports grounds, public halls, community centres, public toilets and amenities, a road side rest area, walkways, a picnic area, a viewing platform at a waterfall, a rodeo ring, a camp draft area, tennis courts and a pre-school.
415. The community assets located on these reserves were in use by the Kyogle community.
416. Council considered that the potential benefits in handing back Crown Reserves would be through minimising operating losses being incurred and a reduction of additional public liability risks associated with management of the Crown Reserves.
417. At the meeting where council determined to hand back the Crown Reserves it was reported, *“It is more than likely that community organisations, some of which are already involved with the Reserves would be willing to constitute Trust Boards to assume control over the operations of the reserves.”* (Attachment 64)
418. Following the hand back, the Department of Lands has established twenty Reserve Trusts. An administrator appointed by the Department of Lands is still managing five. One was only handed back in September 2005 and the departmental representatives have not established its current status.
419. If the community wanted to continue to have the use of these Crown Reserves, it was forced by the actions of council to take on the management of the reserves itself. Council contributes little to the community-run Reserve Trusts.
420. Council decided to withdraw as Trust Manager from the Crown Reserves despite little evidence of proper consultation with its community about such a decision. The report to council indicating that community organisations would take over their management was not



- supported by any indication that council sought or had any discussions with the community or users occupying these reserves before making its determination to hand them back.
421. The only public consultation in relation to Crown Reserves identified by the departmental representatives, was a public meeting held at Bonalbo Bowling Club on 29 November 2001, seven months prior to council handing back the reserves.
422. This public meeting was called, not to discuss the hand back, but to discuss a Botanical Gardens Development project and to gauge the level of community support in Bonalbo for the Project.
423. A report to council on 17 December 2001 states, “*Approximately 50 persons including representatives from the Bonalbo and District Progress Association, UCCEDO, Bonalbo Garden Club, Bonalbo Bowling Club and other interested persons attended the meeting. The community provided general support for the project however, the underlying opinion of the meeting was that council should retain trusteeship of the Crown Reserve*”. (Attachment 65)
424. The community opinion expressed at that meeting was obviously of insufficient weight to impact on council’s later decision.
425. Council ceased its maintenance of these reserves on 21 May 2002, the date of its resignation.
426. This included council removing plant and equipment from Crown Reserve No 69558, before completion of works already commenced on the reserve. The works in question relate to the piping of grey water.
427. Crown Reserve No 69558 contains a caravan park. The caravan park has permanent residents as well as holiday sites and could be counted as significant in the provision of low cost housing in the local community as well as a potential avenue for tourism development.
428. Council’s abandonment of these works prior to their completion has resulted in the ongoing flow of grey water from the caravan park into an adjoining watercourse, an issue council was supposed to address, and was in the middle of addressing, at the time of the hand back.
429. At the time of the abandonment of works council had an employee who had been the resident manager of the caravan park for over 10 years.
430. In interview, he advised the departmental representatives that he was told on a Thursday that he would be required to vacate the residence in the park. Council trucks came to the caravan park on the Saturday morning, removed his furniture, in his absence, and put it into storage. He was required to find alternate accommodation.

431. The Director of Planning Environmental and Community Services, in interview, stated that, *“following the decision to hand back the Reserves, the General Manager told me not to spend any more money and get the caretaker off site,”* which he did.
432. The Director of Planning Environmental and Community Services returned to say, *“the caravan park caretaker and how he was removed from his residence was one of the worst things I’ve been involved with during my employment with council.”*
433. Councillors did nothing about this activity and in their response council indicated it was unaware of the activities at the time. It is unclear when they became aware of the matter but apparent that no action was taken to try to rectify the situation.
434. The *Crown Lands Act 1989* section 92 provides that a Reserve Trust [http://www.austlii.edu.au/cgi-bin/disp.pl/au/legis/nsw/consol\\_act/cla1989134/ - disp10](http://www.austlii.edu.au/cgi-bin/disp.pl/au/legis/nsw/consol_act/cla1989134/-disp10) is charged with the care, control and management of any reserve (or any part of a reserve) of which it is appointed trustee.
435. Council’s General Manager in a letter dated 29 September 2005, to the Director General of the Department of Local Government, claimed that council managed the Crown Reserves adequately before handing them back. However, this statement was not supported in interviews and other information that came before the departmental representatives during this investigation. (Attachment 66)
436. Investigation of the Crown Reserves has revealed there were significant problems relating to council’s previous management. Specific allegations of council’s failure to adequately maintain certain reserves have been made and raise concerns regarding the level of council’s maintenance of the reserves and its community assets generally.
437. The condition and problems of the pools in Kyogle Council’s control have already been discussed at length in paragraphs 222-240.
438. Another example, the community centre on Crown Reserve R91529, was, at the time of the council resigning as Trust Manager, in a state of disrepair. It required funding to undertake repairs to bring it up to an acceptable standard.
439. Council permitted a driveway to freehold land to be constructed on and over Crown Reserve No 82860 and to remain on the land without authorisation. The departmental representatives viewed the driveway on 23 November 2005. When questioned, the Director Planning, Environmental and Community Services responded that council had no building approval or development consents on file for the dwelling where the driveway was constructed.

440. Council as a Reserve Trust Manager was obliged to ensure that any party with sole use of any part of a Crown Reserve occupied that reserve in accordance with the *Crown Lands Act 1989*. This could have been achieved by a lease or licence granted in accordance with section 102 of that Act. Council as Trust Manager permitted the occupation of a number of Crown Reserves.
441. The occupations have been without any formal tenure approval as required by section 101(2) of the Crown Lands Act. This section of the Act provides that a Reserve Trust is not capable of being alienated, either the whole or any part of the reserve, except in accordance with this part.
442. The General Manager's response to this allegation, in the letter dated 29 September 2005, was, "*The Department of Lands knew of this situation and raised no objection. Further, this arrangement existed when Kyogle Council was gazetted as Trust Manager on 24 May 1996.... For example, at 24 May 1996 the Kyogle Croquet Club and the Kyogle Tennis Club (third parties) had been located on R69556 – the Kyogle Recreation Area – for many years*". (Attachment 66)
443. The degree of monitoring by the Department of Lands of the manner in which council was performing its Trust duties, while in itself causes concern, is not sufficient argument for council to allow the unfettered alienation of the community's assets.

### **Bush Fire Facilities**

444. Council has also permitted the construction of a bush fire shed on R91367 which is a Crown Reserve for a community centre, without obtaining approval as required by section 121A of the *Crown Lands Act 1989*. This section requires the Minister's approval to utilise a reserve for an additional purpose. 'Additional purpose' is defined in section 112 of the Crown Lands Act as any purpose that is additional to the declared purpose or any purpose authorised by the Minister under section 121A in relation to a reserve.
445. Although this bush fire shed is located on one of the Crown Reserves handed back, the building is listed in council's 2005 insurance renewals - the building is insured for \$41,000 and the contents for \$5,000. (Attachment 67)
446. Council was asked whether at the time the development application for this shed was lodged, the Department of Lands signed the application as owner. In addition, why, if council has handed back this reserve, it still had the building insured in its 2005 insurance schedule.
447. The Director Planning, Environmental and Community Services advised by email on 14 November 2005 that the Green Pigeon Fire Captain signed the DA. There is no record of formal approval from the Department of Lands. The email notes that normally all rural fire service

buildings and vehicles are included in council's insurance schedule and further, though as this building is located on the Crown Reserve which were handed back by the community trust, it may be more appropriate if the community trust includes the building within its insurance schedule. (Attachment 68)

448. Such action would breach section 37(3) of the *Rural Fire Service Act 1997*, which provides that the local authority (council) for the rural fire district for which a fire control officer is appointed must provide facilities and accommodation to enable the fire control officer to exercise his or her functions.
449. Council therefore appears to have three options: take back and manage the Crown Reserve properly, or pay a commercially established lease/license fee to the existing Trust, or provide other facilities and accommodation for the rural fire service.

### **Swimming Pools**

450. The Woodenbong and Bonalbo Pools are located on Crown Reserves that were handed back by council. Council is still operating these pools (when they are not closed due to the risk of users being electrocuted) without any formal approval to occupy the reserves.
451. Council indicated in its response to the draft report that it now has temporary licences for the pools in place.
452. Council's 2005 insurance renewal also states that the council operates 3 pools, including the Bonalbo and Woodenbong pools. Facilities at these pools are included in council's insurance schedule. For example, Bonalbo pool facilities are insured for \$187,900 for buildings and contents for \$21,000. Woodenbong pool facilities are insured for \$196,400 and the contents for \$21,000. (Attachment 69)
453. The acting General Manager and Director of Planning Environmental and Community Services confirmed that council had no formal lease or license to remain in occupation of these reserves. They were asked, "*what do you think your community is going to say when they hear that the pools may have to be closed because you don't have a licence or lease to continue to operate them?*" There was no response.
454. Again, considering the concerns of the General Manager and council about minimising public liability, council appears to have exposed itself to considerably more risk. They have been, and continue to, operate facilities for the community, on land over which they have no clear authority.
455. Council did not provide financial records of monies received as Reserve Trust Manager to the Department of Lands either before or upon resignation.

456. Section 122(1)(b) of the *Crown Lands Act 1989*, requires that the Reserve Trust keep such records (including accounting records) as may be prescribed in the regulations or as may be required by the Minister by notice in writing to the Reserve Trust.
457. Clause 34 (2) of the *Crown Lands Regulation 2000* requires such records to be kept as the council is required to keep under the *Local Government Act 1993*. Records are to be kept in such a manner that will permit dissection of monetary details of each reserve from which the council receives revenue of any nature.
458. The General Manager in a letter of 29 September 2005 to the Department of Local Government, states that “*Although Council did not have separate bank accounts or financial records for these reserves all transactions relating to these trusts have been processed through Council’s ‘Combined Funds’ bank account and have been recorded in council’s General Fund financial reporting system.*”
459. Council appears to be able to account for the monies related to the Crown Reserves in only the most general manner. This is not considered to be consistent with requirements of the *Crown Lands Regulation 2000*.

