

SECTION

EVIDENCE

6

## The Conduct of the Elected Representatives of Warringah Council

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## 6.1 Interest Groups and Council's Advisory Committees

### 6.1.1 Issues Raised by the Community

6.1.1.1 This Section explores concerns raised in Submissions that focus on a range of what might be called place issues. These relate to concerns raised in various localities across Warringah; primarily, these concerns revolve around development matters, environmental management, and issues to do with transport and traffic. In turn, these particular problems enlarge into a more general focus on the Council's dealings with committees and interest groups.

The remarkable thing, revealed by the Submissions, is the number of interest groups that have been formed in Warringah. Each interest group has grown out of community concerns expressed by local residents about a variety of local matters. There appears to be no organisational connection between the groups. Although there might be some similarity in the broad themes that they raise, each set of problems is unique to each locality. The interest groups add up to a strong community vote of no confidence in the ways in which various aspects of Warringah's land use are being managed. They indicate a huge amount of dissatisfaction at the local level. The following list shows the suburban localities where the main community interest groups have been formed. They cover a large part of the territory of Warringah.

Community interest groups:

- Brookvale
- Manly Vale
- Dee Why
- Narrabeen
- Belrose
- Collaroy
- Killarney Heights
- North Curl Curl
- Harbord
- Terrey Hills
- Queenscliff

The intent of this Section is to draw together and review concerns affecting Council Committees, Public Interest Groups and those affecting particular places. There is no attempt to deal with all of the issues in each of the places. Rather, the focus is on a few major disputes between residents and the Council, illustrating the kinds of interactions that have taken place.

6.1.1.2 Despite the adoption of a Plan of Management for John Fisher Park and the Abbott Road Playing Fields, over a year before the Inquiry was convened, matters affecting this park remained a principal point of focus for the constituents of Warringah. This is evidenced by the number of Submissions received by the Inquiry making reference to concerns over matters relating to the park.

The park also serves as a useful example to highlight and to consider facets that, directly relate to it, or which bear concerns similar to or which stem from it.

It is accordingly important to emphasise that the park whilst a major facet, is not the sole focus of this Section.

6.1.1.3 Linked to the Submissions raising concerns over the park, were concerns over the application of funds raised from the Sports Field Rectification Levy. These concerns affected works carried out on John Fisher Park or the adjoining Abbott Road playing fields, as well as other works, that were undertaken by the Council on other playing fields within the Council area.

6.1.1.4 John Fisher Park is one of the reserves categorised as “community land” by the Council. The Council is required to, and has adopted Plans of Management governing management of such reserves.

6.1.1.5 Some of the concerns which were raised over John Fisher Park, were also raised over the management of Brookvale Park under its Plan of Management. In view of the obvious link it is appropriate to also deal with these concerns in this Section.

6.1.1.6 The concerns which have been highlighted, raise issues over the manner in which members of committees, and residents and other groups, have been dealt with by the elected and corporate bodies.

Whilst this introduction has so far referred to ‘concerns’ being raised, it should be stated that a minority of residents groups, particularly the Belrose Open Space Community Association lauded the efforts of the Councillor and the staff.

6.1.1.7 The involvement of groups such as those referred to in this Section, should be seen as beneficial to a Council that sees itself as:

- valuing community participation in decision making<sup>1</sup>
- welcoming the opinion of all
- conducting its dealing in an atmosphere of mutual respect

And, as expressed in Council's Submission to the Inquiry, No.288,

- providing an opportunity for members of the public and users/special interest groups to assist Council in managing the facilities or providing services that meet community needs and expectations.

6.1.1.8 Regrettably, the matters which are attended to in this Chapter do not reflect favourably in terms of the Council following the principles referred to above, and when considered as a whole, reflect adversely upon the Government both the Elected Body and the Corporate Body.

To the extent that they bear adversely on the Corporate Body, they instance the need for the Corporate Body to take steps, which will restore public confidence in this body.

To the extent that they reflect adversely on the Elected Body or on some or all of the Councillors making up this body, they are matters which should be borne in mind when viewing the actions of this body as a whole, and in considering what actions might be appropriate when responding to the totality of matters contained in this Report.

6.1.1.9 Other than those issues affecting John Fisher Park, and the application for the Sports Field Rectification Levy, the matters raised in this part have principally been raised by community groups or by former members of these groups.

Because of the individual importance of some of the matters which have been raised, the issues associated with the particular places or the particular committee are dealt with separately. These issues comprise:

- John Fisher Park
- Brookvale Park
- The Sports Field Rectification Committee
- The Sporting Union

Other matters affecting committees, bear hallmarks, demonstrating certain common traits in the manner in which members have been treated by Councillors and staff, the information made available to committees and the quality of minute-keeping and recording.

<sup>1</sup> Council's vision statement

## 6.1.2 Public Participation

6.1.2.1 This Report has referred to the emphasis, which the Act places on public participation in the exercise of the Council's functions.

Such public participation may be directly referred to, as is done in Section 4, which deals with Open Meetings and Access to Information, or less directly, as in Section 5 which embodies the Council's Charter.

Council is constrained to provide services and facilities, "*after due consultation*".

Similarly, the Council is required to facilitate the involvement of members of the public in the "*development, improvement and co-ordination of local government*."

6.1.2.2 The Act, in Section 355 anticipates that functions of Council may be exercised by Committees, it provides:

### Local Government Act 1993 – Section 335

#### 355 How does a council exercise its functions?

(b) by a committee of the council

Whilst there are certain exemptions and restrictions, principally to be found in latter part of 377 and 379 of The Act, Councils have a general power to delegate in Section 377 in the following terms:

### Local Government Act 1993 – Section 377

(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council

Section 379 of the Act restricts the powers to delegate regulatory functions. It is not necessary to consider such matters in this Part and reference is only made for completeness.

Accordingly, the Act gives specific powers to delegate functions and, in turn, anticipates that Councils will give effect to such powers.

6.1.2.3 In Submission 288 the Council refers to, and lists, the committees it has established.

It lists 42 committees. Of these 13 could not be regarded as "community" Committees as they do not provide for community members to be represented on the Committee.

Whilst some Committees, such as the Aboriginal Land Working Group have status as advisory committees, there are others to whom powers have been delegated. Such Committees include:

- Abbott Road Land Steering Committee
- Sportsfield Rectification Advisory Committee
- Environmental & Stormwater Management Committee

It will be seen that the functions of the committees may have real and direct consequences, whereas others may be properly seen as providing guidance to the Council.

Where Committees exercise powers, and are not merely making recommendations, their conduct must attract the probity that should attach to the functions exercised by the Corporate Body.

6.1.2.4 A review of Submission 288 indicates that many of the Committees consist of a number of community representatives. Certain other Committees draw from groups who may be users of the facility or who have particular expertise which will assist the functioning of the Committee.

In so doing, the Council is emphasising the public's participation in its processes. Likewise, it is giving effect to its Charter.

For Committees to work effectively they must continue to draw upon members of the public who are willing to make the contribution which membership entails. Precise numbers of people who makeup these committees can not be given as certain committees do not have a fixed number of community members.

6.2.4.2 Certain Committees meet on a regular basis, whilst meet as often as they determine or as is required.

It is therefore imperative that committee members perceive their involvement as valuable.

Submission 288 makes clear that many of its constituents are willing to give up their time to contribute to Council's Committees. Council should foster and promote this willingness.

6.1.2.5 Despite this, the Inquiry received a number of Submissions, which raised concerns over the conduct of Councillors and the relationships between Committee members and staff.

The Submissions ventilated the concerns which may be broadly classified in the following manner:

- Appointment and tenure of the members of Committees
- Governance issues
- Relationships between community representatives and the Councillors and staff

It is appropriate to explore these matters in greater detail.

6.1.2.6 The Council attaches a précis of each of the 42 committees to its Submissions. It indicates that a great number of the Committees are established for the term of the elected body. Accordingly, members are appointed from one election to the next.

By comparison, the Brookvale Reserve Committee, is expressed to be only appointed for an annual period.

It was surprising, having regard to Council's Submission, that a number of Submissions referred to the removal of members of committees within the term of the elected body. Such removal coincided with the annual Mayoral election.

Submission 141 refers to its author's involvement in the Warringah Heritage Committee. The Committee is not listed as one of the 42 Committees referred to in Submission 288, and accordingly there can be some doubt regarding the term of the appointment of the committee members.

The author of Submission 141 clearly saw that his involvement would be beneficial to the committee, attaching a letter dated September 15 2001, demonstrating his commitment to and his positive input into the future deliberations of the Committee.

The letter clearly anticipated that he would have a continuing involvement in this Committee. To his surprise he was removed, and in a summary fashion.



The letter and Mr. Thyer's commentary is set out below:

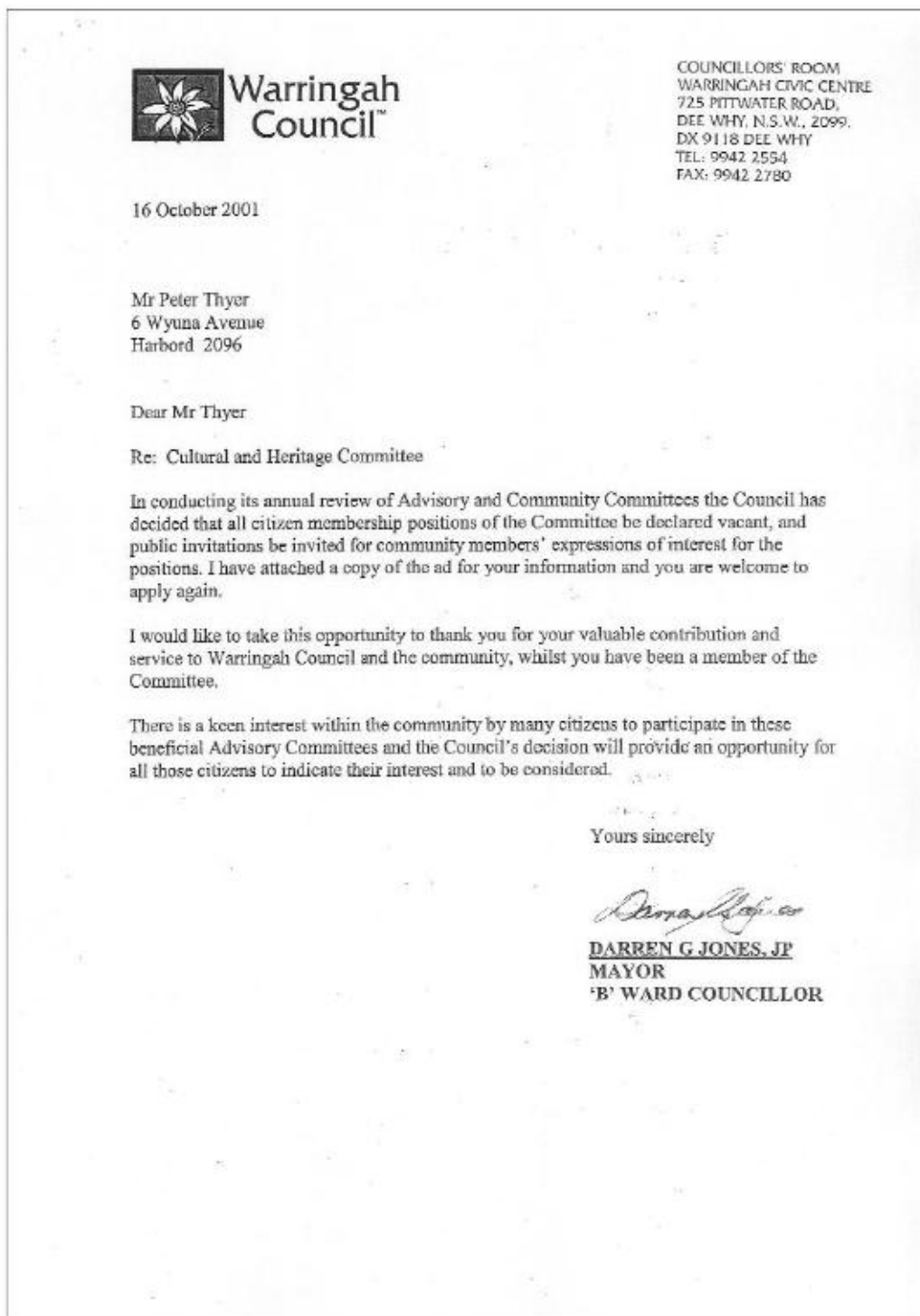
### **Submission 141**

#### **1. Warringah Heritage Committee**

I was appointed as a community member of the Warringah Heritage Committee (sometime in the year 2000 I think) after responding to Council's invitation in the Manly Daily. I believe that my input to that committee was informed, useful and pro-active, and that my attendance was good. I sent a letter dated 15<sup>th</sup> September 2001 with some suggestions re the committee papers and a proposal to hold a 'Beginning of the Century' photographic competition to identify heritage items in the Warringah area, to the committee co-ordinator (letter attached 1).

I did not receive a reply to that letter, but did receive a letter from the newly elected Mayor, Darren Jones, dated 16 October 2001 (letter attached 2) advising that all citizen membership positions of the Cultural and Heritage Committee (name had previously been changed) had been declared vacant. This was well short of the period for which I was appointed to the committee. I was invited to re-apply in that letter, but would have had to submit an entirely new application. My opinion is that the new Mayor took the opportunity to install committee members that may be more sympathetic to his ideas for Warringah. It should be noted that one of the roles of the Heritage Committee was to review and recommend items for the Heritage Schedule of the Warringah LEP.

**Submission 141 – Council Letter dated October 16 2001**



This was not the only instance where members of Committees were summarily removed.

Mr. Dunphy, the author of Submission 238, who wrote of the manner in which community representatives on all committees were declared vacant.

This course of action appears to be extraordinary. Certainly many of the representatives who were removed saw this as a slap in the face.

The response provided by the Council appears to be inadequate.

On one hand the Council in Submission 288, advises the term of membership of Committees (except Brookvale Park) as being for the term of the elected body.

It is assumed that good governance would dictate that this was enshrined in the constitution of such committees.

6.1.2.7

On the other hand the Council, in Briefing Paper No. 36 (Volume 3, Appendix 2) indicates that the representation and composition of advisory Committees has generally been reviewed annually, with regard to the Mayoral and Deputy Mayoral elections.

The Council reproduces its resolution passed on October 9 2001.

**Briefing Paper No. 36**

1. *That the report on the Council's Advisory Committees, Joint Committees and appointment of Delegates to Community Committees and Organisations be noted.*
2. *That the following committees be abolished as they are no longer required:*
  - *Cultural Advisory Committee*
  - *Waste Management Committee and*
  - *Northern Sydney Regional Waste Board – no delegate be appointed as the Waste Boards have been abolished.*
3. *That the Cultural Advisory Committee be incorporated with the Heritage Committee to become the Cultural and Heritage Committee.*
4. *That the Charters for each Committee including composition, contained in the Booklet attached be confirmed.*
5. *That the appointment of Councillor representatives/delegates to each Committee be dealt with individually.*
6. *That public nominations be invited, for consideration by the Council, for all citizen members of the advisory committees.*

The Report to Council which is referred to in the Briefing Paper emphasised that only Councillor representation on Committees had generally previously been reviewed, with the Mayoral and Deputy Mayoral elections.

### Report to Council

The Councillor representation only on these committees has generally been reviewed annually having regard to the Mayoral and Deputy Mayoral elections. However the Committees may be abolished or their function or composition amended by Council resolution at any time.

The Council is also entitled to the election of delegates to a number of community committees established by, or in conjunction with, other organisations. All Committee Charters listed in this report are included in the book attached.

6. That with the exception of the Brookvale Park Advisory Committee, the existing community/citizen membership of the various advisory committees be confirmed.

The Report recommended the confirmation of the various advisory committees. The body of the report commented upon the appointment of community representatives to these various Committees, emphasising their appointment for the term of the elected body:

### Report to Council

Many of the advisory committees have representatives from various community, government or service bodies and/or individual citizen members as part of the committees' composition.

Individual citizens are appointed, usually following a public nomination process, and are appointed to the committee for the four (4) year term of the committee unless the committee is dissolved before the end of the period of time.

An exception to this general rule is the Brookvale Park Advisory Committee which holds office for 12 months only and is dissolved in September each year. Public nominations for the three (3) community representatives will therefore have to be invited for the ensuing 12 months.

There is no suggestion either, that community representatives on these committees could be removed at this time, or that they should be removed. To the contrary, the Report anticipates a formal motion be passed confirming the continuance of the existing community/citizen membership of the committees.

Briefing Paper No. 36 suggests that that normal practice was to review the community/citizen membership of these Committees. A review of the Report to Council's Meeting on October 9 2001 does not support this.

The Report, whilst listing in detail the Councillor representation on the Committees does not once refer to the community/citizen representatives on any Committees.

The propositions that, on the one hand the representatives are appointed or the term of the elected body, and on the other hand that they have been traditionally removed following the Mayoral and Deputy Mayoral elections, do not sit together comfortably.

6.1.2.8 In providing these two alternate stances, the Council has not seen fit to provide the Inquiry with copies of the constitutions of the Committees which would determine which response is to be accepted.

Council's website contains what it says are the constitutions of its various Committees. The information provided, is nothing more than the précis attached to Submission 288. These do not amount to a constitution.

The inadequacy of this information reflects adversely on Council. It does not demonstrate appropriate levels of governance.

There appears to be no sound basis for the summary removal of Committee members as occurred. Certainly the author of Submission 141 did not anticipate his demise.

The foregoing concerns are heightened by the matters put in Submission 300 regarding the removal of Mrs. Betty Radcliffe from the Brookvale Park Advisory Committee.

This Committee is appointed on an annual basis. Its membership is made up of Councillors, representatives of the Manly Warringah Rugby League Football Club Ltd, community representatives, and one person nominated by the Brookvale Valley Community Group.

This Group had reminded Mrs. Radcliffe, that in these circumstances she could not be 'removed' by a resolution of Councillor, nor removed by Council. Rather, how nomination could be withdrawn by the Community Group. Very simply, the constitution of the Committee, if it exists and conforms to that advised in Submission 288, brought with it an autonomous and inalienable right for the Brookvale Valley Community Group to nominate its representative. The Council could not remove Mrs. Radcliffe. Its only right was to indicate that she was not an acceptable nominee.

6.1.2.9 This was not the only quandary thrown up by Mr. Dunphy, the author of Submission 238. Mr. Dunphy spoke at the Public Hearings on March 31 2003, and told of the delay in his appointment to the Sports Field Rectification Committee. Mr. Dunphy had advised that it had taken approximately 12 months for his application to be processed, despite the fact that it was the only application received for the position.

At the Public Hearings, when asked if the Committee had functioned during this interim period. Mr. Dunphy gave the following evidence:

**Public Hearings Transcript – March 31 2003**

THE COMMISSIONER: ... So nothing happened for the first 12 months?

MR DUNPHY: There was some things happening. There was a meeting of the committee which occurred prior to my appointment and also the  
- - -

THE COMMISSIONER: Excuse me, I don't follow. How could there be a committee if people had not been elected to it?

MR DUNPHY: That's - my concern is the fact that there was this meeting held at which the C Riding representative attended along with other members of the Sporting Union and Councillors and it appears that there had not been a nomination from C Riding. So this gentleman who's on the executive of the Sporting Union said: well look, I'll be the C Riding representative and matters occurred at that meeting and then one of those was that my nomination was accepted.

As has been indicated previously, Mr. Dunphy was removed from the Sports Field Rectification Committee. In giving evidence, Mr. Dunphy described his removal in the following terms:

**Public Hearings Transcript – March 31 2003**

MR DUNPHY: ...I was terminated last year in circumstances that showed that Council were feeling uncomfortable about the line of inquiry I was making with regards to the financial statements prepared for the levy itself.

Mr. Michell, the author of Submission 011 wrote of his involvement in the Dee Why Centre Management Group/Committee.

Like other former committee members, including the author of Submission 011, Mr. Michell emphasised the successes of the Committee, detailing them in the following terms:

**Public Hearings Transcript – April 3 2003**

THE COMMISSIONER: So their recommendations were supported by evidence of what they thought was good examples of the sorts of things they were recommending etcetera?

MR MICHELL: Yes, very much and the Council staff involved, including the Dee Why Place Manager, I think was the guy's title, were totally in support and playing an active part in why the committee's thinking and on this matter, and so there was a - there was a strong consensus of new.

The transition of the Dee Why Centre Management Group to a Committee of Council was explored with Mr. Michell, who spoke at the Public Hearings on April 3 2003. Mr. Michell gave the following responses:

**Public Hearings Transcript – April 3 2003**

THE COMMISSIONER: What kinds of recommendations did the group make, or the committee make, broadly I mean?

