



**Warringah Council  
Public Inquiry**

**Inquiry Report**

**Volume 1**

**Findings and  
Recommendations**

July 2003

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## Executive Summary

- The Report of the Public Inquiry into Warringah Council is presented in four volumes. Volume 1 provides the Findings and Recommendations of the Inquiry. Volume 2 presents Evidence and Analysis. Volume 3 contains Attachments and Appendices of information relevant to the Report. Volume 4 provides copies of the written Submissions to the Inquiry.
- The Minister of Local Government announced the Public Inquiry on January 15 2003. The Terms of Reference of the Inquiry are given in the Introduction to Volume 1. The Inquiry was constituted under Section 740 of the Local Government Act 1993.
- A Public Notice, calling for Submissions to the Inquiry, was placed in metropolitan and local newspapers on January 25 2003. The closing date for Submissions was February 28 2003.
- Public Hearings began on March 19 2003. These ran until April 10 2003. The majority of the people who gave oral Submissions at the Public Hearings had also tended written Submissions, and had sought leave to appear. There was a smaller number of people who were invited to appear at the Public Hearings, but who had not made a written Submission. The Public Hearings were conducted at the Masonic Centre, Sydney.
- The Inquiry received 368 individual written Submissions. Some members of the community made supplementary written Submissions; these were attached to the writer's original Submission. For people who might have been named, in either the written or oral Submissions, a period of 14 days was set aside at the conclusion of the Public Hearings for them to make Submissions in Reply. At the end of the Public Hearings, there was also a facility for people to make an oral reply to evidence presented. Adding the supplementary Submissions and the Submissions in Reply to the total, the Inquiry was presented with over 400 pieces of written evidence.
- Most Submissions were placed on the Inquiry's website. Those that were not placed on the website were either censored by the Commissioner, or were held back because the writers requested that their Submissions remain confidential.
- 98 persons appeared at the Public Hearings, which extended over four weeks with 33 individual sessions.

- The Terms of Reference defined the parameters of what was accepted as evidence, and what was not. Some written Submissions were not accepted because they were deemed to fall outside of the Terms of Reference.
- Some issues were raised during the Public Hearings that were deemed to fall outside of the Terms of Reference, and they were not considered as evidence.
- In some Submissions references were made to individuals. Unless such references were deemed to be relevant to the Terms of Reference, the names were censored before the Submissions were placed on the Inquiry's website.
- In the opening address at the Public Hearings it was stressed that the focus of the Inquiry was on the efficiency and effectiveness of the governance of Warringah Council. It was not a trial of individuals. The same point was repeated several times during the Public Hearings.
- In some written Submissions, and during the Public Hearings, allegations were made concerning individuals. Some of these were very serious, ranging from allegations of death threats to allegations of corrupt practices. The Inquiry did not receive strong evidence to support such claims. Under the Royal Commissions Act (1923), that underlies the Section 740 Public Inquiry, there are a number of bodies and agencies (including ICAC and the Police) to whom matters arising in the Inquiry can be referred. No such referrals were made. Allegations against individuals were either deemed to fall well outside of the Terms of Reference (and so were not treated as evidence), or were dismissed because of a lack of evidence. The individuals concerned have referred some of these matters privately to the Police. Such private references do not relate to the task of the Inquiry.
- Volume 1 of the Report provides an introductory Section that outlines the general approach of the Inquiry.
- After the introduction, Volume 1 outlines the main findings of the Inquiry. These findings are organised in five Sections.
- The first three of those Sections relate specifically to the central themes of the Terms of Reference: the conduct of the elected representatives; the confidence and support of the community for the elected representatives, and the capacity of those representatives to direct the affairs of Council; and issues concerning the governance of the Council.

- The subsequent two Sections focus on the major issues that were raised in the written and oral Submissions, and that were closely related to the Terms of Reference. These issues were Council's dealings with community committees, places, and interest groups, and property and development issues. The material findings in these Sections help to explain the findings on the community's confidence and support for the elected representatives, their views on the conduct of the elected representatives, and their appraisal of the efficiency and effectiveness of the governance of the Council.
- Section 8 of Volume 1 gives the Recommendations made in respect of the findings. The bulk of the recommendations derive directly from the Terms of Reference. In the Terms of Reference, however, there is scope for the Inquiry to make recommendations on other matters not specifically covered by the Terms of Reference. Some recommendations relate to issues that are pertinent to Warringah Council, but equally apply to other Councils.
- Volume 2 is a companion volume to Volume 1. In Volume 1 a large number of themes, relevant to the Terms of Reference, are identified, and various conclusions are made. The evidence for these conclusions is provided in Volume 2. Volume 2 provides a commentary on the relevance of such evidence to the findings.
- The Terms of Reference identified the conduct of the elected representatives as a major theme. The problems of the Elected Body stem from the actions of a group of Councillors, who form a controlling faction, in promoting development, renewal and change in Warringah, and the reactions of a minority group of Councillors who have been generally opposed to change. The behaviour of the dominant group has displayed arrogance, fuelled by a strong self-conviction that their policies were inevitably right. Their promotion of change has been clumsy, and completely intolerant of any criticism. The minority group have reacted in frustration at not being able to get their voices heard, and at times their behaviour has been obstructive and disruptive. The stance of the dominant group has been belligerent, intolerant, abusive and intimidating to their opponents. The atmosphere within the Elected Body has become so poisonous that little hope can be placed in the ability of the body to manage their affairs in a rational fashion.

- Property development issues lie at the heart of the problems of the Elected Body, and at the core of the distrust of the Council held by the major part of the community. The fact that two of the longest-standing Councillors have their primary business interests in the property industry, has generated a belief that they must have benefited from the pro-development stance of the Council. Evidence to support this contention is thin, but community opinion about it is strong. Rightly or wrongly, the anti-development sentiment within the community has solidified into anti-Council attitudes held by many people. The pro-development Councillors blame State Government policies for the levels of development in Warringah. The Council's management of the development approval processes has engendered a great deal of criticism as well. The pro- and anti-development forces have entangled both the Elected Body and the Corporate Body in what appears to be a continuous battle with sections of the community. There is little hope that the Elected Body can now untangle the mess.
- The dominant group within the Elected Body has argued that the problems of Warringah Council have been caused by a small group of people, variously described as zealots and conspirators. The core of this argument is that a few people who stood for election at the 1999 election, and were not successful, have endeavoured since then to bring the Council down. There is evidence that these people have been active in their opposition to the dominant group, and that at times their behaviour has ranged from being inappropriate to being outright obstructive. The notion that this small group of people are responsible for the many problems that face Warringah Council is preposterous, however. Scattered across the entire area of Warringah, community interest groups have been formed to present community views on such issues as the impacts of developments on the amenity of local areas or on environmental management. Repeated failures of both the Elected and Corporate Bodies to consider their views has led to frustration, which has often turned to anger and distrust of the Council. Beyond the community groups, there are a very large number of individuals who carry their own grievances against the Council (overwhelmingly related to property and environmental issues). In too many cases both the groups and the individuals have been abused, ridiculed and dismissed. Many people in the community have become marginalised and alienated.

- It cannot be said that the whole community is against the Council. Sporting, cultural, educational and recreational organisations have expressed strong support for the Council. Many of these groups have close relationships with individual Councillors, and the Council has supplied material and organisational assistance to the organisations. There is a genuine fear that if an Administrator replaced the elected representatives that such assistance would disappear. It is very difficult to weigh up organisational support for the Council against the lack of support by a range of community groups or individuals. Organisations don't vote. Individuals do. It is perfectly possible that a person might be very happy that the ground where her son plays football is well maintained, or that the Clubhouse has new facilities, and still be unhappy about the condition of the road she traverses on the way to the ground or the Club. There is strong support for large-scale community events organised by the Council. Again, it is hard to know how much weight can be placed on this. A person might be very happy to attend a symphony concert with thousands of other people, but at the same time be quite angry because the Council refused his DA. The identification of levels of confidence and support for the Council is difficult and complicated. In terms of the evidence presented to the Inquiry, however, the only conclusion to draw is that the proportion of the community dissatisfied with the Elected Body, and the Council in general, is much greater than the proportion that is satisfied.
- Reforms that apply to the Corporate Body will be necessary if the confidence and trust of the community is to be strengthened. There are examples of problems with the governance of Warringah that flow from the actions of the Corporate Body rather than the Elected Body. Some problems of governance relate to the interactions of both Bodies. Complaints about unsatisfactory governance processes refer back to the first two years of the term of the current Council. There were allegations that senior officers had politicised their positions, and were aligned with certain Councillors. The serious financial problems of this period led to redundancies and down-sizing of the staff, allegedly creating an atmosphere of insecurity and even fear amongst the staff. Some elected representatives also put pressure on some of the staff, a pressure that is still evident today. The present General Manager has sought to repair the governance problems that he inherited, and has given strong support to his staff. That support, however, was not sufficient to entice any member of staff to appear voluntarily before the Inquiry or to write a Submission to the Inquiry.

# Introduction

## Background

On January 15 2003 a Public Inquiry, convened pursuant to Section 740 of the Local Government Act 1993 (the Act), was announced into Warringah Council.

Section 740 of the Act relevantly empowers the Governor or the Minister to appoint a person as Commissioner, to hold a Public Inquiry and to report to the Governor or the Minister, relevantly, with respect to:

*Any matter relating to the carrying out of the provisions of the Act or any other Act conferring or imposing functions on a council, and*

*Any act or omission of a member of a council, any employee of a council or any person elected or appointed by any office or position under the Act or any other act 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*

The Act incorporates certain powers, which are given to commissioners, under the Royal Commissions Act 1923.

## Terms of Reference

In announcing the Inquiry, the Minister for Local Government, the Honourable Harry Woods MP provided its Terms of Reference.

These terms established the parameters for the Inquiry. The Terms of Reference provided for the conduct of a wide-ranging inquiry into the affairs of the Council, involving both the conduct and public perception of the Councillors as the Elected Body, and also of the Council staff and Council's operations, as comprising the Corporate Body.

The Terms of Reference are set out below:

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



*The Inquiry will have particular regard to:*

*The conduct of elected representatives of Council (whether individually or collectively as the governing body); and*

*Whether the elected representatives command the community's confidence and support as to their capability, and whether the elected representatives have been and will continue to be in a position, to direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil the charter, provisions and intent of the Local Government Act 1993 and otherwise fulfil its statutory functions.*

In light of the directions embodied in the Terms of Reference, the Inquiry has directed itself to matters, which it regards as falling within the Terms of Reference, involving both the Elected Body and the Corporate Body.

## **The Concerns underlying the Inquiry**

In announcing the Inquiry, the then Minister for Local Government, the Honourable Harry Woods MP ascribed the reasons for convening the Inquiry as:

*Today's announcement of an inquiry into Warringah follows an exhaustive investigation into the council – the most complained about council for two years running according to Department of Local Government's official figures.*

*It also follows a call from four of the councillors themselves last December for the Minister to launch a public inquiry.*

In turn, the Minister stated:

*It is clear to me that the Council does not even enjoy the support of some of its own elected representatives let alone a significant number of people in the community*

*I am still receiving many complaints about the Council suggesting it is not operating in the best interest of ratepayers. In fact, more than 360 complaints have been lodged since the investigation began last February*

*This public inquiry will afford councillors, Council staff and community members an opportunity to present submissions in a "royal commission setting"*

## Governance

Council's Submission, (No. 288), contains a definition of governance in the following terms:

Governance, as the act of governing, relates to how an organisation arranges its systems, procedures, processes, policies and practices to deliver efficient and effective decisions, services and facilities, so they meet the organisation's objectives and intent. For Warringah, as a Local Government organisation, effective governance relies on compliance with the provisions of the Local Government Act, particularly those relating to charter, organisation structure, management planning and conduct.

Whilst this definition may be criticised for not making particular reference to public participation, it is considered that this is a useful definition and it has been adopted by this Inquiry as a benchmark when weighing and considering the matters that are referred to in the body of this Report.

## The Complaints History of the Council

The Department of Local Government monitors the performance of Councils in a number of ways.

The Department publishes its Annual Report which both comments on, and provides data of, its monitoring of local government. The Department also publishes comparative information, dealing with various aspects of local government.

In its annual report, the Department of Local Government publishes complaints statistics.

The figures published by the Department in recent years reveal the following:

	Total Complaints	Warringah Total Of Complaints	Percentage of Total No.	Position on List
1999/2000	738	43	5.8	3
2000/2001	788	117	14.8	1
2001/2002	1140	195	17.1	1

Mr. Blackadder, Council's General Manager, acknowledged, in evidence given at the Public Hearings, that in the last reporting year the NSW Ombudsman had listed Warringah Council as the second most complained about council. Evidence provided by the Independent Commission Against Corruption (ICAC) revealed that 65 issues concerning Warringah Council had been referred to it during the term of the current Council.

In response to The Inquiry's request, the NSW Ombudsman's office advised that from September 20 1999 to January 15 2003 it had received 75 formal complaints, and 118 informal telephone complaints regarding Warringah Council.

## The Previous Investigation

On January 23 2002 the Director General of the Department of Local Government authorised and approved an investigation (the Investigation) into the Council, pursuant to Section 430 of the Act. Mr. Jim Mitchell as “Departmental Representative” conducted this Investigation.

The report of the Investigation (the Mitchell Report) concluded:

*There are aspects of the administration of the Warringah Council where opportunities exist to enhance effectiveness and efficiency, especially in the areas of development consents and council meeting procedures*

*Examples of inappropriate behaviour by Councillors have had a deleterious effect on the level of confidence placed by constituents in Warringah Council and its decision-making processes*

*Aspects of the approval process for some development applications are appropriate for referral and review by the Independent Commission against Corruption*

This Inquiry, whilst acknowledging

- the levels of complaints, which had been received by the Department of Local Government and by the Ombudsman’s office, regarding the Council; and,
- the conclusions and the recommendations of the Investigation, was independent of the Department of Local Government, the Ombudsman’s Office and of the Section 430 Investigation.

This matter was emphasised at the commencement of the Public Hearings, and subsequently, where appropriate during the course of these hearings.

Having regard to its independence, the Inquiry has sought to assess for itself, all matters relevant to the Terms of Reference.

The Inquiry has been provided with a copy of the Mitchell Report, and has heard evidence from Mr. Mitchell. The Inquiry has also been provided with a copy of the Council’s reply to the Mitchell Report, and has reviewed both these documents.

It is emphasised that the conclusions reached and the recommendations made in this Report, arise independently of the Mitchell Report and of Council’s response to that report.

The conclusions reached in this Report and the recommendations, which are made herein are drawn from the Submissions which have been received, the evidence which has been given at the Public Hearings, from material provided by or at the request of the public and from material which has been provided by the Council.

This point is emphasised as certain Councillors and members of the public have questioned the independence of this Inquiry.

## **The Manner of the Conduct of the Inquiry**

In order to provide an insight of the processes which have been undertaken by the Inquiry, in order that it form a view *on the efficiency and effectiveness of the governance of Warringah Council*, as required by the Terms of Reference, the following outline of the procedures undertaken by the Inquiry is provided:

### **(i) Public Notices**

Following the announcement of the Inquiry, notices calling upon the public to provide written Submissions to the Inquiry, were published in Sydney daily newspapers and in local newspapers circulating within the council area.

This call for written Submissions was subsequently re-iterated when notices were published advising the dates of the Public Hearings.

### **(ii) Direct Approaches to the Council for Information**

In early February the Inquiry requested that the Council provide certain information and material. The information and material which was sought included:

- Pecuniary Interest returns lodged by Councillors and persons designated under the Act
- A copy of the report to Council “Warringah Council 2002 – Community Survey” undertaken by Research Solutions – published in November 2002;
- Annual Reports and Quarterly Reports September 1999 to December 2002;
- Council’s Code of Conduct and if varied during between September 1999 and the date the Inquiry was convened, a copy of each version which had been adopted;
- Council’s Development Application Notification Policy, and if varied during between September 1999 and the date the Inquiry was convened, a copy of each version which had been adopted;
- Council’s Code of Meeting Practice and if varied during between September 1999 and the date the inquiry was convened, a copy of each version which had been adopted;
- Council’s Local Environment Plan and Maps, all Development Control Plans and planning instruments, and if varied during between September 1999 and the date the Inquiry was convened, a copy of each version which had been adopted;

- Any Policy adopted by the Council for dealing with complaints made by members of the public, and if varied during between September 1999 and the date the Inquiry was convened, a copy of each version which had been adopted;
- Statistical details showing (or tending to show) the number of, nature of and manner of resolution of complaints received by the Council in the period from September 20 1999 to January 15 2003.

**(iii) Letters Addressed to:**

- The Mayor and each of the Councillors
- The General Manager, Mr. Blackadder
- The former General Manager, Mr. Smith
- Members of Council's Executive Staff

advising them of the Inquiry, its Terms of Reference and inviting them to make a Submission.

- The NSW Ombudsman
- The Independent Commission Against Corruption
- The Department of Local Government

seeking information from them.

**(iv) The Inquiry's website**

In late February the Inquiry established its own website.

The website contained a précis setting out the Terms of Reference and an Information Paper providing information about the Inquiry and setting out the intended processes which the Inquiry proposed to undertake.

Subsequently further material was added to the website, including:

- details regarding the Public Hearings and the list of speakers for each of the daily hearings
- copies of the majority of the Submissions received by the Inquiry

**(v) The Written Submissions**

An Information Package, to assist the preparation of Submissions, was prepared by the Inquiry.

A copy of the Information Package, in a downloadable format, was made available on the Inquiry's website. Additionally, arrangements were made with the Council for copies of the Information Package to be available at the Council Chambers and at Council's libraries. Copies of the Information Package were then sent to the Council for this purpose.

Additionally, the Inquiry mailed copies of the Information Package to persons who requested the package from the Inquiry's office.

Ultimately more than 360 Submissions were received.

These written Submissions formed the basis to establish the direction of the Inquiry.

## **The Approach taken by the Inquiry**

The Terms of Reference called upon the Inquiry to obtain an overview of matters pertaining to the governance of the Council, and to form an opinion on the efficiency and effectiveness thereof.

In so doing, the Inquiry was directed to inquire into certain matters associated with the conduct of the Elected Body.

The Inquiry was not directed to inquire into specific matters or allegations.

In the opening address of the Public Hearings the Inquiry's approach was clearly defined, and the relevant parts of the transcript are set out below:

*"Because the Terms of Reference require me to consider whether the elected representatives command the community's confidence and support as to their capability, I have agreed to allow a number of people to make submissions and appear before the inquiry to talk about specific issues. I am not in a position, however, to reassess those people's cases but I am only prepared to consider their submissions and evidence from the point of view of the Terms of Reference. I have made that decision because if I exclude people from having their submissions published where they appear to fall within the Terms of Reference, or to refuse them leave to appear, there will be some concern that the inquiry will be less than open.*

*However, I repeat, I will curtail evidence where it falls outside the Terms of Reference. All evidence will be given on oath which provides some protections for persons making an oral submission. I emphasise that evidence on oath and the protection requires that I keep the inquiry within the Terms of Reference. I should also point out it is an inquiry into the circumstances of the Council. It is not a trial of individuals. The basis of the submissions, and the presentation of evidence and other matters are dictated by this, not by the rules which apply in Court rooms for actions by parties against individuals or corporations."*

In conducting the Inquiry, and in particular the Public Hearings, The Inquiry sought to obtain an overview, and where possible sought to exclude specific reference to particular properties, Council staff or Councillors.

