



**NSW DEPARTMENT OF LOCAL
GOVERNMENT**

Report on

**SECTION 430 INVESTIGATION INTO
PORT MACQUARIE HASTINGS COUNCIL**

DEPARTMENTAL REPRESENTATIVES

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
TERM OF REFERENCE 1 - SUMMARY	1
FINDINGS - TERM OF REFERENCE 1	3
TERM OF REFERENCE 2 - SUMMARY	3
FINDINGS - TERM OF REFERENCE 2	4
TERM OF REFERENCE 3 - SUMMARY	5
TERM OF REFERENCE 3 – FINDINGS.....	5
OVERALL FINDINGS	6
RECOMMENDATION.....	6
COVERAGE	6
THE INVESTIGATION – BACKGROUND AND AUTHORITY	7
BACKGROUND.....	7
THE INVESTIGATION TEAM	7
TERMS OF REFERENCE.....	7
STATUTORY REQUIREMENTS.....	8
THE INVESTIGATION METHODOLOGY	8
THE INVESTIGATION REPORT	9
ACKNOWLEDGEMENTS.....	10
INTRODUCTION	11
PORT MACQUARIE HASTINGS COUNCIL	12
THE ARTS, CONFERENCE AND ENTERTAINMENT CENTRE	13
TERM OF REFERENCE 1	16
TERM OF REFERENCE 1 - ANALYSIS	21
TERM OF REFERENCE 1 - SUMMARY	37
FINDINGS - TERM OF REFERENCE 1	38
TERM OF REFERENCE 2	40
TERM OF REFERENCE 2 - SUMMARY	43

FINDINGS - TERM OF REFERENCE 2	44
TERM OF REFERENCE 3	45
COMMUNITY SUPPORT AND COMMUNITY CONSULTATION.....	45
BREACHES OF CONFIDENTIALITY.....	52
AN INVESTIGATION REPORT COMMISSIONED BY COUNCIL.....	52
TERM OF REFERENCE 3 - SUMMARY	52
FINDINGS - TERM OF REFERENCE 3	53
CURRENT STATUS OF THE ACEC PROJECT	54
RECOMMENDATION.....	55

EXECUTIVE SUMMARY

This report results from an investigation into certain aspects of the activities of the Port Macquarie Hastings Council, undertaken in the terms of Section 430 of the *Local Government Act 1993*.

A *Promoting Best Practice Review* Report prepared by Department of Local Government staff in March 2006 identified that there was an issue with the Council's proposal to build an Arts, Conference and Entertainment Centre. The report stated (p.48):

The decision to commit nearly \$30million of loan funds to a project for an area on which the community places low importance raises concerns. Additionally, concerns have been raised by some members of the community in relation to the substantial increases in costs of the centre, the processes around the selection of the site and the general management of the project. This is a matter that the Department will separately review in greater detail.

As a result of these issues, and considerable representations to the Minister and the Department from concerned members of the community, the Director General of the Department of Local Government considered that a formal Section 430 investigation should be conducted.

The Terms of Reference authorised for the investigation were:

To investigate and report on:

1. Whether the council has exercised reasonable diligence in the financial management of the Port Macquarie Arts, Conference and Entertainment Centre (ACEC).
2. Whether the council has properly considered what impact the centre will have on the capacity of council to carry out its functions including the provision of services and the replacement and maintenance of infrastructure.
3. 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.

The Investigation Team found as follows:

TERM OF REFERENCE 1 - SUMMARY

The evidence indicates that the cost of the ACEC has risen significantly, from \$7M in 1997 to approximately \$37 mil in 2006 and most recently, \$39.15M. This Investigation believes the current estimated cost of the ACEC to be \$43M+ with potential for further increases. If the cost of loan repayments is added to the capital cost of the project, the outflow of community resources will be over \$66M.

EXECUTIVE SUMMARY

Details of this costing has been provided to Council. In its submission to the Investigation (page 55), Council stated that 'due to the strong financial modeling and planning that Council undertakes and its sound financial position', it has the capacity to address any gap in the current budget and the final budget.

The reasons for this escalation in costs, which is beyond what might be reasonable for a 10 year period, relates to the failure by Council to undertake two key processes: a study of the feasibility of the Centre, and a scoping of the project so as to formally define its extent and limitations.

The failure to undertake these two key fundamental processes has facilitated the Council being able to include a conference facility, without formal community consultation and which itself has generated an estimated additional cost of around \$10M.

(It could also be argued that provision of a conference facility is not the responsibility of ratepayers, but rather, a matter for a commercial decision by the private sector, which stands to gain the most from the availability of such a facility.)

The failure to scope the project has also allowed Council to locate the Centre on a prime commercial site, with a number of limitations with regard to the Centre, the sale of which could have generated funds for the Centre to be built on a less expensive location.

As well, an economic appraisal in the form of a cost benefit analysis was not carried out for the ACEC. The opportunity cost of allocating an expensive CBD site to the Centre should be factored into the equation, since this resource is a community asset and is now alienated from other uses.

A further concern with respect to Council's financial diligence has been the failure by Council to adequately research and estimate the full range of costs that are attributable to the Centre. More accurate estimates of the extent of archaeology costs could have been established during 2004, following the first Higginbotham Report.

With regard to payment for the Centre, Council is funding the Centre almost entirely through loans, one third of which are to be repaid by way of projected returns from the Community, Cultural and Emergency Services S94 funds, while the remainder will be repaid from the General Fund. In addition, there is a shortfall of approximately \$11M between current available loan funding and the current total cost of the project, which is yet to be funded. Council has not indicated where this funding would be sourced. Funding the Centre almost entirely through loan funding is a risky strategy. There are no guarantees that the S94 funds will be realised to the extent that is predicted.

As well, there has been a failure to produce an operating or business plan which is grounded in the local demography and socio-economic factors, so that the figures that have been provided cannot be regarded as being reliable.

EXECUTIVE SUMMARY

These factors suggest that Council has determined to embark on the construction and operation of a costly Centre, with little regard to sound business practice which would demand full and complete definition of the scope of the Centre, feasibility studies to determine whether the projected scope is financially sustainable, business plans to determine ongoing operating costs and the commitment of funds from a reliable source. Internal resources which might have been used to assist in defining costs better, such as archaeology and planning costs (see later in this report) were not used.

The almost complete reliance of Council on loans to fund the Centre has removed the constraints of working to a set budget of funds provided directly from Council savings and has been one factor that has allowed for a continuing regime of costly changes in scope without financial challenge.

FINDINGS - TERM OF REFERENCE 1

It is the view of the investigation team that:

- 1.1 Council has not exercised reasonable diligence in the financial management of the Port Macquarie Arts, Conference and Entertainment Centre to date.
- 1.2 Council failed to undertake a scoping exercise to define the extent and limitations of its proposal for a cultural centre. In the absence of an appropriate scoping exercise for the project expensive inclusions of questionable merit, in particular, the conference facility, have been progressively included without appropriate consultation with the community who will be funding the ACEC as ratepayers.
- 1.3 Council's focus on quoting the construction costs of the Centre has the potential to mislead the community with regard to the true costs of the Centre.
- 1.4 The addition of the conference facility, involving the costs of the acquisition of the Ritz site, further consultancy fees and additional building costs has increased the cost of the ACEC by around \$10M, or almost one third of the current estimated cost of the centre before interest costs are added.
- 1.5 Council has not identified the source of funding for the increased costs of over \$11M. Under the current scenario, the additional funding could only come from one or a combination of the following: selling existing assets, raising further loans, diverting internal funds from existing commitments or deferring other capital works.

TERM OF REFERENCE 2 - SUMMARY

Council did not conduct an economic risk assessment prior to proceeding with the concept for the current ACEC.

Council's finances have deteriorated in the past year, with a net operating result for the year before grants and contributions provided for capital purposes of (-\$9,636,000), which represents a significant change from the positive result for the previous year of \$10,973,000.

EXECUTIVE SUMMARY

However, this was largely due to the writing-off of a road asset of \$8.4M, which is a non-cash item.

Council proposes to fund the Centre in part using S94 contributions from the Community, Cultural and Emergency Services Fund. These loans total approximately \$11M, almost 1/3 of the total loans. However, no consideration appears to have been given by Council to any possibility that these contributions might not occur as projected, nor to the funding of infrastructure for which the S94 contributions might ordinarily have been used.

The balance of the loans, totalling almost \$21M would be repaid from the General Fund.

It is estimated that the total annual operating subsidy of the ACEC, including loan repayments from the General Fund, will be around \$1.8M.

Council has already identified a shortfall in infrastructure spending of \$3.5M in 2005/2006. Council was granted extraordinary rate increases in 2004/2005 and 2005/2006. Although Council identified several areas that were likely to benefit from the rate increase, one important reason put forward was the need to reduce the operating deficit before capital items for the General Fund.

A further issue which has not been canvassed by Council is the funding of the difference of \$11M+, in the cost of the project which is the gap between available funding of \$32,464,755 and the current estimated cost of around \$43M. If further loans need to be taken out, as seems likely, the total annual subsidy is likely to be greater than \$1.8M.

These figures suggest that spending on infrastructure maintenance and renewals is likely to be adversely affected by the ACEC into the foreseeable future.

FINDINGS - TERM OF REFERENCE 2

It is the view of the investigation team that:

- 2.1 Council has not properly considered what impact the centre will have on the capacity of Council to carry out its functions including the provision of services and the replacement and maintenance of infrastructure since Council did not carry out an economic risk assessment, prior to commissioning the Centre.
- 2.2 Council's decision to partly fund the Centre from S94 contributions may lead to loans taken out for the Centre being repaid from other S94 funds and possibly the General Fund, if those S94 contributions do not eventuate as projected. This may lead to projects for which the S94 contributions were made having to be funded from other sources.
- 2.3 Council has already demonstrated that it has had difficulty in maintaining spending on infrastructure, with shortfalls in infrastructure spending (\$3.5M) having already been the subject of special rate increases as recently as 2005/2006.

- 2.4 The annual subsidy of the Centre is estimated to be in excess of \$1.8M, which includes loan repayments and operating costs. An unknown cost is the cost of any further loans which may need to be taken out to fund the shortfall between loans that have already been taken out (\$31.5M approx) and the current estimated cost (\$43M). This means that ongoing funding responsibilities will represent a significant pressure on the General Fund.

TERM OF REFERENCE 3 - SUMMARY

Council's approach to community consultation falls short of what could be considered to be effective consultation in that it did not provide a structured, ongoing approach where the various opinions of residents were gathered and considered, as part of the decision making process with respect to commissioning the Centre in its current form.

A further concern is that the opposition to the Centre does not appear to be the province of a few people. While there are a number of articulate resident groups who are opposed to the Centre, the sheer number of people writing to the media and signing petitions against the Centre, on a sustained basis, would suggest that there is critical mass of opposition to the Centre which cannot be ignored, or glossed over as a failure by Council to communicate effectively.

As Council had determined that the centre would be located on the Civic Centre site as early as 2001, community consultation and studies regarding the location of the Centre apparently played no part in influencing the outcome.

Council's view that community criticism of the ACEC is due to insufficient 'PR' regarding the Centre is symptomatic of a view that PR constitutes community consultation.

Notwithstanding the opposition to the ACEC, the evidence is clear that there is general community support for a cultural centre in the Port Macquarie Hastings area subject to it being cost effective, appropriately located and the scope being limited to exclude a conference centre.

TERM OF REFERENCE 3 – FINDINGS

It is the view of the investigation team that:

- 3.1 There is broad general support for the development of a facility for the performing and visual arts, BUT at a cost that can be afforded by the community.
- 3.2 The opposition to the Centre is based on concerns about the escalating cost and location of the Centre.
- 3.3 The Port Macquarie Hasting Council failed to engage in meaningful community consultation regarding the proposal currently being implemented to build the Centre.

EXECUTIVE SUMMARY

- 3.4 Council has breached section 664(1) of the *Local Government Act 1993* by leaking the draft Report of this investigation (which was provided to Council in strict confidence to afford them procedural fairness) to a number of outside parties.

OVERALL FINDINGS

Council failed to implement sound business practices with regard to the planning and financing of the Arts, Cultural and Education Centre, leaving open the possibility that future maintenance and infrastructure spending may be affected by the ongoing expense of the Centre.

Council failed to respond adequately to increasing community concerns about the escalating costs of the Centre, creating a perception that they were dismissive of such concerns and non responsive to genuine community complaints.

This perception of Council being dismissive of genuine community concerns has been reinforced by Council's decisions to:

- (1) ignore the DLG request to suspend any further work associated with the ACEC pending the outcome of this Investigation; and
- (2) proceed to approve the appointment of a building contractor, contrary to the DLG request.

RECOMMENDATION

The investigation team recommends that:

The Minister for Local Government considers the instigation of a section 740 Inquiry under the Local Government Act 1993 with respect to the Port Macquarie Hastings Council.

COVERAGE

The matters raised in this report are only those that came to our attention during the course of our investigation and are not necessarily a comprehensive statement of all the issues that may exist.

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THE INVESTIGATION – BACKGROUND AND AUTHORITY

BACKGROUND

This report details the investigation and findings undertaken pursuant to an authorisation issued by the Director-General of the Department of Local Government under Section 430 of the *Local Government Act 1993* ('the Act') on 6 November, 2006, regarding the decision by the Port Macquarie Hastings Council to undertake the construction of an Arts, Conference and Entertainment Centre ('the Centre'). The decision to authorise an investigation was taken following the receipt by the Department of numerous complaints about the Centre dating back over a number of years.