MR MICHELL: It ranged over a number of areas, it went through the entire original consultant's study plus the second one which had costed infrastructure and updated the infrastructure study to things which were relevant, it still believing highly relevant, gave them priorities etcetera. I guess it rapidly emerged to perhaps some people's surprise that all of the different - shall we say, competing interests involved, property owners, business and residents. As has always been my experience on such committees, found that they had an enormous amount of common interest and they may have had different thoughts on how things should be achieved.

But the committee rapidly moved to some areas which it believed were of a high priority with a total consensus and one of those was to most rapidly move to an agreement adoption of the former street-scape should exist in Dee Why. There was some highly practical reasons for that, you had developers building buildings and as part of that condition, having to reinstate footpaths etcetera and it was obviously sensible to have that sorted out so you knew what outcome you wanted overall. But there were also a lot of areas - the plan took of a view that a lot of activity should now happen on footpaths.

The footpaths which should be such that restaurants etcetera could use those and so there was quite a lot of street-scape work to be done and some traffic work to be done on re-directing traffic and parking etcetera. So I guess the committee's - whilst it was focussed on numbers of areas, one key area was the street-scape and not just the pavers etcetera, but how that was going to all work. To that end, the committee visited three other Council areas which had done similar things, Crows Nest, Concord and Leichhardt, to look at how they had done it, what they had done, and how they had got the different parties together to support it and how they had funded it, and that was not the only part, but a key part of where the committee had reached.

THE COMMISSIONER: So their recommendations were supported by evidence of what they thought was good examples of the sorts of things they were recommending etcetera?

MR MICHELL: Yes, very much and the Council staff involved, including the Dee Why Place Manager, I think was the guy's title, were totally in support and playing an active part in why the committee's thinking and on this matter, and so there was a - there was a strong consensus of new.

THE COMMISSIONER: How was all this to be funded?



## Public Hearings Transcript – April 3 2003 (cont.)

MR MICHELL: Well that was one of the big questions. The costing had been done and we looked at - - -

THE COMMISSIONER: What is the order of - roughly the order of funding that was needed for this - - -

MR MICHELL: The total package, I think, was in the order of \$20 million, but the part that - a lot of that involved traffic and some re purchase of lands etcetera. But you were still talking of the order of \$4 to \$6 million dollars of funding to be found. Section 94 was - the plan was updated part-way through this process to try to bring it into line with the desires, but there was still a significant shortfall in a capital sense and it was also the end of the - a funding requirement, a maintenance requirement over time for cleaning etcetera.

THE COMMISSIONER: So what was the solution to - - -

MR MICHELL: Well, in general, the other Councils where we went and looked at, they had done this by a commercial levy, again it was stressed it was critical to get the various players on side, not to impose - attempt to impose this, that the businesses themselves had to see this and what was the benefit to that and so part of the recommendation that was going forward was that this should be most carefully scoped out as to what was - the last thing people wanted was just to go out if there was going to be a commercial levy, it was fully understood that this would be a significant political step in all senses of the word and there were lots of people who would have to be convinced before that could happen.

THE COMMISSIONER: Was the commercial levy - did it contain a sunset clause? Was it specifically for the street-scaping or whatever, and then it would be dropped or was it - - -

MR MICHELL: It hadn't reached - it hadn't reached - the staff were asked to come back with a paper on the alternatives, it hadn't - I guess the committee had just reached the point that - that having gone through all the various potential sources of funding these things, that they assume no way - for the amount of money involved, other than a commercial levy, to go forward as other Councils seem to have found.

THE COMMISSIONER: And did that recommendation go to Council?

MR MICHELL: I don't believe it did. I - I can't be adamant on that, I know that it - the committee recommended with the staff's total support, that was their suggestion that we recommend to them, that they work on this and prepare a paper and I know that that - the Council staff then was involved with buyers by their management, that they should not just work on this on it's own, but they should work on it as part of a package of - of funding proposals and but also at that stage the process suddenly ceased.

**Public Hearings Transcript – April 3 2003 (cont.)**

So I'm not sure whether it ever formally got to Council, I don't think it did, but I could be wrong on that.

The nature of the involvement of the Committee and the recommendations it made were also taken up with Mr. Michell, who provided the following responses:

**Public Hearings Transcript – April 3 2003**

MR MICHELL: Well, I guess I can either start at the start or start before the start. I will go back a little way, I mentioned the move by Council to revitalise Dee Why where upon - and this was back in probably '97 or so when they commissioned some consultants and there was a great concern by residents at that time but although a Steering Committee was formed for that process, there was no resident representation on that committee. So that was one of the great concerns that residents at the time had.

And of the completion of that process when the consultants produced their study, which was adopted by Council, a group which did involve residents was formed in order to turn some of the concepts in that into a DCP and that group did its job and ended. But in the consultant's report, they recommended that an ongoing Town Centre Management Group be formed which would involve not only residents, but particularly would involve businesses and property owners and Council staff and Councillors, and that was in the original 1998 or so report.

It was I think, initiated, agreed by Council in 1999 and finally came into being in May 2000, and I hope I've got my dates right there. So the group came formally into being in May 2000 and it's role was - it was spelt out formally, it - and the group looked at it's role, but it was essentially - it was well understood that the - that the building developers would potentially be the bits of the plan that would go ahead, in other words there was direct financial incentive to property owners to put in DAs.

But the revitalisation plan covered a whole lot more than just building buildings, street scape was an obvious one, town squares, aspects of business, what sort of businesses you would want and where, parking, traffic flows, etcetera. So this group was to attempt to look at moving the whole process forward, not just the building of buildings. And to that end, Council itself employed consultants to cost the infrastructure parts of that plan which were not directly associated with individual building of buildings and that was also done prior to the forming of this committee.

THE COMMISSIONER: Did the committee have any powers? What sort of - - -

MR MICHELL: Initially the committee had no powers, it was a group I think, rather than a formal committee. But it had - after it had been going for some months, Council staff who were on the group suggested that the committee should be upgraded to official Council committee status and that was done I think in November 2000, and at that point the committee then at least had the power of its minutes going to Council, but such committees have essentially no powers other than to recommend or suggest that certain actions be taken or not taken.

Mr. Michell suffered a different fate, the Committee that he was a member of was disbanded, with no prior discussion or warning.

At the Public Hearings, Mr. Michell was asked the reason for this, and responded:

### **Public Hearings Transcript – April 3 2003**

THE COMMISSIONER: Why did it cease?

MR MICHELL: Well, I don't know, it was a surprise to me and to every other member of the committee. I received a letter as did everybody else thanking me for my contribution to the committee which had served it's purpose and the only embroidered account on that was, I think, that the then - or the previous Mayor, Peter Moxham, was asked by the Manly - I was rung by the Manly Daily for my feelings about it and he obviously was as well and his comment, which obviously had some status, was that the committee had served it's function and the work could now be taken forward by Council staff, the Dee Why Place Manager.

That certainly was not the position that I believe the committee had reached, and I don't think that individual did either, he resigned some months after and left the Council and was not replaced.

THE COMMISSIONER: So there is no Place Manager there now?

MR MICHELL: No, not that I'm aware of, but I could be corrected on that.

THE COMMISSIONER: Has there been any of the infrastructure activities that you talked about street-scaping etcetera, any of those things gone forward?

MR MICHELL: Again, I'm not privy to all activity but the town square has certainly gone forward, but that was not really part of the committee's brief. The committee would have played more role in that - it felt in uses for the town square and form - function rather than form, I'm not sure that any other matters that were involved at that time have been progressed.

THE COMMISSIONER: Okay.

MR MICHELL: I should say that I - I - it is not so much out of fairness, but as a matter of simple fact, that the - Darren Jones in his role as Mayor some nine months after the disbandment of the committee when he first became Mayor, did attempt to re-invent the committee, but failed. So it would appear that elements of Council and Councillors felt that there still was value in it- perhaps still is value in such a committee.

In the circumstances which have been highlighted, the authors of these Submissions question the reasons for their removal from the Committees. There is legitimacy in their concerns.

6.1.2.10 The public's confidence in the governance of Council must suffer if members of the public form the view that committee members may be removed at the whim of Councillors or in circumstances that their tenure exists only at the goodwill of the existing mayor.

Such confidence can only be further diminished if members of the public form the view that a committee may be disbanded at the whim of the Mayor or Councillors.

As has been indicated previously in this part, Council's response has been inadequate.

6.1.2.11 The selection and appointment of Committee members was also raised in Submissions.

In each circumstance, the concerns related to the Committees, which are explored in greater detail later in this part.

The précis which are attached to Submission 288 indicate the particular interests which are sought to be represented on the Committees or the parts (e.g. the wards) whose input is sought.

As the citizen/community representative are being promoted as representing such interests, and if the Committees are to enjoy the public's confidence, those persons appointed to committees as representing a particular view or the community as a whole, must truly represent such views.

It is therefore inappropriate to appoint members to a committee, ostensibly as representing a particular view, when in reality they hold views and represent another faction's view.

6.1.2.12 There are three recurring themes in Submissions received from former or current committee members:

- A failure to carry out the functions of the committee in a 'business like' manner
- A lack of information being provided to committee members
- Inaccurate Minutes being adopted

Submission 300 attaches copies of correspondence passing between the author group and the Council recording attempts by the group to ensure that the Minutes of the Brookvale Park Management Committee properly recorded a meeting.

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Whilst the matter is more fully explored later in this Section, it is appropriate to note that the reason assigned by Council's Director of Public Office for what are acknowledged to be inaccurate minutes, is erroneous.

Submission 125 contains the following description of minutes kept by Sports Field Rectification Advisory Committee:

### Public Hearings Transcript – April 1 2003

THE COMMISSIONER: ... You have asserted that there has been expenditure on works outside of the scope of the special levy and you have provided some detailed figures in relation to that. I wonder if you would indicate first where those figures came from?

MR THOMAS: Those figures have come from Sports Field Rectification Advisory Committee minutes.

THE COMMISSIONER: So these are on the public record?

MR THOMAS: They are on the public record. They are also from the income and expenditure statements from that levy.

THE COMMISSIONER: Would you like to briefly just identify where you see the major discrepancies occurring between the intention of the levy and the actual expenditure.

MR THOMAS: I think the main issues that came out of this, I mean, we really only got to learn about the Sports Field Rectification Levy when we were looking into the John Fisher Park issue, so I personally had until that point had no idea that there was this 2 per cent levy that was on my rates and we were initially concerned that this money might be spent for the hard surfacing, the bitumen for the netball courts, so we started looking into it to try and find out how the money was being spent.

In looking at some of the minutes and financial breakdowns that have been presented, there seem to be some large anomalies with amounts that were being spent on items such as sporting facilities and lighting that seem to have no bearing at all upon the rectification of subsidence and so really we started just looking through each project individually and just trying to see what was being spent. Obviously, the first one

that came up was St Mathews Farm, which was quite a large project which was carried out and within the St Mathews Farm budget there seemed to be this figure of \$215,000 for lighting which to me, you know, lighting has nothing to do with subsidence.

So it was issues like that, you know, in looking through this, other items that kept cropping up - much smaller items admittedly that kept crawling up, were items such as sort of a plaque of a marque to celebrate the re opening of a facility once the subsidence works had been corrected. Things such as new fencing, ground closing off was one item in Aquatic Drive, whether - the ground whereas it had previously been quite open to the public they had obviously put new fencing in and actually locked it up. Again, the payment of that came out of the rectification funds.

THE COMMISSIONER: I have read your submission carefully and

## Public Hearings Transcript – April 1 2003 (cont.)

you do instance a number of things there. I don't want to pursue them all, but let me just ask you about the money for lighting in one instance, where you say there was \$215,000 allocated - - -

MR THOMAS: That is what is listed on the statement.

THE COMMISSIONER: ... Do you know if there was lighting there before?

MR THOMAS: The problem with the St Mathews Farm project is there is very little detail there because Council claim that the original documentation was on a different computer system and all those records appear to have been lost for the first year of the St Mathews Farm work, so it is very difficult to try and judge what was there before and what wasn't - you know, what was new works.

THE COMMISSIONER: I guess it is possible that something like lighting, if there was significant movement in the surface, that lights could be moved out of place and so forth and they may have to be removed.

MR THOMAS: That could be the case. I think an item that is perhaps more relevant is the item of the baseball nets that were put in at the Abbott Road soccer fields, where they are much, much bigger than the original items that were there and, in fact, the original items when you watched the work being carried out and the stripping off the ground being carried out over there, those original nets actually stayed in place while that work was being carried out and the contractor actually worked around them.

It seemed quite amusing at the time to watch the contractor having to work around these structures that were there and it was only once that work had been completed that the structures seemed to be demolished and new structures put in. Now, if they were able to work around them and the nets could remain there, why on earth are we paying so much money, over 70,000 or more, I think was just on those elements alone.

THE COMMISSIONER: In terms of the general expenditure pattern, are you saying that the use of any of these funds for sporting facilities cannot be provided from the money raised by the levy?

MR THOMAS: What I feel because the levy - certainly the levy I have discovered since sort of going through all the early documentation on this and how the levy was advertised to the general public - it appears to have been - although it was only being advertised as: rectification of subsidence, there was never any mention of replacement of sporting facilities, it was purely talking about the ground issues. It certainly wasn't a universally accepted levy, even in that limited viewpoint of just the ground works.

**Public Hearings Transcript – April 1 2003 (cont.)**

I understand that there was a public meeting early in the piece, I think in 1998 or 1997. There don't seem to be any records of that public meeting on file in Council, but I have spoken to one of the elder representatives of the community who was present at that public meeting and he says: it was quite a bun fight between the sporting groups and the general community, who were concerned that they were having to carry out an extra 2 per cent on their levy to what was purely being listed as rectification of sports fields.

Now, I think the whole issue about how that money then starts getting used to replace sporting equipment, I think, it becomes a further burden upon the general community and a lot of that equipment - for instance, replacement of goal posts and that, I mean, surely, the goal posts that have been pulled out can simply be put back in after the work has been carried out.

It seems to be just an excuse or has been in the past, certainly when this letter was originally put down and with all of this information, Council didn't have a policy with respect to this levy. I think it has purely come out of the comments that Mr Mitchell had with his report that Council had to look at actually providing a more stringent policy that governs the use of that money. But I think the biggest issue with all of this is has been that there is no sunset clause to this levy.

So what was initially being presented to the community as a 2 per cent levy that may last for 5 or 6 years or something and then we would go back to our normal rates arrangement has no sunset clause. It is just continuing and continuing and even now, with the new policy in place, there is still no sort of forecasted program of works and no forecasted end date for this. The concern is that the more it is spent for elements that aren't strictly and purely in that sort of ground subsidence category, then it will just linger and linger and the community will have to bear it for longer and longer.

THE COMMISSIONER: ... I turn to another matter. The proposal to hard surface the 10 netball courts in John Fisher Park. You give some details of the total cost in your written submission and contributions from the Manly Warringah Netball Association. I'm not sure I understood exactly what the outcome of that is, what the message was in those figures that you quoted?

MR THOMAS: The message within that was that within the plan of management process for John Fisher Park there was a stage at which during the draft presentations, there was a stage at which there was a cost breakdown given for various options for works to those netball courts. The Sport Field Rectification Committee had already prior to the plan of management process approved an option of rectifying the grass courts and they had given certain cost alternatives in that they could rectify say 30 courts at 380,000 and 10 bitumen courts at 350,000.



## Public Hearings Transcript – April 1 2003 (cont.)

This plan of management process then proceeded to produce a series of breakdown figures on how you might deal with 33 courts taken, say, 10 hard surface, 23 grass or having all 33 grass. The option that then was presented was one where the total costs came to something 729,000 and the hard surfacing cost including GST came out at 262,625. Now, the netball association had written to Council on 9 May 2001 quite some time after the closing date for submissions which had been October 2000 to that plan of management process.

They had written saying that they would offer to contribute up to \$200,000 for the cost of asphaltting 16 additional courts. Now, there was obviously a cost difference there between the 262,000 which was outstanding for hard surfacing and the 200,000 that the netball association was prepared to offer. The question then was where is this 62,000 going to come from and the concern had been all along that the 62,000, Council were going to try and use Sports Field Rectification moneys to pay for that hard surfacing.

This was further complicated by the fact that in, I believe it was December of that year, I think it was December 2001, the Sports Field Rectification Committee actually voted to set aside 729,000 from their funds for this work. Now, that 729,000 covers, in estimated costs at the moment, that covers the total expenditure of both the grass and the bitumen netball courts. So it was seen then that that money was being allocated to do both grass and bitumen. So even though the netball association was saying they would put 200,000 in, already that total expenditure was being covered by the levy.

THE COMMISSIONER: ... Another part of your submission, you say in two instances, the Abbey Road Soccer Fields and St Mathews Farm, you suggest that funds for drainage works were either omitted or were much smaller than the works carried out on what you see for items outside the scope of the levy. Would you make a brief comment on that?

MR THOMAS: There was in the financial breakdowns for the works at Abbott Road, when the tenders came in, the tenders were much higher than the estimated figures originally budgeted for. The committee or Council went back to those tenderers and asked them to resubmit and they actually made a budgetary saving of 100,000 by omitting an item for subsoil drainage. So there was a figure there of \$107,800 omitted as a budgetary saving and yet when you look back at the sort of works that were completed out on that field in terms of those baseball nets and other structures that perhaps are nothing to do with ground subsidence.

There was an expenditure there of 157,000. On St Mathews Farm, once again because of the earlier records, I'm not sure what was allocated if anything in terms of subsoil drainage on St Mathews Farm originally. However, a recent project has seen contractors have to return to St

**Public Hearings Transcript – April 1 2003 (cont.)**

Mathews Farm after that project had been completed I think in 1999 and they have had to spend a further \$80,000 on putting in subsoil drainage. So this is on a project that already had had over \$700,000 spent on it. They then had to return 3 years later and rectify drainage problems.

Again, this matter will be explored in greater detail later in this Section.

Council ought to have in place procedures for keeping accurate Minutes of Meetings that involve Council working with members of the community. This would assist the public to have faith in the transparency and accountability of its processes.

- 6.1.2.13 Other Submissions which were received by the Inquiry referred to the infrequency of meetings, to a lack of appropriate notice being given, and to the quality of information provided to committee members.

The first two suggestions are to be found in Submission 300, which states:

**Submission 300**

**8 FUNCTIONING OF THE BROOKVALE PARK ADVISORY COMMITTEE**  
 Meetings have been held infrequently, ( the required minimum no / year has not been met.)  
 Notice of meetings is generally inadequate, often less than a week, and complaints in this regard have been minuted. See Minutes of Advisory Committee Meeting dated 29 May 2002 where it was moved that 3 weeks prior notice of meetings be given and an agenda be provided 2 weeks prior.

Some submissions have expressed concerns about the frequency with which meetings are called.

Many Submissions raised concerns over the quality or accuracy of the information provided to committees. Such concerns are raised in Submissions 300, 109, and 117.

These concerns are particularly emphasised in the matters relating to the Brookvale Park Management Committee and the Sports Field Rectification Committee and the comments and findings regarding these particular committees apply to the whole of this Part, and should not be seen as being limited to such committees.

There is evidence that Committee members have sought assistance from the elected representatives. The Act does not provide greater access to information by the elected representatives. To the contrary it could be argued that they might be entitled to less information than the members as they do not exercise the functions of the Council, that are being exercised by the Committees through their members.

6.1.2.14 There are two other aspects which bear consideration. When reviewing concerns over the adequacy of information made available to committees:

- The information available to the public under the Act
- The particular functions and responsibility vested in Committees

The Act makes express provisions for information to be publicly available under Section 12.

The limitations imposed on the provision of information are contained in various subsections within Section 12. The most relevant of these, given that committees would appear to be involved in wider and more general matters, is likely to be commercial as referred to in Subsection (1A) or which might be contrary to the public interest.

The nature of the information highlighted as not being available in Submissions 300 and 117 affecting Brookvale Park and the Sports Field Rectification Levy, would not appear to fall into these clauses.

It would be inappropriate not to provide information otherwise available to the public.

A review of Submission 288 records that many of the committees fulfill substantial roles.

The functions of committees, as detailed in the Submission include:

- Care control and management of areas and buildings
- Co-ordinating activities
- Oversight of the implementation of Plans of Management
- The making of recommendations on, staging and funding of works
- Assessing cultural and school grants
- Enabling council to implement State Government Policies
- Oversight of expenditure of funds
- Oversight and ensuring implementation of projects
- Identification of issues

In order that committees exercising any of the functions are able to operate in a competent manner sufficient and accurate information must be provided.

In providing information to committees, the Council must ensure that it meets the needs of the committee for its proper functioning.

