

**REPORT ON THE  
SECTION 430  
INVESTIGATION INTO  
WALGETT SHIRE COUNCIL  
29 JANUARY 2004**

Departmental representatives:

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## EXECUTIVE SUMMARY

This report results from an investigation into Walgett Shire Council, undertaken in the terms of section 430 of the Local Government Act 1993.

Walgett Shire Council has been the subject of complaints to the Minister for Local Government regarding its administrative and financial management. These complaints led to preliminary enquiries being conducted in May 2003. As a result of these enquiries the Director General 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's administration and management is able to meet its responsibilities under the Local Government Act 1993 and to fulfil its other statutory functions*
- 2. Whether council, as custodian and trustee of public assets and funds, is correctly recording and reporting on its financial transactions and financial position and is otherwise exercising reasonable financial management*
- 3. Whether the conduct of councillors and council staff results in the provisions of efficient, effective and appropriate standards of governance for Walgett Shire Council*
- 4. 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:

- Based on the available evidence, there appears to be widespread and systemic failure to observe the provisions of good local government administration and governance.
- There are a number of breaches of the *Local Government Act 1993*, associated Regulations and council policy.
- There appear to be procedural inadequacies that directly result from the way council administration manages council finances and has dealt with a number of matters.
- On the material available, it would appear that there may be room for streamlining the current senior management structure.
- Some councillors do not appear to be aware of their responsibilities in relation to declaring pecuniary and non-pecuniary conflicts of interest.
- The net result of council's inability to get the Lightning Ridge Community Centre project off the ground is that the people of Lightning Ridge are without a public facility for their use.
- Inaction by council staff and the breakdown in document handling procedures has left council open to liability issues.

- Council has not followed the required development assessment procedures for some development applications.
- Council is not collecting or recovering some lease payments promptly.
- Overall finances of council appear to have improved.
- Council still has a high rates and annual charges outstanding ratio.

The investigation team has made a number of recommendations in the body of this report. A summary of all the recommendations and findings can be found on page 61 of this report. The major recommendations include:

1. ***That council appoints a suitably qualified person to act as a “mentor” to the senior staff of Walgett Shire Council for a period of at least 12 months. The Director General of the Department of Local Government will be required to approve of this appointment.***
2. ***That council engages a suitably qualified legal compliance auditor to conduct a legal compliance audit***
3. ***That council remains on the Department of Local Government’s financial monitoring list and continues to submit quarterly budget reviews to the department.***
4. ***That council undertakes a detailed review of its accounting records and accounting practices to ensure that they are in accord with the legislative requirements (including the Local Government Code of Accounting Practice and Financial Reporting).***
5. ***That council, by using an appropriately qualified organisation and/or individual, develops and implements a suitable, and continuing, orientation and training program for councillors.***
6. ***That the Minister for Local Government:***
  - a. ***Orders Walgett Shire Council to do such things arising from the recommendations contained in this report, And/or***
  - b. ***Considers the merit of holding a public inquiry into Walgett Shire Council under section 740 of the Local Government Act 1993.***

## INTRODUCTION

- 2 This is our report as Departmental representatives concerning an investigation under section 430 of the Local Government Act 1993 into Walgett Shire Council and 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.

### ***Terms of Reference***

- 3 On 9 September 2003 the Director General of the Department of Local Government, Mr Garry Payne, approved an investigation under section 430 in respect of Walgett Shire Council. Mr Keith Coates and Mrs Lyn Brown, Senior Investigation Officers and Mrs Sonja Hammond, Principal Finance Officer, were authorised to act as Departmental representatives to conduct the investigation. The Terms of Reference authorised for the investigation were:

*To investigate and report on:*

- 1. Whether the council's administration and management is able to meet its responsibilities under the Local Government Act 1993 and to fulfil its other statutory functions*
- 2. Whether council, as custodian and trustee of public assets and funds, is correctly recording and reporting on its financial transactions and financial position and is otherwise exercising reasonable financial management*
- 3. Whether the conduct of councillors and council staff results in the provisions of efficient, effective and appropriate standards of governance for Walgett Shire Council*
- 4. 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.*

- 4 On Wednesday 10 September 2003 council's General Manager was formally notified of the investigation.

### ***The Investigation Process***

- 5 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.

6 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.

7 This report is based on evidence generated from:

- a. Information provided in direct interviews with councillors, senior managers, current and former staff members of Walgett Shire Council and community members
- b. The information provided by the complainants in written form and by way of discussions
- c. Written materials provided by community members
- d. Council documents.

### ***Statutory Requirements Relating to the Investigation Report***

8 Section 433 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.



- 9 Clause 17 of the Local Government (Meetings) Regulation 1999 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.
- 10 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.

### ***Procedural Fairness***

- 11 In accordance with the principles of procedural fairness, council, as the subject of the investigation, received a draft of the report (excluding the executive summary and recommendations) prior to finalising the report. This provided council with the opportunity to provide any comments and submissions in respect of the draft. The departmental process also involved providing draft excerpts of the report to those people potentially adversely affected by the section 430 investigation and inviting them to comment on the relevant sections of the draft report.
- 12 We received ten submissions from affected individuals and a submission from Walgett Shire Council. We considered each of the submissions received and made changes to the report where appropriate.
- 13 In addition, it should be noted that council has indicated in its submission on the draft report, that it has already taken action to rectify a number of matters raised by us. Where this has occurred, a comment to that effect has been included in this report. Specifically council has indicated that it has already rectified:
- a. The levying of a business rate
  - b. The re-payment of the General Manager's bonus
  - c. Provision for bonus payments included in contracts
  - d. The delegations
  - e. The financial reports

### ***The Role of Councillors and the General Manager***

- 14 The Local Government Act 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(see section 232 of the Local Government Act).

- 15 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.

### ***Background to Investigation***

- 16 The Minister for Local Government and the department received a number of complaints about Walgett Shire Council which led to preliminary inquiries being conducted between 12 May 2003 and 16 May 2003. The preliminary inquiry team consisted of Senior Investigations Officers Keith Coates and Lyn Brown.
- 17 Many of the issues raised with the department's preliminary inquiry team indicated the apparent inappropriate application of certain provisions of the Local Government Act. The cause of this appeared to be a lack of understanding of the requirements of the Act by council's senior management team and some councillors.
- 18 The preliminary inquiry team identified a number of issues at the preliminary enquiry stage where there was a sufficient body of evidence to support recommendations to improve council operations. These were:
  - a. The absence of a business rate category
  - b. The performance review and bonus payment of the General Manager
  - c. The establishment of a reserve for the payment of staff bonuses
  - d. The appointments of the Group Managers
  - e. The management structure of Walgett Shire Council
  - f. The number of councillors
  - g. The complaints handling processes
  - h. Staff recruitment processes
- 19 The Director General wrote to council on 24 July 2003 identifying a number of issues and making a number of recommendations. Council was requested to respond to the letter within 28 days of its receipt. An initial written response was provided by council's General Manager on 27 August 2003.

- 20 On review of the response letter it appeared that the preliminary inquiry team had been provided with conflicting information relating to council's structure and the appointment of the two Group Managers. The preliminary inquiry team had also recommended that council engage the services of a mentor for a six month period to provide guidance and advice to council's senior management. The General Manager stated in his letter that there seemed little justification to incur the expense of a mentor. Specifically, he requested recent examples of where the appropriate procedures had not been followed or appeared to be inadequate. This request was made despite the fact that the Director General's letter clearly stated that council had not followed appropriate procedures in relation to the issues canvassed.
- 21 It must also be noted that the preliminary inquiry team identified other issues of concern. There were a number of other matters that, due to time restraints, could not be thoroughly addressed. This consideration, combined with council's disappointing response, resulted in the Director General authorising a formal section 430 investigation to allow the verification of the evidence and material provided by council during the preliminary inquiries and a thorough investigation of the additional matters.

### **Council Background**

- 22 Walgett Shire is located in northern New South Wales and covers an area of 22,000 square kilometres. It is approximately 691 kilometres northwest of Sydney. The population within the Shire is 8,550 persons. The major towns within the Shire are Walgett, Lightning Ridge, Collarenebri, Corinda and Burren Junction.
- 23 Walgett Shire Council employs 103 full time equivalent staff (Comparative Data Collection 2001/2002). In the past four years there have been five different individuals in the position of General Manager. This includes two people acting in the position at various times. The current General Manager, Mr Vic North, was appointed to the position in May 2001.
- 24 During the same four year period many of the senior positions within the organisation have been filled at one time or another by temporary contract staff.
- 25 In 2001, council undertook a major restructuring of the management of the organisation. This resulted in the departure of a many long serving individual staff members. We are informed that this in turn resulted in a great loss of corporate knowledge and experience. Many of the council's practices and processes were not documented and as a result knowledge about the operations of council was not stored and passed on.

- 26 As a result of this loss of knowledge, the new management team was required to spend significant time in building and documenting new systems and procedures.
- 27 A recurring theme expressed by a number of senior staff, councillors and community members was the existence of a division between the communities of Walgett and Lightning Ridge. We are advised that this division is also evident within the elected body of council. The net result being a competition for resources between Lightning Ridge and Walgett.

## FINDINGS

- 28 We make the following findings in relation to each Term of Reference. Our examination of each of the individual issues is contained in the analysis section of the report.

