

**REPORT ON THE
SECTION 430
INVESTIGATION INTO
CESSNOCK CITY COUNCIL**

JANUARY 2009

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1. EXECUTIVE SUMMARY

1.1 Background

This report results from an investigation into certain aspects of the activities of Cessnock City Council, undertaken in the terms of section 430 of the *Local Government Act 1993*.

Firstly, an investigation became necessary due to serious concerns regarding Council's past performance and its continued capacity to meet its responsibilities under *the Local Government Act 1993*.

Secondly, the Director General had regard to Council's failure to adequately respond to the Promoting Better Practice Review undertaken during 2006.

Cessnock City Council has also attracted significant, ongoing media coverage since early 2006. Incidents reported on included the dismissal of two senior management team members and various allegations about the improper conduct of some councillors and former Council Rangers.

This media attention continued while the investigation was being conducted and revisited incidents and allegations that occurred in 2006 and 2007. In a number of instances, this included references to staff who are no longer employed by Council but still reside in the area.

1.2 Terms of Reference

The Terms of Reference authorised for the investigation were:

1. Whether the Council is able to meet its responsibilities under the *Local Government Act 1993* (the Act). In particular, whether:
 - a. The conduct of councillors and council staff results in the provision of efficient, effective and appropriate standards of governance of Cessnock City Council.
 - b. The internal controls and reporting systems of Council reflect a good governance framework.

- c. Council staff are efficiently and effectively managed and supervised.
 - d. The Council has effectively managed and carried out its private works activities. In particular, the works Council carried out for Hightrade Constructions Pty Ltd.
2. Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationships between the council, councillors and its administration. [A1]

1.3 Summary findings

Standards of governance and internal controls

Council does not appear to have a well defined governance framework. In particular, a number of critical internal controls and reporting systems seem to be lacking. This impacts on Council's capacity to govern at an optimum level.

A number of significant deficiencies were found in terms of governance standards, internal controls and reporting systems. These are summarised below.

1. Cessnock City Council's leadership could be strengthened at both the strategic and operational levels. The principles of good governance, best practice and compliance with current regulatory requirements have been of lower priority to Council.
2. Effective debate and decision making at Council meetings are hindered by the use of outdated meeting practices. Some practices originate from the old *Local Government Act 1919*.
3. Some councillors do not appear to fully understand their obligations under Council's Code of Conduct. Also, the handling of complaints under the Code requires attention.
4. There is evidence to suggest that some councillors may have participated in binding caucus votes on decisions including development applications. Voting in this manner is inconsistent with the obligation of each councillor to consider the merits of the matter before them. In respect of development

application determinations, binding caucus votes may be inconsistent with 79C (1) of the *Environmental Planning and Assessment Act 1979*.

5. There appears to be an inappropriate culture within Council in relation to councillors and Council employees accepting gifts and benefits of value. Some staff perceive this is condoned by the elected body and the General Manager.
6. The Department's Promoting Better Practice Review report issued to Council in December 2006 made ten (10) recommendations to improve Council's governance and internal controls. Only one of these recommendations has been completed.

Also, the lack of progress in carrying out the necessary improvements was not reported to Council. Council failed to identify and address this lack of progress via the General Manager's performance reviews.

7. A number of internal controls require urgent attention and improvement. These include:
 - Current staff delegations and register(s) are out of date and inaccurate.
 - Council's performance management processes should be improved and more transparent.
 - Fraud and corruption prevention and controls need to be tightened or introduced.
 - Several critical strategic Information Technology concerns that have significant impact of Council's standards of governance need attention.
 - By not tendering for legal services, Council has failed to comply with its own purchasing policy and has potentially breached section 55 of the Act if its legal services exceeded \$150,000.

- A range of improvements are required in terms of the management of Council's fleet of vehicles.

Council proposes to develop a Governance Health Check Action Plan by the end of December 2008. This action plan will be used to drive the continuous improvement and rolling programs for all governance activities at Cessnock City Council.

Given the scope and extent of improvements still required in the governance area, the investigation team view this as a very worthwhile initiative. The action plan should also form the basis for articulating Council's overall framework to provide good governance.

Staff supervision and management

There is room for improvement in the manner in which Council supervises and manages its staff. Some Council employees, including senior officers, have been involved in improper conduct found to be unacceptable in terms of their employment conditions and Council policies.

During 2006 and 2007 all three Directors of Council's senior management team were found to have engaged in improper conduct which was in breach of their employment conditions and Council policies. The employment of two of these Directors was terminated in 2007.

Council's internal investigation and disciplinary processes which lead to the dismissals, while thorough could have been more efficient in a number of areas.

The dismissal of two directors had a significant impact on the organisation at all levels. For example, both directors were absent on directed leave for extended periods and the General Manager was required to oversee two complex internal investigations. The outcome confirms the urgent need for a range of improvements not only in the human resource/workforce relations area but also in governance systems and internal controls.

Rebuilding a strong senior management team which can demonstrate leadership and achieve the critical changes recommended as a result of this investigation is a key challenge for the General Manager.

Private works

There is evidence to suggest that an ongoing relationship between the former Mayor, Councillor John Clarence, the former General Manager, Mr Col Cowan and a Director of Hightrade Constructions Pty Ltd (Hightrade), Mr Zhang influenced Council entering into private works.

The current General Manager and the former Director City Works appear to have failed to ensure that the private works entered into with Hightrade were in accordance with standard contract management principles and procedures.

Promoting Better Practice Review

Progress toward achieving the twenty five (25) recommendations of the Department's Promoting Better Practice Review in 2006 has been unsatisfactory. Council did not adopt an action plan to complete them until July 2008. At the time of the investigation only five (5) of these recommendations had been completed.

1.4 Recommendations

A number of recommendations are listed at section 4.2 of this report.

The General Manager, consistent with his role under the Act (section 335), should ensure that this work is undertaken to improve the overall functioning of Council.

The newly elected Mayor and the General Manager should work together to provide positive leadership of Council to guide the implementation of these recommendations to achieve good governance in accordance with the Act and successfully meet the diverse needs of its community.

Given the extent and critical nature of matters requiring improvement it is also recommended that the Department conduct a post investigation review to be undertaken 12 months from the date Council provides its response to this report, as required by section 434 of the Act.

The post investigation review should seek to confirm the implementation of the recommendations of this investigation and review their impact on improving Council's continued capacity to meet its responsibilities under the Act.

2. THE INVESTIGATION

2.1 Introduction

Cessnock City Council has attracted significant, ongoing media coverage since early 2006. Incidents reported on include the dismissal of two senior employees and various allegations about the improper conduct of some councillors and Council employees.

On 21 April 2008 the Director General of the Department of Local Government, Mr Garry Payne, approved an investigation into Cessnock City Council under section 430 of the *Local Government Act 1993* (the Act).

This report details the investigation and findings of the Departmental representatives. The final report is presented to the Minister for Local Government and Director General of the Department of Local Government, and copied to the Council, pursuant to section 433(1) of the Act.

Evidence referred to in this report is identified by code in bold text within square brackets. The description and source of evidence quoted are provided in tables at the end of the report.

2.2 The investigation team

Ms Caroline Egberts and Mr Paul Terrett, Senior Investigations Officers, Department of Local Government, were authorised as Departmental representatives to conduct the investigation.

2.3 Terms of Reference

The Terms of Reference authorised for the investigation were:

2. Whether the Council is able to meet its responsibilities under the *Local Government Act 1993*. In particular, whether:

- a. The conduct of councillors and council staff results in the provision of efficient, effective and appropriate standards of governance of Cessnock City Council.
 - b. The internal controls and reporting systems of Council reflect a good governance framework.
 - c. Council staff are efficiently and effectively managed and supervised.
 - d. The Council has effectively managed and carried out its private works activities. In particular, the works Council carried out for Hightrade Constructions Pty Ltd.
3. Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationships between the council, councillors and its administration.
 4. The Mayor and General Manager of Cessnock City Council were formally notified of the investigation on 21 April 2008.

The investigation team was not authorised to identify and investigate criminal acts or breaches of legislation other than that administered by the Minister for Local Government and the Department of Local Government.

However, the investigation team can, where necessary, refer any current matters relating to other jurisdictions for consideration and action.

2.4 Statutory requirements

2.4.1 The investigation

Section 430 of the *Local Government Act 1993* provides:

- (1) The Director General may, at the request of the Minister or on the Director General's own initiative, authorise any person (referred to in this Part as a "Departmental representative") to investigate any aspect of a council or of its work and activities.
- (2) An authority may be given generally or in respect of a particular matter.

- (3) The functions of a Departmental representative are set out in the authority.
- (4) The Director General is, by virtue of holding office as Director General, a Departmental representative with power to investigate all matters.

2.4.2 Functions of a Departmental representative

Section 431 of the Act provides:

- (1) For the purpose of exercising his or her functions, a Departmental representative may direct a person to do any one or more of the following:
 - a) to appear personally before the Departmental representative at a time and place specified in the direction,
 - b) to give evidence (including evidence on oath),
 - c) to produce to the Departmental representative any document that is in that person's custody or under that person's control,
 - d) to grant to the Departmental representative such authorities as may be necessary to enable the Departmental representative to gain access to any document that is in the custody or under the control of any bank, building society, credit union or other person.
- (2) For the purposes of this section, a Departmental representative may administer an oath.
- (3) A Departmental representative may take copies of or extracts from any document to which the Departmental representative gains access under this section.

Section 433 of the Act provides:

- (1) A Departmental representative must report to the Minister and the Director General on the results of the investigation and must send a copy of the report to the council.

- (2) The report may comment on any matter which, in the Departmental representative's opinion, warrants special mention and may contain such recommendations as the Departmental representative considers appropriate.
- (3) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.

Clause 244 of the *Local Government (General) Regulation 2005* provides in this regard:

When a report of a Departmental representative has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report:

- a) is laid on the table at that meeting, and
- b) is subsequently available for the information of councillors and members of the public at all reasonable times.

In accordance with section 434 of the Act council is required, within 40 days after presentation of the report, to give notice to the Minister of the things done or proposed to be done to give effect to any recommendations in the report. There are also provisions in that section that enable legal proceedings to be instigated to enforce compliance.

2.5 The investigation methodology

The primary steps undertaken by the investigation team are as follows:

- a) Documents, submissions, correspondence and other written material held by the Department of Local Government were analysed.
- b) Additional Council documents were requested and analysed.
- c) A questionnaire was developed and forwarded to all councillors to complete.
- d) Written submissions were also considered.

- e) The investigation team visited Council from 19 to 22 May and from 30 June to 4 July 2008 to conduct interviews as well as examine documents, systems and procedures.
- f) Interviews were held with the former Mayor, General Manager, councillors, various Council staff, ex Council staff community representatives and other relevant stakeholders. The interviews led to further documentation being provided to the investigation team.
- g) Information provided via phone calls were documented and compiled.
- h) Council meetings held on 21 May and 2 July 2008 were attended.
- i) A detailed review of Council's progress toward achieving the recommendations the Department's Promoting Better Practice Review Report issued in December 2006.
- j) Following consideration and analysis of all material available, a draft report was prepared.
- k) In accordance with the principles of procedural fairness Council was provided with a copy of the draft report (without the recommendations) and the opportunity to respond prior to the report being finalised. Also those people mentioned in the report who could potentially be adversely affected were provided with a copy of the relevant extract of the draft report.
- l) This final report contains consideration of the responses provided to the draft report from all parties.

3. THE CONTEXT

3.1 Background to the investigation

A formal investigation into Cessnock City Council was determined for two main reasons.

3.1.1 Council's capacity to meet its responsibilities under the Act

Firstly, an investigation became necessary due to serious and ongoing concerns regarding Council's past performance and its continued capacity to meet its responsibilities under *the Local Government Act 1993*.

The concerns relate to a number of critical areas of Council's operations such as:

- the conduct of councillors, senior staff and other staff
- internal controls and reporting systems
- staff management and supervision
- the management and delivery of private works.

Since 2006, the Department of Local Government has conducted a number of preliminary enquiries into various matters relating to Cessnock City Council. One matter was referred to the Independent Commission Against Corruption (the ICAC) as required by section 11 of the *Independent Commission Against Corruption Act 1989*.

3.1.2 Promoting Better Practice Review of Cessnock City Council

Secondly, the Director General had regard to Council's failure to adequately respond to the Promoting Better Practice Review undertaken during 2006.

The Local Government Reform Program - Promoting Better Practice is a review process designed to encourage improvement in the way councils conduct their activities and to ensure good governance. Promoting Better Practice also includes monitoring aspects of a council's performance.

Reviews also have a wider role in the development of local government practices across the state and identifying the need for future action or legislative change by the Department.

In June 2006 a reviewer closely evaluated the effectiveness and efficiency of key aspects of council operations. This involved examining Council's overall strategic direction, checking compliance, examining appropriate practices and ensuring that council has frameworks in place to monitor its performance.

The review report issued to Council in December 2006 contains twenty five (25) recommendations. Most of these relate to governance issues including internal controls (10), followed by five (5) relating to planning and regulatory matters and five (5) relating to workforce relations. *[DLG-1]*

In February 2007 Council resolved that the Review report "be noted and an action plan be developed to implement the report's recommendations." Council was required to advise the Department on its progress within six months of the date of tabling of the report.

Council did not develop a draft action plan and progress report until May 2008. A copy was provided to this investigation (section 430). The action plan was further revised and adopted by Council on 16 July 2008. On 28 July it was formally submitted to the Department as required. *[CP-1]*

The investigation therefore also focussed on assessing Council's progress against this action plan. Details of progress toward each of the recommendations are presented in the body of this report.

An overall assessment and summary of the findings are presented in section 5.5 - *Other matters*.

3.2 Council background

Map 1 Cessnock local government area

The Cessnock local government area is a sub-region of the Hunter Valley spanning an area of 1,950 square kilometres. It is located 120 kilometres north of Sydney and lies between Sydney, the Hawkesbury and the Hunter.



The Cessnock LGA is one of thirteen (13) that make up the area known as the Hunter Region and is the largest LGA located on the fringe of the urban-based Lower Hunter Sub-Region.

Cessnock and Kurri Kurri are currently the two main population hubs but there has also in recent years been increased residential and commercial development in the Branxton area.

Cessnock is the traditional home of the Darkinjung Aboriginal people.

Local government was introduced to the area in 1926 when Cessnock was proclaimed a municipality. In 1956 the area was named the City of Greater Cessnock and was given its current name, the City of Cessnock, in 1984.

In 1995 the Council reduced its councillor numbers from sixteen (16) to thirteen (13). The Mayor is elected by popular vote and three (3) councillors each are elected from four (4) wards.

Cessnock City Council currently employs around 266 equivalent full-time staff. In 2006/2007 Council had an operating deficit of \$1,060,000 before capital items and the Minister approved a special variation rate increase of 9.65 per cent to fund infrastructure replacement over five (5) years.

4. FINDINGS AND RECOMMENDATIONS

4.1 Findings

4.1.1 Terms of Reference 1A and 1B:

1A: Whether the conduct of councillors and council staff results in the provision of efficient, effective and appropriate standards of governance of Cessnock City Council.

1B: Whether the internal controls and reporting systems of Council reflect a good governance framework.

Both Terms of Reference 1A and 1B seek to establish Council's capacity to govern. Therefore, the evidence relating to each of them has been considered together to provide integrated findings in relation to Council's governance standards and framework.

The findings in this section relate specifically to the impact of the conduct of councillors, the General Manager and senior staff on the governance of Council. Conclusions about the conduct, supervision and management of employees in general are at Term of Reference 1C.

Council is a body corporate. It is a large and complex organisation with many varied responsibilities. In order to fulfil these responsibilities in an efficient, effective and appropriate manner, both the elected body and senior staff need to have a clear knowledge and understanding of the requirements of the *Local Government Act 1993* (the Act).

The foundation to good governance is having a clear sense of direction and positive leadership. The elected body of Council has a primary strategic and policy making role which should involve consultation with senior staff and the community.

The General Manager is responsible for mobilising the employees and resources of the organisation to put Council's decisions into action.

Overall, Council's strategic leadership and corporate governance was found to be poor and in some instances entirely lacking.

The Council has articulated its vision, goals and charter in its strategic plan titled "Our People, Our Place, Our Future". The plan appears to be understood by the former Mayor, some councillors and the General Manager. However, broader ownership of the document and understanding of what it hopes to achieve was not apparent among other councillors and staff members.

Council meetings are the primary forum for a council's governing body to make decisions. The investigation finds that Council's current practices do not optimise proper debate and effective decision making strategies. (Holding three (3) committee meetings and then an ordinary meeting which are attended by all councillors is inefficient.)

A number of the Council's meeting practices as well as actions by some individual councillors do not comply with the current Act, the Regulation and/or Council's own Code of Meeting Practice.

A substantial number of questions without notice were raised by councillors after each committee meeting. Most of these were operational in nature and could be more appropriately raised through another means.

The investigation found evidence that some councillors may have participated in binding caucus votes on a range of matters including development applications. This may be inconsistent with the obligation on each councillor to consider the merits of the matter before them. Any councillor voting in line with a caucus decision rather than voting in accordance with their own considered view as to what is in the best interests of residents and ratepayers or good governance is inconsistent with the Model Code of Conduct (Model Code) for Local Councils in NSW.

Council allows members of the public to make an address to the Council meeting. However, at times this could be better integrated with the rest of Council's meeting.

The standards of conduct expected of councillors and council staff are set out in the Model Code. It was evident that a number of councillors do not appear to fully understand their obligations under Council's adopted Code. The manner in which complaints are dealt with under the Code requires attention.

The investigation revealed evidence that in complaint handling procedures:

1. The processes of natural justice may not always be adhered to or seen to be followed.
2. Long delays were encountered in resolving some complaints.
3. Council may not have properly followed the adopted Code in censuring a councillor.