The annexures to Submission 300, which will be dealt with more fully later in this section, indicate that in the past, Council has been less than forthcoming in the provision of information to members of the Brookvale Park Advisory Committee.

It is surprising that members of committees have raised concerns over the accuracy of information provided to them, as the provision of accurate information is fundamental to the governance of Council.

The accuracy of information provided to Committees was taken up by Committee Members of the Sports Field Rectification Committee and the Brookvale Park Advisory Committee.

Given the functions of these Committees, there can be no excuse for this.

6.1.2.15 The issues raised by members of committees were not limited to procedural matters, but also included contempt and disdain for committee members and favouritism and nepotism in their appointment.

On April 4 2003, Mr. Baxter, a member of the Brookvale Park Advisory Committee gave evidence in the following terms:

**Public Hearings Transcript – April 4 2003**

MR BAXTER: I'm not sure when it first formed. It was - there was one established definitely with the previous plan of management. It was to have two - well, the three councillors from the Ward, the Mayor, two citizen representatives and one representative from our community group whom we could nominate. We were unhappy at the time that the two citizen representatives we felt really were there chosen, in that they represented the league interest and not the broader community interest.

After complaining, Council moved to create a third position and again that third position went to someone whom we consider wasn't a genuine community representative. The submissions, the people who applied for that position, there were seven. Staff ordered them in order of their recommendation. The first person got on, he was again someone who has consistently represented the league's interest. The second person was someone whom - Julie Woodfield, whom we considered a worthwhile community representative. She didn't get on, the councillors moved that the sixth person be put on in her stead.

So again we don't feel that that was a totally appropriate process given that staff who presumably made a reasonably independent assessment on the merits of the candidates recommended otherwise. More recently the Mayor has moved that for some reason that the - Peter Moxham be added to the group, I'm not sure why, but he's suddenly popped out of the blue and he's now on - sits on that advisory committee.

Again the matters involving this Park will be taken up more fully later in this section.

Submission 020 raises very serious allegations of Councillor and staff misconduct. A copy of the relevant part is set out below.

**Submission 020**

- a) My family home adjoins an small open Council Reserve and for 17 years my wife and I have meticulously maintained this area. Cr Jones, against huge neighbourhood objection, directed Council staff to erect a ugly log fence around the perimeter of this Reserve and had Council instruct me to cease further upkeep. Council immediately placed an ugly log fence across the front of the Reserve and , now the Reserve is basically neglected and not properly maintained by Council. Council staff, Divisional Manager, Gary Thomson, other Managers, Dennis Corbett and Stephen Bax, have each admitted to me that Cr Darren Jones has instructed them to get me.
  - b) An on-site meeting with Cr Darren Jones to discuss the abovementioned log fence resulted in the statement by him, " If you don't like it, move! ... go and buy a house by the sea, and get a yacht!" I have a neighbour who witnessed this whole confrontation and was horrified by these rude remarks by Cr Darren Jones.
- I was receiving letters and continual harrasing visits from Council officers up until the public announcement of the investigation into Warringah Council.  
These were all instigated by Cr Jones in what has to be a total misuse of his postion.

The author, Mr. Minnici spoke at the Public Hearings on April 8 2003, expanding on the allegations in the following terms.

## Public Hearings Transcript – April 8 2003

MR BROAD: You talk about your involvement in maintaining a reserve.

MR MINNICI: Yes, I did.

MR BROAD: Can you indicate when and by what means Council instructed you to cease further upkeep of that reserve?

MR MINNICI: It was approximately the second half of 2001. Council instructed me not to maintain this reserve that I had been maintaining for 17 years.

MR BROAD: How as (sic. was) it done?

MR MINNICI: It was done by way of a letter and also personal visits by senior Council staff. I was directed not to have anything to do with the reserve at all, that Council would maintain it.

MR BROAD: You state in your letter that certain persons, and I ask you not to name them, have admitted to you that a councillor, and again I ask you not to name that councillor, has given them certain instructions. Can you tell me when that took place and in what circumstances?

MR MINNICI: Under the same circumstances. When senior Council officers came to my place to inspect the Council reserve also to instruct me not to mow the reserve and basically to keep off the reserve, they indicated that there was pressure from above. Subsequent to that, I was doing renovations to my house and there was a fence, a construction fence around the home which was normal practice, and I was abutting the reserve by 6 inches, I was told to move the fence by 6 inches and I said, "This is stupid. This is very, very petty, ridiculous." They said, "Sorry, we can't help it, Frank, we're under instructions."

MR BROAD: So the nature of the statement is either we have instructions from above, is that a correct statement?

MR MINNICI: To some degree. It was more - - -

MR BROAD: As best as you can recall.

MR MINNICI: As best as I can recall, you know who it is.

MR BROAD: Was that on the first occasion that you were talking about or what it when you were talking about the fence?

MR MINNICI: On both occasions. Different Council officers said exactly the same thing.

**Public Hearings Transcript – April 8 2003 (cont.)**

MR BROAD: You said in your submissions that you had been receiving letters and continual harassing visits. Firstly, in respect to the letters, over what period did you receive these letters?

MR MINNICI: Probably - I started receiving the letters probably in June 2001. I continued to receive letters during the course of the building operations which went from that period, June 2001 through to May 2002 and even following that. I constantly got letters, no longer about the reserve but about my construction fence and other matters. Just continual - - -

MR BROAD: Do you have copies of those letters?

MR MINNICI: I don't have them with me but I can provide copies of letters.

MR BROAD: If you might. You say you had continual harassing visits from Council officers?

MR MINNICI: That's correct.

MR BROAD: Can you tell me what those visits related to?

MR MINNICI: Similar things. Just trivial matters. Like the - one councillor took up a complaint from an adjoining property that I was taking over the reserve and he immediately indicated that he wanted to put a log fence around that reserve. There was a certain amount of intimidation about that. I indicated, look, I'm more than happy to comply, let's not do a log fence - an ugly log fence that is unfavourable visual impact, doesn't comply with the amenity of the area, we'll do a nice grass hedge, I'll pay for that hedge, I'll get a landscape architect to design a nice hedge etcetera, etcetera. I subsequently had a meeting on site with this councillor. This councillor's words were: Frank, if you don't like it you can move. Go buy the sea and buy a yacht. I turned around and I just said, "If that's the way you feel."

MR BROAD: Coming back to the visits, how many did you receive?

MR MINNICI: I would have received no less than five to six visits by different officers at different times.

MR BROAD: Over what period?

MR MINNICI: Well, because I had move out of my house during the renovations, I wasn't there most of the time, but probably, over that year, would have been five to six visits.

MR BROAD: The purposes for the visits, can you indicate the nature of those?



## Public Hearings Transcript – April 8 2003 (cont.)

MR MINNICI: Once again, just to see if I was complying and not touching the reserve, to make sure my construction fence was in place, just trivial matters.

Council's Briefing Paper No. 55 (Volume 3, Appendix 2) responds, in part, to the allegations raised by Mr. Minnici.

It is not the role of this Inquiry to determine whether the actions referred to by Mr. Minnici arose as a result of Councillor interference. Accordingly the Inquiry draws no conclusion from the allegations other than to reinforce that Submissions suggesting Councillor interference in the processes of Council have elsewhere, and where made elsewhere, evidence supports the suggestions.

On a different note, the author of Submission 163, Mr. Williams, a representative on the Community Advisory Committee speaks of his treatment by Councillors in the following manner:

### Submission 163

When speaking before Council I have personally been abused, ridiculed and treated with contempt by some of the majority block Councillors. The Council's own audiotapes if obtained by this Commission of Inquiry will prove what I have just written. No one, no member of the general community should have to endure the verbal and body language abuse and violence that I and many others, including the minority block Councillors, have had to suffer at the hands of our Elected Local Government Officials – the majority block Councillors.

- 6.1.2.16 If Council seeks to obtain the assistance, guidance and expertise of members of the public and provide a meaningful committee structure, then Council must ensure that it takes appropriate actions to attract worthwhile participants who properly, and independently represent the interests of the constituents, bodies or interests that they represent.

Council must ensure that the committees provide, and importantly, are seen to provide worthwhile input into Council processes.

In order for these aims to be achieved it is necessary that appropriate processes be adopted to ensure that committees are given appropriate and accurate information as a foundation to undertake their processes. In turn it is necessary that their views and recommendations be properly recorded and documented.

It is of great importance that their views and recommendations be presented to and received by the Council without interference from Councillors and staff. And that in turn, the Councillors and staff receive their views and recommendations with an open mind.

There is strong evidence that this has not occurred.

The following parts contain a more detailed analysis of the processes associated with John Fisher Park, Brookvale Park and matters involving the Sports Field Rectification Levy, which reinforce this view.

## 6.2 John Fisher Park and Environs

### 6.2.1 Summary of Issues

6.2.1.1 Issues surrounding John Fisher Park and the Abbott Road playing fields gave rise to by far the greatest number of Submissions on a single issue received by the Inquiry.

In turn, copies of the complaints received by the Minister for Local Government in the latter part of 2002 revealed that the majority of complaints that had been received over this period related to John Fisher Park and environs. Copies of all such complaints were provided by the Minister following a request made by the Inquiry.

6.2.1.2 To a large degree the Park became a battle fought between the environmental and sporting interests of the community. This battle has resulted in these groups being marginalised. This is a fundamental concern, as these groups must continue to co-exist in the enjoyment of the park.

The manner in which the Council acted led to a perception that this battle had to be waged. The actions of the Mayor in a recent letter to the netball association, suggest that this battle is to continue.

The battle has, in turn, undermined the confidence of a significant portion of the community in the processes of and governance of the Council.

6.2.1.3 The Park and environs is located in Curl Curl. It contains an area of about 39ha. It embodies and surrounds Curl Curl lagoon and Greendale Creek. The Park provides a mixture of natural areas, generally surrounding the creek and lagoon, and extensive sporting facilities including playing fields and extensive netball facilities.

Many of the principal issues which have been highlighted in Submissions and in evidence at the Public Hearings arise from the dichotomy of the users and the conflict between active and passive uses.

Much of the land adjoining the lagoon and creek was formally used as a waste facility, apparently from the 1940's<sup>1</sup>, handling both putrescible and non-putrescible waste.

<sup>1</sup> See report of URS Australia Pty Ltd dated October 23 2000, located in the Appendix G to John Fisher Park Plan of Management November 13 2001 (Volume 3, Appendix 3).

During the period of the operation of the waste facility the creek was narrowed and channelled into its present form<sup>1</sup>.

Subsequent civil works in the 1970's led to the Park being developed as open space<sup>1</sup>.

The Park forms the lower part of the catchment area of the creek. The catchment, which comprises approximately 440ha, contains a mixture of residential, industrial, business and open space areas<sup>1</sup>.

6.2.1.4 The previous use of the site as a tip, and the development in the catchment area, has given rise to two major problems affecting the creek and the Park degraded water quality and subsidence problems.

The subsidence issues will be principally dealt with elsewhere in this Section, however, in order to provide a complete picture of the issues affecting the Park, they will be referred to in this part.

Council has obtained the approval of the Department of Local Government to impose a special levy on rates to obtain a fund to be applied towards the rectification of sports fields which have been constructed on formal landfill sites.

Funds generated by this levy have been applied towards rectification works on playing fields in the Park and environs.

6.2.1.5 The Act requires that Councils categorise land as either “operational” or ‘community’ land. The park has been classified as ‘community land’.

The Park and environs contains land variously owned by the Council, the Department of Education and Training, and the Crown. The Council has care and control of the Crown Land. The Council does not have control of the land owned by the Department of Education. This land is said to be excluded from the current Plan of Management. This Plan will be referred to in detail later in this Part.

On February 24 1998, the Council adopted a Plan of Management for the Park. A separate Plan of Management was adopted for the “Abbott Road Land”.

This Plan appears to have been favourably received by the public and it appears that this Plan serves as the platform for criticism of the subsequent actions of the Council. This Plan will be referred to as the ‘Former Plan’ in this Part.

Under the Former Plan, the Park was categorised as:

### **John Fisher Park and Environs Plan of Management 1998**

In accordance with the Act, this plan of management must identify :-

- **The category of land.**

John Fisher Park and environs is categorised as a natural area comprising a watercourse (Greendale Creek) and a wetland (Curl Curl Lagoon).

John Fisher Park and environs is both a sportsground and park for general community use.

- **The objectives and performance targets of the plan.**

The Management strategies contained within the Former Plan could be said to emphasise a passive use of the Park.

The objectives and Performance Targets of the Former Plan were:

### **John Fisher Park and Environs Plan of Management 1998**

1. **To protect and maintain the natural environmental qualities of the lagoon and reserve.**
2. **To provide for the existing and expanding needs of the various sporting and user groups.**
3. **To manage and protect John Fisher Park and environs for future generations.**
4. **To ensure John Fisher Park and environs remains accessible to all people and facilitates social interaction.**
5. **To provide a safe, healthy and attractive environment for all users.**

It was anticipated that the Former Plan would be reviewed on a yearly basis and revised after the fifth year.

#### 6.2.1.6

On January 1 1999, amendments to the Act, affecting the categorisation of Community Land, came into effect.

Under the amendment and the regulations which were promulgated, the Council was required to take steps to adopt a fresh Plan of Management.

It is important to emphasise that the effect of the amendments to the Act was not to invalidate the Former Plan.

It is the steps taken by Council, the provision contained in the subsequently adopted Plan of Management (hereafter referred to as the 'Current Plan'), and the approvals given both prior to and subsequent to the adoption of the Current Plan, that have given rise to the division and controversy that have made John Fisher Park and Environs such a contentious issue.

Additionally, controversy has arisen from the utilisation of funds from the Sports Field Rectification Levy to carry out works on the Park and Environs.

The Issues that have arisen are:

1. The conflict between sporting and recreational uses of the Park.
2. The consultation process – perceptions of bias.
3. Appointment to and the conduct of the Committees associated with the Park.
4. Development and works prior and subsequent to the Current Plan.
5. Utilisation of Sports Field Rectification Levy Funds.
6. Pollution
7. Giving effect to the Plan of Management

Submission 117 contains the following commentary on Council's move to adopt the current Plan:

#### **Submission 117**

The categorisation of the Park became an issue when Council decided that the amendment to the Local Government Act in 1999 gave them the opportunity to reopen the Plan of Management for the Park, even though it still had several years to run under the existing plan. Other councils merely adopted a new categorisation without going through the full process of developing a new plan of management for each park given that such an exercise would be particularly onerous upon each council. The Council have not been consistent in their treatment of the categorisation process because they have not applied the same process to all eighty (80) parks and sports fields under their control.

## **6.2.2 The Conflict between the Sporting and Recreational Uses of the Park**

- 6.2.2.1 The Former Plan attached a plan of the Park and Environs showing the extensive sporting areas. These include the Reub Hudson Playing Field, Weldon Reserve Oval, cricket nets and extensive areas devoted to netball playing fields. Significantly smaller areas along the creek and lagoon remain and are available for passive recreation.

There are notes on this plan which point out and describe areas where works are anticipated, and the nature of the works.

The Submissions, which were received by the Inquiry, suggest that the majority of the community was satisfied with the balance between recreational and sporting uses of the Park and the proposals for upgrading the Park as contained in the Former Plan.

The principal works, which were anticipated by the Former Plan, were substantially concerned with the rectification of the playing surfaces affected by subsidence and the relocation of certain netball facilities.

The Former plan did not, therefore, suggest any cutting back of what was, and would continue to be, a major sporting facility in the Council area, which provided extensive areas, particularly for netball.

6.2.2.2 If there has been any single issue which would suggest that the community lacks confidence in the Council, or represented by both the Elected Body and the Corporate Body, it is the consultation process surrounding the adoption of the Current Plan.

The effectiveness of any consultation process is determined by the public's perception of a number of factors which include:

- a. That all interested persons and parties are involved.
- b. That views which are being expressed are being listened to and considered.
- c. That Submissions are being given equal consideration.
- d. That all issues are 'on the table' and that there are no hidden agendas.

Many members of the public did not believe that these principles have been followed. Two things in particular have created such beliefs:

- Council conducting a meeting with representatives of the Manly-Warringah Netball Association 2 days prior to a Community meeting.
- Council not indicating that this meeting was to, or subsequently that it had occurred.

These acts, when discovered, led to a perception that the Council was not being even-handed in its dealings with all sectors of the community.

The subsequent processes, leading up to, and following the adoption of the Current Plan inflamed these concerns.

A number of Submissions evidence this perception.

The perceived preference of the Council for the 'netballers' underlies the concerns. This perceived preference stems from both the procedures adopted by the Council and the 'majority block' Councillors.

6.2.2.3 The Former Plan, whilst anticipating re-levelling some netball courts and relocation of others, did not anticipate asphaltting netball courts.

In 1999 Council had written to the President of the Manly Warringah Netball Association responding to its request to upgrade and asphalt an additional 25 netball courts, advising that the Former Plan did not contain additional asphaltting of netball courts. The letter indicated the anticipated review of the Plan of Management and that serious consideration would be given to the asphaltting of the netball courts, as sought<sup>2</sup>.

This letter appears to have set the division which permeates the consultation process.

Submission 120 provided by Curl Curl Lagoon Friends Inc described the division in the following terms:

**Submission 120**

Unfortunately, since the 1999 election, the Council appears to have adopted an "environment's had it's turn, it's the sports groups turn now" approach to the management of John Fisher Park (JFP) – which is probably the most critical part of the lagoon catchment.

<sup>2</sup>See Council's letter dated 24 September 1999



A useful critique of the consultation process was provided by this group in response to the briefing notes provided by the Council.

### Submission 120

DATE	ACTIVITY	RESPONSE
March 6 2000	Community Consultation Workshop held with Manly Warringah Netball Association within their Executive Meeting at the request of the Association.	Was not a "community consultation" because the general community was neither informed it was being held nor invited to attend. This meeting was held at the request of the Manly Warringah Netball Association.
March 8 2000	Community Consultation Workshop held with local residents at North Curl Curl Primary School.	Many netball reps who attended the previous meeting attended this one as well and, unknown to other participants, logged the same claims as at the previous meeting.
6 June 2000	John Fisher Park Community Group hold own public meeting at Stirgess Ave Scout Hall.	This cannot be held to be part of the consultation. It was organised solely by the community – and Council Strategy Staff considered it "inappropriate" that they attend.
29 June 2000	Second John Fisher Park Community Group public meeting held at Freshwater High School.	As before, relevant staff declined to attend.
July 2000	First Statement of Environmental Effects delivered by Blumberg and Associates to Council re: hard surfacing a proposed 16 hard courts.	The SEE was fundamentally flawed in both its terms of reference and its conclusions. We provided Council with written discussion on the problems with this document – but they failed to respond. In 2002/3, this SEE – with only minor alterations – was resubmitted in support of the DA for the netball courts.
September – October 2000	Submission and exhibition period for draft John Fisher Park and Abbott Road Land Plan of Management. 343 submissions received for the draft Plan of Management.	See our comments below on the treatment of submissions.
October 2000	Public Hearing regarding categorisation in Council Chambers	Public hearing participants recorded about 90% support for "Park" category. The consultant's report – in recommending the "Sportsground" category – relies on informal evidence and ignores community-obtained legal advice.
October 2000	Second Statement of Environmental Effects delivered by URS Australia to Council re: hard surfacing a proposed 16 hard courts.	Not a satisfactory report given that it was briefed to use the "preferred development model" of the first SEE as its basis.

**Submission 120 (cont.)**

8 February 2001	Letter DLWC – comments in support of categorisation of Crown Land.	This letter supported categorisation of Crown Land as a concept – not the application of particular categories – as could be inferred by this item.
16 March 2001	Categorisation Report on Public display at Civic Centre and on Warringah Council's website.	We made written comments to Council on our perceived problems with this report but they were not addressed.
22 May 2001	Council meeting to exhibit the draft John Fisher Park and Abbott Road Land Plan of Management (2) supported this recommendation.	Majority Councillors were quite hostile to residents' serious concerns – which were rejected. A large public gallery attended – including about 90% who were opposed to hard surfaces.
27 June 2001	Public Hearing regarding categorisation in Council Chambers	Second hearing was conducted by the same consulting firm which had lost broad support after its previous report. At the hearing, again, 90% of speakers argued for the "Park" category. The consultant commented verbally "what a pity it will all come down to a legal opinion" – suggesting he will ignore the public hearing outcome in his report. This he did – as well as ignoring legal advice from Clayton Utz that says that sport can be played on a "park".
28 May – 9 July 2001	Draft John Fisher Park and Abbott Road Land Plan of Management (2) submission and exhibition period. 1583 submissions received for the draft Plan of Management (2).	See notes below on the treatment of submissions.
17 October 2001 (late)	Received the Independent Chair's Report on the categorisation of John Fisher Park and Abbott Road Land.	Again, our written comments on the limitations of this second report were not acknowledged by Council.