### **Risk Management**

460. Kyogle Council is the only council in NSW that has handed back to the State Government all of the Crown Reserves for which it was Reserve Trust Manager. The move has potentially significant State wide ramifications.
461. The General Manager indicated in his letter dated 29 September 2005, that council resigned as Trust Manager because of the risks involved, which include the potential liability associated with council’s operational activities and extends to the operational activities of others.
462. In an interview on 19 October 2005 the acting General Manager said, “*...initially the caravan park issue arose. Council wanted to sell it to a commercial operator but didn’t get a response to its request to do that from the Department of Lands. The General Manager said that council had these reserves but can’t do what we want to with them. Then the General Manager raised the public liability issue with council and the decision was made to hand them back.*”
463. The Director of Planning Environmental and Community Services advised the departmental representatives on 18 October 2005 that these 25 reserves were handed back because of all the Crown land council had responsibility for, these 25 reserves were the only ones it could hand back.
464. When asked if he believed council would have handed all of them back if they could, the Director of Planning Environmental and Community

Services replied, “*yes, they would have handed them all back at the time if they could.*” He also confirmed that no meetings were held with the community before the decision to hand back the Crown Reserves was made.

465. The acting General Manager indicated that there had not been much public objection to council handing back the Crown Reserves. A former councillor also indicated this was the case.
466. However the local member indicated, in relation to the handover of the Crown Reserves, the community was very concerned about the actions of the council and expressed those concerns to him. The caravan park issue brought it to a head but the reserves were handed back without reference to the community’s views.
467. During an interview on 20 October 2005, a former employee advised there was real concern in the community regarding the handing back of the Crown Reserves and that the community was outraged.
468. An example given was in the handing back of the Kyogle Botanical Gardens - community representatives wanted to meet the General Manager to protest the hand back. The former employee reports the response by the General Manager to the request for a meeting as, “*you know I don’t attend public meetings.*”
469. Council and the General Manager claim that the hand back was related to public liability risks. Councils generally must make arrangements for adequate insurance against public liability and professional liability in accordance with section 382 of the *Local Government Act 1993*. At the time of the hand back of the Crown Reserves, council had public liability cover in the sum of \$200,000,000. (Attachment 70)
470. The acting General Manager in interview stated that council’s claims history indicates it has not had a public liability claim relating to Crown lands. It appears its claims are related primarily to footpaths. In relation to insurance and public liability matters, council while Trust Manager of these reserves appears to have taken little or no action in mitigating its liability in relation to possible claims.
471. This is demonstrated in its failure to take steps to formalise occupations on the reserves to ensure all occupations were subject to proper agreements, with specified conditions of use and the relevant insurance and liability clauses. In relation to Crown land these clauses should indemnify and hold harmless both the council and the Minister for Lands.
472. Council, it is noted, does not have a signage policy and failure to implement signage in accordance with a policy would increase its risks.
473. Another area where it fails to mitigate its risks is the maintenance of the facilities generally. For example, council was reportedly aware of

electric shocks being experienced at Woodenbong pool for some time before having it assessed and undertaking repairs.

474. At the public access session of the council meeting held on 17 October 2005, with the departmental representatives in attendance, it was alleged that the council was aware of this problem 30 years ago.
475. The local member also indicated in interview that for a time these works had been identified as necessary, but nothing had been done.

### **Caravan Park**

476. Crown Reserve No 69558 contains a caravan park, tennis courts, botanical gardens, a croquet club, and an oval. Section 68F (2) of the *Local Government Act 1993*, requires formal approval for the operation of a caravan park.
477. Council allowed the operation of the Kyogle Caravan Park without the necessary approval under the *Local Government Act 1993*.
478. Operating losses on the caravan park were reported to be \$24,700.95 in 2000/2001 and were projected to be \$28,000 for 2001/2002 at the time of the hand back.
479. The caravan park amenities block is still listed on council's insurances for 2005. (Attachment 71)
480. According to the General Manager's report dated 20 May 2002, council resolved, on 17 May 1999, to sell a portion of Crown Reserve No 69556 and the improvements associated with the Kyogle Caravan Park to a private person.
481. Council sought approval under the *Crown Lands Act 1989* to sell part of this Crown reserve.
482. The request was refused. The (then) Department of Land and Water Conservation instead proposed council consider granting a lease over the caravan park site for a period of up to 20 years. (Attachment 72)
483. The report to a meeting of council on 18 February 2002 includes a statement that "... a lease of up to 20 years, by Council as Trust Manager to a private operator, is considered an inferior option to sale". The report does not provide reasons for why the lease proposal was inferior to the sale of Crown land or if a lessee could be found to take over the park. Council does not appear to have given due consideration to the option to lease the caravan park before rejecting it.
484. At this meeting council resolved that it give notice of its intention to resign from the position of Trust Manager of this reserve and requested a list of all Crown Reserves in the Kyogle Council area for which council

- is Trust Manager with a view to handing back all of those Crown Reserves.
485. Council made an approach to the Department of Lands on 30 July 2002 to have the Woodenbong and Bonalbo pools vested in council. When it handed back the Bonalbo Reserve in 26 September 2005 council again requested vesting of the land for the two pools. (see Attachment 65)
486. Council also requested on 3 May 2005, that the Kyogle Lookout be dedicated as public road and given back to council. In its request to the Department of Lands, council indicated that in conjunction with the Kyogle community it was considering the strategic nature of a number of Crown Reserves.
487. It is understood that council has also approached two of the Reserve Trusts, who now manage land handed back by the council. The Norman Johnston Park Reserve Trust and the Kyogle Recreation Area Reserve Trust have been asked to enter into a lease arrangement whereby council would lease certain areas of the Reserve at a nominal charge to enable maintenance to be carried out at council's expense.
488. The areas council is seeking to regain an interest in are:
- Botanical Gardens and surrounds
  - Alcorn Park and Bullring
  - Recreation Ground (cleared area only)
  - Norman Johnston Oval and immediate vicinity
  - Toilet Block adjacent to the Oval (Attachment 73)
489. Council seeking to be reinvolved in these reserves underlines the ramifications of its earlier decisions to hand back of the 26 Crown Reserves. It appears the long-term effects of its decision are only now becoming apparent to council.
490. The Reserve Trusts consist of voluntary members of the local community with limited resources. Council in its letters, requests that if the Trusts are agreeable with a lease proposal, they should prepare an appropriate lease agreement for council's signature.
491. Although the newly established trusts are doing commendable work in operating these trusts and continuing to make available to the citizens of Kyogle district, and its visitors, valuable community assets, they are made up of individuals.
492. These individuals will not be able to act as Reserve Trustees in perpetuity. Council's resignation as Trust Manager has resulted in a high degree of uncertainty about the management of community assets. Kyogle Council has been in existence for 100 years and it is the ongoing nature of council as an organisation that makes it the most appropriate manager of the Crown Reserves.



493. Crown Reserves are parcels of land owned by the Crown that are made available for all members of the community to enjoy. Each local government area in NSW has responsibility for the provision of certain facilities in its area so that local residents and visitors can reasonably expect to be able to enjoy a consistent standard of amenities in those areas.
494. State and local governments and members of the local community, working together to ascertain what facilities are appropriate to be provided in each locality, do this. It has been determined that local government is best placed to provide and maintain those facilities, hence the Trusteeships.
495. Some funding is available from a range of state government departments to contribute towards their management, something Kyogle Council does not appear to have adequately investigated or utilised. Given that it is mainly the residents of any area that get most use of the facilities provided, it is expected that council rates will also contribute in some measure to their maintenance.
496. The General Manager did not seek, from the legal advice, any assessment of the appropriateness of a proposal to hand over the reserves or whether this would be contrary to council's charter of obligations.

## **FINDINGS**

497. Council's decision to resign as Trustee of Crown Reserves further demonstrates its failure to consider the long-term implications of their decision for the community. Their position as Trustee, like that of all councils, has been a long-term commitment. The interweaving of council activities, on behalf of the community, with those assets is a complex matter.
498. Those complexities have significant implications, both for council and the local community, which council had no regard for and which are becoming evident in council's attempts to regain an interest in some of the Reserves.
499. Council's decision to hand back Crown Reserves, and the manner in which it was done, has in our view significantly increased its public liability risks.
500. Disregarding requirements to refer to Ministers of the Crown across a range of State Government Departments, in this instance at least three, it is not generally regarded as an appropriate standard of behaviour for a local government authority.

## TERM OF REFERENCE 4

### **Whether the conduct of councillors, senior officers and council staff has resulted in efficient, effective and appropriate governance for the Kyogle Council**

#### **ANALYSIS**

##### **Councillors**

501. At the beginning of this investigation the General Manager and his performance review committee, consisting of the Mayor, Councillor Bennett and two other councillors, Councillors Passfield and Marriott had met once for his 2005 review.
502. The review committee is supposed to meet with the General Manager, review his performance against established criterion and make a recommendation to council about the General Manager's fulfilment of his contract of employment.
503. Clause 5 of the General Manager's current contract of employment requires him to undergo a performance review annually and requires his performance to be measured against a set of strategic performance objectives and measures. (Attachment 74)
504. It appears that the General Manager and his performance review committee met on three occasions in 2004 to conduct the assessment for that year.
505. Following the General Manager's performance review, the committee made up of the same three councillors, wrote to the General Manager, in a letter dated 14 September 2004, "*The Performance Review Committee is pleased to report a high level of satisfaction with your performance as General Manager of Kyogle Council*".
506. The letter went on to discuss seven issues, three related to works performed well, one on a restructure of the performance review process, and three matters of concern.
507. The three matters of concern included (a) implementing the wishes and intent of resolutions passed by council, (b) the need for transparency in issues involving council and the need to draw to council's attention the intent of changes in expenditure and variations in specific projects, and (c) a quick distribution of Minutes after the council meeting in order for councillors to participate more fully. (Attachment 75)
508. It is unclear whether the committee sought council's agreement to the letter prior to sending it.

