



WALGETT SHIRE COUNCIL PUBLIC INQUIRY

REPORT OF THE COMMISSIONER

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EXECUTIVE SUMMARY

This is a short executive summary of my report to the Minister for Local Government, the Hon Tony Kelly MLC, in respect of a Public Inquiry conducted by me, pursuant to section 740 of the Local Government Act 1993 (the "Act") in respect of the Walgett Shire Council.

On the recommendation of the Minister for Local Government, the Hon Tony Kelly MLC, I, Robert Bulford, was appointed by Her Excellency the Governor of New South Wales on 25 February 2004 to hold a Public Inquiry under section 740 of the Local Government Act 1993 into the Walgett Shire Council.

The Instrument of Appointment of myself as Commissioner reads:

APPOINTMENT OF ROBERT BULFORD
TO CONDUCT PUBLIC INQUIRY – WALGETT SHIRE COUNCIL

In accordance with the provisions of section 740 of the *Local Government Act 1993*, I [i.e. Tony Kelly, MLC] have the honour to recommend for the approval of Her Excellency the Governor and the Executive Council the appointment of Robert Alexander Bulford to hold a Public Inquiry with the attached terms of reference.

The Terms of Reference of my appointment as Commissioner are as follows:

To inquire, report and make appropriate recommendations to the Minister for Local Government on the efficiency and effectiveness of the governance of Walgett Shire Council.

The Inquiry will have particular regard to:

1. Whether the elected representatives have been and will continue to be in a position to direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil the Charter, provisions and intent of the Local Government Act 1993 and otherwise fulfil its statutory functions.
2. The conduct of elected representatives of Council (whether individually or collectively as the governing body).
3. Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the management of and working relationships within the Council.

The Commissioner may make other recommendations as they (sic) see fit, including whether all civic offices in relation to the Council should be declared vacant so as to ensure that an appropriate structure can be put in place to provide optimum community leadership.

This Public Inquiry commenced with a public notice being placed in a number of newspapers circulating in the Walgett Shire calling for written submissions to be lodged with the Inquiry by 24 March 2004. A later public notice advertised the holding of public hearings at the Walgett Shire Council Chambers in Walgett commencing on 20 April 2004.

By the time the public hearings commenced, a disappointingly small number of submissions had been received, and this was despite personal invitations having been issued by me to all then Councillors, the General Manager and all senior managers at the Council. At the close of the hearings the position had only marginally improved.

Some 25 persons appeared as witnesses during the public hearings, over a period of 7 days. Three witnesses were in the witness stand for some extensive time, namely the former Mayor, Clr Peter Waterford, the General Manager, Mr Vic North, and former Councillor, Mrs Joan Treweeke.

On 27 March 2004, namely after the Inquiry was announced and before the public hearings commenced, a general election of Councillors to the Walgett Shire Council was held. At these elections, some 6 of the 12 Councillors did not stand, but all of the remaining 6 were duly elected. Some 6 new persons were elected to Council, all but one of whom has had no previous local government experience as an elected Councillor, and none of the 6 served as a Councillor in the 1999-2004 Council.

All 6 of the newly elected Councillors gave oral testimony at the public hearings.

The procedures followed by me at the public hearings are explained at section 1.11 of this report.

At section 1.13 of this report I have extensively considered the framework of legal and other provisions, in the context of my Terms of Reference, by reference to which I have examined all the issues I have considered relevant and appropriate. This framework includes the question of the impact of the intervening March 2004 elections, as to which see section 1.13.4.

I have concluded that the newly elected 2004 Councillors cannot be held responsible and accountable for any failures of the 1999-2004 Council. The 2004 Councillors must be judged by their own performance and track record. However, my Terms of Reference do require me to examine and consider the important question as to whether Council's (current) elected representatives will continue to be in a position to direct and control the affairs of Council, such that it meets its Charter and other obligations under the Local Government Act 1993 and other relevant legislation. I have therefore carefully examined and considered that issue, and I shall return to that matter shortly, in this Executive Summary.

Under the Act, there is a division of powers, in effect, between Council's elected body, comprising the elected Councillors, on the one hand, and Council's General Manager, as the full time head of the Council administration, on the other. The question of governance, the key aspect of my Terms of Reference, must therefore be examined and considered in that context.

There is a dual responsibility in respect of governance. At the first level is the General Manager, as head of the administration. At the second, and above the General Manager, is the elected body. But the Act ensures that it is to the elected body that the General Manager is accountable, and it is only that body that has power to remove a General Manager who is not performing adequately.

In order to oversee that performance, the elected Councillors are required to undertake a proper and adequate performance appraisal process, having regard to the terms of the General Manager's contract of employment with Council and best and accepted management practice.

The accountability of the elected body occurs in two contexts. One is an accountability to Council's electors, at the ballot box. But the other is to the State Government of the day, through its Minister for Local Government.

This Public Inquiry has been undertaken as part of that latter accountability process. Under section 255 the Minister has power to recommend that all civic offices in relation to Council be declared vacant. In other words that the Councillors be sacked, but only after the holding of a Public Inquiry, and after the report of that Inquiry has been duly considered.

This Public Inquiry was preceded by the undertaking of a formal investigation under section 430 of the Act by officers of the Department of Local Government. The events leading up to that investigation and the findings and recommendations made in the course of that process are considered at Part 2 of this report.

The Departmental Representatives undertaking the section 430 investigation made some 37 recommendations in their report. However, the report identified some 6 of them as key recommendations. One of the Departmental Representatives appeared as a witness, on behalf of the Director General and the Department generally, at the public hearings in this Inquiry. She confirmed that in the view of the Department one of the recommendations was considered a key recommendation, namely that a mentor be appointed for the benefit primarily of the General Manager and his staff, but incidentally also for the benefit of the Councillors. It was recommended that the mentor be appointed for a minimum of 12 months.

By the time this Inquiry commenced that mentor had not been appointed, but Council had resolved to do so, despite earlier publicly expressed reservations in respect of such a process by the General Manager himself, and the then Mayor, Cllr Waterford. A mentor remains to be put in place.

The reason for appointing a mentor was because of the large number of breaches of and failure to comply with important provisions of the Local Government Act 1993, as well as other legislation such as the Environmental Planning and Assessment Act 1979. These failures were considered so systemic as to indicate that the General Manager and his staff did not understand and/or were not aware of such provisions.

A Council General Manager, as is this one, is expected to be aware of such requirements and to be fully conversant with them. If not aware, and not conversant, then it is incumbent on the office holder to ensure that he or she is so aware and conversant with them. A Council General Manager, as is this one, is paid a considerable salary, and provided with other benefits, in recognition of this. A Council General Manager is not paid such a large amount, at the considerable cost and expense of the ratepayers, to bumble along on a hit and miss, learn, with luck, on the job basis.

It is important that the General Manager discharges his role and responsibilities properly and fully in this regard. Not only is this to ensure that Council itself meets its obligations under the Act and to its community, in particular its Charter obligations, but this is also to ensure that the elected body, who are not full time professionals, do so as well, and receive the appropriate, complete and correct advice. If the General Manager does not perform in this regard, he or she lets the Councillors down, and the Councillors face the potential of their accountability to the electors, and to the Minister, noted above.

Another aspect to this lies in the role of the General Manager in guiding and assisting the elected Councillors in their policy making and policy setting role.

Where a public inquiry has been preceded by a section 430 investigation, one of the key criterion by which a Council is to be judged is the extent to which Council, through its elected Councillors, as well as through its General Manager, is duly acting on and accepting the findings and recommendations made by the umpire, in that process. This is particularly so where recommendations are made to ensure that the level of performance in relation to the governance of Council is improved.

At section 2.3 of this report, therefore, I have examined this particular issue. The evidence is that Council has, despite some earlier indications to the contrary, generally acted promptly and appropriately in respect of all recommendations. Some recommendations are only capable of full implementation over time, but even for those Council has demonstrated a willingness and indication of steps taken towards implementation. This is so, for example, in relation to the important mentor appointment.

In this Inquiry I have not sought to travel over the same ground as the Departmental Representatives in their section 430 investigation. Their findings were, with only very minor exceptions, not relevant here, not challenged in my Inquiry.

On the other hand, I have found, on the evidence, indications of a good many other failures, failures that are both important and relevant to my Terms of Reference, and hence Council's report card from this Inquiry.

At Part 3 of this report I have examined those issues in that regard that I considered relevant and appropriate to examine and consider, and having regard to my Terms of Reference, that related to events that occurred in the life of the immediate past (1999-2004) Council.

One of the key underlying factors, over and above the failures of the General Manager and his staff, relevant to the poor performance of the 1999-2004 Council is the question of factions (considered at section 3.2 of this report), and more particularly a Lightning Ridge versus Walgett faction. A number of witnesses sought to challenge that the factionalism occurred along such geographical lines, and said that it was more a split along the lines of a progressives versus conservatives split. Whatever nomenclature is used, and the indications are that the split occurs the same way, whichever way the split is examined, it is clear that there has been a split.

But the evidence is equally that this split does not occur at all times, and does not even occur necessarily with the same players dividing into and ending up in the same camps. In general, however, it seems clear that when certain issues arise, such as the division of resources and the provision of services and facilities between Lightning Ridge and Walgett (including in this regard not only the town of Walgett, but also the rest of the Shire), there has been on a number of occasions a six all split amongst the 12 Councillors, and there has been a need for the Mayor of the day to exercise his casting vote, an exercise that in itself brings divided views and emotions.

The evidence clearly shows that there are great divisions, not only amongst Councillors, but also even amongst the staff and the community in general, as to whether or not the town of Lightning Ridge is getting its share of resources, services and facilities, when compared with Walgett and the rest of the Shire. I have examined this at section 3.5 of my report.

The evidence shows that the town of Lightning Ridge is a much newer settlement and town than Walgett. History has meant that Walgett, accordingly, has a head start and therefore has greater publicly provided buildings, parks and other amenities and facilities. Because of this, much of the budget of Council necessarily goes to the upkeep and maintenance of such facilities.

But the evidence is equally clear that Lightning Ridge has progressively, with input from Council, been getting a number of much needed public buildings, parks and other amenities.

The question of the alleged imbalance appears to be at the centre of the divisions at Council and amongst its community. There is a perception both in the community and particularly amongst Lightning Ridge Councillors that Lightning Ridge is not getting its fair share.

That perception was fuelled by, and much of the recent problems and discord at this Council trace back to, a report from a member of Council's staff on relative expenditures in Lightning Ridge and Walgett townships. However, this is a misconception and the perceptions and conclusions in that regard were neither reasonable, nor supported by the evidence.

Mr John Burden, Council's current Group Manager, Services Management, gave extensive oral testimony at the public hearings which conclusively showed that the Lightning Ridge Councillors misused and misinterpreted a report he provided in that regard to the Councillors, for their own political purposes.

Council's task is now to manage the incorrect perceptions that exist in its community, and to communicate the correct position, appropriately, to them.

The evidence is that Walgett Councillors do accept the need for the provision of services and facilities to the town of Lightning Ridge, and have in fact been providing them, and voting to provide them, where the cost is reasonable and not out of proportion.

I shall return to the question of the cause celebre on the supposed imbalance of resources and services and facilities in respect of the Lightning Ridge Community Centre, in that regard, shortly.

I have therefore concluded that, in general terms, and contrary to the incorrect perceptions in that regard, Councillors have been adequately and properly discharging their Charter obligation to provide adequate, equitable and appropriate services and facilities to its community.

One issue of some controversy amongst certain sections of the community was Council's decision to exit certain human or community services. I have examined that at section 3.3 of my report, and have concluded that there is no reason to conclude that Council acted unreasonably in that regard.

One aspect of Council's performance in respect of this Charter obligation that I have examined is in respect of the extent to which Councillors have adequately and appropriately considered the potential use of borrowing powers to fund the provision of much needed new, as well as to maintain existing, infrastructure. This is examined at section 3.8 of my report. I have found failings in that regard, but these are, in my view, failings for which the General Manager and his administration are responsible.

One of the areas where I have the greatest concerns is in relation to the Charter obligation of keeping the community informed. This is examined at section 3.9 of my report. The evidence shows that Council has singularly failed to discharge, in a satisfactory manner, this obligation. Of particular concern are the many instances in which Council has failed to provide adequate and appropriate information to its community on matters that the Act requires it informs and involves its community via the annual management plan consultative process.

Of equal concern are the many instances in which Council has set up for itself certain objectives, and performance measures and targets by which its performance on such objectives is to be measured, where it has told its community, over and over again, in its Annual Report, that it has failed, in some cases quite badly, to meet those objectives and those targets. These objectives are even on those matters that Council holds out to its community are its key objectives and key projects.

One of the major projects and objectives in that regard is the important aim of economic development in this remote and often socially challenged and problem plagued regional area. Council has failed to meet the targets it has set for itself, and has failed to provide its community with adequate information about this.

This failure is symptomatic of a greater failure by Council to be honest and fully informative with its community about its performance. For example, there has been much spin doctoring, trying to present a positive message, and glossing over and hiding failures, such as those exposed by the Department of Local Government's section 430 investigation.

This has led, in my view, to the recent Council elections being held on a basis where the community was not properly aware of the failings, and this has possibly led to a distorted outcome.

Tourism, or the promotion of tourism, in the Shire has been touted by Council as the “front end” of its economic development strategy. However, this is an area where I have found that Council has singularly failed to meet its objectives and self-set targets and performance measures, and where Council has failed to adequately inform its community.

It is also an area on which, on the evidence, I have found that the General Manager appears to be spending too much time, at the likely cost of his discharging his role and responsibilities to manage the organisation, with its attendant failures to comply with legislation such as the Local Government Act 1993. It is also an area in which the General Manager appears to be inappropriately crossing the line between his role and duties as General Manager, and venturing into policy setting, which is a matter for Council’s elected body. As a result, the General Manager has allowed perceptions to be raised that he is too close to one grouping of Councillors, namely the Lightning Ridge Councillors. This is inevitably at his cost. See section 3.20 of my report.

At section 3.11 of my report I have considered Council’s performance on financial matters, and its being on the Department of Local Government’s financial monitoring list. The evidence shows that Council’s performance is considerably wanting, and the elected Councillors, as well as the General Manager and his administration, equally share the responsibility for this.

One particular aspect of Council’s financial performance that I have examined is in relation to the question of self-insurance on certain risks. This is examined at section 3.12, and I am not satisfied that Council has met all the necessary criteria to support a defensible decision to so self insure. Any failure in that regard means that Council is not properly discharging its Charter obligation as the custodian and trustee of public assets and moneys, the ratepayers’ funds.

There is evidence that some Councillors are not conducting themselves properly, and are thereby failing to meet their Charter obligations. This is considered at sections 3.13 and 3.14 of my report. I have raised concerns particularly in relation to the conduct of the former Mayor, Clr Waterford, as well as his failure, reasonably, to discharge and pay certain long outstanding debts to Council. I have, however, found no evidence of any special favours being accorded to the Councillor by Council staff, because of his position.

Of particular concern, on the question of Councillor conduct, is the question of walkouts. However, there is no evidence of this being a systemic problem at Council. This is considered at section 3.15 of my report.

I have, on the other hand, concluded that one particular walkout, that which took place at Council’s February 2004 meeting, when a crucial vote in relation to Council’s Lightning Ridge Community Centre project was due to be taken, is an

example of a clear and important failure by Councillors to meet their obligations and responsibilities. See section 4.17 of my report.

There is evidence of serious concerns and problems at this Council in respect of relationships between the General Manager and his staff and relationships between staff, and there is clear evidence of an unacceptably low staff morale, a situation in respect of which the General Manager is in a good measure responsible. This is considered at sections 3.18 and 3.19 of this report.

The evidence, both in this Inquiry and in the Department of Local Government's section 430 investigation, clearly shows that the General Manager and his administration under him, for which the General Manager is responsible and accountable, are performing and discharging their roles and responsibilities very badly. This is considered throughout my report, and in particular at section 3.21.

As previously noted, the General Manager is accountable for his performance to Council's elected body. The elected body is required to conduct a regular and proper performance appraisal of the General Manager in that regard. The evidence is that this has not occurred. Only two such appraisals have been carried out since Mr North was appointed to his role in May 2001. One led to the payment to him of an unlawful bonus, an issue that was the focus of attention in the section 430 investigation and report of that investigation.

The other and most recent performance appraisal took place in December 2003, at a time when the final draft section 430 investigation report was available to the Councillors.

The evidence is that the performance appraisal process that was undertaken in each case failed to meet and comply with the performance appraisal process that was required under the General Manager's contract of employment with Council, as well as with best and accepted practice.

But, what is worse, the evidence shows that the outcome of the December 2003 appraisal process was one which was perverse and did not reasonably reflect all the information and evidence available to the Councillors at the time. The General Manager was given a satisfactory report. I fail to see how this view could reasonably have been come to.

These matters are considered at section 3.22 of my report.

Part 4 of my report is devoted entirely to the major case of the Lightning Ridge Community Centre. It is the cause celebre at this Council, and is the key issue by which Council's performance, in my view, stands to be judged.

I have found that Council's performance on this matter is appallingly bad.

The evidence shows that the whole idea of a community centre got off the ground because of approaches made to Council in 1996 on behalf of a number of Home and Community Care (HACC) services who wanted to co-locate to new premises. Those premises were intended to be not only an office for the HACC services workers, but

also a place from which such services might be delivered. See section 4.1 and, to a lesser extent, section 4.4 of my report.

The project got under way in earnest when in 1997 Council was advised by the then Department of Ageing and Disability that a grant of \$270,000 had been approved, on condition that Council provide, in cash or in kind, one half of such amount itself. The Centre was, accordingly, supposed to be a Centre costing approximately \$405,000.

Council approved the Centre, in principle, on that basis in mid 1997. However, the evidence is that, from there on, the whole project got progressively out of control, due to poor management from both the Council administration under the General Manager of the day, and poor inputs from Council's elected body, and in particular Mrs Joan Treweeke. See, in particular, sections 4.2 to 4.4.

The evidence leads to great cause for concern whether Council adequately determined the need for a Centre, at least along the lines of the Centre it was becoming. See section 4.4 of my report.

There is evidence of very poor planning on this account. Of particular concern is the fact that the alleged needs for such a Centre, and for the facilities to be provided in it, were apparently judged on the basis of assumptions and guesses as to the population of Lightning Ridge. See section 4.5.

I am also very concerned about the manifestly inadequate community and other consultation undertaken in relation to the project. The reporting on the project to Council's community via its management plan and annual report is woefully inadequate, and shows that the community appeared not to be fully aware, if at all, of the project, let alone how much the proposed Centre was costing. See sections 4.7 and 4.8 in this regard.

Council appointed an internationally acclaimed, but very expensive architect to design the proposed Centre. That appointment was made in breach of the tendering requirements of the Act, a matter fully examined in the Department of Local Government's section 430 investigation report. But it was also made by persons and in circumstances showing that it was not properly authorised by Council. Mrs Treweeke played a key role in that regard. See section 4.6.

The Centre designed by Mr Murcutt, the architect so appointed, grew like Topsy so that its costs escalated dramatically. However, there is no evidence to suggest that this was the fault of Mr Murcutt. What was to go into the Centre grew dramatically, and did so in circumstances which show that there was clearly inadequate consultation on the matter.

More importantly, what was occurring was in clear breach of requirements and conditions imposed by the Department of Ageing, attached to its HACC funding grant. These were set out in a Deed of Agreement signed by or on Council's behalf, and authorised by Council. However, it appears that many Councillors, including Mrs Treweeke, the Councillor who on the evidence was driving the project, were not aware of its terms, and it appears to have been honoured more in the breach than otherwise. See section 4.9 of my report.

The Department of Ageing had various occasions to write to Council expressing concerns. A demand was even made for the return of the HACC funding. These appear to have been largely ignored, particularly by those at Council, such as Mr North and Mrs Treweeke and other Lightning Ridge Councillors, who did not like what they were hearing. There is also evidence indicating that the correspondence from the Department was not being properly reported and disclosed to the Councillors, and there is some indication of a cover up in that regard.

There is evidence that the Department over a period of several years had cause to write to Council advising that the need for the Centre was dissipating. This is not what the proponents of the project wanted to hear, and they convinced themselves that those who were expressing such views had no authority to speak or did not mean what they were saying. This was clearly inappropriate.

As noted, the costs of the proposed Centre escalated out of hand. They reached \$3.29 million in July 2000, and then an even higher \$3.44 million in February 2001.

These were figures provided by a firm of quantity surveyors, experts in such matters, appointed by Council for the express purpose of coming up with appropriate costings. See section 4.13 of my report.

The evidence is that those who did not want to hear such figures, fearing that it would result in the demise of the project, refused to believe them. Even at the public hearings Mrs Treweeke continually sought to have me believe that they did not mean what they said.

Various attempts were made to play down the figures, and to get them reduced, by arguing firstly that a lot of the labour and materials would be provided by community input from various members of the Lightning Ridge community, at no cost to Council. But, the evidence is that the figures provided by the quantity surveyors took such inputs into account. Yet those who favoured the project kept arguing that they were still not being properly and fully taken into account.

What is also of concern is the extent to which assumptions have been made as to those community inputs, on no reasonable basis, and in particular as to whether at the end of the day they will be forthcoming. This is being reckless with ratepayers' funds, because, in the end, if they are not forthcoming then Council is going to have to find the moneys itself. See section 4.11 of this report.

The other aspect to the unrealistic position that Council was being allowed to get itself into concerns the source of the funding for the balance of the cost of the proposed Centre, after taking into account the HACC funding, Council's own set aside inputs, and this alleged community input. Many at Council seem, without foundation, to have a sort of cargo cult mentality and expectation that Governments, State and/or Federal would just miraculously appear with copious amounts of funding to cover such a shortfall.

The evidence does not support any reasonable basis for such expectations. See section 4.11 of this report. There is evidence of some discussions, at a Federal

level, with the Hon John Anderson, the local Federal Member of Parliament and Deputy Prime Minister. But there is no evidence of any actual promises or assurances of such funding being granted, on the basis of which Council might continually, as it has done, and even in December 2003 and as late as March 2004, commit to the project.

At the State level, there is evidence of funding being sought, with the assistance of various persons, such as Mr Peter Black, MP. But, there is clear evidence from a letter to Council from Dr Col Gellatly, head of the Premier's Department, to Mr Black, that was passed to Council, but not passed on to the Councillors, that additional State Government funding was extremely unlikely.

That letter contained clearly worded warnings to Council of the need to seriously revisit the scale and expected cost of the project. Except to the extent that Council did look at a proposal to build the Centre in stages, those warnings were ignored.

As noted, Council did look at a staged construction, and this was costed by the experts, the quantity surveyors appointed by Council. A number of key players knew that this was being done, after approaches were made to the quantity surveyors in November 2003 for that purpose. Mr North was aware. So too were Mr Wooldridge, Council's Group Manager Infrastructure Management, the staff officer ostensibly in charge of the project, as well as Mr Burden, and Mrs Treweeke.

The Department of Ageing was at this time making demands for a prompt and final decision from Council in relation to the project. They, now some 7 and more years later, urgently needed somewhere for their HACC services to co-locate to, and had clearly in mind the potential taking over of the project themselves, if Council did not run with it in a responsible way and at a reasonable and responsible cost, and the building themselves of a new building, along the ones of one just recently completed in nearby Coonamble, at a cost very close to the originally approved budget of some \$400,000.

By the time staff at Council were preparing for Council's key meeting of 8 December 2003, at which it had to make a decision on the matter, the advice of the quantity surveyors was still not in. A rushed, and in my view, inappropriate move, was made to get an unofficial costing on stage 1 of the proposed Centre from a member of the Council staff. He was the building inspector and surveyor. His advice was oral, and all that was advised to the Councillors in the report that went to them for the purpose of the 8 December meeting was the figure that he came up with, namely \$500,000 to \$600,000. No supporting advice or documentation was provided to the Councillors, and indeed they were neither told who it was who had provided this figure, on what basis it had been calculated, nor even that an official figure had been requested and was still awaited from Council's duly appointed expert quantity surveyors. This is very poor and far from appropriate.

The report that did go to the Councillors was prepared by Ms Christina Johansson, Council's Facilitator Community Services, but with input from Mr Burden. It also went through the usual process of being approved by Council's Executive Management Team, that is to say, the General Manager, Mr North, plus Mr Burden and Mr Wooldridge. It was a very poor and inadequate report.

That report was prepared and was issued at the end of the week ending Friday 5 December 2003. The Council meeting of 8 December was due to start at 9:30 am on the following Monday.

The evidence is that a fax from Council's quantity surveyors arrived at Council at just after 5 pm on the Friday. It was too late to get into the already issued business papers and agenda for the Monday meeting, but if persons at Council had been astute, it was not too late for it to have been copied to the Councillors at that meeting as a late item. The information in that fax was vital for the Councillors to be able to make an informed decision, and this was known by a number of the key players, including the Council staff officers and Mrs Treweeke.

The evidence is that none of the Council staff officers saw the report until after the meeting had taken place. At that meeting Council passed a resolution approving and adopting option 1, i.e. stage 1 of the project, as identified in plans from Mr Murcutt, for the estimated cost of \$500,000 to \$600,000, and to proceed immediately with the building of those premises under the auspice of Walgett Shire Council. Nothing was said in the resolution about this being an in principle resolution only, for the purposes of proceeding with a next phase of seeking and obtaining necessary funding to cover that cost, because Council did not have sufficient funds in hand even to cover that estimated cost at that time. Yet Mrs Treweeke sought to have me believe that this was the clear intent of the resolution and that her fellow Councillors clearly understood that this was so. Such an interpretation is not borne out by the evidence.

Council's decision was controversial. A rescission motion was immediately lodged. That motion was due to be considered at Council's next meeting, namely on 9 February 2004. See sections 4.14 and 4.15 of my report.

The advice from the quantity surveyors in their 5 December fax to Council did not bear out the figure reported to the Councillors as being the estimated cost of stage 1 of the proposed Centre. In fact what the quantity surveyors advised was that stage 1 would come in at \$2.6 million to \$2.9 million, very considerably in excess of what the Councillors had been told and what they had approved.

Frantic moves were taken to go to see the quantity surveyors in Sydney to get them to revise their figure. The problem is that this was not done pursuant to any formal authority from Council, and even occurred without the knowledge and approval of Mr North as General Manager. See section 4.16 of my report. Mr Wooldridge and Mrs Treweeke attended this meeting.

The meeting led to a further fax going to Council dated 19 January 2004. However, far from endorsing the figure of \$500,000 to \$600,000, the quantity surveyors still came up with an estimated cost for stage 1 of \$1.384 million.

By the time of the February meeting, neither the fax of 5 December nor the fax of 19 January were formally advised or copied to Councillors. Mr North was not aware of the latter until he was shown a copy in the witness box at the public hearings.

At the February meeting, the Lightning Ridge Councillors present walked out, leaving the meeting without a quorum, just before the rescission motion was due to be considered. They did not return to the meeting, and as a result left unfinished a considerable amount of business.

The Councillors who walked out did so because it appeared that the Deputy Mayor, Clr Prue Hutchinson, was not likely to support them and help defeat the rescission motion, and because one of their number was absent from the whole meeting already, with leave. The Lightning Ridge Councillors therefore did not have the numbers. See section 4.17 of my report.

The rescission motion therefore came to be considered at Council's next meeting of 8 March. This time one of the Walgett Councillors was absent, and therefore, no matter how Clr Hutchinson voted, the Lightning Ridge Councillors had the numbers. The rescission motion was defeated. See section 4.18 of my report.

The problem is that even now, the Councillors were not provided with copies of either of the faxes from the quantity surveyor, information that it was most important for them to have. This meant that they made an uninformed and accordingly indefensible and inappropriate decision at that meeting. This was the last meeting before the impending Council elections, and the meeting after that would likely see a newly constituted Council.

The evidence is that Mr Woodridge and Mrs Treweeke bear a very great responsibility for this failure. So did the General Manager as head of the administration, even if he was not personally aware of the January fax. See sections 4.19.1 to 4.19.3 of my report. Mr Woodridge because, without consulting the General Manager and getting his approval, he decided that it did not need to be copied to the Councillors. Mrs Treweeke because, while she did not have a copy of the covering page of the second fax, she did have a copy of the costings, comprising some four pages, attached to that fax, and made no attempt to make sure that Councillors knew about it and were adequately informed.

The evidence does show that Clr Greenaway did have a copy of the earlier fax before the meeting, and had done so since about January or possibly December, having got a copy from Mr Burden. He told some of his fellow Walgett Councillors about the document and its contents. The evidence also shows that the figure of \$1.384 million was known to the Councillors and discussed at the March meeting, even if they did not see the fax. But this does not excuse the situation, nor does it change my views that the Councillors did not make an informed or appropriate decision at their meeting of 8 March.

The implications for Council in relation to this decision and the project are considered at section 4.20 of my report. It is clear that even if, the rescission motion having been lost, Council possibly cannot yet once more seek to overturn that decision, the decision is one that is patently incapable of implementation according to its terms. Council has not got the funding to cover a Centre at the cost its resolution approved, and in any event, the Centre is, on the evidence of Council's own expert advice from its quantity surveyors, going to cost a good deal more.

Council therefore urgently needs to revisit the matter and decide what it can properly and reasonably do. Any decision it makes must meet what Council itself promised to the Minister it would do, in response to the corresponding recommendation in the section 430 investigation report, namely approve and, if approved, build a Centre at an affordable cost, and in a clear timeframe. Council's decisions to date have manifestly failed to do so.

The evidence, therefore, is clear in respect of the Lightning Ridge Community Centre. Council, whether it be through its elected body, or through its General Manager and his administration, has performed very badly and has clearly failed its community and failed to meet its Charter and other obligations.

But, all these failings have occurred at the time of the 1999-2004 or earlier Councils. They are not failings of the present 2004 Council, and the newly elected Councillors cannot be held accountable and responsible for them, at least on the events and evidence to date.

My conclusions in respect of the 1999-2004 Council are summarised at Part 5 of my report. If the 1999-2004 Councillors were still all in office I would have had no hesitation in recommending their dismissal from office under section 255 of the Act.

As to the new 2004 Council, I have examined its position at Part 6 of my report.

As I have indicated already in this Executive Summary, I do not believe that the newly elected Councillors can be dismissed on the strength of the failings of their predecessor Council. The 2004 Council needs to be judged on its own performance or likely performance. Also as previously noted, one of the key issues that my Terms of Reference require me to examine is the question of the future governance of the Walgett Shire Council.

I have at section 6.2 of my report had particular regard to the probative and reliable evidence as to what might be expected to happen in the future. Crystal ball gazing does not come into that.

The only such evidence is what the newly elected Councillors have told their community and told this Inquiry they were elected to do and propose to do. All the newly elected Councillors gave evidence of their intent and determination to overcome the problems, and in particular the disunity of the past. There is no reason to doubt their evidence in that regard, or at least no legally based and probative evidence or reason.

On the other hand, the new Council needs to get on and do something about the manifest failures of the General Manager and his administration in terms of appropriate compliance with relevant legal requirements and so on. The Councillors have two options in that regard. I consider them at section 6.2.3 of my report.

The first option is to get on and do something about the appointment of a mentor and the fulfilment of Council's promises to the Minister in that regard. But another perhaps more appropriate option would be to conduct a fresh and this time proper and appropriate performance appraisal of Mr North's performance.

In my view the evidence is already there to demonstrate that Mr North's performance is such that there are grounds for the termination of his contract and his dismissal for incompetence. Mr North might consider saving the Councillors the need to do this by resigning. The matter is in the hands of the new Council; and they must proceed appropriately, including after obtaining appropriate legal and other advice.

In conclusion, I have therefore, after having given the matter long and careful, and at times agonising, thought, found myself unable to recommend that the present Councillors be removed from office. See section 6.3.

At Part 7 of my report I have briefly examined the question of possible local government reform measures, including amalgamations, as a possible solution for Council. I have rejected them. This Public Inquiry process was not such a process as is necessary and appropriate to make recommendations of that nature.

I have however, made a number of other recommendations at various places in my report, and for convenience and ease of reference these have been collected and repeated at Part 8 of my report.

The recommendations made include an option for the Minister to consider regarding possible dismissal of the 2004 Councillors. I have said:

For the reasons set out in this report, and particularly at section 6.3, I am myself unable to recommend that the present 2004 Council be sacked.

On the other hand, if the Minister can, even now, reasonably form the view, on the evidence I have presented to him in this report of the deliberations and outcome of my Public Inquiry, that the newly elected Councillors, together with the six Councillors who have continued in office from the 1999-2004 Council, cannot be believed and cannot be expected to discharge their Charter and other obligations from here on, then it might be possible for the Minister to conclude that there is no other course but to recommend to the Governor that a declaration be made that all civic offices in relation to the Walgett Shire Council be declared vacant. That is a matter for decision by the Minister.

PART 1

1. INTRODUCTION AND INQUIRY PROCESSES

This is my report to the Minister for Local Government, the Hon Tony Kelly MLC, in respect of a Public Inquiry conducted by me, pursuant to section 740 of the Local Government Act 1993 (the “Act”) in respect of the Walgett Shire Council.

1.1 Terms of Reference

On the recommendation of the Minister for Local Government, the Hon Tony Kelly MLC, I, Robert Bulford, was appointed by Her Excellency the Governor of New South Wales on 25 February 2004 to hold a Public Inquiry under section 740 of the Local Government Act 1993 into the Walgett Shire Council.

The Instrument of Appointment of myself as Commissioner reads:

APPOINTMENT OF ROBERT BULFORD TO CONDUCT PUBLIC INQUIRY – WALGETT SHIRE COUNCIL

In accordance with the provisions of section 740 of the *Local Government Act 1993*, I [i.e. Tony Kelly, MLC] have the honour to recommend for the approval of Her Excellency the Governor and the Executive Council the appointment of Robert Alexander Bulford to hold a Public Inquiry with the attached terms of reference.

The Terms of Reference of my appointment as Commissioner are as follows:

To inquire, report and make appropriate recommendations to the Minister for Local Government on the efficiency and effectiveness of the governance of Walgett Shire Council.

The Inquiry will have particular regard to:

4. Whether the elected representatives have been and will continue to be in a position to direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil the Charter, provisions and intent of the Local Government Act 1993 and otherwise fulfil its statutory functions.
5. The conduct of elected representatives of Council (whether individually or collectively as the governing body).

6. Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or the management of and working relationships within the Council.

The Commissioner may make other recommendations as they (sic) see fit, including whether all civic offices in relation to the Council should be declared vacant so as to ensure that an appropriate structure can be put in place to provide optimum community leadership.

1.2 Public Notices of the Inquiry

Public notice of the Inquiry was published in all the major regional and local papers circulating in the Walgett Shire Council area, namely the Dubbo Liberal, the Moree Border News, the Tamworth Northern Daily Leader, the Moree Champion, the Black Opal Advocate, the Coonamble Times, the Lightning Ridge News and the Narrabri Courier. The publication commenced on 3 March 2004.

A second public notice was published in the same newspapers, commencing on 29 March 2004, advising of the date and proposed venue for public hearings to be held by myself as Commissioner. The public hearings were advertised to commence on Tuesday 20 April 2004, and were to be held at the Walgett Shire Council Chambers, 77 Fox Street, Walgett.

1.3 Submissions to the Inquiry and the lack of them from certain quarters

The first public notice of the Inquiry invited written submissions from persons with an interest in putting forward points of view relating to the Terms of Reference by Wednesday, 24 March 2004. It was advised that submissions to the Inquiry would be made available to the public (meaning, published or placed on public exhibition), but at the discretion of the Commissioner.

Initially, the number of submissions received by the Inquiry was surprisingly and disappointingly small. By 26 March 2004, two days after the advertised closing date for the lodging of submissions, only 21 submissions had been received.

On the other hand, I had, soon after my appointment, namely on 27 February 2004, personally written to each of the then Councillors (there is a total of 12 Councillors at Walgett Shire Council), plus to the General Manager and a further seven Council senior officers, holding various managerial positions with the Council, inviting them to lodge written submissions with the Inquiry, if they so chose. That is to say, some 20 such letters were issued.

As indicated, the invitations left it to the option of the invitee as to whether or not to lodge a personal submission to the Inquiry. But, given the nature of the Inquiry and the events leading up to it, it was reasonable to expect that many, if not all, such

persons would wish to lodge submissions to the Inquiry, both to put before the Commissioner their personal concerns and views, as well as to put before the Inquiry any issues or evidence that might be relevant to the Terms of Reference.

Of particular relevance and note in this regard is the fact that the Council had itself formally called, by a resolution of the Councillors, for a public inquiry process to be undertaken. In fact resolutions to that end were passed by the Council both at its 9 February 2004 meeting, and again at a special meeting held on 13 February 2004. The letter to the General Manager had invited not only a personal submission from him, if he so chose, but also a corporate submission on behalf of the Council. In the result, no such corporate submission was ever provided to the Inquiry.

Further submissions did, however, come in, from some persons, after the formal closing date, and these were considered, and taken into account. Where I had determined that this was appropriate, these later submissions were also placed on public exhibition. By the time the public hearings commenced on Tuesday 20 April 2004, a total of some 40 submissions had been received.

However, many of these submissions were from members of the public, while some were from present and former Council staff members. Only four Councillors provided submissions in the original batch of 21 submissions, received by 26 March 2004. Twelve of the original batch of submissions received were from members of the public.

Some five of the Councillors elected in 1999 and serving on the 1999-2004 Council apparently chose not to provide submissions at all (i.e. whether in the original batch of submissions, or later) to the Inquiry. These included the former Mayor, Clr Peter Waterford (who, it is noted, had at least initially, on 9 February 2004, formally opposed the holding of a public inquiry, apparently seeing no need for such a process). Clr Waterford served three terms as Mayor on this Council.

Other Councillors from this Council who provided no formal written submissions to the Inquiry included former Clrs Joan Treweeke, Sam Jeffries and Tim Horan. None of these persons contested the 27 March 2004 Council elections, at least at the Walgett Shire Council (Clr Horan stood as a candidate at the adjoining Coonamble Shire Council elections, and was elected, and later voted in as Mayor of that Council by his peers). Clr Margaret Bow, who was re-elected at the 27 March 2004 elections, also provided no submission to the Inquiry.

As noted, the personal invitations to lodge submissions with the Inquiry were issued on 27 February 2004, and the formal closing date for receipt of submissions was 24 March 2004. Council elections were held three days later, on Saturday 27 March 2004, when some six new Councillors were elected to the Walgett Shire Council, all but one of them serving as a Councillor for the first time. Accordingly, no formal personal invitation to lodge written submissions with the Inquiry was issued to any of these new Councillors, and none in fact provided such submissions to the Inquiry.

Nonetheless, given their very real and direct interest in the outcome of the Inquiry, it is surprising that no newly elected Councillor chose to lodge written submissions with the Inquiry.

As is noted at section 1.10 of this report, each of the newly elected Councillors was invited to and did give oral testimony as a witness before the Inquiry, and many testified to their concerns as to the need for the newly elected Council to put aside and overcome the difficulties of the past, and this provides another reason to express surprise at the fact that none of them saw fit to lodge written submissions with the Inquiry. At various stages of the Inquiry process it was made quite clear that late submissions would be welcome and would be considered, even if they were not formally invited (except by way of an invitation to lodge a written reply at the close of the public hearings).

Even the relatively small number of submissions from the community was a matter of surprise to me, given the apparent level of concerns in the community about Council and its operations (as to which see section 2.1 of this report).

On the other hand, the relatively high attendance in the public gallery at and throughout the public hearings was to some extent reassuring and of note, in view of what I understand to be a very low level of attendance at recently concluded public hearings at a section 740 Public Inquiry into a Sydney Metropolitan Council, an Inquiry that raised matters of a potentially higher plane and a higher or more serious level of public concern, than those at the Walgett Shire Council Public Inquiry. It must be noted, however, that the turnout at the public hearings at the Walgett Shire Council Public Inquiry appeared to be commensurate with that at public inquiries which have occurred in the last seven years into other rural and regional Councils.

I shall return to the question of community satisfaction with and the level of community awareness and understanding of such matters as Council's performance and discharge of its obligations at section 3.2.3 of this report.

1.4 Publication of submissions to the Inquiry

Arrangements were made with the Walgett Shire Council for copies of the submissions lodged with the Inquiry to be placed on public exhibition at various Council owned or controlled venues throughout the Shire, namely in Walgett, Lightning Ridge and Collarenebri. That public exhibition commenced on 30 March 2004, and the published submissions remained on public exhibition until some time after the public hearings had concluded. As and when further submissions were received, copies were provided to the Council and added to the submissions already on public exhibition.

The question of a possible placing of the published submissions on the internet, via Council's website, was initially raised with me by Council, but I advised that I considered that this was neither necessary nor desirable, particularly given the large number of attachments to some of the submissions. In the result, no internet publication was authorised, nor, to my knowledge (as to which see further below), took place.

A small number of submissions or parts of submissions were not included in those made publicly available. This was done on my order. Some of these did not fall within the Terms of Reference of the Inquiry, and some were determined by me to be dealt with in confidence.

The great proportion of submissions were placed in the public domain. By making the documentation available prior to the opening of the hearings, I provided all concerned with an opportunity to examine the submissions prior to giving oral evidence or providing any written submissions or written reply, as the case may be.

Shortly after the first batch of written submissions was placed on public exhibition an issue arose in respect of the publication of the names and addresses of persons in a document purporting to be a list of debtors. That publication, so it was reported to me, led to loud and extended concerns being raised both at the immediately following Council meeting, particularly, so I understand, by Clr Peter Waterford, whose name appeared a number of times on that list, and by a small group of community members. A number of these made contact with either me or my office.

I accordingly found it necessary to have some words to say on the matter at the opening of the public hearings, in my opening address. This is what I had to say:

I am aware that concerns have been expressed by some persons about the publication of some documents which have been included in the submissions published and placed on public exhibition to date. I have noted them.

However, I would like to make a number of things very clear.

Any relevant rights of persons to privacy or to privacy in respect of their personal information exist via or in reliance on an Act of the New South Wales Parliament. This is the Privacy and Personal Information Protection Act 1998.

This Act does not provide for absolute rights to privacy in all cases. For example, a very important provision for present purposes is section 6, subsection (2) of that Act, which provides that nothing in the Act affects the manner in which a Royal Commission, or any Special Commission of Inquiry, exercises the Commission's functions. This means that the privacy laws do not prevent me from ordering or authorising the publication of personal information, should I consider it relevant or necessary to the Inquiry and its Terms of Reference.

I would also like to note that section 12A of the Royal Commissions Act 1923, which is one of the sections of that Act that applies to this Inquiry, provides that a Commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the Inquiry conducted by it to a Commission of Inquiry, if the information or material relates or may relate to matters within the Terms of Reference of the Commission of Inquiry.

That really disposes of the issues, so far as I, as Commissioner, and this Inquiry are concerned. But, I would like to add some further comments on the matter.

There is another exception to privacy contained within the Privacy Act that needs to be noted. This is section 24, which provides that an investigative agency has power to override the privacy rules in certain cases where it might detrimentally affect the agency's complaint handling or any of its investigative functions. As a Commissioner appointed to undertake a public inquiry under the Local Government Act 1993, I have, on behalf of the Department of Local Government and its Minister, and the Government generally, powers

and responsibilities in respect of complaints and to investigate and inquire into matters concerning the Walgett Shire Council that fall within my Terms of Reference.

The question of Council's handling of outstanding debts was one of the key findings, against Council, in the Department of Local Government's investigation and report of that investigation under section 430 of the Local Government Act 1993. That investigation was the forerunner to and foreshadowed this Public Inquiry. I have determined that the issue of Council's management and handling of its outstanding debts is one of the various issues that falls within my Terms of Reference. I propose to examine and inquire into it.

The particular document that I understand has been published, and has as a result caused concerns, is one that appears to be a list of some 4 pages of outstanding debtors. In accounting terms it is called a Sundry Debtors Ledger.

The list of debtors is a document that forms part of the large volume of material that was put on public exhibition as part of submission number 23. It is not a document that is labelled or marked, or even readily identifiable on its face, as a Walgett Shire Council document. Nor is it a document that is marked or identified in any way as being confidential.

Nor is it a document which purports to be a list of outstanding debtors as at any particular date. It might well be a listing that is quite old and out of date, and persons who are identified on that list as allegedly owing money to whoever the creditor is may well have long since paid the debt off. Or the creditor may have written the debt off. Or the creditor may have agreed that the debt was mistakenly shown as being one owing. All of that is yet to be established.

Another point which needs to be noted is that just because someone is identified or named on the list as being an outstanding debtor, from the perspective of the person, presumably the creditor, who compiled that list, does not mean that there is any legal obligation to pay that debt. The debt may be disputed, legitimately or otherwise. That is an issue, I must note, is not for this Inquiry to establish. I have no power to rule on the payability or otherwise of particular debts or demands said to be owing to any creditor, even if that creditor were to be established as the Walgett Shire Council. And I do not propose to do so.

And I would warn members of the public and persons at or associated with the Council not to draw conclusions from the publication of the list.

There is, on the other hand, one aspect of the list or one issue, perhaps amongst others, arising out of the list, which in my view does clearly fall within my Terms of Reference and in respect of which I have a legitimate and proper interest in inquiring into. As I have said, I have determined that Council's management and handling of its outstanding debtors, in general terms, and not specifically in the context of any particular debt, is one of the issues that does fall within my Terms of Reference. An aspect of that debt management may well, though this is yet to be established, be whether Council's putting together of any Sundry Debtors Ledger is handled in such a way that it is mismanaged.

For example, does Council recklessly, or otherwise, compile lists of allegedly outstanding debtors, knowing full well that it proposes to take no further action in respect of or to recover certain of the debts, or knowing full well that the debts are disputed, and have been for some time? The inclusion of clearly uncollectible or disputed debts in Council's receivables may, in certain cases, have an effect of misrepresenting Council's true financial situation. That would clearly be, if established, an aspect of mismanagement of the Council.

Another aspect is whether persons holding public office have acted in a proper and appropriate manner. The conduct of elected representatives (whether individually or as a group) is one issue clearly identified in my Terms of Reference as one in respect of which

I have been appointed to inquire. Councillors and other public officials are expected to show leadership and to act according to certain standards and to aspire to and meet standards of conduct that may be over and beyond that expected of ordinary citizens. An issue that I propose to examine is whether elected representatives should, accordingly, not allow outstanding debts, owing to the body they are elected to serve, to unreasonably remain outstanding for unreasonable periods of time.

As I have indicated, the list of outstanding debtors that was published, and which has excited comment from some quarters, was, at least initially, put on public exhibition as part of submission number 23 to this Inquiry. That submission was one from Clr Charlie Mitchell of the Walgett Shire Council.

Councillors, and other persons working at or associated with Council, have certain statutory obligations under the Local Government Act 1993 to ensure that confidential Council documents and information remain just that – confidential. The relevant section of the Act is section 664.

There is, on the other hand, one very important and relevant exception set out in section 664, namely in section 664 subsection (1) paragraph (b). This provides or allows, if you like, a Councillor or other relevant person to disclose confidential information or documents where that disclosure is made in connection with the administration or execution of the Local Government Act. The Department of Local Government is the oversight agency that monitors the performance and compliance of Councils with the provisions of the Act, and the Department is in turn responsible to the Minister for Local Government. In turn also, I as a Commissioner appointed to inquire into Council under section 740 of the Act, also have powers and responsibilities in relation to the administration and execution of the Act and in particular in relation to Council's compliance and performance.

Therefore, let me be quite clear on this. *If* the document that Clr Mitchell provided to me was a Council document that he obtained in the course of his role and duties as an elected representative, and *if* that document was one that was confidential and not otherwise disclosable or publicly available under section 12 of the Act, then Clr Mitchell's disclosure of that document to me was perfectly in order and proper. Clr Mitchell, in my view, has done nothing wrong or improper.

It was not Clr Mitchell who published the document or placed it on public exhibition, nor did he cause it to so be. The publication was one ordered and authorised by myself as Commissioner.

That, I must make abundantly clear, is and should be the end of the matter so far as the Councillor is concerned. Attempts to harass, pursue or sue or otherwise seek to bring the Councillor to account for his actions, or for that matter myself, in this case are out of order.

Having said all that, and it is to be regretted that it has been necessary to say anything at all about the matter, I have, as I have already indicated, noted the concerns that have been expressed by a small number of people over the publication of their names. As soon as those concerns came to my attention, I took steps to withdraw the relevant document from publication and public exhibition.

I wrote to Council asking it to withdraw the document, and to replace it with a document which had the names removed from publication. I understand that Council, as soon as it was able to do so, and had received my request, did so. The document, in its original format, is therefore no longer in the public domain and no longer on public exhibition.

There is one last aspect of the matter on which I would like to comment. This concerns allegations that have been made to me that the original document was supposedly published on the internet.

When discussing with Council the appropriate arrangements for placing the submissions to this Inquiry on public exhibition, the question of a possible placing of them on Council's website was raised by Council with me. I replied that I neither saw it necessary nor appropriate that this be done, particularly having regard to the volume of materials provided to me with some submissions.

I have been assured by Council, and I accept those assurances, that at no time has the document in question, or any other of the submissions, been published by Council on its own website.

This leaves the question where that alleged internet publication occurred, if it did at all. I have made enquiries as to the matter. One person, who telephoned me to express concerns about publication of her name, told us that she had not herself seen the alleged document on the internet, and that she had merely been told by a "friend" that this had occurred. I asked her to find out from the friend where the document was apparently published. These enquiries led to nought.

If the document has been published on the internet, then this has occurred, not as a result of any action taken by either myself, the Council, or for that matter Clr Mitchell, and has been done so without authority and unlawfully. If any person is able to give this Inquiry information about the matter, I would appreciate it if you could contact Ms Weston as soon as possible.

I heard nothing further on the matter during the public hearings. Nor was any information or evidence provided to me about alleged internet publication. Clr Mitchell, when appearing as a witness before the Inquiry, told me he had no knowledge of any such internet publication.

1.5 Enquiries of other investigative agencies

On 27 February 2004, I wrote to the heads of a number of investigative agencies and Government Departments to find out if they had any information that might be relevant to the Inquiry and which fell within my Terms of Reference. Letters were sent to the Department of Local Government, the Office of the NSW Ombudsman, the Independent Commission Against Corruption, and the Department of Infrastructure, Planning and Natural Resources. Responses were in due course received from all but the Independent Commission Against Corruption.

1.6 Other lines of enquiry

In conducting this Inquiry I have had regard not only to the written submissions, oral testimony and evidence provided to this Inquiry, but also to other lines of enquiry open to me.

A considerable volume of materials and written evidence was provided to me, over an extended period, by the Council, in response to my enquiries and requests. These included information and documents on Council files, for example, particularly Council's files in relation to the Lightning Ridge Community Centre, as well as

Council policy documents, minutes, annual reports and management plans going back to 1999, and in some cases beyond.

Mrs Joan Treweeke, but only after she took the stand as a witness before the Inquiry, provided, with the assistance of her legal adviser, a large volume of materials on the Lightning Ridge Community Centre, which she had copies of on her own records and files, some of which appeared to be missing from the Council files and records. The volume provided by Mrs Treweeke was of help to me in conducting my Inquiry and in writing this report.

The Department of Local Government provided assistance and advice in relation to information on population statistics for the Walgett Shire, and in particular in relation to the alleged population for the centre of Lightning Ridge.

Legal and procedural advice was also provided by officers of the Department throughout the Inquiry process. This advice proved to be of immense use and assistance to the Inquiry, and I must place on record my sincere thanks for that valuable input.

The Department also put at my disposal its very considerable and extensive files relating to the Walgett Shire Council. These included all complaints received in respect of Council since 1999, related documents and correspondence, as well as all the evidence and other working materials and notes produced or obtained during the course of the Department's investigation under section 430 of the Act, as well as its earlier preliminary enquiries, in respect of this Council. It is noted that a number of persons who provided written submissions to this Inquiry sought to draw my attention to letters and other materials they had provided to the Department or the Minister at an earlier time, and the Department's opening up of its files enabled me to have access to this material.

A number of those who provided submissions and who gave oral testimony to the Inquiry drew my attention to press reports about the Walgett Shire Council. Given the public nature of local government, press articles and reports will always be a source of information, though this has been treated with care and, where relied upon, has sought to be corroborated by other means.

1.7 Assistance to the Commissioner

Ms Fay Weston was authorised by me to assist in the conduct of the Inquiry, pursuant to the provisions of section 12 of the Royal Commissions Act 1923.

The smooth functioning of the Inquiry was in large part due to the sterling efforts of Ms Weston, and I would particularly like to express my very great appreciation for all her willing, cheerful and excellent work and effort.

1.8 Resources available to the Inquiry

In addition to what is mentioned above, the Department of Local Government provided or made available considerable resources for the Inquiry. These included the making available of funds to meet the cost of a very necessary oral evidence tape recording and transcription service. In order to meet budgetary constraints imposed on the Inquiry, it was necessary to limit typed transcription of oral testimony to the testimony of certain witnesses only. These transcripts were not, however, available for publication or to witnesses or other interested persons.

The recording and transcription was provided by APT Transcriptions of Sydney. The service they provided was invaluable and much appreciated.

1.9 Point of liaison with Council

In order to ensure the orderly conduct of the Inquiry, particularly given that a number of Council's senior management were the subject of issues raised with the Inquiry and were witnesses before the Inquiry, Mr Barry Shields, Council's Manager, Executive Services, was appointed, after consultation with myself, and provided with delegated powers, as the point of contact between the Inquiry and its officers, including myself, and the Council.

I would like to express my great appreciation for the work undertaken by Mr Shields in that regard, particularly having regard to the sometimes long lists of information and documents that I sought from time to time from the Council.

1.10 The Inquiry process

In addition to the processes already noted, the Inquiry held public hearings at the Walgett Shire Council Chambers over a number of days. Hearings took place on 20, 21, 22, 23, 27, 28 and 29 April 2004. On two of these days the Inquiry sat only for part of the day, due to logistical factors and travel needs.

Very early on it was found that the volume of evidence sought from and provided by witnesses was much more and took more time than had first been expected, and it became necessary to sit and hold hearings on more days than first estimated and for longer hours. This enabled the hearings to be concluded on Thursday 29 April 2004, and without the effort and expense of another week of hearings. The forbearance of witnesses and members of the public in that regard was appreciated.

During the public hearings some 25 persons appeared as witnesses.

These witnesses included the current Mayor, Cllr Alan Friend, each of the six newly elected Councillors who were elected at the Council elections of 27 March 2004, the former Mayor, Cllr Peter Waterford, and nearly all of the Councillors who served on the 1999-2004 Council.

The Councillors who served on that Council who were not called as witnesses were not so called because I determined that they appeared to have no key role in events at that Council that I considered warranted examination pursuant to my Terms of Reference and therefore appeared to have nothing by way of relevant oral evidence to give to the Inquiry. On the other hand, where a Councillor (or Councillor on the 1999-2004 Council) sought to appear as a witness, that Councillor was granted leave to do so. And each such person had, of course, the right, particularly having regard to my personal invitations to do so, to give written evidence to the Inquiry through written submissions.

The Councillors who served on the 1999-2004 Council, and who did not stand for re-election, who did not appear as witnesses at the public hearings were former Councillors Tim Horan, Prue Hutchinson (and despite her previous role as Deputy Mayor), Sam Jeffries and Peter Lang. Of the continuing Councillors only Cllr Margaret Bow was not called as a witness, though in her case there was some discussion with her about whether or not she might appear. At one stage she contacted Ms Weston asking why she had not been called. She was advised that she was welcome to appear, if she wished to do so. After some prevarication she advised that she did not seek to appear after all.

Of the Council staff, the General Manager, Mr Vic North, appeared as a witness, as did his two senior managers and other members of Council's Executive Management Team, Council's Group Manager, Services Management, Mr John Burden, and Council's Group Manager, Infrastructure Management, Mr Jo Wooldridge. Also called as witnesses at the public hearings were the Manager, Roads and Bridges, Mr Alan Nelson, the Manager, Development Services, Mr Matthew Goodwin, and the Facilitator Community Services (despite the absence of the word "Manager" in her title, one of the management team), Ms Christina Johansson. Another witness at the public hearings was Council's Marketing and Promotions Officer, Mr Alex Lubanski.

1.11 Procedure at the public hearings

Sections 740 (2) to (4) of the Local Government Act 1993 set out the powers of a Commissioner at a public Inquiry as follows:

- (2) For the purposes of any inquiry under this section, any person appointed to hold the inquiry has the powers, authorities, protections and immunities conferred on a commissioner, and:
 - (a) if the person is the only person appointed to hold the inquiry – on a sole commissioner, or

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

by Division 1 of Part 2 of the Royal Commissions Act 1923.

- (3) The provisions of sections 27A and 27B of the Local Courts Act 1982 apply to any witness or person summoned by or appearing before the person so appointed in the same way as they apply to witnesses and persons in proceedings under that Act.
- (4) The provisions of the Royal Commissions Act 1923 (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.

Subject to this, the procedures adopted in an Inquiry of this nature are not fixed (nor are the rules and procedures generally adopted in a court of law generally or in all cases applicable) and the Commissioner is given a wide discretion on the matter. It is therefore of relevance to note what I had to say on the matter in my opening address at the public hearings on 20 April 2004.

The Inquiry will be conducted in accordance with section 740 of the Local Government Act 1993, which provides for a number of things.

It confers on me, as Commissioner, the powers, authorities, protections and immunities which are conferred on a Commissioner by Division 1 of Part 2 of the Royal Commissions Act 1923.

As Commissioner I cannot therefore be sued, for example, for defamation or for alleged breaches of privacy laws.

It also invokes the provisions of sections 27A and 27B of the Local Courts Act 1982. These provisions contain powers and mechanisms for dealing with any perceived contempt of this Inquiry, in the same way as for a contempt of court.

A number of other provisions of the Royal Commissions Act apply in respect of the conduct of this Inquiry. These include provisions about the appearance of persons before the Inquiry, about legal representation, and about the examination and cross-examination of witnesses. In essence, each of these may be allowed, but only with the leave of myself as Commissioner.

Other provisions give me power, as Commissioner, to summons witnesses, and to require the production of documents. Section 11 of the Royal Commissions Act provides that a witness shall not be entitled, other than where certain very limited exceptions apply, to refuse to answer any question relevant to the Inquiry that is put to the witness by the Commissioner. One of these exceptions provides that it is not compulsory for a witness to answer any question, or for that matter to produce any document, if the witness has a reasonable excuse for refusing. Such an excuse would need to be one recognised by the law as being appropriate and applicable to proceedings such as these.

Subject to these provisions, the Commissioner is given a wide discretion as to the procedure to be adopted for the conduct of an Inquiry under section 740. I therefore propose to outline the procedures which I intend to adopt for the purpose of this Inquiry.

...

I propose to manage the Inquiry on as informal a basis as possible. I will follow procedures that will allow evidence to be presented and replied to in as simple and as expeditious a manner as possible, while recognising the rights of all involved.

Evidence will, so far as possible, be taken by oral testimony on oath or by affirmation.

...

Beyond the written submissions provided to this Inquiry, it is possible that some of the evidence given during the hearings may be contentious. I therefore understand that individuals who may be substantially and directly affected by the subject matter of the Inquiry, or whose conduct in relation to any such matter has been challenged to that person's detriment or possible detriment, may wish to have a right of reply at the *conclusion* of the hearings.

For that reason, I have therefore decided that I will allow such affected parties (or, where leave to do so has been granted by me, through their legal representatives) to provide to me a *written* response or further written submissions. I ask that this be done *within 7 days* of the close of the public hearings. These submissions should be posted, emailed or faxed to the address that has already been advertised as the place to send submissions to the Inquiry. If you are not sure about this address, please refer to Ms Weston.

I may, subject to there being sufficient time available to do so, consider allowing such affected persons the right to seek leave to make an *oral* reply to any such matter, towards the conclusion of the public hearings. I must indicate that my preference is for any such response or reply to be in writing and submitted within 7 days, as I have already said.

Again, I would like to emphasise that if someone wishes to respond to any criticism made about them then it is appropriate to do so in writing by way of reply.

From the schedule of witnesses now set, it is probable that, if there are to be oral replies given by some witnesses, these replies will occur next week, giving people time to prepare.

Any person who wishes to appear before the Inquiry must seek and obtain leave to do so. Those who have already been notified that they are to be called as a witness to give evidence before this Inquiry do not need to seek further leave for that purpose.

Any person who is not already scheduled as a witness should apply for leave to speak to the Inquiry. Upon receipt of any such application, which I suggest be made by approaching, in the first instance, Ms Weston, I will deal with each application as I feel is appropriate. Due to the limited time available for the public hearings, I would prefer any person who might wish to seek that leave, or who otherwise might wish to place documents, information or other material before this Inquiry, to do so by means of a written submission to me, but lodged with Ms Weston, personally, during the course of the hearings. That application, or those submissions, should outline, very briefly, the issues on which a right of personal appearance to give evidence as a witness or on which an oral reply, as the case may be, is sought.

Where any additional submissions, over and above those that have already been placed on public exhibition, have been provided to the Inquiry during the course of these public hearings, or during the 7 days after the public hearings have concluded, I will endeavour to ensure that these are also put on public exhibition, along with the existing submissions, at the various Council venues in the Shire.

Questioning or cross-examination of individual witnesses during the hearing will be strictly only by leave. To obtain that leave you will need to apply to me. I will need to be

satisfied of the suitability and need for such a request to be entertained. Matters of general argument should be reserved for the reply stage.

I would like to make it clear that questioning or cross-examination of witnesses, even where I have granted leave to do so, is not to be taken as an opportunity to make a speech, or to provide evidence to this Inquiry on the part of the person undertaking the questioning or cross-examination. If a person wishes to produce evidence to the Inquiry, other than by means of the answers of the person being questioned or cross-examined, then that should be done either by making an application to me to give evidence and appear before this Inquiry, or by means of the lodging of written submissions during the course of the hearings, or, in the limited circumstances that I have already outlined, by means of a reply at the end of the hearings.

A full Information Paper about the general procedures for the Inquiry, and associated matters, has already been provided directly to all Councillors, or at least those who held that office immediately prior to the last Council elections on 27 March 2004. Newly elected Councillors, if they have not already done so, may wish to obtain a copy from the Council.

That Information Paper has also been provided direct to the Council's senior staff. The information paper has also been published on the Public Inquiry website.

Any other person still requiring a copy of this information Paper should obtain it from Ms Weston during one of the adjournments.

Evidence given must be within the Terms of Reference of this Inquiry and it is my responsibility as Commissioner to refuse to admit evidence which goes beyond the bounds of the Terms of Reference.

People watching the progress of the Inquiry should be aware that despite being given an opportunity to present information or to appear in person to give evidence, it is not to be taken as an opportunity to revisit the issues of specific applications or cases from the past. I have no power to re-open past Council decisions or actions. Nor do I have power to overturn them and substitute my own decision on them.

I propose, in general, but with perhaps some limited exceptions, to ask specific questions of witnesses appearing before me, rather than give such witnesses a general or open invitation to address this Inquiry. Those questions will be directed to the issues that I see as relevant or beneficial to my understanding of the issues that I consider fall within or are relevant to my Terms of Reference.

I would emphasise that I am not in a position to re-assess specific cases and I am only going to consider submissions and evidence from the point of view of the Terms of Reference.

Evidence will be given on oath or by affirmation, and there is a protection from defamation. However, I would again emphasise that I will expect and require that evidence will be given strictly in accordance with the Inquiry's purpose and its Terms of Reference.

I should also point out that this is an Inquiry into the circumstances of the Council. It is not a trial of individuals. The basis of submissions, and the presentation of evidence and other matters, should, therefore, be dictated by this and not by the rules which ordinarily would apply in a legal action or formal court case between parties to those proceedings.

These public hearings or proceedings will be tape recorded in order to provide me with a transcript to assist in the preparation of my Report on the Inquiry. I do not propose to make typed transcripts of the proceedings available to other persons. Part of the reason for this is that the transcripts will be typed and prepared in Sydney, and will not be available in any event until some days after the close of the public hearings.

All public hearings will be and remain open to the public and to the media, unless I otherwise direct.

I would like to note that I have been approached by some persons who wish to give evidence to me in confidence. I have ascertained that there are sufficient grounds for this to occur, and therefore the evidence of some witnesses will be taken in hearings that are closed to all persons, other than myself, Ms Weston, the witness and the transcription service staff. No other persons will be permitted to attend, and no cross-examination of those witnesses will be allowed.

For this reason, however, I would like to stress that any evidence obtained by me through such a process has only very limited benefit to this Inquiry and only very limited usability. This is for a number of reasons, including legal reasons about limitations on my ability to make findings based on untested evidence.

I would accordingly ask that persons who might be considering approaching me or Ms Weston with a view to being allowed to give evidence in confidence, or in camera as it is called, carefully consider the implications and limitations.

Where it is possible for me to do so, and where I deem it appropriate, I will endeavour to put to persons who might adversely be affected or implicated by evidence or allegations put to me in confidence, the gist of the allegations, and seek a response. I will endeavour to do so in a way that protects the identity of the original witness.

Putting the gist of the allegations to such an affected person in this way is done with a view to meeting natural justice and procedural fairness rules and legal requirements, and it will provide some means whereby the evidence or allegations might be tested, but this procedure can have its limitations.

One of the various reasons that have been put to me by persons seeking to give evidence in confidence is that there is a fear of retribution or reprisals, and in some cases this is said to be from the Council management, in others from Councillors, and even from members of the community. This in itself is a cause for considerable concern.

I would like to warn all persons that retribution, reprisals or other inappropriate conduct towards witnesses appearing before this Inquiry, or to persons who have provided written submissions to me, will not be tolerated. Steps can and will be taken against any persons offending these rules.

However, as is indicated in the Inquiry Information Paper, the provisions of the Protected Disclosures Act do not apply to persons seeking to provide disclosures or evidence to me. This is the legislation that is sometimes called the whistleblowers legislation, and it is designed to protect whistleblowers from recriminations and reprisals. ...

Shortly after the close of the public hearings a press report appeared in the Lightning Ridge Black Opal Advocate of 5 May 2004 which suggested that I had not been willing to listen to what a Councillor sought to say. This is simply not true, and as the above quotation from my opening address makes clear, I invited all Councillors (and other relevant persons) to provide written replies to me, giving all such persons more than adequate opportunity to say anything they wished to say to the Inquiry.

In fact, I repeated this invitation, in my concluding remarks, at the close of the public hearings:

Ladies and gentlemen, I would just like to say a few words before we close these public hearings.

On 25 February this year, I was appointed as Commissioner to conduct this public Inquiry into the Walgett Shire Council. The terms of reference required that I inquire into the governance of the Council, the conduct of elected representatives, and the effective administration and management of, and working relationships within, the Council.

For this purpose, I have sought written submissions, conducted public hearings and am now, as I indicated in my opening address, allowing a right of reply.

Just to remind everyone, I would like to repeat what I said about this.

I indicated that some of the evidence given during the hearings might possibly be contentious. I therefore said that I understood that individuals who might be substantially and directly affected by the subject matter of the Inquiry, or whose conduct in relation to any such matter had been challenged to that person's detriment or possible detriment, might wish to have a right of reply at the conclusion of the hearings.

For that reason, I decided that I would allow such affected parties (or, where leave to do so has been granted by me, through their legal representatives) to provide to me a *written* response or further written submissions. I ask that this be done *within 7 days* of the close of the public hearings. This means that I will need to have received these written replies by no later than the close of business on Friday 7 May 2004. No latitude can be allowed for this, I am afraid.

These submissions should be posted, emailed or faxed to the address which has already been advertised as the place to send submissions to the Inquiry. If you are not sure about this address, please refer to Ms Weston.

While most witnesses before me at the public hearings were asked a series of questions posed by me, and only a relative few were invited to say whatever they wanted to put to me, the fact is also that some persons did intervene, speak up and say they wanted to add something, and I permitted this, when asked to do so. And it must not be forgotten that the invitation to lodge a written reply was in essence a second bite at the cherry for many.

1.12 In camera hearings

As indicated in my above-quoted opening remarks, some evidence was obtained from a number of witnesses in closed or in camera hearings. Any evidence so obtained has been dealt with in the manner outlined by me in those opening remarks.

1.13 Framework for consideration

1.13.1 The Terms of Reference

The Terms of Reference for this Inquiry expressly require me to inquire, report and make appropriate recommendations on the efficiency and effectiveness of the *governance* of the Walgett Shire Council. This is clearly the primary role and focus of this Inquiry.

1.13.2 The question of governance – the role of the Councillors

Under section 222 of the Local Government Act 1993 the elected representatives, called “councillors”, comprise the “governing body” of a Council. And section 223 adds that the role of the governing body is to direct and control the affairs of the Council in accordance with the Act. Section 232 in turn adds to this. It provides:

- (1) The role of a councillor is, as a member of the governing body of the council:
- to direct and control the affairs of the council in accordance with this Act
 - to participate in the optimum allocation of the council’s resources for the benefit of the area
 - to play a key role in the creation and review of the council’s policies and objectives and criteria relating to the exercise of the council’s regulatory functions
 - to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

Therefore, the Councillors, acting as a group, comprise in effect the board of directors of Council, which is also (section 220) a corporate body.

My Terms of Reference also indicate that I am to have particular regard to the performance of the elected representatives (i.e. the Councillors) in directing and controlling the affairs of Council in accordance with the Act, as well as to the conduct of those elected representatives, whether individually or collectively as the governing body.

The emphasis, and therefore the primary focus of this Inquiry, is accordingly quite clearly *on the Councillors* and their performance and conduct. It is they who are primarily responsible for the “governance” of the Council.

1.13.3 The power of the Commissioner to recommend the sacking of the Councillors

I am also empowered, but in terms that make it clear that this issue is one that is secondary, and not the primary focus of the Inquiry, to make recommendations on “whether all civic offices in relation to the Council should be declared vacant”.

This reference to “civic offices” is a reference to the positions of the elected Councillors, given the language of section 255 and other provisions of the Act. In the Dictionary to the Act (i.e. that part of the Act that sets out how particular words or phrases are to be defined or interpreted), “civic offices” means, in respect of a Council such as Walgett, the office of Councillor or Mayor. It is also noted that the word “council” is used throughout the Act to describe both the corporate body and the elected Councillors.

In section 255, which is the important companion section to section 740, it is provided that the Governor may, after a public inquiry has been held under section 740, and after the Minister has considered the results of the inquiry [report], and assuming that after such consideration the Minister has recommended this, “declare all civic offices in relation to a council to be vacant” (my emphasis). That is to say, that the elected Councillors be sacked and removed from office.

And, given the word “all”, it is clear that the statutory power to remove from office is one which can only be exercised by removing at one and the same time the Mayor and all the Councillors. In other words, there is no power to sack a Mayor alone, nor is there power to sack particular Councillors and not others. This means that the guilty and the culpable must go, along with the innocent.

This has particular importance and relevance for this Inquiry, for reasons which will be further explained below.

There were recent moves towards amending the Act to allow a selective removal from office, but at this time those provisions have not been successfully enacted. This Inquiry must examine the situation at Walgett Shire Council having regard to the law as in force at the time of the Inquiry and the events leading up to it.

Therefore, to summarise the position so far, only the secondary focus of this Inquiry is on the question of whether or not the elected body of Councillors should, as a whole, be removed from office. Of course, if I were to conclude that the elected Councillors had so badly failed in their responsibilities in relation to the efficiency and effectiveness of the governance of the Council, then it may follow that the secondary focus might be triggered – namely, that the only logical conclusion or corollary from such a finding is that I should recommend that the elected Councillors, including the Mayor, be sacked.

1.13.4 The impact of the March 2004 elections

There is one very important factor that this Inquiry, unlike past inquiries, faces in this case, one which presents me with particular challenges in relation to possible findings and recommendations. This is the fact that on 27 March 2004, after this Inquiry was approved and I was appointed on 25 February 2004, the then Councillors at the Walgett Shire Council faced a general council election.

Of the then 12 Councillors, only six stood for re-election at those elections. This represents exactly one half of the Councillors of the previous Council. The evidence is that all these persons were successfully re-elected. Therefore, only one half, but really a very significant proportion of the Councillors holding office in the 1999-2004 Council, has continued on serving into the new Council elected on 27 March 2004. Conversely, on the evidence, one half, again a very significant proportion of the new Councillors, had nothing to do with the business, and more importantly the performance, of the old Council.

Of the six Councillors in the old 1999-2004 Council, two (for present purposes) might be said to have come from one faction or grouping of Councillors, and four from the other. Again for present purposes (this issue will be examined in further detail later in this report), the first-mentioned faction might be described as the Lightning Ridge faction, and the second as the Walgett faction.

Therefore the key issue for me in this Inquiry is that one half of the present Council, that elected on 27 March 2004, did not formally participate in what did or did not occur at the old 1999-2004 Council. And given that at the close of the public hearings, when essentially the evidence gathering phase of this Inquiry concluded, only one meeting of the new Council had occurred, there has been clearly insufficient time in the life of the new, present Council, to be able to judge its actual performance in respect of the matters falling within my Terms of Reference.

On the other hand, I note that my Terms of Reference require me to have particular regard to whether Council's elected representatives have been and will continue to be in a position to direct and control the affairs of Council. It is therefore necessary for me, in this Inquiry, to the extent that I am able to do so, based on probative and reliable evidence, and not mere conjecture, to form a view as to what might be expected to be the case in that regard into the future.

1.13.5 The question and impact of factions

Of relevance in this regard is the question of likely factional divisions in the new 2004 Council, and any prospective impact on the ability of the new Council to perform adequately and effectively. As already noted, only two of the former Council's Lightning Ridge faction have continued in office, whilst four of the Walgett faction have so continued. As will be considered and reported on later in this report, of the new Councillors, including the continuing Councillors, six could, on the evidence, be said to be actually or prospectively from the Lightning Ridge faction, and six from the Walgett faction, making for an even split between the two factions (on the evidence, on balance, it would seem that this will likely entail a continuation of the status quo from the 1999-2004 Council). The question is as to the potential impact this might have on future performance of the elected body as a whole.

1.13.6 The question of the role of the Mayor

Of equal relevance in this regard is the question of which faction holds the Mayoralty. The evidence is that in the 1999-2004 Council Clr Peter Waterford (Lightning Ridge faction) was the Mayor for three of the relevant periods for which the Mayor was elected. In one of those periods the Mayor was Clr Alan Friend (Walgett faction), and he was only elected on a draw out of a hat, necessitated because the vote for the Mayor split along factional lines. The evidence, on the other hand, is that Clr Waterford, when he was elected Mayor, did not have to go to a decision made by a draw out of a hat. In September 2001 and 2002 he was elected on a 7:5 decision.

The present Mayor of the new 2004 Council is Clr Friend and, as for his previous term of office, he achieved that position by dint of his name being drawn out of a hat. Clr Friend, moreover, will hold office, having regard to section 291 (1) (b) of the Act, only until September 2004, when there will be a further Mayoral election, and the question is who will be elected Mayor, and whether this will once more, because of factional splits, be out of a hat. As Clr Friend himself in effect put to me in oral testimony at the public hearings, his luck must run out some time.

The role of Mayor is, under section 226 of the Act, actually limited to the performance of four identified roles or responsibilities. Only one of these gives any real hint as to his or her actual, or de facto position and role, or power and influence, at Council amongst the Councillors. This is the third dot point of the section – “to preside at meetings of the council”. Another, but far less clear, indicator is the fourth dot point – “to carry out the civic and ceremonial functions of the mayoral office”.

But, in effect and in practice, the Mayor is the leader of the elected body. This means that the Mayor, at least potentially, is in a position to influence the performance of the elected body as a whole during his or her term of office.

1.13.7 The question of the Mayor’s casting vote

More importantly, under section 370 (2) of the Act (often replicated in an individual Council’s Code of Meeting Practice, as is the case for Walgett Shire Council – see clause 3.20 of that Code), the person presiding at a meeting of the Councillors has, in the event of an equality of votes, a second or casting vote.

This does not mean that the Mayor, when presiding at a meeting, necessarily must exercise that casting vote. It is a matter for the individual Mayor, in his or her discretion, whether or not to exercise that power, and therefore the particular standards or expressions of intent of a particular holder of the office of Mayor may well be relevant. This report examines the evidence in that regard in respect of Clr Friend.

It is sometimes stated in local government circles that there is a convention that in the case of a tied vote the Mayor should not exercise a casting vote to change the status quo. That may or may not be so, according to the particular views and past conduct of particular Mayors, but legally there is no such general convention, and legally it has no binding force of law. It would in any event be inconsistent with the clear language of section 370 (2), and to that extent be inoperative and not have any legal force.

This is because of section 360 of the Act. That section firstly says that regulations made under the Act may supplement those provisions that are already in the Act relating to how Council meetings are conducted, and how decisions are made at those meetings. Section 371 says that a decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the Council. Subsection (2) of section 360 provides that a council may adopt a code of meeting practice, but it can only incorporate the regulations made for the purposes of

that section or supplement them, but must not be inconsistent with them. And section 360 (3) provides that a council must conduct its meetings in accordance with the code of meeting practice adopted by it. There is clearly no room for conventions.

1.13.8 Relationships between Councillors and staff

The Terms of Reference require that I have particular reference to the conduct of the elected representatives, but unlike the terms of reference for a number of other past section 740 inquiries into other Councils, I am not specifically directed to have regard to their relationships with senior and other staff of Council. This notwithstanding, I consider that my Terms of Reference in this case are sufficiently wide to allow me to examine and consider such an issue, amongst the many relevant issues to consider. For example, such an issue may well, if the evidence were to so support such a conclusion, have an impact on the general efficiency and effectiveness of the governance of this Council.

1.13.9 The confidence of the community in Council

Again, in contrast with the situation in respect of a number of past section 740 inquiries, there is also nothing expressly in my Terms of Reference which requires me to have regard to whether the elected representatives command the community's confidence and support as to their capability to discharge their governance responsibilities. But, once more, I consider that the opening words of my Terms of Reference allow me to examine this aspect of matters. It is implicit in and relevant to those words.

1.13.10 Charter obligations

My Terms of Reference require me to have particular regard to whether the elected representatives have been, and will continue to be, in a position to direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil the Charter, provisions and intent of the Local Government Act 1993 and otherwise fulfil its statutory functions. The Council's Charter is set out in section 8 of Chapter 3 of the Local Government Act 1993.

Under section 8(1) of the Act each council constituted under the Act has the following Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership

- to exercise its functions in a manner that is consistent with and actively promotes the principles of cultural diversity
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants
- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
- to be a responsible employer.

The required standard of performance, as well as the required standard of conduct and behaviour of Councillors, and also that of Council staff and delegates, is partly covered by the provisions of Council's Charter, noted above. For example, the need to exercise community leadership, the need provide adequate, equitable and appropriate services and facilities for the community, the need to properly discharge Council's responsibilities as the custodian and trustee of public assets, the need to keep the community adequately informed about its activities and the need to ensure that decisions are made consistently and without bias, and so on.

1.13.11 Statutory duties and the Code of Conduct

But the provisions of section 439 of the Act are also particularly important. That section provides that every Councillor, staff member and delegate must act honestly, and exercise a reasonable degree of care and diligence in carrying out his or her functions under the Act or any other Act.

Section 439 is part of Part 1 of Chapter 14 of the Act. That Part also contains important provisions about Codes of Conduct. The need for every Council to have a Code of Conduct is specified in section 440 (1). Walgett Shire Council has such a Code of Conduct.

That document contains important and illuminating provisions about what standards of conduct and behaviour are required of both Councillors and Council staff.

It is worth noting a number of these:

Introduction

The Council is an elected body responsible for administration of its local government area in accordance with the applicable legislation. It must do that in the best interests of the local community, as well as the public in general.

The public is entitled to expect that:

- The business of the Council will be conducted with efficiency, impartiality and integrity;
- Councillors, staff and delegates of the Council will obey the spirit and letter of the law and, in particular, the provisions of all relevant statutes, ordinances, regulations and instruments and;
- Duty to the public will always be given absolute priority over the private interests of councillors, staff and delegates of the Council.

The Code does not override or affect the legislation applicable to local government.

...

2. PERSONAL BENEFIT:

...

(2.2) Improper or undue influence:

Councillors, staff and delegates of the Council shall not take advantage of their position to improperly influence other members, staff or delegates of the Council in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

...

3. CONDUCT OF MEMBERS, STAFF AND DELEGATES OF THE COUNCIL:

(3.1) Personal behaviour:

- (a) Councillors, staff and delegates of the Council shall:
 - (i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
 - (ii) perform their duties impartially and in the best interests of the communities, uninfluenced by fear or favour;

- (iii) act in good faith (ie. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Council and the community;
 - (iv) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
 - (v) always act in accordance with their obligation of fidelity to the Council.
- (b) Councillors should represent and promote the interests of their communities as a whole, while recognising their special duty to their own constituents.
- (c) Councillors have no special executive powers by virtue of the office and it is only when Council meets as a corporate body that a councillor has the right to vote on matters before it. A councillor has no power to give directions to other councillors, staff or delegates of the Council, to make statements or enter agreements on Council's behalf and has no special authority with regard to members of the public.

(3.2) Honesty and integrity:

Councillors, staff and delegates of the Council shall:

- (i) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- (ii) bring to the notice of the Mayor or General Manager any dishonesty on the part of any other member or employee; and
- (iii) be frank and honest in their official dealings with each other.

...

(3.5) Administrative and management practices:

Councillors, staff and delegates of the Council should ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

...

(4.3) Access to information:

Councillors, staff and delegates of the Council should ensure that members are given access to all Council held information necessary for them to properly perform their duties and meet their responsibilities as members.

5. CORPORATE OBLIGATIONS:**(5.1) Communication with community:**

Councillors, staff and delegates of the Council should ensure that their Council effectively communicates with, and promotes participation by all sections of their communities, in order to achieve proper accountability and responsibility.

...

(5.3) Professional advice:

Councillors, staff and delegates of the Council shall ensure that no restrictions are placed on the ability of staff to give professional advice to their Council.

...

(5.5) Mutual respect:

Councillors, staff and delegates of the Council are to treat one another with respect, courtesy, compassion and sensitivity.

1.13.12 The question of governance, administration and management of the Council – the role of the General Manager and staff

In the above paragraphs of this section of my report I have concentrated on the question of the role and responsibilities of the elected Councillors. But the management of a Council does not begin and end there.

The Act in fact provides for a division of powers and responsibilities between the elected body (the Councillors acting as a group), on the one hand, and the General Manager of the Council, on the other.

Section 335 sets out what are the functions of a General Manager. It provides:

- (1) The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.
- (2) The general manager has the following particular functions:

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

That is to say, sections 222 and 223 make the elected body of Council (the Councillors) responsible for the overall policy and direction of the Council, but section 335 gives the responsibility for the day to day management and operation of the Council to the General Manager, as the head of the permanent and professional administration and its staff.

According to the Oxford Dictionary, "governance" means the act, manner or function of governing. "Govern" means, in this particular context, to "conduct the policy and affairs of" the body in question (i.e. the Council).

In view of these considerations, in my view "governance", in the context of the Local Government Act 1993 and its provisions, means and includes not only the role and functions of the elected body, but also the role and functions of the General Manager and his administration under him.

Therefore, in my view, my Terms of Reference allow me equally to examine and inquire into the performance, role and responsibilities of the General Manager and his administration in the day to day operations of the Council, which equally impact, subject to the guiding policy and other directives of the elected body, on a Council's performance in the discharge of its Charter and other statutory obligations.

However, if I am not correct in this, I note that my Terms of Reference permit, or even require, me to have regard to any other matter that warrants mention, particularly where it may impact on the effective administration of the area (i.e. the Walgett Shire) and/or the management of and working relationships within the Council. Those words quite clearly allow me to consider and judge the question whether the General Manager and his administration have properly discharged their responsibilities under the Act.

Moreover, the realities of local government in this State are that policies and directives adopted and issued by the governing body, the Councillors, are in practice usually, if not frequently almost entirely, adopted and issued after advice and input from, and at the initiative of, the General Manager and his administration. See in particular key objective number 2 assigned by Council to its General Manager, as quoted at section 1.13.14 below, from his employment contract with Council. Experienced Councillors and community leaders may well have considerable input and sway in that regard, but wise Councillors would seek the counsel of the General Manager and his professional and experienced staff. So, the performance of the elected Councillors in this regard needs, at least in part, to be considered and judged

in the light of what the General Manager and his administration have done, or not done, as the case may be.