*Term of Reference 1: Whether the council's administration and management is able to meet its responsibilities under the Local Government Act 1993 and to fulfil its other statutory functions*

- 29 The efficient and effective operation of a council is largely reliant on the professional and specialised knowledge and skills of the staff employed. Councils are large and complex organisations with vast responsibilities. In order to fulfil these responsibilities in the correct manner, council is required to be advised by senior staff who have a clear knowledge and understanding of the requirements of the Local Government Act. Councillors rely on this advice in their decision making.
- 30 It is our view that some of the problems faced by the administration of council are due to issues associated with their regional isolation. This poses particular difficulties for council in fulfilling its tasks to a required standard. For example, council experiences difficulties in attracting and keeping experienced local government staff in some areas. This isolation may also make it difficult to access staff training courses.
- 31 In addition, a number of senior staff have identified conflicts between the Lightning Ridge and Walgett communities. This divide exists between councillors as well and may have played a major role in hindering progress within the Shire.
- 32 We reviewed a number of council's processes as a result of complaints raised with the Minister for Local Government and the department. As a result of this review, we found many of the processes examined to be inadequate. We found a number of breaches of the Local Government Act, the related Regulations and in some cases council's own policy, which would appear to indicate a lack of knowledge and understanding of council procedures and the provisions of the Local Government Act.
- 33 Specifically, there appear to be procedural inadequacies that directly result from the way council administration has dealt with:
- a. Recruitment and selection of senior staff
  - b. The requirement for certain council documents to be properly signed and dated
  - c. The categorisation of council's land assets
  - d. Meeting records and procedures
  - e. Tendering for goods and services

- f. The payment of the deputy mayoral fee
  - g. Document handling processes
  - h. Obligations concerning the leasing of a crown reserve
  - i. The approval of development applications
- 34 We acknowledge that some of the issues that we have examined may have been exacerbated because council has not dealt with them expeditiously or at all. We recognise this is related to a lack of consistency of senior staff over the last several years.
- 35 We use the term 'senior staff' to refer to those positions identified in council's senior management structure. The management structure as stated in council's strategic plans for 2002 – 2007 and 2003 - 2008 consists of eleven senior management positions, including the General Manager (**Evidence Table T – T1 & T2**). These positions, with the exception of the Human Resources Officer, appear to meet the requirements of section 332 of the Local Government Act that enables them to be determined as senior staff positions.
- 36 As stated above, council carried out a major restructure in 2001 that resulted in the turnover of a number of senior staff within this timeframe. Further, there have been a number of different people either in the position, or acting in the position, of General Manager within the last four years. This being the case, it is arguable that council has lost corporate knowledge and consistency in relation to particular issues and files.
- 37 However, many of the issues that have been inherited from previous administrations have been allowed to continue unresolved, or remained undetected, for a considerable amount of time. In any event, there are a number of breaches of the Local Government Act, associated Regulations and council policy that are directly attributable to the current administration. The seriousness of a number of breaches may have left council open to liability issues, particularly in relation to tendering processes, handling of the Lightning Ridge Caravan Park lease and the signing of official council documents such as contracts and delegations.
- 38 Many of the problems we identified relate directly to inappropriate and ineffective document handling. We acknowledge that this has been a long-standing problem for council and that the current administration has attempted to rectify a number of deficiencies. However, it is our view that council's administration would benefit from an audit of their processes. This would enable council to measure its compliance in line with its obligations under the Local Government Act.
- 39 Based on the available evidence, there appears to be widespread and systemic failure to observe the provisions of good local government administration. With this in mind, it appears that senior staff would benefit from the assistance and guidance of an

experienced mentor. This would ensure that the correct procedures are implemented in relation to the matters that have been examined and council's day to day operation. The mentor could also provide advice to councillors on their role and responsibilities.

- 40 Recommendation 1: That council adopts, as a matter of urgency, an efficient and effective document handling system.**
- 41 Recommendation 2: That council engages a suitably qualified legal compliance auditor to conduct a legal compliance audit, including the following council operations:**
- a. Recruitment and selection processes**
  - b. Council delegations**
  - c. Classification of land under the control of council**
  - d. Tendering processes**
  - e. Development application processes**
  - f. Leasing procedures over all council-owned or council-managed property**
- 42 Recommendation 3: That council appoints a suitably qualified person to act as a "mentor" to the senior staff of Walgett Shire Council for a period of at least 12 months. The Director General of the Department of Local Government will be required to approve of this appointment.**
- 43 Recommendation 4: A suitable remuneration package for the mentor is to be determined in consultation with the Director General of the Department of Local Government and paid by the council.**
- 44 Recommendation 5: That the following Terms of Reference be adopted in relation to the mentor position:**
- a. To provide guidance and advice to council's senior management for a period of at least 12 months.**
  - b. To oversee the implementation of the recommendations contained within the report of the section 430 investigation.**
  - c. To report to the Department of Local Government on a quarterly basis as to the implementation of the recommendations contained within the section 430 investigation report.**
  - d. To provide guidance and advice to council's development approvals section and directly assist in the implementation of the correct procedures as stated in the section 430 investigation report.**
  - e. To ensure that council implements the legal compliance audit recommendations.**



**45 Recommendation 6: In addition to council's obligations to give notice to the Minister under section 434 of the Local Government Act, that council submits quarterly reports to the departmental representatives on its progress in implementing the recommendations in this report.**

*Term of Reference 2: Whether council, as custodian and trustee of public assets and funds, is correctly recording and reporting on its financial transactions and financial position and is otherwise exercising reasonable financial management*

- 46 Council is the custodian and trustee of public assets. The Department of Local Government monitors financial performance to ensure council is effectively and responsibly managing those assets to ensure the ongoing viability of the council.
- 47 After a review of the 2000/2001 financial reports, Walgett Shire Council was placed on the Department of Local Government's financial monitoring list. Officers of the department visited council in September 2002 to discuss a number of concerns such as poor accounting controls and processes, the high level of rates and annual charges outstanding and the service potential of assets.
- 48 Council's auditor, Spencer Steer, mentioned in its 2001/2002 audit report that *"Council's overall financial position ... is in our opinion unsatisfactory. The restoration of its available working capital position requires some immediate attention in the form of revising the current budget and a consolidation on its financial position and remedial actions by the 2003/04 budget."*
- 49 Spencer Steer continued, *"Of particular concern are the overdue instalments due by deferred debtors, one which appears to be irrecoverable (since 1996), and the other dependant on terms and conditions being performed by council before any payment is due and no repayments are expected by 30 June 2003."*
- 50 As at 30 June 2002, council's unrestricted current ratio was 1.39:1. The unrestricted current ratio is a measure of council's ability to meet its financial obligations such as paying for goods and services supplied. Council's ratio is well below the average of 3.12:1 for councils of similar size and population.
- 51 Council held cash assets of \$5.584M at the end of 2001/2002, of which \$2.2M was not externally restricted. Council has had high levels of rates and annual charges outstanding for several years.
- 52 Following a review of the 2001/2002 financial reports, the Department of Local Government wrote to council to seek details of remedial action council would undertake to improve their financial situation. The department has received no response to date.



- 53 The department's concerns over the financial management of council were the focus for the financial aspects of the section 430 investigation.
- 54 Specifically, we find there are procedural inadequacies that directly result from the way council administration manages council finances and has dealt with:
- a. The setting of a business rate category
  - b. Provisions for bonus payments
  - c. The payment of the deputy mayoral fee
  - d. Presentation of financial reports to council
  - e. Collection of lease payments
  - f. Providing required returns to the Department of Local Government
  - g. Appropriateness of the internal restrictions
  - h. Collection of outstanding rates and charges
- 55 Subsequent to the visit to Walgett Shire Council, council has submitted its 2002/2003 financial reports to the department. These reports indicate an improvement in council's overall financial situation with the exception of the rates and annual charges outstanding.
- 56 The 2002/2003 auditor's report states '*Council's overall financial position ... is in our opinion, satisfactory.*' As stated in the auditor's report, the general improvement in the financial position can be attributed to savings in operating costs and additional ordinary revenues. Further details on the financial position of council can be found in this report in the section titled 'Current Financial Position'.
- 57 Despite the fact that the overall financial situation of council appears to be improving, there are still a sufficient number of inadequacies to warrant council remaining on the department's financial monitoring list. This will be reassessed after a review of the 2003/2004 financial reports.
- 58 ***Recommendation 7: That council remains on the Department of Local Government's financial monitoring list and continues to submit quarterly budget reviews to the department.***
- 59 ***Recommendation 8: That council undertakes a detailed review of its accounting records and accounting practices to ensure that they are in accord with the legislative requirements (including the Local Government Code of Accounting Practice and Financial Reporting).***

*Term of Reference 3: Whether the conduct of councillors and council staff results in the provisions of efficient, effective and appropriate standards of governance for Walgett Shire Council*

- 60 As previously stated, section 232(1) of the Local Government Act stipulates that councillors as members of the governing body direct and control council's affairs, allocate council's resources for the benefit of the area, assist in the review and determination of council policy and review the performance of council and its delivery of services.
- 61 The role of an individual councillor is to represent the interests of the community, provide leadership and guidance to the community and to facilitate communication between the community and council (section 232(2) of the Act).
- 62 With these requirements in mind, we have reviewed the current standard of governance provided by Walgett Shire councillors as a group.
- 63 We find a number of aspects of councillor governance that appear to demonstrate a lack of understanding of their role and responsibilities arising from our review of:
- a. The entitlement of the General Manager's bonus payment
  - b. Meeting procedures
  - c. Requirements relating to the declaration of pecuniary and non-pecuniary conflicts of interest
  - d. Delegations
  - e. An appreciation of the impact of their decisions
  - f. Obligations imposed by the Local Government Act
- 64 Our dilemma in determining what action to recommend as a result of the investigation is that, while councillors are responsible for the overall governance of council, they are in the main not "experts" in the requirements of local government and related legislation and largely rely on the advice of council staff.
- 65 Nevertheless, some councillors have been involved in local government for many years and have had time to familiarise themselves with the requirements of the various legislation that applies. In any event, we cannot escape from the fact that the overall role of the governing body is to direct and control the affairs of council in accordance with the Local Government Act (section 223). It is clear from the available evidence that there has been a significant number of direct breaches of the Act, the related Regulations and in some instances council's own policy. Therefore, the governing body must take some responsibility for the breakdowns and failures of council's systems and processes.