509. The General Manager reported his concerns about potential pecuniary interest matters raised by some councillors' behaviour to the Department of Local Government. The investigation of those matters has been held over until the completion of this investigation. The failure of all of council's elected representatives as well as the designated persons to lodge their returns on time is also of concern to the department.
510. In one example, the Minutes of the Ordinary meeting of council 21 February 2005 pages 14-15, No 5 Road Network Management System Item 210205/26 Public Gates and Bypass Management Plan, reads "*Moved Councillor Bennett seconded Councillor Jim O'Neill that the requirement to maintain 20 metres either side of the public gate/grid be removed*". (Attachment 76)
511. Councillor Lewis asked whether any councillor had a grid/gate on a public road, which may be affected by this decision? Councillor Bennett said he had a grid, which would be affected by the decision.
512. Councillor Lewis asked whether any councillor would stand to save money if this decision was made this way? Councillor Bennett said he would, but he was making policy, and continued to participate in the meeting.
513. Councillor O'Neill said he might be affected by the decision, as he was not sure whether he had a registered grid on his property or not. The General Manager advised that councillors should have regard to the pecuniary interest requirements and whether there might be a pecuniary interest.
514. The two councillors continued to move and second the motion.
515. The General Manager referred Councillor Lewis' conduct relating to his interactions with a staff member to council on 18 July 2005, believing Councillor Lewis may have breached council's Interaction between Councillors and Staff Policy. (Attachment 58)
516. From the information provided in Councillor Lewis' correspondence and council Minutes of 18 July, it appears that his interactions with a former staff member, Samantha Muller, and hers with him, may breach the Policy under the section Inappropriate Interactions which states that the following interactions are inappropriate: "*Councillors approaching junior members of staff for information on sensitive or controversial matters, members of staff approaching Councillors directly (rather than via their Directors, staff representative or union delegate) on staffing or political issues*".
517. The Policy continues: "*Councillors approaching staff outside the council building or outside hours of work to discuss Council business; staff providing advice to Councillors without recording or documenting the*

*interaction as they would if the advice was provided to a member of the community*". (Attachment 77)

518. Councillor Lewis provided a response to council's Conduct Committee, notwithstanding the committee apparently being unable to be constituted, on 22 July. In it he indicates that he did meet with Ms Muller and more importantly, spoke to her about a Confidential matter before a council meeting. In the view of the departmental representatives it appears both he and Ms Muller, who is no longer a council employee, may have breached the Policy. (Attachment 30)
519. The General Manager also alleges that Councillor Lewis had a pecuniary interest in the matter of the Australian Technical College, referred to in paragraphs 116 - 143. He referred this matter to the Department of Local Government for consideration. It has not formed part of this investigation.

### **General Manager**

520. Allegations and complaints have been received about the General Manager's failure to reside in the Kyogle Local Government Area (LGA), his regular absences from his place of work at Kyogle Council and his working from home.
521. The General Manager's residence is not a point of issue for the department's investigation. There is no legislative requirement nor does his contract of employment require him to reside in the Kyogle LGA.
522. The General Manager's employment contract does not require him to present himself for work at Kyogle Council buildings nor prevent him from working from home continuously.
523. Further, there have been allegations made that the General Manager is an undischarged bankrupt and therefore should not be employed by council.
524. Section 341 of the *Local Government Act 1993* requires a General Manager who becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the person's creditors to give notice of the bankruptcy, composition, arrangement or assignment to council.
525. The General Manager declared his bankrupt status to council at an Ordinary meeting of council on 16 February 2004. He has complied with the requirements of the Act. (Attachment 78)
526. As previously mentioned, the General Manager's contract of employment has a performance review clause. His responses to questions raised with him following receipt of the performance review committee's letter dated 14 September 2004 appear to indicate a reluctance on his part to address the committee's concerns. (see paragraph 503)

527. In a memo to the Mayor and copied to the other members of the performance review committee dated 17 September 2004, the General Manager says: *“The Minutes of the Ordinary Meeting held 21 June 2004 record the following: Cr E Bennett 2. Enquired when a response would be received for his request for information in Questions Without Notice at the Council Meeting on 17 May 2004.*
- i. *General Manager again advised he had been away, and he would now consider the request which had been taken on notice.”* The implication was that he had been unable to respond due to his absence on leave. (Attachment 79)
  - ii. The General Manager’s leave records supplied to the departmental representatives by council, indicates the General Manager applied for two single days absences in the period between 17 May and 21 June 2004.
  - iii. In a series of memos from the General Manager to the performance review committee members, the General Manager answers questions that he had not previously responded to. His comments include: *“(a) The answer to the question is obvious. It does not require an answer (b) I am surprised such a question would be asked in the public forum of council, concerning a matter reported in council’s Annual Report, (c) I do not agree that it is an accurate reflection of the situation because it ignores the very lengthy discussion of 19th May 2004”.* No written response to the questions had been provided at that time.

### **General Manager and Councillor Lewis**

528. On 24 June 2005 Councillor Lewis faxed a letter to the Minister for Local Government drawing to his attention the tender document by Kyogle Council for \$20 million for a Technical College and expressing his concerns at the failure to include the General Manager in the list of relevant persons in the submission.
529. On 18 July 2005 at the ordinary meeting of council the General Manager raised issues about Councillor Lewis’ conduct. (Attachment 29).
530. The Minutes of 15 August 2005 Item 8 Questions Without Notice, from Councillor P Lewis referred to the high number of positions vacant (9) recently advertised by Kyogle Council and enquired as to why there were so many vacancies?
531. The General Manager advised that the issue was of an operational nature. The General Manager also advised that, as Councillor Lewis had not responded to his various requests for information, any

questions asked by Councillor Lewis ‘without notice’ would be taken ‘on notice’.

532. Councillor Lewis again, enquired if councillors have no right to confidentiality then why is *Item 15.4 (Further referrals to Conduct Committee; Councillor Lewis)* in the confidential section of the business paper. “The General Manager advised that the question would be taken on notice”. (Attachment 32)
533. There does not appear to be any attempt by the Mayor or council to address this behaviour either in the meeting or subsequent to the meeting. The General Manager is required to provide councillors with information that they request in a timely manner, be courteous to councillors in a public forum and generally to assist councillors to perform their duties to the best of their abilities.
534. The General Manager’s behaviour towards Councillor Lewis is not confined to council meetings. On 14 October 2005, after this investigation was announced, and after the General Manager had commenced on leave, he emailed a staff member requesting full details of Councillor Lewis’ previous dwelling at Blackhorse Creek Community alleging it was illegal.
535. He then spoke to the Director of Planning Environmental and Community Services about the dwelling on 17 October. After he received the response from the Director Planning, Environmental and Community Services he requested the acting General Manager to provide a copy of that response to the departmental representatives. (Attachment 80)
536. The General Manager then provided this exact information from council files, to the editor of the Northern Star, the local newspaper, on 18 October 2005. (Attachment 81)
537. The General Manager’s actions can best be described as an attempt to portray Councillor Lewis in a poor light. The information is irrelevant.
538. He also sent a copy of an internal council memo from himself to all councillors where he took Councillor Lewis to task for having sent him flowers. The newspaper declined to publish either of the documents. (Attachment 82)
539. Section 664 (1) of the *Local Government Act 1993* states: “A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
- with the consent of the person from whom the information was obtained, or
  - in connection with the administration or execution of this Act, or
  - for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

- *in accordance with a requirement imposed under the Ombudsman Act 1974 or the Freedom of Information Act 1989, or*
- *with other lawful excuse.*

*Maximum penalty: 55 penalty units”.*

540. The General Manager’s actions in releasing this information was not for the purposes of council’s business or a purpose referred to in section 664 (1) of the *Local Government Act 1993*.
541. The Model Code of Conduct, (point 9.13) requires that when dealing with personal information, the *Privacy and Personal Information Protection Act 1998* (PIPPA) and Council’s Privacy Management Plan and the Privacy Code of Practice for Local Government must be complied with.
542. Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.
543. Section 17 of PIPPA requires that personal information held by council must not be used for a purpose other than that for which it was collected unless: the individual to whom the information relates has consented, the other purpose for which the information is used is directly related to that for which it was collected or the use of the information for that other purpose is necessary to prevent or lessen a threat to life or health of a person.
544. The General Manager did not have authorisation or permission to release the information.
545. Clause 6.1 of the Contract of Employment provides that the employee shall receive the remuneration in Schedule B. Clause 6.3 provides that the remuneration package includes any other benefits identified in Schedule B.
546. The signed copy of the General Manager’s contract provided includes a blank Schedule B not containing any remuneration amounts or other benefits. Should council wish to conduct negotiations or provide information when required it is unable to do so easily. (see Attachment 74)
547. During this investigation there have been at least three different amounts given to the investigation team as the amount that should be in Schedule B. Councillors were unable to tell the investigation team what the amount was and provided a range of figures with a variance of some \$20,000. The figure provided in council’s response was in accordance with a 2002 resolution not the current remuneration being paid.