Whilst there are aspects of this critique which may bear criticism, it represents a perception held by this group of inadequacies in the consultation process. The great number of Submissions which were received by the Inquiry, expressing similar concerns, evidenced that such concerns were widespread.

## 6.2.2.4

Whilst it is not referred to in the schedule, substantial concerns have been expressed over the conduct of certain Councillors.

Submission 120 contained the following commentary:

### **Submission 120**

#### **Councillors refusing to meet community representatives**

Our members feel that there was very much a lack of leadership by Councillors in attempting to resolve this very divisive issue. While the four minority Councillors made themselves available frequently to discuss all issues, the majority Councillors either refused to meet with community representatives or would only meet under very conditional circumstances.

It is worth noting that the community did not enjoy support from 3 of the 4 minority Councillors at the outset of this campaign. These 3, however, on being presented with the community case, were convinced of its validity and they became strong supporters. The 5 majority Councillors took a blinkered approach from the outset and for the most part actively avoided hearing the community opinions in a calm and non-political environment. Instead they resorted to tactics of name-calling, public criticism and raising irrelevant issues to hide the real facts.

Submission 112 expressed concerns over the parity of the Council's dealings in the following terms:

### **Submission 112**

- The above figures do not include pro forma letters. In 2000, (then) Mayor Moxham made it abundantly clear the council did not recognise pro forma letters, and no matter how many were submitted they would be included as one. However, the next submission period when the MWNA had gathered 700 pro forma letters, they were counted individually!!!! This is simply outrageous!!!! It is clear the council change the rules in order to obtain their pre-determined outcomes. We would have collected thousands.

These concerns were frequently raised in other Submissions.

A footnote to the handling of pro forma Submissions was contained in the material provided in reply by Curl Curl Lagoon Friends Inc. (Submission 120) as follows:

### Submission 120

(A week later, to illustrate a genuine comparison, community groups tabled 1,200 letters, signed in 7 days, condemning the adoption of the Plan of Management. These were dismissed as being irrelevant. At the Council meeting on 20 November 2001, Cr Julie Sutton said something along the lines of "So you got 1,000 letters, so what? We could have got 20,000 saying the opposite if we didn't have better things to do." In comparison, the Manly Warringah Netball Association conducted a rigorous campaign for letters to be sent during the six week exhibition period – and only managed 658 – most of which were pro-formas. The treatment of all these letters again demonstrates the way Councillors were prepared to selectively accept or reject submissions to support their pre-decided outcome.)

This is not the only instance where concerns were raised over the independence of the Mayor in the processes affecting the Park and environs.

During the course of the Public Hearings, the Inquiry was handed a copy of a letter dated March 3 2003 written by the Secretary of the Manly Warringah Netball Association Inc. in the following terms:

### Letter from Secretary of Manly Warringah Netball Association Inc

Coralie has been contacted by the Mayor of Warringah Council, Julie Sutton to get signatures from all our players, their parents etc. in support of the Development Application for ten existing courts to be sealed as approved in the Plan of Management for John Fisher Park in 2001.

Typed version as the excerpt was not clear:

*"Coralie has been contacted by the Mayor of Warringah Council, Julie Sutton, to get signatures from all our players, their parents etc. in support of the Development Application for the existing courts to be sealed as approved in the Plan of Management for the John Fisher Park in 2001..."*

Other Submissions had referred to Councillor J Sutton's apparent bias in favour of the netballers. Submission 112 referred to this in the following terms:

### Submission 112

- At a council meeting about the Draft Plan of Management Julie Sutton concluded her address with fists in the air and the statement "**up the netballers!**" Clearly she had no intention of listening with an open mind.

These approaches undermine the public's confidence, both in the consultation process and in Council generally.

6.2.2.5 Submissions which were received by the Inquiry suggested that the community, which, as indicated previously, appeared to have accepted the Former Plan, felt that the Former Plan should run its 5 year course.

Submission 117 contrasted the approach taken by the Council with actions taken by other Councils, and by the Council in its response to other reserves, suggesting that it was unnecessary to move to adopt a new plan of management for the Park.

If there was a need for a new management plan, this need was not clearly conveyed to the community.

The belief that the Former Plan should have run its course, when coupled to the concerns over the consultation process leading to the Current Plan reinforced the lack of confidence referred to previously.

6.2.2.6 Further concerns have been raised over the apparent disregard for the community's views over particular aspects of the current plan.

A number of Submissions to the Inquiry referred to the numbers of Submissions to Council for or against certain proposals in the draft plan.

Submission 120 contained the following table and commentary:

**Submission 120**

<b>Disregard of submissions from community members</b>		
The following summarises the written individual community submissions made to the Council in response to the Draft PoM (2) for John Fisher Park and the Abbott Road Land. The comments in brackets indicate both the recommendation made by staff in relation to each item and the subsequent decision made by the Council. It should be noted that these figures reflect the levels of opposition to proposals received consistently at all stages of the plan's drafting.		
<b>Issue:</b>	<b>For</b>	<b>Against</b>
Hard surfacing of netball courts (Courts permitted)	20*	405*
Increases in building sizes (Permitted)	0	19
Granting of leases (Leases permitted)	14	91
Further car parking (Permitted)	3	57
Removal of children's play equipment (Equipment removed)	10	179
New lighting (Permitted)	17	26
Development of new facilities/buildings (Permitted)	8	83
Categorisation as "Sportsground" (Majority of land categorised as sportsground)	20*	480*
* Note, these figures do not include proformas as individual submissions – based on our analysis of the tables appended to the report to Council 13 November 2001.		

The Submissions record that, despite the overwhelming number of Submissions against the various proposals, the community's concern, as expressed thereby, was ignored.

6.2.2.7 The Submissions which have been received also raise concerns over the nature of the information which was provided during the consultation period.

Submission 120 reports of recommendations from the then Department of Lands and Water Conservation (DLAWC). It asserts that these recommendations were substantially ignored in the consultation process.

## Submission 120

*Ref: Report to Council meeting 13 November 2001.*

### **Disregard and misrepresentation of recommendations from DLWC**

Council received several letters making recommendations from DLWC during the PoM drafting process. The recommendations referred to things like the preservation of the riparian zone, restrictions to the impact of sports on recreational users as well as potential alternative sites for the high-impact game of netball. Councillors only acknowledged the existence of these letters when one was made public by the State MP. Majority Councillors then responded by making exaggerated statements about the implications of the recommendations and casting aspersions onto the motives of community members. Suggestions for alternative sites for netball were completely ignored. This was despite repeated requests from the community to at least investigate alternatives. Also, the letter of 19/11/01 was not released to Councillors or the public despite repeated requests to the Mayor. Instead, the Mayor (Cr Jones) chose to report to the Council meeting only that the letter supported the actions proposed by the majority Councillors. When the letter subsequently became available, this was seen to be untrue.

*Ref: Letters from DLWC to Warringah Council – 19 November 1999, 18 July 2001, 19 November 2001.*

Council's Briefing Paper (Volume 3, Appendix 2) records that Council representatives met with DLAWC in February 2000, and that it received letters dated October 13 2000, February 8 2001, July 18 2001, and September 10 2001. Additionally the Briefing Paper records a number of telephone calls to, and meetings with, representatives of DLAWC. It also records alterations in the Plan as a result of the representations.

It does not, however, answer the concerns that it failed to make this correspondence available as part of the consultation process.

Such information would form part of the 'feed-back' process anticipated in Council's Community Consultation Matrix. If the Council sought to give effect to its consultation process, then this information should have been made available.

### 6.2.2.8

The consultation processes, which were undertaken by the Council leading to the Current Plan for the Park and Environs, clearly evince a failure to secure the public's confidence.

Submission 161 highlighted the contrast between the consultation process as carried out, with Council's Award-Winning model:

### Submission 161

4. About this time Warringah won a special prize from the Local Government Association for a "Method of Consultation" in which great emphasis was placed on the consultation with the interested residents and ratepayers. This procedure included meetings and surveys of local concerns. Great Stuff, but Warringah went through all these procedures with JFP, and then clearly went their own predetermined way, with only minor concessions to local feelings.

Another Submission, No. 192, attached a copy of a letter of complaint written to the Director General of the Department of Local Government, dated March 13 2002, as follows:

### Submission 192

I am writing to you as a resident of the Warringah Shire and I understand that you are presently conducting an investigation into the operations of the Warringah Shire Council. I would particularly like to address the issue of Re-zoning of the John Fisher Park to a sportsground. I do not wish to canvass the merits of the opposing viewpoints in that debate as I have already expressed my opinion in numerous letters to the Council. What I am extremely concerned about is the manner in which the Council completely disregarded the overwhelming opposition to the plan for the rezoning which included further hard surfacing of netball courts. This decision was all the more inexplicable given that a reasonably compromise was available to the Council. I am drawn to the conclusion that:

- (a) Either the majority of the Council had already decided to go ahead with the hard surfacing of the netball courts before the exhibition and "debate" on the draft plan, which, if true, makes a complete mockery of the whole process; or
- (b) The decision was taken with a completely cavalier disregard of the wishes of an unsilent majority of local residents.

I believe that this whole sorry episode merits further investigation.

The complaints received by the Department of Local Government demonstrate that the levels of community concerns that have arisen, regarding Council's processes when considering, adopting and giving effect to the current plan. It is not known whether any of the complaints, which were referred to the Department were taken up with the Council.

The matters which have been explored in this part should not be dismissed as 'trivial'.

The concerns reflect adversely on both the elected and corporate bodies.

Despite the clear, vocal and long-standing public concern over the Park, no Councillor sought to address the concerns in any Submission made to the Inquiry.



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The failure of the consultation process and the subsequent matters which are referred to in this part, have been a major source of a widely-held perceptions that the community's trust should no longer reside in the Council. As has been alluded to earlier in this part, this perception extends to both the elected body and the corporate body.

6.2.2.9 The matters affecting the Park and Environs are not exhausted by the concerns over the Current Plan, as outlined earlier in this section.

Other issues that have been raised affect development which has been carried out on the Park and the Abbott Road land, the make-up of the management committee, concerns over the manner in which the Current Plan has been given effect to, and pollution issues.

Additionally, matters involving the Park and Environs have thrown up, and reinforced, concerns over the use of funds derived from the Sports Field Rectification Levy.

Most of these concerns have been highlighted in Submissions. However, the pollution issue arose during questions put to Mr. Corbett, the Manager of Council's Environment Management Service Unit.

The amendments to the Act which provided for a more exact definition of the classification of Public Reserves did not render the Former Plan solid. This was confirmed by Council's Manager, Policy Planning and Commissioning, who gave the following evidence at the Public Hearings on April 3 2003:

**Public Hearings Transcript – April 3 2003**

MR BROAD.... Now, there has been a suggestion that in respect of the 1998 plan of management that by virtue of the fact that a new plan was being considered, which no doubt ultimately was the 2001 plan for John Fisher Park, that the 1998 plan thereby became void. In your view would that be correct?

MR BORTHWICK: I think that the new plan was supplanted - it supplanted the old plan when it was adopted by Council.

MR BROAD: Yes.

MR BORTHWICK: As to the sort of details of management under the old plan you will appreciate that it was before the time I was with Council so I don't - - -

MR BROAD: I'm asking you principles and I'm just trying to limit myself to that. So it is not akin to say a situation where a draft planning instrument has been exhibited and where it may be considered in a development?

MR BORTHWICK: No, it wouldn't be the same case. However, I might make a proviso that the old plan would need to be consistent with the current Act at that time and those new changes came in in January 1999.

MR BROAD: I thought the Act and certainly - - -

MR BORTHWICK: I think there were saving provisions in it.

MR BROAD: I thought it was executory, that what you were being told by the Department of Local Government was that you would have to conduct a review and you would have to give effect to the intentions of the Act.

MR BORTHWICK: That's my understanding, yes.

In Submission 112 it is asserted that significant developments took place without proper authority.

### **Submission 112**

- Baseball nets were erected without approval, and against the, at the time, current Plan of Management. In my view, the above three points clearly point towards a council which shows no regard for the wishes of its constituents. They had a pre-determined agenda, and they weren't going to let a consultation process get in the way!

Similar concerns were raised in Submission 120. The Council has responded to the matters raised in Submission 120, in so doing, Council has not denied the possibility that these developments might have taken place as suggested.

Concerns have also been raised that development has taken place outside the terms of the Current Plan.

Principally, these concerns relate to construction of baseball facilities within 40 metres of the riparian zone.

The Current Plan contains action tables for both the Park and Abbott Road Land.

The tables provide for re-vegetation and re-establishment of areas within 40 metres of the top of the creek or lagoon bank. Other parts require that steps be taken to ensure that a 40 metre buffer zone be maintained for any new development.

Examples of these clauses are set out below:

**John Fisher Park and Abbott Road Lands Plan of Management 2001**

<b>JOHN FISHER PARK – MANAGEMENT ACTIONS</b>					
<b>LAND CATEGORY: ALL CATEGORIES</b>					
Value	Relevant Management Issues	Performance Target (strategies)	Means of Achievement (Management Actions)	Means of Assessment (of the actions)	Priority
Social/Recreation/Visual	Additional Facilities	<ul style="list-style-type: none"> <li>Management and reduction of litter across the park</li> <li>Consider the mix of active and passive recreation needs in the context of increasing sporting facilities</li> </ul>	<ul style="list-style-type: none"> <li>Ensure a 40 metre buffer zone from the top of Greendale Creek be maintained throughout the park for any new development, with the exemption of pathways.</li> <li>Relocate rubbish bins as required throughout the park. The location of these bins to be in conjunction with existing amenities and proposed amenities. Provide new bins with new developments</li> <li>Incorporate opportunities for passive/ informal recreation throughout the park, through:                             <ul style="list-style-type: none"> <li>Detailed design of multi use paths.</li> <li>Provide multi use bike paths in accordance with the Landscape Master Plan or similar.</li> </ul> </li> <li>Ensure requirements for planting and outdoor recreational shade areas are addressed in future development.</li> <li>Investigate, and develop if appropriate, the rectification and hard surfacing of a maximum of 10 netball courts as per the Landscape Master Plan. Rectify and regrade any remaining courts. This will bring the maximum total of hard surfaces to 25 courts. Ensure that a 40m grassed court 'buffer' is maintained from the top of bank of Greendale Creek. Include vegetative plantings along road where feasible and implement measures to minimise scouring of the bank.</li> </ul>	<ul style="list-style-type: none"> <li>All works recognise this buffer zone.</li> <li>Rubbish within the park is reduced and regularly removed. Trends over time</li> <li>Development of new facilities in accordance with the Landscape Master Plan</li> <li>Number of new facilities measured over time.</li> <li>Requirements addressed</li> <li>Development of these courts.</li> </ul>	<p>High</p> <p>Medium</p> <p>Low</p>

It should be emphasised that the Current Plan gives these actions 'high' emphasis.

Mr. Borthwick was taken to the Current Plan, when he spoke at the Public Hearings on April 3 2003. Mr. Borthwick emphasised the importance of the zones, which had been adopted, in the Current Plan in the following terms:

**Public Hearings Transcript – April 3 2003**

MR BROAD: Would you agree with me that the amendments to the Local Government Act and to the regulations made more prescriptive the uses that a reserve could be put to?

MR BORTHWICK: Yes, that seems to be the case. Certainly there was not those set of individual objectives for each type in the same form.

MR BROAD: There wasn't a blurring, there was much more specificity.

MR BORTHWICK: Yes, yes.

MR BROAD: Would you agree that it follows that far greater emphasis is put on the continued use of any particular part of a reserve which may be categorised as a result of the changes.

MR BORTHWICK: I'm not sure I follow you.

MR BROAD: Okay, perhaps I can rephrase it. You have agreed with me that there was far greater emphasis on the particular use of parts of a reserve. Would you agree the effect or the intent of the legislation was to more strictly control that use?

MR BORTHWICK: Yes, I think so. I think I see what you are getting at, is the fact that, you know, if something is a sportsground now it in some way freezes it as a sportsground in the future.

MR BROAD: I don't put it in those terms. I say that it gives more emphasis.

MR BORTHWICK: It does, but remember that the plans of management are now subject to review on a 5-yearly cycle. As part, for instance, of the plan of management for John Fisher Park one of the actions is to investigate other sites for - say for alternative sport - - -

MR BROAD: That is why it wouldn't be correctly said as freezing it.

MR BORTHWICK: No, it doesn't. In the short term perhaps but certainly not long term.

MR BROAD: It wouldn't freeze it totally again in the sense that the plan of management is not an absolute plan. It does not say that you cannot do these things, it gives guiding principles.

MR BORTHWICK: It authorises uses, so as long as the uses are consistent with the plan of management there can be quite a wide range of uses authorised by that plan.

When he was asked about the objectives of a zone, Mr. Borthwick gave the following evidence.

**Public Hearings Transcript – April 3 2003**

MR BROAD: Can I change to another topic and one of the things that you mentioned was the 40 metre riparian zone. Now, the 40 metre riparian zone is emphasised in the categorisation both in respect of the sportsground, as I understand, in John Fisher Park, the - it is mentioned specifically in sportsground, it is referred to in all categories. It is also referred to in the Abbott Park land again in respect of the sportsground and the other categories and in respect of the sportsground there is emphasis firstly that any existing sporting facilities within the 40 metre zone be removed as a priority and I think it is a high priority, and again as a high priority that no structures be built in that zone. I understand that there is a complaint that at least the softball courts have been built within this zone.

MR BORTHWICK: Are you referring to nets?

MR BROAD: I'm talking about a net. Is it your view that these objectives should be met and observed?

MR BORTHWICK: In general, yes, that's my view. I think that the specific case of the netball is not an area that would be an operational matter. The actual construction of them is not - I can't comment on whether they are within that riparian zone, for example, and the actual circumstances under which they were constructed.

Despite this, it has been suggested that baseball nets were constructed contrary to the Plan.

Council has provided Briefing Note No. 37 (Volume 3, Appendix 2) in response to these allegations.

Mr. Corbett, the Manager of Council's Environmental Management Service Unit spoke at the Public Hearing on April 3 2003.

Mr. Corbett was asked questions regarding the relative importance of Plans of Management, giving the following evidence:

**Public Hearings Transcript – April 3 2003**

MR BROAD: Yes. If such a matter was referred to you and it involved an application for development in a reserve, would your unit give emphasis to compliance with the terms of the plan of management affecting that reserve?

MR CORBETT: Yes, Mr Broad, the plan of management is the first port of call that we make for a DA but again, the assessment of DAs is under the charter of local approvals. I'm often, as you are saying, as an applicant and other parts of my team may make comment on any DA but for all of us across Council the plan of management is the first port of call. The plan and LEP are the first ports of call.

In Briefing Note No. 37 (Volume 3, Appendix 2), Council seeks to respond to concerns raised in Submissions, and evidence given by Mr. Hamlyn-Harris when he spoke at the Public Hearings on April 1 2003.

Mr. Hamlyn-Harris was asked whether he thought the spirit of the current Plan had been applied to decisions made in relation the Park, Mr. Hamlyn-Harris replied:

**Public Hearings Transcript – April 1 2003**

MR HAMLYN-HARRIS: Well, the adoption of that plan and the whole process of its development as you know was a very - was fought with a lot of debate and it was a very divisive issue. We as an environmental group felt that very little was conceded to us and to our point of view in that plan of management. Two of the things that were conceded - one was that there would be no new development within the so-called Riparium zone, the 40-metre buffer zone within, you know, either side of the lagoon and the creek and the other was that there would be a plan over a period of years to determine how that zone can be rehabilitated because in a lot of places there are - I mean, there are some bitumen netball courts sitting on it at the moment. There are other playing fields on it and obviously there are issues involved in being able to rehabilitate that zone without causing a certain amount of upset.

Since that time - well, even in the plan itself one of the things that it permits in its action tables is the expansion of a toilet block which is actually sitting right on that Riparium land and I pointed that out to the Council when I addressed them at the time that the plan was adopted and, you know, straightaway we had this disparity between the undertaking not to put any development on this land and the fact that in the same stroke of the pen we were approving one. There's also a car-park to be formalised which according to the plans looked like it was well within the 40 metres.

In addition to that there have been some very large baseball nets constructed within this zone over the last 12 months or so. Now, the official word that I've been given on why they permitted this, they were simply replacing ones that were removed during a rehabilitation programme on that particular land under the sportsfield rectification programme. However, they are twice the size and they contain an awful lot more infrastructure than they ever had before. Just a couple of weeks ago some surfaces were laid within the dug-outs on a very solid - it took them 2 days to build so it's hardly just a temporary piece of structure and something that is going to be taken away. These baseball nets are huge. Apparently one of the reasons for their size is so that they can be removed but there's clearly no intention whatsoever to remove them so they are effectively permanent structures.