1.13.13 Accountability mechanisms and provisions – the elected Councillors

Certainly, it is the elected body who are ultimately responsible and accountable to Council's ratepayers and its community for Council's performance, but, subject to this, Council's accountability is really both via its elected body and its General Manager and administration. The community's power in that regard is in practice via a final say at the ballot box. That is to say, the electors are the final arbiters of the Council's performance, and in turn that of the elected body and its members, by means of the manner in which they may choose to cast their votes.

Interestingly, the evidence in this case is that not one of the 1999-2004 Councillors who chose to contest the 27 March 2004 elections failed to be elected, but in my view that fact needs to be tempered by and examined in the context of the extent to which the electors made an informed determination on the matter. As has been noted, one of the Charter obligations on the Council, its elected Councillors and its administration is to keep the community adequately informed. This Inquiry has accordingly examined the extent to which that has properly and adequately been achieved at Walgett Shire Council.

1.13.14 Accountability mechanisms and provisions – the General Manager

As noted, it is the elected Councillors who are, under the Act, accountable to the ratepayers and community they represent. And while the General Manager is responsible for the day to day management and operation of Council and its affairs, the General Manager is accountable to the elected body. That elected body is, in turn, accountable to the electors, ratepayers and Council's community for the performance of the General Manager and his administration in that regard.

Under section 334 (2) of the Act, the General Manager is a "senior staff position". Section 338 provides that the General Manager and other "senior staff" (a term that has a more limited connotation and meaning under the Act than the public might otherwise think – it does not apply to all persons who might be part of the management team at Council) must be employed under contracts that are "performance based".

Other than, perhaps, in section 332 (2) (a), the Act gives no further guidance on what this last-mentioned expression entails. In practice most General Managers are appointed under written contracts which follow closely the terms of a model suggested contract issued by the Local Government and Shires Associations (now known as Igov). This is so for Walgett Shire Council.

The contract of employment of the General Manager of Walgett Shire Council provides in clause 1.2 that the General Manager is accountable to the Mayor and Council.

While such accountability to the Mayor might at first sight seem inconsistent with the provisions of the Act, Council, through its elected body, can delegate certain powers and responsibilities, subject to section 377 of the Act, to other persons. The delegations granted to the Mayor of Walgett Shire Council, at least those approved by the elected body on 13 October 2003, and I have no reason to doubt that these are any different from the relevant provisions applying in previous years (under section 380 Council must review its delegations within 12 months of its being elected, though this does not prevent it revisiting those delegations at any time it chooses) provide (at paragraph 2) that the Mayor has the delegated powers, authorities and functions of, inter alia, carrying out the general supervision, control and direction of the General Manager. The only constraint on delegation of matters relating to a General Manager is that applying under section 377 (1) dot point 1, namely that the question of “the appointment of a general manager” cannot be delegated, and must be personally exercised by the elected body (acting as a group).

As noted, clause 1.2 of the General Manager’s contract makes him accountable to the “Mayor and Council”. Therefore, it is clear that, whatever might be said as to the delegations to the Mayor (alone) regarding such matters as the “general supervision, control and direction of the General Manager”, the task of overseeing the “accountability” of the General Manager is for the joint action of the Mayor and the Council, acting through its elected body.

It is, moreover, best management practice, no matter what might be the purport and effect of the Mayoral delegations in this case, that at the very least a committee of Council, if not the full Council, should be engaged in the task of appraising the performance of the General Manager. Having the full Council involved ensures that there is some level of even-handedness, openness and transparency to the process, even if it is done in closed session, and removes the destabilising risk of those Councillors kept out of the process, and therefore not knowing how it was undertaken, questioning its procedures and conclusions.

On the question of the General Manager’s accountability for his performance, clause 5 of the General Manager’s employment contract is in the following terms:

5. PERFORMANCE REVIEW
- 5.1 The employee and the Council shall sign a performance agreement within three months of the commencement of this contract and thereafter annually. The performance agreement shall set strategic objectives and performance measures consistent with the responsibilities of the employee as set out in Schedule A.
- 5.2 In the event that the employee and Council are unable to agree on the strategic objectives and performance measures and sign a performance agreement as provided for in subclause 5.1, the Council shall determine such strategic objectives and performance measures consistent with the responsibilities of the employee as set out in Schedule A.

- 5.3 An action plan shall be prepared by the employee which sets out how the strategic objectives and performance measures are to be met.
- 5.4 Performance shall be monitored on a six-monthly basis and reviewed annually.

Schedule A is a fairly lengthy document which I do not propose to set out or quote in full. It expressly notes that the General Manager is “accountable to Council”. So that confirms what I have said above. It also indicates that the General Manager “reports to [the] Mayor”. It states that “the General Manager is Council’s principal staff officer, exercising overall management responsibility for Council’s operations”. It then goes on to identify five “key objectives”:

1. Acts as the primary link between Councillors, the organisation and the community.
2. Responsible for the provision of assistance to Councillors in developing policy.
3. Provide leadership to staff in achieving Council objectives.
4. Oversee the financial management of the Council.
5. Communicate and promote Council’s policies to the community it serves.

Subject to these provisions, the General Manager’s employment contract is actually silent as to the means by which his performance is to be regularly appraised by the Councillors. I shall consider this question in more detail later in this report.

So, the legal position is that the Councillors to some extent at least discharge their accountability to Council’s electors and ratepayers and community through their taking appropriate measures and procedures to oversee and appraise the performance of the General Manager, as head of the Council’s permanent administration. This is accordingly one of the key issues examined in this Inquiry and report in relation to the role of the elected Councillors in the efficiency and effectiveness of the governance of Walgett Shire Council.

1.13.15 Accountability mechanisms and provisions – the role of oversight bodies and persons

I have spoken so far in terms of the accountability of Council, through its elected body, and in turn through its General Manager and administration, to Council’s electors, ratepayers and community. This reflects the fact that under the Local Government Act of 1993 Council is, subject to that accountability, a largely autonomous body.

That is not to say that the Minister for Local Government, the Department of Local Government and its Director General, as well as Departmental Representatives appointed to conduct an investigation under section 430 of the Act, plus myself as Commissioner appointed to conduct a Public Inquiry under section 740, do not have roles to play in that accountability.

Local government in New South Wales is a creature created by the Parliament of the State, through legislation, namely the Local Government Act 1993. It is thus subject to the control and direction of the Government of the day, particularly via its Minister for Local Government and the permanent public service administration appointed to serve and assist him, namely the Department of Local Government led by its Director General. The Minister and his Department are the persons and body responsible for the oversight of Council, along with all other councils in the State.

Of course, the NSW Ombudsman and the Independent Commission Against Corruption have, in accordance with their respective enabling legislation, roles to play as well.

While this is not spelt out in so many words in the Act, it is clear from the system of government in this State, and the general terms of the Act, that this is so. Signposts in that regard are the powers of oversight and control afforded to the Department and the Minister via such sections as section 430 and section 740, plus the ultimate power of the Minister and the Governor of the State via the power to sack under section 255. These powers therefore supplement, or even complement, Council's accountability to its ratepayers, electors and community.

1.13.16 Other issues

It is against criteria such as all those set out in preceding paragraphs of this section 1.13 of my report that the performance of the Council, at either a corporate or elected level, must be measured.

The requirements of the Local Government Act are supported by a framework of Regulations, Practice Notes and Codes, some of which are mandatory and some of which are adopted voluntarily by councils. These documents provide subsidiary information and requirements which guide the achievement of the Council's Charter and its operations at both the elected and staff level.

1.14 Other observations as to the role of this Inquiry

Prior to the commencement of the public hearings, during the course of those hearings and in the period allowed subsequent to them for final submissions, a number of issues have been canvassed. This report will deal with those which I believe are most significant to the Terms of Reference in some detail.

Some of the statements and allegations which were made were dealt with during the course of the Inquiry. Some were resolved, some remain unsubstantiated and others cannot be resolved beyond one person's word against another. Many of the allegations involving individuals were not published in the press and therefore have had no widespread publicity and Council's community's knowledge of such matters is largely limited to those who were in attendance at the public hearings or who read

the submissions to the Inquiry. Nothing is to be gained by giving such allegations, particularly unsubstantiated or unresolved ones, further currency.

As was indicated in my opening remarks at the commencement of the public hearings, the purpose of this Public Inquiry is not necessarily to resolve individual claims or submissions, but to deal with the *wider issue* of conduct of the elected representatives and the Council's capacity to direct and control the affairs of Council. I indicated a number of times during the course of the public hearings that my powers as Commissioner and my Terms of Reference give me some latitude and discretion as to which issues I see as being important to those Terms of Reference, and therefore which issues I wish to pursue in any detail, or at all.

It is not intended, therefore, to deal with all of those issues which were raised with me during or for the purposes of the Inquiry, nor to come to concluded views on the appropriateness or correctness of each and every decision or action brought before the Inquiry. Instead, these have been taken into account in generally evaluating the issues outlined above in accordance with the Terms of Reference.

At the outset of the public hearings, I commented that the Inquiry was not an opportunity to revisit individual decisions or deal with matters which had already been the subject of decisions by competent authorities, such as the Land and Environment Court, or other similar processes. Nor was it an opportunity to revisit individual decisions or actions of the Council itself. I have no power to override, set aside or substitute my own decisions or determinations on such matters.

Individual cases do, however, provide an insight into the operations of the Council at both elected and staff level, and for that reason individual decisions and the process used to reach them can be useful as a source. With one limited exception, I have made no attempt, however, to review the merits of any decision or case, nor have I found any need to refer to all of those which were brought before the Inquiry.

The exception relates to what Council has or has not done in relation to the Lightning Ridge Community Centre. This is an issue that, on the evidence, has loomed very large at this Council, and is in many ways central to a determination of Council's performance in respect of those matters that fall within my Terms of Reference. It is, no doubt, and on the basis of the evidence, submissions and information put before me, not the only such case, but it is clearly the major one, and to that extent is taken as particularly indicative of Council's report card on its performance.

PART 2

2. BACKGROUND AND THE DEPARTMENT OF LOCAL GOVERNMENT'S SECTION 430 INVESTIGATION

I now propose to provide a brief summary of the events leading up to my Inquiry.

2.1 Events leading up to the Department's section 430 investigation

The Department of Local Government's section 430 investigation report notes, at p. 4, that Walgett Shire Council had been the subject of complaints to the Minister for Local Government regarding its administrative and financial management. These complaints led to preliminary enquiries being conducted in May 2003 by officers of the Department's Investigation and Review Branch, who visited Council for that purpose.

A letter to Council resulted from those preliminary enquiries. That letter was dated 24 July 2003. It listed a number of issues in respect of which the Department had concerns about Council's processes and procedures. It also made a number of recommendations.

However, before considering that letter and its aftermath, I should note that in April 2000 the Council had itself, pursuant to a Council resolution that this occur, called in the Department of Local Government to examine and to conduct an independent investigation into certain matters relating to two projects. One was the Walgett Waterways Project, which I have determined is not relevant to be examined for the purposes of this Inquiry. Most of what occurred in respect of that project occurred in the life of a previous Council to the 1999-2004 Council, and involved persons who in a number of cases are no longer with the Council. The other project was the Lightning Ridge Community Centre project, which I have examined in some detail (as to which see Part 4 of this report).

After examining the relevant issues and evidence, the Department determined that a formal investigation was not warranted, but did write to Council, by letter of 20 June 2000, raising a number of concerns. Those relating to the Lightning Ridge Community Centre project are noted at section 4.1 of this report.

Paragraphs 16 to 21 of the Department's section 430 investigation report set out the background to that investigation. Of particular note is para 17, which states:

Many of the issues raised with the department's preliminary inquiry team indicated the apparent inappropriate application of certain provisions of the Local Government Act. The cause of this appeared to be a lack of understanding of the requirements of the Act by council's senior management team and some councillors.

Council provided a written response to the Department's letter, by letter of 27 August 2003, which the Department described in its section 430 report as a "disappointing response" (report para 21). This factor, plus the existence of other issues that the Department's investigators had not, as yet, had time to thoroughly address, led to the Director General authorising a formal investigation under section 430 of the Act.

Council's letter of 27 August 2003 was issued under the signature of the General Manager, Mr North. He had been away overseas when the Department's letter came in, and he was clearly upset at the hornet's nest (the General Manager's words were "absolute turmoil") he walked back into only a day or two before the Council reply was issued. But his response does not, in the cold light of day, really do him much credit.

One of the major issues he had was that the Department had chosen to communicate its concerns to Council in his absence. However, the Department cannot be expected to hold up its work, which is required to be done expeditiously and according to certain standards of timeliness and so on, just because a General Manager is absent for a period, particularly when that absence extends over a whole month, as was the case for Mr North. Council has an Acting General Manager, or should have an Acting General Manager, in place to take over the responsibilities of managing the organisation in the meantime, and it is appropriate that the Department communicate with that person or whoever is given the necessary delegated authority and is accordingly in charge.

The other major concern or attitude Mr North appeared to have was that he considered that the Department's investigation was unwarranted. Subsequent events have clearly proved Mr North's somewhat defensive and combative stance to be wrong.

These are the two key opening paragraphs of that letter:

... I am most disappointed with the way this whole matter has been handled. This was a preliminary enquiry that responded to a large number of accusations made by unknown people about Council and Management. Given that the findings did not justify a formal investigation, I would have thought that your Department would have shown the courtesy of a telephone call to discuss with me (and my Management Team) those matters considered to be worthy of inclusion in a formal letter. This will not only have lessened the stress and anxiety levels to my staff, particularly by junior staff, but would have allowed factual errors in the letter to be corrected.

As it turned out, I was absent from the office on leave for four weeks from 28 July 2003 and arrived back to absolute turmoil in the office. Once the need for a 'formal investigation' had been eliminated, surely the process should have been about helping rectify any issues in a sensible and constructive way. Instead, the process has been destructive and divisive for both my staff and the community. I am naturally prepared to accept responsibility for those matters for which I may have erred (we all make mistakes) but it hurts and annoys me to see innocent people, being subjected to innuendo and sensationalised and inaccurate press items, and it saddens me to see these people suffering high levels of anxiety and dysfunctionality (sic), as a consequence.

The concept that the Department should discuss concerns with both Mr North, as General Manager, and his "Management Team", is a theme that Mr North has repeated during this Inquiry, that is to say the implication is that he appears to

consider that the management of Council is the role and responsibility of the Team, as a whole.

This is simply not correct. Section 335 of the Act makes it quite clear that the General Manager of a Council is responsible for its management and for its efficient and effective operation.

Time and time again, when Mr North was in the witness box at the public hearings, he appeared not to be conversant either with key legal requirements that Council, through he and his administration, has to comply with or with what was going on at Council on major issues of importance and relevance to the Inquiry. He indicated repeatedly that he would have to check the matter being inquired about with one or more of his Management Team. This is a cause for considerable concern. It raises questions as to the fitness of Mr North for the job.

If a General Manager chooses, within the confines of the walls of the Council administration building, to work as a team with his senior managers, that is one thing, but the responsibility for management is his and his alone. The buck stops with him.

I do not mean to suggest that a General Manager must be fully conversant with and have at his fingertips an intimate knowledge of everything that is going on at Council. But I do expect, and the Councillors and the community reasonably expect, that he will be personally familiar with the facts and know the broad legal requirements affecting what is happening at Council on major issues. This should particularly so on issues or projects that have proven controversial, either with the elected body, and/or the community.

This General Manager gave me a very clear impression that he did not.

2.2 The Department's section 430 investigation and report

On 9 September 2003 the Director General of the Department of Local Government authorised an investigation under section 430 of the Act into the Walgett Shire Council. Terms of reference for that investigation were approved. These are set out at paragraph 3 of the report of that investigation.

That investigation commenced immediately and led, in accordance with procedural fairness requirements, to a final draft of the investigation report being issued to Council on 12 November 2003 for its comment. In essence, therefore, the fact finding phase of the investigation had been concluded by that time, and events after that date were not investigated by the Department Representatives conducting that investigation.

Council, through its then Mayor, Clr Peter Waterford, and a number of other persons provided written responses the Departmental Representatives, who considered all those responses before finalising their investigation report, which was formally issued on 29 January 2004. The report is a document of some 94 pages.

2.3 The Department's section 430 investigation report recommendations

As indicated in section 2.2 of this report, the Department of Local Government's section 430 investigation report was issued on 29 January 2004. It made a number of findings, summarised in paragraphs 28 to 76, and also a considerable number of recommendations. In all there were 37 recommendations made.

In the executive summary of the report, at pp. 4-5, it was indicated that of these 37 recommendations some 6 recommendations were considered to be "major recommendations".

These recommendations (and in the order in which they appear in the Department's report) related to the following:

1. The appointment of a "mentor" to the senior staff of Council "for a period of at least 12 months".
2. The engagement of a suitably qualified legal compliance auditor to conduct a legal compliance audit.
3. That Council remain on the Department's financial watch list and continue to submit quarterly budget reviews to the Department.
4. That Council conduct a detailed review of its accounting records and practices to ensure they were legally compliant.
5. The implementation of a suitable training program for Councillors.
6. That the Minister order Council to take steps to implement all the recommendations contained in the report, and consider holding a public inquiry into the Council.

As noted above, the first "major recommendation" listed in the above list related to the proposed appointment of mentor. In her oral testimony to the Inquiry, presented officially on behalf of the Director General and the Department, Mrs Lyn Brown told the Inquiry that the mentor recommendation was a key recommendation made by she and her fellow Departmental Representatives (this is a transcript made by my assisting officer, Ms Weston):

RB: ... would you say that the concept of appointing and following the advice of a mentor is the most important recommendation of you and your fellow Departmental Representatives, in terms of turning Council around from its poor performance rating to date?

LB: It was certainly a key recommendation, yes.

RB: Does the Department have a view as to how long it might take for a mentor to bring Council up to scratch on its obligations and legal requirements and so on?

LB: No, No I don't

RB: But the twelve months....

LB: The twelve months would seem a way of being able to assess how that would go...

RB: Right, but it might take longer, it might take less

LB: It may.

The recommendation relating to the appointment of a mentor is considered further at section 2.5 of this report, below.

Section 434 of the Act requires a council, within 40 days after presentation of the report to it, to give written notice to the Minister for Local Government of the things done or proposed to be done to give effect to any recommendations contained in the report.

2.4 The response to and steps taken by Council in respect of the investigation report recommendations

The Department's section 430 investigation report was presented to Councillors in time for Council's meeting of 9 February 2004. It was presented and considered as an urgent late item of business. In view of this, and the already full agenda of business set for that meeting, the Mayor, Cllr Peter Waterford, suggested that a special meeting of Council be convened to prepare a response to the Minister for Local Government on the report's various recommendations.

Council (that is to say the elected Councillors) passed two resolutions in respect of the report and its recommendations at the meeting of 9 February 2004. Cllr Sam Jeffries was not present at this meeting, and his formal apology is recorded in the minutes.

The first related to the holding of a special meeting of Council on 13 February 2004, only some four days later, to be devoted to preparing a response to the Minister, with the assistance of Council's legal advisers. Council, therefore, clearly acted very promptly, and there can be no question about Council's intent to act promptly to respond to the section 430 report and its findings and recommendations.

The second resolution was passed on the motion of Cllrs Robert Greenaway and Margaret Bow. The resolution was that Council "accepts and adopts the report ... and resolves to recommend that the Minister be requested to hold a Public Inquiry under Section 740 of the Local Government Act 1993".

That recommendation was carried, but with four Councillors voting against that motion. These were Cllrs Waterford (the then Mayor), Hewlett, Hutchison (the then

Deputy Mayor) and Lang. The recording of this vote against the motion is not usual, and took place only because Clr Greenaway called for a division and that names be shown of which Councillors voted for and against the motion.

Normally Council does not record in its minutes how the voting occurred, which does present difficulties when it comes to procedures such as the present Inquiry. Council does not, as well, but as it is free to so choose, record its meetings, which also denies another means of learning what in fact occurred at any particular meeting. It is not, of course, normal or accepted practice for a council to record in its minutes all that was said at a Council meeting, in particular what was said for or against a motion by Councillors.

I should note that Council's practices and procedures in minuting of its meetings in some cases leave a lot to be desired, though the worst examples are the minutes of meetings of one or more years ago, and there has been a clear improvement in the quality and professionalism of Council's minute taking in more recent times.

I believe that in the interests of openness and transparency, as well as more accurate and informative minuting and record keeping, and so that the community may be able to judge for themselves the performance of individual Councillors, Council should consider recording in its minutes (of Council and committees of Council) the voting outcome on any motion before it, in all cases (including where the vote is unanimous), and even where a division is not formally demanded.

This will require an amendment to clause 3.20 of Council's Code of Meeting Practice. The recommendation is made notwithstanding that clause 3.20 of Council's Code does in fact comply with and reflect clause 24 (2) and (4) of the Local Government (Meetings) Regulation 1999, and notwithstanding that clause 27 of that Regulation contains no mention of such recording either.

Section 375 (1) of the Act requires Council to ensure that full and accurate minutes are kept of proceedings of meetings of the Council, and the corresponding requirement for the proceedings of Council Committees is contained in clause 39 of the Local Government (Meetings) Regulation 1999.

Recommendation

That Council consider recording in its minutes (of Council and committees of Council) the voting outcome on any motion before it in all cases, even where a division is not formally demanded, and that Council should amend its Code of Meeting Practice accordingly.

Subject to the changed scenario that occurred at Council's meeting of 13 February 2004, this vote (at Council's meeting of 9 February 2004) against the motion supporting a public inquiry might be considered to be significant, particularly when those voting against the motion included the then two leaders of the elected body, the Mayor and Deputy Mayor.

Council effectively passed the same resolution at its meeting of 13 February 2004, though the minutes of that meeting do not, this time, record any vote against the motion.

At the public hearings, I asked Cllr Waterford about his apparent attitude to the holding of a public inquiry:

Q. ... What in your view - what's your view and reaction to the findings and recommendations made by the Department of Local Government in the section 430 investigation report?

A. The first we had an informal inquiry, maybe last year was it, the year before, and I felt that okay, the informal inquiry came through and a lot of the things that were written down we thought, in talking, speaking to the general manager and to the other senior staff I felt that these things could be adequately addressed and we felt that - I felt that, you know, the informal inquiry didn't do, didn't criticise us that much, and we felt that we could have got around that very easily. In the period between the informal inquiry and the formal inquiry was more submissions and that led to a formal inquiry being done. There were a lot of things there that obviously the Department of Local Government picked up, but I didn't think in any one of them it was a hanging offence. You know, I travel the country a lot talking to mayors and general managers and they'd all seen this report and all of them said, "Come and look at our shire, we've got ten times worse than you've got, there's nothing really wrong," and so I felt, you know, we're going to get through this okay.

Q. So, all right, so I notice that when council actually formally met to respond to the department's report and to reply to the minister, as it's required to do under the Act, a resolution or a number of resolutions were passed, and according to the minutes you voted against the motion that was moved by some councillors that council itself seek a public inquiry.

A. Yes, I felt there was no need to have a public - I felt we'd been kicked upside down, shaken up and really looked at over the previous two inquiries and I felt there was nothing to add. I don't say this is a farce, I just say that I didn't believe that a public inquiry was necessary for our shire after - - -

Q. You accept that certain things were correctly found not to have been done correctly?

A. Absolutely.

...

Q. Are you aware of a letter that was written to the editor of the Walgett Spectator, but I'm not sure about the date, I think it's a letter that was published as one of the submissions, signed by concerned citizens, where those persons raised concerns about your apparent disregard for the serious nature of the findings revealed in the inquiry? What's your response to that?

A. I remember someone bringing it up at a council meeting, that this is the sort of thing I'd said. I had never downgraded the seriousness of the allegations that were brought up in the Local Government inquiry. What I did was try to lay it out to the people that I did not believe that the things they were bringing up was a hanging offence, and I state that again. I have always maintained that some of the things were of serious content and had to be fixed up, but a lot of them I felt didn't justify the sorts of things that everyone was going on about and that was to get a public inquiry. Certainly, as I said a minute ago, there are serious things that happened but we, as you heard Mrs Brown say, we have certainly, when it was brought to our attention we certainly were fixing it up, and fixing it up rapidly.

Q. Right. Now, I know you've indicated that you voted against the motion that there be a public inquiry - - -

A. Yes.

Q. - - - and for the reasons that you've just told us. ...

...

Q. ... some people seem to be suggesting in the submissions that I have been reading that part at least of the motivation behind the motion to have a public inquiry was almost a sort of I dare you approach to the minister, kind of like throwing down the gauntlet. Would you – is that a correct conclusion in your view?

A. Perhaps, even the minister came up to see that because Walgett Shire Council demanded a public inquiry - - -

Q. Mmm.

A. - - - because it's under his jurisdiction that sort of thing be done, so - - -

Q. Though the minister responded pretty quickly I think.

A. Pretty quickly about that.

Q. Yes.

A. And I also felt that - and when we saw him in person he was - he would speak to the people that were requesting to be in conference. He maintained that people just don't go round asking for public inquiries but if they were he was certainly going to give them one and that no public inquiry since 1990 had – they'd all reverted into a sacking of council.

...

Q. So you've indicated that in your view council was correctly found as having failed to do certain things in the way it should have.

A. Yes.

On the other hand, as early as June 2003, Clr Waterford had been putting about the view that the Department of Local Government was only becoming involved because “obviously a few disgruntled people over the last two or three years have been sending reports in and at last the Local Government Association (sic) have decided to look for themselves”. These words come from p. 8 of Council's minutes of its meeting of 23 June 2003, in that part of the minutes that sets out the Mayor's monthly report. In that report he had been reporting on his meeting on 14 May 2003 with officers from the Department of Local Government.

I also note from the minutes of Council's meeting of 8 March 2004 that, despite what the Mayor appeared to be telling me in his oral testimony, quoted above, in his monthly Mayoral report to the Councillors, as recorded in those minutes, he said:

(I hope that all Councillors are happy with this enquiry as most requested it).

The words themselves, as well as the fact that they are in brackets, suggests to me that Clr Waterford was still, at least at that time, somewhat piqued that his fellow Councillors had passed the resolution they did. It is clear that, to the last, Clr Waterford saw no need for a public inquiry. He does not think Council has done sufficiently wrong to warrant such a process.

Certainly, as his answer to the final question quoted above shows, he appeared to accept all the findings made by the Department. However, I am not really satisfied that Clr Waterford's final acceptance of this was complete and fully genuine, and it is clear that, even if it was, he fails to see the obvious and inevitable link between such a conclusion and the real underlying need for a public Inquiry.

I also note the testimony of Clr Alan Friend, the newly elected Mayor in the 2004 Council:

- A. I, I think there really was and I – I've got to say that the mayor and the general manager were not at all happy in admitting that anything was wrong.
- Q. Despite the fact that at least for public consumption they've said so?
A. Exactly right.
- Q. On what basis do you form that feeling, I mean, is that on the basis of things that they've said to you?
A. They've said it publicly. The mayor certainly, perhaps the general manager hasn't, but the previous mayor certainly had made it quite clear.

In a written submission to this Inquiry, a clearly disillusioned former Councillor, Mr Peter Lang (who signed himself as "former Councillor (and never to be again)") put the following views, which appear to demonstrate a lack of acceptance on his part that Council may have done wrong. However, as the Mr Lang is no longer a Councillor, not having contested the 27 March 2004 elections, those views must be of limited importance in terms of any probative evidence as to the attitude of the present Council. He said:

The entire basis for this complaint and inquiry has been a few vexatious complainants who were not getting their way crying foul ... The fact of the matter is the Council operates in a democratic way, and for the most of it, distributes its resources in a fair and appropriate way. Unfortunately, some do not get their own way all of the time. It is interesting that those who no longer get their own way, are the ones crying foul and spreading the doom and gloom statements such as WSC is broke, bankrupt etc. The [sic] is a prime example of small mindedness that is tearing small communities apart. Rather than allowing the majority to have their say, thinking positively and working together towards promoting and enhancing their communities, we have this personality working behind the scenes to erode, undermine and sabotage any project that they do not agree with. The sum total of this activity is our Shire suffering from infighting and short-sightedness and suffering from its own self inflicted death.

... I recently resigned after 4 ½ years of watching some of my "elders" demonstrate their small mindedness, their simplistic and negative views, their poor understanding of local government legislation and their complete ignorance of behavioural standards. I will never venture into Local Government again. ...

However, Clr Waterford was, and is, at least on this account, and despite his undoubted influence and position as Mayor, only one of twelve Councillors. The publicly expressed views of most other Councillors appear to fully accept the necessity for a public inquiry, and more importantly evince an acceptance of Council's past sins, as discovered by the section 430 investigation process.

The testimony of the General Manager, Mr Vic North, in respect of the Department of Local Government's section 430 investigation findings and recommendations, was as follows:

- Q. ... What is your view regarding – and perhaps in general terms initially – regarding the findings and recommendations of the Department of Local Government's investigation report under section 430 of the Local Government Act?
- A. Well, there's serious allegations and serious findings that we've taken equally seriously. They are things that I would have preferred didn't happen but they did and I saw the process as an audit process to highlight those things that we need to correct and as a management team we've – we've made every effort to do those quickly and as efficiently as we can.
- Q. Do you agree with the findings and recommendations that the department made?
- A. Yes, absolutely. Can I say that I've always encouraged audits in all of the organisations I've been responsible for - - -
- Q. Right.
- A. - - - and I see this as a positive process.

I am not sure I agree with Mr North's view that the investigation process was merely an audit process, but that does not detract from his evidence as to his apparent acceptance of the findings and recommendations.

The General Manager, responding to the Department of Local Government's earlier preliminary enquiries phase of its investigation into Council, had written a letter to the Editor of the *Walgett Spectator*, published on 25 February 2004. In that letter the following passage appears:

Walgett Shire Community deserves more than the senseless, negative criticisms and destructive innuendo that constantly divides the community and sends out negative messages to the rest of New South Wales and Australia. We need business and visitors to be enticed into the Shire to build our economy and help us achieve long-term sustainability. If we don't create a positive image, then how can we expect to attract tourism and business development. We all have a responsibility to give our future generations a better deal.

It will be noted that the opening remarks mirror words and sentiments expressed by former Councillor Lang, quoted above. They also mirror views expressed by Cllr Waterford as Mayor.

Some of what the General Manager says in that paragraph may be fine, as far as it goes. But, I am equally concerned that, if that is the expressed view and approach of the General Manager and his administration, then Council's community may not be being kept informed, honestly and candidly, about its Council's performance. Spin doctoring has no place on that account.

The other aspect of concern is in relation to the apparent message that the opening words of that paragraph present as to whether the General Manager and his administration are accepting of the Department's findings (or at least those contained in its interim report of its preliminary enquiries phase of its investigation).

I asked Mr North about this when he appeared before me as a witness at the public hearings. Similar statements had been made by the General Manager which are

recorded in the minutes of Council's meeting of 29 August 2004, when it considered the Department's report and letter to Council about those findings.

Mr North began by trying to explain away the wording of his letter to the newspaper as annoyance on his part about the matter having been brought to light while he had been away overseas. I do not find that explanation satisfactory.

The evidence about what he had said in his report to the Council meeting continued:

Q. It says, "Mayor Peter Waterford invited the general manager to provide a response to the report received from the Department of Local Government. The general manager responded as follows," and then there are a series of numbered paragraphs.

A. Yes, yes.

Q. (1) is, "Mr Mayor, I guess everyone knows that this preliminary inquiry was triggered by a large number of complaints forwarded to the Department of Local Government by certain people in the Walgett community accusing selected members of the senior management team and council of a wide range of misdemeanours." Paragraph 2, "It's interesting that these faceless people chose not to discuss their grievances directly with me or even show the courtesy of checking with shire staff first on the legitimacy of their claims. I can only conclude after all of the commotion that the process was nothing more than a witch-hunt, one that has further damaged the image and reputation of our community and the shire and one which has done nothing to improve the social problems in our community or improve our position in the global marketplace," and so it goes. Would you care to elaborate on the concerns that you raised there?

A. Well, firstly I – I don't withdraw any of that. My comments then are no different to now. I think that - - -

Q. Notwithstanding the department's subsequent formal investigation and its finding showing a long list of things that were wrong at the council?

A. The point I'm about to make is that I would have thought that any reasonable person would have discussed any issues that we were experiencing with us first. I happen to know that that's quite different now. There is a process that clearly encourages people to go beyond that as the first step which I don't think is a sensible one but that's how it is, so what I was trying to say and what I'd stand by is that if people have got a problem with what I'm doing or not doing I would encourage them to come and talk to us first and then we may be able to deal with the issues internally. I'm – I'm open to criticism but I need to know what the criticism is and the report - - -

Q. But the statements – the statements that you're making there seem to suggest that you are questioning the legitimacy of the concerns or the complaints.

A. No, not at all. I just don't know who they were and what the complaints - - -

Q. So you're saying that your concerns were about the process they followed - - -

A. Yes.

Q. - - - rather than the bottom line as to whether they were in fact genuine problems.

A. Absolutely, absolutely, and clearly some of those issues that were raised have been shown to be true. Now, I would like to have known about them earlier and at the stage that they saw them happening but I didn't. I didn't know until the department came on board.

I should acknowledge, on the other hand, that in the letter Mr North wrote and that was published in the Walgett Spectator of 25 February 2004, Mr North did say this:

For the record, the Executive Team accepts that the process and the findings are serious matters and in this regard we have taken immediate action to rectify the areas of concern. Further, I accept my share of responsibilities, as General Manager, for the day-to-day management of the organisation. No one within the organisation, to my knowledge, has deliberately set out to mislead or prevent due process from occurring.

In conclusion, I must indicate that in my view those who have sought to explain away and deny that very much wrong has happened at Walgett Shire Council, and that there is no need for a public Inquiry, such as Cllr Waterford and former Councillor Peter Lang, and, at least initially, the General Manager, are clearly wrong in their suggestions that a small group of malcontents, who allegedly don't get their way on some things, have been needlessly crying foul and without justification saying that Council has done wrong. The findings of the Department of Local Government in its investigations and of this Inquiry clearly show such views to be incorrect. Nor do I have much sympathy for Mr North's "process concerns".

Let me now return to the question of the adequacy of the minuting of Council's meetings.

At the special meeting of 13 February 2004 Cllrs Sam Jeffries and Tim Horan were not present and the minutes record (albeit in very truncated form) their apologies. It is noted that in neither of the minutes of the meetings of 9 nor those of 13 February 2004 is any clear indication given as to whether or not these apologies were formally accepted. The same applies, for example, regarding Cllr Horan's absence from the meeting of 8 March 2004.

This is an important omission, and such omissions are relevant to the important provisions of section 234 (1) (d) of the Act. This section provides that a Councillor automatically loses his or her position as a councillor if he or she is absent from three consecutive ordinary meetings of the Council, without prior leave or leave granted at that meeting. Council's minutes should, therefore, contain a record of such leave being granted, at the very least so as to ensure that there is a documentary record to refute any inference arising in the context of section 234.

Council's minutes of a special committee meeting of 30 April 2004 record the presence of some 11 only of the 12 Councillors. I have been advised by Council that the absentee was Cllr David Lane, who tendered no apology or reasons for his absence. However, Council needs to ensure that its minutes of this meeting make it clear that the Councillor was absent, without Council's approval or leave.

I do note, on the other hand, that Council's minutes of its most recent, special meeting of 10 May 2004 do record that apologies given by some four Councillors be received.

Recommendation

That Council revise its practices and procedures relating to the recording of the absences of Councillors from meetings of Council so that those minutes

provide a proper and complete documentary record to satisfy the requirements of section 234 (1) (d) of the Local Government Act 1993.

It would appear that at the 13 February 2004 Council considered, in turn, each of the 37 recommendations in the section 430 investigation report. I say “appear”, because the minutes of that meeting, or at least the copy provided to me for the purposes of this Inquiry, only record motions and resolutions carried in respect of the first 32 recommendations. Yet the letter from the Mayor to the Minister of the same day indicates that all 37 recommendations were considered and dealt with.

The minutes of Council’s meeting of 13 February, as were those of its meeting of 9 February 2004, were confirmed at Council’s meeting of 8 March 2004, supposedly as an accurate record, in accordance with the provisions of clause 3.4 of Council’s Code of Meeting Practice. So, there seems to be something wrong in the minutes of Council’s 13 February meeting which may need to be addressed.

Recommendation

That Council review its minutes of its special meeting of 13 February 2004 at the earliest opportunity, and take steps to ensure that they are indeed an accurate record of the business transacted at that meeting, in accordance with the provisions of clause 3.4 of Council’s Code of Meeting Practice.

The minutes of the meeting of 13 February 2004 record, at least as to the first 32 of the 37 recommendations, that only in respect of one of them was there any *recorded* dissension in relation to Council’s response. This one recommendation was number 13, relating to the repayment of a bonus paid, unlawfully, to the General Manager, Mr North. Council resolved that it could be repaid by instalments of \$500 per fortnight. Clrs Friend, Mitchell and Bow voted against this.

The testimony of Mrs Lyn Brown, on behalf of the Department of Local Government, was:

We have looked at that issue and we think it is reasonable.

I am satisfied that the decision of the majority to approve the repayment of the bonus in the agreed instalments was reasonable in all the circumstances.

Council’s resolutions of 13 February 2004 demonstrate, at least on their face, a clear acceptance of the findings and recommendations of the Department in its section 430 investigation report, and a willingness to take them on board and take prompt and appropriate action in respect of them.

I do not propose to examine and record each and every of the recommendations and what has been done by Council in respect of them. But, by way of summary only, I set out below in the following table and brief overview of the recommendations and

the steps taken. At section 2.5 of this report, below, I shall say a little more about the key recommendation to appoint a mentor.

Rec no.	Recommendation	Action taken by Council
1	Adopt an efficient and effective document handling system	Council determined to develop such an electronically based system as a matter of urgency and to have it operational by the end of April 2004. At Council's later meeting of 8 March 2004 it adopted a new Records Management Policy and a new procedure for dealing with complaints and requests from its community.
2	Engage a legal compliance auditor and conduct such an audit	At the 13 February meeting it was noted that contact had already been made with the LGSA for assistance on this. The appointment of an auditor was made on 22 March 2004, and the audit was due to start immediately.
3	Appoint a mentor to the senior staff of Council for at least 12 months. Director General of Department of Local Government to approve of the appointment	Council agreed to the appointment being made on the terms recommended, and resolved that the Mayor and General Manager meet with the Director General as soon as can be arranged to agree on the relevant parameters. See further section 2.5 of this report below.
4	Approval of a suitable remuneration package of the mentor	Ditto
5	Adoption of certain Terms of Reference for the mentor	Ditto
6	Submit quarterly reports to the Department of Local Government regarding Council's implementation of the recommendations in the section 430 investigation report	Council resolved to do so, and the first such report was duly provided to the Department, ahead of time, on 23 March 2004.
7	Council remain on the Department of Local Government's financial watch list and continue to submit quarterly budget reviews to the Department	Council resolved, without question or demur, to submit such reports and accepted that it should in the meantime remain on the list. Council's Management Review for December 2003 was submitted to the Department on 27 February 2004.
8	Review accounting records and practices	The resolution basically noted that most if not all of the required action had already been taken.

9	That Council implement the section 430 recommendations and that the Minister consider the merit of holding a public inquiry under section 740 of the Act	Council had already resolved to call for such a review, by its resolution of 9 February 2004. As noted earlier in this report, that resolution had its opponents, who voted against it. But at the 13 February 2004 meeting the resolution was confirmed, apparently, or at least according to the minutes, without any recorded dissent.
10	Implement Councillor training	Council resolved to approve steps already taken to implement such a training system, with the assistance of the LGSA. A report on Councillor training was approved by the Councillors at their meeting on 8 March 2004. Council has advised the Minister (its letter of 23 March 2004) that it will ensure that an amount is contained in the budget each year to cover ongoing training of Councillors. But see also section 2.6 of this report.
11	Referendum to reduce the number of Councillors	Council noted steps already taken to implement this recommendation, by means of putting to its electors, at the forthcoming elections of 27 March 2004, a proposal to reduce the number of Councillors from 12 to 9. The evidence provided to this Inquiry showed that this in fact occurred, and that the proposal was approved by a majority of electors. Therefore, at the next ordinary election of Council, the number of Councillors will be reduced accordingly.
12	Setting of a business rate and the monitoring of this occurring by the Department. In fact the need to set such a rate was one of the issues previously raised by the Department in its preliminary enquiries phase of investigating this Council.	Council's resolution pointed out that such a rate had already been set for 2003-2004. All that had not been done was to identify properties to which such a rate might apply. Council has now put in place procedures, which will understandably take some time, to create such a list of properties. Council has promised to have this done in time for the next financial year, which is reasonable.

13	Repayment of the General Manager's unlawful bonus according to a timeframe advised to the Department.	Done, and the bonus is progressively being repaid. It will be repaid in full by May 2005, coinciding with the end of the General Manager's current contract of employment. The Department's representative at the public hearings of this Inquiry advised it was satisfied on the matter and the progress to date.
14	Making of suitable provisions in Council's financial statements to cover any bonuses payable to staff pursuant to their contracts of employment.	At the 13 February meeting it was reported that a provision had already been made to cover the amount for which Council is currently liable. A recommendation for making of the related reserve was one of the items at Council's meeting of 9 February 2004 which was not dealt with, due to the walkout of some Councillors from that meeting. However, it is not clear from the minutes whether this was duly dealt with, and therefore, created, by resolution passed at the next, 8 March 2004, meeting of Council. If this was not done at that meeting this additional procedural step needs to be taken. Council's letter to the Minister of 23 March 2004 purports to suggest that this was done.
15	Review of Council's staff recruitment and selection policy to reflect best practice	The work to revise that policy was done by staff before the 13 February meeting, and Councillors were informed of this. Councillors endorsed an intent to present the revised document to the next Consultative Committee, and then bring it before a full Council meeting, probably in April 2004. However, this last step has not occurred, as no meeting of Council dealt with the matter in April, and the agenda for Council's May meetings shows that a special meeting is to be devoted to Council's Annual Management Plan, as is appropriate. Therefore, the final step of formally endorsing the revised document needs to be taken. Council has also revised its meeting schedule, so that its ordinary meeting that might otherwise have occurred at the beginning of April or May is now not to be held until the end of May.

<p>16</p>	<p>Review of Council's organisational structure with a view to reducing the number of senior staff positions – note that having regard to the 27 March 2004 Council elections, Council is in any event required by section 333 of the Act to re-examine and determine its organisational structure within 12 months of that election.</p>	<p>A report on a proposed new structure was presented to the Councillors at their December 2003 meeting, but the Councillors then resolved, reasonably in my view, that having regard to the impending Council elections, the matter should be one left to the new Council. A report, containing a number of options, was presented to the new Councillors at their first meeting of 5 April 2004. Council resolved to consider the matter further at a special meeting of 30 April 2004. At that meeting, extensive discussion took place, and various amendments were made to the options. Two of six options were identified as being preferred, and the General Manager was requested to provide a further report to the Councillors, including on the cost of those options. Council is therefore making good progress and there is no indication that Council will not have adopted an appropriate new structure by the end of March next year.</p>
<p>17</p>	<p>Council conduct an annual review of its delegations to ensure they are up to date</p>	<p>Council so resolved on 13 February 2004 and noted, quite correctly, that its delegations needed to be reviewed in any event after the 27 March 2004 Council elections. This is required by section 380 of the Act. By the time I completed this report, this had not yet been done, but Council has 12 months to do it.</p>

<p>18</p>	<p>Council examine all its real estate holdings and determine which need to be formally classified as community lands and which as operational for the purposes of section 25 of the Act.</p>	<p>It was reported to Council's 13 February 2004 meeting that no list of Council land holdings could be found. Such a list is therefore being compiled as a precursor to undertaking the necessary classifications process. Once this has been done Council will prepare and adopt any necessary plan of management for community lands, as a matter of urgency. It is yet another indictment on Council and its administration that it has no record of its land holdings, let alone the fact – exposed in the section 430 report – that it has no plans of management and does not in any way comply with the provisions of Part 2 of Chapter 6 of the Act.</p>
<p>19</p>	<p>Council ensure that declarations of pecuniary interests under section 451 of the Act are correctly recorded in the minutes of its meetings and that such declarations extend to a description of the nature of the interest disclosed.</p>	<p>At Council's meeting of 13 February 2004 it was noted that steps were being taken to comply with this, including the obtaining of appropriate advice on the matter and the acquisition of an ICAC training video to be shown to Councillors as part of their training package. A check has been made of the minutes of all Council meetings since that date and any disclosures made have been found to be compliant, at least on their face.</p>
<p>20</p>	<p>Council review its tendering policies and procedures to ensure they are compliant with requirements under the Act and Regulation.</p>	<p>Council resolved at its 13 February 2004 meeting to diligently observe the relevant requirements, particularly having regard to the total payable under the contract over the life of a contract, the need to sign documents in a timely manner and the need to ensure that no late tenders are accepted, and a list of other such matters. All tenders for the supply of goods and services to Council for the 2003-2004 financial year were in fact re-examined by Council at its meeting of October 2003.</p>
<p>21</p>	<p>Council ensure that all its contracts which operate over a period of time have been and are so compliant. This will entail an estimation of the total amount payable or expected to be payable by Council over the life of the contract.</p>	<p>See No. 20.</p>

22	Council ensure that any fee payable to its Deputy Mayor comply with the requirements of section 249 (5) of the Act.	Council passed the necessary resolution to correct the previous non-complying situation on 8 March 2004. A similarly worded resolution was passed in respect of the new Mayoral fee (and any moneys payable out of that fee to the Deputy Mayor) at the first meeting after the 27 March 2004 elections, namely on 5 April 2004.
23	Council ensure that its current plans for the Lightning Ridge Community Centre provide a facility within a defined and affordable budget and a strict timeframe for completion.	See Part 4 of this report. In fact, a resolution following the precise wording of the Department of Local Government recommendation was adopted at Council's meeting of 13 February 2004, but the defeat of a rescission motion, finally considered by Council on 8 March 2004, meant that Council was <u>not</u> complying either with the terms of its own resolution and adopted policy in that regard, let alone the terms of the recommendation.
24	Council review its document handling procedures	A resolution to do so was passed at Council's meeting of 13 February 2004. In its letter of 23 March 2004 to the Minister Council advised that it was in the process of dealing with the matter.
25	The form of staff reports to the Councillors on DAs should be revised to ensure that all matters that Councillors are required by law to consider are covered in the reports.	A resolution to do so was passed at Council's meeting of 13 February 2004.
26	Council's DA assessment process be revised to ensure that the requirements of SEPP No. 60 are met.	Ditto
27	All conditions of consent of a DA must be set at the time of approval, as required by sections 80 and 80A of the Environmental Planning and Assessment Act 1979	Ditto
28	All deferred commencement consents to be properly so identified	Ditto
29	Council develop a new LEP as a matter of urgency to replace its long outdated and outmoded planning instrument.	Ditto. See also section 3.10 of this report.

30	Quarterly financial reports must be presented to Council within 2 months of the close of the relevant quarter.	A resolution to do so was passed at Council's meeting of 13 February 2004. At Council's meeting of 5 April 2004 (the first for the newly elected Council), some difficulties were reported to Councillors and noted regarding the timeliness in which reports, requiring input and analysis from managers, could be presented. Nonetheless, it was indicated that the March quarter review would be presented at the May meeting of Council. If done, this will meet the requirements of the Department's recommendation, at least for that quarter's figures.
31	Material differences in Council's income and expenditure, from the figures in its budget, must be monitored by the appropriate member of staff and reported to Councillors on a monthly basis.	See section 3.11.3 of this report.
32	Council ensure that its procedures facilitate the timely collection of all rental and other payments due to it by any lessee.	A resolution to do so was passed at Council's meeting of 13 February 2004. Council advised further progress in its letter to the Minister of 23 March 2004.
33	Lease payments received by Council in respect of the Lightning Ridge Caravan Park are paid into a trust account, in view of the status of the lands as a Crown Reserve Trust and consequential obligations under the Crown Lands Act.	Council has put the necessary arrangements in place, and so advised the Minister in its letter of 13 February 2004. In its further letter of 23 March 2004 Council told the Minister that an audit and reconciliation of income from crown reserves is to be carried out in June.
34	Council review its leases regularly on an annual basis to ensure that it collects any rent increases to which it may be entitled under the terms of the lease.	Council has put the necessary arrangements in place, and so advised the Minister in its letter of 13 February 2004.
35	Council submit its Budget Summary Collection for 2003-2004 to the Department of Local Government and revise its Quarterly Budget Review to reflect Council's adopted budget.	This was done on 21 November 2003.
36	Council review its internally restricted reserves to re-allocate, as appropriate, funds being held for projects which are not going to proceed.	Council did this at its meetings of 10 November and 8 December 2003.
37	Council consistently and actively pursue the collection of all moneys outstanding and owing to it in respect of rates and annual charges.	See section 3.11.2 of this report.

Council's progress, and its deliberations at its 13 February 2004 meeting, were duly reported to the Minister by a letter of the same day, under the hand of the then Mayor, Clr Waterford. That response was well within the 40 days allowed to Council under section 434 of the Act.

On 23 March 2004 Council followed this up with a letter containing its (again early) quarterly update report on its progress in implementing the recommendations.

Clearly, not all recommendations were as a matter of reasonableness and practicality capable of immediate and one-off implementation. Therefore the fact that some of the recommendations are yet to be fully implemented should not be taken in any way as counting against Council and its performance.

On the other hand, equally clearly, the evidence before this Inquiry (but with what might, when the big picture is considered, be viewed as minor exceptions only – for example, the evidence of the attitude of Clr Peter Waterford) demonstrates an almost complete contrition on the part of Council and its Councillors and General Manager in relation to the sins of the past, as exposed in the section 430 investigation report and its precursor, the preliminary enquiries phase. That evidence equally shows that Council is ready, willing and able to take, and in many respects has already taken, prompt and appropriate steps to address and overcome past problems and wrongdoings.

The exceptions relate firstly, to what Council has done, post the issue of the Department of Local Government's section 430 investigation report, in respect of the Lightning Ridge Community Centre. This issue is considered at Part 4, and in particular at section 4.18, of this report.

Secondly, another exception concerns the attitude of Council's former Mayor, Clr Peter Waterford, who may well, on the available evidence, become once more the leader of the Council and Mayor in September 2004, that is to say in only a few short months' time. His attitude is therefore taken as being important and indicative, but by no means definitive, of the attitude and likely performance of the rest of the current 2004 Council.

That said, however, it must be acknowledged that what might transpire, come September, is in most respects, as I have indicated in section 6.2 of this report, purely speculative. No probative and legally reliable evidence is available as to what might then, or up till then, happen in terms of the governance of the 2004 Council.

It is noted that Clr Waterford's Mayoral report to his fellow Councillors for the 8 March 2004 meeting of Council, the last of his term as Mayor of the 1999-2004 Council, included the following additional indications of his attitude:

... Although we have gone through a very thorough Local Government inquiry and still have to get through a public inquiry, I still maintain that there is little we have to do that hasn't been done already.

... Contrary to most of the media that has been coming out of the Walgett Shire of recent months, we all have achieved a huge amount and this Council will see the benefits [of] our restructure over the next decade. The hundreds of people who have called or written

in appreciation of the better facilities and gardens that we have been able to provide is staggering.

So, once again, I thank all Councillors and staff for a job well done ...

On the evidence before this Inquiry, I consider that in many respects Cllr Waterford's report was not an honest and objective appraisal of Council's performance, nor of that of the Councillors and the General Manager and his staff. If the Councillor genuinely believes this, then he is mistaken.

Accolades from the community about better facilities and gardens, whilst important, are not in fact indicative of the performance of the Council on governance matters.

And, it is clear, from both the evidence before the Departmental Representatives in their section 430 investigation and before me in this Inquiry, that there has, at least until now, NOT been a job well done.

While, as I have myself concluded, much of the problems brought to light by the Departmental Representatives in their investigation have been or are in the process of being corrected and addressed, this does not mean that there have been no such problems in the past, nor that there has been a job well done.

The fact remains that it should not have been necessary for the Departmental Representatives to have to conduct an investigation that might expose poor performance, particularly of such a systemic and all encompassing nature, in the first place. The same goes for this Inquiry.

On the other hand, I sought from the Department's representative, who came to give oral testimony at the public hearings, what was the Department's current view as to how Council had performed in relation to acting on the various recommendations made in the section 430 report (the transcript comes from one prepared by my assistant officer, Ms Weston):

LB: There are a number of areas, um, that we've looked at that are satisfactory. There are other areas where we've requested more information and at this point in time we are looking at the areas where we've requested information. We've received some ---

RB: So there's none that you are saying it's clearly unsatisfactory?

LB: No.

2.5 The recommendation for the appointment of a mentor

As noted above, this was the central or key recommendation of the Department of Local Government's section 430 investigation report. Council's performance in implementing that recommendation is therefore taken by me as being particularly indicative of its willingness to admit the error of its past ways and to do something constructive about them, promptly and without demur.

The question of a mentor was one raised by the Department long before it commenced its formal investigation into Council. The Department's investigating officers had recommended this after conducting the preliminary enquiries phase of their investigation in May 2003. It was advised to Council by the Department's letter of 24 July 2003, issued under the signature of the Director General.

On the question of the mentor, it was stated:

Based on the evidence and material available to the Department, it appears that Council may not have followed the appropriate procedures in relation to a number of matters. It was found during the course of the enquiries that there were a number of examples where decision-making procedures appeared to be inadequate. With this in mind, it appears that senior staff may benefit from the assistance and guidance of an experienced mentor. This would ensure that the correct procedures are implemented in relation to the matters that have been examined and Council's day to day operation.

Recommendation 11: Council is required to appoint a suitably qualified person to act as a "mentor" to the senior staff of Walgett Shire Council for a period of 6 months. The Director General of the Department of Local Government is to be consulted prior to this appointment.

Recommendation 12: The "mentor" appointed by Council is to report to the Department of Local Government on a monthly basis as to the local governance standard of the Council. Further, Walgett Shire Council is to remain on the Department's quarterly financial monitoring list.

It will be noted that at this stage the recommendation was only for the appointment of a mentor for some six months. This became extended to 12 months in the section 430 investigation report, presumably because of the much greater level of problems and non-compliances uncovered by the Departmental Representatives in the investigation.

I should also note the concerns expressed by the Department in relation to the number of senior staff in Council's then organisation structure and the relatively high percentage of Council's overall expenditures taken up by the annual wages expenditure for these senior staff. The Department said:

On the material available it would appear that there may be room for reducing the number of senior management positions which would result in significant savings to the Council.

Recommendation 5: Council reviews the organisation's structure by December 2003 with a view to reducing the number of senior staff positions.

These concerns about expenses were expressed in the following context:

The Department is concerned about Council's deteriorating financial position, particularly relating to Council's low level of working capital and high level of outstanding rates and annual charges. The Department has also noted the deteriorated condition of Council's infrastructure and the need to spend over \$11 million to bring this to a satisfactory standard.

Mr North's response to the mentor recommendation, as expressed in his letter of 27 August 2003, was as follows:

Based on the contents of your letter, there seems little justification to incur the additional expense of a “mentor”. On the one hand your letter raises concern about Council’s deteriorating financial position and makes proposals for cost cuts, yet considerable time and expense will be incurred to comply with your recommendation. Please note that over the past eighteen months my Group Managers, Human Resource Officer and myself have maintained regular communication with the legal and Industrial Relations Branches of the New South Wales Local Government Association for advice on a range of matters. We have also sought advice from your Finance Department. We would therefore appreciate recent examples of where you believe the appropriate procedures have not been followed or have appeared to be inadequate, and that have not already been corrected, to justify the additional expense to Council.

Clr Peter Waterford reported to Council’s special meeting of 29 August 2003, as recorded in the minutes of that meeting, that:

The Mayor, Peter Waterford advised that he had telephoned the Director General, Department of Local Government to discuss the contents of the Department’s letter and to express concerns and opposition to the Department’s Recommendation regarding the ‘mentor’, particularly given the lack of substantial evidence to justify the appointment and cost and also the inferred ‘slur’ on Walgett Shire Council.

When it came to their section 430 investigation report, the Departmental Representatives put their findings and recommendations in respect of the need for a mentor in the following terms:

Based on the available evidence, there appears to be widespread and systemic failure to observe the provisions of good local government administration. With this in mind, it appears that senior staff would benefit from the assistance and guidance of an experienced mentor. This would ensure that the correct procedures are implemented in relation to the matters that have been examined and council’s day to day operation. The mentor could also provide advice to councillors on their role and responsibilities.

The recommendations were as follows:

Recommendation 3: That council appoints a suitably qualified person to act as a “mentor” to the senior staff of Walgett Shire Council for a period of at least 12 months. The Director General of the Department of Local Government will be required to approve of this appointment.

Recommendation 4: A suitable remuneration package for the mentor is to be determined in consultation with the Director General of the Department of Local Government and paid by the council.

Recommendation 5: That the following Terms of Reference be adopted in relation to the mentor position:

- a. To provide guidance and advice to council’s senior management for a period of at least 12 months.
- b. To oversee the implementation of the recommendations contained within the report of the section 430 investigation.
- c. To report to the Department of Local Government on a quarterly basis as to the implementation of the recommendations contained within the section 430 investigation report.
- d. To provide guidance and advice to council’s development approvals section and directly assist in the implementation of the correct procedures as stated in the section 430 investigation report.
- e. To ensure that council implements the legal compliance audit recommendations.

The Council's formal response to these recommendations, as set out in the Mayor's (Clr Waterford) letter of 13 February 2004 to the Minister, was:

Council agrees to the appointment of a Mentor under the Terms of Reference as set out in the Report. The Mayor and General Manager will arrange to meet with Gary (sic) Payne, Director General, Department of Local Government as soon as possible to agree on the details and process for the appointment and role of a suitable Mentor.

Such a meeting was duly arranged, and the Mayor and General Manager travelled to Sydney on Friday 26 March 2004 to meet with the Director General, Mr Garry Payne. The evidence of the Department's authorised representative, who gave oral testimony on behalf of the Department and its Director General at the public hearings, was that, while the matter of a mentor was raised, no agreement was reached on the relevant issues. She said:

I'm advised that the Director General has met with the Mayor and General Manager. I'm also advised that the issue did come up and that the mentor was discussed but not in any great detail and my understanding is that no direction has been provided at this stage, pending the outcome of the Public Inquiry.

When he appeared as a witness at the public hearings, I asked Clr Waterford about what the Director General said at that meeting. He told me:

And even the last time when we went down he said certainly leave it – leave it in abeyance until this public inquiry was heard because I had brought it up, I said, you know, "We've been told we've got to get a mentor. What do we do?" and he said, "Just leave it."

I also sought advice from the former Mayor as to his apparent attitude to the mentor concept. His evidence was as follows:

A. ... I was never in favour of a mentor but that didn't stop me from proceeding with the recommendation.

Q. So it was a reluctant - - -

A. I was a reluctant participant just as the mayor but I was going ahead with it because I'd been told to and both times - - -

Q. Who told you to?

A. Both the council was asking me to see the director-general - - -

Q. So you were acting in accordance with a council resolution.

A. With a council resolution.

And again:

Q. Somebody has put it to me, you know, why pay for a mentor out of council's moneys - the ratepayers' moneys - when you could get a general manager who might be able to perform without the need of somebody looking over his or her shoulder?

A. That may be what was put to you. I think we've had - - -

Q. You don't agree with that proposition.

- A. I – I don't. Vic North was (indistinct) for a specific reason and that was to do the restructure on the Walgett Shire Council. We had had a big meeting with Coonabarabran to say this is the way we were going to go and – and this is what Vic was doing and all very well to say that Vic's been pulled up – some things have been pulled apart and put in a report by the Department of Local Government but no one mentions the thousands of things that he and his bloody senior staff have done over the last 3 years to bring Walgett into the 20th century. We've done an enormous amount of difference. We've changed the culture of just about everything in the shire and I believe to the betterment – much to the betterment of this shire, and no one's mentioned that. The department didn't mention it.
- Q. Would you say it's true to say that Mr North inherited something of a mess?
- A. Absolutely, a huge mess and I don't think councillors realise when they got in in '99 just how much of a mess it was.
- Q. So what you're saying to me is notwithstanding the pretty daunting and long list of errors and problems that the department made findings on its report, when compared with all the messes that have been fixed up Mr North's performance is pretty good?
- A. Exactly.

The fact is, however, that whatever views Cllr Waterford might have on the question of the need for a mentor, as he himself indicated, as Mayor he was obliged to put into place Council's decision, as reflected in its resolution passed at the meeting of 13 February 2004. That resolution reflects Council's official position on the mentor question.

Nonetheless, Cllr Waterford's private reservations and even disagreement with the need for a mentor may be considered to be illuminative and relevant, when considering the key question as to whether or not Council, including the new 2004 Council, will in fact be likely to act on the recommendation.

The views of the present Mayor, Cllr Alan Friend are slightly different and present an interesting perspective:

- Q. What do you think about the recommendation of the Department of Local Government regarding the appointment of a mentor?
- A. Well, I think that that was very good and a good (indistinct)
- Q. Are you one of those who would say that that's an additional expense that seems to be unnecessary?
- A. Certainly not, I would say that that would save us thousands by having a mentor.
- Q. Rather than appointing a different general manager, say?
- A. Well, that's a hard one for me to say, but certainly at that stage, at that stage when that came forward from the department I thought it was a very good idea. A lot of councillors opposed it and I couldn't understand why.
- Q. How long do you think the mentoring program would need to be in place before there would be likely positive results and substantial lasting results?
- A. I suppose it depends on the attitude of the general manager. If he took it on board and genuinely took it on board to try and improve his performance by the help that mentor would give as far as - - -
- Q. Because the mentor, I think, was intended to be for the benefit not just of the general manager, but the whole administration and, indeed, the councillors.

- A. Yeah, I realised that, but I thought that – well, who would be running the show? I suppose (indistinct) I'm not sure of that one. Does the general manager still run the show, or does the mentor?
- Q. Well, I don't know.
- A. No.
- Q. That's – that would be an interesting question, yes.
- A. Well, yeah. But, anyway, we weren't travelling so well and I thought at the time that it would have been a worthwhile thing to do.
- Q. Generally do you support the findings as well as the recommendations that the department made in its investigation report?
- A. Yes, I do.

I deal with the question of whether a new General Manager might be a more effective proposition at section 6.2.3 of this report.

I sought advice from the General Manager, Mr North, as to his present attitude to the mentor concept, and as to how long such a mentor might need, when appointed, to achieve the intended aims:

- Q. So would you accept that you've now changed your mind about the concept?
- A. I have, yes. I think somebody with extensive experience would help both the management team and council.
- Q. So you think that the appointment of a mentor will likely have a positive result and be productive?
- A. Yes, I would hope so.
- Q. Do you have any views as to how long it will take to have a mentor produce positive results?
- A. Well, I would have thought we're dealing with most of the issues that have been highlighted. I guess it's about that person who I expect would have extensive local government, New South Wales local government experience coming up to Walgett from time to time for periods to work through some of the processes and perhaps regulatory issues that I'd - - -
- Q. Perhaps even on issues that the department didn't discover.
- A. Absolutely, and that's what I would expect that the person would sit on council meetings just to provide guidance.
- Q. So how long do you think that that process will take for you and your staff to come up to speed with all the legal requirements?
- A. Well, I would have thought a fairly short period but we'd better have the person for 12 months.
- Q. Yes.
- A. So we'll take advantage of that full period but our – our intention would be to pick up those things quickly.
- Q. So you're hopeful that it will actually take shorter than 12 months, are you?
- A. Absolutely, and – and I would have thought three council meetings would deal through a lot of the issues. However, I mean, there are matters that come up once every 4 years, so I guess the person can't be there at those times - - -
- Q. Yes.
- A. - - - at least with normal procedure.

I also obtained evidence from him regarding the steps Council had taken towards the appointment of a mentor:

- Q. Now, what steps has council taken or to put it another way, what progress has council made in appointing a mentor?
- A. Only a visit that council asked the mayor and myself to undertake to meet with the director-general where there appeared to be a response not to do anything for the time being. Apart from that we've done nothing.

Mr North's further oral testimony about the meeting he and Clr Waterford had with the Director General on 26 March 2004 was as follows:

- A. ... I guess we have to take some notice of what the director-general was saying. He may know something that we don't and may see the appointment at this stage as not a worthwhile process.
- Q. He may?
- A. He may, which is why he may have given us - - -
- Q. Why do you think that that might be the case?
- A. Well, I suppose one of the possible outcomes is that - - -
- Q. Is that wishful thinking on your part?
- A. Not at all. I think that I was regarding his advice as serious and informed and what we went down to find out was what sort of role, what kind of person, did he have people in mind.
- Q. You didn't go down to try and talk him out of it?
- A. I certainly didn't and neither did the mayor at all.

Given the passage of time and the intervening Council elections held on 27 March 2004, it is now up to the newly elected 2004 Council to take the next steps. This issue is examined at section 6.2.3 of this report.

2.6 Councillor training

While, as noted above, the Departmental Representatives did envisage that the mentor to be appointed by Council might benefit both the senior staff and the Councillors (a concept with which I agree, subject to what I have to say at section 6.2.3 of this report), in their section 430 investigation report, the Departmental Representatives also made other express recommendations about the need for appropriate Councillor training.

The report provided (at pp. 18-19):

There are numerous problems at Walgett Shire Council that in the main relate to operational aspects of council activities. However, council has presided over a number of administrations that have not implemented correct procedures or carried out a number of the functions as prescribed by the Act, resulting in the problems described in this report.

We have no confidence that these problems will be fixed in the short term by council. This view is based on the very fact that council has allowed this situation to develop and continue under a number of different administrations.

...

We believe that council would benefit from orientation and training programs for councillors. We have recommended that council engage a suitably qualified mentor to assist its senior staff. This mentor could also be utilised to provide advice on suitable orientation and training programs for the newly elected council following the March 2004 election.

...

Recommendation 10: That council, by using an appropriately qualified organisation and/or individual, develops and implements a suitable, and continuing, orientation and training program for councillors.

In its formal response of 13 February 2004 Council responded positively, indicating that steps had already been taken to put such a training process in place. It was intended to do this with the assistance of the LGSA. In Council's follow up letter, its first quarterly report, of 23 March 2004, Council advised the Minister that:

A report on "Councillor Training" was presented to and ratified by Council at its Meeting on Monday, 8 March 2004. A budget allocation will be set aside each year for ongoing Councillor Training Programs. Council will commence training within four weeks.

When he appeared to give oral testimony at the public hearings, I asked the General Manager about the new Councillor training plan, as well as about practices in the past:

Q. Another issue raised by the department was the development and implementation of a suitable training program for councillors. What steps are being taken to deal with that?

A. Well, I know there was a couple of organisations contacted. We got good response from the Shires Association and got a list of courses which are being presented to council and there's one course which is going to be conducted by David Clarke on 10 May around – I can't think of the title just off the top of my head but the first course would be run for councillors on 10 May.

Q. Right, and is that all councillors as well as the new ones?

A. All new councillors – sorry, all councillors, all 12 councillors that are currently in place.

Q. Yes.

A. And the management team can sit in as well.

Q. Right. What arrangements - - -

A. That's a start – I'm sorry – that's the start of the training program.

Q. Right. Are there other arrangements that have been put in place particularly for the newly elected councillors that were elected just the other week?

A. There's no specific training although we have had – I've received correspondence which I'm going to put to councillors to choose as individuals courses that are being run out of Dubbo and Tamworth and places like that.

Q. Where have you got to on your current management plan, the new one, the new strategic plan that you must be in the process of doing?

A. Yes. We're doing the finalisation of the existing one and we're in the process of finalising some budget matters that we'll have to take to the 10 May - - -

- Q. Had a draft plan gone to council for approval to going on public exhibition before the election or is that yet to be done?
- A. Still to be done. We will take it to a special meeting that's been set aside for this purpose on 10 May. Council will then have some input to that, we'll deal with those revisions and it will be placed on the business papers for the end-of-May council meeting so that we've got adequate time, 28 days, for it to be on public display.
- Q. The question of putting in place a strategic plan or management plan is a pretty large diving-in-at-the-deep-end exercise, is it not, for new councillors?
- A. Yes, I guess that's right and it's difficult to see how they can do justice to such an important - - -
- Q. Yes, so have any steps been taken particularly to assist and guide them in fulfilling their roles in dealing with that particular issue which of course is high on the list for them to do?
- A. Well, the first opportunity is going to be the special meeting on the 10th. In that process I guess there will be an understanding of what's contained, what needs to be there and the councillors individually and as a council will have an opportunity to have input prior to the final document being put – the draft document being put together for the public.
- Q. In your own written submissions to this inquiry you have commented about your concerns that councillors appear not to have enough knowledge and experience of financial and accounting matters. Would you care to elaborate on that?
- A. I think it's an area that because you've got accrual accounting and cash accounting there's a lot of confusion. We report on a monthly basis on cash and otherwise we do it in accrual and it's difficult for any layperson to pick that up, so there's not a general and good understanding of those differences with processes.
- Q. So again what's being done to do something about that?
- A. Well, we did bring a specialist presenter on that topic up last year sometime.
- Q. In fact I think you said that, now I recall, in your submissions.
- A. Yes.
- Q. Presumably that was done at some cost, perhaps even considerable cost to the ratepayers, because you flew an expert up here, didn't you?
- A. Yes, we did and it was a lesser cost than actually having all 12 councillors and the management team go to Sydney.
- Q. No doubt, yes.
- A. So it's one of those compromises of being up in the rural areas.
- Q. But you said in your submissions to me that this only had a marginal benefit. Could you please give me some more detail about that.
- A. Yes, look, I think with any program of training that you might sit and listen rather than participate and take that information away in a practical sense and work on it is only going to have limited benefit, so the way that the presentation occurred was – I don't know how many – it might have been a 2-hour presentation by somebody that really knew the works.
- Q. Were you there during the presentation?
- A. Yes, I attended as well, so it was chalkboard approach, excellent presentation but unless you're dealing with those things on a daily basis it's sometimes difficult to grapple with.
- Q. So there was no question of the content or the presentation of the training session not being adequately - - -

- A. Absolutely not, it was an excellent presentation and the person knew his information extremely well and councillors asked questions but I'm simply making the comment that unless you're working with those things regularly it's easy to forget or just not comprehend it to the level that you might wish.
- Q. What steps have been taken by council since the department's section 430 report was delivered to council to ensure firstly that councillors and secondly that you and your senior management team are aware of and understand the requirements of the Local Government Act, or is that entirely being left to the mentoring process?
- A. Well, not entirely. I think what it's done for me and the management team is to identify weaknesses that we need to pick up on so I have to say that my Local Government Act has fallen to pieces as a consequence of trying to find my way through checking things out but I guess that was a role that we saw could also be supported by the mentor. I've asked for the ordering of the new copies of the Act for all councillors and the management team here.
- Q. What documents do new councillors get given when they arrive at council?
- A. Very little. We sent some material out that explained the roles of councillors and stuff like that but I don't think we dealt with that well enough. We didn't run any training programs. We offered a mentorship and only had two – we had three takers at the beginning.
- Q. I mean, councillors presumably need to be aware of what policies are on the books, as it were, so that they know what's in place that maybe they might wish to change or add to or whatever, so presumably steps should be taken to give them a complete set of policies, copies of the Act, and various things. But you're saying that that's been done badly.
- A. We – we haven't been proactive enough in providing that information for new councillors. We could do better and we are making a start to do that but I think if we had our time again for the last period and a lot of this stuff wasn't happening we would have prepared some training programs for - - -
- Q. Now, the department and I think also the LGSA has put out a booklet, in each case I think the title is virtually identical about So You're Thinking of Becoming a Councillor - a Local Government Councillor. Are you aware of those – that literature?
- A. Yes, I am. I'm aware of the one from the Shires Association.
- Q. And are measures being taken to equip each councillor with a copy of that document?
- A. I've certainly talked with a couple of staff members for some of that documentation to be circulated. I don't know where that's at though, but I can certainly give some undertaking that that will happen.
- Q. One of the important aspects I think at least from the perspective of the department would be the need for councillors or indeed relevant members of council staff to be aware of their obligations in relation to conflicts of interest - - -
- A. Yes.
- Q. - - - their obligations whether they be of that nature or other issues or aspects under council's code of conduct and also under the pecuniary interest provisions of the Local Government Act. Now, singling out for the moment generally the code of conduct, is the code of conduct a document that's given to new councillors when they arrive?
- A. It's been given to all of the councillors in this – during this process.
- Q. And is it given just sort of, "Here it is," or is there any sort of presentation saying, "Look, you really need to look at this, this and this bit in priority," or whatever?

- A. At this stage it's simply been included in the mail-out as additional information that might be of benefit.
- Q. And what about the pecuniary interest and ordinary conflicts of interest issues?
- A. It's an area that I think concerns most councillors and myself. ICAC have produced a video that we've placed an order for, that should have arrived some time ago, last week I chased it up again, but that was intended as part of a training program for councillors and the staff to view. I haven't seen it, I've just read the write-up and asked for it to be ordered.
- Q. Yes. I certainly would support that as a start though I'm not sure that that would be the beginning and the end of the training.
- A. No, no. I think pecuniary interest is reasonably well covered but conflict of interest seems to be just - - -
- Q. No, that's the greyer area of course.
- A. Yes.
- Q. And I think it's necessary for councillors to understand that even if they don't have a pecuniary conflict of interest they may well have an ordinary conflict of interest - - -
- A. Absolutely.

Yet, one of the new Councillors elected on 27 March 2004 expressed concerns about the induction she was provided as a new Councillor when she arrived at Council. This was Cllr Lynette Carney, and her oral testimony at the public hearings was as follows:

- Q. ... The other issue that you mentioned that I'm interested in was the question of councillor training. Would you like to elaborate on that?
- A. Yes, I would like to elaborate on that because I'd like to comment on my first day in council if I may.
- Q. Yes.
- A. I came into the council chambers, I suppose, a little apprehensive even though I'd been in the position Jenny sits in there now taking notes for quite a number of years and I hadn't – I didn't recall probably having ever been at a mayoral election before but certainly I must have been but didn't take it all on board perhaps and at that particular meeting the first thing, my first observation was that the biggest decision I made initially was where I was going to sit and beyond that, you know, you're talking about the charter that the council – councillors are expected to abide by and my disappointment was that I sat down, I wasn't sworn in - I don't know whether that's practised in New South Wales, it certainly is in Queensland. I wasn't sworn in as a councillor, I didn't take – take an oath to do my best for this shire. I didn't have a charter in front of me, I didn't have – I didn't have any sort of instructions, so I'm – I've got a job with no description.
- Q. So was there any calling of new councillors particularly together before the first official meeting in terms of giving you some sort of induction process?
- A. No.
- Q. Has one occurred since that meeting?
- A. No, but after the actual meeting and because I was a little disappointed with that particular process I did email, ask for certain particulars and I certainly got them very – very quickly.
- Q. But you only got documents in response to asking for them.
- A. That's right.

- Q. So there was no attempt to hand you a copy of the code of conduct - - -
A. No.
- Q. - - - or the Local Government Act or - - -
A. No.
- Q. - - - any advice regarding your obligations under the pecuniary interest laws?
A. No. I'm only saying that, commissioner, because very much of what we're listening to today seems because councillors like myself have come in here green and not a lot of knowledge and there's an expectation, there's an expectation.
- Q. Now, I understand that there is in fact a councillor training session that's scheduled.
A. Yes.
- Q. You're aware of that?
A. Yes.
- Q. And you'll be attending?
A. I'll certainly be attending if – if it fits in with my diary.

The failures to hand out and to provide some basic commentary or advice about what the key Council documents were about is obviously simply a continuation of bad practices from the past. When the former Mayor, Clr Waterford, was in the witness box he told me, as to the Code of Meeting Practice:

- Q. What steps have been taken to ensure that councillors are familiar with that document?
A. Very little, I would say. They're all given ... copy of it ...
- Q. But beyond handing it out there's been no sort of training session, if you like?
A. No.

It is clear to me, both from Mr North's testimony and that of Clr Carney, that the introductory training and information provision processes for new Councillors, their induction, was insufficient. A more rigorous and business like approach and system needs to be put in place. If Councillors are not armed with all the necessary documents, copies of Council policies, its Code of Conduct, Code of Meeting Practice, and so on, as well as with copies of key pieces of legislation, such as the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979, they do not even stand a chance of getting to first base on coming up to speed with their responsibilities and obligations.

Equally, what Mr North told me about the daunting Management Plan process that the newly elected Councillors will face does not fill me with confidence that these Councillors will be being given the necessary background knowledge and experience they really need to be able to come to grips with what is probably one of the most important tasks they fill in any year, namely the annual Management Plan and budget process.

I read recently a press report of steps being taken by the Wagga Wagga City Council to educate their new Councillors, including a "weekend retreat" somewhere, so that an intensive training course could be given to them. Walgett Shire Council might

consider benchmarking with this and other Councils on the matter, as well as with the LGSA (Igov). I am not suggesting that Walgett Shire Council needs to go as far as Wagga has done, but something along those lines might well be of assistance in the future to new Councillors. It is probably too late to do anything about it this year, but consideration might be given to seeing what the Councillors might like or think they need next year.

Another facet to training and relevant personnel understanding their obligations and so on is in respect of the pecuniary interest provisions of the Local Government Act 1993. Prior to the opening of the public hearings, and having regard to what the Departmental Representatives had to say on the matter in their section 430 investigation report, I sought copies from Council of the Pecuniary Interest Register it is required to maintain under section 450A of the Act. The requirements under that section are obligations expressly imposed personally on a Council General Manager.

I noted from the Register that one Councillor in the 1999-2004 Council had failed to lodge a written return of interests under section 449. One part of that Register copied to me by Council was a summary sheet showing whether or not returns that were required to be lodged by 30 September 2003 had been lodged by all the required persons.

The sheet showed that everyone who Council recorded as having to lodge such returns had done so (though the date of actual receipt in each case is not clear from that document), except for Clr Tim Horan, who is no longer a Councillor at Walgett Shire Council. He stood for election at the 27 March 2004 elections at the neighbouring Coonamble Shire Council, and in fact was elected both as a Councillor and later by his peers as Mayor.

In respect of Clr Horan the summary sheet merely noted, "Phoned and emailed message", but no return of interests appears in the register, and the inference is that none was lodged. This is not satisfactory, and would appear to entail a breach by Clr Horan of his statutory obligations.

I asked Mr North about this matter when he gave oral testimony to me:

Q. ... I called for a copy before we started these hearings of council's pecuniary interest register.

A. Ah hmm.

Q. Do you know what I'm referring to?

A. Yes.

Q. That shows that at least for the councillors in office up until the last elections that one councillor had not in fact lodged a return. Are you aware that that's the case?

A. I certainly am.

Q. There is a note made that there's an email and a phone call about chasing it up but shouldn't that have been followed up?

A. I requested at the time after the due date for the group manager who has responsibilities as public officer to follow it up and make a formal report.

Q. And did that officer make a report?

- A. He may well have done but I don't know, I didn't see it.
- Q. But wasn't that a report that should have come to you - - -
- A. Yes.
- Q. - - - because don't you have specific obligations under the Local Government Act?
- A. I do.
- Q. What would those obligations be?
- A. Well, to report anything like that that didn't comply with requirements.
- Q. That's part of the story. What other? Don't you have an obligation to put all returns in a register - - -
- A. Yes, and that's the case.
- Q. - - - and to table the register?
- A. That's the case.
- Q. Have you in fact been tabling the returns each year as section 450A requires?
- A. I understand we have, yes.
- Q. Well, you say you understand but the obligation under the Act is specifically imposed on you as general manager.
- A. Well, the register is certainly prepared and I'm certainly aware of it being tabled at least once, on one occasion where I was - - -
- Q. If you delegate that task what steps do you take to ensure that the delegation is met so that you in turn are clear in terms of your statutory responsibilities?
- A. Well, only – only to the extent that there is a prompt to do that at a particular time and that's what - - -
- Q. What sort of prompt is that?
- A. Well, the department indicates that there's a date that those things have to be presented, that is 30 August each year.
- Q. And who monitors that prompt?
- A. Well, I monitor it from my own point of view but I have the public officer that deals with it.
- Q. The public officer.
- A. Yes, and the public officer collects that documentation, prepares the file and he reported to me at the end of that process that there was one missing which he was still following through and I indicated that if that wasn't forthcoming in a reasonable time it needed to be reported.
- Q. And yet you didn't apparently receive that report on the matter.
- A. No, I didn't.

This suggests to me that Mr North is not properly managing his responsibilities as General Manager in respect of the Register. Nor did he give me the impression that he knew, off the top of his head, or fully comprehended what his statutory roles and responsibilities were. He responded and appeared to remember documents and requirements when prompted only.

His evidence continued:

- Q. Are you aware of any circulars to councils or other information put out by the Department of Local Government about pecuniary interest matters?
- A. Yes, I am.
- Q. And what is the indication in the circulars as to the role and responsibilities of the general manager in relation to those issues?
- A. Well, in council meetings to advise councillors or the mayor whether they have a conflict or what they should do in terms of those conflicts or pecuniary interest.
- Q. Does the department's circular say that?
- A. Um, I'm – I'm not sure.
- Q. I mean, doesn't the department and hasn't the Local Government Pecuniary Interest Tribunal constantly, repeatedly made it clear that the responsibility for declaring - identifying, declaring and acting appropriately in respect of any pecuniary interest is that of the councillor or the person affected and that person alone?
- A. That's absolutely right but you're asking what my role was - - -
- Q. Yes.
- A. - - - and on occasions I've been asked whether they have a conflict of interest and I've provided that advice.
- Q. Well, in fact I think that you'll find that the suggestion is that it's not in fact your responsibility to be providing that advice. The councillor concerned should be obtaining his or her own advice on the matter and if necessary independent legal advice at their own cost and expense.
- A. I think in both cases that I gave advice the advice was that if they have any doubt to declare it and - - -
- Q. I don't think that it would be appropriate for a general manager to – let me back up a pace. I can see that it's appropriate for a general manager to perhaps nudge a councillor to say, "Perhaps you better think about" – or alert them to the fact that they may need to consider whether they have a pecuniary interest, but I don't think it's a matter for the general manager to be saying, "Tick or cross, you do or you don't have a pecuniary interest." I think that's going too far and I think you'll find that the Department of Local Government and the Pecuniary Interest Tribunal have indicated that that is the situation.
- A. On the two occasions my advice would be that you declare the interest and I – and I take your point.
- Q. What steps did you as general manager take on joining council and particularly having come from Victoria to make yourself aware of the roles and responsibilities and the legal obligations in the New South Wales local government legislation?
- A. Well, before I came and before I came up even for an interview I actually looked at legislation in a general sense to see what covered local government and requirements. When I arrived one of the first things I did was to order the new Act or the Act in print and make sure that I had the regulations, but these days of course you can go straight on-line and get that information - - -
- Q. Right.
- A. - - - to get up to date. I collected an amount of other material relevant but I also had ongoing discussions - and I still have - with my colleagues in other shires on some of the things they're experiencing and some of the concerns that they encounter.
- Q. And yet 3 years after you had joined council the department was able to point to a long list of non-compliances with the legislation.