It should be emphasized that no attempt has been made to conduct an investigation of the matters which were raised. The Inquiry has limited its involvement to obtaining a sufficiency of information upon which it is satisfied a conclusion can be safely drawn. In light of this, there are recommendations, which anticipate that an appropriate investigation be undertaken.

### **The Issues raised in the Written Submissions**

Ultimately over 360 written Submissions were received in response to the Inquiry's call for written Submissions.

The Submissions, which were received from the public (not including the Council or Councillors), ranged from the succinct,

*“Warringah Council is a Joke!”* (Submission 096)

to one Submission contained in two large folders providing a lengthy and detailed analysis of a Submission, which had been received from another member of the public.

When reviewed the Submissions raised the following themes:

#### **1. Property Related**

- Corruption in Development Application process
- Councillors overriding staff recommendations on Development Applications
- Infrastructure and Development
- Business links of Councillors
- Over-development and/or barriers to development
- Passing and/or rejection of Development Applications
- Procedures relating to notification of Development and Re-zoning Applications

#### **2. Councillor's behaviour at meeting and other events**

- Allegations of arrogance
- Calls for the appointment of an Administrator
- Objections to Councillor's behaviour at meetings

- Loss of confidence in Council proceedings and/or failure to observe proper processes

- Factionalism in voting patterns

### **3. Threats from Councillors**

- Intimidation and/or retaliation
- Victimisation and/or defamation

### **4. Staff**

- Arrogance towards the public
- Intimidation of staff
- Victimisation of staff
- Privacy issues
- Corruption and/or improper use of resources
- Lack of controls and/or accountability
- Failure to pursue breaches and/or failure to observe proper processes

### **5. Specific Issues**

- Downgrading of infrastructure
- Misuse of rectification levy
- Financial mismanagement
- Loss of files and/or tampering with files

### **6. Favourable Comments**

- Comments favourable to Council
- Comments favourable to Councillors

Council, in its review of the Submissions which had been published on the Inquiry's website, provided the following classification:

- Behaviour at meetings
- Submissions in support of Council and Councillors
- Pecuniary Interest, term of office and occupations of Councillors
- Behaviour of the public in the public gallery
- Staff issues
- Dealings with Council property
- Council's Local Environment Plan and over-development
- John Fisher Park
- Sportsfield rectification levy
- Ardel development



- Lack of service and infrastructure
- Submissions indicating a lack of support for Council, but felt that Council should go to the elections in September
- Council's tree preservation order

It will be seen from the foregoing that Submissions, which contained views adverse to Councillors or Council, ranged over a wide variety of issues.

Those written Submissions, which were favourable to Council and/or Councillors, comprised 14.5% of the written Submissions.

### **Publication of Submissions**

The Inquiry emphasized its role as a Public Inquiry.

It sought, as far as possible, to obtain the public's views, whether they supported or opposed a view that the Council was efficient and effective in its governance.

This was emphasised on a number of occasions, in the information sheet and at the commencement of, and during the Public Hearings conducted by the Inquiry.

Emphasis was given to exploring both favourable and contrary views.

The Terms of Reference, amongst other things, directed an Inquiry into whether the elected representatives command the community's confidence and support as to their capability.

In order to undertake this Inquiry and the Inquiry into the other roles required by the Terms of Reference, it was appropriate to seek the widest involvement of the public.

The Inquiry's website was utilised to publish copies of the written Submissions. The majority of written Submissions received were placed on the website.

The Submissions were published in a downloadable format. As further Submissions were received, those published on the website, were continually updated.

It became clear, particularly during the Public Hearings, that a significant portion of the public had accessed the Inquiry's website to view the Submissions.

### **Censorship of Submissions**

The Inquiry obtained advice regarding the general application of defamation law to matters contained in Submissions. The advice indicated that matters would generally not be considered defamatory, if contained in Submissions falling within the Terms of Reference of the Inquiry.

The nature of this advice was incorporated into the Information Package.

Shortly before the announcement of the Inquiry, two Councillors had been involved in Court proceedings involving allegations of defamation. The proceedings had attracted a large amount of media coverage, and were clearly well publicised. A significant proportion of the members of the public within the Council area knew of the case.

Whilst these proceedings were irrelevant to the Inquiry, many persons who contacted the Inquiry's office or who provided Submissions, expressed concerns over possible repercussions, particularly the instigation of defamation proceedings against them for matters contained in their Submission.

Discretion was exercised as to whether to place a Submission on the website.

In light of the advice which had been provided to the Inquiry, notwithstanding the Inquiry's view that Submissions should be publicly available, it was felt appropriate in certain instances to refrain from providing copies of certain Submissions on the Inquiry's website. In other circumstances it was felt appropriate to delete certain information from Submissions which were included on the website.

A policy was adopted to consider whether a Submission should be censored or not be published, and each Submission was reviewed according to this policy.

## **Removal of Submissions**

In calling for Submissions, the Inquiry gave notice of its intent to make Submissions available for viewing by the public by placing them on its website.

Notwithstanding, a number of people who had made Submissions expressed concerns that their Submission had been published.

Subsequently the Inquiry adopted a further policy to accede to requests for removal of Submissions from the website, where such requests had been made by their author and where the Inquiry felt that the author had genuine concerns. In so doing, the Inquiry was concerned that the concerns, which had been expressed by many people over publication of Submissions, might hamper the ability of the Inquiry to carry out its task.

Submissions contained statements similar to that set out below:

*"We are careful not to name people in this regard because individuals have been threatened with court action for speaking out."*

Ultimately, these requests emphasise concerns held by the public, surrounding the governance of the Council.

The Submissions provide clear evidence that there is public concern involving both the elected and corporate bodies of the Council.

## **Public Hearings**

The Inquiry made arrangements to conduct Public Hearings in 33 sessions.

Whilst it was anticipated that the Public Hearings could be held within the Council area, no suitable venue could be obtained.

Alternative venues were explored within adjoining council areas, without success.

Ultimately a suitable venue in the Masonic Centre in Sydney was obtained.

Whilst facilities closer to the Council area would have been preferred, particularly for the convenience of Council's constituents, such facilities were unobtainable.

The Public Hearings commenced on March 19 2003 and continued until April 10 2003.

In all 98 different speakers attended and spoke, some on more than one occasion.

Speakers included:

- Mr. Jim Mitchell, who conducted the Investigation
- Council's General Manager, Mr. Stephen Blackadder
- The Mayor, Councillor Julie Sutton and all other Councillors
- Mr. David Barr, MP, Member for Manly
- Ms. Petula Samios, Director of Local and Regional Planning, Department of Planning
- Members of Council staff, and
- a large number of members of the public

Speakers represented views favourable to, and adverse to the Elected Body or the Corporate Body. Other speakers provided background information to enable the Inquiry to obtain a fuller understanding of aspects relating to the governance of the Council.

Some members of the public who were invited to speak declined to do so. Of those persons with whom arrangements were made to speak, only two failed to attend.

Whilst the Commissioner had powers to compel the attendance of speakers, it was thought inappropriate to exercise these powers in the circumstances.

In conducting the Public Hearings, the Inquiry grouped speakers according to the following distinct themes and sought, so far as possible, to deal with distinct themes in the following blocks:

- The behaviour of the Councillors
- Issues relating to particular places
- Issues relating to Council's governance
- The public's perception of Council and the Councillors
- Property Issues
- Staff Issues
- Issues affecting parks and reserves

The Public Hearings were conducted on an informal basis. The procedures, which were adopted, sought to ensure that the Inquiry proceeded in a simple and expeditious manner, whilst at the same time, recognising the rights of the people involved.

The approach taken by the Inquiry at the Public Hearings was to put questions to the speakers on the themes being pursued by it. This approach was underlain by the premise that the Inquiry had reviewed the Submissions made by the various speakers before they were called, and was aware of the issues that they had raised.

In adopting this approach, the Inquiry sought to obtain clarification or further detail of matters, which it thought appropriate, whether the particular matters had been specifically raised in the Submission, or not.

It was felt that this approach would enable the Inquiry to make more efficient use of the limited time available to it at the Public Hearings.

Through the adoption of this course, the Inquiry heard from a greater number of speakers than it could otherwise have heard from, if each speaker were simply allowed to read from, and expand on their written Submission.

Most importantly, it allowed the Inquiry to direct itself to, and focus on, the issues it regarded as important to its Inquiry.

This approach differed from the approaches which had been taken by previous Inquiries convened under Section 740 of the Act.

## **The Period Considered**

The Inquiry gave emphasis to the period of the term of the current Elected Body, that is the period since September 20 1999. The Inquiry did not feel constrained to limit its inquiries solely to events occurring within this period.

The Terms of Reference did not, by their terms, impose any temporal limitation.

Whilst it may be argued that it is implicit from the Terms of Reference that issues pertaining to the Elected Body be limited to the term of the current Elected Body, it was the Inquiry's view that no similar suggestion might be implied regarding the Corporate Body.

It is also arguable, that where Councillors have been re-elected, their actions when part of an earlier Elected Body, can be relevant in obtaining a view on the efficiency and effectiveness of the governance of the Council. The Inquiry maintains the view that in some instances this view is correct, and did at times adopt this view.

Accordingly, the Inquiry, whilst not emphasising the period prior to September 19 1999, has given consideration, where appropriate, to matters arising in this period.

### **Right of Reply**

The Terms of Reference call upon the Commissioner to inquire, report and provide recommendations to the Minister on the efficiency and effectiveness of the governance of the Council. At all times it was open to the Inquiry to make a recommendation that the Governor declare all civic offices to be vacant.

Such a recommendation, if made, and if acted upon, could result in the appointment of an Administrator or a fresh Council election.

Similarly, given the breadth of matters that the Inquiry could explore, adverse comments or recommendations or possibly findings involving Council's staff might arise.

Whilst the Inquiry would only be making comments, findings or recommendations, these might be taken up by the Minister or by the Governor and given effect to.

Given this, the Inquiry regarded itself as having a duty to act fairly in accordance with the principles of administrative law. The Inquiry sought to conduct its proceedings in a manner, which afforded natural justice to the Councillors, Council's staff and to members of the public.

A number of Submissions, which were received by the Inquiry contained adverse comment regarding Council staff. A number of these Submissions named staff.

Whilst the Inquiry was of, and maintained, the view that it was not looking at specific matters nor seeking to reassess peoples cases, it was considered appropriate to make special provision within the Public Hearings for members of Council's staff to attend and to reply to Submissions where they had been named adversely.

Time was set-aside during the evening hearings on March 27 to allow staff to attend, in circumstances where they did not have to absent themselves from work.

Additionally where staff were otherwise called to speak, an opportunity was specifically provided for them to respond at that time.

Further time was set-aside on the last day of the Public Hearings for Council, Councillors and members of the public to reply to matters, which had been raised during the Public Hearings.

Council, Councillors and members of the public were afforded an additional opportunity to make further written Submissions in reply within two weeks from the conclusion of the Public Hearings.

## **Natural Justice**

The powers available to the Inquiry included the power to recommend the dismissal of the Elected Body. In light of this power it was imperative that procedures were adopted to ensure that the principles of natural justice be observed.

Whilst not wishing to detail the entirety of the approaches taken to ensure this outcome, it is appropriate to highlight some of the major aspects embodied in the manner in which the Inquiry was conducted.

Included in the procedures adopted were:

- The majority of Submissions which were received by the Inquiry were placed on the Inquiry's website.
- Some of the Submissions placed on the Inquiry's website were censored by deletion of personal particulars which might identify the person making the Submission.
- Details which were thought to be inappropriate, were deleted from other Submissions.

This approach provided opportunity to others to comment on or correct statements made in the Submissions.

Other procedures included:

- Requesting that speakers at the Public Hearings not name particular Councillors or staff or other individuals when giving evidence.
- Conducting the hearings, so far as possible, in public.
- Allowing members of the public, with leave of the Commissioner, to put questions to speakers. Limits were placed on the nature of the questions to ensure their relevance.

- During the course of the Hearings it became apparent that certain members of the public sought to abuse this privilege. In those circumstances Councillors, and members of the public, were allowed to put relevant questions, in a proper form, through the Officer Assisting the Commissioner.
- A right of reply, both orally at the conclusion of the Hearings, and subsequently in writing was offered to any persons who felt that any evidence might have unjustly implied wrong-doing, inappropriate behaviour, on their behalf, or which simply was factually wrong.

As has been indicated previously special facilities were made for staff to reply to adverse comments.

### **Post Hearing Procedures**

The Inquiry has adopted a view that where issues required further clarification following the conclusion of the Public Hearings it should seek appropriate evidence.

Shortly before the conclusion of the Public Hearings the Inquiry was given authority to obtain further material from the Independent Commission Against Corruption, by its author. The Inquiry was of the view that obtaining this material and further material from the Council was appropriate, and accordingly undertook this Inquiry.

### **The former General Manager**

In May 1998 Mr. Denis Smith was appointed General Manager of the Council.

Mr. Smith had joined the Council in February 1998 as Council's Director of Services under Council's former General Manager, Mr. Frederick Leonard Thompson.

Council reports Mr. Smith as having over 20 years experience in local government supported by an additional seven years experience in private enterprise. He had previously held positions with the Councils of Coffs Harbour, Baulkham Hills and the City of Campbelltown.

Mr. Smith left the Council and took up a position as General Manager of the Council of the City of Joondalup in Western Australia.

Following Mr. Smith's departure, Mr. Ross Symons was appointed Acting General Manager, until the appointment of Council's current General Manager, Mr. Stephen Blackadder on February 11 2002.

A number of the Submissions received by the Inquiry raised issues that directly pertained to or related to the period during which Mr. Smith was General Manager of the Council.

Input from Mr. Smith was considered to be prospectively beneficial to the Inquiry.

Accordingly, on March 10 2003 the Inquiry wrote to Mr. Smith drawing his attention to the existence of the Inquiry and its Terms of Reference. The letter drew Mr. Smith's attention to references to him being made in Submissions and invited him to provide a written Submission and to attend the Public Hearings.

Mr. Smith subsequently declined the invitation to become involved in the Inquiry. He made no Submission to the Inquiry, nor did he attend the Public Hearings.

The failure of Mr. Smith to make himself available at the Public Hearings, or to provide a written Submission to the Inquiry means that the various allegations made against him have not been tested, and therefore cannot be considered as evidence in determining conclusions and recommendations. Such allegations are contained in the body of the report for another purpose. They have generally been aired in the public arena, and have coloured the public's image of Council dysfunctionality in the early years of the present Council. Whether the allegations are right or wrong, they have been a factor in lowering the levels of community confidence in the Council.

There is another reason why no weight has been given to the allegations against Mr. Smith. The various allegations relate to the early years of the present Council. The terms of Reference of the Inquiry require judgements to be made concerning the capacity of the Council to provide efficient and effective governance now, and into the future.

### **Council's Approach**

A lengthy Submission was received from Council's General Manager, Mr. Blackadder. The Submission advised that it was being made in Mr. Blackadder's capacity as the General Manager.

Separately the Mayor made a submission on behalf of the Council, in consequence of Council's decision of February 25 2003.



In light of this, it was somewhat surprising that at the commencement of his evidence, Mr. Blackadder said:

*I represent obviously myself as the general manager but I should acknowledge at the outset that the Council, Warringah Council last evening resolved that I also be authorised to represent the Council at this public inquiry. That was a unanimous decision and I guess I say to you, Commissioner, that if there's any issues that you would like me to consider on behalf of the Council, then I will do so and I may require some consultation with Council.*

This approach tended to blur the separation of the roles of the Elected Body and the Corporate Body, and to some degree led to some uncertainty whether at any particular time Mr. Blackadder was speaking on behalf of the Elected Body, or the Corporate Body, of which he is the head.

It is the Inquiry's view that this approach hampered the freedom which would otherwise have been available to Mr. Blackadder, if he was only called upon to represent the Corporate Body.

At times it became necessary to separate the roles that he was representing when asking questions of him.

Ultimately it is the view of the Inquiry that the credibility of the evidence given by Mr. Blackadder was adversely affected by the authority given by the Elected Body that Mr. Blackadder represent their views.

## **Council's Code of Conduct**

Section 440 of the Act requires that Council adopt a Code of Conduct. Councils may adopt their own code or alternatively adopt a model Code prepared by the Minister.

The Council adopted its own Code of Conduct. During the current term of the Elected Body the Code has been modified a number of times.

At the commencement of the current term of the Elected Body, Council was subject to a code, which commenced on September 4 1996.

In accordance with recommendations contained in the Mitchell Report, Council adopted a further variation of its Code on December 3 2002.

There have been substantial amendments to the Code during the term of the current Elected Body. For general purposes the current Code will be referred to. If matters affecting the Elected Body or the Corporate Body specifically refer to the Code of Conduct, then where their actions are contrasted against the requirements of the Code, then reference is made to the Code which applied at that time.

### **Warringah Councillors**

Councillor Julie Sutton, Mayor  
Councillor David Stephens, Deputy Mayor  
Councillor John Caputo  
Councillor Phil Colman  
Councillor Peter Forrest  
Councillor Darren Jones  
Councillor Peter Moxham  
Councillor Kevin Smith  
Councillor Ruth Sutton

### **Warringah Council Senior Staff**

Mr. Stephen Blackadder, General Manager  
Mr. Ross Symons, Director Public Office  
Mr. Michael Ryan, Director Strategy

## **Acknowledgments**

The Inquiry would like to take the opportunity to express its thanks to the following persons who have assisted in the conduct of the Inquiry:

Angus Broad, who served as Assistant to the Commissioner during the Inquiry. He handled relationships with the Council and the public and press. He helped in analysing and evaluating the Submissions. He assisted with the censoring of Submissions. He attended the Public Hearings and assisted with the questioning of the speakers. He assisted with the compilation of the Report. He worked on the Inquiry from its inception; without his assistance the Inquiry and the Report could never have been completed.

Hamida Kanj, who served as the chief administrative assistant to the Inquiry. Ms. Kanj successfully managed the detailed day-to-day organisation of the workings of the Inquiry. She also provided the resource base that organised the reception and processing of Submissions, arranged speakers for the Public Hearings, stored and recorded the large quantity of material additional to the Submissions, and the production of the Report.

Michelle Carnegie and Paul Chapman who provided advice, and organised legal opinion, on matters to do with the Inquiry. Their assistance was available throughout the whole period of the Inquiry.

Jenny Felsch who carried much of the burden of putting the inputs of the Report together. She also played a major role in organising the arrangements in the lead-up to the Public Hearings, assisted with the processing of Submissions, and worked throughout the Public Hearings in a number of roles.

Megan Thomas, who almost single-handedly organised the speakers for the Public Hearings, as well as assisting in the recording and processing of Submissions, and the management of the Public Hearings.

Thanks are also offered to the Council, both the elected representatives and the staff. Their cooperation and provision of material was extremely helpful.

There are also a number of other people who provided valuable input and support, and their assistance is also recognised.