These complaints raised three major issues:

1. Concerns about the capital costs of the Centre.
2. Concerns about the impact on Council finances of the ongoing costs of the Centre.
3. Concerns about the location of the Centre, including concerns about the extent and depth of investigations of alternative sites.

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

THE INVESTIGATION TEAM

Three people, designated as Departmental representatives for the purpose of this investigation, were authorised to conduct the investigation, as follows:

- Mr Debasish Bose, Senior Finance Officer, Department of Local Government
- Ms Helen Colbey, Management Consultant
- Ms Linda Pettersson, Management Consultant.

TERMS OF REFERENCE

The Terms of Reference authorised for the investigation were:

To investigate and report on:

1. Whether the council has exercised reasonable diligence in the financial management of the Port Macquarie Arts, Conference and Entertainment Centre.
2. Whether the council has properly considered what impact the centre will have on the capacity of council to carry out its functions including the provision of services and the replacement and maintenance of infrastructure.

3. 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.

STATUTORY REQUIREMENTS

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.

Section 431 provides:

- (1) For the purpose of exercising his or her functions, a Departmental representative may direct a person to do any 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.

THE INVESTIGATION METHODOLOGY

Following appointment by the Director-General of the Department of Local Government, the Investigation Team reviewed documentation available at the Department relating to the Port Macquarie Hastings Council and the Arts, Conference and Entertainment Centre (ACEC).

This review led to the formulation of a number of questions and issues arising from the Terms of Reference, which were put to Council for a written response.

The Investigation Team then conducted interviews with community representatives, councillors and council staff and members of the Project Reference Group on 28 November and 7 December, 2006. Council's written response to the questions put was received on 4 December 2006. This response was supported by a number of boxes of documents. The Team also received a number of documents from community representatives.

The interviews conducted by the Investigation Team led to further documentation being provided to the Team by some of the interviewees.

Following consideration of all material available, this report was prepared, for submission to the Director-General, Department of Local Government.

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.

THE INVESTIGATION REPORT

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.

Pursuant to section 434 of the Act council is required, within 40 days after presentation of the report, to give written 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.

ACKNOWLEDGEMENTS

The Investigation Team acknowledges the diligent approach which was taken by Council and by the community representatives involved who provided information and materials for the consideration of the Investigation Team.

In order to respect confidentiality, the names of those who provided responses and information to the Investigation have been provided to the Department of Local Government.



INTRODUCTION

The Local Government Reform Program – *Promoting Better Practice* is a review process conducted by the Department of Local Government. *Promoting Better Practice* has a number of objectives:

- to generate momentum for a culture of continuous improvement and greater compliance across local government
- to provide an ‘early intervention’ option for councils experiencing operating problems
- to promote good governance and ethical conduct principles
- to identify and share innovation and good practice in local government
- to enable the department to review information to feed back into its work in identifying necessary legislative and policy work for the local government sector.

A Report of a *Promoting Better Practice Review* of the Port Macquarie Hastings Council (PMHC) was issued in March, 2006. The Report contained 31 recommendations. The Report also noted that there was an issue with the Council’s proposal to build an Arts, Conference and Entertainment Centre. The report stated (p.48):

The decision to commit nearly \$30million of loan funds to a project for an area on which the community places low importance raises concerns. Additionally, concerns have been raised by some members of the community in relation to the substantial increases in costs of the centre, the processes around the selection of the site and the general management of the project. This is a matter that the Department will separately review in greater detail.

During the course of the Review (January, 2006), the DLG wrote to the PMHC regarding the proposed centre, raising six concerns, viz. the lack of market research to determine paying customers, the lack of consideration of ‘competing’ venues, the lack of planning processes to support the centre, such as a feasibility assessments, risk assessments, management plans, business plans or project plans, escalating costs incurred because of the lack of planning, the capacity of the PMHC to afford the centre if costs continue to escalate and the failure by the PMHC to include all costs in accounting for the project.

On 7 February 2006, the General Manager of the PMHC replied to the letter. Council’s response, while detailed, did not provide any reassurance that the basic concerns expressed by the DLG had been addressed adequately.

At the same time, there has been a significant amount of correspondence generated in relation to the centre, by way of letters to the editor of local print media, letters to the Minister, representations to the local Member of Parliament and representations to the Department of Local Government, including:

- 266 different letters to the media
- 127 separate letter-writers
- 104 of these sent only one or two letters
- 23 letter-writers wrote more than twice.

Given the determination of the PMHC to proceed with the centre, in the face of mounting community criticism and information to the DLG, which caused concern, the Department determined to commission this Investigation.



PORT MACQUARIE HASTINGS COUNCIL

FEATURES OF THE PORT MACQUARIE HASTINGS LGA

The Port Macquarie Hasting Local Government Area (LGA) covers an area of 3,693 sq. kms and is located on the mid north coast of NSW, 420km north of Sydney. It has a population of approximately 69,473.

Local government in the area is the responsibility of the Port Macquarie Hastings Council which employs around 470 equivalent full-time staff. The town of Port Macquarie, where Council operations are based, is the major population centre for the area, with 37,405 residents. The area includes two regional centres, being Wauchope with a population of 4,772 and Camden Haven with a population of 7,355.

The population of the Port Macquarie Hastings LGA is the fastest growing in NSW. About 90% of the net increase is due to net migration to the area, primarily to Port Macquarie. The census statistics indicate that the population of the area is ageing, with a median age of 43 years in 2001, up from 40 years in 1991.

Socio economic factors that are relevant include the ageing of the population and the dependence of a significant proportion of the population on welfare assistance. According to Department of Local Government figures (obtained from the Australian Bureau of Statistics), the number of people aged 60 and over is 10% higher than the state average, with over a quarter of the LGA's population aged over 60 years. About 40% of the population under the age of 60 years are pension and benefit recipients, which is 10% higher than the state average.

THE ROLE OF COUNCILLORS AND THE GENERAL MANAGER

The *Local Government Act 1993* requires that councillors as a group direct and control the council's affairs, allocate resources, determine policy, and monitor the council's performance. As individuals, councillors communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council (section 232 of the Act).

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 ARTS, CONFERENCE AND ENTERTAINMENT CENTRE

According to Council's submission to this Investigation and its letter to the DLG dated 17 February, 2006, the project has a long history. The need for a cultural centre was apparently first suggested in the late 1980's. A public meeting was held in May 1993 which resulted in the formation of a taskforce headed by the then Mayor Councillor Ray Cooper. This committee provided a range of advice to council regarding the need for a cultural facility.

In 1995 a Performing and Visual Arts Working Party was formed by council to formulate a plan to meet the needs of the communities in this area. This was also headed by the Mayor Councillor Cooper. The report identified the existing civic centre venue as inadequate for the needs of the community.

In 1996 Council developed the "Hastings Development Plan" through public workshops and consultation and made the following recommendation. "*A public Regional Gallery, which operates in close association with all educational centres...A prestige drama and entertainment complex that caters for theatrical productions and other entertainment not catered for by the clubs including a range of cultural entertainment for youth*".

In 1997 a Community Services Plan called the *Hastings Community Plan 1997-2000* was developed. According to Council, the plan was developed with consultations with over 70 varied groups in the community. It identified inadequate performing arts facilities and the lack of major events or performers. Such a facility was estimated to cost around \$7 million at the time and was to be opened in 2003. However, the Community Plan also identified, as equally important, the need for health and personal care needs such as a public dental facility, podiatry and acoustic assistance. In addition, aged housing needs and accessible, flexible and affordable public transport were ranked as being of equal importance.

In 1999 the Community Plan was updated and again reaffirmed the long-standing need for a purpose built regional cultural facility.

In 2000 a Cultural Facilities Planning Workshop was held for councillors and senior staff which identified a keen interest in the community for a cultural facility. According to Council 'there was agreement across the community that a centre as is being developed was the "*highest cultural priority for the Hastings*". [However, this interest was qualified by the outcomes of a "*Community Attitudes to Services Provided by Hastings Council*" survey in February 2000 which identified arts, entertainment and cultural facilities as lowest in importance of council's services although it did not necessarily indicate that there was no need for development of such a facility (quoted in the *Hastings Open Space, Community Cultural and Recreation Facilities Study Stage 3 (Strategies) Report*, May, 2001, page 87). The Report of the Workshop also stated (page 9) that a Performing Arts Centre needed to be cost effective (viable, but affordable) and needed to include provision of adequate parking.

The *Hastings Open Space, Community, Cultural and Recreational Facilities Study*, prepared by BBC Consulting Planners in May 2001, identified a number of issues in relation to addressing the longstanding need for a Performing Arts Centre in Hastings. The study consulted the community at large, cultural and recreational groups throughout the Hastings LGA and reported as follows (pp. 9-11):

“The need for the development of a Performing Arts Centre for the Hastings is clearly apparent. The facility must be cost effective (i.e. viable yet affordable), multipurpose...seat 500 or more “[It must be noted here that there was no mention of the inclusion of a conference facility.]”

“While such a facility is sorely needed in this community and would provide a multitude of community benefits to a wide range of community and target groups, including young people, the particular circumstances of the rate base of Port Macquarie are such that it is important that any Centre built not become an unanticipated drain on council resources and subsequently cause council to skew the allocation of future resources from other areas. There should be clear identification of the level of subsidisation which will be required by council.

[In terms of location} ...” the Civic Centre site is clearly ideal. However the reality of the situation is that the Civic Centre site is a highly valuable commercial site which is likely to be required to be sold to fund Council’s contribution to any such performing arts centre. It is unlikely that the mix of uses which are mooted for the site, and which appear appropriate to the needs of Port Macquarie, would be able to be retained on the site while maximising its economic benefit.

The study also went on to state:

“...it would also be desirable for Council to hold discussions with what may be seen as ‘competing’ venues, such as the Port Macquarie RSL Club 1000 seat flat floored auditorium in finalising its proposal and determining how best to meet the wider needs of the community, such as meeting rooms, which are in high demand.....Such alternative venues need to be taken further into consideration in planning the facility.

In order for council to make an informed decision, the study recommended:

“The recommended process by which adequate investigations can be undertaken to allow Council to make an informed decision on this centre are as follows:

- *Commissioning of a scoping study to determine the role and function of the centre;*
- *Identification of site requirements including size, desirable linkages, parking requirements, environmental impacts etc*
- *Carrying out of a site feasibility assessment (reviewing options and determining a preferred option);*
- *Carrying out of a project feasibility assessment;*
- *Determination of S94 implications; and*
- *Identification of capital and recurrent cost liabilities to Council.”*

Following development of the above plans, workshops and studies, council began work on the project. In 2001 and 2002 confidential discussions were held with potential strategic partners for a joint venture arrangement but this did not materialise. Soon after this, council decided to go it alone and started holding workshops with staff and councillors on the design and redevelopment of the civic centre.

During the community discussions held for the period 1993 to 2002, the cost of the centre was not documented to our knowledge. It was apparently mentioned only once in 1997 and the figure at the time was \$7M (p.57, Council's submission).

In September 2003, following a workshop for councillors and senior staff, council began to market the project by distributing between 26,000 and 27,000 copies of a community brochure to the households in Hastings Local Government Area. The brochure provided details on the concept and key components of the project. It stated:

“The concept is to redevelop the current Civic Centre and the Regional Gallery to accommodate a 610 seat Performing Arts Centre, an enhanced Regional Gallery, the Visitor Information Centre and the creation of a public forecourt in Hay Street”.

This indicates that council had already determined that the site would be the current Civic Centre site. It makes no mention of the inclusion of a conference facility.

On the question of costs, the brochure states:

“The overall cost of the centre is approximately \$15,000,000. This will be funded through contributions through the development of the area and council funds.....Council has significantly reduced its loan borrowings over recent years to proceed with a development such as this.’

Not unreasonably the above statements could be interpreted as meaning that council would fund the project through s94 contributions and internal resources, and not borrow externally.

Community responses to the brochure are discussed later in this Report under Term of Reference 3.



TERM OF REFERENCE 1

Whether the council has exercised reasonable diligence in the financial management of the Port Macquarie Arts, Conference and Entertainment Centre

There are two major areas of cost which arise with respect to the proposed Arts, Conference and Entertainment Centre (ACEC), the initial development and construction costs and ongoing operational costs. The Investigation Team obtained information on both areas in order to determine the nature and extent of Council's diligence in the financial management of the centre.

According to the Council, strong financial management has occurred with regard to the ACEC. Council's submission to this Investigation (p.18) indicated that '*funding for the ACEC has been included in each of the Council's Annual Management Plans since 2001/02*'. Page 28 indicates that \$30,000 was 'made available' for capital expenditure on the project in 2001/02, rising to \$7,000,000 in 2004/2005 and \$16,309,800 in 2006/2007'.

Despite making funding available for the Centre from 2001/2002, the ACEC was not a major priority for Council until the 2004/2005 financial year.

A council business paper prepared for an extraordinary council meeting on 28 June 2004 stated that "*The facility will cost between \$15 - \$20 million to construct.*" It must be noted here that the tone of the language had changed significantly. The 2003 brochure quoted \$15 million as the **overall project cost** whereas the June 2004 business paper quoted \$15 - \$20 million as the "**construction cost**". In the same meeting council officially confirmed its commitment to the project and resolved to engage with relevant stakeholders in the development process. At the time of the commitment, there was neither any evidence of a feasibility study having been undertaken nor any detailed business planning or scoping done on the project.