- A. Yes. I think that's regrettable but that's now a fact and as soon as I was aware we've dealt with it.
- Q. What steps have you taken as general manager to provide a copy of and perhaps even a report and summary in respect of the decision of the Pecuniary Interest Tribunal in respect of Councillor Alan Friend to all the other councillors, that decision – judgment having been passed down on – handed down on 30 August, 2002?
- A. I received a copy of the findings and I checked the council resolution when that matter was first talked about. There was no indication that council instructed the general manager to report back on it. I then spoke to the gentleman concerned to find out whether he had any problems with me releasing it. I think his response was he'd prefer it to come up at another date or for somebody to request it and I respected that – that situation.
- Q. But did you not see a need for all councillors to be aware of the issues raised in that judgment because there but for the grace of God might go they?
- A. I did in a general sense but not specifically to do with that particular case and I respected the right of that individual to not - - -
- Q. Are you aware that those judgments are in fact publicly available documents posted on the Internet?
- A. I am indeed and when I was asked about whether that was being released I said it is obtainable on the Internet so yes, I am.
- Q. But I would put it to you that you had an obligation, a responsibility in terms of your responsibility of keeping councillors advised and informed of their roles and responsibilities to make sure that all councillors were aware of that judgment and at least if not actually provided with a copy of it, directed to where they might find a copy of it, and you're telling me that you did not take those steps simply to accommodate the concerns of Councillor Friend.
- A. Well, I respect your views. At the time I didn't feel that I did have an obligation to release it to the rest of the council.
- Q. What about reporting to the community as a whole?
- A. On that particular matter?
- Q. Yes.
- A. Well, again, my comment about releasing it to the rest of the council, it would follow that I wouldn't release it to the rest of the community.

Clr Horan's failure to lodge the required return of interests under section 449 would appear to be a matter not reported on by the Departmental Representatives in their section 430 investigation report.

It is equally clear from this evidence that Mr North does not fully comprehend and is not properly discharging his responsibilities as General Manager in respect of the pecuniary interest laws.

These are vitally important laws, and vitally important to the Councillors. While, as my questioning brought out, it is in fact the personal responsibility of each and every Councillor to lodge written returns of interests and to declare pecuniary interests at meetings of Council or of its Committees, in accordance with the relevant requirements of the Act, it is equally clear that if the Council General Manager is not on top of the detailed requirements, then his Councillors stand little chance.

Councillors must be mindful that if they are found by the Local Government Pecuniary Interest Tribunal to have breached their obligations in respect of pecuniary interests, then the Tribunal has power to impose a range of sanctions, including disqualifying the Councillor from holding civic office for a period not exceeding five years (section 482 (1) (d) of the Act).

Recommendations

That Council and its General Manager further review all Councillor training and induction procedures to ensure that they are fully adequate to make Councillors aware of their relevant roles and responsibilities as councillors under the Local Government Act 1993.

That the General Manager take steps to ensure that appropriate mechanisms are in place to check and follow up, with all due despatch, that all his obligations in respect of pecuniary interest returns of interests and the Pecuniary Interest Register under the Act are duly discharged.

That the question of the apparent non-lodgement, with the Walgett Shire Council, by former Councillor Tim Horan (but now the Mayor of the Coonamble Shire Council) of a return of his interests under section 449 of the Act for the year ended 30 June 2003, be referred to the Director General of the Department of Local Government for appropriate action.

PART 3

3. ISSUES AND EVENTS EXAMINED IN RESPECT OF THE 1999-2004 COUNCIL

3.1 Issues specifically not examined in this Inquiry – issues covered in the section 430 investigation

The Department of Local Government's section 430 investigation was a fairly comprehensive and wide-ranging investigation of the matters examined by the Departmental Representatives appointed for the purpose. They made a significant number of findings and a substantial number of recommendations.

The evidence before this Inquiry shows that, with only very minor exceptions, all the findings of the Departmental Representatives are not challenged by Council and the Councillors. There seems, therefore, to be little to be served by travelling over the same ground.

I have therefore in general not done so, and only examined particular issues that I considered necessary and relevant from the point of view of my Terms of Reference.

3.2 Factions – Lightning Ridge versus Walgett

If one were to examine the residential addresses of each of the Councillors at the 1999-2004 Council, one might be forgiven for concluding that if Councillors were to vote along factional lines, according to where they come from or reside, then the split at that Council would have been 7:5. But the evidence, or at least the predominant evidence, is that, certainly when it came to voting on matters that entailed the interests of Lightning Ridge when compared with the town of Walgett and the rest of the Walgett Shire, the split was generally 6:6.

Clr Waterford's oral evidence to me on the matter was:

I suppose the only thing I can say is that Walgett councillors as a rule are from a rural basis, a strong rural basis and have been for ad infinitum. Lightning Ridge is basically the new town on the block, has come into being in '57 and over the subsequent years has been getting an extra councillor as the years have progressed to the present day where it's now got around about half. It's got a lot more than half the population but it's got ... very few people vote out that way. So you've got a system where you've got six - a six-all draw in most cases at local government voting.

The potential odd person out was Clr Prue Hutchinson, who resides on a rural property and whose address is given as Walgett, rather than Lightning Ridge.

Clr Waterford's oral evidence to me was that she actually comes from Burren Junction and that she tended to vote according to her conscience on most matters (his words were "a very free thinker"), but at times, and on the crucial and potentially divisive issues, voted with the Lightning Ridge Councillors.

I put this to Clr Friend, when he was in the witness box, but he said he did not agree with all of that proposition. He pointed out that while Clr Hutchinson was the Deputy Mayor under Clr Waterford, she had also been Deputy under Clr Friend for his one year as Mayor in the life of the 1999-2004 Council. But he added:

I suppose theoretically it was six all but, in fact, a lot of the time in a lot of some of the important issues it was ... seven: five.

And later:

Q. I presume that this Lightning Ridge versus Walgett, whether it be seven: five or six: six, is only something that's occurred in '99?

A. No, I think it was, it was going before that.

Q. Was it?

A. I think, I think in the previous 4 years it was alive and well.

Q. Yes.

A. But it's – it has been made worse by these bigger issues that have come up that are obviously costing a lot of money.

Q. Yes.

A. You know, I'm a bit inclined to think there is a money link there with all of these.

Clr David Lane's perspective was also that Clr Hutchinson "voted with her conscience", and "she certainly didn't do whatever the Lightning Ridge so-called faction wanted her to do".

Clr Waterford told me that the six all split between the Councillors along locational lines was not always the outcome of a vote. And the subject matter of the vote, he said, did not always dictate the outcome. So, for example, if the question was about the provision of services or facilities to Lightning Ridge versus Walgett, the vote was not necessarily a six all result.

He added:

It wasn't an inflexible split ever, but it seemed on certain occasions - certain cases like this community centre we seemed to be in some sort of fix on that.

Former Councillor Mrs Joan Treweeke, who served as a Councillor from 1991 to 1999, told me:

My observation in watching council business over 12 years is that generally on issues that pertain to the wide areas of the shire there quite often were unanimous votes ...

Clr Waterford also told me that:

The only thing I've ever really pushed with a casting vote is that community centre.

But he also told me that in his view a lot of the division and problems at Council in recent years related to:

Of recent years we've had an inordinate amount of rescission motions that seem to come up.

He added that these motions came up on "all sorts of things", and were not just limited to development application matters and the like. I consider the question of rescission motions further at section 3.16 of this report.

I asked Cllr Waterford whether he agreed with the Department of Local Government's section 430 investigation report findings that the division between Councillors was hindering progress in the Shire. He said "I wouldn't disagree with it". But when asked if he agreed with the finding that the division is irreconcilable and is the cause of dysfunction within the elected body, his response was:

No, I don't agree with that. ... Only because the council ... got on with the running of the shire.

Yet, in looking at Council's Annual Report for 2002-2003, I noted a particular passage in Cllr Waterford's Mayoral report. I asked him about this:

Q. In your mayoral report of 2002-2003 as published in council's annual report for the same report, you describe the previous 12 months as a demanding and challenging period and later on in the same report you refer to difficult and challenging times. Are you able to tell this inquiry what you were referring to?

A. In all my years on council this last 4 years have seemed to have been - it seems to have built up to a stage where - not just because I was the mayor - it just seems to be a build-up of some of the things that are happening around the shire. I felt - many times in my reports over the last 4 years I felt that this council could have done a hell of a lot better for itself. I always believed this had - this council had a great potential and I said so on many occasions, if only councillors could pull together.

Q. So the problem was a lack of cohesion or agreement amongst councillors in passing resolutions to get things done, was it?

A. In a lot of the cases, yes, but it wasn't just passing of - passing of things in the council, it was the attitude of some people, some councillors outside the arena of council that made it very hard to work within, the letters to the paper and the continuous backbiting, there was a lot of that going on and I felt it very hard. I started to answer some of these allegations in the papers and then I felt it was just - there were so many of them coming through that I felt it was nearly impossible, so what - - -

Q. Now, you've been in politics for 20-plus years and presumably you'd agree that the cut and thrust of politics, to use a hackneyed term, is something that happens, but what you're telling me, I think, is that for the last 4 years this was more than that, was it?

A. Absolutely, more than I'd ever seen in the previous 19, or 18 to 19 years. I'd never seen it as bad.

Q. Was it a single issue-focused thing or was it across the board on various issues and various aspects of council's operations?

A. I look back on it and it seemed to be the personnel that we hired, whether it be the general manager, if the general manager didn't seem to do the right thing

then he was crucified - he was criticised and then crucified and so we went through a series of general managers in the 4 years we were there. ...

Former Councillor Bob Hewlett put the following views in his written submissions to the Inquiry:

In the recent reports from the Dept. of Local Government investigations into complaints lodged against Walgett Shire Council a perception arose of a Walgett – Lightning Ridge split amongst councillors resulting in the Council being rendered ineffective in administering the shire.

I do not believe the elected representatives ever reached that point where they were incapable of administering the affairs of Council nor do I believe the above interpretation of the causes of this “split”. I believe that over the last decade two factions have emerged within Council – one a progressive group concerned with open transparent government, accepting changes and trying to adapt to it and the other group who I will refer to as the “ Old Guard” (A faction mainly composed of long serving councillors with a very conservative outlook). These two factions have ill defined boundaries as the voting patterns on various issues will testify. Over the same period a change of demographics in the shire has been emerging – the growth of Lightning Ridge into the biggest population centre in the area and its desperate need for new infrastructure. These two events occurring over the last decade have blurred into being seen as the so-called Walgett – Lightning Ridge split. Unfortunately as is often the case in any form of government the bitter divisions tended to coalesce around the two particular individuals.

Clr David Lane put similar views to the Inquiry.

The General Manager, Mr Vic North also proffered the following views in his written submissions to the Inquiry:

I wish to submit the following written submission to the Public Inquiry into Walgett Shire Council and specifically comment on the much-publicised ‘division’ between Walgett and Lightning Ridge as well as the performance of Council.

I wish to tender the view that the division as described does not portray the dealings of Council in its true light. In almost three years of dealing with the twelve individual Councillors and Council as a whole I have witnessed incidences where differences and disagreements have occurred between two groups, not groups based on geographical location but rather on the predominance of philosophy. One of these groups, aligned with Lightning Ridge Councillors is more aptly described, as “progressive” while the other group aligned with Walgett Councillors, is rather more “conservative”. The progressive group is inclined to focus on the bigger picture incorporating new initiatives and strategic projects while the conservative group is more comfortable dealing with the day-to-day activities of finance, roads, rates and rubbish. This is not meant to be a criticism of either group, but simply my opinion of what I think is at the root of difference. Look at it whichever way you wish but it is democracy operating at local government level.

Nonetheless, there is evidence that some Councillors, aligned with the conservative group, occasionally display paranoia about Lightning Ridge becoming the head office and perhaps a more vibrant town than Walgett. These Councillors and some members of the Walgett Community have suggested from time to time that there were plans to relocate the head office to Lightning Ridge but I am not aware of any such proposal. Other than a recommendation by two Councillors aligned with the progressive group who proposed a name change and logo change for the Shire in 2002, there has been no suggestion that I am aware of that the headquarters should be shifted to Lightning Ridge.

I got Mr North to elaborate on this when he was giving oral testimony at the public hearings:

- Q. ... In your submissions to this inquiry you've stated that divisions or factions are not based on geographical considerations, but on a progressive versus conservatives split. Could you please explain and elaborate on that.
- A. Yes, commissioner, I believe predominantly it's a philosophical difference, rather than a physical locational difference. One group of the council, as you would put it, aligned with Lightning Ridge has a broader view and a longer term view with respect to strategic and capital projects ... and can from time to time be perhaps not all that interested to the detail of what needs to be put in place, whilst the Walgett-aligned group, as you would refer to it as, are more conservative, interested in providing the services of core business and financial management predominantly, than to be looking at longer term pictures. That's not to say, of course, that that's a consistent activity ...

The perspective of the current Deputy Mayor, Cllr Robert Greenaway, who comes from between Collarenebri and Rowena, and who served on Council for eight years from 1983 to 1991 and then continuously since 1999, was as follows:

- A. I don't consider it a Lightning Ridge versus Walgett, I consider it possibly a Lightning Ridge versus the rest of the shire because really there are only three councillors I consider that are in Walgett. The other three councillors were spread around the – well, eastern section of the shire being Tim Horan from Carinda, myself from Rowena Collarenebri and Prue Hutchinson was sort of in the middle round Cryon which is towards Burren Junction.
- Q. What about – I mean, to the extent that people formed allegiances and whether you call them the X group or the Y group there is a grouping split at council both in the previous council and the current one, I understand. Would you agree with that?
- A. Well, I would agree there's certainly two groups or a different – people with different opinions, maybe different agendas but I feel that that's the case in most local councils.

And shortly afterwards:

I think it's – it's been sort of beat up a little bit, to use the common term. I don't think it's impacted on the operations of the council. There's been a bit of talk so far that Lightning Ridge has suffered because of the split, you might say, but they had the majority on the majority of the last 4 years and I really don't think that – I think we've voted generally to – as we should to try and see that the shire has been managed correctly.

In his written submissions provided to me before the commencement of the public hearings, Mr Vic North, General Manager, expressed the following concerns about the impact the divisions between Councillors in the 1999-2004 Council were having on him and his administration:

The major concern for me as General Manager was a confused and unclear direction from Council on its objectives and priorities for the future benefit of the Community. I was recruited on the understanding that major change and reform was required to strengthen the Shires (sic) future prospects. Council settled on new Vision and Mission Statements and goals and directions, which supported the need for the reform program. However, from that time a level of confusion has prevailed and it hasn't always been easy to achieve a general consensus on the priorities to be implemented. I believe, in addition to the philosophical differences between the two groups of Councillors, other major challenges for Council include the geographical size of the Shire, the complexity and diversity of social issues confronting rural communities, the cultural differences in rural

towns, comparative services and facilities available in each town and village, balancing costs between core service delivery and long term strategic planning and development and the difficult departure from the core industries of agriculture, farming and mining being the economic backbone of the community to focussing on tourism as a strategy for long term economical sustainability.

As in most small towns and villages there is an element of the community who prefer to throw bricks rather than putting their energy into something constructive and worthwhile. Unfortunately, I think some Councillors are being significantly influenced by these antics.
...

While I would suggest that one or two individual Councillors could make a more positive and constructive contribution to Council Meetings and perhaps to the planning for long-term benefits and sustainable outcomes for the Walgett Shire Community, generally speaking, I believe we have very dedicated individuals who commit their time and energy to serve the people of Walgett Shire in the best way they know how. The role of a Councillor is not easy and living in close-knit communities makes this task even more difficult. While there is always room for improvement, on balance and in the circumstances, I believe Council as a whole has performed satisfactorily. ...

I sought more information on these points when Mr North gave oral evidence at the public hearings. He said:

A. ... I guess if there's been a split on council, it's been around whether we're looking at long-term global benefits as opposed to roads, rates and rubbish, and I wrote that in my report to you, but I think that's where a lot of the difference is, rather than a physical locational difference. Obviously that comes into play, but I really think it's a philosophy of what do we do with ratepayers' dollars to provide the services that are core, and obviously we do but - - -

Q. And that's for the councillors to give you direction on.

A. Indeed, and because, I think, you had pretty much a fifty-fifty split on that philosophy that led - - -

Q. Well, yes, you've just pre-empted my very next question.

A. Yeah, led to perhaps uncertainty from management's point of view about what we did. They tried to - - -

Q. So you're saying, are you, that this split between the councillors from one group and the councillors from another group is in fact adversely impacting on, firstly, the ability for direction to be given to you and your administration?

A. Yes, their philosophical differences means that one group is looking to develop more infrastructure, which costs more money, capital money.

Q. The progressives versus the - - -

A. Conservatives.

Q. - - - conservatives.

A. And obviously there's a lot more to be done on our core business, so there's a group that are looking to improve those. So there's a balance between that the management team have been trying to find a way through. Clearly if we're going to have long-term sustainability we need to be looking at what this place is going to be – what it will look like in 20 years' time. I mean, we've got an aged population, mixed population. What sort of services are going to be here and not be here, in order to plan for the future. But at the same time we have to have the balance with what we're supposed to be here for.

At a later stage in Mr North's testimony he also gave me a specific example where he felt that the Councillors had failed to respond to his prompting them for direction

on an important matter. This was on the key question of an appropriate organisation structure. He put a report to the Councillors in January 2003 in which he commented on the difficulties that Council had faced in relation to staffing and organisational issues.

- Q. In January last year you put a report to councillors entitled, Current Organisation Structure and Issues Encountered During the Past 15 Months, and those issues are in the first paragraph of that report, referred to in terms of having confronted management. Were those issues the same difficulties that you've just been telling me about?
- A. Yes, yes, and there was a list of areas that I was seeking to have feedback from the council about, both in terms of direction, but also supporting and dealing with some of those. I still have a copy.
- Q. Mmm.
- A. I saw that as a major document to move forward.
- Q. That report that you sent to the councillors?
- A. Correct.
- Q. Mmm.
- A. However, it didn't have the same level of response that I was expecting for reasons that I explained earlier.

We then spent some time examining details of the points he made in his report to the Councillors, and he conceded that he bore some of the responsibility for this:

- A. ... I guess it's true to say that maybe I didn't articulate it well enough, or there wasn't a willingness to - - -
- Q. Well, the interesting – the bit that I'm interested in is, you know, where does the fault lie, is it with - - -
- A. I'm happy to take - - -
- Q. - - - with your reports or you? I mean, statutorily, I guess, the general manager is the one whose head's on the block if the staff - - -
- A. And if - - -
- Q. - - - don't perform, isn't it?
- A. I'm happy to accept blame where it's my problem and I think I'm certainly in part, but certainly my view was we needed more strategic grunt, as I call it, because of the informal requirements that I thought that I was being recruited to undertake, and so I placed infrastructure, with council's acceptance - I mean, the structure was there but I used - - -
- Q. Would you - - -
- A. - - - the directors.
- Q. Would you accept that perhaps a failure of your reports to look at the big strategic picture and to get bogged down in the detail was perhaps at least in part your fault for a failure of giving adequate direction as to what was expected of them?
- A. Yes, possible, possibly, but certainly the minute we hit the ground there were, as I said, systemic problems and issues which involved all of us at detailed levels, and I guess it was a balance for each of us to make a judgment of that - - -
- Q. Mmm.
- A. - - - dealing with that as opposed to a core activity.

We then proceeded to talk about staff training and development issues, in the context of the problems he was telling me about concerning the failed organisational structure. He told me that he had not specifically faced any refusal by the Councillors to allocate funding and resources for such purposes.

The evidence continued:

- A. ... But nonetheless we needed – there was a flag in there that we needed to do more for it, more with it and there certainly has been in the last 12 to 18 months a lot more training and development opportunities. More and more we're being compelled to put in place compulsory training, particularly for our field staff on the roads. I mean, even for me to stop on the side of the road to talk to my staff I had to do a training program, a health and safety training program. So those requirements - - -
- Q. How to wear your hard hat or something?
A. And when to.
- Q. Yeah.
A. But nonetheless those requirements are compulsory, so we've got no choice, so the money has to be set aside for those, which this, what we see is future opportunities for individuals, and what we've done is to give people, particularly in the office and out on the roads - - -
- Q. Mmm.
A. - - - an opportunity to exchange roles as a way of, you know, broadening their knowledge about what we do, because I think, you know, there's all sorts of good reasons to leave somebody where they are when they're doing a good job but they can become stagnant, and perhaps a bit complacent, or indeed just not understand the full running of the organisation. So I've seen a large change, even though we haven't had a major increase in dollars, of opportunities for staff. We can do a lot more.
- Q. That change has come about as a result of stuff that's happening from within the administration - - -
A. That's right, changed - - -
- Q. - - - rather than direction from council?
A. - - - management philosophy.
- Q. Yes, because at page 3 of that report you've made a recommendation urging the councillors to note the issues and to take the opportunity to discuss matters of importance and of interest for the long-term benefit of the shire. Was this really code for you as the governing body of council need to do something about these issues and show some leadership, ladies and gentlemen?
A. It was both helping us with showing leadership and direction - - -
- Q. Mmm.
A. - - - but also assisting us – well, having dialogue around someone who then challenges the (indistinct)
- Q. So what was the response? I think you've already indicated to me that it was disappointing, but I would just like to revisit that and go over that ground again, if I may.
A. Well, it was raised in a council meeting, I put it up as a council business paper, but I think there was a special meeting held to discuss it, and really it was bogged down on perhaps a misreading of what I was saying, or it may have been the way I wrote it, where they thought that there was really criticism of past administration, and really got tied down on whether or not that was the case rather than dealing

with the issues that I was raising. So in that context from my point of view at least we achieved nothing.

Q. And despite the fact that you were present, presumably, at the meeting where these misconceptions that you're saying were being read into - - -

A. Yeah.

Q. - - - your report, I mean, presumably you had the opportunity to say, "No, no, no, that's not what I way saying at all."

A. And that's – that's precisely what I did.

Q. But you got nowhere with that, I take it?

A. No.

Q. Is there any particular group of councillors who you're pointing the bone at here?

A. No. ...

I pressed Mr North for more information, given his other submissions and evidence to me, but he played a diplomatic hand:

A. You're trying to tie me down, commissioner.

Q. I am - - -

A. Um - - -

Q. - - - because I need to know how the current council is going to perform.

A. No, I think it was, it was a situation where as a total council they didn't seem – the timing didn't seem to be right for them to actually get involved in trying to find solutions and directions at that time. That would be a political response.

Q. It might be a political response, but it's not very helpful for me, I have to say. ...

A. Yes, sure. I really don't know, to be honest.

Q. You don't?

A. I really don't know the answer.

Later still in his evidence I asked him as to his views as to the impact, if any, of the split on the functioning of the Council:

Q. And whether you classify the division amongst councillors as Lightning Ridge versus Walgett, or progressives versus conservatives, the outcome of that division is the same, is it not, that it's adversely impacting on the functioning of this council?

A. I didn't go that far - - -

Q. Ah hmm.

A. - - - to say it was adversely affecting council. It certainly would be – could be better if, if there was cooperation and - - -

Q. It's not helpful?

A. It's not helpful, correct.

3.3 Charter Obligation: the provision of services and facilities to the community

The very first item listed in the list of obligations that a Council has under its section 8 Charter is to provide directly or on behalf of other levels of government, *after due consultation*, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively [emphasis added]. Section 24 of the Act to some extent complements this provision.

There are a number of important facets, or if you like qualifications, to this Charter obligation.

The first is the need to distribute services and facilities after due consultation, which means with the community, primarily, as well as other service providers and so on.

The second is that the services and facilities provided must be adequate, equitable and appropriate. These words clearly imply, in my view, that those services and facilities should be provided, as near as can be in all the particular circumstances, equitably throughout a Council's area, i.e. throughout the Walgett Shire, and not be provided just to certain communities or certain sections of the community, at the expense of others.

But, the role of the Councillors and those responsible for governance at Council, often a difficult role, is to come up with the right balance on this account. They have to balance the competing demands, aspirations and needs against the available and often limited resources.

The "due consultation" referred to above is, so far as the community is concerned, one that needs to be undertaken in appropriate ways, and in compliance with any applicable legal requirements. Subject to this, how any particular Council goes about fulfilling its consultation obligations in any particular case is largely left to the Council to determine for itself.

On the other hand, my role as Commissioner and my Terms of Reference in this case would require that I examine and form views about whether the Councillors and Council had done so adequately and appropriately, so there has to be some element of examining and judging on my part of the judgements taken by others. This is not an easy task, and one needs to resist the temptation to impose or substitute personal and subjective views on or for those of others.

As in all such matters, there is ultimately a range of views that might be held. But at either end of the scale it might be possible to say that Council had clearly got it wrong. If Council's view is somewhere in between, particularly given the overriding requirement for public consultation and input into Council's decision making, then it is not for me as Commissioner to second guess the matter.

The most important of the legal requirements in respect of consultation is the statutorily mandated annual management plan process provided for in Part 2 of Chapter 13 of the Local Government Act 1993. Chapter 13 is entitled “How are councils made accountable for their actions?”

Section 402 of the Act says that during each year Council must prepare a draft management plan with respect to Council’s activities for at least the next three years and Council’s revenue policy for the next year. Section 532 prevents Council from levying rates unless and until this has been done.

The Act prescribes in some detail what must be contained in the management plan. The key section in this regard is section 403. Some of the important points to be covered, for present purposes, are:

- A statement of the principal activities that the Council proposes to conduct, with particulars of, inter alia:
 - Capital works projects to be carried out by Council;
 - Services to be provided by Council;
 - The activities (“access and equity activities”) that Council will undertake in its area to meet the needs of residents in that area, and this must comply with the terms of and priorities identified in Council’s Community or Social Plan [see clauses 27 to 30 of the Local Government (General) Regulation 1999];
- A statement of the objectives and performance targets for each of its principal activities;
- A statement of the means by which Council proposes to achieve these targets.

Other sections in Part 2 of Chapter 13 spell out community consultation procedures that Council must undergo before its final management plan is formally adopted (essentially as a policy statement) by the Council through a resolution of its elected body. That process includes placing the draft plan on public exhibition, allowing a period for the public to make submissions and lodge comments with Council, and then making any necessary amendments to the plan after considering those comments.

In essence, therefore, what Council does in each year is determined by a process that probably starts with the Council staff having their input and putting forward their wish lists and proposed projects, and drafting a first draft of the plan. It then goes to the Councillors who have their say and sign off on it, as a draft. The document then goes into the public exhibition phase, giving the community its say or chance of a say on what it wants its Council to do, and so on.

I am aware that many Councils in the State take the view that they will not enter into the arena of providing community or human services, unless the Council is fully

covered by State and/or Federal funding. This leads directly into the thorny question of the “unfunded mandates” debate, one that I do not propose to enter into.

However, what I would like to say is that dot point 1 of section 8 (1) of the Act does make it quite clear that local government is expected to provide services and facilities from time to time on behalf of other levels of government. I suppose the “sixty-four million dollar question”, as it has probably become in twenty-first century monetary terms, is whether that can reasonably be expected where the other level of government provides no financial assistance. There may be an argument, but one on which I offer no definitive views, that it is implicit in the words of section 8 (a) dot point 1 that, if the services and facilities are to be provided as agent for another level of government, the agent is entitled to be indemnified for this.

It is clearly a difficult question to assess, all the more so for myself and this Inquiry, given the expression of concerns from certain sections of the community, at least, about Council having exited from providing certain community services to its community. Interestingly, some of the exited services were in Walgett and some in Lightning Ridge. Some of the complaints to the Department of Local Government that preceded its preliminary enquiries and subsequent formal investigation were on that topic.

My role as Commissioner and my Terms of Reference would in some respects at least require me to judge the bottom line, the reasonableness and appropriateness of decisions taken by Council on certain matters, and not just to examine whether the processes and means by which Council made those decisions were in accordance with the law, as well as best management practice.

Given the concerns about Council’s having exited these community services, I sought the opportunity of the public hearings to obtain advice and evidence about the impact that this might be having on the level of such services, now provided by others, to the community. For example, I sought advice in this regard from Ms Christina Johansson, Council’s Facilitator Community Services, on the matter, and her evidence is quoted at the next section of this report. In summary, her evidence was that the level of service had not deteriorated, and this was largely corroborated by other witnesses.

On the other hand, Mrs Gai Richardson, at one time, and for a period of 11 years, Council’s co-ordinator of community services, told the Inquiry that in her view the level of service had “deteriorated dramatically”. Ms Johansson disputed Mrs Richardson’s views on this (see section 3.4 of this report). Mrs Richardson, however, made it clear that she opposed Council’s decision to exit the services and in fact believed that “all community services should be under local government”.

Apart from this, I have no evidence to indicate that there has been such a deterioration or adverse impact from Council’s own decision.

I do note that Clr Waterford’s evidence to me was that:

The only reason we moved, we didn't move away from the responsibility of looking after them, we made sure that the - the people who were taking over it were better equipped to handle it than the people we had running it.

The very important question of Lightning Ridge vs Walgett facilities is considered by me at section 3.5 of this report.

In all the circumstances, and having regard to all the available and probative evidence, I am unable (but subject to what I shall now deal with in respect of the provision of infrastructure to its community) to form a *general* view that Council has failed in its Charter obligations in respect of the provision of services and facilities to its community. There is another aspect of failure, however, in relation to the needs of children, dealt with at section 3.4 of this report. That is to say, in some cases I have found evidence of specific failures, but in general terms Council seems to be discharging its overall Charter obligations on the provision of services and facilities to its community.

In its Management Plan (Strategic Plan) for 2003-2008, Council told its community that it set for itself the objective (E8 at p. 33) that it would "continue to ensure that the infrastructure of the Shire is improved". Council's performance measure for 2002-2003 was set as developing separate five year plans for sewerage, water and drainage. The advertised target for that year was at least to have such "development commenced".

But, when it came to reporting on its progress in its Annual Report for 2002-2003, Council's performance is a dismal failure. In each case the reported result was "commencement deferred".

I asked the General Manager about this when he was giving oral evidence at the public hearings.

Q. ... However, I have noted that in reporting on its progress on these plans council has in each case indicated that commencement was deferred and, in fact, there are three such entries. Can you explain please why that might have been so?

A. Yes. Commissioner, it was the same matter we touched on yesterday with the manager, asset management, the role that was to be undertaken by that person was to compile a database of that infrastructure and, as I pointed out yesterday, the only stage that we got to was to have plant and building and property identified. We're still trying to get the roads, sewerage and water data onto the system and to do that someone, and there's one person in our staff that has a good understanding and experience on it, over 40 years, who was sharing that information so that the right information will go onto the system. So - - -

Q. In a nutshell - - -

A. - - - it was delayed.

The evidence of "yesterday" is at section 3.7 of this report.

The questioning continued:

Q. What's been happening since then on these 5-year plans, or are they still in abeyance because of this - - -

-
- A. I'm hoping that we're still working. We've had, obviously, a departure of our utilities person, so there's certainly been a hiatus for a couple of, or 2 or 3 months.
- Q. So there seems to be a lot of major projects, if I can put them that way, that seem to be in hiatus because of the flux of staff, or the unavailability - - -
- A. Yes.

3.4 Charter Obligation: the needs of children

In addition to, and perhaps expanding on, the Charter obligation requiring a Council to provide adequate, equitable and appropriate services and facilities for the community, dot point 4 of section 8 (1) of the Act provides that Council must specifically "promote and ... provide and plan for the needs of children".

In the last section of this report I have considered the question and implication of Council's conscious decision to exit from the provision of certain community or human services. But Council's exit has not been total, and it still provides some such services.

Of particular note are the services that Council provides for and in respect of the needs of children and their parents. I deal with this example as a positive indicator that Council is in some respects meeting, so it appears, its Charter obligations.

But, as the following evidence will demonstrate, the picture is not all as it should be, and in some respects not positive.

The extent of Council's incursion into services for children and their parents can be seen by an examination of Council's Annual Report for 2002-2003.

In that Annual Report Council indicates (at p. 230) that one of its objectives for that year was to "strengthen our involvement with, and our services to, Youth", and that Council's chosen measure to gauge its progress in achieving that object was to lodge a submission for a significant increase in funding for youth services to both the State and Federal Governments. However, the report indicates, when advising Council's ratepayers and community of the outcome, that "several requests have been submitted without success".

At the public hearings, I asked Ms Christina Johansson, Council's Facilitator Community Services (a manager in the organisation, despite the title), and appointed to the position in October 2001, firstly about her responsibilities at Council:

My area of responsibility as a facilitator, community services covers a number of community services which I supervise the system, oversee such as the family day care, youth services and of course there's a variety of local community events such as talking about reconciliation. We also have vacation care within the youth services.

Next, I asked her about the reported lack of success. I had considerable difficulty, both on this and other issues, issues which should have been within her knowledge as the manager concerned to answer. Her evidence was singularly unhelpful. She

seemed to lack an understanding of the issues, let alone the requisite knowledge. It was not, so far as I could ascertain (and I was particularly astute at the time to watch for this) just a question of possible nerves in the witness box. An example, related to this particular question, suffices to show this:

- Q. ... However, the report indicates when advising council's ratepayers and community of the outcome that "several requests have been submitted without success." Could you please provide this inquiry with more information about this.
- A. Currently youth services is undergoing a restructure. We're looking at redefining the services that – that council provides to youth in the community. At the moment we maintain our youth centres and provide vacation care. We also - - -
- Q. I'm not sure you're answering my question. My question was in relation to the report by council to its ratepayers that several requests had been submitted without success. I want to know about - more information about those unsuccessful requests for funding.
- A. I'm not – not sure that I know what you mean.
- Q. Well, council told its community that it was proposing to strengthen its involvement with and to strengthen its services to youth and that council told its ratepayers that it was going to do it by means of making applications for more funding, but council said, "We made several requests without success." I want to know what was applied for and why there was no success.
- A. We are in the - - -
- Q. I mean, I'm not asking you a question that's outside your role, am I?
- A. No. There have been – as part of the structural changes there is also some funding coming towards the shire from the Department of Sport and Rec – Recreation which is looking at a further - - -
- Q. You're telling me that's funding that is coming. I want to know about the funding that you applied for that you did not get and why you did not get it. You don't know.
- A. Thank you.
- Q. If council does not secure external funding from another tier of government does that mean that council is not prepared to do anything itself?
- A. The council is prepared to – to further research funding opportunities.
- Q. That's not my question. If council doesn't get the money from somebody else does that mean that's the end of the story and council is not prepared to do it itself?
- A. Council very much is doing so at the moment.
- Q. Well, what about all the other community services that council exited?
- A. What about them?
- Q. Well, that's what I'm asking you.
- A. Well, these services – there were a number of services such as the neighbourhood centre, which means community transport, neighbour aid and the rural respite services, Meals on Wheels. A decision was made that these services would – would progress better outside council.
- Q. Why was that decision made?
- A. Well, there were – it was a request also, a request made also, I believe, from service-providers who themselves believed that they weren't satisfied with council managing their services.

- Q. And yet I've received evidence from a member of the community, previously an employee at this council, that since council exited those services the level of service has in fact gone down. Would you care to comment on that.
- A. That's not my understanding.
- Q. Well, what is your understanding?
- A. My understanding is that the services are still provided very – very adequately for the shire but they may have – the configuration is somewhat different from how it used to be.

My questioning continued:

- Q. ... Does council have the funds to be able to increase youth services itself?
- A. My – I believe it's – this is not – this is not possible.
- Q. Is it council's intent to try and increase youth services?
- A. With external funding, the partnerships.
- Q. So how is that external funding going to be applied for? I mean, we're coming back full circle to what I was trying, with a singular lack of success, to get some information on. The annual report says you tried to get funding but you were not successful. I'm trying to find out what went wrong, what's the problem, why was there no success. You simply don't know, is it?
- A. I – I don't believe that I have addressed the funding opportunities with the youth services. I – I don't believe I have applied for any funding – external funding, me personally. We also have a youth development officer.
- Q. But if you're the facilitator, I mean, you're in charge of that area subject to you reporting to John Burden, are you not?
- A. That's right.
- Q. Well, therefore, if council had made an application for that funding you'd know about it, wouldn't you?
- A. I only know – I do know about the Department of Sport and Recreation funding.
- Q. And has there been any such application for youth funding to that department?
- A. Yes.
- Q. And what was the outcome of that application?
- A. It's just waiting to be put into place.
- Q. Well, why was council telling its community, at least as of 30 June last year that it was without success?
- A. It may not have been announced.
- Q. You're guessing though.
- A. That's right.

It is clear from this evidence, and from what is stated in the Annual Report, that Council's performance on the provision of youth services is not all that it might be, and certainly not what Council itself has declared that it aspires to.

At p. 169 of the Annual Report is a page from Council's "Shire Community Plan/Profile", which I take to be its social and community plan, which deals specifically with "children's services". On that score mention is made of family day care services provided by Council. I asked Ms Johansson about this. She told me that Council had remained in family day care, despite exiting other community or

human services, because “with family day care there is no other option”, that is to say no other alternative provider.

My questioning continued:

- Q. The annual report talks about grants received for family day care for both Walgett and Lightning Ridge and there were 50 places, I understand, at each centre. Can you give me more information about that?
- A. Family day care is wonderful, a much-needed service but it has struggled due to issues with attracting carers to provide care for – for families. We have recently reduced the places to 45 for the whole shire rather than a hundred.
- Q. You’ve reduced the number of places?
- A. That’s right.
- Q. I thought council was seeking to increase them.
- A. No, we’re not in a position to do so.
- Q. Why is that?
- A. Lack of carer numbers.
- Q. How can that problem be overcome?
- A. Well, we’ve had a marked increase in carer numbers just recently so there is a lot of good work being done and so it’s looking positive at the moment.
- Q. It’s looking positive. What does - - -
- A. It means that we are actually got increased - - -
- Q. There are lots of sort of vague statements coming out that I’m sort of having difficulty finding where the meat is.
- A. Well, the numbers, the carer numbers have increased, therefore – but it still doesn’t warrant - - -
- Q. I mean, you seem to have got to the stage where you were telling me things were pretty hunky-dory, pretty good, and yet you started by telling me that there was a problem, so I’m utterly confused as to what the situation is.
- A. No, there was a problem – there is a problem, there still is a problem with attracting carers. It’s something that is consistently – we are consistently promoting for more carers to join the family day care scheme. What I’m saying is that the numbers – number of carers is now seven which doesn’t sound very much but it’s actually good, which doesn’t warrant for us to increase the - - -
- Q. But there is a need for more carers but you can’t get them.
- A. The community certainly, well, particularly Walgett community relies very much on - - -
- Q. Well, how is council going to solve this problem – can council solve the problem?
- A. Well, we – we can but continue promoting it. We’ve got a new energetic – a new and energetic coordinator and she’s very well focused on – on – on promoting family day care and attracting – attempting to attract carers.
- Q. But the ratepayers are saying that there’s all this money being spent but what are the results? “We want some bangs for our bucks.”
- A. Well, at the moment even though it’s such a – such an important service that we need in the community and – and it’s – it’s not carrying itself very well but it’s nevertheless an important one and I believe council is supporting family day care because - - -

- Q. So council is continuing with its children's services, family day care and so on but it decided to exit the other ones.
- A. Yes.

Also at p. 169 of the Annual Report, mention is made of "vacation care" services provided by Council. I asked Ms Johansson about that:

- Q. ... What can you tell me about the vacation care program?
- A. Vacation care is – is a holiday program of activities for schoolchildren during the holiday period.
- Q. Is that available for all children in the shire or is it only available for children in particular localities?
- A. Well, it is available in Lightning Ridge, Grawin and Collarenebri and there is vacation care in Walgett but it's run – it's operated through the Walgett Aboriginal Medical Service.
- Q. So council's vacation care is only in Lightning Ridge and Collarenebri.
- A. And Grawin.

3.5 Charter Obligation: the provision of services and facilities to the community – the question of Lightning Ridge versus Walgett

There was a deal of evidence before this Inquiry suggesting that there are fairly widespread views that there is a degree of imbalance between services and facilities provided by the Walgett Shire Council to the town of Lightning Ridge and what is provided to the town of Walgett and the rest of the Shire. Not only is it maintained that there is such an imbalance, it is more moreover alleged that Councillors from Walgett and the rest of the Shire have been responsible for failing to address the imbalance. I understand that it has become a matter of some general controversy, dividing the two communities.

Clr Waterford told the Inquiry:

- A. But it just amazed me. But whenever I travelled the shire, and I did it at least twice a year, travelled to different small towns, had meetings with them, the perception was that Lightning Ridge was getting all the money. Now, I don't know where it kept on coming from, but it was obvious that people were pushing the barrow that Lightning Ridge was getting all the money.
- Q. Well, there's certainly a view, isn't there, that Lightning Ridge hasn't got much in the way of public facilities or services?
- A. That was the view from the people of Lightning Ridge, not anywhere else, you know, there's no public hall, there's no government housing, there's no - there's very little.
- Q. Mmm.
- A. Everything in Lightning Ridge has been built by the people in Lightning Ridge. There's a lot of money out there - - -

In most cases, as Clr Waterford's evidence indicated, the suggestion is that Lightning Ridge gets a lot less than the rest of the Shire. And there is clear evidence

to indicate that on many social facets Lightning Ridge *is* a socially disadvantaged area – for example, when giving oral testimony to this Inquiry, Mrs Joan Treweeke, former Councillor from the 1999-2004 Council, tendered a booklet, entitled “Community Adversity and Resilience” by Professor Tony Vincent, issued by the Ignatius Centre for Social Policy and Research in March 2004, which showed (p. 69) that Lightning Ridge was one of some seven areas of Australia in the “most disadvantaged” category, set out in a table of the “forty highest-ranking postcode areas [for NSW] on general disadvantage factor”.

But, questions of social disadvantage raise issues and areas of responsibility that may not necessarily be those for which the Walgett Shire Council, as the relevant arm of *local* government in the area, has the relevant jurisdiction or powers, or the dominant jurisdiction or responsibilities.

It is clear that, historically, Lightning Ridge is the newer community, and as a result has some catching up to do, in terms of what is publicly provided, or more particularly in Council provided services and especially facilities. Nearly all witnesses before me conceded that point.

This Inquiry is not an appropriate forum to examine and establish how historically this might have become so. Nor is it an appropriate forum to examine and establish who, if anybody, is to blame for this. That would be entirely unproductive.

The issue for this Inquiry is whether or not the 1999-2004 Council has met its Charter obligations on service and facility delivery to the Shire.

I have noted one side of the allegations, namely the alleged imbalances in favour of the rest of the Shire. In other cases, however, and perhaps more recently, a view has apparently gained currency in some quarters that, at least when the Lightning Ridge Councillors had the majority (i.e. when Clr Waterford was Mayor and held the casting vote rights) there was an imbalance in what Council was doing, in favour of Lightning Ridge. See, for example, some of the remarks from Clr Waterford himself, quoted at the commencement of this section of my report. Clr David Lane, a Lightning Ridge Councillor, put it to me in a written submission that:

In the report to the investigators May 2003 author unknown it is claimed that the Lightning Ridge councillors direct all the expenditure to Lightning Ridge. This is of course laughable nonsense and even a cursory glance of the budget will confirm this, refer attached council report annex A and the attached 356 vote expenditure report annex B. Unfortunately these allegations repeated over and over ad nauseam have started to gain some credence among the community, especially Walgett and the other smaller villages where they are looking for someone to blame for all the ills of changing social and economic times, so they blame Lightning Ridge for it.

In this case, in my view, the evidence supports the Councillor’s thesis, at least on this aspect of the question.

In his oral testimony to the Inquiry, Clr Lane indicated:

Lightning Ridge has certainly suffered shortfalls over the last 25 years but I believe slowly and surely as budgets allow there has been an increase in infrastructure in Lightning Ridge and it will eventually right itself.

I sought advice from the General Manager at the public hearings as to the allegations made to this Inquiry that Lightning Ridge was not getting a fair share of resources, when compared with the town of Walgett and the rest of the Shire:

- Q. What about the question of competition for resources between Lightning Ridge and Walgett? You've said in your written submissions that some of the councillors aligned with what you described as the conservative group occasionally display paranoia about Lightning Ridge becoming the head office and perhaps more vibrant than Walgett. Again, would you like to elaborate on that?
- A. Yeah, I think there is a paranoia that spreads through Walgett itself losing the head office, and perhaps because of its long standing, obviously, it's the town in the shire that's been around the longest.
- Q. But there's no actual proposal to transfer the - - -
- A. Well, certainly not in, not in - - -
- Q. - - - the headquarters of the shire?
- A. Not in my time and I - and I can't see how you could justify relocating a building at this cost for that purpose, so. However, I did allude to the fact that one of the Lightning Ridge-aligned councillors had put a proposal to change the name and logo, which triggered that, what I call paranoia.

At section 3.3 of this report, I have set out a brief overview of the requirements of the Act in respect of Council's obligations to have an annual management plan, and to produce it after a community consultative process. This process allows Council's community to have a say and an input into what Council is going to do for the year ahead, and following years, and on which projects it is going to undertake, where it is going to spend its money on the provision of services and facilities, how much and so on.

It is, of course, Council's elected body that is the key determinant as to what is going to be done in the year(s) ahead, where it is going to be done and how much is going to be spent. It is Council's elected body, accordingly, that is accountable if Council has failed to meet its Charter obligations in this regard. In other words, if there is in fact an inappropriate and indefensible imbalance in what the elected body has determined is going to be done, in various parts of the Shire, it is that body that must accept the responsibility, and be judged accordingly.

At the public hearings the General Manager also told me about the processes followed by Council, in the context of its annual management plan process (Council calls the document its "Strategic Plan", but I consider this a confusing use of terminology, because the term strategic plan is frequently used in other contexts, for example in relation to strategic land use planning), for determining what moneys are going to be spent on what projects and where:

- Q. When council's draft management plan is being prepared each year for presentation to councillors for approval what steps are taken to ensure that services are provided to all parts of the shire, so that council may meet its charter obligations under section 8 of the Local Government Act?
- A. Well, I suppose throughout the previous year we have feedback on certain things that need capital or other attention, so they are always recorded and brought up into that estimates – draft estimates process. So we'll have a number of items that have been raised throughout the last 12 months that require council's attention, so

that that's addressed. We have activities now in each of the centres on a regular basis – each of the towns and villages on a regular basis – our parks and gardens people - and they would raise things through the management team. But at the end of the day every – of the information that goes to council at that special meeting that usually happens prior to the council meeting is information that's gleaned and gathered by every executive and management teams throughout the period, and it's their view about what needs to come forth.

Q. Ah hmm.

A. Council, of course, individual councillors will put forward other things at that meeting and we bring together a revised draft.

Q. Does council have any formal structure in place, and the names may well differ, but, you know, does it have a local area consultative committee, or a precinct committee, or a group of persons from particular locations or towns who act as the sounding board for ideas and projects that council might undertake in the forthcoming year that – and those ideas feed into the preliminary draft management plan process? I mean, many other councils have such a process, does Walgett?

A. We don't have one specifically for that, we've got a number of committees that obviously look at specific issues, whether they be traffic issues, or - - -

Q. Mmm.

A. - - - or things like that, but - - -

Q. No, I'm looking at – I'm thinking in terms of committees of community representatives who are able to put up ideas for work to be done and things to be done in particular locations, you know, a committee from Walgett - - -

A. We don't have specific - - -

Q. - - - a committee from Lightning Ridge, and so on.

A. We don't have specific committees set up by council to contribute - - -

Q. Has it ever been considered?

A. It may well have – I haven't been part of a discussion where that's been raised, but I can certainly say that there's, there's enough committees around in the shire that you would have the opportunity to feed in - - -

Q. It just strikes me that that's a possible process that - - -

A. Yes.

Q. - - - may help to manage these perceptions that there are imbalances and one community, or one locality, is missing out at the expense of others.

A. Yes, and I think that's a good idea. However, I suspect that each group, or each centre, will come up with a wish list that still needs to be cut back and - - -

Q. For sure, and – nonetheless it provides a formal process.

A. Yes.

The General Manager went on to confirm that for the current Strategic Plan that Council has in place:

... the only formal process to contribute directly into this strategic plan was the meetings were held in Lightning Ridge and Walgett recently to determine the strategic projects that they've - - - ... of interest to those, those areas.

It is clear therefore that Council has followed the correct and appropriate procedures to determine priorities for projects in the two centres of Lightning Ridge and Walgett,

even if there may be means by which each centre might be given a greater empowerment and say, such as the institution of a precinct committee system, with each committee being given a small budget of its own, with freedom to spend those moneys locally.

The next question to consider is whether there is any credence to the views, apparently, as I have already indicated, widely held by some in the community, that Lightning Ridge is not getting its fair share. The evidence in this Inquiry suggests that this is largely a misconception.

Lightning Ridge does have a good many Council provided or Council assisted facilities, such as a swimming pool, parks and gardens, and so on. Some of these have only been provided in more recent times, but, as indicated in section 3.3 of this report, the Councillors have to balance needs against available resources and determine priorities.

Both Walgett and Lightning Ridge have their Council owned and operated Visitor Information Centres, both have Council libraries.

The General Manager told me:

there is a very big activity, the swimming, the swimming association at Lightning Ridge that gets a fair amount of money from council to maintain the swimming complex ...

The fact that this pool may not have got off the ground without considerable community input is not to the point, in my view.

The senior manager currently holding the position of Group Manager Services Management, but who for some time until August 2003 held the other Group Manager role, that relating to Infrastructure Management, Mr John Burden, gave oral evidence that:

Lightning Ridge has a swimming pool, a theme park. It also has a – what they call a gymnasium but we know it as a public hall although it's not used as that. Then in terms of council-owned - owned facilities that is, in Walgett we have the swimming pool, we have a number of old halls like the youth centre. I don't – I believe that Walgett has probably got the older infrastructure, Lightning Ridge has got the more modern which they've earned and they, you know, the community has contributed to.

A number of Councillors, Clr Waterford, the former Mayor, among them, drew my attention to a staff report provided to the Councillors that purportedly demonstrated that there was a clear imbalance in Council expenditures between Lightning Ridge and Walgett. Clr Waterford in fact tendered two separate documents to the Inquiry which he maintained supported his views.

The first document comprised two pages, clearly an extract of Council minutes, which related to item 3.4 of an agenda for a Council meeting. The agenda item was headed "2002/2003 Budgeted comparative expenditure against income for towns and villages". It sets out a table of expenditures on a long list of services and facilities, apportioned according to particular towns or localities in the Shire. The copy of the document tendered to me by Clr Waterford was such that it was difficult

to identify which meeting of Council it hailed from. However, after further enquiries with Council, we were able to identify the meeting as being Council's Finance Committee meeting of 24 June 2002.

That document also indicated the total expenditures on these services and facilities in each such place. The total for Walgett was \$1.135 million, out of a total budgeted expenditure for that year of \$2,248,549. The total for Lightning Ridge is shown as \$519,400.

Also shown, at the top of the table, are supposed ABS population figures for 1996 for each place. The figure for Walgett is given as 3,613, and the figure for Lightning Ridge as 3,253 (with an addendum of another alleged population figure from "L/Ridge P.O. Data Base" of 6,280).

Despite the fact that these figures purport to come from a Council document and minutes, I must question the accuracy of them, for a number of reasons.

I have at section 4.5 of this report closely examined the reliable available evidence as to population figures for the two centres of Walgett and Lightning Ridge. The ABS figures for those places are clearly not the figures contained in the Council document that Clr Waterford tendered to me. The figures in the Council document are, in my view, not accurate and are unreliable. Also at section 4.5 of this report, I have also given my views as to the reliability and usability, for Council planning and decision making purposes, of alleged population figures based on Australia Post figures.

Presumably, Clr Waterford, and others, look at the Council produced figures, see that the populations for Walgett and Lightning Ridge are about the same, then, noting that the expenditures for the two centres are also not the same, conclude that, Q.E.D., Lightning Ridge is not getting a proper or fair share of moneys being spent by Council.

Clearly, therefore, on these bald figures, and using that sort of apparent reasoning, Lightning Ridge seems to have had slightly less than one half of the moneys spent on Walgett, at least by the date of that document, in the 2002-2003 financial year. But, it seems to me, care needs to be taken with such figures, and they must be used for what they were intended to be used for and to convey, and must not be taken out of context.

If the information given to the Councillors is misused in that regard there is a serious danger that theses formed on that basis are unreliable, insupportable and even just plain wrong.

It is clear that many of the Lightning Ridge Councillors did interpret the figures in the way I have indicated. The following comes from the minutes of the Finance Committee meeting in question, at p. 15, and is attributed to Council's then Group Manager Services Management, Mr Jo Wooldridge:

Discussion By Council:

Council thanked the Management Team for providing for the first time a break-up of expenditure between towns and villages.

Clr Treweeke and Clr Hewlett requested that budget allocations need to be reviewed to ensure that all towns and villages are treated on an equitable basis.

The General Manager indicated that everyone present shouldn't have any difficulty with the principle of equity by the distribution of budget the problem he said was in the definition of equity and how it would be applied.

The General Manager went on to suggest that rather than re-strike the budget that the recommendation directs Managers as part of increased efficiency and budget management to move to a position of greater equitable distribution of activities and expenditure across the various towns and villages over the next twelve months.

He added that by 3 September 2002, Managers should have made some progress in their planning towards this position and should be able to report.

By the end of the next twelve month period, Managers should be able to strike a budget that better reflects the principles of equity. In the meantime, a discussion paper will be put to Council in July 2002 by the Group Manager Services Management on the issues and proposals to achieve this principle.

It is a pity that the General Manager apparently failed to speak up and have it duly recorded that the push towards the fuss over uneven distribution of expenditure on services and facilities was based on misconceptions and not actually supported by the figures. The inference, supported by other evidence which I have noted elsewhere in this report, was that the General Manager was too keen to be siding with the majority Lightning Ridge Councillors.

The minutes also show that the following resolutions were passed at the meeting, and it is clear that these resolutions and the thinking behind them were tainted by the misunderstandings of the figures provided by staff to the Councillors:

It was resolved, Moved Clr D Lane, Seconded Clr S Jeffries that the report on budgeted comparative income and expenditure for 2002/2003 for towns and villages in the Walgett Shire be noted and that:-

1. Managers to operate and manage budgets over the next twelve months to move closer to achieving in practice the principle of equitable distribution of resources and infrastructure in the various towns and villages.
2. A discussion paper be prepared by the Group Manager Services Management on the definition, issues and considerations for achieving in practice, the principle of equitable distribution of budget allocation.
3. Managers provide an interim report at the 3 September 2002 Budget Review Meeting on progress to date and assemble relevant information to achieve an improved budget distribution for the 2003/2004 financial year.

Clr Waterford tendered to me, at the same time, another or second document. This was a table or spread sheet, having no particular heading or other identifier, which also lists each of the main towns and centres in the Walgett Shire, and then shows

expenditures on such matters as town maintenance, aerodromes, pools etc, cemeteries, parks etc, and domestic waste management, broken down into expenditures made in such places. He tendered this document, too, as allegedly supporting this “imbalance” thesis.

Actually, when Mr Burden was giving oral testimony at the public hearings, he too tendered a copy of a very similar document to this second document that Clr Waterford tendered. The Burden version is one hailing from June 2003, whereas the Waterford version is a slightly earlier one, from April 2003.

Now, the figures for expenditures to April 2003 for Walgett were shown as \$768,614, whereas for Lightning Ridge they were \$398,255 (again about less than one half of the Walgett amount). The figures in the Burden June version were, respectively, \$923,349 and \$561,600. The relativities of these latter numbers are slightly different, but not so different as to be able to say, if one were to accept the figures at face value, that it would seem that Lightning Ridge was still having only about one half of what Walgett was having spent on it.

In both the April and the June versions, the total budgeted expenditure for 2002-2003 for Walgett is given as \$1.027 million, and that for Lightning Ridge as \$567,500. Again, the figure for Lightning Ridge being about one half of that for Walgett.

It seems to me that the two documents that Clr Waterford tendered were really different examples of the same information, the first being a little more detailed as to what the expenditures were on.

Now, with that in mind, I move to the important oral evidence of Mr Burden.

I showed Mr Burden a copy of the first document Clr Waterford tendered. He identified it as a report prepared by his fellow Group Manager, Mr Jo Wooldridge. He also told me that the document that he tabled, and the second document tabled by Clr Waterford, both were based on a “matrix” that he had prepared as the basis of an intended regular monthly report to the Councillors. He added:

I was trying to show them where the expenditure – or where money is being expended ... they were picking up on items that suited their causes rather than looking at it as a management tool and looking at the information. I tried to explain to them, for instance, that in the Walgett area most of the management and supervisory positions are costed in there.

My questioning continued:

Q. So those figures include the overhead expenses, yes.

A. Yes, it's a distortion.

Q. Yes.

A. Now – and we weren't in a position to be able to dissect that information and divide it up amongst all the different areas on any particular basis, so this was only an information sheet just to give – they weren't used to getting this information, I was trying to give it to them.

- Q. So your proposition to me is that some councillors were not understanding the information here.
- A. I think some councillors were making use of that information in ways which were not intended.

Mr Burden told me that “Council now receives a regular monthly report of actual expenditures against budget” (a report that by law must be given, and for a time was not – see section 3.11.3 of this report).

His evidence continued:

- Q. Yes, well, this document was intended to show what was budgeted to be spent in particular places, what had been spent, what’s left to be spent.
- A. Correct.
- Q. Yes. You say that the figures for Walgett - is it only Walgett may be distorted because of overhead expenses in terms of staff salaries or is it all of them?
- A. No, Walgett in the main because we are the main centre, the main depot is here, the supervisory staff for water, sewer, the roads.
- Q. But why were the overheads only attributed to Walgett rather than amortised over the whole of the shire?
- A. We weren’t quite that sophisticated in getting this information. What we did was basically try to get some management reports out because at this stage it was still being done fairly laboriously.

I asked him how much of the budgeted total for Walgett (of \$1.027 million) represented these overhead costs, but he replied:

No, sir, I would only be guessing and I could be way out.

The questioning continued, with my testing whether the documents could nonetheless be usable for the purposes that some of the Councillors appeared to be using them:

- A. But, sir, this is purely a report against the estimates adopted by council so council has adopted estimates based on its known staffing levels at various areas. This is not to divide them up amongst the different towns but to actually report on the estimates that were adopted by council.
- Q. Yes, but it’s been used, at least by some, in this argument as to whether Lightning Ridge is getting its fair share of money.
- A. Correct, but that’s quite incorrect – an incorrect application.

I then went on to ask him about the budgeted expenditure total figures:

- Q. So the actual adopted budget in total for Walgett versus Lightning Ridge is – Walgett’s figure is actually double Lightning Ridge, nearly.
- A. That’s what council – council adopted.
- ...
- Q. So it was the council’s decision through the councillors to spend more money in Walgett than Lightning Ridge.
- A. Correct. Had that shown an over-expenditure in one area against the other then they may have cause to argue that point.

- Q. The budget on this account that the councillors approved, was it any different from the initial drafts that were put up from the staff, from you and the general manager, or is it the same?
- A. In the main it'd be the same.

So, to summarise so far, the evidence shows me that while it was the Councillors who were responsible for setting a budgeted expenditure for Walgett and for Lightning Ridge that resulted in the amount for Walgett, on its face, being about double that for Lightning Ridge, these figures distort the true situation, because Council overhead expenditures relating to its administration (the running of the Shire offices and all the Walgett Shire office staff overhead costs) were lumped in to the Walgett figure, whereas they really need to be amortised over the whole of the Shire, and a different figure (one that is not available to this Inquiry) produced to show the true relativities of expenditures between Walgett versus Lightning Ridge.

Nonetheless, it seems clear to me that the evidence, when put into its proper context, does not support the thesis of those who would argue that Walgett is getting a disproportionate share of expenditures, and hence services and facilities, when compared with Lightning Ridge.

By the same token, however, the evidence also shows that Council has been needlessly distracted by these petty squabbles and misconceptions and jealousies between Walgett and Lightning Ridge and what is spent in each of those places, when compared to each other.

Mr Burden gave me oral testimony about an attempt he had made to get the Councillors to move above this. He told me about a proposal that had put up for Council's consideration, namely that Council should consider obtaining a line of credit to provide it with funds to carry out works and to provide services and facilities in various parts of the Shire. Cllr Waterford described it in the following terms:

That came about because when this first paper came out about how much money was being spent in both Walgett and Lightning Ridge, we accepted that Walgett was a town that has been here for years. ... we realised that the infrastructure in Walgett needed a lot more money to keep the infrastructure going whereas Lightning Ridge was a relatively new town and didn't have that sort of infrastructure, for instance ... street sweeping which was (indistinct) There's streets in Lightning Ridge that didn't have kerb and guttering and so didn't need a street sweeper to go up and down. That's the sort of thing. We realised we couldn't change the perception of that, we couldn't change the rules on that because Walgett needed that sort of money to keep the town clean and tidy. But what we did, we said, "Okay, why don't we bring down a facility" - this is how it came about - "a drawdown facility so we can put some of the infrastructure into Lightning Ridge and get it up to a standard?" But then it changed somewhere and it suddenly became a pool for every town in the Walgett Shire ...

The proposal for the line of credit is considered in more detail in section 3.8 of this report, but for present purposes I note the following evidence from Mr Burden:

- A. I developed or I put up that submission to council and I put it up because - it was a challenge. It was not, you know, trying to necessarily make that happen. The whole idea was that in a previous submission to council there were some - the proposal was that we spend the \$560,000 that we have as a loan that we took out as a loan for domestic waste management development and the proposal to

council was that it be divided up basically \$247,000 to Walgett, \$245,000 to Lightning Ridge and the rest amongst the rest of the towns.

- Q. Ah hmm.
- A. Well, that's the sort of thing that I don't like. To me let's think globally and I was trying to get the councillors to act in concert to provide something throughout the shire and I don't – Lightning Ridge may very well – can very well do with a community centre, I've got no doubt about that and you saw my earlier proposal from 2001 which I'm sure you'll get onto. But I believe that we spend too much time nitpicking rather than have a cohesive global strategy so all of the shire can benefit and that's what I believe they should concentrate on. ... Look, they all – all the towns could do with more facilities, more infrastructure and we can argue for each town.
- Q. But what you're saying is that the councillors lost sight of the ball because of other - nitpicking and squabbles.
- A. Well, lost sight of the ball or the ball was never tossed up at all.
- Q. And this proposal on the floating of the idea, if you like, of a line of credit was to try and get them to focus attention on that issue - - -
- A. To look at the broader objectives.
- ...
- A. I have here a copy of my original submission which was added to in my absence and that was purely just giving them the – you know, the drawdown facility and using the – let's say the opal and fossil museum that we're looking at building at Lightning Ridge as a focal point.
- Q. That's as part of this community centre building.
- A. No, no, separate.
- Q. It's separate, okay.
- A. But it was – you know, if we are going to build an icon such as that then let all the shire benefit. Let's develop, you know, Collarenebri as a fantastic fishing spot. Let's develop that and the caravan park in the area. Let's develop the – the archaeological find at Cuddie Springs and all these areas so that we get people to stop here for 7 days instead of 7 hours. That's the sort of idea I was trying to promote.
- Q. But they didn't pick it up.
- A. They didn't pick it up that way, they still wanted to pick bits and pieces out of it.

However, at section 3.8 of this report, I consider evidence which tends to undermine Mr Burden's propositions.

Newly elected Cllr Danielle Osborne, a real estate agent in Lightning Ridge, told me her perspective on whether Lightning Ridge was missing out on facilities:

- A. And you will find in Lightning Ridge that the community do pull together if they want something. There is a - - -
- Q. Are you suggesting that the council as an organisation did not put its fair share - - -
- A. No, I'm not suggesting that.
- Q. - - - into that pool?

A. No, I'm not suggesting, what I'm suggesting is that the townspeople if they perceive that something is required they will work for it regardless of whether they've got funding. They will get the funds to build it.

Q. So this community spirit and the willingness to go out and do something about anything means that Lightning Ridge doesn't at the end of the day miss out - - -

A. No.

Another newly elected Councillor Lynette Carney also gave me the following perspective of both a newly elected Councillor and a Lightning Ridge resident:

... given that they and the people – 'they' meaning perhaps the Walgett representatives – believed that they were representing perhaps the best interests of their rate paying constituents because they were paying more rates, and we believe as Lightning Ridge people that we had an inequitable distribution then it seems as though there's a breakdown and I must concur with Councillor Woodcock's opinion that surely a talking-through process should have been able to achieve some sort of result.

Clr Woodcock's evidence in this regard is quoted at section 6.2.4 of this report.

She also added:

but it would probably be wise for the council to publicise these matters more broadly.

In his oral testimony the General Manager told me that there was a need and challenge ahead for the Council to deal with and manage the perceptions on such matters. I agree.

... there's certainly an issue that council and the management team need to deal with in terms of what appears to be equity, the equity distribution – equitable distribution of resources and the services.

Q. So how is the management team and council, how are they going to deal with that?

A. Well, I'm not even sure that if you did it on per capita is the right – well, it – that won't be- there's no, not going to be any right decision. The fact of the matter is that some of the towns are well established with infrastructure and other towns, and Lightning Ridge councillors and communities argue regularly that they are short of some basic facilities, and that's, that's right, until the last 18 months they didn't have a park. We've now got two parks. But that's not to say that they are necessarily ahead of the priority order, although - - -

Q. It's a question of catching up, is it?

A. I, I think that's probably right.

Q. Mmm.

A. Although, there's also a perception that with, with a casting vote in the last 2 years to a mayor that headed up an aligned – alignment of Lightning Ridge, that could make the situation worse.

Q. Well, were those sorts of projects ones that were secured by the exercises of – of the exercise of a casting vote?

A. No, I don't think it was, but I think there's a perception that it – that the power's there to do that - - -

Q. Yes.

- A. - - - and it means that – that that might have an influence. I think it – I would like to think it's perception – I would like to think that shortly we'll be able to sort that out, but I don't think we'll ever – we'll satisfy everybody.

Moreover, the new Mayor, Cllr Alan Friend, a Councillor from Walgett, told me, when in the witness box:

... quite frankly, I suppose you would say I'm biased and I would have to agree, but I can't remember in these last 4 years that I've been on council that we've denied Lightning Ridge anything that was reasonable. We haven't been in favour of this HACC building because of the amount of money that was needed to build it and where was it going to come from, who was going to pay it back, who was going to pay the interest? In 1998 when the council before the one that I was elected actually passed for that building to be built around about the \$700,000 and it was passed, and the new council has not really gone past that. They, they would have kept on with that, but they kept making the building bigger and bigger until, as it's been quoted today, \$3.4 million, and that's just out of our league. We just, you know – Mr North says they are progressive. I call that regressive. If you're paying something that you can't afford – for something that you can't afford, that's not progressive.

He went on to tell me about the Lightning Ridge Olympic swimming pool, and about an amount of \$200,000 that Council had lent the proponents of the pool to be able to progress the project. He continued:

We spent just recently \$200,000 to turf an oval. We've talked about drainage up there and there was no question of denying Lightning Ridge help with this drainage. I really can't think of anything that we've ever said that they can't have.

- Q. As long as it's a reasonable cost?
 A. Yes. ... As long as it's sensible because it's not – it's the rest of the shire that's got to pay for it. Lightning Ridge really doesn't generate too much money. ...
- Q. But would you not accept, wearing your hat as a councillor as opposed to a member of the community, that council has an obligation to provide services and facilities and what have you throughout its shire - - -
 A. Certainly.
- Q. - - - whether parts of the shire to which those services might be provided are ones that generate large amounts of rates or not?
 A. Yeah, I do, but I've got to say within reason. I know there's a responsibility there.
- Q. So you're not particularly an advocate of the cross-subsidisation approach?
 A. Not really. ...

Even Cllr Waterford at one stage in the course of his oral testimony at the public hearings told me, in respect of Lightning Ridge:

I'm saying it was getting as much as – as much as this council could afford to give it because there was no more funds there ...

I also took the opportunity, when the General Manager was giving oral evidence, of asking him about perceptions commented on by the Departmental Representatives in their section 430 investigation report:

- Q. At page 81 of the department's investigation report, the formal report, "It is noted that Walgett councillors believe that Lightning Ridge is receiving favoured

treatment from the new senior management of council.” Would you agree with this statement?

A. I don't agree. I certainly don't provide favouritism, I guess because I report to the mayor, and the mayor has been from Lightning Ridge, he can understand.

Q. So the reference to the management is presumably to you and your team?

A. I presume so - - -

Q. Ah hmm.

A. - - - but I don't agree with that. I certainly haven't set out for that to occur and, in fact, the reality is that I spend more time in Walgett, and do more innovative programs in Walgett than I do in any other, other town or village. Lightning Ridge have a very progressive parks and gardens team, that they tend not to be needing our direction or assistance in most part - - -

Q. Mmm.

A. - - - but – so I would disagree with that.

I also sought comments from Clr Friend on the matter:

Q. ... The Department of Local Government in its investigation report said that it is – they noted that Walgett councillors believe that Lightning Ridge is receiving favoured treatment from the new senior management of council, which I understand at least from Mr North's evidence was meaning his regime since 2001. Would you agree with that statement?

A. It's, it's a pretty hard one that, it's – I mean, when you look at issues like the bonus, for instance, you certainly start to think that there's something going on. I mean, I still can't - - -

Q. No, I'm having difficulty in relating the bonus payment to Mr North with the question of expenditures in Lightning Ridge.

A. Well - - -

Q. That's what I'm focusing on, the issue of expenditures - - -

A. Yeah.

Q. - - - in Lightning Ridge.

A. Yeah, I know where you're coming from - - -

Q. Yes.

A. - - - it's got to be a council resolution to make that expenditure, but the general – if the general manager's on side to a group of councillors that does help pave the way, and maybe I'm speaking out of turn - - -

Q. For his bonus, you mean?

A. Sorry?

Q. For his bonus?

A. Yes.

Q. Yes.

A. Maybe I'm speaking out of turn here, but there was - - -

Q. Please feel free (indistinct)

A. There was, there was every, there was every reason why that committee should have reported back to council and it should have been a council vote that bonus be given. Now that's quite simple in my book - - -

Q. Mmm.

-
- A. - - - and they were – two of the most experienced councillors were on that review in the shire and they chose not to do that.
- Q. In fact, you were invited to be part of that process though, were you not?
- A. Yes, and I, I refused because I was the mayor when we hired Mr North ...

Once more, and in all the circumstances, and having regard to all the available and probative evidence, I am unable to form a view that Council has failed in its Charter obligations in respect of the provision of services and facilities to its community, in terms of the equitable provision and distribution of services and facilities between Lightning Ridge and Walgett.

The 1999-2004 Councillors cannot be held responsible, if it were appropriate even to hold anyone responsible, for historical imbalances that might exist, given the largely later development and settlement of Lightning Ridge when compared with the town of Walgett and its other towns, villages and localities. It is clear that Council has progressively been seeking to address the needs of the growing population of Lightning Ridge, and it is clear that Lightning Ridge has in fact been provided, and I would expect will continue to be provided, with a number of important and needed services and facilities. This will need to be done in such a way that the cost and expense of such services and facilities are reasonable and not excessive.

I also note at this point that the evidence of Mr Jo Wooldridge, Council's Group Manager Infrastructure Management, on the relative amounts of rates collected from the two centres was:

- Q. Do you have any information about the relative total dollar amount collected from rates in Walgett versus Lightning Ridge?
- A. I do, commissioner, very very similar figures, in fact the 2003 budget figures were Walgett \$261,000 and Lightning Ridge – in fact \$241,000 and Lightning Ridge \$226,000.

3.6 Charter Obligation: the exercise of community leadership

Another important Charter obligation set out in section 8 (1) of the Act is a requirement to “exercise community leadership” (dot point 2). These words are, of course, fairly broad and to some extent vague, but deliberately and appropriately so. They bring in a range of facets or issues.

The exercise of community leadership can be in the way in which Councillors behave and show initiative and resolve in doing things, appropriately, for the benefit of the community. Aspects of this facet are considered at various places in this report, and a particular example would be what the elected body is doing, or not doing, as the case may be, in respect of the much promised Lightning Ridge Community Centre, as to which see Part 4 of this report.

Another aspect is in terms of how Councillors vote and discharge their obligations at Council meetings, and at section 3.2 of this report I have examined the question of the Lightning Ridge vs. Walgett factions.

Yet another can be in terms of the conduct of Councillors, considered at section 3.13.

3.7 Charter Obligation: Council as the custodian and trustee of public assets

Dot point 7 of section 8 (1) deals with this. Again this is a Charter obligation that can have many connotations and facets.

One aspect is in relation to Council's obligations under Part 2 of Chapter 5 of the Act, concerning the appropriate classification and management of publicly owned, through the Council, lands. That is an issue that was extensively examined by the Departmental Representatives in their section 430 investigation, and is not one that I felt it necessary to re-examine in this Inquiry. The progress, an understandably slow progress, given the state to which Council records were virtually non-existent, and the extent to which Council was years behind in doing what it should have been doing, on implementing the recommendations made in respect of the need to identify, classify and put in place Plans of Management for community lands, is considered in the table at section 2.4 of this report.

Another facet of this Charter obligation is Council's appropriate risk management of potential liability as owner and occupier of such publicly owned lands, along with other lands, such as Crown Reserve Trusts, which Council is not the owner of but is appointed as trustee under the relevant provisions of the Crown Lands Act. The related question of appropriate insurances to cover such potential liabilities, as well as the need to protect ratepayers' funds, is considered at section 3.12 of this report.

Yet another facet relates to Council's due collection of all rental and other payments that it is entitled to under lands owned by it that may be leased out to third parties. This was an issue examined by the Department of Local Government in its section 430 investigation and a number of adverse findings were made in the investigation report. Recommendations were also made about the need to do something about Council's failures. The progress made is reported in the table at section 2.4 of this report.

Yet another facet lies in what Council does in respect of the management of its infrastructure, and the provision it makes not only for the maintenance of that infrastructure but also its ultimate replacement, as and when needed. Council's Management Plan notes the considerable challenges Council faces in that regard, as well as the difficulties Council faces, in terms of its "limited Council income" (p. 5, Mayor's report). As reported at section 3.11.1 of this report, those difficulties have a bearing on Council's financial position and its being on the Department of Local Government financial watch list.

Another aspect to Council's responsibilities in terms of managing its assets is the need to identify and record all such assets – Management Plan objective E1 at p. 30. Council advised its community that its performance measure for 2003-2004 was to "construct a master database", or at least commence that process, giving priority to

“residential properties and plant”. On that account its performance target was to have that done by the end of the financial year in question.

However, the reported outcome, advised to Council’s community in its Annual Report for 2002-2003, was simply that the “database is progressively being assembled”. Once more, Council has failed to meet the targets that Council has set for itself.

A large part of the problem is due to the fact that Council has not had a person on its staff to deal with the matter. Its organisation structure, at least until recently, provided for Council to have an Assets Manager, whose task would be to deal with this and other matters. But Council has not had an Assets Manager in place for some time, and its attempts to hire one have been unsuccessful. The progress, or rather lack of progress, in this regard was regularly reported to the Councillors in the monthly report from the Manager Human Resources.

Another aspect to the question of Council’s management of its assets and infrastructure can be noted in objective E9 that Council set for itself in its Management Plan:

We will plan for the long term efficient management of assets.

Council declared that it would “develop a policy, procedures and appropriate databases, to identify and manage defects in infrastructure Shire wide” and set as a performance measure in that regard that it would have the “project completed by due date”, that date being, under its performance target for that year, “June 2003”. See Council’s Strategic Plan at p. 34.

However, once more, the reported outcome, as advised in its Annual Report, was “systems being evaluated, completion expected by 30/6/2004”.

I asked the General Manager about these matters when he was giving oral testimony at the public hearings. First, I asked him about the job of Manager Council Assets. He told me that it is not going to be filled, and this will be one of the positions disappearing in the current review of Council’s organisation structure. He added:

... that position won’t be filled and the duties are distributed between two other positions at officer level. One of those positions is currently being interviewed for, the technical officer, and then there’s another position which the two group managers are again dealing with, estimates controller, so the functions and duties of that asset manager will be distributed between those two. ... That’s been slower than I again would like to have happened but that’s – that’s the proposal or that’s the action being taken.

My questioning continued:

- Q. Right, because one of the objectives, objective E1 in fact in council’s strategic plan, my copy page 30, identifies certain objectives in relation to asset management.
- A. Yes.
- Q. My concern was given the vacancy in that position how council can fulfil that objective but from what you’re telling me that will be the means by which it’s done.

A. And your concern is absolutely well founded, it is a task that we know is absolutely essential for this council, the asset identification and the database setting up for those and maintenance - - -

Q. Yes, absolutely.

A. - - - which we've never had. Assets is one of our probably longer term, medium to longer term challenges.

Q. In council's annual report for 2002-03 one of the key objectives that council set itself for that year, and that was again E1, was to identify and record all council-owned or controlled assets as per statutory requirements.

A. Yes.

Q. What are the statutory requirements?

A. I can't – I'd only be guessing. I presume listing of all of those assets in some sort of register. We were proposing to do that on a database.

Q. I've also noted from the same page of council's annual report that council's target for that year was to complete that assets register or database but that council only reported that by the end of the year council had only been able to get as far as having the database progressively assembled. Can you please explain why this was so?

A. I don't know why we didn't achieve as much as we had set but I think the incumbent was very much involved in some of the detail around housing and vehicles so the area that was predominantly dealt with by the assets manager was housing and building assets and vehicles and plant.

Q. Was that being done at the expense of looking after the other issues?

A. Well, I guess you could say that but the other issues were very much dependent on partnerships between that person and other members in the engineering area particularly who needed to bring forward their data of our assets such as water and sewerage and those sorts of bits and pieces and I guess the identification of those underground lines in themselves was a task that wasn't on paper but rather in somebody's head because they'd been here for a long time so it was actually trying to get that information from that person which I understand is being done progressively so that we could put them on plans and maps to be then loaded into a database system. But certainly the devotion – and I'm not saying it was right or wrong – was on building assets and vehicles.

Q. So what steps have been taken since 1 July, 2003, which was the cut-off date for that annual report, to remedy and complete the task?

A. I understand that certainly before our utilities manager departed there was an amount of work that was done by him.

Q. Was he the one who had it in his head?

A. No. No, no, it's one of our water and sewerage foremen who had been here for almost 40 years and had got a good knowledge of it but he was gleaning that from that person for the tool but I'm not in a position to be able to tell you just exactly how far that's got and how much information still needs to be done. I would suggest that there'd be a lot still needing to be done.

Q. Right. How long do you think it will take to do?

A. Well, at the beginning we thought it was going to be a 2-year project anyway. Given that the person stayed around about 12 months and there's been a - - -

Q. Things have marked time presumably given the lack of a person in that role.

A. That's right, that's right.

Mr North added:

As I said, I foreshadowed that it's going to be a major problem for council in years to come with a deteriorating asset base and if we don't have it recorded our maintenance cycles - and I suspect we're not the only council that didn't - then we're going to be in dire straits in 10, 20 years' time because of costs and money that's needed to deal with that asset base.

Q. So something is going to be done about that, I take it?

A. Well, it has to be but in order to deal with it we have to collect the data and understand what the deterioration is, what replacement cycles we'll need. I mean, the stuff at the top of the ground is easy but that's going to be a problem in itself. ...

3.8 Charter Obligation: the borrowing of moneys

Dot point 9 of section 8 (1) of the Act provides that another Charter obligation of Council is "to raise funds for local purposes by ... when appropriate, borrowings and grants".

Council is not free to borrow as it pleases, however. There are certain controls on this set out in Part 12 of Chapter 15 of the Act. So, for example, section 622 provides that "a council may borrow by way of overdraft or loan or by any other means approved by the Minister", and section 624 provides that "the Minister may, from time to time, impose limitations or restrictions on borrowings by a particular council or councils generally".

I understand that the last-mentioned provision operates in the following way. Each year Councils are asked to advise what they wish to borrow, and the Minister has to approve such borrowings. Council is not usually required to identify the purpose of its proposed borrowings, but only the maximum amount it proposes to borrow. I understand that this is for the purpose of keeping a control on the total of all local government borrowings in the State, so that the State Government does not exceed its Loan Council limits for the year in question.

Walgett Shire Council has current a number of outstanding borrowings that it has made. However, a proposal was put forward by Council staff for further borrowings to provide funds to be able to meet anticipated infrastructure needs. This proposal, for a proposed "line of credit" for \$2 million, is disclosed in Council's current Strategic Plan for 2003-2008, at p. 148.

That document flags a proposed motion to go before Council's meeting of 23 June 2003 on the matter. It was indicated by the terms of the motion that the intention or purpose of the borrowings was "to enable long term strategic planning for the social and economic development of the shire as a whole". It was also so indicated that if the proposal for such a line of credit was approved (in principle) then there should be "meetings ... held in each Community of Walgett Shire to obtain priorities of projects they wish to have in their communities".

The oral evidence of Council's Group Manager, Services Management, Mr John Burden, about this is set out at section 3.5 of this report.

Actually what is at p. 148 of the Strategic Plan in terms of proposed borrowings is quite inconsistent with what is said at p. 43, where it is stated that “no additional loans are provided for”. I asked the General Manager about this apparent inconsistency:

- Q. You’re saying in one breath on one page you’re not intending to borrow, but then on the last page if somebody was astute enough they would pick up the resolution, which seems to be inconsistent, which you’ve admitted.
- A. Yes, I agree with that.

At Council’s meeting of 23 June 2003 the Councillors considered Council’s then draft Strategic Plan 2003-2008 and annual budget for 2003-2004. They also considered the report from Mr Burden (then serving as Council’s Group Manager Infrastructure Management) on the question of the proposed line of credit (minutes p. 26 et. seq.). That report was quite extensive.

The report commenced by noting that at Council’s May 2003 meeting the Councillors had been asked to consider a motion to free up and use moneys standing in reserves that were allocated to what might be described as defunct projects for other projects. They had determined to do so, to some extent (an issue that the Department examined in its section 430 investigation). But, as the report to the June meeting noted:

This process highlighted the limited funds available for project initiatives, such as “the development of tourism potential, economic development and infrastructure upgrade or replacement” and “the difficulty faced by management in prioritising and allocating limited funds”. It was indicated that “the limit of \$2,000,000 would enable projects to proceed without the need to commit operational funds and it would enable Council to take advantage of funding on offer on a dollar for dollar basis”.

The report went on to note that a number of potential projects had been put forward for consideration in that regard. It listed some 21 such projects, and it is clear from the list that they entailed Shire wide projects. Interestingly, the Lightning Ridge Community Centre is listed amongst such projects, as well as public toilets for both Walgett, Lightning Ridge and Collarenebri.

The report outlined a number of issues for consideration, including “lack of funds to undertake projects that would provide economic and social benefit to the shire”. A number of options were presented for consideration by the Councillors, ranging from merely utilising reserves funding, as Council had resolved at its May meeting, to pursuing the line of credit idea. It was warned that the first such option “allow[ed] for only a few initiatives to be developed”, would entail a “short-term strategy” and that “limited funds restrict shire wide strategies”. The line of credit option was what was recommended.

It was also advised to the Councillor that “once a decision on the make-up of the projects has been taken by Council these will determine the primary focus of the management team over the next five years”. It was clearly not intended that the Councillors identify the candidate projects then and there. Community consultation, as part of the continuing “rollout” of the plan, was envisaged. But it was suggested that, as part of that rollout, and after the consultation phase had been undertaken,

“Council agre[e] to a list of priority capital works projects and new initiatives that satisfy Council’s objectives, for inclusion in the five year plan”. Councillors were also invited, in that manner, to agree to an amount of funds to be allocated to each project.

There was, at least from what is minuted in the minutes of the 23 June 2003 meeting, clearly some debate and disagreement amongst Councillors on what to do. For a start a motion along the lines recommended by the staff was put, moved by two Lightning Ridge faction Councillors, but this resulted in an unsuccessful amendment moved by Clr Greenaway and seconded by Clr Friend (both Walgett faction). They wanted public meetings to be held first, before any decision in principle was made on establishing a line of credit. Frankly, I see nothing wrong with this as a concept, in the same way that I see nothing inherently wrong in proceeding in the order that the original motion envisaged. It is just a matter of subjective choice.

The Deputy Mayor, Clr Hutchinson, then envisaged a further motion, putting a different modus operandi. This became the motion put to the meeting, and it was carried, but with three Walgett Councillors, Clrs Mitchell, Bow and Friend requesting that their names be recorded against the decision.

The resolution of the Council, therefore, was:

1. Council determine to pursue the establishment of a line of credit of \$2,000,000 ... to enable long term strategic planning for the social and economic development of the shire as a whole.
2. If the line of credit ... is approved, that meetings be held in each community of Walgett Shire to obtain priorities of projects they wish to have in their communities.

Therefore, it seems to me, in essence the Councillors did what they were asked to do, and I am not sure that I share or agree with the views that Mr Burden was putting to me in his oral evidence at the public hearings that they failed to “pick up” what he was wanting them to do. Perhaps this was another example of the staff report not being very clear as to what was really intended as the outcome, as the General Manager told me happened on another matter (see section 3.2 of this report).