There is evidence to suggest that there is an inappropriate culture within Council around accepting gifts and benefits of value. Further, there are indications that councillors and employees are not accurately or fully disclosing/recording the offer and/or acceptance of gift and benefits. There is a perception among a number of staff that this sort of behaviour is condoned by the elected body and senior management.

Council officials, especially those in positions of authority, should not accept any gifts or benefits that give rise to a real or perceived influence in relation to their decision making role. A number of examples cited in section 5.1.6 of this report show that the former Mayor, some councillors and some senior officers accepted gifts or benefits of value. In some instances these were also not recorded in the appropriate gifts register. Accepting gifts that are greater than token value and not disclosing them, is contrary to the adopted Code.

Prior to and during the investigation there was evidence of staff and councillors disclosing confidential Council information to the media or other parties. This included leaking information about sensitive internal investigations and disciplinary processes relating to staff to the media. This is contrary to the Code and section 664 of the Act.

The General Manager is relatively new to his role (less than three years). Many of the governance and other organisational issues have been inherited from

previous administrations. However, these have continued unresolved or remained undetected since his appointment.

Key issues and recommendations to improve a range of policies and practices were identified in the Department's Promoting Better Practice Review Report which was issued two years ago. Progress toward achieving the necessary improvements identified in the Department's review report has been minimal.

Neither the elected body nor the General Manager has demonstrated the necessary commitment, leadership and management skills in this area. Only one of the ten (10) recommendations relating to governance issues including internal controls has been completed. The completed recommendation was of a very minor nature.

Council delegated the task of implementing the recommended improvements to the General Manager who in turn delegated the task to the former Director of Corporate and Regulatory Services. To some extent, the ability of the General Manager to lead and bring about these improvements was restricted by difficulties encountered with the members of his senior management team and other staffing issues.

Rather than having the support of all his senior management team to bring about change, the General Manager had to conduct two separate, protracted internal investigation and disciplinary processes in relation to the improper conduct of two Directors whose services with Council were ultimately terminated in 2007. In addition to this, he has been involved in managing ongoing disputes between the outdoor staff and the Director of Infrastructure Services

While the difficulty the General Manager has encountered during the last two years is acknowledged, the delegation of tasks does not abrogate responsibility.

The General Manager remains responsible for monitoring and ensuring that the recommendations of the Promoting Better Practice Review are satisfactorily completed. The lack of progress in carrying out the recommendations was apparently not reported to Council.

While the delegation of this task to the General Manager was appropriate under section 334(1) of the Act, it remains Council's responsibility to monitor the General Manager's overall performance. In the case where performance has not been satisfactory, Council has an obligation to manage the situation to achieve a successful outcome. Council has not done this.

It is noted that Council in July 2008 adopted an action plan to carry out the recommendations and that work towards completing that action plan has recently commenced.

Evidence presented throughout this report demonstrates that the principles of good governance, best practice and compliance with current regulatory requirements have been of lower priority to Council. Council does not have a clearly defined governance framework.

In addition to the improvements to its corporate governance systems and processes recommended by the Department's earlier review, there is a range of internal controls that need urgent attention as follows:

1. Current staff delegations and register(s) are out of date and inaccurate. A complete review of staff delegations on an annual basis is one of the key performance indicators in the performance agreements of the General Manager and Council's three Directors. This matter should be attended to as a matter of priority to make sure employees are fully aware of the functions delegated to them and are acting within the correct level of authority.
2. Council's performance management processes need to be improved and should be more transparent. The process undertaken last year for the General Manager and the Directors was not well documented, particularly in relation to evidence to substantiate achievement or information about areas requiring improvement.
3. Fraud and corruption prevention and controls need to be tightened or introduced. A recent comprehensive risk assessment conducted by IAB Services found that while Council is generally well managed in this area, there are a number of areas where it is exposed to potential fraud and

corruption risk because of controls that need to be strengthened. Some examples include passwords to information technology systems and stock takes of portable IT assets; the frequency of stock takes at Council's library; and the need for log books for council vehicles.

The review found that a number of policy gaps as well as a number of existing policies which require updating and/or extending.

The development of the draft fraud policy, *Maintaining Our Ethical Workplace - A Strategy for Preventing, Detecting, Investigating and Dealing with Fraud and Corruption* is noted. It is understood that a plan to translate this policy into action to improve Council's systems and processes in this area is being developed. It is critical that Council not only adopt this plan but implement it as a matter of priority.

4. Several critical strategic Information Technology concerns that have significant impact of Council's standards of governance need attention. A *Review of IT Health Check* carried out by an external consultancy firm recently highlights these concerns. It is noted that an action plan to implement the required improvements was adopted by Council on 16 July 2008.
5. By not tendering for legal services, Council may not comply with its own purchasing policy. Council's purchasing policy strives for value for money, probity, equity and effective competition. Under section 55 of the Act and Part 7 of the Regulation councils must invite tenders for contracts involving an estimated expenditure of over \$150,000.
6. A range of improvements are required in terms of the management of Council's fleet of vehicles. The areas of "almost certain risk of fraud and corruption" identified in Council's recent risk assessment should be attended to immediately.

It is further noted that Council proposes to develop a Governance Health Check Action Plan by the end of December 2008. This action plan will be used to drive the continuous improvement and rolling programs for all governance activities at the Council. Given the scope and extent of improvements that are required in the

governance area this is a worthwhile initiative. The action plan should also form the basis for articulating Council's overall framework to provide good governance.

Council is strongly encouraged to enhance its leadership and organisational capacity by exploring appropriate frameworks such as the Australian Business Excellence Framework. As well as building an integrated leadership and management system these frameworks and associated training help to create more positive and productive workforces.

4.1.2 Terms of Reference 1C:

Whether Council staff are efficiently and effectively managed and supervised.

Significant improvements are required in Council's human resources and workforce relations area. The General Manager is directly responsible for the appointment, supervision, management and, if necessary, the dismissal of Council's senior staff (section 335(2) of the Act).

A number of the allegations against certain employees did not prove to be accurate and/or exaggerated actual events or had already been the subject of a past investigation by Council. Allegations about "cover ups" in relation to the investigation and disciplinary processes of the two senior staff and Council Rangers also could not be substantiated.

However there were some occurrences of serious employee misconduct and a number of areas of major concern in relation to the management and supervision of Council employees in general.

Since 2006 Council has appropriately referred all allegations of a criminal nature against its employees to the NSW Police for investigation and follow up. Matters concerning the possible corrupt conduct of employees were referred by Council to the Independent Commission Against Corruption.

The sensitive nature of some of the allegations made about staff conduct and associated privacy considerations (including potential legal action by the parties) must be acknowledged and respected.

The key steps that Council undertook in relation to the investigating and/or the taking of disciplinary steps in relation to the alleged misconduct of some staff during the last two years have been examined. More importantly, this investigation focused on identifying gaps and/or weaknesses in Council's human resource systems, policies and procedures that require improvement.

A critical finding of the investigation is the apparently unstable and dysfunctional nature of Council's senior management team since late 2006 contributed to by having two of Council's three Directors involved in protracted internal investigation and disciplinary processes.

In 2007 these internal processes resulted in the General Manager terminating the employment of two of the three Directors in his senior management team for conduct which was in breach of their employment contracts and Council policies. These processes could have been more effective or efficient as outlined below.

- The General Manager and Human Resources Manager were inexperienced in complex and technical investigations. Subsequently the leadership and handling of the processes overall were poor.
- Both investigations lacked a clear investigation plan and follow through to systematically gather evidence to substantiate or dismiss the allegations.
- The first investigation initially focused on minimising financial loss and other risks to Council.
- Failure to understand and/or accept the gravity of the complaint in relation to the allegations of the complainant.
- Communication with employees and councillors throughout both processes could have been substantially better.
- As discussed in relation to Terms of Reference 1B, Council currently lacks a range of internal controls and policies to minimise the risk of fraud and corruption. This included Human Resources policies such as those relating to staff attendance at conferences.

An examination of Council's gift registers revealed that the Director Infrastructure Services, the third member of the senior management team, has accepted gifts of value which is contrary to the Council's adopted Code. The Director Infrastructure Services states that he does not believe that this is contrary to the Code. However, the 2004 Model Code of Conduct clearly addresses gifts and what action is required.

The Director Infrastructure Services appears to have a poor working relationship with Council's outdoor employees. All significant employee matters relating to these staff are currently handled by the General Manager and the Human Resources Manager instead of the Director. It is noted that the Director Infrastructure Services disputes that all significant employee matters relating to outdoor staff are currently handled by the General Manager and Human Resources Manager.

An apparently unstable or dysfunctional senior management team has had a significant impact on Council as an organisation at all levels. The General Manager has had limited support at the strategic level and has had to be heavily involved in the day to day management. This situation has also reduced the Human Resource Manager's capacity to address gaps in human resource policies for the entire Council workforce. Employee confidence in the former senior management team was found to be very low.

On 5 March 2008 Council adopted a new structure aimed primarily at addressing problems caused by the split in responsibility across various areas of Council's infrastructure functions. However the direct appointment of the former Director of Works to the new position of Director Infrastructure Services appears to be contrary to sections 348 and 349 of the Act.

Under these sections Council is required to advertise all new senior positions in a particular manner and recruit on merit. There is no evidence that this occurred here. A new position with a significant increase in responsibilities it is not necessarily exempt by section 348 (3) (a) of the Act which refers to re-appointment to an existing position.

To remedy this situation the recently elected Council, in accordance section 333 of the Act, should as a matter of priority review the current organisation structure. Whether Council endorses or revises its current structure, Council should satisfy itself there is compliance with sections 348 and 349 of the Act, including seeking and being guided by its own legal advice if necessary.

Section 333 of the Act requires a council to re-determine its organisation structure within 12 months after any ordinary election. The newly elected Council should therefore review the recent restructure as a matter of priority. Should Council determine a revised structure and create other new positions Council should also ensure compliance with the Act in relation to any recruitment action for those positions.

The operation and culture of the Ranger's unit has also been of concern for a number of years. During 2005 and part of 2006 Council Rangers wore "Police like" attire which consisted of blue uniforms, handcuffs and batons. It was also alleged that at that time some Rangers were involved in misleading and intimidating behaviour. The unit has attracted significant media coverage that likely lead to a poor reputation in the community.

In particular, the enforcement activity of former Rangers in early 2006 in relation to allegations about activities at the Branxton public toilets and a possible "cover up" by Council was examined. No evidence was found to substantiate such a "cover up" in relation to the alleged activities.

Notwithstanding this, the manner in which the enforcement was conducted appears to have been excessive and not approved by Council.

In recent times, from an individual staff supervision perspective, Council appears to have handled the allegations of Ranger misconduct competently. Council has conducted thorough, timely investigations in accordance with disciplinary procedures. Where warranted appropriate disciplinary action appears to have been taken. Again, criminal matters were appropriately referred to the Police.

However, at a systemic level Council has for some time neglected to make urgent and significant improvements to the way it is managing its Rangers. Specifically, Council has not implemented the recommendations of a WorkCover improvement

notice and an external review of the unit it commissioned in 2006. Council failed to make any real attempt to carry out these improvements until February 2008.

While good progress has been made this year by improving internal controls and security in relation to the use of Lethobarb (euthanasia drug), microchips, Penalty/Caution Notice Books and Companion Animal Register forms, Council must continue its focus on and commit resources to the completion of outstanding critical requirements in this area. For example an ongoing training manual for each Ranger, a Best Practice review of its animal pound (this should explore alternative options to carry out the required functions) and a policy for the disposal of euthanised animals.

Council must also finalise the range of draft policies and procedures it has prepared for the management of companion animals and the operation of the Ranger unit. More importantly Council must continue to satisfactorily supervise and manage its Rangers to ensure that its policies and procedures are effectively and efficiently implemented.

It appears that most of the Promoting Better Practice Review recommendations to improve the workforce relations and human resource areas remain incomplete. Many of Council's Human Resource policies are in draft form and others have not been updated for some time.

These processes severely limited Council's capacity to progress these recommendations of the Promoting Better Practice Review and to maintain a satisfactory policy framework to optimise the management, supervision and productivity of its employees.

It is for this very reason that these tasks must be a high priority for Council. A sound policy framework complemented by clear procedures is vital to promoting a motivated and productive workforce and to avoid future occurrences of misconduct and instability.

Given the extent of improvement required in this critical area, the General Manager should liaise with Council to ensure that adequate resources are provided within the Human Resources Branch to allow this to occur.

Rebuilding a strong senior management team who can demonstrate leadership in achieving the necessary improvements recommended as a result of this investigation is a key challenge for the General Manager.

Achieving these improvements particularly in the human resources area must be a high priority for the whole senior management team and should be monitored closely. In the event of delays or barriers, the General Manager and responsible officers should determine solutions to continue a forward momentum.

To enhance Council's leadership and organisational capacity, the General Manager and senior management team, are also strongly encouraged to explore appropriate frameworks such as the Australian Business Excellence Framework. As well as building an integrated leadership and management system these frameworks and associated training help to create more positive and productive workforces.

4.1.3 Terms of Reference 1D:

Whether the Council has effectively managed and carried out its private works activities. In particular, the works Council carried out for Hightrade Constructions Pty Ltd.

Cessnock City Council constructed specific road works including an intersection for entry into the Crown Plaza Hotel for Hightrade Construction Pty Ltd (Hightrade).

There is evidence to suggest that an ongoing relationship between the former Mayor, the former General Manager and a Director of Hightrade Constructions Pty Ltd (Hightrade) influenced Council entering into these private works. The arrangements for this particular project differ from other private works undertaken by Council in that it appears to have lacked the necessary adequate project management controls. Within that Council may not have act consistently with its charter as set out in section 8 of the Act and may have acted with bias.

The General Manager and the then Director City Works do not appear to have to ensured that the private works entered into with Hightrade were in accordance with standard contract management principles and procedures. Basic elements such as signing a formal contract at the commencement of the project, procedures for negotiating cost variations and arranging for a bank guarantee or deposit payment to be made were neglected.

The failure to require Hightrade to pay instalments to Council was not prudent and not consistent with Council's charter. Section 8 of the Act states *"The council has the following charter: ...to have regard to the long term and culmulative effects of its decisions and to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of council is affected."* (section 8 of the Act)

This project by not using standard procedures or check and balances became high risk and resulted in a significant financial loss to Council. It also had an

impact on Council's reputation in the community and does not reflect sound leadership standards.

4.1.4 Terms of Reference 2:

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

Overall, the progress toward achieving the twenty five (25) recommendations of the Department's Promoting Better Practice Review report has been unsatisfactory. Council did not adopt an action plan to complete them until July 2008. Only five (5) of these recommendations had been completed at the time of the investigation.

The General Manager indicated that this lack of progress was due to a number of internal issues in 2007. However, it is important to note that some of the "internal issues" referred to, in some instances, could have been avoided if appropriate systems and policies as recommended had been in place.

Completion of these recommendations is crucial to improving Council's performance across a range of areas. While it is noted that Council has recently commenced work on a further 19 recommendations, a substantial amount of work is still outstanding. The General Manager, consistent with his role under the Act (section 335), should ensure that this work is undertaken to improve governance standards as well as the overall functioning of Council.

4.2 Recommendations

1. *That Cessnock City Council be given twelve (12) months from the date Council provides its response to this report, as required by section 434 of the Local Government Act 1993, to take appropriate steps to do such things arising from the recommendations contained in this report.*
2. *That Council review its strategic plan in consultation with the newly elected Councillors, Council employees and the community to ensure that it continues to be relevant to the community as a whole.*
3. *In accordance section 333 of the Local Government Act 1993, re-determine its organisation structure.*
4. *That Council aligns the manner in which it conducts its meetings with the provisions prescribed under the Local Government Act 1993 and the Local Government (General) Regulation 2005. In particular, that:*
 - i. *Council review its current meeting and committee structure and implement ways to make its meetings more efficient and effective such as holding one integrated ordinary Council meeting (including officers' reports).*
 - ii. *Council reviews its Code of Meeting Practice to ensure that it incorporates the required regulatory changes introduced by the Local Government Act 1993 and the Local Government (General) Regulation 2005.*
 - iii. *Council provide training on the revised Code of Meeting Practice. All councillors should abide by this Code and also strive to keep abreast of any subsequent regulatory changes.*
 - iv. *Council consider formally acknowledging the traditional owners of the land at the beginning its meetings.*
 - v. *Council consider reviewing the wording of its opening prayer in line with other NSW councils to embrace broader denominations and beliefs.*

- vi. *Council implement a clear and transparent process to allow councillors and council officials to declare pecuniary and non pecuniary conflicts.*
 - vii. *Council consider adopting the practice of including an item on the agenda entitled “Matters Determined without Further Debate” to assist in the smoother operation of Council meetings.*
 - viii. *Council, when it has determined that a matter should be dealt with in closed session, comply with section 10 of the Local Government Act 1993 and the Local Government (General) Regulation 2005.*
 - ix. *Council consider amending its adopted Code of Conduct to prohibit binding caucus votes in relation to development applications or other matters where there are specific statutory issues for each councillor to consider.*
 - x. *Councillors abide by the provisions relating to Giving Notice of Business in its Code of Meeting Practice and use more efficient means of gaining answers to their questions about operational matters such as the customer complaints system.*
 - xi. *Council consider, where appropriate, the option of moving into Committee of the Whole under section 259 of the Local Government (General) Regulation 2005.*
 - xii. *Council review its policy “Requests for Verbal Submissions to Council” to incorporate the improvements suggested in the body of this report.*
5. *That the newly elected Council review all of its delegations during the first twelve (12) months of its office in accordance with section 380 of the Local Government Act 1993.*
6. *That Council conduct regular reviews of the General Manager’s performance. The Mayor and the General Manager’s Employment Arrangements Committee must document the grounds upon which it assesses the General Manager’s performance and agree upon appropriate strategies with the General Manager to further develop his leadership and management skills.*