A year later, in August 2005, a budget of \$25.42M was set – for construction only -, plus indexation. The Council resolution states:

That Council support construction funding for the Cultural Centre of \$25.42 million (Item 26 Ordinary Council 20/06/05 to be indexed and exclusive of consultant fees and acquisition costs).

Council indicated in its submission to the investigation that the total, immediate cost of the project, without factoring in interest on repayment of loans, and provision of parking facilities at William Street (see further explanation later in this report) will be \$32,464,755 (page 30). This figure is based on the Ritz cost being \$3.2M, although Council has already paid out over \$4.66M. The legal cases associated with the acquisition of the Ritz that were pending at the time of the draft report earlier this year have now been resolved. Council maintains that the final payout is likely to be within the contingency amount allocated to the project. However, the quantum of the contingency amount has not been provided to this Investigation at the time of this report.

TERM OF REFERENCE 1

As at December, 2006, the total cost of the Centre has been estimated by Council at \$39.15M (press release, 18 December, 2006). Council maintains that this figure has not changed, at the time of this Report in April, 2007.

With respect to funding of this expenditure, Council's submission indicated (pp. 30-31) that this comprises the following:

S94 Contributions	\$10,873,801	
Grant	\$500,000	NSW Ministry for the Arts
Grant	\$250,000	Dept Transport & Regional Services
Grant	\$125,000	NSW Ministry of the Arts (Fit-out)
Loan Funding	<u>\$20,715,954</u>	
	\$32,464,755	

According to these figures, S94 contributions will provide around one-third (1/3) of the cost, while Council's General Fund will provide approximately two-thirds (2/3) of the cost. Grants, should they become actual, may comprise less than 3% of the cost. If these grants are not forthcoming, the sums involved will no doubt be the subject of further loan borrowings.

Council's submission also provides that the loans for the Centre will be borrowed, in advance of these funds, over a three year period.

2004/05	\$3,500,000
2005/06	\$11,780,000
2006/07	\$16,309,755

These loans will need to be repaid, from projected S94 funds and from the General Fund. When it was pointed out by this Investigation, during meetings with Council officials and staff, that there is likely to be a substantial additional burden on the General Fund, to sustain the ongoing operating costs and loan repayments of the ACEC from its current revenue base, Council noted potential extra sources of funding which will bolster the General Fund. This was also noted in Council's submission to this Inquiry (page 31) where Council informed this Investigation that it will have a large cash inflow in 2011/12 and this continues for a number of years due to the Thrumster land holdings.

The Thrumster land holding is a strategic development site in one of the regions growth areas, area 13. The site is approximately 200 hectares, which will yield approximately 650 plus residential lots and 20 industrial lots. According to Council, the current englobo valuation on the parcel is between \$37M - \$40M. The Thrumster development will require start up funding around 2009/10. However, Council notes (page 27) that it will then generate an income stream which will increase the size of the surpluses indicated. Options such as joint ventures and financing options are currently being considered in the context of the project being treated as a stand alone commercial project.

TERM OF REFERENCE 1

The following table details the loans taken out by Council for the ACEC.

TABLE 1: PMHC borrowings for the ACEC

YEAR	AMOUNT	TYPE	INTEREST RATE	TERM IN YEARS
2004/2005	\$3,500,000	Fixed	6.03%	20
2005/06	\$11,780,000	Variable	5.99%	20
2006/07	\$16,309,755	Fixed	6.27%	20

However, what does not appear to have been factored into any material made available to the Investigation is the impact of changes in interest rates on loan repayments for the loan that has been borrowed at a variable rate. Nor does there appear to be a contingency plan to deal with any reduction in the projected S94 contributions which may occur through unforeseen fluctuations in the property market. Any shortfall in the S94 contributions would mean an increased burden on the General Fund to meet loan repayments.

A project risk assessment should have been undertaken to address these issues which are not insignificant.

Turning to cost increases which have been incurred during the development of the ACEC concept, Council outlined in its submission (pages 19 and 57) a number of ‘significant cost pressures’ which have been placed on the project so far. The Investigation Team was keen to see how Council incurred these additional costs and how it has managed them. The increased costs were quoted as:

- Acquisition of the Ritz site \$4.8M (to accommodate the increase in the scope of the project, although Council also states that it would have acquired this site anyway – more on this issue appears later in this report)
- Additional building costs associated with increase in scope due to community consultation \$3M
- Escalation in the project from 2003-2005 \$3M
- Archaeology increases from budget \$3M; (originally a lower amount had been allocated for archaeology, but this cost has increased – more on this issue appears later in this report)
- Consultant’s fees increase due to increase in scope and redesign \$1.8M
- Increase in hydraulics \$565,000
- Sub Stations Costs \$180,000
- Discovery of high voltage cables running through the site \$200,000 that all site investigations did not uncover.

Two further costs are the relocation of the Visitor Information Centre (VIC) and the cost of litigation by affected persons in relation to the acquisition of the Ritz Arcade, at a cost yet to be itemized at the time of this report.

These figures equate to approximately \$20M in cost increases in the project since 2000-2002, as advised in Council’s submission (page 57).

THE INCLUSION OF THE CONFERENCE FACILITY

One of the factors generating a significant cost increase is the inclusion of a conference facility in the proposed development which the Investigation Team came to believe has been seriously understated by Council. The Investigation Team enquired of Council how and when the ACEC's brief was expanded to include conference facilities and any other non-performing Arts functions, the reasons for those inclusions, whether budget figures were produced at the time of those decisions, as well as what estimated costs were considered for the additional functions.

According to Council's submission (p.54), the conference facility was included following representations from the local Chamber of Commerce to include more facilities for conferences. The location of the Art Gallery on the ground floor was made at the request of the Gallery Advisory Board and on the advice of the Regional Galleries of NSW *Checklist for Planning a Regional Gallery* which was understood to support ground floor access for art galleries.

No broader community consultation, outside of the relevant interest groups, was undertaken with respect to these additions, to the knowledge of the Investigation Team.

Council also indicated in its submission (page 55) that the budget and costs associated with these developments were as follows:

- the cost of the acquisition of the Ritz site, although Council had originally determined, in 2003, to purchase this site for other reasons - \$3.2M initial valuation
- additional building costs (for the conference centre and the gallery) of approximately \$3M
- escalation due to delays in the project from 2003 – 2005 approximately \$3M.

Elsewhere in Council's submission (page 19), Council quotes the cost of the Ritz acquisition at \$4.8M. This means that an additional \$1.6M has been incurred. The Investigation also notes that \$1.46M has already been expended on this matter. In addition, there are the as yet unspecified costs of the litigation that has arisen as a consequence of the compulsory acquisition of the Ritz site.

This makes a total of at least \$10.6M for the conference facility and the relocation of the gallery to the ground floor.

ON GOING OPERATING COSTS

With respect to ongoing operational funding, Council was asked to indicate what feasibility studies had been carried out, including economic considerations, such as projected operating costs, impacts on Council's budget into the future, cost/benefit analyses, etc.

In its submission, Council responded to this question by stating (pp. 44-45):

The development of this project is best described as having been evolutionary...This facility must be the best value facility at the right price. The feasibility for the ACEC was not undertaken in one single process or one document...feasibility was assessed throughout the staged development process...the final conclusion of Council was that the development of such a facility was and is feasible both in terms of capital provision

and ongoing operational costs in addition to the obvious social and economic benefits. The projected operational budget is for an additional amount of \$340,000 per year above the current costs of the Regional Gallery (\$160,000 pa). The operational costs should be compared with costs such as the operations of the Library and sports field and parks and gardens. These areas run into millions of dollars each year.'

It should be said that the lack of a feasibility study, with a detailed analysis of options leading to the identification of a project which is the 'best fit' in terms of benefits and costs means that Council or the community will never know whether the facility is the 'best value facility at the right price'.

In an earlier section of Council's submission (page 31), the operating cost in the first year of operation (2008/2009) is projected to be \$667,340, of which \$500,000 has been budgeted for. However, in terms of impact on Council's budget, this estimated cost does not include interest payments on the loans that are being taken out for the Centre. Further into Council's submission (page 51), Council states that the projected operating cost were first determined:

through discussions with other centres and the level of Council subsidy they received. Example budgets were sourced and a draft operating budget developed in 2003. This was fine tuned over time until being adopted by Council as part of the ACEC Business Plan in March 2006. In 2004 the average local government net annual operating cost per Regional Gallery was \$434,089.

In the context of the Centre, there are two aspects to operating costs. These are ongoing costs incurred in running the Centre and repayments on loans. The loans are to be repaid from the General Fund (2/3 of the loans taken out) and S94 contributions (1/3 of the loans). Taken together, these costs represent total operating costs. According to Council, the estimates of the total operating costs state that Council will pay an annual subsidy of \$1.8M from the General Fund. Any shortfall in S94 contributions will need to be made up from the General Fund, which will mean an even higher subsidy from the General Fund.

LACK OF A BUSINESS PLAN

A further question asked of Council by the Investigation Team was whether Council had developed a business plan for the Centre. According to Council's submission (page 57), a comprehensive business plan was first developed in draft form in 2003 and 'then built upon following ongoing research and advice until the final plan was adopted by Council on 6 May, 2006'. However, Council did not indicate that the 2006 Business Plan was, in fact, a response to a request by the DLG to Council in January, 2006 to provide a Business Plan.

This is evident from the minutes of the ordinary council meeting of 23 January 2006 which resolved, "*Council prepare a business plan for the cultural centre, with detailed costing and revenue projections. Further, that this business plan be presented to council within six weeks*".

A review of the Business Plan indicates that the figures on which certain assumptions are based, for example, performing arts customers are based on national averages. There is no reference or qualification relevant to the demographics of the Port Macquarie Hastings LGA which may affect the validity of those averages.

TERM OF REFERENCE 1

A detailed business plan with a clearly defined project plan and description, project scoping with strict upper limits, a clear statement of deliverables/outcomes, maximum total project costs, market profile and preferred risk management strategies in accordance with AS/NZS 4360:2004 would most likely have minimised the escalation of both the scope and costs of the project.

TERM OF REFERENCE 1 - ANALYSIS

Whether the council has exercised reasonable diligence in the financial management of the Port Macquarie Arts, Conference and Entertainment Centre (ACEC) can be assessed by examination of a number of factors:

1. What is the true cost of the ACEC?
2. How Council plans to fund the ACEC?
3. Council's assessment of whether the community's expressed wish for a centre is economically feasible in both the short term and the long term with respect to income projections and capacity to meet loan repayments, as well as any shortfalls that arise because of poorer than expected returns.
4. Council's diligence with respect to cost control in the development and construction phases, including probity issues.
5. The validity of Council's assessment of ongoing operating costs of the ACEC.

Each of these factors is discussed below.

1. THE TRUE COST OF THE ACEC

The first issue is to determine an actual estimated cost for the Centre. In a number of places in its submission as well as in communication with the community, Council qualifies the cost of the Centre as being the construction cost only. For example, in August, 2005, as quoted above, the construction cost of the Centre was quoted as \$25.42M. In its submission, Council noted a number of additional factors which have increased the cost by approximately \$20M since 2000/2002.

As the cost of the project escalated, council appeared to focus on the construction costs alone. At times, when the community raised concerns about the rising cost of the project, Council's response was similar to its response as outlined in its submission to this Investigation, that is, that the construction cost was set at \$25.42M plus indexation (pages 18, 54, 57). For example, in response to the following question from the Investigation Team (page 74):

Who has responsibility for approving variations/overruns? Are there thresholds where approvals need to be sought from Council, prior to approvals for variations or cost overruns?

Council replied:

All approvals are in line with Council's Delegated Authorities and purchasing guidelines. The costs of the construction for the project had been set in Aug 2005. A contract for the Main Works Contract will be let in line with the Council budget. Therefore there have been no cost overruns in relation to the construction of the facility and no approvals have been sought.

Comments focusing on just the construction cost alone were also made in the media. Quoting only construction costs provides a misleading picture for ratepayers, since the funding of the centre includes significant other costs, including the Ritz acquisition, archaeology and car parking.

It is not clear how much of these costs have been incorporated into the final figure that, in Council's submission was proposed by Council to be \$32.464M, plus additional costs arising out of the Ritz acquisition of \$1.6M and the discovery of convict remains on the site (page 55).

The additional costs of the Ritz acquisition at \$1.46M plus litigation costs, together with the cost of archaeology at an estimated \$3M brings the estimated total cost of the ACEC, based on Council's submission, to approximately \$37M. However, a more recent figure issued by Council in its press release dated 18 December, 2006 is \$39.15M. The Investigation Team estimates that the current cost of the ACEC at the time of this Report in April, 2007, is over \$43M.

A further cost factor that has not been included in Council's cost estimates as provided in its submission is the cost of car parking. Numerous submissions to this Investigation noted that car parking was a key issue and in particular, car parking for elderly and mobility impaired potential users which needs to be located on or near the Centre. (Even the most famous cultural centre in Australia, the Sydney Opera House, was eventually forced to provide on-site parking, at great expense, some years after it was built).