548. Clause 16.1 of the General Manager's contract includes the provision that all parties agree that the code of conduct and other nominated policies and procedure [sic] attached form part of the contract. No policy documents or procedures are attached to the copy of the signed contract provided.
549. Should council have wished to discipline the General Manager or include references during his performance reviews, the absence of policy documents to be referred to would have, in this instance, caused council some difficulties. If the contract requires attachments all due care should be taken to ensure the attachments form part of the contract.
550. During the course of the interviews conducted, a number of interviewees indicated that they felt intimidated by the General Manager. One councillor described his behaviour towards another councillor as *"being a bully"* that there was *"lots of sarcasm and bullying, intimidation designed to keep people in their place"*.
551. It was also raised that the General Manager had focused intimidating behaviour on various councillors depending on the issue. It was said that it appeared, *"he had hounded the Mayor"*.
552. In interview, a union representative said that any dealings he had with the General Manager have been horrible and that procedures took far longer than necessary. For example, the draft nine-day fortnight agreement has still not been signed after waiting 18 months.
553. He also said that the General Manager had not wanted him at a consultative committee meeting and had asked who had invited him. He felt that the General Manager had been intimidating towards him.
554. A community member interviewee said that the General Manager had been abusive and threatening to her over the phone. She had been visibly distressed by his phone call and other employees in her workplace had witnessed her distress.
555. On the first visit to council by the departmental representatives one of the outdoor staff indicated that staff were uneasy about talking to the representatives, because they were fearful of being victimised by the General Manager or the HR Manager. Other outdoor staff members indicated that the General Manager makes legal threats and gets people to back off when they oppose him. An indoor staff member made a similar comment.
556. A councillor also recalled an occasion he had disagreed with the General Manager and the General Manager said he would seek legal advice. The councillor decided not to pursue the matter because of this threat.



557. All three directors said that while they found the General Manager demanding on occasions, they had learned from him. They recognised that some of his tough decisions were aimed at getting council out of its previously poor financial position.
558. One director said that the General Manager could take credit for fixing the financial position. He also described the General Manager *“as a focused person, who protects his staff and won’t take any crap from councillors or the public regarding staff. He can be harsh and was especially harsh when he first came.”* He said, *“the General Manager can and has pressured staff and some people have left. In a discussion his view prevails”*.
559. Another director, in response to a question about what the General Manager was like to work with, said, *“No problems, as long as you are doing what is asked of you. If you are not –well you don’t want to be an enemy of him”*. Further, when asked if he raised his voice with any level of staff members, he replied, *“yes, he will raise his voice. Some staff are intimidated”*.
560. The Human Resources Manager said that he and the General Manager got along fine. He then added that he disagreed with the General Manager in some things but then he believed that the General Manager’s decisions proved to be right in the end. He called the General Manager *“formidable, not aggressive, but you need to be prepared, as he will grill you. If you’re well organised you might convince him”*.
561. When asked if the General Manager had threatened him, as alleged by one of the other interviewees, the Human Resources Manager replied, *“not me, no. I’m not aware of any staff member being threatened”*. There were no formal staff complaints about the General Manager’s behaviour that were relayed to us.
562. On 20 October 2005, the Mayor sent a memo to the General Manager requesting that he discontinue working while on approved sick leave. The departmental representatives have been provided with a list of at least seventeen occasions when the General Manager has made contact with council on work related matters, either by phone or email since that time and whilst still on sick leave. (Attachment 83)
563. On 25 October 2005 while on approved sick leave the General Manager sent memos to Councillors Lewis, Bennett and Hannigan. The memos informed them that as he has made unfavourable reports about them regarding pecuniary interests that they may wish to consider if they had a conflict of interest in attending the Extraordinary meeting of 24 October called for the purpose of discussing his contract of employment.
564. The memos incorrectly advise the councillors that they may have a conflict of interest in the matter before the council. Their tone could be

viewed as threatening and they represent inappropriate behaviour by the General Manager. (Attachment 84)

### **Directors and Managers**

565. During the General Manager's absence on sick leave the Director Corporate Services was acting General Manager. This covered the duration of the investigation. He is referred to as the acting General Manager in this report.
566. Interviews were conducted with the acting General Manager on 19 October, 22 November, and 24 November as well as informal discussions about matters arising. Due to the absences of the General Manager and, on the second visit the Human Resources Manager, the acting General Manager was required to address issues normally covered by these absent managers.
567. In the initial interview, the acting General Manager stated that council had not conducted a customer survey. He went on to explain council's Dataworks action requests (see paragraph 206) system, although this is not a complaints management system. He indicated that there had been some complaints about customer service since the reduction in staffing levels.
568. He also indicated that the reduction in staffing levels had not significantly reduced wages costs and that council needed to address workers compensation matters. Council's response indicates variations in wages costs during the period of the General Manager's employment from 1997 resulting in an approximate net reduction of \$800,000.
569. The acting General Manager indicated that he had *"to admit something. I failed to send out the Pecuniary Interest returns early enough."* When asked, he said they had been sent out in early October.
570. Section 449 (3) requires *A councillor or designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form prescribed by the regulations.* The statutory completion date is 30 September.
571. He indicated that he had missed the Department of Local Government's strategic checklist as it came attached to something else. The checklist was sent out under separate Departmental circular and is clearly marked Strategic Tasks for Councils.

### **Muli Muli Aboriginal Community**

572. The acting General Manager, in September 2003, was also responsible for threatening to restrict the water supply to the Muli Muli Aboriginal community.

573. This matter has been addressed in Parliament, together with concerns that the community does not have a potable water supply or a decent sewerage system. (Attachment 85)
574. The community has been subject to legal battles with council with few attempts by council's senior management to effectively engage the community in negotiating through the sometimes difficult issues that are involved.
575. The manner in which senior management members of council staff have dealt with this matter is less than satisfactory.
576. Council provided a copy of a Proposed Agreement between itself, the Department of Aboriginal Affairs and the Muli Muli Land Council to the investigation on 24 November 2005. No copy has been received by the Muli Muli Land Council or their solicitors to date, although, council may have sent a copy to the NSW Department of Aboriginal Affairs. (Attachment 86)
577. The conditions of the water and sewerage supply are detailed in the February 1997 Department of Public Works and Services report, 'Muli Muli Water Supply and Sewerage Assessment'.(Attachment 87)
578. The departmental representatives also viewed the site on their second visit to Kyogle on 23 November 2005 and the conditions remain essentially unchanged.
579. Progress on this matter is imperative, however, due to the conditions that the community is currently experiencing.

### **Australian Technical College Proposal**

580. The Director of Planning Environmental and Community Services, under direction by the General Manager, co-ordinated the preparation of the submission relating to an expression of interest and a tender to the Federal Government for an Australian Technical College.
581. In February 2005 an expression of interest was lodged for this proposal. Council did not consider the expression of interest before it was lodged, nor were council aware of the matter.
582. As the proposal contained a matter that would need to be dealt with under section 358 of the *Local Government Act 1993*, the matter could not be dealt with by delegation.
583. Section 358 requires that: "*A council must not form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity, except:*
- (a) with the consent of the Minister and subject to such conditions, if any, as the Minister may specify, or*

*(b) as provided by this Act.”*

584. The Tender document was lodged on 20 May 2005. The council did not consider, and was not aware of, the Tender until 20 June 2005, at which time the council received and noted the report. (see Attachment 15)
585. While section 377 of the Act does not prohibit the council from delegating authority to submit the tender, no such delegation appears to have been made by council. Considering issues such as strategic planning and the commitment of resources, all of which could be impacted upon by lodging this tender, council’s authorisation should have been sought before lodgement of the tender.
586. In addition, the proposal to form an entity under section 358 of the Act (as referred to in the tender document) and the makeup of the Board are both issues that council should have had input on before the lodgement of the tender.
587. During an interview on the first visit, the Director of Planning, Environment and Community Services advised the departmental representatives that when the tender came before the council it was only reported on verbally and that the tender had already been lodged by that time.
588. The General Manager directed the Director of Planning Environmental and Community Services to get a team together to prepare the tender documents.
589. The preparation of the tender documents cost \$10,000.
590. There was no resolution from council prior to the lodgement of the expression of interest or submission of the tender.
591. The tender document included establishing a board of directors to operate the college by way of a company limited by guarantee. This board of directors included the Director of Planning Environmental and Community Services.
592. At an interview conducted during the first visit the Director of Planning Environmental and Community Services confirmed that the General Manager had nominated him to the Board. He understood that he was only appointed for a period of 12 months. When asked about whether this would include remuneration he said that it wouldn’t, although he acknowledged that the board could decide to receive payment for their duties as directors.
593. He confirmed that he was the only council representative nominated to the Board. It should be noted that there are no council resolutions nominating any person to the Board contained in the tender document.

594. The tender document came before the council on 20 June 2005 and was considered in the closed session of the meeting. (see Attachment 18)
595. The Minutes for that meeting do not indicate that the Director of Planning Environmental and Community Services declared an interest in the matter and it appears that he remained for the duration of the consideration of the item.
596. The departmental representatives have been advised by councillors that the Director of Planning Environmental and Community Services took part in defending the appropriateness of his appointment to the board when this was questioned at the council meeting.
597. Departmental representatives were advised that one question raised by Councillor Lewis asked whether the Director of Planning Environmental and Community Services should declare an interest in the matter.
598. The minutes of the council meeting make no reference to any questions being asked or to any of the matters raised by councillors at this meeting.
599. The tender document includes an Application Form (Parts A to H) and a Financial Feasibility Questionnaire (Parts A to D). Part A of the application form shows Kyogle Council as applicant.
600. Part E of the application form contains a checklist. Two of the questions in this checklist to which the response is affirmative, include:
- *“Has the declaration been signed by an appropriate senior representative of the applicant organisation?”*
  - *“If applicable, has the Statutory Declaration been completed by Lead Organisation Member?”*
601. Part F of the application form contains a declaration by the applicant or representative. The preamble to the declaration contains the following advice. *“Giving false or misleading information is a serious offence.”*
602. The declaration states that: *“The information provided in this form and all attached documents is complete and correct and together they constitute an application to DEST (Department of Education Science and Training) to establish and operate an Australian Technical...”* The Director of Planning Environmental and Community Services signed the declaration.
603. Part G of the application form relates to legal requirements for the lead organisation (council). Part G1 contains a statutory declaration under the *Statutory Declaration Act 1959*. This declaration is to the effect that the person who has been nominated as lead member of the consortium has signed and has been authorised to make this declaration on its behalf.