Mr. Hamlyn-Harris subsequently emphasised that the 'undertakings' were included in the Current Plan, in the following evidence:

**Public Hearings Transcript – April 1 2003**

MR BROAD: If I can take up two issues with you. You raised two issues when dealing with the revised plan of management, the 2001 plan, and you say that there was an undertaking given that: no new development would take place within 40 metres of Curl Curl Lagoon. Can you tell me who gave that undertaking?

MR HAMLYN-HARRIS: It is actually written in the Plan of Management as one of the key strategies on the very first page. I don't recall precisely when it first arose. It was certainly something that we had been lobbying for. I mean, we have been lobbying for a very proactive program of redevelopment of the Riparian zone of the 40-metre buffer, and this was what subsequently came out of the plan. I think it was originally in the first draft of the plan where it was referred to as a "grass buffer", and then I think DLAWC came back and said that: that terminology wasn't acceptable to them, and it became just "a buffer", but with some obligation to redeveloping it as a Riparian zone over a period of time.

MR BROAD: The second undertaking that you refer to, that is that:

Council would initiate a long term process to identify opportunities for restoration of the 40-metre Riparian zone.

Was that likewise in the plan of management?

MR HAMLYN-HARRIS: Yes, it is in the plan of management and I think it arose out of the same process, yes.

MR BROAD: So it is probably more correct to say that they are really not undertakings, they are more in the nature of a paradigm upon which the park should be managed?

MR HAMLYN-HARRIS: Yes, yes, I suppose I would agree with that, yes.

6.2.2.10 In Briefing Note No. 37 (Volume 3, Appendix 2), the Council emphasises that the land on which the baseball nets were constructed is within the Abbott Road Lands, pointing out that the land is owned by the Department of School Education, and accordingly is not 'community land' under the Act.

This fact is acknowledged in the Current Plan in the following terms:

### **John Fisher Park and Abbott Road Lands Plan of Management**

#### **3.2 Development of a Management Actions Table for the Abbott Road Land.**

Despite not all of the Abbott Road Land being classified as 'Community Land', under the Local Government Act, the Abbott Road Land Management Committee felt that this Plan of Management should reflect the following requirements for 'Community Land':

- The category of the land.
- The objectives and performance targets of the Plan.
- The means by which Warringah Council proposes to achieve the Plan's objectives and performance targets.
- The manner in which Warringah Council proposes to assess its performance with respect to the Plan's objectives and performance targets.

The Abbott Road Land is considered as a separate Management Action Table as there are several characteristics that make this land distinct from that of John Fisher Park. This area has, in the past, been a totally separate Plan of Management. The community consultation methods for this Action Table are as per the John Fisher Park consultation process.

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The role of Warringah Council and the Department of Education and Training has on this land is outlined in the Deed of Agreement. The Deed of Agreement states that Council has care, control and management of the land for 20 years, after the adoption of the 1996 Abbott Road Land Plan of Management, and for implementation of this and subsequent Plans of Management. The Department of Education and Training would approve leases or licences proposed by the Steering Committee that would be implemented by Warringah Council.

The Briefing Note fails to record this.

Similarly, the Briefing Note fails to record relevant management actions. For completeness, they are set out below:

### John Fisher Park and Abbott Road Lands Plan of Management

ABBOTT ROAD LAND – MANAGEMENT ACTIONS					
LAND CATEGORY: SPORTSGROUND, NATURAL AREA WATERCOURSE					
Value	Relevant Management Issues	Performance Target (strategies)	Means of Achievement (Management Actions)	Means of Assessment (of the actions)	Priority
Natural/Social	<ul style="list-style-type: none"> <li>Additional Facilities/future development</li> </ul>	<ul style="list-style-type: none"> <li>Avoid potential problems occurring as a result of the landfill base</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that development and future use of the land does not compromise the rehabilitation of Greendale Creek and Curt Curl Lagoon.</li> <li>Investigate and develop if appropriate, a multi-use pathway between Manly High School and Freshwater High schools. Route to be determined in consultation with Steering Committee.</li> <li>Ensure there is a 40 metre buffer between the creek and any major recreational developments on the site, with the exemption of pathways.</li> <li>Permit only informal or unstructured recreational activities such as walking and cycling adjacent to the creek.</li> <li>Reclaim the grass areas adjacent to Denzil Joyce Playing Field for passive recreation.</li> </ul>	<ul style="list-style-type: none"> <li>Development within Council Policy. Target 100%</li> </ul>	High
Visual	<ul style="list-style-type: none"> <li>Embellishment and Development</li> </ul>	<ul style="list-style-type: none"> <li>Enable development and embellishment of existing facilities.</li> </ul>	<ul style="list-style-type: none"> <li>Expressly authorise embellishment and development of existing facilities, ensure embellishment and development is in accordance with the Local Government Act 1993, and is for use by the community as per Table 3 of this Plan.</li> <li>All development proposals for new infrastructure within the park will be assessed as per Council policy, as detailed in Section 5.5 of this Plan of Management.</li> </ul>	<ul style="list-style-type: none"> <li>Level of embellishment and development per annum. Measure trends over time.</li> <li>All developments meet criteria. Target: 100%</li> </ul>	High
Social					High

**ABBOTT ROAD LAND- MANAGEMENT ACTIONS**

Value	Relevant Management Issues	Performance Target (strategies)	Means of Achievement (Management Actions)	Means of Assessment (of the actions)	Priority
	Vegetation and Landscape character	<ul style="list-style-type: none"> <li>To conserve, maintain and enhance vegetation within the park.</li> </ul>	<ul style="list-style-type: none"> <li>Selected areas within 40 metres of the top of the creek and lagoon bank that are not part of an existing sports facility, or are not immediately adjacent to an existing sports facility, will be revegetated with endemic native vegetation appropriate to re-establishing a functioning riparian zone. Much of this work can be undertaken as part of Stage 4 of the Greendale-Creek and Curl Curl Lagoon Rehabilitation Project (Figure 4 shows the location of the proposed revegetated areas.)</li> <li>Over the long term (15 – 30 years), and if opportunities for the provision of alternative sporting facilities become available (either through reconfiguration of fields in the area subject to this Plan or other sites in Warringah), sporting facilities within 40 metres of the top of creek and lagoon bank will be relocated. The area within 40 metres of the top of creek and lagoon bank will then be revegetated with endemic native vegetation appropriate to re-establishing a functioning riparian zone.</li> </ul>	<ul style="list-style-type: none"> <li>All works recognise this buffer zone.</li> </ul>	High

Finally, it appears that Council is suggesting that the replacement of the nets, with what was said to be larger nets, was not 'new' development.

This fails to address the requirements of the Management Actions of the Plan, under the heading 'Additional Facilities/Future Development Sports Field Rectification'.

Certain rectification works have been undertaken within the Park and Environs. Funds to meet the costs of these and other works have been provided out of funds derived from the Sports Field Rectification Levy.

Concerns have been raised that work which could not be properly described as 'rectification works' have been funded from the Levy.

It is not intended to explore this matter in this Part. Rather these matters will be explored elsewhere in this chapter.

Before concluding this part, it is important to emphasise that a great number of Submissions have been received which express concerns over Council's management of John Fisher Park and the aspects contained in this part and also, at the same time, raise concerns over the use of funds derived from the Sports Field Rectification Levy.

6.2.2.11 Pollution issues were taken up with Mr. Corbett in the Public Hearings on April 3 2003.

In an appendix to the Current Plan there is a supplement to the Statement of Environmental Effects relating to certain netball courts in the Park.

It raises pollution issues and recommends the installation of ground water monitoring wells and some water quality testing.

The quality of Council's monitoring of ground water was revised in the following terms:

**Public Hearings Transcript – April 3 2003**

MR BROAD:

It is concluded from this investigation that the proposed sealing of 16 netball courts is unlikely to have a significant negative impact on the rate of run-off from the sealed area and on the quality of surface or ground water flow. It is also concluded that severe subsidence of the courts is unlikely. It is, however, recommended that -

and I won't bother with first -

ground water (leachate monitoring wells) are installed upstream and downstream of each of the two netball court sites to confirm that the proposed development is not adding to any pollution concerns in the lagoon.

It then gives a costing on the basis that there would be one round of sampling and analysis. Now, what I'm concerned about is this and I'm again seeking to find this. It goes to the previous page which is 4.5 and recommends that base line levels for phosphorous nitrogen and PH be obtained. Now, does Council monitor leachate in this area?

MR CORBETT: Mr Broad, the Council as part of its environmental special rate projects has a consultant doing a range of water quality monitoring across Warringah including Greendale Creek and Curl Curl Lagoon.

MR BROAD: What about its tip sites?

MR CORBETT: No, well, nothing specifically refer tip sites but we are currently reviewing where the water quality fund should go and it's to me an example in terms of process. When a management plan is done actions are listed and then the Council staff then start to implement what's the actions in here the Council's approved into the works programs. Mr Broad, that one to date has not been done. It needs to be obviously further investigated by my staff to implement it in but as the plan is done and things now to implement it following on from the plan, but that work has not been done to date.

MR BROAD: Does Council adopt the benchmark testing requirements of the EPA, not just the phosphorous nitrogen and PH balances?

MR CORBETT: For tip sites in particular?

MR BROAD: For leachate monitoring.

MR CORBETT: We do not do - I'm not aware that we do leachate monitoring in particular at this stage as part of the monitoring we do.

## **Public Hearings Transcript – April 3 2003 (cont.)**

Again we do use Dr John Laxton and Professor Dominic Cheng from UTS as consultants to do a range of water quality studies but I'm not aware of the work we're doing, if any I might add, on the particular leachate issues from these former land-fill sites. It's something we need to have a further look at I would suggest.

Given that the concerns over water quality have existed for a very lengthy period, this response appears inadequate.

6.2.2.12 The amendments to the Act provided greater certainty to the management of Parks and Reserves.

This matter was taken up with Mr. Borthwick, who spoke on April 3 2003. His evidence has been quoted earlier in this section.

The suggestion that the Current Plan of Management would provide greater certainty, if given effect to, was also taken up with Mr. Stockdale, who spoke at the Public Hearings on April 7 2003.

Mr. Stockdale gave the following evidence:

**Public Hearings Transcript – April 7 2003**

MR BROAD: .... Are you familiar with the plan of management as it now is, the 2001?

MR STOCKDALE: I have read it. Yes.

MR BROAD: .... Now, are you aware that there were certain changes to the Local Government Act which made it incumbent upon Councils to be more specific in the manner in which community land is used and that it is put to the inquiry by the Council that the underlying reasons for the change to the plan of management for John Fisher Park is that it was brought on because of the change of law?

MR STOCKDALE: The categorisation you are referring?

MR BROAD: Yes, the re-categorisation.

MR STOCKDALE: Yes.

MR BROAD: Now, essentially what has been put to the inquiry is that the changes to the law require a more strict approach to classification of the land. Now, what I'm wanting to explore with you is really a question which can very shortly be put that if the plan of management as it now stands is adhered to, would the park be better protected than if the 1998 plan were to have continued?

MR STOCKDALE: I suppose it raises a number of issues, the first one being that it's not considered a trigger that re-categorisation, I should say, of the park for a new plan of management. The park could've been specified in accordance with requirements of that categorisation process without the need to change the plan of management. When the plan of management was introduced, the previous one still had some time to - before it expired. The new plan of management - new plan of management was introduced in November 2001, whereas the previous plan of management was due to expire on February 2003.

MR BROAD: Yes.

MR STOCKDALE: The contentious issues with the new plan of management was that the new plan of management had provision for additional 10 bitumen or hard surfaced courts for the Netball Association and it also allowed the long term lease of buildings on the park.

MR BROAD: ... Now, assuming - assuming for the sake of what I'm asking you, that it was a requirement of Council to have to cast aside the 1998 plan and to adopt a new plan, what may be put is this, that the new plan of management adopts four particular characters of areas. It is much more defined perhaps than the previous plan in that it has actually five areas within its zoning and they are distinct. There is one very large area which, of course, is sports ground and there have been contentious issues



## Public Hearings Transcript – April 7 2003 (cont.)

which have arisen in respect of the sports ground.

There is another area which is listed as parkland and again another area which is natural area watercourse, another which is wetland and there are two smaller areas which are general community use. They are the car parks. The previous plan was a general plan in the management goals. The new plan is a much more specific plan.

MR STOCKDALE: True.

MR BROAD: It lists a great number of management actions and they are in the green and yellow sections at the rear of the plan which provide relevantly, I think, from the view of those who are not associated with the sporting bodies protection for the wetland areas.

MR STOCKDALE: Agree.

MR BROAD: One of the principal protections is to ensure that development not take place within 40 metres from the crest of the bank of the creek or from the crest of the bank of the lagoon. Now, leaving aside the hard surfacing of the netball courts, which of course is a contentious issue, leaving aside the back nets for the softball area, in your view if that plan was adhered to and there was that buffer zone, would that provide an increased level of protection to the creek and lagoon area?

MR STOCKDALE: It would.

MR BROAD: One of the other actions which is proposed is to revegetate within that buffer zone where sporting areas do not currently exist. Again, I assume that would be of benefit.

MR STOCKDALE: It would.

MR BROAD: The other matter is an intent that over the - I think it is expressed in the next 15 to 30 years to relocate existing sporting uses out of the buffer zone. Again, would that provide a stronger protection to the creek and lagoon area than the previous plan?

MR STOCKDALE: It would.

MR BROAD: The ultimate point of course I'm trying to explore and don't think that what you have put in your submission is ignored, is that for those reasons and for the fact that there are restrictions, far greater restrictions, under the land management types which are identified, that is, the wetland, the recreational area, there is potentially more likelihood - no, I won't put that question in that form. If the plan were to be given effect to in the manner that it is drawn, would you agree that those prescriptive provisions may likely provide for a better outcome?

MR STOCKDALE: Yes, it would.

**Public Hearings Transcript – April 7 2003 (cont.)**

MR BROAD: Is it by way of contrast your concern that notwithstanding that this plan has been adopted, those prescriptive outcomes have not yet been adhered to?

MR STOCKDALE: That's correct and they were given a high priority by the plan of management, the current one.

MR BROAD: ... Does that underlie your concern in respect to the future administration of John Fisher Park?

MR STOCKDALE: Yes, it does but I also mention that the categorisation of the sports ground was also a very contentious issue and was subject to a number of meetings at Council and there was overwhelming objection to the classification of most of the sports areas as sports ground because it changes the orientation of the current multi-use and active and passive use of the fields to more of a sports oriented environment - sorry, more of a sports oriented usage.

MR BROAD: One of the things that comes out of the amendments to the Local Government Act and I'm putting this as a proposition in fairness to Council, is that the amendments to the Local Government Act really make a sharp divide between a sports ground and a recreational area.

MR STOCKDALE: They do.

MR BROAD: Council would say that their hands were tied, that when there is active competitive sport played, then in reality they have little alternative but to reflect this in the plan.

MR STOCKDALE: Well, that's their legal advice, I understand, but we've also heard other legal advice which contradicts that. Also the information that came from the Land and Environment Department indicates to us that it wasn't imperative that the Council adopt the sports ground categorisation in order for sports to be played on that land.

MR BROAD: .... So what you are saying is effectively that whilst Council may say this, this may not necessarily be the case?

MR STOCKDALE: That's my understanding.

It is apparent that the evidence given by Mr. Stockdale evinces a view, which is held by many constituents, that such trust does not reside in the Council.

## 6.3 The Sportsfield Rectification Levy

### 6.3.1 Subsidence Issues and the Levy

6.3.1.1 In common with many Councils in New South Wales, the Council has utilised former landfill sites for sports fields. Council's Manager of its Environmental Management Service Unit gave evidence that Council has 30 sports fields on twelve former landfill sites.

As a result of the breakdown of the waste dumped in the landfill and as a consequence of the failure to properly compact the fill, these sites are affected by subsidence.

In 1998 the Council obtained approval from the Department of Local Government to impose a levy on rates to be applied to rectification works on sports grounds affected by subsidence. Submission 125 recites the terms of the application made by the Council to the Department of Local Government.

#### **Submission 125**

"The additional 2% will be used to provide additional funding in relation to sports grounds constructed on land fill sites. There is a need to address the subsidence problem at the grounds, which must be rectified and further differential settlement prevented. If the grounds are not adequately maintained continual settlement will cause further damage. Funding from internal revenue and reserves is infeasible as the Council does not have existing resources to meet the high costs involved in the proposed solution."

It is important to emphasise the following purposes as outlined in the application:

- There was a need to rectify subsidence
- There was a need to address further differential settlement problems
- If the grounds were not adequately maintained, continued settlement would cause further damage.

There is of course, no suggestion in the application that funds raised by the levy would be used to address issues other than those outlined in the application. In those terms, the intent of the application (and if acceded to, the intent of the levy) was to carry out works to rectify subsidence, the intent was also to carry out works to address differential settlement, and finally, the intent was to provide for ongoing maintenance of grounds to prevent further damage from further settlement.

By contrast, the application did not envisage that the proceeds of the levy would be applied to upgrade facilities at sportsgrounds. If the Council had sought to use funds derived from the levy for this purpose, it was incumbent upon the Council to include this intended use when making the application, or subsequently, when intending to do so.

6.3.1.2 Mr. Dunphy, the author of Submission 117, refers to the levy being considered in a report to Council's Strategy Committee on December 16 1997. Mr. Dunphy's Submission contains the following commentary on the report:

### **Submission 117**

The categorisation of the Park became an issue when Council decided that the amendment to the Local Government Act in 1999 gave them the opportunity to reopen the Plan of Management for the Park, even though it still had several years to run under the existing plan. Other councils merely adopted a new categorisation without going through the full process of developing a new plan of management for each park given that such an exercise would be particularly onerous upon each council. The Council have not been consistent in their treatment of the categorisation process because they have not applied the same process to all eighty (80) parks and sports fields under their control.

The Levy was considered in "Report to Strategy Committee Meeting on 16 December 1997". In that report the sports fields requiring rectification were identified in order of priority and funding options were considered. A discussion of the type of works proposed to be undertaken was given and it is readily apparent that the works were intended to be primarily earthworks.

Based upon Council's 1997 Biennial Livability Survey it was considered that there was a high degree of support for the imposition of a levy to fund sports field rectification. This proposition could potentially be suspect in that they have not identified whether the total number of respondents to the survey was a majority of ratepayers or even a sizeable minority. The quote of 55% in favour and the dismissal of the 41% in the negative fails to consider the total population of Warringah. Furthermore, no consideration was apparently given to imposing a levy on the members of the Manly Warringah Pittwater Sporting Union (the "Union") who were to be the main beneficiaries of the works programme and whose membership encompasses many sporting participants beyond the Council boundaries.

The Submission refers to a later report to the same Committee on March 31 1998 which contained a recommendation that an application be made for:

### **Submission 117**

recommended that an application be made to the minister for "...a 2% Special Variation increase to Council's General Ordinary Rate to specifically fund works to address safety hazards associated with landfills and subsiding sports fields." This recommendation clearly sets out the purpose of the Levy,

Mr. Dunphy indicates that the report indicates the purpose of these works as being:

### **Submission 117**

“works to address safety hazards”

6.3.1.3 The Council has convened the Sportsfield Rectification Advisory Committee as an Advisory Committee.

In Submission 288, the Council provides a précis of the Committee and it is appropriate to extract the following information from this:

- The Functions of the Committee are:
  - to oversee and ensure the implementation of the projects undertaken from the approved schedule of works detailed in the Sportsfield Rectification Programme;
  - To oversee the expenditure of funds collected as per Sportsfield Rectification special variation of the General Rate;
  - To consider and make recommendations to Council on a three-year rolling Sportsfield Rectification Programme.
- Its voting members comprise:
  - the Mayor, who is the Chairperson;
  - at least two other Councillors;
  - three representatives of the Manly Warringah Sporting Union;
  - three community representatives, one from each of the three Wards of Council.
- There are various non-voting members whose positions are made up of Council staff.
- The members cease to hold office at the ordinary election of Council.
- The Committee may be dissolved and disbanded at any time.

The power to dissolve or disband the Committee should not, however, be taken as a right to remove all or any member of the Committee. It will be seen that Council foresaw the need to obtain expert advice from user groups through their peak body, the Sporting Union. This is expressly provided for by allowing three representatives of the Union to sit on the Committee.