Council's position with respect to car parking (page 73) is contentious. Council states that it was not aware that car parking was an issue because a Traffic Management Study did not identify this as an issue. This is a surprising claim, since Council would have been able to obtain an 'in house' preliminary estimate of car parking needs well in advance of the formal DA process. This could have been done with no apparent problem arising out of Council's dual role as developer and consent authority. Notwithstanding this, the need for additional car parking was thus not identified until an independent DA Assessor (in 2006) judged that there would be a demand for an additional 79 car parking spaces, generated by the Centre.

At the same time, Council had already commenced work on the development of a site at William Street for car parking. Council maintains (page 74) that the 79 car parking spaces will be provided on this site and therefore the car parking should not necessarily be attributed to the cost of the project, since the purchase of the William Street site for car parking purposes is linked to Council's car parking strategy, which was adopted by Council in 2003.

In this regard, Council cannot have it both ways. On the one hand, if the car parking in William Street was identified as early as 2003 as being part of Council's car parking strategy, this would suggest that that parking will be fully utilized for CBD needs, unless Council envisages that the ACEC will only be used at times when CBD activity does not require parking, ie at night. This is unlikely, since two of the projected uses of the centre are daytime events, one being eisteddfods and the other being conferences. However, if the William Street car park will fulfill the role of providing car parking for users of the ACEC, it can be argued that the cost of the William Street car parking should be included in cost estimates for the Centre.

Adding the cost of the William Street car parking site brings the cost of the Centre to more than \$37M, before interest on loan repayments. The use of approximately \$2M from internally restricted funds, as mentioned later in this report, for the William Street car park, if correct, brings the total actual cost to \$39M, based on the figures in Council's submission, before interest repayments.

The cost of the site also needs to be considered. Although the site is that of the former Civic Centre and was therefore Council-owned, if an economic appraisal in the form of a cost benefit analysis was carried out for the ACEC, the opportunity cost of allocating an expensive CBD site, (possibly worth some millions of dollars), to the Centre should be factored in to the equation, since this resource is now alienated from other uses. A cost benefit analysis is usually carried out to determine the benefits of providing a particular project at a certain cost as opposed to providing other vital services, or options, with the same resources.

Another matter which was the subject of submissions to the Investigation relating to the cost of the Centre was a perceived need to factor into the cost estimates the cost of interest on repayments over the coming years, given that the ACEC is being funded almost entirely by way of loan funds. Although interest costs are not factored in the capital cost of the project, they must still be considered in the context of the outflow of community resources. Factoring in loan interest costs of the project would bring the total costs to over \$66M, with further possible increases as the project goes on.

In a press release issued by Council on 18 December, 2006, the total project cost was stated at \$39.15M which is said to include almost \$5M of additional costs incurred over the previous eight months, 'directly attributable' to heritage requirements and costs due to the disputed Ritz site acquisitions'.

The cost of the ACEC is influenced by its size as well as the range of facilities that it incorporates. The size of the ACEC, in terms of seating capacity is 600 seats, which is 100 seats more than were in the Civic Centre which it replaces. In the submission, Council does not provide any rationale as to why 600 seats was chosen as the size, beyond stating that the national and NSW average seating sizes for theatres are 648 and 742 respectively, and that the Sydney Symphony Orchestra (SSO) has confirmed that 600 seats is 'practical and appropriate' (page 36). Interestingly, the letter from the SSO states that it would be interested in performing at Port Macquarie 'if Coffs Harbour and Tamworth provide suitable venues' [for touring]. This suggests that Port Macquarie would not be the destination in itself for the SSO, but rather would be one stop on a regional tour that the SSO might undertake if other regional centres of suitable size were available on which to base a tour.

No apparent attempt has been made to confirm whether this seating capacity is the most appropriate capacity for the Port Macquarie Hastings LGA. Even though this capacity may be the number needed to attract major events, if there are not sufficient paying customers, these events will run at a loss and will eventually not come to the Centre at all.

2. FUNDING THE CENTRE

Funds for the Centre are based on two key assumptions: that both S94 contributions will be forthcoming as projected and that the General Fund will receive sufficient revenue so as to generate the necessary funds to repay the loans that have been taken out for the Centre.

Council has sourced funding of \$32,464,755 for the ACEC project, comprising of external loans of \$31,589,755 and grant funding of \$875,000. However, the Investigation Team estimates the total cost of the project at the time of this report (April, 2007) at \$43M+. Council has not identified where the funding gap of \$11M will be sourced. As per the 2005/06 audited financial statements, Council's unrestricted cash balance was only \$81,000. Councils maintain unrestricted cash to meet unbudgeted expenditure. This scenario means that Council can only raise the extra \$11M needed for the project by one or a combination of the following options:

- (1) Selling existing assets.
- (2) Raising further loans.
- (3) Diverting internal funds from existing commitments.
- (4) Deferring other capital projects.

Turning to the question of where repayments will come from, the General Fund will be used to repay \$20,715,954 of the loans (2/3 of the total loans to date), while the balance of \$10,873,801 (1/3) will be repaid from the Community, Cultural and Emergency Services S94 Plan. If any further loans are raised to reduce the funding gap, it is assumed that one of these two sources will be used to repay those loans.

With respect to the ability of the General Fund to sustain the operations and loan repayments of the ACEC, which would amount to approximately \$1.8M in subsidy annually, Council notes in its submission (pages 29 –30) that rating revenue has increased, from around \$14M per year in 2000 to approximately \$27M per year in 2006. However, these figures were no doubt assisted by two extraordinary rate increases that were allowed by the Minister for Local Government during this time. These increases, included 19.16% in 2004/2005 and 4% in 2005/2006 over and above rate pegging. Some of the major areas identified by Council to benefit from the extraordinary rate increases were roads, parks, recreational, environmental and cultural facilities. Another important area highlighted by Council, in its application to the Minister, was the need to increase the revenue base and thus reduce the operating deficit before capital items in the General Fund.

With regard to the projected S94 contributions, these collections are dependent on growth rates in the area. As discussed elsewhere in this report, while it is likely that the area will achieve some growth in coming years, the quantum of that growth is unknown, and is subject to competitive pressures from other centres.

Council projects (page 46) that the population will be in excess of 100,000 in 2026. The graph supporting this figure shows a steady rise in population from 2001 to 2025. This would represent an increase of approximately 40%, based on the current population of the region (69,473).

Population increase in NSW occurs as a result of three factors: natural increase (more births than deaths), internal migration and overseas migration. Internal migration by older people to the area is a significant factor in the Port Macquarie Hastings LGA. However, there can be no certainty about the constancy of any of these population change factors in any particular location.

In the case of Port Macquarie, changes to the levels of internal migration to the area could be generated by the opening up of other coastal areas in NSW which turn out to be competitors for internal migrants. This has been foreshadowed by the release of a draft regional strategy for the mid north coast, which was issued for comment by the NSW Government on 18 January, 2007. The strategy projects that there will be 91,000 extra residents in the mid north coast within the next 25 years. The strategy identifies the mid north coast as including four major regional centres, Coffs Harbour, Grafton, Port Macquarie and Taree. While the strategy supports Council's optimism about an expansion in the population of the Port Macquarie area, it identifies a number of competitor centres for the expanded population. It also suggests that high rise residential development within the CBD areas of these cities may be necessary.

Other factors which could constrain population movement to the area are changes in interest rates and housing affordability which act to reduce the propensity of prospective migrants to the area. Whatever the cause, any decline in internal migration, should this eventuate, would have a significant effect on the levels of S94 contributions collected by Council and in turn, on the continued financing of the loans taken out by Council for the ACEC.

Council has stated that if there are shortfalls in S94 contributions, then other projects within the Community, Cultural and Emergency Services S94 plan can be deferred, on the basis that if population projections do not meet expectations, the infrastructure required will be correspondingly diminished (page 35, Council's Response).

The significance of these uncertainties is magnified by the fact that the Centre is being funded almost entirely by loan funding. It is an unavoidable conclusion that any shortfall in projected revenue and S94 collections will have an adverse impact on spending on essential infrastructure projects.

3. COUNCIL'S ASSESSMENT OF WHETHER THE CENTRE IS ECONOMICALLY FEASIBLE

Prior to receiving Council's submission to this Investigation, a number of questions were put to Council regarding feasibility studies that might have been conducted into the viability of a Centre. As identified earlier in this report, Council has not conducted a formal or informal feasibility study. In its submission to this Investigation, Council responded to the questions:

What feasibility studies were carried out?

Who carried out those studies and when were they carried out?

What were the findings of each feasibility study?’

As follows: (pp. 45):

...feasibility was assessed throughout the staged development process...The final conclusion of Council was that the development of such a facility was and is feasible both in terms of capital provision and ongoing operational costs in addition to the obvious social and economic benefits.

This is a matter of concern, given the escalating costs for the Centre and the as yet unknown final cost which will need to be carried by ratepayers, given that the Centre is yet to be constructed and so further, unplanned costs may yet be incurred.

Council was asked further whether the feasibility studies included local market research and demographic projections for the catchment area for the Centre.

In its response (pages 47-48), Council relied on general information relating to support for the Arts in the Australian community and equated these to the Port Macquarie community. It also provided information relating to research that has been undertaken in relation to ticketing fees charged by centres in Australia.

Council also noted in its submission (page 48) that ‘current projections allow for a total of 60 conference days per year’ in Port Macquarie. No basis was supplied for the estimate of 60 days, nor the rationale for charging \$1,000/day. This means that a conference facility, which in itself has generated acquisition and construction costs in the order of \$10M, will realise a gross return of approximately \$60,000 per annum.

In this regard, it has been noted earlier in this Report that Council’s submission to this Investigation in December, 2006, that Council stated that the developments in relation to the relocation of the gallery and the adding of conference facilities led to costs of over \$10M. However, in its response (page 42) to the draft Report in March, 2007, Council notes that the total cost of the conference facility was \$617,000. This is a significant change of position by Council in three months. In addition, the Investigation Team noted that the Conference facility had been redesignated as ‘meeting rooms’ in Council’s response to the draft Report (page 42).

Council indicated that it has consulted with a number of other Arts facilities in Australia and New Zealand, listing 60 such facilities including the Sydney Opera House. However, this list included museums, art galleries and theatres which are only peripherally relevant to the Centre. Only 13 of the facilities listed (including the Sydney Opera House) appear to be Performing Arts or Entertainment Centres of the nature of the ACEC.

As noted earlier, estimates of operating costs developed by Council were based on discussions with other centres and the level of Council subsidy that they received. This suggests that Council’s only concern with regard to operating costs was the size of any subsidy that might be required from Council finances. However, this was not an issue for this investigation, since it is Council’s prerogative to determine the size of any subsidy that it applies to community facilities.

Another factor that Council did not appear to examine was the validity of those estimates for the Port Macquarie area; that is, were these subsidies examined against the demographics for those areas to identify their relevance to the Port Macquarie area? For example, a cultural centre that is located in an area where a high proportion of the population are in the socio-economic demographic of cultural centre users is unlikely to be comparable to the socio-economic demographic of the Port Macquarie area where a high proportion of the population is dependant on pensions and benefits, and is older than the NSW average.

There is thus no way of knowing whether the current Centre proposal is the best and most economically sustainable proposal that could be adopted, as there is no evidence that council has considered a range of alternative project proposals, beyond stating that it has considered various alternative sites.

In this regard, it was noted by the Investigation Team that Council tends to view the ACEC as providing a regional facility extending beyond the LGA. One of the marketing objectives (page 58) states that Council wishes ‘*To establish the ACEC as the pre-eminent regional centre on the east coast.*’ This would certainly be in line with the NSW Government’s State Plan, issued in late 2006, where section 8 notes, in relation to the North Coast, that:

One of the biggest challenges for the North Coast region as identified by the community is to provide education and employment options, especially for young people. In addition, continued population growth, urban expansion and the ageing of the population is creating demand for new social and physical infrastructure, including the need for better transport, water and sewerage, health, housing and education infrastructure.

At the same time, a pre-eminent regional centre might well be funded by a conglomerate of local councils, if ratepayers from a number of LGAs will benefit.

The outcomes of an analysis of alternative project proposals could have included the following:

- a) Do nothing and maintain the status quo.
- b) Pursue other joint ventures after the collapse of negotiations with Deutsche Asset Management group.
- c) Buy an existing building and renovate.
- d) Prioritise other capital commitments.
- e) Implement a more cost effective proposal with a revised scope.

An economic appraisal of a range of options, in the form of a cost benefit analysis can be used to give weight to various alternatives, so that the community can make an informed decision.

That Council did not conduct such an appraisal for the ACEC raises serious doubts about the rigour of the requirements for each of its functional areas to complete a business plan (p.22) which Council described as follows:

Included in these business plans are the following:

- *Analysis of the existing service*
- *Analysis of the market*
- *Analysis of the competition*
- *What are the opportunities for the future*
- *Implementation (action) plan*
- *Business strategy.*

As part of this planning process any new initiatives that are considered necessary by the managers of each area are included as a new bid request, this includes new staff positions. This is completed electronically via Council's Cognos product. Each bid outlines the bid description, reason for the bid, the cost, starting year and length of project plus other relevant information.