604. The declaration also states that it is made by virtue of the *Statutory Declarations Act 1959* and subject to the penalties provided by that Act for the making of a false statement in statutory declarations, conscientiously believing the statements in this declaration to be true in every particular.
605. Part A, Q9 of the financial feasibility questionnaire requests the applicant to list all relevant persons and further identifies these people as those directly involved with the project and/or organisation.
606. The preamble to Q9 determines that a relevant person is a person with the potential to exert significant influence over the management or operation of the project and the use and recording of funds. Examples of relevant people would be directors, partners, presidents, executive directors, and project managers.
607. The Director of Planning Environmental and Community Services has responded to this item by listing the acting General Manager, Director of Planning Environmental and Community Services and Director Technical Services and council's former Economic Development Officer as relevant persons.
608. During an interview conducted on the second visit the Director of Planning Environmental and Community Services conceded that based on the fact that the applicant for funding was Kyogle Council, and the preamble to Q9, the General Manager was a 'relevant person'.
609. The Director of Planning Environmental and Community Services also confirmed that at the council meeting where council received and noted the report, Councillor Lewis asked the General Manager why he was not listed as a relevant person.
610. Part B Q15 of the financial feasibility asks if any office bearer (relevant person) has been involved with business failure and asks if any office bearer has been declared bankrupt. The Director of Planning Environmental and Community Services responded in the negative to both of these questions.
611. Part D Q19 of the financial feasibility questionnaire contains a Statutory Declaration completed by the Director of Planning Environmental and Community Services, which includes a declaration that information provided in this form and all appended documents, is complete and correct.
612. The fact that the application completed by the Director of Planning Environmental and Community Services on behalf of Council did not list the General Manager as a relevant person has affected the accuracy of the information provided to the Federal Government by the Director of Planning Environmental and Community Services in the tender form.

613. If the General Manager had been included as a relevant person as he should have been, the answer to the above parts of Question 15 would have required an affirmative response.
614. When asked who had authorised the Director of Planning Environmental and Community Services to lodge the tender, he replied, “*I would have to say the General Manager*”. When asked if he had been authorised in writing by the General Manager he said “*No*”. He said that the General Manager was given the tender early in the week before it was lodged and went through it.
615. In a letter of response to the departmental representatives dated 1 December 2005 the Director of Planning, Environment and Community Services advised that on 19 May 2005 a complete set of Tender documents was sent to the General Manager for review. (Attachment 88)
616. The General Manager made minor changes to the Tender application and these were incorporated into the documentation. On 29 May 2005, the General Manager gave oral authorisation for him to lodge and sign the Tender.
617. The letter of response also includes a Statutory Declaration dated 1 December 2005. This statutory declaration states that, “*I did not include Mr. Davies as a relevant person because firstly, I formed the opinion that he was not a person who would be directly involved in the project/and or organisation and additionally because Mr. Davies would not be a person with the potential to exert significant influence over the management/operation of the project and the use and recording of funds.*”
618. The applicant is Kyogle Council and the documentation lists as relevant persons council’s three directors. The General Manager’s role is to supervise those directors and the day-to-day management of the council’s operations.
619. Under those circumstances, it is difficult to see the logic in the exclusion of the General Manager from the list of relevant persons or how the Director of Planning, Environment and Community Services could have formed the opinion that he was not relevant.
620. The *Statutory Declaration Act 1959*, provides that a person who wilfully makes a false statement in a statutory declaration is guilty of an offence against that Act and subject to the penalties for the making of a false statement. The penalty is four years imprisonment.
621. As the General Manager’s exclusion from Q9 of the tender was raised at the council meeting, council has also failed in its duty to ensure the information contained in the tender made to the Federal Government on its behalf was not misleading.

## Human Resources Manager

622. The Human Resources Manager was available for interview on the first visit by the departmental representatives.
623. Unfortunately, he was unavailable for interview on the return visit. The Human Resources Manager appears to have adopted similar work practices to the General Manager. The acting General Manager said that the Human Resources Manager attended work at council for an average of three days per week. This was supported by comments from other staff members.
624. His attendance at meetings on the other days had not been substantiated at the time of the return visit. The acting General Manager has started to verify his attendances.
625. The departmental representatives have been informed that the Human Resources Manager has since tendered his resignation.
626. An official from the United Services Union (USU) said that there have been some allegations of threats and intimidation by management towards workers over the last two-year period and that there have been other issues between management and staff in that period.
627. While we were told of the allegations of intimidation by a number of interviewees, no direct evidence was provided.
628. A number of employees and former employees indicated that some employees who spoke out against management decisions were then subject to organisational restructures and their employment was terminated.
629. Three former employees confirmed this in telephone interviews.

## Industrial

630. The Charter, under the *Local Government Act 1993*, requires council to be a responsible employer. At Kyogle, the council is regarded as an employer of significance, even though the workforce has declined in numbers from 120 employees in 1999 to 112 current employees. Any changes in the workforce need to be given serious consideration and be conducted in accordance with the requirements of the Local Government (State) Award 2001.
631. Section 332 (1) of the *Local Government Act 1993* states:

*A council must determine:*

- *An organisation structure*
- *Those positions within the organisation structure that are senior staff positions*



- *The resources to be allocated towards the employment of staff.*

632. Section 333 requires:

*The organisation structure may be re-determined by the council from time to time. It must be re-determined within 12 months after any ordinary election of the council.*

633. On 21 October 2003 the General Manager presented a proposal for an organisational structure of council staff to the council meeting.

634. On 27 March 2004 an election of council was held. An organisational structure was required to be submitted to council by 27 March 2005.

635. Section 332 of the Act requires that council must determine its structure. Section 333 provides that council may determine its structure from time to time. Section 325 empowers the General Manager to appoint staff in accordance with an organisational structure approved by the council.

636. According to the (recently retired) USU organiser there have been 7 'restructures' in the past two years that have not all been presented to council. As council should determine the organisational structure and determine its budget requirements accordingly it would be more appropriate that council be informed of such a significant number of restructures and the reasons for them.

637. As a result, the costing of these reorganisations was not critically examined. Neither was the impact on service delivery or other workers' duties.

638. Earlier, the acting General Manager indicated that reductions in workforce numbers had not resulted in commensurate reductions in the wages budget because of increases in costs associated with workers compensation.

639. The Director of Technical Services believes that the number of staff employed in the technical services area is at its lowest possible safe operational level.

640. Council has been involved in at least three different significant industrial disputes in the Industrial Commission in the last three years.

641. One involved an unfair dismissal claim where council was required to reinstate an employee, pay back wages and reinstate his entitlements. The General Manager refused to reinstate the employee and instead paid him, initially, to remain at home.

642. After some time the employee returned to work and not long afterwards his position was the subject of re-organisation. He and another

- employee were forced to compete for the one job resulting from the re-organisation and he was unsuccessful in obtaining the position.
643. Council is currently negotiating a second amount in settlement of further claims with him. Some councillors knew of this situation and did nothing.
644. In another matter council submitted for funding of a bridge casting works. In the submission council indicated it would create five new positions in an area of high unemployment, one of them an aboriginal identified position and another a traineeship position.
645. This matter is currently lodged as a dispute as a result of management attempting to relocate three employees as part of a reorganisation. The employees were required to start work at a facility an hour from their homes in Kyogle, which meant losing two hours of their family time to travel.
646. The alternative offered to them was redundancy. The Human Resources Manager, in delivering their letters of redundancy, arrived at the works depot in time to hand the letters to the employees as they left their vehicles one afternoon.
647. He then left. No discussions about redundancy were held, no counselling was offered. Council had employed the employees for between three and thirteen years.
648. None of the current employees being offered those positions fitted any of the criteria detailed in the submission. Technical Services were previously described as operating at their lowest safe possible level prior to the possibility of the three positions being deleted.
649. The matter of the funding was raised during the course of this investigation and council has produced an Agreement, that is still to be finalised, that will enable council to meet the funding requirements and still conduct its business.
650. The three existing employees have been given some flexibility and security in their employment. It is doubtful that this outcome could have been achieved had the current General Manager and Human Resources Manager been active in their positions as it is contrary to their previous behaviour.
651. Council's Occupational Health and Safety practices are the subject of paragraph's 211 - 240 of this report. It should be noted that council, as a responsible employer, should be far more vigilant with regard to these matters.
652. The lack of amenities at the Kyogle works depot has been referred to elsewhere as well but the general appearance and condition of all of

council's work depots is not adequate in terms of its workplace safety obligations.

653. It appears that money has been set aside for works to be undertaken in this regard and it is certainly in the plant depot report September 2005 but the General Manager has not authorised the release of those monies.

## **FINDINGS**

654. Councillors have failed to adequately monitor and manage the General Manager in his performance. As a result no improvement in his performance could have occurred. His failure to manage members of staff properly, as described previously, has not been monitored.
655. This has resulted in some of the inadequate performances by senior staff, which has not served council or the community well.
656. Councillors have not properly completed and lodged pecuniary interest returns and there are allegations of pecuniary interest matters against three councillors.
657. The General Manager has also stepped outside his role on a number of occasions, detailed in the report analysis. Again, council has failed to check him or in any way increase his level of accountability.
658. It is our view that the General Manager, in his employer role, has behaved in a manner that a significant number of employees found intimidating, harassing and threatening. This can only be detrimental to the operations of council and should have been managed by council.
659. Further, he does not appear to have confined that behaviour to staff. Some councillors have also experienced his behaviour in that way which goes some way to explaining why they didn't manage his performance better.
660. Nevertheless, it is their responsibility to do so.
661. His attempt to bring a councillor into disrepute by releasing council documents without authorisation, had it been successful, could have been grounds for summary dismissal.
662. Council's industrial relations have deteriorated in the last few years although it would not be correct to say that they are generally poor.
663. There are instances when the observation of industrial requirements has not been a priority and as such situations have been mismanaged or employees treated without all the respect that should be afforded to an employee.