7. *That the General Manager rebuilds a strong senior management team who can demonstrate leadership in achieving the critical changes recommended as a result of this investigation. Appropriate management frameworks such as the Australian Business Excellence Framework to enhance Council's leadership and organisational capacity should be explored.*
8. *That the General Manager take a more proactive role in the performance management of his Directors to improve the rigour and transparency of the process. The process should clearly document assessment of achievement as well as define specific areas and/or performance indicators to foster improvement in performance.*
9. *That the Director of Infrastructure Services as a matter of high priority work with the General Manager to determine and implement strategies to improve his relationship with outdoor employees including Union representatives. Those strategies should form part of the Director's performance agreement which is to be monitored closely by the General Manager.*
10. *That Council prepare a policy and guidelines for approving and managing private works to be undertaken by the Council to ensure that its exposure to risk is minimised and that projects are well managed. Regular progress reports relating to significant private works should be submitted to Council.*
11. *That Council implement all 25 recommendations of the Cessnock City Council Review Report 2006 - Local Government Reform Program Promoting Better Practice in accordance with the action plan it adopted in July 2008.*
12. *Given recent staff conduct and management issues, that Council ensure that the Promoting Better Practice Review recommendations 21, 22, 23, 24 and 25 relating to workforce relations and human resource improvements be implemented as a matter of priority. The General Manager should monitor and drive ongoing progress in this area.*
13. *That Council extend and resubmit its Promoting Better Practice Review action plan to address the following necessary improvements as identified in this report and summarised as follows:*

- i. That Council provide information and training to all councillors and employees about their obligations in relation to:*

 - *Council's electronic document management system and the State Records Act 1998*
 - *Council's adopted Code of Conduct*

- ii. That Council review its Councillors - Access to Staff and Information policy (to align with the recently revised Model Code); its Handling of Conflict of Interests policy; and develop a Confidential Information policy as recommended by IAB Services)*
- iii. That Council review its system for recording delegations to address the issues raised in this report and ensure that its electronic and hard copy version of its delegation register are consistent and current. This should be complemented with an audit program to ensure that delegations remain accurate and are exercised appropriately.*
- iv. That Council develop a consistent standard for the disclosure of gifts or personal benefits and maintain a more centralised online register which gathers consistent and sufficient information to ensure maximum transparency and accountability. That the General Manager delegate responsibility for the oversight, maintenance and monitoring of the gifts register to Council's Public Officer.*
- v. That Council ensure that its Fraud and Corruption Risk Assessment and Management Action Plan be amended to address any additional internal controls referred to in this report and submit a progress report to the Department of Local Government by 31 March 2009.*
- vi. That Council implement its Information Technology Strategy and monitor the ongoing progress against the action plan adopted at its meeting of 16 July 2008.*
- vii. That Council's planned review its of procurement and disposal practices (particularly in the area of fraud and corruption) to align with the provisions of the Local Government Act 1993 and the Local Government (General)*

- Regulation 2005 also consider its Goods Disposal Policy and its E-procurement system. The review should also include an independent representative from another branch within Council on its tender assessment panel and the use a tender checklist.*
- viii. That Council tender for its legal services and establish a legal panel.*
- ix. That Council finalise and issue its Leaseback Vehicle Manual and Leaseback Vehicle Agreement and implement effective controls to ensure that replacement occurs according to the Manual.*
- x. That the General Manager review relations between the Occupational Health and Safety committee and management to ensure all concerns are investigated and acted upon appropriately and consistently.*
- 14. To continue improvement of the operation of the Ranger unit, Council should implement all recommendations of its three (3) action plans that respond to the issues identified in the Promoting Better Practice Review, the WorkCover Improvement Notice 7 - 110028 and the Price WaterHouse Coopers Agreed upon Procedures Report.*
- 15. That the Director General of the Department of Local Government consider the issue of a circular to all councils providing them with information about resources such as the Enforcement Guidelines issued by the NSW Ombudsman to help them act promptly, consistently and effectively in response to allegations of unlawful activity.*
- 16. That the Department conduct a post investigation review to be undertaken 12 months from the date Council provides its response to this report, as required by section 434 of the Local Government Act 1993. The review should seek to confirm the implementation of the recommendations of this investigation and review their impact on improving Council's capacity its continued capacity to meet its responsibilities under the Local Government Act 1993.*

5. ANALYSIS OF EVIDENCE

5.1 Standards of Governance

5.1.1 Governance overview

Governance - governing body vs corporate systems

This section examines the conduct of councillors and the General Manager in relation to the provision of efficient, effective and appropriate standards of governance of Cessnock City Council.

Matters relating to the conduct of all other employees are covered in part 5.3 - *Staff Management and Supervision*.

Governance, in general terms, refers both to the body which is established to govern or administer something as well as the act exercising authority. More specifically:

“Corporate governance refers to all the means by which entities are directed and controlled.” (Standards Australia, HB401-2004:12)

Corporate governance is important because it enhances organisational performance, manages and minimises risks, increases the confidence of the community and the industry in the organisation, ensures that an organisation is meeting its legal and ethical obligations, and assists in the prevention and detection of dishonest or unethical behaviour.

The governing body

The councillors are the elected representatives and comprise the governing body of the council (section 222 of the Act).

Council has thirteen (13) councillors. Three (3) councillors each are elected from four (4) wards. The Mayor is elected by popular vote.

The members of the Council at the time of the investigation were:

Mayor, Councillor John Clarence, OAM

Ward A - Councillors Alison Davey Rachel Main, Robert Bedford

Ward B - Councillors Bob Pynsent, Bruce Scott, Ian Olsen

Ward C - Councillors Catherine Parsons, Dale Troy, Jeff Maybury

Ward D - Councillors Graham Smith, James Ryan, Ron Besoff

5.1.2 Strategic direction and leadership

The foundation to good governance is a clear sense of direction and positive leadership. The elected body of Council and the senior management team need to work together to provide good leadership and direction to the organisation to enable it to perform its functions well to provide services and infrastructure for the community.

The investigation team concurs with the Cessnock City Council Promoting Better Practice Review Report 2006 which concludes:

“Cessnock City Council has clearly articulated its vision, goals and charter in its strategic plan titled “Our People, Our Place, Our Future”.

[DLG-1]

To ensure the relevance of its strategic plan, Council should review it in consultation with the newly elected body, Council employees and the community. Participation of councillors, senior staff and Council’s employees in general is critical to the ownership and capacity to work together for community as a whole. The revised plan needs to be integrated with the management plan and other operational plans.

The former Mayor

Leadership by the mayor

The role of the Mayor is:

- *to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council*

- *to exercise such other functions of the council as the council determines*
- *to preside at meetings of the council*
- *to carry out the civic and ceremonial functions of the mayoral office.(section 226 of the Act)*

The former Mayor has been a member of Council for twenty one (21) years. During the past nine (9) years he has committed himself to the position of Mayor on a full-time basis. The former Mayor indicated that he would not be standing for re-election in the September 2008 elections.

The former Mayor appeared to have a good understanding of his role and was able to clearly articulate Council's vision and strategic directions. In particular, he has taken a keen interest in developing educational and employment opportunities for young people in the city. A key achievement in this area has been the establishment of an ongoing Mayoral Academic Awards.

The former Mayor, in his written response to a questionnaire issued by this investigation, made the following comments in relation to the conduct of council meetings :

“Council meetings are conducted in accordance with standard meeting procedure.....As Mayor I am in control of the meeting and have on occasions cautioned councillors for interjections and inappropriate personal comments.” [CQ-1]

In interview he stated:

“Sometimes there is a perceived lack of respect for the Chair. It is difficult for the Mayor to run the meeting in accordance with the Code of Meeting Practice....” [CI-2]

Despite this the former Mayor believes every council meeting does conduct the business of the Council.

“A number of councillors agreed that the Mayor was mostly in control. However, the minority non-ALP councillors believed meetings were overly politically controlled in favour of the majority ALP councillors.” [CQ-1-11]

Council meetings are analysed in more detail at section 5.1.5: *Council meetings*.

Relationship between the former Mayor and General Manager

Both the former Mayor and General Manager reported that they have a professional and productive working relationship. The former Mayor describes the General Manager as:

“decent, trusting and honest. His biggest mistake is that he assumes that everyone is like him.” [CI-2]

Performance management of the General Manager

Performance management is an essential part of good management practice. It provides a means to monitor organisational performance by linking and aligning individual and organisational objectives and results. It also provides a means to recognise and reward good performance and to manage under-performance.

At the General Manager level, performance management is the means by which a Council and General Manager can reach agreement about:

- The overall performance of Council. That is, the achievement of Council's goals, statutory responsibilities and the targets set in its strategic and management plans.
- His/her individual performance
- How this performance is to be measured consist with his/her contract and other regulatory requirements.
- The achievements of the senior management team.

Council has established the General Manager's Employment Arrangements Committee which consisted of the former Mayor and Councillors Bedford, Parsons, Troy and Pynsent.

The committee last met on 28 June 2007 to review the General Manager's performance over the previous six month period. The committee assessed his performance as satisfactory overall and awarded a nominal increase in line with the Consumer Price Index.

A Mayoral Minute which provided a summary of the committee's deliberations was adopted by Council 4 July 2007. The minute included three key performance criteria against which performance was measured and particular recommendations for the General Manager to implement.

The recommendations included specific tasks including the provision of a breakdown of all development applications and facilitation of a think tank for all councillors to discuss future Council restructure. **[CM-1]**

All Councillors were provided with the minutes of the committee's deliberation on 31 January 2008. The minutes included a matrix outlining major tasks, responsibilities, performance indicators, performance standards and assessment.

The assessment column was blank. Neither the former Mayor nor General Manager was able to provide any formal or contemporaneous notes recording the discussions which formed the basis upon which the General Manager's performance was assessed. **[CM-2]**

The next six monthly review was scheduled for 7 February 2008 but did not occur.

In relation to the staff conduct and management issues, the former Mayor believes the General Manager acted cautiously but appropriately. He stated that in matters such as these "*Justice has to be done and procedural fairness has to be followed.*" **[CI-2]**

He also pointed out that the staff difficulties were outside of the General Manager's control and claimed "*Bernie's never had a clear shot at managing this Council.*" **[CI-2]**

The former Mayor's perception of Councillor and staff conduct

When asked to describe the conduct of councillors in general, the former Mayor indicated:

“On the whole councillors’ conduct over the last nine years has been good and despite exchanging vigorous debate councillors engage in friendly conversation following the meeting and at other functions they attend. Councillors from all aspects of the political realm have attended conferences and workshops and worked together as a team.” [CQ1]

In relation to staff conduct the former Mayor stated:

“Overall the conduct of Council staff is excellent. Within any large organisation there are people who choose to behave in unacceptable and sometimes unethical behaviour. These need to be addressed by Council and managers following appropriate policies.” [CQ-1]

However, in interviews the former Mayor cited at least two instances where he personally intervened in staff management of supervision matters. The issues relating to staff conduct are considered in *Part 5.3 - Staff Management*. He stated that in more than one instance he was required to intervene and bring matters to the General Manager’s attention. This behaviour is not appropriate to the role of a council mayor. *[CI-1 - 2]*

Conduct issues relating to the former Mayor

Matters relating to the former Mayor’s understanding of the Council’s adopted Code of Conduct and his management of gifts and benefits are covered at section *5.1.6 Code of Conduct*.

Allegations have been made to the investigators during the course of their inquiries. Where appropriate, these allegations have been referred to the relevant authorities. *[CC-1]*

The Councillors

The role of councillors - governance role vs political role

Councillors have two (2) roles. Firstly, to act as a member of the governing body to direct and control the council's affairs in accordance with the Act (section 223 of the Act). This includes decision making around policy development and resource allocation as well as monitoring the council's performance.

Secondly, councillors are required to act as an individual elected member to communicate council policy and decisions to the community, exercise community leadership as well as represent the views of residents and ratepayers to council (section 232 of the Act).

While it is acknowledged there is a perception that these roles may at times conflict, it is the obligation of a councillor to strive for balance. It was observed by a number of councillors that the role as an elected person representing community and/or political views seems to dominate over considerations of good governance.

For example, one councillor stated:

The past nine years have been the most politically run ones in the twenty four and a half years of my experience. Other Labor led Councils have been fairer with committee membership structures and both the Independent led councils were also fairer in this aspect, and in meeting procedures too. I have experienced six councils - four Labor and two Independent. [CQ-5]

Some councillors expressed the view that Council was highly politicised and others expressed concern that their fellow colleagues operate in the past insisting that "we have always done it that way". *[CI-1-8 and CQ-1-11]*.

Evidence presented throughout this report appears to confirm that the principles of good governance, best practice and compliance with current regulatory requirements have been of lower priority to Council.

Training

Nine out of ten councillors who completed a “Councillor Questionnaire” distributed to all councillors for the purposes of this investigation indicated that they had received adequate training and support to assist them in carrying out their role. Several councillors indicated that further training related to section 94 or voluntary contributions plans and the Code of Meeting Practice would be beneficial to them carrying out their roles effectively. [CQ-1-11]

Training on meeting practice would be most beneficial to councillors. This is well illustrated by the following statement from one of the councillors:

“It would have been very beneficial (and still would) to have received training on the Code of Meeting Practise as a new councillor as I was a fairly young new councillor and unfamiliar with formal meeting procedure. It took me close to two years to be confident that I was following the correct procedures when participating in debate.” [CQ-6]

These comments should be taken into consideration in the development of induction training as per recommendation 10 of the Department’s Promoting Better Practice Review. Councillor training should also be provided on an ongoing basis as required.

Relationships between councillors

It was evident that there was a distinct division and some animosity between the political majority (the ALP) and other minority councillors.

- Some ALP councillors expressed the view that some of the independent councillors could on occasion be rude and disrespectful and at times *“deliberate in their attempts to provoke other councillors or defy the Mayor.”*
- Most of the independent councillors commented that the Mayor was not fair in his rulings when chairing a council meeting. It was perceived that preference was given to the ALP councillors.

- It was observed that councillors usually mix socially following the meetings and at other functions they attend. All councillors have attended conferences and workshops and appear to work together as a team.

On average, it appears that Councillors have a mature approach to carrying out their roles and duties. [CQ 1-11]

Councillor interaction with staff

Council adopted a policy entitled Councillors - Access to Staff and Information in March 1998. The policy was last reviewed in June 2000. [CP-2]

The policy is linked to the relevant regulatory provisions and is cross referenced to other policies or documents such as the Model Code. A revised Model Code took effect from 20 June 2008.

Overall, councillors and staff reported that their interactions were cooperative and consistent with Council policy. Councillors in general found staff to be professional and helpful. There were isolated examples where a few councillors failed to modify their interactions in line with the Local Government Act introduced in 1993. [CI-1-8]

The General Manager

Role of the General Manager

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

- a. the day to day management of the council
- b. to exercise such of the functions of the council as are delegated by the council to the General Manager
- c. to appoint staff in accordance with an organisations structure and resources approved by the council
- d. to direct and dismiss staff

- e. to implement the council's equal employment opportunity management plan.

The General Manager has been employed by Council in various roles since 1975. He was appointed as General Manager in October 2005.

Leadership by the General Manager

The improper conduct of certain employees, particularly senior staff, was outside of the General Manager's control.

Since late 2006 the General Manager has by necessity been preoccupied with trying to manage serious staff conduct matters rather than implementing Council's strategic directions. These are examined in detail at section 5.3 *Staff Supervision and Management*.

In 2006 the Department's review identified a range of governance and human resource improvements which were inherited from the previous administration. Many of these had not been implemented at the time this investigation was authorised.

While the investigation and disciplinary processes in relation to the allegations of misconduct against two of Council's senior officers may not have been conducted in the most effective and timely manner, it is clear that the General Manager's intention was to facilitate procedural fairness. Ultimately, the General Manager took the necessary action in relation to the outcomes of these processes to exercise his authority by terminating the employment of two senior staff.

In essence this means that the organisation at the operational level was without leadership for an extended period of time. Appointments have recently been made to two new senior management positions. Rebuilding a strong senior management team who can demonstrate leadership in achieving the critical changes recommended as a result of this investigation is a key challenge for the General Manager.

Interviews with a number of councillors and employees at different levels of the organisation reveal that the General Manager is much respected in the manner in which he communicates with all stakeholders and attempts to manage various

matters. However, most perceived that his leadership and management skills could be strengthened.

The perception of Councillors and staff members in general is that they were not well informed about the investigation and disciplinary processes in relation to the allegations of misconduct against two of Council's senior officers. This also is further explored in part 5.3 *Staff supervision and management*.

The General Manager and senior management team are strongly encouraged to enhance leadership and organisational capacity by exploring appropriate frameworks such as the Australian Business Excellence Framework. As well as building an integrated leadership and management system these frameworks and associated training help to create more positive and productive workforces.

5.1.3 Council's governance framework

Promoting Better Practice Review progress

Overall, in terms of decision making, the Department's Promoting Better Practice Review Report concluded that:

"Cessnock City Council generally has a mature approach by both council management and elected officials to decision-making. However, this can sometimes be undermined by in-fighting among elected councillors, and council must be mindful of the damage this does to council's reputation in the community."

The report contains a total of twenty five (25) recommendations. Ten (10) of these relate to governance issues including internal controls. Progress toward achieving these recommendations has been less than satisfactory. The limited progress made is reported here and in *section 5.2 - Internal controls and reporting*.

Statement of business ethics and code of conduct - (Promoting Better Practice Review - Recommendation 1)

As well as defining standards of behaviour for its elected representatives and staff, Council should alert businesses to the standards of conduct that will apply

when they are in a business relationship with Council. The review recommended that Council's Statement of Business Ethics and Code of Conduct should be made more prominent on Council's website, and Council should examine how to better organise its "Codes Policies and Procedures" to make them more accessible and user friendly.

Council has not completed this recommendation. Council has decided to create an "About Us" page on its website to comply with this recommendation. It is estimated that new page will be operational by 31 December 2008.