The General Manager told me at the public hearings:

Well, I don't believe council has made any definite decision to move ahead with a drawdown of \$2,000,000. ... We haven't made any contact with the minister's office. We haven't got an approved list of projects yet. We certainly had those meetings in Lightning Ridge and Walgett to cover the consultation. That paper will be part of the estimates considerations on May 10 [2004].

This last-mentioned meeting is one that the newly elected Councillors of the 2004 Council were at that time due to attend, and have since attended, to deal with the forthcoming approval of Council’s new management plan for 2004-2005.

So, despite what was approved by the Councillors in June 2003, some 11 months later little progress has been made. It seems to me that the fault lies not with the Councillors who, on the evidence, and despite the fact that they appeared not to have gone as far as Mr Burden told me he would have liked, did in fact resolve to

approve the idea of looking further into the establishment of a line of credit, and did agree to the concept of having community consultation occur so that the desired projects that might be pursued with such funding might happen.

Yet none of the Councillors seems to have raised concerns about this, and Mr North's performance appraisal conducted at the end of 2003 resulted in a supposedly good report card – as to which see section 3.21 of this report.

In my view, therefore, the Councillors have, in this respect, failed to adequately discharge their Charter obligations and in particular to show the required leadership on the matter. The elected body is expected to discharge a very important and primary function of overseeing the performance of the General Manager and his administration, and ensuring that what they decide as a policy matter is to occur does in fact get followed through with.

3.9 Charter Obligation: keeping the community informed

Dot point 10 of section 8 (1) of the Act, relating to Council's Charter obligations, requires Council to "keep the community ... informed about its activities".

The principal and statutorily mandated process for achieving this is via the annual process of putting out to its community of an Annual Report, as required by section 428 of the Act. This has to be prepared within five months after the end of each financial year, and its purpose is to report "as to its achievements with respect to the objectives and performance targets set out in its management plan for that year". It is equally implicit in this wording that Council's annual management plan process, and more particularly the community consultation phase of that process, is another important and statutorily mandated means of Council's discharging its Charter obligations in this regard.

I have at various places in this report set out my findings in respect of what Council has so reported in its Strategic Plan for 2003-2008 and in its Annual Report for 2002-2003. In many cases I have highlighted the fact that Council has not achieved what it told its community in its Strategic Plan (management plan) it held itself out as going to achieve and do.

Another example relates to Council's very poor reporting to its community as to what capital projects it is proposing to engage in and how much it will be spending and where the money is coming from in that regard. What is at p. 148 of the Strategic Plan in that regard is, in my view, woefully inadequate, and I spent some time with the General Manager when he was in the witness box talking about this. I compared with him what other Councils, whose documents I had examined in a comparison or benchmarking process, were doing. I do not seek to suggest that what many other Councils do is singularly informative, but those benchmarked in nearly all cases did much better than Walgett Shire Council. I do not propose to go into details in this report. Suffice it to say that the General Manager told me that he took my point, and would follow the matter up.

Recommendation

That Council's General Manager and administration, and in turn Council's elected body, should review, for example by benchmarking with other major rural and regional Councils, how it goes about informing its community on the various matters that the Act requires be reported in its annual Management Plan and in its Annual Report, to ensure that the community is kept adequately and meaningfully informed about such matters.

In other cases, I have brought to light evidence of a failure of the Strategic Plan or Annual Report, as the case may be, to be clear or informative on what it has said or was trying to say. For the present purpose, this is the more important failure.

On many key objectives and projects that the Council set for itself the information given is so poor as to lead to an inevitable conclusion that the community is sadly none the wiser, either as to what Council really was intending to do, and had done, with ratepayers funds and for its benefit, or as to Council's failures. It is equally clear that if the draft management plan that Council puts out for public comment and input into is not clear then that process becomes *a fortiori* flawed.

Another very important key example of failures in this regard is the clear failure of Council to tell its community what it was doing in terms of the proposed Lightning Ridge Community Centre, and in particular how much it was going to cost. It is a damning indictment indeed if a person who is sufficiently interested in Council affairs, amongst an otherwise apathetic community, and who actually stood and was elected to Council, did not know what was the real cost of the proposed centre until she became involved in this Public Inquiry. See the evidence at section 4.22 of this report in this regard.

One example of the poor discharge of Council's Charter obligation in respect of keeping its community informed is in relation to what was, at least in the foreword of the Mayor in the Annual Report for 2002-2003, described as the major project of "Shire Beautification". Yet, in the body of the Report, it is clear that little, if any, money is apparently allocated to this program in Council's budget. When I asked Cllr Waterford about how, otherwise, Council was reporting to its community on its performance on that project, all he could tell me was that:

We've got four, four or five people on the beautification committee. ...

My questioning continued:

- Q. But it's not – it's not – you haven't reported that to your ratepayers in your annual report.
- A. Well, whether it was reported or not it was part of the system that we've had for a beautification program.
- Q. But don't you concede that one of the key purposes of council's annual report is in fact to report on its performance to its ratepayers and its community?
- A. And we do.

- Q. Well, but you haven't reported on what you're telling me.
A. Well, the people out there know that they've had trees pruned.

Really?!

There is, it seems to me, far too much evidence of "spin doctoring", rather than honest and full reporting to Council's community of what is going on, or not going on, at Council. This is clear just from a reading of Council's most recent Strategic Plan and Annual Report, but there are other indications as well. I do also note the following evidence from the General Manager:

I guess our management meetings are all about how, as a management team, we need to send positive messages and deal with the problems we're being challenged with. So my approach has been to try to – and make an attempt to get the management team to think more positively ...

At sections 3.9.1 and 3.9.2 I shall deal with the question of Council's information to its community on its two major flagged projects of tourism and economic development.

3.9.1 Tourism promotion as a principal or key Council activity

Walgett Shire Council's most recent annual rolling management plan (Council calls the document its Strategic Plan), namely for 2003-2008, is an extensive document of some 148 pages. It commences (at p. 5) with a one page foreword from the Mayor, who at the time was Clr Peter Waterford. The largest part of that foreword deals with and highlights, or if you like emphasises, Council's focus on tourism:

We have embarked on a major tourism campaign as a front end to our economic development strategy. The Walgett Shire Strategic Plan was developed by a Community based Council Committee and we have now implemented a number of the actions that were agreed under the Plan including the establishment of two Visitor Information Centres, one in Lightning Ridge and the other in Walgett. Both these centres have been set up to become self funding over the short period ahead by selling products and services which are not in direct competition with local businesses. While the major attractions for visitors to the Shire in the past has been Lightning Ridge and Opal Mining there has been a diverse range of untapped attractions and events across the Shire that we now see as having enormous potential both as complimentary (sic) attractions as well as "draw cards" in their own right. These additional attractions are now being identified and developed on a community level and Council is working cooperatively with the Lightning Ridge Tourist Association, the Walgett and Districts Tourist Association and other community members.

Page 6, the next page, is a one page dealing with the "General Manager's Comments". He tells the community, about halfway down the page, that Council "will continue with the implementation of our major projects including ...", and then in dot point form lists some five such projects of which the second is "the Walgett Shire Tourism Strategy, designed to assist with achieving economic viability and long-term sustainability, by creating the Shire as a tourist destination", and the third is "the Economic Development Strategy".

On page 10 of the Strategic Plan the community is informed about Council's "Mission Statement", which comprises some eight objectives, set out in dot point form. I do not know whether the order in which those points are presented is significant. The fifth is:

Promote the Shire as a great place to live, work and visit.

Pages 12 to 35 are devoted to a tabular presentation of Council's "Outputs, measures and targets". Each output is given a Code reference or number, and in respect of each a "measure" and a "target" are given for the 2003-2004 year (the first year in the five year rolling plan). There are some 35 outputs altogether.

Output A6 (on p. 14) is "we will provide encouragement and support to promote economic growth". The "measure" for this is expressed in terms of creating "new job opportunities ... through Council led initiatives", "identif[ying] opportunities for economic development" and "promoting" the Shire "to attract new investment". The "target" is for each, respectively, the annual reduction in unemployment levels, the identification of "at least three opportunities for economic development" and an "increase [in] community awareness of these opportunities".

Despite the Mayor's foreword stating that the promotion of tourism was intended as the "front end" of the economic development strategic aim of Council, tourism is not mentioned at all in objective A6. Tourism does not get a look in until item F2 on p. 35.

So much for the "front end" focus and importance.

Objective F2 is not even primarily expressed in terms of tourism, but the aim to "promote and market our Shire". The measure is in four parts, the first of which is to "promote the Shire as a tourist destination". The target is "ongoing", and no other information is given. All very illuminating and informative.

When he was giving evidence at the public hearings, I sought to get some clarification on the matter from the General Manager, Mr North:

Q. At council's Strategic Plan for 2003-2008, in fact at page 5, there's the foreword by the mayor where he talks about a major tourism campaign.

A. Yes.

Q. Does that accurately reflect the relative importance of tourism as one of council's key strategic aims - - -

A. Yes.

Q. - - - in its overall policies?

A. Yes. Tourism and economic development are intertwined.

Q. However, council's identified outputs, measures and targets, that is, its identified aims as to what it wishes to do for its community in the period covered by its management plan and the identified performance measures that council says it will be judged by do not out of some 35 such measures appear to mention the Walgett Shire tourism strategy in so many words at all, or am I misreading the document?

My questioning of Mr North continued, with my seeking his assistance, as General Manager, in finding where in Council's Management Plan it had kept the community informed about its supposed major focus as a key objective on tourism:

- Q. And this is what I'm trying to establish as to what you've told your community in terms of council's tourism strategy.
- A. Absolutely right, and there may have been a weakness in bringing some of that material back into this document to properly identify tourism outcomes that we're trying to achieve.
- ...
- Q. I mean, I would have thought that if the tourism – the Walgett Shire tourism strategy, to give it its official title, ought to have been mentioned and flagged there for the benefit of the community as one of the key things, but nowhere does it seem in my looking through the document to be mentioned other than some reference on page 5 in the mayor's foreword.
- A. I concede that that's a possibility. ...

After further questioning on the matter he ultimately conceded the point that the community could well be being misled on the matter:

- Q. But it seems to me that the public, having looked at this document, would not appreciate the significance of council's declared – apparently declared but not very publicly declared focus on tourism promotion.
- A. Yes, I concede that but that wasn't deliberate.

My questioning on the matter continued, having regard to the requirement in section 403 (1) dot point 3 that a management plan is required to include a statement about the means by which Council proposes to achieve the objectives and performance targets of each of its principal activities:

- Q. ... How can council monitor and measure its performance on its apparent aims to promote tourism?
- A. I guess by the achievements and successes that we have on an annual basis but on an ongoing basis.
- Q. But more importantly, how can it monitor and measure its performance and report to its ratepayers and community on its performance if there appear to be no performance measures in the management plan for the goal of tourism? I mean, look at the wording 'ongoing.' How is that a target?
- A. I – I understand where you're coming from.
- Q. It's a bit vague, isn't it?
- A. I mean, promoting the shire as a tourist destination will be ongoing but I guess there are specific – what you're highlighting is specific strategies that are being adopted to achieve that ongoing direction and that's not there, so I accept that it could do more than just say that's what we're doing.
- Q. I mean, it's a fairly sort of motherhood sort of vague statement, 'ongoing' and therefore the community can't see whether you're in fact delivering on what you said you'd promised you'd do.
- A. Well, I accept that this document needs to be perhaps prettied up and detailed more in that regard. I think we should be proud of actually what we've done to put it in here so it's an oversight on both fronts that we've underestimated - - -

-
- Q. Well, yes, and if you are achieving things then you need to make sure that your community is aware of it.
- A. Sure.

A Council management plan is also required to include “a statement of the manner in which the council proposes to assess its performance in respect of each of its principal activities” (section 403 (1) dot point 4). So, my questioning of Mr North continued:

- Q. What information does council have to be able to monitor and assess its success and return to the ratepayers on the expenditure of their scarce funds and resources on tourism promotion?
- A. Well, I simply go back to what’s happening in the community. Councillors are involved in those – those activities and – and I guess what we’re trying to achieve is not going to be achieved in an overnight exercise. It’s going to be an ongoing one where it grows and I think we’ve got a long way to go before we can say that we’ve been successful in establishing this shire as a tourist destination or indeed having many of the things in place that we desire, but we are – we are making every attempt to do that.
- Q. But again I’m having difficulty coming to grips with specifics here. You’re giving me a very generalised statement that’s a bit nebulous.
- A. Well, I mean, there are things that we have achieved so far but it’s nowhere near achieving what we’ve stated as a measure, Promote the shire as a tourist destination because it’s not going to be a tourist destination until we’ve got all of these individual things in place. We now have information centres, we now have identified attractions, we’ve got events and we’ll need to do better at publicising and marketing those in order to see numbers increase that come into the shire to look at those things that we believe are attractions and events ...

Council is required to report on an annual basis to its community on its actual performance on what it sets up for itself in its management plan. This is done via its Annual Report, required by section 428 of the Act.

I therefore closely examined Council’s latest Annual Report, that for 2002-2003, to see what Council had in fact done, or not done, as the case may be, on this and other matters.

That document purports to set out, in tabular format, the required report. At p. 227, and under the identifying Code of B4, Council apparently sought to report on its achievements in respect of its tourist promotion activities.

Mention is made of the target for the year being set as “vigorously promote positive aspects of the Shire externally”. The outcome was expressed in these terms:

Major marketing campaign resulted in 12,000 enquiries, ongoing opportunities identified.

There appeared to be some doubling up on this advice, because under Code item F2 on p. 239, where one of four performance measures is expressed in terms of “promote the Shire as a tourist destination” and another as “community satisfaction”, the outcome in respect of the former used the same words quoted above regarding the marketing campaign, and in respect of the latter simply said “a small number of issues have been identified for Council’s attention”.

Despite the supposed prominence of tourism, there is no other entry about tourism in the fairly long table that makes up that part of the Annual Report which contains Council's "Statement of Performance".

I asked Mr North about the words used in respect of the reporting of Council's alleged achievements in respect of tourist promotion and its marketing campaign:

- Q. Is that the only outcome that was achieved?
A. No, it reflects only one of the major – major, I suppose, indicators.
- Q. But aren't you required to report on all your key outcomes and this is only telling the community about one of them.
A. Yes, I concede that we haven't been that good in elaborating on the outcomes for most of our outputs.
- Q. The other problem I'm having difficulty coming to grips with and perhaps you can please explain is how mere requests for information can be an adequate gauge of success of a marketing campaign.
A. Well, it isn't. It simply shows that 12,000 people responded to advertising that was done about Walgett Shire in a regional network and that's a significant number of people for a first-up campaign. What we can't measure is how many of those did come into town, so we don't know how many actually came into the shire, that's only inquiries about information on Walgett Shire and its attractions.
- Q. So as you're indicating, I think, surely you need some more concrete results such as demonstrated tourism visitor numbers and expenditure on various goods and services in the shire to show that the efforts, the money and the time and resources that are being put into doing this apparently for the benefit of the ratepayers is actually producing some concrete results.
A. I absolutely agree with you but we haven't got to that point yet. We are embarking on a statistical gathering process with New South Wales Tourism ...
- Q. When did that commence?
A. Well, it hasn't commenced, we've only agreed on it in the last month and that will run over the next few months so that we understand who our – what type of visitors we get into the shire and other places in the region and how we can better cater for those particular types of visitors.
- Q. Why has it taken up till last month to start getting involved in that sort of more concrete information gathering?
A. Well, we've been gathering information from the information centres since they've been open but it's not adequate enough and the campaign is going to be a collaborative campaign with New South Wales Tourism and other shires across the western area.
- Q. I think you've told me that the tourism strategy was adopted in 2002.
A. That's correct.
- Q. So it will be nearly, I suppose, ultimately 3 to 3½ years after that strategy was adopted that you're even beginning to get, once the efforts that you just started last month, get some hard evidence to show whether it's working.
A. Well, as you said earlier, our budget isn't very big. An exercise like that has been estimated to cost \$170,000.
- Q. But you're telling your ratepayers that it's a major thing.
A. Yes, it is.
- Q. Aren't you bulldusting your ratepayers on this?
A. No, not at all. ...

I do not agree with this last proposition.

Council's Annual Reports for the two previous years, those for 2000-2001 and 2001-2002, are even less informative on the question of tourist promotion, and this despite the General Manager's evidence to me that Council's tourism strategy document was adopted on 29 April 2002. All that I can find that was said about that is at pp. 10-11 of the more recent of the two documents, in the General Manager's report, reporting that "a new focus has been placed on tourism and a recognition of a wonderfully broad and diverse range of attractions that the Shire has to offer visitors".

The information in both reports is virtually identical in each case, which suggests to me that the more recent document was created by way of a hasty or lazy "copy and paste" exercise from the first, without much effort or thought.

Council must take its reporting obligations and community consultation obligations more seriously.

It is quite clear to me that Council's performance on keeping the community informed about its focus on tourism has been very poor indeed.

It is equally clear that Council's actual performance on implementing its tourism strategy is also pretty nebulous.

3.9.2 Economic development as a major Council activity

As indicated in the last section of this report, tourism is supposedly the "front end" of Council's overriding aim and strategy to promote the development of its Shire for the economic and social well being and prosperity of its community. An admirable objective.

But, how has Council performed on this, and how has the community been kept informed?

The entries in Council's management plan on economic development promotion are set out above, and will not be repeated here. I shall now deal with the question of Council's performance, and reporting of that performance.

On the three identified "measures" for objective A6, the reported performance was, at p. 224 of Council's Annual Report for 2002-2003, on the first, "employment strategy in process of development with community input, delayed by drought & poor economic conditions prevailing".

For the second "economic committee met & still to fully develop strategic approach".

For the third "work still continuing. Some opportunities identified & under negotiation".

A pretty poor performance result, overall. Yet, this is one of the five major projects that Council set up for itself and trumpeted to its community it was undertaking. Despite all the excuses this is a pretty damning indictment of what the 1999-2004 Council was able to achieve, as reported so far, for its community. It is hardly, on this key example, an indication that Council has met its Charter obligations.

I sought more information and clarification from Mr North, when he was in the witness box:

Q. ... the tourism promotion strategy was the key or cornerstone of the economic development strategy?

A. Absolutely right. It's the front end of economic development.

Q. Right. In that case why fragment the strategies in that way when you've got one person at council responsible for economic development but a different person responsible for tourism?

A. I think it's a good question but the economic development process needed to be kicked off with a committee which I proposed to council and council adopted and my group manager, Jo Wooldridge, was going to drive that committee of which I was a member to achieve an economic development strategic plan. Unfortunately we haven't got very far on that activity at this point but the tourism process was to better familiarise our local people with what we had to offer both visitors and businesses so that when we got to the economic development strategy part of this exercise we would have better and positive input into how we might attract businesses and expand existing businesses in the towns of Walgett Shire.

Q. Ah hmm.

A. But we are well behind target on an economic development process.

Q. Why would that be?

A. I – I mean, I think there's a number of reasons for that but I think the - one of those is simply this process we're currently going through which has been ongoing for about 12 months and has had a major impact.

Q. This is the Department - - -

A. Investigation process.

Q. - - - of Local Government investigation.

A. It's certainly had an impact on what we've been able to do and achieve. I think also the coming to awareness of the value of tourism in some parts of the shire has been much slower than I had hoped or planned and I think it was fairly crucial.

Q. And yet you promoted tourism as the cornerstone of economic development.

A. But that's still the case. I mean, the issue is about improving our shire's image and improving our part of New South Wales to be able to attract people and the first part of that was an awareness about how do you attract visitors. When you start to think about how do you attract visitors and what sort of things would they come to see in our shire as opposed to somewhere else then it's going to be an easier move into the economic strategic process to then think about how do we attract businesses because if you've got a lot more – sorry, businesses. If you've got a lot more visitors in town then businesses will see there's an opportunity to expand or to come into town and offer their activities.

Q. Would it be correct to say that your perception is or council's perception is that tourism drives economic development?

A. Exactly right and that's what I've been trying to achieve.

But without much success, apparently.

I also sought evidence from Cllr Alan Friend on the question of tourism and its role in relation to economic development:

A. Yes, I think that tourism is good, it can't be neglected and you do what you can, but I think there is a limit that you can go to. I'm on an economic committee, for 4½ years I've been on the economic committee.

Q. Who's the chair of that committee?

A. We just never met.

Q. Really?

A. And I thought that tourism was part of an economic committee.

Q. So the economic committee never met in 4½ years?

A. No. It, it finally did.

Q. Yes.

A. I kicked up a bit of a fuss and I rang - - -

Q. Yes.

A. - - - a meeting was fixed, and I came into town, and the other person that was on the committee with us – only with me, it was only two, he never turned up. He had an apology at the last minute apparently. The next meeting that was – I kept on trying to insist that it should meet, that the committee should be a worthwhile committee, and I think the general manager then roped in a few volunteers from people in the community to then come along. It was quite a good meeting, but we never had another one.

Q. Mmm.

A. And there were no minutes that went to the council.

Q. And yet council's annual report and strategic plan trumpet to the community that it's a major project.

A. Yes, and that worries me.

Me too.

The evidence is that at Council's meeting of 24 June 2002 such a committee was set up, and delegates appointed to it, comprising, from amongst the Councillors, Cllr Waterford, as Mayor, and Cllrs Friend and Treweeke. But, even Cllr Waterford was vague about the Committee when he was asked by me about the matter:

Q. Well, what about council's progress in achieving its economic development aims, were you as mayor a member of council's economic development committee?

A. Yes, I'm ex officio on everything.

Q. And were you chair of that committee while you were the mayor?

A. No, I wasn't but I was - - -

Q. But you were a member ex officio.

A. Ex officio I was - - -

Q. How often does the committee meet?

A. I don't even know who's on the committee, to tell you the truth.

-
- Q. So you can't tell me how often it meets.
A. No, couldn't tell you.

The General Manager's report to the Councillors for the purposes of their 24 June 2002 meeting recommended the setting up of the committee, following the strategic direction Council had already taken in developing its Tourism Strategic Plan. The minutes of the meeting record some comments made by Councillors during the debate, including one from Clr Friend pointing out that he was already on such a Council Committee, by that name, with Clr Treweeke, and that it had not met since it was established in 1999. This says an awful lot for Council's supposed focus on economic development as a major project, as it seems to have been trying to tell its community.

I then asked Clr Waterford about what Council was saying about its progress on promoting economic development, in its Annual Report:

- Q. Another of the performance measures set by council for itself in its annual report for the 2002-03 year was to identify opportunities for economic development and to in fact identify at least three opportunities for economic development. In reporting on its progress, however, it is merely stated that the economic committee met and is still to fully develop a strategic approach. Can you please comment on that.
A. No, because I said I hadn't been to the meeting.
- Q. Likewise another performance measure set by council for itself was that the shire should be promoted to attract new investment.
A. Yes.
- Q. And on its progress on that score it is reported, "Work still continuing, some opportunities identified and under investigation." Are you able to provide to the inquiry more information about that?
A. Yes.

He then proceeded to give me a rather confused story about interest that had been expressed by a motel operator about a block of land in Walgett. Frankly, I do not see that as being a fulfilment by Council of its aim to identify opportunities.

My questioning continued:

- Q. Why was council not able to go any further than simply identifying opportunities?
A. That's – that's one of the problems that Walgett Shire has got. Walgett Shire seems to – the town itself seems to have a - dare I say it - a bad image to the rest of the world. Immediately they have gone and tried to promote a good image, the bars up and down the windows as you drive down and the different other problems we've got associated with that, the Aborigines standing on the street, gives it not a good picture as far as the outside public goes.
- Q. So what follow-up action is being taken by council to follow through with these aims?
A. Nothing on the ground here in Walgett. The only thing I can say is that wherever I go I promote Walgett as a great – a great town to be in and I can only say that the people who live here say, you know, "It's a fantastic town to be in," but I can't do anything more than that.

Not much vision and leadership in that.

3.10 Planning and development matters

In the Department of Local Government's section 430 investigation and report of that investigation a number of issues are examined in respect of Council's very poor performance in the past on strategic land use planning and on its handling of development applications. Again, the findings in this regard are not disputed, and I do not propose, as a result, to go over the same ground.

Much progress has already been made in respect of implementing the Department's recommendations on these matters, and this is noted in the table at section 2.4 of this report. On many of these issues the work will inevitably take much time, and no criticism is directed at Council on this score. When giving oral testimony at the public hearings, Council's Manager Development Services, Mr Matthew Goodwin, told me that in terms of the developmental services function in excess of 90% of the recommendations had already been dealt with and were now on a regular basis being followed.

I do propose to note one word of warning, not from me, but from the Department of Infrastructure, Planning and Natural Resources, provided by way of response to my early enquiries to that Department (see section 1.5) of this report.

The Department is aware that Council has commenced the inevitably long and fairly arduous task of upgrading and modernising its planning instruments. But it had this to say to me on the matter:

Other matters relating to the terms of reference:

- I.) There is an absence of modern and comprehensive planning controls applying to the Shire. Council has been utilising an Interim Development Order (IDO), which was gazetted in 1968 and last amended in the 1980s. The IDO is seriously outdated and is inadequate to effectively and responsibly manage the environmental planning issues in the Walgett Shire.
- II.) Walgett Shire Council sought to introduce a modern local Environmental Plan (LEP) in 1987 and again in 1997. Both of these attempts have effectively failed for reasons not apparent from the Department's records. This is despite input from the Department and other state government agencies. The last references to the 1997 LEP on file dated 28 May 1999 indicates that the Department was not prepared to issue a s65 certificate to allow public exhibition of the draft LEP until specified changes were made.
- III.) An e-mail from current Manager Environmental Services (Matthew Goodwin) on 15 October 2003 indicates a desire to reactivate the LEP process.
- IV.) The Department is of the view that the LEP work undertaken so far has again become outdated due to the significant lapse in time and the shift in the State Government's policies and planning 'best practice' on the preparation of LEPs. It is considered that a 'fresh start' would be appropriate.

Mr Goodwin told me that he had already been in communication with the Department and that suggestions from that Department that a land use study be undertaken as a preliminary step in revising its planning instruments were already being acted on.

One of the issues I canvassed with Mr Goodwin related to a report I had noted he had provided to the Councillors for its meeting of 13 October 2003. This report is to be found at p. 122 and following pages of the minutes of that meeting. The report commences by noting that at a recent meeting of Council a number of Councillors had sought a full report “showing a description of all categories of land within the shire” and about so-called “under the counter maps”.

The report indicated:

The “under the counter maps” are purported to show more detailed zoning than the IDO [Council’s current and outmoded planning instrument: an ‘Interim Development Order’] within the major urban areas in the Shire, such as commercial, residential and industrial zones. Searches of council records have failed to locate any maps which show such detailed ‘zoning’. The only maps that have been found in council records are those gazetted as part of the IDO.

The report noted that in the past it appeared that planning and development decisions may have been made on the basis of such unofficial maps, and that this would have led to all sorts of legal problems. However, it was also advised to the Councillors that:

There is some evidence that the “*under the counter maps*” may have existed in the past, ... However, after 1993 the register only refers to village zoning for urban developments, and so it became consistent with the gazetted zones under the IDO.

Although it is difficult to reconstruct the full background of this situation, it appears that the “*under the counter maps*” may have existed and were used for some time to determine what ‘zone’ a development fell within. Subsequently it seems likely that staff became aware that the “*under the counter maps*” had no formal status, and represented a potential liability. As a result, the problem was corrected and subsequently the correct zoning was then recorded henceforth in the register.

Mr Goodwin’s oral evidence to me was:

A. Approximately 12 months after my coming to council [October 2001] there was a comment made from councillors or others to the effect that there was a zoning system that I was ignoring in terms of the villages in the shire and they referred specifically to an under-the-counter plan which laid out commercial, residential or industrial zoning. At the time my general commentary in response to those sorts of comments was that there’s only one gazetted zoning in the shire for urban areas and that’s village and that’s laid out in the Interim Development Order and Associated Zoning Acts which are, you know, formally recognised under the Environmental Planning and Assessment Act. Further down the track council actually resolved to ask for a report on the under-the-counter plans and I think I prepared a report about mid or late last year on that specific matter.

Q. Yes, I’ve noticed that in the council minutes.

A. Yes. There were assertions on a number of occasions though that there was some legitimate zoning in place within the urban areas within the shire and that seems to be a misapprehension or a misunderstanding that was – you know, that more than one or two people had. My research into the subject suggested that up until about 1993 council staff were noting a commercial or residential and industrial zoning within urban areas in the shire, but the reality was that at even at that time the only gazetted zoning was the village in any of the urban areas.

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- Q. You say up until 1993. Does that mean that since then, at least at the staff level, there have been no problems that you've detected where zoning assessment and development application assessment is being made on an unofficial plan?
- A. No, not that I've detected, not that I've gone searching but that's – I haven't seen any evidence of that.
- Q. So why was there a request from councillors in about August last year for some sort of information on the matter?
- A. I'm not sure what stimulated that request but a misapprehension that there was meant to be some sort of zoning, I can't – I can't - - -
- Q. Now, your report to the councillors disabused them of such a notion. Is that right?
- A. Yes, that's correct.
- Q. Has there been any indication that you've seen that councillors might still be – or some councillors might still be being tempted to assess development applications on the basis of an under-the-counter map zoning?
- A. Not that I've openly seen, no.
- Q. No. So to all intents and purposes the matter has been clarified and cleared up and it's not an ongoing problem.
- A. That's my understanding.

That is good. Were it not the case, I would have had serious concerns about the discharge of their Charter and other responsibilities by the Councillors in respect of planning and development decisions.

3.11 Financial matters – Council's financial performance and other financial watch list considerations

3.11.1 General issues concerning the state of Council's financial health

In his final report as Mayor of the 1999-2004 Council, presented to his fellow Councillors at Council's meeting of 8 March 2004, Clr Waterford thanked all his fellow Councillors "for your input over the last 4 ½ years to get this Council back onto a good financial footing". The evidence before this Inquiry shows that, whilst great gains may have been made from the most unsatisfactory position that Council found itself in only a year or so ago, this is a very overly optimistic and less than correct appraisal of the true situation.

Council's financial performance has certainly improved, but Council remains on the Department of Local Government's financial monitoring or "financial watch" list.

Under dot point 7 of section 8 (1) of the Act, one of a Council's Charter obligations is "to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible". Those assets includes ratepayers funds, raised by the imposition of rates, fees and charges.

It therefore, in my view, goes without saying that if a Council is consistently in a parlous or less than satisfactory financial situation (and this is not just a question of being in the black or the red, as many people seem to think), then its management – the elected body and the General Manager and his administration – are not discharging their responsibilities properly, and are letting the community down.

The Department's financial watch list signifies Councils that have been identified as having financial concerns to the Department of varying degrees. The names of the Councils on that list are advised in the Department of Local Government's Annual Report for each year, the most recent being that for 2002-2003.

On 4 October 2002 the Department wrote to Council to tell it that it would go on the financial watch list. Some of the reasons for this were Council's failure to comply with legislative reporting requirements in respect of financial matters (Council's financial statements for 2000-2001 had been lodged some 286 days late) and a number of concerns raised by Council's own external auditors, Spencer Steer.

Part of the reason for Council's late reporting was staffing problems that it was having. It could not attract or keep staff with the necessary financial skills and experience. But Council's late reporting had been going on for some 5 years. The Department also considered that Council appeared to have poor accounting controls and processes.

Ongoing concerns in respect of financial matters were repeated by the Departmental Representatives in their section 430 investigation report.

Recommendations 30 and 31 in that report provided that:

Recommendation 30: That the Responsible Accounting Officer continues to present quarterly financial reports to council within two months of the end of each quarter.

Recommendation 31: That the Responsible Accounting Officer monitors and reviews income and expenditure each month and reports material differences to council at the meeting following this review.

Another recommendation was that Council remain on the financial monitoring list, and in its response to that report and those recommendations Council accepted that this should be so.

As recently as 18 March 2004, the Department again wrote to Council concerning its financial performance. That letter commenced by noting the existence of a more favourable recent audit report from Spencer Steer, but advised:

However, the Department is concerned with Council's deteriorated asset base, and the low level of funds set aside for infrastructure replacement. Council states that it needs to spend \$8.3 million to bring its infrastructure to a satisfactory standard.

Council's outstanding rates and annual charges percentage stood at 17.6% as at 30 June 2003, which is at an adverse level, and Council should aim to reduce this level.

As a result, Council will continue to be on the Department's financial monitoring list ...

While, for the year ended 30 June 2003, Council reported a surplus (of \$1.712 million) in respect of revenues from ordinary activities, after deducting its expenses from such activities, in contrast to an alarming deficit of \$3.308 million for the corresponding previous year, as noted above, this is not the whole story, and Councillors and others should be mindful of not misleading their community and not putting too much store by such numbers or results. It is also noted that Council's position has fluctuated considerably in previous years, a point of concern to the Department, and one surplus may not necessarily tell a good continuing story.

There are other important key indicators by which a Council's financial performance may be assessed. These are described in the Department of Local Government's annual publication on *Comparative Information on NSW Local Government Councils*, the most recent of which is for the 2001-2002 year.

For the year ended 30 June 2003, Walgett Shire Council obtained a staggering 45% of its revenues from Government grants and contributions. This is a figure that is far too high.

Councils which rely on grants and contributions in percentages in excess of 30% are considered not to be sufficiently revenue self-sufficient. They are overly dependent on grants from external sources, principally State and Federal Governments. It is considered that recent evidence regarding the Roads to Recovery Program in which \$100 million has been set aside specifically for regional projects, requiring a regional bid for such funds and, further, the much publicised recent NSW State Government concerns, when the Federal Grants Commission failed to meet State Government expectations, make it self-evident that local government may similarly suffer a reduction in grants and other contributions in the future.

Furthermore, the recently concluded Federal Parliamentary Inquiry into Cost Shifting may well mean that local government may not necessarily be able to rely upon the same level of funding in grants and contributions as has been the case in the past. It is noted that as recently as 16 March 2004 the Minister for Local Government, while indicating that the NSW Government would seek to fight this, told Parliament:

It is the Federal Government's secret plan to strip New South Wales councils of \$50 million a year in funding from Federal Assistance Grants (FAGs). ... There are some councils in New South Wales that will be crippled by any change. Some country councils rely on those grants for up to 30 per cent of their total incomes.

Recommendation 16 of the report [of the recent Federal Cost Shifting Inquiry] includes centralising the distribution of grants – cutting out the State Grants Commission, which currently distributes the Federal Assistance Grants. In particular, it will abolish the safety net of the minimum grant, which currently protects 22 councils across New South Wales. A loss like this could spell disaster for country communities that rely on 30 per cent of their income coming from the Federal Assistance Grants. These ratepayers rely on their councils for the delivery of services.

3.11.2 Collection of outstanding rates and charges

Another performance ratio or indicator used to assess the financial success or otherwise of a council is the percentage of rates outstanding. The Department of Local Government, in its annual publication *Comparative Information on NSW Local Government Councils*, states that “this indicator assesses the effectiveness of a council’s revenue collection. The percentage of rates, charges and fees that are unpaid at the end of a financial year is a measure of how well a council is managing debt recovery. ... There is no benchmark for the level of outstanding rates, charges and fees. The lower the percentage, the less income is tied up in receivables and the more revenue there is available for council purposes”, such as the provision of services to council’s ratepayers and its community. It is the view of many in local government, a view I share, that a percentage in excess of 6% is a cause for concern.

This Council’s percentage figure of 17.60% shows that far too much money has not been collected, a lot of which could be collected and therefore be available for spending on the delivery of services and facilities for the benefit of the Shire and its community. Moreover, this 17.60% figure represents a steady and continuing decline over previous years. In 2002 it was 15.50%; in 2001 it was 14.0%; and in 2000 it was 12.0%.

In my view this shows clear signs of mismanagement. And the drought cannot be appealed to as a total excuse.

Another of the recommendations in the section 430 investigation report in fact related to concerns about poor debt collection practices in terms of the too high level of outstanding rates and charges. This was recommendation number 37.

In Council’s first quarterly report to the Department (letter dated 23 March 2004), reporting on its progress in dealing with the concerns and recommendations of the section 430 investigation report, Council advised:

Debt recovery has been an ongoing process for Council with preferred approach in the past of negotiating a repayment agreement with debtors to clear outstanding debt rather than (sic) pursuing legal action through our debt recovery agents Receivable Management Limited (RML).

The debt problem has been compounded by the effect of the three-year drought in the area.

However, Council has referred 43 active files, totalling \$197,006.52 to RML, which is in addition to an assessment for which RML is already initiating bankruptcy proceedings to recoup approx. \$64,000.00.

It is planned to submit another batch of debtor files to RML in March 2004 ...

Other areas to be investigated are debt recovery against pensioners, provisions for write off of bad and doubtful debts and sec 713 sales.

This advice shows that Council is now, belatedly, doing something about the matter. But things should never have been allowed to get this far.

In instructing debt recovery agents Council will need to be mindful of the advice of the Director General of the Department in the Department's Circular to Councils No. 04/08 of 24 March 2004.

The question of the recovery of debts apparently owing by Cllr Peter Waterford is considered at section 3.14 of this report.

Let me now move on to another financial performance indicator.

Council's unrestricted current ratio for 2003 was 2.40. This is a marked improvement on that for the previous year, which was 1.40, and a return to the levels of earlier years. In 2001 it was 2.40, and in 2000 it was 2.28.

The unrestricted current ratio (current assets/current liabilities) shows the ability of an operation to meet its cash flow requirements when they fall due. In the words of the Department of Local Government, in its *Comparative Information 2001 – 2002*, "This indicator is a measure of a council's ability to meet its financial obligations such as paying for goods and services supplied. It assesses the level of liquidity and the ability to satisfy obligations as they fall due in the short term. A ratio of 1:1 indicates that unrestricted current assets are available on hand to meet unrestricted current liabilities. If the ratio is less than 1:1, the ratio is unsatisfactory and council may be unable to meet its short term commitments. A ratio of between 1:1 and 2:1 is satisfactory and shows that a council has sufficient liquid assets on hand to meet its short term liabilities. A ratio of 2:1 or better is generally viewed by the industry as good."

3.11.3 Proper reporting of certain financial matters

In the context of recommendations number 30 and 31 of the section 430 investigation report, I note that at Council's meeting of 5 April 2004 (minutes pp. 106-107), a report was presented by Council's Group Manager Services Management, Mr John Burden, informing the Councillors "of the operational performance against the adopted estimates". In other words, Councillors were advised as to how Council's revenues and expenditures were going, in fact, when compared with what had been budgeted for. Such variances have to be reported, in accordance with the recommendations, each month, even though under the relevant Regulation quarterly financial reports have to be given – the point of recommendation 30 being that Council needed to do this, because it had not.

Mr Burden's report sets out a table headed "Budget Performance Analysis". In that table a number of line items are shown, collected under three headings "general fund", "water fund" and "sewer fund". Figures are given, in one column, opposite each such item. Some are in brackets; others not. Beside that is another column with either the comment "favourable" or "adverse", as the case may be. The "favourable" comment appears besides all items where the dollar amount is in

brackets. From this I assume that the showing of a figure in brackets denotes that the amount in question is less than budgeted for.

The point about this table, however, is that the information in it is not clear. In section 2.6 of this report I have noted the advice to me from the General Manager as to his perception as to the lack of experience and awareness of Councillors (at least those in the 1999-2004 Council) on financial matters. It is quite possible that a number of the new Councillors in the 2004 Council may be equally inexperienced in these matters, and may potentially have some difficulty in understanding the information given (this report was of course presented to the newly elected 2004 Council at their first meeting after the elections).

I therefore consider that the General Manager and his senior Manager need to revisit the format of these reports to ensure that they are capable of being fully understood, so that they can in fact function as the useful management tool to the elected body, that they are intended by the Regulation and the Department's recommendations to be.

Council must also be mindful of the fact that it is accountable to its community, and one of the means by which Council discharges that obligation is to ensure that its community is kept fully and adequately informed – Charter obligation dot point 10 under section 8 (1) of the Act. In similar vein sections 9 (2), 11 (1) and 12 of the Act require Council business papers and reports to be publicly available. These reporting obligations will not properly be discharged if what is reported is unclear and incomplete, or incorrect.

There is a more serious aspect to the deficiencies in the report to the meeting of 5 April 2004, however. Recommendation 31 required a monthly reporting of material differences in both income and expenditure from budget. It is not clear whether what is reported in the table in the report is income and/or expenditure. Probably it is the latter. It might even be the net amount. Who knows. If the figures are amounts relating to expenditure, then the report would appear to be deficient in respect of a failure to give information on income.

What really needs to be done is to clearly set out which figures are income variations and which are expenditure variations, and show, in respect of each such item, not only the amount by which the budget figure has varied, but also what was the budgeted figure and what was the actual income or expenditure figure, as the case may be. This will enable, for example, a clearer picture to be presented, and also the determination of the percentage variation. Percentage variations may, at least on one view, be important information, because if there are large such variations then this may highlight the need for Council's elected Councillors, as Council's governing body, to raise questions or call for further reports or actions, so that they can in fact monitor and manage Council's progress, for which they are accountable to Council's ratepayers, community and electors.

The information given in the form of report given to date, therefore, not only fails to meet what the Department had in mind in its recommendations but is potentially misleading and likely to be insufficient for the Councillors to be able to discharge their oversight governance responsibilities.

Recommendation

That Council should revisit the format of its quarterly financial reports and monthly material budget variation reports to Councillors (section 430 investigation report recommendations numbers 30 and 31), and ensure that they are complete, accurate and clear, and provide a meaningful set of information and a means whereby both Council's governing body and the community can reasonably and effectively monitor Council's financial performance.

3.11.4 Revenue raising

One of the issues of revenue collection that the Departmental Representatives examined was in respect to the setting and collection of business rates. Such rates are generally higher than those levied on residential lands. So if Council is not collecting business rates, where it could reasonably and properly do so, Council's management – both its elected Councillors and the General Manager – are failing in their responsibilities to raise funds for local purposes by the fair imposition of rates, charges and fees, and so on – dot point 9 from section 8 (1) of the Act (Council's Charter obligations).

I have examined Council's progress in implementing recommendation 12 of the recommendations in the Department's section 430 investigation report at section 2.4 above (see the table).

If a Council does not raise (and then collect) sufficient revenues, then it will have an insufficient pool of funds out of which it can spend moneys on providing appropriate and sufficient services and facilities to its community.

There is another facet to Council's management undertaking proper and adequate revenue raising. Council's expenses and overheads go up from time to time. Council may also determine, as a policy matter, through its elected body, that it will need more moneys to undertake certain projects. It either gets such moneys from increasing the amount it collects by way of rates, charges and fees, or it seeks Government grant moneys, or it borrows. Whatever it does, it has to comply with relevant legal requirements and other such restrictions.

Under the long-standing rate pegging provisions of the Act (supported by both the Government and the NSW State Opposition), rates can only be increased each year by no more than a maximum amount set by the Minister for Local Government. But, the Act allows special applications to be made by any Council for approval to increase its rates by more than the allowed maximum. These are called "special variations".

When such special variations are approved by the Minister it allows a council to raise higher revenues, in the form of rates, at a level above the annual increase that

operates under the rate pegging provisions of the Act. Such approvals are granted to allow a council, for example, to undertake and finance a particular project.

Conversely, some councils fail to take the annual increase allowed under rate pegging and therefore put their council area at significant disadvantage, which can never be caught up unless that council applies for a special rate variation, which must be for a specific purpose, and not simply to overturn a previous but poor decision. Failure to impose the amount allowed under rate pegging denies residents and ratepayers the opportunity to ensure that their needs for services are adequately funded and met.

Some councils are reluctant to apply for special rate variation even though in some cases the special variation may be necessary to improve services and/or infrastructure. Recent history has proven that successive Ministers for Local Government have supported such special rate variations upon being satisfied that the council will improve its services or infrastructure.

In the case of the Walgett Shire Council, the evidence, from both Council's General Manager and its former Mayor, Clr Waterford, is that Council has, apparently despite its at times poor financial position – for example its very clear lack of available funds to be able to maintain its existing infrastructure, let alone improve or add to it – not sought any special variation to assist it to overcome its needs and problems.

The General Manager's oral evidence to me at the public hearings on this was as follows:

Q. And I asked the mayor yesterday or at least the day before, I suppose it was, as to whether council had in fact sought and been granted a special rate variation, but the answer is no.

A. No.

Q. It's something that has been put up as a proposal?

A. Council has chosen over the period that I've been here not to seek a rate variation.

Q. But in each case it's actually put the rates up by the maximum permissible?

A. Yes, that's correct, yes, and there was some controversy about that last year.

Q. Coming back to the special rate variation, was that something that you and your staff were in fact advocating should be applied for?

A. No, it wasn't. The last 12 months we recommended that the rates be put up by the amount that the state government recommended.

Q. And is that therefore limiting the funding that might be available and therefore the ability to undertake some of these projects?

A. Possibly, but in the same hand the council has to balance that against the ability of the rural ratepayers to pay extra, and I think that was a concern in the current drought climate whether – from some councillors whether even lifting it to the level that state government approved - - -

Q. How does council ascertain what is the will, I mean, do you hold public meetings about, you know, "We can do it for you but you've got to pay, so do you want it"?

A. No, certainly that hasn't happened since I've been here. We've been guided, I guess, by individual councillors in a council forum.

- Q. Who are frightened of losing their seats?
- A. Yes, but I suspect that even if you went out there wouldn't be a consensus one way or the other with the community. There'd be some that would be willing to pay provided the services were better understandably and there would be others that would indicate - - -
- Q. It strikes me that there's a certain amount of lethargy in all that.
- A. It's - - -
- Q. You're not presenting a picture of a get-up-and-go council.
- A. Well, I mean, I think there's opportunities available for community members to raise those issues as well. We have open forums every quarter.
- Q. They're held in the communities themselves?
- A. Well, we have in the past run open forums and public meetings but not specifically around rate increases and - - -
- Q. Well, yes, it's a question of what you ask or how the points are raised in the open forum.
- A. Sure.
- Q. You presumably can't necessarily just say, "Okay, we're having an open forum", and you have all the councillors line up with their arms folded at the front glaring at the audience waiting for somebody to speak.
- A. No, no, most of those are told to us in advance so that we can prepare for whatever's raised. But the point I hear you make is that there may be some merit in consulting with the community about a number of issues and I think that's good governance.
- Q. And, you know, yes, the management plan is one means that's statutorily mandated - - -
- A. Sure.
- Q. - - - but that has its limitations because presumably to get into the management plan you've already earmarked that you're going to do that project - - -
- A. Yeah.
- Q. - - - or propose to do that project subject to what screams and yells come from the community in response to putting the public – the management plan on public exhibition. But you've got to presumably go through a preliminary process and what you're telling me is that there seems to be a lack of an adequate preliminary process.
- A. Yes, it's true that the community have 28 days in which to read the document and make submissions, and we certainly don't get very many submissions relative to the population.

In my view all this demonstrates a relatively poor vision on the part of Council's governing body, the Councillors, as well as on the part of the General Manager.

There appears to me, at both this and many other Councils, to be a too great a reliance on Government handouts and grants coming to the rescue. This "cargo cult" mentality clearly pervades this Council, perhaps because of the willingness of successive Governments, both State and Federal, to provide funds and spread largesse in remote and disadvantaged rural areas. Council needs to be weaned off this dependence.

I have considered a particularly relevant example of such a bad mentality at section 4.11 of this report, in relation to the proposed Lightning Ridge Community Centre.

3.12 Financial matters – self-insurance problems and concerns

Council's Financial Statements for the year ended 30 June 2003, its most recent such statements, are set out in its Annual Report of 2002-2003, as is required by the Act. The notes to those financial statements, at note 5.9, under the heading "self insurance" indicate:

Council has determined to self-insure for various risks including public liability and professional indemnity. A provision for self-insurance has been made in accordance with the Local Government Code of Accounting Practice to recognize outstanding claims the amount of which is detailed in Note 10.

Note 10 shows that, after being "remeasured" during the year, a small provision of some \$75,000 was made.

On the other hand, at page N16 of the financial statements it is indicated that Council nonetheless incurred expenditure in an amount of about \$355,000 by way of what are presumed to be insurance premiums, and there is an additional line item detailing the expenses from ordinary activities for the year relating to "insurance liability – Statewide and HIH".

At note 6 to the financial statements (p. N22), which details Council's "restricted cash assets and investment securities", it is stated:

- C. Self insurance liability resulting from reported claims and claims incurred but not reported.

Paragraph C is apparently a paragraph amongst a list of notes to a table set out on the previous page (p. N21), where what restricted cash and investments securities that Council has are supposedly listed. There is no line item in that table corresponding to paragraph C, so the implication is that Council has no such restricted cash or investments securities relating to its self-insurance provision.

I sought professional and expert financial advice and assistance from the Department of Local Government on this matter. That advice was as follows:

The Code of Accounting Practice deals with provision for self insurance (Chapter 7.6). ... The code provides councils with guidance on how to account for self insurance and how to reflect it in financial reports. The Code assumes that councils have assessed the risks. ... Obviously this method of insurance is undertaken where acceptance of the risk involved results in a lower cost than is available through an insurance market.

Where a decision has been made by a council to self insure, a provision for self insurance must be created and moneys set aside to meet an estimate of the cost of outstanding claims.

Where there is no amount set aside and there is no investment for self insurance purposes there is no insurance.

Section 382 of the Local Government Act 1993 requires that Council “must make arrangements for its adequate insurance against public liability and professional liability”.

Chapter 7.6 of the Code is, as to relevant parts, in the following terms:

7.6 Provision for Self Insurance

Policy Statements

7.6.1 A provision shall be made to recognise liabilities for outstanding claims (uninsured losses) arising from a decision to undertake self-insurance. The provision shall comprise liabilities for expected future payments in respect of events which have occurred up to the end of the reporting period relating to:-

- (i) Unpaid reported claims.
- (ii) Claims incurred but not reported (IBNR).
- (iii) Adjustments to the assessed liability for outstanding claims arising from the availability of further claims information (claims incurred but not enough reported (IBNER)).
- (iv) Direct and indirect claims settlement costs.

7.6.2 The amount of the outstanding liability must be assessed each year on the basis of the measurement process set out in paragraphs 34 to 36 of AAS 26 "Financial Reporting of General Insurance Activities". An actuarial assessment of the outstanding liability should be obtained if the liability cannot be ascertained from historical records. The amount of the outstanding liability shall be disclosed in the notes to the financial statements.

7.6.3 Cash or specific investments must be held for either:-

- (a) The full amount of the provision or a banker's guarantee arranged for that amount or
- (b) An amount determined to be adequate by an independent actuarial assessment made in the current financial year.

7.6.4 The amount of cash and investments held must be disclosed as a restricted asset in the Notes to the Financial Statements as required by AAS 27. (Paragraph 71)

7.6.5 A provision shall not be created as a means of setting aside funds to meet commitments which may arise in the future from future events.

Discussion

A number of councils have decided to self insure certain risks such as a proportion of workers' compensation, public liability, professional indemnity, motor vehicles and various assets. Self insurance is a procedure whereby an organisation, having accepted the existence of risk, decides not to insure against the risk, and provide out of its own resources an amount to cover the liability

likely to arise if a loss eventuates. Obviously this method of insurance is undertaken where acceptance of the risk involved results in a lower cost than is available through an insurance market.

...

Where a decision has been made by a council to self insure, a provision for self insurance must be created and moneys set aside to meet an estimate of the cost of outstanding claims. This amount so provided is to be regarded as a restricted asset.

An actuarial assessment of these estimates must be made on an annual basis. The fact that this has been done is to be indicated by way of note to the annual financial statements.

...

The annual charge to the statement of financial performance will be re-assessed each year

...

Note: Councils must be aware that a distinction must be made between self insurance where there is an amount set aside in the form of a restricted asset and no insurance where there is no amount set aside and no investment for self insurance purposes. The latter is not "self insurance" it is no insurance.

Having regard to all these requirements and that advice, and also to what appears or does not appear, as the case may be, in Council's financial statements on the question of self insurance, I was most concerned to establish whether Council has been meeting its relevant obligations. I therefore sought advice from the General Manager on the matter, when he appeared to give oral testimony at the public hearings.

The tenor of his evidence to me does not give me confidence that Council is so meeting its obligations.

Q. All right. What can you tell me about what the code of accounting practice says about accounting for costs – council's possible liabilities in respect of which council might be able to take out insurance to protect itself from large claims and the prospective depletion in ratepayers' funds?

A. You mean in terms of public liability?

Q. The code of accounting practice has some stuff to say about how council should go about accounting, financial accounting for its possible liabilities, being liabilities in respect of which it might need to take out insurance to protect itself.

A. I don't know the answer to that question.

Q. I've noted from the notes to council's financial statements for the year ended 30 June 2003 that council has apparently elected to self-insurance, and this is said to be for various risks including public liability and professional indemnity. When did council first make that election?

- A. I don't know that either, but I understand from self-insurance is that you simply lift the level of when you can make a claim so that we save on the premium. But in answer to your question, I don't know.
- Q. So you don't know who made the decision - - -
- A. No, I don't.
- Q. - - - whether it was done by councillors or by administration?
- A. It should have been done by council, but I'm not aware of when and - - -
- Q. Are you aware that your position description requires you to ensure proper management of council's risk management program - - -
- A. Yes, I am.
- Q. - - - and that you must have in place an appropriate risk management program to reduce - - -
- A. Yes.
- Q. - - - public liability claims?
- A. Yes, I am.
- Q. Well, how can you convince me that you are discharging that responsibility when you say you don't know about what has been done or decided in relation to self-insurance? It's just something that's been around since you came, I take it?
- A. I, I, I presume that's right, yes. At this stage (indistinct) - - -
- Q. Has there been any attempts to keep that decision whilst you've been at council under constant review?
- A. Not directly by myself, and I can't speak on behalf of my finance people who deal with the insurance. But risk management remains a major issue for us that we're needing to get on top of.
- Q. So given that you don't know who made the decision and you don't know when it was made, and you're telling me that it's never been re-looked at in your time - - -
- A. By me.
- Q. - - - at least to your knowledge - - -
- A. By me, yes.
- Q. - - - you can't tell me either what steps or procedures council went through before making a decision to self-insure.
- A. That's correct.
- Q. Would you agree that if you were starting off afresh to decide whether to self-insure that one of the things that you should do as a prudent manager and guardian of council's financial position would be to find out what the cost of actually taking the insurance out was versus the other risks of not taking out, so does council regularly get tenders or quotes on what the insurance premiums might be if council didn't self-insure?
- A. I know that we get premium costs each year and I presume that that would be balanced against what you're talking about, but at the end of the day it is - - -
- Q. But you've not been involved in that process and you're only guessing - - -
- A. Not - - -
- Q. - - - aren't you?
- A. I am but, I mean, self-insurance is only about reducing the premium as opposed to receiving a higher level of insurance cover, so you do save significantly, from my previous experience some large amounts of saving are done on the premium if

you lift that bottom, that bottom line up, and in one instance I can tell you that we lifted it to \$20,000 (indistinct)

- Q. Council's financial statements to 30 June 2003, and it's at note 16, indicates that there was an expenditure of \$355,000 on insurance premiums, and there's some indication that that might be less moneys from Statewide and HIH. Do you know what those insurance premiums were spent on?
- A. Not off the top of my head, I can certainly follow that through, if you wish, but there's no instructions - - -
- Q. Now, if council's making – in fact, self-insurance at least for some risks, obviously there must be some insurance taken out for some other risks, given that apparently you're spending \$355,000 a year, on the risks that you're not covering by actually taking out insurance policies what provision has council made in its accounts for self-insurance?
- A. Commissioner, as I understand it the self-insurance is about simply lifting the limits, so in case of a replacement of a car we might choose to put it that we pay the first \$5000.
- Q. Well, perhaps I've got news for you, Mr North, because accounting standard section 7.2, and especially section 7.6.1, in fact, require that a council that self-insures make a provision for self-insurance in its financial statements.
- A. I wasn't debating that. I was simply saying that we have all of the areas covered, it's just that our return may be lower in some areas given that our premiums (indistinct)
- Q. We're talking about making a provision in your accounts. Now, you say you have no idea really whether you've made a provision.
- A. Well, I'm sure we would have, but I'm not – I can't pinpoint it, no.
- Q. When was that last – that provision last reviewed?
- A. Commissioner, I don't know.
- Q. You are aware, I trust, that, and probably not given the tenor of your answers, that the accounting standard again requires that the provision be regularly reviewed?
- A. No, I'm not.
- Q. Has the amount of council's contingent liability for which it has elected to self-insure been checked and determined to be adequate by reference to an independent actuarial assessment?
- A. Certainly our auditors – it's not a separate actuary accounting process, but - - -
- Q. Well, accounting standard section 7.6.3 requires that that be done, an independent actuarial assessment. Aren't you playing fast and loose with ratepayers' funds in not properly considering whether insurance is taken out, or that council's going to run the risk and assess the risk, and to make provisions and so on by not – and not take out insurance policy with ratepayers' funds?
- A. Commissioner, there's - - -
- Q. I mean, council could be hit with a negligence claim, or a claim, you know, like the Evans Shire Council has which has tottered up to something like \$11,000,000, because of interest and legal costs.
- A. Commissioner, there's a level of responsibility that has to be placed in each of my managers to undertake those specialist activities. I have an overall obviously responsibility and interest and the arrangements that we have here is that if there is any anomalies it's reported to me, so I'm assuming that all is in place for those things to comply.
- Q. Has council set aside moneys to meet an estimate of the cost of outstanding claims?

-
- A. I don't, I don't know. Those questions I would need to follow up with my finance people.
- Q. Does council hold cash in the required amount to cover its estimated liabilities for which it has elected to self-insure?
- A. Yeah, we certainly do and - - -
- Q. In the required amount?
- A. I believe so. When talking to the auditors last year we actually – we were able to reduce it.
- Q. And has council made an investment of that cash for the purposes of meeting its obligations in respect of self-insurance?
- A. All of our – the majority of our cash is invested in a term deposit.
- Q. Where in council's financial statement, or more particularly the notes to those statements, has it been disclosed that council has a restricted asset to cover those cash or investments? I mean, I've looked at note 21 and 22, but there's nothing there which tells me that there has been such a restricted asset created, and that is a requirement of the accounting standard.
- A. Well, again, commissioner, I can only say that I depend on my finance people to advise me if there's any anomalies or non-compliance and I haven't had anything along those lines, so, and we've had ongoing audits that have cleared the way, so I can only indicate that things must be in order.
- Q. Well, maybe the auditors haven't picked it up because the financial statements and the informations in them doesn't seem to require the relevant information, or disclose it. At paragraph C to note 6 to council's financial statements there is a reference to self-insurance liability resulting from reported claims and claims incurred but not reported. Are there any such liabilities, because there's no dollar figure given?
- A. Again, I, I don't know without referring your question to my finance people.

The finer details may well be known to Mr North's Group Manager, but I would have expected that on an important matter such as the question to undertake self insurance he would have been familiar with at least an overview of the issues, the requirements, and in broad terms what Council was or was not doing. He cannot, by delegation, abrogate all responsibility as manager of the Council.

The other issue that concerns me is that Council may well have contractual commitments, such as under premises leases, where it is a requirement of the contract that Council actually take out insurance cover for public liability risks and so on. There is in fact such a clause in the contract Council has with the NSW Department of Ageing and Disability, in respect of the Lightning Ridge Community Centre. When I asked Mr North about this contract he was quite unaware of it, let alone some of its detailed and important contractual obligations imposed on the Council. This issue, but not that relating to the insurance clause, is dealt with further at section 4.9 of this report.

I am therefore concerned that Council may not be complying with its contractual obligations, and placing itself in jeopardy of contracts being terminated for breach, or even claims for damages. Council as the custodian of public assets cannot afford to play fast and loose with ratepayers' funds in this way.

The General Manager, when I asked him about it, seemed to think that Council's external auditors would have picked up any such non-compliances. There are a number of responses to this. First, the auditors only come in infrequently, and perhaps only once a year. Second, it is the General Manager who is manager, and he cannot shirk his responsibilities in this way.

It is his responsibility as General Manager to ensure that he is personally satisfied that Council is both compliant with its statutory as well as with its contractual obligations, even if he leaves the detailed day to day task of ensuring this is so to his Executive Management Team and/or other relevant and appropriate managers. The General Manager should have an appropriate and effective system in place for regular reporting and signing off to himself on such matters. That is standard accounting audit and general good management practice.

It is not good enough simply to rely on his underlings confessing to errors, or promptly, adequately and fully reporting matters of concern that the General Manager as manager of the organisation needs to be aware of. There are too many examples exposed in this Inquiry and in the Department of Local Government's section 430 investigation that demonstrate the folly and danger of such an approach.

3.13 Conduct issues

The conduct of elected representatives (whether individually or as a group) is one issue clearly identified in my Terms of Reference as one in respect of which I have been appointed to inquire. Councillors and other public officials are expected to show leadership and to act according to certain standards and to aspire to and meet standards of conduct that may be over and beyond that expected of ordinary citizens. The relevant statutory and other sources of those standards and requirements are considered at section 1.13.11 of this report. These include, of course, Council's Code of Conduct, which it is required to have, pursuant to section 440 of the Act.

Council's Code of Conduct in particular enjoins Councillors not to engage in any form of conduct that might cause any reasonable person unwarranted offence or embarrassment. See clause 3.1 (a) (iv) of the Code, quoted at section 1.13.11 of this report, above.

This must be particularly so for the Mayor, given his or her position as leader of the elected body, and often the public face of local government in general and Council in particular in the community.

One of the persons who lodged written submissions with this Inquiry drew my attention to publicly expressed concerns about language used by Cllr Peter Waterford, when he was the Mayor, with a particular example being when he gave a radio interview on 2WEB (Bourke). My attention was also drawn to a letter to the editor of the Walgett Spectator, published by that journal under the banner heading "Mayor says a Mouthful!".

The letter was simply signed “Concerned Citizens”, and those members of the community felt it necessary to “express disgust at the language used by the Mayor, our local government spokesperson, during his interview”. Some more printable examples of such language were given in that letter. The writers went on to note that those examples “are hardly becoming to this position and do very little to improve the public’s opinion of the Walgett Shire Council”.

I agree.

As the question of inappropriate and bad conduct is one arising under Council’s Code of Conduct, it was incumbent on the elected body, perhaps even prompted by the General Manager, to do something about the matter. Under the law as it presently stands, it is the Council and the Council alone that is in a position to do something about Code breaches or alleged Code breaches.

In that regard Councillors are expected to act honestly and impartially on the matter, and to show public leadership, all of course Charter and statutory obligations imposed on them. Closing ranks along party or factional lines will not do.

In this case there is no evidence that anything ever was sought to be done about the Mayor’s conduct. This is poor and reflects badly both on Council and on its elected body.

I am not seeking to suggest that the odd swear word is a major sin. But, all elected members, and in particular a person holding office as Mayor, need to be mindful of their great responsibilities as holders of public office to aspire to and in fact comply with standards of conduct that the community can have pride and confidence in.

If, as and when the long promised “sin bin” proposals, to be brought in by way of an amendment to the Local Government Act 1993, get enacted, it is to be hoped that there will be an impartial and appropriate means whereby something can be done about examples of inappropriate conduct.

I asked Cllr Waterford about the allegations when he was in the witness box on the first day of the public hearing, though I first sought his views as to what might be appropriate conduct for a person holding the office of Mayor:

- Q. ... What about appropriate conduct for a mayor, as opposed to a mere councillor, if I can call them that?
- A. The appropriate conduct, I believe, of the mayor as the official head spokesman and person for the shire, I think he’s got to be on his best behaviour at all times and I believe his role is to push as much as he can for the benefits and the greatness of his own – of his shire.

The questioning continued:

- A. ... I’ve seen that letter. Did I use bad language?
- Q. Yes, what do you - - -
- A. Because I said - I would have said ‘bloody’ a few times as I do.
- Q. That’s all it was?

-
- A. I can't remember any other things, no. I've got, I've had – been on television a fair few times. Paul Lockyer from the ABC, he puts me on television because he thinks I'm a colourful person. Now, I can't say anything more than that but I just – that's the way I am.
- Q. And did you – what did you do when you saw that letter?
- A. I did nothing. I had been answering letters in The Spectator for some – I've probably answered four letters over the last 4 years.
- Q. So you made no apology for the language that you used?
- A. No.
- Q. Would you say, with the benefit of hindsight, that it was perhaps inappropriate for you to have used as mayor and leader of the council?
- A. Perhaps. I'm not saying, me being the person I am, I've had just as many people ring me up saying, "You said it the way we want it to be heard," and if that includes a 'bloody' then that's the way they get it.

Waterford was clearly unrepentant, and this is a cause for concern.

3.14 Conduct issues – debts owing by a Councillor to Council

I indicated in my opening address on the first day of the public hearings that an issue I proposed to examine was the question of the appropriate conduct of Councillors in respect of debts owing by them to the organisation to which they are elected and which they serve, namely the Council. The question is whether such Councillors breach the standards of leadership and conduct expected of them if they allow such debts unreasonably to remain outstanding for unreasonable amounts of time.

Another aspect of such debts, and their non-collection, is whether improper favours are given to the debtor by virtue of his or her position and office as a Councillor.

Council's Code of Conduct says, in its opening words, that "duty to the public will always be given absolute priority over the private interests of councillors, staff and delegates of the Council". One of such duties would be the due collection of all outstanding moneys owed to Council, for the reasons explained at section 3.11.2 of this report.

A very important part of the obligations of a Councillor, and of Council's Code, is that "there is no actual (or perceived) conflict or incompatibility between their personal interests and the impartial fulfilment of their public and professional duties" (clause 1.1 (a)).

And equally important is clause 2.2 says that Councillors must "not take advantage of their position to improperly influence other members, staff or delegates of the Council in the performance of their duties or functions, in order to gain undue influence or improper (direct or indirect) advantage or gain for themselves or for any other person or body". This provision mirrors and complements the provisions of the Independent Commission Against Corruption Act 1988, as to which sections 7 and 8, defining the ambit of "corrupt conduct", are particularly relevant.

Clause 3.2 of the Code requires Councillors to “observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards”.

With his written submissions to this Inquiry (submission no. 23) Clr Charlie Mitchell tendered a copy of what appeared to be a sundry debtors list. Witnesses giving oral evidence at the public hearings identified it as a Council document, and Clr Mitchell himself indicated that it was a list, a copy of which was given to him, along with all other Councillors, on or about December 2003. This was corroborated by Mr John Burden, Council’s Group Manager Services Management, one of the Executive Management Team and the senior manager responsible for financial matters, who positively identified it as being of that date. It is therefore clearly a pretty up to date outstanding debtors list.

Mr Burden’s evidence was that this was a special list that had been created and issued to Councillors because of a request for this information. Councillors get a regular sundry debtors list, but this was a list showing outstanding or “overdue” debtors, as he described it.

The list shows that some three separate amounts, totalling in excess of \$3,600 are owing by “PP Waterford”, and that these amounts have been owing, as of the date of that list, for more than 90 days. How much over that 90 day period is not stated. The evidence is that these are debts owing to Council by Clr Waterford. In addition, there is an amount of over \$2,500 so owing by Mr BJ Waterford, the evidence being that this is related to the Estate of Clr Waterford’s late father.

I sought information from Mr Burden as to the steps that might have been taken by Council to collect the debts owing by the Councillor and his family:

Q. Let me go back to the steps that were being taken by council to collect its outstanding debts. What steps were taken specifically in relation to Councillor Waterford’s debts?

A. I have pulled out all of the information regarding all those debts of Councillor Waterford’s and his company or his family and they date back to pre-1995 and it’s - - -

Q. Are you saying that they are not just more than 90 days old, they’re in fact almost 8 or 9 years old?

A. Sir, they relate to a water line dispute which I am – I have been trying to unravel. It was the subject of submissions to council back in 2000, I think, at which time the mayor - - -

Q. Well, why has it taken this long to get things sorted out?

A. Sir, that’s what I’m trying to do, obviously.

Q. Well, I know you’re telling me you’re trying to do it now as we speak.

A. I can’t answer why - - -

Q. But, you know, 9 years have gone by apparently.

A. I – I can’t answer that. All I know is that I’m trying - - -

Q. Is that the situation for other debtors, are there other debts of a similar nature?

- A. I haven't researched each one. Currently the information that we've received from councillors in regards to new addresses, etcetera, is being followed up, that is, we're writing to - - -
- Q. So there would be no question, you would assure me on oath, that Councillor Waterford, because he's a councillor, has been given favoured treatment which is not available to other people owing money to the council?
- A. Sir, I assure you on oath that there's no one that receives any favourable treatment.
- Q. It's simply a question that council is so disorganised that it hasn't got round to recognising that these debts have been kicking around for 9 – who knows – maybe more years and they haven't been collected?
- A. Correct, and I'm doing my utmost to sort things out.
- Q. To catch up on them.
- A. Yes.

I was concerned that if debts identified in that list were so old as to be uncollectable, Council might be overstating its receivables in its financial statements. I asked Mr Burden about the matter:

- Q. ... So it's quite possible therefore that council's financial position assuming that it's got money that's collectable, is in fact overstated because a lot of the money is simply not collectable. I mean, some of the debts may be statute-barred by now. They may be disputed.
- A. Quite – quite so.
- Q. The people are simply untraceable and therefore they're never going to be collected - - -
- A. Yes.
- Q. - - - in which case the money is simply not a receivable, is it?
- A. Quite so. I totally agree with you.
- ...
- Q. There's been no notes in the accounts to date to flag that there's some question as to collectability other than a provision which may or may not have been adequate.
- A. Quite so.

It was reported to me that the initial publication of the debtors' list along with the first batch of submissions to this Inquiry caused considerable adverse comment by Clr Waterford at Council's meeting of 5 April 2004.

In one of several written submissions to this Inquiry from Clr Alan Friend, the current Mayor, he said:

Probably the inclusion of Charlie's comments were as much under attack as the inclusion of the sundry debtors list. However Waterford was clearly making comments because his name was on the list – first and foremost. To my knowledge he has owed Council \$8845 for four and a half years. Why then has he not paid his debt? When I came back on Council Sept. 1999 he owed an amount of \$21 - \$22,000, which included the sundry debtor amount. The next was unpaid rates, which also had been owing for some time. The rate component disappeared over in the following 12 mths. If he made some arrangement with the then GM, Kelvin Matthews, Council was never informed. I may be

a cynic, but I really doubt he ever paid off this amount – a deal was done. He has a long record of not paying his debts. If he was upset at having his name on the list – for at least four and a half years, probably longer, why doesn't he pay it off?

Clr Waterford was present during my opening address. He therefore heard what I had to say. He provided no written submissions or response to the Inquiry at any time, nor did he allude to the question when in the witness box giving oral evidence on the first day of the hearings. He had ample opportunity to provide an explanation to the Inquiry as to the circumstances of the debts, for example to deny liability or some other explanation as to why they were still owing, but provided none. It is certainly true that I as Commissioner did not specifically ask the Councillor about the matter, but, as I have indicated, I had expected that the Councillor would seek to raise the matter himself.

I find that there is a real question as to Clr Waterford's conduct in relation to the outstanding debts, and I believe that they should be discharged in full at the earliest opportunity and without further delay.

Recommendation

That Council should take immediate action to recover all moneys owing and payable to it by Clr Peter Waterford, or persons or companies associated with the Councillor, without further delay.

This will at the very least remove the potential for any perception that the Councillor is being accorded favourable treatment because of his position as former Mayor or as a Councillor, particularly when Council is actively pursuing the recovery of moneys owing to it by other debtors.

3.15 Conduct issues –Councillor walkouts

Under the Act Councillors are expected to devote a reasonable amount of time and attention to Council affairs. Councillors are not, of course, full time in the job, or at least the Act does not expect them to be, and they are certainly not remunerated on such a basis.

As a collective group, most of the role of Councillors will be discharged at Council meetings (or meetings of its duly constituted committees). Councillors are therefore expected, unless they have good reason for not so doing, to attend all Council meetings, and their absence should be explained and accounted for. In fact, section 234 (1) (d) of the Act provides that a Councillor automatically loses his or her position as a councillor (his or her "civic office becomes vacant") if the Councillor is absent from three consecutive ordinary meetings of Council without prior leave of the Council or leave granted by the Council at any of the meetings concerned.

This deals, of course, with the situation of not turning up at all to meetings. But, it is equally a failure on the part of a Councillor, in relation to his or her civic duties of that office, to leave a meeting at any stage during that meeting without lawful excuse (for example, section 451 compels the Councillor to leave the Chamber, because the Councillor has a pecuniary interest which has been declared by that Councillor), or the leave of Council.

Leaving a meeting without leave or lawful excuse, whether or not the Councillor subsequently comes back, is what is generally called a walkout. It is not appropriate.

Nor is it appropriate or excusable to walkout simply because a particular group or block of votes at Council does not "have the numbers". Walkouts by a sufficient number of Councillors may leave the meeting without a quorum so that its business cannot proceed, at least until a quorum is regained.

It is particularly indefensible when the walkout brings the rest of the meeting to an entire halt, so that the rest of the business on the agenda fails to be dealt with. Where a Council has only one ordinary Council meeting a month, as does Walgett Shire Council, the effect will be that all unfinished business is left in abeyance for a whole month.

A special meeting might be called, early, to deal with outstanding business, particularly where a Council has a long and busy schedule and agenda regularly to deal with. But all this means having to incur the expense of advertising and notifying the new meeting, holding the meeting and so on. Valuable staff time, that costs the community and its ratepayers a good deal of money, is wasted.

In addition, members of the community who may have made a special trip or effort to be present at the aborted meeting will have wasted their time and will be understandably upset.

In terms of Charter obligations, Council (Councillors) will have failed to exercise community leadership (section 8 (1) dot point 2), at the very least.

Councillors are not elected to play political games by staging walkouts when they think that they might not get their way on a vote. Under section 371 a decision of Council on a matter is one supported by a majority of votes at a meeting of the Council at which a quorum is present. If a quorum is present (and a quorum will not require the presence of the full complement of Councillors), then the system, the law, and if you like democracy at work, is that if the numbers shift by a Councillor or Councillors being lawfully absent, or by a Councillor or Councillor apparently changing sides, then so be it.

It is not "democracy at work", as some would suggest, to play the numbers game by staging walkouts.

That said, there is no evidence of any systemic problem at this Council in relation to walkouts, whether at the 1999-2004 or the more recent and current 2004 Council.

But that does not excuse a walkout when it occurs.

I sought evidence and a report from Council as to any walkout history and received this before the public hearings commenced. The written advice to me was that between 31 July 2000 and 9 February 2004 there was no item of business on the agenda for a meeting that failed to be dealt with because of a walkout.

The meeting of 31 July 2000 involved a walkout by Clrs Friend, Greenaway, Horan, Hutchinson and Mitchell leaving the meeting without a quorum for one item of business only. They returned to the Chambers for the next and succeeding items of business.

The meeting of 9 February 2004 was the meeting, the second last before the recent 27 March 2004 elections, at which the rescission motion in respect of a very contentious resolution to proceed with the Lightning Ridge Community Centre was due to be considered and voted on. It was item 4.8 on a long agenda of some 8 items. Item 5 was divided into some 18 separate items of business, and item 7 into 15. In other words there was a lot of business that failed to be dealt with at the meeting because a number of Councillors walked out, leaving the meeting without a quorum, and did not return at all.

Details about this walkout are considered at section 4.17 of this report.

Briefly, and for present purposes, it is noted that Clrs Lane, Lang, Hewlett, Treweeke and Waterford all walked out leaving the meeting without a quorum. The evidence is that all Councillors deliberately left the meeting to prevent an expected win for the rescission motion. The reason for this was that Clr Jeffries was absent, apparently with leave, from the meeting, and Clr Prue Hutchinson, the Deputy Mayor, had indicated that she would be likely to support the rescission motion. The Lightning Ridge faction Councillors therefore were faced with the expectation that they could only muster five votes, and those who were going to support the rescission motion six votes. Those who walked out were all Lightning Ridge faction Councillors.

Clr Hutchinson took the Chair in the absence of the Mayor, Clr Waterford, and the meeting had to be adjourned. The unfinished business was set down to be dealt with at Council's 8 March meeting.

In conclusion, I note that it was not appropriate for these Councillors to have walked out, and in so doing they failed to act in a manner that Council's community could reasonably expect of its elected representatives, and failed to discharge their Charter and other obligations under the Act.

3.16 Relationships between Councillors

The question of the relationship between Councillors at this Council is very much related to and centres upon the Lightning Ridge versus Walgett issue, that I have considered at section 3.2 of this report.

There was a view put to me by Clr Waterford (see his evidence at section 3.2 of this report) and some other Councillors from the Lightning Ridge faction that the Walgett faction Councillors had created discord by a too frequent use of the lodgement of rescission motions.

Clr Mitchell from the Walgett faction responded to this when he gave oral testimony at the public hearings, and refuted the notion that there had been frequent rescission motions coming from that faction.

The issue can be dealt with quite succinctly. First, I have not seen evidence of any overly frequent lodgement of such motions. Second, and in any event, any Councillor, if he or she gets a seconder, is perfectly entitled under the Act and the Local Government (Meetings) Regulation 1999 to lodge a rescission motion at any time, subject only to the rule in section 372 against repetitive rescission motions on the same issue.

3.17 Relationships between Councillors and staff

As I have indicated at section 1.13.8 of this report, this is an issue that is not specifically, in so many words, mentioned in my Terms of Reference, but I consider that the general language of those Terms allows me to examine the issue, as appropriate.

In fact, I found no evidence to suggest that there is any question concerning the conduct of particular Councillors towards any particular staff, or vice-versa, such as would warrant any particular findings or recommendations.

The submissions of some staff members did raise concerns about the Lightning Ridge versus Walgett split, one which apparently spills over to the staff arena. There were even suggestions that such splits occurred within the ranks of the staff. I have seen some evidence to support this, but do not consider that it amounts to much more than the apparent divisions, along the same lines, amongst the two groups in the community. It is unfortunate that this should be so, but in local government it is generally to be expected that Council employees living in the Shire they work for will have often heightened views and awareness of matters at the local government political level.

One thing that does concern me, however, is that Council has no written policy in place dealing with the often troubled question of Councillor - staff interactions and relationships. I raised the matter with the General Manager when he was in the witness box.

A model such policy, still very relevant today, was promoted by both the Department of Local Government and the Independent Commission Against Corruption in 1997, when they jointly issued a publication entitled *Under Careful Consideration: Key Issues for Local Government*, in March of that year. The Model Policy is contained in Appendix 1 of that publication, and I commend it to Council. It also deals with the related question of the provision of information to Councillors.

Recommendation

That Council should as soon as possible adopt a policy on the provision of information to and interaction between Councillors and staff, along the lines of the Model Policy issued jointly by the Department of Local Government and the Independent Commission Against Corruption in March 1997, with such alterations or additions as may be appropriate to Council's own particular circumstances.

3.18 Relationships between the General Manager and his staff

There is considerable evidence to show that this is a real issue at this Council. It may be related to or result in the additional issue of low staff morale, dealt with separately at section 3.19 of this report.

I have received a number of written submissions from staff or former staff members raising concerns about the management style and capabilities of Mr North as General Manager. All bar one of these were either anonymous or sought confidentiality, fearing reprisals and possible adverse impacts on their employment and career development prospects. The one member of staff who was prepared to come into the open was Mr Alan Nelson, Council's Manager Roads and Bridges, whose two submissions I have published, as part of the general submissions to this Inquiry put on public exhibition.

Given the confidential nature or anonymity of these submissions, I have had some difficulty in examining the concerns and issues raised, or in testing them. However, as I explained in my opening address on the first day of the public hearings (see section 1.11 of this report), I have endeavoured, where possible, to introduce and test the allegations and issues by other means.

Suffice it to say that the evidence, which I have dealt with throughout this report, shows that there is a real and proven issue in respect of Mr North's capabilities and performance as General Manager of the Walgett Shire Council.

It is also clear that a number of staff members do not respect Mr North accordingly, and this does not augur well for a smoothly running and efficient organisation and administration. If Mr North were to cease to be the General Manager these problems could be expected to be alleviated, once the right person was appointed as his replacement.

When Mr North was in the witness box I sought his reaction to the published submissions of Mr Nelson. His reply was:

What I can say is he's a sad individual, I guess.

This was an unfortunate and somewhat unprofessional response from a General Manager. After explaining in more detail what he meant by that, I pressed Mr North as to whether he accepted some or all of what Mr Nelson was asserting:

Q. So you don't accept the correctness of his assertions?

A. In part. I mean, he refers to me as arrogant, my wife refers to me as arrogant on occasions, so I guess he must be right on that front. I'd like to think that I'm confident in my own strengths and weaknesses and am able to (indistinct). Certainly my - my major role in all of this was to protect the staff who have been, particularly the junior staff, who have been affected detrimentally by these criticisms from the community and the investigations, and I have tried to put their minds at rest with a very calm presentation, that the issues are really resting with me as general manager on the council.

Q. Ah hmm.

A. However, I needed to indicate that if amalgamation or some other matters were to follow that the government had put certain things in place to protect their rights. So I have been particularly calm and particularly trying to project a favourable and happy front, and I have to say that I think that's worked, although there's a level of stress because of the unknown, like this inquiry we're attending. I think you'll find that if you speak to staff in the office particularly there may be some renegades amongst us I can read from this documentation, but generally I think we've got morale sitting reasonably steady, although lower than I would like, in the office, and I think certainly with mixing with my outdoor staff is a similar issue, but when you've got staff of a hundred there are going to be some who don't necessarily agree with or like what you're doing, and I think that's coming out from here. He's also an opportunist I would suggest, commissioner. I mean, situations are and weaknesses are being identified for people to take advantage of that ...

Perhaps Mr North's "calmness" was interpreted as some as his not being able to manage the situation. Another interpretation was somehow he was refusing to see what was really going on and was pretending that all was well.

On the other hand, there is also evidence that there are some amongst the staff who support Mr North. I have partially published an otherwise anonymous late written submission from a group of such persons, who merely identified themselves as "five very concerned and angry employees". Wording indicating their clear support for Mr North was so published, but is not otherwise quoted in this report.

The receipt of this letter, in itself, and the contents of that submission, show that all is not well amongst the staff and that there are clear divisions amongst them based on loyalties, or not, as the case may be, to Mr North as General Manager. On the other hand, the publication of their submission prompted a written submission from another employee, who provided me with his/her name, stating:

I respect the right of reply from these employees and have no problem with that.

However, the mentality revealed in the letter is a reflection of these five employees and fortunately for Walgett Shire, is not embraced by other employees.

The indications, also corroborated by some of the other confidential submissions, are that Mr North is at least perceived to have his favourites, and no doubt those persons are amongst that group. The mere having of the favourites appears to have at least contributed in part to the divisions amongst the staff and the concerns of those "on the outer". This is unfortunate.

The “five very concerned and angry employees” said the following:

We are a group of five very concerned employees who are from three different areas of Council and we have met tonight to prepare this letter for your attention.

We have been very concerned for many years about the attitude of our Walgett Councillors. Councillors Mitchell, Friend and Bow show no respect to the staff and it is as though we don't exist even though they see us regularly they ignore us, not even a hello.
...

We do not understand why these old and cynical individuals who just want to criticise everyone and not contribute anything positive to the Shire, except to want to take it back to the fifties decided to stand for Council again. If that is all we can hope for then we would be better off without a Walgett Shire. But we are concerned about our own jobs, all five of us have been born and bred here and we don't want to shift anywhere else. Just get rid of these negative people and Walgett will be great. ...

We all like Walgett and we think it is good to have Lightning Ridge and Collie etc. We don't want to leave but if you can get rid of Councillor Mitchell, John Burden, Margaret Weber, Councillor Bow, Councillor Greenaway, Councillor Cooper, Councillor Waterford and Councillor Friend we will stay and it will be an excellent place. We don't know the other Councillors yet. Get us some Councillors that care about us staff and who want to do something worthwhile for Walgett and not be negative. We have had to (sic) much negative advertising about Walgett weve (sic) had enough.