## Dictionary

So far as possible the following definitions contained in the Act, and other Acts and sources which have been referred to, have been followed

The Act	<i>means</i> The Local Government Act 1993
The Council	<i>means</i> Warringah Council
The Elected Body	<i>means</i> the Councillors
The Corporate Body	<i>means</i> the General Manager and staff of the Council, or where appropriate the functions carried out by the Council
The Investigation	<i>means</i> the investigation conducted by Mr. Jim Mitchell under Section 430 of the Act
The Mitchell Report	<i>means</i> the Report of the Investigation

### Notes:

1 Evidence of Mr. Stephen Blackadder at Public Hearings on March 19 2003

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SECTION

FINDINGS

# 3

## The Conduct of the Elected Representatives of Warringah Council

### **3.0 Background**

#### **3.1 Conduct of the Council and the Causes of Disputations**

- 3.1.1 The Gallery Problems
- 3.1.2 Conspiracy Theories
- 3.1.3 The Statistical Argument

#### **3.2 Behaviour of Elected Representatives at Council Meetings**

- 3.2.1 Codes of Conduct and Codes of Meeting Practice
- 3.2.2 Differences between the Codes
- 3.2.3 Lack of Respect for the Code of Conduct
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#### **3.3 Factionalism within the Council**

- 3.3.1 The Origins of the Problem
- 3.3.2 Induction of New Councillors
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- 3.3.4 Adjournment of Meetings

#### **3.4 Belligerence, Bullying, and Intimidation**

- 3.4.1 Intimidation of Councillors
- 3.4.2 Relationships with the Public

#### **3.5 Conduct of Councillors: Individual and Group Factors**

- 3.5.1 The "Majority" Councillors
- 3.5.2 The "Minority" Councillors

#### **3.6 The Behaviour of the Elected Representatives**

- 3.6.1 The Outcomes of the Section 430 Investigation
- 3.6.2 Promises about the Future Conduct of the Elected Representatives

## 3.0 Background

This Section details the findings on the conduct of the elected representatives as revealed by the evidence of the written Submissions (hereafter called Submissions) and the Public Hearings. It should be noted that almost 86% of the Submissions were critical of the governance of the Council. One in five of the Submissions that made adverse comments on the Council, was focussed solely on the conduct and behaviour of the elected representatives. A significant proportion of the Submissions that focussed on individual issues (eg. over-development or environmental management) also made criticisms of the conduct of the elected representatives. The majority of speakers appearing before the Public Hearings made critical comments about the behaviour and conduct of the elected representatives. There can be no doubt that the conduct of the elected representatives has been of serious concern to many of the residents of Warringah, during the life of the present Council.

This Section concentrates on the issue of the conduct of the elected representatives from a number of different perspectives.

- ◆ Section 3.1 examines whether, what is perceived as adverse behaviour on the part of Councillors, has been provoked by forces external to the governing body. The conclusion is that the evidence does not sustain this argument.
- ◆ Section 3.2 considers evidence on whether the behaviour of Councillors at Council meetings has brought the governing body into disrepute with the community. The conclusion is that it has brought the governing body into disrepute.
- ◆ Section 3.3 follows the issue of factionalism within the governing body, and whether it has affected the efficient and effective governance of the Council. The evidence suggests that it has had negative effects on the governance of the Council.
- ◆ Section 3.4 examines whether the behaviour of Councillors, in their dealings with the public, has brought the governing body into disrepute with the community. The evidence points to the fact that the community has viewed the behaviour of the elected representatives negatively.
- ◆ Section 3.5 considers the individual behaviour and individual attitudes of the elected representatives and focuses on whether the collective impact is such that the governance of the Council is impaired. The evidence strongly suggests that it is impaired.



- ◆ Section 3.6 deals with the progress of reform since the Section 430 investigation, and the promises made about future reform. The issue is whether or not the current and projected reforms will overcome the negative features exhibited in 3.1 to 3.5, and produce efficient and effective governance of Warringah Council. Despite the sincerity of some of the promises, and the worth of some of the reforms, the conclusion is that relationships between the elected representatives are too fractured, and the enmity too deep, to hold out any hope of a transformation.

## 3.1 Conduct of the Council and its Causes

### 3.1.1 The Gallery Problems

#### *Theme:*

Some Councillors and some members of the public have argued that the public image of a dysfunctional Council has been generated by the unruly behaviour of people in the public gallery at Council meetings. The image of a dysfunctional Council cannot, therefore, be attributed to the conduct of the Councillors, the argument concludes.

#### *Findings:*

- ❖ There is clear evidence that the public gallery has been disruptive at a number of meetings. There is evidence of serial offenders. The behaviour of some people in the gallery was wrong, and harmful to the effective operations of Council meetings.
- ❖ The reaction of some Mayors, some Councillors, and the General Managers to these disruptions has, at times been, draconian. The placement of rangers in the Council Chamber to name people, and the calling of police to meetings, inevitably inflamed, rather than calmed, the attitudes of the people in the gallery.
- ❖ The reading of a Disorderly Conduct advisory statement at the commencement of each meeting suggests a combative approach to the public in the gallery.
- ❖ Some part of the frustration of the gallery has been generated because of the minuscule time allowed for the public to speak at the meetings.
- ❖ There is clear evidence that due process has not always been followed at Council meetings, and this has inflamed the gallery at times.

- ❖ A further factor in arousing discontent within the gallery has occurred when issues have been discussed in closed sessions, without providing the public with a full enough explanation of why. In at least one case the Council erred in going into closed session.
- ❖ The fact of disruptions to Council meetings through unruly behaviour in the gallery is real. Suggesting that this fact solely accounts for the tarnished image of the Councillors' conduct at Council meetings is fanciful.

### 3.1.2 Conspiracy Theories

#### *Themes:*

1. The “Majority” Councillors<sup>1</sup>, and some members of the community, argue that Warringah Council operates very well. Political forces, intent on dismissing the Council (and other councils in the State), are said to have generated a false impression through the media and by other means; they have spread a lie that the Council does not operate effectively. It is part of a “grand” conspiracy, with Warringah Council being the first of a number of Councils that will be dismissed for political reasons.
2. A small group of failed candidates in the 1999 election have orchestrated a dirty campaign to bring down the Council.

#### *Findings:*

- ❖ The grand conspiracy theory, of Warringah Council being the first in New South Wales to be targeted for dismissal, has no credence. The Inquiry has not been provided with any strong evidence to support such a claim.
- ❖ There is evidence that two of the candidates<sup>2</sup> who stood for election in 1999, and were not elected, have maintained an active role in Local Government affairs. The notion that this represents a conspiracy is far-fetched.
- ❖ There is evidence that the reputation of some Councillors has been sullied by the activities of their non-elected opponents. There are even allegations of death threats.
- ❖ Such evidence, however, is circumstantial. There is little proof that the activities of the zealous (perhaps, over-zealous) former candidates has been responsible for generating a widespread sense of dissatisfaction with the behaviour of a number of Councillors.

<sup>1</sup> Councillors Moxham, Jones, J. Sutton, Caputo, Stephens

<sup>2</sup> Mr. Parsons and Mr De Luca.

- ❖ There is strong evidence that the most prominent of the unsuccessful candidates in the 1999 election has had a long history of public engagement with both Local Government and State Government matters. His activities during the life of the present Council appear to be an extension of his work in the community, rather than being part of a conspiracy to overturn the Council.
- ❖ There is evidence that the same candidate has a professional background which enables him to assess issues related to the operation of the Council in a manner that few in the community are capable of doing. He appears to take pains to verify his sources and information. It would appear that some members of the community have sought his help because of this. The fact that this has happened ought not to be interpreted as evidence of his leading a conspiracy.
- ❖ There is substantial evidence of great bitterness existing between some Councillors and the few people accused of fermenting a conspiracy. The extent of this bitterness seems to have clouded the judgements of people in both camps. The enmity has become so deep that there is no prospect of reconciliation.

### **3.1.3 Representativeness of the Evidence of the Written Submissions and Appearances at the Public Hearings**

#### *Themes:*

1. Despite the large number of Written Submissions, and the number of people who appeared at the Public Inquiry, the “Majority” Councillors and others argue that this represents only a small proportion of the population of Warringah. It cannot, therefore, be considered as representing the opinions of the Warringah community. Any criticism of the conduct of elected representatives made in the Submissions ought not to be counted as being indicative of the community’s feelings, the argument concludes.
2. The number of Submissions sent to the Inquiry from community groups suggests a level of support for the Council that is much higher numerically than the opposition to the Council.

#### *Findings:*

- ❖ The proponents of the view that the Submissions/Appearances at the Inquiry are unrepresentative of the community fail to understand the nature and purpose of a Public Inquiry. The Inquiry is not some kind of public popularity survey. Its obligation is to explore in depth the efficiency and effectiveness of the governance of Warringah Council.

- ❖ The Submissions, in general, are carefully prepared, replete with evidence, and reflect a keen interest in issues of governance of the Council. The fact that less than one in five of the Submissions are supportive of the Council is a significant indicator of community sentiment.
- ❖ The proposition that group Submissions necessarily reflect the opinions of a significant proportion of the community is flawed. Members of the Board or Executive of the groups have written these Submissions. There is absolutely no evidence that the members at large have been consulted about their opinions. The authors of the group Submissions cannot claim to speak for the membership of those groups.
- ❖ The group Submissions reflect special interest groups within the community. Some of these groups have been supported by the Council, or are closely connected with individual Councillors. Most of the groups represent either recreational or sporting clubs. The focus of such groups can be only tenuously linked to the central issues that might define the quality of the governance of Warringah Council.
- ❖ Some the groups placing Submissions are business organisations. The majority of the businesses that put in a Submission have links to the property industry. A recurring theme throughout the Submissions that have been critical of the Council has been the reputed close relationships between some Councillors and the property industry. The fact that property-related businesses have written and spoken in favour of the Council only adds weight to the contention that their relationships with some elected representatives is close.
- ❖ Implicitly, if not directly, the Submissions that paint a positive image of the Council express confidence in the conduct of the elected representatives. A large proportion of the non-group Submissions of this type is in fact form letters. Other Submissions, expressing positive views of the Councillors and of the Council, are from political associates or relatives of Councillors.

## 3.2 Behaviour of Elected Representatives at Council Meetings

### 3.2.1 Codes of Conduct and Codes of Meeting Practice

### 3.2.2 Differences between the Codes

#### *Theme:*

The Code of Conduct and the Code of Meeting Practice are two separate Codes: one determines the procedures to be adopted at Council Meetings; the other outlines the principles governing the conduct of the elected members, and others, at meetings, and in other situations.

#### *Findings:*

- ❖ There is a general confusion about the Codes amongst Councillors and senior staff at Warringah Council. The evidence of the oral Submissions suggests that some Councillors believe that if they follow the rules governing meeting practice, they have then satisfied their behavioural obligations at meetings.

### 3.2.3 Lack of Respect for the Code of Conduct

#### *Theme:*

The Code of Conduct is a key document. It provides the community with an understanding of what they should expect in terms of the conduct of elected representatives.

#### *Findings:*

- ❖ Councillors generally have not taken the Code of Conduct seriously. This is partly because they do not think they will be sanctioned if they break the Code. There are sanctions available, but they have not been used.
- ❖ The senior elected representatives generally claim that there are no violations of the Code of Conduct. They are wrong in such assertions. There is clear evidence in both the written and oral Submissions that the Code of Conduct has been violated on a large number of occasions.
- ❖ Senior elected representatives suggest that any perception the Code of Conduct has been broken during meetings has arisen simply because the public don't understand the "hurly burly" of debate. The Code of Conduct prescribes limits to the tone and content of debates, and obliges the elected representatives to remain within those limits. Clearly, a number of the elected representatives on a number of occasions have transgressed the boundaries of civility and reasonableness during council debates.

- ❖ Councillors excuse their indiscretions within Council meetings by claiming that far worse happens at State and Federal Parliaments. Such arguments are irrelevant.

### **3.2.4 Requirements of the Warringah Council Code of Conduct**

#### *Theme:*

The four revisions of the Code of Conduct during the life of the current Council provide a clear template for the conduct of the elected representatives within the Council Chamber.

#### *Findings:*

- ❖ The Local Government Act only obliges Councils to revise their Code once in a four-year term (within 12 months of a new Council being formed). The fact that there have been four revisions of the Code within two years indicates that either the Code has been defective, or that Councillors have not abided by the Code. The very fact of so many revisions indicates that the latter is most likely to be the case.
- ❖ The first revision of the Code, made in November 2000, required the elected representatives to treat each other with respect, courtesy, compassion and sensitivity. If Councillors had abided by these injunctions there would have been no need for a revision of the Code.

### **3.2.5 Violations of the Code of Conduct and the Code of Meeting Practice**

#### *Theme:*

An examination of the behaviour of the elected representatives in relation to the Code of Conduct and the Code of meeting practice.

#### *Findings:*

- ❖ The stated view of many Councillors, and of the General Manager, is that there has been no reprehensible behaviour on the part of elected representatives at Council meetings. This conclusion arises out of the apparent inability of both Councillors and the General Manager to understand the differences between the Codes of Conduct and the Code of Meeting Practice.
- ❖ The most publicised breach of the Code of Conduct has been the persistent use of crude and offensive terms by some Councillors when addressing Councillor Ruth Sutton. This has been offensive to the general community, as well as Councillor Sutton. These breaches have been a singular and material factor in creating a bad image of the elected representatives amongst the community.

- ❖ Beyond the particular case of Councillor Ruth Sutton, there has been a substantial quantity of complaints within the Submissions concerning the behaviour of elected representatives at Council meetings. The only conclusion to be drawn is that this conduct has so diminished the status of the forum of policy-making and decision-making that many people in the community have lost faith in the body of elected representatives.

## 3.3 Factionalism within the Council

### *Theme:*

An investigation of the level and nature of factionalism within Warringah Council, and whether factionalism has had a deleterious effect on the capacity of the elected body to provide efficient and effective governance.

### *Findings:*

- ❖ There is no doubt that factionalism exists within the elected body. Its roots are pragmatic and individually self-serving. It does not relate to every facet of Council's business, but it does become apparent when the elected representatives deal with major property development issues.
- ❖ The pragmatic nature of the factionalism revolves around attitudes towards levels of development; there is a group of pro-development Councillors, who are in the majority, and a group of anti-development Councillors.
- ❖ The self-serving nature of the factions results from the election of five new Councillors at the 1999 elections. The majority faction included one Councillor who was elected through the preferences of one of the re-elected Councillors. With the help of this person, the re-elected Councillors immediately closed ranks against the remaining four newly elected Councillors. There was no apparent ideological bond between the re-elected Councillors. They came together in what they saw as an act of self-preservation.
- ❖ Little or no assistance was offered to the group of four newly elected Councillors (who became the minority). Rather than assisting them, the senior Councillors did the opposite. From a very early period, the senior Councillors branded the new "Minority" Councillors as their enemies. They did nothing to help induct them into the operations of the Council. This, by itself, explains a great deal about the almost immediate descent of Council meetings into periods of chaotic bad behaviour. It certainly did not build a basis for good governance. It very quickly generated negative images of the elected representatives within the community.

- ❖ The large number of people, who had elected the new Councillors, had done so because of their concerns about the level and character of development within Warringah. Immediately, the factionalism of the Council was recognised by this large portion of the community. In major development application decisions a pattern of 5/4 voting was recognised by the community. This was judged by many in the community as evidence that the pro-development faction was making decisions without taking care to measure the merits of the issues.
- ❖ A major product of factionalism within the elected body of Council has been the disruption of Council meetings. This has been perceived by many in the community as clear evidence of the incapacity of the Council to run its affairs properly. It has been used by some in the community as evidence that the elected representatives have been incapable of providing any effective leadership. Both factions have been at fault. The “walk-outs” by the “Minority” group of Councillors has enlarged the public image of a disruptive and ineffectual Council.

## 3.4 Belligerence, Bullying and Intimidation

### *Theme:*

1. Appraisal of the allegations that there have been repeated instances of the “Majority” Councillors treating the “Minority” Councillors in an unfitting way, including belligerent behaviour, bullying, and intimidation.
2. Appraisal of allegations of belligerent behaviour, bullying, and intimidation by elected representatives directed at the general public.

### *Findings:*

- ❖ There is evidence of belligerence and intimidation, with the “Majority” Councillors being primarily responsible for such acts.
- ❖ Some Councillors allege that senior staff allied themselves with the “Majority” Councillors, and so added to the levels of intimidation, but no firm conclusions can be drawn from the evidence.
- ❖ The scale of some of the threats was such that some “Minority” Councillors feared the loss of their homes and other assets.
- ❖ Belligerent attitudes, and the belittling of the “Minority” Councillors, appear to have been common when substantial issues related to large development applications were being debated.



- ❖ The same belligerence, and intimidating poses, was witnessed at the Public Hearings. There is no doubt that it has become the standard response of some “Majority” Councillors whenever they meet criticism.
- ❖ The most substantial threat that hung in the air was that of defamation, after Councillor Jones had sued Councillor Ruth Sutton. Without commenting on the outcomes of that case, it is obvious that many people in the community have been cowered by it, and are now reluctant to express their opinions publicly, or to complain about issues.
- ❖ The threat of defamation, or some other form of recrimination, peppered the Submissions and oral evidence. This prevented some people from sending in Submissions, or appearing at the Public Hearings. It led a number of people to request that their Submissions be kept confidential.
- ❖ The use of Rangers at Council meetings, and in one case at a public protest meeting, was a clear act of intimidation.
- ❖ Derisive and abusive behaviour by the “Majority” Councillors has been directed at community groups when they combined to oppose something the “Majority” Councillors supported. This kind of behaviour has occurred within the Council Chambers, and at public meetings. Petitions presented by groups have been ignored.
- ❖ The behaviour of the Councillors who have been belligerent, bullying and intimidating towards their colleagues, the general public, or the staff, has been a major factor in the loss of confidence within the community in the council’s ability to govern fairly and effectively.
- ❖ Individuals who seek to oppose “Majority” Councillors’ views have been ridiculed, belittled, and ignored within the Council Chambers.

## 3.5 Conduct of Councillors: Individual and Group Factors

### *Theme:*

A review of the personal attitudes and personality traits of the elected members, revealed in the evidence, to decide how much of the divide between the “Majority” and “Minority” Councillors can be explained by these things. This was done with a view to assessing whether such differences are so great that they would block hope of a reconciliation that might lead to more effective governance.

### *Findings:*

- ❖ Three and a half years of vicious and uncompromising in-fighting amongst the Councillors has sapped community confidence.
- ❖ Each of the Councillors has strong views on what policies are right or wrong, and each believes that they are representing what is right for the community. Collectively, this has created a high level of intransigence over particular issues.
- ❖ Many Councillors have a combative approach towards other Councillors. Individually, there has been little willingness to adopt any other attitude.
- ❖ A number of Councillors have a great self-belief. They consider their understanding of the needs of the community as being infallibly right. They have shown themselves to be uncompromising in the face of alternative opinions.
- ❖ There is a complicated mix of backgrounds and experience amongst the elected representatives. This is allied to a volatile set of personal traits. These include self-righteousness, arrogance, and pigheadedness. These personal traits explain much of the poor conduct of the elected representatives.
- ❖ It is difficult to see how any of this will change. The elected representatives seem to be caught up in a vicious cycle of behaviour of their own making. The level of acrimony has been allowed to fester over such a long period that it is unlikely ever to modify.

## 3.6 The Future Behaviour of the Elected Representatives

### 3.6.1 The Outcomes of the Section 430 Investigation

#### *Theme:*

The Section 430 Investigation of 2002 proposed a number of changes, some of which were designed to rectify perceived problems of the conduct of the elected representatives. The evidence is reviewed, seeking signs of constructive changes in the behaviour of the Councillors since the Section 430 Report was released.