Internal reporting procedures (Promoting Better Practice Review - Recommendation 2)

Council has a policy called Internal Reporting System which describes how staff may report allegations of corrupt conduct, waste and mismanagement.

The Department recommended that Council include the *Protected Disclosure Act 1994* and internal reporting procedures in ongoing training programs for staff and councillors.

Council has not completed this recommendation. The draft Risk Assessment of Fraud and Corruption report, April 2008 identifies the need to upgrade the policy in a number of areas.

Given the extent and seriousness of the conduct of some senior staff and councillors, it would seem that such training and policy revision is vital and a matter of priority.

The investigators note that Council has tentatively scheduled this training to be delivered by a specialist training provider in December 2008. Further training of staff and councillors is planned for early 2009.

Induction and ongoing training for councillors - (Promoting Better Practice Review - Recommendation 10)

Council has commenced planning induction training for councillors to occur in October/November 2008 after the local government elections.

An ongoing education program for councillors and staff is currently being investigated by senior management. No timeframe has been set for achieving this.

Governance framework

Council does not appear to have a clearly defined governance framework. As evidenced above and in section 5.2 there has been limited progress in improving its corporate governance systems and processes as recommended by the Department.

Council proposes to develop a Governance Health Check Action Plan by the end of December 2008. This action plan will be used to drive the continuous improvement and rolling programs for all governance activities at Council. Given the scope and extent of improvements still required in the governance area, the investigation team view this as a worthwhile initiative. The action plan should also form the basis for articulating Council's overall framework to provide good governance.

5.1.4 Delegations

Regulatory context

Councils are given the power to delegate functions by virtue of section 377(1) of the Act. Specifically, a *council may, by resolution, delegate the General Manager or any other person or body (not including another employee of the council) any of the functions of council* with certain exceptions. Upon the appointment of the current General Manager, Council reviewed the General Manager's delegation.

The delegations register contains no reference to section 377 (2), which provides *"that council may, by resolution, sub-delegate to the General Manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council."* [CP-3]

It is critical that the Mayor, General Manager, councillors, employees and other Council officials understand and formally agree to the functions delegated to them. This will help to ensure all parties act within the correct level of authority

and conduct themselves accordingly.

Role of senior staff

One of the key indicators in the performance agreements of the General Manager and three Directors is to *“ensure appropriate staff delegations are in place and to ensure staff delegations are reviewed regularly to meet the operational needs of the organisation. A complete review is conducted on an annual basis.”* [CP-4]

Delegations register

Each council must review all its delegations during the first twelve (12) months of each term of office (section 380 of the Act).

The delegation register which records delegations was found to have a number of deficiencies. In particular, the investigation team identified that the register:

- does not contain a reference to the requirement that a council may not delegate *any function under this or any other Act that is expressly required to be exercised by resolution of the council* (section 377(1) last dot point).
- does not contain an index at the front of the register and does not record any requests to update delegations.
- is out of date and in some cases inaccurate. For example, some delegations originate in 1995 and refer to legislation which no longer exists such as the *Dog Act 1966*. Many delegations are still authorized by the previous General Manager. In a number of instances the monetary limits referred to in the delegation were contrary to Council’s current purchasing policy. For example, delegations that refer specifically to limits prescribed in old delegations, in one instance those set in 1995 were noted.
- neglects to establish the delegation of a number of critical operational functions to a number of officers. Of particular note is the Director, Infrastructure Services. This position was created via Council’s restructure in March 2008. It gained a substantial number of new responsibilities. At the time of the investigation a revised delegation had not been finalised.

This means that the Director has operated for a number of months without receiving a formal delegation of authority as prescribed by the Act.

- records only some recently revised entries in a comprehensive and clear manner.
- does not record other entries in sufficient detail to ascertain what authority the employee or councillor has. For example, the functions delegated to the former Mayor have not been reviewed for many years and do not clearly set out his basic functions and authority to act. Technically, this means the former Mayor may be acting without authority and is particularly important in exercising key functions in a time of emergency.
- appears to include some delegations that have not been approved by the General Manager and/or are not signed by the General Manager.
- does not record when the delegations have been reviewed to provide an audit trail.
- does not link delegations with position descriptions to clarify the level of authority that an employee/councillor has in his/her role.
- does not require staff to sign in order to confirm that they have received and understood their delegations.

Council has established an electronic delegation register which captures recent and new delegations. Therefore, this register does not reflect the hard copy register of delegations. Also, it is evident that Council does not conduct an annual review of delegations to ensure that they are up to date and continue to be relevant. It is also not apparent that changes in delegations are successfully communicated and understood by staff.

Given this, the current register(s) fails in the purpose of ensuring employees are fully aware of the functions delegated to them and are acting within the correct level of authority.

Council should implement an audit program to ensure that delegations are being exercised appropriately.

5.1.5 Council meetings

Regulatory context

One of the key functions exercised by councillors in their capacity as members of the governing body of Council is their participation in council meetings. This is the primary decision making forum in which decisions on key policy, strategic and other matters are made. Council meetings are open, except in limited circumstances.

For a council to exercise its functions effectively and to meet its obligations to the community it serves, it is vital that council meetings are conducted in an orderly and efficient manner.

The manner in which council meetings are to be conducted is prescribed under the Act and the *Local Government (General) Regulation 2005* (the Regulation).

The investigation team observed Council meetings held on 21 May 2008 and 2 July 2008. In addition, Council's code of meeting practice, business papers, minutes and other relevant documents were reviewed.

Many instances were noted where the meeting did not appear to comply with meeting practices prescribed by the Regulation. *[CM-4 and CM-5]*

Structure of Cessnock City Council meetings

Under section 260 of the Regulation and section 355 of the Act councils may establish committees to exercise a function of council. Council has three committees as follows:

- Infrastructure and Services
- Corporate and Community
- City Planning

Each committee is comprised of all councillors. A separate meeting for each committee is held before the ordinary Council meeting. While committees are permissible under the Act, they should be established to exercise a specific purpose and function.

The current structure adopted by Council is inefficient due to the unnecessary repetition of meeting procedures such as apologies, questions without notice, closing and opening of meetings. Given all councillors are represented on each Committee, one integrated ordinary Council meeting (including officers' reports) would be more efficient and effective.

Meeting Practice

Under section 360 of the Act a council may adopt a code of meeting practice that incorporates the provisions of the Regulation and may supplement them with provisions that are not inconsistent with the Regulation.

Cessnock Council adopted a Code of Meeting Practice in 1970. The copy of the Code available on Council's website was last amended in June 2000 prior to the introduction of the Regulation. **[CP-5]**

Many of the Council's meeting practices observed at the two Council meetings were out of date and confirm that Council has not kept abreast of the required regulatory changes introduced in the Act in 1993 and the Regulation. Specific examples of outdated or poor meeting practice requiring improvement are provided below.

Councillor participation in council meetings

Overall, the behaviour of councillors at the two council meetings attended was mature and generally respectful. However, the meetings were characterised by a lack of formality by many interjections and procedural motions being moved. This was not conducive to proper debate and effective decision making.

In many instances the councillors did not participate in accordance with meeting practices prescribed by the Regulation.

The majority of councillors who provided their perception of meetings agreed that the former Mayor was mostly in control. However, as mentioned earlier, some of the minority councillors believe the former Mayor's rulings were not always equitable. **[CQ1-11]**

There have been a small number of occasions where a meeting has become disorderly with members of the public gallery being rowdy. The former Mayor in these instances called an adjournment and then restored order to the meeting. *[CQ1-11 and CI-2]*

Acknowledgement of traditional owners

While Council displays the Aboriginal flag in the chamber, the traditional owners of the land are not acknowledged as part of its council meetings. It was noted that one councillor made his own personal recognition of the traditional owners of the land at the beginning of the meeting.

Prayer

Council meetings are opened with a prayer which reflects the traditional Christian religion. This does not recognise the increasing diversity in the Cessnock community and may cause offence to those who hold different religious beliefs. Council, in line with other NSW councils, should consider reviewing the wording of the prayer to embrace broader denominations and beliefs.

Declaration of interests

All of the meetings failed to have a clear process for the declaration of pecuniary and other conflicts of interests. A single ordinary council meeting would make it easier to establish a clear and more transparent method of declaring interests in matters before Council at the beginning of Council's meeting which should include more transparent tabling of councillors' written declarations.

Council currently uses a "Record of Disclosure by Member" Register which was a requirement under section 30A (6) of the old *Local Government Act 1919*. A examination of the register showed an increase in disclosures from 4 in 2000, to 22 and 25 in 2007 and 2008 respectively. While the quantity of disclosures has increased substantially, some of these lacked critical information such as the nature of the interest and whether it was a pecuniary or non-pecuniary interest.

There also appeared to be a lack of understanding by councillors of how to manage a pecuniary and other conflicts of interest as regulated by Chapter 14, Part 2 of the Act. For instance, disclosing the interest in writing and, in the case of pecuniary interests, disclosing the nature of that interest and leaving the meeting so as not to participate in discussions or voting on the matter (section 451 of the Act). This became apparent by observing Council meetings, from questionnaires completed by councillors and in interviews with a number of Councillors.

For example, at one of the meetings attended by the investigation team a councillor declared a pecuniary interest in a matter and then remained in the chamber. This is inconsistent with the requirements of section 451 of the *Local Government Act 1993*. This matter has been referred to the Department for separate examination.

A number of items listed in the business paper such as development applications failed to disclose information to assist councillors in determining whether they have a pecuniary or non-pecuniary conflict of interests in the matter.

The General Manager has advised that Council is reviewing ways to improve the Councillors' disclose of interests.

Determining matters without further debate

The practice of including an item on the agenda entitled "Matters Determined without Further Debate" allows Council to determine those matters in the business paper that will be adopted in their entirety without debate.

Specifically, it involves identifying and adopting all of the officers' reports and recommendations that all councillors agree with as a whole to avoid further and unnecessary debate.

Council did not use this procedure where appropriate. Such a process could assist in the smoother operation of Council meetings and avoid undue delays.

Closure of meetings

As a general rule, meetings of councils and their committees are required to be open to the public. Council can, in accordance with section 10 of the *Local Government Act 1993*, determine that a matter should be dealt with in confidential session.

Council closed its meetings by resolving into committee of the whole. This does not comply with the provisions of section 10 of the Act. This represents another example of where Council is continuing to adopt meeting practices in place under the old 1919 Act rather than the current 1993 Act. Committee of the whole provisions are set out under clause 259 of the Regulation. These provisions are intended to be used for other purposes which are outlined further in this section.

The investigation team examined the public agendas for two council meetings attended and found that they did not list the items proposed for consideration in the closed portions of the Council meeting. Section 9(2A) of the Act requires the General Manager to indicate, on the agenda, that he expects an item to be discussed in a closed part of the meeting, without providing details in relation to the item.

Under clause 252 of the Regulation the public may make representations as to whether the part of the meeting should be closed. In order to do this, the public is entitled to know what the item of business is about.

Where Council determines that a matter should be dealt with in closed session, sections 10A to 10D of the Act outline the requirements for this determination. The business paper should also include an explanation of the way in which discussion of the matter in an open meeting would, on balance, be contrary to the public interest (section 10D(2)(c)). This information is also to be recorded in the minutes of the meeting.

Additionally, Council should make public all the resolutions made in closed sessions as soon as practicable after those meetings (clause 253 of the Regulation). An examination of Council's minutes for the past 12 months shows that not all resolutions discussed in closed session were reported to open Council. Some resolutions referred to the recommendations of the report considered in closed session which the public do not have access to.

Caucusing

A caucus is a closed meeting of a group of persons belonging to the same political party or faction of a political party. A vote in line with a caucus decision on matters before Council is referred to as a binding caucus vote.

Interviews with some ALP councillors disclosed that, *“Labor councillors do not caucus”*.

However, it did appear that caucusing on certain items may have occurred at the two Council meetings attended by the investigation team. For example, at one meeting it was observed that ALP councillors were reluctant to accept amendments to motions until these were accepted by the majority of ALP councillors. It was noted that some of these matters related to development consents.

When asked *“Do ALP councillors caucus?”*, the former Mayor replied:

“We do.....It’s known as Labor caucus meeting”

I can tell you now from day one when we met I said there will never be any forced caucus decisions. You will vote according to your conscience and what you believe is best for this city...” [CI-2]

The General Manager when asked the same question, replied that:

“I have no doubt that they do. Whether they follow strict caucus rules, I suspect not. It is not unusual for members of the Labor Party to vote on different matters than the group. I would say it does not happen on a regular basis, but it does happen.” [COI-1]

One Councillor's perception was:

"Caucus meetings decide who will lead debate and this person is called despite the light being lit first by an opposition representative. The Mayor calls the name of a mover and seconder for some other less important motions quite randomly and not on voices heard or of lights lit up." [CQ-5]

In response to the draft report, a Councillor advised *"that the only binding caucus in the NSW ALP rules refer to the Deputy Mayor, budget and policy issues. As an ALP Councillorall Labor Councillors have made conscience decisions on DAs."*

The *Guidelines for the Model Code of Conduct for Local Councils in NSW* refer to caucus votes in the *Optional better practice section* and state that councils may wish to consider including the following specific provision on causing in their codes of conduct:

"Engaging in binding caucus votes on matters is inconsistent with the obligation of each councillor to consider the merits of the matter before them. Political group meetings must not be used to decide how councillors vote on matters like development applications where there are specific statutory considerations for each decision maker to consider." [DLG-6]

The *Report on an investigation into corruption allegations affecting Wollongong City Council Part Three* by the Independent Commission Against Corruption (ICAC) finds:

In respect of DA determinations, a binding caucus vote would be inconsistent with the requirements of section 79C(1) of the EPA Act, which sets out a number of matters that have to be taken into consideration in determining a development application. These matters include environmental planning instruments, any submissions, the likely impacts of the development and the public interest. [O-2]

The ICAC report recommends that all NSW councils consider a prohibition on binding caucus votes in relation to development applications during their next code of conduct review.

Dealing with operational matters at Council meetings

A substantial number of questions without notice were raised by Councillors after each Council Committee meeting. Provisions relating to Giving Notice of Business (section 21 of Council's Code of Meeting Practice) prescribe that Council must not transact business at a meeting unless notice of the business is given. The raising of "questions without notice" gives rise for business to be considered contrary to the provisions set out in the Code of Meeting Practice as well as clause 241 of the Regulation.

Many of the questions asked were operational in nature. An example of questions raised include: why the toilets in the foyer to the Council chamber were still out of order; requests for specific pothole patching; the pruning of trees coming in close contact with electrical wires. Matters such as these should be raised through other means such as the customer complaints system or raising the question prior to the meeting with the appropriate Council officer in accordance with Council's policy.

The former Mayor agreed that the number of such questions were excessive and stated that *"Councillors are in campaign mode and are asking silly questions."* [CI-2] He had encouraged them to seek information directly from the relevant Director.

It was noted at the 2 July 2008 meeting that the former Mayor reminded Councillors to use the "green form" (Councillor Complaint Form). Most Councillors indicated that they were unfamiliar with this form. Some stated they had not used it in the last four years. [CP-6]

The Department has issued a circular to councils on transacting business without notice (Circular No 07/14). The Circular makes it clear that questions during a council meeting should be in relation to the business before council and councillors should avoid raising business that can be discussed under other items of business on the agenda, pursuant to clause 241 of the Regulation. [DLG-2]

The Act also provides a number of other methods for councillors to bring matters to council, such as using notices of motion, holding councillor information sessions on significant matters or raising a matter of urgency at the consent of the Mayor and council.

Councillors can put forward questions on notice, similar to a motion on notice and include such questions in council's business paper.

Council can also resolve to move into committee of the whole under section 259 of the Regulation. This allows greater flexibility by not restricting the limits on the number and duration of speeches normally required by virtue of clause 250 of the Regulation. The meeting remains open to the public unless the council closes it under section 10A (2).

Public Participation

Council allows members of the public to make an address to Council meetings. It has adopted a formal policy called Requests for Verbal Submissions to Council which provides guidelines to the community and staff in relation to such requests.

[CP-7]

The agenda for Council's meetings did not include this as part of the ordinary Council meeting. It was noted at one of the Council meetings attended that a large number of people waited some time to hear the particular item of business that they were interested in. In matters which have a large public interest Council could consider moving a procedural motion to move the item of business to earlier in the meeting to minimise the length of time members of the public need to wait for their item of business.



5.1.6 Code of conduct

Adoption and implementation of the Code

The Model Code of Conduct for Local Councils in NSW came into effect on 1 January 2005. Cessnock City Council adopted the Model Code in its entirety on 2 March 2005. The Code sets out the standards of conduct expected of councillors and council staff. All councillors attended training about the Code. *[DLG-3]*

During 1 July 2007 to 30 June 2008 Council was among the list of the top 25 most complained Councils in NSW. The largest majority of all complaints against Council received during the period related to the alleged misconduct of Councillors and Council staff. *[DLG-4]*

Several issues have been identified which indicate that Council has not entirely understood its obligations under its adopted Code and had difficulty in implementing it in a satisfactory manner. Some of these include:

1. Accountability and procedural fairness The minority councillors perceive a distinct lack of adherence to all aspects of the Code particularly in terms of natural justice. One councillor stated:

“The (ALP councillors) have the power to have opposition councillors censured or sent to the Conduct Committee on a whim and this has happened more than once in my term of Council. Conversely, complaints made about the majority party councillors are rarely taken seriously or investigated.” *[CI-5]*

Another councillor alleged that the former Mayor had participated in deliberations on the Conduct Committee when there was a complaint under the Code about his own conduct. *[CQ-8]* Also, at the time of the investigation there were two outstanding complaints with the General Manager in regard to speaking on matters outside of the Conduct Committee.