We like our jobs and we would like you to keep Walgett Shire and put some better people into Council (sic). We are angry that the current Councillors are not protecting our future.

The law, as I have indicated at section 1.13.3 of this report, does not permit a selective removal of Councillors from their positions. So what these staff members ask for is simply not possible to achieve.

While they express concerns about the attitude of the Councillors named by them to the staff, no corroborative evidence of such behaviour was provided to me, and no other person raised the matter, either in oral evidence or in written submissions. In any event, not saying “hello”, or “ignoring” staff is not conduct which would warrant adverse findings against such persons, and certainly not their removal from office. It is not clear what the staff members mean by these Councillors “not protecting our future”, and as these persons are anonymous, I was unable to seek any clarification from them.

Nor does being critical of staff merit opprobrium to the Councillors. It all depends, at least in part, on how the criticism is expressed, and one of the reasons I have recommended that Council adopt a policy on Councillor staff interaction is to ensure that rules are set down to protect staff and Councillors alike. I also have no evidence as to what criticism was being referred to, so I can make no findings on that. Who knows, the criticism may have been merited. It is clear from the findings of both this Inquiry and the Department's section 430 investigation that Mr North is not the only Council staff member whose performance has been found wanting. The point for Mr North, however, is that the buck stops with him, at least as far as this Inquiry *and the Councillors* are concerned.

The publication of this submission generated two other, but more heated responses published in the Walgett Spectator of 12 May 2004. The first was from Ms Annie Muir:

A letter has been written and sent to Commissioner Bulford concerning the Public Inquiry for the Walgett Shire Council.

This letter was written anonymously by five very concerned angry Walgett Shire Council employees. Are you all too 'gutless' to write your names and approach the concerned Councillors face to face. What a 'nice' letter to be written concerning the Councillors of Walgett, including my mother Margaret Bow.

My mother has lived and worked in this community for fifty (50) years. She has donated a lot of her time to voluntary organisations over the past years. And this includes the other towns of Walgett Shire. Therefore, it is not fair to say that she only has interest in the Walgett Township and not the other towns in the Shire. My mother was voted in to be Councillor by the people of the Walgett Shire, and if you 'The Anonymous Five' aren't happy with her, why don't you approach her and voice your concerns. ...

The second letter was from Shirley Mitchell, who signed herself as "A concerned and angry person":

... As the wife of a Councillor on the 'hit list', I am saddened for our Shire that five local (they have stated that they were born and bred here) council employees could stoop to such a low level of character assassination.

To accuse a person of '**threatening families**' is both libellous and defamatory and to say '**It's like the Mafia and we need to eliminate them**', proves there are five sad folk who have lost touch with reality.

As a family, Charlie and I along with Vickie and Michael have always shown respect to everyone in our community, including all Council staff. We believed that we had made a contribution to our Shire and community in many ways over many years so it is with extreme disappointment we learn that five, obviously embittered locals do not see us this way.

It is a shame that these five '**concerned and angry**' employees did not put their names to this pathetic document as innocent people may well be blamed for the writing of same.

...

3.19 Staff morale

Submissions from staff members, as noted in section 3.18 of this report, in many cases refer to low staff morale at Council.

This is an issue that has been corroborated by other evidence. A formal survey of staff morale was carried out, through one of the employees, Mr Alex Lubanski, who reports directly to the General Manager. The survey and its results were, however, actually outsourced to a university student, who received no payment for his services.

According to Mr Lubanski's oral testimony this survey was conducted in the last 12 months, namely in about October or November 2003.

I have received a copy of the survey and the report on the results of that survey. Some of the findings are as follows:

35% of office staff and 46% of outdoor staff do not look forward to coming into work each day ... the unhappiness of the staff is related more to the work conditions rather than to the job.

The most common complaints listed by the unhappy staff members were in relation to Management. Of the staff who were unhappy, 100% of the office staff and 57% of the outdoor staff felt that management did not communicate well with them ... They also felt that there was a lack of communication between all staff members and a lack of organisation. ...

A number of signs suggest that many staff members feel as though they are not always sure of what is required of them. Only 37% of employees feel as though management provides enough direction ... while 59% feel that management does not communicate well with staff ...

Only 24% of the staff members feel that the council is providing a good service to the community ... This means that most staff members are not proud of the work they are doing, which may greatly reduce the quality of their work and their desire to do a good job. ...

59% feel that the community has no confidence in them ...

A major comment that needs to be considered is staff members attitudes about unfair or biased management. Many staff feel that there are high levels of favouritism within the work place. ...

When Mr Lubanski appeared to give evidence at the public hearings I asked him about this survey, and particularly about what happened with the results (this comes from a transcript prepared by my assistant officer, Ms Weston):

RB: Council received a written report from this student – is that right?

AL: I submitted whatever documentation was presented to me.

RB: I have a copy of the report that came from Daniel Sturman –

AL: That's correct

RB: One of the things that's not clear is the date that that report was submitted because, it's, mmm, its not dated, nor does it bear a Walgett Shire Council date receipt stamp.

AL: Mmm, well it was submitted along with my monthly report to the General Manager.

RB: And when was that report given to the General Manager?

AL: It would have been given in the November session.

RB: So did you get any response back from the General Manager in relation to the report results?

AL: Only a verbal comment, which you know, which, er, just to say that it was either good or whatever, you know, there wasn't much dialogue - - -

RB: Is it not the case that the most – well let me ask you this, what was the most common complaint, listed by staff members?

AL: ----

RB: Do you recall that?

AL: Yes, I do. I think the, um, the most common complaint, um, which was the most dominant complaint was lack of communication between management – and I believe most of this came from outdoor staff, mmm, and so forth.

RB: And was it true to say there were a lot of unhappy staff members?

AL: I'd have to, mmm, affirm that - yes

I also sought comments from Mr North on both the question of the low staff morale and about the survey:

Q. In at least one of the submissions that I've received for the purposes of this inquiry it is alleged that staff morale, particularly of the wages staff, is at an all-time low and it is added that real leadership is needed as well as direction and support to enable council to function correctly. Would you care to comment on that?

A. Well, I would challenge that it's at an all-time low. It was certainly low when I arrived and we've been through a period like that. I think - - -

Q. Has it improved since then or - - -

A. It has improved but it's actually gone back a bit. This – this process - again I'm not making excuses but it has had - - -

Q. This process meaning when the department first arrived.

A. The investigation, it's raised some uncertainties, I guess, for staff so understandably that affects morale, but I am concerned. We undertook a survey of staff at my instruction, a confidential survey to test this and I was looking at using it as part of a cultural change program ...

...

Q. Could you tell me something about the results of that survey and what was done about them?

A. Well, certainly the survey highlighted things that in part surprised me, the level that some of it might have been. There are certainly issues about leadership and management from the management team. There were certainly issues about the environment. A large number of staff felt they had a good rewarding job but many of them didn't want to – didn't feel like coming to work in the mornings. All of that led me to suggest that there needed to be a lot of work done to pick that up but as you probably would have picked up from this that survey was done - we started to prepare it before the investigation started. It wasn't completed by the university until just after we received the report and as a consequence it hasn't had an opportunity to - - -

Q. The timing was bad - - -

A. Yes.

Q. - - - coming in at the low ebb, as it were.

A. Yes, well, in part it did but the fact of the matter is that there are other fairly basic foundation things that we've got to do before we - - -

- Q. So what's being done to address those identified concerns?
A. We've done absolutely nothing and we should have.

Later I also asked Mr North about the views, coming out of the survey results, that his management was biased. He replied:

I would generally challenge that although I know there's probably individuals that feel that they could have been dealt a better ...

Other questioning brought to light that he seemed to think this was principally about staff appointments and promotion and the like, but he conceded that it may be wider than that. The questioning continued:

- Q. But whether you agree with it or not does it not send you a message that there seems to be a view amongst your staff that that is the situation?
A. Yes, of course I'm concerned about that but it's – it's not easy to deal with if you don't know what the circumstances are. I mean, I have an open door policy so any staff member can come into my office and talk to me about anything and in confidence so I can only hope that if there are individuals who feel that that is occurring that they would come and talk to me about it.

I also asked him what steps he had taken to report on the results of the survey to Councillors. He told me that because the Executive Management Team had not yet progressed the matter, this had not happened. He added, however, that some Councillors at least were aware of the survey, and had requested copies of both the questionnaire and the results. It would appear from his evidence that this has yet to be done.

To some extent the results of the survey are a matter entirely for Mr North, as the General Manager of the Council. Staffing matters of this nature are largely a matter within his sole purview. But, when it comes to questions about Council's performance and even about his own, it seems to me that the Councillors were entitled to know, and his evidence indicates that no attempt was made by him to make them aware of this. He should have done so.

3.20 The blurring of the roles of the General Manager and the elected body

I have found some evidence in this Inquiry of an inappropriate blurring of the statutorily mandated division of powers between Council's elected body, the Councillors acting as a group, on the one hand, and the role of the General Manager as the head of Council's administration on the other. There does not appear to be any major or systemic problem of that nature, however.

At section 4.3 of this report I have noted that former Councillor, Mrs Joan Treweeke, appears at times, in her undoubted enthusiasm for the Lightning Ridge Community Centre project, to have overstepped the mark and ventured into matters of day to day administration, which was for the General Manager and his staff to be involved in.

There is also some evidence that the General Manager, Mr North, appears at times to have ventured too far in terms of policy matters than was wise or appropriate. At section 1.13.12 of this report I have noted that the Councillors of a Council may in practice look to the professional staff of Council to advise or even initiate policy matters. But, conversely, the staff and the General Manager must recognise that under the Act it is the elected body that is the arm of government at Council that is the policy maker. I say this despite the provisions of “Key objective” number 2 spelt out in Schedule A of Mr. North’s employment contract, which states “responsible for the provision of assistance to Councillors in developing policy”. If the General Manager and any staff feel that the Councillors are not playing ball and following what they want to do, that is too bad.

There are indications, from the evidence before me, that Mr North may have, to his possible ultimate detriment, allied himself, or allowed himself to be seen to be allied to, the Lightning Ridge faction of Councillors at this Council, and their particular philosophical or policy aims. This has become apparent to me for a number of reasons, including some of the views that Mr North chose to put to this Inquiry in his written submissions, quoted at section 3.2 above. Another example lies in his almost identically worded description of the basis on which he sees the division between Councillors to that provided to this Inquiry by former Clr Bob Hewlett, both of which are also reported in section 3.2. It seems clear to me from what Mr North told me about the need for reforms (see again section 3.2) that his philosophical views accord much closer with the Lightning Ridge group.

A General Manager needs to walk a fine line between his statutory role and responsibilities to “implement without undue delay the decisions of the Council” (compare the wording of section 335 (1) of the Act) and the fact that the elected body may frequently need advice and guidance on policy directions and needs. Where this latter situation arises, the General Manager must ensure that all options are presented to the Councillors in an even handed and impartial way, and leave it to the elected body, as the governing body of Council, to fulfil their role and responsibilities on such matters as policy direction and so on.

I note that Mr North himself conceded to me in his oral testimony (see the passage quoted under section 6.2.1 of this report) that some of the advice given in reports to Councillors in the past was insufficiently objective, and that he would change this for the future.

A General Manager needs to be seen not to be pushing particular barrows, and it seems to me that Mr North may have failed to understand this. A particular example is in relation to the policy on the role to be played by tourism and tourist promotion, an approach that the evidence shows Mr North has adopted and pushed with some personal zeal and interest. Certainly, Clr Waterford’s evidence to me was:

We decided to go along a tourist route early in '99. There was a lot of people out at Lightning Ridge who were pushing to get more brochures printed. I believed that brochures were just not getting anything done and I believed we should be doing something for the whole of the shire. Nothing much was done in '99 or 2000 but when Vic came on board I asked him to look at - seriously look at the pushing of tourism in our shire. He's done so.

An example in relation to Mr North's enthusiasm for and views in respect of tourism is as follows. When giving oral testimony at the public hearings, Mr North gave the following evidence about the tourism strategy:

- Q. What's council's policy on tourism and tourism promotion?
- A. I think when you talk about council there's 12 members on council and I think they vary in – vary in their opinions about the importance of tourism but I would imagine I think all of them would agree that we need to achieve long-term economic sustainability and I guess as general manager I see tourism as a means to achieving that economic sustainability in the longer term. Now, other industries while they're important, some of them are based on seasonal – are only seasonal and can be up and down quite significantly and I think tourism is one of the industries that would provide us with a consistent income and sustainability in the long term. That's not to degrade any other industries.
- Q. But, see, what you're telling me is that council's policy is 13 policies representing the views of 13 individuals including yourself.
- A. No. I'm saying that every individual has a different opinion and some will see one activity more important than another and I think that's human nature.
- Q. But doesn't the – isn't it one of the key roles of the elected councillors as a body by means of passing resolutions at duly constituted meetings if necessary by majority vote where there is some dissent or disagreement, isn't that one of the primary roles of the council, so that when I ask you what is council's policy on X, Y or Z surely you must appreciate that I'm asking you for some indication as to what policy council has officially adopted by means of a resolution documented in the minutes?
- A. I accept that and in that regard with tourism the tourism strategic plan was adopted by council.
- Q. When would that have occurred?
- A. During the year of 2002. ...

But, Mr North also later told me:

I think also the coming to awareness of the value of tourism in some parts of the shire has been much slower than I had hoped or planned and I think it was fairly crucial.

At section 3.2 of this report I noted the General Manager's advice and evidence in which he expressed concerns about what he described as confused and unclear directions he felt he was getting from the Councillors. Towards the close of his evidence, I asked him more about this:

- Q. ... You also commented in your submissions that council needs to depart from the core industries of agriculture, farming and mining being the economic backbone of the community and instead to focus on tourism as a strategy for long-term economic sustainability.
- A. I think that you might have misinterpreted what I wrote, commissioner. What I was saying was that there needs to be an effort placed on another industry that is going to provide reliable long-term sustainability, and it wasn't about not doing the agriculture and other industries. Of course, they have a major place in this community, but they are unreliable with seasonal changes.
- Q. Are you saying that as part of the confused and unclear direction that you are getting from council that there was no recognition by councillors of the concerns that you're expressing?

A. I'm not sure that there wasn't recognition, there was inaction to assist with that process and, therefore, determine a way forward. I'm sure that individuals did have views about - - -

Q. Mmm.

A. - - - each of those items, but it wasn't forthcoming as a council group.

Q. Do you not agree that under the Local Government Act is council's elected body that has the power and prerogative to set policies and directions for council?

A. Absolutely.

Q. So if the elected body has not decided to pick up the concept of focusing on tourism as a strategy for long-term economic sustainability, then that's a matter for the elected body, isn't it?

A. Absolutely, but they did, commissioner. They actually helped - - -

Q. So whose need, whose idea was it to focus on tourism? Was that something that came from you, or was it something that was initiated from one of the councillors, or several of the councillors, or the whole lot, or what?

A. I suppose these things start in somebody's mind. I certainly was involved in that at the beginning and was responsible for putting the paper to council that we develop a strategic - - -

Q. So you put a written paper to council.

A. Yes, I provided you with - - -

Q. Yes.

A. - - - the strategic plan and the resolution that council adopt a tourism strategic plan ...

..

Q. At the very end of your written submissions to this inquiry you comment that councillors have made some difficult decisions in the best interests of the Walgett shire community, and you give as a specific example council's strategic directions for tourism.

A. Ah hmm.

Q. Why was such a decision difficult?

A. Well, that may not have been a good example of a difficult decision, but that was a decision - - -

Q. Well, it's the one that you put to me in your written submissions.

A. Well, I put a number, I think, of decisions that council took - - -

Q. Mmm.

A. - - - and there was some difficult ones that they needed to take. The point I was simply making was that despite other matters, what I referred to as democratic process, there were decisions that council have taken and some difficult ones taken.

Any General Manager who actively seeks to ally him or herself to a particular grouping of Councillors, or who allows perceptions to arise that this is occurring, ultimately does so at his or her own risk. Chickens can come home to roost when the reins of power change hands at Council. I can only refer in this regard, in the context of this Council, to the words of Clr Greenaway, the newly elected Deputy Mayor from the Walgett faction, which at least for the next few months, holds power. His submission in this regard is quoted at section 3.2 of this report.

3.21 The performance of the General Manager and his administration

The findings of the Department of Local Government's section 430 investigation and of this Inquiry as well are abundant testament to the poor performance of the Council administration, led by Mr Vic North as General Manager.

To some extent, only, Mr North sought to put some of the blame on his Group Managers:

Q. What about – is not your primary role as manager of the organisation, you're the general manager?

A. Ah hmm.

Q. How much of your time would you spend on that? By all means talk in terms of days a week or hours a day.

A. Well, I see all of my time spent on managing the organisation whether it's writing strategic documents or whether it's writing letters of response to people or whether it's ensuring that our governance process is on track, whether we're getting the minutes out on time. I mean, I see all of that as managing the organisation.

Q. So the 2 days a week that you're doing on checking these publications - - -

A. Are part of management. [Mr North had earlier told me that it took about two days a week of his time just to check certain publications. This part of his evidence is quoted later in this section.]

Q. - - - you would include as part of management.

A. Yes, and I have to add that the reason that I'm more involved in that is I think that our two group managers and managers have been more tied up with a lot of systemic issues that perhaps we weren't aware of before the team came into place, so there was a lot more work to be done on just setting ourselves - - -

Q. Sorry, which team are you referring to?

A. The management team that was brought on at the end of 2001 - - -

Q. Right.

A. - - - was brought on with an understanding that they get on with operational work and strategic work and you saw how the structure was developed. The two group managers are strategic managers not line managers in the true sense.

Q. Right.

A. And so their role was to assist me in rolling out a strategic plan for the shire to achieve long-term sustainability, economic sustainability. I guess I have to say that that hasn't worked as we planned it for various - - -

Q. Are there any particular reasons for that?

A. Well, I think because our two group – my two group managers have spent more time than I would have liked and they would have liked on line and operational work.

Q. Is that due to circumstances outside their control or inside their control?

A. I think it's probably a bit of both. I think the issues and systems that we had to deal with were far more than we anticipated we'd have to do and I guess when

you put a new structure in place you've got to change finance, charts of accounts and things like that. Those things took longer than we had hoped to achieve those things.

Q. Was any aspect of that what the mayor told me yesterday in terms of inheriting problems from the past?

A. Let me say that I don't call them problems, they're challenges. I mean, when you take on a new team with a new mandate there are obviously changes that need to be made to fulfil those requirements and this organisation was no different. The things that were in place clearly worked in the past and they weren't going to work with the way we wanted to do business and I have to say that there were some of those matters that took – they were much more complex and more difficult to deal with than I had anticipated.

For the record, I should note that I have seen confidential documentary evidence which shows that when it came to undertaking performance appraisals of his Group Managers, Mr North was much tougher on one of them for his perceived supposed failures to focus on strategic directions than he was apparently having me believe from the above evidence.

One issue that I saw from the documentary evidence provided to me prior to the commencement of the public hearings, as well as in the written submissions to this Inquiry, related to the extent to which Mr North might have been devoting too much time to tourism promotion matters and not to simply managing the organisation.

At section 3.9.1 of this report I have considered the evidence as to tourism promotion being apparently, though Council really failed to tell its community about this in any meaningful or adequate way, one of the major projects and focuses of the 1999-2004 Council.

And at section 3.20 of this report, I have looked at the question of how it would seem that Mr North himself personally played a major driving and initiating role in getting the Councillors, though apparently with some difficulty, a matter that seemed to be the source of some frustration to him, to adopt a tourism strategy.

Schedule A to the General Manager's contract of employment sets out a position description and performance measures for him. Tourism matters are not mentioned.

On the other hand, and perhaps inconsistently with the contract of employment, Council's Strategic Plan for 2003-2008 (its latest management plan) at p. 7 reproduces Council's organisation structure and lists under each senior manager his or her responsibilities. For the General Manager there are 10 such responsibilities identified, and the fourth in order is "tourism and economic development" and the next is "marketing, promotions and media".

Mr North's oral evidence to me, however, was that since that document had been written the role regarding economic development had been transferred to one of his Group Managers, though he stressed that "tourism and economic development are very closely linked".

The hand of Mr North is evident in the description of responsibilities listed in the management plan. Early in his oral testimony to me he gave me evidence about his

employment background and experience. Immediately prior to joining Council he was the group managing director of three small, sports marketing and sports management companies, based in Victoria.

I asked him about how he saw his role:

- Q. What do you see as being the key functions of a general manager of a council such as Walgett?
- A. I guess primarily I was attracted here because there was a need for, as I understood it, reform, so obviously leading – reporting through council to lead the organisation on a day-to-day basis and I guess I saw as probably the most attractive part of that offer to lead some reform for the long-term sustainable - economic sustainability of the shire. However, obviously with a position at this level governance and other matters of staff management are equally important.
- Q. What about your statutory role and responsibilities under the Local Government Act?
- A. I don't think there's any doubt that that is an essential component.

I also sought evidence from him as to his involvement in tourism matters:

- Q. ... The list of your responsibilities there, subject to the point you've just made about economic development, does that mean that you personally fulfil each of those roles and responsibilities or are some in fact delegated by you to other staff?
- A. Some I try to drive with the assistance of others, so really that list reflects what I want to be directly involved with ...

And later:

- A. Tourism I try to be actively involved in; however, I have two of the centre coordinators of the visitor information centres helping in that regard, and where there's marketing and promotion I have the marketing and promotions officer so for most part all of those are not just me, they are myself with a team.
- ...
- Q. ... Does your position description actually specifically mention tourism?
- A. No, I don't believe it does. It talks about long-term sustainability and I've embarked on tourism as a way of enhancing the understanding of locals, particularly the value that we've got in the shire and across the shire, and what we can offer, so that there's a mind shift in our local people to be more positive, and therefore will help us when we move into attracting businesses into the area, as a separate phase.

I went on to ask him more about his previous sports marketing job and role, and then continued:

- Q. And is that a role, the sort of work that you find particularly interesting?
- A. Yes, it is.
- Q. Ah hmm. Is that why you involve yourself in those sorts of matters at council?
- A. Well, I suppose there's an element of that, commissioner, but I don't consciously think of that.
- Q. And what qualifications do you have in tourism promotion and marketing?

- A. I've got no formal qualifications in tourism at all. Most of it is fairly common sense. It's about recognising what as a visitor or a traveller you might want to see, so it's really looking from the other end.
- Q. Ah hmm.
- A. In terms of marketing, obviously that was a key role in my last job, and a lot of the jobs in terms of reform involved marketing of new ideas to the stakeholders to ensure that we moved together along a reform process.

I then sought to get some indication of the amount of time Mr North was devoting to the various key parts of his job:

- Q. How much time on an approximate percentage basis would you spend on each of the various roles and responsibilities that you have?
- A. I guess I spend far too much on detailed stuff of checking writing and advertising and publications that we communicate to the community on. I - - -
- Q. Is that because you don't have somebody to delegate that task to?
- A. No. We have different people that do these things but before something can go out into the public arena it goes through my office and myself and the mayor are the only two people delegated by council to speak to the media or to put material into the public arena and I suppose it's part of my own weaknesses that I want to make sure that those things are generally okay before they go out so I do spend a lot more time than I would like on that.
- Q. How much approximately in percentage terms of your total time in the office would that encompass?
- A. I'd only be guessing but I guess if I take into account all the letters that I have to write each day and check other things that come through my office I would say it's a couple of days a week.
- Q. Out of 5 days a week.
- A. At least, yeah, at least.

I then sought to examine the issue in terms of relative expenditures on tourism in Council's overall budget:

- Q. Council's tourism budget for the year ended 30 June, 2003 was a fairly small amount. Is that right?
- A. Well, it's about \$125,000.
- Q. Ah hmm. My calculation was that it's really only about less than 1 per cent of the total budget.
- A. Yes, that's probably right.
- Q. And on that account it seems to me that from what you're telling me as to the time that you spend it seems to be out of proportion with the budget.
- A. Well, that may be so in terms of the budget but that doesn't necessarily mean it's less important because it's got less budget. I mean, you were pointing out yesterday that our economic development had only \$10,000 but that's a key strategy that we need to drive through and I may spend once we get it going a significant amount of time on it, so I don't know that there's a correlation necessarily between budget and importance.

The question of the relative importance of tourism and the efforts that appeared to be being devoted to it was perhaps summed up with following:

- Q. But in general terms what is the degree of importance to Walgett Shire and the Walgett Shire Council as an organisation of tourism?
- A. Well, it's in my opinion absolute if we're going to achieve any economic sustainability in the long run, medium to long - - -
- Q. No, it's your opinion?
- A. Yes.
- Q. But is that what the council as the policy-making body has decided?
- A. I assume that's the case since they agreed to the tourism strategy.

Notwithstanding what Mr North was trying to put to me, I do have some concerns that Mr North may have been spending too much time on what he viewed as the more interesting, or perhaps the more glamorous, side of things, rather than formally managing the place.

I sought the following evidence from Cllr Alan Friend on the matter:

- Q. ... What are your views as to tourism and its alleged importance to the shire?
- A. Well, I think tourism is, is very worthwhile, but it hasn't just suddenly happened in these last few years. This, this shire has been very touristy-minded way back in the early '70s.
- Q. Has that been at the cost of looking at other facilities and other expenditures and other efforts on the part of the council?
- A. No, not really, it's – it hasn't – it didn't attract the amount of money that it's attracting now. I feel that the money that you might look at there that goes to tourism at the moment is really not the true figure because personnel and one thing and another, it wouldn't show up in those figures are being used quite extensively. Just off the top of my head I would think it would probably be about \$600,000 they've spent on tourism.
- Q. Which is not readily apparent from council's published annual report - - -
- A. No, no.
- Q. - - - and strategic plan?
- A. And someone will shoot me down in flames for saying that, but I just – I have a problem trying to - - -
- Q. So you say that tourism is certainly an important issue, but are you putting to me that there's – it's become – there's been too much concentration in it, out of proportion perhaps?
- A. Yeah, yeah, I would agree because if that happens something else does suffer.

The issue for the major part of my consideration is, however, what responsibility the elected Councillors have for the failures of Mr North and his administration. I have explained that such responsibility and accountability does exist, for the reasons set out in section 1.13.14 of this report.

In essence, a large part of the responsibility of the Councillors serving on the 1999-2004 Council arises through their failure properly to understand and fulfil their role of oversight of the performance of the General Manager, and through him, his administration. I examine this further in the next section of this report.

As for the newly elected 2004 Council, the role and any appraisal of the performance of those Councillors in discharging that role, is examined in section 6.2.3 of this report.

3.22 The appraisal by the Councillors of the performance of the General Manager

Mr North, as is required under section 338 (1) of the Act, was appointed as the General Manager of Walgett Shire Council under a written performance based contract. The contract is a four year contract, which expires on 13 May 2005. Mr North commenced on 14 May 2001.

I have discussed in section 1.13.14 of this report the provisions of his contract relating to the contractual requirements as to his performance, and how that performance is to be measured. Apart from the need to have in place an annual and separate performance agreement, and the fact that an appraisal of the General Manager's performance must be undertaken on a six-monthly basis, the contract is largely silent as to how that performance might be appraised.

The evidence is that, despite the clear requirements of clause 5.1 of the contract, no performance agreement has ever been signed, though there is some indication that a document of sorts was prepared and used in the course of the first performance appraisal of Mr North's performance that was carried out, nearly a year after the General Manager was first appointed. Clr Alan Friend was in fact the Mayor at the time Mr North was appointed, and it was the joint responsibility of Council (through and led by the Mayor) and Mr North to ensure that such a document was created and signed.

I actually attribute a greater responsibility on the matter to Mr North, because as General Manager he was responsible for providing advice on administrative matters to the elected body, and also because it was clearly in his personal interests that the proper procedures were followed so that he clearly knew what his responsibilities were as General Manager.

As I have indicated at section 1.13.14 of this report, the contract does provide a default fall back provision, in terms of what is set out in Schedule A to the contract, as to the strategic objectives and performance measures of the General Manager, but this is not an excuse for the failure I have noted.

The evidence is that only two performance appraisals have ever been formally carried out. The first was in April or May 2002 and the second in December 2003. It is clear, equally, from the evidence that neither process was in accordance with the requirements of the contract – indeed the contract was never even looked at as a reference point – nor in accordance with what I would call best and appropriate practice.

I sought the advice of Clr Waterford as to what did in fact happen in relation to the appraisals that have in fact occurred in respect of Mr North's performance:

- A. ... Alan Friend was meant to have done a performance agreement and it hadn't been done and so when I got into the chair a couple of months later Vic had mentioned that the performance agreement hadn't been done and should have been done to give him some idea of what responsibilities he was meant to have had in the first 3 months and that hadn't been done and it took me another - I suppose 3 or 4 months before I actually did one.
- Q. Why did it take that long?
- A. I don't know, just I couldn't seem to be able to get anyone to do it. I'd seen Councillor Friend and asked him if he could come onto the board to do a performance agreement. He said he couldn't because he was - - -
- Q. Did council have a resolution on its book at that time as to how any performance appraisal of the general manager's performance should be undertaken?
- A. No.
- Q. So there was no set procedure laid down.
- A. No set procedure and I suppose because it was the first one I'd done I didn't have a clue what was going on so I - but I did ask Councillor Friend to come on and he said he was too friendly with the then general manager, he didn't particularly want to do it. I felt it was his - part of his role to do it seeing he'd been mayor for a fair part of that first part of the season but he declined.
- Q. You were forming a committee of people to undertake the - - -
- A. Of people to do the performance agreement.
- Q. Yes.
- A. And I couldn't get - Councillor Lane, he wasn't going to be there. I asked someone else. I finally asked Councillor Joan Treweeke and Councillor Prue Hutchinson to do it and they said they'd be happy to do it. I went to Vic and I said - - -
- Q. They came on at fairly short notice, I understand.
- A. They did because I was getting very concerned about the time it was taking to do a performance agreement.
- Q. What process did you follow in doing that performance - I mean, let me go back half a pace. Did you seek any external advice from any source as to what might be the appropriate process to follow? Did anybody approach the LGSA, for example?
- A. No, I didn't but I have - I had got - I don't know where I'd gotten a performance agreement from somewhere else that gave a rundown on how you go through it.
- Q. From another council.
- A. From another council and we went - there was five or six pages with - - -
- Q. Questions on it.
- A. - - - 20 questions on each page.
- Q. Yes.
- A. I gave one to Councillor Treweeke and one to Councillor Hutchinson.
- Q. That's the performance appraisal that led to the \$15,000 bonus, isn't it?
- A. Yes, yeah.
- Q. What - - -
- A. It was a fair process, it took us - it took me 3 or 4 days to fill this form out and I'm sure it took the others some time. It wasn't just a fly-by-night - - -

I asked Clr Friend why he had declined the invitation to be on the committee:

I refused because I was the mayor when we hired Mr North ... And then in September I was replaced. I just preferred not to be involved ... I thought it was actually far better that I wouldn't be and I didn't see any reason that – there were plenty of other councillors that could do that job. And, anyway, I kept saying to them, "Why don't you do the review at a council meeting?" It's just as easy to – for a whole council to do it as two or three, but they insisted on having a committee. ... Now, if it comes back to council it could still take half an hour to resolve it anyway. You go through the whole process again. But I, I just thought it was quite out of order, there was – wasn't a bonus in the contract. I helped prepare that contract and I knew it backwards. And why I remember it so clearly is that we advertised that position from \$90,000 to \$95,000, that was the range, and Mr North pushed us up to 105, or around about that figure, I'm just not sure, and then with the extras his total salary came to \$120,000. Now, I said to Mr North, "You're getting your bonus upfront, there's not bonus in this contract, you're getting it upfront." And that – that is the way I remember it. We didn't write it into the contract because we paid him well at the start ...

As noted, the second appraisal was one conducted in very late 2003, at a time when the final draft report of the Departmental Representatives in respect of their investigation under section 430 of the Act had been provided to the Councillors for their comment, as Council's governing body. They were therefore well aware of the adverse findings in the report.

I asked Clr Waterford about the process followed on this occasion:

- Q. What process was followed on that occasion, was it the same questionnaire process?
- A. No, it was a different questionnaire. One of the councillors who were on that committee had produced another one from another council and we went through that form, that would seem to be similar.
- Q. Again nobody contacted the LGSA to find out what they might recommend be done?
- A. No.
- ...
- Q. So you had a different form of questionnaire, you also had a different committee, differently constituted committee?
- A. Different committee, yes.
- Q. Who was on that committee?
- A. The committee was Councillor Greenaway, Councillor Lane and Councillor Bow and myself.
- Q. Right, so you had in effect two from each side. What was the outcome of that process?
- A. That his performance agreement was satisfactory ...

And later:

- Q. ... What criteria do you use when each time you review Mr North's performance, is it simply to get answers to these questions that you've got samples on from another council or several other councils?
- A. In the last time – in the two times that I've done it I've had – there was a score of 1 to 10 - - -

- Q. Ah hmm.
- A. - - - and a comments column and if he was under par or he was above par then there's comments you put on it and a score to be evaluated.
- Q. Is that a process that is actually provided for or in accordance with Mr North's contract?
- A. I don't know.

Clr Waterford told me that he did not even think to have a look at Mr North's contract. He said that he merely assumed that it was the same as that of one of the predecessor General Managers, and this is why he mistakenly thought that it was all right to award Mr North a bonus in May 2002.

Clr Waterford accepted full responsibility for the unlawful granting of the bonus to Mr North. On the other hand:

- Q. So you don't concede that any of the procedures followed were incorrect.
- A. Not – not at all. In fact, I think it was very well done by all three parties.

As indicated above, I do not agree. The process followed was not a proper process carried out in accordance with the relevant contractual provisions. Indeed, it was carried out in ignorance of those provisions.

Nor was it a process that followed best practice. If it had occurred to anyone, it would have been quite simple to seek formal advice and assistance on the matter, for example from the Shires Association, which had after all provided assistance to Council in the employing of Mr North in the first place. Likewise, an approach might have been made to another Council (and I am not talking the informal, and apparently one on one, basis of meeting some other Councillor at a conference or whatever) by way of benchmarking, let alone to the Department of Local Government. No one seems even to have thought of it.

This is shocking; yet it seems in place with the other "anything goes", "she'll be right", amateur hour approach to many things that has been the experience to date at this organisation. It is simply not good enough.

Not only do those Councillors who participated in the process share the blame and responsibility for this, but so does the General Manager, Mr North, himself. Equally, so do the whole of Council's elected body, the Councillors.

There is evidence that some Councillors called, for some time without success, for a report on the results of at least the earlier process. They should have called and pressed harder. It was the collective responsibility, as I have indicated at section 1.13.14 of this report, of all the Councillors to ensure that the performance of Mr North as General Manager was up to scratch. They failed in that task.

Moreover, and particularly as to the result of the December 2003 appraisal, I consider that if the process had been done properly, a very different outcome should have ensued.

I note that the December 2003 process was undertaken by a committee of four, two Councillors from each faction. That being so, I feel surprised that they came to the conclusion they did.

The outcome of the December 2003 process was recorded in a largely informal document, a copy of which, at my request, Clr Waterford tendered to me. The Committee's conclusion was:

We find that he has performed in a satisfactory manner.

Given the clear evidence of the final draft section 430 investigation report, I must question how the Councillors could reasonably have come to such a conclusion.

Perhaps they simply failed to understand the gravity, at that time, of the matter. The appraisal was carried out prior to Council's meeting of 8 December 2003, when at the end of the meeting the meeting moved into closed session of all Councillors present to discuss the committee's report. It was also clearly carried out prior to the special Council meeting of 16 December 2003, when the Councillors met to formally consider the Department's section 430 investigation report (then still in draft form) and to settle a response to it.

The decision of the full Council, at the close of the closed session, was recorded in the minutes of the meeting of 8 December 2003, as required by the Act. That resolution was in terms that firstly endorsed the report card from the committee, and then to set up a list – a longer list than that proposed by the committee – of points on which action needed to be taken by Mr North. The list formally adopted and approved by all the Councillors contains some 15 items. Again, one wonders how in view of this a "satisfactory" report card could reasonably have been come to and so endorsed.

The document – the report of the committee – also contains the following passage:

We accept that when first employed, the first three months review was not carried out and this caused the Review Panel to have little to go on in regards to Performance Agreements or no base on which to evaluate the performance. Taking everything into account this Shire has another six months to bring back Performance Agreements, Bonuses and Evaluations into the right time frame.

This passage is replicated in the decision of the full Council.

I take this as an admission that the process carried out by the committee was flawed. Another reason to doubt its findings.

The decision of the full Council is, at least according to how it was minuted, one that on its face appeared to have been carried unanimously. There are certainly no votes recorded as having been cast against it.

As noted, Clr Lane was one of the committee of four Councillors involved in the performance appraisal process of December 2003. I asked him about the matter when he gave oral testimony at the public hearings:

- Q. So what was your view as to the general manager's performance?
A. That I thought that there were certain areas lacking.
- Q. Were they significant?
A. I believe so.
- Q. Could you elaborate as to the areas that you have in mind?
A. I – I certainly believe that the relationship between council and the general manager has gone downhill and I believe that certain management support of other staff was lacking.
- Q. The support by the general manager for other staff?
A. Yes.
- Q. And what impact is that having on council's performance and its ability to do the job that it's required to do for the residents and ratepayers?
A. Like everything, commissioner, everything has an impact. It would be wrong of me to say that it's all the general manager's fault though, that would be totally inappropriate. The dysfunctionality if you call it that - - -
- Q. I don't think that was really the question I was putting to you. You've identified what you perceive as certain inadequacies in the general manager's performance. I'm asking you to indicate what the impact if any is of those inadequacies on council's performance.
A. Would you like me to give it to you in percentage terms or how - - -
- Q. Tell me however you think is appropriate.
A. I believe, yes, I believe that there is an effect on the ability of council to perform its duties but I don't – I wouldn't say that it's entirely the general manager's fault either.
- Q. So who else's fault is it?
A. Certainly councillors, certainly council has to share some of the blame.
- Q. Is that all councillors or - - -
A. All councillors.

3.23 The views and confidence of the community in Council

As I have already explained at section 1.13.9 of this report, my Terms of Reference do not specifically raise this as an issue for consideration in this Inquiry, but nonetheless I consider it an important aspect that I should, to the extent of the available evidence, examine. Given the Councillors' ultimate accountability to the community, it is important, when I as Commissioner am considering the governance and performance of Council's elected body, that community views on the matter be taken into account.

It is also clear that the General Manager's own performance is one to be gauged by reference to such views, or at least by reference to the ascertainment of such views and the reporting back to Council of them. Given the lack of any annual separate performance agreement having been put into place between Council and the General Manager, as to which see section 3.21 of this report, the effect of clause 5 of the employment contract of the General Manager is such that whatever is

contained in Schedule A to that contract is relevant as to what he was expected to do as General Manager.

In that Schedule certain “key objectives” are identified that the General Manager has to satisfy. There are five of them. The Schedule then goes on to provide that to “achieve these objectives” the General Manager has certain identified “key accountabilities”. One of these is to “manage the administration’s dealings with the community and other government bodies”, and in turn under this heading is:

Ensure that regular customer surveys are conducted to assess the quality of service provided by the Council.

Another accountability is “to be a spokesperson for the Council in its dealings with the community and the media”, and under this head also is:

Report information gathered from community and others back to Council.

The evidence is that very little surveys of the type in question have been conducted under or by Mr North as General Manager. A form of questionnaire on customer service was for a brief period left at Council’s front service desk for people to fill in. This was in or around November 2002. It had a very limited purpose.

It was conducted on the Council’s behalf by Mr Alan Nelson, then in the position of Manager Executive Services. He made an oral report back to his Group Manager on the results, but it apparently went no further, other than with Mr Wooldridge (who told me that he had the necessary delegated authority to do this) instructing Mr Nelson to implement any recommendations he made arising out of the survey results.

Another form of limited survey was a sample survey of a number of persons in the community, done over the phone, as to the best manner in which Council might communicate with its community. This was overseen by Council’s Marketing and Promotions Officer, Mr Alex Lubanski. The results of this were reported to Mr North.

I obtained the following evidence from Mr North:

Q. I was going to say, well, how often are these surveys carried out? The information to date seems to me that they’re a bit random and spasmodic.

A. They are, they are.

Q. And yet your job description requires that you conduct regular customer surveys.

A. Well, I’m also out and about. The councillors are out and about and we get feedback, so we are keeping up to date with what – we’re pretty much up to date with what’s happening out there.

Q. Well, I’m not sure that I would agree with you, that the general manager being out and about is the conducting of a customer survey.

A. It’s certainly understanding, or getting to understand what some of our customers require and have opinions about. It may not be a formal piece of paper - - -

Q. Mmm.

A. - - - that goes out that they have to fill out.

Later he told me:

... we haven't had a regular customer survey process. ... clearly there were other priorities.

In my view Mr North has not really or sufficiently discharged his accountability regarding his performance in terms of Council customer or community surveys, and has certainly not adequately reported back to the Councillors on whatever has been done.

There is also the question whether the community are being kept properly informed. One of the target objectives set for itself by Council in its Management Plan was to keep its community satisfied and to measure this by the conducting of customer surveys. I asked Mr. North about this:

Q. - - - "The measure chosen by council to gauge its performance was to conduct a survey of customer needs and regular consultation as to levels of satisfaction."

A. Yes.

Q. "In reporting on the outcome a meaningful customer sample has not been forthcoming from council survey." Could you please explain what those rather obscure words mean.

A. That there were none done and none carried out for that purpose because we had a vacancy for some lengthy months - - -

Q. Well, that's a - - -

A. - - - we – so the manager (indistinct)

Q. - - - rather different message, it seems to me.

A. Well - - -

Q. I mean, this is another situation where the community aren't being honestly told what's going on or not going on.

A. Well, it's honest in the sense that there wasn't one carried out. The reason - - -

Q. Yes, but "The meaningful customer sample has not been forthcoming," that's sort of mumbo-jumbo - - -

A. Well, there was - - -

Q. - - - bureaucratic speak - - -

A. There was - - -

Q. - - - which nobody can understand, not even this bureaucrat.

A. Well, they're the responses from the managers who put those targets together and I accept that you, and accepted yesterday, that are you looking and suggesting more than the outcomes that are put in single sentences or two sentences, I accept that.

Q. So the result is, is it not, that council simply isn't aware whether it's meeting the needs and expectations of its ratepayers and residents?

A. Well, I don't think you need – you have to depend on questionnaires, commissioner - - -

Q. But that's the - - -

A. - - - and while we did - - -

Q. That's the standard which council itself has said that it will be judged by.

A. But I would repeat what I've just said, it's not the only way that you can make that judgment.

- Q. Then you should have told your community that there are other ways of doing it and you haven't.

And later:

- Q. So what steps is council now taking to remedy the situation so that council and the administration, that's to say both you as the general manager and the elected councillors as the governing body, are in a position to self-monitor your performance on these matters?
- A. Well, the truth is that I haven't been involved in any detailed - - -
- Q. But you're the general manager and this is - this is a key measure of council's performance and accountability to its community and ratepayers.
- A. I accept that, commissioner, but I'm simply advising you what I – what is the factual situation.

And again:

- Q. Now, those surveys that have been done - - -
- A. Yes.
- Q. - - - what reports were provided to the councillors on the results of those surveys?
- A. None at this stage.
- Q. Why not?
- A. Well, I - I think I explained to you yesterday that we needed to address at executive level the survey about staffing and put some management proposal ...

The result of the failure to report to the Councillors is that Council, through its elected body, really has very little if any formalised information, contrary to the apparent intentions in this regard, from which they might be able to measure and manage their own performance and whether they are in fact keeping their community happy and discharging their obligations to them. Council's complaints handling mechanism is certainly one management tool that is in place, but it seems clear from the terms of the General Manager's contract, as well as from Council's Strategic Plan, that more was intended.

The evidence is that complaints are reported, at least in more recent times, on a monthly basis by means of a complaints schedule being made available to the Councillors at each monthly Council meeting.

I have noted at section 1.3 of this report the fact that very few submissions have been received by this Inquiry from members of the public. That therefore limits the opportunity that I might otherwise have for myself for obtaining evidence of the community's views. It is therefore virtually impossible for me to make any reliable findings on the matter.

However, one letter (published as submission number 55) which was received shortly after the close of the public hearings, was as follows:

As citizens of the Shire and ratepayers we are deeply concerned about the outcome of the public enquiry (sic).

Suggestions that the Council may be sacked as a consequence are deeply troubling. Regardless of the problems associated with the old Council, the people have now voted in new council members – this is democracy at work and we would suggest defensible at law. The Shire's citizens have *not* voted for an administrator to take over the reins and have overwhelmingly voted *against* any amalgamations.

We urge you to bear this in mind as you conduct this demoralizing enquiry (sic) and give our formally elected councillors the opportunity to validate the confidence that the community has placed in them.

We strongly support our councillors who have selflessly volunteered their time and energy for the good of the community. We would vehemently resist any action by State bureaucracies that meddles in the affairs of Local Government without due consideration to the democratic process.

I also received an interesting late written submission from a long term but now ex Councillor. This was Mr John Campbell, and his submission was catalogued as submission number 51. Mr Campbell was a Councillor on Walgett Shire Council for some 25 years. In his letter he had the following to say:

After attending and listening to the first day and a half of the Inquiry into the Walgett Shire and after reading most of the submissions and the report from the Local Government inspectors I feel that I would like to make the following observations.

Having been born in Walgett in 1936 and spending 63 years there and having spent 25 years, covering seven terms as a member of the Walgett Shire I believe that I have the experience and knowledge to know the workings of the Shire very well. Starting first with the report from the Inspectors, it is obvious to me that the present staff, and in particular the General Manager, knows little of what is in the NSW Local Government Act and as a consequence has failed to advise Councillors that they were working outside the Act at times. As I served with some of the 1999-2004 councillors I am also aware that to some the Local Government Act was an obstructionist document which they were quite happy to attempt to defy whenever they could get away with it.

After reading all the submissions that were published, the one from Alan Nelson a present member of the Walgett Shire staff confirms most of my suspicions re the G.M.'s lack of knowledge of the Act and his willingness to follow his own agenda. Also in the submissions it is interesting that several others, all from Lightning Ridge, followed a similar theme to the G.M.'s. This was the "progressive" Councillors from the Ridge versus the "Conservative" Councillors from Walgett; it's interesting the Ridge Councillors lump all other Councillors into Walgett Councillors regardless of where they come from within the Shire. Many of the Ridge submissions mentioned the fact that the so called conservative members of the Council represent the areas that pay the vast majority of the rates and the Progressive members come from the area that pays only about 10-15% of the Rates. Maybe, just maybe the so called Conservative side of the Shire knows more about the financial state of the Rural Ratepayers and their capacity to pay rates than the other side when it comes to paying for multi million dollar buildings in Lightning Ridge or anywhere else for that matter.

As well, a lot of the submissions mention the split within the Councillors and from knowledge that I have picked up from my frequent trips back to Walgett the Councillors are hopelessly split – Lightning Ridge versus the rest.

This split started in about 1997 under the Chairmanship of Ian Woodcock. After our G.M. Kevin Ryan left in 1996, we appointed James De La Haye, a New Zealander with little knowledge of NSW Local Government or our Act. This man, De La Haye, had many personal failings and weaknesses and the Mayor quickly realised this and took advantage of his position to influence De La Haye to the advantage of Lightning Ridge and as they had the numbers the rest of the Council could do little to stop this.

Eventually De La Haye was sacked for misconduct, but only after he had been vigorously defended by the Lightning Ridge Councillors for some six months.

As I retired from Council in 1999 I don't know the ins and outs of the last Council but I understand that Cr Peter Waterford and his Ridge colleagues have continued on with this influence over the present G.M.. From what I can gather I don't think either side thinks that the other have any worthwhile contributions to make to the daily running of the Shire.

Finally, after listening to the first day and a half of your Public Inquiry, I was shocked to hear Peter Waterford's evidence. How a man who has been Mayor for 3 ½ of the last 4 ½ years [can] have so little knowledge of what went on in the Shire and what was done is beyond me – it was all “I don't know” or “I don't remember”. This is a man who was only defeated at the last Mayoral election by a draw from the hat and presumably may well be Mayor again after the next Mayoral election. I spent a lot of time on Council with Peter and although he was always a bit rough and ready he was quite a good Councillor despite the fact that he was one who I considered didn't have much knowledge of the Local Government Act and who at times would try to implement things outside the Act. He always accepted the advice from the G.M. that he was outside the Act but now with the present G.M. seemingly having a scant knowledge of the Act I doubt that he has the capacity to guide the Council along a lawful path at all times as Mayor.

There is probably lots of other things I could add however I don't think it will broaden your knowledge of the Walgett Shire that you will have at the conclusion of your hearings. ...

Thank you for reading this submission and for the opportunity to submit it. I and a lot of others have spent a lot of time and energy doing the best for the Walgett Shire and I hate to see the whole administration – both Council and Staff in such a mess. To me it has rendered much of my efforts useless and I feel that I have wasted a lot of 25 years. ...

PART 4

4. THE LIGHTNING RIDGE COMMUNITY CENTRE

4.1 Background

This is a project that, despite dragging on for some 8 years, has still not got much past the planning stages. This has been the subject of comment and criticism in the Department of Local Government's section 430 investigation report. And there is really no excuse for the failure to get an *appropriate* building built and operational, long ago.

It is possibly not the most important project undertaken, or, at least, attempted to be undertaken, by Council in that period, but nonetheless it appears to have assumed a considerable importance in the affairs of Council. It certainly seems to be a project that is a key project in terms of examining the performance of Council (particularly the 1999-2004 Council) and its governance. It is a project that has become the cause celebre of the argument about the alleged imbalance in the provision by the Walgett Shire Council of resources and facilities to Walgett versus Lightning Ridge. It has been central to this Inquiry.

Clr Waterford's evidence to me was:

Q. So the Lightning Ridge Community Centre is 'the big issue,' is it?

A. It's the big issue for everyone.

Q. Yes.

A. It's a big issue. I mean, the rest of them pale into insignificance compared to that particular issue.

The evidence indicates that the project came to life in 1996 through various (in fact some nine) State Government auspiced home and community care services (HACC), housed at various locations in Lightning Ridge needing to be relocated into one new and purpose built building.

Mrs Treweeke, a Councillor from 1991 – 2004, told me:

In July 1996 a discussion was held – I have notes of a discussion with Mrs Johansson, who was the Home Care Service coordinator, regarding a letter she was submitting to the council requesting that the council set aside an area of land next to the library for a community centre and also confirming a number of community groups wanting to use the centre ...

She went on to tell me Ms Johansson simply approached her:

as the council representative, you know, and a person interested in community projects she approached me on that matter and we had worked together in various community projects over the years. ... She just approached me as her local councillor.

Ms Johansson was not, at that time, a Walgett Shire Council employee. She joined Council only in October 2001, some five years later.

The approach made by Ms Johansson on behalf of the various HACC groups was formalised by a handwritten letter from her to Council dated 28 July 1996.

Council responded, at least at that time, very promptly. The very next day, 29 July 1996, Council passed a resolution:

That Council support in principle the concept of establishing a Multi Service Outlet at Lightning Ridge and that a suitable area of land be set aside in Pandora Street.

Ms Johansson wrote another letter to Council on 6 August 1996 giving Council more details as to what needed to be provided for in the proposed building. However, no precise figures or advice were given as to the likely required size of the building. Mrs Treweeke made some handwritten notes in respect of a meeting she apparently had on 21 August 1996 where dimensions of some of the required rooms were mentioned.

On 4 September 1996, the then General Manager of the Walgett Shire Council, Mr James de la Haye, signed a formal written "Expressions of interest" document by Council, as the "Sponsor Organisation", for Government funding for the proposed Centre. It was advised that the funding was sought for "construction of a Multi-purpose building to incorporate the local HACC services and additionally some other community services". No mention, as such, of Council use of the building, or facilities being provided for Council auspiced services and so on. It was, on the other hand, indicated that the project was to "provide a meeting place for community and target groups with facilities for disabled people for toileting and showering which are not readily accessible at other locations locally".

It was also flagged that other funding would be coming from Council, and "development plans donated by community contribution". No indication was provided as to the likely cost of the building, even though the form apparently invited that information, and it was stated that the "estimated HACC grant sought" was \$500,000.

The "Expressions of interest" document was followed up by a formal written funding application, signed by the then Deputy General Manager on 19 December 1996. This advised an estimated cost of the building as being \$289,000. That part of the building that was to house the HACC services was estimated as likely to cost \$270,000. The HACC funding sought was scaled back to only \$300,000.

The then Department of Ageing and Disability (which for ease of reference I will henceforth simply refer to as the Department of Ageing) formally wrote to Council on 17 June 1997, advising of the approval of funding of \$270,000 for the project. Council was asked to sign and return an enclosed Deed of Agreement with the Department to facilitate the release of the funding. The evidence is that this was done by Council, and a copy of the Deed has been provided to me.

That document required (by clause 5.1) that Council itself put in funding or in kind contributions valued at or amounting one half of the funding from the Department. This meant that the project for which funding was approved was to be one costing no more than \$405,000.

The progress was reported to the Councillors on 24 June 1997. It was advised, however, that the Centre “will be built on to the existing library, and would be an extension to the existing facilities”. It was recommended that “an organising committee be established ... to consider all the needs of the occupants of the building and then establish the appropriate design and specifications”. It was also contemplated that “a further report be submitted to Council in the future relating to costings, design and any other details”.

At Council’s meeting of 30 June 1997 a resolution was passed adopting the recommendations. Cllrs Treweeke and Lane, as two Councillors from Lightning Ridge, were authorised to be Council’s representatives on the committee. The other members of the committee were to be the Mayor, the General Manager, two other senior staff members and one representative from each of the organisations who would be occupying the Centre.

The project was off and running, at least on paper.

I have noted at section 2.1 of this report that Council itself called in the Department of Local Government in April 2000 to examine certain matters, one of which was Council’s handling of the Lightning Ridge Community Centre project. The Department wrote to Council on 20 June 2000 to express a number of concerns about Council’s handling of the matter, and in some respects the Department’s later formal section 430 investigation picks up on those.

The concerns raised by the Department in 2000 related to the failure to follow proper and required legal processes – tendering – in respect of the appointment of an architect for the project. The section 430 report also considers this issue, and there is nothing I wish to add on this.

Apart from this, however, the Department expressed general concerns “about the ad hoc nature of the decisions concerning the Complex. There appears to be a lack of quality information on the scope of the project and its purpose to allow informed decision making. Decisions seem to have been made without any real appreciation of the impact eg the engagement of an Architect without an assessment of the cost implications and whether the tendering requirements of the Local Government Act apply ...”.

The evidence gathered in the section 430 investigation and by me for the purposes of this Inquiry show that Council has singularly failed to heed these concerns, expressed as long ago as June 2000, and has just ploughed on, in its own sweet merry, and inappropriate, way. This is a matter for particular concern.

The fault rests at the feet of both the elected body and Council’s administration (in this case under a series of General Managers, but principally under the general

managership of Mr Vic North since he was appointed in May 2001, that is to say some three years ago).

This Part of my report examines the evidence gathered by me for the purposes of and within the Terms of Reference of my Inquiry. I have not attempted to conduct an exhaustive or comprehensive investigation or inquiry into all circumstances and procedures taken in relation to the project, but confined myself to what I see as the key issues relevant to the Terms of Reference of my Inquiry.

4.2 The appointment and role of Council Committees

As noted above, Council resolved on 30 June 1997 to establish a committee comprising Councillors, staff and representatives of the user groups “to consider all the needs of the occupants of the building and then establish the appropriate design and specifications”. Clrs Ian Woodcock (the Mayor of the day), and Lane and Treweeke were on the committee, with no particular Councillor having any particular or special role to play. There is no evidence of any formal delegations being made to any person, let alone particular Councillors or other members of the committee.

The evidence of Mr Jo Wooldridge, Council’s Group Manager Infrastructure Management, was that this “was a constituted committee of council”. Mrs Treweeke told me that the committee was an advisory committee only, and therefore did not have decision making power.

By June 1999 it is clear that concerns were already being expressed at Council about how the project seemed to be growing beyond what was originally envisaged, and how the costs appeared to be blowing out, because the minutes of Council’s meeting of 28 June record:

There is no evidence of a benefit cost analysis having been carried out on the project identified as estimated to exceed \$200,000. In fact the application for ‘slippage funds’ of \$270,000 failed to appreciate the size of a building achievable using only those funds.

It was then noted that the architect’s fees already incurred on the project would use up a sizeable proportion of Council’s contribution.

It was also noted:

The community brief to the Architect suggested what the building would be used for resulting in a floor space of about 760 m2 (indicating a possible \$1,824,000).

The report to the Councillors also stated:

I am concerned that neither Council nor Mr Murcutt has been advised of the real budget for this project.

Council accordingly resolved “that a sub committee of Council consisting of the Mayor, Clr Treweeke, General Manager, and all three Directors meet to determine a fully detailed budget and working plan for the Council meeting on 30 August”.

Mrs Treweeke's oral evidence to the Inquiry was that this was a special purpose committee formed to undertake this particular and limited task only, and did not replace the committee created in 1997. The words quoted set out the sum total of the terms of reference for the committee.

By August 2000 the costs had blown out yet further to the most alarming sum of \$3.29 million. See section 4.13 of this report on this. Council met on 28 August that year and resolved to form yet another ad hoc committee to examine the matter. The recommendation was for the committee to comprise Clr Waterford as Mayor, Clr Mitchell as Deputy Mayor, Clr Treweeke and the General Manager. A motion in those terms was put by two Lightning Ridge faction Councillors, but an amendment, which became the motion that was put and carried, was that the members of the Committee should also include Clr Friend.

Once more the only terms of reference and other indications as to the powers and responsibilities of the committee were in terms of the committee having been formed "to investigate the plans, costings and possible funding of the project".

There may even have been a further committee appointed on 25 September 2000, or perhaps it was just a reconstituting of the same committee set up the previous month, given an intervening election for Mayor and Deputy Mayor, when the persons holding both posts changed. The new Mayor and Deputy were respectively Clrs Friend and Hutchinson. The minutes of the meeting of September refer to the Terms of Reference of the committee being "to undertake its task in regards to the Multi Purpose Outlet proposed for Lightning Ridge", wording that is even more vague than that of August. Nothing is said in the resolution of September to clarify the matter.

The language of Council's resolutions setting up these committees is not at all sufficient to clearly set out the role and powers of the committees, let alone the procedures that they had to follow in conducting their meetings and proceedings. Unless these matters are properly spelt out there is always room for misunderstandings and things going wrong.

It needs to be clearly specified whether the committee is just an advisory committee, or whether it has any decision making powers, and if so whether there are any conditions or restrictions attaching to such powers. It needs to be clearly spelt out who is the Chair of the committee. The rules governing meetings and other procedures to be followed should be set out. For example, what is to be the quorum, who is to preside in the case of the absence of the Chair, and so on.

That there is a need for these things to be done is clear from the provisions of clause 33 and in particular clause 34 of the Local Government (Meetings) Regulation 1999. The provisions of the earlier parts of that Regulation only, by virtue of clause 32 (1), apply to committees of the whole.

Council's own Code of Meeting Practice should not be assumed, in all cases, to apply to the proceedings of all or any of its committees. I note that Council has in clause 5.6 of its Code, which was of course adopted long after these committees were established, that each committee of Council (other than, it would seem, a

Committee of the Whole, to which the normal provisions of the Code apply, by virtue of clause 5.1) may regulate its own procedures, but the appropriateness of this may need to be considered in each case. I have also noted the requirements of clauses 5.2 and 5.3 of the Code, which if complied with, will ensure that Council does what it clearly did not do when establishing the committees relating to the proposed Centre.

Recommendation

That Council ensures that when it establishes committees, whether those committees comprise just Councillors or a mix of Councillors, staff and other persons, it complies with the requirements of Part 5 of the Local Government (Meetings) Regulation 1999, and in particular clauses 33 and 34 thereof, as well as with the terms of Part 5 of its own Code of Meeting Practice. This recommendation applies to all committees so established, whether they be ad hoc committees established for particular purposes or for limited times, or not.

The proper recording of proceedings of all Council committees is necessary in order to ensure that Council acts, and is seen to act, in an open and transparent way, an essential aim and rationale of the 1993 Act.

Mr Wooldridge told the Inquiry that:

I don't recall the committee sitting on a formal basis in fact.

He also said that its "discussions", whether those were considered formal or informal, were not minuted. Mrs Treweeke's evidence was that some sort of notes were taken, but other her own handwritten notes, copies of which she produced to the Inquiry, no "notes", even, were sighted by me. "Notes" are not minutes. Mrs Treweeke also said that the committee met only on "a needs basis". She added:

there were times when there were no meetings for quite lengthy periods, a year or more in some cases.

I also asked her:

Q. Why would that have been?

A. Because the council was dealing with other business and the Lightning Ridge Community Centre was not seen as a priority.

This might, at least in part, explain or provide an answer to the concerns that Cllr Greenaway expressed to the Inquiry about the lack of reports back to Council.

Mrs Treweeke also told the Inquiry that she had been a member of many other committees of Council, and that minutes were taken of the proceedings of those committees by an officer of Council who attended the meetings.

4.3 The role of Mrs Joan Treweeke

Let me first say that I found Mrs Treweeke not to be an impressive witness at the public hearings. In the early part of her evidence she frequently appeared to be lashing around for an answer, furiously leaving through files in front of her, apparently searching for inspiration as to a reply. I expressed concerns about this and the problem diminished, but it did not go away all together.

At other times she stretched the credulity of myself as Commissioner urging me to believe that documents and letters, and also resolutions of Council, did not mean what their plain language quite clearly signified. As to the resolutions of Council it was her thesis that her interpretation was also the one in the minds of her fellow Councillors. I did not and do not accept such hypotheses. They are not credible.

Another of her themes was that what had been said and done or what had been provided by people in the way, for example, of costings figures “had been taken out of context and misconstrued”. This thesis, too, I have rejected as not being credible and not consistent with other probative evidence before this Inquiry.

Despite her protestations to the contrary, the evidence is that Mrs Joan Treweeke, a Councillor in the 1999-2004 Council, and earlier Councils, played a very large and often inappropriate role in relation to the Lightning Ridge Community Centre project.

Mr Wooldridge’s evidence to me was that he agreed that Mrs Treweeke played a fairly prominent role in relation to the project.

The evidence, moreover, shows that she was at many times the driving force behind the project, and particularly the inappropriate directions and dimensions it took.

For example, Clr David Lane told the Inquiry at the public hearings that:

Councillor Treweeke ... drove this project.

Mrs Treweeke’s own evidence was:

Q. ... I’ve noted a good deal of documentary evidence which shows that you played a pretty active role and one could almost be tempted to assume a leading role on that committee. Would you care to comment on that?

A. I think in most council business people have different areas of interest and responsibilities, and quite often jobs are divided up so that somebody just has – keeps a watching brief, or has the repository of the knowledge, if you like, on that area.

Q. So that just happens - - -

A. It happened - - -

Q. - - - as a matter of practice?

A. Exactly.

I asked her about what other members of the committee that was created in 1997 did in relation to the project. For example, while she told me that Clr Lane did attend meetings:

he had other areas that he was – took on his interest. I mean, it is very difficult for every councillor to be across every issue.

Mrs Treweeke also sought to put it to the Inquiry that the main person or persons on the committee who did all the work were Council officers.

Mrs Treweeke was certainly, according to the documentary evidence, one of several Councillors (along with other persons) appointed by Council to the first committee set up to oversee the project on 30 June 1997, but she was not the Chair of the committee. That was the Mayor of the day, Clr Woodcock being the first such Mayor, who remained in that office until 1999. After that the chains of office passed to Clr Waterford, then Clr Friend and back to Clr Waterford for the next 2 ½ years. Mrs Treweeke's evidence, however, was that she did stand in for the Mayor as Chair, if the Mayor was absent.

That is fine, so far as it goes, but, absent any specific delegations, even a Mayor's powers are limited (by section 226 of the Act), and he or she has no ex officio powers to be doing hands on work and taking hands on personal decisions or action on things.

On the other hand, as indicated at section 4.2 of this report, at no time was any formal delegation or other authority given to Mrs Treweeke in relation to the project, except and then only to the extent I shall now record.

I have noted at section 4.6 of this report, the then General Manager's letter of 1 April 1998, copied to Mrs Treweeke, making it clear that communication with Mr Murcutt needed to be through himself. There is some evidence to indicate that, from time to time, but only in a limited way, and for limited purposes, Mrs Treweeke was authorised by the General Manager of the day (the question whether or not he had the necessary delegated authority or power to do so is another matter, but is one that I do not propose to pursue) to contact Mr Murcutt.

So, for example, the General Manager wrote to she and Margaret Gleeson on 4 November 1998, suggesting "Joan, perhaps a visit to Glenn might be appropriate". On the other hand, he goes on to note that he himself would be "visiting Sydney in the near future" and he "wonder[ed] whether or not you would support such an action". Quite why it was necessary to get Mrs Treweeke's consent for this to occur is not explained.

The then Acting General Manager wrote to Mr Murcutt on 15 April 1999 formally accepting Murcutt's terms of engagement. In that letter, which was copied to Mrs Treweeke, he advised that Margaret Gleeson was henceforth to be Council's "liaison officer" on the work to be done by Murcutt.

Despite all this, the evidence clearly shows that Mrs Treweeke played a very active role in relation to the project, a role that was clearly beyond her formal delegations, powers and authorities.

I have come to this conclusion despite a much later letter to Mrs Treweeke by the then General Manager, Mr North, on 5 November 2003 specifically authorising her to contact Mr Murcutt about a possible staging of the project. These discussions were clearly limited in focus.

For example, Mr Murcutt wrote directly to Mrs Treweeke about the project, and this was not just a personal letter, on 21 December 1999.

Moreover, as noted at section 1.13.11 of this report, clause 3.1 (c) of Council's Code of Conduct emphasises that individual Councillors "have no special executive powers by virtue of the office" and no power to "make statements or enter agreements on Council's behalf". This provision merely reflects the law, such as the Local Government Act 1993.

The Act makes it clear that the main role of a Councillor is as a member, collectively, of Council's governing body, the elected Council. The role of that body is in relation to governance. Day to day matters of administration and the operations of Council are matters, not for Councillors, whether collectively or individually, but for the General Manager and his administration.

Mrs Treweeke, therefore, in my considered view, having regard to this and other evidence noted in this report, overstepped the mark.

I asked Mrs Treweeke at the public hearings:

Q. Do you understand what the role of a councillor is in a – under the Local Government Act?

A. I have the charter and the charter says - - -

Q. I'm not interested in the charter, Mrs Treweeke, I'm interested in knowing whether you know what is the role of an elected representative to a council under the Local Government Act. There's a division of powers, is there not, under the Local Government Act between the elected body on the one hand and the administration headed by the general manager on the other, is there not, or are you not aware of that?

A. I am.

Q. Well, in the context of that division of powers what is the role of a councillor as a member of that elected body?

A. No doubt to direct the business of the – of the - - -

Q. Mmm, it's to issue directions and to make policy decisions.

A. Mmm.

Q. The day-to-day administration of the council is in the hands of the administration, isn't it - - -

A. Yes.

- Q. - - - unless you have a formal delegation from council to undertake acts within the terms of that delegation. You've not been able to refer me to any such delegation. Is there such a delegation, or do you have no answer to that?
- A. I – I don't – all I can say is that that was the committee's direction and that's the only authority we need.

I do not agree that this is so. Mrs Treweeke's reference to the committees' direction was a reference to a decision of the committee taken in respect of approaching an architect to design the Centre. That is considered at section 4.6 of this report. As I have already noted, the committee had no delegated or other power to make that decision, however.

Mrs Treweeke prepared draft letters for individual members of the staff to sign and issue. Frequently they were on matters that were really out of her expertise and knowledge to deal with. Her evidence was that she qualified as a lawyer, but beyond serving articles of clerkship for a couple of years in a Melbourne solicitors' office, a different legal jurisdiction to NSW, she did not practice as a solicitor. She holds no qualification or experience in building and construction law or projects.

I asked Mrs Treweeke about her experience and qualifications. She told me that she held a law degree, but that she had only worked as an articled clerk for a short time before she went to live on Angledool Station, north of Lightning Ridge. My questioning continued:

- Q. What experience do you have in relation to the planning, design and construction of major works and buildings?
- A. None, I don't have any qualifications in that area at all.

Even if she did, it was not for her to be being so hands on and drafting letters, and so on, on such matters, for staff to issue.

Another example of her preparing letters for the Council staff to issue is in relation to letters to be issued to shore up funding lobbying efforts, which I have considered at section 4.11 of this report.

All this shows that Mrs Treweeke was far too keen and pushy in getting the project underway. It is one thing to have been an enthusiastic community member of the Lightning Ridge community (in loose terms, given that she lives some kilometres north of that town), or a keen and enthusiastic local representative, a Councillor at Walgett Shire Council, but she still in my view went further than that, and went too far.

That Mrs Treweeke, when she was a Councillor, was controlling the project is also confirmed by a copy of a letter of 19 October 2001 that Mr Glenn Murcutt wrote to Council's General Manager, by that time Mr Vic North. The copy of that letter provided to the Inquiry bears handwritten notes and directions made by Mr North, and in those notes is the following:

This will need some discussion and may need to be presented to Council (or at least to Joan T) for info and clearance.

The letter was about Murcutt's fees, and it was patently not a matter for Mrs Treweeke to be signing off on or approving them.

On the other hand, I note this evidence from Mr Wooldridge:

- Q. Who at council would you say, whether it be a councillor or a staff member, was in charge of and managing this project, was it a councillor or was it you or was it the general manager?
- A. I would say it was me.

But, this evidence does not sit well with other evidence before this Inquiry. For example, Mr Wooldridge himself told me that "I was never officially a member of the committee". This seems odd, because if he was, at least after his joining Council's staff, one would have expected him to have been appointed a member of the committee.

Nonetheless, it is clear to me, from the evidence as a whole, that Mrs Treweeke, if particular persons must be singled out, is responsible, in large measure, for the project getting out of control and as far as it did. See, for example, her role in relation to dealings with the architect, considered at section 4.6 of this report.

4.4 Council's assessment of the need for a community centre

In his evidence at the public hearings, the current General Manager, Mr Vic North, told me:

I don't think on council there was ever any disagreement about the need for a building. I think the disagreement was about what type of building and how much it cost. ... those that are supporting the Lightning Ridge Community Centre in its larger form, if you like ... and I see that building as an icon that would attract others to the area. I guess that's an underlying part of that – that part of the design of Murcutt's is about a building that's architecturally unique and that will attract people, and you have to understand that Lightning Ridge has always been interested in visitors, so there is, there is an element, I believe, behind all that that they needed a building that was, that had, that was an icon ...

Evidence from Clrs Friend and Greenaway corroborates the point first made by the General Manager in the above passage.

Council's Ms Christina Johansson, before she had become a Council employee, had been involved in the start of the project when Council was first approached. That part of events is considered at section 4.1 of this report. As noted at that part of his report, the whole thing started simply because the local HACC service providers needed a new building into which they could co-locate. This building, according to the evidence, was one not only intended to provide an office from which the HACC service provider employees could work, but also a place from which those services would be provided to the community.

Ms Johansson joined Council in October 2001, and in view of both roles she had played from the start with the project, I asked her, when she was giving oral testimony at the public hearings, about how the need for a community centre had

been established, and how it was determined what should go into it, particularly over and above what the HACC service providers needed:

Q. But what about all the other things that have suddenly caused the centre to be costing much more than \$400,000?

A. Such as?

Q. I mean, how was the need for all the additional things assessed in a businesslike fashion rather than somebody saying, "Oh, that would be a wonderful idea, let's put that in. Oh, that's a great idea, let's put that in," and everybody gets excited and the whole thing runs away with itself because my impression is that that's what seems to have happened here.

A. All the components irrelevant of the cost – and I'm speaking now – are very much needed and services and facilities.

Q. Well, how did you assess that they were very much needed, that's what I'm getting at. How was a proper businesslike approach taken to determine those needs?

A. Well, there's little – we've heard some talk about infrastructure and there is definitely a lack of infrastructure for those type of facilities in Lightning Ridge. For example, it was going to house the public toilets but it was also going to house a place for people who come into town from – from the opal fields. It was going to also have a place for Meals on Wheels to - - -

Q. And how were all those things assessed as being necessary - - -

A. Yes.

Q. - - - to be provided by council?

A. Now I'm speaking only from a community services point of view.

Q. Well, I'm asking you from council's perspective and your role as a council officer responsible for those sorts of matters. How did council come to be involved in providing a building of the size and scale that it seems to have got to which is way beyond what the original request from Ageing and Disability was?

A. When we received – when we had the good news that we had been successful with our funding application it was on the premise that it would be in partnership with the Walgett Shire.

Q. But the funding application was made on the basis, was it not, that we were going to end up with a building around about the \$400,000 mark, wasn't it?

A. That's right, but then it – it - - -

Q. Well, why did we – how did we get past that?

A. It still has the same - - -

Q. You're not answering my questions. Is it because you don't know?

A. How did it get to - - -

Q. Am I not making myself clear enough in my questions?

A. You want to know – you are asking why did it become so costly?

Q. Yes.

A. Well, I don't know about the cost but I know about the needs.

Q. Well, the question, to which I really got no satisfactory answer, was how do you assess the needs, how did you go about assessing the needs in a proper businesslike fashion so that it wasn't just guessing what those needs were?

A. I'm very well aware of the needs that exist.

- Q. How are you aware of the needs? We're going round in circles like a dog chasing its tail.
- A. Well, I – I believe that through consultation we – we became very aware of ...

I asked her what consultation. She told me it was with the community, "in the early stages", at a time before she joined Council.

It seems clear to me from the evidence that there was insufficient consultation, let alone other examination and analysis, in a proper and business-like fashion, of the needs for a community centre, and what might be needed to go into it. Further evidence as to that consultation is considered at section 4.8 of this report.

I have noted at section 4.8.1 of this report the words that Mrs Treweeke put into a draft letter which show an acknowledgement that there was really very little done on this account, and certainly no survey of the users of the proposed facilities. The only "survey", if it can be called that, was apparently with the HACC service provider staff, or at least some of them.

On the other hand, there is other evidence which shows that doubts were being expressed at least at one time about whether the Centre was still needed by the intended HACC service providers. In an urgent and supplementary report to Council's meeting of 28 February 2000, then senior staff member Mr Ted McGuckin noted:

At present I have heard of concerns that some of the end users may not want to proceed. May be from frustration with delays ... The Department is becoming very concerned with no progress ...

Mr McGuckin put up two options for consideration by the Councillors. One was to "inject more funds" into the project. The other was to "walk away". One of the recommendations he made was "that Council's Committee hold a meeting with end users to ascertain their commitment for the project".

The minutes show that there was some considerable debate and division amongst the Councillors as to what to do. Cirs Greenaway and Mitchell moved to defer any decision until after the March Council meeting. Mrs Treweeke moved that the recommendations made by Mr McGuckin be adopted.

It is singularly unclear from the minutes of Council's meeting what the outcome was in relation to these motions. At page 2/105 it is in one breath suggested that both motions were defeated, yet in another that both were carried!

On the other hand, Mrs Treweeke received a letter from Mr McGuckin dated 8 March 2000, that is to say, after the unclear outcome to the Council meeting of the previous month, inviting her to a meeting to discuss the "design and commitment to the project".

Mrs Treweeke sought to explain away the apparent concerns about whether the end users wanted to proceed. She said that:

that they would have been some of the employed staff.

Questions as to the commitment of the HACC service providers to the project continued into late 2000. The Acting Manager of HACC and Ageing Programs at the Department of Ageing wrote to Council's Acting General Manager on 20 December 2000 advising of the fact that a recent survey of the providers had indicated that only one of them still wished to be accommodated in the proposed Centre to be built by Council. The letter continued:

It has become evident from discussions that the need for a facility to accommodate HACC services, that was identified three years ago, has diminished.

In view of this a demand was made for return of the funding provided by the Department.

The evidence is that Council did not act on that demand, and instead continued to proceed with the project somehow convincing itself that the Department did not mean it.

So much is clear, for example, from the fact that, regardless, Council's then Acting General Manager on 30 January 2001 issued a series of invitations to likely stakeholders to a meeting to be held in Lightning Ridge on 14 February 2001 to view a model of the proposed Centre. Advertisements were also placed in newspapers.

Mrs Treweeke maintained to the Inquiry that this letter was one which had not been brought to her attention, and it is certainly not in the file of Centre documents and correspondence that she tendered to the Inquiry. But the fact remains that later correspondence to the same effect (see next) was known to her.

The view of the Department of Ageing that the need for a facility to accommodate HACC services was diminished was repeated again to Council in a letter of 27 August 2001. Mr Vic North was by now the General Manager. It is clear that Mrs Treweeke saw this letter because the only copy I saw of that letter was the one Mrs Treweeke tendered to the Inquiry, and it bears evidence of handwritten notes on it in her handwriting.

It was Mrs Treweeke's thesis, one that she assiduously sought to have me believe, that any letters to Council from the Department were written by junior staff and persons who were not managers, with the requisite authority to speak on the Department's behalf. For example:

I think those people had those feelings and they expressed them, but I think the people that were senior to them had a different view.

I discussed this at some length with Mrs Treweeke when she was in the witness box, testing the proposition. Eventually, her solicitor, Mr Jackson, intervened and advised:

We would concede, commissioner, that if something is on the letterhead of an organisation, absent any contrary evidence, that that must be accepted as the document of the organisation.

This clearly undermined Mrs Treweeke's original proposition to me. Furthermore, the letter of 20 December 2000 from the Department was clearly, in any event, one signed by and issued under the name of the then Acting Manager HACC and Ageing Programs.

In response to yet another letter raising the question of the return of the grant funding already provided by the Department of Ageing (letter of 8 January 2002, discussed at section 4.9 of this report), Council, via Ms Christina Johansson, but on behalf of the General Manager, wrote to the Department "forwarding an update and some rather extensive background information" for its consideration. In the attached information the following passages appear:

- The Community Centre remains a project with a high priority, to provide HACC services and community needs, with a focus on an appropriate venue for local service providers and the frail aged and younger disabled in the community ...
- It was with much frustration for many, in the community, to observe that this project was put on hold for lack of action by Local Government to address the needs of a growing community. But with the restructure of Council and new leadership, the project now has a very high priority.

Frankly, I am astounded at the assertions made in this letter. At various places in this report I have noted the considerable, albeit spasmodic, action and correspondence to that time relating to the project. I have, for example, at section 4.9 of this report, noted the growing concerns from the Department on the escalating cost and the failure to get the project completed. Moreover, I have noted above the clear advice from the Department itself as to the diminished need for a Centre to rehouse the various HACC services.

Yet, the statements evince a clear ignoring of such advice.

The references to "new leadership" are also curious. There had been no change of elected Councillors in the previous two and a half years, and the only change was really in Mr North's arrival as General Manager. But he had come to Council in May 2001, nearly a year before this letter was written, and his Executive Management Team had followed soon after.

Even if one were to agree that there had been such a change, the one constant throughout was Mrs Treweeke.

The statements, therefore, I take to be no more than mere spin doctoring and a manifest failure to listen to and see reality on the so called needs for the Centre.

Mrs Treweeke maintained that view during the public hearings, seeking to have me believe that despite the more recent correspondence from the Department of Ageing:

- Q. So are you saying to me that those in authority, as it were, at those agencies, or in those services despite the fact that the regular staff, if that's the appropriate word, were initially happy and then, unhappy rather, and then happy, that the – that those in authority were still saying that they wanted the project to proceed?
- A. And I think that's evidenced by my handwritten note from COMMSI – there's a note here with it, I quoted what she had told me, and also the fact that Tracy

Wright and Yvonne Muller came to us late last year saying that they desperately needed the space, so yes.

Her interpretation is not, in my view, consistent with what the Department's officers were telling Council as late as its meeting of 8 December 2003, as to which see sections 4.13 and 4.14 of this report, and Mrs Treweeke's interpretation is once more a gloss. The evidence, in my view, shows that the Department needed urgently a decision from Council so that they knew where their HACC services were going to have to relocate to (and they needed to relocate by early 2005), but the Department were equally happy with a Council auspiced and provided building as they were with one purpose built by themselves, based on what had been built recently, for a considerably lower sum than Council was anticipating and for a cost much closer to the originally anticipated \$400,000, in nearby Coonamble.

At one point Mrs Treweeke's solicitor, Mr Jackson, intervened and suggested that a question be put to his client. This is the question, quoted from what Mr Jackson proposed to me, and this is the answer from Mrs Treweeke:

MR JACKSON: Perhaps it might be helpful, Mr Commissioner, if that proposition was squarely put to my client, that is if the council – did the councillors take on board, or the council or the committee take on board the proposition that whether or not there was a need. ...

- A. ... I think the answer to that question is if you're talking only of office space for those particular employees they may well have felt comfortable in their current rented accommodation, but the building was to do much more, they had not considered the client needs ...

In my view it is quite presumptuous of Mrs Treweeke to be making the suggestion that letters written by HACC officers, whether managers or not, did not mean what they clearly said, and that in suggesting that the need for the Centre had diminished the officers were talking only of their own needs and had not considered the needs of their clients. I therefore reject her proposition.

At section 4.11 of this report I have discussed a very important letter that the head of the NSW Premier's Department sent to Mr Peter Black MP, replying to his representations on behalf of Walgett Shire Council in relation to the proposed Centre. Very clear messages were being sent that Council needed to revisit and revise the project and look at what the urgent priorities and needs were. There is no evidence that this was done in any real sense. The letter did urge that Council examine building the Centre in stages, and that was certainly acted on, but there is still no evidence, and this is my point, that Council examined, whether properly or at all, the needs and the priorities in that regard for what was being intended to go into the first stage. Minds had already been made up, and people stuck limpet like to those views.

The report of Clr Waterford, as Mayor, to Council's meeting of 16 December 2002, is telling in that regard. He reported to the Council on a meeting of the Lightning Ridge Community Centre Committee in Lightning Ridge on 21 November 2002:

This building is a must and should go ahead as soon as possible. ... The Governments must come on board and support this project ...

Even if we have to borrow the money to kick-start this project, I believe we should when interest rates are so low ...

The building can be put up in certain sections, the choice is ours of which sections should go up first and just how much the local people can contribute along with the CDEP to this particular project. ...

Glen certainly believes that Bob Carr will certainly fund part of this project, we have got in our agenda for Regional Solutions, half a million dollars from the Federal Government and the Shire has already got money in its budget to pay for some three or four hundred thousand dollars. ...

At section 4.11 I have noted the clear evidence that the State Government funding was not going to be forthcoming. And in the same section I have noted that there is no evidence that the alleged and merely hoped for Federal funding was anywhere near a sure thing or reality.

Council's Facilitator Community Services, Ms Christina Johansson, reported in her monthly report of 8 September 2003 to the Councillors that the local HACC services had made a request to the Department of Ageing for funding, otherwise earmarked for another State Government project, the MSO (Multi Service Outlet), to be released to enable the "purchase of an alternate accommodation facility" for certain services pending the building of the proposed Lightning Ridge Community Centre.

It has also emerged from more recent Council minutes and reports that certain aspects of the project appear not to have been properly thought through or considered. For example, in the minutes of the Lightning Ridge Neighbourhood Centre Advisory Meeting held on 18 June 2002, but not reproduced or apparently reported to Council until much later, namely in its meeting minutes of 31 March 2003, the following is noted:

Plans for the new HACC building are still underway. HACC services will be given priority. The distance the new site will be from the town centre is of some concern to those who are able to walk to the present site but will be unable to walk the distance to the new planned site. The choice of the site was predetermined due to the site being the only suitable 'council owned' land. Transport because of the distance will eventually be an issue.

One of the key services that are intended to go into the Centre are services for the aged and disabled.

With my leave, Clr Greenaway, at the close of Mrs Treweeke's oral testimony, asked an interesting question of her, which I then picked up on:

MR GREENAWAY: I have a further question.

- Q. You've just – Mrs Treweeke, you've just mentioned the social disability report that you have next to you there at Lightning Ridge and how disadvantaged they are. Can you tell me or the people present how building of a conventional building that was proposed during the meeting of the rescission motion wouldn't benefit those disadvantaged people just as much as the Glenn Murcutt-designed building?
- A. The building that is – was – the plans of which I think are attached to your submission do not include showers, do not include a laundry which are two fundamental things that were asked for by the community – HACC services.