664. In that regard, council does not appear to be aware of its responsibilities and obligations as an employer. While the General Manager makes decisions about staff management and appointments, it is council that has the responsibility of bringing to account the General Manager in that role. Ultimate responsibility rests with the corporate body.
665. This situation indicates that council is in breach of its charter of responsibilities under section 8 of the *Local Government Act 1993*, particularly with regard to its responsibilities as an employer.
666. When the General Manager commenced his employment at Kyogle Council, council's financial position was seriously undermined.
667. Council's financial position has significantly improved since the General Manager took up the position. His senior management team and some councillors are quick to credit him with having made many tough decisions that have been of financial benefit to council.
668. They also credit him with having instilled a necessary discipline in the management team that was previously absent.
669. It is the view of the departmental representatives that it is only in council failing to meet its management of community assets and provision of services to the community adequately that council has achieved some of those financial gains.
670. This may have implications for council's long-term financial viability.
671. However, it is also our view that council has not necessarily accessed, to the fullest extent, the funds that are available to it to provide those services.
672. Development consents issued to Resitech have been issued contrary to the provisions of section 116C of the *Environmental Planning and Assessment Act 1979*. Neither the Minister nor the applicant has agreed to the conditions imposed by the council or its Director.

## TERM OF REFERENCE 5

### **Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationship between council, councillors and its administration**

673. A number of matters have been raised during the course of this investigation remain outstanding. Some of those matters are referred to elsewhere in this report. The matters listed below are matters that the investigation team considers to be of importance.
674. Due to the time frame of this investigation it is not possible to either investigate fully all matters drawn to the attention of the investigation team or to fully document some of those matters.
675. The most significant examples of where council practices have been lacking are therefore the ones detailed in the previous sections of this report. Other examples listed below, are still matters that raise serious concerns about council's management.
676. We believe that the development application process applied to the Bloore Street Hall item was significantly flawed. We also believe that the development application process used regarding a number of applications is also flawed.
677. One of the most significant examples of the mismanagement of the development application process was the application lodged by Mr Jason Chandler.
678. The departmental representatives have had phone discussions with Mr Chandler and also interviewed the Director Planning, Environmental and Community Services about the matter.
679. Of concern about this matter is that council's actions appear to have detrimentally affected Mr Chandler's business for a period of time, until the matter was addressed at the beginning of this investigation.
680. In addition, Mr Chandler has made allegations of fraudulent documentation by council that, in view of the processes in the Bloore Street matter, is of concern.
681. In another unrelated matter, in a letter from council's solicitor to the General Manager dated 11 May 2005 it appears that the General Manager recommended physical changes to council's offices.
682. Those changes have been made to council offices. It appears that council was misled and was not notified of the correct reasons for making the changes to the offices. It appears that the General Manager

has made structural changes to the building for personal reasons and without proper reference to council about the expenditure.

683. Performance bonuses have been paid to council's senior staff. The performance of some senior staff members is a matter of concern to the investigation team and therefore the appropriateness of the payment of performance bonuses in such circumstances is questionable. A review of the performance bonus system and payments made should be undertaken.
684. There are allegations of a contaminated site at the Kyogle saleyards. The allegations are of a serious nature and should be included in any further review of council's performance.

## RECOMMENDATIONS

685. Section 434(2) of the Act states that:

*“The Minister may:*

- a. after receiving the council’s notice, or*
- b. after the 40-day period, whichever is the earlier, order the council to do such things or to refrain from doing such things arising from the recommendations contained in the report as are specified in the order.”*

686. Section 740(1) of the Act states that:

*“The Governor or the Minister may appoint a person as commissioner, or two or more persons as commissioners, to hold a public inquiry and to report to the Governor or the Minister with respect to:*

- a. any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council, and*
- b. any act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.*

687. It is the recommendation of the investigation team that the Minister for Local Government authorise a public inquiry into Kyogle Council under section 740 of the Act and that included in the Terms of Reference should be council’s action with regard to the Muli Muli Aboriginal community and the handing back of Crown Reserves.

688. It is the recommendation of the investigation team that Kyogle Council complete the actions contained in this report under the heading “Immediate Actions for Council”.

689. It is the recommendation of the investigation team that the Director General of the Department of Local Government acts upon the recommendations contained in paragraphs 704 to 711 of this report under the heading “Actions for the Department of Local Government”.

### **Immediate Actions for Council**

690. Recommendation 1: That Kyogle Council immediately reconsider its decision to resign its position as Trust Manager of the 26 Crown Reserves in the Kyogle area with a view to also encouraging the community boards to maintain a role as well.

691. Recommendation 2: In reconsidering, council should in the first instance liaise with the Department of Lands as to the availability and/or possibilities of obtaining funds to assist it to perform its duties.
692. Recommendation 3: Should council decide not to become the Trust Manager, it should direct its attention to immediately taking the necessary steps to mitigate its public liability risks, its lack of leases/licenses for public facilities on Crown Reserves and decide how it will fulfil its Charter and assist the community to maintain its facilities.
693. Recommendation 4: Council should progress the water and sewerage matters related to the Muli Muli and Woodenbong communities and provide the communities with a timetable of anticipated works by 16 June 2006. The timetable is also to be provided to the Minister and to the Director General of the Department of Local Government by that date.
694. Recommendation 5: Council staff should progress the Seniors Centre project to the fullest extent possible with a report to the council meeting in June 2006 and a copy to the Minister and the Director General.
695. Recommendation 6: Council should take immediate steps to address the performance of the Director Planning, Environmental and Community Services.
696. Recommendation 7: Council should immediately take steps to address its occupational health and safety processes and conduct risk assessments on all of its work sites.
697. Recommendation 8: Council should consider retracting the cautions to Councillor Peter Lewis and indicate that it is prepared to wait until the Conduct Committee has determined the matters before it.
698. Recommendation 9: Council should immediately review its Register of Delegations to address errors and omissions identified in this report and to review the extent of delegations to staff.
699. Recommendation 10: Council should ensure that any/all monies owed to its employees as a result of industrial actions are paid in a timely manner.
700. Recommendation 11: Council should finalise all outstanding industrial matters in a timely manner.
701. Recommendation 12: Council should immediately inform the Department of Education Science and Training that the information in their application and statutory declarations is incorrect and that they either seek to amend or withdraw the application.
702. Recommendation 13: Council should, in addition to its obligations under section 428 provide quarterly reports to the Department of Local



Government on its progress commencing 3 months from the tabling of this report.

703. Recommendation 14: Council should review the General Manager's Contract of Employment with a view to ensuring a presence commensurate with increased accountability for its chief executive.

### **Actions for the Department of Local Government**

704. Recommendation 1: That the Director General refer Kyogle Council to WorkCover for investigation of possible breaches of the *Occupational Health and Safety Act 2000*.
705. Recommendation 2: That the Director General, in consultation with the relevant local government representative associations, include provisions in the standard form of contract of employment for General Managers being developed by the Department that regulate General Managers' absences from council business in line with community expectations.
706. Recommendation 3: That, in the event of the Minister deciding not to implement the recommendations in the report at paragraph 687 the Director General issue 'show cause' letters to the nine councillors of Kyogle Council and the four designated persons of council about their failure to lodge their pecuniary interest returns by the due date. That Councillors Bennett, Hannigan and Lewis should also have included the additional pecuniary interest matters that have been raised in the body of the report.
707. Recommendation 4: That, in the event of the Minister deciding not to implement the recommendations in the report at paragraph 687, the Director General ensures that matters listed in the final term of reference analysis are addressed by Kyogle Council in a timely manner.
708. Recommendation 5: That as council has failed to comply with the requirements of section 431 (1) (c) & (d) of the *Local Government Act 1993* which requires them to produce to the Departmental representative any document that is in that person's custody or under that person's control, and to grant to the Departmental representative such authorities as may be necessary to enable the Departmental representative to gain access to any document that is in the custody or under the control of any bank, building society, credit union or other person, the Director General consider what action, if any, is required.
709. Recommendation 6: That the Director General consider the apparent breach of Section 664(1) of the *Local Government Act 1993*, by the General Manager and take whatever action is deemed appropriate.
710. Recommendation 7: That the Director General refer the Director Planning, Environmental and Community Services and the former General Manager of Kyogle Council to the Independent Commission

Against Corruption for their roles in the Senior Centre matter in accordance with paragraphs 401 and 403.

711. Recommendation 8: That the Director General refer the representatives of HACC/RSL Kyogle to the Independent Commission Against Corruption for their roles in the Senior Centre matter in accordance with paragraphs 402 and 403.

## List of Attachments

Attachment No	Document Description
1	Director General's Authorisation
2	Extract of council's Register of Delegations - July 2005 (pages 3,4,9 &16)
3	Extracts of council's Vehicle Policy
4	Information provided by council regarding vehicle costs
5	Extract of council's 2005 insurance renewal – vehicle schedule
6	Extract of council's Register of Delegations - July 2005 (pages 34, 35 & 36)
7	Letter from council's solicitors 20 January 2004, Crown status of Resitech
8	Letter from Resitech to Kyogle Council dated 10 December 2003
9	Development consent issued by council to Resitech, 16 February 2004.
10	Letter from Resitech requesting consent be amended, 23 February 2004
11	Letter from council to its solicitor 17 May 2004.
12	Letter from Resitech requesting consent be amended for another development application, 14 October 2005.
13	Council minutes meeting 19 & 26 September 2005
14	Extract of council minutes consideration of organisational structure
15	Council Tender for Australian Technical College
16	Letter of response from council to Department Representatives, 30 November 2005
17	Extract of council newsletter July 2005 Australian Technical College
18	Extract of council report and minute closed meeting 20 June 2005
19	Extract council report Extraordinary meeting 10 August 2005 (code of conduct Councillor Lewis)
20	Letter from Councillor Lewis to Thomas George MP, 28 September 2005
21	Extract of State Records NSW Policy: "Electronic Messages as Records"
22	Extract of council's Records Management Plan (page 6 - point 7.2.3)
23	Extracts of council's Email and Internet Usage Protocol (pages 2 & 3 – points 3.1 & 3.3)
24	Facsimile and attachments General Manager's first employment contract
25	Email response from General Manager to provide specific documents to Departmental Representatives
26	Email from General Manager to Departmental Representatives, 15 October 2005 - list of documents not in accordance with request
27	Facsimile council to general manager dated 22 November 2005
28	Letter from General Manager's Industrial Consultant 28 November 2005 querying request