- 66 The issue for Walgett Shire councillors is their understanding of the correct procedures to follow in carrying out their responsibilities. Not only have they not fulfilled aspects of their role as councillors of the governing body, they have not carried out some of their obligations under council's charter.
- 67 There is clearly division amongst the elected representatives of Walgett Shire Council. This belief was articulated by many of the community members, staff and councillors we interviewed during the investigation. The division largely relates to a "Walgett vs Lightning Ridge" split among the councillors. The Lightning Ridge aligned councillors appear to "have the numbers" on council. We were informed that the vote is often 7 to 5 in favour of the Lightning Ridge aligned councillors. The department has received information that indicates that some members of the community believe that this division is irreconcilable and is the cause of dysfunction within the elected body. Ultimately this has had an adverse affect on the administration of council.
- 68 The vast majority of persons interviewed during the investigation acknowledged the existence of this division. This included the Mayor, the General Manager and a number of councillors and staff.
- 69 One option available to us is to recommend a public inquiry with respect to the functions carried out by council and/or its employees. There are numerous problems at Walgett Shire Council that in the main relate to operational aspects of council activities. However, council has presided over a number of administrations that have not implemented correct procedures or carried out a number of the functions as prescribed by the Act, resulting in the problems described in this report.
- 70 We have no confidence that these problems will be fixed in the short term by council. This view is based on the very fact that council has allowed this situation to develop and continue under a number of different administrations.
- 71 The council has indicated in its response to the draft report, that is has already taken action on a number of the matters investigated by us. This report will be presented to council before the next local government elections, which are due to be held in March 2004. As this report will be a public document, it will provide the community with the opportunity to review the functioning of council and make decisions in relation to their elected representation at the March election. Also, this report makes a number of recommendations to improve the functioning of council and the implementation of these recommendations will lead to an improvement in the governance of council. However, a public inquiry would provide the entire community with the opportunity to raise any concerns about the behaviour of councillors and staff. This opportunity was not afforded during the

preliminary inquiries and the section 430 investigation. It may also give council a chance to decisively break with the past and more openly explore the best structure for the future.

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

73 ***Recommendation 9: That the Minister for Local Government:***

- a. ***Orders Walgett Shire Council to do such things arising from the recommendations contained in this report, And/or***
- b. ***Considers the merit of holding a public inquiry into Walgett Shire Council under section 740 of the Local Government Act 1993.***

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

*Term of Reference 4: 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.*

75 We intend to refer two additional matters relating to the possible contravention of the pecuniary interest provisions of the Act to the Investigations and Review Branch of the Department of Local Government for further examination.

76 We have made a number of specific recommendations in relation to some procedures of council, which are contained in the body of this report.

## ANALYSIS

### **Councillor Governance**

- 77 Walgett Shire Council currently has twelve councillors. In a comparison with other councils in their group, as listed in the department's comparative data collection (which totals twenty eight councils), Walgett is one of only five councils in that grouping with twelve or more councillors. The majority of councils in this group have nine councillors or less. Currently, councillors receive fees of \$6645 per annum. If council reduced its elected representatives to nine (the average for this group), this equates to savings of \$19935 per annum on the current fee rate.
- 78 Further, Walgett has one elected representative for every 693 persons, whereas the average for their group is one elected representative for 812 persons. Therefore, the question must be posed, does the community need this many councillors? This question may be answered by way of a referendum at the next council elections.
- 79 As stated previously, a councillor has two roles. One as a member of the governing body of council and one as an elected person. During the investigation we analysed the performance of councillors against the criteria as set forth in section 232 of the Local Government Act.
- 80 Two of the specific responsibilities of a councillor are to participate in the optimum allocation of council's resources for the benefit of the area and to represent the interests of the residents and ratepayers.
- 81 Councillors, staff and community members informed us that there is division amongst the councillors of Walgett Shire Council. This was identified as a "Lightning Ridge vs Walgett split". Lightning Ridge councillors believe that their community has not received its share of resources over a long period of time, whereas Walgett councillors believe that Lightning Ridge is receiving favoured treatment from the new senior management of council.
- 82 Some of the issues we examined lend some support to the view that the community of Lightning Ridge has been disadvantaged for some time and lacks the resources that the Walgett area has. On the other hand, some councillors assert that Lightning Ridge has now caught up with the resources provided to Walgett and is now receiving favourable treatment. However, the inability of Walgett aligned and Lightning Ridge aligned councillors to come to common agreement on this issue affects council's decision making in relation to the allocation of resources for facilities, projects and works.
- 83 For example, a number of the internally restricted reserves that were established several years ago appear to have been dormant for some

time. We were advised that despite staff recommendations to re-allocate funds that were no longer required, councillors blocked such moves based on factional lines. That is, if a particular project was implemented by Walgett aligned councillors, that faction would prevent the removal of the relevant funds. We are advised that this has occurred on a number of occasions. This being the case, these resources have not been able to be put to better use, for the benefit of the Shire.

- 84 Another example is the Lightning Ridge Community Centre project, discussed in detail in this report. This project received government funds in 1997 and has not yet been completed beyond an architectural drawing and model. This is partly due to the escalation of the costs of the project which itself is a direct result of councillors requiring a facility that appears to be beyond the means of council and its financial supporters. Thus, this has deprived the residents of Lightning Ridge of a much needed facility.
- 85 Under section 232 of the Act, councillors are required to direct and control the affairs of council in accordance with the Act. This report has identified a number of breaches of the Act, the associated Regulations and in some cases council's own policy. Many of these breaches appear to be as a result of a lack of understanding, by both councillors and staff members, of the requirements imposed by the Act. Despite evidence that many of these breaches appear to be a direct result of administrative inadequacies by the senior staff, the fact remains that councillors are charged with directing and controlling the affairs of council. It would appear that councillors in their role as the governing body have not exercised sufficient diligence to detect or prevent these breaches from taking place.
- 86 Councils are guided by a charter containing a number of principles, as provided by section 8 of the Local Government Act. We have identified examples where it appears that council has not met its obligations under the following principles:
- a. To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively (as evidenced by the analysis in *Lightning Ridge Community Centre*)
  - b. To have regard to the long term and cumulative effects of its decisions (as evidenced by the analysis in *Lightning Ridge Community Centre* and *Appropriateness of Internal Restrictions*)
  - c. To bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible (as evidenced by the analysis in *Land Management Issues* and *Lightning Ridge Caravan Park Lease*)
  - d. To raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when



appropriate, by borrowings and grants (as evidenced by the analysis in *Collection of Lease Payments, Business Rate Category and Current Financial Position*)

- e. To keep the local community and the State government (and through it, the wider community) informed about its activities (as evidenced by the analysis in *Lightning Ridge Caravan Park Lease and Budget Returns to the Department of Local Government*).

**87 Recommendation 11: That council conducts a referendum in conjunction with the next local government elections to determine public opinion in relation to reducing the number of councillors.**

***Business Rate Category***

88 This issue was initially examined during the preliminary inquiries.

89 It is a requirement under section 494 of the *Local Government Act 1993* that council must levy an ordinary rate for each year on all rateable land in its area.

90 Under section 514 of the Local Government Act, council is required to declare each parcel of rateable land in its area to be within one or other of the following categories:

- i. Farmland
- ii. Residential
- iii. Mining, or
- iv. Business

This categorisation must be carried out prior to council making an ordinary rate.

91 Each category has a statutory definition. If a particular parcel of land does not fall within the categories of farmland, residential or mining, that land *must* be categorised as business in accordance with section 518 of the Local Government Act.

92 The evidence provided in Walgett Shire Council's Annual Report 2001/2002 (**Evidence Table A – A1**) and its Strategic Plan 2002-2007 (**Evidence Table A – A2**) indicates that council has not struck a business rate. This is further supported by verbal advice given by the General Manager at his interviews during the preliminary enquiries and the formal section 430 investigation (**Evidence Table A – A6 & A7**).

93 It is noted that council was informed by the department that it was not levying a business rate. In response to this, council's Mr John Burden (currently Group Manager, Services Management) stated in an email dated 7 August 2001, that all businesses are rated as residential and that he would undertake to "sort it out in the near future" (**Evidence Table A – A4**). At this time Mr Burden was

contracted to the council on a temporary basis and informed us that he brought this matter to the attention of the General Manager.

- 94 It is apparent that this issue was not rectified in 2001 (**Evidence Table A – A3**). This is a breach of the rating provisions of the Local Government Act. Council is able to exercise its discretion in categorising land for rating purposes. However, there is land used for business purposes in the Walgett Shire area and council has failed to properly categorise this land.
- 95 The preliminary inquiry team recommended to council that the relevant land be re-categorised to ensure that a business category is included in the rating period 2004/2005 and further that the Finance Management Branch of the department monitor this situation.
- 96 At council's special meeting of 29 August 2003, council confirmed that it is currently in the process of re-categorising the relevant land to ensure that a business rating category is included in the rating period 2004/2005. Council further resolved to keep the Finance Management Branch of the department advised of developments in relation to this matter.
- 97 ***Recommendation 12: That the Finance Management Branch of the Department of Local Government monitors the situation and confirms that a business rate category is implemented in the council's estimates for 2004/2005.***

### **General Manager's Bonus Payment and Performance Review**

- 98 This issue was initially examined during the preliminary inquiries.
- 99 On 4 June 2002 Mayor Clr Peter Waterford, Deputy Mayor Clr Prue Hutchinson and Clr Joan Treweeke approved a performance bonus payment of \$15,000 to the General Manager, Mr Vic North, after undertaking an annual performance assessment (**Evidence Table V – V1**).
- 100 The General Manager's contract allows for a total remuneration package of \$120,000. This includes salary and *all* benefits. The General Manager has received a total of \$135,000 in remuneration for the year 2001/2002, due to the additional payment of the performance bonus.
- 101 During the course of the preliminary inquiries the preliminary inquiry team examined the General Manager's contract of employment (**Evidence Table V – V2**). Clause 6.2 of the contract allows for the review of the level of remuneration on an annual basis subject to a performance review. The remuneration package identified in clause 6.3 and Schedule B of the contract states that the core benefits are the salary and compulsory superannuation. There are a range of



optional benefits contained within the contract. The contract does not provide for a bonus payment.