COMMISSIONER

Q. But those plans came from the department, didn't they?

A. Yes, but they don't - - -

Q. So how – who are you to second-guess what is fundamental or required when the department has indicated to you what they consider is sufficient for their purposes?

A. Because that was the original part of their brief because the people - - -

Q. No, but then they've advised you in their most recent letter that something along the lines of what was built at Coonamble, here's the plans of what was built at Coonamble, would be fine, thank you very much.

A. Well, they've changed their mind in that case because my - - -

Q. But that's their most recent advice.

A. My understanding - - -

Q. Who – who are you to be second-guessing and saying what they mean or should mean?

A. Their – their original brief because the people, the majority of the people that live outside the town do not have bathrooms or water supplies, need to be brought into town to shower.

Q. That's your view, Mrs Treweeke.

A. It is not my view, it is their view and – and I - - -

Q. You've got the clear language of the department's letter, Mrs Treweeke.

A. Well, I think – I think you need to ask them to clarify that.

I saw no need to do so.

4.5 The Lightning Ridge population issue

Walgett Shire Council's Annual Report for 2002-2003, at p. 137, purports to set out a "Population Profile" for the Shire. It suggests that the "official population statistics ... as per ABS data 2001 Census is 8,310". The "ABS" is the Australian Bureau of Statistics.

The document, at the same page, sets out a table purporting to provide a break down of the total figure for each town, village or locality. It is stated that the population for Walgett is 1,960, and that the figure for Lightning Ridge is 3,432.

I note that the total of all the population figures in that table is 8,341, so already there is some question apparent as to the accuracy of the information in Council's own Annual Report.

Now, for the purposes of this Inquiry, I made my own enquiries, through the Department of Local Government, as to the statistics maintained by the ABS of the populations of the Shire as a whole, and those of Walgett and Lightning Ridge townships. The figures so produced were, respectively, 8,207, 1,826 and 1,831.

Now, I am aware that the ABS figures are progressively firmed up and can change over time, as those figures are further analysed and checked. So, exact numbers are not the issue here. What is the issue is the relative, in broad terms, populations of the towns of Walgett and Lightning Ridge.

Is the population of Lightning Ridge almost double that of Walgett, as Council's Annual Report would suggest, and as Council would, via that document, have its community believe?

The official ABS figures that were first provided to me would suggest otherwise. Those figures make it clear that, according to the official statistics, put together by the ABS, the official Australia wide population counter, based on official census counts, the populations of the two towns are virtually the same.

Having regard to the Council figures that I found in its Annual Report, I went back to the Department of Local Government seeking clarification on the matter. I was advised by the officer of the Department that she had contacted the relevant and appropriate officer at the ABS about the matter. The advice was that the figures were respectively 8,310, 1,826 and 1,831. So, the only change is in the total for the Shire, and not the figures for Walgett and Lightning Ridge.

During the public hearings phase of this Inquiry the question of the population statistics was raised. I sought some clarification as to where Council's figure of 3,432 people in Lightning Ridge had come from. Both the General Manager and Mr Wooldridge tendered copies of what was supposed to be the same document to me. That is a document whose provenance is unclear.

It is a document of some two pages. These pages have lists of numbers on them, in columns. There is nothing to show that the document is an official document that might have come from the ABS. On the contrary, at the top of the document the following heading appears:

Walgett Shire Council
ABS Census Data

This suggests to me that the document was prepared at the Walgett Shire Council, and was compiled from a source or sources unknown, but which purported to be the ABS. I have been unable to verify that this is the case. The evidence, gathered by me directly from the ABS, via the Department of Local Government, suggests otherwise.

The North version of the document gives the population for the town of Walgett as 2,094 in 1996 and 1,960 in 2001. That for Lightning Ridge in 1996 was 3,353 and in 2001 was 3,349. The figure for 2001 for Walgett is the same number as reported in Council's Annual Report, but that for Lightning Ridge is different.

But, in one relevant respect, the Wooldridge version of the document differs from the North version. The Wooldridge version gives the 2001 total population of Lightning Ridge as 2,993, and not 3,349, as in the North version. The relative difference is quite substantial.

So far, therefore, it seems to me that the figures being used and quoted by Council are unreliable. Even within the Council offices, it seems, widely different numbers are apparently being used.

This raises an issue of concern, because if Council is undertaking its planning, and making decisions, based on unreliable data, then questions must equally arise as to the appropriateness of the Council decisions in question.

But, the situation gets worse.

Mrs Treweeke tendered to me a copy of a handwritten fax that she sent to Council from her own home on 12 March 2001. Attached to that document is a copy of a "Briefing Paper", as well as "draft letters" (again in her handwriting) intended to be sent to Mr Michael Fleming, then Senior Policy Adviser in the office of the then Minister for Local Government, Mr Harry Woods. The letters were apparently intended to be issued as part of Council's lobbying for Government funding for the project. The office of the Minister was intended to be used to get access to the Premier of NSW on the matter.

At the top of the first page of the "Briefing Paper" (prepared by I know not whom, but there is no indication that this is an official Council document), which is a paper specifically dealing with the Lightning Ridge Community Centre, the following paragraph appears:

ABS population figures do not accurately record the population living in area. Post Office data base has names & addresses of 6268 people to whom mail is delivered to (sic) in LR in March 2000 ... LR Bowling Club had 3500 members in 2001. ... Shire works on there being 7000 people for the provision of services.

So, just where does the even greater figure of 7,000 people come from? A very good question. The official statistics for the whole of the Shire give it a population of only just over 8,000.

I sought to ask Mr Wooldridge about the matter when he was in the witness box, but his evidence was really of no assistance. I did ask him to tender a copy of the Post Office information that he was telling me that Council had, but he later wrote to me to say that it was not on Council's files.

Even if the 7,000 were some sort of rounding up of the Post Office figures, questions must arise as to whether such figures can properly and legitimately be used by Council for the purposes they appeared to be.

For example, there was evidence given to me, from a number of sources, about a transient population at Lightning Ridge. People who have given the Lightning Ridge post office as some sort of *poste restante* address may well be transients or persons merely visiting that town or its neighbourhood. For example, "grey nomads" may be just passing through en route to the sun in the winter months. Accordingly, figures as to the number of people collecting mail from the Post Office are hardly likely to be indicative of the number of people living in the area, even just for parts of the year, such that they might be assumed, if such assumptions can validly be made, to be

persons needing services and facilities of the sort that Council appears to have been intending to go into the Lightning Ridge Community Centre.

In giving oral testimony at the public hearings, Mrs Treweeke told the Inquiry that:

In Lightning Ridge two-thirds of the population live outside the town area, 1700 of them on these camps.

What the source of that intelligence was, was not clarified for me. Even if one were to assume that this figure is reliable, and it were added to the official statistics from the ABS for Lightning Ridge, that would only give a figure of 3,531, and not 7,000, or even 6,268. Likewise, even if one were to add the figure of 1,700 to the Council assumed figure of 3,349 (taking Mr North's higher figure), then the total is still only 5,049.

While she was in the witness box I examined the question of the population statistics, and how they were used in planning and other decisions at Council, with Mrs Treweeke. She told me of discussions she had had directly with ABS officers when they had visited the area. She also told me about discussions she had had with officers of the Department of Ageing. She then added:

But everybody has the trouble nailing it down and all you – all we decided you could do was look at the services that were delivered and work back from that because nobody had anything - - -

I commented to Mrs Treweeke:

- Q. Well, I think you're making enormous assumptions, with all due respect, Mrs Treweeke.
A. Well, I think – I think everybody is in this area.

I also asked Ms Christina Johansson about the population figures and about what figures were used for Council planning purposes.

- Q. But is it not the case, Ms Johansson, that councillors were told in some reports or briefing papers - and indeed the Premier's Department was told in a briefing paper that the need for the project and therefore the funding that was being applied for from state government funding - that there was a population of 7000. Well, where did the 7000 come from, what, rabbits out of a hat, is it?
A. Well, I would say that through many informal studies that - - -
Q. What informal studies?
A. Informal such as over the years there's been a number of informal studies.

On further questioning she eventually told me about "informal indicators such as the bowling club and post office". My questioning continued:

- Q. Well, how reliable are those informal indicators?
A. Well, they are a good gauge of – of - - -
Q. You say they're a good gauge but convince me that they are a good gauge. Why do you say they're a good gauge?
A. Well, when we get - seeing that we can actually have numbers that they can show us that this is the regular - - -

- Q. Are those the sort of figures that you use in deciding what youth services and so on council provides in these areas?
- A. I'm afraid that doesn't go very far when you do official funding applications.
- Q. Well, I'm not surprised, so how can it be said to go far and support and substantiate council's examination of the need to provide a building of the magnitude and scale that we seem to have got to if it's not good enough for those providing funding? Why is it not good enough for them and yet good enough for you guys at council?
- A. Actually, I mean, I – I don't know if DADHC – DADHC – DADHC may accept the figures, I don't know.
- Q. Sorry, who is it?
- A. Department of Ageing, Disability and Home Care, I know that the health services, for example, accept a higher number.
- Q. Well, it's a question of how high you go. I mean, you start with the official number as I understand it of 1800 and then maybe you get to 3400 but it's an awful long way to get to 7000, isn't it?
- A. Well, once again I – I certainly can't say that I – I – I'm not in a position to use informal indicators of population.

I asked her further about the figure of 7,000:

- Q. Well, how did council – I mean, you told me about community consultation back in 1997 but, you know, that's 7 years ago. How does council know today that there are that many people around that they need a building to house so many services and so many aged care people coming in, how do you even know how many aged care people there are on the mines – on the opal fields?
- A. Well, statistically Lightning Ridge, according to the ABS data, has an older population than the rest of the shire, for example.
- Q. Yes, but the ABS data presumably will say that the older population is a percentage of 1800 and not a percentage of 7000, so how do you know how many aged care people are going to need these services?
- A. Well, we – our indicator is the services – the service-providers and their client needs and we know that the client needs are there.

Once more, we were going round in circles.

I also sought to test the population figures by examining the available information as to the votes cast at the 27 March 2004 local government elections in the Walgett Shire. Council provided to me figures as to the votes cast at various polling booths in the Shire. There was one in Lightning Ridge. The figures provided to me covered both the 1999 and the 2004 elections. In 1999 there were some 1,312 votes cast in Lightning Ridge. In 2004 the figure was lower, at 1,109. So, these figures hardly corroborate the alleged very high numbers being bandied about on the population for the town.

Something just does not add up here.

Another paragraph of the Briefing Note, in fact the next paragraph, says:

Infrastructure & provision of government services have constantly lagged behind the needs due to the "population debate" and the perception that mining towns lack permanency.

It is clear to me that Council's planning, if that is what it can properly be described as, for the alleged needs of the community for a Community Centre in Lightning Ridge, is being made on very dodgy figures. There are far too many funny figures being apparently plucked out of the air.

4.6 The engagement of an architect and the designing of the Centre and its facilities

Mrs Treweeke's evidence, corroborated by other documentary evidence, was that the local Lightning Ridge newsagent proprietor, Mr Barry Barnes, had prepared the first plans or design for the proposed Centre. Despite her fairly voluminous file of documents relating to the history of events connected with the development of the project that she tendered to the Inquiry, she was unable to provide me with a copy of those plans. However, Clr Mitchell tendered a copy which he had been able to retrieve, after the close of the public hearings.

Mrs Treweeke's evidence was that the Barnes plans:

were presented to the HACC and community service groups and the plan was rejected on the basis that it did not meet the ... preliminary brief [discussed by a number of stakeholders] ... on 21 August, '96 ... to secure the funding ...

The plans tendered to this Inquiry comprise three pages, one of which is just a sketch, but the other two of which are formal plans. The latter are dated "Aug '97", which suggests that Mr Barnes and his drawings were around for much longer than Mrs Treweeke appeared to be telling me. Perhaps she was just mistaken as to the year.

Council resolved on 30 June 1997 that there should be work done on drawings, costings and other details in relation to the proposed building to house the Centre. No resolution was ever passed by Council authorising or delegating anyone, let alone Mrs Treweeke, to start engaging an architect for this purpose.

Mrs Treweeke wrote a letter, on her own letterhead, and not on Council letterhead, on 26 July 1997 to Mr Glenn Murcutt, a leading and internationally acclaimed architect. That letter starts with the following:

I am writing to ask for your help in the design of the Lightning Ridge Community Centre. This is rather a bold request, but I wondered if you would consider helping our community.

Clearly, she was nonetheless writing on Council's behalf.

She told Mr Murcutt that the building was to re-house the HACC services, but also indicated that it would be used “for public use at other times”. Quite where this comes from is not clear from the documentary evidence. There is nothing in either of Council’s two resolutions, so far, which suggests that Council had this in mind. The only indicator, interpreting these words pretty generously, is perhaps in the wording of the Expressions of Interest document signed by Council’s then General Manager on 4 September 1996, quoted above at section 4.1 of this report – namely “and additionally some other community services”.

Mrs Treweeke also told Murcutt that “the budget is limited” and that “a grant of \$270,000 has been made for the building”. She added that Walgett Shire Council had “given the land” (in fact it was not Council’s to give, but this seems not to have been realised at Council until much later), “and will also help in kind and with some funds”. This suggestion is certainly not supported by the terms of Council’s resolutions to date. There is some indication from the funding Expressions of Interest form, and the later formal application for HACC funding, that this is what some persons might have intended, even if it was yet to be formally approved by Council in the appropriate way.

There is practically no indication in the letter to Murcutt, apart from these, what exactly it was he was being asked to design. No size to the building was provided; no cost or budget in any formal sense, and so on. But, given the words noted above, I would not go so far as to say he was being given a blank cheque either.

She also told Murcutt:

We estimate that there are some 8000 people living in and around the Ridge.

This should be contrasted with the population numbers noted in section 4.5 of this report. It is 1,000 more people than the largest number tossed around at Council, apparently. It just goes to show how rubbery were the population figures, that were apparently being used to plan for the Centre, and to gauge the alleged needs of the population for such a Centre.

I sought to ask Mrs Treweeke, when she was giving oral testimony at the public hearings, about the letter of 26 July 1997 to Mr Murcutt. I asked her why she had written that letter:

A. After the council accepted the grant and signed the deed of agreement, and it was realised that professional advice would be needed there were three options about how that advice would be sought. One was a design competition, one was an expression of interest invitation to a selected group of architects that lived – or lived, you know, worked in this area - - -

Q. I’m not sure that you’re answering my question.

A. - - - and the other one was a direct approach by - - -

Q. Mrs Treweeke, I asked you a simple question. If Mr Austin, as you say, did not write to Mr Murcutt until 15 April 1999 my question was, you wrote a letter to Mr Murcutt on 26 July 1997, why did you write that letter?

A. I wrote it as a result of this process, looking at the three options, one of them was to – a direct approach by the community to a recognised architect who had a track

record in building in remote area and designing community facilities, and I undertook as a member of the community to write that letter. That's it.

Q. What approval did you have from council to write that letter?

A. Only the approval of the committee that had been set up by the - - -

Q. But that – that committee resolution didn't speak anything about – you said that the committee was advisory only. So how do you get from simply giving advice and recommendations to actually writing letters asking an architect to be involved in the project?

A. To ask him – someone to express an interest, I think that – I don't see that there's - - -

Q. Well, you weren't asking the architect to build a building for Joan Treweeke or Angledool Station, were you?

A. I was asked – asking - - -

Q. You were asked - - -

A. - - - on behalf of the Lightning Ridge community to – and you've got a copy of the letter so you know exactly what was said.

Q. Exactly. But I want - - -

A. And - - -

Q. - - - to know on whose - - -

A. But that - - -

Q. - - - authority you were writing that letter.

A. The organise – the committee. That's all I can say, that's - - -

Q. And where is the resolution of the committee that gives you that authority?

A. I don't have a copy of the - - -

Q. It doesn't exist, does it, Mrs Treweeke?

A. I don't have – it – at that stage Mrs Gleeson was the person taking the notes for those meetings and I don't know where those notes are.

This last reply was a fudge. The question was clear enough.

We returned to the original question, why she had written to Murcutt, later:

Q. Why was the letter that you wrote to Mr Murcutt on 26 July 1997 not on council letterhead?

A. Because I was writing it as a member of the community, that's why. I was writing it as an individual and that's what I always believed.

That may or may not have been her belief, but Mrs Treweeke, as a law graduate, would well know that if it was Council that was going to build the Centre, it would necessarily have to be Council that she was writing on behalf of. She later also put to me the proposition that the whole project was a joint one with the other agencies and other intended end users, but again this in the end fails to take into consideration that it was Council that was running with the project, who was appointing the architect and who would have to let any relevant construction contracts.

I later also questioned Mrs Treweeke as to whether she had discussed her proposed letter with anyone at Council, seeking to find out if she might have sent a draft to

someone in advance, but her reply is equally consistent with her only having sent a copy of the letter to Council, after it was despatched:

Q. When you wrote this letter to Mr Murcutt in July 1997 did you discuss its contents with anybody?

A. I sent a copy to the council.

Q. And where is the evidence to show that you did that?

A. No doubt on the missing files.

It is not on the extensive portfolio of documents, retrieved from her own records, which she tendered to the Inquiry.

I have been provided with what are possibly unofficial notes or a set of minutes of a meeting of stakeholders held on 8 September 1997. This was a document that Clr Mitchell also provided to me very late in this Inquiry and after I had questioned Mrs Treweeke at the public hearings. According to those minutes, apparently prepared by Margaret Gleeson, there were some 13 persons present, including Margaret Gleeson and Clrs Treweeke and Lane.

These minutes record:

The purpose of the meeting was for the committee to decide whether they wished to request expressions of interest:

1. from the architects on the list supplied by Joan or
2. to invite Glenn Murcutt to be the sole architect or
3. to add Glenn Murcutt's name to the list

Points from Joan's address:

1. a copy of the letter from Glenn Murcott (sic) to the G/M has been handed around.

...

8. Building would be a tourist attraction.

Points from the floor:

- The cost of his services should be comparable and not absorb the budget.
- He has been told that we are a community group funded by public money and not a private client.
- It may be the first time he has designed a community building.
- The small budget has to serve a lot of groups.

...

Show of hands resolved that 9 of the people present agreed to invite Glenn Murcutt to be the sole architect.

There is perhaps some difficulty in relying on this document. Its provenance is unclear. It was not amongst the file of records relating to the project tendered by Mrs Treweeke. Nor was it tested, for example, by asking Mrs Treweeke about it, when she was in the witness box. On the other hand, some of Mrs Treweeke's own

papers do contain a note indicating that there was to be a meeting on 8 September 1997.

The minutes of a Council meeting held on 29 September 1997 corroborate that the meeting took place. Those minutes also make it clear that the Councillors were told that the committee had chosen to offer the project to Mr Murcutt. No one at the Council meeting seems to have woken up to the fact that the committee had no power to do this, however. There is no indication from the Council meeting minutes that a copy of minutes of the committee meeting, or for that matter, any other report, was provided to the Councillors about the proceedings and deliberations of the committee. The whole entry in the Council meeting minutes takes up just four lines.

If the unofficial notes of the committee meeting are reliable, then it certainly is relevant to show a number of important things. One of these is how it was that Mr Murcutt's name came up. And as to whether Mrs Treweeke played some part in this. The document tends to suggest that Murcutt was perhaps not her idea, for the implication is that his name was not on the list of architects that Mrs Treweeke apparently produced. But, she could equally have mentioned his name, without it having been on the list.

On the other hand, other evidence before this Inquiry also raises doubts about whether it was Mrs Treweeke's idea to go to Murcutt. For example, Mrs Treweeke provided a copy of a note from Margaret Gleeson, which talked about documents having been posted to:

a selected list of architects provided by Joan and endorsed by the General Manager.

This does not necessarily prove that Mr Murcutt's name was on the list said to be endorsed by the General Manager. Moreover, Mrs Treweeke's papers include a list of architects' names, attached to the copy of Margaret Gleeson's note, and Mr Murcutt's name is *not* on that list. The only documentary evidence before this Inquiry as to correspondence with Mr Murcutt at this time are the letters to and from Mrs Treweeke, rather than anyone at Council.

The following evidence, from Mrs Treweeke herself, to my mind, however, is telling, and suggests that it was in fact Mrs Treweeke who came up with Murcutt's name:

- Q. So how did you come to write to him and not a whole heap of architects?
A. I suppose I'd heard his name and I knew the sort of work he did, and that he was interested doing work in remote communities as in the Northern Territory and other places.
- Q. Well, presumably there were equally other architects who might have done it and perhaps come up with costings that – a design that was going to cost quite a lot less.
A. I have no evidence of that ...

Interestingly, after leave was granted by me to do so, Mrs Treweeke was cross-examined, at the close of her oral testimony, as to the apparent burning question as to whether she or any member of her family was related to Murcutt. After smiling and pausing in a way which to me suggested that she was not surprised that she was being confronted with such an implicit accusation, she firmly denied it.

Even if it was the case that the committee, by majority, voted to extend an invitation to Mr Murcutt to be the sole architect for the project, it is clear, as I have already indicated, that the committee had no delegated power or authority granted by Council to do this, on Council's behalf.

Mr Murcutt's letter to Mrs Treweeke in reply is dated 26 August 1997. He noted that his invitation was "to design a small complex", and he asked for a lot more information, including "the brief", "how much extra to the \$270,000 would council fund the project", as well as for clarification as to his role. Mrs Treweeke faxed a copy of Murcutt's letter from her home to the General Manager on 1 September 1997, together with "biographical notes" on Mr Murcutt.

On the copy of Murcutt's letter that Mrs Treweeke provided to the Inquiry, are hand written notes opposite where Murcutt asks about the Council funding. These notes would appear to indicate that Mrs Treweeke thought that Council was going to put in only one third of the amount that the Department of Ageing was putting in, namely \$90,000. This suggests that for some reason Mrs Treweeke had not then seen, or at least had overlooked, the requirement in the Deed of Agreement already signed by the General Manager and the Mayor on Council's behalf that Council's funding proportion be one half of the amount the Department was putting up. This is corroborated by other evidence from Mrs Treweeke that she had never seen this Deed – see section 4.9 below.

Other issues as to the procedures followed by Council in engaging Mr Murcutt, including whether or not the tendering requirements of the Local Government Act 1993 had been met, are considered in some detail in the Department of Local Government section 430 investigation report. I do not propose to go over that same ground.

It was Mrs Treweeke who arranged for Mr Murcutt to fly up to Lightning Ridge in early November 1997 to have a look round and meet with relevant personnel. She even booked his ticket, charging it to the Treweeke account.

After the visit to Lightning Ridge on 3 November 1997, the correspondence with Mr Murcutt continued on a personal basis through Mrs Treweeke. He wrote to her on 29 November 1997 formally advising of his interest in the project. The minutes of a Council meeting of 24 November 1997 (again containing only a four line report, not from the committee, but through Margaret Gleeson as the Council Community Development Officer, about Murcutt's flying visit) appear to indicate that Council thought that Murcutt was already engaged by Council. But Murcutt's letter contains the following interesting passage:

Could you let me know the name of the person and or organisation to whom I should write, confirming my interest and outlining my likely timing and scale of charges.

So, despite the fact that at least some at Council thought that Murcutt was already engaged, it seems that his fees had not even been discussed. This seems extraordinary, and is one of many indications in the history of how the project has unfurled that people were off and running before they could even walk, let alone

know that they were on the official starting blocks. Mr Murcutt did not write to Council advising of his fee structure until 9 February 1999.

Mr Murcutt made another visit, over a number of days, to Lightning Ridge in February 1998. But it was not until 1 April 1998 that the first documentary evidence exists of any formal correspondence direct between he and Council. Why Mrs Treweeke failed to pass on Murcutt's last referred to letter to her to Council and to get some sort of response to him on the question he raised has not been explained.

On 1 April 1998 the then General Manager wrote to Murcutt. In the letter he advised:

Your contact with the Council regarding this project will be through myself as General Manager for administrative purposes. ... Any formal correspondence should be forwarded through myself and this will be passed to the organising committee for their consideration when and if necessary.

On the same day the General Manager also wrote to Mrs Treweeke sending her a copy of his letter to Murcutt.

These instructions appear to have been adhered to, for a time. But, even as early as 11 May 1998, Mrs Treweeke was still talking to Murcutt personally over the telephone.

A very brief report from Margaret Gleeson to Council at its meeting of 22 February 1999 noted that Murcutt had "presented his concept plans for the centre" at a meeting at Lightning Ridge on 5 February. She also noted "all providers present had approved the projected design", but there is no other documentary evidence that has been presented to this Inquiry to show that.

I asked Cllr Waterford about this

... he was very enthusiastic and I think it was Councillor Greenaway and Councillor Bow, who were at that meeting, said, "Why should we spend so much money when we can build something smaller?" and he said, "Because my buildings are like the Harbour Bridge. Once they're built people will come from all over the country to see my buildings."

4.7 The facilities proposed for the Centre

The originally approved Centre was, as I have already noted, one that was apparently limited to a rehousing, only, of certain HACC services in Lightning Ridge. Not long thereafter there appeared to be a widening of this to cover some Council oriented or focussed facilities.

It is not entirely clear from the documentary evidence how the additional facilities grew, but grow they did, like Topsy.

It seems that the addition of users to the building, beyond the HACC services, and therefore the expansion of its size, scale and cost, did not officially at least, in the early stages, come via the requisite approvals either from Council or from the Department of Ageing (the requirements for this latter approval are considered at section 4.9 of this report). So much seems to be suggested by the wording of a report that the then Acting General Manager issued to Councillors for the purposes of the special budget meeting of 24 May 1999:

Until such time as plans are prepared and estimates are drawn up it is not possible to accurately predict the costs involved in the building. However, enquiries to the Architect reveal a possible enlargement of the building to accommodate new players.

On 8 June 1999 an internal email was sent to Council's then Manager, Mr Edward McGuckin, which raised a number of concerns about the project and how it was being handled. And the author appeared to be aware of the terms of the Deed of Agreement with the Department of Ageing. One of the concerns raised was about the use of the Centre that appeared to be being contemplated, with an Aboriginal group coming into the picture. The author feared that this might be beyond the terms of the Deed. McGuckin sent a copy of the email to Margaret Gleeson with a handwritten note on it asking her to discuss the matter with him. On the other hand, I note that the Schedule to the Deed did clearly indicate that "Aboriginal Community Options" were to be amongst the authorised uses of the building. The issue appeared, quite rightly, to be whether the particular contemplated uses, which included a museum, fell within the terms of that description.

Even Mr Murcutt seems to have been expressing concerns in June 1999. He wrote a letter on 30 June to the Acting General Manager of Council which noted that he estimated that the size of the building that was needed to house everything that the staff had told him about when he had met with them in February that year would likely now be in the order of 760 square metres. He continued:

Before I start costings, I think we'll have to meet and try to cut the size drastically. .. To date I've not been given a budget maximum ... I'm happy to rethink on a smaller job.

But, there is no evidence that this ever happened, or was allowed to happen. Obviously the ball was rolling, and apparently could not, or was not allowed to, stop.

The Acting General Manager did write to Murcutt on 29 July 1999 telling him that "Council has an expectation that the 760 [square] metres may cost close to \$650,000".

I have noted at section 4.2 of this report that concerns were aired at a Council meeting on 30 August 1999 about the potential blow out in the size of the building and consequential cost. Council authorised the engagement of an expert, namely a quantity surveyor, to undertake a formal costing. The resolution passed was actually in some five parts or paragraphs, the last of which was:

That the Architect be authorised to go ahead with plans for the building.

The report to the Councillors had clearly expressed a query about whether a museum qualified for the intended "Aboriginal Community Options" part of the

Centre. The resolution of the Councillors, at least on its face, hardly clarified what the answer was. Yet, Mrs Treweeke's copy of those minutes, which she made available to the Inquiry, contained notes in her handwriting which stated "Aboriginal Museum is approved". She appeared, in my view, to have been reading far too much into the Council determination, particularly given that it was clear that Council yet had to get the results of the costings so that it could make an informed decision about the project, and what was to go into the proposed Centre.

Someone must have been in contact with Murcutt, but how, or whether with authority, is not clear. The inference from the terms of the Council resolution is that there was no such authority and no commitment by or approval from Council for, for example, an Aboriginal museum to be included. Yet, Murcutt wrote to the then General Manager on 29 February 2000, but copying the letter directly to Mrs Treweeke, referring to "the last discussions and Council confirmation" that there would be both a "space planned for two Council offices" as well as "museum for Aboriginal people's artefacts".

He added the further comment that:

Working in every thing set by the committee and Council, makes for a building which is outside a small 'local facility'.

Remember that he had been originally led to understand that all that he was being asked to do was to "design a small complex".

I questioned Mrs Treweeke about the matter, and her evidence tends to suggest that the "approvals", including for the idea of a museum, came not from Council, but from the small group of Lightning Ridge people representing the intended users:

- Q. I mean, even – even a complex that as to phase 1 only on the latest figures is going to cost \$1.384 million can hardly be said, in my view, to be a small complex.
- A. The people using the building briefed him on what their requirements were. That is their role. It is not my role to interfere with that process and I didn't.
- Q. Well, we seem to have suddenly got an Aboriginal museum in there. That's not consistent with the rehousing of HACC offices, is it?
- A. It wasn't – nobody believed it was only for HACC offices, that was to be part of it.
- Q. Who's nobody?
- A. The community, the people that were involved in the whole process. HACC offices were only one part of it.

This fails to recognise who was really in charge of and running with the project: Council. It was Council's approval that was needed (the Council resolution that I have just noted does not constitute such an approval), and it was Council that should have stepped in and reined matters in when they were getting beyond the scope of what Council, by its formal resolutions, had in fact approved. The end users had no authority to approve the project, approval being quite different from obtaining a concurrence from them as to how it was to evolve, and it is a pity that people like Mrs Treweeke failed to understand this.

Later she appeared to be trying to suggest that even the Council resolution that had been passed in 1997 demonstrated that Council contemplated more than just HACC offices going into the proposed building:

- Q. But if we go back to the resolution of council that resolution quite clearly indicates that all that was going in there was a building for the HACC complex.
A. I think council understood that it also was going to provide the public toilets there.
Q. Well, on what basis did council understood, I mean, you're - - -
A. In discussions.

She went on to add that other services such as migrant services were also so understood or contemplated to be included. My questioning continued:

- Q. So how – but how can council then in that resolution be approving a project in the language that's there, and the language is – the resolution is pretty clear on its face, it seems to me, and you keep saying to me, "Everybody knew," and, "They all knew and they all understood that it was something entirely different"?
A. Well, the plans - - -
Q. I'm trying to find out on what is the basis.
A. Well, they'd all – they'd seen the plans, they were – they'd seen the model.
Q. What plans, were there plans around the time?
A. They were - - -
Q. There weren't plans around the time, were there?
A. Plans around at what time?
Q. In July 1997.
A. There was certainly - - -
Q. So how – how could they possibly know what was actually going in there, let alone what it was going to cost and that, in fact, they all perfectly well knew, as you are seeking to suggest to me, that the \$405,000 was simply limited to the HACC component?
A. Well, that's the fact.

Mrs Treweeke might think so. Not me.

There appears to have been a further letter sent (by whom is not clear) to Mr Murcutt on 23 March 2000, but any trace of this appears to have been lost, because it appeared neither from the Council files on the Centre, copied to me, nor from Mrs Treweeke's records. Murcutt wrote to Council's General Manager, responding to that letter, on 11 June 2000, and advising that "the plans have been rethought in part and adjusted in accordance with" that letter and subsequent telephone discussions between Murcutt and Mr McGuckin. He repeated his warning:

You will realise that this is no longer a small community facility but one which now serves the whole community and one which achieves considerable flexibility in its use patterns.

There is no evidence of any Department of Ageing input into and approval for all these developments. As to the need for this see section 4.9 of this report.

Murcutt also advised:

The design would be best constructed in one stage but clearly it could be constructed in stages.

4.8 Council's consultation with and informing of its community on the Centre

At section 4.4 of this report I have examined the steps that Council did, or did not, as the case may be, take in the process of determining the need for a community centre and what was to go into the centre by way of facilities and services.

I have noted that the whole idea started with an approach from or on behalf of the local HACC service providers, wanting an office building to which they could co-locate, a building that would provide room and facilities for their various needs as HACC service providers.

There is evidence that, at least in the early stages, and once more only towards the end of 2003, there was some consultation with that group and its representatives on the matter. But, as noted in section 4.9 of this report, even that necessary aspect to planning and consultation in respect of the project fell considerably short of the mark for an extensive period of time. Ultimately it led to considerable concerns being expressed by the Department of Ageing, so much so that the funding they had provided was asked to be returned.

But consultation and joint planning with the Department of Ageing and directly with the HACC service providers covers only part of the story.

As a local government body, Walgett Shire Council is expected to have consulted with its community on the project, and this section of my report looks at that aspect.

Part of the consultation process requires that the community be kept fully and adequately informed as to Council's plans. There can be no proper and meaningful consultation unless those being consulted are told all they need to know to be able to make an informed decision and to express informed and reasoned views on the matter.

When I asked Clr Waterford as to whether in his view the Walgett Shire community and ratepayers as a whole have had full and complete information on the Centre project, he answered:

Yes, I would say so ...

My questioning of Clr Waterford continued:

- Q. And by what means has council made the community fully aware of what's to be spent, what's to be built, how and where and so on?
- A. We've had two or three public meetings out at Lightning Ridge to let them know what was going on. Certainly Glenn Murcutt's been up on two occasions, and

that was one occasion with the councillors to let him – let him tell us why it's costing so much.

Q. But presumably public meetings in Lightning Ridge are largely intended - given the distances that this shire covers - are intended for the benefit of the Lightning Ridge community. I'm equally interested in knowing whether – I mean, while there is a view, I think, in some quarters rightly or wrongly that rates raised from ratepayers in part X of the shire should be spent in X and so on the fact is that legally that's not the case.

A. No.

Q. Therefore, the ratepayers who pay rates in Burren Junction or Rowena or wherever it might be are equally entitled to know where their moneys are being spent.

A. Absolutely, and - - -

Q. So what steps have been taken to ensure that not just people in Lightning Ridge are aware what's to be built and how and so on, but people in the other parts of the shire?

A. Well, no more so than the annual general budget we put out.

Q. This is this through the management plan process, is it?

A. Yes, if you go through the strategic plans and those sorts of things, that was in it. There were people coming here as well. We're always open to the public ...

However, the evidence uncovered in and available to this Inquiry presents a very different picture.

At section 4.8.1, I examine the question of community consultation by the more direct means of meetings held in the local community.

At section 4.8.2, I examine the question of community consultation, and of the community being kept informed, via Council's annual management plan and annual reporting process.

Council is required, in particular via sections 9 and 12 of the Act, to keep the community informed, and in essence to give the community an opportunity to have a say, through the publication of its meeting agendas, its documents, and the holding of open meetings. Therefore, to the extent that Councillors have been provided with full and adequate reports on the project for the purpose of Council meetings, that is another means whereby Council can discharge its required Charter obligation to keep its community informed, as well as to facilitate the involvement of members of the public and users of Council facilities and services in the development, improvement and co-ordination of local government (section 8 (1) of the Act).

The trouble is that this Council's staff and other reports to Council on the project have on many occasions also been poor and lacking. Concerns were expressed by a number of the Walgett Councillors from time to time, and again to this Inquiry, on this. The evidence shows that their concerns were in the main justified.

4.8.1 Local consultations

There is some evidence of a local consultation process, of a sort, having been undertaken in relation to the proposed Lightning Ridge Community Centre. But that appears to have been limited to certain sections of the people living or working in Lightning Ridge.

For example, a public meeting was held in Lightning Ridge on 14 February 2001, when a model of the proposed Centre was put on public exhibition. According to a Council letter to the Premier's Department (letter of 22 February 2001) approximately 100 people attended.

There was also some suggestion that some sort of survey was undertaken, but as there is no documentary evidence to corroborate this, I can only assume that it was oral. In a telling passage in a draft letter to State Government Departments, intended to shore up State Government funding lobbying (see section 4.11 of this report), which was prepared by Mrs Treweeke and faxed to a Council officer on 12 March 2001, she noted:

... the survey ... was only of the HACC Service staff ... There was no survey of the community or the users of the services.

That, in my view, was the very sort of enquiry and consultation process that should have been undertaken, so that Council might be satisfied that there was a need for a Community Centre at all, let alone as to what services or facilities might be provided in it.

On the other hand, in a draft briefing paper document attached to that draft letter it was claimed:

The whole project has been community driven with consultation at ever step of the way.

That is, on the available evidence, a considerable overstatement.

One very important aspect that I have inquired into is the question whether the community knew what the proposed Centre was going to cost, and in particular cost the ratepayers.

I asked a number of questions of Clr Waterford, in relation to what he told me about the public meetings that were held in Lightning Ridge, particularly when a model of the proposed Centre was put on public exhibition, intending to find out if the community had been told what the proposed Centre was, according to costings available to the Council at the time, going to cost. His eventual response was:

I can't remember if it was told to them or not.

He kept trying to persuade me that if the costings were available then he would presume that they were so advised, but that is not probative evidence of the fact. From the available evidence, it appears that the community were not aware of the true cost, and I find this to be a major deficiency.

I have noted the evidence of Clr Osborne, a Lightning Ridge Councillor newly elected to Council on 27 March 2004, at section 4.22 of this report.

I pursued the matter further with Clr Waterford:

Q. Would you say that the community is now completely aware of the full projected cost of the centre?

A. I would say certainly with the number of newspaper articles that have come out I'm sure that most of the people are fully aware of how much it's going to cost.

Q. And what's the last tally?

A. Well, for the new building to go up I should think it was \$1.3 million for the reception or looking at building that - - -

Q. That's part of the building being built in a staged process.

A. Yes, yes.

Q. And what publication or publicity has been given to that figure?

A. Other than the council papers I don't know of any, but certainly it's been put out in the papers in levels.

The point is, of course, that the documentary evidence quite clearly shows that the true cost was not advised in the "Council papers". See sections 4.16 and 4.19 of this report as to that.

In general the evidence of Clr Waterford to me on a large number of questions I put to him on the Centre project was most unsatisfactory. He was frequently vague, and ended up conceding that he could not remember. When he did appear to give me clear answers, I later found that what he told me was simply not corroborated either by the documentary evidence or the oral testimony of other witnesses. He was frequently imprecise and appeared to be confused about the sequence of events and important details and matters.

In short, for a person who was Mayor for most of the last 1999-2004 Council in whose time, on the Councillor's own testimony, the project was so important an issue, I find it astounding that he appeared to know or understand so little.

If that is the sort of mindset and approach he brought to his deliberations on the matter when he was asked to vote at Council meetings on motions relating to the project, it signifies a very poor one. My distinct impression is that he had somehow long ago decided the Centre was needed, and he stuck to that view, through thick and thin, with a limpet like determination to see the project come to fruition, come hell or high water. That is simply not good enough, and clearly does not result in the Councillor meeting his Charter and other obligations as an elected representative.

4.8.2 The Management Plan and Annual Report process

From the point of view of legal requirements, imposed via the Local Government Act 1993, the most important aspect of the public consultation process that I need to be

satisfied was undertaken in relation to the proposed Centre is in the context of Council's annual Management Plan and Annual Report processes.

At section 3.3 of this report I have explained the important role of the former in the annual process of Council determining, with an informed input from its ratepayers and its community, where and what to spend its moneys on each year. The question, therefore, is to what extent Council did adequately and properly discharge its obligations in that regard.

The evidence shows that Council's performance was very poor and considerably wanting on this account.

It could not be said, in reality, that Council has adequately and properly kept its community informed about its plans and what it was intended to do, and to spend, in respect of the proposed Community Centre.

And, as with the spasmodic and limited consultation meetings undertaken in Lightning Ridge itself, it is clear that the true cost of the project, despite the fact that it was well known to staff and Councillors closely involved with the project, was in reality kept from and not adequately or clearly made known to the public.

I have examined the Walgett Shire Council Strategic Plans (Council's name for its management plans) for each of the years from 1998-1999 to date. The information given in them about the proposed Lightning Ridge Community Centre is scant. This is particularly poor, having regard to the need for Council, pursuant to section 403 (2) for Council's annual statement of its principal activities (required by subsection (1) of that section) to include a statement, with particulars, of the "capital works projects to be carried out" by Council.

I have also examined, on a random sample basis, what a number of other major regional and rural Councils do in respect of their proposed capital works. While the standard of reporting varies, it is clear that the standard of Walgett Shire Council is less than the minimum achieved by the sample group.

In its 1998-1999 Strategic Plan (at pp. 37-38) Council advised its community that one of its principal activities that it would be undertaking in that year was "to act as a funding facilitator for capital works throughout the Shire", and it indicated in particular that it proposed "to oversee the funding for a HACC centre in Lightning Ridge". Nothing more was said. Very informative.

While noting these objectives in its Annual Report for that year, no information was provided at all as to what, if anything, Council had in fact achieved in that regard, except the very limited information, if that is what it might be called, in the General Manager's report (p. 4), where he advised:

The proposed new Home and Community Care (HACC) Centre for Lightning Ridge is moving slowly, Glen Murcutt has been appointed as the Architect for the building. Extra funds will need to be sourced to commence works on the building.

It was even suggested that one of some 10 “significant highlights of the year” was the proposed Centre! Spin doctoring par excellence.

In Council’s Annual Report for the next year (1999-2000) the same objectives and targets are noted, but there is an absolute silence, so far as I can tell, on the progress made in respect of the project.

Ditto for 2000-2001.

In Mr North’s first report as General Manager, at p. 11 of the Annual Report for 2001-2002, the only mention is that “we have continued support for the ... ongoing strategic development of the proposed Lightning Ridge Community Centre”. Very informative stuff.

In the Strategic Plan for 2003-2008, at p. 148, the only real information, if you could call it that, about the capital works that Council proposed in relation to the Community Centre is a one line entry regarding using temporarily some \$70,000 of loan funds, held in the Waste Management Reserve, towards the Centre. No information about what the Centre is to entail. No information about where it was to be built, or when. No information about its projected cost. No information, other than what I have just noted, as to the source of funding to cover that cost.

At p. 20 of the document Council holds itself out as having one of its principal objectives (B4) to “support the provision of an appropriate range of community services, facilities and community infrastructure”, but no mention is made of the Centre. At p. 87 there is a very brief mention of an adopted budget of \$73,380 in respect of what is referred to as the “Lightning Ridge Multi-purpose Centre”.

In short, a dismal performance.

In his oral testimony at the public hearings, the General Manager, Mr North, conceded that there was no formal process undertaken whereby Council properly determined the need for the sort of “iconic” Centre it was apparently wanting to build:

Q. ... Now, the annual report, the latest annual report, albeit a document that, of course, hails from some years after the project was first being mooted, notes that council adopted a social plan - - -

A. Yes.

Q. - - - in 1999 and that the Walgett Shire community plan or profile is an update of that plan. It goes on to state that this update of the social plan will now – for now be more appropriately named a community profile, as community consultations for comment and input have not at this stage been actioned. A process of community consultations will assist with appropriate strategies to be put in place in response to identified needs. Now, in view of that statement, and what I understand it to mean, how can council be satisfied with this proposed community centre, which has not advanced very far, that its expenditures and budgetary aims, and preferred projects will warrant the further expenditure of ratepayers’ funds, or the devotion of scarce council resources and manpower when you – council is conceding that it hasn’t even identified the needs?

A. I think there’s sufficient demand currently to probably argue the case, that is that there are needs for - - -

-
- Q. Well, how has that demand been identified?
- A. I don't think – well, I'm not aware of any formal process, or rather – that there's been identified issues in Lightning Ridge that have led to a number of agencies being required, services being required. I think this building is simply about co-locating those people into one area. Now, whether there's justification in spending \$1,000,000 or \$3,000,000, or indeed \$200,000 of ratepayers' money has been a decision that, I suppose, caused a split in council.
- Q. ... You sent a memo to your senior managers on 28 April last year. The subject was, meeting with Lightning Ridge councillors and it's just short of 2 pages long. It covers a series of issues that were raised during that meeting, a third of which is the Lightning Ridge Community Centre and it says, "Prepare a report to the May 2003 council meeting which argues the benefits for the Lightning Ridge Community Centre on a shire-wide basis and include a request for funding." Could you tell me what was done about implementing that?
- A. I don't, I don't really know whether there was a report provided to the May meeting. I would have to look at the May meeting to find out.
- Q. Particularly, in terms of arguing the benefits of that centre on a shire-wide basis.
- A. And the point that I was making there was simply recognising the expense that was being proposed for such a building, it would need to be seen as a shire-wide benefit, otherwise - - -
- Q. I mean, the Lightning Ridge Community Centre has been a particularly large issue for council, hasn't it?
- A. Yes, it has.
- Q. So presumably a lot of what's been going on in respect of that project whilst you've been the general manager would have loomed large in your daily or weekly things that were happening to you.
- A. Well, it certainly loomed large. I have had confidence in my group manager that's represented the management group in dealing with that and that group manager has been certainly across all of the issues of this, but it's swung from pillar to post from one week to the next with – and I guess when you've got a council split on what needs to occur or what shouldn't occur – I mean, that's, that's - - -
- Q. I mean, this is a request that's made as a result of a meeting not with Walgett councillors, but with Lightning Ridge councillors according to the document.
- A. And that – well, that would be right then, I would imagine, there were meetings that I held with the Walgett councillors in my office and there were meetings I held with – so they were on the ground issues, people wanted to talk to me about what they saw were issues. At the end of the day we had to prepare business papers for all of the council to consider.
- Q. But, in fact, the first part of the memo says that some of the items and issues raised at that meeting require urgent attention as they have to be included in the 2003-2004 budget.
- A. Well, I guess that - - -
- Q. So presumably it was intended that this benefit on a shire-wide basis should go into the management plan, into the strategic plan, but I've not seen anything in the strategic plan that does that.
- A. Well, it may not have gone forward. I mean, the urgency obviously was raised by – and I'm sure it was just councillors that were there, I think it would be a request.
- Q. When you issue these sorts of instructions to senior managers what sort of formal system do you have in place for follow-up and ticking off what's been done and not been done?

-
- A. I have a bring-up system only in my office for those actions and when the executive meet we go through those, and they're either pushed back or they're deal with.
- Q. And you can't recall what would have happened in relation to that instruction - - -
- A. No.
- Q. - - - in that?
- A. No, I can't, and it may well have gone forward, I'm – I can't tell you that.

The poor performance of Council in informing its community about the project can be summed up in the following evidence from Mr North:

- Q. Nowhere in the management plan is it spelt out just what council is proposing to do or contribute in respect of the Lightning Ridge Community Centre.
- A. Yeah, absolutely, I think you're, you're right and I understand the comment you are making, that we should be more transparent.

4.9 The discharge of Council's obligations to the Department of Ageing

As indicated at section 4.1 of this report, Council signed a Deed of Agreement with the Department of Ageing in June 1997. This was a condition of securing the funding from that source.

That Deed is an extensive document, with some 22 clauses and 13 pages. Clause 3 makes it clear that the offer of financial assistance was conditional upon the various provisions and requirements of the Deed being met. The conditions cover a wide range of issues.

When she was giving oral testimony, I asked Mrs Treweeke about the Deed:

- A. I've not seen a copy of that deed.
- Q. So you're totally unaware of its contents?
- A. That's correct.

It is simply astounding that one of the key players in relation to the project was not aware of such an important document. The General Manager of the day and his staff must be severely criticised for failing to bring the Deed and its terms and provisions adequately to the attention of Council, let alone the committee Council set up to oversee the project. Certainly, as noted at section 4.1 of this report, Council was aware of the document – it passed a resolution, after the event at least, authorising its being signed for and on behalf of Council. Mrs Treweeke was a member of that Council, so her denial of knowledge of the Deed is at best simply an indication that she had forgotten about it.

The other point to note is that, even if the Councillors were not shown a copy of the Deed when they passed the resolution they did, it was equally incumbent on them, as the governing body of Council, to inquire as to its contents and to ask to have

some sort of report given to them about its import, before blandly, and yes even blindly, approving the document.

Certainly, much of what occurred, or did not occur, to be more relevant, in relation to the project, and it must not be forgotten that the project was a very important and central one to Council, even in Mr North's time, occurred before Mr Vic North joined Council in May 2001. But given that much has occurred in relation to the project in more recent times, and whilst Mr North was at the helm, I was concerned to learn about the extent to which Mr North appeared to be unfamiliar with the terms of the Deed.

When he was in the witness box at the public hearings, I asked him:

Q. ... Were any conditions attached to the handing over of those moneys?

A. I can't, can't tell you that, I really don't know.

Q. So - - -

A. I'm sure there would have been.

Q. - - - you're not sure about conditions, about the timing and completion of the project?

A. No, I'm not, and I, I assumed that that's what you meant, and I'm not sure about that.

Q. Would you say speaking generally that when government grants are handed over that there normally are conditions attached?

A. Absolutely, yes, and they're usually not 8 years.

He did not even seem to know about the existence of the agreement:

Q. Are you familiar with that agreement, have you – you haven't seen it?

A. No. Well, I – if I've seen it I can't remember much about it.

Clause 19 of the Deed provides for fairly drastic consequences to Council if any of its terms and conditions are not met by Council. Not only can Council be required to refund to the Department of Ageing any unexpended portion of the funding paid over, but Council could even be required to repay the whole of the original amount of funding provided to it.

It is therefore imperative that Council comply with its obligations, and someone in the administration, responsible to the General Manager, should have been, and should be, closely monitoring the matter to see that Council is not at risk. On the evidence, this has clearly not been happening, and over an extensive period of time, including under Mr North's administration.

Clause 9.2 (e) required that Council "ensure that suitably qualified and competent persons are engaged in management of the project throughout all stages of provision of the approved facility".

The General Manager's evidence to me showed that he didn't even seem to know who was managing the project:

-
- Q. Who would be the person who was effectively in charge of and managing the project?
- A. I think originally it was our community services officer, probably working closely with the - - -
- Q. Who was that, Christina Johansson?
- A. No, it was before her time. It was Margaret Gleeson, I think certainly applied for the funds, so I'm assuming she would have been part of that project management - - -
- Q. So you're saying to me that it was a council staff member who was in charge of the project, are you?
- A. I'm presuming that's the case. She was – she was certainly - - -
- Q. Is that still the case today?
- A. I have a group manager, Jo Wooldridge, who is our representative on a committee that's looking at the detail of that project with representatives from the department and other agencies.
- Q. Did council not, and in fact it's done it several times, appoint a committee to oversee – a council committee to oversee the project?
- A. It may be right but again I don't know that. ...

Technically, according to the Council resolution of June 1997, Council's committee was at least overseeing the project. Neither Mr. Wooldridge, nor anyone in his office or job, was appointed to it. See also section 4.3 of this report. But that resolution may not necessarily mean that Council was managing it. It is unclear to me from the evidence whether it was Mrs Treweeke who was fulfilling that role, or some staff member from time to time.

Whoever it was, the evidence seems to indicate that no one held the required experience and qualifications that the Deed demanded. Mrs Treweeke did not, as to which see section 4.3 of this report, above. And as I have concluded, Mrs Treweeke was certainly playing a very hands on role, particularly in relation to dealings with the architect designing the project. The evidence indicates that it was she who was really managing at least that aspect, if not more, for a good part of the time.

The Deed was particularly prescriptive as to what was going to be built and how it was going to be achieved. Clause 9.2 (a) provided that Council should:

obtain the prior approval of the Department as to the proposed site and the purchase, design, construction and /or refurbishing of the approved facility and all tendering, design and construction processes to be employed in provision of the approved facility.

The evidence is that, when it came to the appointment of an architect to design the project, Council breached its obligations in this regard. No prior approval was obtained, in the formal way it should have been, for legal purposes and for the purposes of the clause, from the Department. Yes, persons who might be said to have represented the Department were present at the committee meeting of 8 September 1997, where it was agreed that they should go with Mr Murcutt. But that is not enough for such purposes.

As noted at section 4.6 of this report, it was reported to Council's meeting of 22 February 1999 that a meeting had been held earlier that month when Murcutt

presented “concept plans”, and that “all providers present approved the projected design”. I have seen no documentary evidence of this, nor any to show that the “providers” included a duly authorised delegate of the Department of Ageing who had authority to sign off on the plans. In any event, prudent and proper management and other practices would decree that whatever was said at that time was later confirmed in writing.

The building to be built with the use of the Department provided funding (“the approved facility”, as it is called in the Deed) was, under the terms of clause 4.3, required to be “developed for or in connection with the provision of approved HACC services”. Clause 12.2 also provides that Council should also “always ensure that the priority use of the facility, or that part thereof for which the financial assistance has been advanced, will be for or in connection with the provision of services which are within the scope of the Home and Community Care Program”.

Council, to the extent that the intended use of the proposed Centre has moved well beyond that, is or is clearly likely to be in breach of this key requirement. No one seems to have even thought about this, in their enthusiasm.

Clause 9.2 (f) required Council to “promptly commence, and diligently proceed with work within the time frame determined by the Department”. As some seven years have passed since the Deed was entered into, Council has dismally failed in this requirement.

The evidence shows that at least in mid 1998, there was some awareness at Council that time was important. The General Manager issued a memo on 16 June 1998 to his then managers, and copied it to Mrs Treweeke, warning:

Time is of the essence given the possibility that funding may be withdrawn ...

The General Manager also wrote to the same effect on the same day to Mr Murcutt. But, it seems, Mr Murcutt did not heed that advice, because the General Manager had to write to him again on 4 November 1998 complaining about a lack of reply to his letter of June, and the lack of progress in the project. So, at least part of the blame for the failure to move diligently ahead seems to be Murcutt’s.

But the General Manager’s advice was obviously soon forgotten, even if it was ever heeded. One of the key concerns and findings of the Departmental Representatives in their section 430 investigation report related to Council’s lack of timeliness in proceeding with the project.

Council was also required, under clause 7.2, to “provide regular reports, in the form determined by the Department, of progress and expenditure on the ... project”. Once more, on the evidence, Council has failed to do so. In fact there is no record of formal written reports, which is what one would have expected to occur, being provided.

A strongly worded letter dated 11 September 2000 was issued to Council by the Department of Ageing. The letter noted that there had been some involvement of Dubbo and Wagga Wagga based Departmental officers in consultations on the

project, but it was stressed that the funding provided by the Department had been approved on the basis of the funding application submitted by Council, that is to say, on the basis of:

a project costing \$405,000, a building size of 483 square metres and a time frame of 12 to 18 months from date of receipt of funding.

... It is with concern that it is noted that the costing for this development now stands at an approximated \$3.29 million.

The Department demanded that Council “provide written confirmation” on some five enumerated matters. One of these related to “details of the expected source of additional funding for the development at the approximate costing of \$3.29 million”. Another was “an explanation of why the proposed development has escalated in costs so significantly from the proposal submitted to the ... Department in May 1997”.

A report to Council was received at a Council meeting very shortly after, namely on 25 September 2000, but was limited reporting on the outcome, to date, of the work done by the third of the committees appointed by Council in relation to the project (see section 4.2 of this report), namely that a model of the Centre, plans and preliminary costings were ready.

There seems to be absolutely no excuse for the failure to report to the Councillors the fact that the Department’s letter of 11 September had been received, and of its concerns.

This smacks of a cover up.

The report was prepared by and issued under the name of Mr McGuckin, but it is clear from the evidence that Mrs Treweeke had her own copy of the Department’s letter in her files. On the other hand, Council’s copy of the letter is date stamped with a receipt date of the same day as the meeting. If the letter had been received in time for the meeting, there is simply no excuse why such a letter was not rushed to the meeting. All Council staff, particularly those receiving incoming letters and faxes should be astute to this, particularly on days they know Council meetings are either in progress or about to happen. See also section 4.19 on this in relation to a similar incident.

The evidence does show, on the other hand, that the Council committee appointed on or referred to in the minutes of Council’s meeting of 25 September 2000 was on 28 September 2000 called by Mr McGuckin of Council to a meeting on 9 October (the notice incorrectly refers to September) 2000. Attached to that notice is a copy of the Department’s letter.

However, the notice only went to three Councillors, namely Clrs Friend, Hutchinson and Mitchell. Why these Councillors is not clear, because the committee appointed at Council’s meeting of 28 August 2000 was to comprise Clrs Waterford, Mitchell, Treweeke and Friend. The minutes of the meeting of 25 September may or may not show (see section 4.2 of this report) that yet another committee was formed at that meeting, and its members were apparently Clrs Friend (the newly appointed Mayor),

Clr Hutchinson (the newly appointed Deputy Mayor) and Clrs Treweeke and Mitchell. Clr Treweeke's name is therefore missing from the list of invitees, though this might be just an error, as the only extant copy of the notice that was provided to this Inquiry came via Mrs Treweeke. On the other hand, the evidence is that Mrs Treweeke did attend the meeting to which she appeared, on the face of the notice of the meeting, not to have been invited.

Apparently, Council replied to the Department by letter of 28 September 2000 from its then General Manager, but once more all trace of that letter seems to have disappeared. The only evidence of it is in the fact that it is noted in the letter that bounced back from the Department to Council.

Why Council's General Manager was replying to the Department on 28 September 2000, when on that very same day the members of the latest ad hoc committee of Council were being invited to a meeting, one of whose tasks implicitly must have been to consider a response, is entirely unexplained. The inference is that there was very poor communication between Mr McGuckin and the then General Manager.

The letter that bounced back from the Department in response was a letter of 17 October 2000, received by Council on 20 October. The letter advised:

I am concerned about several aspects of the response ... Firstly, the cost escalation of the project ... would place the project outside the scope of the HACC funding approval.
...

The Department suggested that the "preferable" solution would be for the project to be taken over by another agency which had apparently already contemplated undertaking a building project for its own needs in Lightning Ridge. It was noted that this would need, however, the support of Council and the HACC service providers, and Council was asked to provide a written reply by 20 October 2000, only 3 days later (and the same day Council had received the letter), giving certain information to the Department. The Department demanded to know:

- The reason for the cost escalation of approximately \$3 million.
- Whether Council has signed a contract with the architect, who I am advised is Glen Murcutt.
- What other sources of funding (including from Council) have been confirmed? ...

So, it seems that the information regarding funding sources sought by the Department's earlier letter of 11 September 2000 had not been given in the lost reply.

As to the second dot point, it seems from that wording that at no time was any proper or official approval ever got, as was required, from the Department for the appointment of Murcutt.

The letter officially notified Council:

I wish to formally advise that Council is in breach of the Funding Agreement with the Department.

Pretty strong stuff.

The reply time originally demanded by the Department was extended by another letter of 18 October 2000 from the Department to Council to 23 October.

The reply was duly issued by Council on 23 October. It was merely advised that a committee of Council were meeting with Mr Murcutt in an attempt to “determine the final estimated cost of the proposed building”. It was also indicated that Murcutt had said the building could be constructed in stages. But no concrete or satisfactory reply was really provided to the Department.

It is clear that Council was desperately buying time.

Clearly the Department was not satisfied on progress because, as noted at section 4.4 of this report, it wrote to Council on 20 December 2000 formally demanding the return of the funding it had provided some three years earlier.

More than one year later Council had not complied with this clearly worded demand.

The Department had to write to Council’s General Manager, Mr North, on 8 January 2002 about the matter. It is clear that at least one option being pursued by the Department was still that the funding be returned. A meeting was demanded to “discuss the finalisation of this project, or the return of grant funds”.

That meeting took place on 31 January 2002, and the Mayor, Clr Waterford, briefly reported on it to Council’s meeting of 25 February 2002. His report included the following comments:

It was suggested that it may be advisable to give this money back and apply for a much larger grant. The trouble with this proposal is that I hate giving the money back!

Council was also required by clause 7.1 to “ensure that proper and complete project management records and books of account are established and maintained to show the receipt, management and expenditure of funds pursuant to the project”. Again, the evidence provided to this Inquiry shows Council to have been in breach.

Clause 6.2 required Council to place the moneys paid to it by the Department in a “trust account for the approved facility”. Mr North told me at the public hearings:

Commissioner, I have found out that the, the amount of money is not held in a trust account, it’s held in the reserve.

Council’s track record in compliance with its important contractual obligations is clearly dreadful, and the major responsibility for this must lie at the feet of the General Manager, as head of Council’s administration.

4.10 The adequacy of advice and administrative assistance to Council in respect of the Centre

I have at various sections of this report, and in particular of this Part 4, noted evidence, as well as admissions, as to inadequate advice and administrative assistance provided to Councillors on the Centre project. Clearly, as General Manager, Mr North must bear responsibility for this.

4.11 An affordable centre – funding issues and sources

The terms of the Deed of Agreement with the Department of Ageing signed by Council in late June 1997, as well as of Council's resolution passed at its meeting of 30 June 1997, make it clear that at the beginning the only approved anticipated cost of the proposed Centre was at about \$405,000, with some \$135,000 being contributed, in cash or in kind, from Council.

At that time \$270,000 funding from State Government sources, through the Department of Ageing, was already secured, and had been paid over to Council.

On the other hand, it seems from the earlier funding expressions of interest documentation that at an early stage there was some sort of contemplation that contributions would be made in kind from other persons towards the cost of the project. Certainly, as early as 23 February 1998, as shown by a set of minutes of a meeting of Council's Aboriginal Reconciliation committee or group held on that day, it is noted:

The use of local labour will be built into the tendering process for the construction of the multi purpose community centre at Lightning Ridge.

But, what local labour? Doing what work? Which would otherwise cost what amount? Providing what materials? Which would otherwise cost what amount? And how and to what extent has the provision of the labour actually been tied up with some legal certainty and clear and enforceable promises obtained? All these questions are unanswered, and this is the common and continuing theme and problem, it seems to me, pervading the whole funding issue.

Unless these things are pinned down in some sort of more defined and precise way, then Council, as the one running with the project, and being responsible for the building of the Centre, may be left holding the baby on any shortfall between the actual cost of the Centre, on the one hand, and on the other, what is in the end actually provided in kind, plus what comes from external funding, such as approved Government grants, and what comes from what Council itself is providing in cash and has put aside in a reserve for the purpose.

Without such matters being pinned down, Council, whether it be through its elected body, or through its General Manager and his administration, is being reckless with

ratepayers' moneys, and breaching or potentially breaching its Charter obligations to its community.

The pervading theme in respect of what the Lightning Ridge community, whether that be from members of the Aboriginal community and/or others, was supposedly going to provide, is a sort of "she'll be right" mentality, a view formed on the basis that the Lightning Ridge community has, somehow, always come through, when it comes to the crunch, in the past. That is as may be, and I have no reason to doubt that the community has pulled together and secured all sorts of facilities and other things in the past, but this is Council, a local government authority, charged with statutory duties and responsibilities under its enabling legislation, and Council, through its elected body, and its General Manager and his administration, needs to be more business like and so on, than just a "don't you worry about that, it'll be all right on the day, mate", response.

What was envisaged in the way of in kind contributions from others appears to have gained a wider import, but again with no precision or quantification or valuation, when the Councillors were advised, at and for the purposes of the special meeting called on 24 May 1999 to plan for and approve Council's budget generally, that, in respect of the Centre "it is expected to be constructed using a fair degree of volunteer labour and donated materials".

The question of hopefully bringing the costs of the proposed Centre down resurfaced once more in October 2000, at a time when the Department of Ageing was flexing its muscles and demanding to know why the costs had blown out to such an enormous amount (\$3.29 million), and to know where the funding was coming from (as to which see section 4.9 of this report), and when Council had another committee working on the funding and costing issues (see section 4.2 of this report).

Council's General Manager wrote to Mr Murcutt on 19 October 2000 advising him that the committee "wish to identify particular construction work that can be performed locally including supply of construction materials on the basis of reducing the overall cost of the building".

But, once more, it is clear from this evidence, Council was still thrashing around in the dark on the matter.

Council's unrealistic stance continued. In a letter to the NSW Premier's Department on 22 February 2001, when additional cash funding was being sought from the State (as to this aspect see below), figures were put on the value of the in kind contributions.

The day before a revised costing of the proposed building had arrived from Northcroft, the professional quantity surveyors engaged by Council, and put the total cost at \$3.44 million. Northcroft, however, advised that they had made certain assumptions, which they asked Council to confirm (I have seen no documentary evidence of this having occurred), as to the percentage of labour and/or materials of certain items or parts of the Centre that were going to be provided by Council (and/or others). On the basis of those as yet unconfirmed assumptions, Northcroft estimated the "community contribution" at \$1,056,000.

This is certainly a very significant figure, and is a figure that has the benefit of having been professionally calculated, albeit on the basis of the as yet unconfirmed assumptions.

But, the point remains that Council had no reliable, and certainly no legally enforceable or covenanted promises from anyone in the community that in kind contributions were in fact going to be forthcoming. Without wishing to be seen to labour the point, my view is that unless and until Council had reached such a position where it had reliable assurances or promises that the hoped for or assumed in kind contributions were in fact going to be delivered, Council was reckless in proceeding with and committing to the project, because if the in kind contributions did not eventuate, then Council would either have to find more Government funding (which must be considered, in all the circumstances, to be most unlikely to be forthcoming – as I will note shortly, the costings and estimates of funding coverage were already been made on the assumption of considerable extra Government sourced funding) or come up with the moneys out of its own (i.e. the ratepayers') coffers.

I must also raise some queries about the costing of the hoped for in kind community contributions. I am not assured as to how reliable those figures were, even if they did come from Northcroft, a professional quantity surveyor. I must confess to a considerable uneasiness over those figures, though I equally note that the matter was not examined or tested during the public hearings or otherwise during the Inquiry process.

On the other hand, there is a further cause for concern.

Despite the figure advised by Northcroft on the community in kind contributions (\$1,056,000), Council fiddled further with that figure, seemingly without any input or signing off from Northcroft. The letter to the Premier's Department was to seek additional State Government funding, and there was a need to provide more information to the Premier's Department to support that application. That information included a copy of the Northcroft fax of the previous day, but Council also included a set of calculations purporting to show where all the cash and in kind contributions to cover the \$3.44 million were coming from.

Firstly, from that figure they deducted the \$1.056 million figure provided by Northcroft. But then they went further. They deducted from that net amount of \$2,384,000 an additional \$215,516 of "further adjustments to estimate", comprising a further calculation, not apparently sourced from Northcroft, on the value of community inputs. As this figure appears not to have had the benefit of any professional input, I have serious concerns with it.

The further adjusted net amount or net cost of the project, for which funding in cash was needed from various sources, was \$2,168,484. I shall now deal with the cash funding situation.

Another aspect to the question where the moneys were coming from to pay for the proposed Centre relates to apparently intended, and on the evidence to me,

expected, funding from other State and Federal Government sources. This became particularly relevant, once the likely cost of the project exceeded the \$405,000 originally secured, via the Department of Ageing HACC funding and the balance coming in kind or in cash from Council itself.

The first documentary indication that there was an actual and real intent to get other Government funding is a letter that the Hon John Anderson MP, Federal Member for Gwydir, and hence the local Federal member, wrote personally to Mrs Treweeke on 27 January 2000.

In that letter he thanked her for making arrangements in respect of and for his recent visit to Lightning Ridge when one of the issues he discussed was the Lightning Ridge Community Centre project and possible Federal funding for it. As to this latter aspect all that the letter says is:

I acknowledge that you will be requesting Commonwealth funding and upon receiving the detail of the Report will seek to explore some funding options for the facility.

It is abundantly clear from these words that no funding commitments or promises were being made.

A meeting of an ad hoc committee relating to the Centre project, held on 9 October 2000, records that the total funding in hand at that time for the project was \$465,000 (this included the interest that had been earned on the other funding handed over or committed), but that of this only some \$449,800 was still available, because the balance had been spent.

The minutes, which show that many of those invited to the meeting had sent their apologies (Mrs Treweeke was present as I have noted, and while this is not formally stated the inference is that she chaired the meeting, because of the absence of the Mayor), record:

The committee stressed that Council is only responsible for its own share of the overall capital cost and recurrent expenses. Other Government Departments will be responsible for the balance of costs.

It is clear from the evidence that this statement is one of wishful thinking rather than legal or actual reality, because there is no evidence of any formal undertaking or commitment having been given by such "other Government Departments", whoever they might be, such as could underpin such a conclusion.

The committee were clearly out of touch with reality on this matter.

Probably, this was due at least in part to Mrs Treweeke. Her own evidence to this Inquiry repeatedly led me to believe that she considered that Council had only to ask for Government funding, whether from the State or from the Federal Government, and it would be granted.

For example:

A. I think it is quite understood that in this country the federal government funds aged care facilities, so the day care centre, which is quite a large portion of the thing, would be funded by the federal government. That's – that's – that's where they applied to for funds for that.

Q. So what expectations did you have that that money would be coming as opposed to hopes that it would be coming - forthcoming?

A. Well, it has to be applied for.

Q. Had it been applied for at that stage?

A. It has not been applied for at – as yet ...

...

Q. So where was the rest of the money coming from then?

A. State government through the - - -

Q. So what expectation as opposed to hope did you have that the state government was going to provide that money?

A. As it does in other places for similar facilities or for similar service outlets.

Q. But how – I'm having difficulty in understanding how just because moneys might have in the past been approved for other projects in other places, that they should be approved for this project to this place. I mean, this particular circumstances may well be different. The other places may have been putting up a very cogent argument for funding for a well-researched, well-planned project.

MR JACKSON: These kinds of government funds, commissioner, are put up on a needs basis and there is no question - - -

COMMISSIONER: Well, I'm asking your client, Mr Jackson.

A. Well, I would agree with that because that is exactly the basis on which this project was put forward. Also, whenever you go to government, be it state or federal level, the first question that's asked when you're – because most funding these days is done in partnerships, so people are putting in bits to make a whole, they ask what contribution is coming from local government, and in this case the fact that things like the public toilets, and indeed the council had wanted a couple of offices built in this building, assists with it. So it is a question of putting under the one roof, if you like, many different services.

Q. We're talking about the funding, not the toilets.

A. Well, local government funding is part of it, that the local government funding would be responsible for local government services alone.

Q. Local government funding means presumably funding from the Walgett Shire council?

A. Exactly, for the sort of thing - - -

Q. So how much was the Walgett Shire council putting up over the \$3.29 million?

A. It had put up its - - -

Q. \$135,000?

A. Exactly.

Q. All right.

A. To begin with.

Q. Well, that's a hundred and thirty-five. Now, we've got an awful long way to get to \$3.2 million.

And again:

- A. You asked me before about where the funds were coming from and why – what sort of expectations would I have - - -
- Q. Right.
- A. - - - and I think I would like to demonstrate that by giving you this document, the Community Adversity and Resilience Report on Socially Disadvantaged in Victoria and New South Wales where Lightning Ridge is listed as the third most town of need in New South Wales - - -
- Q. Ah hmm.
- A. - - - and from other information I have from other government departments they're seen as a – an area of need and priority, so I have every reasonable expectation to believe that such funds would be forthcoming. This is the second document that this research organisation has done. The first one in '99 made us the fifth most socially disadvantaged. We have now regressed to the third most. So I have fairly – or very reasonable expectations that funds would be coming from both state and federal governments to address the needs that have been demonstrated.

And once more, at the same time seeking to explain away the costings provided by Northcroft:

- Q. So where is that money coming from?
- A. Well, the public toilets would need to be funded by the council because they fund those in every town, so there's that to be added to it.
- Q. But you can't be telling me that the public toilets cost \$500,000?
- A. No, but then part of that would be landscaping and other matters, because part of the design of the building is that - - -
- Q. But the price of \$1.384 million that Northcrofts were able to get the numbers down to excluded a lot of stuff and if I'm correct it excluded the landscaping.
- A. That document needs to be explained to the council about what it – how that figure was arrived at and that hasn't happened yet, so I'm unable to give you any more information on that because I'm unaware ...

Further questioning of Mrs Treweeke, touching on her views and apparent expectations of the arrival of funding, is quoted at section 4.4. At the close of that extensive set of questions she added:

I can say no more except one would have to say as a normal, reasonable person that if you can meet the requirements and the guidelines, that the expectation that the funds would come would have to be reasonable, and I don't say any more. I mean, how can I?

I wish I shared Mrs Treweeke's optimism.

There is a further reference to the question of "recurrent costs" later in the minutes of the committee meeting of 19 October 2000, which I started to quote from and consider, above:

Recurrent costs would be shared on the basis of percentage area of total building area utilised.

Moreover, the various references to “recurrent costs”, presumably meaning the running or operating costs for the Centre once it was constructed and opened, are also curious. It is not supported by any documentary evidence presented to the Inquiry. The Deed of Agreement between Council and the Department of Ageing said nothing about the costs of operating the Centre, and certainly contained no commitment by the Department, whether on its own account, or on behalf of the HACC service providers, to provide a share of such costs. I have also noted the evidence of the current General Manager, Mr North, in relation to operating costs later in this section of my report.

The Committee also contemplated that Council would “lobby for funding for the capital costs for the balance of the building”.

The evidence is that the efforts towards such lobbying were pretty patchy, however.

A full Council meeting was held on 30 October 2000, and one of the issues looked at was the question of the costing of the Centre and funding for it. Two resolutions were passed. One was to hold a meeting with the community in Lightning Ridge “to seek input into the final design along with identification of other avenues of finance”. This seems to suggest to me that Council really had no idea what those might be and were somehow hoping for a brain wave from the community.

The second resolution was that the committee travel to Sydney to meet with Mr John Anderson, the Federal member, and the NSW Premier to “press for further funding for the Centre”.

Mrs Treweeke’s own notes provided to the Inquiry provide evidence of her having personally telephoned an officer in the Department of Ageing about funding on 1 November 2000. She was trying to get that Department to provide more money.

Minutes of a Council meeting of 4 December 2000 show that Council was lodging an expressions of interest with the Federal Department of Transport and Regional Services for funding of up to \$500,000 for the Centre project under what is described as the “Regional Solutions Program”. Council resolved to support this application.

I have noted above that Council wrote to the Premier’s Department in late February 2001 providing additional information on the costing of the proposed Centre and on the anticipated funding sources to cover that estimated cost. After making some adjustments (which I have noted above leave one with concerns about their reliability), Council estimated that the “adjusted funded total” (or more realistically put, the hoped for funded total), was \$2,168,484.

On a separate page of calculations provided by Council with that letter that figure is broken down to show that the funding was hoped to come from the following sources:

Regional Solutions Program	500,000
Commonwealth Department Funding	250,000
State Department Funding	1,168,484
Council Share	<u>250,000</u>
	2,168,484

Despite these figures, Council formally sought, in the covering letter, State Government funding of \$1.2 million.

At this time, of course, no Federal Government funding at all was promised, let alone formally applied for, so the \$750,000 coming from that supposed source was mere wishful thinking, based on no reliable foundation at all.

And even the State Government funding asked for was on the basis of a wishful request only. No documentary or other evidence of assurances that it might be forthcoming have been provided to this Inquiry. I exclude in this regard the HACC funding of \$270,000 that had already actually been handed over through the Department of Ageing, a point that seems to have been glossed over or omitted from Council's letter of 22 February 2001.

On 12 March 2001 Mrs Treweeke faxed to a Council staff member a series of draft letters she had prepared to go to Mr Michael Fleming, then Senior Policy Adviser in the office of the then Minister for Local Government, and to the Premier's Office, once more to shore up the lobbying campaign for State Government funding. She also suggested a letter go to State Member of Parliament, Mr Ian Slack-Smith. The aim was apparently to secure a meeting with the Premier, Mr Bob Carr.

The Department of Ageing apparently became aware of Council's lobbying efforts, and an officer of the Department wrote to Council on 27 August 2001 and advised (continuing in this regard advice that had many months before already been notified to Council – see section 4.4 of this report):

All except one HACC service expressed [after enquiries by the Department with the various services] satisfaction with their current accommodation arrangements. Therefore, given the response from services it would appear the need for HACC capital funding in Lightning Ridge has diminished.

This was clearly not the message that those at Council, who supported the proposed Centre and who were determined to get it built, wanted to hear. The evidence is that they ignored it. The copy of the letter provided to this Inquiry, which came from Mrs Treweeke's files, has various handwritten notes on it, the tenor of which is that the writer queried the clear written advice from the Department.

There also appears to have been an application made, perhaps in late in 1999 or early 2000, to the State Government for further funding. However, all trace of this appears to have been lost from Council's records, and there is no record of it in Mrs Treweeke's files either. However, I have been provided with copies of documents entailing a fax of 28 June 2002 from the NSW Premier's Department to Mr Jo Wooldridge of Walgett Shire Council, and attachments. One of those attachments is a letter from the Premier to the General Manager, dated, 26 July

2000 (i.e. before the committee meeting of 9 October 2000 whose deliberations I have noted above), enclosing a cheque for \$70,000 funding approved for the Lightning Ridge Community Centre project.

Clearly that cheque, for some reason, either never got to Council, or was lost at Council, and not presented. One of the attachments to the fax to Mr Wooldridge is a copy of the unpresented cheque, and the fax of 28 June 2002 advises Wooldridge of an impending electronic funds transfer to Council's account of the \$70,000.

So, the total of approved, and therefore real and actually promised or committed Government funding for the project increased with that transmission to \$340,000. To those available funds for the project must, of course, be added the interest that has been accruing on the moneys held on that account in Council's bank account, which Council has resolved also be earmarked for the project.

More recent evidence shows that the committed and earmarked funding stands at about \$400,000 to at best \$500,000, and no more. Council did pass a resolution at its meeting of 12 May 2003 earmarking the use of some \$70,000 out of its Waste Management Reserve Fund for the proposed Lightning Ridge Community Centre. This amount is not cash held by Council but loan funds.

And, on 23 June 2003 Councillors were asked to consider a line of credit proposal possibly to cover the Centre and various other possible infrastructure projects. On this see section 3.8 of this report.

Despite what Mrs Treweeke sought, unsuccessfully I would add, have me believe, there is no Government commitment, State or Federal, which can in fact be relied upon by Council to cover the costs of a stage 1 of the project of \$1.384 million, which is (see section 4.13 of this report) the latest reliable cost estimate of the construction of that stage.

Council provided to this Inquiry a copy of a letter of 28 May 2002 from the Premier's Department to Mr Peter Black OAM, Member for Murray Darling and member of the NSW Parliament. Relevant parts of that letter are as follows:

I refer to your representations on behalf of Walgett Shire Council of 18 March to the Premier concerning funding for the proposed Lightning Ridge Community Centre. ...

Following recent representations from Council, the Department of Ageing ... agreed to roll over its contribution for a further 6 months to enable the determination of an application before the Commonwealth for \$500,000 towards the project.

You would appreciate that the State budget will be extremely tight next year because of the Commonwealth Government's clawback. This will make it very difficult to provide additional funding from New South Wales.

Even with community in-kind support and if the Commonwealth approves the current grant application, there will be a project shortfall based on the highest estimate of between \$1.5m and \$2.0m. Perhaps Walgett Shire Council could consider reviewing the community centre design and/or undertake construction on a staged basis as funds become available. Priority could be given to the most pressing needs.

The letter was signed by none other than one of the State's two most senior public servants, Dr Col Gellatly, Director General of the Premier's Department.

This letter, alone, shows that there is no question of "ask and you shall receive", as Mrs Treweeke and others appeared to think is the case. I have also noted at section 3.4 of this report Council's failure to secure apparently asked for funding on childrens services.

I asked Clr Waterford, the Mayor at the time this letter was issued, about it:

- Q. ... Do you recall seeing a copy of that letter?
A. Never. Peter Black is not part of our – we're not part of Peter Black's electorate.
- Q. Well, why would Peter Black be involved then?
A. I wouldn't know.

However, there is other, documentary evidence which appears to indicate that Clr Waterford must have been mistaken and have forgotten about a meeting he had where Mr Black was present. Clr Waterford's own Mayoral report to Council's meeting of 25 March 2002 reports on a meeting he attended in Sydney on 27 February 2002. Present were Mr Murcutt, Mr Peter Black, Mr North and the Premier, Bob Carr and members of "his entourage". The Community Centre project was, according to Clr Waterford's report to his fellow Councillors, one of the various issues discussed at that meeting.

Mrs Treweeke's evidence on the involvement of Mr Black was:

Peter Black came to the Western Division shire conferences as the Premier's representative. ... And we had the model of the building there and showed it to him, and then he asked to see the site and what have you in here.

This was a conference held in Lightning Ridge.

Returning now to the letter to Mr Black itself: There is no evidence that this is a letter that was formally provided or copied to the Mayor, let alone the other Councillors. So, that might in part be a reason why Clr Waterford expressed surprise about the letter when I asked him about it. Mrs Treweeke also told the Inquiry:

I knew there'd been a reply, but I – I was not familiar with the contents of it, no.

Given the importance of the contents of the letter I find it most surprising that it was apparently not so copied to the Mayor and Councillors.

The letter is in fact, in my view, one of the most important of the documents by which the performance and conduct of the Councillors of Walgett Shire Council, and of its General Manager and his administration, must be judged in relation to the project.

It could not have been expressed more clearly, in my view, that the Premier's office was sounding a very loud and clear warning to Council about, first, the need for Council to revisit and revise the ambit of the project, and second that Council could not expect further State Government funding.

On the evidence, both warnings were inexcusably ignored. Yes, the evidence shows that Council did pursue the suggested staged construction idea, but that is not my point.

Council proceeded to come up with a stage one that still cost way in excess of the available funds. See section 4.16 of this report on that aspect. And even the staged construction idea still resulted in a stage one that included, in my view, facilities for which it could not reasonably be said that there was a “most pressing need”, namely, for example, an Aboriginal artefacts museum.

There is evidence to indicate that Councillors who voted for and continually supported the project did so in blind disregard for what it cost, let alone whether Council had moneys in hand to cover those costs.

Mrs Treweeke’s evidence to me was a valiant attempt to persuade me differently. That attempt failed.

I asked Clr Waterford as to what he could recall about the costing of the project being advised to Councillors at the Council meetings of 8 December 2003 and 8 March 2004:

- Q. ... Have you seen it in council papers officially given to all the councillors at the meetings that were held in February and March, let alone December?
- A. I – I haven’t taken much notice of it but I would imagine it would have been. It was certainly discussed at great length.

The words, “I haven’t taken much notice of it” are particularly telling.

In another part of her testimony Mrs Treweeke made yet another attempt to put a gloss on matters and to explain them away. We had been talking about the cost of the building and what was reported, from time to time to the Councillors. She said:

... I think people throw around the term budget as though it’s the cost of the whole building when they’re only referring to the HACC section.

I asked her who “they” were, but got no satisfactory response.

On the other hand, Mr North’s oral testimony to the Inquiry showed that he, as General Manager, was concerned about where Council was going on the project:

- Q. You spoke a moment ago about the progressive councillors being oblivious to the detail and implications surrounding finance and liability. Is there any possibility that the alleged lack of interest of that group is as a result of poor or inadequate advice on such matters from council’s administration?
- A. Can I first say that I’m generalising when I make that statement. Obviously it doesn’t happen in all cases. Yes, I think there’s an element of responsibility on the part of administration to ensure that that detail is given, and I didn’t say in that letter that it wasn’t, I think that what I was trying to say is the progressive group are looking at big picture stuff more often than not, and wanting to progress the big picture, and allowing the detail to be run through by the administration, and I think an example of that is the Lightning Ridge Community Centre, which obviously hasn’t worked with that in mind, but that, I think, is how it pans out.

And later:

- A. Those that would be promoting it, as Councillor Lane said yesterday, the intent from those Lightning Ridge people was to have enough money from council to enable other grants to be successful to pay for the rest of the building. I guess my concern on all of that was are we clear that the building that we're going ahead with is properly costed and what the liabilities to council are.
- Q. It's a concern I share too.
- A. And that's why I raised that issue in the meeting that that was decided.
- Q. Mmm.
- A. So there is certainly an element of that I would feel much easier with if we knew exactly how much it was going to cost and where other funding was going to be triggered from.