<b>Attachment No</b>	<b>Document Description</b>
29	Extract council minutes closed meeting 18 July 2005 (Items 15.2, 15.3 & 15.4)
30	Letter from Councillor Lewis to conduct committee 22 July 2005
31	Memorandum from General Manager to Councillor Lewis 9 August 2005
32	Extract council minutes 15 August 2005, (Item 10.F.17)
33	Letter from General Manager to The Kyogle News 23 August 2005 regarding letter to the Editor by Councillor Lewis
34	Letter from council's solicitors 23 August 2005, legal advice conduct committee, email and letter from council to Dept of Local Government
35	Media Release from WorkCover regarding \$150,000 fine
36	Extract of risk assessment Bonalbo and Kyogle Pools (Tables detailing risk)
37	Extract of council minutes for ordinary meeting 21 March 2005. Questions without notice Councillor Passfield - Pools
38	Extract of council minutes for ordinary meeting 18 April 2005. Questions without notice Councillor Passfield - Pools
39	Extract of council report to meeting 17 October 2005 – advice to council regarding threat
40	Extract of council report to closed meeting 15 August 2005 – Sale of land
41	Plan of Management for Community Land adopted 1996
42	Extract of council land register (Page 19 & 20)
43	Letter from council to HACC 20 August 1999 supporting seniors centre proposal
44	Letter from council's solicitor to council 12 July 2001
45	Letter from HACC to council 9 November 2004, requesting extension of development consent and notation on letter.
46	Letter from HACC to Kyogle Council, back dated to 11 December 2003
47	Email from General Manager to council's solicitor 18 November 2004
48	Letter from council's solicitor to council 6 December 2004
49	Letter from council's solicitor to HACC/RSL's solicitor 7 December 2004
50	Letter from council's solicitor to HACC/RSL's solicitor 10 December 2004
51	Second Letter from council's solicitor to HACC/RSL's solicitor 10 December 2004
52	Extract of council minutes 13 December 2004, receiving and noting report

<b>Attachment No</b>	<b>Document Description</b>
53	Letter HACC/RSL's solicitor to Kyogle Council dated 15 December 2004
54	Letter from council's solicitor to council 15 December 2004
55	Letter from council to HACC dated 22 February 2005
56	Extract from council minutes 21 March 2005
57	Letter council to HACC 16 May 2005 – Advising DA has lapsed
58	Extract council report closed meeting 18 July 2005
59	Extract of council report closed meeting 15 August 2005
60	Letter from HACC/RSL's solicitor to council – confirming preferred option
61	Extract of council report 18 February 2002 re: Crown Reserve No R69556
62	Letter from Kyogle Council to Minister for Land and Water Conservation dated 21 May 2002 resigning as Crown Reserve trust manager
63	Letter from council to its solicitor 15 January 2002
64	Extract of council report dated 20 May 2002
65	Extract of council report dated 17 December 2001
66	Letter dated 29 September 2005 from Kyogle Council to the Director General of the Department of Local Government
67	Extract of council insurance renewal 2005 – bush fire shed Green Pigeon
68	Email from Director Planning, Environment and Community Services to Departmental representatives dated 14 November 2005
69	Extract of council insurance renewal 2005 – Swimming pool facilities
70	Extract of council insurance renewal 2005/2006 – Tax Invoice showing public liability cover of \$200 million
71	Extract of council insurance renewal 2005 – Caravan Park amenities building
72	Extract of council report dated 20 May 2002
73	Letter from council to Norman Johnston Park Reserve Trust 3 May 2005
74	General Manager's current contract of employment
75	Letter from Performance Review Committee to General Manager 14 September 2004
76	Extract of council minutes 21 February 2005

<b>Attachment No</b>	<b>Document Description</b>
77	Council policy -Interaction between Councillors and staff
78	Email General Manager to Departmental Representatives
79	Memorandum from General Manager to Mayor, cc to other performance review committee members 17 September 2004
80	Email from General Manager 17 October 2005, requesting information be forwarded to Departmental Representatives about Councillor Lewis
81	Email from the General Manager to the Northern Star Newspaper providing a copy of an internal email concerning Councillor Lewis and an illegal dwelling
82	Internal Memorandum from General Manager to councillors about Councillor Lewis providing flowers to him
83	Memorandum from Mayor to General Manager 20 October 2005 directing him to stop work whilst on sick leave.
84	Memorandum sent to Councillors from General Manager (incorrectly dated) raising alleged conflicts of interest.
85	Letter from Muli Muli Land Council to council requesting council not cut off its water supply
86	Proposed agreement between council and Muli Muli Land Council
87	Extracts from Public Works and Services report – Muli Muli Water Supply and Sewerage Assessment.
88	Letter from Director of Planning Environmental and Community Services to Departmental Representatives 1 December 2005 and statutory declaration – Australian Technical College

## APPENDIX A – CHRONOLOGY NORTHERN RIVERS TECHNICAL COLLEGE

19/05/05	Expression of interest proposal closing date 20/05/05. Made to the Federal Department of Education Science and Training	Copy of expression of interest lodged without a council resolution
6/6/05	Email from Sam Muller (council) to Linda Woodrow of CTC requesting invoice for work done on tender/submission proposal.	Copy of email
20/06/05	Council Report (Confidential 10A(2) d) and attachment - Received and Noted	Copy of report and attachment
20/06/05	Minutes of Confidential Committee 20/06/05 Council receives and notes the submission.	Copy of minutes
20/06/05	Letter to Minister Hickey 24/06/05	Copy of letter to Minister for Local Government
July 2005	Kyogle Council News letter July 2005. This newsletter advises Council has lodged a tender for one of the Federal Government's 24 New Australian Technical Colleges. Describes the how the venture will be operated by company limited by guarantee.	Copy of newsletter
18/07/05	Urgent Business – item 14.1 Confidential Committee Verbal Report. This report contains no information. Council resolution to receive and note.	Copy of minutes
28/07/05	Copy of news article - Northern Star Newspaper	Copy of Article
17/8/05	Email from Department of Local Government to General Manager requesting information regarding project	Copy of Email

## APPENDIX B - CHRONOLOGY SENIORS CENTRE PROJECT

Info Item	Council purchased this land in 1939	Title Information
Info Item	The land contains a scout hall also referred to as the Bloore Street Hall	Parish Map
Info item	Community Concerns document provided at interview with Department Representatives	List of concerns
Info item	Summary of project as provided by Thomas George MP Member for Lismore to the Minister for Local Government	Summary of Project
1999 to 2005	<p>The council has the Kyogle Seniors Centre Project in its Management plan and in its Social Plan 2005 Social plan identifies mandatory target groups including - Older People</p> <p>The demographic analysis includes:</p> <p>1 Kyogle has an ageing population and coupled with a high proportion of older people, this will create extra demand on services for this target group;</p> <p>Over the next 5-10 years, Councils need to plan services and facilities for the influx of people into the 55 years and over age group.</p> <p><b>Recommendation</b> Explore feasibility of developing a neighbourhood centre</p>	2005 Social Plan
Info Item	Management Plans 2004/2005 and 2005/2006	Extracts Management Plans
21/06/99	Approach made to council in an address to the public access session – council resolved to advise that it supports in principle and acknowledges the benefit to the community of such a facility	Extracts of original proposal and council minutes
20/08/99	Council letter of support and nominates Director of Planning, Environment, and Community Services as contact.	Letter from Council
Sept & Oct 1999	Proposal taken to community to gauge community support	Summary of Project
Dec 1999 to Jan 2000	Community consultative meetings held on 16/12/99 and 31/01/00	Summary of Project
21/02/00	Address during public access at Council providing up date	Summary of Project
31/10/00	Development Application DA01/164	DA application
21/11/00	Letter to adjoining and affected property owners	Letter
24/11/00	Advertisement of Development Application	Advert
7/12/00	Letter Stephen P McElroy and Associates Site meeting alternative access to swimming pool	Letter
11/2/00	Council assessment notes, fees from Development Application file	Assessment documents



March 2001	Kyogle sub branch of RSL becomes actively and financially involved	Summary of Project
4/4/01	Letter to council from HACC/RSL Requesting Council consider inclusion of \$10,000 contribution in 2001/2002.	Letter to Council
May 2001	RSL and HACC agree to structure three party equal shares Council, RSL and HACC. Company to hold title, facility to be managed by Management Committee each party to have equal holding in company. Council did not want an active role.	Summary of Project
16/05/01	Council Report and Minutes update of progress	Report and Minutes
June 01	Meeting of HACC, Council and RSL Council's solicitor were requested to recommend appropriate simple legal structure	Summary of Project
12/07/01	Council's solicitors submitted recommendation to council of proposed legal structure	Letter
18/07/01	Council considered recommendation and resolves to approved the recommended ownership model	Letter
19/09/01	Report to Council Meeting recommends preparation of constitution	Report
20/12/01	Development Consent (DA2001/164)	Development Consent
20/12/01	RSL committing \$100,000 subject to review of constitution.	Letter
4/04/02	Council's solicitors forwarded draft constitution for discussion purposes	Letter
15/04/02	Letter from council to its solicitors requesting strengthening of some points in draft constitution	Letter
09/05/02	Letter from Council's solicitors to Director Planning, Environment and Community with requested amendments amendment to constitution	Letter
July 2002	Kyogle Lions Club agrees to support project and take it to the Lions Club Northern Regional Development Trust.	Summary of Project
18/07/01	Council report and minute	Report and Minutes
12/08/02	Council's solicitors advised completion of constitution document confirming Council had approved of the proposal	Letter
March 2003	Lions Club conducts first public fund raising and contributes \$6,000 for the project	Summary of Project
10/09/03	Letter from Council's solicitors forwarding constitution, shareholder agreement, deed of option to purchase land	Letter
15/09/03	Email from General Manager to Director of Planning, Environment and Community Services querying if land can be on sold and requesting a review of the documents. See email 30/09/04	Email