- 102 It was noted that the employee may request in writing that the structure of the remuneration package be varied (clause 6.3). The benefits contained in Schedule B remain in force unless varied by agreement in writing between the parties. The Mayor has advised that, to his knowledge, no such written request or agreement between the parties exists. As such, the performance bonus would not fit the definition of remuneration as defined by the contract. The benefits contained within Schedule B have not been amended as prescribed.
- 103 The preliminary inquiry team discussed the issue of the performance review and bonus payment with the Mayor. He recalled that council discussed the establishment of the committee that reviewed the General Manager's performance in April 2002. He further stated that in his view the committee had been given approval by council to pay the bonus. The committee determined that a bonus payment of 10-15% should be paid based on the Mayor's enquiries with a number of commercial organisations in Sydney.
- 104 Pursuant to section 377(1) of the Local Government Act, council may not delegate the function of the voting of money for expenditure on its works, services or operations. We believe that staffing falls within the definition of council operations. This being the case, the relevant committee was not empowered to approve the expenditure as evidenced by the letter approving the bonus (**Evidence Table V – V1**).
- 105 The preliminary inquiry team examined the minutes of council from July 2001 to September 2002 (inclusive) and could find one reference to the formation of a performance review committee. This was in the July 2001 minutes. This committee was to comprise the then Mayor, Deputy Mayor, Clrs Waterford and Mitchell and the Human Resources Consultant. We found no further reference to this particular committee other than a request from Clr Lane in January 2002 for a report on the performance review. We can find no reference to the performance review committee of Clrs Waterford, Hutchinson and Treweeke, nor voting in relation to the expenditure for the bonus payment to the General Manager. Thus, on the evidence available, it is arguable that the committee that carried out the review, despite comprising different members, was empowered to review the performance of the General Manager. But in any event, there is no evidence to support the proposition that they had approval from council to make the subsequent performance bonus payment.
- 106 In January 2003, the Mayor reported to council, in his monthly report, (**Evidence Table V – V4**) on the outcome of the General Manager's performance review and identified that such a review would be conducted every six months. There is no mention in this report of a

bonus payment. There is a note included in the minutes at the end of the Mayor's report that indicates the composition of a future performance review panel. This panel was to consist of Councillors Lane, Horan and Mitchell and Mayor Peter Waterford.

- 107 The preliminary inquiry team recommended that, as the relevant committee appears to have acted without the approval of council, the bonus payment to the General Manager should be repaid.
- 108 At council's special meeting of 29 August 2003 council resolved that the General Manager be requested to return the bonus payment (**Evidence Table V – V9**). This was confirmed with the Mayor during his formal interview. The Mayor stated that a timeframe in relation to the re-payment is still being negotiated. The Mayor further stated that any future amendments to the General Manager's remuneration package, including a bonus payment, will only be made if agreed by council and put in writing as prescribed by the contract (**Evidence Table V – V2**).
- 109 ***Recommendation 13: That council report to the Department of Local Government confirming a timeframe for the repayment of the relevant bonus.***

#### ***Provisions for bonus payments***

- 110 This issue was initially examined during the preliminary inquiries.
- 111 The preliminary inquiry team reviewed the employment contracts of other senior staff and noted that they contain a provision for the payment of a performance bonus.
- 112 Council's General Manager advised that there is no provision in council's budget for 2002/2003 for the payment of performance bonuses to senior staff and that he intended to rectify this situation for the 2003/2004 financial year (**Evidence Table U – U2 & U3**).
- 113 The performance bonus payments for senior staff are made at the conclusion of their contracts. The contracts we viewed were for a four year period. Therefore, in the case of the two Group Managers, whose contracts commenced on the same day, it is possible that the payment of their bonuses could occur in the same financial year. This would mean council could be liable to pay \$49,000 in 2005. It appears that there is currently no provision in the budget to pay this sum when it becomes due.
- 114 Pursuant to section 332(1) of the Local Government Act, the council must determine the resources to be allocated towards the employment of staff. Thus, council should make provision for the payment of bonuses in developing their budget.

- 115 During the course of the investigation, the Group Manager, Services Management advised that a provision account would be set up for the accrual of senior staff bonuses (**Evidence Table U – U5**).
- 116 *Recommendation 14: That council report to the Department of Local Government confirming that a provision and an internal restriction for the accrual of senior staff bonuses has been established for the financial year 2003/2004.***

## **RECRUITMENT**

### **Appointment of Group Managers**

- 117 This issue was initially examined during the preliminary inquiries.
- 118 Council approved a management restructure in May 2001 and subsequently advertised the ten senior management positions in the Sydney Morning Herald on 24 July 2001 (**Evidence Table R – R1**).
- 119 Two of the advertised positions are the Group Manager, Services Management and Group Manager, Infrastructure Management.
- 120 On 15 October 2001, Jonathan Wooldridge was appointed to the position of Group Manager, Services Management and John Burden was appointed to the position of Group Manager, Infrastructure Management (**Evidence Table R – R2 & R3**).
- 121 In a complaint sent to the Minister for Local Government it was alleged that neither of these managers had applied for the positions to which they were subsequently appointed. This would constitute a breach of section 349(1)(a) of the Local Government Act. Section 349(1)(a) states that only a person who has applied for appointment to the position may be selected. During the preliminary enquiries, information received indicated that neither manager had applied for the position they were appointed to. However, council's General Manager has provided copies of the relevant job applications for these positions which indicate that Jonathan Wooldridge had in fact applied for both positions (**Evidence Table R – R4 & R5**). The General Manager stated during his formal interview that John Burden had been appointed to the position of Group Manager, Infrastructure Management, but had not applied for that position.
- 122 Section 350 of the Local Government Act provides an exception to the requirement in section 349 if the appointment is by way of demotion or lateral transfer. In the present matter this is not the case. Further, council's recruitment and selection policy under section 4.8.2 states that "...only a person who has applied for the appointment to the position may be selected."

- 123 This appointment does not conform to council's policy nor does it meet the provisions of section 349 of the Local Government Act.
- 124 Subsequent to the preliminary enquiries, the Director General recommended that council seek and be guided by independent legal advice in this matter. Council has now provided a copy of its legal advice. The advice is that the appointment of John Burden appears to contravene section 349(1)(a) of the Act (**Evidence Table R – R6**). It should be noted that John Burden and Jonathan Wooldridge have since been swapped in their respective positions, thus both officers are now in positions for which they formally applied in 2001. However, we consider that the "swapping" of positions does not alter the fact that the original appointment of John Burden was made in contravention of the Act.
- 125 In addition, section 337 of the Local Government Act states that the General Manager may appoint or dismiss senior staff only after consultation with the council. The minutes of council's meeting on 24 September 2001 indicate that the General Manager had made formal offers of appointment to 9 senior management applicants without first consulting with council as required by section 337 of the Act (**Evidence Table R – R7**).

### ***Recruitment Processes***

- 126 A complaint was sent to the Minister for Local Government alleging that there were certain anomalies in relation to the interview processes for a number of the senior officer positions. These positions were advertised in July 2001 (**Evidence Table X – X11**). The allegations included:
- The attendance of a councillor at the interview of only one applicant for one position. This councillor was not in attendance at any of the other interviews for this position.
  - The inclusion of other staff at interviews for some, but not all, applicants.
- 127 Council's recruitment and selection policy under section 4.5.9 states that "The Interview Panel should remain the same for all applicants for the current vacancy. Where a member of the Interview Panel is unable to complete the interview, then, where possible, another person may be substituted on the panel to ensure that the interviews are conducted according to EEO principals (sic)." (**Evidence Table X – X1**)
- 128 During preliminary inquiries, the General Manager confirmed that there was one interview where a different panel member was in attendance due to the absence of one of the original panel members (**Evidence Table X – X6**). He also confirmed that he sought advice from some of his staff with specific expertise by having them sit in on some of the interviews. However, current and former staff members

stated that many of the panels had in fact comprised of different panel members for different applicants. This is difficult to verify, as no written documentation relating to the senior officer positions has been kept on file.

- 129 This issue was further examined during the investigation. The Group Manager, Services Management, Mr John Burden, confirmed that he had sat on interview panels for some of the applicants for particular positions. (**Evidence Table X – X3**) For example, he was a member of the interview panel for one of the applicants for the Manager, Developmental Services position, but not for the other applicant.
- 130 Further, we have concerns that Mr Burden was involved in the interview process for Mr Jonathan Wooldridge, who had applied for the position of Group Manager, Services Management and a number of other positions. It should be noted that Mr Burden and Mr Wooldridge were both applicants for the position of Group Manager, Services Management.
- 131 Mr Burden stated that he was asked by the General Manager to attend that part of the interview relating only to the Manager Financial Services position. Council's General Manager confirmed that Mr Burden was asked to attend this particular interview for his financial management expertise. However, according to the General Manager, Mr Wooldridge was short-listed only for the position of Group Manager, Services Management. He requested Mr Burden to attend the end of the interview to provide his opinion on whether or not Mr Wooldridge would be suitable to "*go forward*" to the interview for the Manager Financial Services position, a position for which Mr Wooldridge had also applied (**Evidence Table X – X2**). The minutes of 27 August 2001 state that the General Manager intended to conduct only one interview for persons who had applied for more than one position (**Evidence Table X – X5**).
- 132 In any event, it would appear that Mr Burden was asked to provide an opinion on the suitability of Mr Wooldridge, a competing applicant for the position of Group Manager, Services Management.
- 133 Technically, Mr Burden's opinion may have related to Mr Wooldridge's financial abilities in regards to the Manager Financial Services position. However, the Group Manager, Services Management is responsible for the overall financial management of council and directly supervises the Manager Financial Services. As such, Mr Burden's opinion had the potential to detrimentally affect Mr Wooldridge's chances of gaining the position of Group Manager, Services Management, the position for which both Mr Burden and Mr Wooldridge had applied.
- 134 We requested that council provide us with all documentation relating to the interview process, panel composition and interview reports for

the senior management recruitment conducted in 2001. Council staff were unable to provide the material in question. The General Manager, in his interview, confirmed that the documentation could not be found. His recollection was that he had handed all the documentation to the Human Resources Officer at the completion of the recruitment process (**Evidence Table X – X2**).