The manager is then required to evaluate the bid based on certain criteria. The criteria are:

- *Alignment to Strategy – Economic Perspective*
- *Alignment to Strategy – Social Perspective*
- *Alignment to Strategy – Environment Perspective*
- *Project Impact – 3rd parties and community*
- *Project Impact – PMHC staff, operations and suppliers*
- *Project Impact – Environment*
- *Project Impact – Financial*
- *Project Impact – Service delivery and project performance*
- *Financial Analysis – Return on Investment*
- *Financial Analysis – Cost Analysis.*

Each of the criteria is given a score out of 10 by the manager. This score is then assigned a pre-determined weighting so that an overall score can be attributed to any one project. Once the manager has completed the scoring the bid is sent to the director. The Director can amend the score applied by the manager and then approve the project, reject the project or return it to the manager for additional information.

4. COUNCIL'S DILIGENCE WITH RESPECT TO COST CONTROL IN THE DEVELOPMENT AND CONSTRUCTION PHASES INCLUDING PROBITY ISSUES

As noted earlier, the ACEC has increased in cost from an estimated \$7M in 1997 to approximately \$37M in 2006 and a current estimated cost (by the Investigation Team) of \$43M. Council was asked by the Investigation Team to identify, by reference to a budget for the project in mid 2005 and the current budget for the project, which five items have incurred the greatest upward variations and the reasons for each of those variations.

Council stated in its original submission (page 75) that the key areas where cost pressures have been felt since mid 1995 are:

- Acquisition costs – these have increased from a budget of \$3.2mil to approximately \$4.8M
- Escalation costs – this has been catered for in the Council resolution from August 2005. The escalation from March 2005 to project completion is \$3.799M
- Archaeology – the cost of archaeology has increase from the budget of \$450,000 to \$3M, including redesign fees and escalation
- Consultants fees - have increased due to the increase in the project costs and redesign fees relating to the archaeology. Increase to \$3.M.

Each of these factors is dealt with below.

Acquisition costs

The increase in acquisition costs results in part from a failure by Council to adequately define the scope of the Centre and to control the addition of significant extra functions to the Centre, so that the extent of the facilities to be provided are known at the outset.

As examples of the ‘running’ change in the scope of the Centre, A *[draft] Project Brief for the Hastings Cultural Centre Redevelopment Project for a Performing Arts Theatre, Art Gallery and Visitor Information Centre* was prepared in September, 2001. This brief did not include conference facilities. In 2005, a Project Brief was prepared entitled *Theatre, Art Gallery and Museum Exhibition Space, Conference Facility and Restaurant*. However, the Centre now comprises a Performing Arts facility, a Conference facility, an Entertainment facility and an Art Gallery. It does not include a museum (unless this relates to the display of archaeological remains, nor a restaurant.)

This is a radical change in scope which has no doubt impacted on the acquisition and escalation costs totaling almost \$8.6M, a cost which appears to arise out of the inclusion of one of these facilities, the conference facility at a relatively late stage in the project.

The Investigation Team asked Council how and when the Centre expanded its brief to include conference facilities and any other non-performing Arts functions, the reasons for those inclusions, whether budget figures were produced at the time when the decisions were made to include those functions, as well as the estimated costs of these additional functions.

Council has claimed in its submission (page 54) that the inclusion of a conference facility was because the Chamber Urban Development Advisory Committee (CUDAC), a committee of the local Chamber of Commerce, made a strong presentation to include such a facility. At the same time, the CUDAC made the following observations in a letter to council dated March 5, 2004:

The Chamber of Commerce has a number of concerns which include:

1. *Lack of feasibility studies on alternative sites & combination usage*
2. *High capital and ongoing costs without a strong revenue stream*
3. *Limited potential for expansion due to restricted footprint*

4. *Insufficient car parking facilities in the CBD*
5. *Risk management issues arising from traffic congestion*
6. *Logistical problems caused by the unloading of semi-trailers & trucks associated with touring companies*
7. *Inadequate spill out space around the facility*
8. *Council documents supplied to CUDAC make recommendations that are in conflict with council's decision to focus on the Clarence Street site*
9. *Alternative uses of the Civic Centre as a valuable commercial site*

The Chamber encourages council to reassess its thinking on the facility and to re-develop and re-establish communications with the broader community.”

It appears that these concerns were not given the same weight by Council as the weight given to the CUDAC's submission for a Conference facility.

Council also noted in its submission that the Art Gallery was relocated to the ground floor, implying an extra cost in this relocation.

As mentioned earlier in this Report, according to Council's submission to this Investigation (page 54) the budget and costs associated with these developments [the conference facility and the relocation of the gallery] were:

- the cost of the acquisition of the Ritz site, although Council had originally determined, in 2003, to purchase this site for other reasons - \$3.2M initial valuation
- additional building costs (for the conference centre and the gallery) of approximately \$3M
- escalation due to delays in the project from 2003 – 2005 approximately \$3M.

To these costs should be added the additional costs of acquisition of the Ritz site, which has brought the total cost of the acquisition of the Ritz site to \$4.65M. A further four cases are still pending payment at the time of this Report, so the final cost of the acquisition is not known.

Notably, Council's submission did not provide any response to the questions relating to process around the decision making to include the conference facilities and to relocate the Gallery to the ground floor. That is, Council did not identify whether the additional costs that were generated were estimated or budgeted at the time the decisions were made to include those functions in the ACEC.

According to Council's submission, the Ritz site was acquired during the period November 2003 to June 2004, which is shortly after the receipt of the submission from the Chamber of Commerce regarding the inclusion of the conference facility. While Council had previously resolved to acquire the Ritz site, it was subsequently and conveniently incorporated into the Centre project. The conference facility would provide the only known reason for including the site in the centre project.

The Investigation Team noted the projected use of the Conference facility at 60 days per year at \$1,000/day, and question whether there is a net cost benefit in increasing the footprint of the project to such an extent for such limited annual returns, assuming that this level of usage is obtained. No basis for estimating 60 days conference usage per year was provided in the 2006 Business Plan. Nor is there a cost/benefit analysis for this facility. A number of community members who met with the Investigation Team expressed a belief that the main beneficiaries of the conference centre will be nearby large hotels.

Escalation costs

It is assumed that these costs are a result of the delays that have been incurred to date in constructing the centre, which have led to a need to factor in general cost increases.

Archaeological findings

A further area where there has been a significant increase in costs is in the area of archaeology. Originally, archaeology was budgeted to cost \$400,000. This has now become \$3M.

Council should have been aware of archaeological issues from the earliest years of the project. According to a letter dated 30 June, 2006, from the Heritage Office to Council, ‘...a comprehensive Archaeological Management Plan for Port Macquarie was prepared in 1994/95 by Dr Edward Higginbotham. That document includes an Inventory of Sites.’ As well, Council has employed a full-time Heritage Officer for the last 6-7 years. There are also extant maps which show the extent of convict settlement in the area, including the site of the ACEC. Council also should have been aware of the archaeological constraints on the Civic Centre site by 2003, since in November, 2002, Dr Edward Higginbotham was contracted to prepare a *Historical and Archaeological Assessment Report for the Civic Centre, Clarence Street, Port Macquarie*. The Report was provided to Council in February 2003.

In the Report, Dr Higginbotham stated (page 23) that ‘the site is likely to retain archaeological remains which will contribute to our understanding of the site.’ He assessed the site as being of State significance, which is the highest of three levels of significance as defined by the NSW Heritage Office, with the following implications (page 39):

The state significance of the site means that:

- 1. It should be conserved at least in part.*
- 2. It should be placed on the State Heritage Register and also the Register of the National Estate.*
- 3. It should be conserved and managed in an appropriate manner and in accordance with standard heritage guidelines, practice and legislation.*

With respect to the significance of the site for future construction, the Report notes (page 37):

Where historical research has revealed the location of historical settlement, experience has shown that the discovery of relics is highly likely once the soil is disturbed. When relics are revealed the Heritage Council must be notified. This may involve delay until appropriate arrangements can be made to record the archaeological remains. As a result, developers and other are normally advised that excavation permits must be obtained prior to undertaking works, which involve excavation or the disturbance of historical sites. In this way most delays can be avoided.

The Report notes that the site is listed in the *Archaeological Management Plan* for Port Macquarie which was prepared in 1994-1995 for the Hastings Council.

The Report further proposed that test-excavations should be undertaken to provide more precise information on condition, location and nature of the archaeological remains and the evidences used to determine the conservation requirements for the site. It also provided further detail of the work that should be undertaken in order to minimise disturbance to the site, which included an impact on the design of the Centre.

There is no evidence that work of this nature was carried out prior to the commissioning of a further report from Dr Higginbotham in June, 2005. This was titled *Historical and Archaeological Assessment Report for the Hastings Entertainment, Arts and Conference Centre, Clarence Street, Port Macquarie*. In the Introduction, the Report states that the area to be assessed had been expanded and that this report updated the earlier report.

Presumably, the reference to the expansion of the area to be assessed is made with respect to the inclusion of the Ritz Arcade in the Centre project. Curiously, however, there is no additional material that relates specifically to the Ritz Arcade in that Report, beyond two photographs of a Shopping Centre Arcade on Clarence Street.

What is different in the 2005 Report is the assessment that (page 63):

The proposed development will have a major detrimental impact on the cultural significance of the archaeological sites. Nonetheless, the proposed cultural centre will be a valuable asset for the community at Port Macquarie and on the Mid North Coast. [It has been argued by some respondents to the Investigation that Dr Higginbotham was not qualified to make this assessment.] The potential loss of significance can be mitigated by conservation in situ, interpretation and display.

The Investigation Team was therefore not convinced by Council's submission to the Investigation that (page 71), despite the reports commissioned from Dr Higginbotham, there was 'no way in which the Council would have been able to know the amount, quality or quantity of remains that were found...The degree of remains that were unearthed was a surprise to all involved'.

The significance of the issue of archaeology for the Investigation is that it would appear that Council had already been made aware of the significance of these costs in 2003, before the updated report was presented in 2005. Nonetheless, it would appear that Council did not move to conduct the test work recommended by Dr Higginbotham which more than likely would have enabled Council to obtain more accurate estimates of the likely costs of the archaeological work, which could then have been factored in to the cost of the Centre. While Council has sought grants of \$3mil from the Federal and State Governments for the cost of the archaeological work, it is not known whether any or all of these amounts will be provided.

In its response to the draft Report, Council has included a further letter from Edward Higginbotham & Associates Pty Ltd dated 22 February, 2007. The content of this letter was considered, but the Investigation Team did not find anything to indicate that the above findings are not still valid.

Consultants' fees

Council's submission noted (page 74) that "the cost of archaeology has increased from the budget of \$450,000 to \$3M, including redesign fees and escalation. Consultants fees have increased due to the increase in the project costs and redesign fees relating to the archaeology to \$3.8M". It could be argued that the total costs attributable to archaeology are well over \$3M.

In this regard, the question arises of Council's adherence to due process in engaging consultants for the project. For this reason, the Investigation Team sought details from Council of the methods by which consultants were engaged. From the information provided, it appears that most consultants were engaged in line with normal Council and business practice for their appointment.

The Investigation Team was interested in the question of how consultants were appointed, because the Promoting Better Practice Review Report noted (pp.30 – 31) that, in certain instances, Council had inappropriately dealt with tenders in closed sessions, evaluation processes were inadequate and Council misunderstood the "exceptional circumstances" power in the Act.

Four other issues are also relevant to Council's regard for cost control. These are:

- The role of the Project Reference Group
- The location of the ACEC
- Attempts by Council to reduce costs
- Implementation of probity processes.

Each of these issues is dealt with below.

The membership of the Project Reference Group and their significant influence

Another matter that came to light during the Investigation was that there was ongoing consultation with members of a Project Reference Group which had been established by Council and whose members were selected by Council apparently without calling for expressions of interest generally. The members of that Group are, by and large, involved in the Arts community in the region. During the Investigation, some members of the Reference Group advised that Investigation Team that they believed that any request that they made for inclusions in the Centre were taken seriously. The impression was that any request for particular items of equipment or similar were simply incorporated into the Centre. While this may have led to best practice in terms of ACEC equipment, the costs of this approach are to be borne by the ratepayers at large.

The location of the ACEC

The question of the location of the ACEC is also relevant to the issue of cost. Council appears to have been determined to go ahead with locating the ACEC on the Civic Centre site, which is a prime commercial location in the CBD of Port Macquarie. This determination was evident as early as 2001, when Council commissioned the preparation of the document *Hastings Cultural Centre Redevelopment Project: Project Brief for Procurement of Architectural and Allied Consultant Services for the provision of a multi-purpose complex*. Page 1 of this document notes that the 'Hastings Cultural Facilities Redevelopment Project is located in Clarence Street, Port Macquarie adjoining the existing Port Central Shopping Centre'. At the same time, Council had commissioned the Hastings Open Space, Community, Cultural and Recreation Facilities Study noted earlier in this Report, which identified a number of problems with a CBD location for the site.

This issue is a contentious one within the community and it is not the intention of this Investigation to canvass the relative merits of the various alternative sites that have been proposed by community members.

However, the reasons for selection of the current site are significant for this Investigation because of the particular costs that have been generated. According to Council's website, the CBD site was chosen because it offers:

- minimisation of capital expenditure for facility by using Council-owned land
- maximum economic benefits for tourism and hospitality industries by being close to established businesses such as restaurants, café's and walking distance to accommodation
- a CBD site provides opportunities for Regional Gallery exhibitions to capture existing passing pedestrian traffic, reducing the need for excessive promotional spending
- industry consultants advice strongly supported CBD location as it is alongside existing cultural facilities such as the historic court house and museum
- the site will give the best outcomes for the community creating a cultural 'heart' in the CBD.