Sept 2003	Lions Club Northern Regional Development Trust agree to support the project with a \$20,000 grant and to support an application to the Australian Lions Foundation for a further grant of up to \$15,000 on a dollar for dollar basis	Summary of Project
Oct 2003	Receive and review legal documentation from Council's solicitors. RSL submit to RSL NSW for consideration	Summary of Project
3/10/03	Email from RSL with proposed amendments and seeking clarification on a number of matters.	Email
31/10/03	Email to RSL Kyogle. Confirming happy with deed subject to changes	Email & attachment
5/11/03	Letter from RSL NSW to RSL Kyogle requesting amendments. RSL NSW support the proposal and require RSL sub branch to get its own legal review of documentation. RSL's solicitor recommends amendment.	Letter and Summary of Project
26/11/03	RSL Solicitor to RSL making a suggestion that the of building could be held by a Trust	Letter
19/09/03	Table comparison Original Structure and Draft Structure	Table
Info Item 20/12/03	Development Application has lapsed. See Council letter of 16/05/05 and see also meeting 16/11/04	Summary of Project and Council letter of 16/05/05,
March 2004	Lions Club second fundraising activity contributing \$9,000	Summary of Project Development
9/9/04	Letter from Council to Mr D Judd DA2001/164 sewerage works includes costing for Council to undertake Sewer works	Letter
29/9/05	Email from Council's solicitors to RSL's solicitor	Email
30/9/05	Email from Director Planning Environment and Community Services to General Manager	Email
30/09/05	Email from General Manager to solicitor (Not to the firm of solicitors who still appear to be acting for council at this time).	Email
22/10/04	Letter from council's solicitor - Advising hand over of file	Letter
22/10/04	Email to Council from RSL's solicitor	Email
8/11/04	Letter from Council's solicitor to General Manager advising of his action in requesting file	Letter
9/11/04	Letter from HACC to Council requesting extension of DA consent	Letter
16/11/04	HACC and RSL at their request meet with Director Planning, Environment, and Community Services regarding the possibility of loss of funding.  Meeting where a backdated letter was requested.	Summary of Project Interview 21/11/05 Interview 21/10/05 Interview 21/11/05

17/11/04	Meeting held with, RSL/HACC and Director Environmental Planning and Community Services and General Manager who reaffirmed Council's commitment to the project requests written update for council.	Summary of Project Interviews 21/10/05 and 21/11/05
18/11/04	Email from General Manager to council's solicitor following meeting of 17/11/04. Refers to a letter from letter from solicitor 8/11/04	Email
2/12/04	Written update provided to council by HACC	Letter
3/12/04	Verbal advice via RSL solicitor from council's solicitor that council would secure equity by way of mortgage. There is no resolution from Council regarding a mortgage.	Summary of Project
6/12/04	Letter from Council's solicitor to Council Refers to a meeting on 1/12/04.	Letter
6/12/04	Verbal advice via RSL solicitor from council's solicitor that council wants to retain ownership of the land and negotiate a lease. There is no council resolution regarding a lease.	Summary of Project
7/12/04	Council's solicitor letter to RSL solicitor council wants to explore the option of a long-term lease	Letter
10/12/04	Council's solicitor letter to RSL solicitor 7/12/04.	Letter
10/12/04	A letter from Council's solicitor letter to RSL solicitor.	Letter
13/12/04	HACC/RSL to attend the council meeting. This was frustrated because the matter was dealt with in closed session.	Summary of Project
13/12/04	Council report and minute 13/12/04.	Report and Minute
15/12/04	Letter to Council's solicitor letter from RSL solicitor	Letter
15/12/04	Letter Council's solicitor to General Manager referring to telephone conversation	Letter
10/01/05	Meeting with General Manager	Summary of Project
20/01/05	Meeting between council's solicitors and RSL NSW.	Summary of Project
24/1/05	Letter from council's solicitor to RSL Council to allow the HACC and RSL to use the premises "for little or no charge"	Letter
2/2/05	HACC writes to Council regarding outcome of 31/1/05 executive meeting.	Letter
22/2/05	Letter from Council to HACC	Letter
2/3/05	Letter from HACC/RSL to Councillors	Letter and Summary of Project
10/3/05	Fax from Julie Lewis for General Manager to HACC requesting a copy of documents listed.	Faxed letter
16/3/05	Letter from HACC forwarding all documents requested except the for DVA Grant material due to confidentiality clauses	Letter

21/03/05	Address to Council meeting public access by Ken and Ruth – Notes taken include Q&A from These minutes include a full transcript of the address given by the RSL representative and questions by councillors and responses given by the HACC representative.	Notes taken by HACC/RSL and Summary of Project Development
21/03/05	Copy of Minutes re public address includes notes of Q&A	Report and Minutes
End March 2005	As they received no response to their public access address, HACC requested a meeting with the General Manager	Summary of Project
5/04/05	Meeting with General Manager attended by HACC/RSL .	Summary of Project t
5/4/05	Notes taken at meeting attended by General Manager, Director Planning, Environment and Community, solicitor for council RSL, HACC and solicitor for RSL	Notes taken at meeting by HACC/RSL Summary of Project Development
18/04/05	Report to the open section of the Council meeting item No 10F.16. This states it intends to provide Council with an update of the proposed Kyogle Seniors Centre.	Report and Minute
18/04/05	Report to Council Confidential based on Section 10A(2) (d) and (g) Refer to the notes taken by HACC and RSL referred to above and the comments referred to above. This report results in council adopting a proposal to lease the building.	Report and Minute
16/05/05	Letter from council to HACC advising DA has lapsed. The letter informs HACC will need to lodge a new DA should they wish to pursue the development of the site.	Letter
30/05/05	Letter council's solicitors to RSL's solicitors forwarding copy of lease	Letter and copy of lease
18/7/05	Confidential Report to Council and Minutes Council resolves to give 14 days for acceptance of lease	Report and minutes
25/07/05	Email to council's solicitors and RSL's solicitors advising of Council resolution	Email
27/07/05	Letter to HACC/RSL from its solicitor forwarding email and requesting instructions	Letter
28/7/05	Letter to RSL's solicitor from HACC/RSL requesting response be sent to Council	Letter
15/08/05	Confidential Council report and Minutes – withdrawing from the agreement in relation to the Senior's Centre	Report and minutes

15/8/05	Confidential Report See item 15.3 “Request for Development Options – regarding written request for purchase of land including Bloore Street Hall. The report contains a copy of the written approach. It contains no recommendation and instead the report states: “ <i>Recommendation (To be Provided at the meeting).</i> ”	Report and minutes
16/08/05	Email to council’s solicitors and RSL’s solicitors advising of Council resolution of 15/08/05 not to proceed with the lease.	Email
24/8/05	HACC/RSL letter to solicitor with proposed response to council	Letter
30/08/05	Email from General Manager to Director Planning Environment and Community Services advising of meeting with developer regarding commercial sale of Bloore Street Site	Email
19/09/05	Report to Council Report to closed meeting Report as follows: The General Manager will speak to this item. Recommendation: Council receives and notes the report Kyogle Seniors Centre – Response to Council’s Decision Not to Proceed with Lease	Report and Minute
30/9/05	Letter to Minister for Local Government from Thomas George MP raising his concerns	Letter and attachments
25/10/05	Fax from RSL	Fax

**APPENDIX C – CHRONOLOGY CROWN LANDS HAND BACK**

17/05/99	Council Report and Minutes – proposal to sell caravan park	Council report and minute
17/07/00 & 19/11/01	Council Report Botanical Gardens Development	Referred to in council report 17/12/01
17/11/01	Council report advising request for approval to sell caravan park refused.	Council report and minute
29/11/01	Public Hearing at Bonalbo Bowling Club regarding Botanical Gardens Development	Undated council report
Undated Report	Report about results of public hearing	Undated council report
15/01/02	Instructions to council's solicitor J F Gibson in relation to handing back crown reserves	Copy of instructions
04/02/02	Memorandum of Advice by T. F. Robertson SC Frederick Jordan Chambers – opinion on hand back and method to achieve this.	Copy of Counsel Advice on hand back
18/02/02	Council report where it resolved to withdraw as trust manager for caravan park and request list of all reserves for which is trust manager	Copy of council report
13/05/02	Listing of crown reserves in the council area	Copy of list of reserves
18/05/02	Council report where it resolved to resign as trust manager of 25 crown reserves	Copy of council report
Undated (May 2002)	Media Release from Mayor	Copy of Media Release
21/05/02	Letter to Minister resigning as trust manager	Copy of Letter
5/06/02	NSW Legislative Council Hansard - Civil Liability Bill Second Reading Debate Page 2525	Copy of Debate
27/04/05	Letter to Kyogle Recreation Area Reserve Trust proposing council taking over part of reserve	Copy of letter from Council
3/5/05	Letter to Norman Johnston Park Reserve Trust	Copy of Letter from Council
5/6/02	Hansard debate Civil Liability Act	Copy of Debate
Info Item	Council continued to occupy certain Crown Reserves handed back	Refer to Report
4/8/05	Letter from Kyogle Reserve Trust proposing maintenance standard and proposal for council to lease.	Copy of letter
26/09/05	Letter from council from Minister for Lands resigning as trust manager Crown Reserve containing Woodenbong Pool	Copy of letter
27/09/05	Letter from council to Kyogle Reserve Trust Regarding vesting of part of reserve	Copy of letter

29/09/05	Letter from council to Director General Department of Local Government – response to issues raised	Copy of letter
14/11/05	Email from council to Department of Local Government regarding Green Pigeon Reserve – rural fire station.	Copy of email