Likewise, the Council foresaw the need to have the wider community represented on the Committee by allowing a representative from each of Council's Wards to sit on the Committee. It is implicit in providing for this representation that Council saw that this makeup would also meet community perceptions.

Submissions received by the Inquiry raised nine issues. These issues were subsequently taken up with their authors, with Council staff and with a member of the Committee in the Public Hearings. Additionally, the Council has taken the opportunity to provide briefing papers responding to matters raised, as part of the opportunity granted to it to put matters in reply.

The issues which have been raised may be grouped under three headings:

- The work undertaken
- Governance issues
- Procedural matters

6.3.1.4 One of the principal concerns which has been raised is that certain of the works which were undertaken could not be classified as falling within those described in the Application. Mr. Dunphy, the author of Submission 117 and a former member of the Committee, indicates his understanding of the works which could receive funding, in the following terms.

#### **Submission 117**

During my tenure on the committee it was understood that the levy was to be applied for the rectification of the sports fields and the replacement of any infrastructure removed as a consequence of the rectification process. It was considered that expenditure for new works could not be approved and this was demonstrated at a Committee meeting held on 16 June 1999 when the payment for new turf cricket nets was denied as it was considered an improvement not rectification. Subsequently, after much debate, the same approach was adopted in respect to the asphaltting of new netball courts, ...

Mr. Dunphy gives the following view of works that he felt did not fall within the ambit of the levy.

#### **Submission 117**

As an example the rectification of Aquatic Drive was substantially over budget (250%) and included over \$80,000 for fencing and landscaping and \$20,000 for a new foul ball post. A further example occurred at John Fisher Park where portable baseball back nets costing over \$70,000 was spent to replace the existing back nets which were not removed during the earthworks and a concrete footpath was laid along the entire length of the soccer fields when there had previously never been one. Other examples, for which I am not totally sure, may include the installation of lighting and the construction of a multi-use hardcourt at St Mathews Farm Reserve.

Mr. Thomas, although he was not involved in the Committee, has undertaken extensive analysis of the works undertaken which are, in his view, outside the terms of the levy. Mr. Thomas asserts that:

**Submission 125**

Since the introduction of this Special Levy nearly all of the major rectification projects funded under this levy have included payment for substantial areas of works that have no bearing upon rectification of subsidence whatsoever. These works are totally outside the parameters of the original scope of works presented to the DLG in 1998, and as such should be funded from elsewhere within Council's budget.

Mr. Thomas then lists the works undertaken and the costs incurred providing the following table.

**Submission 125**

A project by project breakdown of expenditure on areas considered to be outside this scope is listed below (all figures are in dollars):

**St Matthews Farm**

Sporting Facilities	47,500	
Electrical/Lighting	215,000	
Sub-Total		262,500

**John Fisher Park**

Brass Plaque	373	
Opening Expenses	799	
Sub-Total		1,172

**Aquatic Drive**

Fence	59,900	
New fencing to dugouts	3,800	
Replace backstop fence	6,279	
Ground closed, gates, fence	1,630	
Relocate lighting	2,690	
Outfield distance signs	360	
Electrical work	2,525	
Plaque	755	
Marquee	481	
Sub-Total		78,420

**Abbott Road Soccer**

Baseball home plates	10,700	
Fencing	57,300	
Concrete paths	22,600	
Supply and install soccer posts	19,200	
Making fencing removable	19,950	
Additional works for backnet installation	24,165	
Relocation of baseball dugouts	3,500	
Sub-Total		<u>157,415</u>

Total expenditure on works outside scope of levy? = \$499,507

It must be emphasised that the work detailed by Mr. Thomas and the costs attributed by him, derive from his own views and calculations. They do not flow from the opinion held by Mr. Dunphy, which is outlined earlier in this part.

Mr. Thomas spoke at the Public Hearings on April 1 2003 and gave the following evidence regarding his conclusions and costing.



## Public Hearings Transcript – April 1 2003

THE COMMISSIONER: ... You have asserted that there has been expenditure on works outside of the scope of the special levy and you have provided some detailed figures in relation to that. I wonder if you would indicate first where those figures came from?

MR THOMAS: Those figures have come from Sports Field Rectification Advisory Committee minutes.

THE COMMISSIONER: So these are on the public record?

MR THOMAS: They are on the public record. They are also from the income and expenditure statements from that levy.

THE COMMISSIONER: Would you like to briefly just identify where you see the major discrepancies occurring between the intention of the levy and the actual expenditure.

MR THOMAS: I think the main issues that came out of this, I mean, we really only got to learn about the Sports Field Rectification Levy when we were looking into the John Fisher Park issue, so I personally had until that point had no idea that there was this 2 per cent levy that was on my rates and we were initially concerned that this money might be spent for the hard surfacing, the bitumen for the netball courts, so we started looking into it to try and find out how the money was being spent.

In looking at some of the minutes and financial breakdowns that have been presented, there seem to be some large anomalies with amounts that were being spent on items such as sporting facilities and lighting that seem to have no bearing at all upon the rectification of subsidence and so really we started just looking through each project individually and just trying to see what was being spent. Obviously, the first one

that came up was St Mathews Farm, which was quite a large project which was carried out and within the St Mathews Farm budget there seemed to be this figure of \$215,000 for lighting which to me, you know, lighting has nothing to do with subsidence.

So it was issues like that, you know, in looking through this, other items that kept cropping up - much smaller items admittedly that kept crawling up, were items such as sort of a plaque of a marque to celebrate the re opening of a facility once the subsidence works had been corrected. Things such as new fencing, ground closing off was one item in Aquatic Drive, whether - the ground whereas it had previously been quite open to the public they had obviously put new fencing in and actually locked it up. Again, the payment of that came out of the rectification funds.

THE COMMISSIONER: I have read your submission carefully and

**Public Hearings Transcript – April 1 2003 (cont.)**

you do instance a number of things there. I don't want to pursue them all, but let me just ask you about the money for lighting in one instance, where you say there was \$215,000 allocated - - -

MR THOMAS: That is what is listed on the statement.

THE COMMISSIONER: Right. Do you know if there was lighting there before?

MR THOMAS: The problem with the St Mathews Farm project is there is very little detail there because Council claim that the original documentation was on a different computer system and all those records appear to have been lost for the first year of the St Mathews Farm work, so it is very difficult to try and judge what was there before and what wasn't - you know, what was new works.

THE COMMISSIONER: I guess it is possible that something like lighting, if there was significant movement in the surface, that lights could be moved out of place and so forth and they may have to be removed.

MR THOMAS: That could be the case. I think an item that is perhaps more relevant is the item of the baseball nets that were put in at the Abbott Road soccer fields, where they are much, much bigger than the original items that were there and, in fact, the original items when you watched the work being carried out and the stripping off the ground being carried out over there, those original nets actually stayed in place while that work was being carried out and the contractor actually worked around them.

It seemed quite amusing at the time to watch the contractor having to work around these structures that were there and it was only once that work had been completed that the structures seemed to be demolished and new structures put in. Now, if they were able to work around them and the nets could remain there, why on earth are we paying so much money, over 70,000 or more, I think was just on those elements alone.

THE COMMISSIONER: In terms of the general expenditure pattern, are you saying that the use of any of these funds for sporting facilities cannot be provided from the money raised by the levy?

MR THOMAS: What I feel because the levy - certainly the levy I have discovered since sort of going through all the early documentation on this and how the levy was advertised to the general public - it appears to have been - although it was only being advertised as: rectification of subsidence, there was never any mention of replacement of sporting facilities, it was purely talking about the ground issues. It certainly wasn't a universally accepted levy, even in that limited viewpoint of just the ground works.

## Public Hearings Transcript – April 1 2003 (cont.)

I understand that there was a public meeting early in the piece, I think in 1998 or 1997. There don't seem to be any records of that public meeting on file in Council, but I have spoken to one of the elder representatives of the community who was present at that public meeting and he says: it was quite a bun fight between the sporting groups and the general community, who were concerned that they were having to carry out an extra 2 per cent on their levy to what was purely being listed as rectification of sports fields.

Now, I think the whole issue about how that money then starts getting used to replace sporting equipment, I think, it becomes a further burden upon the general community and a lot of that equipment - for instance, replacement of goal posts and that, I mean, surely, the goal posts that have been pulled out can simply be put back in after the work has been carried out.

It seems to be just an excuse or has been in the past, certainly when this letter was originally put down and with all of this information, Council didn't have a policy with respect to this levy. I think it has purely come out of the comments that Mr Mitchell had with his report that Council had to look at actually providing a more stringent policy that governs the use of that money. But I think the biggest issue with all of this is has been that there is no sunset clause to this levy.

So what was initially being presented to the community as a 2 per cent levy that may last for 5 or 6 years or something and then we would go back to our normal rates arrangement has no sunset clause. It is just continuing and continuing and even now, with the new policy in place, there is still no sort of forecasted program of works and no forecasted end date for this. The concern is that the more it is spent for elements that aren't strictly and purely in that sort of ground subsidence category, then it will just linger and linger and the community will have to bear it for longer and longer.

**THE COMMISSIONER:** Thank you. I turn to another matter. The proposal to hard surface the 10 netball courts in John Fisher Park. You give some details of the total cost in your written submission and contributions from the Manly Warringah Netball Association. I'm not sure I understood exactly what the outcome of that is, what the message was in those figures that you quoted?

**MR THOMAS:** The message within that was that within the plan of management process for John Fisher Park there was a stage at which during the draft presentations, there was a stage at which there was a cost breakdown given for various options for works to those netball courts. The Sport Field Rectification Committee had already prior to the plan of management process approved an option of rectifying the grass courts and they had given certain cost alternatives in that they could rectify say 30 courts at 380,000 and 10 bitumen courts at 350,000.

**Public Hearings Transcript – April 1 2003 (cont.)**

This plan of management process then proceeded to produce a series of breakdown figures on how you might deal with 33 courts taken, say, 10 hard surface, 23 grass or having all 33 grass. The option that then was presented was one where the total costs came to something 729,000 and the hard surfacing cost including GST came out at 262,625. Now, the netball association had written to Council on 9 May 2001 quite some time after the closing date for submissions which had been October 2000 to that plan of management process.

They had written saying that they would offer to contribute up to \$200,000 for the cost of asphaltting 16 additional courts. Now, there was obviously a cost difference there between the 262,000 which was outstanding for hard surfacing and the 200,000 that the netball association was prepared to offer. The question then was where is this 62,000 going to come from and the concern had been all along that the 62,000, Council were going to try and use Sports Field Rectification moneys to pay for that hard surfacing.

This was further complicated by the fact that in, I believe it was December of that year, I think it was December 2001, the Sports Field Rectification Committee actually voted to set aside 729,000 from their funds for this work. Now, that 729,000 covers, in estimated costs at the moment, that covers the total expenditure of both the grass and the bitumen netball courts. So it was seen then that that money was being allocated to do both grass and bitumen. So even though the netball association was saying they would put 200,000 in, already that total expenditure was being covered by the levy.

THE COMMISSIONER: Okay. Another part of your submission, you say in two instances, the Abbey Road Soccer Fields and St Mathews Farm, you suggest that funds for drainage works were either omitted or were much smaller than the works carried out on what you see for items outside the scope of the levy. Would you make a brief comment on that?

MR THOMAS: There was in the financial breakdowns for the works at Abbott Road, when the tenders came in, the tenders were much higher than the estimated figures originally budgeted for. The committee or Council went back to those tenderers and asked them to resubmit and they actually made a budgetary saving of 100,000 by omitting an item for subsoil drainage. So there was a figure there of \$107,800 omitted as a budgetary saving and yet when you look back at the sort of works that were completed out on that field in terms of those baseball nets and other structures that perhaps are nothing to do with ground subsidence.

There was an expenditure there of 157,000. On St Mathews Farm, once again because of the earlier records, I'm not sure what was allocated if anything in terms of subsoil drainage on St Mathews Farm originally. However, a recent project has seen contractors have to return to St

## Public Hearings Transcript – April 1 2003 (cont.)

Mathews Farm after that project had been completed I think in 1999 and they have had to spend a further \$80,000 on putting in subsoil drainage. So this is on a project that already had had over \$700,000 spent on it. They then had to return 3 years later and rectify drainage problems.

The Council, in Briefing Paper No. 23 (Volume 3, Appendix 2), has partly responded to these claims, essentially taking issue over the definition of “subsidence” works. It is considered that this response is inadequate, particularly in light of the matters highlighted earlier in this part where the Application was explored.

It is not the province of this Inquiry to determine the correctness or otherwise of the concerns raised by Mr. Thomas. It is appropriate that independent advice be obtained whether all or any of the works for which funding has been provided from the levy, fall outside the scope of the works able to be funded by the levy.

Mr. Thomas raised other concerns that the inclusion of works not properly funded from the levy led to other work being omitted as a budgetary saving. Mr. Thomas suggests:

### Submission 125

It would appear that \$107,800 for subsoil drainage was omitted as a budgetary saving from the contract works for the Abbott Road soccer fields. Yet \$157,415 has been spent on works outside the scope of the levy.

An additional \$83,300 has recently been expended from the reserve to rectify drainage problems at the St Matthews Farm project. Yet this project contained over \$260,000 of expenditure on works clearly outside the scope of the levy.  
*Ref: Minutes of Sportsfield Rectification Advisory Committee Meetings; Abbott Road Soccer Fields Contract Tender breakdowns Sept and Oct 2000.*

## 6.3.2 Governance Issues

6.3.2.1 Again, if these concerns are correct, they raise substantial concerns over the governance of Council. Accordingly, they bear independent review.

Mr. Dunphy, a former member of the Committee and an accountant, raises concerns over a number of issues which might be described as “governance issues”.

Reference has already been made to his concerns over cost blowouts in which he refers to the rectification of Aquatic Drive as being 250% over budget.

The John Fisher Park Group also raises concerns in its Submission 109, stating:

### **Submission 109**

#### **Questionable accounting of funds expended on sportsfield rectifications**

The community has had extreme concerns about the financial accountability of the sportsfield rectification fund. On several occasions, through minority Councillors, project figures have been made available. It is almost impossible to reconcile each set of figures and the recurrence of 'miscellaneous' and 'sundry' expense items – often featuring large amounts of money – is of great concern.

*Ref: Various financial statements of the Sportsfield Rectification Fund; Letter from John Fisher Park Community Group to Department of Local Government, March 2001.*

Briefing Paper No. 50 (Volume 3, Appendix 2) appears to direct a response to these concerns. However neither its contents nor the accounts attached to the Paper, adequately respond to the concerns, particularly the references to “miscellaneous” or “sundry” expense items.

#### 6.3.2.2

Other issues falling under the theme of “governance issues” include allegations contained in Submission 120 regarding inaccurate minutes. The Submission contains the following assertions:

### **Submission 120**

#### **Misrepresentation of information and adoption of inaccurate minutes**

On 7 November 2001, at a meeting of the Sportsfield Rectification Advisory Committee, Cr Moxham made statements about the potential effect of DLWC's riparian zone requirements. According to the minutes of that meeting, he greatly exaggerated the implications of riparian zone protection. Furthermore, the minutes state that the 'local representative present' (presumably Cr Jones) said that he had not received any significant expressions of objection to the sporting proposals for JFP (ignoring, in the process, 18 months of campaigning and thousands of letters to Council). When the validity of these comments was challenged in a Council meeting by Curl Curl Lagoon Friends Inc., the speaker was dismissed and ridiculed by majority Councillors. In further discussion of the Council, Cr Moxham, by way of explaining the disparity between the minuted information and reality, said that the minutes don't necessarily reflect what was actually said. Despite this, the Council then proceeded to adopt the minutes without change.

At the meeting where our representative had asked to speak on the above matter, the majority Councillors' disrespect for the community view on this issue was highlighted by their deliberate action to pass over the agenda item (which was one of the first on the agenda) until 11:50pm – by which time the public gallery had all but cleared. It seemed that they wanted to discourage the speaker and/or avoid his comments being heard by other members of the community.

*Ref: Minutes of Sportsfield Rectification Advisory Committee, 7 November 2001, p. 28; presentation to Council by President of Curl Curl Lagoon Friends Inc., 20 November 2001; Council meeting proceedings, 20 November 2001.*

### 6.3.2.3

There are two other matters which arise from the Submissions. The first involves the appointment of Mr. Galloway as a community representative to the Committee. Underlying these concerns is a suggestion of bias or a conflict of interest by virtue of the position held by Mr. Galloway on the Sporting Union.

In Briefing Paper No. 32 (Volume 3, Appendix 2) the Council recognises:

#### **Warringah Council Briefing Paper No. 32**

*"It is important to avoid public perceptions of conflicts of interest and not just real conflicts. When such conflicts exist, matters must be resolved in the public interest and in a way that is reasonable, fair and workable, so as to avoid rumours, suspicion or perceptions that something is wrong."*

Having regard to Mr. Galloway's position and in light of the foregoing, it must be anticipated that public perceptions would likely exist. In those circumstances Council might have made a wiser choice in not appointing Mr. Galloway.

In drawing this conclusion it must be emphasised that no allegations or suggestions were received which in any way raised any adverse comment in the way that Mr. Galloway conducted himself or performed his duties as a member of the Committee.

The other issue raised in the Submissions related to the removal of Committee members in 2001. The précis of the Committee provided in Submission 288 does not suggest that the Committee was validly removed at that time.

Finally, for the sake of completeness, it is necessary to respond to a concern which was raised in the course of the Public Hearings that representatives of interest groups should not vote on matters affecting such groups. In the present circumstances this view would suggest that the representatives of the Sporting Union could not vote on resolutions to provide funding for rectification works on grounds on which members of the Union play sport.

It must be accepted as fundamental to the functioning of such committees that the knowledge and experience residing in these representatives, be available to the committees. To disbar people with particular knowledge and expertise must be contrary to the intent of their appointment.

## 6.4 Brookvale Park

### 6.4.1 Plan of Management

6.4.1.1 The Inquiry received Submissions raising concerns over the Plan of Management for Brookvale Park and aspects relating to developments on the Park, and in the near vicinity.

Principally these concerns related to a perceived favouritism of the sporting interests associated with the Manly-Warringah Rugby League Club Ltd.

In response to the issues which were raised, the Council provided two Briefing Papers No. 28 and No. 56 (Volume 3, Appendix 2).

6.4.1.2 A detailed Submission was received from the Brookvale Valley Community Group, Submission 300, which raised the following issues falling within the Terms of Reference, and which bear consideration in this Report.

1. Concerns over the consultation process leading up to the adoption of the 'Brookvale Plan of Management' in September 2002.
2. Concerns over the independence of the citizen representatives to the Brookvale Park Advisory Committee.
3. Governance aspects involving the Brookvale Park Advisory Committee.
4. Perceived favouritism of the Rugby League Club.

Mr. Baxter, the President of the Group, subsequently spoke at the Public Hearings.

6.4.1.3 The Manly-Warringah Rugby League Club Ltd is the principal user of the Brookvale Oval, which forms the major part of Brookvale Park. It is effectively the sole user of the oval and adjacent facilities from the first Friday in February until September 30 in each year.

In Briefing Note No. 56, the Council has provided a copy of a deed dated December 8 1993, entered into between the Council and the Club. It provides for the Club's right of occupation in the terms which are outlined above up to September 30 2009.

In view of certain concerns which are raised in Submission 300, it is appropriate to set out some of the provisions of the Deed.

6.4.1.4 In addition to the rights granted to use the Oval, the Club has the right to use the remainder of Brookvale Park on those days when there is a New South Wales Rugby League fixture.



This period of use is, however, broken to permit the Manly Agricultural and Horticultural Society to hold its show.

The Club is required to pay to the Council 15% of the gross total revenue received by the Club from its use of the oval and adjacent buildings. The Deed requires that this be paid by two equal instalments on or before July 1 and December 31 each year.

The Deed contains a definition of the meaning of 'gross total revenue', however, it is not necessary to refer to this for the purposes of this Report. It is sufficient to say that it seeks to refer to all sources of income anticipated to be received by the Club from its use and occupation of the site, principally to conduct football games in the National Rugby League Football Competition.

The Oval is of course the home ground of the Manly-Warringah Rugby League team in its various names over the period of the Deed.

The Club is granted the rights regarding catering and refreshments, sale of alcohol, the existing advertising space, radio and television and admission charges.

The Council bears the burden of maintaining the playing surface of the Oval and cleaning and maintaining the rest of the Park, with the exception of the corporate boxes and the catering and liquor facilities.

The Council is empowered, but not required to upgrade certain facilities. Should the Council resolve to do so, then Council is responsible for the costs of such upgrading. The club may likewise upgrade the facilities within the existing buildings, again at its own cost.

The Deed expressly prohibits the club transferring, sub-letting or parting with possession of the land. The terms of this clause provide an absolute constraint.