What has not been formally recognised by Council is that the CBD site, with its known archaeological significance, car parking, traffic and expansion limitations, all of which have generated consequent costs, could have been sold to fund Council's contribution to a Centre located in another area of town – as noted by the community in 2001.

Attempts by Council to reduce costs

Given the rising costs of the ACEC, Council indicated in its submission to this Investigation that it has attempted to reduce costs. On pages 62 and 63 of the Council submission, there are lists of items that have been reduced or removed from the project. The list of items that was prepared prior to the archaeology of historical significance being found totals just over \$9M. The list of items that was prepared since the archaeology of historical significance was found totals approximately \$3.3M.

Probity processes

According to the Independent Commission Against Corruption (ICAC) the term probity means integrity, uprightness and honesty. In its publication *Probity and Probity Advising* (2005) the ICAC states:

For public officials and public sector agencies, creating and maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying and complying with public sector values and duties such as impartiality, accountability and transparency....

Effective probity management is concerned with the procedures, processes and systems used rather than the outcome of an activity, undertaking or project.....

Considering and addressing probity issues should be a normal part of any significant project being undertaken by an agency....

Dealing with probity issues early in the planning process of a public sector project can:

- *improve the quantity and quality of private sector involvement by generating confidence in the process*
- *remove ambiguities in the evaluation of proposals*
- *assist in ensuring overall project objectives are met*
- *minimise costly challenges in the future concerning the integrity or processes of the project.*

Given the size of the ACEC project, Council was asked whether it had undertaken any probity assessments or put into place any formal or informal probity checking structures during the period up to and including the tender process for the construction of the ACEC. Council responded, indicating that a probity process was put in place for the tender process for the construction of the ACEC. The probity adviser was an employee of Council. While it is not the intention of this observation to cast aspersions on the individual concerned, the Investigation Team was concerned about the lack of outside scrutiny that could be provided by the appointment of an external probity advisor. There was no indication from Council that any probity processes had been established to operate during the earlier period leading to the recent tender process.

The Investigation Team is concerned about this failure to implement probity processes, given the significant sums of money that are being committed to the project. The lack of a probity process means that Council is unable to assure the community that all decision making in relation to the project was based on sound and defensible business practice which accords with due public standards of transparency and accountability.

5. COUNCIL'S ASSESSMENT OF THE ONGOING OPERATING COSTS OF THE ACEC

The 2006 Business Plan includes a statement of projected income and expenditure for the ACEC (page 22).

The most significant item of income is described as 'Touring', with a projected figure of \$286,369.94, representing almost half of the projected income of \$659,869.94 in 2008-2009. There is no guarantee that these shows will materialize and generate the anticipated revenue. Notwithstanding the Draft Touring Show Budget provide by Council on page 55 of its initial submission to this Investigation, there is nothing that explains how this figure was calculated nor on what basis it was derived.

In the list of expenses (called Operational) there are a number of items that are questionable, for their relatively low amounts. The first is Security, for which \$5,000 has been allowed in 2008/2009, that is, \$100 per week.

The second item that is questionable is cleaning, which is projected to be \$20,000, that is, \$400/week. Both figures would seem to be abnormally low for an ACEC of the size and scope of the one that is the subject of this Investigation.

Further examples of costs that appear to be understated include repairs and maintenance, which have been quoted at \$10,000 per annum. For a facility costing over \$40 million, this is unrealistic. Other Councils, for example, Dubbo City Council and Shoalhaven City Council, who are building similar facilities but at a much lesser cost, indicate that their repairs and maintenance budgets range from \$98,000 to \$136,000. Regular general maintenance of air conditioning, plant, equipment, fixtures, fittings and the building itself is necessary, even for a new building. Other expenses such as electricity, gas and insurance costs have also been budgeted at unrealistically low amounts. Depreciation, although a non-cash item, has not been included in the operating budget.

This suggests that some items in the Operational list have been unrealistically understated in order to keep to a minimum the size of the operating deficit. Although Council states that the annual operating subsidy of the ACEC, to be met by the General Fund, is estimated to be \$1.8M, this could be much higher if S94 contributions are not adequate to meet its 1/3 share of the loan repayments. Expenditure incurred in running the Centre will continue to be incurred even when the Centre is not in use, that is, not generating revenue.

Another aspect of the Business Plan that is a concern is the fact that it does not base its plans and projections on the demographics of the area. For example, one would expect to see an integration of those plans with the particular demographic groups in the area, viz. the younger and the older age groups who predominate in the area. This has implications for ticket prices and for the types of shows that might be successful in the area. Aiming to attract high cost ventures such as the Sydney Symphony Orchestra or the Australian Ballet may not represent a

TERM OF REFERENCE 1

financially sound strategy if the particular audiences for those performances are not to be found in sufficient numbers in the Port Macquarie Hastings LGA.

The Investigation Team found that, despite the brief Environmental/Situational Analysis (page 14), the Business Plan did not have sufficient connection with local circumstances. It is our view that the Plan could have been prepared for any such centre in Australia.

TERM OF REFERENCE 1 - SUMMARY

The evidence indicates that the cost of the ACEC has risen significantly, from \$7M in 1997 to approximately \$37 mil in 2006 and most recently, \$39.15M. This Investigation believes the current estimated cost of the ACEC to be \$43M+ with potential for further increases. If the cost of loan repayments is added to the capital cost of the project, the outflow of community resources will be over \$66M.

Details of this costing has been provided to Council. In its submission to the Investigation (page 55), Council stated that 'due to the strong financial modeling and planning that Council undertakes and its sound financial position', it has the capacity to address any gap in the current budget and the final budget.

The reasons for this escalation in costs, which is beyond what might be reasonable for a 10 year period, relates to the failure by Council to undertake two key processes: a study of the feasibility of the Centre, and a scoping of the project so as to formally define its extent and limitations.

The failure to undertake these two key fundamental processes has facilitated the Council being able to include a conference facility, without formal community consultation and which itself has generated an estimated additional cost of around \$10M.

(It could also be argued that provision of a conference facility is not the responsibility of ratepayers, but rather, a matter for a commercial decision by the private sector, which stands to gain the most from the availability of such a facility.)

The failure to scope the project has also allowed Council to locate the Centre on a prime commercial site, with a number of limitations with regard to the Centre, the sale of which could have generated funds for the Centre to be built on a less expensive location.

As well, an economic appraisal in the form of a cost benefit analysis was not carried out for the ACEC. The opportunity cost of allocating an expensive CBD site to the Centre should be factored into the equation, since this resource is a community asset and is now alienated from other uses.

A further concern with respect to Council's financial diligence has been the failure by Council to adequately research and estimate the full range of costs that are attributable to the Centre. More accurate estimates of the extent of archaeology costs could have been established during 2004, following the first Higginbotham Report.

TERM OF REFERENCE 1

With regard to payment for the Centre, Council is funding the Centre entirely through loans, one third of which are to be repaid by way of projected returns from the Community, Cultural and Emergency Services S94 funds, while the remainder will be repaid from the General Fund. In addition, there is a shortfall of approximately \$11M between current available loan funding and the current total cost of the project, which is yet to be funded. Council has not indicated where this funding would be sourced. Funding the Centre entirely through loan funding is a risky strategy, since there are no guarantees that the S94 funds will be realised to the extent that is predicted.

As well, there has been a failure to produce an operating or business plan which is grounded in the local demography and socio-economic factors, so that the figures that have been provided cannot be regarded as being reliable.

These factors suggest that Council has determined to embark on the construction and operation of a costly Centre, with little regard to sound business practice which would demand full and complete definition of the scope of the Centre, feasibility studies to determine whether the projected scope is financially sustainable, business plans to determine ongoing operating costs and the commitment of funds from a reliable source. Internal resources which might have been used to assist in defining costs better, such as archaeology and planning costs (see later in this report) were not used.

The almost complete reliance of Council on loans to fund the Centre has removed the constraints of working to a set budget of funds provided directly from Council savings and has been one factor that has allowed for a continuing regime of costly changes in scope without financial challenge.

FINDINGS - TERM OF REFERENCE 1

It is the view of the investigation team that:

- 1.1 Council has not exercised reasonable diligence in the financial management of the Port Macquarie Arts, Conference and Entertainment Centre to date.
- 1.2 Council failed to undertake a scoping exercise to define the extent and limitations of its proposal for a cultural centre. In the absence of an appropriate scoping exercise for the project expensive inclusions of questionable merit, in particular, the conference facility, have been progressively included without appropriate consultation with the community who will be funding the ACEC as ratepayers.
- 1.3 Council's focus on quoting the construction costs of the Centre has the potential to mislead the community with regard to the true costs of the Centre.
- 1.4 The addition of the conference facility, involving the costs of the acquisition of the Ritz site, further consultancy fees and additional building costs has increased the cost of the ACEC by around \$10M, or almost one third of the current estimated cost of the centre before interest costs are added.

- 1.5 Council has not identified the source of funding for the increased capital costs of over \$11M. Under the current scenario, the additional funding could only come from one or a combination of the following: selling existing assets, raising further loans, diverting internal funds from existing commitments or deferring other capital works.



TERM OF REFERENCE 2

Whether the council has properly considered what impact the centre will have on the capacity of council to carry out its functions including the provision of services and the replacement and maintenance of infrastructure.

In order to assess properly what impact the ACEC will have on the capacity of council to carry out its functions into the future, the Investigation Team expected that Council would have organised for an economic risk assessment to be carried out prior to commissioning the Centre. This risk assessment might have revealed what services, projects and activities of Council that are currently funded by the General Fund and S94 contributions to the Community, Cultural and Emergency Services Fund would be affected by the schedule of loan repayments that arise from the loans taken out to fund the Centre.

For this reason, Council was asked if it had carried out such an assessment and if so, what were the key risks identified and what mitigation strategies had been developed.

Council did not indicate that an economic risk assessment had been undertaken. Rather, Council responded by referring to its earlier response in the document outlining Council's financial management processes. This section of Council's submission is a description of Council's budget process which is made up of four main areas:

1. Business Plans incorporating new bids
2. Operational Budget
3. 10 year rolling works program
4. Financial Model

Included in this section of the submission is a section on the ACEC. Council states that the ACEC will come under the General Fund of Council (page 28). This is the fund that provides for other areas such as roads, parks and gardens, libraries, building maintenance including halls, toilets, etc. Figures have also been provided which indicate that there have been significant increases in expenditure in each of these areas from the 1998/99 budget year to the 2006/07 budget year, varying from an increase of 30.51% for libraries to 101.42% for buildings (which is the smallest item in dollar terms).

In summary, Council notes that the key elements (apart from those listed above) are (page 31):

- Discretionary funding in the rolling works program is tending up
- The net increase/decrease in working capital trends into significant surplus
- The General Fund debt service ratio has been reduced in order for Council to fund upcoming major capital works including the ACEC (although in other parts of its submission, Council states that the Centre will be paid for through S94 contributions and loans)
- The net debt service ratio peaks at 14.72% in 2006/07 then reduces to 0.75% in 2015/16

TERM OF REFERENCE 2

- Road maintenance expenditure has been increased from 0.754% of the written down value of the assets in 1998/99 to 1.118% in 2006/07
- Council's rate revenue is increasing with rate rises and growth
- The operational aspect of the Centre has been costed into the budget since 2003/04.

Given the lack of an economic risk assessment and the lack of detail regarding what items would be affected by funding of the ACEC, the Investigation considered the total amount of repayments to be made by Council, the current status of spending on infrastructure and the possible impact that ACEC repayments would have on spending on infrastructure.

Council noted that loans for the ACEC, totalling \$31,589,755 will be borrowed over a three year period to 2006/07 with total interest payable of approximately \$24M. This makes a total cash outflow of almost \$56M. Council also claims (page 31) that repayments for the s94 component of the funding (approximately 1/3) will be made solely from S94 funds:

Due to timing issues the S94 funds will be borrowed initially and repaid as contributions are received. The loan repayments due each year for the S94 component will be repaid solely from S94 revenues.

It is estimated that S94 funds would repay a total of \$19M over 20 years, based on a calculation of \$10,873,801 borrowed plus around \$8.5M interest.

One issue that arises with using S94 contributions to the Community, Cultural and Emergency Services Fund is that the purposes for which that fund was established will still need to be funded by Council in some way. The impression given by Council is that, by pooling funds within this S94 plan, the ACEC project will have a priority in terms of funding need before any other infrastructure within that plan. This may not be appropriate. If other projects within that plan do not proceed as planned, the contributors may then seek a return of their contributions from Council.

The General Fund will be used to repay the balance of the loans. It is estimated that repayments of loans taken out in this regard would total an estimated \$36M, based on a calculation of \$20,715,914 borrowed (approximately 2/3 of the total loans) plus around \$15.4M interest.

As noted earlier, if further borrowings are made to finance the project's current funding gap, the cash outflows will be much higher.

In its submission (page 31), Council notes that the General Fund may be boosted through a projected large cash inflow in 2011/12 which may continue for a number of years, due to the Thrumster land holdings. This may mean that Council may be able to repay all or some of the Centre loans, thus reducing the total amount of interest payable. In addition, Council states further (page 32) that:

'the amount that the Council has and will spend on community and cultural facilities from 1983-2011 is less than 4% of the amount of the \$900M spent on its infrastructure projects and programs. On balance this is a very small percentage in this area and demonstrates that the Council directs the overwhelming majority of its funds into roads, water, sewerage, stormwater, parks, sports fields and the like'.