2. Some complaints have taken a long time to be dealt with and resolved. Three (3) complaints made in November 2007 were still outstanding or not

resolved. The General Manager advised that these matters were awaiting additional information before they can proceed.

3. Inappropriate censure of councillors The Model Code prescribes complaint handling procedures for councillor misbehaviour. In December 2007 Council resolved by notice to censure a councillor rather than refer the matter to the conduct committee. This was contrary to the Code and consequently did not afford procedural fairness as per clause 10.12 of the Model Code. **[CM-6]**

Upon the advice of the Department the matter was later referred to the Conduct Committee. The Committee engaged a solicitor to investigate the complaint. The solicitor determined that the Councillor did not commit the breaches of the Code of Conduct alleged against him.

Revised Model Code of Conduct

The revised Model Code of Conduct for Local Councils in NSW came into effect on 27 June 2008. Council adopted the revised Code of Conduct on 16 July 2008. **[DLG - 5]**

The revised Model Code incorporates a number of changes which should assist Council to address many of the difficulties it has had in implementing the former Code.

For example, the conduct committee has been replaced with a more neutral Conduct Review Committee or a sole Conduct Reviewer who are to be persons independent of council.

Also new part on procedures (Part 3) contains complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer.

Given Council is perceived as not fully understanding its obligations under the former Code, training for all Councillors on Council's revised Code is critical.

Council also has a Handling of Conflict of Interests policy that provides that its Ethics Committee will consider matters relating to non-pecuniary interests. IAB Services have recommended improvements to this policy to require staff to report

in writing to the appropriate level of management any conflicts that may arise in the course of their work and that this is responded to in writing. *[CP-8]*

Personal benefit

It is highly likely that council officials at some stage in their career may be offered a gift or benefit in the course of their work. The gift or benefit could be offered innocently in good faith, or offered in an attempt to influence the council official.

If council officials accept a gift or benefit, this can give rise to feelings of obligation on their part towards the giver. It can also create perceptions that they are or will be influenced because of the gift or benefit.

It is therefore important that Council develops a policy and procedures to guide and assist Council officials in dealing with gifts and benefits and to support the provisions in the Model Code of Conduct regulating gifts and benefits. The Model Code of Conduct requires councils to maintain a gifts register.

The Model Code more clearly defines token gifts and benefits and gifts and benefits of value. Guidelines to assist in the implementation of the Model Code have been issued by the Department.

Gifts and benefits policy and register

Council does not have a consistent standard for the disclosure of gifts or personal benefits. There are five (5) gift registers at Cessnock City Council, one for each branch of Council's operation. *[CP-9]* All gift registers were reviewed. They contained few entries, mostly made by staff. Council should ensure that all staff and Councillors are aware of what constitutes a gift and of the associated requirements.

Some of the entries were found to be incomplete. Important details were missing from entries such as:

- the entry number
- the date received and the date was entered in the register (one unspecified date is confusing)
- estimated amount or details of the gift received

- whether their supervisor has been advised of the gift
- the action taken in regard to the gift
- the Public Officer or General Manager's signature or acknowledgement.

A register should gather consistent and sufficient information to ensure maximum transparency and accountability. It should be able to withstand the scrutiny of anyone examining the register. The quality of information entered needs to be monitored regularly.

As well as collecting more information Council should integrate its registers into one and consider the option of an online register. The General Manager should delegate responsibility for the oversight and maintenance of the registers to the public officer. Council is encouraged to consider the publication *Managing gifts and benefits in the Public Sector Toolkit* when reviewing its practices in this area.

The gifts received by Council officers in general included small gifts such as bottles of wine and dinners. However, some received tickets to sporting and major community events.

Gifts and benefits of value

Under the Council's recently adopted Code gifts and benefits that of a greater than token value are more clearly defined.

“ Notwithstanding clause 8.1, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)) corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gym, use of holiday homes free or discounted travel.” [DLG-3]

Under the adopted Code, councillors and council officials must not accept any gift or benefit of more than token value. The offer of such gifts should also be entered into the gifts register.

Allegations were made about gifts and benefits of value such as hotel accommodation, tickets to sporting events and dinners with local developers being accepted by the former Mayor, councillors and senior staff. It was further alleged that these were not recorded on the gift register.

The former Mayor and councillors

Investigating allegations relating to the failure to disclose gifts and benefits are by nature difficult to substantiate. For example, the former Mayor's gifts register does not list an estimated value and does not record whether the gift was accepted, given to the Council or disposed of in another manner.

When asked why the former Mayor replied:

"Actually I have never made a declaration." [CI-2]

He explained that he has always informed his personal assistant of what he received and she recorded it. However, delegating this function does not abrogate the former Mayor's obligation to meet his obligations under Council's Code of Conduct.

The former Mayor also confirmed that he and his wife stayed at the Crowne Plaza Hotel as part of a trial run of the hotel prior to it being open to the public. It is more than likely that this hospitality was offered to him because of he held the position of Mayor and therefore the provisions of the Code apply. The hospitality which could amount to a gift and benefit of value should not, according to the Code, be accepted. It was also not recorded in the gifts register as required by the Code.

When asked if he had received hospitality such as dinners the former Mayor stated:

Of course I have. I was invited out there [Polkobin] to have dinner with Cardinal Pell. I was invited out there to have lunch with the Governor-General Michael Jeffery. You do that as the former Mayor. [CI-2]

This dinner, lunch and others were not disclosed in the register.

The former Mayor and some Councillors further confirmed their attendance at a dinner between themselves and a local developer who is associated with Hunter

Employment Zone (HEZ). Corporate hospitality such as this without the discussion of official Council business is contrary to the Code. No entries were found in the gift register relating to this dinner.

It was also alleged that Councillors attended an annual Christmas party at HEZ which also included transport to the event. There was also no record of this hospitality in the gift register.

In 2004, the former Mayor and former General Manager were invited by Mr Li Zhang, Chairman of Resort Hunter Valley Pty Ltd and Hightrade to join him on a visit to China for the purposes of examining business and trade opportunities for the area.

As representatives of the Council it was determined that the costs of the trip for the former Mayor and former General Manager be paid by Council (i.e. business class return airfare to China and 11 nights accommodation). Hightrade provided Council with an invoice for \$9,000 to cover these costs. While the invitation was extended to partners, their costs (totalling \$6,000) were met by the former Mayor and former General Manager personally.

Despite the cultural norms of the exchange of gifts in Chinese culture it is noted that only one gift (a set of Warriors) was recorded in the gifts register.

While the former Mayor's frank admissions are noted and it is acknowledged that such networking and hospitality is consistent with the Mayoral role, the Model Code requires that such hospitality be declared. The former Mayor's failure to do so is contrary to several principles in section 4 of the Model Code including impartiality, accountability, openness and honesty.

In his interview the former Mayor also said that he was not sure if all Councillors understand Council's adopted Code. Councillors must avoid or appropriately manage any conflict of interests. *[CI-1-2]* Ethical decision making means councillors' decisions and actions should be able to withstand public scrutiny.

Council officers

Various allegations were made about some officers (particularly senior staff) who regularly receive gifts of value from Council suppliers without disclosure in any of

the gifts register. Limited specific evidence of such practice was provided or found.

However one example of this practice is the Council's Director of Infrastructure Services and Council's Plant Superintendent, who are involved in assessing and approving Council's tenders for large equipment, are regular guests of WesTrac at the Bathurst 1000 car racing event.

WesTrac has been successful in winning tenders to supply Council with Caterpillar equipment. For example, in January 2007 Council accepted WesTrac's tender to supply three items for approximately \$300,000 (ex GST, with trade in). **[CM-3]**

The Director of Infrastructure Services, the Plant Superintendent and other Council officers have attended the event for a number of years. The following invitation from WesTrac to the Director on 14 August 2007 confirms this arrangement.

"Dear Lew,

Hope all is well, it's coming around to that time of the year again where we begin the planning process for the Bathurst 1000, I would like to invite you and the boys to attend our customer event, similar deal to last couple of years, accommodation provided from Friday thru Sunday included package includes all on site transfers, ticketing and customer functions as well as reserved corporate tent area on Conrod Straight.

I know the lads keep talking about "camping" for old time sake but I thought they may still prefer our offer?

Can I count on 4 or 5 from Cessnock? Would appreciate names if possible.

Let me know so I can begin planning.

Regards Dave" [CC-2]

The Director Infrastructure sought to delete this document from Council's electronic Document management system. This included formally seeking the

General Manager's approval which was granted on 27 August 2007. The Director indicated that he believes that such invitations should not be profiled and captured by Council's electronic document system. This action would be contrary to the *State Records Act 1998* as the invitation would be considered to be a Council record.

A Councillor raised the matter of the officers' attendance at Bathurst as guest of WesTrac as an issue of conduct with the General Manager. The Councillor also indicated to the General Manager that the gifts had not been recorded in the relevant gifts register.

The Director Infrastructure Services and the Plant Superintendent did attend the Bathurst 1000 on the weekend of 6 October 2007. (It is noted that the former Mayor also attended this race meeting however this was in a personal capacity and was not at the invitation of Wes Trac). The hospitality was declared by the Director shortly after the weekend in the relevant gifts register at an estimated value \$200. The hospitality consisted of three (3) nights shared accommodation (discount rate of \$25/per person per night) and a few BBQ type meals and drinks.

[CP-9]

The Director indicated to the investigation team that he attended this event in 2004, 2005 and 2007. However, only one entry covering his attendance in 2007 could be located in the gifts register. In response to the draft report, the Director Infrastructure Services advised that on each occasion that he attended the Bathurst 1000 he notified and obtained the approval of the General Manager.

The Plant Superintendent did not declare his acceptance of hospitality immediately but did record it before 1 November 2007. He estimated the value of his gift at \$250 which is somewhat different to the Director's estimate of \$200. Both officers failed to describe their gift/benefit but rather indicated that it was a "*new product release*". The inconsistency in these amounts does not appear to align with the Code of Conduct principles of accountability and transparency. In response to the draft report, the Plant Superintendent advised that he had attended the Bathurst 1000 on three occasions. He raised concern that the gifts register located at the Council Depot was removed some time ago, so he advised

the Director who said he would register both names in the gift register at the Council's Administration office.

The email from the WesTrac representative reproduced above confirms attendance by Council officers in previous years. However, no corresponding entries were found in the gift register.

In a reply memo to the Councillor who had raised the matter, the General Manager stated that *"the acceptance of corporate hospitality by staff is not prohibited."* [CC-3]. Both the former and revised Model Codes of Conduct treat corporate hospitality at sporting events as more than token. They should therefore not be accepted by staff. A council officer's acceptance of gifts of value may amount to a breach of the Model Codes.

There is sound reasoning for such a position. Council officials should not accept any gifts or benefits that give rise to a real or perceived influence in relation to their decision making role. In this case two senior officers (one a member of Council's senior executive) who in early 2007 were involved in the assessment of competitive tenders, recommended Council purchase equipment to the value of approximately \$300,000 from WesTrac. They then accepted hospitality to a major sporting event from WesTrac. Such gifts and benefits can create obligations and expectations to create a real or perceived bias in decision making.

The Director in response to these matters has stated that at no time did any hospitality offered by or accepted from any supplier in any way affect his impartial assessment of any tender or purchase of Council equipment.

If the "new product release" was the important issue, alternative arrangements could be made with the supplier to view the equipment on more neutral territory or there could be more transparency around this. The General Manager has since reviewed the matter and taken appropriate action.

Other gifts and benefits of value entered in the gifts registers include:

- A \$3,000 electronic whiteboard from the ERM Project Team which was accepted as all member councils received equipment.

- 1 week's accommodation was offered to three officers by the Hightrade company. All officer's refused the offer. *[CP-9]*

There appears to be a lack of understanding around the appropriateness of accepting gifts and benefits of value at the Council. There needs to be significant improvement in accurately disclosing and recording the acceptance of or offer of gifts and benefits.

5.1.7 Confidential Information

Prior to and during the investigation there was evidence of staff and Councillors disclosing confidential Council information to the media or other parties. This included information about sensitive internal investigations and disciplinary processes relating to staff to the media. This is inconsistent with Council's adopted Code of Conduct and section 664 of the Act.

Council hold a range of confidential information about elected representatives, employees, private citizens and businesses. Councillors and staff need to be aware of what constitutes confidential information and understand the ethics of handling or being exposed to such information. They need to be aware of their obligations in relation to the Code of Conduct and the Act.

5.2 Internal Controls and Reporting Systems

5.2.1 Promoting Better Practice Review progress

Promoting Better Practice Review (PBP Review) recommendations were made in relation to several critical internal control areas as follows:

- Risk Management (PBP Review - Recommendation 3)
- Fraud and corruption prevention (PBP Review - Recommendation 4)
- Legislative compliance (PBP Review - Recommendation 5)
- Disaster management plan (PBP Review - Recommendation 6)
- Procurement and disposal practices (PBP Review - Recommendation 7)
- Internal audit plan (PBP Review - Recommendations 8 and 9)

Progress toward achieving these recommendations has been minimal. Furthermore, since the release of the report there have been several instances of conduct by employees found to be fraudulent and corrupt which have led to their employment with Council being terminated. (See section 5.3 - *Staff supervision and management*).

Such conduct exemplifies some of the potential consequences of inadequate internal controls. It has been necessary for Council to engage external assistance (IAB Services) to improve and put in place a range of suitable controls to prevent or minimise future risk including the improper conduct by its employees.

Council is encouraged to consult the range of publications the Independent Commission against Corruption has produced to assist councils and other public sector agencies to prevent corruption.

5.2.2 Risk management

Council has a risk management policy as part of its integrated management system for works and services (design, construction and maintenance services for roads, bridges, drainage systems and recreation areas). *[CP-10]* However, Council does not have an overall plan to guide its risk management activities organisation-wide.

The Department recommended that Council establish a Risk Management Committee to draft a Risk Management Strategy and then develop a Council-wide structured and integrated plan to cover all risks - financial, operational, customer service oriented, safety, security, environment, technical, commercial business activities (lawn cemeteries, swimming pools and residential land development) et al.

This recommendation has not been completed. In its action plan Council aims to establish a Risk Management Committee by the end of December 2008. This committee will coordinate the assessment of corporate risks along with the development of a risk management strategy to be completed by 30 June 2009.

5.2.3 Fraud and corruption prevention

Council engaged Internal Audit Bureau Services (IAB) to carry out a comprehensive risk assessment of fraud and corruption. A draft report which included a Fraud and Corruption Risk Assessment Management Plan was provided to Council in April 2008. *[CP-11]*

The risk assessment focused firstly, on identifying and analysing the risks and secondly, on examining Council's systems, processes and behaviours which have a bearing on its ability to detect and manage fraud and corruption risk.

The review found that while Council is generally well managed in terms of fraud and corruption risk, there are a number of areas where it is exposed due to weak and/or poor controls. Some examples include:

- Passwords to information technology systems need to be changed more frequently
- Regular stocktakes should be carried out at Council's library
- Log books need to be introduced for council vehicles
- Stocktakes of portable IT assets are necessary,
- A list of all plant and equipment owned by Council should be developed and maintained with ongoing stocktakes against this list.

In addition, the review found that a number of new policies need to be introduced and a number of existing policies require extending and updating.

An action plan to carry out the necessary improvements to Council's systems and processes as identified in the risk management plan was adopted by Council in September 2008. A copy has been received by the Department and Council will provide a status report in six (6) months or before 31 March 2009. **[CP-12]**

Council also proposes to carry out fraud and corruption risk assessments on a quarterly basis.

Building upon the fraud and corruption risk assessment, IAB Services also prepared a draft fraud policy, *Maintaining Our Ethical Workplace - A Strategy for Preventing, Detecting, Investigating and Dealing with Fraud and Corruption*. **[CP-13]**

This document is essentially a fraud control strategy which contains the elements that the NSW Audit Office recommends as being integral to managing and minimising fraud and corruption risk in government organisations.

Council in its action plan to address the Promoting Better Practice Program recommendations has committed to formalising the policy over the coming months and submit it to Council by 31 December 2008. (see PBP recommendation 8)

5.2.4 Internal audit

Internal audit and control provides for systematic scrutiny of an organisation's operations, systems and performance. It assists in ensuring that service standards are met, data records are accurate and complete, and established procedures are being followed. An internal audit program will also provide Councillors and members of the public with assurance that Council is managing its operational risks and performance appropriately.

Changes to the Australian Auditing Standard 210 (ASA210) now require all external auditors to obtain a written representation from management that the organisation has systems to deal with fraud risks. Council needs to address this issue.

Council has not, as recommended by the Department in 2006, developed an internal audit plan. Council in its action plan has committed to developing such a plan by 31 December 2008. (see PBP recommendation 8)

Council does not have an internal audit committee to assist Council in monitoring continuous improvement of its internal controls. To ensure that any internal audit program is cost effective, Council was asked to consider an opportunity to share resources with other Hunter regional Councils, including forming a Regional Audit Committee.

Discussions between Cessnock City Council and Hunter Councils have taken place and are ongoing. Council advises that at this time, it has decided not to proceed with a Regional Audit Committee. (See PBP Recommendation 9)

5.2.5 Information Technology Health check

The draft report Cessnock City Council - Review of IT Health Check, IAB Services, March 2008 reports on the assessment of the adequacy of controls over Council's Information Technology (IT) environment. The report concludes that Council's Information Systems (IS) are *"in the process of maturing but require further progress."* [CP-14]

Key concerns identified, including those indicated above in section 5.2.3, were:

- The need for senior executive team support for IS strategy planning.
- The IS Manager is burdened by technical and operational issues and needs to be freed up to focus on strategic issues.
- A number of Council's core business applications such as the Customer Request Management System are no longer being developed or supported by their software vendors.
- Council needs to focus urgent attention on the issue of availability and recoverability of its IT systems in the event of an incident or disaster.

A formal Information Technology Strategy and an action plan were adopted by Council on 16 July 2008.