6.4.1.5 There are terms which allow for the club to terminate the agreement on giving 12 months prior notice, on the further proviso that the club is not in default when giving such notice. This is contained in clause 19 (i) of the Deed.

There is a further provision, contained in clause 19 (ii), which allows the club to terminate the Deed if it is refused admission to the first class Rugby League competition (formerly) the 'Winfield Cup'.

Conversely, the Council may terminate the Deed by giving 12 months notice, in the event that the amounts payable by the Club in that year are less than the Council is obliged to spend on the land and buildings during that year. This provision is contained in clause 19 (iii).

At this point it might be noted that the powers exercisable under clause 19 (iii), do not arise as a consequence of any 'default', but rather as a consequence of levels of income derived by the Club or by levels of costs incurred by the Council.

Subsequently, in Clause 20, the Deed provides a right on the part of the Council to determine (terminate) the Deed in the event that the Club makes a default.

Such default may arise from a failure, on the part of the Club, to observe any of its obligations under the Deed or to remedy any default after receiving one month's notice to do so. In addition to this, there are specified events which give rise to a default including the appointment of a receiver, or if the club goes into liquidation.

It should be noted that the provisions entitle the Council to terminate the Deed, they do not require that the Council must exercise this right. Accordingly, the Council is able to exercise a discretion whether to terminate the Deed or to take other steps to deal with any default.

## **6.4.2 The Concerns**

### **6.4.2.1 Concerns over the Consultation Process leading up to the adoption of the Plan of Management.**

Mr. Borthwick, Council's Unit Manager, Policy Planning and Commissioning, spoke at the Public Hearings on April 3 2003, giving evidence of the legislative amendments which required that the Council adopt Plans of Management for review in the following terms:

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MR BORTHWICK: ...However, in 1998, there was a change to the Act and these amendments came into force on 1 January 1999, and that applied considerably more detail to this categorisation. So if I can do this, say, a section - just bear with me for a moment - right, so for example, section 36(f), which was a new section: Developed Core Objectives. which had not really lived in a plan before. So Core Objectives:

For management of community land categorised as Sports Ground.

Okay, and then it gave core objectives:

To encourage, promote and facilitate recreational pursuits in the community, involving organised and informal sporting activities and games.

And, (b):

To ensure that such activities are managed having regard to the adverse impact on nearby residences.

Then 36(g) gave another set of core objectives for land categorised as "a park", and that was:

To encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities. To provide for passive recreational activities, or pastimes and for the casual playing of games and to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

So what we have now is a set of objectives for each of those other categorisations, and there was an extra categorisation added at that time. You had objectives which were not necessarily consistent with each other. As well, the Local Government regulations addressed this issue as well and talked about in section - part 3 of section 11 of the regulations which is regulation 1990 at number 460, section 11 says that - well, guidelines for categorisation of land as a sportsground:

Land should be categorised as a sportsground under section 36(4) of the Act if the land is used or proposed to be used primarily for active recreation involving organised sports and the playing of outdoor games.

Section 12 it talks about the guidelines for categorisation as a park:

Land should be categorised as a park if the land is or is proposed to be improved by landscaping, gardens or the provision of non

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sporting equipment and facilities for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

Now, I must stress this is prior - John Fisher Park was prior to me taking over as manager so my observations are based on a reading of the Act and a reading of the files. I don't have actual direct experience. What I understand is that the result of the 1998 amendments was that if you had land that was categorised under several categories there was potential conflict and you can see there is potential for conflict there. If we look at the adopted plan in 1998 and it talks about category of land, it just has two lines in it. It says:

John Fisher Park and environs is categorised as a natural area comprising a water course and a wetland. John Fisher Park and environs is both a sportsground and park for general community use.

There's no - it does mention the water course as Greendale Creek and the wetland Curl Curl Lagoon but it's not specific as to what areas are which and not surprising because it was not required by the Act under which this was done. Another section of the regulations - I'm sorry to keep going back to this but I think it takes us to where we want to go. Section 21, preparation of draft plan of management where land is categorised in more than one category, it says:

A draft plan of management that categorises an area of community land or parts of an area of community land in more than one category must clearly identify the land or parts of the land in separate categories by a map or otherwise.

We chose mapping as the easiest method rather than description by lot and DP number. Finally there's a practice note issued by the Department of Local Government, practice note number 1. Latest revision is May 2000 called: Public Land Management. It re-states the necessity to clearly identify each category of land and then on page 12, second paragraph it says this:

Once land is categorised, the core objectives for each category are provided in the Act. These apply automatically to the land regardless of the content of the plan of management. The core objectives came into force on 1 January 1999 and apply to all plans existing at that time.

This is in bold:

Council must review its plans of management to determine whether they comply with the core objectives. The review must be completed by 31 December 2000.

## Public Hearings Transcript – April 3 2003

Reference is clause 23, Local Government General Regulation:

As a result of the review Council may need to alter some categories and plans.

The view that was taken, I understand, was that the potential conflict between the various categories of use in John Fisher Park plan among others was such that it should be subject to review and in August 1999 a report was put to Council discussing this issue and it recommended I think eight to 10 plans for priority for review. John Fisher Park was one of those. We have since then been working steadily through the list. We have undertaken the review by 31 December 2000 but obviously preparation of plans of management, particularly given the level of detail and the consultation that we do despite an extensive process, takes if all goes well at least 7 to 10 months.

In accordance with the requirements for this legislation, Council commenced consultation on the new Plan of Management.

In its Submission to the Inquiry, the Brookvale Valley Community Group expressed concerns that:

### Submission 300

There is great disappointment in the community that a whole raft of items which further the interests of the League at the expense of the community have been added at the 11<sup>th</sup> hour. It is tailor made for what are obviously the interests of the MWRLC yet there are no documents or submissions from them included which detail their requests. It would appear that these negotiations have taken place outside the prescribed consultation process.

The Submission then details the changes.

#### 6.4.2.2

Council's Submission 288 refers to Council's Community Consultation in the following terms:

In 2000 the Council developed an Award-Winning community consultation framework to guide staff in the practice and process of consulting with the community about Council business.

- The Warringah Community Consultation Framework comprises:
- The Community Consultation Matrix
- The Community Consultation Toolkit

The Community Consultation Policy and Strategy, adopted by Council in August 2000, support these documents. The Policy outlines the philosophical basis of Council's commitment to community consultation. While the Strategy covers the Framework's implementation across the organisation.

The Council has made the Consultation Matrix and the Consultation Toolkit available in its briefing notes.

The community Consultation Matrix suggests that Plans of Management are to be regarded as falling into the 'Level 1 – High Impact' classification.

This classification anticipates that such projects have:

- High levels of real or perceived impact across Warringah
- Significant impact on attributes that are considered to be of high value to Warringah
- Potentially a high degree of controversy on conflict
- Likely to have a high level of interest across Warringah

The Matrix anticipates that such matters generally require participation, informing, seeking information, involving and seeking partnerships.

The Toolkit provides a practical guide to various ways in which consultation may occur.

The Toolkit contains good practice examples, including an analysis of the process undertaken for the Griffith Park Plan of Management. This process emphasises the manner in which feedback was obtained.

#### 6.4.2.3

Submission 300 attaches a copy of the Group Submission on the Draft Plan of Management. It highlights the concerns of the group that there was too little feedback when the Plan was being drafted. This is evidenced by the following statements:

#### **Submission 300**

We oppose plans to allow telecommunications facilities on any lighting towers. This item has never been raised in any of the discussion, meetings or presentations leading up to this report

We oppose the initiation of a feasibility plan for a car park under the oval and park. This item has never been raised in any of the discussion, public meetings or documents leading up to this report

The Council has provided a Briefing Note which responds to these concerns. It suggests that the issues had been raised in Section H of the discussion paper. This does not appear to respond to the assertions in Submission 300, but rather to acknowledge that the issues arose in the discussion paper.

It must be acknowledged that the Group was putting a view, no doubt on behalf of its membership, that it viewed the appropriate consultation process should have allowed discussion in a formative sense, rather than in simply being permitted an opportunity to respond.

There is support for this view, particularly as the Group is expressly represented on the Brookvale Park Advisory Committee.

### 6.4.3 Representation on the Brookvale Park Advisory Committee

6.4.3.1 In December 1997, the Council established the Brookvale Park Advisory Committee. The Committee is appointed for a period of one year. It is constituted by

- The Mayor
- The 3B Ward Councillors
- 3 representatives of the Manly-Warringah Rugby League Club
- 1 representative of the Brookvale Valley Community Group
- 3 citizen members

In Submission 300 it is asserted:

#### **Submission 300**

Regrettably council continues to fill the 3 "citizen representative" positions with persons who have blatant connections with the League and represent their interests. This is contrary to the stated intention of the Plan of Management and in doing so we believe council has overlooked more eminently qualified applicants.

The Plan of Management summarises the issues raised in regard to Brookvale Park, and under the heading 'Brookvale Park Advisory Committee' the following comment is contained:

#### **Brookvale Plan of Management – September 2002**

Overall the membership of the committee is not seen as balanced and representative of the community and all users of the Park. There is considerable disagreement as to the make up and role of the committee.

The Plan acknowledges that:

**Brookvale Plan of Management – September 2002**

The effective and transparent management of all aspects of Brookvale Park was one of the most important aspects raised by both the primary stakeholders and the general Warringah community. Many of the issues raised related directly to the management of the Park. Management has therefore been treated as a value with a specific objective and set of strategies and actions in the Action Plan

Community involvement in the management and development of Brookvale Park was also raised as a very important issue during the community consultation for this Plan. Those consulted generally wished to be informed and invited to be involved in the ongoing development of the Park. This has been addressed within the management actions.

The Management Objectives contained in Part 3, express themselves as having been developed to protect and enhance the values identified as important to the community, specifically, the following is inserted:

**Brookvale Plan of Management – September 2002**

**“To develop and manage Brookvale Park in such a way that a harmonious balance is achieved in its use as both a regional sporting/event facility and neighbourhood park. This is to be attained through the ongoing involvement of the community and considering stakeholders needs.”**



In turn, this is reflected in the action tables as having a high priority in the following terms:

**Brookvale Plan of Management – September 2002**

Land category	Performance Target (Strategies)	Means of Achievement (Management Actions)	Means of Assessment (of the actions)	Priority	Respon-sibility
All	1. To ensure that Brookvale Park is managed in an effective and collaborative manner.	<p><i>Brookvale Park Advisory Committee</i></p> <p>1. The Brookvale Park Advisory Committee composition should provide opportunity for representation from major stakeholders and the community. At the commencement of any new long-term use agreements the composition of the community should be reviewed. See Appendix F for further information.</p> <p>2. Rewrite the Advisory Committee charter to extend the function of the Committee to include involvement in the strategic management of the Park and improve the overall effectiveness of the Committee. The preparation of an operational manual for the Committee could also be considered at this time. The Committee however is to remain advisory only and all minutes must be reported and adopted by Council prior to implementation of any actions. See Appendix F for further information.</p>	<p>Committee composition reviewed and, if appropriate, a new structure recommended to Council.</p> <p>Charter adopted and implemented.</p>	High	W/C
All				High	W/C

**Brookvale Plan of Management – September 2002**

Land category	Performance Target (Strategies)	Means of Achievement (Management Actions)	Means of Assessment (of the actions)	Priority	Responsibility
All		3. An alternative management structure for the ongoing management of this Park may be suggested and implemented if it is decided that the current structure is not effective or that there is a more suitable structure which will enable the achievement of the objectives of this Plan of Management. The decision to undertake any changes in this area must be in line with any of the actions and recommendations in this Plan in regard to community and stakeholder involvement. See Appendix F for further information.	Adoption and implementation of recommendations.	N/A	AC and WC

As has been previously indicated in this Part, the Advisory Committee enables specific representation of the interest of the Manly Warringah Rugby League Club by permitting it to nominate 3 representatives.

The Plan of Management acknowledges the appropriateness of and need for community involvement. This can only be facilitated if the citizen members on the Brookvale Park Advisory Committee are independent, and seen to be independent.

## 6.4.4 Governance Issues

6.4.4.1 The matters which are raised, in Submission 300, give rise to concerns over governance issues affecting Council.

There are distinct facets thrown up by the Submission:

- Notification procedures
- The content of Minutes
- The information available to the committee and the accuracy thereof
- The failure to involve the Committee in decisions effecting the Park

Submission 300 is a very full and detailed Submission, it also attaches a great deal of material. It may be suggested that the Submission represents the views of a particular group, however, the Submission attaches copies of minutes and letters and the like, which gives it credence.

Whilst it is not developed subsequently elsewhere, and not supported by any extrinsic material, the Submission states:

### Submission 300

The Plan of Management originally provided for one representative from the Brookvale Valley Community group, 3 from the League Club, 2 citizen representatives the mayor and three ward councillors. A third citizen representative position was added to the Committee composition as a result of our groups complaints that our group had inadequate representation. This selection however was not perceived by the local community to represent their interests.

Regrettably council continues to fill the 3 "citizen representative" positions with persons who have blatant connections with the League and represent their interests. This is contrary to the stated intention of the Plan of Management and in doing so we believe council has overlooked more eminently qualified applicants.

Currently a second genuine community representative has been appointed to the committee due however to the fact that he was the only applicant.

**Submission 300 (cont.)**

**8      FUNCTIONING OF THE BROOKVALE PARK ADVISORY COMMITTEE**  
 Meetings have been held infrequently, ( the required minimum no / year has not been met.)  
 Notice of meetings is generally inadequate, often less than a week, and complaints in this regard have been minuted. See Minutes of Advisory Committee Meeting dated 29 May 2002 where it was moved that 3 weeks prior notice of meetings be given and an agenda be provided 2 weeks prior.

In July 2002 concerns were raised over the quality of the Minutes, in which it was alleged that the Minutes did not accurately record matters raised at a meeting of the committee on November 19 2001. It was suggested that the Minutes failed to record concerns raised by the group's representatives over financial statements presented at the meeting.

Thereafter a series of letters passed between the Council and the author, Mr. Baxter.

In responding, Council downplayed the importance of the accuracy of minutes.

Whilst this aspect is dealt with more thoroughly elsewhere in this Report, it is appropriate to emphasise that Minutes, particularly those of a Council Committee, should be accurate.

Council's failure to ensure both the correctness of the Minutes, or to take appropriate steps to correct them when errors were demonstrated, reflects adversely on Council.

The information which is available to the public is principally governed by the operation of Section 12 of the Act.

The Act emphasises the availability of information and moves to restrict access in limited circumstances, relatively where some commercial confidence may be involved.

Submission 300 attaches documents which instance that in the past Council has not been freely forthcoming with information.

This information has not been limited to information available to the Group or to the Committee but also to Councillors.

The Submission attaches a response provided by Mr. Vescio dated May 15 2001, responding to a question put by Councillor Smith.

Mr. Smith had asked whether the amounts payable by the Club were less than amounts the Council was obliged to spend on the Oval, in accordance with Clause 19 (iii) of the Deed. This Clause has been referred to earlier in this Section.

Unfortunately, in putting the question Councillor Smith incorrectly referred to a 'breach' on the part of the Club. As has been previously indicated, the Clause is not one where a 'breach' or 'default' lies.

The reply failed to respond to the question being put.

### **Submission 300**

<u>Question Without Notice – Reply</u>	
<b><u>Subject:</u></b>	Brookvale Oval (Deed of Agreement between Council and Manly Warringah Rugby League Club)
<b><u>File No:</u></b>	315.030.003
<b><u>Councillor:</u></b>	Cr Smith
<b><u>Meeting Date:</u></b>	1 May 2001
<b><u>Question:</u></b>	Is the Manly Warringah Rugby League Club in breach of the Deed of Agreement with Council with reference to Clause 19 (ii) of the Deed of Agreement, are the amounts payable by the Club to the Council in any one of recent years less than the amounts which under the deed, the Council is obliged to expend on the land and buildings in such year?  <i>A. We will have a look at that.</i>
<b><u>Response Date:</u></b>	15 <sup>th</sup> May 2001
<b><u>Response:</u></b>	Clause 19(iii) of the Deed of Agreement forms part of a termination clause in the Deed. Council has not chosen to terminate the Deed by giving the Club 12 months notice pursuant to Clause 19.  The Club are only in breach if Council determines so pursuant to Clause 19(iii).
Joseph Vescio <u>Service Unit Manager</u> <u>Governance</u>	

Interestingly, no claim for commercial confidentiality was sought, the question was simply not answered.

There are a number of letters, which are attached to Submission 300 in which the Group's representative seeks further information. An example is the Group's letter of May 28 2000. The letter concludes:

### **Submission 300**

We are concerned that unless accurate figures are available and transparent, it will not be possible to make the best decisions for future management.

The Inquiry adopts the principles of the Group's statement in its letter of May 28 2002, and likewise, is of the view that unless full and correct information is given to any committee, whether the Brookvale Park Advisory Committee, then such committee will not make the best possible recommendations for future management or others.

Submission 300 raises concerns that the committee's views have not been sought regarding matters affecting the Reserve.

The Submission cites an application for modification of a development consent under Section 96 of the Environmental Planning and Amendment Act.

Given the functions of the Committee to oversee the implementation of the Reserve's Plan of Management, given that it has a role to make recommendations to the Council as a priority, staging and funding of works, and given that it purports to represent all interests of the community, it is difficult to see why it was not consulted.

6.4.4.2 There is a theme which pervades the Minutes and Reports which are attached to Submission 300 which suggests favouritism on the part of Council towards the Club.

It is noted that the Council has granted a long-term right for the Club to use the park almost exclusively from mid-February to the end of September each year for a period of 16 years.

Such an arrangement may be seen as benefiting the Council in knowing that it will obtain a return from a business securing high spectator levels with attendant income levels.

Obviously such a relationship eases the concern of obtaining a return on expenditure when upgrading the Park's facilities.

On the other hand it is likewise in the interest of the Club to obtain security of tenure, again to directly benefit from the income derived from the spectator levels, and indirectly, but most importantly, from the increased patronage of its club facilities which are nearby.

In that sense the relationship between the Council and the Club is symbiotic.

As has been indicated earlier in this part, the Deed exists between the Manly-Warringah Rugby League Club Ltd and the Council. It requires that the Club make certain payments, calculated by reference to the income earned by the Club in conducting football matches on the Oval.

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It is surprising therefore, that on August 27 2002, there were separate reports to Council which, on one hand recorded a serious downturn in the income derived from the use of the Park and a very serious default on the part of the Club, but on the other hand, in a separate report promoted further expenditure on infrastructure in the revenue, excusing the inability of the Club to contribute upon the basis *'that they are basically a new Club'*.

Submission 300 also expresses concerns over Council's consideration of development and rezoning application lodged by the Club affecting a site in Federal Parade, Brookvale. Whilst this application does not affect Brookvale Park, it is supportive of a view that some favouritism extends to the Club.

## 6.5 Community Interest Groups

### 6.5.1 Roles of Community Groups

6.5.1.1 The Inquiry received a number of Submissions from community interest groups and subsequently heard evidence from many speakers representing them.

Elsewhere in this Report reference is made to Submissions made by community groups relating to their perceptions of aspects of the governance of the Corporate Body.

In this section emphasis will be given to community groups, as they have served to focus attention on particular issues or particular places. In so doing it is appropriate to focus on their perceptions of the manner in which Council responds to them.

Community interest groups play an important role in the community. On the one hand, they may serve to draw together a community's view on matters directly affecting them. On the other hand, they may draw together members of the community to respond to a particular matter or problem.

Accordingly they may be, for example, a residents' action group or an environmental group. These groups comprise a group of volunteers willing to give up their time and to direct their minds and labour to a cause, which, in their opinion, is worthwhile.

Two things are clear from all the information provided to the Inquiry. Whether from the Submissions or in evidence given by speakers at the Public Hearing:

- There are a large number of people in the Warringah community who are willing to become involved in and to support local groups.
- People involved in these groups are not driven by an anti-council mentality.

Representatives of groups who spoke at the Public Hearings evidenced a knowledge and understanding of the issues that the particular group addressed itself to. Representatives of residents groups demonstrated a knowledge and understanding of Council's Local Environmental Plan and planning processes. Those representing environmental groups similarly demonstrated a knowledge and understanding of the issues to which they referred.

In at least one instance a representative possessed qualifications and practical knowledge which in all probability, was unequalled.



The groups accordingly represent a large and valuable resource which is available to be tapped into by Council.

6.5.1.2

Despite this, the Inquiry was left with the view that to a large extent, these groups had been marginalised by Council. Members of these groups made up a significant percentage of persons making Submissions to the Inquiry expressing concerns over the governance of Council. It should be emphasised that not all groups expressed such concerns.