#### *Findings:*

- ❖ There has been a good deal of confusion within the Council, and within the community, over the purpose and relationship of the Section 430 Inquiry, and the Section 740 Public Inquiry.
- ❖ The structure and legal powers of the Investigation and the Public Inquiry are quite different. The former is a Departmental Investigation with its own Terms of Reference, ordered by the Director-General of Local Government. The latter is an Inquiry ordered by the Minister with a separate set of Terms of Reference.
- ❖ The Section 430 recommendations led to the Council revising its Codes of Conduct and Meeting Practice. The evidence of the Inquiry suggests that the revisions have not led to changes of an order that restores the community's confidence in the Council. High levels of complaints against the Council have continued after the changes were made.

### 3.6.2 Promises about the Future Conduct of the Elected Representatives

#### *Theme:*

The examination of the future changes promised at the end of the Public Hearings, and the likelihood of their achieving a robust adherence to both the letter and spirit of the Codes of Conduct and Meeting Practice in the future.

### *Findings:*

- ❖ The Mayor has signalled that there will be an improvement in the conduct of the elected representatives in the future. Training and workshops, and new rules and sanctions, lie at the heart of her plans.
- ❖ The Mayor does not express much hope that the revised Code of Conduct will be of much assistance by, and of, itself.
- ❖ The emphasis of the Mayor is on Council meetings. She does not seem to have a broader view of the need to improve the Councillors' behaviour beyond the Council Chamber.
- ❖ The conclusion is that the plans, as outlined by the Mayor, will not fundamentally provide a solution to the deep-seated problems that have beset the relationships, and consequent conduct, of the Councillors.
- ❖ The General Manager outlined the range of changes he was planning to make explicitly in relation to the Code of Conduct. Monitoring behaviour, training of Councillors, an automatic referral to an independent body, are parts of his plans. These will be aids to improvements, but the fundamental shift that is needed will depend on how willingly the Councillors accept the need to subscribe to the Code of Conduct.
- ❖ The General Manager also flagged workshops for people in the gallery to overcome behavioural problems associated with the gallery. Whether this would work will depend on the reaction to such suggestions by the community. It may well prove to be counterproductive. Attendance at meetings is a citizen's right, protected by the Local Government Act. Many people might react adversely to attending workshops designed to tell them how they should exercise their rights.
- ❖ There is a suggestion that the conduct of Councillors at meetings has now begun to change. It is not clear how far this change has gone, or how genuine the will to change is. A succession of events (including the completion of a defamation case between two Councillors, the Section 430 Investigation, and the Public Inquiry) has been powerful forces in promoting change. Once the public focus has shifted, after the Public Inquiry report goes to the Parliament, the enthusiasm for change may fade.
- ❖ Some of the "Majority" Councillors have demonstrated that they do not believe that there were behavioural problems, and so there is nothing in their conduct that needs changing. The evidence suggests that this sentiment is deeply ingrained with some of the Councillors.

- ❖ One former Mayor believes that the problems of the Council are so deep that only a period under an Administrator could fix them. But the difficulties that he refers to are blamed on forces outside of the Council, not on the conduct of the Councillors themselves.
- ❖ Messages concerning the necessity of inclusion and unity within the governing body have been trumpeted from the first days of the Council in 1999. Despite this, each year the divisions got wider, and the conduct of the Councillors towards each other deteriorated. It may have now reached a point where divisions and animosities are so great that they cannot be overcome. Like the promises made at the start of each new Mayoral year, the current promises about better behaviour might never be fulfilled.



SECTION

FINDINGS

# 4

## Community Confidence in and Support for the Elected Representatives

## **4.0 Background**

### **4.1 Community Confidence in the Council**

#### 4.1.1 Measuring Community Confidence

### **4.2 The Relevance of Complaints About the Council**

#### 4.2.1 The Scale of the Complaints

#### 4.2.2 The Community Surveys

### **4.3 Community Confidence and the Ability of Elected Representatives to Direct and Control the Affairs of Council**

#### 4.3.1 Management of the Council

#### 4.3.2 Community Consultation Framework

### **4.4 Financial Management and Community Confidence**

#### 4.4.1 History of Financial Performance

#### 4.4.2 Council Finances Now and in The Future

#### 4.4.3 Awards and the Council

### **4.5 Structural Change and the Ability of the Elected Representatives to Restore Community Confidence**

#### 4.5.1 Local Government and the Westminster System

#### 4.5.2 Respecting the Democratic Process



## 4.0 Background

The Terms of Reference of the Inquiry require a judgement to be made on whether the elected representatives command the community's confidence and support as to their capability. A judgement has to be made as to whether the elected representatives have been and will continue to be in a position to direct and control the affairs of Council in accordance with the Act, so that it will fulfil its charter and its statutory functions. This part of the Terms of Reference forms the focus of this Section. Three sources of evidence were used to evaluate community confidence and support: the written and oral Submissions made to the Inquiry; Warringah Council's customer satisfaction surveys; and, complaints about the Council made by the community to a number of bodies. In terms of assessing the ability of the elected representatives to direct and control the affairs of council, evidence was considered relating to the general management of the Council and its record of financial management. Both of these aspects were related to the theme of community confidence. Evidence on the Council's community consultation processes was also considered. The final area of consideration concerned the operational changes foreshadowed for the Council and whether if these were put into place, the confidence of the community would be restored.

- ❖ Section 4.1 assesses whether the evidence showed that the majority of the community had confidence in, and supported, the elected representatives. The conclusion is that the elected representatives do not enjoy the community's confidence and support.
- ❖ Section 4.2 considers whether the volume of complaints made by the community to the Department of Local Government, ICAC and the Ombudsman should be considered as legitimate evidence of the degree of confidence the community has in the elected representatives. The finding is that they do constitute clear evidence of the strength of the community's dissatisfaction with the elected representatives.
- ❖ Section 4.3 considers levels of community confidence in the ability of the elected representatives to direct and control the affairs of Council. The conclusion is that there are substantial community concerns about the adequacy of management and that the community consultative mechanisms are insufficient in terms of engaging the community in aspects of management.

- ❖ Section 4.4 explores the reputation of the Councillors as financial managers and whether perceived deficiencies in this area are balanced by good performances in other aspects of management. The conclusion is that despite an improvement in the financial position of Warringah, there are still doubts about the effectiveness of management in this area. The fact that the Council has won awards in certain areas of management has not reduced the doubts entertained by some sections of the community about the capacity of the elected representatives to provide good governance.
- ❖ Section 4.5 examines whether projected operational changes and methods of improving the conduct of the Councillors will be sufficient to restore the community's confidence. The conclusion is that such measures may not be effective because of the attitudes of some Councillors, and the long and deep enmity between Councillors. Restoring the confidence of the community may only be possible when the current elected body is no longer directing the affairs of the Council.

## 4.1 Community Confidence in the Council

### 4.1.1 Measuring Community Confidence

#### *Theme:*

The Terms of Reference require the Inquiry to have particular regard to whether the conduct of the elected representatives command the community's confidence and support as to their capability. A determination has to be made on how community confidence can be evaluated.

#### *Findings:*

- ❖ Confidence and support cannot be measured in the same way that physical properties such as temperature can be measured. An evaluation of confidence and support has to rely on more qualitative information. The strongest information available to the Inquiry comes from the written and oral Submissions. The Submissions suggest that the majority of people in the community do not have confidence in the elected representatives.

- ❖ It is clear that the “Majority” Councillors are given strong support by associations and institutions in Warringah. There can be no judgement made that the support of institutions or associations as a body reflects the support for Councillors of all of their members. Neither can it be assumed that the support of an institution or an association implies that the institution or association supports each and every policy or action of the Councillors. It is more reasonable to assume that judgements are made in relation to how the Councillors have assisted the particular needs of the association or institution.
- ❖ The “Majority” Councillors have pointed to the success of a number of public functions organised by the Council as evidence of the support of the community. There is no connection between public events and the kinds of issues raised by Submissions that are critical of the Council. No connections can be drawn from the fact that certain public functions have been a success, and the level of general confidence and support for the elected representatives.
- ❖ The people who state that they do not have confidence in the Councillors represent a broad cross-section of the community. Their views are expressed independently of each other and the range of issues raised touch on many different aspects of the operations of the Council.

## 4.2 The Relevance of Complaints About the Council

### 4.2.1 The Scale of the Complaints

#### *Theme:*

As well as the evidence of the Submissions, there is evidence of a lack of confidence and support for the elected representatives in the complaints made by the community to a range of outside bodies. The “Majority” Councillors presented arguments that sought to dismiss such complaints from being used as evidence when assessing the confidence and support of the elected representatives.

#### *Findings:*

- ❖ Arguments that the complaints made to bodies such as the Department of Local Government are inconsequential and trivial, and therefore do not have any relevance in determining levels of confidence and support for the elected representatives, are misplaced. Those dismissing such complaints (principally the General Manager and the “Majority” Councillors) have never actually seen any of the complaints. The complainants are ensured by the Department that their complaints will remain confidential.

- ❖ The large number of complaints about the Council, made to bodies other than the Council, signifies that many people in the community have no faith in the Council's capacity to respond to their complaints. In other words, they signify a strong lack of confidence in the Council. The volume of complaints also reflects the lack of both a complaints policy and a complaints management system within the Council. That, by itself, is a significant reason why many in the community do not have confidence in the Council.
- ❖ Further showing their level of disconnection with the community, most of the senior Councillors do not believe that a complaints management system is a significant need. Unless citizens believe that they can take their complaints to Council and that those complaints will be examined fairly, transparently and expeditiously, they will doubt the Council's capacity to respond to their needs and concerns.
- ❖ The "Majority" Councillors prefer to believe that the apparent loss of confidence, reflected in the complaints, is the product of a conspiracy engineered by a small number of people. The evidence does not sustain the conspiracy theory.

#### **4.2.2 The Community Surveys**

##### *Theme:*

The Council's 2002 customer satisfaction survey reported an overall satisfaction level of 60%. The Mayor and others in Council, have argued that the community satisfaction survey provides proof of a high level of support for the Council and the elected representatives.

##### *Findings:*

- ❖ The customer satisfaction survey was about the quality of services provided by the Council. It was not about the performance of the elected representatives.
- ❖ The authors of the customer satisfaction survey suggested that the 60% satisfaction outcome is something of a statistical mirage. Because the survey used ordinal measures to try and capture the qualitative feature of customer satisfaction, there is a statistical tendency for outcomes to cluster near the mid-point of the scales used. The authors argue that from the evidence of other, similar surveys, the overall 60% satisfaction level inflates the true level of satisfaction. In fact, they state the data indicated that only 21.7% of the respondents were truly satisfied.
- ❖ The report stated that between 1999 and 2002 the public's perception of Council's credibility and ability to make fair, consistent decisions had fallen, and that this was a matter of high community concern.

- ❖ The Mayor admitted in the Public Hearings that the Councillors had not made fair and credible decisions at all times. This admission points to a prime reason why community confidence in the elected representatives has fallen.
- ❖ Community concerns about the ability of the Councillors to make fair, consistent decisions stretches back to 1995, on the evidence of past customer satisfaction surveys. These concerns have progressively grown. They now represent a major reason for the community's lack of confidence in the elected representatives.

## 4.3 Community Confidence and the Ability of Elected Representatives to Direct and Control the Affairs of Council

### 4.3.1 Management of the Council

#### *Theme:*

An examination of the systems in place to “encourage and assist the effective participation of local communities in the affairs of local government” (Section 7 Local Government Act 1993).

#### *Findings:*

- ❖ Information supplied by the Department of Local Government to Warringah Council on 13 March 2003 shows that 36% of community complaints made to it related to maladministration and mismanagement. This indicates serious misgivings about the way in which the elected representatives, who are ultimately responsible for ensuring good management, have fulfilled their responsibilities.
- ❖ The lack of a complaints management system has created a sense of alienation amongst some people in the community who feel that they cannot communicate with the Council. They do not understand how they can effectively participate in the affairs of the Council.
- ❖ Despite the very public unease about many aspects of the functioning of the Council, the establishment of a complaints tracking and management system is still not in place. Some elected representatives have expressed very lukewarm support for establishing such a system. This indicates the degree of separation they have from the concerns of the community.

## 4.3.2 Community Consultation Framework

### *Themes:*

1. An appraisal of the community consultation approaches of the corporate body of the Council.
2. An appraisal of whether the elected representatives are fulfilling their responsibilities under Section 232 of the Local Government Act. In particular, whether they have fulfilled their role in facilitating communication between the community and the Council.

### *Findings:*

- ❖ Warringah Council in 2001 won an award for its community consultation framework. This framework consists of a Matrix that guides staff on when the staff should consult with the community and a Toolbox that gives guidance on how they should consult. The large number of complaints to outside bodies suggests that the consultative system is not working as well as it should. One of the reasons appears to be the closeness of some Councillors to some members of staff, resulting in the staff feeling it is more important to follow the wishes of the Councillors than to respond to considerations raised by the community.
- ❖ Warringah Council has no less than 42 Community Consultative Committees. Despite this very large number, the links to the community do not appear to be very strong. The General Manager (Public Hearings April 10 2003) observed that neither the Committees nor the consultation framework have been sufficient to develop a reputation for openness and transparency. Simply put, the community does not have confidence in its ability to communicate with the Council. The Councillors ultimately responsible for facilitating this (Section 232 of the Act), have failed in this regard.
- ❖ There is a perception within the community that the composition of the Consultative Committees does not reflect a real cross-section of the community. There is a perception by some members of the community that certain positions have been filled by the Mayors selecting their own supporters.
- ❖ Some Councillors have regularly used abuse and ridicule in their dealings with the community, and by so doing, have sapped the community's confidence in their capacity to govern effectively and fairly.

## 4.4 Financial Management and Community Confidence

### 4.4.1 History of Financial Performance

### 4.4.2 Council Finances Now and in The Future

#### *Theme:*

An appraisal of whether the record of the financial management of the Council is a factor in the low levels of confidence and support for the elected representatives.

#### *Findings:*

- ❖ For most of the life of the current Council, Warringah's financial position has been poor. This fact has been well publicised in the community. The financial difficulties have reflected on the capability of the elected representatives to manage. This has been a significant factor in lowering the community's level of confidence in the Council.
- ❖ The financial position of the Council has improved but its past record is still fresh in the minds of some members of the community. Some people have expressed doubts about the capacity of the Council to further improve the financial position. There is some feeling that in improving the Council's financial position, Warringah has lowered the standard of its service levels, and that the general amenity of the area has suffered as a result.

### 4.4.3 Awards and the Council

#### *Theme:*

Warringah Council has won a number of awards in recent years. These awards are put forward as proof that Warringah Council has managed its affairs quite well. The relationship of the awards to confidence of the community in the elected representatives is examined.

#### *Findings:*

- ❖ The major awards won by the Council are primarily in two areas: environmental management and waste management. Admirable as these awards are, they represent only a portion of the activities of the Council. The awards have done little to boost the confidence of many in the community in the management of the Council.

- ❖ The number of awards for environmental management contrast with the number of complaints about environmental outcomes of development within the Council area. The blame for this is placed at the feet of the Councillors who are considered to be pro-development by many people within the community.
- ❖ The activities and projects that have won awards for environmental and waste management are broadly seen to be the result of staff efforts. The community does not appear to give the elected representatives much praise for achieving the awards. Consequently, many within the community have not accepted the argument that the awards point to good management.
- ❖ Environmental issues represent one of the main areas cited in the Submissions for community members having a lack of confidence in the Council. The contrast between this and the environmental management awards is striking. The evidence suggests that the inevitability of growth and development, accepted by the “Majority” Councillors, is seen to produce some negative environmental outcomes and there is little that can be done to stop them.
- ❖ The debate over the relationship between development and environmental outcomes has stirred strong passions in Warringah. The divide between the protagonists on either side of the debate is now so large that it seems that there will be no sensible resolution until they are removed from the critical interface between development and the environment (the development approval process). A fresh start is needed.

## 4.5 Structural Change and the Ability of the Elected Representatives to Restore Community Confidence

### 4.5.1 Local Government and the Westminster System

*Theme:*

An appraisal of how well the community understands the distinctions between the roles and responsibilities of the elected body and the corporate body. If the distinctions are not well understood, it is possible that the criticisms of either the elected representatives or the staff may be misplaced. A number of operational changes have either been put in place or foreshadowed for Warringah Council. The elected representatives are also meant to be putting in place measures that will improve their conduct. An assessment is made of whether these changes will be sufficient to restore community confidence in the elected representatives.



*Findings:*

- ❖ There is confusion between the roles and responsibilities of the elected body and the corporate body. The confusion derives from a lack of understanding of the separation of functions defined in the 1993 Act. It is clear that some of the criticisms in the Submissions have unfairly blamed either the elected representatives or the staff, for actions that did not fall within their responsibilities. It is a confusion that is not confined to Warringah.
- ❖ One area that has generated a large number of negative Submissions concerns the roles that Councillors play in being both advocates in development issues and judges of whether a development should take place. The community discerns many areas of conflicts of interest in this regard and their suspicions about these conflicts are a material factor in their diminished confidence in the elected body.
- ❖ Remedies for some of the problems associated with defining the roles and responsibilities of the elected body have been presented in the evidence. These include introducing a portfolio style of government, instituting the system of popularly elected Mayors and the abolition of the Ward system. Each of these suggestions has merit.

**4.5.2 Respecting the Democratic Process***Theme:*

An assessment of whether the current Council should be allowed to run its course until the next election and whether, if that course were followed, the elected representatives would be able to regain the confidence of the majority of the community. To restore confidence a number of operational changes have either been put in place or foreshadowed for Warringah Council. The elected representatives are also meant to be putting in place measures that will improve their conduct. An assessment is made of whether these changes will have the desired effect.

*Findings:*

- ❖ Strong arguments have been put forward stating that it would be a denial of the democratic process if the elected representatives were not allowed to complete their term of office and if the community did not have the opportunity to elect a new council at the next elections. It is also true that in democratic societies there are usually mechanisms available to remove governments when they have lost the confidence of their communities.
- ❖ Each of the “Minority” Councillors, one of the “Majority” Councillors and one former Mayor no longer serving on Council, have recommended at some stage that the Council be dismissed from office.

- ❖ Supporters of the Council believe that a series of operational changes foreshadowed will mend the problems that have existed within the elected body. The operational changes are needed and an improvement in Councillor behaviour is desired. In Section 3 it was concluded that the fundamental clashes of temperament and differences of attitude between the Councillors, and the long period over which enmities have festered, makes it difficult to conceive of their conduct improving to the point that they can effectively manage the operational changes. There is little doubt that operational changes would be more effectively put in place if an Administrator were appointed to Warringah Council, rather than letting the elected representatives serve out the remainder of the life of the Council.
- ❖ The operational changes will not be sufficient, of themselves, to restore confidence in the elected representatives, if such changes were put in place by the elected representatives.
- ❖ The need to improve the conduct of the Councillors is not accepted as being necessary by some Councillors. The will to change is not apparent across the elected body. The evidence suggests that the differences between the Councillors are too deep for them to ever conduct themselves in the manner expected of them by the community.
- ❖ The most effective way of restoring the community's confidence in the Council would be to declare the elected representatives' positions vacant and conduct a series of reforms under an Administrator.
- ❖ More radical solutions to the problems of Warringah Council, such as whole or partial mergers with other councils, were not considered by the Inquiry. They might well be considered by those charged with putting in place an appropriate structure to provide optimum community leadership for the future.