5.2.6 Disaster management plan

In 2006 Council was advised to finalise a plan to manage the impact of a disaster/critical incident on its operations and test it, as soon as practicable.

To date draft Information Technology, Records, Furniture and Communication Plans have been completed. Existing evacuation plans for the Administration Building are currently being reviewed in conjunction with the new structure and new seating arrangements.

Council proposed to incorporate these in an integrated Business Continuity Plan to be implemented by the end of June 2009. This has been incorporated as part of the action plan to address the Promoting Better Practice Review recommendations. (See PBP recommendation 6)

5.2.7 Legislative compliance

Council has prepared a draft report which proposes a system for the internal reporting of legislative non-compliance or prosecutions against Council. The report is to be reviewed by the senior executive team. It is anticipated the system will be finalised by the end of August 2008.

5.2.8 Procurement and disposal practices

Council has made some progress toward ensuring controls in relation procurement and disposal practices are adequate. A Goods Disposal Policy was adopted by Council in February 2007. *[CP-15]* An E-procurement system was endorsed by Council on the 9 June 2008. *[CM-7]*

However, allegations were raised about Council's purchasing and tendering practices. In particular, it was alleged that certain suppliers appear to receive preferential treatment from Council. A number of outdoor employees perceive that Council purchases a significant number of Caterpillar equipment from WesTrac in preference to other suppliers of similar equipment. They believe that "there is only one choice and that is Caterpillar".

Outdoor employees also expressed frustration that the users of the equipment were not consulted on the replacement of equipment. *[COI-2]*

In response to the draft report the Plant Superintendent advised that he only has authorisation to spend up to a Limit of \$15,000 (as per his instrument of delegation dated 16 June 2000) and his role was to give technical advice and make recommendations to the Director and Logistics, Depot and Building Manager who make the final recommendation prior to the matter going to council for a decision. The response was also accompanied by examples of purchases made by Council to dispel any 'perceived' misuse of Council's funds and verifies that the system of plant evaluation is done on a fair and equitable basis. The Plant Superintendent asserts that *Council has purchased major items of plant from a variety of suppliers over recent years which are clearly not dictated by a 'price only or manufacturer only' basis.*

As previously mentioned, Council's tendering panel which makes recommendations to Council as to which equipment to purchase consists of the the Plant Superintendent and Acting Depot Manager.

The Plant Superintendent and the Director Infrastructure who is also part of the approval process, as reported in section 5.1.6 have both attended the motor car races at Bathurst a number of times as guests of WesTrac. Within this context it is not unreasonable that some staff and community members may have perceptions that decision making could be unduly influenced.

Notwithstanding this, a review of tenders for heavy equipment did not substantiate these perceptions or allegations. It appears that Council has purchased a number of pieces of equipment from other manufacturers supplied by other dealers who had submitted tenders.

However the fact that the tendering panel has representation only from the Infrastructure Services area may exacerbate the perception that adequate probity and transparency does not occur.

Also it was not apparent that the panel used a tender checklist to ensure that the tenders are assessed in accordance with the Act and Regulation.

Council in its action plan for implementation of the Department's review report recommendations has indicated its commitment to further analysis and work in this area by the end of 2008. Improved probity and internal controls in relations to its tender panel should be looked at as a priority.

5.2.9 Legal Services

It is evident that in recent times Council has relied upon legal advice received in relation to a number of matters including the investigation and disciplinary processes related to two of its former Directors.

Council has never tendered for legal services and has traditionally used a local solicitor. This relationship has extended for over 50 years.

A key principle of Council's purchasing policy strives for value for money, probity, equity and effective competition. By not tendering for legal services, Council appears to have failed to comply with its own policy.

If a council's total legal costs exceed \$150,000, then section 55 of the Act in relation to tendering could apply to the provision of such services. Given the diversity in the legal services needed, it is seen as prudent that Council tender for its legal services and establish a legal panel.

5.2.10 Management of Council's vehicle fleet

The provision of vehicles for the use of Council staff on Council business is a significant area of expenditure. There are four groups of vehicles as follows:

- Vehicles that are part of an employment contract. In this case a fuel card with unlimited fuel is provided.
- Lease back vehicles where an employee pays a weekly amount and receives one tank of fuel per week from Council's depot.
- Pool vehicles used by staff who have an occasional need to travel on Council business.
- Heavy vehicles that are used on Council jobs.

Management of Council's vehicles was raised by some staff as an area in which internal controls were not satisfactory or consistent. In particular, there was a perception that vehicles are replaced in an ad hoc and inequitable manner. For example, some senior officer vehicles are replaced when they have travelled only low kilometres and others are replaced after they have travelled very high kilometres.

Council has a Leaseback Vehicle Manual which includes a revised Leaseback Vehicle Agreement has been in draft form since 27 August 2007.

The draft Manual states:

- (i) When replacing vehicles Plant and Fleet Services will select vehicles from the NSW Government contract approved range that provides the best financial whole of life operating costs.*
- (ii) Vehicles will be replaced at the optimum replacement interval as determined by Plant and Fleet Services. [CP-16]*

These measures make the replacement of vehicles more flexible than just setting a kilometre threshold at which a vehicle should be replaced. As a consequence perceptions of inconsistent or inequitable vehicle replacement may be real. For example, a random review of the turnover rate for vehicles showed vehicles were replaced at varying odometer readings from 27,000 to up to 60,000 kilometres.

The investigation team was advised by the Plant Superintendent that within the above parameters employees are able to choose the make and model of their vehicle. As this does not take into account climate-change considerations, it is contrary to council's Ecologically Sustainable Development Strategy developed in 2003. To Council's credit it has ceased purchasing eight (8) cylinder vehicles.

Appropriate checks and balances to ensure that replacement occurs according to the Manual and that favouritism, real or perceived, does not occur were not evident.

Council's Plant Replacement Policy provides for work vehicles and/or non leaseback vehicles to be replaced at 40,000 km or after two years, whichever comes first. A number of outdoor vehicles had exceeded 100,000 kilometres and

it is noted that some trucks are not disposed of until after seven years. In another case a vehicle had defects that had not been repaired for some time.

The Plant Superintendent in response to the draft report states " Council clearly have different needs in relation to the purchase of cars as opposed to the purchase of trucks." Motor vehicles are replaced at 40,000 km this was increase from 20,000 three years ago. The purchase of trucks, plant has always been bases on Council's 10 year rolling plant replacement procedure with many trucks passing 100,000 km.

Defects in vehicles are taken seriously and any fault which makes the vehicle dangerous is removed from service.

IAB Services Risk Assessment identified a number of almost certain areas of risk of fraud and corruption in Council's management of its vehicles. For example their report states:

"Fuel may be stolen because there are no log books in cars which record distances travelled and fuel purchased. Currently there are no controls on fuel cards being used to purchase fuel purchased for private."

Strategies are identified in the action plan that Council has adopted which will institute better internal controls to prevent fraud and corruption in this area.

5.3 Staff Supervision and Management

5.3.1 Introduction

The conduct of some Cessnock City Council employees and Council's management of these employees is an area that has attracted significant, ongoing media coverage since early 2006. Concerns relating to staff were raised by a number of parties including current and former employees of Council as well as other members of the community.

A number of the allegations against certain employees did not prove to be accurate or exaggerated actual events and/or had already been the subject of a past investigation by Council. Allegations about "cover ups" in relation to the investigation and disciplinary processes also could not be substantiated.

The investigation did, however, identify some occurrences of serious employee misconduct and a number of areas of major concern in relation to the management and supervision of Council employees in general. Since 2006 Council has appropriately referred all allegations of a criminal nature against some of its employees to the NSW Police for investigation and follow up. Matters concerning the possible corrupt conduct employees were appropriately referred by Council to the relevant agency.

The sensitive nature of some of the allegations made about staff conduct and associated privacy considerations (including potential legal action by the parties) must be acknowledged and respected.

Therefore, the investigation examined the key steps that Council undertook in relation to the investigating and/or taking disciplinary steps in relation to the alleged misconduct of some staff during the last two years. More importantly, the investigation focused on identifying gaps and/or weaknesses in Council's human resource systems, policies and procedures that require improvement.

5.3.2 Overview of the organisation

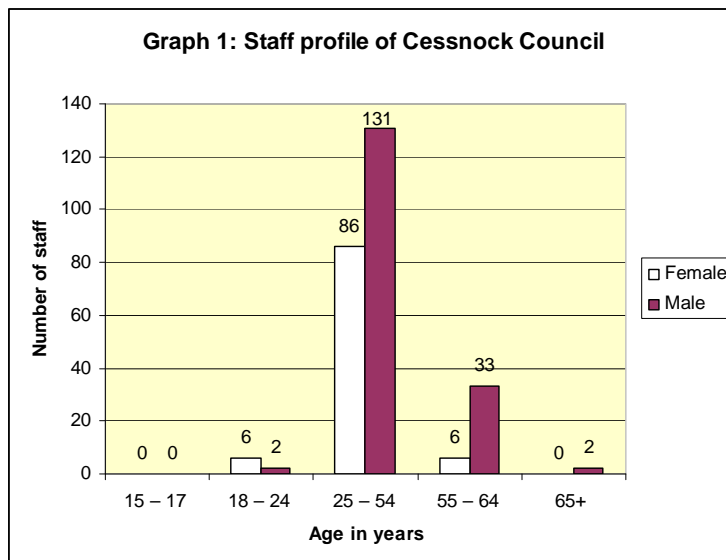
Regulatory context

The *Local Government Act 1993* requires that a council determine its organisation structure, the positions within that structure that are senior staff positions and allocate resources towards the employment of staff (section 332). A council may re-determine its structure from time to time (section 333).

Council (the elected body) is responsible for the appointment of its General Manager (s334 (1)). The General Manager may appoint or dismiss senior staff only after consultation with the Council (s337).

Staff profile

Council employs 266 equivalent full-time (EFT) staff. The age and sex profile of these staff is displayed in graph 1. A total of 59 employees (excluding casual staff) left Council's employed during 2006/2007. This represents a turnover of twenty two (22) per cent of Council's overall workforce in one year. Factors leading to such a significant level of turnover should be considered in Council's overall human resource management and in particular its workforce planning.



(Source: Cessnock City Council)

Review of Council's organisational structure

In 2007 the General Manager terminated the employment of two of his senior management team for conduct which was in breach of their employment contracts and Council policies. The investigation and disciplinary processes Council undertook in relation to their dismissals are covered below in section *5.3.3 senior officers*.

Prior to commencing recruitment for the two Director positions Council decided to review its organisational structure. In December 2007, the General Manager held two briefing sessions with Councillors to discuss issues relating to the current organisational structure and to identify various restructure options.

Council employees were also given an opportunity to comment. On 5 March 2008 Council adopted a new structure aimed primarily at addressing problems caused by the split in responsibility across various areas of Council's infrastructure functions. The restructure resulted in the loss of only one staff position, i.e. the Manager, Marketing and Economic Development. The duties of this position have been absorbed into other positions. *[CM-8]*

New senior management team

Under the new structure, the senior management team is made up of the General Manager, the Director Community and Corporate; the Director City Planning and the Director Infrastructure and Services.

Under section 337 of the Act the General Manager may appoint or dismiss senior staff only after consultation with the Council. Council endorsed an external recruitment process for the two newly created Director positions and recent appointments have been made to these positions.

However, the new position of Director Infrastructure and Services was not externally advertised. Rather the incumbent of the previous position of Director, Works and Services was directly appointed to this new position.

Council reports and resolutions relating to the restructure do not reflect any formal discussion or resolution about the rationale for not externally advertising

the position of Director, Infrastructure Services or appointing one of its senior officer's directly to the position.

The newly created position Director, Infrastructure and Services covers a range of additional functions and duties to that of the previous Director of Works position. It covers the entire process of providing infrastructure (from the design phase to completion and ongoing maintenance). The position is responsible for the supervision and management of six (6) Managers.

Council evaluated the proposed position with the assistance of Local Government Solutions which recommended a substantial increase in remuneration commensurate with increased range and complexity of functions.

On this basis it is a substantially different or new position. Council amended the contract of the incumbent of the Director of Works position to cover the extra duties and functions of the Director Infrastructure Services position as well as provide for increased remuneration. *[CP-20]*

When it is proposed to make an appointment to a new position within the organisation structure of the council, the position must be advertised in a manner sufficient to enable suitably qualified persons to apply for the position (section 348 of the Act). If the position is a senior staff position it must be advertised at least twice in a daily newspaper circulating throughout the state. Appointments must be made on merit (section 349 of the Act).

The direct appointment of incumbent of the Director of Works position to the new position of Director Infrastructure Services may be inconsistent with sections 348 and 349 of the Act. It does not appear to constitute a re-appointment of the incumbent to his existing position and is therefore not exempt by virtue of section 348 (3) (a).

In separate interviews with the investigation team, the former Mayor and General Manager initially indicated that they were not aware that these provisions of the Act applied in this situation.

However, the General Manager also advised that he had initially approached the former Mayor to externally advertise the new position. They both reported that

they believed that by appointing the incumbent of the Director of Works position to the new position they would avoid further instability within the organisation and minimise the loss of corporate knowledge created by the dismissal of two Directors.

In addition, the General Manager further disclosed that if they advertised the position and Mr Oldfield was unsuccessful Council would be obliged to pay him out in accordance with his contract which amounted to approximately 39 weeks salary. While these concerns are valid they do not necessarily exempt Council from sections 348 and 349 of the Act. *[COI-1]*

The recently elected Council, in accordance section 333 of the Act, must re-determine its organisation structure within 12 months of its election. Council should, as a matter of priority, review the current organisation structure. Should Council determine a revised structure and create other new positions these should be recruited as legally required.

Council should seek and be guided by its own legal advice about its compliance with section 348 and 349 of the Act in relation to the appointment to the Director Infrastructure Services Position and the potential impact of Council's appointment upon the current incumbent of the position and his conditions of employment.

5.3.3 Senior officers

Contracts and performance management

The contractual conditions of senior officers were reported to Council by the General Manager in 2006 and 2007 as required by section 339 of the Act.

The General Manager conducted annual performance reviews of the three Directors. However, the process undertaken did not clearly document any critical assessment of achievement or define specific areas and performance indicators to achieve improvement.

More rigour and transparency is required in the performance management area and the General Manager should take a more proactive role in managing his Directors.

Former Directors

As mentioned, the employment of two Directors was terminated in 2007 for conduct which was in breach of their employment contracts and Council policies.

Council undertook detailed internal investigation and disciplinary processes which led to their dismissals. Council sought and was guided by legal advice throughout these processes.

Council's internal investigation and disciplinary processes

The investigation team examined the key steps of each of the processes undertaken by Council in relation to the two former Directors and found they were both very prolonged in duration. The former Director Strategic and Community Service's employment was terminated after an internal process of about four and a half (4 ½) months. In the case of the former Director Corporate and Regulatory Services the process took six and a half (6 ½) months. **[CC7 and CC8]**

The investigation found a number of key issues that may have prolonged the processes and impacted on their effectiveness. These are set out below.

1. Inexperience and poor leadership. The General Manager and Human Resource Manager were inexperienced in conducting serious and/or complex investigation and disciplinary processes.
2. Failure to understand and/or accept the gravity of the complaint. Of major concern, is that in the early stages of the first process in particular, Council did not appear to grasp the seriousness of the allegations. In the second case the former Director was placed on directed leave early in the process.
3. Complex and technical nature of enquiries required to establish the facts. The nature of the allegations against the former Director Corporate and Regulatory Services required Council to engage external expertise to establish the facts of the matter.
4. Lack of clear investigation plans. Council did not develop and implement clear investigation plans to systematically gather evidence to substantiate or dismiss the allegation.

In terms of the allegations against the former Director Strategic and Community Services there is evidence to suggest that priority was given to attending to the needs of the complainant rather than investigating the complaint. At one point Council “*stopped the factual investigation to focus on the injury management/ return to work for the complainant.*” [CC-4] This appears to have left the onus of proof mainly with the complainant.

In terms of the allegations in regard to the former Director of Corporate and Regulatory Services, the General Manager believes that he had learnt from the previous process and sought independent advice on how to proceed. This was left to Council’s solicitors to coordinate and as well as provide legal advice. The General Manager also outsourced technical aspects of the investigation to two external companies with relevant expertise.

5. Focus on minimising financial loss and risk. There is evidence to suggest that in the case of the former Director Strategic and Community Services, the General Manager was initially concerned with minimising Council’s potential financial and legal liabilities. This appears to have been at the expense of conducting a thorough and reliable investigation to substantiate or dismiss the allegations against early in the process.

The General Manager stated to the investigators that in hindsight the legal advice he received made “*the whole process much more protracted and involved that I believe it needed to be.*” [COI-1]

6. Communication with employees and councillors

Employees

Most staff members interviewed during this investigation indicated that very little (if any) information was provided by management about Council’s internal investigation and disciplinary processes. However, there were various rumours circulating about what was happening.

The General Manager advised that he relied heavily on legal advice on how to communicate with employees. The investigation team reviewed

copies of e-mails the General Manager sent to all Cessnock Council employees. While it is acknowledged that certain privacy and legal requirements were important, from a management perspective taking a minimalist and legalistic approach to communicating with staff may have contributed to an atmosphere of mistrust and misinformation.

For example, in one email the General Manager advised staff members that one officer's services had been terminated and another officer was under investigation. Some staff members reported that by not naming the officers in his e-mail the General Manager avoided making an obvious statement of facts which employees were entitled to know and were able to deduce for themselves. For a number of employees, the termination meant that their Director would not be returning to the organisation and for others this meant their Director was on indefinite leave while an internal investigation was being conducted.

Some staff believed that not divulging the broad parameters of the internal investigation possibly prevented staff coming forward with further information. *[CC-5-6]*

During the second investigation the General Manager acknowledged that *"the rumours have taken on grand proportions"* and in general improved communication while still being mindful of privacy and legal requirements. *[CC-9 and CC-10]*

On 10 July 2007 the General Manager addressed staff and later confirmed by e-mail to all employees that he was not satisfied that any of the allegations against the Director of Corporate and Regulatory Services warranted further action.