TERM OF REFERENCE 2

Council's own assessment, in its 2005/2006 audited statements also reflects significant shortfalls in spending for infrastructure maintenance. For the year ending 30 June 2006, Council did not meet required maintenance by \$3.5 million. Further, Council has stated that it needed \$58M to bring its infrastructure assets to a satisfactory standard.

However, what is significant is that Council does not appear to have generated a range of scenarios which might eventuate and for which there should be contingency plans.

An examination of Council's Financial Reports for 2005/2006 as published in the Annual Report reveals that Council had a net operating result for the year before grants and contributions provided for capital purposes of (-\$9,636,000) which represents a significant change from the result for the previous year of \$10,973,000. However, it is noted that this change was largely due to the writing off of a road asset of \$8.4M, which is a non-cash item. The Report also indicates that Council's expenses budget for 2005/2006 was \$77.240M compared with an actual cost of \$93.069M which is also significantly higher than the actual cost for the previous year of \$75M.

PriceWaterhouseCoopers provided an *Independent Audit Report s417(3) – Report on the conduct of the audit for the year ended 30 June, 2006* dated 17 October, 2006. In that report, it is noted that the decrease in the net operating result for the year in the Income Statement is mainly 'attributable to a decrease in Capital Grants and Contributions of \$8,682,000. This is primarily due to contributions provided for capital purposes decreasing by \$7,325,000 as a result of a \$2,832,000 decrease in Section 94 contributions, \$2,819,000 decrease in Section 64 contributions and a \$2,503,000 decrease in contributed assets as a consequence of a decrease in overall development activity'.

The Report also noted that Council had outstanding borrowings of \$48,966,000 compared with \$26,141,000 the previous year, which increases the debt service ratio from 6.61% for the year ended 30 June, 2005 to 7.07% for the year ended 30 June, 2006. This means that there has been an increase in the cost of meeting loan and interest repayments as a percentage of revenue from ordinary activities, excluding specific purpose grants and contributions.

The Report further notes that Council's rates and annual charge revenue as a proportion of its total revenue has increased compared to the prior year, due to a decrease in capital contributions during the current year, resulting in the rates and annual charges making up a higher percentage of total revenue.

The Report goes on to state further: (page vi):

Accordingly, Council should continue to investigate options available to increase its revenue streams from sources other than rates and annual charges so as to reduce Council's reliance on rates and annual charges revenue in providing Council services'.

A further consideration in regard to any negative impact on spending on infrastructure is the fact that Council has previously sought and been granted three extraordinary rating increases within the last six years, for the purpose of infrastructure spending. The last two special variation applications for extraordinary rate increases were said by Council to be based on the need to increase general income 'to assist with costs associated with road works, parks, environment management and also increased community service expectations'. Council was also keen to reduce its operating deficit before capital items for the General Fund.

TERM OF REFERENCE 2

Given that the General Fund will subsidise the annual operations of the ACEC by an estimated \$1.8M, it will be extremely difficult for Council to close any infrastructure maintenance funding gap from its current revenue base. In addition, the annual operating cost of the Centre is based on what appear to be a number of significantly underestimated costs, as discussed earlier in this Report. This means that the annual operating subsidy is likely to be greater than the suggested \$1.8M.

A further issue that has arisen is that there is a funding gap of approximately \$11+M between the loans that have been taken out for the Centre (\$31.5M approx.) and the current estimated cost of the project which is closer to \$43M approx.

Council has not indicated where the additional funding for the shortfall will come from. Council has only \$81,000 in unrestricted cash, which is usually available to fund unbudgeted expenditure. In order to fund the additional \$11+M shortfall, it is possible that Council will need to:

1. Sell existing assets (presumably land).
2. Raise further loans.
3. Divert internal funds from other commitments.
4. Defer other capital works to fund the ACEC.

In this regard, it is noted that Council has utilised funds that have been reserved for other purposes. For example, the William Street site, which was acquired for CBD car parking, was bought utilising almost \$2M which came from an internally restricted reserve, earmarked for other commitments.

The likelihood of infrastructure spending being negatively affected by the ACEC is significant. This is likely to lead to a significant deterioration in infrastructure provision, unless Council is able to generate significant extra funds or is able to convince the Minister for Local Government to allow further extraordinary rate increases. It is reasonable, then that the community should be concerned about the possible impact of the Centre on infrastructure spending.

TERM OF REFERENCE 2 - SUMMARY

Council did not conduct an economic risk assessment prior to proceeding with the concept for the current ACEC.

Council's finances have deteriorated in the past year, with a net operating result for the year before grants and contributions provided for capital purposes of (-\$9,636,000), which represents a significant change from the positive result for the previous year of \$10,973,000. However, this was largely due to the writing-off of a road asset of \$8.4M, which is a non-cash item.

TERM OF REFERENCE 2

Council proposes to fund the Centre in part using S94 contributions from the Community, Cultural and Emergency Services Fund. These loans total approximately \$11M, almost 1/3 of the total loans. However, no consideration appears to have been given by Council to any possibility that these contributions might not occur as projected, nor to the funding of infrastructure for which the S94 contributions might ordinarily have been used.

The balance of the loans, totalling almost \$21M would be repaid from the General Fund.

It is estimated that the total annual operating subsidy of the ACEC, including loan repayments from the General Fund, is around \$1.8M.

Council has already identified a shortfall in infrastructure spending of \$3.5M in 2005/2006. Council was granted extraordinary rate increases in 2004/2005 and 2005/2006. Although Council identified several areas that were likely to benefit from the rate increase, one important reason put forward was the need to reduce the operating deficit before capital items for the General Fund.

A further issue which has not been canvassed by Council is the funding of the difference of \$11M+, in the cost of the project which is the gap between available funding of \$32,464,755 and the current estimated cost of around \$43M. If further loans need to be taken out, as seems likely, the total annual operating subsidy is likely to be greater than \$1.8M.

These figures suggest that spending on infrastructure maintenance and renewals is likely to be adversely affected by the ACEC into the foreseeable future.

FINDINGS - TERM OF REFERENCE 2

It is the view of the investigation team that:

- 2.1 Council has not properly considered what impact the centre will have on the capacity of Council to carry out its functions including the provision of services and the replacement and maintenance of infrastructure since Council did not carry out an economic risk assessment, prior to commissioning the Centre.
- 2.2 Council's decision to partly fund the Centre from S94 contributions may lead to loans taken out for the Centre being repaid from other S94 funds and possibly the General Fund, if those S94 contributions do not eventuate as projected. This may lead to projects for which the S94 contributions were made having to be funded from other sources.
- 2.5 Council has already demonstrated that it has had difficulty in maintaining spending on infrastructure, with shortfalls in infrastructure spending (\$3.5M) having already been the subject of special rate increases as recently as 2005/2006.
- 2.6 The annual operating subsidy of the Centre is estimated to be in excess of \$1.8M, which includes loan repayments and operating costs. An unknown cost is the cost of any further loans which may need to be taken out to fund the shortfall between loans that have already been taken out (\$31.5M approx) and the current estimated cost (\$43M). This means that ongoing funding responsibilities will represent a significant pressure on the General Fund.



TERM OF REFERENCE 3

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.

The Investigation Team considered three further issues which it considers to be relevant within the Terms of Reference for this Investigation.

These are:

- Community Support and Community Consultation
- Breaches of Confidentiality
- An Investigation Report commissioned by Council

A particular issue that warrants consideration is the issue of community support for the Centre. This is a matter that was raised with the Investigation Team by the community members who were interviewed and/or made submissions to this Investigation.

At the outset, it should be stated that the Investigation Team was made aware that, in general, there was support for a performing and visual arts facility. What was not supported was the overall cost of the facility, as it currently stands, its location in the CBD and the constraints that arise out of this location, in particular, the lack of parking associated with this location.

COMMUNITY SUPPORT AND COMMUNITY CONSULTATION

Almost all of the submissions made to the Investigation Team, and to the Department of Local Government prior to this period, were critical of Council's approach to assessing community support for the ACEC. In particular, they alleged that Council had failed to engage in meaningful community consultation which might have led to a serious reconsideration of the ACEC project and/or the development of a centre with broad community support. Rather it was perceived that Council had engaged in a communications exercise aimed at justifying the imposition on the community of a costly centre in the wrong location at any cost.

The exceptions to this view were the members of the Project Reference Group, who are in the main, active in the Arts community in the area, and expressed the belief that the community had been fully consulted as indeed they have, as they have ongoing input into the development of the project.

Community Consultation, in the local government context, has been described in a policy document adopted by the Tweed Shire Council on 15 December, 2004, titled *Community Consultation – Best Practice Guidelines*. In that document, community consultation is described as follows:

Consultation is a central principle in sound planning and decision making. It allows local government to make informed decisions about issues that affect residents. The

consultation process aims to maximise opportunities for residents to be informed, and to have their concerns heard and taken into account, before a decision is made by Council. It involves methods that range from information sharing through to participatory decision making, and which ensure Council is aware of the views of residents affected by any decision or policy change.

..... effective community consultation...can contribute to building social capital through enhancing the relationship between government, community and the private sector. Consultation provides an opportunity to identify major differences, as well as areas of agreement. These can be taken into account by Council in its decision making process.

To be effective, appropriate consultation needs to commence early in any decision making process. The choice of appropriate consultation methods should be based on input from relevant key informants and stakeholders, who will have an understanding of how best to access and involve those residents who are most affected by or interested in a potential decision or policy change.

This definition provides a useful yardstick against which to measure whether there was effective community consultation in the case of the Centre.

As a first step, Council was asked by the Investigation Team whether community consultations were carried out to establish if there was support for the Centre; if so, how many and over what period of time. As well Council was asked what issues were raised by the community during those consultations.

In its response, Council stated (p.40) that *'there have been numerous community consultations that have repeatedly identified the need for a centre for performing and visual arts....community consultations have occurred over a period from 1993'*.

In support of this claim, Council identified the following activities:

- 2003: Cultural Planning Workshop (however, it is not known if this workshop was attended by community members, or by councillors and/or staff only)
- 2003: Display of concept designs and model in the local shopping centres and branch libraries
- 2003: Circulation of 27,000 brochures to all households
- 2005: Display of concept designs and model in the local shopping centres and branch libraries.

In order to supplement this information, Council's website was checked and the following information in relation to community consultation and the Centre was found.

The need for a performing arts centre in Port Macquarie is long-standing and has seen much community consultation, participation and discussion over an extending period of time. Outlined below are the key consultation events that have occurred.

TERM OF REFERENCE 3

26 May 1993: A public meeting was held at Port Macquarie High School to determine public interest in the provision of a Performing Arts Cultural Centre in Port Macquarie by the Year 2000.

31 May 1993: A Council meeting adopted the Mayor's recommendations that a Committee of interested persons be formed to investigate the feasibility of a Performing Arts Cultural Centre for Port Macquarie.

1997: The Arts & Cultural Working Group of the Community/Social Plan found in relation to the performing arts that the performing arts mostly have to suffer totally inadequate facilities, including the almost unusable Civic Centre, various club auditoriums designed for commercial club applications, and a scattering of very basic community halls which are usually small, in a state of disrepair and almost completely lacking in ancillary facilities or comforts (Hastings Community Services Plan 1997-2000).

The Hastings Development Plan: Council and the community looking to the future 1996-2016, identifies the vision for a prestige drama and entertainment complex that caters for theatrical productions and other entertainment not provided for by clubs, including a range of cultural entertainment for youth.

The Hastings Community Services Plan 1997-2000 identifies the need for a Performing Arts Facility, noting that existing facilities are inadequate in terms of size, state of repair and appropriate facilities. The Cultural Facilities Taskforce was formed to advise on a strategy to achieve the vision which, in 1997, was estimated to cost around \$7M, with the facility to be open by June 2003.

1998: The Ministry of Arts, Regional Program Manager, stated the Civic Centre site could be adopted for use as a Performing Arts Facility. Dollar-for-dollar funding was investigated under the Regional Arts Infrastructure funds, but was not pursued pending the outcome of the Hastings Open Space Community Cultural and Recreational Facilities Study (OSCCRF).

1999: An Arts & Cultural Futures Community Consultation was undertaken.

July 2000: Council contracted Cultural Planning Facilities Consultants Australia Street Company, Byron Harford & Associates to undertake a Cultural Facilities Planning Workshop with staff and Councillors. This planning process identified the key Cultural Planning Principles which have been used in the development of this project.

2002: The Open Space, Community and Cultural Facilities Plan identified the need for a regional gallery, performing arts centre and associated infrastructure.

(All of the above major reports have involved extensive community consultation.)

September 2003: Three community information sessions were held (at Port Macquarie, Wauchope and Laurieton) where the community was invited to speak to the relevant staff, view the plans and model and discuss issues and concerns

Late 2003: A community brochure was circulated to every household (27,000) in the Hastings and three community information sessions were held.

24 June 2004: A public meeting was organised by local residents in the Civic Centre at which 600 community members attended and voiced their strong support to Councillors for this development.