SECTION

FINDINGS

# 5

## Efficiency and Effectiveness of the Corporate Body

## **5.0 Background**

### **5.1 The Role of the General Manager**

- 5.1.1 The Separation of Powers: The Key Objects of the Act
- 5.1.2 The Concept of the Separation of Powers
- 5.1.3 Influence of the Elected Representatives on the Corporate Body
- 5.1.4 Actions of the Former General Manager
- 5.1.5 The Reform Process under the Existing General Manager

### **5.2 Council's Administrative System**

- 5.2.1 The Council Model
- 5.2.2 Financial Management and Budgetary Relationships
- 5.2.3 Institutional connections to Council
- 5.2.4 Awards to Council

### **5.3 Community Concerns About Warringah Council's Management System**

- 5.3.1 Evidence of the Adequacy of Council Responses to Community Concerns
- 5.3.2 Community Complaints and Their Management by the Council
- 5.3.3 Access to Information
- 5.3.4 Community Concerns with the Involvement of Council in Court Cases and Other Legal Costs
- 5.3.5 Community Concerns with Council Minutes
- 5.3.6 Community Concerns with Community Consultation

### **5.4 Staff Issues Within Council's Administrative System**

- 5.4.1 Staff Behaviour and Staff Employment Security
- 5.4.2 The Relationships Between Councillors and Staff
- 5.4.3 The Relationships Between Staff and Councillors
- 5.4.4 Governance of the Staff within the Corporate Body
- 5.4.5 Protection of Staff and Outcomes if an Administrator was Appointed

## 5.0 Background

The 1993 Local Government Act defined the roles of the Elected Body and the roles of the Corporate Body. The Act clearly separates these roles. The connections of the elected representatives to the Corporate Body are a vital factor in maintaining the separation of powers as outlined. The General Manager provides the link between the Elected Body and the Corporate Body. He or she is responsible for implementing, without undue delay, the decisions of the Council. He or she exercises functions delegated by the Council, appoints staff, directs staff, and has the power to dismiss staff. The actions of the General Manager and the senior staff are critical to the maintenance of the separation of roles within the Council. Section 5 considers various aspects of the functioning of the Corporate Body of Warringah Council. It examines some aspects of the functioning of both the past and present General Managers, as revealed by the Submissions. It reviews the Council's administrative system, and the connections of that to the broader community. The Submissions raised a number of community concerns about the functioning of the Corporate Body, and the major issues that arise from these concerns are also explored in this Section. Finally, the Submissions pointed to a range of issues that bear on the governance of the Council, but relate directly to the staff. These issues include staff security and independence within the system, on the one hand; and the ways in which the staff interact with the community on the other hand.

The major themes that emerged in connection with governance matters connected to the Corporate Body are:

- ❖ Section 5.1 examines the actions of the General Managers in their prescribed responsibilities of ensuring the efficient and effective operation of the Council's organisation. The early years of the present Council were marred by serious financial challenges, and other features, that affected the efficiency and effectiveness of the Council's organisation, leaving the current General Manager with a large reform agenda.
- ❖ Section 5.2 surveys the administrative structure of the Council and the quality of the achievements that this structure has generated. The conclusions are that the structure is complex, somewhat opaque to the community, and internally is somewhat lacking in connectivity; yet it is seen to have functioned well in the view of many institutions and associations in Warringah, and has been recognised externally in the number of awards won by the Council.

- ❖ Section 5.3 considers the strength of the connections between the Council and the broader community of Warringah, and assesses whether that community believes that the Council is effectively recognising and responding to their needs. The evidence suggests that there are numerous areas in which the community believes the Council has let them down in the recognition of, and responses given to, their needs and concerns.
- ❖ Section 5.4 focuses on the staff, examining the degrees of separation between the staff and the Elected Body, and issues such as the security of tenure of staff, the independence of staff in the performance of their duties, and actions of staff in relation to the public. The evidence shows that the staff have at times been subject to undue pressure to produce certain outcomes, that the relationships of some staff to some Councillors have been too close, and that the manner in which staff have responded to issues raised by the public has at times been unsatisfactory.

## **5.1 The Role of the General Manager**

### **5.1.1 The Separation of Powers: The Key Objects of the Act**

#### **5.1.2 The Concept of the Separation of Powers**

#### **5.1.3 Influence of the Elected Representatives on the Corporate Body**

##### *Theme:*

Assessment of whether the elected representatives of Warringah Council in the current term have acted in accordance with Sections 232 and 335 of the Act relating to the separation of powers.

##### *Findings:*

- ❖ The number of Submissions alleging that some elected representatives have exercised powers beyond those contained in the Act far outweigh the number of Submissions defending their behaviour in this regard.
- ❖ The allegations refer to the influence of some Councillors over the staff, extending from the General Manager through to junior staff, and there is some evidence supporting these allegations.
- ❖ The allegations suggest that the interference of some Councillors has affected public participation in the workings of the Council, and has interfered with the processes of public consultation.

- ❖ Although the information concerning these issues is patchy, the expressions of concern are genuine. Many members of the community hold the probability of undue influence being exercised by some Councillors as very high, and this has negatively influenced the levels of confidence they place on the independence of some aspects of the governance of the Council.
- ❖ There can be little doubt that some Councillors have exercised their influence to give preference to certain individuals and organisations.

#### 5.1.4 Actions of the Former General Manager

##### *Theme:*

Assessment of whether the former General Manager of Warringah Council in the current term acted in accordance with Sections 232 and 335 of the Act relating to the separation of powers.

##### *Findings:*

- ❖ There have been a number of allegations made against the former General Manager. These include his active promotion of the interests of certain Councillors; his prevention of other Councillors in the basic performance of their duties; and selectively making information available to Councillors.
- ❖ The former General Manager left the Council before his contract had expired, and the general public was not informed of the terms of his separation, nor the details of his original contract.
- ❖ The allegations have received a good deal of publicity, as did the issues surrounding his contract and his separation from the Council. Mr. Denis Smith declined an invitation to attend the Public hearings and/or write a Submission to the Inquiry. It was not possible, therefore, to gauge whether or not the various allegations had substance.
- ❖ The allegations were not used as evidence in forming judgements about the efficiency and effectiveness aspects of the governance of Warringah Council. Their relevance, even if they had been tested, is tangential to the central theme of the Inquiry: the capacity of the elected representatives to provide sound governance, now and into the future, and to hold the confidence of the community. They have been included in the Report because they indicate the kinds of issues that troubled the Elected Body, and the general public, in the early days of the current Council. Whether the allegations are right or wrong is immaterial. The fact that they were made indicated the kinds of things that lay behind internal dissension within the elected body, and suspicions of poor governance within the community.

### 5.1.5 The Reform Process under the Existing General Manager

#### *Theme:*

Assessment of whether the current General Manager of Warringah Council in the current term has acted in accordance with Sections 232 and 335 of the Act relating to the separation of powers.

#### *Findings:*

- ❖ Mr. Blackadder, the General Manager, has begun a broad program of reform to improve the governance of the Council.
- ❖ There is no intimation in the evidence presented to, or collected by, the Inquiry of any breaches of the separation of powers by the General Manager.
- ❖ The very fact that he has instituted an on-going program of reform indicates that he has recognised the weaknesses that were apparent in various areas of governance.
- ❖ Since the same Councillors who were involved in exerting undue influence within the Council are still within the Elected Body, the reforms will not necessarily convince the community that such influence has disappeared.

## 5.2 Council's Administrative System

### 5.2.1 The Council Model

#### *Theme:*

A review of the administrative structure of the Corporate Body in terms of its transparency and cohesiveness, and consideration of the evidence that this structure has produced positive outcomes in terms of governance.

#### *Findings:*

- ❖ The administrative model is complex. The complexity makes it difficult for the community to understand which member of staff is responsible for which activities. This, when coupled with the absence of an effective complaints system, has made it difficult for the community to understand the workings of the Council, and so appraise whether it is working in their best interests.
- ❖ There is evidence that activities are compartmentalised, both within Divisions and between Divisions. Some of the criticisms made of the Corporate Body stem from this functional separation.



## 5.2.2 Financial Management and Budgetary Relationships

### *Theme:*

A review of the current and past record of financial management during the current term of the Council.

### *Findings:*

- ❖ The critical area of financial management has been negatively assessed by many in the community because of poor budgetary performances in the earlier years of the life of this Council. The evidence suggests that the Council's budget management has improved greatly in the past two years.

## 5.2.3 Institutional connections to Council

### *Theme:*

The connections of the Council with various sporting, recreational and cultural groups have been put forward as evidence of the Council's standing within the community, and the effectiveness of its operations in the community. This theme is explored.

### *Findings:*

- ❖ Although the evidence shows that a favourable Submission from an organisation does not necessarily reflect the opinions of the members of that organisation, the sheer volume of such favourable Submissions suggests that Warringah Council does indeed enjoy strong relationships with many organisations.
- ❖ The evidence shows that Warringah Council has actively supported a number of associations, and that in certain circumstances that support has led to the provision of services and material assistance from the staff.
- ❖ There is a genuine view that if the connections with the Council were disturbed by the appointment of an Administrator the organisations would inevitably be worse off.

## 5.2.4 Awards to Council

### *Theme:*

Alongside the support of community organisations, the granting of awards to the Council from bodies outside of the Council is seen as strong proof that the operations of the Corporate Body are working well in Warringah.

### *Findings:*

- ❖ The Council has received a large number of awards in recent years, but these awards are predominantly in two areas: environmental and waste management. There is little doubt that the Council has fully deserved the awards that it has won.
- ❖ In both of these areas (environmental and waste management) the primary credit for the awards must be given to the staff, supported in some instances by community inputs.
- ❖ In one instance, the granting of an environmental award by the Council in connection with the Ardel development, there has been public criticism of the award.
- ❖ There has been widespread public criticism of the environmental management efforts of the Council in relation to the place management of various sites in Warringah. It is somewhat paradoxical that in the area where Warringah Council has received high praise from external award agencies, environmental management, there is very strong criticism of the way in which Warringah Council has managed certain specific environmental management issues within its area.

## 5.3 Community Concerns About Warringah Council's Management System

### 5.3.1 Evidence of the Adequacy of Council Responses to Community Concerns

#### *Theme:*

A consideration of how well the Body Corporate has responded generally to community concerns about issues of governance.

#### *Findings:*

- ❖ The evidence presented to the Inquiry is sufficient to conclude that many people in the community do not consider that the Body Corporate provides sufficiently adequate responses to their concerns.

### 5.3.2 Community Complaints and Their Management by the Council

#### *Theme:*

Throughout the Inquiry a great deal of concern was expressed about the Council's management of complaints. The specific focus of this part is the management of such complaints by the Body Corporate.

#### *Findings:*

- ❖ A very large number of individual complaints were made to the Inquiry about the handling of complaints that had been made to the Council. No effort was made by the Inquiry to explore the individual rights and wrongs of the subject matter of complaints made the Council. Rather, the emphasis was on considering the processes by which the matters were considered by Council. There is clear evidence that in many instances the Body Corporate has given insufficient responses to community concerns.
- ❖ Members of the community have been forced to resort to appeals to elected representatives because they have not obtained satisfactory responses from the Corporate Body.
- ❖ A major failing is that neither the Elected Body nor the Corporate Body had an effective means of evaluating complaints, yet were quick to decide on how serious or how trivial a complaint might be.
- ❖ The failure to have an effective complaints system in place, and the slowness of the response to this situation, reflects very poorly on the governance of the Council.
- ❖ The Council has failed in its projected reforms to understand the difference between a policy by which the Council would bring probity, parity and equity to the manner in which it determined complaints, and a system that would merely ensure that complaints were recognised, responded to, and tracked.

### 5.3.3 Access to Information

#### *Theme:*

An assessment of whether the Council has encouraged and assisted the effective participation of the community in the affairs of the Council by fully allowing the broad access to information guaranteed by Section 12 of the Act.

### *Findings:*

- ❖ Section 12 of the Act provides that community members are entitled to have free access to a range of documents, and be entitled to inspect the latest version of such documents. The evidence suggests that such access has not been forthcoming on a number of occasions.
- ❖ The evidence shows that on certain occasions community members have been forced to pay for access to information through the Freedom of Information process, when that information should have been supplied free of charge.
- ❖ Neither Mr. Symons, the Public Officer, nor Mr. Vescio, Manager of the Governance Unit of the Council, could provide convincing explanations of why this has happened.
- ❖ When Council has made information available, there have been delays in its availability, sometimes greatly reducing the value of the information to the applicant.
- ❖ The problems that members of the community have faced in obtaining information have been dismissed, or glossed over, by both members of the Elected Body and members of the Corporate body.

## **5.3.4 Community Concerns with the Involvement of Council in Court Cases and Other Legal Costs**

### *Theme:*

A review of the relative levels of legal costs faced by Warringah Council, and the underlying circumstances leading to these levels.

### *Findings:*

- ❖ During the current term of the Council, Warringah has had some of the highest levels of legal costs, whether a comparison is made with Councils similar to Warringah, or with Councils in New South Wales generally.
- ❖ Members of the Elected Body did not provide satisfactory explanations of why the level of costs should be so high, nor were they able to provide a clear picture of how they reached decisions to go to Court, or to incur other legal expenses.
- ❖ Members of the Corporate Body failed to provide a clear understanding of their roles in the decisions to proceed to Court, or to incur other kinds of legal expenses.
- ❖ The evidence given to the Inquiry suggests that on occasions the Council has failed to ventilate all issues in Court proceedings, and has sometimes failed to appraise the Court of all relevant evidence.

- ❖ There is evidence that the Council has withdrawn from Court proceedings near, at, or after the commencements of hearings.
- ❖ There is evidence that the Council has instituted proceedings or maintained issues that were not sustainable.
- ❖ In these various ways the Council has incurred costs that might have been avoided, and by so doing has imposed costs on members of the community, or others, who have been forced to contest cases.
- ❖ Not all the evidence on this issue submitted to the Inquiry has been accepted. In some cases this is because the Submission was not detailed enough to form a judgement on. In other instances there have been circumstances where the Council has been right to withdraw from cases or settle cases without proceeding to a final Court-determined outcome. It is clear that some of the criticism of the Council in this regard has been misplaced.
- ❖ Accepting the point made above, there is still sufficient evidence before the Inquiry to conclude that the Council's governance of these issues has been flawed.

### 5.3.5 Community Concerns with Council Minutes

#### *Theme:*

An assessment of whether the Council has always fulfilled the requirements of its own Code of Meeting Practice, and the Act, in keeping full and accurate Minutes of proceedings at meetings.

#### *Findings:*

- ❖ There have been instances where correct Minutes of meetings have not been made.
- ❖ There have been instances where the Council has been reluctant to correct inaccuracies in Minutes when these have been brought to its attention.
- ❖ There have been instances where Minutes have been altered in the light of events that have taken place some time after meetings.
- ❖ The Body Corporate has, on occasions, taken a cavalier attitude towards the proper care and accuracy of Minutes that is both enshrined in laws and practices, and expected by the community.

### 5.3.6 Community Concerns with Community Consultation

#### *Theme:*

An assessment of whether the community consultative processes of the Council have provided an opportunity for members of the public and users/special interest groups to assist Council in managing facilities or providing services that meet community needs and expectations.

#### *Findings:*

- ❖ There is a great deal of dissatisfaction with the Council's consultative processes. This is not because there is a lack of committees and other forms of prospective consultation means. The dissatisfaction arises from the ability of members of the community to achieve outcomes through these processes.
- ❖ The number of consultative committees, spoken of by the Council, actually exaggerates the number of forums in which members of the public can actually participate.
- ❖ There are community concerns about how people are selected for community committees. There is some community feeling that some committees are stacked to ensure that the policies promoted by certain Councillors are followed.
- ❖ There is evidence suggesting that there has been Councillor interference in committee decision-making.
- ❖ There are community concerns about the disbanding or removal of committees.

## 5.4 Staff Issues Within Council's Administrative System

### 5.4.1 Staff Behaviour and Staff Employment Security

#### *Theme:*

The Act specifies the general responsibilities of staff, and their particular responsibilities of acting honestly and exercising a reasonable degree of care and diligence in carrying out their functions. This part explores the financial problems faced by the Council in recent years, and the impact that has had on the ability of all staff to carry out their responsibilities in the manner laid down in the Act.

#### *Findings:*

- ❖ The evidence given to the Inquiry suggests that the election of a new Council in 1999 brought about deterioration in the relationships between staff and Councillors, and between staff and the public.
- ❖ The major restructuring of Council's staff, which began in 1996, led to a very large attrition of senior staff, a process that extended into the life of the current Council.
- ❖ The reduction of staff associated with the Council's efforts to improve its financial position beyond 1999, has had a more general impact across the spectrum of positions.
- ❖ There are allegations that the restructuring and the recent downsizing of the staff in the early years of the Council and in the period immediately preceding, have involved creating deliberate redundancies of staff who have been critical of the Council, and there is some evidence supporting the allegations.
- ❖ There is evidence that the departure of staff is due to the culture of the Council, and the way in which staff have been treated.

### 5.4.2 The Relationships Between Councillors and Staff

#### *Theme:*

An assessment of whether the separation of powers defined in the Act has been followed, and has worked to the benefit of staff at Warringah.

### *Findings:*

- ❖ There was such great reluctance of staff to raise issues with the Inquiry that not one staff member volunteered to write a Submission dealing with staff issues, or to appear at the Public Hearings. It is clear that this reluctance was not born of a lack of issues, but a fear of recriminations if they were to raise staff issues in a public forum.
- ❖ The same reluctance was evident with former members of staff. Only one was willing to make an oral Submission, whilst others sought leave to appear in closed sessions. The reluctance of former members of staff to discuss staff issues is triggered by the same fears: recriminations against them if they were to criticise either the Elected or Corporate Body.
- ❖ The fears that some staff have of some elected representatives, and of some senior staff, probably explain some aspects of their behaviour that has been deemed to be unsatisfactory by members of the community.
- ❖ The Inquiry has no doubts that the fears of these staff members are very real, and that they have had a corrosive effect on the workings and morale of the Council. Since certain Councillors have most definitely contributed to this climate of fear, the only sure solution is the removal of the source of their fears: that is, removing the elected representatives who have abused their power.
- ❖ Some Councillors and some senior staff have not followed the dictates of the Act in terms of the separation of powers. Some Councillors have formed alliances, working relationships, and levels of understanding with staff. Such alliances and relationships can only be removed if the source of the problems is removed; that is, removing the elected representatives that have abused their power.
- ❖ There is evidence of occasions where elected representatives have interfered with the processes of Council, having staff perform actions at their behest, and using staff to punish members of the public who had acted in some way contrary to the wishes of elected representatives.
- ❖ There is no doubt that, on occasions, some elected representatives have given directions to staff.
- ❖ There is no doubt that the fear of some staff, manifested in their unwillingness to appear at the Public Hearings, has been caused by the abuse and belligerent attitudes of certain Councillors.



### 5.4.3 The Relationships Between Staff and Councillors

#### *Theme:*

The separation of powers contains a twofold responsibility: staff must not act outside of their roles, as defined in the Act, in their relationships with the elected representatives. This part assesses this issue.

#### *Findings:*

- ❖ The former General Manager is alleged to have made threats against some Councillors. The seriousness of such threats, or their context, could not be fully explored because Mr. Denis Smith declined the invitation to present to the Inquiry. It should be noted that even if such threats were made, the former General Manager had no means or authority to carry them out. Their relevance is not so much to do with whether or not real threats were made. It is the strong belief held by some Councillors that they were made and, at an early stage of the life of the current council, convinced them that they were unable to carry out their duties in relation to the people who had elected them.
- ❖ There is an impression within the community that some staff have taken sides in the disputes that have arisen between Councillors.