In speaking at the Public Hearings on April 3 2003, Mr. Elliffe spoke of the background of the Curl Curl Lagoon Friends in the following terms:

**Public Hearings Transcripts – April 3 2003**

MR ELLIFFE: ... I have been associated or I am associated with the Curl Curl Lagoon Friends but I'm not as fully involved as several people that you've already interviewed but as an interested party my main function in Curl Curl Lagoon is pulling out weeds and putting in plants and this is basically why I've been associated with them for about the last 15 years and the Council has done very well in supporting the rejuvenation of the Glendale Creek and the work they've done so far has really lifted the place quite a bit.

Mrs. Armstrong, the President of the Belrose Rural Community Association Inc., spoke of the background and beginnings of this Association, speaking at the Public Hearing on April 4 2003.

**Public Hearings Transcripts – April 4 2003**

MS ARMSTRONG: The community association was formed in 1994. It really grew out of the Community Monitoring Committee for the Waste Service Centre when we realised that we could help each other if we came together. We represent the community in the Belrose non-urban area which covers basically two localities, B2 Oxford Falls and C8 Belrose North.

In a similar vein, Mr. Michell spoke of the involvement of the Friends of Dee Why Lagoon, when speaking at the Public Hearing on April 3 2003, describing the group's involvement:

### Public Hearings Transcripts – April 3 2003

MR MICHELL: The Friends of Dee Why Lagoon was formed in 1980. It has - the membership moves around a little between, around 35 and 50 members. It's currently a little over 40. Dee Why Residents' Action - it's a very active group. It has a weekly bush regeneration group and a monthly bush regeneration group plus formal monthly meetings and AGM and it takes itself and the lagoon seriously.

## 6.5.2 Relationships with the Council

6.5.2.1 Speakers also referred to lengthy and productive relationships with the Council over a number of years. Despite this clear evidence of extensive and lengthy commitment by such groups, a number of issues arose from the Submissions from and evidence on behalf of these groups which give rise to concerns. They comprise:

- A deterioration in the relationships between groups and the Council;
- Abuse and vilification of members of groups;
- Harassment of members of groups.

In Submission 179, the Belrose Rural Community Association Inc. expressed concerns over the deterioration of its relationship in the following terms:

#### Submission 179

The tensions that have developed between the BRCA and C Ward Councillors have led to a situation where Council officers know that the "majority" Councillors will not be inclined to support issues raised by our Community Association. This, of course, affects the attitude of Council officers towards our Association. When we report problems such as dumping and illegal land use we often receive a negative response, as if we are "trouble makers".

In turn, the Submission detailed the matters leading to the deterioration as being:

### **Submission 179**

The conduct of the 5 "majority" elected Councillors has given us cause for serious concern since the last Council Elections. The 3 elected Councillors for C Ward, which covers our Association's area, have consistently rejected our representations regarding compliance with LEP 2000, and have voted with Cr. J Caputo and Cr. D Jones to bring about development in the non-urban area in breach of the LEP 2000. In the course of discussions prior to Council meetings, they have contemptuously dismissed our objections and at Council meetings have stated that we are a small unrepresentative group and, as such, have no "right" of objection.

Individual Association members have been treated similarly.

The Inquiry has received Submissions and heard evidence that the 1999 elections brought about fundamental changes in governance affecting the Council and particularly the elected body.

In speaking at the Public Hearing on April 1 2003, Mr. De Rome, who describes himself as being active in the Curl Curl Lagoon Committee and its successor the Friends of Curl Curl Lagoon for over 20 years, gave the following evidence:

**Public Hearings Transcripts – April 1 2003**

MR DE ROME: Towards the end of the last decade, 1999. Certainly right through the early nineties into the middle of the nineties I was president of the same committee that Charles Hamlyn-Harris is currently the president of in the early nineties and I had a - it wasn't always easy, we didn't win everything we wanted but we had a very effective community group, the Curl Curl Lagoon Committee, that worked with Council and with the very committed Council staff. I think your question of Chris just then about experience of Council staff - I had detected a quite specific shift in the willingness and the genuine commitment to consultation of their strategy and environmental section over the last - or of my experience through the middle nineties and what I observe is happening now in the experience of our current community groups.

THE COMMISSIONER: Is the fact that you said that this change started around 1999 coincidental with the change of the elected representatives?

MR DE ROME: I'm conscious of not trying to be coincidental and I try to pick some dates. I was invited to participate in the community consultation workshops in the year 2000. I had previously been involved in the community workshops in '97, '98 for the plan of management when it was first developed and so I attended both of those strategy sessions in '97 and then again in 2000, in early 2000. It was those ones in 2000 that Charles referred to where we discovered some months later when the minutes were issued that another workshop had been held 2 days previously and I found it astounding when I read the minutes and saw the attendance list that there was a large meeting on 6 March with 20 or 30 people all from the netball group plus a sporting - and a sprinkling of half a dozen of those, I hadn't noticed at the time, were part of our meeting 2 days later, as were rugby league.

I'm a soccer person myself, my wife's a netballer and we thought the meeting we had, the workshop we had, was the community consultation workshop. The sessions I'd experienced 3 years previously actually held I think at the Harbord Diggers Club was a wonderful session of, you know, had a brainstorming division and mission and all that sort of stuff, it was very productive stuff and we had no problem with the '98 plan of management and were surprised to find 2 years into its 5-year term it was being rewritten.

In turn, Mr. De Rome gave evidence that the efficiency and effectiveness of the governance of Council had been compromised, saying:

## **Public Hearings Transcripts – April 1 2003**

MR DE ROME: Yes. I think to be efficient you only undertake processes that are genuinely worthwhile and produce an outcome. This Council and its staff did institute consultation processes which were extensive, I will acknowledge that, but at the end of the exercise there was absolutely no willingness to accept the results as input to their decision-making. We over the last 3 years have become very, very cynical as a result of that. Time and again we say, "It's time to get out your file and write another letter and make your point one more time". I think the numbers of submissions you've received, Mr Mitchell received and Council received over the history of this project is remarkable given the fact that people have had to do it again notwithstanding the last time they did it it was ignored. So as an efficiency thing I think the Council has really wasted a lot of resources if they were ever going to do much with the results.

Mrs. Armstrong spoke of the deterioration of the relationship between the Belrose Rural Community Group in the following terms when giving evidence at the Public Hearings on April 4 2003.

**Public Hearings Transcripts – April 4 2003**

MS ARMSTRONG: We are in the C ward of Warringah Council which includes the non-urban areas of Belrose, of Terrey Hills and Duffys Forest. In the first years of our existence we met regularly with our councillors, if I can refer to them as that, and on a number of occasions councillors came to our meetings. We felt that we were involved in a mutually profitable exercise of discussing problems and solutions. We certainly didn't always get exactly what we were asking for but we felt that there was open communication.

In the period after the last Council elections in 1999 we became aware of a change which made the meetings somewhat tense and we seemed to be involved in a conflict situation. On one occasion one of the councillors did leave our meeting in a very abrupt manner and there was a later reference to a death threat which is not in our submission because it seemed rather bizarre at the time.

THE COMMISSIONER: A death threat to people - - -

MS ARMSTRONG: To one of the councillors - not from any of us. We had really found that we had to maintain communication on a one-to-one basis. In other words, ringing councillors individually, and on a number of occasions that has proved to be acrimonious. On one occasion I had an appointment to meet one of the councillors and that appointment was not kept, nor was there any apology made.

THE COMMISSIONER: Why do you think there was this change in the relationship?

MS ARMSTRONG: Well, I think it's rather difficult to pinpoint excepting perhaps in the fact that a number of development applications came before Council which were certainly in our view in breach of the Warringah LEP 2000 and for that reason we stated our objections to those DAs. Since those DAs were supported by our C ward councillors I think it's fairly clear that this didn't lead to a very happy relationship.

Mrs. Armstrong's views regarding the 'C' Ward Councillors was not shared by Mr. Galloway, a representative on the Manly Warringah Pittwater Sporting Union, who gave the following assessment in Submission 227.

## Submission 227

Truly the only problem in C Riding is our Councillors are doing too good a job and there is too much apathy in the Riding.

6.5.2.2 Particular concerns have been raised about their treatment by members of committees, both at the hands of Councillors and staff.

In the course of the Public Hearing, the Inquiry saw the manner in which members of the public were treated by Councillors, when they were asked questions by Councillors.

The Killarney Heights Progress Association Inc. provided a Submission to the Inquiry (No. 104). Subsequently its President spoke at the Public Hearing. The Submission was mild in its criticism of the Councillors. Despite this, shortly before the commencement of the Public Hearing, the Association wrote to the Inquiry withdrawing part of its criticism. In giving evidence at the Public Hearing on April 1 2003, Mr. Newham, the Association's President, confirmed the reasons for withdrawal of the criticism. Mr. Newham gave evidence in a considered, measured and articulate manner. The issues which were raised by Mr. Newham were entirely legitimate and in no way was his evidence other than factual. He was willing to concede favourable outcomes when questioned by Mayor Sutton or when speaking in response to questions put by the Inquiry.

It was, therefore, surprising that in a situation where Mr. Newham's views were neither contentious nor particularly inflammatory, that Councillor Jones embarked on questions in a berating manner in the terms set out below:

### Public Hearings Transcripts – April 1 2003

MR JONES: .... Mr Newman, you indicated to the Commissioner that you withdrew the comments that reflect not only upon yourself but the other eight councillors. You would be aware that these things have been all on the internet and people have been able to read that and a slur has probably been cast upon yourself and other people. What would have prompted you in the first place, without fact, to put pen to paper? Is it part of a, you know, square off the Council exercise?

MR NEWMAN: No, indeed not. When I looked at the dictionary reference to honesty it talked about character and behaviour and also it talked about acts of, you know, against finances, etcetera. So it was never in the intention that it was going to be against any financial or monetary matter.

MR JONES: On the second page of your submission you make certain statements there. Have you read the transcript?

MR NEWMAN: Of what?

MR JONES: The recent Court case?

MR NEWMAN: No, I haven't, no.

MR JONES: So you selectively reported things again to try and create a feeling of ill will within the Warringah - - -

MR NEWMAN: It wasn't a matter of trying to create a feeling of ill will, it was just a matter of sort of bringing the thing up to date.

MR JONES: Well, if you bring something up to date, surely you would include all that was said rather than be of a selective nature.

MR NEWMAN: The matter is public knowledge, isn't it? That's the way I see it. It's on the record and I was just drawing attention to it.

MR JONES: I would have thought, Mr Newman, that if you were going to quote something that the least you could have done as a representative of the Killarney Heights Progress Association, would have included all that was said rather than a very, very small snippet, and I think it behoves anyone that is making a submission to this Inquiry, if they were going to rely upon newspaper reports, rather than actually reading the details, I think that that sort of evidence ears some doubt in the Commission's mind, rather than having the opportunity, as I say, where things are now being withdrawn, no doubt having been brought before the public eye? Thank you.

Please note the name of the speaker should be Mr. Newham.



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Similarly, Mr. Hamlyn-Harris, the President of Curl Curl Lagoon Friends Inc., was subjected to questioning in a berating manner, in this instance by Mayor Sutton. Mr. Hamlyn-Harris had given evidence of the long-term involvement of the Association in environmental matters affecting Curl Curl lagoon. The evidence had again been balanced, informative and articulate. Similarly, it had not been inflammatory. At the end of his evidence, Mr. Hamlyn-Harris was subjected to the following questions which were put in a disdainful and aggressive manner:

### Public Hearings Transcripts – April 1 2003

MS SUTTON: Mr Commissioner, nearly everyone has had two questions and I think we are running out of time because of the lengthy answers to simple questions, but I will just ask Mr Hamlyn-Harris. As you know so much about the whole business, don't you know that Council's sports rectification policy expressly forbids changing grass courts to bitumen, and don't you know that the Netball Association is paying for it, and then why did you tell the Commissioner under oath that you didn't know that?

MR HAMLYN-HARRIS: I don't - I don't recall saying that.

MS SUTTON: You were asked by the Commissioner if the sports field rectification was paid for and you waffled on that question when you are under oath and you know that the - - - ?

MR HAMLYN-HARRIS: I - - -

MS SUTTON: Please don't interrupt me. That you know that the Netball Association is paying for every cent of it?

MR HAMLYN-HARRIS: Well, if I may clarify to you, Commissioner, about that. I - the statement I made earlier was that I believe that there had been some moneys allocated from the sports field rectification fund for bitumen netball courts back in the previous years in 1999, I believe - in fact, I think I heard someone stating that in here last week - and that the clarification of what this fund could be used for has been made only in recent times and it is only really, I believe in the last year or so, that that clarification has been made that, in fact, it can't be spent on those kinds of things.

MS SUTTON: But we are talking about now. I mean, you know - - -

THE COMMISSIONER: Can I - - -

MS SUTTON: There is no use pursuing it, but I mean I would like to make that point that there is absolutely no truth in the allegation that any money from the sports field rectification is going towards the hard surfacing of the netball courts and I'm very surprised that somebody under oath should make that - - -

Other speakers representing groups, including Mrs. Davies, a co-ordinator of the Harbord Library, and Mr. Newham appeared to be patronised.

Separately, other Submissions raised concerns over the way members had been treated in Council's meetings.

Mr. Williams, the author of Submission 163 and a member of the Brookvale Avenue and Ryan Place Community Group, wrote:

### **Submission 163**

When speaking before Council I have personally been abused, ridiculed and treated with contempt by some of the majority block Councilors. The Councils own audiotapes if obtained by this Commission of Inquiry will prove what I have just written. No one, no member of the general community should have to endure the verbal and body language abuse and violence that I and many others, including the minority block Councilors, have had to suffer at the hands of our Elected Local Government Officials – the majority block Councilors.

Subsequently, Mr. Williams gave cogent evidence of the seriousness of the concerns that he had been endeavouring to raise with Council, without success.

Other groups wrote of being belittled by Council, whilst others raised concerns over misleading information being given. Submission 193 contains the following statements.

### **Submission 193**

5. Councillor Moxham insulted the SMDCC on 18<sup>th</sup> February 2003, by asking “which phone box they meet in?”. The SMDCC is a properly constituted and incorporated group that has regular meetings and a sizeable membership. At the time another councillor pointed out that Cr Moxham’s comments were contrary to the Code of Conduct and asked him to withdraw them, but he refused.

### **Submission 109**

#### **Misleading statements to Council meetings**

On several occasions Councillors have made statements in relation to JFP to Council meetings which were quite misleading. For example, both the current and previous Mayors stated categorically that Council’s legal advice gave them absolutely no option but to take a certain action (in this case categorisation of community land to ‘Sportsground’) when it did not in fact do so. Additionally, recommendations and guidelines in the Local Government Act were stated selectively as absolute requirements – thus justifying Council actions that were in direct contravention to clearly stated majority community submissions.

*Ref: Recordings of Council meetings; Letter from the Hon Harry Woods to Warringah Council, June 2001; Clayton Utz Solicitors legal advice 6 June 2001.*

### Submission 109 (cont.)

**Questionable accounting of funds expended on sportsfield rectifications**

The community has had extreme concerns about the financial accountability of the sportsfield rectification fund. On several occasions, through minority Councillors, project figures have been made available. It is almost impossible to reconcile each set of figures and the recurrence of 'miscellaneous' and 'sundry' expense items – often featuring large amounts of money – is of great concern.

*Ref: Various financial statements of the Sportsfield Rectification Fund; Letter from John Fisher Park Community Group to Department of Local Government, March 2001.*

More serious concerns were raised by Ms. Bilderdeck-Frost, the author of Submission 191, who gave evidence suggesting that in consequence of her involvement in efforts to stop the Ardel development, she was the subject of harassment. When speaking at the Public Hearing on March 27 2003, she detailed the events and her concerns in the following manner.

## Public Hearings Transcripts – March 27 2003

THE COMMISSIONER: ... Finally, in your submission, you claim that you had a visit from two Council rangers to your property on a certain date, which is in your submission, and you saw this as an attempt to harass you, can you expand on that?

MS FROST: Yes, one was a Council Ranger and he had his uniform on and the other he introduced as his manager and they said to me: oh, we've had complaints that there's rubbish in your garden, that a downpipe - this is a long time ago - a downpipe is blocked and some other structural thing about the house is wrong. Like, minor thing: the gutters are blocked or something like that, so I said: yes, there is a - you know, I'd cleared out the garage ready for putting out for the Council tip.

Yes, there is a pile of rubbish but what did the downpipes have to do with anyone else or the gutter? So they shrugged a bit and went. They weren't aggressive or intimidating in any way but the fact that they were there at all seemed very odd to me because - - -

THE COMMISSIONER: Could it not have been returned? Could they - - -

MS FROST: No, they said they - - -

THE COMMISSIONER: - - - is it possible that they'd had a phone call that said: there's a lot of rubbish in that yard, can you look at it.

MS FROST: Well - - -

THE COMMISSIONER: Why do you say they are harassing you?

MS FROST: Because as they walked in they could see it was a well maintained house and if there was a group of objects then it was a temporary thing, it wasn't an untidy, ill kept property so there manner to me would have been: look, we've been asked to come but obviously everything is all right but they weren't, they were saying: this is wrong and I believe that's wrong. So it was a little bit like that.

In exercising its right of reply, Curl Curl Lagoon Friends Inc. provided the following response regarding the conduct of Councillor Sutton when asking questions of Mr. Hamlyn-Harris.

**Submission 120****2. Warringah Council Code of Conduct**

You observed the manner in which I was questioned by the Mayor at the public hearing on Tuesday 1 April, 2003 and that she was quite hostile. I think it needs to be said that this was not the result of a long-standing personal animosity between us – as it may have appeared. It was simply her reaction to me as the representative of an organisation that is known to have a point of view different to hers.

Apart from that incident and one occasion when I was heckled by her during a presentation to a Warringah Council meeting, I have only met Cr J Sutton once. That was on the occasion of the opening of the third stage of the Greendale Creek rehabilitation project – an occasion where Curl Curl Lagoon Friends was publicly congratulated for the excellence of its environmental work. When I was introduced to Councillor Sutton, she responded by turning her back on me. Although, at that time, due to my perseverance, a conversation developed, I have never had an opportunity to discuss the John Fisher Park issue with her directly – and our next contact was that witnessed by you at the Inquiry.

It is evident that the conclusions reached by Mr. Hamlyn-Harris are soundly based.

In concluding its Submission, the Belrose Rural Community Group Inc. wrote:

**Submission 179**

As a group and as individuals we have endured a 2 year period during which we have been denigrated and vilified by the "majority" Councillors when we have urged Council to respect the LEP 2000. The personal attacks have been especially unpleasant.

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Our support for the LEP 2000 has been dismissed and ridiculed.

## 6.5.3 Governance Issues

6.5.3.1 The matters which are outlined in this section, raise particular concerns over the governance, both of the Elected and Corporate bodies.

In evidence at the Public Hearings and in the Submissions made on behalf of the Council, Mr. Blackadder emphasised the manner in which the community's voice is able to be heard in Warringah Council.

The Submissions, which the Inquiry has received and the evidence, which has been given to the Inquiry suggest that community groups are being disenfranchised by both the Councillors and the Council.

6.5.3.2 It must be remembered that these groups, perhaps more than anyone else, are involved in reviewing Council's actions. For some this review process has been continuous, both prior to and during the term of the current elected body. Their views must therefore be given emphasis.

It must also be emphasised that those speakers who attended the Public Hearings, whether expressing a view favourable to or adverse to Council or the Councillors, have done so because of their commitment to matters which they see as important to their local community.

These speakers did not represent an extreme view.

Many of the speakers understated their concerns. The majority gave careful and considered evidence. Despite this, many of the groups have clearly been marginalised. Underlying this marginalisation is an expressed view, which is contrary to the views of the "Majority Councillors", or critical of the processes of the Council.

Groups, such as those who made Submissions to the Inquiry, represent the views of potentially large numbers of constituents. The evidence which was provided by, or on behalf of, these groups indicated that they had undertaken substantial research before expressing their views. They demonstrated an understanding of the issues which they sought to address. Additionally, many of their speakers were eminently qualified to put views on the particular matters which they sought to address.

Given all of the foregoing, and the willingness of members to commit time and effort for what they perceive as the betterment of their community, it is a poor reflection on the Council that their willingness has not be seized upon, and that they have not been brought under the Council's umbrella.

Worse still is that these groups have been so marginalised, that members in significant numbers have seen fit to provide strong evidence to support their conclusions of the community's lack of confidence in the Council.

The evidence that they have provided in their Submissions and in evidence provided by their representatives, weighs heavily on a conclusion that there are sound and cogent reasons to express a lack of confidence in the elected body and in certain aspects of the governance of the elected body.