- 135 In a discussion with the current Human Resources Officer, one Departmental representative was informed that the General Manager's office retains the interview records for all senior management positions. Further, the Departmental representative was informed that interview panel summaries are kept for a 12 month period, but a record of interview is attached to the successful applicant's file. The Departmental representative reviewed the personnel files of the senior management positions and could not find an interview record on any of the files viewed.
- 136 In addition to the anomalies with the recruitment processes, we are also concerned that a number of current and former staff members (who asked that their identities remain confidential) indicated that they thought the General Manager was under "political pressure" to appoint applicants from the Lightning Ridge area. The General Manager has unequivocally rejected this assertion and maintains that at no point in time was he approached by any Lightning Ridge councillors or members of the Lightning Ridge community in relation to the selection of applicants for these appointments.
- 137 The lack of documentation concerning recruitment procedures prevented us from verifying whether or not the processes in question were in fact fair and equitable. Council's policy and procedures manual requires the storage of all documentation relating to the recruitment process (**Evidence Table X – X1**). Due to the fact that the correct procedures have not been adhered to, there is no way to verify whether or not undue influence has been applied to the recruitment process. If recruitment processes are not conducted in an open and transparent manner as prescribed by council policy, this perception may continue to exist amongst certain staff members and arguably the community at large.

### ***Marketing and Promotions Officer***

- 138 We reviewed the recent recruitment of a senior officer to establish the processes that are currently being utilised by council. The position of Marketing and Promotions Officer was advertised in February 2003. There were nine applicants for this position.
- 139 The process undertaken for the selection of a suitable applicant for the position involved three steps. First there was an initial cull of applications based on an assessment of the written application. Second there were short interviews with some applicants only. Finally



interviews were held with the full panel for those who had made it through these preliminary stages.

- 140 Clause 4.4.2 of council's recruitment and selection policy states that applications will be culled by at least two members of the interview panel (**Evidence Table X – X1**). In the case of the Marketing and Promotions Officer position, the culling of applicants for interview was undertaken solely by the General Manager.
- 141 Two applicants were initially culled by the General Manager based on their written applications. The General Manager then conducted a further culling process by travelling to Sydney to conduct short interviews with the remaining applicants, some of whom were culled at the conclusion of this particular process (**Evidence Table X – X10**). These applicants were not afforded the opportunity of an interview by the full interview panel even though their written applications had been assessed as meeting the selection criteria.
- 142 It appears from the evidence available that council has again breached its recruitment and selection policy and procedures. We note that council is currently reviewing this policy and the related procedures manual. However, this has not been finalised nor has it been adopted by council. In any event, the procedures in the current policy have not been followed.
- 143 Recommendation 15: That the current review of the recruitment and selection policy reflects current best practice.**

### ***Management structure of Walgett Shire Council***

- 144 The management structure as stated in council's annual report for 2000-2001 consisted of five senior management positions (**Evidence Table T – T6**). In May 2001, council approved and adopted a revised senior management structure. This is the current structure as approved by council and it identifies eleven senior management positions including the General Manager (**Evidence Table T – T1 & T2**).
- 145 In Council's Comparative Data Collection return to the department for 2001/2002, the number of full time equivalent employees at Walgett Shire Council is 103 (**Evidence Table T – T3 & T12**). There also appears to be a number of middle management or supervisory positions within the organisation structure. Without including these middle management positions there is a ratio of one senior staff position for every ten employees.
- 146 As at the financial year 2002/2003, council's budget allocation for remuneration (including access to council motor vehicles and housing) for the eleven senior staff positions was approximately \$905,000. The total annual wages expenditure for the Shire in

2001/2002 was \$5,348,000. We estimate that approximately 16% of the total wages budget is allocated to senior staff wages. We note in the budget estimates for 2003/2004, the expected cost for the eleven senior staff positions is approximately \$937,000.

- 147 The preliminary inquiries review team recommended that council review its structure with a view to reducing the number of senior management positions. In response to this recommendation council stated that there was in fact nine, not eleven, senior staff positions with an estimated cost of \$780,000 for 2003/2004. This interpretation of the structure did not include the Human Resources Officer or the Manager Council Assets positions.
- 148 The senior management structure referred to in council's response letter of 27 August 2003, has not yet been approved by council (**Evidence Table T – T11**). The proposed structure removes two positions from the current *senior management structure*. However, it is noted that the Human Resources Officer position will be retained at the same cost and the Manager Council Assets position will be abolished and replaced by an information technology position at a similar cost.
- 149 Based on the information we received it appears that the proposed amendments to the structure will lessen the remuneration costs directly associated with the senior management positions. However, the net result, should council approve the amendment, will be that council incurs the same cost. In any event, the budget continues to reflect the cost of eleven senior management contract positions.
- 150 During the course of the General Manager's interview during the investigation, he confirmed that the senior management structure identified in the minutes of 28 January 2003 is the current structure as approved by council (**Evidence Table T – T2 & T10**). This structure identifies eleven senior management positions.
- 151 During the investigation we asked the General Manager to provide the current costing for the eleven senior management positions (**Evidence Table T – T11**). The senior management structure is costed at \$886,000. Thus, our recommendation would remain the same. With this in mind we note that the General Manager has proposed that a revised organisational structure will be submitted to council for consideration by December 2003 in accordance with the initial recommendation. Council has indicated, in its response to the draft report, that it will consider modifying the structure.
- 152 *Recommendation 16: That council reviews the organisational structure by April 2004 with a view to reducing the number of senior staff positions.***



## **Delegations**

- 153 Section 377(1) of the Local Government Act sets forth a number of functions that cannot be delegated by council. This includes, at dot point 17, a decision under section 356 of the Act to contribute money or otherwise grant financial assistance to persons.
- 154 We reviewed council's delegation of authority to the General Manager and discovered at clause 31(i) that council, in direct contravention of this section, allows the general manager to approve applications for donations of a minor nature up to the amount of \$250 for material etc (**Evidence Table AC – AC5**).
- 155 Council minutes for the meeting of 30 July 2001 set forth council's policy for dealing with all applications for financial assistance under section 356 of the Act (**Evidence Table AC – AC4**). In short, this policy authorises the General Manager in consultation with the Mayor, to approve financial assistance for requests up to the value of \$200. This policy is also in direct contravention of section 377(1) of the Act.
- 156 Evidence that this particular delegation was utilised is contained in the minutes of council's meeting of 30 September 2002, when council considered a report on a donation to a number of local community members to attend a sporting event overseas (**Evidence Table AC – AC11**). However, this approval appears to be retrospective as the ledger of section 356 expenditure (**Evidence Table AC – AC10**) indicates that the actual payments were made on 26 August 2002. This being the case, it appears that council breached both sections 356(1) and 377(1) of the Act.
- 157 On examination of the relevant ledger and a number of later council approvals pertaining to donations under section 356 of the Act, it would appear that the payments reviewed were properly approved prior to being made. However, the fact that the policy in question and the General Manager's delegation remain current documents, indicates a lack of knowledge and understanding of the requirements of the Local Government Act.
- 158 We also note that there are a number of documents granting delegations that have not been signed or dated. Some of these documents also contain the name of the previous Mayor, Cllr Alan Friend. In addition, the document delegating authority to the Mayor has not been updated. This delegation is actually made to Cllr Friend. Cllr Peter Waterford was elected as Mayor on 24 September 2001 and has remained Mayor since that date. Thus on the face of it, it does not appear that the current delegations have been properly authorised.

- 159 A further examination of the delegations revealed that a number of delegations relating to the *Environmental Planning and Assessment Act 1979* are out of date.
- 160 Council has advised in its response to the draft report that the delegations matters have been rectified.
- 161 *Recommendation 17: That council annually reviews its current delegations to ensure they are correct and up to date.***

### **Land Management Issues**

- 162 Section 25 of the Local Government Act requires a council to classify all public land under its control. Pursuant to section 26 of the Act there are two classifications for public land. These classifications are “community” and “operational”.
- 163 Section 27 of the Act stipulates two ways to classify public land:
- a. by way of a local environmental plan, or,
  - b. by resolution of the council under sections 31, 32 or 33 of the Act.
- 164 In relation to public land under the control of Walgett Shire Council, we were advised by the General Manager, the Mayor, the Group Manager, Services Management and the Manager Developmental Services (**Evidence Table Z – Z3 to Z6**) that:
- a. Council does not have a local environmental plan, and
  - b. That the public land under council’s control has never been classified by way of council resolution.
- 165 This is further confirmed by a business report to council’s meeting of 28 January 2003 that states “*council has made no attempt to classify public land as operational or community land*” (**Evidence Table Z – Z1**).
- 166 Clause 6(2) of Schedule 7 stipulates that on the commencement of Part 2 of Chapter 6 of the Local Government Act, the land comprising a public reserve, land subject to a trust for a public purpose, land dedicated under section 94 of the *Environmental Planning and Assessment Act 1979*, land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space, and land controlled by council that is vested in the corporation constituted by section 8(1) of the *Environmental Planning and Assessment Act* is taken to have been classified as community land.
- 167 Clause 6(3) of Schedule 7 states that within one year after the relevant commencement, the council may, by resolution, classify, as community land or operational land any public land that is vested in or under its control and that is not classified by sub clause (2).