### 5.4.4 Governance of the Staff within the Corporate Body

#### *Theme:*

An assessment of how well the system of governance protects staff when they come into dispute with the Council, and conversely how well the system of governance protects the public when its members come into dispute with the staff.

#### *Findings:*

- ❖ Council reaction to Protected Disclosures has meant that proper assistance has not been given to members of staff when they have raised issues that were critical of the operations or management of the organisation.
- ❖ There is evidence that dismissals have followed the issuance of a Protected Disclosure.
- ❖ In other situations the Council has had staff, who were leaving their employment with the Council, sign Settlement Agreements that appear to impose unnecessary conditions on the departing staff member.
- ❖ The Council's use of Deeds of Release may be interpreted as buying the silence of the departing staff member.
- ❖ Some members of the public allege improper use of Council resources by staff, but feel they have no way of bringing their concerns to the Corporate Body.

- ❖ There is evidence of staff treating members of the community with arrogance, and even intimidation leaving such people with no means of redress.
- ❖ There are perceptions of a lack of professionalism in the conduct of some staff in their dealings with members of the public.
- ❖ Some members of the community fear addressing problems that they have encountered into their dealings with the staff for fear of having to face legal action.
- ❖ Some members of the public believe that there is insufficient control over the actions of some members of staff by senior staff.
- ❖ The lack of a comprehensive means of handling complaints by members of the public translates into particular perceptions that staff do not deal with their complaints in an effective and timely fashion, if indeed they deal with them at all.

#### **5.4.5 Protection of Staff and Outcomes if an Administrator was Appointed**

##### *Theme:*

The General Manager, in particular, has argued that staff would be adversely affected if an Administrator were appointed to the Council. This fear is assessed.

##### *Findings:*

- ❖ The General Manager's fear that the staff would have to carry an unwarranted scar, because their reputations would be damaged if an Administrator were appointed, is misplaced. The bulk of the Submissions that are critical of the Council relate to the behaviour of the Elected Body, or to specific issues to do with development. Staff are only incidentally, and peripherally, connected to the causes of concern about these issues.
- ❖ Many of the problems related to the staff result from the improper pressures that have come from the failure of certain Councillors to honour the separation of powers defined in the Act. If an Administrator were appointed the very cause of those problems would disappear.
- ❖ If an Administrator were to be appointed the roles, functions and positions of the staff would remain untouched.

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SECTION

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# 6

## Managing Localities: Community Input and Community Concerns

**6.0 Background****6.1 Interest Groups And Council's Advisory Committees**

- 6.1.1 Issues Raised
- 6.1.2 Public Participation

**6.2 John Fisher Park And Environs**

- 6.2.1 Summary of Issues
- 6.2.2 The Conflict between the Sporting and Recreational Users of the Park

**6.3 The Sportsfield Rectification Levy**

- 6.3.1 Subsidence Issues and the Levy
- 6.3.2 Governance Issues

**6.4 Brookvale Park**

- 6.4.1 Plan of Management
- 6.4.2 The Concerns
- 6.4.3 Representation on the Brookvale Park Advisory Committee
- 6.4.4 Governance Issues

**6.5 Community Interest Groups**

- 6.5.1 Roles of Community Groups
- 6.5.2 Relationships with the Council
- 6.5.3 Governance Issues

## 6.0 Background

There are three major elements that relate to the governance and management of a Council. These are the Elected Body, the Corporate Body, and the Community. The primary focus in this report is on the Elected and Corporate bodies. In this Section the third element, the Community, is considered. Relationships between the Council and the Community may take many forms. In Warringah it is manifested in a formal way through a series of consultative committees. It is also manifested in community interest groups. These latter are made up of groups of individual citizens who band together to address one or more issues of concern. In almost every case, the interest groups come together to represent a locality. Locality is used here in a more general sense than the 67 defined Localities in the Warringah LEP. The geographic spread of an interest group may be as small as a street, or even a single block of land, or it may extend across several of the Localities defined in the LEP. The important thing to note about interest groups is that they represent the grass roots of community action. They may work in harmony with the Council, or they may be formed to contest policies or actions taken by the Council. In some ways the manner in which a Council interacts with its community interest groups provides a litmus test of its capacity to listen to, and understand, community needs and desires in relation to particular issues. The successful incorporation of community sentiment about various issues represents the ability of the Council to make its governance responsive and responsible. As well as the informal interest groups, the Council works through a large number of Community Consultative Committees. These are formal organisations that are meant to give citizens an input into the governance of the Council. Warringah has chosen to create a large number of such Committees. In this Section an appraisal is made of both the formal and informal groups that represent Community contributions to Warringah's governance.

- ❖ Section 6.1 considers the constitution of various Consultative Committees in terms of how people have been appointed to them, how people have been removed from them, and more general interactions between the Committees and the Council. The evidence suggests that Warringah Council has not always taken the appropriate actions to attract participants to their Committees representative of a range of community interests, and has not always encouraged participants to provide independent views and recommendations to Council.

- ❖ Section 6.2. John Fisher Park provides the most significant insight into how the Council has reacted to serious community concerns about a locality, involving as it does both Community Consultative groups, interest groups, and both the Elected and Corporate Bodies centred on the Plans of Management for the area. If John Fisher Park is treated as the test case for how well the Council has managed place disputes, and has been able to exercise responsible governance in relation to complex issues, then it must be recorded that the Council failed the test.
- ❖ Section 6.3 considers the sportsfield rectification levy, partly a subset of the John Fisher Park issues and partly an issue in itself, to examine another aspect of Council's approach the managing a high profile, complex issue. The evidence suggests that the Council may have been guilty of partisanship in its approach; more serious is the possibility that the funds, garnered from the community and subject to special approval from the Department of Local Government, may have been both not properly applied, and not well accounted for.
- ❖ Section 6.4 considers another major place issue, Brookvale Park, involving Council operations in association with both formal and informal community groups, but also bringing into focus the Council's links with institutional organisations. Serious issues arise as to the Council's treatment of its own Committees, its ability to relate to community concerns, and apparent irregularities in the processes by which communication and discussion with the Community is managed.
- ❖ Section 6.5 focuses on the informal interest groups within Warringah and the extent to which such groups can provide input into the management of their areas of concern. The evidence suggests that relationships between such groups and the Council have deteriorated over the life of the present Council, and that little effort has been made to utilise the energy and insights that such groups have to offer.

## 6.1 Interest Groups And Council's Advisory Committees

### 6.1.1 Issues Raised

#### *Theme:*

Whether the Council approaches community consultation in the spirit of its vision statement that avers that the council welcomes the opinions of all, and deals with the community in an atmosphere of mutual respect.

### *Findings:*

- ❖ The general conclusion, after an overview of a number of Council-Community interactions, is that the Council does not act in accord with its vision statement.
- ❖ If the Council is to restore Community confidence in its ability to govern, it must take steps to review its attitudes and operations in respect of Community groups.

## **6.1.2 Public Participation**

### *Theme:*

The way in which the Council operates its Community Consultative Committees, focusing on the appointment and tenure of members, governance issues related to the functions of the Committees, and relationships between community representatives and the Elected and Corporate Bodies.

### *Findings:*

- ❖ In certain instances the Council has changed the composition of Committees without proper reference to its own rules, and without proper recognition of the inputs made by members to the work of the Committee.
- ❖ The Inquiry could not form a judgement as to the strength or weaknesses of the constitutions of various Committees because the information was not made available to it, nor (on the evidence of the Council's website) to the public at large.
- ❖ There is public concern that committees that the community judged to be working well in the interests of the community have been disbanded.
- ❖ In relation to a number of Committees there is concern that their functions have not been carried out in a 'business-like' fashion.
- ❖ The evidence suggests that the information available to Committees is sometimes insufficient to enable them to perform their duties effectively.
- ❖ The record-keeping of some Committees is below the standard of accuracy that is needed for transparent and effective decision-making.
- ❖ There are examples of interference in the workings of Committees by the Elected Body.



## 6.2 John Fisher Park And Environs

### 6.2.1 Summary of Issues

*Theme:*

The summary of the issues related to John Fisher Park provides a context for the appraisal of the conflicts that have been associated with its management.

*Findings:*

- ❖ When summarised, the issues surrounding John Fisher Park do not exhibit a degree of difficulty or complexity of management that should have led to the scale and intensity of public conflict that has surrounded the Park.

### 6.2.2 The Conflict between the Sporting and Recreational Users of the Park

*Theme:*

An appraisal of the balance of interests within the community on the use of the Park.

*Findings:*

- ❖ A major reason for the expansion of the conflict into a serious problem affecting the general operations of the Council, and the community's confidence in the Council, was the perception of bias in the behaviour of some elected representatives, which was seen to distort the consultation process.
- ❖ There was a perception of bias in the selection of Consultative Committees related to decisions made about the Park.
- ❖ The Council did not satisfactorily address the concerns of some members of the community about the scope and scale of works within the Park.
- ❖ There is a strong feeling that the works may have been funded, irregularly, from the sportsfield rectification levy.
- ❖ There are serious concerns about the environmental outcomes of changes to the Park that have not been settled by the Council.
- ❖ There is a strong community sentiment that the Council erred in changing the Plan of Management of the Park, with the existing plan being deemed sufficient to cater for a change in the Act.

## 6.3 The Sportsfield Rectification Levy

### 6.3.1 Subsidence Issues and the Levy

*Theme:*

A consideration of why the levy was approved, and how it should have been used.

*Findings:*

- ❖ The purpose of the levy was clearly and explicitly expressed in the application to the Department of Local Government for approval to raise the levy: the purpose was to rectify subsidence, and address future differential earth settlement problems.
- ❖ There is a clear perception in the community that monies have been spent for works that differed from those intended when the levy received approval, and the evidence given by the Council to demonstrate that such perceptions are wrong have failed to convince the Inquiry.

### 6.3.2 Governance Issues

*Theme:*

A review of community concerns about such governance issues as the accounts of the sportsfield rectification funds, and the selection of certain persons to the Committee, and the removal of other Committee members.

*Findings:*

- ❖ There are serious allegations of irregularities in the accounts of the fund, and the Council has not satisfactorily answered these.
- ❖ The removal of certain members from the Committee in 2001 appears not to have been valid, and the appointment of others to the Committee appears to contain bias.

## 6.4 Brookvale Park

### 6.4.1 Plan of Management

*Theme:*

An examination of the arrangements between Warringah Council and Manly Warringah Rugby League Club in relation to the Plan of Management.

*Findings:*

- ❖ There is a community perception that the League Club has received favoured treatment by the Council.
- ❖ The Deed of the agreement between the two parties suggests that the community perception is right.

**6.4.2 The Concerns***Theme:*

An assessment of the consultation processes before the adoption of the Brookvale Plan of Management in 2002.

*Findings:*

- ❖ There was insufficient feedback from the Council to the community during the preparation of the Plan.
- ❖ The community interest group focused on Brookvale Park was only afforded an opportunity to respond to the Plan after it was completed, rather than being able to submit its views during the drafting of the Plan.

**6.4.3 Representation on the Brookvale Park Advisory Committee***Theme:*

An examination of the structure of the Advisory Committee.

*Findings:*

- ❖ That effective and transparent management of the Park is dependent on involvement of primary stakeholders, and the general Warringah community.
- ❖ The appointment, by the Council, of three persons with strong connections to the League Club as 'citizen representatives' destroys community confidence in the proceedings of the Advisory Committee.

**6.4.4 Governance Issues***Theme:*

An examination of various issues in relation to the governance of the Park.

*Findings:*

- ❖ The correct procedures concerning notification of meetings and other matters appear not to have always been followed in respect of Brookvale Park.
- ❖ There is evidence that the Minutes have not always been correctly kept, and there is evidence that the Council has not acted to amend incorrect Minutes.

- ❖ There is evidence that the information supplied to the Committee has not always been satisfactory in terms of the Committee being able to perform its functions satisfactorily.
- ❖ There are concerns that the arrangement between the Council and the League Club may not be producing sufficient economic benefits to the Council.
- ❖ There is evidence of a failure of the Council to involve the Committee in decisions affecting the Park.

## 6.5 Community Interest Groups

### 6.5.1 Roles of Community Groups

#### *Theme:*

A review of the roles of community interest groups as representatives of the community in alerting the Council to community concerns about local issues, and in working with the Council to find solutions.

#### *Findings:*

- ❖ There are a large number of people in the community who are willing to become involved in local affairs.
- ❖ The evidence suggests that these people are not driven by anti-Council sentiments.
- ❖ The community interest groups often have a level of expertise, and an understanding of local issues, that is better than that of either the Elected Body or the Corporate Body.
- ❖ Instead of being used as a large and valuable resource, the community interest groups have been largely marginalised by the current Council.

### 6.5.2 Relationships with the Council

#### *Theme:*

An examination of the levels of connection, or disconnection, of community interest groups and the Council.

#### *Findings:*

- ❖ There has been a significant deterioration in the relationships of the groups with the Council during the life of the current Council.

- ❖ Many members of community groups have suffered abuse and vilification at the hands of some elected representatives, and some staff.
- ❖ There has also been harassment of members of community groups.

### **6.5.3 Governance Issues**

#### *Theme:*

A review of how community interest groups have been associated with governance issues.

#### *Findings:*

- ❖ The community interest groups play an important role in reviewing Council's actions.
- ❖ The objective of the community interest groups is to raise matters with the Council that as concerned citizens they feel obliged to do.
- ❖ The evidence suggests that the community interest groups generally present their views in a careful and considered fashion, supported by strong local research.
- ❖ The failure of the Council to construct meaningful channels for discussion with, and flows of information and concerns from, the community interest groups amounts to a serious failure of its governance processes.
- ❖ This failure is a material factor in the loss of confidence in the Council.

SECTION

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# 7

## Development Issues and Development Processes in Warringah Council

## **7.0 Background**

### **7.1 State Government Policies And Development In Warringah Council**

- 7.1.1 Comparative Growth Rates
- 7.1.2 The Role of the State Government
- 7.1.3 The Residential Development Strategy
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### **7.4 The Operations Of The Local Approvals Service Unit (LASU)**

- 7.4.1 The Unit's Resource Base
- 7.4.2 The Operations of the LASU
- 7.4.3 Relationship of the LASU with Councillors
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- 7.4.7 Warringah Council and the Land and Environment Court

## 7.0 Background

In both the written and oral Submissions property development in Warringah is raised as a recurring theme. The community is divided between those who are against the level of property development (an apparent majority) and those who support growth and development. There are many issues that relate to this theme. These include the scale of development in Warringah, and the extent to which this has been influenced by the State Government's urban consolidation programs. The structure and application of the Council's Local Environment Plan (LEP) gazetted in the year 2000, and the Council's residential development strategy are further issues raised in the Submissions. A very large number of Submissions have pointed to weaknesses that members of the community believe to be embedded in the development application (DA) and approvals processes. There are specific issues raised in the Submissions about the operations of the Local Approvals Service Unit. A large number of the Submissions raise questions about the alleged conflicts of interests for Councillors who play a role in developing and approving the LEP and the residential development strategy, and who make decisions in relation to DAs, and whose main business activities and links are with the property industry. The role of the Land and Environment Court in relation to a number of these issues is also raised in a number of Submissions. Many of the issues raised in relation to property development in Warringah lie behind community concerns about the governance of the Council, and explain the lack of confidence in the elected representatives expressed by some. This Section considers the findings made in relation to these various issues.

- ❖ Section 7.1 considers whether the various State Government policies associated with the urban consolidation program lie behind the community's concerns about levels of development in Warringah. The evidence shows that the levels of development in Warringah are not high when compared to other Sydney Councils, and the levels can only be partially explained by State Government policies.
- ❖ Section 7.2 considers the community's appraisal and understanding of the LEP, and the criticisms that have been made in relation to the LEP. The conclusions reached are that the LEP is a very innovative document and that has caused some confusion in its interpretation. There are many people in the community who understand the document and whose criticisms arise out of that understanding. The community is particularly concerned with the level of discretionary and merit-based decisions in relation to the LEP.



- ❖ Section 7.3 focuses on the DA processes, and examines the large number of complaints that are made about those processes. The complaints cover a wide canvas of issues (interpretation of the Desired Future Character statements, and development controls; drainage and easement problems, notification processes; mediation facilities; communication channels). The evidence suggests that many of the complaints are legitimate. There are also a large number of concerns about compliance issues, and the evidence suggests that the Council does not adequately enforce compliance with conditions of development consents.
- ❖ Section 7.4 considers a number of issues related to the operations of the Local Approvals Service Unit. Amongst these are: the adequacy of the resource base of the unit; the relationship of the operations of the Unit to the elected representatives; the introduction of an independent hearing and assessment panel; the reform of the Unit; and the relationship of the development approvals processes to the fact that some Councillors have close business ties to the property industry. The evidence suggest that the Unit should be reformed and merged into a new structure that would allow the input of a much broader cross-section of the skills base of the staff. The suitability of having people, whose principal livelihood is derived from the property industry, making decisions about DAs is questioned. The conflicts between the advocacy and judicial roles of councillors in respect of DAs are seen to be a source of concern to many people in the community. The policies of the Council in relation to cases that might or should go before the Land and Environment Court is also an area of community mistrust.

## 7.1 State Government Policies And Development In Warringah Council

### 7.1.1 Comparative Growth Rates

#### *Theme:*

A comparison of the growth rates of Warringah with other large Metropolitan Councils in Sydney to understand the level of development pressure on Warringah in recent years.

#### *Findings:*

- ❖ Warringah's relative growth rate in recent years has not been exceptionally large. It ranked 9th out of the 16 largest Councils in Sydney for population growth rates, and 10th for the size of growth between 1996 and 2001.

- ❖ The rise of property prices in Warringah has not been exceptional. In the three years to 2002 Warringah ranked 13th for house price increases (amongst the 16 largest metropolitan Councils), 10th for land price increases, and 7th (with two other Councils) for home unit price increases.
- ❖ In terms of the volume of property transactions in the three years to 2002 Warringah ranked in the middle of the 16 largest Sydney Councils.

## **7.1.2 The Role of the State Government**

### **7.1.3 The Residential Development Strategy**

#### *Theme:*

An examination of whether the levels of development in Warringah in recent years have been a direct product of State Government urban consolidation policies.

#### *Findings:*

- ❖ The State Government has not set specific targets for Warringah's residential development, as several Warringah Councillors assert.
- ❖ Warringah's residential development strategy is still under review, and has been a point of conflict with State authorities.

### **7.1.4 Warringah Council Delegations to the Minister for Planning**

#### *Theme:*

An examination of the efforts of the Council to modify State policies in relation to Warringah Council.

#### *Findings:*

- ❖ The delegations of the Council to the Minister sought to vary aspects of the residential development strategy. The objections to this by the Minister had nothing to do with the level of development in Warringah, but rather the need for a variety of residential types.
- ❖ The postponement of the urban village element of the residential plan has had the consequence of adding to the development pressures on places like Dee Why.
- ❖ The State Government has not unfairly targeted Warringah. Instead the Delegations appear to have been an exercise in blame-shifting for the development levels in Warringah.