Mr North highlighted another important facet to the building of the proposed Centre:

- Now, there's a concern that I have for that in once sense, that while the idea might be great, what is the cost to council when council has to look for maintenance and replacement costs ... We haven't been very good at perhaps projecting 20 years down the track and working out maintenance costs, what we've been focusing on is the capital cost right now ... But the groups in Lightning Ridge generally are very enthusiastic, progressive and just want things done now.
- Q. Hang the detail and the cost.
- A. Yeah, so that – that's how it works, and for a lot of things it's worked very well, so it's not a criticism. I think as a public body or council we need to be vigilant about understanding what, what that means to council - - -
- Q. Mmm.
- A. - - - and that's where it's been bogged down.

At the public hearings I asked Clr Waterford about where the money was coming from to pay for the Centre:

- Q. Where is the money coming from?
- A. To build this building?
- Q. Yes.
- A. Well, we've got half a million dollars in our bank now or \$470,000-odd in our bank.
- Q. Right, well, that's – so that leaves us with just short of another million.
- A. Yes, and I believe and I said a minute ago that some of the other government departments will be coming forward. Mind you, I said - - -
- Q. But what – what firm promises have you got?
- A. Other than the ones that I've said who have said that they would partake to build their section of the community centre, no more than hearsay or innuendo, but that's what I believe would happen.

My questioning of Clr Waterford continued:

- Q. ... I've seen a letter that was written to the Premier's Department on 22 February, 2001 which sought state government funding of approximately \$1.2 million.
- A. Yes.

- Q. Now, 22 February, 2001 was in fact at a time when the costings had already gone up to \$3.44 million. Now, that letter suggests that council would only be putting up about \$250,000 of its own funds. It doesn't take too much in mathematics to work out that there's one hell of a shortfall there, so where is the money coming from?
- A. I can't say it enough and obviously you're missing the point that most – the figure of \$3.4 million was from the quantity surveyor who said, "Build in Sydney, this is what it's going to cost." I keep maintaining that the people in Lightning Ridge will put in the rest of it by contribution and building.

And later:

- Q. If the money – if council commits to this project, which it appears to have done, and the vague promises, if I can put it that way, that have come from various quarters actually don't end up being delivered, council is going to have to come up with the money, isn't it, the rest of it?
- A. Yes, I suppose so.
- Q. So where – that's going to come presumably from ratepayers' funds.
- A. I believe - and I've said this a few times - that there should be a committee set up out there and anything that goes over what council has committed should be raised by the committee and paid for.
- Q. But isn't that a bit pie-in-the-sky hope?
- A. Well, it's not a pie in the sky. There's already a committee – there's already a committee been formed.
- Q. I mean, haven't ratepayers' moneys got to be sort of spent and planned to be spent in a bit more of a businesslike fashion?
- A. We have. We've planned as much as we've committed. I would like to have seen more than \$135,000 out of this council to build it but so far it has not, but I believe that the committee up there with council's funding, with the Department of Ageing's funds and with other different funds that they can get it will be built.

Clr David Lane told me at the public hearings:

Well, I voted for the project and I've never intended for council to pay \$1.3 million, that was never the aim. The aim was always that each – each service, whether it be HACC, whether it was Murdi Paaki, the neighbourhood people, they would all – council – would all put in their fair share and council's fair share would be a portion of the front of the building and whatever office space they required and the public toilet amenities. Then we would assist with things like paving the car park, in kind contributions, and that was where I always said that the money would come from.

He also denied, when I put it to him, that he voted for the project, no matter what.

I asked Clr Waterford about what he said in a Mayoral report he presented to his fellow Councillors at Council's meeting of 16 December 2002, particularly where he raised the possibility of borrowing to pay for the cost of the Centre (the relevant words of that report are quoted at section 4.4 of this report):

- Q. ... In the report you said, "The building is a must and should go ahead as soon as possible." Is that still your view?
- A. Indeed.

-
- Q. What about what you said about borrowing money to pay for the building, do you recall saying that in the report?
- A. Yes, I do. That was not the same as – over the years we have borrowed money to put different infrastructures into different towns.
- Q. Was this your own idea you were floating with your fellow councillors - - -
- A. Yes.
- Q. - - - or is it one on which you'd got input and advice from the general manager and his staff?
- A. No, that was my own idea. That was a thing off the top of my head. I said, "This would be one way to get some money, borrow the money and as the people use it they can pay us back."
- Q. What do you know of provisions in the Local Government Act about council borrowing money?
- A. Just that we must apply to the minister before we borrow any money and let him know for what reason we're borrowing it.
- Q. So had you had discussions with anybody in the minister's office to see whether that would fly?
- A. Not at all, that was a – that was a thing to say to councillors, "This is one way we can get ahead and build this building."

More vague ideas. They corroborate what Mr North was saying about Councillors from Lightning Ridge, which I have noted in this section of my report.

Clr Waterford also gave the following testimony:

- Q. Council resolved at its meeting of 13 February, 2004 to ensure that its current plans for the centre provide a facility within a defined and affordable budget and a strict time frame for completion. You were present and chaired that meeting. You were also present and chaired council's next meeting, its last before the elections, held on 8 March, were you not?
- A. Yes.
- Q. There was no council meeting between 13 February and 8 March. Is that correct?
- A. That's right.
- Q. Right. Then would you please explain to this inquiry how council's resolution of 8 March could be said to fall within the ambit of council's promise and resolution of 13 February that it was building a building within a defined and affordable budget and a strict time frame for completion?
- A. Because I still believe if given the go-ahead, and I believe we've got the go-ahead from this council now, we can build it within the time frame. As far as the affordability, I still believe that the papers that you obviously haven't seen yet about what the Barriekneal can do, it will be built within an affordable structure.
- Q. And you've formed this belief simply on your experience built up over the years living and working and being a councillor in this community particularly knowing what the Lightning Ridge people can and will do.
- A. Yes.

I questioned Clr Lane at some length about the issue of the Councillors approving the project, particularly at their meetings of 8 December 2003 and 8 March 2004, as to which see below, despite not knowing whether the funding was secured. After a series of combative answers, he finally admitted:

If you're – if you're asking me to say that perhaps the correct procedure in what was moved wasn't followed, that very well may be the case, but again if council had decided to go ahead with the building as it did and then it had come back to us and said, "It's now going to cost you a dead-set rock-solid \$950,000 and you haven't got the money, you're going to be in the red," it wouldn't have proceeded obviously.

The views Clr Greenaway put to me at the public hearings were:

Well, to be honest I've been against the project since we learnt the cost of it. I'm not against it and still not against the building of a centre but I've been against it because of the cost of it after we got the quantity surveyor's cost at \$3.29 million because I really think that that is a ridiculous amount of money to spend in any one town on any one building and I think if Lightning Ridge was lucky enough to get that sort of money or any other – or if the shire was lucky enough to get that sort of money that it would be well spent or better spent on a number of projects.

I concur in those views.

4.12 An alternative option that was not pursued

In June 2001 an alternative to building a new building surfaced, and a draft report was prepared by Mr John Burden, then Council's Director of Finance Services, about it. The report contemplated that Council purchase an existing "centrally located building intended to house all the HACC services in Lightning Ridge". That building was at that time up for sale. The draft report noted:

... it is considered to be a sound commercial property that could be purchased and renovated to suit ...

It was also calculated that the cost of purchase of the existing building would be \$150,000, which would mean that of the then available funds, some \$320,000 could be used to undertake the renovations, allowing the proposed Centre to come in at or under budget.

Mr Burden told me, when giving oral testimony at the public hearings:

... this building was vacant. It's in the middle of town. The HACC services providers had a look at it, they thought it would do. ...

Burden's evidence was that this report "was passed on but never saw the light of day".

On the face of that report this alternative appeared to be a suitable and manageable option that Council might reasonably have pursued.

I asked the General Manager about this at the public hearings:

Q. Have to your knowledge staff recommendations to councillors on the matter of this centre ever been not followed?

A. Yes, there was, there was a – I’m not too sure whether it was a formal submission, but certainly one of my group managers who was dealing with a building that we use for other purposes, an older building, put the proposal that maybe we could use and buy that building for, I think, a sum of \$150,000, and achieve a result that would be satisfactory, but - - -

Q. Was that a proposal that was put to the councillors, you’re saying?

A. I just can’t remember. I, I think there was certainly some – I don’t know whether it was a formal proposal, or whether it was captured within something else, but certainly one of my group managers was arguing that we could, as an option, use a building that we were going to give up, and purchase - - -

Q. Mmm.

A. - - - which was on sale - - -

Q. And you can’t recall what happened with that?

A. It – I know that it wasn’t favoured by those that were supporting the Glenn Murcutt building.

Q. Well - - -

A. Because it clearly was an option.

Q. Yes.

A. Whether it was a suitable option - - -

Q. What I’m looking for is some sort of documentary evidence which I would expect will exist which shows that that was an option put to the councillors, that there was debate on the matter, and that there was a vote, but, in fact, there’s no evidence, and indeed the submissions to me suggest that that particular option, and I’ve seen the documentation - - -

A. Mmm.

Q. - - - at least in a draft format for that option, never got to the councillors, and that somehow it died before it got that far.

A. Yes, well, it was certainly the view of one of my group managers who was dealing with a building that we no longer required, and I think it was meant in a - - -

Q. Was it an option that you were prepared to favour? It certainly looked like a financially manageable outlet that would have met the requirements of the Department of Ageing at the time.

A. Can I – can I say we did discuss this briefly in an executive meeting and I know that the manager – my group manager that’s looking after the process of the community centre was not of the same view as his colleague about that building being suitable. So one of my group managers felt that that might be an option, the other felt it wasn’t a suitable building to cater. So it may have died at that stage, but it certainly was put forward as a solution.

Mr Burden’s evidence as to why his proposal did not get pursued was:

Q. ... So what you’re saying to me is that the reason it didn’t get put officially to the councillors for their consideration as an option was that you got transferred to perform a different function in the meantime and it seemed to die as a result.

A. Correct.

4.13 The appointment of a qualified and expert Quantity Surveyor to cost the building of the Centre

I have noted at sections 4.2, 4.6 and other sections of this report the concerns that were starting to be expressed at Council, and even by Mr Murcutt, in June 1999, about the likely expansion in the size of the proposed Centre, and the consequential likely blow out in the cost of the project. Council appointed a special committee at its meeting in that month to look into getting more detailed costs. This apparently led to an expert being called in to assist with the costing process.

This was a firm of Quantity Surveyors, Northcroft (Australia) Pty Ltd, of North Sydney. Mr David Wallace of that company was in charge of that project for them.

A fee proposal was sent by Northcroft to Council by letter of 19 August 1999.

But on 11 August 1999 a meeting had already been held with Mr Murcutt, attended by the Acting General Manager and other senior staff members, plus Clrs Treweeke and Lane, to review the project, and a new sketch and list of possible users of the building were produced. Even this resulted in a possible size of the building, so it was reported to Council's meeting of 30 August 1999, of 600m², and it was feared that the cost of such a building might be anywhere between \$513,000 and \$1.2 million. Hence, it was recommended that a quantity surveyor be called in. This was approved by the Councillors, after the event as it were.

The response and advice of Northcroft was provided in a fax to Council on 28 July 2000. The costing they calculated was a shocking \$3.29 million.

That figure did not include what was described as a "regional allowance for contracting in Lightning Ridge". Just what is meant by this was not explained. It might, on one view, mean that the costing might be *increased* by some sort of remote location loading, and the cost of tradespeople having to travel to and stay in Lightning Ridge whilst construction was occurring. Pages 1 and 2 of the table of support figures provided by Northcroft would appear to support such a proposition.

It appears to have been assumed by at least some at Council (see for example, Clr Waterford's comments quoted at section 4.11 of this report) that it meant that the figure of \$3.29 million was what it would cost to build the Centre in Sydney, and that as a result the cost in Lightning Ridge would be a *smaller* amount, but the basis for or reasonableness of such a conclusion has not been explained or clarified to me.

This costing led to the formation of yet another committee to examine the matter, as to which see section 4.2 of this report.

Some seven months later, the figure, again one calculated by Northcroft, and one which once more excluded the "regional allowance", jumped to \$3.44 million. In their fax of 21 February 2001, advising of this new costing, Northcroft noted "we have applied the following assumptions for council contribution calculations". A table

followed showing the percentage of labour and/or materials that were assumed to be coming from "Council".

How Council sought to explain away and tone down this figure, in a letter of 22 February 2001, to the Premier's Department, is considered at section 4.11 of this report.

Elsewhere in this Part of my report I have noted considerable evidence of the concerns that were being expressed in various quarters about the blow out in costs and in the very slow progress in getting the proposed Centre built. I have noted, for example, at section 4.11 of this report, the letter from the Premier's office on 28 May 2002 about the need for Council to consider a staged construction of the project. And at section 4.9 I have considered the evidence of the growing impatience and concerns of the Department of Ageing. By November 2003 the Department had both made a demand for return of the funding it had previously provided and for an urgent resolution of what was or was not going to happen in the way of building of a Centre by Council. The Department was itself moving towards getting a separate and stand alone building built that would house the HACC services in a building along the lines of one recently erected in Coonamble, and for a cost much nearer the original projected cost of \$400,000.

So, in the face of all this, the General Manager, Mr North, finally authorised Mrs Treweeke, by letter of 5 November 2003, to approach the architect and quantity surveyors to see if the Centre could be built in stages and get a costing on that idea. She proceeded with that.

Northcroft provided their advice, in writing, by a fax dated 5 December 2003. It was addressed to Mr North, and was copied to John Burden, Council's Group Manager, Services Management, and Mr Murcutt. The copy provided to the Inquiry shows that it was transmitted to and received by Council on its machine at 5:11 pm on that same day, 5 December. This was a Friday.

Northcroft advised that their estimate of the cost to construct stage 1 of the project was, in terms of an estimated "lowest tenderer in a competitive tender submission", to "fall within the range of \$2,600,000 to \$2,900,000 depending on June 2004 market conditions". That figure, as did their earlier costings, excluded GST.

The Northcroft fax was however, not apparently processed or retrieved by a Council staff member until the following Monday, though the exact time that this occurred is not known. The fax is date stamped with the usual Council stamp indicating that it was received on 8 December (the Monday), and it is marked as to go to the General Manager.

Mr Jo Wooldridge, one of the staff members working on the project, functionally allegedly in charge of it, but whose name was not formally shown as a recipient of the fax, told me that he had received a copy of the fax. But, he advised that "It was after the council meeting of 8 December".

The evidence is also that Mr North did in fact see the fax, and his initials are on the copy provided to this Inquiry. However, the evidence also indicates that he probably

did not see the fax until after the close of the meeting of the Councillors on the Monday.

Council's last meeting for 2003, its December meeting, was due to take place on Monday, 8 December 2003 at 9:30 am. Council's agenda and business paper, therefore, would have gone out to the Councillors, for the purposes of that meeting, some time late in the week before, and clearly before the close of business on Friday, 5 December.

Perhaps because of this, and because by the time the agenda was being prepared Northcroft's advice had not been received, as well as because there was an urgent need for Council to make a decision on the project, one way or the other, at its December meeting (see section 4.14 of this report), an alternative costing was obtained on stage 1. The evidence as to the source of that costing is also considered at section 4.14 of this report.

The business papers for the 8 December meeting contained a report, ostensibly under the name of John Burden, but actually prepared by Christina Johanasson, according to her oral testimony to the Inquiry, corroborated by Mr Burden. However, she told the Inquiry that whatever information she put into the report about the cost of stage 1 was simply what Burden gave and told to her.

Mr Burden's evidence as to the process that the report went through en route to the Councillors was:

- Q. ... Did the report get passed through you for approval en route to going to the councillors?
A. Yes, it went through the executive in any case, all - - -
- Q. This is Mr North, you and Mr Wooldridge.
A. That's right, correct.

In the report the Councillors were told that:

"The First Stage", is a completely self sustainable and stand alone construction. Estimated cost of Stage 1 is \$500,000 to \$600,000.

No further information was provided as to this so-called costing, and no attachment to the report was provided which might explain that figure.

I asked Mr Burden about these figures and how they came into being:

- A. ... that indication of cost of 5 to \$600,000, I was involved in that in that I asked our – I think at the time Joan Treweweke was there and Christina and I but Jo Wooldridge was away at the time and as we had not received any costs from the architect or quantity surveyors I approached our building inspector to give us a rough estimate of the cost of building that section of the building, no landscaping at all, just that section of the building and I'm sure he – and he measured it and, you know, he's got a - - -
- Q. I'm sorry, who did you say provided this?
A. Len Smythe - - -

-
- Q. He's a staff - - -
A. - - - our building inspector.
- Q. Building inspector, right. Did he provide you anything in writing or was it simply a figure that he nominated?
A. Just – just a figure. He measured it and consulted his almanac or whatever he did and multiplied it out and he got - gave us a figure on building - - -
- Q. Verbally gave it.
A. Verbally gave us a figure on building a conventional-type building, no landscaping, nothing.
- Q. Well, was the sort of building that's the subject of the proposal, costed on that basis at 5 to \$600,000 and referred to in this report that went to the councillors for their consideration, was that made clear that it was a conventional building, no landscaping in this report?
A. I don't remember it to be so but having said that, my – my knowledge of the - - -
- Q. Well, why – why was it not explained to the councillors that this was the sort of building that was being costed at 5 to \$600,000?
A. My understanding of the community centre was that the total cost was going to be about \$2 million-odd and it just – when Len came up with 5, \$600,000 for what seemed to be less than half the building with no landscaping it seemed fairly reasonable to me.
- Q. Now, your explanation for approaching Len to give this figure was that the quantity surveyors had not yet provided anything in writing.
A. Correct, and I fell over backwards when we received it.

The report told Councillors that there were three options as to the proposed Centre. One was to go with a stage 1 construction at that figure. The second was to go with the Department of Ageing proposal for a stand alone office block (as to which see section 4.14 of this report). The third was in essence to give up on the project and to hand over to the Department the reserves that Council had so far set aside, from the Department of Ageing HACC funding and interest thereon, for the project, and let that Department wholly take over the project.

A recommendation was made to the Councillors as follows:

That Council resolve to adopt Option 1, accept identified HACC section of Glen Murcutt's quotation "First Stage" developmetn of Lightning Ridge Community Centre plan and costing, to accommodate office space for the Home Care Service of NSW, Ngangana Aboriginal Home Care, North West Area Community Options, Meals on Wheels, Neighbour Aid and Community Transport Options and proceed immediately with the building of these premises under the auspice of Walgett Shire Council. The "First Stage" is a completely self-sustainable, stand alone construction. Estimated cost of "Stage 1", \$500,000 to \$600,000.

I should also add that the report provides no explanation as to how it is that stage 1 is "self-sustainable". The evidence of Mr North, as General Manager, to this Inquiry regarding the question of ongoing operating costs of the Centre, once constructed, is noted at section 4.11 of this report. Suffice it to say at this point that his evidence was that Council had not even looked at the question of ongoing operating costs.

The report is, on the whole, in my view, a very poor document. It covers no more than two pages, including the recommendations, and for a project of this magnitude

and importance is clearly inadequate for the purposes of the Councillors making informed decisions.

Attached to the report was a copy of a very small and scanty sketch of what was supposed to be stage 1 of the project. It shows some 20 or more rooms, identified only by number, with no other information as to their intended end use, being included in that stage. When Ms Johansson was in the witness box I spent some time, a very frustrating time, with her trying to get her to identify what rooms were going to be used for which purposes. At the end of that extended period, and having given her a break to be able to reflect on the position, I was really none the wiser, and she failed to be able to identify the apparently intended use for all of the rooms.

When he was in the witness box I asked Cllr Waterford about the \$500,000 to \$600,000 estimate:

Q. How do you know that the building is actually going to cost that when somebody else, a professional quantity surveyor that council itself has resolved to hire to cost the project, has told you that it's \$1.384 million and that's a figure that was come to after reducing an earlier figure?

A. I can do no more than say I was on the swimming pool committee when we had a swimming pool bloke come in and said, "It's going to cost you \$3.3 million to build a swimming pool in Lightning Ridge." We built it for under \$1. People can do things in Lightning Ridge. There's a lot of people out there with a lot of ability and I keep saying that to people, if we want a building we've got to have a good building and we can get the people out there to build it.

Q. But what if it doesn't happen that way? I mean, you're buying a pig in the poke here, aren't you?

A. Well, I've only lived there for 50 years, Mr Commissioner, and I know what the people out there do. Just about everything they've done out there, the ambulance stations, everything they've done out there they've done for themselves because they get sick of state and federal government mucking them about.

This sort of advice is not assuring.

In giving evidence to the Inquiry Mrs Treweeke often sought to explain away the figures advised by Northcroft, and her thesis was frequently that people had taken them out of context and misconstrued them. I do not accept this. I asked Mrs Treweeke:

Q. Well, are you suggesting that – that the quantity surveyors didn't know their own trade when they gave you an expert, that it was some wildly inaccurate figure?

A. I'm suggesting that people need to understand the basis on which the estimate was done.

4.14 The decision made by Council at its 8 December 2003 meeting

As already noted, Mrs Treweeke wrote to Mr Murcutt on 19 November 2003, asking him to proceed to look at a staged construction process for the Centre. Her letter ended with the following comments:

It has been a long and difficult argument to win and I know that this is our best and probably last chance to build the much needed Community Centre. There will be Council elections in March and if there is not a positive decision to proceed at the December meeting DADHC [Department of Ageing] will withdraw their money and build their own dedicated offices as they can wait no longer.

The report given by the Council administration to the Councillors for the purposes of the meeting is considered at section 4.13 above. The Councillors were given three options to consider in relation to the project, but with option 1 being recommended as the preferred option.

At the meeting there was a move by Clrs Greenaway and Horan to have Council adopt option 3. This motion was defeated.

Option 1 was the option approved, with the minutes of the meeting showing that only Clr Greenaway's vote was recorded as being against the resolution.

That is to say, the decision of the Council was to build a stage 1 of the proposed Centre at an estimated cost of \$500,000 to \$600,000.

Nothing was decided by Council as to where even this money was coming from. Councillors were advised as to the financial implications of going with this option, which were that the Department of Ageing had already provided some \$270,000 to cover the cost, and that Council held in reserve some \$135,000, only, in addition. In other words, Councillors were advised that Council had in hand only \$405,000 to cover the estimated \$500,000 to \$600,000, so that there was a shortfall, apparent to anyone who chose to do the maths, of about \$100,000 to \$200,000.

That being so, it was clearly fool hardy and reckless, and clearly therefore inappropriate, for the Councillors to approve the project at that estimated cost, in the circumstances. In my view, there is no question that the Councillors failed in their Charter obligations in so doing.

The question of the implication of making such a decision when Council had in fact, in time, received written advice, professional written advice from its appointed expert quantity surveyor, that the real cost was actually THREE TIMES that figure is considered at section 4.20 of this report. The answer is plainly obvious.

At the public hearings I asked the General Manager how the figure of \$500,000 to \$600,000 was obtained. He replied that:

I understand, commissioner, that an approach was made to our building surveyor, who's a staff member, to provide a gauge of what it would cost to build a particular section of Glenn Murcutt's building. ... There's a building surveyor here who has, I understand, experience in a range of previous buildings and he provided, as I understand it, that ballpark figure. ... As I understand it, it was only an estimate, it was only an indicative price of what it would cost if only stage 1 of the building was done. ...

This was possibly in contrast to the earlier evidence of the former Mayor, Clr Peter Waterford:

- Q. Was any explanation given to the councillors - and it certainly wasn't in the written report – as to how that 5 to \$600,000 was calculated?
- A. No, just that the building surveyor had done it and we presumed he knew what he was talking about.
- Q. A building surveyor had done it.
- A. Our Walgett building surveyor had done it.
- Q. Somebody in town here.
- A. Someone in - - -
- Q. Not the quantity surveyor from North Sydney who had been engaged particularly by council to provide costings.
- A. No, our man who works down in the lab.
- Q. I mean, council had resolved to use Northcroft Quantity Surveyors from North Sydney. Why are you relying on figures from somebody else? I mean, was this local quantity surveyor or local surveyor, did he provide that figure in writing?
- A. Yes, I'm sure he did, it came through council.

When I put the discrepancy in this evidence to Mr North he repeated that the surveyor who provided the estimate was a staff member.

Mrs Treweeke put to me in the witness box that the Council resolution passed at its 8 December meeting did not mean what it purported to mean on its face. I later questioned her on this:

- Q. Let's go back put to the resolution of 8 December 2003. I think you were trying to suggest to me that that resolution was simply passed so that council could demonstrate for the purposes of lodging applications for funding that it was committed in principle to the project.
- A. That was a requirement.
- Q. And that's all that was intended by the resolution of 8 March – of 8 December?
- A. Yes, because the building can't be built unless the money's found.
- Q. But the language of the resolution is not in those terms.
- A. Well, I – it's a poorly worded recommendation, I don't - - -
- Q. Well, you voted for it, councillor.
- A. I – I did.

And later:

- A. Of course, I'm a layperson, I have to understand these things, but I just feel that a lot of stuff has been taken out of context and – in one way and, I mean, people's anxiety or whatever, they may have misinterpreted, certainly misunderstood the information that was before them, and until – we are only now at the process where we need to look at it bit by bit, line by line, and we haven't yet been able to go through that process, and that's what should be happening now because in all of the quantity surveyor's – my understanding is that you get a initial cost - - -
- ...
- Q. How can, given what you've just told me about the need to understand bit by bit, line by line, how can council have rationally and appropriately made a defensible decision to approve the project construction at 5 to \$600,000?
- A. I think on imperfect knowledge, on imperfect knowledge.

- Q. Because there's no evidence that any document was tendered to the council meeting showing how the 5 to \$600,00 had been produced, was there?
- A. No. And I think - - -
- Q. And yet you were a councillor who voted in favour of the resolution. Why, if you now say to me that it was done on imperfect knowledge, why – I can't see the logic in your now saying that to me, and yet you voted not only on – in favour of the resolution, but to support the continued existence of that resolution by voting to defeat the rescission motion?
- A. All I can say is I think it – it's important to be able to take – go through the proper processes to – before any final decision is made and I didn't see - - -
- Q. But have the processes been gone through as we speak?
- A. I don't believe they have and I believe that they need to be gone through before any final decision can be taken.
- Q. Well, did you make any expression of views to that effect to your fellow councillors at the meeting in December?
- A. I have constantly expressed those views.
- Q. And yet you voted in favour of the resolution.
- A. Well, the vote, yes, it was – yes, and this is – we are only - - -
- Q. I mean, if you were concerned about the matter, councillor, is not the normal procedure to move a motion and to persuade a councillor to second that motion to defer consideration of the matter until a further report on the matter has been submitted to the council, that's a common practice, is it not?
- A. That's been the nature of the entire project, deferring.
- Q. But you - - -
- A. And yet the knowledge still hasn't come through.
- Q. I'm having enormous difficulty in – in understanding what's going in here because your – your evidence is swinging from here to here, and here is inconsistent with here.
- A. Well, all I can say is that it is – managing projects, be they roads or bridges or buildings, it's much the same process, so it shouldn't be something that council officers are unaware of, and - - -
- Q. Why the rush in December 2003 and again in March 2004? I mean, you – you've just conceded to me that it was perfectly possible for you or any other councillor to move a motion, that it be deferred, and your comment to that was immediately, "It's been deferred too much." Would you like to explain what you meant by that? If it had taken 7 or 8 years surely another month or two wouldn't have – would be neither here nor there?
- A. I suppose – we voted on the intention to proceed, that's what the resolution was.
- Q. That's not what the resolution says.
- A. Well, I think that's what people believed they were doing ...

I reject Mrs Treweeke's suggestion. That the intention behind the resolution, as she put it to me, may have been what *she* understood, I do not question, or at least I do not rule it out, but I do not accept that this is what all the Councillors, whether they voted for or against the resolution, understood. There was no evidence, to the effect Mrs Treweeke was urging, provided to the Inquiry by any other witness.

There is some evidence to indicate that officers of the Department of Ageing attended the 8 December meeting and made a presentation to the Councillors about their needs and views. What they said is not minuted. It should have been.

What was provided to the Councillors with the staff report on the project was a copy of a "briefing paper" presented to Council by the Department. I presume that the Department's officers who attended the meeting spoke to their briefing paper.

The briefing paper provided that there was an "urgent need to have an adequate office block built in Lightning Ridge, to co-locate all the Home and Community Care services [with] funding through the Department of Ageing". The paper noted that it was expected that costings of a stage 1 of the building would be presented to Council's 8 December meeting, based on Mr Murcutt's design for that project and from costing figures that would be obtained by Council. It was also indicated that the Department itself would be making a presentation to the meeting costing a "conventional building design".

The paper advised:

- In recognition of the work undertaken by Council to date, [the Department] would prefer if possible, that this project remains with Council. This would enable the Council to build onto the premises as and when additional funds are obtained, to meet the needs of the community as expressed at various open forums and incorporated into the Plans drawn up by Glen Murcott (sic).
- However, in order to meet future accommodation deadlines for occupancy of the building, being January 2005, a decision would need to be made by Council at the December, 2003 meeting.

The paper ended up noting that Council had three options, largely the same as those provided in the staff report to the Councillors, but did not make any recommendation as to which option Council should adopt.

I asked Clr Waterford about the presentation made by the Department of Ageing officers:

- Q. Do you recall whether a representative or perhaps more than one representative of the Department of Ageing attended council's meeting on 8 December last year?
- A. Yes.
- Q. Did those people make a presentation to councillors about the anticipated cost of stage 1 of the project?
- A. Yes, they did, they made a presentation about that and a presentation of another building in Coonamble (indistinct)
- Q. So what amount were the councillors told that this stage would cost?
- A. Before speaking to Glenn Murcutt the first stage they had - - -
- Q. No, I'm talking about what the Department of Ageing people were telling you? I mean, wasn't the presentation that the Department of Ageing made simply that they had built recently a similar building in Coonamble which only cost about \$400,000 and surely that could be done in this case?
- A. Yes.

- Q. Now, isn't there a wealth of difference between \$400,000 and if the whole project is taken on board \$3.4 million or even if stage 1 is only taken into account \$1.384 million?
- A. There's a huge difference. All I can do is say that I believe with the number of problems we're going to have in Lightning Ridge that the building they were talking about, I've seen the building in Coonamble, that's a little – it's not efficient and in talking to those two people after they said it will be a - - -
- Q. Sorry, the building in Coonamble is not efficient.
- A. Is efficient in Coonamble, it would not be efficient in Lightning Ridge.
- Q. Is that your view or is that a view put to you by - - -
- A. This was – this was an unofficial view by the two people who were talking to us.
- Q. An unofficial view. How did they express that?
- A. They were talking after the meeting. They just want a building built in Lightning Ridge. They don't care how it's built, they just want it built and as soon as possible.

It is also interesting to note that the minutes of the Council meeting of 8 December 2003 also contain, as part of Clr Waterford's monthly report as Mayor, the following entries regarding a meeting he had with representatives from the Department of Ageing on the previous 3 November 2003:

I met with Yvonne Muller and Tracy Wright from the Department of Aged Home Care Services, along with General Manager Vic North to discuss the Lightning Ridge Community Centre.

Their concern was that Lightning Ridge had missed out on the Community Centre for the last six years and that we should build as fast as possible. It matters not if it's a conventional building or part of Glen Murcutt's plan. If the Glen Murcutt's Plan in its revised state can **come in on budget**, then it would be the way to go, as the plan is already in place and would save new architectural plans to be drawn.

With the money Home Care put in and our own Council Money in Reserves, we should be able to put towards new buildings, whether it be a new conventional building that can be designed or whether we look at a proportion of what Glen Murcutt designed some months ago. We will have the Quantity Surveyor have a look at the design and pricing that Glenn Murcutt came up with, **to see if that portion of the building can be built for the \$400,000.00**, so it would house the eight of twelve employees that are now looking desperately for office space in Lightning Ridge.

The emphasis is mine.

In view of these sentiments one again wonders how the Councillors could have reasonably made the decision that they did at the 8 December meeting.

Lastly, in relation to the resolution made at the meeting, I note one further very important fact.

At section 2.4 of this report I noted what Council had determined and advised the Minister in relation to the recommendations of the section 430 investigation report in respect of the Lightning Ridge Community Centre project. Council had resolved that it should provide a facility within a defined and affordable budget, and a strict timeframe for completion.

The resolution passed at the 8 December meeting singularly fails to meet the terms of this.

In view of Council's decision and advice to the Minister, Council should on 8 December have actually allowed the motion to be defeated, and, if that was the will of the majority, substituted a new motion which was worded so as to comply with its undertaking to the Minister. In fact it was not in a position to do so, given the fact that the finance had not yet been secured, so Council had no idea whether or not it could really afford the Centre, if the hoped for funding did not arrive, and the fact that no timetable for completion of the building was set (a requirement also of the Department of Ageing).

This makes Council's failures at its meeting of 8 December 2003, let alone at its later meeting of 8 March 2004, all so much more the worse.

4.15 Rescission motion

Almost immediately after the close of the 8 December 2003 meeting a rescission motion was lodged in respect of the resolution regarding the proposed Centre. The rescission motion was signed by Clrs Greenaway, Mitchell and Bow.

4.16 The moves to obtain a revised and lower costing for the project – December and January 2004

The strong inference from the fact that the rescission motion was lodged, as well as from the fact that the Northcroft fax of 5 December 2003 had now come to light, is that there were frantic moves taken by certain persons at Council to get Northcroft to revise their costing of \$2.6 to \$2.9 million for stage 1, a very high figure given their previous advice and costing of February 2001 that the whole project was expected to come in at \$3.44 million.

Mr Wooldridge's evidence as to the purpose of the meeting was:

The purpose of the meeting was to try and establish a more – a more reliable figure that council could work with as far as the project is concerned

Unlike the position leading up to the 5 December fax from Northcroft, there is no evidence that the General Manager or anyone else formally sought this, or that Mrs Treweeke or any staff member was authorised to get such a revised costing from Northcroft.

The evidence is that a meeting took place in North Sydney, at the offices of Northcroft, on 5 January 2004. Present were Mr David Wallace of Northcroft, plus Council's Mr Jo Wooldridge, the Group Manager, Infrastructure Management, and Mrs Treweeke. It appears to have been a clandestine little gathering.

I asked Mr Wooldridge why, out of twelve Councillors, let alone the fact that other Councillors were on the committee, Mrs Treweeke was the one to attend the meeting. His reply was:

I suppose convenience and – and cost-wise because Councillor Treweeke – we arranged the meeting that she was passing through Sydney and there would be no cost to council her being there.

In response to that meeting, Northcroft sent another fax, on 19 January 2004, to Council, marked for the attention of both Mr Wooldridge and Mrs Treweeke. It was copied to Mr Burden and once more to Mr Murcutt.

The advice so given to Council was that Northcroft's revised estimate of the cost of stage 1 was \$1,384,000. As for the previous figures provided by Northcroft, this amount did not include GST. On this occasion, on the other hand, the lower figure was come to after excluding fit out costs. The figure was prepared on the basis of Council "proceeding on a project management basis and not tender" (the 5 December 2003 figure had assumed a tendering process).

Even so, the amount advised and calculated by Northcroft was still some nearly THREE TIMES the in-house estimate which was the foundation of the Councillors' decision on 8 December 2003.

Mr Wooldridge, when giving oral testimony at the public hearings, sought to argue that the figure provided by Northcroft on this occasion had not taken into account the full value of community input. But the five pages of the breakdown of the \$1.384 million figure provided by Northcroft with their 19 January fax do not appear to bear this out. On both pages 1 and 5 it is clearly indicated that "External works – community project" were costed at \$750,000, and this figure is NOT included in the \$1.384 million figure. This much Mr Wooldridge did concede in his evidence to me, but he went further arguing that the figure of \$750,000 was only for landscaping, and that there was going to be other community input, which presumably would bring the value or cost of what Council was going to have to pay out to build stage 1 down to a lower figure.

I am totally unconvinced that the value of the alleged additional in kind contributions would explain the difference between the figure of \$1.384 million and the figure of \$500,000 to \$600,000 that was the only figure formally advised to the Councillors in writing, and that had been the basis of the disputed resolution of 8 December. And it must not be forgotten that the figure of \$2.6 to \$2.9 million that Northcroft had advised in their fax of 5 December had in any event also been a cost relating to stage 1 of the building only.

As she had done on other occasions, Mrs Treweeke sought to put the startling proposition to the Inquiry that the fax of 19 January was:

not a cost document and I think that is why we need the briefing from the quantity surveyor so we can all understand what the – what the figure ...

I have noted at section 4.19 of this report, Mrs Treweeke's evidence that she had seen the attachments to the fax but not the covering fax itself. I questioned Mrs Treweeke about the import of the wording in that covering fax:

- Q. ... It says, "Further to our meeting of 5 January, 2004 please find herewith our revised assessment of the cost to construct stage 1."
A. Well, I think we need - - -
- Q. That's – nothing could be clearer.
A. Again, I think we need to understand the terminology and exactly what it means and exactly what the document says and that is what we have not had.
- Q. But these are – these are qualified expert quantity surveyors that council has apparently considered it appropriate to engage to provide advice and they've said, "This is what we think it costs."

Council's copy of the 19 January fax shows, via its usual received stamp, that the fax was received by Council allegedly on 16 January, but this cannot be so because the fax is dated 19 January and shows that it was in fact faxed on that same day. I take the reference to 16 January therefore to be an error for 19 January.

Like the fax of 5 December it was marked by the staff officer processing the fax on its receipt as being one for the attention of the General Manager. However, unlike the earlier fax, there is no evidence on the copy provided to this Inquiry that Mr North ever saw the document.

When appearing at the public hearings, I sought to ascertain from Mr North, as General Manager, whether steps had been taken to make the Councillors aware of this second revised costing. His evidence indicated that he had not been aware even of the existence of this fax.

Yet, as I have noted, there are indications on the document that it was intended to go to the General Manager. Mr North confirmed that the annotations to this effect were normal procedure, and that normally he would have expected the document to have come across his desk. He also said that normally he would initial the document if he had seen it.

I sought to test whether Mr North had in fact seen it, on the premise that he may have just forgotten that he had done so, and perhaps had failed to initial it in this case. The copy that I had contained evidence of someone's handwritten notes on it, notes that were evidently made after the receipt of the document by Council. I showed the copy to Mr North, and he advised me that he was unable to identify the handwriting, but indicated that he had not seen the document before, adding:

This is a pretty important document in relation to this project, quite staggering ... I can honestly say I haven't read that document.

Mr North later made enquiries and re-checked to see if he had in fact seen the document. He once more confirmed that he had not.

Mr North also told me, when he was giving oral evidence, that it was the first time he had even known that a meeting had taken place in January 2004, in Sydney, attended by one of his senior staff members.

So, it is clear from the evidence that Mr North had seen the fax of 5 December 2003 from Northcott (when he was recalled briefly on the last day of the public hearings he identified some handwritten annotations shown on the copy I had of it as being in his own handwriting), but had not seen the 19 January 2004, until I showed it to him in the witness box on 22 April 2004.

I find this a matter of great concern, particularly given the importance and prominence this project has had in the affairs of this Council, and the very important information it was telling Council about the costing of the project, information that was clearly around when Council was due to debate a controversial rescission motion on the project. The culpability for this is examined further at sections 4.19.1 and 4.19.2 below.

4.17 The walkout from the Council meeting of 9 February 2004

The next scheduled meeting of Council after its 8 December 2003 meeting was not until 9 February 2004. The rescission motion was on the agenda for that meeting.

Clr Jeffries, normally one of the Lightning Ridge faction Councillors, was absent from the meeting. Depending on how Clr Hutchinson voted, the risk, therefore, was that the Lightning Ridge faction could only muster 5 votes and the Walgett faction would have 6 votes, enough to ensure that the rescission motion got up, meaning that the resolution to proceed with the proposed Centre would be overturned.

However, the rescission motion was never dealt with at that meeting.

The minutes record that before the motion could be dealt with some five Councillors walked out. They were all Lightning Ridge faction Councillors, namely Clrs Lane, Lang, Hewlett, Treweeke and Waterford.

The walkout left Council without a quorum to deal with the rescission motion, nor any item of business on the agenda after that item.

I asked Clr Waterford, the Mayor at the time, why he walked out:

- A. The rescission motion was coming up about the community centre, which we wanted to get on board. At smoko we tried to talk to the other people, the other councillors to see if we could change their minds and get them to do something different other than the notice of motion.
- Q. Did you – when you say something different, did you suggest a compromise motion or - - -
- A. Well, the only compromise was to – compromise at that stage was to give their money back, the one that has been, to - to give the money back to - - -

Q. Well, that was what the persons who lodged the rescission motion were seeking to get – achieve, wasn't it?

A. No, that was a notice of motion after the rescission motion.

Q. Yes, that was in effect the substitute resolution, wasn't it?

A. To substitute – to substitute what they wanted, yes.

Q. But that wasn't something that came from your side?

A. No, that wasn't something that came from us, that was something we couldn't accept.

Q. Yes.

A. Yeah, no, just - - -

Q. So what proposal did you put up?

A. That we build the thing, and we could build it within the confines of the money. They were throwing around millions of dollars and I believe that they hadn't talked to any of the participants who were going to do a lot of the local work out at Lightning Ridge, and they just said, "This thing's going to cost \$3,000,000, and that's the end of it." It was not quite the end of it as far as I was concerned. No one realised just what Lightning Ridge – what the Lightning Ridge community can do. It builds huge shows up there. ...We got to a stage where we were at an impasse. Had it gone to the meeting, because we had councillors short and the numbers that we needed, it would have - - -

Q. Yes. I think one councillor was not present at that meeting.

A. Councillor Jeffries.

Q. Yes.

A. It would have meant that the rescission motion would have been carried and the money would have gone back which was not something that the Department of Local Government had suggested we do and - - -

Q. But wouldn't that – if that had occurred isn't that the democratic process?

A. That is the democratic process, except this has been going on for 4 or 5 years and we were getting really sick of the democratic process (indistinct)

Q. Would you not say that walking out is a rather, for want of a better word, an underhanded way of achieving your aims?

A. Mr Commissioner, it wasn't the first time there had been a walk-out. We weren't the first ones. I hadn't even conceived it, but certainly some of the other councillors - - -

Q. When was the time before that that there had been a walk-out?

A. Perhaps a year before. Then there was - - -

Q. Because I've actually got a listing from – provided to me by council as to when walk-outs had occurred and in fact they're not that common.

A. No, they're not that common, but there was two others, both by the Walgett councillors.

...

Q. - - - why does that justify your walking out 4 years later nearly?

A. Because I felt the end justified the means. I - I've never done it before, it's the first time I'd ever done it and I - - -

Q. Would you do it again?

A. Would I do it again? No. The ramifications have been too great, so I probably wouldn't do it again. But I felt at that day we were stymied, we were trying to get

something through that we'd been trying for years. If it had gone ahead the way it was it would not have – just I couldn't accept it ...

...

Q. ... would you agree that it is the responsibility of councillors who are elected to their office, their public office, to attend duly called meetings of council unless properly excused from attending?

A. Absolutely, my word.

Q. And therefore you would equally agree that councillors who fail to attend or who leave a meeting without getting approval to do so, and particularly where that leaves the meeting without a quorum, are failing in their duty to the ratepayers and the community?

A. Myself, when I made that decision to walk out, that I wasn't failing the ratepayers of Lightning Ridge. They had been waiting since 1996 to get a community centre up and I felt that this was the quickest way to progress that community centre. Had I stayed in the chamber and run the meeting the money would have been handed back and it would have been another 2 or 3 years.

Q. As you put it to me a moment ago, at least on that time you thought that the end justified the means?

A. Yes.

Clr Lane's evidence was as follows:

A. ... Councillor Hutchinson would not give us a yes or no answer as to how she would vote before she heard the debate.

Q. Is that what caused the walk-out?

A. That's right.

Q. Were you one of the councillors who walked out?

A. Yes.

Q. Do you consider that to have been a proper discharge of your duties and responsibilities as a councillor?

A. It's certainly a political manoeuvre ...

Mrs Treweeke's evidence was as follows. I had just finished canvassing with her the meaning and effect of the Department of Ageing letters that Council had last received expressing concerns about how the project was going, and about the blow out in cost, and asking where the moneys were coming from:

Q. ... I mean, to my mind the letters they wrote were flagging in strobe lights to council that it needed to proceed with care. An awful lot of people seem to have had blinkers on. Why was it so necessary to ram through these decisions in December last year and tenaciously fight a rescission motion in March this year, including by means of walking out of the council meeting in February? Were you one of the people who walked out of the meeting?

A. Yes, I was.

Q. So why did you have to walk out?

A. Because I didn't believe when a member of council was – not all council members were there and the person who wasn't there was - - -

Q. Only one councillor was not there and you were scared you weren't going to get the numbers.

-
- A. He happened - - -
- Q. But that's the - - -
- A. He happened - - -
- Q. That's how things work in – in the democracy of local government, isn't it?
- A. Well, he happens to be the chairperson of the ATSIC regional council for the area and is – would have been very fundamental to the debate, and I thought it was rather appropriate that – that the whole council be there, and that he be participating in the debate.
- Q. So you walked out, rather than face the results of a democratic vote?
- A. Well, I had to weigh up - - -
- Q. Couldn't you have moved a motion that the matter be deferred because of the importance of this councillor being present and then eloquently persuaded your fellow councillors that that is what should be the result?
- A. Had I thought of it at the time I – I may have, but I didn't.

In my view, and no matter what the motives, it was an improper use of power by the Councillors who left the meeting to walk out of that meeting, and in so doing they failed to comply with their Charter and other obligations.

4.18 Defeat of the rescission motion at Council's meeting of 8 March 2004

At Council's next meeting of 8 March 2004 the business left unfinished at the February meeting had to be dealt with, including the rescission motion. This was Council's last meeting before the 27 March local government elections.

This time a Walgett faction Councillor, namely Clr Horan, was absent from the meeting. The Lightning Ridge Councillors, despite how Clr Hutchinson might vote, had the numbers. There were accordingly no walkouts.

In addition to the rescission motion, it was advised to the meeting that if the rescission motion was passed another motion would be moved which would have the effect that Council get out of the project and pass the moneys held in its reserves to the Department of Ageing.

The agenda and minutes for the meeting record the following:

Note: Clr R Greenaway opened the discussion advising Councillor's (sic) that the updated cost for Stage 1 of Glen Murcott's (sic) design is now \$1.6 million (sic). He reminded Councillor's (sic) they had voted on \$500,000.00 to \$600,000.00. Clr Greenaway feels that Council should reconsider the amount that they are willing to put towards the HACC Centre. Clr Greenaway provided a detailed sequence of events in the development of the proposed Lightning Ridge Community Centre. After a lengthy discussion the following rescision (sic) motion was put.

The minutes record that the rescission motion as put and lost. The minutes do not disclose how the votes were cast.

Mrs Treweeke's evidence to me was that there was an urgent need for Council to make its decision that it did at its meeting of 8 December and for that decision to be defended and the rescission motion defeated at the meeting of 8 March because of the timing needs of the Department of Ageing to get a building finished in early 2005, February 2005 in fact. She indicated that if that deadline was to be met then the building work was going to have to start by June 2004.

I therefore closely questioned her about the apparent haste with which Council proceeded on both occasions, particularly having regard to her earlier evidence that Council did not in fact have all information that it needed before it (quite apart from not having seen the Northcroft faxes of 5 December and 19 January):

- Q. Now, if all the councillors thought they were doing in December 2003, and then digging in their toes in the last meeting before the council elections, when a lot of you councillors were not standing again, including yourself, if all you thought that on both occasions you were simply expressing an intention in principle to proceed, how having done that in March could you make an enormous quantum leap time-wise to actually proceed it starting with construction in June? The mind boggles.
- A. We had not received yet the proper time lines for when things had to be done regarding the building, we were still exploring that, and I think this is the point, it needed to be - - -
- Q. Councillor, it – even if it was \$500,000 or \$400,000 presumably you appreciate that the local government laws would have required that council go through a tendering process to appoint somebody to undertake the construction. Now, how long does a tendering process take in your experience?
- A. I would have thought a month.
- Q. Well, I put it to you that that is extremely optimistic. Even if it was a month do you expect that a builder is going to be able to say, "Okay, 2 days after my quote has been accepted I'm on the job turning the sod." Please.
- A. That's just to appoint a builder, not to begin the work, I would have thought. That's what – that's what a tendering process is to – isn't it, to - - -
- Q. Exactly, exactly.
- A. - - - to – for - - -
- Q. But then in order to start construction, let's say that the tendering process were starting the week before Easter which, of course, has already passed.
- A. That is the prerogative of the council officers, I don't have expertise of that area, that's for their advice. That's the advice that councillors should be able to expect from council officers.
- Q. What I'm – what I'm trying to understand, councillor, is your submission to me in your evidence that it was the – that the effect of the resolution that was contested in – via the rescission motion was simply an in-principle approval for the purposes of getting finance. All the logic, when looked at in the context of all the documentary evidence, suggests to me that is simply not maintainable.
- A. (PAUSE) I'm not sure what you're trying to ask me (indistinct) I think - - -
- Q. You – you put to me that the intent of this resolution and what the councillors understood they were achieving by it was simply an in principle approval for construction of a building to the tune of 5 or \$600,000 for the purposes of applying for government funding.
- A. I don't think that's exactly what I said. I think - - -
- Q. Well, what do you now wish to say you said, because with all due respect to you I think that's what you did say, but I can go back and check the transcript.

- A. I think that certainly sorting out the funding was one thing that had to be done but at the same time you could be working out a timetable of other actions that needed to be taken into the future, but everything dependent on the funding being available.
- Q. And how long does it take to get this funding, if it hadn't been applied for in December or even March, or even today is what you're telling me?
- A. I don't know. All I know - - -
- Q. Well, you - - -
- A. All I know is - - -
- Q. You know for sure because you've indicated that the Department of Ageing had said, "Look, this building's got to be finished by," was it April 2005 you said?
- A. I said February.
- Q. February 2005. Well, whatever it is in 2005. To be able to get there somewhere in the documentary evidence it said that the building needs to start construction in the middle of 2004, which is - which as we speak is practically only 6 weeks away. Are you suggesting that this council, and if you were still a councillor, you'd be prepared to let a - to approve a tender, to build their contract when you had not a clue where the money was coming from?
- A. Of course not, that's the point. We have - unless the funds are - - -
- Q. Well, you don't know where the money's coming from, do you?
- A. Not until it's applied for, no, and I think I've made that - - -
- Q. Exactly.
- A. - - - quite clear.
- Q. And how long does it take to apply for, months presumably?
- A. That's not my understanding.
- Q. Well, what is your understanding?
- A. My understanding is that, particularly with this regional development money, that there's a large fund of money that has not been spent across the nation as it was intended, because projects have been slow in coming forward, and that they are asking people to put forward immediately proposals because there's a pool of money there waiting to be - to be allocated.
- Q. I know we're in a federal election year, but I mean - - -
- A. Well, that's - - -
- Q. - - - even there I - I can't hear the drone of a cargo plane - - -
- A. Well - - -
- Q. - - - circling overhead ready to open its bowels and drop lots of banknotes.
- A. Well, all I can say to you is that the - ODEC, who are based in - have their regional offices in Dubbo said that at a Barwon-Darling Alliance meeting in February of this year, "Please come to us with projects that can be immediately begun because we've got this money and if it's not spent in this period of time Treasury wants it back." So all I can say to you is there were funds available - plenty of funds available for reasonable projects - and the project that is on the table here fits their guidelines to a T. ...

I should note that on 18 March 2004, therefore after the Council meeting, the Director General of the Department of Local Government issued a Departmental Circular to Councils (No. 04/06), reminding all Councils in the State that with the impending local government elections it would not be considered proper or

appropriate for major contentious business to be transacted at any Council meeting leading up to the elections. The message in that regard was not in fact new.

This adds another dimension to the failures of the Councillors at the 8 March meeting.

4.19 Whether the Councillors made an informed decision at their meetings of 8 December 2003 and 8 March 2004

Before proceeding to look at this particular question, I would like to note that concerns were put to me by various persons that, generally, the Councillors had over the time this project has been discussed, very little information on it. Clr Greenaway, for example, expressed concerns about the lack of information on the cost of the proposed building. He added:

There was a 2 year period I think that it wasn't mentioned at all and we've never received, to my knowledge, certainly the councillors haven't, a business plan stating how the centre is going to be run like the income from it, the expenditure or anything.

I shall now consider the very important question as to whether the Councillors, when they were deciding on the fate of the Lightning Ridge Community Centre on 8 December 2003, and again, in relation to the rescission motion, on 8 March 2004, were making an informed and proper decision based on all the facts and all the information that was available and that should have been provided to them.

The evidence is that, while the fax of 5 December 2003 from Northcroft had been received in time, if officers had been astute to the matter, for the Councillors to be told about and given a copy of it, they were not provided with a copy of it, either in time for or at either meeting.

Mr Burden's evidence in relation to peoples' awareness of the receipt of the fax at the time of the 8 December meeting was:

I can tell you, Mr Commissioner, that I was not – and I'm sure no one was aware of that fax.

Later, he added:

Sir, I can assure you that had I been aware, council would have been informed.

I went on to ask Mr Burden when he might have become aware of the fax, but he said he could not remember and that in any event he really had no functional role in relation to the project, which was more the responsibility of Council's Mr Jo Wooldridge. Mr Wooldridge's evidence as to when he saw the fax is noted at section 4.19.2 of this report. It was that he had not seen it until after the meeting.

Mr Burden told the Inquiry that it was he who, in the absence of the General Manager at the time, provided a copy of the fax of 5 December 2003 to Clr Greenaway. This was apparently done outside the context of a Council meeting,

and in response to a general query from the Councillor about progress in relation to the project. The exact date that this copy was handed to the Councillor is not known, but it seems clear that it happened some time in January and in any event before Council's first meeting for 2004 in February of that year.

The evidence is that even by their meeting of 8 March, let alone the aborted meeting of 9 February 2004, Councillors had still not officially, as they clearly should have, been provided with a copy of the 5 December fax.

Given that Mr Burden was marked as an intended recipient on the fax, and his evidence that this would in the normal course have meant that a copy of the document would have been provided to me, plus later evidence that he had in fact seen the document at some stage, I asked him about why it was not brought to the attention of the Councillors for the 8 March meeting:

- Q. ... Well, given what you've just told me, and I think your words were something to the effect that if you were aware of it you'd have moved – that you'd have ensured that the councillors were aware of it, and given that you were aware of it at the time, why did you not say to the councillors at the February meeting, "There's a document you should be aware of and the figure is \$2.6 million"? I mean, you're a senior officer of the council. Surely if you're aware even of a document that's outside your immediate functional responsibility you'd have some responsibility to make sure that the councillors are given full and accurate information.
- A. Quite so. I also understand or understood that it was being handled by the other group manager, Mr Jo Wooldridge, and I would have assumed that there would be a reason for that not being so.
- Q. Well, did you ask Mr Wooldridge about the matter on the day?
- A. Afterwards I don't know whether he – because of the way the meeting ended, I don't know that that was discussed.

Mr Wooldridge's evidence was (he was responding initially to my question about the first fax from Northcott of 5 December, but then was clearly referring, as well, to the second of the relevant faxes from Northcott, the fax of 19 January 2004):

- Q. What steps did you take then or at any time up to and including the council meeting in March this year to provide a copy of that letter to the councillors or to otherwise make them aware of it?
- A. There was no written report submitted to council. There was a verbal report when the rescission motion was dealt with as to the cost of the project.
- Q. Who gave that verbal report?
- A. I did.
- Q. And what did you tell the councillors at the meeting in - - -
- A. I said the latest indication of costings that we had was in fact \$1.6 million.
- Q. \$1.6 or \$1.3?
- A. No, I said \$1.6 and I was corrected in fact to \$1.384, that's the only reason I remember it so clearly.
- Q. Okay. Who corrected you on that figure?
- A. I believe – I believe it was Councillor Treweeke.

Mr Wooldridge, as part of his regular monthly report to Councillors on what he had been doing in the previous month, told Councillors at the 8 March meeting that he had attended the 5 January meeting with Northcroft, but he simply told them that that firm was going to provide “more detailed costings”. I asked him about this advice:

- Q. Would you not concede that to tell the councillors that Northcrofts were going to supply more detailed costings was in many ways misleading?
- A. In retrospect, yes. At the time I took the decision, rightly or wrongly, that the whole saga of the community centre - there was a rescission motion pending, we had been instructed by the general manager not to do any further work on the project except for gathering further information, so I guess what I’m saying is I – I was waiting for the outcome of the rescission motion before proceeding any further and as I say, they were informed - - -
- Q. But would you equally agree that the true information as to what was then available on the cost – costings done by Northcrofts was, at least on one view, relevant information for the councillors to have when they were considering the rescission motion?
- A. Yes, I would.

I also specifically asked Mr Wooldridge about whether the fax of 19 January had been provided to Councillors:

- Q. And why – why wasn’t the written advice of 19 January provided to the councillors when they met in February and March?
- A. As I stated earlier, it was a decision that I took pending the outcome of the rescission motion.
- Q. But surely it was relevant to the councillors’ determination as to what that outcome might be.
- A. I concede that and that is why they were told prior to the rescission motion being discussed what - - -
- Q. Is this a decision that you made on your own?
- A. Yes, it was.
- Q. Did you consult with anybody?
- A. No.
- Q. Did you talk to Mr North?
- A. I don’t believe I did.
- Q. So on what basis do you say you had authority to be actually actively not providing councillors with information that from your perspective, at least with the benefit of hindsight, was in fact relevant to them? Surely if you were going to be taking a dramatic step of that nature you would consult with the general manager at the very least?
- A. I concede I would – I would not do that again. However, it is something that I have done and I’m not going to be able to change it at the moment but I concede - - -
- Q. I mean, you seem to be telling me now on the costings that we’ve got a series of figures, all of which you seem to be telling me are questionable. If you end up with a series of figures all of which are questionable, how in God’s name can the councillors make rational decisions about whether or not to proceed with this project and what to build? That is a question that greatly troubles me.
- A. I don’t believe that we are anywhere near taking such a decision.

- Q. But the councillors have taken such a decision, Mr Wooldridge.
 A. I know, I know they have.
- Q. And you've allowed them to take such a decision by unilaterally deciding not to give them vital information.
 A. Council's decision to go ahead with the project is based on a costing of between 5 and - - -
- Q. A costing which has been provided, according to the evidence, from a member of staff - - -
 A. That's right.
- Q. - - - contrary – which quite clearly contradicts the figures that expert quantity surveyors that council has gone to the trouble - and ratepayers' expense, I might add - of hiring to provide such costings, and you simply ignore the experts' costings, and to make it worse, not even – not even the off-the-back-of-an-envelope-type figure of 5 to \$600,000 seems to be provided to the councillors in any real way. There's no answer, is there, to it?
 A. There – there – there is no answer, no.

And later:

- Q. One of the additional difficulties I have in trying to comprehend what's going on is how you actually value when for the whole shebang Northcrofts have said it will be \$3.4 million or even if you look just at stage 1, say, \$2.6 to \$2.9, how you actually value what other people are providing by their own hard yakka such that you can work out what the difference is and therefore come up with what it's going to cost in terms of paying people to do things. How do you value the hard yakka that is coming in from people?
 A. It's – it's one of the difficulties and I mentioned earlier, I don't believe that we have done enough work on the project to proceed right away. If we don't - - -
- Q. Yet the councillors were asked to approve the project.
 A. At 5 to \$600,000.
- Q. At 5 to \$600,000, when other figures much greater than that were floating around – not just floating around, they were there from the experts.
 A. Although we didn't have those figures available at the December meeting.
- Q. You had them at the time when councillors were being asked to consider a rescission motion.
 A. We had them then certainly.

The evidence therefore is that even though the Councillors appeared to know about the dollar figure advised in the 19 January 2004 fax from Northcroft, they had not been provided officially, as they should have been, with a copy of that fax. On the other hand, Mrs Treweeke told the Inquiry that at least she had seen not the fax but the attachments to that fax by the time of the March meeting. She said that she could not say that her fellow Councillors had, however.

That means, in my view, that the decisions taken by Council in respect of the Lightning Ridge Community Centre at those two meetings were tainted as a result. Those decisions were not decisions that could be described as defensible, and were certainly not open and transparent.

The evidence as to what people were told or knew about is, in some respects only, conflicting.

Clr Greenaway's evidence as to what was told to the Councillors at or for the purposes of the 8 December meeting was:

- Q. Was there any verbal discussion at the 8 December meeting from any councillor present at that meeting about how the 5 to \$600,000 was obtained or calculated?
- A. I don't recall any.
- Q. Was there any mention of any other costing figure at the 8 December meeting?
- A. ... no, I don't think there was ...

Clr Greenaway's evidence to the Inquiry was that he had gone to see Mr Burden probably in December, and after the 8 December meeting, and obtained a copy of the Northcott fax of 5 December 2003. He was unable to be more precise about the date. He told me that, therefore, when it came to the 8 March 2004 meeting he was in fact aware that there was a costing from Northcott of between \$2.6 and \$2.9 million.

Clr Greenaway's evidence continued:

- Q. Would other councillors, to your knowledge, have been aware of that?
- A. I think I may have mentioned it to one or two of the other councillors but possibly not ---
- Q. At the meeting or before the meeting?
- A. Probably in discussion about shire business prior to the ... meeting. ...
- Q. Was a copy of this fax from Northcotts actually officially provided to councillors for the purposes of the February or the March meeting?
- A. No. ... it was not circulated.
- Q. So at least some councillors to whom you spoke were aware that there was a figure of \$2.6 to \$2.9 million even if they had not seen this letter.
- A. Yes.

As to the fax of 19 January 2004 from Northcott, Clr Greenaway's evidence was that, while he could not recall when he obtained a copy of it, he did have a copy before the February meeting. However, it had not been officially circulated to the Councillors either for the purposes of or at that meeting, or the later meeting of 8 March. On the other hand, in later questioning Clr Greenaway appeared either to become confused or to back away from his earlier assertion that he had in fact seen the 19 January fax before the February meeting, because he told me:

... speaking to the rescission motion in the March meeting I asked had we had an update of any costing regarding the building and after a period of time I was – we were told that there was an estimate of - I think they quoted \$1.4.

I asked him who it was that so told them, and his evidence was that it was Mr Wooldridge.

My questioning of Clr Greenaway continued:

-
- Q. So it would be true to say that when councillors were in fact considering the rescission motion and voting on it in March they knew at least from oral advice at that meeting from Mr Wooldridge that there was a costing of \$1.4 or \$1.384, a figure around that amount.
- A. Yes. During the debate I quoted \$1.4 and I think by memory Councillor Treweeke countered – said \$1.8, so we were aware that there were higher figures.
- Q. But when the motion – the rescission motion was being considered at the March meeting was there any documentary evidence or advice given to you as to how the 5 to \$600,000 figure which was in the motion that you were seeking to rescind calculated or that might have verified that that figure was from some particular source?
- A. No, no evidence whatsoever.

Mr Burden's name was marked on the 19 January fax as an intended recipient. His evidence was once more that he could not recall having seen it. He said, however, that by the time of the public hearings he had become aware of its contents.

Clr Waterford, in his oral evidence at the public hearings, told me:

- Q. ... one of the allegations or issues that's being raised with me is that some councillors were not aware.
- A. Well, any – any of the councillors who were at that meeting, Councillor Greenaway brought it up and he gave a rundown of the full – full rundown of the community centre since its inception so they either weren't listening but certainly it came down to that part of the building was going to cost us \$1.3 million.

Clr Lane told me at the public hearings:

- A. ... I can remember when we originally got the quantity surveyors' estimate it was \$2.3 or something absurd million. I think by memory there was a figure of \$180,000 for planting some trees in the garden. It was ludicrous - in my opinion it was ludicrous costings of the building.
- Q. But those were professional people which council employed by resolution to give council expert advice. Are you suggesting that just because you think it's ludicrous that you're in a position to ignore that expert advice?
- A. I have spoken to several builders and building project type manager people.
- Q. What, at the pub?
- A. No, I don't drink but I have spoken to them and their estimated cost I believe was between 2 and \$3000 a square metre for a commercial building and if you look at the price that the quantity surveyor came to there was nowhere that that was substantiated.
- Q. So did you express these views to your fellow councillors at the meeting when they were considering the project?
- A. Commissioner, I can't exactly – can't remember exactly what I expressed. I certainly expressed my views at the meeting. What exactly they – they – that entailed I couldn't tell you.
- Q. But how could it be said to be a reasonable exercise of your responsibilities and judgment on voting on matters in respect of the expenditure of ratepayers' moneys and the provision of services by council to its community and ratepayers to do so on the strength of ignoring written advice from experts commissioned by council that provided advice that the figure was going to be X and to go ahead on the basis of what you had spoken to unofficially to people that you may or may not have communicated to your fellow councillors or certain of your fellow

councillors and make a decision accordingly? Are you saying to me that that is a proper exercise of your responsibility?

A. I believe the decision that I took at the time was an appropriate decision and I still stand by that.

Q. And on what basis do you say it's an appropriate decision?

A. Because of the need for the centre in Lightning Ridge and what I believe the cost would be.

On the question of what the Councillors knew or did not know at the 8 December meeting, Clr Friend's evidence to me was:

Q. The documented report in the council business papers advised that council was being asked to approve the building of a centre costing approximately between 5 and \$600,000 and, indeed, that's what the resolution was on 8 December, that now stands given that the rescission motion failed. Were you present at the meeting on 8 December?

A. Yes.

Q. Was 5 to \$600,000, a building of that cost the only information that was provided to councillors, were councillors told, for example, that on the previous Friday there had been a costing coming in for building stage 1 at between \$2.6 and \$2.9 million, were you aware of that at the time?

A. I don't think I was aware of that.

Q. Did anybody circulate any documents indicating that there was – well, firstly, to substantiate the estimation of between 5 and \$600,000 at that meeting?

A. I don't think so.

As to the later, 8 March 2004 meeting, Clr Friend's evidence was:

Q. Did you know when you were considering the rescission motion that there had been advice as to \$2.6 to \$2.9 million that had subsequently been revised by various means down to \$1.384 million?

A. I think - - -

Q. Did you know at that meeting?

A. I think at that stage we did or I did, yeah.

Q. Do you recall seeing documents at that stage, because there's no paper trail to show that you were given copies - - -

A. No.

Q. - - - for the purposes of that meeting, or at that meeting?

A. No.

Talking initially particularly about the Northcroft fax of 19 January 2004, my questioning of Mrs Treweeke was as follows:

Q. - - - is it – is it a document, assuming it is accompanied by a proper briefing, you would concede that your fellow councillors should have been aware of?

A. Yes.

Q. Well, then, was it not within your power to say, "We can't deal with this motion today, we have to have that proper briefing and the councillors need to be aware of it because it's vitally important"? You didn't do that though, did you?

A. I didn't say it in that context but I'm sure I knew that - - -

- Q. Why was it appropriate to proceed, why was it so necessary to proceed to deliberate on the notice of motion, the rescission motion, on 8 March? What was the hurry?
- A. It was the last meeting of the last – of that council, I suppose.
- Q. But the matter could be dealt with by the new councillors, they were the ones after all having to carry the project forward.
- A. I saw that as important not to delay the matter any longer because we were already months behind.
- Q. Because you wanted to ram it through, didn't you?
- A. I don't think I'm capable of ramming anything through, Mr Commissioner. I don't think that's the way it is. What – what capacity do I have to ram anything through?
- Q. I don't know, you tell me.
- A. Well, I don't know either.
- Q. I mean, it's – how do you explain your decision to walk out with certain other councillors to prevent it being considered in February?
- A. I – I was one of many.

I also asked Mrs Treweeke about the costing of \$500,000 to \$600,000 provided to Councillors that formed the basis of their decisions:

- Q. Why was it appropriate even to debate the matter and to pass a resolution based on those figures, which apparently were not even in writing, with no additional information provided to the councillors to explain what it was all about and how it had been calculated – why was it appropriate to even do that on 8 December when you knew full well that Northcrofts had been instructed and were in the process of doing a recalculation as to the true cost?
- A. (PAUSE) I suppose the main thrust of the motion was the intention to proceed with the building and the cost - - -
- Q. Because you wanted to ram it through again.
- A. - - - and – it's not – I think that's – I don't have that capacity, I'm sorry, it's - - -
- Q. Well, no matter what you describe, because you were anxious for it to get – to move forward. Whether you're capable of picking up a battering ram or not is not relevant, it's simply a figure of speech and I'm not going to waste time in playing with words.
- A. No.
- Q. It's clear to me, the clear inference from the documentary evidence is that somebody, including yourself having voted on the matter and having been party to a lot of knowledge that apparently wasn't available to your fellow councillors, was determined to push the matter through come hell or high water. Is that – your silence an answer?
- A. No. I mean - - - (PAUSE)
- Q. I can't wait forever, Mrs Treweeke.
- A. Oh, sorry, I thought I'd answered the question. Now, what – what – what you're saying I don't – is not true.

The evidence in this Inquiry does not allow me to believe this.

Mr North's evidence to the Public Inquiry in respect of the decisions taken by Council was:

I feel confident that the decision that was taken, if that was the meeting, was on the basis that it was going to cost \$600,000.

Later he told me:

Nonetheless, I have indicated to my group manager that if the costs aren't within the \$600,000 the paper needs to come back to council.

These instructions were, however, so Mr North told me, only issued after the meeting of 8 March 2004, when the rescission motion was defeated.

When asked about the failure to bring a copy of the 16 January 2004 Northcott fax to the attention of the Councillors for their meeting of February or even their meeting of March 2004 he said:

I agree, it could have been put on the business paper.

And later:

Q. ... you would agree, would you not, that information of a costing, albeit on the basis upon which I've just read out of \$1.384 million was vital for the councillors to have - - -

A. Yes.

I also questioned Mrs Treweeke, and she returned to a theme that she was trying to have me believe that the costing figures provided by Northcroft did not mean what they appeared on their face to mean:

A. All I'm saying is we have not had the quantity surveyor to explain to us how he arrived at \$1.3 million.

Q. Well, did it not occur for you as a member of the committee, and I understand you even went to Sydney and had a meeting with the quantity surveyor, to say to the quantity surveyor, "Why don't you come up to our next meeting and tell the councillors"?

A. That was part of the process that we had - - -

Q. And yet you proceeded, so far as I can see, and I'm going to ask you some questions further on this in a minute, but let me just say where it seems to me we've got to so far on the evidence of other people. You proceeded to deal with a rescission motion about a building for 5 to \$600,000 without apparently having the advice of the quantity surveyor, which revised the figure down from \$2.6 to \$2.9 million already, before the councillors, let alone - - -

A. That's - - -

Q. - - - any further explanation as to what that \$1.384 million meant.

A. That's the - that's the stage at which we're now at.

Q. Well, how can it have been appropriate for councillors to be voting on a rescission motion which on its face purports to indicate that people understand they're being asked whether to set aside a decision for a 5 to \$600,000 project, how can that conceivably properly proceed in those circumstances? You were prepared to walk out of the meeting in February to force through the result, that the rescission was defeated. What was the urgency of the matter? Surely it was appropriate for the councillors to have the benefit of the explanation that you say to me now was required - - -

- A. Indeed it was - - -
- Q. - - - for the project - - -
- A. - - - and I made that point clear in the debate.
- Q. - - - from the quantity surveyor?
- A. And I made that quite clear in the debate.
- Q. Then why did you vote in favour of defeating the rescission motion? Again, what you're trying to tell me you said happened seems to be just inconsistent with other documentary evidence showing what happened.
- A. (PAUSE) It is – I mean, it's a motion that was passed in March, and after the rescission motion was lost the original motion came back. It was the intention to proceed, that was the import of that particular motion.

I sought advice from Cllr Greenaway as to whether the lack of costing or related financial information that clearly existed in relation to the Lightning Ridge Community Centre project was a systemic problem:

- Q. ... In relation to other projects that councillors might from time to time be asked to approve or to approve funding for, what sorts of reports and budgetary information or business plans in your experience have you generally seen on these? The issue I suppose I'm looking for is, is there any particular difference or worse situation for the Lightning Ridge project or was the standard of reporting the same whether it be the Lightning Ridge Community Centre or other projects or motions that you were asked to consider?
- A. Well, we – in the case of projects, we haven't had many projects similar to that one but I do think that we have probably received some information but probably not a complete amount of information on projects but as I said, we haven't had many.
- Q. You haven't had many.
- A. Well, not large projects anyway, only smaller ones.
- Q. All right. If you have had concerns about the lack of necessary information or reports on this particular project or any other project, have you sought, for example by moving a motion for consideration by the councillors that a further report on the matter be submitted to council at its next meeting?
- A. I can't recall personally moving one. I think there have been occasions where there may have been one moved.

4.19.1 The role and responsibilities of the General Manager

The evidence of the General Manager, Mr Vic North, to the Inquiry on the question of his responsibility, if any, for the failure to ensure that Councillors made an informed decision on the Lightning Ridge Community Centre at their meetings of 8 December and 8 March was:

- Q. Wasn't it your responsibility to ensure that council got accurate information?
- A. Yes, indeed.
- Q. And if council didn't get accurate information you would admit that you're responsible in the end - - -
- A. Yes.

That is clearly a correct reading of the situation.

Mr North had earlier told me that staff reports to the Councillors for the purposes of Council meetings went through and were endorsed by his Executive Management Team, as a group.

But, under the Act, it is the General Manager who is ultimately responsible for any failings by the Council administration.

4.19.2 The role and responsibilities of the two senior Managers

I have previously noted that each of the two faxes from Northcroft were marked for the attention of Mr Burden and/or Mr Wooldridge, as the case may be. I therefore asked both Council officers about the matter when they gave oral testimony at the public hearings.

First, Mr Burden, speaking, initially, about the report that went to the Councillors for the purposes of their 8 December 2003 meeting, told the Inquiry that at the time of the meeting Council had, he believed, about \$470,000 in reserves to cover the cost of the project. His evidence continued:

A. I'm – the proposal [the staff report to the Councillors for the purpose of their 8 December meeting] was only just to identify a rough cost of that first stage. I don't think it was intended to be a – a document to identify sources of funding for the - - -

Q. But if councillors were being asked to approve construction of a building and the spending of considerable moneys on infrastructure, is it not relevant for the councillors to be aware whether the moneys are going to be forthcoming for that purpose when they're asked to approve it - - -

A. Yes.

Q. - - - because it may well be relevant if – if the moneys are on the never-never and may never actually eventuate, presumably at least for some councillors that could influence their decision as to whether it should be approved or not.

A. Quite so, I totally agree with you.

Q. So why would a proposal go to the councillors on 8 December when clearly the available funds that were available with any certainty were a maximum \$400,000 and there was at least 1 if not \$200,000 that nobody knew about yet?

A. You're quite correct, I mean, that should have had more detail than it did have.

Q. And you were functionally responsible for financial matters on that date, weren't you?

A. Yes, I was, yes, I totally agree with you, sir, I don't argue that point at all.

Q. So you would now agree that on one view at least it was premature to be asking the councillors to approve a project costing 5 to \$600,000.

A. I certainly do, I think it was - - -

Q. And that it was in fact inappropriate at that stage to be asking the councillors to approve a project for 5 to \$600,000?

A. I totally agree.

-
- Q. What about if the cost of the project was in fact \$2.6 million as we now know, at least with the benefit of hindsight, was in fact the figure that was available, albeit perhaps lost in the system here in the building or still with the fax operator, when the councillors were meeting on the Monday morning, is that not an infinitely worse situation?
- A. Infinitely worse, I quite agree. I – I am not – and again, I will take the responsibility for it ...

Burden told the Inquiry that he had been part of the Executive Management Team which signed off on the staff report to the Councillors for the purposes of the 8 December meeting, so he must share responsibility for any deficiencies in that report.

His evidence continued:

- Q. But at least when council was considering whether or not to rescind the decision made on 8 December based upon the advice that they did have on that day, you say you were aware that the figure was considerably more, why was not a report officially put to the councillors, and I have no evidence of that having been done, saying, "It's terribly relevant that you be aware that in fact it's not 5 to \$600,000. The quantity surveyors that council has hired to come up with a costing on the construction of this building have come up with a figure way way in excess of what you, the councillors, appear to believe"? Why wasn't the whistle blown?
- A. Again, as part – look, while I don't want to – wish to abdicate my responsibilities as part of senior management I expect that the rest of the team would do their job as I am expected to produce financial returns and so to that extent, yes, I do accept what you're saying that I should have at least spoken up louder, but I honestly assumed that other people were looking at it or had reasons not to.
- Q. It seems to me that there's far too much assuming in this council that somebody else is responsible for things. I keep getting this response from various people. I'm not sure I'm very satisfied with it.
- A. As I said, I – I – it's not wishing to abdicate my responsibilities in that area, obviously.

Burden's evidence was that he had not seen or been aware of the 5 December fax by the time Council's meeting of 8 December took place, but he admitted to knowing about it by some time in January 2004. He admitted that he had taken no steps to make sure it was circulated to all Councillors. The evidence of his having provided a copy to Clr Greenaway, only, possibly in January, is noted at section 4.19 of this report, above.

Burden's evidence was that he had not known, at the relevant time or times, about the later fax of 19 January, despite the fact that his name was marked on it as an intended recipient, so to that extent he bears no responsibility for the failure to make sure that fax was provided to the Councillors for their February and March meetings.

The evidence as to the role and responsibility of Mr Wooldridge concerning the failure to ensure that Councillors were provided with all necessary documents and information when they met on 8 December 2003 and 8 March 2004 to consider the project is noted at section 4.19 of this report. It is clear that he failed in his duty and responsibilities.

At section 4.19 of this report, I have noted evidence that the General Manager instructed his Group Manager that if the cost of the Centre was over the maximum \$600,000 entailed in Council's resolutions of 8 December 2003 and 8 March 2004, then the matter needed to be brought back before Council's elected body. At the public hearings I sought more information on this from Mr North:

- Q. Well, when you said this to your group manager did he say, "But the council has already got that information", or was his response - - -
- A. No, no, I think - - -
- Q. - - - indicative to you of an acknowledgement on his part that the councillors did not have the information?
- A. No, I don't know about not having the information. He certainly acknowledged, I believe, that that was reasonable, that if it was over the budget that council had set for that building, then it needed to come back for approval.

In all the circumstances, I find both Mr Burden and Mr Wooldridge failed in their duties and responsibilities as senior managers to bring vital and important information, of which each was clearly aware, to the attention of the Councillors, knowing they needed that information for important, let alone controversial, matters before them.

This is simply inexcusable. It amounts to a serious dereliction of duty by both officers.

4.19.3 The role and responsibilities of the Councillors, including Mrs Treweeke

Given her prominent and active role in relation to the project in general, as well as in relation to at least the meeting of 5 January 2004 with the quantity surveyors, and her receipt and knowledge of the 19 January 2004 fax from them with their revised costings, I have also considered the culpability of Mrs Treweeke in relation to the failure to make sure that Councillors were appraised of all the necessary information and provided with copies of all the relevant documents.

In my view the evidence clearly shows that Mrs Treweeke is as guilty as anyone else, if not more so than her fellow Councillors.

The other more important issue is as to the position of the Councillors as a whole.

In my view the Councillors plainly failed in their Charter and other obligations in coming to the decisions they did on 8 December 2003 and 8 March 2004 on the project. In this regard I leave out of the culpability equation those Councillors who are recorded as having voted against the motions in question.

I questioned Cllr David Lane about the motivation behind the decision to defeat the rescission motion, and in effect approve the project going ahead, at a cost, according to the resolution, of somewhere between \$500,000 and \$600,000, when the Councillors knew that the quantity surveyor's advice was that it was much more, and

when they knew from the staff advice that the available funding, in hand, was much less even than the first-mentioned set of numbers:

- Q. Are you saying to me that in March after you'd done your walk-out in February and you finally did deal with the rescission motion that you were not aware that the cost of stage 1 as advised by the quantity surveyors was well in excess of the 5 to \$600,000 that was being talked about?
- A. No. I was aware that the quantity surveyor had increased the figure.
- Q. So why did you approve it when there would be a yawning chasm in the availability of funds?
- A. Because it was always the intention to seek funding from other sources, that was always the intention.
- Q. But how could it be said to be reasonable to proceed with a project if the funding from other sources is in the realms of never-never land?
- A. Because if you want to get funding you have to make a commitment to that project.
- Q. But then can't you equally pass a resolution which says that we approve this project subject to funding being obtained?
- A. Well, yes, and that may be - - -
- Q. Well, then, why didn't you do that?
- A. That may very well be perhaps what should have happened but it didn't. We voted - I voted on the resolution that was put, that's - I can't control what people move and I voted according to my conscience.

My questions to Cllr Lane continued:

- Q. I put it to you that you were so determined to get the motion defeated, the rescission motion, that you were prepared to turn a blind eye and do anything that would defeat that motion.
- A. Well, if that's your opinion that's your opinion, I can't - I can have no effect on that, that's the bottom line.

Mrs Treweeke's evidence on such matters is considered at section 4.19 of this report.

4.20 The implications for Council

What are the implications for Council from its appallingly unjustified and inappropriate decisions of 8 December and 8 March?

In my view, and in the interests of openness and transparency, as well as of the ratepayers and Council's community, neither decision can be allowed to stand.

Council should in my view be re-examining its commitment to the project, at least in the configuration it has got to under the baton of Mrs Treweeke and in the designs and content of Mr Murcutt.

There is some difficulty in relation to the resolutions of those dates, given the failed rescission motion of 8 March. Section 372 (5) of the Act provides:

If a motion to alter or rescind a resolution has been negatived, or if a motion which has the same effect as a previously negatived motion, is negatived, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.

This means, it seems to me, but subject to what I have to say below, that Council's rescission motion must for the time being at least, and until the required three month period has elapsed, stand. Council may care to be guided by and act on its own legal advice on the matter however.

But, despite this, I consider that it would not be appropriate for Council to act on its 8 December 2003 resolution, that resolution still standing, as a result of the loss (negating) of the rescission motion on 8 March 2004.

This is because, quite patently on the evidence, Council would otherwise be committing to a project at a price that was not in accordance with its expert advice. It would be committing to a project that costs a lot more than the one it approved. I suppose the result is that it would be quite easy, and lawful, for Council and its administration to ignore the 8 December resolution accordingly, because that resolution is, on the facts, apparently incapable of implementation in accordance with its terms.

Moreover Council would, if it were to give effect to the 8 December resolution, be being reckless and acting inappropriately with ratepayer's funds, in breach of its Charter obligations, given the fact that Government or other appropriate funding to cover a project even of a cost of \$500,000 to \$600,000 has not been obtained and is not assured.

This must accordingly be even more so in respect of the building of a Centre, or just first stage of a Centre, which on the evidence and Council's expert advice, is clearly going to cost \$1.384 million.

4.21 Conclusions

My conclusions in respect of the Lightning Ridge Community Centre are really adequately set out at previous sections of this report, and it serves no purpose to repeat them here.

But, what I would like to state and to emphasise is that, whatever has been done wrong and inappropriately in respect of this project, and there is plenty in that regard, is a sin of the 1999-2004 Council, and not the present 2004 Council.

It falls, however, to that Council to retrieve the situation.

4.22 Where to from here?

The present 2004 Council must act, and act promptly, to retrieve the situation.

Newly elected Cllr Danielle Osborne gave the following oral evidence:

- Q. And if a centre of that value [over \$3 million] is going to be built would you say that ordinary members of the community are aware of that?
- A. I don't think they are aware of it but I think at the same time if a facility is to be built in Lightning Ridge then it should be within the means of the funds that are available.
- Q. And what do you know as to where the money is coming from for a \$3 point something million centre?
- A. I'm sure the shire would not be in a position to provide that – that funding.
- Q. That being the case should the centre go ahead?
- A. I think it should but - - -
- Q. Or should it be scaled back to something that everybody can afford?
- A. I think it should be scaled back.

Wise counsel indeed.

Recommendations

- **That the present Council needs to act promptly and appropriately to ensure that Council's resolution in respect of the Lightning Ridge Community Centre of 8 December 2003 is not implemented.**
- **That Council should promptly and appropriately review its commitment to the Lightning Ridge Community Centre, and only proceed, if it is to proceed at all, with a project that is defensibly affordable, having regard to all clearly agreed and committed funding from other persons or bodies, or other arms of Government, whether State or Federal, and when compared with Council's expert advice as to the likely cost of construction of the building, even after taking into account properly and fully costed in kind community and other inputs in respect of labour and materials.**

PART 5

5. GENERAL CONCLUSIONS REGARDING THE PERFORMANCE OF THE 1999-2004 COUNCIL

In general, the performance of a Council's elected body is to a large extent dependent on the quality and degree of advice and support given to them by the Council's administration, through the General Manager and his or her staff.