In addition, Council reports that the Project Reference Group is a form of community consultation, as follows:

Council has established a local Project Reference Group. The Terms of Reference for the Project Reference Group for the group are:

To provide advice in relation to the key areas required in line with the brief and detailed planning of the new facility

Provide comments and advice in relation to the functional layout of the facility, its linkages and relationships of the design and its operations

Assist in the community communication processes for the project

Curiously, the list on the website does not include reference to the “*Community Attitudes to Services Provided by Hastings Council*” survey in February 2000 which identified arts, entertainment and cultural facilities as lowest in importance of council’s services for the community.

Further information relating to community consultation was also found in an information sheet for the ‘Hastings Cultural Centre’, date of publication unknown, in which the Council states that Council has consulted the community about the cultural centre in the following ways:

- Public submission
- Workshops
- Locality/Community Meetings
- Open forums/Consultations
- Media Statements/Council newsletter
- Mail outs
- Working Groups
- Reference Groups
- Web site
- Email newsletters.

Allied to the question of community consultation is the priority that the community puts on the availability of a performing and visual arts facility. Council was asked if there were any studies which indicate community priorities for community facilities, how these studies were conducted and by whom, who was consulted, who responded and their numbers and the priority that the Cultural Centre achieved relative to other priorities.

Council responded (page 42) stating that seven community need and priority assessments and plans ‘confirming the need to progress with development have been undertaken’. However, no information was provided by Council as to the relative priorities that were established for various facilities. The Investigation Team was told by at least one community member that, in

one survey, a cultural centre was ranked last, at 40 out of 40. This may be the Community Attitudes survey indicated above.

Not all of the events quoted as being community consultation produced unqualified support for the building of a cultural centre. The draft report from the 2003 Cultural Planning Workshop indicates that the participants noted that 'a new cultural centre may be beyond the reach of local people'. A Report entitled *Community Attitudes to Services Provided in the Hastings Area* (April, 2004) prepared for Hastings Council by the Hunter Valley Research Foundation notes that two items had been ranked as being relatively lower in importance, and lower in importance than all other items in the 2003 Importance ratings. These were cycleways and arts, entertainment and cultural facilities. However, the 2004 report qualifies this rating by indicating (page ii) 'the mean scores indicated respondents believe these facilities are moderately to quite important'. There is no explanation as to how this qualification was derived.

Of the 131 responses to the brochure issued by Council in 2003, 29 (22%) were opposed to the construction of a centre on cost and need grounds. A further 39 (30%) objected to the proposed CBD location because of lack of parking.

On the other hand, there is clearly some support for a cultural centre. The *Hastings Open Space, Community Cultural and Recreation Facilities Study Stage (Strategies) Report* notes a 1999 survey in which 78 of the 93 respondents ranked as very important a cultural centre for the visual and performing arts.

A public rally was organised in support of the centre in June, 2004. According to Council, the rally was attended by approximately 600 people. Council stated (page 42) that the rally was organised by community members. However, some interviewees told the Investigation Team that the rally was organised within Council, with Council funding and producing flyers and materials for the rally. Importantly, many of those attending were schoolchildren. As schoolchildren are not ratepayers, it is misleading to count schoolchildren as being supporters of the ACEC within the current context. Notwithstanding who organised the rally and who attended, it is important to note that there is some support for a centre within the community.

The question is whether the activities outlined above constitute effective community consultation, viz. a process which enabled all residents to have their concerns heard and taken into account, and how Council responded to those views when making decisions regarding the Centre.

Looking at the various lists of activities, what becomes clear is that none of them indicates that there was a structured approach to developing and establishing meaningful input from the community into the Centre proposal over time. None of those activities could be seen as providing an opportunity for residents to have input into the scale of the project, its location, costs and benefits, all of which will impact on residents in financial and amenity terms. Had that been the case, it would have been expected that the current proposal would have broad ranging support from an informed community.

What is also notable is that the late addition of the conference facility, which has increased the cost of the ACEC by around \$10M, as shown earlier in this Report, was not the subject of any consultation with the community, despite the fact that, as ratepayers, they will bear the cost.

Rather, the Investigation Team believes that the activities put forward by Council as constituting community consultation could best be described as ‘community information’ activities or community surveys about more general issues.

Given this level of opposition to the Centre, the Investigation Team consulted further to ‘take a reading’ on the extent of support and opposition to the Centre.

One of the first issues that came to light was the question of attempts which were alleged to have been made by Council to silence community members and/or to ignore expressions of community concern for the Centre.

Two community members reported being asked to meet with the General Manager at his office, separately, following publication of a letter in the media that each of these persons had sent, which was critical of the Centre. These community members described the exercise as being one of attempted ‘re-education’ and the perceived intention was that the person was to be silenced. The Investigation Team raised this issue with the General Manager. The General Manager confirmed that he invited two community members “*who continually wrote letters about the project*” to meet with him separately. He said that after explaining Council’s perspective, the first person “*was fairly steadfast too and that was fine and I think we really agreed to disagree.*”

In relation to the other community member the General Manager said that person “*actually wrote comment about myself wreaking economic havoc on Hastings and moving on to other Councils to do the same. I invited him in and we just had a discussion about the project and I just made the comment at the end that a couple of people had said to me that he is really attacking my professionalism and my integrity. He was extremely unapologetic.*”

A key mechanism for gauging support for the Centre is the *Port Macquarie News* (the News), which is published three times each week. A journalist at the News informed us that the ACEC is the single most written about topic over the past 2.5 – 3 years, with more opposition than support for the ACE. The main points of opposition are the cost and location. In terms of public interest, the building of the ACEC is a bigger issue than the take over of the RSL club by the Panthers, where bomb threats were made prior to a large community meeting on the issue, and the privatization of the Port Macquarie hospital.

Following publication in mid 2006 by the *News* of a poll which was critical of the *Centre*, relations between the *News* and Council have reportedly ‘cooled’. The poll in question involved 115 people in three locations. The response was overwhelming opposition to the cost and location of the Centre. Following publication of the poll, some of the staff of the *News* were invited to a briefing with some of the senior people at Council. The nature of the briefing was described as being ‘very much about pushing ahead with the Centre’.

Another poll was conducted recently by, one of two Councillor critics of the Centre. That Councillor reported that, in the space of a month, his street poll of residents in the Port Macquarie, Wauchope and Laurieton areas by way of petition protesting at the cost and location of the Centre had resulted in his obtaining 3,500 signatures, with a further thousand signatures being received after the initial petitions were sent to the Minister. The Investigation Team attempted to obtain access to these documents but was unable to do so. The Councillor involved says that they ensured that each signatory was a resident of the Hastings area, was over 18 and was entitled to vote.

TERM OF REFERENCE 3

Another Councillor provided a sample of surveys obtained which they and other Councillors regard as evidence of community support for the ACEC. These surveys were dated November, 2006 and are prefaced as follows:

I wish to express my strong support for the Port Macquarie Hastings Council's decision to build the ACE Centre in Clarence St and its management of the project and I look forward to the completion of this significant public building.

An examination of these documents shows that 180 signatures were obtained. Of these, 120 (67%) provided an address in the Port Macquarie Hastings LGA. A further 31 (16%) were from people whose address was outside the area, while 17 (9%) had addresses that either could not be determined or was not stated. In addition, 22 (12%) signatories represented multiple votes from 12 of the people. Of those 12 people, there were five 'votes' from one person and four 'votes' from two people.

While non ratepayers may well benefit from the Centre, it is ratepayers who will have to bear the ongoing costs, hence the need to determine the true level of support from the rate paying community.

Two further polls should be noted. Council tendered with its submission copies of petitions headed 'Declaration of support for a Cultural Centre in the Hastings' which it received after the public rally. This petition contains approximately 930 signatures. However, a significant number of these signatures appear to be from children, who are, as noted above, not ratepayers.

Opposed to the Centre were a number of people who supported the development of an Australian Heritage Museum. In an undated petition entitled 'We the undersigned emphatically demand that a purpose built AUSTRALIAN HERITAGE MUSEUM be established at 30 – 42 Clarence Street, Port Macquarie and that Port Macquarie-Hastings Council plans for an ACE be abolished, there were 140 signatures. Also attached to the petition were a number of letters in support of the objects of the petition.

When speaking to councillors and council staff about community consultation, the Investigation Team was told on several occasions that the issue was that Council had not been successful in communicating its information about the Centre, rather than having failed at community consultation. This appears to indicate that Council confuses community consultation with providing community information.

The effectiveness of the activities and polls described above can be judged against whether they influenced Council's decision making with regard to the Centre. The fact that Council was commissioning an architectural brief for the Civic Centre site during 2001, at around the same time as it was receiving a report from a study (*Hastings Open Space, Community, Cultural and Recreational Facilities Study*, prepared by BBC Consulting Planners in May 2001) which queried the CBD as a suitable location suggests that Council did not necessarily accept advice from experts or the views of the community.

BREACHES OF CONFIDENTIALITY

The draft Report prepared by the Investigation Team was forwarded to Council in confidence for Council's consideration and response. Council was advised that *'The draft Report and its contents are not to be discussed or shown, either in whole or in part, to any third party with the exception only of Council's financial as well as corporate legal advisor, through you as General Manager, as appropriate'*. Consequently, the Investigation Team was concerned to learn of several breaches of confidentiality that occurred with respect to the draft Report.

One of these became known through Council's response to the draft Report, which included a letter of support from the project architect, dated 27 February, 2007. The letter quoted specific findings in the draft Report, as well as page numbers from the Report. One of the investigators contacted the author of the letter during March, 2007 and established that Council had, in fact, provided a copy of the draft Report.

In addition, the Investigation Team was concerned to receive copies of an analysis of the draft Report that was prepared by a community group that has opposed the project.

These instances of leaking of the draft Report to outside parties would appear to represent clear breaches of section 664(1) of the *Local Government Act 1993*.

AN INVESTIGATION REPORT COMMISSIONED BY COUNCIL

Following the submission of its response to the draft Report prepared by the Investigation Team, Council forwarded to the Director-General of the Department of Local Government a copy of an untitled Investigation Report that it had commissioned from a private company into matters raised by a community group in 2006. This Report was then referred to the Investigation Team for consideration.

The Investigation Team has noted the contents of the untitled Report, which was 421 pages in length. The Team did not identify any new information, which would affect the contents of this final Report.

TERM OF REFERENCE 3 - SUMMARY

Council's approach to community consultation falls short of what could be considered to be effective consultation in that it did not provide a structured, ongoing approach where the various opinions of residents were gathered and considered, as part of the decision making with respect to commissioning the Centre in its current form.

A further concern is that the opposition to the Centre does not appear to be the province of a few people. While there are a number of articulate resident groups who are opposed to the Centre, the sheer numbers of people writing to the media and signing petitions against the Centre, on a sustained basis, would suggest that there is critical mass of opposition to the Centre which cannot be ignored, or glossed over as a failure by Council to communicate effectively.

TERM OF REFERENCE 3

Notwithstanding the opposition to the ACEC, the evidence is clear that there is general community support for a cultural centre in the Port Macquarie Hastings area.

Other Matter – Breach of Confidentiality

The investigation team was extremely concerned that the draft Report which was provided to Council in strict confidence to afford them procedural fairness was leaked to a number of outside parties in breach of section 664(1) of the *Local Government Act 1993*.

FINDINGS - TERM OF REFERENCE 3

It is the view of the investigation team that:

- 3.1 There is broad general support for the development of a facility for the performing and visual arts, but at a cost that can be afforded by the community.
- 3.2 The opposition to the Centre is based on concerns about the escalating cost and location of the Centre.
- 3.3 The Port Macquarie Hasting Council failed to engage in meaningful community consultation with the community regarding the proposal currently being implemented to build the Centre.
- 3.4 Council has breached section 664(1) of the *Local Government Act 1993* by leaking the draft Report of this investigation (which was provided to Council in strict confidence to afford them procedural fairness) to a number of outside parties.



CURRENT STATUS OF THE ACEC PROJECT

Despite a request to Council by the DLG to suspend the project, Council at its meeting on 18 December, 2006, awarded the tender for construction, as outlined in the following media release issued by Council on the same day:

Council lets contract for ACE Centre: 18 December 2006

\$26.67m contract for Arts, Conference & Entertainment Centre

Port Macquarie-Hastings Council has let its biggest-ever contract - for \$26.67million for construction of the Arts, Conference and Entertainment (ACE) Centre on Clarence Street, Port Macquarie.

The Mayor, Cr Rob Drew, announced today the successful tenderers were long-established construction company Hansen Yuncken. The contract was awarded in a decision at Council's regular meeting this afternoon.

Work on the project will begin in about four weeks' time, in late January.

The Mayor said today the construction cost had come in at under the benchmark set by Council in August last year.

"The total project cost will be \$39.15million, which includes almost \$5million of additional costs incurred over the past eight months," Cr Drew said.

"The additional sum incurred this year is directly attributable to heritage requirements and costs due to disputed Ritz site acquisitions."

The Mayor said Council acknowledged that a Department of Local Government examination of the project was continuing.

"However, its terms of reference do not indicate in any respect that the project should not proceed.

"Delaying it indefinitely to await the outcome of the investigation process - to be given at an unspecified date in the future - would add significant cost to the project that no responsible Council could justify.

"Council believes it is both fiscally responsible and in the best community interest to move forward expeditiously with the project.

"We are confident the sound assessments that have gone into the Centre's planning will stand Port Macquarie-Hastings in good stead."



RECOMMENDATION

That the Minister for Local Government considers the instigation of a section 740 Inquiry under the Local Government Act 1993 with respect to the Port Macquarie Hastings Council.


END OF REPORT