- 168 Clause 6(7) of Schedule 7 states that any land that may be classified by resolution under sub clause (3) and that is not classified within one year after the relevant commencement is taken to have been classified as community land.
- 169 Land acquired by council after 1 July 1993 other than land to which the *Crown Lands Act 1989* applies and land that is acquired for the purpose of a road must be classified as community land or operational land either before council acquires the land or within three months after its acquisition: section 31(2) of the Local Government Act.
- 170 Any land acquired by council that is not classified by the end of the three month period is taken to have been classified under a local environmental plan as community land: section 31(2A) of the Local Government Act.
- 171 Public land is defined in the Local Government Act dictionary as “any land (including a public reserve) vested in or under control of the council, but does not include:
- a. A public road, or
  - b. Land to which the *Crown Lands Act 1989* applies, or
  - c. Land subject to the *Trustees of Schools of Arts Enabling Act 1902*,  
or
  - d. A regional park under the *National Parks and Wildlife Act 1974*.”
- 172 As council does not have a local environmental plan and as there is no evidence to suggest that any resolutions to designate public land have been voted upon by council, it appears that all of the public land within the Shire, other than the exceptions defined by the dictionary, is currently classified as community land.
- 173 Section 45(1) of the Local Government Act states that a council has no power to sell, exchange or otherwise dispose of community land. An exemption exists under section 45(4) which states that section 45 does not prevent a council from selling, exchanging or otherwise disposing of community land for the purpose of enabling that land to become, or be added to, a crown reserve or to become land that is reserved or dedicated under the *National Parks and Wildlife Act 1974*.
- 174 Pursuant to section 45(1) of the Act, council has no power to sell any of the land under its control unless such land was first classified as operational. Based on the available evidence, this classification does not appear to have taken place.
- 175 Therefore, council would appear to have acted ultra vires in relation to the recent sales of council owned land (**Evidence Table Z – Z7 to**

**Z11).** Further, the land in question does not appear to be exempt as set forth by section 45(4).

- 176 Council is required to prepare a draft plan of management for community land pursuant to section 36(1) of the Local Government Act. The Departmental representatives were advised by the General Manager, Group Manager, Services Management and the Manager Developmental Services that no plan of management exists for community land within Walgett Shire.
- 177 Based on the evidence provided it would appear that council has breached sections 45(1) and 36(1) of the Local Government Act.
- 178 Council has indicated in its response to the draft report that it will support a recommendation from the Manager Developmental Services for the provision of additional resources to undertake the work required.
- 179 *Recommendation 18: That council, as a matter of urgency, classifies its land assets as community or operational in accordance with section 25 of the Local Government Act.***

### ***Meeting Procedure and Practice***

- 180 During the course of the investigation, we reviewed council's code of conduct and code of meeting practice. Section 440 of the Local Government Act requires that council adopt a code of conduct. Section 360 states that councils may adopt a code of meeting practice that is consistent with the Local Government (Meetings) Regulation 1999.
- 181 Council's adopted code of conduct, sections 1.2, 1.3 and 1.4 (**Evidence Table M – M1**) contains the requirement that staff and councillors must disclose pecuniary interests and non-pecuniary conflicts of interest at relevant meetings.
- 182 Councillors should be aware of their responsibilities in relation to declaring non-pecuniary conflicts of interest as a requirement under council's code of conduct. We have examined two examples that demonstrate the apparent lack of understanding of procedures relating to this particular issue (**Evidence Table M – M12 & M13**). Both of these examples involve councillors voting on matters where there could be the perception that they have a conflict of interest. In one example, council minutes indicate that when a councillor declared an interest in a matter before council and then sought advice from the General Manager as to whether the councillor could move the motion in question, the councillor was informed that it was advisable not to move or second the motion (**Evidence Table M – M13**). The fact that the councillor in question was moving or seconding the motion is irrelevant. The real issue here is if the

councillor believed that there was a conflict of interest, the councillor should have considered the options available including leaving the room and not participating in the debate or voting on the matter. Further, the advice from the General Manager should have reflected the councillor's responsibilities under the adopted code of conduct.

- 183 Section 451(1) of the Local Government Act requires that when a pecuniary interest is declared at a council meeting, the nature of that interest must also be declared. An examination of council's minutes from May 2003 to September 2003 indicates that this is not always the case. We identified at least three occasions when a councillor declared an interest in a matter, but did not identify the specific nature of that interest (**Evidence Table M – M5, 6 & 7**).
- 184 In addition there may also be some confusion in relation to voting requirements on matters before council. This is illustrated by the declaration by a councillor that she would not be voting on a matter. Clause 24(1) of the Local Government (Meetings) Regulation states that a councillor who is present at a meeting and fails to vote on a matter is taken to have voted against the motion. We are concerned that the vote may not have counted, thus affecting the outcome of the motion. This is very difficult to determine as the voting patterns are not recorded in the minutes. The wording of the minutes leaves doubt as to whether council clearly understands that all councillors present are recorded as voting on a matter before it. The minutes lack an acknowledgement that not voting whilst present results in a vote against the relevant motion.
- 185 Section 10A of the Local Government Act provides the reasons when councils can close parts of a meeting to the public. Section 10D of the Act states that the reasons the meeting has been closed must be recorded in the minutes of the meeting. During council's meeting of 29 August 2003, council closed part of this meeting to the public but did not state the reasons in the minutes (**Evidence Table M – M8**), which appears to be in contravention of the Act.
- 186 During the review of council's minutes we also found that council does not appear to have adopted its minutes of 23 June 2003 as required by council's code of meeting practice (**Evidence Table M – M2, M11**). Council has indicated in its response to the draft report, that this was a typographical error and has now been corrected.
- 187 ***Recommendation 19: That council reviews its practice and procedures relating to the recording of declarations of non-pecuniary and pecuniary interest to ensure that such declarations are made in accordance with the Act.***

## TENDERING PROCEDURE AND PRACTICE

### Annual Tenders

- 188 Walgett Shire Council undertakes a tender process annually for various goods and services. The Department of Local Government received a complaint about the procedures followed in relation to the 2002 annual tender process for the load and haul of gravel. This issue was examined during the investigation.
- 189 In addition, we reviewed a random selection of the 2003 annual tenders for supply of various goods and services as well as the recently advertised tenders for waste management services for both Walgett and Lightning Ridge.
- 190 The tendering process utilised for the annual tenders for 2002/2003 and 2003/2004 was the open tendering method. This was confirmed by the General Manager in his interview (**Evidence Table N – N15**). In addition, the tender document information package also identifies the method of tendering as “open tendering by public advertisement in accordance with AS4120”. (**Evidence Table N – N25**) This is in contrast to the view of the Group Manager, Services Management who stated that he believed that the tender process was a “*hybrid*” of the open and selective tendering processes, as he believed the existing suppliers are contacted annually and “*really it is just an update of prices from the last year*” (**Evidence Table N – N14**).
- 191 On examination of the method used by council for its annual tenders, it appears that council uses the open tendering method. This is evinced by the fact that council invites tenders annually by way of public advertisement as opposed to seeking applications from which tenders are invited. Based on the material available it would appear that the General Manager’s interpretation is the correct one.
- 192 We note that the General Manager could not give precise information in relation to the amount of the individual contracts relating to the abovementioned tenders. This is because the cost of these particular tenders can vary greatly over a twelve month period depending upon the amount of work carried out by council. The General Manager stated that council’s Group Manager, Services Management was of the view that the individual contracts would not exceed the tender threshold of \$100,000. Therefore, it is arguable that the contracts would not be subject to section 55 of the Act and the related Tendering Regulation.
- 193 We reviewed the financial transaction history of the creditors who were successful tenderers for the load and haul of gravel for the year 2002/2003. Two of these tenderers, Mijon Pat Pty Ltd and the consortium of Local Gravel Haulers, were paid in excess of \$100,000



for the load and haul of gravel for that financial year (**Evidence Table N – N26**).

- 194 We discussed this with the Group Manager, Services Management by way of telephone on 10 October 2003. It was his view that the \$100,000 threshold applied to each individual “order” for a specific service. Our interpretation of the threshold is that it applies to an entire contract. Council enters into a contract each year with one or more suppliers for a service (for example, the load and haul of gravel) and this contract runs for the full period of that year. Thus, the value of the contract is the sum of the orders for that service in that year. It is possible that an individual contractor may have to fulfil many orders during the twelve month period. However, the contracts in question relate to the provision of the goods and services for a twelve month period. As such, section 55 of the Act and the Tendering Regulation would apply.
- 195 In relation to the annual tenders for 2003/2004, the General Manager expressed the view that he was “*not confident*” that the individual components will remain under \$100,000 and as such the requirements of the Regulation should be followed (**Evidence Table N – N8**).
- 196 In any event, council has chosen to undertake an open tendering process. This being the case, in the interest of public perception, transparency, accountability and probity, council should observe the correct tendering procedures, as stated in the Tendering Regulation.
- 197 We examined a number of annual tenders for the year 2002/2003 and found a number of anomalies. Specifically, one of the successful tenderers for the supply of construction plant/machinery appears to have lodged his tender after the stipulated closing date. This tender is neither dated nor stamped as received (**Evidence Table N – N16**). When questioned on this issue, the Group Manager, Services Management and the General Manager confirmed that, based on the information contained in the addendum to the relevant council report (**Evidence Table N – N9**), it appears that council received this tender after the relevant closing date. As clause 18(2) of the *Local Government (Tendering) Regulation* clearly states that a council must not consider a tender that is not submitted to the council by the deadline for the closing of tenders it would appear that council has in fact breached this regulation.
- 198 On reviewing the selection of contracts relating to the annual tender process for 2002/2003 and 2003/2004, we also noted that none of the contract sighted documents for 2002/2003 had been executed by the principal, Walgett Shire Council, within the period of the contract. When the General Manager was questioned about the contracts not being executed, he stated that he could not recall ever signing a tender document during his tenure (**Evidence Table N – N15**). The

fact that the contracts in question have not been executed on behalf of the council is in contravention of clause 5(2) of the Regulation.

- 199 A number of contracts did not identify who the principal party was, nor did they record the date of the agreement and in some cases did not even identify the name of the tenderer (**Evidence Table N – N4-6, N16, N10-13**). The General Manager was shown the relevant contracts and acknowledged all of the abovementioned omissions.
- 200 It is also noted that the Instrument of Agreement requires the annexation of all related documents and conditions. The Instrument of Agreement states that together, these documents comprise the contract between council and the successful tenderer. In the present case it is arguable that without the required annexation the relevant conditions do not technically form part of the written contract. Of all the tender contracts sighted not one of the documents contained an annexation of the conditions applicable to the contract.
- 201 We examined the minutes that relate to the required acceptance by council of the annual tenders for the years 2002/2003 and 2003/2004. These minutes indicate that council has noted the approved (2002) and conforming (2003) tenders, giving the impression that the tenders have in fact been accepted by council staff and council was merely noting their acceptance (**Evidence Table N – N1, N24**). Section 377(1) of the Local Government Act states that council cannot delegate the acceptance of tenders regulated under the Act.
- 202 The General Manager and Group Manager, Services Management have both acknowledged that the wording may give the impression that council staff selected the successful tenders and the outcome merely reported to council (**Evidence Table N – N14, N15**). In this regard the General Manager has confirmed that all tenders for the annual supply of goods and services for 2003/2004 will be resubmitted to the October 2003 meeting for approval by council to ensure there are no “*regulatory glitches*” (**Evidence Table N – N8**).