### 7.1.5 Transport Issues and the Residential Development Strategy

#### *Theme:*

The concentration of medium density growth around transport nodes is a key aspect of the Sydney urban consolidation program. An assessment as to whether such concentration is applicable to Warringah, and a factor in the large number of complaints about development of the area.

#### *Findings:*

- ❖ Concentration of development around transport nodes has been a primary concern with many people in the Warringah community, promoting many complaints in the Submissions about over-development.
- ❖ There are no real transport nodes within Warringah. Instead development is concentrated around a few shopping centres along the main transport artery.
- ❖ The concentration of development appears to have caused greatly increased congestion and traffic problems on local roads in Warringah.
- ❖ Restricted public transport, and restricted access from Warringah to other parts of Sydney, has exacerbated transport problems associated with concentrated development. Planning NSW has no long-term plans to solve the access and public transport problems.

### 7.1.6 Revision of the Residential Development Strategy

#### *Theme:*

Property development issues have split the Councillors into factions. Development issues are one of the main reasons why parts of the community have lost confidence in the elected representatives. An appraisal is made on whether the revision of the residential strategy can both alleviate community concerns about over-development, and remove the perceptions of a faction-ridden Council.

#### *Findings:*

- ❖ The composition of the committee reviewing the residential development strategy has attempted to dispel the image of factionalism by having a representative group of Councillors. It is too early to judge how well this might work.
- ❖ The revision of the residential strategy began in 2000 and not much progress has been made. There are signs that neither the Councillors nor the community understand that the residential strategy is meant to achieve a variety of housing types in Warringah, as well as accommodating its population growth.

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## 7.2 The Warringah Local Environment Plan (LEP) 2000

### 7.2.1 Community Interest in the Local Environmental Plan (LEP)

*Theme:*

Building an understanding of the community's criticism of the LEP.

*Findings:*

- ❖ There are many criticisms of the LEP made by the community. These criticisms range from highlighting what are believed to be technical problems, through to outright rejection of the instrument.
- ❖ Some Councillors, and some senior staff, believe that many people in the community do not understand the LEP. They believe that the community confuses locality-based planning, as in the 2000 LEP, with zone-based planning, as in the 1985 LEP.

### 7.2.2 The Character of the LEP 2000

*Theme:*

The LEP 2000 is an innovative planning document. The nature of the innovations, and the public's reaction to them, is considered.

*Findings:*

- ❖ The three defining characteristics of the LEP (inclusion of all development controls in one document, integration of controls for localities, and establishing the Desired Future Character of a locality) represent a very different approach to planning compared to the land-use zoning approach. There was input by the community into framing the LEP, and the LEP was developed over a long period of time. There was ample opportunity to communicate the new approach to development controls. It is not clear whether confusion within the community has been created by the novelty of the LEP 2000, or by a failure of the Council to educate the community about the LEP.

- ❖ The LEP 2000 spells out a number of general principles of development control, applicable to every locality in Warringah. In the many Submissions critical of the LEP's application, there are examples of where members of the community believe that the general principles have not been followed. These beliefs underlie a loss of confidence in the transition from the LEP to its application in development approval processes.
- ❖ The LEP 2000 sets out locality development standards, such as housing density, building height, and set backs. There is a strong view, held by many people in the community, that there have been numerous variations of these standards in development approvals. Senior staff deny this. The frequency with which variations in development standards are cited in the Submissions reveals the gulf between the assessment officers (and the elected representatives when they are called on to make decisions about DAs), and the community.
- ❖ The Desired Future Character statements represent one of the most innovative elements of the LEP 2000. The way in which these statements are applied and interpreted has become an area of discontent amongst community members interested in the DA processes.

### 7.2.3 Discretionary Judgements and Merit Factors

#### *Theme:*

Planning authorities at State Government level have encouraged planners to determine DA outcomes more on their merits, rather than base them on a standard check-list of requirements. The Warringah LEP 2000 allows for a good deal of discretionary judgements and merit-based decision-making. Planning NSW have pinpointed a number of dangers that may be encountered if merit-based judgements are not properly made. A review of these issues is made.

#### *Findings:*

- ❖ The Manager of the Local Approvals Service Unit (LASU) at Warringah Council was questioned about discretionary judgements made by the assessment officers. He assured the Inquiry that his officers avoided all the possible dangers set out in the Practice Notes of the State Planning authority regarding discretionary judgements.
- ❖ Many of the departures from the general and local development standards, cited in the Submissions, have resulted from merit-based decisions. Members of the community become confused about where merit-based judgements begin, and where development standards end, in the development approval process.

- ❖ Some of the problems, viewed by community members as resulting from too much discretionary decision-making, may arise from private certifiers not strictly enforcing DA requirements. They may also arise from modifications allowed under Section 96 of the Environmental Planning and Assessment Act 1979.

#### **7.2.4 Community Understanding of the LEP 2000**

##### *Theme:*

An appraisal of whether or not community concerns about departures from development standards in DA judgements result from their lack of understanding of the LEP 2000.

##### *Findings:*

- ❖ The evidence suggests that the innovative nature of the LEP 2000 has made it difficult for some members of the community to understand how certain outcomes can be generated from the LEP.
- ❖ There is also strong evidence that many members of the community do understand the LEP 2000, and that their complaints about its application have validity.

## **7.3 Development Approval Processes**

### **7.3.1 Evidence of Problems**

##### *Theme:*

There are a large number of complaints about the development approval processes, and their outcomes, in the Submissions. The complaints are made about decisions made by the staff, and decisions made by the elected representatives. The former complaints are considered in this Section. The nature of those complaints, and their legitimacy, is examined.

##### *Findings:*

- ❖ The Desired Future Character statements were developed for the LEP 2000 in consultation with the community. In the interpretation of these statements in respect of individual DAs, judgements are made primarily by the Assessment Officers. Since Desired Future Character statements represent 50% of the weight of evidence in a DA approval or refusal, this removes effective community involvement from the most crucial aspect of the decision: interpreting the Desired Future Character statements.

- ❖ The evidence examined suggests that the level of explanation of Assessment Officers concerning their decisions is unsatisfactory from the public's viewpoint. This is especially so in relation to such a subjective thing as the interpretation of a Desired Future Character statement.
- ❖ Problems associated with drainage and easements within the DA assessments are frequently raised in the Submissions. The Inquiry can form no judgement on the legitimacy of the criticisms. What is clear is that there is a good deal of community concern about these issues, and it does not seem to have been handled in a manner that will alleviate the community's concerns.
- ❖ Warringah Council has initiated a mediation facility for assisting applicants and objectors for a DA to determine a solution. It has been a failure. Very few cases go to mediation, and very few people seem to know that mediation is available.
- ❖ In the Submissions there are a number of complaints about the notification procedures related to DAs. The complaints are concerned with interested parties either not being informed about a DA, or, if informed, receiving the information too late. This has bred a degree of scepticism about the transparency of the approval process.
- ❖ Many complainants argue that they have not been able to communicate effectively with assessment officers during a DA assessment. This has clearly bred frustration with the system. If people feel that they cannot reach the decision-makers they experience a sense of disempowerment.

### 7.3.2 Compliance Issues

#### *Theme:*

Compliance with the conditions outlined in the consent for a development is an issue that is of significance to the community. Community confidence in the DA system is shaped as much by what happens after a development is approved, as it is by the process by which a development is assessed. The Inquiry considered the Council's compliance procedures.

#### *Findings:*

- ❖ There are several instances of alleged non-compliance in the Submissions. The Inquiry was not in a position to judge whether or not particular examples given were non-compliant. What does emerge is serious concern in the community about non-compliance, and a loss of credibility in the Council's handling of compliance issues.

- ❖ Constructions have to be certified in terms of compliance with construction standards or DA conditions by either Council or private certifiers. Private certifiers handle nearly all the major residential constructions in Warringah. There is some evidence of less than satisfactory outcomes from this. The Council will accept no responsibility for any problems that arise following private certification of a building. Members of the community have become dissatisfied with the level of non-compliance, and have felt thwarted by their lack of ability to get the Council to address some non-compliance issues.

## 7.4 The Operations Of The Local Approvals Service Unit (LASU)

### 7.4.1 The Unit's Resource Base

### 7.4.2 The Operations of the LASU

#### *Theme:*

The overwhelming majority of development applications are both processed, and approved or refused, by the LASU. The Unit is on the front line of community-Council interactions. The issue considered is whether the Unit is well enough resourced to fulfil its responsibilities effectively.

#### *Findings:*

- ❖ The Inquiry found that, on average, each assessment officer in the LASU would handle around 185 DAs a year. This number is far too high to expect consistent quality outcomes from the Unit.
- ❖ The Unit's Manager stated at the Public Hearings that it had been operating in near crisis mode.
- ❖ As a result, both the mean and median processing times for a DA at Warringah have been well above those for most Councils with a similar population.
- ❖ Warringah Council has shed staff in recent years. The level of staff reductions for the LASU has been lower than in other parts of the Council. Nevertheless the Unit shed staff at a time when the increase in DAs suggest that it should have been expanding its workforce if it were to provide an acceptable level of service. Warringah Council, in its efforts to repair its financial position, has sacrificed service levels for an improvement in its budget position.



- ❖ Evidence from the Public Hearings showed that the Assessment Officers perform their functions without any close scrutiny by their senior officers. This is surprising given the large number of complaints made about the Council’s development application processes and outcomes.
- ❖ The Director of the Strategy Division of the Council (in which the LASU operates) said that the increased pressures on the LASU staff, and the level of complaints, arose from the fact that the community was better informed and better educated about development issues. This is surely a good reason to boost the resources of the LASU if the Council is to gain the confidence of the community in its DA processes.

### 7.4.3 Relationship of the LASU with Councillors

#### *Theme:*

Although most of the decisions on development applications are made by the LASU, the elected representatives determine many of the most controversial applications. The Inquiry considered if the decisions made by the Councillors inspired more or less confidence in the Council’s development approval processes.

#### *Findings:*

- ❖ Councillors vote against the recommendations of the LASU to refuse certain developments frequently enough for such votes to be raised by some Submissions as evidence of a pro-development Council.
- ❖ The Inquiry is not in a position to form a judgement on the merits of such decisions. It is noted, however, that such decisions introduce a second level of flexibility and discretionary judgements into the process. This has added to the community’s problems in understanding how decisions on development applications are reached.
- ❖ There is an impression held by some in the community that at least some decisions are made without considering the merits of a proposal. This criticism is levelled against both the “Majority” group of Councillors, and the “Minority”.

### 7.4.4 Independent Hearing and Assessment Panel (IHAP)

#### *Theme:*

The General Manager and senior Councillors have heralded the introduction of the IHAP as a solution to the problems that have beset the DA processes. The Inquiry considered this development.

### *Findings:*

- ❖ The IHAP will provide an independent and professional judgement on a small proportion of DAs. It cannot be considered a solution to the structural and resource problems that surround the DA processes at Warringah Council.
- ❖ The IHAP will provide an antidote to the public perceptions of bias in Councillors' decision-making in controversial developments. It will raise the political stakes if Councillors choose to vote against the IHAP decisions.
- ❖ Community suspicions of bias in decision-making will not be fully removed by the IHAP. The final decisions still belong to the elected representatives (as they should), and there may be doubts about whether there is any bias in the selection of certain members of the Panel.

## **7.4.5 Reform of the LASU**

### *Theme:*

A review of the operations of the LASU is underway. The extent of this review is examined, and areas not covered by the review are explored.

### *Findings:*

- ❖ There is no evidence that the review of the LASU reflects on the professionalism of its staff. The operational changes arising out of the review will assist a hard-working staff to perform better.
- ❖ The evidence before the Inquiry suggests that part of the problems with DA processes stems from a feeling that the community lacks opportunities to engage constructively with the assessment process.
- ❖ This lack of engagement is particularly obvious in relation to the Desired Future Character statements. There was strong community input by the community in their creation, but no effective engagement with their interpretation in the context of DA assessments.
- ❖ It is virtually impossible for Assessment Officers handling very large numbers of DAs to reflect truly the community's vision for the future character of each of 67 localities in Warringah. There has to be some means devised for engaging the community in a continuous process of assessing whether development trends reflect the community vision for their local area.
- ❖ Because the Desired Future Character statements chart a new approach to planning for NSW Councils, the Assessment Officers themselves cannot be expected to interpret their relevance to DA assessments without community assistance.

- ❖ The evidence from the Inquiry suggests that community discontent with the DA approval system is that it is too narrowly based, perhaps even one-dimensional in the things that are considered. The LASU is isolated within the structure of the Council. Development approvals under the innovative LEP require a comprehensive integration of the skills spread of the professional staff. There is a need to involve environmental management, traffic and transport management, social needs and economic development in the process. Bodies dealing with mediation and compliance should be structurally linked within the same division that handles development applications.

#### **7.4.6 Property Interests and the Elected Representatives**

##### *Theme:*

There is a deep-seated view within the community that the “Majority” Councillors are pro-development. Some of the “Majority” Councillors have business interests in the property industry. A strong connection is made between such business interests and the perceived pro-development stance of the Councillors. There is a further assumption made that Councillors with business interests in property will benefit from the pro-development stance. These perceptions and assumptions underlie the lack of confidence in the elected representatives. These various issues are considered in this Part.

##### *Findings:*

- ❖ The Local Government Act 1993 relies on Sections 442, 443, and 444, which define pecuniary interest, to provide a foundation for handling any issues that might arise when the interests of a Councillor may cross his or her responsibilities as an elected representative. Councillors at Warringah Council appear to have fulfilled all the requirements of declaring interests laid down by the Act. Despite this, some members of the community are concerned about the business links of Councillors and their Council responsibilities, especially concerning development applications. There is evidence that some Councillors have operated on a “nod-and-a wink” kind of system. This involves a Councillor absenting him or herself from a meeting that involves a DA in which he or she declares a pecuniary interest. Other Councillors taking part in the discussion and the vote, however, support the interests of the absent Councillor. The favour is later repaid when one of the other Councillors declares an interest in a DA.

- ❖ The arguments of those critical to Councillors with property interests serving on the Council cover a number of things. It is argued that if development is facilitated by those Councillors, they will benefit because their business base, the property market, expands. The participation of a Councillor in the development or approval of an LEP that might generate more development is another way in which the business base might be expanded. Other arguments point to downstream benefits, removed in time from a particular development approval, that may flow. Examples include a Councillor obtaining the management of a building that which had once been the subject of a development application that he or she had voted on. A similar example is a Councillor with an interest in a building company getting the construction contract for a development that he or she had helped approve. The purchase of options on properties, and the use of proxies for property purchases or developments, can be used to involve Councillors in property transactions without anybody actually knowing that they are involved. The alleged sale of Council land on terms favourable to the purchasers, and approved by the elected representatives, is another example of community perceptions of problems that occur when there are links of the Councillors with the property industry.
- ❖ There was only limited evidence that such things might be occurring at Warringah Council. The Inquiry had neither the means nor the intention to pursue such matters. What is critical, however, is the strong perception within the community that there is a necessary conflict of interest when Councillors with business interests in property sit on Council. This is partly because under the Act, elected representatives are free to act as both advocates or objectors to a development application, and also to sit in judgement determining the outcome of the application. It is a weakness in the Act that there is no separation of powers between the advocacy and judicial roles of the elected representatives. If the elected representatives also make a living from their property market interests the problem of conflicts of interest are greatly magnified. Recognition of the potential for such conflicts of interest is strong within the community. It is a deep and serious problem for the credibility of Local Government generally, and not just in Warringah. The only way in which such problems of conflicts of interest can be removed is by not allowing people with strong individual or family or company interest in the property industry to stand for election.
- ❖ Even if persons with business links to the property industry were excluded from holding office, the problems of Councillors being both advocates and judges remains. The solution lies in reducing the advocacy role. Councillors should not influence the professional officers in any way prior to their report coming before a Council meeting.

- ❖ A further safeguard against Councillor-staff relationships interfering with the independent assessment of DAs is the limitation of an elected person's time on Council to a maximum of two terms. This limitation would not be feasible outside the metropolitan area and large provincial centres.
- ❖ The election of the Mayor by Councillors once a year produces a set of obligations between the Councillors that may manifest themselves in voting patterns on DAs. Popularly elected Mayors, who would serve out a full term, removes this situation.

#### 7.4.7 Warringah Council and the Land and Environment Court

##### *Theme:*

An examination of the use of the Land and Environment Court by Warringah Council.

##### *Findings:*

- ❖ Warringah Council's levels of expenditure on legal expenses related to planning and development applications are amongst the highest for Councils in New South Wales.
- ❖ A number of applicants for development approvals claim that the Council has forced them into the Land and Environment Court. Some people argue that this is the result of Council ineptitude. Others claim that they simply cannot understand why they have had to go to Court. The evidence is not such that the Inquiry can form an opinion as to whether the triggers for frequent use of the Court come from the Council or the applicants.
- ❖ There have been criticisms of the presentation of some cases put to the Court by the Council.
- ❖ There is evidence that the Council has not always followed through in ensuring that developments comply with conditions set down by the Court.
- ❖ There is evidence that the Council has approved certain developments because they believed that they could not win them in the Court. This has attracted criticisms from some community members that poor decisions are made because the Council is unwilling to take issues to the Court.



## Recommendations

### 1. Ensuring Efficient and Effective Governance of Warringah Council

*Recommendation: That all civic offices in relation to Council be declared vacant so as to ensure that an appropriate structure can be put in place to provide optimum community leadership*

#### **Background to recommendation:**

- ◆ The elected representatives have lost the confidence and support of the majority of the community as to their capability to fulfil the charter, provisions and intent of the Local Government Act 1993 and otherwise fulfil its statutory functions.
- ◆ The divisions within the Elected Body are so deep, long-standing, acrimonious and personal that no hope can be offered of a beneficial transformation in their attitudes and behaviour.
- ◆ The Elected Body has persistently demonstrated its lack of ability to make fair and consistent decisions.
- ◆ The conduct of the Elected Body at Council Meetings has been such that the public respect for their civic offices has been severely damaged.
- ◆ The conduct of the elected representatives, both within the Council Chamber and in situations outside of the Chamber, has repeatedly exhibited a lack of respect for members of the community that borders on disdain.
- ◆ The conduct of elected representatives towards members of the Council staff has exhibited a level of arrogance and intrusion that ignores the Statutes determining the separation of powers between the Elected Body and the Corporate Body in the Act.
- ◆ Some elected representatives have adopted belligerent and bullying attitudes towards other elected representatives, staff, and members of the public. They have sought to intimidate their opposition. This has resulted in a climate of fear that can only be dispersed by the removal of those responsible for such reprehensible behaviour.

- ◆ When such attitudes have been translated into the decision-making forums of Council, meetings have descended into a sorry farce. Some elected representatives excuse this behaviour by reference to Parliaments. In so doing, they display their lack of understanding of the purpose and functioning of the Assemblies of higher levels of Government, and the expectations of the community.
- ◆ It is apparent from their Submissions, and from appearances at the Public Hearings, that some elected representatives have neither the capacity nor the desire to modify their attitudes or behaviour.

## 2. Developing a Program of Reform

*Recommendation: That an Administrator be appointed in place of the Elected Body for a period of two years.*

### **Background to recommendation:**

- ◆ The weaknesses of the system of governance at Warringah Council are so great that it requires an independent and professional person from outside the Council to oversee the process of reform.
- ◆ The weaknesses of governance have existed for many years. They have become so manifest in the current term of the Council that restoration of public confidence can only be made by handing the task of reform to a person not tainted by the recent past history of the Council.
- ◆ The time period needed to put the reforms in place is at least two years. Reforms have to be created and applied, and they will extend over a broad spectrum of the Council's activities. Two years is a minimum period if the reforms are to be effective.