Approximately seventy (70) employees attended a meeting facilitated by the United Services Union and other professional associations which raised a number of concerns in relation to this decision. These concerns included:

- Support for the employees who had made the allegations.

- Lack of faith in the investigation process. This included perceptions that the investigation of allegations against the former Director Strategic and Community Services was not handled fairly and equitably and was driven by financial considerations.
- Weak or indecisive leadership by the General Manager. *[EPI-1]*

The meeting resolved to request that Council engage a totally independent body to thoroughly investigate all claims and that the former Director Corporate and Regulatory Services remain on directed leave until the investigation was completed.

The General Manager was unable to convince staff of the independence of the process and conceded to a second investigation by another external body.

Councillors

The General Manager consulted with the Council before the impending dismissal of the former Directors and provided general information about the allegations and the steps of the investigation undertaken.

One councillor advised that following disturbing allegations published in the media, the General Manager had agreed to provide a confidential briefing to all Councillors but that this never occurred. *[CI-7]*

7. Policies, internal controls and associated procedures.

This investigation finds that a number of policies, internal controls and associated procedures could be enhanced to avoid future occurrences of misconduct by Council employees.

Council has a Workplace Harassment Policy and an Equal Employment Opportunity Policy which were adopted in 2003. *[CP-17]* Both are basic documents neither of which has been reviewed since their adoptions. The Department is aware of other Councils that have well developed policies in this area and include prevention strategies as well as specific procedures for reporting and dealing with harassment.

Section 345 of the Act requires councils to prepare and implement an Equal Employment Opportunity (EEO) Management Plan. Again, Council has at best a basic plan, completes EEO surveys and reports on EEO activities in its Annual Report. *[CP-18]*

Several employees (including one of the complainants) and the Union perceive that Council does not have an adequate structure and process to raise complaints or grievances. As discussed in section 5.1.3., the Department's review in 2006 recommended training on the Protected Disclosure Act 1994 and internal reporting procedures for staff and councillors. Council has tentatively scheduled this training to be delivered in December 2008. Further training of staff and councillors is planned for early 2009.

As discussed in section 5.2 Council currently lacks a range of internal controls and policies to minimise the risk of fraud and corruption. The draft Risk Assessment of Fraud and Corruption report April 2008; the draft fraud policy, "Maintaining Our Ethical Workplace - A Strategy for Preventing, Detecting, Investigating and Dealing with Fraud and Corruption" and the IT Health Check and plan are well overdue. These policies and plans must be finalised and implemented. *[CP13 and CP14]*

Director Infrastructure Services

An issue of major concern that requires urgent remedy is the current relationship between the Director Infrastructure Services; the United Services Union (USU) and its outdoor staff members.

In 2006 USU outdoor staff members unanimously passed a vote of no confidence in the Director Infrastructure Services (then the Director of Works) and conveyed this in writing to the General Manager. At the General Manager's request this vote was rescinded by the membership as a show of good faith in an effort to repair the relationship between the members and their Director.

In November 2007 the General Secretary of the USU advised the General Manager in writing that the membership had lost confidence in the direction and ability of the Director of Works. The areas of concern included the appearances

before the Industrial Relations Commission over the Wet Weather Policy that resulted in having to seek the involvement of a Commissioner on three separate occasions to clarify further interpretative changes that the then Director of Works allegedly attempted to introduce even though the matter had reached agreement through conciliation. **[CC11]**

In January and February 2008 the USU again wrote to Council expressing ongoing difficulties between the then Director of Works and the membership. To assist progress in industrial matters the Union requested that it negotiate directly with the Human Resource Manager. **[CC12]**

Meetings with a significant number of USU members during the investigation confirmed that these difficulties continue. **[COI-2 and EPI-1]**

The General Manager indicated that this matter was discussed as part of the Director's performance management last year. In response to the draft report the Director disputes this and alleges that there is no evidence that the General Manager has to date raised issues concerning the USU with him in any performance related context. The outcomes of these discussions are not evident in the related documentation. The General Manager acknowledges that he needs to become more closely involved in managing this Director on some issues.

When asked if, as part of his last performance review, there were any areas in which he and the General Manager had discussed or agreed as needing improvement, the Director stated *"Not that I can recall."* **[COI-3]**

The Director described his relations with the USU and its members as good. He recalled a vote of no confidence in him in 2006 but was not aware of any since that time. **[COI-3]**

The Director denied seeking changes post conciliation in relation to the Wet Weather Policy.

The Director explained that he perceives that the decisions of union members are influenced by two or three vocal members. He claimed many outdoor staff

members visited him directly and are generally satisfied with how he manages issues.

The investigators advised the Director that they had met with a number of outdoor staff members and that most of those in attendance had raised issues. When asked whether this would surprise him he indicated that he believed that these staff are focussed on minor issues rather than systems issues. [COI-3]

On the contrary, the investigation team found the staff they met with to be courteous and articulate in raising a range of issues. This included providing suggestions to improve systems issues such as the system for checking road surfaces, the practical implementation of the Wet Weather Policy and occupational health and safety improvements.

The Director, when asked, did not have any suggestions on how to improve the situation or relations.

As discussed above at 5.3.1, he was previously the Director of Works and was recently directly appointed to the new position of Director of Infrastructure Services. Two key duties of both positions are to provide people management for the Department and manage the Department's dealings with the community and other bodies. [CP-19]

The General Manager has indicated that the Director of Infrastructure Service's latest performance agreement is subject to the Director within three (3) months coming up with an action plan to cover a range of issues including his relationship with outdoor staff members which includes earning their respect to ensure effective delivery of the works program as set out in the management plan. [COI-1]

The lack of understanding and/or refusal by the Director to acknowledge the concerns raised by the General Manager, USU and the Human Resource Manager in relation to a large part of his workforce represents a communication breakdown which requires active intervention, mediation and resolution.

The General Manager should ensure these issues are clearly put to the Director and ensure clear documented specific strategies are agreed upon to resolve the

situation. The General Manager could assess the extent to which a continuation of this situation can be justified in terms of the position description of the Director Infrastructure Services and the incumbent's employment contract.

The Director Infrastructure Services has had the opportunity to read the above comments and does not agree that there is a communication breakdown which requires active intervention, mediation and resolution. The Director Infrastructure Services believes that he has advocated a position on behalf of Council that the USU and its members disagree with. He acknowledges the need to give a renewed focus to improving and maintaining the relationship with the USU and its members.

5.3.4 Council Rangers

Operation and culture of the Ranger's Unit

Interviews with the former Mayor, General Manager and other relevant Council officers confirm that the operation and culture of the Ranger's unit has been of concern for a number of years. In these interviews the behaviour of Rangers was described as "*difficult*". Overall the culture was described as negative being characterised by internal bickering, power games, rumoured criminal activity and weak supervision of their activities.

The General Manager and others reported that during 2005 and part of 2006 Council Rangers wore "Police like" attire which consisted of blue uniforms, handcuffs and batons. It was also alleged that at that time the Rangers were involved in misleading and intimidating behaviour.

Council changed the Ranger uniforms approximately 18 months ago by replacing the light blue shirt for one which is green or khaki. Rangers still wear a navy blue pullover with the word Ranger on the shoulder lapels and dark blue cargo pants. The investigation team was also advised that Rangers now only carry equipment appropriate to their role.

Enforcement powers

Council Rangers have in the past sought and gained approval from the NSW Police Commissioner to be appointed as Special Constables. The Police (Special Provisions) Act 1901, section 103 states:

“Every special constable appointed under this Act shall have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities as any police officer of the rank of constable duly appointed now has or hereafter may have by virtue of the common law or of any Act or Imperial Act for the time being in force.”

Rangers are also delegated powers under a range of pieces of legislation such as (but not limited to) the *Local Government Act 1993*, the *Impounding Act 1993*, the *Companion Animals Act 1998*, the *Traffic Act 1909* and associated Regulations.

Enforcement activity Branxton Public Toilets (former Rangers)

The investigators examined the enforcement activity of former Rangers in early 2006, in particular in relation to alleged activities at the Branxton public toilets. A number of disturbing allegations were made and investigated. This included examining Penalty Infringement Notices (PINs) issued and photographs taken at these public toilets.

The investigation did not find any evidence to substantiate the specific allegations made. Council could not confirm that any formal complaints relating to loitering and other behaviour at the public toilets at the time had been made.

It appears that while the former Rangers may have technically had the authority to conduct surveillance of the Branxton toilets and issue PINs, no evidence was found that they had specific instructions from management to do so.

The manner in which the enforcement was conducted also appears to have been excessive and contrary to strategies developed by the Australian Institute of Criminology in preventing anti-social behaviour near public toilets.

Former Senior Rangers

In late February 2006 a number of serious allegations were made against Council's Senior Ranger. Following a series of disciplinary interviews that officer resigned from Council in April 2006.

In February 2008 allegations were made against Council's then Senior Ranger. Council commenced an investigation into the allegations. The officer resigned in March 2008.

In both cases Council reported the allegations of a criminal nature against the officers to the NSW Police for investigation and follow up.

Current Rangers

Council's current Rangers are closely supervised by the Acting Regulatory Services Manager.

In recent times, from an individual staff supervision perspective, Council appears to have handled the allegations of ranger misconduct competently. Council has conducted thorough, timely investigations in accordance with disciplinary procedures. Where warranted appropriate disciplinary action appears to have been taken. Again, criminal matters were appropriately referred to Police.

However, at a systemic level it appears that Council has for some time neglected to make urgent and significant improvements to the way it is managing its Rangers and failed.

Critical improvements required

Promoting Better Practice Review Report

The importance of taking a systematic approach to corruption prevention in relation to improper conduct on the part of Council Rangers was stressed in the Department's review report.

WorkCover Improvement Notice 7 - 110028

In June 2006 WorkCover issued Council with a formal improvement notice in relation to Council's pound as it was in contravention of section 8 of the

Occupational Health and Safety Act 2000. The notice contained several measures to eliminate or control the risk of injury/illness of employees/persons attending or visiting the premises. Council was required to remedy the situation by 18 July 2006.

Agreed upon procedures report - Council Rangers

In late 2006 Council engaged Price Waterhouse and Coopers (PWC) to undertake a detailed audit of systems and procedures in the Ranger area to assist Rangers to carry out their duties efficiently and in accordance with relevant legislation.

The key findings of their report issued in December 2006 highlight a number of critical areas requiring attention. They include:

- Weak controls and oversight of Rangers in the performance of their duties.
- Many areas lacked formally documented and approved operating procedures.
- The need for new policies and procedures to address poor controls was identified.
- Recruitment processes and training of Rangers were highlighted as key areas for management attention
- Council's animal pound operations needed attention
- Rangers were not clear about applicable legislation which presented an ongoing risk of non-compliance with regulatory requirements.
- Physical access to drugs of addiction required better security and monitoring.
- A preferred supplier arranged for use of towing company was required.

The PWC report complemented the Department's report by providing specific recommendations and suggested internal controls to improve the overall operation and management of the Rangers section.

Progress toward achieving critical improvements

Council has not made a concerted attempt to implement the recommendations and/or actions of the WorkCover and PWC reviews until February 2008. This may explain the continued allegations and complaints of improper Ranger conduct to Council and the Department.

In February 2008 Council's acting Regulatory Services Manager prepared three (3) action plans to respond to the issues identified in the above reports.

Plan to address areas requiring immediate action

Five of the 12 actions requiring immediate action were achieved by April 2008 and consist primarily of the following changes:

- All Lethobarb (euthanasia drug) is stored in a safe in the administration building under management control. Small amounts are available for rangers to sign in and out for use at the pound on euthanasia days. An audit is carried out by management of Lethobarb used per the register to daily pound movements after each euthanasia day.
- All microchips are securely stored and a register system established to control and monitors their use.
- Penalty/Caution Notice Books have been revised in line with industry standard. Procedures for the issue of new books and secure storage of completed books have been developed.
- Companion Animal Register forms are now securely stored by the Regulatory Services Manager.

An external consultant has prepared a draft Operational Manual for Rangers. Draft procedures on how Rangers should identify themselves, issue orders, manage parking offences and abandoned vehicle/articles have been prepared. A draft Enforcement Policy has also been completed.

Plan to address WorkCover Improvement Notice 7 - 110028

Of the 15 actions proposed eight (8) were completed in April 2008. These consisted primarily of fencing and security improvements.

Plan to address Agreed upon Procedures Report - PWC

It appears Council did not commence introducing any of these measures until the acting Regulatory Services Manager prepared two (2) further action plans in February 2008. One plan was linked to and the other focused on areas requiring immediate action.

Other improvements that have been achieved recently include:

- The Rangers Instrument of Delegation has been updated to include the *Poisons and Therapeutic Goods Act 1966* and the *Poisons Therapeutic Goods Regulation 2002*.
- Rangers working from Council's administration building rather than the pound.
- Animal pound movement documentation forwarded to administration staff on a daily basis.
- Cash handling at the pound has been replaced with electronic transactions.
- Rangers have been instructed to update the Customer Request Management System immediately.

All position descriptions of the Ranger section have been reviewed and updated to accommodate the recent changes. The Senior Ranger position was advertised at a higher salary level to attract more skilled applicants. A recent appointment has been made to this position.

The recent improvements driven by Council's acting Regulatory Services Manager are long overdue. However, a number remain outstanding. Council should continue its focus and commit resources to complete outstanding critical requirements that have been identified such as:

- An ongoing training manual for each Ranger.
- The Best Practice review of its animal pound. The review should explore alternative options to carry out the required functions.

- A policy for the disposal of euthanised animals.
- A Delegated Authority Policy for Rangers.

The recent changes must be followed through and managed consistently. Council should finalise the range of draft policies and procedures it has prepared. More importantly Council needs to satisfactorily supervise and manage its Rangers to ensure that its policies and procedures are effectively and efficiently implemented.

5.3.5 Occupational Health and Safety (OH&S)

The Promoting Better Practice Review found that “*Council has a well-developed OH&S policy and procedural framework and has a practice of conducting systematic OH&S risk assessments.*”

During the investigation concerns were raised by some employees that the OH&S committee was not taken seriously by management and that there was a reluctance to improve this area. An example was the failure by Council to act in relation to an urgent matter raised at the OH&S committee meeting on 30 May 2007. Outdoor staff were reported to be lifting loads with buckets which do not define a safe lifting load nor clearly defined lifting points or attachments.

Council’s Plant Superintendent advised that neither the plant manufacturers nor Workcover will give definite rulings on safe lifting limits unless buckets are fitted with defined lifting points.

In response to the OH&S committees concerns, the then Director Works and Services, advised on 20 June 2007 “*that unless manufacturers approve safe, lifting devices and limits, under no circumstance should plant be used to lift unless the item of plant has a safe lifting limit prescribed on plant*”.

On 25 July 2007, the Director advised the OH&S committee that Council had advice that the lifting lug attached to the hitch on the excavator has a lifting capacity of 8 tonnes.

Despite this advice Council has not given approval to use plant other than the excavator to lift loads. A number of employees advised that plant is used contrary to the safety concerns expressed by the OH&S committee.

The General Manager acknowledged that there are a range of issues that need to be addressed including elections for office bearers, ensuring all committee members attend meetings and management providing timely answers to the committee in relation to concerns they raise. He had committed to meeting with the committee in the near future to work through those issues and set in place a program to address those issues.

5.3.6 Promoting Better Practice Review Progress

The Promoting Better Practice Review made five (5) recommendations in the area of workforce relations. Three (3) of the recommendations were highlighted by the Department as being of a high priority requiring implementation within twelve months. Two years down the track limited progress has been made by Council in achieving these priorities.

However, it is acknowledged that the efforts of Council's Human Resource Manager were redirected to either lead or be heavily involved in investigating and/or taking disciplinary action in relation to the two Directors who were dismissed as well as Council's Rangers.

Specific achievements against each review recommendation are presented below.

Human resources plan and recruitment kit (PBP Review Recommendation 21)

It was recommended that Council should formalise its human resources plan and recruitment kit, as soon as practicable. To date, a draft recruitment kit has been prepared and the development of a draft human resource plan is underway.

Internal appeals (PBP Review Recommendation 22)

It was recommended that Council consider adopting a formal policy covering internal appeals available to applicants for positions who are not happy with post-interview feedback from a panel convenor. Council is currently drafting an Internal Appeals Policy.

Employee Attitude Survey (PBP Review Recommendation 23)

The report recommended that Council conduct another employee attitude survey within the next year (i.e. by December 2007) and take action to carry out the actions identified by the survey's findings.

This recommendation is critical as the investigation identified pockets of employees within Council that have low morale. In particular, as discussed in section 5.3.3, outdoor staff members have a range of issues and frustrations. Some of these employees believed that outdoor staff, in general, are treated differently.

This has not yet been completed. Council has advised it is currently drafting the survey and plans to administer the survey to staff by 31 December 2008. Any actions identified in the survey will be implemented by 31 March 2009.

Consultative Committee representation (PBP Review Recommendation 24)

The primary aim of a Consultative Committee should be to provide for two-way communication between management and staff. It was therefore recommended that Council should nominate alternative management representation to replace the two councillors currently on the Committee. It was also recommended that the Committee should revise its constitution to comply with the latest Local Government (State) Award.

This issue was discussed by the Consultative Committee during February and March 2007. The consensus was that the current makeup of the committee worked well. The inclusion of a councillor had not caused any issues so it was determined that there was no need for change.

The Committee adopted a revised constitution in July 2008. This recommendation has been completed and requires no further action.

Succession plan (PBP Review Recommendation 25)

The development of a formal succession plan for key personnel and positions was seen as a priority to be completed within the next twelve months.