### ***Waste Management Tenders***

- 203 We were advised by an anonymous complainant that there may be irregularities in relation to the waste management contracts for both Walgett and Lightning Ridge. Both of these contracts are for amounts above the \$100,000 threshold and therefore subject to the provisions of section 55 of the Local Government Act and the Tendering Regulation.
- 204 On perusal of the relevant documentation, we found a number of anomalies. Initially, it was difficult to determine the actual closing deadline for submission of the tenders. The closing date was advertised as the 2 May 2003, the tender documents received were dated on the 30 May 2003 and the report to council on the tenders



identified the closing date as 23 May 2003 (**Evidence Table N – N17-20**).

- 205 Council advised us that there was only one tender submitted for each locality. Both of these tenders were above the budgeted amount that had been set aside by council for the contracts. As a result, staff negotiated with the tenderers and modified the tender specifications to the point where the tendered amount fell within the budget allocation.
- 206 Following this negotiation, staff submitted a report to council recommending that council accept the tenders based on the amount negotiated. Council's resolution of 11 August 2003 accepted the negotiated contract price subject to legal advice being sought (**Evidence Table N – N20-23**). We received a copy of this advice. This advice stated that council's solicitors were unable to identify a clear legal requirement for council to re-issue the tenders on the re-negotiated terms.
- 207 In any event, clause 19(3)(e) of the Regulation states that council, by resolution may enter into negotiations with any person with a view to entering into a contract provided that council has decided not to accept any of the tenders. Further, if council resolves to enter into such negotiations the resolution must state the reasons for declining to invite fresh tenders or applications: clause 19(4) of the Regulation.
- 208 In the present case it is clear that council did not resolve to enter into the relevant negotiations. In fact, it is council's staff that have entered into the negotiations without council approval. Further, there is no resolution stating the reasons for declining to invite fresh tenders. (**Evidence Table N – N20, N22**)
- 209 It is also a concern that at council's meeting of 8 September 2003 council resolved that this legal advice be noted. However, there is no confirmation that the tenders were actually accepted (**Evidence Table N – N21, N23**). There is a note on the minutes that states that the tenders in question were considered and accepted at the council meeting of 11 August 2003. But as discussed above, this was conditional on the receipt of legal advice. The report to council on 8 September 2003 gives no indication for the reason for this legal advice or the outcome of the advice in question. In fact, the same report as submitted to the 11 August meeting was submitted to the meeting on 8 September.
- 210 Due to the way the minutes relating to this matter are phrased, a member of the public may gain the impression that the council has not accepted the tenders nor have they been given sufficient information concerning the reasons for obtaining legal advice.

- 211 Based on the evidence provided it appears that council has breached clause 19(3)(e) and 19(4) of the Local Government (Tendering) Regulation.
- 212 ***Recommendation 20: That council reviews its tendering policy and procedures to ensure that it meets the requirements of the tendering provisions of the Local Government Act 1993 and the Local Government (Tendering) Regulation 1999.***
- 213 ***Recommendation 21: That council assesses the value of its period contracts to determine whether the contract amount is or is likely to match the \$100,000 threshold prior to determining the appropriate process for the selection of contractors.***

### **Deputy Mayoral Fee**

- 214 Section 249 of the Local Government Act requires a council to pay an annual fee to the mayor. Section 249(5) allows a council to pay the deputy mayor a fee for such time as the deputy mayor acts in the office of the mayor. The amount of this fee so paid must be deducted from the mayor's annual fee.
- 215 Walgett Shire Council set the mayor's fee for 2002/2003 at \$10,560. In addition, council set a deputy mayoral fee of \$1,650 (**Evidence Table P – P4**). The report to council on this matter identified that the amount paid for the deputy mayoral fee is allocated from the mayoral fee.
- 216 However, an examination of the ledger expenditures for the mayoral and deputy mayoral fees for 2002/2003 indicates that the deputy mayoral fee has in fact been paid in addition to the mayoral fee (**Evidence Table P – P2**).
- 217 According to the 2002/2003 ledger the mayor received a total of \$10,560 in mayoral fees, the full amount allocated by council resolution on 29 July 2002 (**Evidence Table P – P4**). Further, the ledger identifies that the deputy mayor received a total of \$1,650 in deputy mayoral fees. The deputy mayoral fee was paid in addition to the amount allocated for the mayoral fee. This is in contravention of section 249(5) of the Act.
- 218 A further examination of the proposed mayoral and deputy mayoral fees for 2003/2004 indicates that the council again intends to pay the deputy mayoral fee in addition to the mayoral fee. This information, contained in a council finance working document, shows that the full mayoral fee identified by council resolution will be paid to the mayor, (**Evidence Table P – P5, P6**) with the deputy mayoral fee being paid in addition to this.

- 219 Recommendation 22: That the mayoral fee for 2003/2004, and if applicable henceforth, is adjusted to reflect the requirements of section 249(5) of the Act.**

### **Lightning Ridge Community Centre**

- 220 In September 1996 council submitted an application for funding to build a community centre at Lightning Ridge. Council was granted \$270,000 from the (then) Ageing and Disability Department in June 1997. The funding was provided for the construction of a multi-purpose building to incorporate a number of Home and Community Care services as well as the Migrant Information Office and the Neighbourhood Centre (**Evidence Table Q – Q1**).
- 221 Council resolved at its meeting on 30 June 1997 to accept the grant, establish an organising committee and prepare drawings and estimates of the proposed centre. In addition, council resolved that a further report was to be submitted to council relating to costings, design and any other details (**Evidence Table Q – Q2**).
- 222 This resolution may have meant that an architect was to be engaged to assist in the development of drawings and estimates. However, there is no specific council resolution authorising the engagement of an architect for this project. At this stage, including the contribution of council, the total cost of the project was expected to be in the vicinity of \$400,000.
- 223 A report to council dated 24 November 1997 indicates that an architect, Mr Glenn Murcutt, had in fact been engaged for the project. However, there is no written acceptance by council of this engagement until April 1999, when the fees for Mr Murcutt's services were accepted on the basis that the project proceed as planned (**Evidence Table Q – Q8**).
- 224 In June 1999 council considered a further report identifying that the expected cost of the community centre could now be around \$1.8M (**Evidence Table Q – Q3**). Nevertheless, council resolved to continue with the services of Mr Murcutt to complete the community facility according to council's brief. Mr Murcutt's fee was to be 10% of the total construction cost of the project. If the project was to cost over \$1M, then this would place Mr Murcutt's fee above the threshold that required this service to be tendered.
- 225 Council formed a sub-committee to determine a fully detailed budget and working plan. This committee presented its report to council on 30 August 1999. Council resolved to engage a quantity surveyor to determine the full capital cost of the project and authorised the architect to go ahead with the plans for the building (**Evidence Table Q – Q4**). At this stage, the cost of the project was now estimated to be \$720,000.

- 226 The report from the quantity surveyor, which was received by council on 31 July 2000, identified the cost of the community centre as \$3.29M (**Evidence Table Q – Q5**). However, a further costing was provided to council on 21 February 2001. Based on a revised sketch design from Mr Murcutt, it identified the estimated cost of the project as \$3.44M. Mr Murcutt has so far been paid \$40,000 for his services as at 13 December 2001.
- 227 On the basis of this information there are a number of issues that arise. There appears to be a lack of quality information on the scope of the project. There appears to be considerable doubt as to the cost of the project, with estimates ranging from \$400,000 in 1999 to \$3.44M in 2001.
- 228 Decisions appear to have been made without any real appreciation of their impact. Specifically, the engagement of an architect without an assessment of the cost implications and whether the tendering requirements of the Local Government Act apply to this engagement. There is also doubt about the process for engaging the architect in 1997, with council's formal acknowledgement of this contract not occurring until 1999.
- 229 Since 2000, the Department of Ageing, Disability and Home Care has written to council on a number of occasions expressing concern about the delay and the cost escalation of the project. More recently, there has been a request from some Home and Community Care services in Lightning Ridge to have the project funding released for the purchase of an alternate accommodation facility for their services (**Evidence Table Q – Q12**).
- 230 The net result of council's inability to get this project off the ground is that the people of Lightning Ridge remain without a public facility for their use. As identified in council's report on 28 June 1999 "*there are no public facilities other than public toilets in Lightning Ridge for community use other than licensed premises*" (**Evidence Table Q – Q3**). Thus many members of the community who are unable to, or do not wish to use licensed premises for a variety reasons, have no access to community centre facilities.
- 231 In addition, council has spent around \$66,000 of the grant funds in architect fees and modelling of the centre. This has substantially reduced the funds that could have been utilised for a more modest centre design. It has been six years since council received the funding. Within that timeframe, a more modest and affordable design could have been built, giving a functional facility to the people of Lightning Ridge.
- 232 Council has indicated in its response to the draft report, that this project was approved to proceed on the 8 December 2003. We

understand that the project had always been approved by council, but had not proceeded. Therefore, we have retained our recommendation that the facility has an affordable budget and realistic timeframe.