### 3. Instituting Changes to the Electoral Process

*Recommendation: That the Ward system be abolished; that Mayors be popularly elected; and that an elected representative be restricted to a maximum of two terms in office.*

#### **Background to recommendation:**

- ◆ In decision-making forums, elected representatives have acted as representatives of a Ward, rather than as representatives of the whole Council.
- ◆ There are fundamental problems associated with the system whereby the Elected Body elects Mayors. It encourages factionalism. It encourages cronyism. It encourages deals that create obligations between Councillors. It can lead to decisions being made based on considerations other than the merits of an issue. It distracts Councillors from concentrating on their principal responsibilities to the community. A single year is too short a time for effective programs to be put in place.
- ◆ Elected representatives who serve on Councils for long periods often become set in their views, and are frequently ill-placed to understand, and respond to, changing community expectations. The roles of Councils are rapidly changing, and the elected representatives have to be capable of responding to new challenges. Long-serving Councillors are often opposed to change; some Warringah Councillors, a decade after the 1993 Local Government Act, was introduced, do not seem to understand its intent and operations, and are actively opposed to the requirements it has placed on the Council. Some Councillors also struggle to understand changing community priorities, and do not know how to deal with them, except to oppose them. More significantly, elected representatives serving over long periods may develop close associations with staff or sections of the community that can lead to casual or improper interpretations of what their duties are. Community confidence in the transparency and accountability of the actions of elected representatives often diminish when long-serving Councillors, with the attributes described above, appear to dominate the affairs of Council.

#### 4. Changes to Operational Systems of Council

*Recommendation: That a review be made of the functions performed by the Elected Body with a view to creating better governance*

##### **Background to recommendation:**

- ◆ Councillors are expected to be knowledgeable about a huge range of topics related to the operations of the Council. The expectation that an individual Councillor can capture sufficient knowledge to make considered decisions over such a large field of issues is unrealistic. A shift to a portfolio style of governance wherein each Councillor becomes expert in one, or a limited number, of issues, and then develops policy around such issues, is preferable.
- ◆ Although the separation of powers between the Elected Body and the Corporate Body are well laid out in the Act, they have become fuzzy in their application in Warringah. Reforms are needed that will exclude the future possibility of the kinds of transgressions that have taken place at Warringah.

#### 5. Enforcement of the Code of Conduct

*Recommendation: That the Code of Conduct be enforced, and that sanctions be applied for breaches of the Code of Conduct.*

##### **Background to recommendation:**

- ◆ Repeated revisions of the Code of Conduct during the term of the present Council has not led to any improvement in the conduct of the Elected Body.
- ◆ Many Councillors do not understand the Code, believing that by fulfilling their obligations under the Code of Meeting Practice they have given sufficient attention to Codes.
- ◆ The Code of Conduct lays down the template by which the public may understand what to expect of Councillors and staff. It is a very public guide to the way in which Councillors should behave. It has been continually ignored and flouted by Councillors at Warringah.

- ◆ Until and unless Councillors abide by the Code, and until and unless sanctions are applied for breaches of the Code, public confidence in, and respect for, office holders will stay at a low level.

**Recommended Actions:**

- Emphasise in Section 440 of the Act that the Code of Conduct is an overriding code which affects all dealings by councillors, members of staff and delegates
- Amend Section 440 of the Act to mandate that councillors, members of staff and delegates comply with the Code of Conduct, upon the basis that a breach of the Code constitutes a breach of the Act
- Provide a statutory penalty scheme for breaches of the Code of Conduct, or for the failure of the Mayor or the Public Officer to enforce the Code
- Provide an independent scrutiny of allegations of breaches of the Code of Conduct

## 6. Giving Clarity and Effect to the Code of Meeting Practice

*Recommendation: That the problems that abounded in Warringah Council in relation to Council meetings be addressed by changes to Section 360 of the Act.*

**Background to Recommendation:**

- ◆ A major reason for the community's lack of confidence in the Elected Body has been caused by the conduct of the elected representatives in Council meetings.
- ◆ The Council has proposed a series of reforms to address the problems identified with Council meetings. A more satisfactory approach would involve strengthening the Sections of the Act that refer to meetings.

**Recommended Action:**

- Amend Section 360 of the Act to require that councils both adopt and give effect to a Code of Meeting Practice
- Provide independent scrutiny of allegations of breaches of the Code of Meeting Practice

- Provide a statutory penalty scheme for breaches of the Code of Meeting Practice, or for the failure of the Mayor to enforce the Code
- Ensure, that within the Code, adequate provision is made for the public to participate in meetings

## 7. Elimination of Conflicts of Interest

*Recommendation: That the Local Government Act be strengthened to recognise conflicts of interest, and create means of managing conflicts of interests of Councillors. That, in association, candidates for office whose main business interests lie within the property industry be declared ineligible to stand.*

### **Background to recommendation:**

- ◆ The main reason for a lack of confidence in the operations of Warringah Council concern its management of property-related issues. There is a strong level of community distrust of the impartiality of decision-making in respect of such issues. This principally derives from the fact that the main business interests of some long-serving Councillors are in the property industry.
- ◆ The most critical decisions affecting the character and amenity of the area are related to property issues. When Councillors with strong business connections with the property industry participate in making such decisions, serious doubts are held within the community as to their impartiality.
- ◆ The Pecuniary Interest stipulations of the Act do not go far enough to assuage the fears and suspicions of the public. Pecuniary Interest declarations may lead a Councillor to absent him or herself from making decisions in reference to a single development. When the Councillor belongs to a controlling faction that supports development in general, and when some of the Councillor's colleagues are active in the property industry, the outcome is generally predictable. An individual's abstention from voting becomes immaterial. Pecuniary Interest declarations in relation to development applications (DAs) only affect individual DAs. Public concern is directed against the cumulative effects over a period of time.

- ◆ Pecuniary Interest declarations cannot cover the range of possibilities open to Councillors with property interests. The use of options and proxies allow Councillors to operate in the industry without any public recognition of their activities. They do not appear on the Pecuniary Interest register. Councillors with no direct Pecuniary Interest in a development application (DA), may vote on it, and then may receive downstream benefits, ranging from direct benefits, such as obtaining the management or building rights of the property, to indirect benefits resulting from the general increase in values of properties or the expansion of the industry.

**Recommended Actions:**

- Strengthen the Pecuniary Interest Provisions of the Act, by:
  - (i) amending the definition of “relative” in the dictionary to the Act to include “cousin”.
  - (ii) introducing a new Section preventing Councillors, members of staff and delegates from entering into any contract or arrangement providing a direct or indirect financial gain to the person or to a party defined in Section 443, within the currency of development approval, or any amendment thereof.
  - (iii) Amending Section 444 to require a Councillor, member of staff or delegate entering into any option or of the acquisition of any other interest in land, to immediately disclose this.
  - (iv) Amending Section 449 to require that persons required to lodge such returns immediately notify such amendments and lodge a statement of amendments within 14 days of the date that an interest was acquired or divested and that the regulations make provision for such returns.
  - (v) Providing a statutory definition of “conflict of interest” and amending Section 451 to mandate disclosure of such interests.
  - (vi) Requiring that Councils prepare and maintain a list of the conflicts of interest disclosed by Councillors, members of staff and delegates, which shall be available for public inspection.
- Having Councillors whose primary business interests lie in the property industry declare a conflict of interest on any Council issue related to property would restore public confidence. These issues would extend from their participation in approving Local Environment Plan (LEP) changes, or the sale of Council property, through to development consents. They would not be allowed to take any part in the decision-making related to such issues.

- These restrictions would bar such Councillors from taking part in some of the most critical facets of the Council’s operations. They would then not really be representing their constituents. The better solution, to this very real problem, is to exclude persons whose primary business is connected to the property industry from standing for office.
- There is a further problem related to development application decisions that affects all Councillors. That is the fact that in relation to development applications every Councillor may act as an advocate for or against an application, and then act as a “judge” in voting for or against the application. The solution to this problem lies in curtailing the advocacy roles of Councillors.

## 8. Restoration of Public Confidence

*Recommendation: That in the reform of the operational aspects of the Council’s functioning, a central importance be given to putting into effect better ways of involving the public in the operations of Council.*

### **Background to recommendation:**

- ◆ Despite the many consultative committees in Warringah there is a strong belief, held by many in the community, that the general public is not effectively engaged in the operations of the Council. Simply put, many people believe that they are alienated from the workings of the Council, and that they do not have a voice in the processes of the Council.
- ◆ Public participation in the affairs of Council must be a high priority in any reform. Such participation must be removed from undue influence of the Elected Body.
- ◆ Vital to the engaging of the community is the development of a complaints handling and management system that provides probity, parity, and equity for complainants.
- ◆ The Code of Conduct must be put into practice in the day-to-day dealings of both the Elected and Corporate Bodies with the public.

**Recommended Action:**

- That Council adopts policies setting out the manner in which complaints are handled and that Council adopt such procedures which will allow the Council to track and report on complaints.
- That Council publishes in its annual report a schedule enumerating the number of complaints which have been received in the last year, their nature, the time and manner in which they were dealt with, whether complaints have been referred on to other investigatory bodies or agencies and the extent to which complaints have required further investigation and whether in consequence of complaints received, the Council has seen fit to amend its processes.

**9. Reforming Community Consultative Committees**

*Recommendations: Revision of the constitutions of Community Consultative Committees*

**Background to recommendation:**

- ◆ Despite the large number of community consultative committees in Warringah, there has been something of a breakdown in communications between the Council and the community.
- ◆ The constitutions of the committees need to be reformed to ensure that they are playing a positive role in encouraging effective public participation in the affairs of Council. The critical thing is not the number of committees, but their effectiveness.
- ◆ The terms of appointments to committees must be better spelt out to give people some assurance about their tenure on the committee. Generally committees ought to run for the term of the Council.
- ◆ The process of selection of members of the community to committees must be fair and transparent, and be insulated from any form of political patronage or interference.
- ◆ Committees must be able to report publicly, and independently.
- ◆ Committees must keep accurate and reliable Minutes concerning their deliberations.

- ◆ Committees must have free and unfettered access to Council information relevant to their tasks.
- ◆ The Council must strive to use the energies of the community. Too much of the recent history of Warringah Council has been sullied by open and vitriolic disputes between the Council and community groups. The Us and Them mentality must be replaced by an Us, inclusive of various points of view.

**Recommended Action:**

- That Council Community Advisory Committees be enshrined in the Act, by inserting a new Section after Section 373 of the Act.
- That the committees be expressly empowered to provide advice and recommendations to, and, if so empowered, to exercise functions on behalf of, Councils.
- That the Section provide for public participation in Council committees, requiring that Councils adopt appropriate constitutions detailing:
  - Their functions and roles
  - The conduct of their proceedings
  - The number of and manner of selection of members
  - The term for which the members are appointed
  - The circumstances in which members may be removed
  - The voting rights, and
  - Such other matters as will give clarity to their conduct
- That, as these committees are intended to provide expert advice on behalf of the community, the Section recognise and permit members of such committees to have conflicts of interests, provided that such conflicts are disclosed, either in accordance with Section 449 or Section 451 of the Act, provided further that such members not personally benefit from such involvement. In order to ensure this, appropriate provisions, mirroring the Pecuniary Interest provisions be contained in the section.
- The Act make express provision for such information, as may be reasonably be required by the committees to be provided to the committees. That the Act makes express provision for confidentiality where appropriate.



## 10. Plans of Management

*Recommendation: Council must reform its Plans of Management processes in relation to community land.*

### **Background to recommendation:**

- ◆ The title community land implies that it is land set aside for community purposes. Under the Act the Council must prepare a plan of management for such land. It is obvious that such plans should meet with the broad approval of the community, and that the community should play a central role in devising the plans. Some Plans of Management in Warringah have become virtual battlegrounds pitting sections of the community against other sections, with a good deal of political interference, and evidence at times of pliant subjection of staff to the political will.
- ◆ The consultation processes between the Council and the community have to be more open, more extensive, less threatening and more inclusive than has been the case.
- ◆ If any changes are proposed to be made to a Plan of Management, before the Plan is due to be reviewed, the processes of consultation connected with a review must be as broad as those used in developing the Plan.
- ◆ No amendments to the Plan should take place through the day-to-day responsibilities of Council in managing the Plan. There should be no sense of adaptation by stealth.
- ◆ The community has to be able to trust the Council to give effect to a Plan of Management.

## 11. Council-State Relationships

*Recommendations: Council should develop its policy and operational programs so that it can establish a harmonious working relationship with the State Government and its Agencies.*

### **Background to recommendations:**

- ◆ Throughout the troubled years of the life of this Council, the Elected Body has persistently blamed the State, rather than its own actions, for outcomes that have been unpopular with the community.
- ◆ The major example of this blame-shifting has occurred with the issues of development and over-development. Whatever the merits or demerits of State policies, like the urban consolidation policy, they apply to every Council in Sydney. Rather than address the weaknesses in its own management of development issues, the Council has simply sought to steer community concerns in other directions. Warringah has been in no better and no worse position in relation to the State than any other Council. It has, nonetheless, managed to generate an atmosphere of persecution.
- ◆ A further example of blame-passing are the complaints made by the Council that the Department of Local Government failed to tell the Council about the nature of the complaints that it had received about the Council. Such complaints were largely sent to the Department because the Council had failed to establish any complaints management system of its own, and were confidential.
- ◆ The 1993 Local Government Act aimed to give Councils a great deal of autonomy in their operations. The Council should work from the basis of that autonomy to develop effective working relationships with State agencies to ensure that community priorities are respected, and beneficial outcomes are achieved.

## 12. Alternative Solutions to Warringah's Problems

*Recommendation: That consideration may be given to adjusting the boundaries or operational relationships of Warringah Council to other Councils.*

### **Background to recommendation:**

- ◆ The focus of the Public Inquiry has been on various aspects of the governance of the Council. Issues, such as the merging of the Council with other Councils, were not pursued in the Inquiry.
- ◆ During the Inquiry, and beyond the Inquiry, a Mayor, a former Mayor, and members of the State Parliament spoke in favour of the complete or partial merger of Warringah with other Councils, or an operational link with other Councils.
- ◆ No judgement on the merits of these proposals is made here. Because there is now a more general climate encouraging reform of Councils, including mergers, it is apposite to suggest that in considering the future of Warringah governance reforms within the Council, they should also be appraised in relation to changes in the system beyond the Council.
- ◆ If nothing else, the history of the Council in recent decades (with the Council having been dismissed on two occasions) suggests that alternative structures might at least be explored.

### 13. Taming the Development Bogey

*Recommendation: That an urgent priority be given to creating a management system for the development of the Warringah area that is more in harmony with the wishes of the community.*

#### **Background to recommendation:**

- ◆ Development, its type, its character, its density, its location, underlies almost all the discontent of the community with the Council.
- ◆ The bellicose attitudes and actions of some Councillors, and the lack of communication between the Elected Body and the mass of the community, have made a difficult task (organising growth in a manner that optimised community amenity and minimised community dissatisfaction) an almost impossible one.
- ◆ The LEP would not have to be changed in the process of remedying the past, but the strong inclusion of the community in the application of the desired future character aspects of the LEP.
- ◆ The community must be able to understand the where and why of employing merit-based judgements as against upholding development standards.
- ◆ A range of community concerns has to be addressed more effectively. These include a variety of environmental issues (from preservation of the natural environment to questions of drainage), mediation, notification, and compliance.
- ◆ Council should endeavour to replace Private Certifiers in approving large constructions, and should consider ways of ensuring that members of the community are not harmed when Private Certifiers accredit buildings that do not conform.

## 14. Reforming the Development Approval Process

*Recommendation: Disband the Local Approvals Service Unit to create a larger and more flexible body armed with better resources and a broader range of professional skills.*

### **Background to recommendation:**

- ◆ The Local Approvals Service Unit (LASU) is understaffed and under-resourced. This is a ludicrous situation given the centrality of property issues in the concerns of the community.
- ◆ The staff of the LASU have faced an almost impossible task. They have been trained in the rather legalistic and one-dimensional zonation approach to planning, used in most Councils, and now have to administer an LEP that is based on the flexible, place-management approach.
- ◆ The Submission of some DAs to the Elected Body for approval introduced a second level of flexibility into the process, and caused a great deal of confusion and uncertainty in the community.
- ◆ To fulfil the ambitions of the LEP a more comprehensive set of skills is needed beyond those of traditional town planners. In addition to the planners the new unit should include people with skills in such areas as environmental management, transport and traffic management, social planning, and economic development.
- ◆ The new Unit should institute a process of continuous and constructive engagement with the community, particularly in relation to the interpretation of Desired Future Character Locality statements.
- ◆ Emphasis should not be focussed solely on individual DAs, but due respect should be given to the cumulative effects of many DA approvals in a Locality.
- ◆ The new Unit must be able to explain their decisions. Much of the anger and frustration in the community about property outcomes results from incomplete explanations of the decisions.
- ◆ Too much emphasis has been placed on the introduction of the Independent Hearing and Appeals Panel. This is a very good initiative, but its scope is limited, and it will certainly not solve the fundamental problems that exist with the LASU.

## 15. Reform of the Administrative System

*Recommendation: That a more transparent and more flexible administrative system be created; one that clearly defines roles and responsibilities in a way that is understood by the community, and that is accessible to the community.*

### **Background to recommendation:**

- ◆ The current administrative structure is somewhat opaque, and it is difficult for people outside the organisation to understand what the various units and sections actually do, and who is responsible for what.
- ◆ The present structure compartmentalises responsibilities in a way that makes decision-making too restrictive in scope.
- ◆ Senior staff appear not to audit the operations of the junior staff as effectively as they might.
- ◆ There is far too much interaction between the Elected Body and the staff in the conduct of their responsibilities. Staff should not take sides with any group within the Elected Body.
- ◆ The salary and conditions of Senior Staff should be revealed to the community regularly, and the terms of new contracts should be placed in the public domain (such as being recorded in the Annual Report and in the local newspapers).
- ◆ Protected Disclosure processes should be overhauled with an aim of ensuring complete protection, fairness, and anonymity to staff.
- ◆ The practice of having staff sign Settlement Agreements when leaving the employment of the Council should be reviewed.
- ◆ The conduct of the staff towards members of the public should be closely monitored, and any indiscretions or lack of professionalism by staff should be acted upon.
- ◆ Clear and unambiguous processes should be put in place to determine the circumstances under which the Council would enter into legal proceedings with members of the community. Such processes should be clearly conveyed to the general public.

## 16. Providing Access to Council Information Systems

*Recommendation: That the Council amend its practices to ensure that the community has effective access to information.*

### **Background to Recommendations:**

- ◆ The evidence provided to the Inquiry shows numerous instances of the failure of the Council to provide timely access to information required by individuals and groups within the community.
- ◆ There is a need for Council to review its practices to ensure that it is following the prescriptions of Section 12 of the Act.
- ◆ The Council should adopt and publish a schedule of charges made for making copies of documents available, and in so doing make them available at the lowest possible cost.

### **Recommended Action:**

- That the Act be amended to make clear its relationship with the Privacy and Personal Information Protection Act.
- That the Act be amended to make clear that information be made available under the Act in priority to the rights under any other Act, and that councils display and make information available outlining the rights to, and the procedures for, access to information held by Councils.