It would be otherwise if the elected body frequently, and for no good reason, failed to follow such advice or take advantage of such support. But, there is no evidence of this being the case at Walgett Shire Council in any frequent or systemic way. Indeed, on the evidence before me, there is no evidence of any such failure in respect of the key issues I have examined, within my Terms of Reference, and for the purposes of this Inquiry.

The evidence in this Inquiry, as it did in the section 430 investigation, overwhelmingly shows that the quality of advice and support given by the General Manager and his staff to the 1999-2004 Councillors was very poor and resulted in numerous breaches of legal requirements that Council and its administration and Councillors were required to meet. On that account alone, it is clear that Council has accordingly failed to meet at least one of its key Charter obligations.

I note that this Inquiry revealed a considerable number of breaches of laws such as the Local Government Act 1993 that had not been revealed by the section 430 investigation. As I have previously indicated, this Inquiry did not travel over the same ground that the Departmental Representatives had travelled. Various witnesses were asked if they disputed findings of the Department in that regard, and none said they did, at least to any relevant extent. These witnesses included the General Manager and Clr Waterford, the Councillor who served as Mayor for three and a bit of the four and a bit years of the term of the 1999-2004 Council. And it is clear from Council's own written response to the section 430 report that officially it accepted the findings likewise. There was therefore little to be served or gained by me re-canvassing such issues.

As indicated in the various sections of this part of my report, above, as well as in Part 4, dealing with the cause celebre of the Lightning Ridge Community Centre, it is equally clear that the 1999-2004 Council has failed in a number of its other Charter obligations. Its governance has therefore been singularly inadequate, and Council has let its community down accordingly.

While a lot of the blame for all this quite clearly rests at the feet of Mr Vic North, as General Manager and head of Council's administration, this does not exculpate the Councillors.

As I indicated in Part 1 of this report, the Councillors as a whole are accountable and responsible for Mr North's poor performance, and must accept this. The Councillors as a whole are particularly responsible for the failure to carry out the required regular

and appropriate appraisals of Mr North's performance that were required of them, for example by Mr North's employment contract.

On this score, I consider that a very large part of the blame and responsibility falls on the head of Cllr Waterford as the Mayor in office when the appraisals, such as they were, were carried out. But, equally, this does not exculpate the elected body as a whole.

I am particularly concerned that the very loud alarm bells ringing from the Department of Local Government's earlier interim appraisal and report on Council's performance, issued in August 2003, let alone the clear message coming to Council when its considered the final draft section 430 investigation report in December 2003, failed, amongst the Mayor and majority Councillors, to trigger a fresh, open-minded, and proper and rigorous, appraisal process of Mr North's clearly inadequate performance.

Nothing could be clearer to the Councillors, if they were so minded to look, listen and think about it, that there was something seriously wrong that needed some serious consideration and more drastic action, than merely sitting comfortably back on their haunches and concluding that everything was being fixed up and would be fine in the future.

For this reason, particularly, therefore, as well as for the other failures on the part of the elected body, as a whole, to discharge its obligations and responsibilities in respect of the governance of this Council, and were the 1999-2004 Councillors still in office, or even most of them, I would have had no hesitation whatsoever in concluding and recommending that all the civic offices at the Walgett Shire Council should be declared vacant, and that therefore the Councillors should be dismissed from office.

But, as I stated at section 1.13.4 of this report, there has been an intervening Council election. A very considerable number (six) and percentage (50%) of the old guard from the 1999-2004 Council are no longer in office, and the present Council, elected on 27 March 2004 is a very differently constituted one. I shall consider further the implications of this, as well as the question whether the new Council can be held accountable for the omissions of the past Council, at section 5.3 of this report.

PART 6

6. ISSUES AND EVENTS EXAMINED IN RESPECT OF THE NEW 2004 COUNCIL

Given that local government elections occurred on 27 March 2004, when a new Council was elected at the Walgett Shire Council, and it is therefore the 2004 Council, or rather Councillors, who must face the possibility of any dismissal that might be approved via section 255 of the Act, it is important to examine the performance and the track record of that Council.

6.1 Preliminary comments – can the 2004 Council be visited with the sins of the past?

As indicated at section 1.13.4 of this report, and again at section 3.24, a very important, and vexing question for this Inquiry and myself as Commissioner in particular has been this question. Can the present 2004 Council be held accountable for any deficiencies of the 1999-2004 Council? Particularly when 50% of the Councillors serving on the new Council were not serving on the 1999-2004 Council.

The answer to this very important question is clear and simple.

No.

There is no juridical basis on which such a proposition could be supported. There is no logical basis for such a conclusion, and it would be grossly unfair at least to the newly elected Councillors.

Therefore, the fate of the 2004 Council rests to be judged on its own track record.

To date, there is clearly insufficient record to be able to judge and to assess the performance of the current Council.

6.2 The outlook for the future

As indicated in Part 1 of this report, my Terms of Reference require me to consider whether the Council, in particular through its elected representatives, will continue to be in a position to direct and control the affairs of Council in accordance with the Act, so that Council can fulfil its Charter and the provisions and intent of the Act, and so on.

Of course, if there were probative and reliable evidence on which I could reasonably and properly conclude that it would be “more of the same” at this new Council, then

I would find that there is a proper basis to believe that the new Council will not be in such a position.

The fact that there are six new Councillors, as well as a new Mayor, a Mayor who, on the evidence of the previous Mayor no less (see below), might be expected or in a position to turn things around for Council, strongly militates against such a finding.

On the other hand, I recognise that as Clr Friend only has, possibly, a fifty percent chance of remaining in office come September, assuming past voting patterns and factions and allegiances remain, this is a factor pointing, at least in some respects, the other way, at least after September. I interpret my Terms of Reference in this regard as needing to make a finding that there is some reliable chance of a positive result, in the long-term, and not just for the short term. But whether one is looking at the short to medium term, or the long term, this is simply crystal ball gazing.

Findings and recommendations based on such a process would not stand scrutiny in the event of a legal challenge being mounted to this Inquiry, its processes and findings.

Given the lack of a track record for the 2004 Council, it is, in my considered view, a matter of pure speculation as to what the outcome might be for this new Council, and whether it should or should not be dismissed for anticipated governance failures of such a magnitude that would warrant such a serious outcome.

It is certainly the case that five of the six new Councillors have no prior experience in local government, at least as members of the elected body. Clr Darryl Cooper was a former member of Council management staff. Clr Ian Woodcock a former long serving Councillor, including with experience under the new 1993 Act, and has even held the position of Mayor. He did so for all of the four years of the 1995-1999 Council. He therefore brings a body of experience that may be of guidance and assistance to his fellow Councillors, if applied properly. I am aware that some have criticised his performance when he was on Council, and assert that he at least contributed to the parochial divisions at Council. He will, no doubt, bring a changed and fresh perspective and approach to Council on this occasion.

But, the lack of experience of the other Councillors may even prove to be positive. They may bring a breath of fresh air to Council. This is clearly needed.

There is no evidence that any of the newly elected Councillors were co-opted or encouraged to stand by any particular members of the previous divisions or factions at Council, or by persons associated with them. There is therefore no clear or probative evidence that the newly elected Councillors will necessarily vote along factional, Lightning Ridge versus Walgett, lines. I examine this briefly further below.

Inexperience should bring caution. That is a good thing. Caution means being guided by and seeking advice, and the principal sources of advice to the Councillors are the General Manager and his professional managers and staff. The question of how the Councillors can ensure that they get proper and appropriate advice, to ensure that their actions and decisions comply with the law and best management practice, is considered at section 6.2.3 of this report.

There are already, even at these early stages, signs of a healthy caution on the part of the new Councillors. Their first big task, one passed to them by their predecessor Council, was to deal with the approval of an appropriate organisation structure for the Council administration, as required by sections 332 and 333 of the Act. Council met in Committee to deal with this on 30 April 2004, the very next day after the close of the public hearings held by this Inquiry.

The minutes of that meeting disclose that “concerns [were] raised by the newly elected Councillors who felt maybe they were not entirely across all of the issues associated with the Organisation Structure and the deliberations of the Inquiry”. This is readily understandable, given particularly that revisions to Council’s organisation structure in the past have been the product of so much dislocation at this Council, and given the various recommendations made by the Departmental Representatives in their section 430 investigation report.

The new Councillors had a fairly extensive, if at times somewhat unclear, report to them from the General Manager on the proposed organisation structure, and he put to them no less than six options, none of which had the newly elected Councillors had the opportunity to have any input into. Mr North’s report was largely a rehash of his earlier reports on the matter to the 1999-2004 Council.

There are, however, a number of criteria by which the likely performance of the new 2004 Council might properly and defensibly now be judged, despite the lack of a history for this Council, and I will now proceed to consider them.

6.2.1 The implementation of outstanding section 430 recommendations

The first such criterion will be how the new Council performs in respect of the implementation of any outstanding recommendations from the section 430 investigation report.

There is no evidence to suggest that a change in guard, the election of a new Council at the 27 March elections, will have any impact on the likelihood and declared intent of Council, through its old guard, the 1999-2004 Council, to implement any outstanding recommendations. Indeed, the evidence is really to the contrary. As to this see the oral testimony of the six newly elected Councillors reported at section 6.2.4 of this report.

There is also the testimony of Clr Friend, as newly elected Mayor:

- Q. ... What steps will you be taking as mayor to ensure that council follows up to do promptly and fully everything that’s needed to comply with Department of Local Government’s recommendations in its investigation report?
- A. Well, I certainly will do my best to keep that flowing on.

The question of the outstanding appointment of a mentor is dealt with further at section 6.2.3 below.

6.2.2 Relationships between Councillors and likely stability

The second criterion by which the new Councillors in the 2004 Council will be judged is by reference to their relationships with each other and whether this produces a stable Council that gets on with its business in an appropriate and proper manner, thereby discharging their Charter and other obligations.

The evidence suggests that, as with the situation at the old 1999-2004 Council, there may be an equal split between those Councillors who might be said to represent Walgett (including not only the town of Walgett but also the rest of the Shire) and those who might be said to represent Lightning Ridge and its surrounds.

The given postal addresses of the Councillors serving on the newly elected 2004 Council are as follows. If no further details are given, then the stated address, as provided by Council to me, is a post office box in the town or centre named:

Name	Address	Likely grouping
Margaret Bow	Walgett	Walgett
Darryl Cooper	"Waratah", Pilliga Road, Walgett	Walgett
Alan Friend	Walgett	Walgett
Robert Greenaway	"St Helena", Rowena	Walgett
Charlie Mitchell	Walgett	Walgett
Grahame Slack-Smith	"Wyndella", Burren Junction	Walgett
Lynette Carney	Lightning Ridge	Lightning Ridge
David Lane	Lightning Ridge	Lightning Ridge
Danielle Osborne	Lightning Ridge	Lightning Ridge
Laurence Walford	Pandora Street, Lightning Ridge	Lightning Ridge
Peter Waterford	Lightning Ridge	Lightning Ridge
Ian Woodcock	Lightning Ridge	Lightning Ridge

As can be seen from the above table, it would appear that, at least on paper, and corroborated to some extent at least by the outcome of the very first vote (for the position of Mayor) taken on 5 April 2004, when the newly elected Councillors met for the first time, that there may be a tied vote on some matters, at least if the Councillors vote according to the views of the place they come from, assuming those views are split. How many such matters there might be, and what topics they may cover, is very much a moot point at this time, and one can only speculate on the outcome.

Clr Waterford's oral evidence to me was that he saw a six all split along these lines. But he also told me:

Q. ... So what's going to be the situation with the current council that's just been elected?

A. I don't know, that's – you're looking crystal ball in here, but I would imagine that - -

Q. But isn't it possibly a very relevant issue for me to explore in terms of - - -

A. Indeed, and it concerns me greatly. I've had nights wondering what's going to happen. ...

And later:

Q. So apart from the odd issues or cause célèbre, or whatever you like to call it, it's business as usual in the past and you expect it to be so in the future, do you?

A. I do, I do. I mean, you're always going to get some bloke bitching.

Q. Other than the difficulties of crystal ball gazing?

A. Yes, indeed. ...

He also told me that he was making a conscious effort to let bygones be bygones and get on, though he said that he did have serious concerns as to what might happen to the Lightning Ridge Community Centre project. Earlier in his oral testimony he had told me:

Q. Well, will you be consciously or maybe deliberately be trying to move away from the problems of the past and hunker down for the benefit of the ratepayers and the community?

A. Absolutely.

The evidence before this Inquiry, on the other hand, tends not to indicate that questions as to the allocation of resources and the provision of services and facilities to the town of Lightning Ridge versus Walgett and the rest of the Shire are necessarily going to result in divisions amongst the Councillors. See section 3.5 of this report in that regard.

Furthermore the newly elected Councillors all expressed a determination to overcome the parochialism and difficulties of the past, when in turn they came to give oral testimony to the Inquiry (see section 6.2.4 below).

If there were to be such a tied vote, then the question will be how the new Mayor, Clr Alan Friend might be expected to act. But, first I note that the previous Mayor's (Clr Waterford) evidence to me was that:

Q. Did you have to use your casting vote very much?

A. I couldn't tell you exactly how many times, but maybe – maybe half a dozen times in the 2½ years I was there. It mightn't have been that, it might have been true.

Q. Were they occasions where it was a sort of Lightning Ridge versus Walgett issue, for example, to provide or not to provide certain services or facilities, or is it not as simple as that?

A. No, I don't think it was as simple as that. ...

I particularly asked Clr Friend about the question of the use of a casting vote, when he appeared as a witness before me at the public hearings:

- Q. ... It was put to me by Councillor Waterford in his evidence that in the period that you were mayor things settled down a lot at council and there was far less destabilisation in terms of the lodgement of rescission motions and the like. Would that be a correct assessment of the situation at that time?
- A. Look, I would leave that for others to judge. I, I couldn't – I couldn't really verify that. I suppose, the only thing I can think of when you say that is that I never used my casting vote, to my knowledge ever, and I would try to get a decision any other way, or have it – have the issue - - -
- Q. So if the vote is six all then the council code of meeting practice rules presumably would be that the resolution's not passed and, therefore, lost, you wouldn't use your casting vote?
- A. Yeah, that – well, that's a tricky one.
- Q. I think you – your statement was you've never done it in the past. Perhaps I should ask would you do it in the future?
- A. Yeah, I think there are times when you've got to and that, that case that you just mentioned, obviously, you've got to have a result.
- Q. Well, it would only be if there was a tied vote that you would be faced with the need to decide whether you would use your casting vote and, if so, how?
- A. Yeah. Well, I always like to, first of all nominate whether I'm going to vote before the vote is taken, obviously, and then I make the decision whether I use the casting vote. I think that this gives council a better knowledge of where they're going and what's happening, and I don't mean to be – having a shot at Councillor Waterford, but that was confusing for council when he did not indicate how he was going to vote with his vote, and then didn't actually say in many cases that he had used his casting vote. ... I suppose, all I'm trying to indicate is that these are not little things in my view, but these sort of things do cause dissension and I think that, you know, the mayor's role in meetings is pretty important to try and get the, get the right result by not having too much friction.

Clr Friend pointed out to me:

but there's only – there was only three councillors from the town of Walgett. The others made up of Collarenebri, Rowena, Burren Junction and Carinda. So, I mean, it's – we're talking about a wide spread of councillors ...

On the question of the Lightning Ridge versus Walgett split and what the future at the present Council might bring, I also obtained the following evidence from Clr Friend:

- Q. ... I've heard a lot about the Lightning Ridge versus Walgett split. Some have described it in terms of progressives versus conservatives. What's your perspective?
- A. Well, it's a bit like a bad marriage, I think, but I think number one, we're not compatible to a large extent. It's been said before here today that one area is basically farming and rural pursuits and the other area is mining basically. I mean, it – it's not anybody's fault, but you've got different interests. We're – the rural people are long-term people, here for, you know, lifetimes. I've been here all my life - - -
- Q. Generations?
- A. - - - and I think that a lot of the people in the Lightning Ridge mining area are only there for – while there's opal and while they're making a living, and then they've gone. Now, they can make decisions about spending huge amounts of money and then just walk away from it. We're here – the rural people pay nearly 75 to 80

per cent of the rates and I was fascinated when you mentioned here that the whole of, the whole of council, you know, it was to be – the building the HACC building was to be promoted by the whole of council. Well, that really doesn't go down well with rural people, three years' drought, they're still paying their rates and paying three or four times, five times as much as the people up there, and they could see their money going into something that is of no help at all in their endeavours to make a living. And I think that that's where probably the split comes with these sorts of things. I think the money bit is a – is an enormous part of it ...

Later I returned to Clr Friend's evidence about "a bad marriage":

- Q. You mentioned, councillor, the situation between Lightning Ridge and Walgett, using those loose terms, is something like a bad marriage. What's the solution, is it separate bedrooms, or separate beds, or is it to head to the divorce court?
- A. Well, it's a difficult one and - - -
- Q. Or even murder? I don't know.
- A. Yeah. Look, I think – I, I think there's no situation that can't be dealt with. I would have some suggestions, I would perhaps like to talk to you in private on that, if that was possible at some stage.

I indicated to the Councillor that this was not appropriate, given that I was appointed to conduct a public inquiry, but I did invite him to put his thoughts into a written submission, one for which he could seek confidentiality, if he so wished. After chasing the Councillor I finally, on 17 May 2004, received his confidential letter.

Despite its confidentiality, I have determined that it is in the best interests of this Inquiry and the Walgett Shire Council community that I publish, in this report, some parts of that letter. Some parts are mentioned in section 6.2.4 and others in section 7.2 of this report.

But, when still in the witness box, Clr Friend did put the following to me:

I do want to be helpful in resolving this situation. ... I really only want to be helpful and get a result that is going to be, well, permanent or certainly better than what we've already got.

And later:

- Q. ... under the current council I presume the situation is, in fact, correctly described as six all, which leaves you with that dilemma. Does that mean that we're facing a worse situation than has been plaguing council for the last 4 years?
- A. Well, I'm inclined to - - -
- Q. In fact, that – that was the suggestion from Councillor Lane last night.
- A. Yes, I wouldn't have put it quite the way he did but I think it is certainly a worry. It's certainly a worry to me to be in the position where I would have to try and handle it and I, I don't know, it's one of those things that will be very difficult to resolve because whichever way you go about it there's going to be – or whichever way I as the mayor go about it with my casting vote, it's going to be divisive.
- Q. Yes.
- A. And I'm not looking forward to it
- Q. I've certainly been involved in local government long enough to know that when the mayor uses a casting vote it usually creates a lot of upset.

-
- A. Yeah. And I – I've always been taught that you try and retain the status quo so that that item can be brought forward again at the next meeting to perhaps be dealt with again with extra information, or whatever, you know, that's – that's why I always try to do ...

It is clear that Clr Friend, as the new Mayor, sees himself as representing the whole Shire. I note that in his recent election advertisements he even said "Finally, I'd like Lightning Ridge to have Alan Friend as a Councillor".

But, when it came to his chances of re-election as Mayor in September 2004 and as to how the newly elected Councillors would likely be voting he said, in his oral testimony to me:

- Q. How do you rate your chances of re-election in 6 months' time when you have to face your fellow councillors once more?
- A. Well, very poor because two out of two, I couldn't see three out of three helping me.
- Q. In other words, you would expect that the vote would be six all again, would it?
- A. Oh, yes.

And when I asked him about how the new Councillors might be expected to vote on general matters, he said:

- Q. So you would expect that it will still be a six all vote?
- A. I would think so, which isn't very satisfactory.
- Q. No. I mean, that's not a recipe for continued stability, is it?
- A. No.

Clr Friend continued this air of pessimism in his confidential letter to me. A relevant extract is produced in section 6.2.4 of this report.

Mr North, proffered some views to the Inquiry as to how he saw the future at the 2004 Council, and I sought more information about them when he gave oral evidence at the public hearings:

- Q. ... What of the future? You've now got a new set of councillors. As I understand it, however, you've still got in essence a six: six split.
- A. Yes.
- Q. Are we going to have more of the same ossification and lack of ability to move forward? Do you see benefits - were you – the mayor told me in his evidence that in fact in the one year that he was not mayor in the immediately past council, when Councillor Alan Friend, the new current mayor, was mayor everything actually went pretty well. Were you around at that stage?
- A. I served with the last part of the - - -
- Q. The last part of it.
- A. Yeah, about 6 months with Councillor Friend.
- Q. So what - - -
- A. It certainly was a more cohesive council.
- Q. So as soon as the mayoralty changed back to the Lightning Ridge camp - - -
- A. I'm not - - -

- Q. - - - you – it became less cohesive. Is that what you're saying?
A. There was greater problems within the council meetings generally.
- Q. Was that simply because the mayoralty was in that camp or was it because the mayoralty chains were around one particular person's neck?
A. I think it was the former from my point of view, commissioner.
- Q. Ah hmm. So, okay, coming forward to the current council, where do you see things?
A. Well, you say there's a six: six split and clearly that's - - -
- Q. Well, that's what's been put to me.
A. And clearly that was so when the elections of mayor and deputy mayor occurred, but if my reasoning is correct about philosophy I'm not in a position to make judgment on the philosophy of the six new councillors at this stage.
- Q. Ah hmm.
A. I'd like to think that perhaps we've now got a council that can look globally at the shire and into the future as well as - - -
- Q. So you're hopeful - - -
A. I am hopeful.
- Q. - - - but you're not prepared to predict?
A. I'm not able to.
- Q. You were present yesterday when Councillor David Lane dropped the surprising statement that he thought that it would all get worse.
A. That is Councillor Lane's opinion. I guess it is a democratic process and I've not been critical. While I think our council meetings and our teamwork could have been better and on occasions more constructive, that's one of the weaknesses, I believe, of the democratic process, and we have to find a way through when we work with democracy. So I think it's the individual's rights - - -
- Q. I think we – nobody would dispute that you have to find the way through. The issue for me, the very real issue for me in this public inquiry is to understand whether the means and the will and the expectation is there.
A. Well, commissioner, what I – as general manager what I can do to help that process is to be more objective about what's realistic and what's not realistic when we put business papers to council. I think - - -
- Q. And project ideas up, and so on?
A. Yes. I think it would be useful if as a council we addressed some of those broader issues.
- Q. Are you suggesting that there's been a lack of objectivity from what's come from you and your administration in the past?
A. I think what's happened is that when we came on board there were 35 major projects floating at different levels - - -
- Q. Ah hmm.
A. - - - and I guess each councillor had their own opinion about those strategic projects, and all had merit.
- Q. So we've got 12 councillors all going in different directions or - - -
A. Well, I think there'd be groups of councillors that believe there were some projects that were worthwhile and others weren't. What we did was to divide those projects between the three executive members and tried to deal with it, but I think, you know, the community, the Lightning Ridge Community Centre's an example of one

of those projects that floated with some councillors supporting it and others not, and I guess at the end of the day, which came out of yesterday's discussions, was there probably was insufficient detailed information for council to make a proper informed decision about going forward. And you will recall in the minutes and somebody said that I gave caution to council that they needed more detail to make a resolution, and it was my opinion that they needed more, and I think you alluded to that yesterday. So I think what I can do to help that process as general manager is to try to bring those to account so that what goes forward is a clearer picture about what's deficient and what's not deficient.

Q. Okay. Well - - -

A. The problem in the past is that there's been individual groups of councillors saying, "We want this report kept to council," and the evidence that we've got on some occasions may be wanting.

Q. Well, you can lead the horse to water but is it going to drink?

A. Yeah. It's all - - -

Q. That's the question I'm asking you. Is it going to drink?

A. Well, what I can say is that councillors anywhere are committed individuals wanting to do the best for their community. It's depending on what they see as their community. They all understand here that they represent the whole shire but of course, as Councillor Lane said to you yesterday they know who voted for them, so they're obviously going to have their ear to the ground for those people who voted them in.

Q. Mmm.

A. So those who were voted in from Lightning Ridge are going to listen more strongly to Lightning Ridge issues.

Later in his oral testimony we revisited the issue of how he saw the future, but he insisted he really did not know what the answer was – this part of the transcript is quoted at section 3.2 of this report.

Lastly, and as already noted, each of the newly elected Councillors have told this Inquiry, as well, in most cases, as their electors, when they were seeking election to Council at the 27 March 2004 elections, that they would carry out their tasks at Council in a constructive and co-operative way with their fellow Councillors, and for the good of the Walgett Shire Council community as a whole. Again, see section 6.2.4 on this.

6.2.3 The question of a mentor versus a fresh performance appraisal for the General Manager

Perhaps the most and immediately important criterion by which the newly elected Council's performance can be judged is by reference to what steps they take in respect of the clearly poor performance of the Council administration, led by its current General Manager, Mr Vic North.

The evidence is that the appointment of a mentor was the central and most important of the many recommendations made by the Department of Local Government in its section 430 investigation report. As indicated in section 2.5 of this report, Council has not, as yet, gone very far, if at all, towards appointing such a person.

Council's resolution of 13 February 2004 was to consult with and seek the concurrence of the Director General of the Department to "agree on the details and process for the appointment and role of a suitable mentor". The evidence is that while the then Mayor, Clr Waterford, and the General Manager, travelled to Sydney and met with the Director General on Friday, 26 March 2004, the questions on which Council hoped to get such guidance and concurrence were put on hold, pending the outcome of this Inquiry.

The question will be, therefore, how quickly and willingly will the new 2004 Council pick up the baton and run with it.

There is no evidence to suggest that Council will not follow through on such an appointment.

On the other hand, an issue for Council will be whether there might be more effective options that it might pursue, instead of proceeding with the full implementation of this recommendation.

One such option is to conduct a prompt, objective, rigorous and proper performance appraisal of the performance of Mr North as Council's General Manager. The evidence is that none has really been undertaken to date, not even on 8 December 2003 when the Councillors were aware of the report card Council, they and the General Manager are getting from the Department of Local Government under its then nearly completed section 430 investigation report. On this, the most recent of the performance appraisals undertaken to date in respect of Mr North's performance, see section 3.22 of this report.

In a late written submission to the Inquiry, the new Deputy Mayor of Council, Clr Robert Greenaway, said:

Last of all, I am sure that the days of the G.M. are numbered. There were moves about two months ago to remove the G.M. by the Walgett aligned Councillors (sic), but we did not have the numbers.

At least, and possibly only with the use of the present Mayor, Clr Friend's, casting vote, assuming he were prepared to use it, the potential now exists in the new 2004 Council to do something about the matter, and Clr Greenaway's submission gives some indication, at least on his part, of an intent to take action.

If, contrary to the outcome of the 8 December 2003 process, Mr North's performance assessment is not satisfactory, and the level of that failure is sufficient, Council has the potential to take action under Mr North's employment contract with Council. Mr North's employment could be immediately terminated, without substantial or expensive penalty or other such payment, for breach by him of the terms and conditions of the contract.

Quite apart from any possibly right to terminate for breach, Council has at least two options under the terms of the contract in this regard.

The first option arises under clause 9.1.3. This provides that the contract may be terminated:

By the Council with one month's notice in writing or by the payment of one month's pay calculated at the monetary value of the total remuneration package as specified in Schedule B, Remuneration, in lieu of notice by Council, where the employee does not meet the performance measures in Schedule A or the terms of the performance agreement referred to in subclause 5.1 or the strategic objectives and performance measures referred to in subclause 5.2.

The second option arises under clause 9.1.4. This also provides that the contract may be terminated:

By the Council without notice if the employee commits any act which would entitle an employer to summarily dismiss the employee in which case the employee shall be entitled to payment and benefits as nominated in Schedule B, Remuneration, up to and including the date of termination or dismissal.

It is possible that the more likely available option would exist under the first-mentioned clause, but in either case Council would need to seek and be guided by legal advice on the matter. In order to avoid any perceptions of possible conflict of interest on the part of a law firm with which Council and its General Manager have regularly been dealing, as well as to ensure that the best and most expert advice is given, Council may need to consider engaging an independent law firm, experienced in these matters, as well as in local government laws, in, say, Sydney.

Care must be taken in attempting to dismiss for breach of the agreement or non-performance under it, as if not handled appropriately Council may find itself on the tail end of a law suit for damages for wrongful dismissal.

If Council can in fact dismiss under clause 9.1.3, then Council would only need to pay an amount to Mr North equivalent to one month's worth of his total remuneration package (which total package presently equates to the considerable sum of \$136,422 per annum), and this would be considerably cheaper, no doubt, than the cost to Council of engaging an expert mentor to assist and advise Mr North in the next 12 months after that mentor has been appointed. No doubt, also, considerable

expenses might be incurred in travel and accommodation expenses in such a mentor travelling to Walgett on a regular basis to undertake the mentor role.

I have considerable sympathy with the views that various persons, including Mr North himself, no less, have expressed from time to time about the unnecessary incremental costs of engaging a mentor, when Council is already meeting relatively high expenses to employ what should be an expert General Manager able to stand on his or her own two feet, and without someone holding his or her hand. Those views are noted at section 2.5 of this report.

I should also state that in my view Mr North, as General Manager, is reasonably expected to have a considerable experience and expertise and qualifications of his own, to enable him to perform his role and responsibilities as general manager, and should not be entitled to say that he can rely on his senior managers or other members of Council's Executive Management Team, to assist him, under delegated responsibilities. A General Manager is not just a decorous figurehead, and particularly a General Manager of a relatively small Council in the bush. That person is expected to be a hands on and experienced team player.

Yet, time and time again, in response to questions from me, when Mr North was in the witness box at the public hearings, he appeared not to know the answer to questions about legal requirements, or even Council's own policies and procedures, and said that he would have to consult or obtain further advice on the matter.

This is simply not satisfactory.

And in my view, the extensive evidence of failures by the General Manager to ensure that Council meets its Charter obligations under the Act, and to comply with legal requirements imposed on it by the Act, and other Acts, such as the Environmental Planning and Assessment Act 1979, exposed not only in the Department's section 430 investigation report, but also by me in this Inquiry and this report, provide ample evidence of a failure by the General Manager to perform in a manner consistent with the terms of his contract of employment, and what is reasonably expected of him in terms of best management practices and procedures.

To put it bluntly, there is in my view ample evidence of incompetence and grossly unsatisfactory performance on the part of Mr North in the performance of his job as general manager. Frankly, Mr North ought to do the proper thing and immediately tender his resignation.

I say this, notwithstanding the admitted difficulties that he and his administration faced when he took over the General Manager's job in May 2001, and notwithstanding the alleged almost uphill battle that he might be stated to have faced in reversing the problems and inadequacies he inherited from the past.

The fact is that Mr North has now had some three full years, or three quarters of the term of his contract, to perform and attend to these matters. His apprenticeship or trial period, if it could be described that way, has long since ended.

In undertaking any performance appraisal of Mr North's performance under his contract of employment with Council, the Councillors will need to have due regard to what his contract says about the required procedures and performance criteria. These are set out in clause 5 and related provisions of that contract, as noted at section 1.13.14 of this report. Even though no separate performance agreement has been signed (as was required by clause 5.1) Council can proceed to conduct that appraisal, having regard to the provisions of clause 5.2 and what has already been indicated in Schedule A of the employment contract itself.

As already indicated, that Schedule already sets out key objectives that the General Manager is expected to achieve, and in turn sets out how the General Manager might be expected to achieve those objectives or accountabilities.

Recommendations

- (a) Council should, through its elected body, and as a matter of urgent priority, immediately address and deal with the question of the apparent level of poor and unsatisfactory performance of Council's administration, led by the General Manager, Mr Vic North.**
- (b) The Councillors have two options in this regard. Either they proceed immediately to appoint the mentor recommended by the Department of Local Government in its section 430 investigation report, for a period of at least 12 months, as recommended in that report, or they should immediately commence a formal and proper appraisal of Mr North's performance under his contract of employment with Council, in accordance with the terms of that contract and best and accepted practice in such matters.**
- (c) If the second option is chosen:**
 - (i) This should be done straight away, and even if the time for the carrying out of such an appraisal, as mentioned in the contract, is not due.**
 - (ii) Council should first seek and be guided by expert and independent legal advice, in particular as to whether grounds exist for early termination of Mr North's contract, for example pursuant to clause 9.1.3 of that contract.**
 - (iii) In carrying out the performance appraisal process itself, Council should first seek and be guided by advice from the LGSA (Igov), as well as seek to benchmark with other leading rural and regional councils in the State. If appropriate, advice and guidance might also be sought from the Department of Local Government.**
 - (iv) If, after carrying out such a performance appraisal, Council can reasonably determine that circumstances exist which would**

warrant Mr North's dismissal from his position as General Manager and the termination of his contract accordingly, then Council should immediately proceed to take such steps.

- (v) Council should then proceed, with all due despatch, and as soon as practicable, to appoint a new and appropriate and suitably qualified and experienced General Manager.**
 - (vi) That appointment should be one made with the participation and approval of the Director General of the Department of Local Government or his delegate.**
- (d) Whether or not Council chooses the second option, Mr North's performance (or for that matter that of any person holding the position of General Manager) should be regularly and properly appraised in accordance with the terms of his contract, and in the manner and on the basis recommended in paragraph (c) of this recommendation. That appraisal process will, in particular, require the signing of an appropriate performance agreement, as required under clause 5.1 of the contract. However, any such appraisal of the performance of Mr North need not occur whilst the process referred to in paragraph (c) of this recommendation is being undertaken.**

6.2.4 The declared aims and intent of the newly elected Councillors

In his late written submission to the Inquiry, the new Deputy Mayor of Council, Cllr Robert Greenaway, said:

I would like to give my opinion on the new elected Council. I feel that our new Councillors (sic) will work together with the re-elected ones. Most of the new and some of the old Councillors (sic) have had letters in the local papers during the election campaign, stating they would represent the whole of the Shire, work with all other Councillors (sic), and some of them would try to end the so-called split.

We have a new Mayor who was a popular Shire President some years ago.

I consider that Councillor (sic) Treweeke was one of the main causes of the diversion (sic) between Councillors (sic) in the old Council. She seemed to have a number of Councillors (sic) under her control when it came to voting. She also organized the last two Mayors (Woodcock and Waterford), and the last three G.M.s to her way of thinking and advantage. ...

As all of the previous Councillors (sic) who put up for re-election were elected, it must say that the public were happy with their performance. I also consider that if an election was held in a number of months time the result would be much the same as the new Council.

I note that the now former Cllr Treweeke did not contest the 27 March 2004 Council elections. Therefore any influence and impact, if any, that the Councillor might have had in the past is no longer an issue.

In another late written submission to this Inquiry Clr Alan Friend, the newly elected Mayor, had this to say as to his perceptions on the performance of the past Council:

After attending the full hearing in Walgett for the last two weeks and reading all the reports, 1 - 4, I can obviously see there are serious problems that have been uncovered by the investigators, and your Public Inquiry. On the positive side, I feel these matters will be dealt with strongly by the Department of L.G. so that Council understands that dealing with other people's money is serious business, and not just a game for self promotion.

The issues that emerged from the Inquiry: -

- Irresponsible expenditure on the HAC building
- Irresponsible action leading up to where we are now by:
- Illegally hiring an architect
- Illegally spending money on travel, accommodation etc on the architect
- Being so arrogant not to acknowledge the Council minute of 1998, that approved the cost of the building at a far more affordable figure
- Bringing Council into disrepute by walking out of the Council Chambers over the same matter five years later
- Bringing pressure to bear on the GM (see bonus)
- Untruthful data given to funding bodies and government in general i.e. population numbers
- Holding meetings with senior staff and other Councillors without reporting back to the rest of Council
- Entering a young, inexperienced Councillor into the Deputy Mayor's position to obtain a 7-5 voting pattern
- Council committees not reported to Council and sometimes members of that committee not informed of that particular meeting
- Important information not being relayed back to Council from meetings with Departments, from senior staff
- Staff – perhaps not chosen on merit
- Lack of skills and L.G. experience in staff
- Lack of knowledge of the 1993 L.G. Act by senior staff
- These shortcomings resulted in poor management
- Council failed to correct the situation as problems became known
- The population in the whole shire in 1999 was 8278 with 2158 under voting age (census)
- The official electoral roll contains 4229 names
- 3357 people voted in 1999
- The land values in 1999 were as follows:
- The value of the Western Division, including the mines, the town of LR plus all the rural properties is \$303,490,000 – 77% of total land value

Ratepayers are very aware as to where their rates are being spent. There is no differential rate to check the imbalance in valuations, as this would be divisive. Western Division is mostly leasehold, while the Eastern or Central Division is mostly freehold.

It seems not unreasonable to me to conclude that, having made those observations, Clr Friend, as new Mayor, should have the knowledge and will to do something about the matter whilst his term of office lasts. More pessimistic predictions from him are noted below.

When he came before me as a witness at the public hearings, I also asked Clr Friend about his views as to what the future might bring. His testimony is at section 6.2.2 of this report. As noted at that section, Clr Friend did, on my invitation, provide to me a confidential letter setting out his apparent views and suggested

solutions for the future. Most of these latter solutions centred on structural reform matters, and I have dealt with them at section 7.2 of this report.

However, in his letter, Clr Friend did proffer the following gloomy and pessimistic forecast:

- This council (now) has little chance of long term ... success
- This Mayor has little chance of settling things down. (Sept is only 4 months away)
- Some staff changes would help.

I prefer the more positive note that Clr Friend chose to publicly put to me, when in the witness box (see section 6.2.2 above), and I am fortified in this by the very positive and determined outlook of the newly elected Councillors, considered at some length below. I firmly believe that it is for Clr Friend, as Mayor and leader of the elected body, to harness such views and will, and make it work for the benefit of the Walgett Shire Council and its community. I believe that Clr Friend can and will do this. He has done it in the past (see the evidence of former Mayor, Peter Waterford, which I next examine). And I say this, despite the all too close looming date of September 2004. Of course, if a very recent push for an extension of the term of Mayors currently in office gets up, Clr Friend's position will be considerably enhanced in my view.

The evidence of the former Mayor, Clr Peter Waterford, as to what might be expected to happen in the future was as follows:

Q. You also, I think, in the same [radio] interview spoke about the views of people in the shire, about councillors needing to work together, and I guess that is a similar point to what you were making to me just a moment ago. Is there anything further that you want to add on that?

A. No, I still believe that the people of this shire - and I even said halfway through my term, my second term that perhaps I should resign because it seems to me that the only time we get an even spread of councillors is when we haven't got a mayor from Lightning Ridge. That seems to go - the council seems to run very smoothly once the balance of power seems to be on the so-called Walgett side.

Q. Ah hmm.

A. And I brought this up to two or three councillors that I spoke to. I said, "Is this the way to go?" and they said, "No, definitely not, you're in, so stay," and that's exactly what happened, I stayed with it but - - -

Q. Mmm.

A. - - - I did feel that if that was the way to go, then that was probably the best way for Walgett Shire to run.

Q. So the most recent time, at least in the life of the immediately past council elected in 1999 when that occurred was the one year where Councillor Friend was the mayor. Is that right?

A. Indeed.

Q. And, what, that was a fairly stable year, was it?

A. No rescission motions, no anything, very stable.

Q. Even though he was elected out of the hat?

A. Yeah, that's a democratic process.

- Q. Mmm. Does that send us a message as to what's going to happen in the next 6 months?
 A. It could. I would be - - - a bold man indeed to say what was going to happen.

Clr David Lane, one of the Councillors re-elected at the 27 March 2004 elections, painted a much blacker and pessimistic picture. Clr Lane was first elected to Council in 1995 and has served continuously since then. He is in the Lightning Ridge faction of Councillors.

Clr Lane provided a written submission to the Inquiry. On this question he submitted the following views:

... The question that I suppose you must ask yourself is whether Walgett Shire Council can continue to perform its statutory functions into the future considering the turmoil over the last few years. If you asked me that question I honestly could not answer it. ...

... I believe that if either one or the other [group of voters – i.e. Lightning Ridge versus Walgett] had a clear majority in numbers ... then we would never have had the damaging split that we appear to have had, and after the last election I'm afraid still have. What do you do about it? Well now there's the question. As I see it there are three options:

One: nothing leave it alone and let democracy work it out, this may take time but as older councillors retire and new councillors who accept the world and its realities are elected it will eventually sort itself out. The downside to this is that it may take some time and council will continue to be unsettled for this period.

Two: dismiss the current twelve councillors and appoint an administrator for a period and then hold new elections. This would have some appeal to the minister but election outcomes would I'm sure be similar to the last three i.e. an even or close to even split. The reduction to nine councillors would help but only marginally, as well it would appear to be unjust to dismiss six new councillors who have only just been elected.

Three: dismiss the current council and break the shire up ... [He proceeded to expound the perceived drawbacks of this – this part of his submission is quoted at section 7.2 of this report.]

Clr Lane's oral testimony (I should point out that he was at times a somewhat hostile and combative witness) was as follows:

- Q. Now, the composition of the current council elected on 27 March - - -
 A. Yes.

- Q. - - - how do you see that in terms of potential factional splits?
 A. I – I believe it's less likely to work than the last council.

- Q. And on what basis do you form that view?
 A. My opinion, my personal opinion.

- Q. But do you just form opinions by clutching ideas out of the air or do you do them on the basis of thinking about it on a reasoned basis?
 A. No, I just pick it out of a box. No, I actually think about it and I've come to the conclusion that I believe - - -

- Q. But there must be some reasons which caused you to form that belief, that's what I'm asking.
 A. The make-up of the council.

- Q. Why do you think that it's not going to work as well?
A. The make-up of the council.
- Q. Is that because of individuals?
A. Individuals, yes.
- Q. So as far as you're concerned the continuation of this council, if it were to be allowed to continue, would be a recipe for disaster and dysfunctionality.
A. As I said to you in my submission, if democracy is a recipe for disaster then yes, you're probably dead right. If you end up with a state government that doesn't have control of the upper house is that also a recipe for disaster?
- Q. Are you suggesting to me that you would support a recommendation if I were so minded that the council be dismissed?
A. I – no, I'm not sure that I would support it or not.
- Q. But isn't there a logical connection between such a recommendation and the proposition that you've put to me that the current council is not going to work and that it will be dysfunctional?
A. Again, I will put it to you it is democracy in action dysfunctionality.
- Q. So what's the result of the dysfunctionality?
A. There's certain issues that we debate strongly. 90 per cent of the stuff that comes before Walgett Shire Council I believe is voted on with very little debate and quite often it's unanimous, but 10 per cent of the - - -
- Q. But you are saying to me that there will be dysfunctionality at least on some issues, aren't you?
A. That's exactly right but you show me a council or a government in this country - - -
- Q. So what is going to be the result - - -
A. - - - that doesn't have some debate on some issues.
- Q. What is going to be the result of the dysfunctionality on those issues – major issues presumably such as where resources go, do they go to Lightning Ridge or do they go to Walgett?
A. We will have to wait and see. I can't – I can't crystal ball that.
- Q. But if it's dysfunctional do you not equally concede that that is going to be dislocating and at the cost of the proper functioning of this council for the benefit of the residents and ratepayers? There's a logical inconsistency and a non sequitur in what you're putting to me, councillor, is there not?
A. No. What you're trying to put to me is that because people have a difference of opinion which they're not entitled to have that the council doesn't work.
- Q. But you've just agreed with me that at least on some issues there will be dysfunctionality.
A. There will be debate on some issues, definitely and there will be cases where that is dysfunctional but at what point do you dismiss elected representatives that have only just been elected?
- Q. Well, at what point would you suggest that the dysfunctionality gets to such a level that - - -
A. Fortunately – fortunately that is not my responsibility, that's yours to make that determination.

-
- Q. But I'm looking for your views too because I need to know what are the views of the councillors as to the likelihood of this council being able to – to serve the interests of the ratepayers and community. Them's my terms of reference.
- A. I believe that on 90 per cent of the issues there would be agreement and on 10 per cent of the issues, 10 to 15 per cent of the issues there'll be deadly disagreement and in the current council I believe that it will come down to a six all vote at all times and depending on whose name comes out of the hat for the mayor he will have the balance of power.
- Q. So is that going to mean that the mayor is going to have to use a casting vote on too many occasions? I mean, you've already indicated in your earlier evidence that you think that a casting vote should be used sparingly, that's my word, not yours.
- A. And I would agree with that but do you call 10 to 15 per cent of the cases sparingly?
- Q. Well, do you, what's your view?
- A. Again I - - -
- Q. I mean, if the vote is split then nothing gets done, doesn't it?
- A. That's exactly – that's exactly what's happened.
- Q. Is that in the interests of the ratepayers?
- A. No, but the ratepayers and the voters are the ones that elect the council.
- Q. But the ratepayers and the voters have to wait for 4 years before they can do anything about it?
- A. Well, maybe not.
- Q. Is that in their interests?
- A. The ratepayers have consistently elected a similar council over the last three elections, have they not?
- Q. That seems to be the case, yes.
- A. Right, so at least as far as the ratepayers are concerned and the voters they have not changed their mind on how it should go. Again, it's in your bailiwick as to whether you think that it's totally dysfunctional. I wouldn't like to – to make a statement on it.

Clr Lane's views and evidence, however, appear to be largely out of step with all other Councillors who gave oral evidence to me at the public hearings. And, in any event, at the conclusion of his testimony even Clr Lane told me:

All I can say to you, commissioner, is that if you decide not to recommend the dismissal of the council I will continue to try my best to make it work. Whether I can make it work that I can't say.

I specifically sought the views of the newly elected Councillors. The first was Clr Ian Woodcock. I note that Clr Woodcock is not entirely new to local government. He in fact served as a Councillor at the Walgett Shire Council for some 12 years, from 1987 to 1999. In the 1995 to 1999 Council he served as the Council Mayor. He chose not to stand at the 1999 elections.

I asked him why he re-entered local government politics:

- Q. So what caused you to come back to the fray?

A. A number of people actually asked if I would consider going back onto council and I – at the time I said that I was too busy and the reason that I gave it away, the last 4 years I was on council from '95 to '99 I was the position as mayor and I found that it was actually very very – there was a lot more work involved than I actually had time for and in those 4 years it just took too much out of me and out of my work, so I just said I'd have to have a spell and put a bit more time into my job as being the secretary-manager of the club, so I did, I stood down and this time when I said I would stand but I wouldn't take any position other than just being a councillor to represent, you know, the Walgett Shire.

...

Q. So your reasons for coming back to council are not connected in any way with your feelings or views or perhaps those people that you know in the community as to what was happening at the council from '99 through to 2004, the beginning of 2004?

A. I believe that there was a division and I think it was commonly known that there was a division and that quite oftentimes there were votes and it was six all and there was always that little bit of uneasiness about it. I might say that in the 4 years that I was the mayor that I believe that we always were able to talk and to work out a problem and I think the only time in that time that I had to use the casting vote was when we had – we wished to fly the Aboriginal flag out the front of the council chambers.

Q. Ah hmm.

A. I had to use my casting vote to actually say yes, we would fly the flag.

Q. I see.

A. But other than that we were able to always come to an agreement and I mean, you mightn't win all the time but there was never a lot of animosity. ... I still say and it was always my opinion and still is that I think that when you get elected to be a member of council you're there to represent the whole of the Walgett Shire and that's what it's all about.

...

Q. So what's your forecast for the future, is there a future of people being able to bury the hatchet and work together and move forward or - - -

A. That was one of the reasons that I stood for council because I believe that we could and with people being able to just sit and talk about situations depending on what they were, I'm sure that they could come to a consensus without having to have those split votes all the time and I think it's only a matter of being able to probably control people and look at it and say, "Hey, you know, look at all different angles."

Q. So is that a product of who's the mayor and/or the deputy mayor at the time?

A. No, I don't think that matters at all. I think that all councillors have got to think along those lines and if you can get them - - -

Q. Self-control you mean.

A. Yes.

Q. Mmm.

A. I mean, they're elected people, they're there to do a job.

Q. Well, that perhaps in one way is your view as to what should be happening.

A. Mmm.

Q. What's your forecast as to - knowing some of the players as I presume you do - -

-

A. Yes.

Q. - - - as to whether that's likely to happen or probable or - - -

A. I believe that it could - the reason that I stood for council was because I believe that it could happen.

Q. Yes.

A. And I mean, that was the reason that I stood hoping that, you know, we could – sanity would prevail and that people would be able to talk through a situation and come to conclusions that were beneficial to the Walgett Shire.

Q. Do you have any particular other cures or remedies in mind as to how all that might be secured?

A. At this stage, no, because I've only just been elected to council. ... but I – I stood for council with the view in mind that yes, I believe that we could all work together for the shire. ... from what I've said before that with a little bit of – using a bit of common sense and being able to sit down and talk about things I'm sure, going on what used to happen in previous years, about 12 years or probably going back 16 years ago when I first stood for council, I believe that things could work out all right because the shire is the shire and - - -

Q. Yes. As a previous mayor, particularly one who held the office for all the 4 years of that particular council, do you feel that you're going to be in a position to exercise greater influence to secure this sort of result than an ordinary councillor?

A. Because I suppose the 4 years that I was there as mayor and some of the – you know, the positions I hold in our community out there other than just being the secretary-manager but also being called upon to do many many other work on other committees and, you know, other work within the community, I believe that I could be beneficial to the council in being able to have them talk through matters so that we could come to a conclusion without having a - being tied up about things.

Before he left the witness stand, I asked Clr Woodcock if he wished to add anything:

... I feel that, you know, in the years that I've known most of the people, whether on council – that have been elected to council I've known them or known of them probably in the 30 years or more, 37 years that I've lived out here in this western area and I believe that they're sensible thinking people and I'm quite sure that with a little bit of direction that they can actually, you know, work together well and look after the Walgett Shire.

The next newly elected Councillor to take the stand was Clr Lynette Carney, who was the editor and proprietor of one of the two Lightning Ridge newspapers, the Black Opal Advocate. She resides in Lightning Ridge. She told me a little about what her election platform was:

A. Social equality, positive publicity for the shire, sustainable development, open and fair decisions, more ratepayer consultation, councillor training, and equitable funding throughout the shire.

Q. Right. Perhaps you could just tell me a little more as to why you said there was a need for positive publicity for the shire?

A. I think with everything that has been going on with the inquiries and the – there certainly has been adverse publicity.

Q. So you're talking in terms of the involvement of the Department of Local Government starting the beginning of last year and throughout the process leading up to and presumably including this public inquiry.

- A. Certainly. I think it was destabilising for the shire. It sort of – it sort of not only probably made candidates a little reluctant ...

She went on to indicate that she accepted the findings of the section 430 investigation report. The questioning continued:

- Q. So when you talk about positive publicity how would you achieve that positive publicity?
- A. I guess – I guess what is necessary and the whole basis and listening to a lot of the evidence it comes back to whether we are going to be a cohesive council, whether we're going to work together, whether we're going to get the message out that we're here for our ratepayers and we're not going to quibble over the petty things that seem to have eventuated, particularly in the last 3 years.

We spoke about the mentor idea and she told me:

I think that there'd have to be a lot of benefit from it, yes.

The evidence continued:

- Q. Right. So assuming the mentor is around - and as I said, the mentor is principally for the benefit of the administration rather than the councillors – how do you see the relationships between the councillors panning out in the life of the current council, say in the next 12 months?
- A. I have asked myself that question quite a bit and wondered how I was going to answer it to you. ... Well, I think that everyone that stood for council, particularly the six candidates that were new candidates, will absolutely do their utmost because for me it was a difficult decision to actually stand given the circumstances but if we've got the shire at heart, if we've got every ratepayer at heart, then it can work.

As to working with her fellow Councillors, she said:

I've got to work with them. ... I wouldn't have put myself up if I didn't want to work with them.

Clr Carney also tendered to me a copy of various materials, showing the views she had put to the electors before the election. These included a letter to the editor of the *Ridge News* published on 11 March 2004. In it she stated:

During my six year involvement with *The Black Opal Advocate* I witnessed and reported this deterioration of relationships which was persistently eroding and inhibiting the smooth function of council.

Many of our elected representatives have 'graced' the chamber for years and between them have clocked up a wealth of knowledge, which if channelled correctly would have made Walgett Shire the "true jewel of the west".

The disruptive and despicable conduct of a minority of councillors often left me wondering if they had lost sight of their true charter.

Throughout the shire's towns, villages and opal fields the ratepaying residents have a diverse range of 'needs'. The growth in some areas has seen this need vary.

It is impossible to categorise that need generally and it appears the specific and expanding needs of some causes consternation to others.

Recognition of those needs and the ability to weigh up and distribute in an equitable manner is the true challenge faced by councillors. If a spirit of goodwill and fair-mindedness does not prevail then the fate of Walgett Shire is inevitable.

There is a high expectation of councillors.

The next witness was newly elected Councillor Danielle Osborne, a real estate agent and property valuer, and also from Lightning Ridge:

I've had quite a long association with Lightning Ridge and Walgett. I feel that I can represent both centres to some extent. ...

Q. ... Did you actually stand on any particular published written platform or election material?

A. ... basically on unity, I felt that there should be unity in the council.

Q. And what were you referring to in that regard?

A. Well, probably unity amongst councillors more than anything.

Q. Your perception as a person outside council was that there wasn't unity.

A. That was my perception, yes.

Q. How – how are you going to work as a councillor now on council towards unity?

A. Well, I guess I was elected by a cross-section of the community, miners, graziers, probably businesspeople and ratepayers in Lightning Ridge so I feel that, you know, I can represent all those communities and obviously I won't be taking one side, I'll try and be fair-minded and represent all the ratepayers.

Q. So you don't see yourself as necessarily voting with the Lightning Ridge councillors.

A. Not necessarily.

She went on to tell me that:

Well, I heard someone referring to the councillors as principally mining or in the mining industry. I think that's a fallacy really. I'm in real estate, I don't really have much to do with mining. I'm in Mines Rescue unit. If you look at some of our other councillors they're not involved in mining. We're businesspeople ... I've lived in the area for 36 years.

She wrapped up her oral testimony with the following:

A. Well, the only reason I stood for council was I thought that perhaps I could make a difference and that I had some input.

Q. Was that wishful thinking or some – some expectation that your contacts and so on would allow you to actually put that into place?

A. Yes. It's not wishful thinking. If it was wishful thinking I wouldn't stand, I wouldn't stand for council.

Q. Mmm.

A. I did feel that we had a chance to make something happen.

Q. And did you stand – was it your idea to stand or did somebody approach you to stand?

A. I had been asked by, yeah, quite a few people, locals, if I was willing to stand.

The next new Councillor in the witness stand was Clr Laurence Walford. He resides in Lightning Ridge. I asked him why he stood for Council:

Another voice for our indigenous people and both – I've got a great concern with Lightning Ridge and Walgett as a community.

Apart from this he said he stood on no particular election platform. He told me that his voice for the indigenous people would continue the work of former Councillor Sam Jeffries, who did not seek re-election at the 27 March 2004 elections.

Clr Walford went on to give me some examples of where he saw room for improvement in services and facilities provided by the Council in Lightning Ridge. One example he gave was in relation to having grass on the existing Lightning Ridge sports ground, but when questioned further about this, he conceded that the problem was not with Council but with the bore water supply.

My questioning of him continued:

Q. From your perspective - and again I ask – welcome your views on behalf of your community – what is your take on the Lightning Ridge versus Walgett division or split amongst people and councillors in this shire?

A. I think it's very – very very disappointing that it is happening, you know, and it is happening, we've got to be truthful with that. I'm originally from Walgett and I just moved to Lightning Ridge about – I've been in Lightning Ridge now for 7 to 8 years and I feel, you know, we've – we put our efforts into the election and I think we have – we can make it work providing all the other councillors sit down and – and maybe take a step back and just think about, you know.

Q. Is this people from both sides of the fence?

A. Both sides, sorry, yes.

...

Q. So how do you – what's your forecast for the future assuming that this inquiry is not sitting and ignoring any recommendations that I may or may not make? How do you see the new council performing and getting on?

A. I think, you know, with the six new ones there I'm – my own feeling, I think it will work.

Q. What can you personally contribute to that?

A. My input as a councillor within our community on different issues that are brought before us by our ratepayers.

The next new Councillor was Clr Darryl Cooper. He is a former Council employee and manager, who was made redundant in December 2001, after a reorganisation. Unlike the previous witnesses, Clr Cooper is from Walgett.

He told me:

Hopefully with the new council we can work towards becoming one. ... My concerns were the social problems not only in Walgett but in Lightning Ridge and the problems within council. ... I've had quite a few of the current staff members approach me and staff morale is very very low at the moment, I believe.

He told me of his hopes to be able to address these concerns, particularly at the meeting that Councillors were due to hold at the end of that very week to discuss a new organisation structure for Council:

It's always been a problem getting quality staff to Walgett, engineers, health and building surveyors. ... It's always very difficult out here and I think probably because of the social problems we have, the isolation but hopefully on Friday when we sit down and discuss the new structure we can come up with some ideas to get some quality staff in place.

My questioning of Clr Cooper continued:

Q. ... Well, moving beyond the staffing situation what about the question of the apparent split between councillors up till 2004, is that going to continue? If not, how is it not or why is it not going to continue at this council?

A. I can't say that it won't continue but I hope it doesn't. That was one reason why I stood for council.

Q. Well, hope is one thing but do you have any particular expectations as to how that hope can be fulfilled, what's going to be your line of attack to ensure that the hope is realised?

A. I think with the new councillors that we've got on board I think we can sit down and work as a whole for the betterment of the shire.

Q. You know most of them, I presume, if not all of them.

A. Sorry?

Q. You know most of them.

A. I do.

Q. Yes. So is your perception that the new group, particularly looking at the six new ones including yourself of course, that there's going to be open-mindedness and so on?

A. I think so, I believe we do.

Q. Now, one of the difficulties that might be said to face the fulfilment of that hope is that most of the new councillors, in fact all but one – sorry, two, all four of new councillors come on what might potentially be viewed as the Lightning Ridge side of things and only two from the Walgett side of things. Is that going to mean that you're up against too many of the old intransigents from Walgett and therefore there might be problems in changing their old ways?

A. I don't believe so, I – as I've stated, I know the – I know two of the Lightning Ridge councillors - newly elected councillors very well and I believe that we can work.

Q. You're of course a Walgett side, aren't you?

A. I am.

Q. Yes, so your expectation is that people should be able to work together and overcome any difficulties of the past.

A. I believe it can happen, mind you, it will take time.

Q. How long?

A. I would think probably 6 to 12 months.

Clr Cooper also tendered to the Inquiry a copy of an election advertisement he placed in the papers:

I have decided to stand as a candidate for the upcoming local government election because I am disappointed at the findings of the report on the section 430 investigations into the Walgett Shire Council and all the negative publicity the Council has received in recent times. Also I am concerned about the constant squabbling between the Walgett and Lightning Ridge Councillors.

I have had 13 years experience in Local Government as an engineering office manager at Walgett Shire Council before taking up the position of Secretary/Manager at the Walgett District Sporting Club in December 2001.

I believe I have the experience and commitment to help promote a more united and progressive council for the benefit of all the communities within the shire.

Both senior management and incoming councillors must learn from the recent investigation and subsequent report and improve the internal running of council and promote morale between all staff, councillors and the community and work as a team for the benefit of the whole shire including the smaller villages.

Clr Graham Slack-Smith, from Burren Junction, also took the stand at the public hearings. His evidence was less explicit but, on the other hand, there is no evidence which would suggest that he does not hold the same views and have the same intentions as his fellow newly elected Councillors.

A lot probably hangs on the question whether perceptions, if not actualities, remain as to whether or not the communities of Lightning Ridge, on the one hand, versus Walgett town, on the other, do and continue to receive their fair and not uneven relative share of Council's total expenditures on facilities and services throughout the Shire. The evidence is clearly that, contrary to what some may appear to believe, no one community is in fact unreasonably gaining at the expense of the other (see section 3.5 of this report), and it will be up to the new Councillors, assisted by the Council administration, to ensure that the community as a whole understands and believes this.

If the petty rivalries and jealousies of the two communities can be overcome, with the new Council, through its elected body in particular, showing appropriate leadership on the matter, then most if not all of the perceived problems of the past, in terms of the discharge of many Charter obligations, can reasonably be expected to be overcome. In the words of Clr Carney's letter to the editor, the expectations are indeed high.

When deliberately asked the carefully worded question as to which part of the Shire they represented, to my satisfaction and, yes, surprise, each Councillor who was asked this question correctly answered, at least in the first place, "the whole of the Shire", and only then went on to admit to the fact that most of their votes probably came from electors in a particular part of the Shire.

The fact is that, as a matter of law, each Councillor does represent the interests of residents and ratepayers from the Shire as a whole, and this is so even if Council is divided into wards, which Walgett Shire Council is not. This is provided for in section 232 (2) dot point 1. This situation is constantly reiterated and advised in booklets issued by both the Department of Local Government and the LGSA at the time of and for the purposes of each general Council election.

The latest such booklet issued by the Department is entitled "So you're thinking of becoming a Local Government Councillor ...". At pp. 9 – 12 of that booklet the following advice is given for the benefit of persons who aspire to be and are Councillors:

The councillors' role is to direct and control the council's affairs in line with the requirements of the Local Government Act.

Council should determine a broad vision for its community based on an understanding of its demographic, social and cultural characteristics, the needs of the various parts of the community, and in recognition of the range of service, environmental, public health and infrastructure requirements to meet these needs. ...

[Councillors] should represent at all times the needs of the community as a whole and not merely the interests of special groups who may have been active in electing them.

Councillors can assist individual members of the community by satisfying themselves that council's policies are being implemented correctly. If a change in policy appears desirable this should be addressed by the council as a whole. It is not appropriate for a councillor to informally attempt to arrange for a council policy to be ignored or acted upon differently, following representations from a resident or ratepayer. ...

Sometimes people stand at local government elections because they have a special interest in one or two local issues. A word of caution is necessary in this respect. Councillors have a responsibility to represent the broad needs and wishes of the whole community, not to be interested in only limited issues or to represent only specific interest groups, no matter how valid the demands of such groups may be.

The commitment required to be an effective councillor is great and the community expects every councillor to provide representation in relation to all council activities and responsibilities. Councillors therefore need to become familiar with the whole council area and the important issues affecting the community.

I have carefully considered all these views of the newly elected Councillors, and in my view they should be accorded considerable weight in any determination as to whether the new 2004 Council can be expected to fulfil its Charter obligations and so forth, and work constructively, and without major discord, for the benefit of the community and ratepayers of the Walgett Shire.

All those Councillors appeared to me to be expressing a clear determination to overcome the difficulties of the past. They all appeared to me to be quite genuine on that account. I accept their intentions will, so far as is possible, be turned into reality, and notwithstanding the fact that at the new Council, as was the case for the past Council, it might be expected that on some matters at least there may be a six all split when a vote is taken. The point is that the expressed aims and intentions of the new Councillors should, all things being equal, result in most cases in such a split vote infrequently occurring at all in the first place. I believe that the people of Walgett Shire can reasonably have confidence that the new Councillors will deliver on their promises. There is no probative and reliable evidence to suggest, at this time, otherwise.

The new Councillors should be given a chance to prove that this confidence is well placed.

6.3 General conclusions regarding the performance of the new 2004 Council

The performance of the new Councillors elected on 27 March 2004 stands to be judged according to their own conduct and record. No matter how badly one might think their predecessor Council had performed, the 2004 Council cannot be held accountable and responsible for the past wrongs of that Council.

The new 2004 Council is made up of no less than six Councillors, or 50% of the new Council, who have not served on the 1999-2004 Council. This is a very considerable injection of fresh blood, ideas and aims, and may well, if the views that the newly elected Councillors put to me when giving oral testimony at this Inquiry are correct and put into practice, result in a quite different outcome for this new Council.

Ultimately the performance of the new Councillors on governance and other relevant matters will be very much dependent on the quality of the advice and administrative support they receive from Council's General Manager and its administration. The new Council, through its elected body, must promptly take steps to ensure that it is protected by and has the benefit of adequate and appropriate advice and support.

There are really, in my considered view, only two viable and appropriate options for this new 2004 Council. And it should be a matter for the new 2004 Council to decide which it is to follow and to proceed to duly adopt and implement it as soon as practicable. I have made recommendations accordingly.

It must either – option one – accept and proceed with the immediate appointment of a mentor to assist Mr North discharge his duties as General Manager, to assist the staff meet required statutory and best practice management and procedures, and indirectly thereby to assist the Councillors discharge their roles and responsibilities.

Or – option two – Council must proceed, with dispatch, to conduct a proper and rigorous further review of Mr North's performance, not waiting until when the next six-monthly performance appraisal might, in the normal course, be due. If that appraisal shows that Mr North has clearly failed, in a substantial and widespread way, as the evidence before this Inquiry and in the section 430 investigation would appear to indicate, then Council should, after seeking and relying on appropriate and independent legal advice, if necessary from a firm of lawyers in Sydney who are not Council's normal legal advisers, consider whether grounds exist for the early termination of Mr North's employment contract for non-performance and breach. Again, in my view, the evidence would appear to suggest that this might be so.

That will then require the Council to proceed, as quickly as possible, to appoint a new General Manager to replace Mr North.

In the meantime, I am not, at least on the evidence before me, sufficiently satisfied with the indications as to the performance of either of the other two senior managers at Council to be comfortable with suggesting that either of them be considered for the post of Acting General Manager, so I would suggest that, if Council chooses to

take option two as the preferred choice, consideration be given to the appointment of an outsider as Acting General Manager, after due consultation with, and with the concurrence of, the Director General of the Department of Local Government.

If Council is to consider option one, it will need to take into consideration the incremental expense to Council in engaging and paying for the services of a mentor, in addition to paying the not inconsiderable salary and emoluments of Mr North as General Manager. Those who made a point about incurring possible additional and unwarranted expense in appointing a mentor, and Mr North was at least at one time included amongst them, in my view have a valid point. Indeed, this is one of the reasons why I have put forward option two as another viable option for consideration by the Council.

If option one is followed, then that process must be allowed to work its way through. The recommendation (number 5 in the Department of Local Government's section 430 report) for the appointment of a mentor was for that mentor to be in place for "at least 12 months".

And in her evidence to this Inquiry, at the public hearings, Mrs Lyn Brown, one of the Department's Departmental Representatives who carried out that investigation, and who was authorised to speak on behalf of the Director General and the Department at the Inquiry, gave the following evidence and advice (this is from a transcript made by my assistant officer, Ms Weston):

RB: ... would you say that the concept of appointing and following the advice of a mentor is the most important recommendation of you and your fellow Departmental Representatives, in terms of turning Council around from its poor performance rating to date?

LB: It was certainly a key recommendation, yes.

RB: Does the Department have a view as to how long it might take for a mentor to bring Council up to scratch on its obligations and legal requirements and so on?

LB: No, No I don't

RB: But the twelve months....

LB: The twelve months would seem a way of being able to assess how that would go...

RB: Right, but it might take longer, it might take less

LB: It may.

That being the view of the Department, and no matter what one might think about the appropriateness or practicality of the mentor concept, then it must at least be taken into account in any decision as to the fate of the new 2004 Council.

I have given careful consideration as to whether I might properly recommend that a decision as to that fate might be delayed until and automatically taken once the 12 month period recommended by the Department has expired. In my considered opinion, this is not legally possible.

It would require parameters and performance criteria to be set, against which Council's progress and performance in the next 12 months might be assessed. Then there is the question as to who might make that assessment and appraisal. Once my report is presented to the Minister my jurisdiction and powers are over. If not myself, as the Inquiry Commissioner, then who else?

The problem in this regard, and the answer, lie in the words of section 255 of the Act. Subsection (1) of that section provides that the Governor may only declare all civic offices in relation to Council vacant (i.e. sack the Councillors) if a public inquiry under section 740 has been held, *and after considering the results of the inquiry*, the Minister for Local Government has recommended that this occur [emphasis added].

In other words, either this present Inquiry would have to remain on foot, and re-activate its processes, with the fresh calling of submissions and the holding of fresh and additional public hearings, at the end of the 12 month "trial period", or a new inquiry would need to occur and a new Commissioner appointed for the purpose. The former option does not appear to be practical, even if it could legally be entertained as an option.

I have therefore concluded that I am unable, on the evidence before me at this Inquiry, reasonably to make a recommendation that the 2004 Councillors currently holding office be removed from their positions.

Much in the future will depend on the will of those persons to live up to their promises. Let there be no illusions. The Councillors are on probation and trial here. They have had ample warning that if their performance is wanting they can expect to be dealt with and have to account either to their electors and/or to the Minister for Local Government.

On the other hand, if the Minister can, even now, reasonably form the view, on the evidence I have presented to him in this report of the deliberations and outcome of my Public Inquiry, that the newly elected Councillors, together with the six Councillors who have continued in office from the 1999-2004 Council, cannot be believed and cannot be expected to discharge their Charter and other obligations from here on, then it might be possible for the Minister to conclude that there is no other course but to recommend to the Governor that a declaration be made that all civic offices in relation to the Walgett Shire Council be declared vacant.

It is my view that the evidence does not reasonably allow such a conclusion to be drawn.

At least, that is clearly so in respect of the six newly elected Councillors. It may be another matter in respect of the six continuing Councillors. Two of those are Lightning Ridge Councillors; four are Walgett faction Councillors. The evidence and past record of the Lightning Ridge Councillors is such that questions may be asked as to whether they will perform properly and discharge their duties and obligations in the future. To a lesser extent this may be so in respect of the four Walgett Councillors.

My own view is that even for the continuing Councillors they should be allowed to show their mettle, and that there is no real or cogent evidence that they will not come up to requirements.

As to the newly elected Councillors, my own view is that there is patently insufficient evidence from which it might reasonably be expected that they can be expected to fail to discharge their obligations and responsibilities. They simply have no proven past track record on which such a conclusion might be based.

At section 3.23 of this report I have quoted from a submission to this Inquiry views expressed by a number of ratepayers that they have voted in new Councillors who should be allowed “the opportunity to validate the confidence that the community has placed in them”.

But, as I have indicated, it is ultimately a matter for the Minister to consider all the evidence I have presented in this report and to form his own views on the matter. It is for him to decide whether or not to make a recommendation under section 255.

PART 7

7. LOCAL GOVERNMENT REFORM ISSUES

7.1 General structural reform matters

Along with all Councils in the State, Walgett Shire Council was asked by the Minister for Local Government in July 2003 to respond to him by the end of August with its proposals for the structural reform of local government in the area. Council duly proceeded to consider the matter, and this clearly sparked a deal of community debate, which continued at least through to the March 2004 Council elections.

A number of persons providing submissions to this Inquiry raised the question of structural reform, including possible amalgamations and/or division of the Shire, as possible solutions in respect of the perceived problems of Walgett Shire.

Council met on 11 August 2003 to consider how it would go about responding to the Minister. A report from the staff was presented to the Councillors for that purpose, and it is reproduced at p. 46 ff of the minutes of that meeting. Council resolved to conduct a series of public meetings before finalising its response.

Council held a further special meeting on 29 August 2003 to deal with a number of matters, which included not only the interim report from the Department of Local Government in respect of their preliminary enquiries conducted in May, but also the structural reform question.

An extensive report from the staff on this latter issue is set out in the minutes of that meeting, at p. 22 ff. It contains a full report on the results of the community consultation meetings. The views expressed at those meetings differed from place to place.

At Burren Junction the prevailing view was that Council should stand alone, but undertake resource sharing with other Shires. At Collarenebri, there was a similar view, but they added that if they were forced to amalgamate that there should be an amalgamation with Brewarrina Shire Council, or failing that Coonamble Shire Council, or even both. However, a motion that those present really did not want to see Walgett Shire split up was also carried. It was made clear that if there was to be an amalgamation, it should not be with the Moree Plains Shire Council.

At Lightning Ridge a proposal that the area west of the Barwon River, including Lightning Ridge township, should amalgamate with Brewarrina was rejected. It was agreed that the first priority should be for the Shire to remain as is, but resource sharing was endorsed. The opportunity was also taken to pass the following resolution:

Whatever the ultimate result of any local government restructure, including the maintenance of present boundaries, that Lightning Ridge has an equitable share of resources in accordance with population and needs.

At Carinda the view was that Council should stand alone, though the residents present wished Council to establish a presence in that village. But it was also agreed that if there was to be an amalgamation then areas west of the Macquarie River, up to the Barwon, should join the Warren Shire, and that the area east of the Macquarie and south of the Castlereagh Rivers should join the Coonamble Shire. An alternative proposition of a “super shire” encompassing all of the Walgett, Coonamble and Warren Shires, was also endorsed.

The view of Walgett was that Council should stand alone. Resource sharing was not supported.

7.2 Amalgamation issues

I have noted in the last section of this report the views that were apparently expressed at community meetings on amalgamation.

In his written submissions Clr Lane proffered views as to what should happen to Walgett Shire Council, as a result of this Inquiry. He suggested that there were three possible options or outcomes, and I have quoted most of these at section 6.2.4 of this report. As noted in that section, the third option was to “dismiss the current Council and break the Shire up”. On this he added:

This would certainly fulfil current state government policy. I doubt if areas like Burren Junction going to Narrabri or Carinda being a part of Coonamble and Rowena being a part of Moree would meet any great opposition, and there certainly is an argument for the county of Finch being a part of a western area shire. From the town of Walgett’s point of view it would be disastrous economically and administratively, with a serious loss of local employment and services, though this option does eliminate the so-called Walgett versus Lightning Ridge division completely and permanently.

The current Mayor, Clr Alan Friend, provided to me very late in the proceedings of this Inquiry a confidential letter in which he set out some views about the causes of the problems that Walgett Shire Council has been facing, particularly in the time of the 1999-2004 Council. He also made some suggestions as to how the matter might be solved.

He appeared to think that much of the problems had been created by the inappropriate joining to the then Walgett Shire of parts of what were then the Unincorporated Area, particularly the opal mining areas in and around Lightning Ridge. He said:

I can’t remember the reasons that bought about the “marriage” – probably “visions of grandeur”, but in hindsight a marriage of convenience destined to fail. The township of L.R. was non existent (1957) but there were miners coming in, and some order had to be kept. There was very little prospect of any rate income from the area, never the less the Central Division pushed ahead and a town was built.

Like most marriages this is OK while the money keeps flowing, but when it stops and things get tough, the squabbles start.

Like most mining towns in our past, before the ore runs out, the miners run the town. The miners at L.R. say who represents L.R, and now the Council. Miners and landholders have little in common both in Council and on the land they are both trying to occupy. There have been many unpleasant situations.

The Inquiry will I hope settle much of the past, so it seems sensible to take this opportunity to now make sure it doesn't break out again. .. Never will peace be returned while "trust" is sitting outside – so solutions must be found.

He went on to put his solution (at least in part) as:

The town of LR and the mining area should become unincorporated again.

He went on to advise that the present Walgett Shire Council "should be sacked to give the Minister a chance to look at [such structural reform] options".

This, in my view, is quite unrealistic and impractical, and the clock cannot be put back to the "good old days". It is incumbent upon the elected body of the Walgett Shire Council to make sure that all parts and sections of the Shire community, miners and pastoralists and farmers alike, can and do work cohesively together as a single community.

Moreover, removing an elected body from office simply to allow, and pending, an examination of structural reform options, is out of the question.

Clr Friend did add that he saw no solution in putting Lightning Ridge with another part of another Shire, and with that I fully agree.

7.3 Conclusions regarding local government structural reform as a possible solution

I do not consider that structural reform options are the answer to any concerns that one might have about the prospects for the future harmony and functionality of the Walgett Shire Council.

The question is not an easy one to answer, but having given the matter careful thought, that is my opinion. It is an opinion strengthened and supported by my own experience in recent local government reforms and the regional review process in various other parts of the State.

For a start, this Inquiry, an inquiry under section 740, is of its very nature not the sort of process that would be needed to be able to properly form any conclusions as to structural reform options, such as splitting the Shire and/or amalgamating parts or all of the Walgett Shire with neighbouring local government areas.

No consultations have been undertaken with neighbouring Councils and their communities. No consultations have in fact been undertaken even with the communities of the Walgett Shire. Calling for submissions in respect of the Terms of Reference of this Inquiry does not, in my view, constitute such consultation.

Furthermore, even if one were tempted to conclude that it is necessary, and in the long term interests of the people of Lightning Ridge and its immediate surrounds, with its emphasis on mining, and the people of the rest of the Walgett Shire, based on the town of Walgett, and its agricultural base, that these communities be split, supposedly on the strength of a conclusion that never the twain shall meet, the likelihood is that similar differences of approach and views would ensue between the communities of Lightning Ridge and surrounds and those of the other parts of the Shire or local government area to which Lightning Ridge and its surrounds are joined.

I also note the oral testimony of newly elected Councillor, Lynette Carney, who lives in Lightning Ridge:

No, it can't be a cure because the towns are too close and it would be a duplication of services and it wouldn't be cost-effective.

Nor would a wholesale amalgamation of the whole of the Walgett Shire with all or part of a neighbouring local government area or areas appear, at least on the scant indications and evidence currently available, to present a satisfactory outcome. Such an outcome would need much further study.

The solution is in the two disparate communities of Lightning Ridge and Walgett (or the rest of the Shire) – mining versus pastoral and agricultural – learning to live together in harmony and understanding one another.

PART 8

8. RECOMMENDATIONS

At various places in this report I have made a number of recommendations. By way of summary, these recommendations are repeated below:

Recommendation No. 1 – minuting of voting

That Council consider recording in its minutes (of Council and committees of Council) the voting outcome on any motion before it in all cases, even where a division is not formally demanded, and that Council should amend its Code of Meeting Practice accordingly.

Recommendation No. 2 – recording of absence of Councillors

That Council revise its practices and procedures relating to the recording of the absences of Councillors from meetings of Council so that those minutes provide a proper and complete documentary record to satisfy the requirements of section 234 (1) (d) of the Local Government Act 1993.

Recommendation No. 3 – correctness of minutes of Council's meeting of 13 February 2004

That Council review its minutes of its special meeting of 13 February 2004 at the earliest opportunity, and take steps to ensure that they are indeed an accurate record of the business transacted at that meeting, in accordance with the provisions of clause 3.4 of Council's Code of Meeting Practice.

Recommendation No. 4 - Councillor training

That Council and its General Manager further review all Councillor training and induction procedures to ensure that they are fully adequate to make Councillors aware of their relevant roles and responsibilities as councillors under the Local Government Act 1993.

Recommendation No. 5 – pecuniary interest returns

That the General Manager take steps to ensure that appropriate mechanisms are in place to check and follow up, with all due despatch, that all his obligations in respect of pecuniary interest returns of interests and the Pecuniary Interest Register under the Act are duly discharged.

Recommendation No. 6 – pecuniary interest return of former Clr Tim Horan – possible investigation by Department of Local Government

That the question of the apparent non-lodgement, with the Walgett Shire Council, by former Councillor Tim Horan (but now the Mayor of the Coonamble Shire Council) of a return of his interests under section 449 of the Act for the year ended 30 June 2003, be referred to the Director General of the Department of Local Government for appropriate action.

Recommendation No. 7 – information to the community

That Council's General Manager and administration, and in turn Council's elected body, should review, for example by benchmarking with other major rural and regional Councils, how it goes about informing its community on the various matters that the Act requires be reported in its annual Management Plan and in its Annual Report, to ensure that the community is kept adequately and meaningfully informed about such matters.

Recommendation No. 8 – quarterly financial reports

That Council should revisit the format of its quarterly financial reports and monthly material budget variation reports to Councillors (section 430 investigation report recommendations numbers 30 and 31), and ensure that they are complete, accurate and clear, and provide a meaningful set of information and a means whereby both Council's governing body and the community can reasonably and effectively monitor Council's financial performance.

Recommendation No. 9 – debts owing to Council by Clr Peter Waterford

That Council should take immediate action to recover all moneys owing and payable to it by Clr Peter Waterford, or persons or companies associated with the Councillor, without further delay.

Recommendation No. 10 – adoption of a policy on the provision of information to and interaction between Councillors and staff

That Council should as soon as possible adopt a policy on the provision of information to and interaction between Councillors and staff, along the lines of the Model Policy issued jointly by the Department of Local Government and the Independent Commission Against Corruption in March 1997, with such alterations or additions as may be appropriate to Council's own particular circumstances.

Recommendation No. 11 – establishment of committees

That Council ensures that when it establishes committees, whether those committees comprise just Councillors or a mix of Councillors, staff and other persons, it complies with the requirements of Part 5 of the Local Government (Meetings) Regulation 1999, and in particular clauses 33 and 34 thereof, as well as with the terms of Part 5 of its own Code of Meeting Practice. This recommendation

applies to all committees so established, whether they be ad hoc committees established for particular purposes or for limited times, or not.

Recommendation No. 12 – Lightning Ridge Community Centre

- That the present Council needs to act promptly and appropriately to ensure that Council's resolution in respect of the Lightning Ridge Community Centre of 8 December 2003 is not implemented.
- That Council should promptly and appropriately review its commitment to the Lightning Ridge Community Centre, and only proceed, if it is to proceed at all, with a project that is defensibly affordable, having regard to all clearly agreed and committed funding from other persons or bodies, or other arms of Government, whether State or Federal, and when compared with Council's expert advice as to the likely cost of construction of the building, even after taking into account properly and fully costed in kind community and other inputs in respect of labour and materials.

Recommendation No. 13 – performance of Mr Vic North as General Manager

- (a) Council should, through its elected body, and as a matter of urgent priority, immediately address and deal with the question of the apparent level of poor and unsatisfactory performance of Council's administration, led by the General Manager, Mr Vic North.
- (b) The Councillors have two options in this regard. Either they proceed immediately to appoint the mentor recommended by the Department of Local Government in its section 430 investigation report, for a period of at least 12 months, as recommended in that report, or they should immediately commence a formal and proper appraisal of Mr North's performance under his contract of employment with Council, in accordance with the terms of that contract and best and accepted practice in such matters.
- (c) If the second option is chosen:
 - (i) This should be done straight away, and even if the time for the carrying out of such an appraisal, as mentioned in the contract, is not due.
 - (ii) Council should first seek and be guided by expert and independent legal advice, in particular as to whether grounds exist for early termination of Mr North's contract, for example pursuant to clause 9.1.3 of that contract.
 - (iii) In carrying out the performance appraisal process itself, Council should first seek and be guided by advice from the LGSA (Igov), as well as seek to benchmark with other leading rural and regional councils in the State. If appropriate, advice and guidance might also be sought from the Department of Local Government.

- (iv) If, after carrying out such a performance appraisal, Council can reasonably determine that circumstances exist which would warrant Mr North's dismissal from his position as General Manager and the termination of his contract accordingly, then Council should immediately proceed to take such steps.
 - (v) Council should then proceed, with all due despatch, and as soon as practicable, to appoint a new and appropriate and suitably qualified and experienced General Manager.
 - (vi) That appointment should be one made with the participation and approval of the Director General of the Department of Local Government or his delegate.
- (d) Whether or not Council chooses the second option, Mr North's performance (or for that matter that of any person holding the position of General Manager) should be regularly and properly appraised in accordance with the terms of his contract, and in the manner and on the basis recommended in paragraph (c) of this recommendation. That appraisal process will, in particular, require the signing of an appropriate performance agreement, as required under clause 5.1 of the contract. However, any such appraisal of the performance of Mr North need not occur whilst the process referred to in paragraph (c) of this recommendation is being undertaken.

Recommendation No. 14 – possible removal from office of the 2004 elected Councillors – option for the Minister

For the reasons set out in this report, and particularly at section 6.3, I am myself unable to recommend that the present 2004 Council be sacked.

On the other hand, if the Minister can, even now, reasonably form the view, on the evidence I have presented to him in this report of the deliberations and outcome of my Public Inquiry, that the newly elected Councillors, together with the six Councillors who have continued in office from the 1999-2004 Council, cannot be believed and cannot be expected to discharge their Charter and other obligations from here on, then it might be possible for the Minister to conclude that there is no other course but to recommend to the Governor that a declaration be made that all civic offices in relation to the Walgett Shire Council be declared vacant. That is a matter for decision by the Minister.