This was not completed. Council has advised that senior management are currently investigating their resource needs under the new organisational structure. A template is being developed to identify key personnel and roles within Council. The template will assist in identifying the major resourcing risks within Council and form the basis for developing a formal succession plan. The plan will form part of the Human Resources Strategy proposes to develop by 30 June 2009.

5.3.7 The General Manager's role in staff management

The Act makes it clear that the General Manager is responsible for the day to day operations of council including staff management and supervision. In particular under section 335(2), he is able to:

- appoint staff in accordance with an organisations' structure and resources approved by the council
- direct and dismiss staff
- implement the council's equal employment opportunity management plan.

The General Manager is directly responsible for the appointment, supervision, management and, if necessary, the dismissal of Council's senior staff.

The dismissal of two directors had a huge impact on the organisation at all levels. It confirms the need for a range of improvements in governance systems, internal controls and the human resource/workforce relations area that must be addressed immediately.

Rebuilding a strong senior management team who can demonstrate leadership in achieving the critical changes recommended as a result of this investigation is a key challenge for the General Manager.

As indicated, a range of human resource policies need immediate attention. The General Manager should liaise with Council to ensure that adequate resources are provided the Human Resources Branch to allow this to occur. Any further complex investigations or incidents which would divert the Human Resource Manager's effort from this critical task need to be managed by the General

Manager. For instance, these matters could be outsourced to other branches or appropriate external providers. Progress in this area should be monitored closely by the senior management team.

The General Manager and senior management team are strongly encouraged to enhance leadership and organisational capacity by exploring appropriate frameworks such as the Australian Business Excellence Framework. As well as building an integrated leadership and management system these frameworks and associated training help to create more positive and productive workforces.

5.4 Private Works

5.4.1 Existing private works

Cessnock Council carries out a limited number of smaller private works. These works mainly include driveway crossings for residential property owners in its local government area.

Council provides a quotation for the work requested which must be paid by the property owner prior to it carrying out the work. Council earns approximately \$50,000 income per annum from providing these private works.

In addition to this Council performs approximately \$1,600,000 in single invitation works contracts for the Roads and Traffic Authority (RTA). These projects appear to be well managed with contracts which (among other things) clearly document the works to be done; procedures for agreeing on variations; and method of payment including any amounts to be paid up front and/or instalment plans.

5.4.2 Private works for Hightrade Construction Pty Ltd

Background

Council undertook a private works project in late 2006 for roadworks associated with the Crowne Plaza development on Wine Country Drive.

As previously mentioned in section 5.1.6 Code of Conduct, the former Mayor and the former General Manager and their wives had travelled to China in October 2004 at the invitation of a Director of Hightrade Construction Pty Ltd (Hightrade). On the basis of this relationship the former Mayor advised that he approached Hightrade to discuss the option of Council carrying out the private works for this development.

The former Mayor advised that he met with the Director of Hightrade and Council's former General Manager to discuss these works.

The former Mayor stated the main reason for undertaking the works was to potentially generate a significant amount of revenue for Council from an alternative source which he believed was consistent with Department of Local Government policy.

It is noted that Hightrade made donations of \$18,600 to the ALP and \$10,000 to the Liberal Party. *[O-1]*

Contract management process

The key steps of the contract management process in relation to completing the private works for Hightrade are summarised below.

August 2006

- Council provided Hightrade with a written quotation to carry out the road works associated with the Crown Plaza development at a total cost of \$195,368 (plus GST). Council's letter did not attach any conditions qualifying the quote.
- Hightrade's letter of acceptance received by Council.
- The subsequent agreement to commence these works was not reported to Council.

September 2006

- Council quoted the price for the access road at \$118,422.98.
- An amended quotation of \$333,327.78 for the road works was accepted by Hightrade on 20 September.

October 2006

- The work was completed.

November 2006

- Council provided Hightrade with a tax invoice of \$549,784.54 for the works.
- Hightrade wrote to Council disputing the first and final invoice. It was claimed that Council had proceeded with variations without Hightrade's agreement.
- Hightrade went into voluntary liquidation and it appeared unlikely that there were sufficient funds to pay outstanding creditors.

February 2007

- Council's elected body was advised of the company's liquidation in February 2007 and that Ferro Construction Pty Ltd had agreed to take over the debt. The value of the works was re-assessed at \$440,000 (including GST).

March 2007

- Council met with its solicitors and advised a proof of debt be lodged with the liquidator.
- Council established a doubtful debt for \$440,000. Clause 213 of the Regulation provides the mechanism for a debt to be written off. The 40,000 GST can be claimed back once the debt is formally written off.

July 2007

- The former General Manager, acting in a consultancy role on behalf of Hightrade, made an offer of \$250,000 as "full and final payment". Council did not accept the offer.

November 2007 to July 2008

- A private individual (wishing to remain anonymous) made ex-gratia payments totalling \$350,000 for the works. After the GST liability, Council received \$318,182 net to offset the doubtful debt of \$440,000. **[CM-9]**

Areas to improve

While the ultimate responsibility for successfully managing this private works project is the responsibility of the General Manager, the day to day management rests primarily with the Director Infrastructure Services.

The contract management process was poorly handled. It was far from ideal in a number of areas including those outlined below.

1. Lack of a clear policy and procedure - Council does not have a clear policy and procedure to guide its private works to ensure that its exposure to risk is minimised and that projects are managed well.

2. Lack of a contract or adequate written agreement - Council's main agreement was a letter providing a quote to do the road works but it did not attach any conditions qualifying the quote.
3. No bank guarantee or instalment payments - This is a standard and obvious risk management practice for jobs of this magnitude. Hightrade's condition of *"Payment terms shall be submission of invoice on the completion of all works. Payment shall be made 30 days from the date of approval of invoice"* was not challenged.

Council chose to ignore the advice of its solicitor who stressed the importance of a legal agreement prior to work being undertaken backed by security and company checks.

The Financial and Administrative Manager in a memorandum to the Director Corporate and Regulatory Services on 23 March 2007 advised that Council create a policy for future occasions. He stated, *"Works of a entrepreneurial nature need to be more fully examined and either the works are back by a legally enforceable agreement (bank guarantee or security over an asset) or payment is required up front, or at the very least 50% deposit and milestone payments as the works are undertake."* It does not appear that Council has developed such a policy. [CC-13]

4. Inadequate process for agreeing upon contract variations - There is evidence that Hightrade were not notified and therefore subsequently did not provide written authority to Council to commence works relating to particular variations.
5. Lack of regularly reporting - Council should be kept informed about key potential risks associated with projects from the onset and be updated on the achievement of key milestones.

In response to the draft report, the Director of Infrastructure and Services comments that at the time of the Hightrade contract, Council had no policy to guide its officers in carrying out private works. The contract was managed under Council's Integrated Management System under the direct supervision of Council's Manager Civil Construction.

Council has recently addressed the lack of a private works policy and adopted on 22 October 2008 a “Work for Outside Bodies and Persons” policy.

5.5 Other Matters

5.5.1 Promoting Better Practice Review Progress

As previously mentioned the Promoting Better Practice Review report makes twenty five (25) recommendations to improve a Council’s performance across a range of areas. Progress toward achieving recommendations relating to governance and workforce relations has been presented earlier in the body of this report. A summary of progress in relation to all recommendations is set out in the table below.

Status of recommendations

Status	Governance	Regulatory	Asset/ Finance	Community/ consultation	Workforce relations	Total
In progress	9	3	2	1	4	19
Completed	1	2		1	1	5
Not applicable			1			1
Total	10	5	3	2	5	25

Progress in relation to addressing issues in the regulatory, asset/finance and community/consultation area has also been minimal. Minor improvements have been made as follows:

- A process for reporting dog attack data to the Department is now in place.
- Council’s 2006/2007 State of the Environment Report now addresses the issues raised.
- The discrepancy in valuations between the assessments of the estimated cost to bring assets to a satisfactory condition was an administrative error that has been amended.
- Council’s 2004-2009 Social and Community Plan has been revised to incorporate the review team’s suggestions.

Overall, progress to date has been most unsatisfactory. The review report was appears to have been disregarded and Council did not develop the required action plan until July 2008.

Council explains this lack of progress due to a number of internal issues in 2007. It is important to note that some of the “internal issues” Council refers to could have been avoided if appropriate systems and policies as recommended had been in place.

Under section 335, “*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 the decisions of the council.*”

The responsibility for preparing an action plan to implement the recommendations was delegated by the General Manager to the former Director Corporate and Regulatory Services. It remained the General Manager’s responsibility to monitor the Director’s progress and if necessary make other arrangements to fulfil Council’s decision and Departmental commitments.

Council did not receive any information updates on the progress (or the lack thereof) in implementing the Promoting Better Practice Review recommendations until 2008.

As previously mentioned, Council adopted an action plan in July 2008 which has now been submitted to the Department.

5.5.2 Drayton’s winery explosion

On January 2008 there was a fatal explosion at Drayton’s winery. Council had conducted a fire audit prior to the explosion in which it is alleged that anomalies were found but not acted upon.

The Police are investigating this matter and have sought information from Council. WorkCover is undertaking concurrent investigations. Both the Police and WorkCover will submit reports to the NSW Coroner.

6. APPENDICES

6.1 Evidence tables

6.2.1 COUNCILLOR QUESTIONNAIRES

The investigation team issued a questionnaire to the former Mayor and all councillors prior to their visits. A copy of the questionnaire is at Appendix 6.5. The following table records the completed questionnaires received.

Evidence Code	Evidence Description
CQ-1	Completed questionnaire - Mayor, Councillor John Clarence
CQ-2	Completed questionnaire -Deputy Mayor, Councillor Bob Pynsent
CQ-3	Completed questionnaire - Councillor Robert Bedford
CQ-4	Completed questionnaire - Councillor Ronald Besoff
CQ-5	Completed questionnaire - Councillor Alison Davey
CQ-6	Completed questionnaire - Councillor Rachel Main
CQ-7	Completed questionnaire - Councillor Jeffrey Maybury
CQ-8	Completed questionnaire - Councillor Ian Olsen
CQ-9	Completed questionnaire - Councillor Catherine Parsons
CQ-10	Completed questionnaire - Councillor Graham Smith
GQ-11	Councillor James Ryan provided detailed submissions in lieu of a completed questionnaire

6.2.2 COUNCILLOR INTERVIEWS (AUDIO TAPE COPIES)

Evidence Code	Evidence Description
CI-1	Interview Mayor, Councillor John Clarence - 25 June 2008
CI-2	Interview Mayor, Councillor John Clarence - 3 July 2008
CI-3	Interview Deputy Mayor, Councillor Bob Pynsent - 22 May 2008
CI-4	Interview Councillor Ronald Besoff - 21 May 2008
CI-5	Interview - Councillor Rachel Main - 22 May 2008
CI-6	Interview - Councillor Jeffrey Maybury - 22 May 2008
CI-7	Interviews - Councillor James Ryan - 22 May 2008 and 2 July 2008
CI-8	Interview - Councillor Ian Olsen - 2 July 2008

6.2.3 COUNCIL MEETING MINUTES

Evidence Code	Evidence Description
CM-1	Mayoral Minute - General Manager's Performance Assessment 4 July 2007.
CM-2	General Manager's Employment Arrangements Committee minutes 31 January 2008.
CM-3	Minutes Council Meetings January 2007
CM-4	Minutes Council Meetings 21 May 2008
CM-5	Minutes Council Meetings 2 July 2008
CM-6	Minutes Council Meetings December 2007
CM-7	Minutes Council Meetings December 9 June 2008
CM-8	Minutes Council Meetings 5 March 2008
CM-9	Minutes Council Meetings 16 July 2008

6.2.4 COUNCIL POLICIES, REPORTS AND DOCUMENTS

Evidence Code	Evidence Description
CP-1	Action Plan Addressing Recommendations of the DLG Promoting Better Practice Review report - July 2008
CP-2	Councillors - Access to Staff and Information policy
CP-3	Cessnock City Council Delegations Register
CP-4	Performance agreements - Directors of Works, Director Corporate and Regulatory Services and Director Strategic and Community Services
CP-5	Code of Meeting Practice
CP-6	Councillor Complaint Form
CP-7	Requests for Verbal Submissions to Council
CP-8	Handling of Conflict of Interests policy
CP-9	Gifts registers
CP-10	Risk management policy - Works and Services Integrated Management System
CP-11	Draft Risk Assessment of Fraud and Corruption Management Plan IAB Services April 2008.
CP-12	An action plan for Fraud and Corruption Risk Assessment Management Plan September 2008.
CP-13	Draft Maintaining Our Ethical Workplace - A Strategy for Preventing, Detecting, Investigating and Dealing with Fraud and Corruption, IAB Services April 2008
CP-14	Review of IT Health Check, IAB Services, March 2008
CP-15	Goods Disposal Policy
CP-16	Draft Leaseback Vehicle Manual August 2007
CP-17	Workplace Harassment Policy and Equal Employment Opportunity Policy 2003.

Evidence Code	Evidence Description
CP-18	Equal Employment Opportunity (EEO) Management Plan
CP- 19	Position descriptions – Director of Works and Director Infrastructure Services.
CP-20	Contract of Employment Director Works and Services and Memo from General Manager to Human Resources Manager and attaching Director of Infrastructure Services position description March 2008 – 16 April 2008

6.2.5 COUNCIL CORRESPONDENCE AND OTHER COMMUNICATIONS

Evidence Code	Evidence Description
CC-1	File note Cessnock City Council employee
CC-2	Email from WesTrac to Mr Oldfield, Director of Works on 14 August 2007.
CC-3	Memo from the General Manager to Councillor Olsen
CC-4	Notes Janette Human Resource Manager's notes - timeline
CC-5	E-mail to all Council employees from General Manager 20 April 2007
CC-6	Staff Newsletter April 2007
CC-7	Human resource records and notes relating to the internal investigation and disciplinary processes of the Director Strategic and Community Services
CC-8	Confidential draft report to the General Manager of Cessnock City Council on the preliminary investigation into allegations of improper conduct by the Director of Corporate and Regulatory Services, April 2007 and related evidence
CC-9	E-mail to all Council employees from General Manager -10 July 2007
CC-10	E-mail to all Council employees from General Manager 27 June 2007

Evidence Code	Evidence Description
CC-11	Letter to General Manager from Ben Kruse, General Secretary, United Services Union - NSW Local Government, Clerical, Administrative, Energy, Airlines, and Utilities Union - 22 November 2007
CC-12	Letters to General Manager from Ben Kruse, General Secretary, United Services Union - NSW Local Government, Clerical, Administrative, Energy, Airlines, and Utilities Union - January and February 2008
CC-13	Memorandum to the Director Corporate and Regulatory Services from the Financial and Administrative Manager - 23 March 2007.

6.2.6 DEPARTMENT OF LOCAL GOVERNMENT POLICIES, GUIDELINES AND OTHER REFERENCES

Evidence Code	Evidence Description
DLG-1	Review Report Cessnock City Council December 2006 - Local Government Reform Program - Promoting Better Practice
DLG-2	Circular to councils No: 07/14 - Council Meeting Practice - Business Without Notice
DLG-3	Model Code of Conduct for Local Councils in NSW June 2008
DLG-4	Cessnock City Council complaint statistics 1 July 2007 to 30 June 2008
DLG-5	Circular No: 08/38 – Revised Model Code of Conduct for Local Councils in NSW June 2008
DLG-6	Guidelines for the Model Code of Conduct for Local Councils in NSW October 2008

6.3.7 EXTERNAL PARTY INTERVIEW

Evidence Code	Evidence Description
EPI-1	Peter Collins & Luke Hutchinson, United Services Union Organisers.

6.2.8 COUNCIL OFFICER INTERVIEWS

Evidence Code	Evidence Description
COI-1	Interview General Manager, Mr Bernie Mortomore - 3 July 2008
COI-2	Consultation meeting with outdoor staff members (Team Leaders and Coordinators) - 2 July 2008
COI-3	Interview Director Infrastructure Services, Mr Lew Oldfield - 3 July 2008

6.2.9 OTHER

Evidence Code	Evidence Description
O-1	State electoral returns of political contributions of more than \$1,500
O-2	Report on an investigation into corruption allegations affecting Wollongong City Council Part Three, Independent Commission Against Corruption, October 2008

6.2 Councillor Questionnaire

COUNCILLOR QUESTIONNAIRE

SECTION 430 INVESTIGATION INTO CESSNOCK CITY COUNCIL

(Completion of this form is NOT compulsory)

Name:	Contact Telephone Number:
Years on council:	Contact Email:
<i>Describe your understanding of your role as a councillor?</i>	
<i>What is your understanding of council's strategic direction?</i>	
<i>Describe what you consider to be council's reputation in the community?</i>	
<i>How satisfied are you with the conduct of council's meetings? If dissatisfied please give reasons.</i>	
<i>How would you describe the conduct of councillors and council staff?</i>	
<i>Have you been the complainant or subject of a code of conduct complaint in the last two years? Please indicate yes or no. If yes, do you believe the matter was satisfactorily resolved?</i>	



<p><i>Do you believe that you have received adequate training and support to assist you to carry out your role in accordance with the Code of Conduct?</i></p>
<p><i>(Please tick the appropriate response)</i></p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>
<p><i>Please comment and/or list any aspects in which you would benefit from additional training or support.</i></p>
<p><i>How would you describe your relationship with council staff?</i></p>
<p><i>What do you think Council does well?</i></p>
<p><i>In which areas do you think Council needs to improve in and how can this be done?</i></p>
<p>Additional Comments:</p>
<p><i>Please indicate whether you would like an interview with the departmental representatives.</i><i>(Please tick the appropriate response)</i></p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>
<p>Return this form by 14 May 2008 to: Caroline Egberts at caroline.egberts@dlg.nsw.gov.au or Cessnock s430 Investigation Department of Local Government Locked Bag 3015 NOWRA NSW 2541</p> <p>Phone: (02) 4428 4175</p>