- 233 Recommendation 23: That council ensures that its current plans for the Lightning Ridge Community Centre provide a facility within a defined and affordable budget and a strict timeframe for completion.**

### **Lightning Ridge Caravan Park Lease**

- 234 Walgett Shire Council is trust manager of the Lightning Ridge Caravan Park Reserve Trust. As trust manager, council is responsible to the Minister for Infrastructure, Planning and Natural Resources for the care, control and management of the Reserve.
- 235 Council granted a lease to the lessee, Ridge Park Pty Limited, commencing on 5 October 1989 and expiring on 4 October 1999 (**Evidence Table L – L4**).
- 236 As required under the terms of the original lease, the lessee provided written notice to exercise the option of a further ten year lease. This notice was dated 3 July 1998 (**Evidence Table L – L1**).
- 237 On 25 November 1998 council advised the (then) Department of Land and Water Conservation that the lessee wished to exercise the option to renew his lease for a further ten years (**Evidence Table L – L2**).
- 238 At council's meeting of 30 November 1998, council resolved to extend the lease for a period of ten years subject to the concurrence from the (then) Department of Land and Water Conservation (**Evidence Table L – L3**).
- 239 On 10 December 1998 the (then) Department of Land and Water Conservation sent a letter to council stating that the *Crown Lands Act 1989* requires that the trust enter into a new lease agreement with the lessee. This letter also contained a guide for the preparation of leases (**Evidence Table L – L5**). Council referred the matter to its solicitors in June 2000. Thus, the matter had not been moved forward for approximately 18 months (**Evidence Table L – L6, L7**).
- 240 Between 26 September 2000 and 6 March 2003 the (then) Department of Land and Water Conservation wrote to council on 16 occasions seeking advice as to when it would receive the necessary documentation relating to the leasing of the caravan park. The Department also requested that council complete a number of reports in respect of the relevant reserve trust as required under section 122(1)(a) of the *Crown Lands Act*. It appears that these have not been completed nor returned to the Department. (**See Chronology of correspondence for details - Table 1 following paragraph 235**)

- 241 On examination of the file it does not appear that council responded to the letters or requests for the relevant reports. This was confirmed with the General Manager and the Group Manager, Services Management during the investigation (**Evidence Table L – L24, L26**).
- 242 The file shows that the General Manager requested urgent action on the matter in June 2001. Council continued to discuss the matter with its solicitor up until this time (**Evidence Table L – L9-12, L15, L16, L18, L19, L24, L25**).
- 243 On 25 June 2001, council resolved to extend the current lease for a further six months to allow time to consult and obtain appropriate information for future usage and management (**Evidence Table L – L17**).
- 244 On 3 October 2002, the (then) Department of Land and Water Conservation wrote another letter to council stating that there was no valid lease agreement over the site as the renewal of the lease had not been consented to. This letter further stated that failure to have a valid lease left council and the department open to liability issues and without the proper endorsements the current user of the reserve does not have the necessary authorisations to use the area in question (**Evidence Table L – L21**).
- 245 Despite the warning that council may be left open to liability issues council did not respond to this letter. This was confirmed with the General Manager and the Group Manager, Services Management during the investigation (**Evidence Table L – L24, L26**).
- 246 We were advised by the Group Manager, Services Management, during the investigation, that he took carriage of the matter in March 2003. He further advised that the matter was raised at a council meeting by a councillor and the General Manager had then requested that he look into the matter. He then had to locate the file as the file was "*in archives for all intents and purposes*." He further stated that the matter was now on the way to being resolved as council's solicitor is currently conducting the process of getting the new lease signed and approved by both the Department of Lands and the lessee (**Evidence Table L – L26**).
- 247 In relation to the relevant rent, he advised that council had been receiving the actual rent on a regular basis. The rent paid had been \$1,400 a month since 1997 (which is as far back as the relevant ledger goes). He stated that he cannot find a record as to when this went up from the original rental of \$300 per week. He further stated that due to council inaction the rent increases as prescribed by the original lease had never been applied. He estimated the loss to council as approximately \$21,720 (**Evidence Table L – L29**). He advised that he had received legal advice stating that the relevant



increases would not be recoverable by council due to the effusion of time.

- 248 Council examined this issue on 25 June 2001, when it resolved to extend the current lease for a further six month period. Council did not examine this matter again until its meeting of 31 March 2003, where the minutes indicate that discussions were taking place with the (then) Department of Land and Water Conservation. These discussions are also noted at council meetings of 12 May 2003 and 23 June 2003 (**Evidence Table L – L27**).
- 249 The minutes of council meetings of 14 July 2003, 11 August 2003 and 8 September 2003 also indicate that the matter is currently being resolved and it is now in the hands of council's solicitors (**Evidence Table L – L28**).
- 250 The General Manager, during the investigation, stated that he became aware of the matter not long after his arrival in 2001. The officer who had carriage of the matter, the then Acting Director Environmental Services, had "moved on" and the position was vacant. Thus, no action was carried out on the file for some time. He further stated that he did not receive a copy of the letter of 3 October 2002 (**Evidence Table L – L21**) and was not aware of the seriousness of the issue nor the legal ramifications. He felt the problem may have been caused by the directing of the file at council's "front end" (**Evidence Table L – L24**).
- 251 There appears to have been a serious breakdown in council's document handling processes. If the (then) Department of Land and Water Conservation's interpretation is correct, and no "valid" lease has existed since the expiration of the original lease (**Evidence Table L – L21**), this breakdown has left council open to liability issues.
- 252 We are concerned that a substantial number of letters setting forth serious concerns were not actioned. In fact, in the view of the Group Manager, Services Management, the file in question was "archived".
- 253 It is a further concern that the "new lease" has taken approximately three years to finalise and in fact is still awaiting formal execution by the relevant parties. This is all the more perplexing as the lessee exercised their renewal option in November 1998 and council resolved in the same month to extend the lease for the further ten year period subject to concurrence from the (then) Department of Land and Water Conservation.
- 254 It is acknowledged that council had concerns relating to the possible future development of the site and market rental issues. Accordingly council sought advice from its solicitor in November 2000. The file indicates that council received this advice on 6 June 2001 and resolved to extend the current lease for a further six months to allow



time to consult and obtain appropriate information for future usage and management. However, based on the evidence available it appears that council did not consider this issue again until its meeting of 31 March 2003, almost two years later.

255 It would appear that inaction by council staff and the breakdown in document handling procedures has resulted in a number of delays prior to the matter being put before council for finalisation.

**256 *Recommendation 24: Council reviews its document handling procedures and its actioning of correspondence to ensure that related matters are promptly addressed by council.***

**TABLE 1: Chronology of correspondence regarding Lightning Ridge Caravan Park Lease**

	<b>Date</b>	<b>Details</b>	<b>Evidence</b>
1989	4 Oct	Lease granted and commenced for ten year period	L4
1998	3 Jul	Lessee exercised option for a further ten year lease	L1
	25 Nov	Council advised DLWC of lessee exercise of option	L2
	30 Nov	Council resolved to extend lease for further ten year period subject to DLWC concurrence	L3
	10 Dec	DLWC informs council that a new lease is required and provides a guide for the preparation of leases	L5
1999	5 Feb	DLWC requests the lease and an application for ministerial approval to operate a caravan park	L6
	4 Oct	Lease expires	L4
2000	23 Jun	Council responds to DLWC letter of 5 Feb 99. Council sends copy of expired lease to solicitor requesting new ten year lease be prepared	L7
	26 Sep	DLWC requests documentation relating to lease	L8
	29 Sep	Council's solicitor sent copy of draft lease to council. Solicitor requests additional information on rent increases.	L9
	10 Oct	Council responds to solicitor's request advising would reply in due course	L10
	30 Oct	Council resolved to refer matter to solicitor for further consideration of future development, lease renewal and market rental.	L11
	15 Nov	Council wrote to solicitor re market rent etc.	L12
	30 Nov	DLWC wrote to council requesting documentation.	L13
	1 Dec	DLWC wrote to council requesting documentation.	L13
2001	26 Feb	DLWC wrote to council requesting documentation.	L13
	10 May	DLWC wrote to council requesting documentation.	L13
	17 May	DLWC wrote to council requesting documentation and report from the reserve trust.	L14

	<b>Date</b>	<b>Details</b>	<b>Evidence</b>
	6 Jun	Council's solicitor wrote to council outlining options for site and increase in rent. Letter identifies discussions between solicitor and council.	L15
	19 Jun	Council's solicitor sent facsimile to council with copies of DLWC requests.	L16
	25 Jun	Council resolved to extend current lease for six months.	L17
	29 Jun	DLWC wrote to council requesting documentation and to telephone.	L18
	28 Sep	DLWC wrote to council requesting documentation as it hadn't arrived and indicating a telephone conversation occurred.	L19
	22 Oct	DLWC wrote to council requesting documentation.	L20
	12 Nov	DLWC wrote to council requesting documentation.	L20
	13 Dec	DLWC wrote to council requesting documentation.	L20
2002	26 Jul	DLWC wrote to council requesting report from the reserve trust.	L20
	24 Sep	DLWC wrote to council requesting documentation.	L20
	3 Oct	DLWC wrote to council stating that lack of valid lease left department and council open to liability issues.	L21
	6 Nov	DLWC wrote to council requesting report from the reserve trust.	L22
2003	6 Mar	DLWC wrote to council requesting report from the reserve trust.	L23
	31 Mar	Council minutes indicate discussions are taking place with DLWC re lease.	L27
	12 May	Council minutes indicate discussions are taking place with DLWC re lease.	L27
	23 Jun	Council minutes indicate discussions are taking place with DLWC re lease.	L27
	14 Jul	Council minutes indicate discussions are taking place with DLWC re lease.	L28
	11 Aug	Council minutes indicate that the matter is in the hands of council's solicitor.	L28
	8 Sep	Council minutes indicate that the matter is in the hands of council's solicitor.	L28

## **DEVELOPMENT PROCEDURES**

### **Context**

- 257 Walgett Shire Council receives approximately 80 development applications per year. Council exercises functions as the consent authority under the *Environmental Planning and Assessment Act 1979*.
- 258 According to council's environmental planning instrument, Interim Development Order No1 gazetted in 1968 (IDO), development within most zones requires the consent of council. The only development identified that can be carried out without the consent of council is agriculture and forestry in Non-Urban B zones and agriculture, forestry and dwelling houses referred to in clause 12(1)(a) of the IDO in Non-Urban A zones. All other permitted development requires the consent of council (**Evidence Table AD – AD10**).
- 259 We acknowledge that council's Developmental Services section has been hampered in fulfilling its key roles by a number of historical factors. These include:
- a. A previous lack of record keeping and documentation
  - b. Inadequate staffing levels and difficulties in attracting experienced and qualified staff. Staffing turnover has contributed to a lack of corporate knowledge
  - c. A lack of systems to ensure compliance with development consent conditions
  - d. An outdated environmental planning instrument
  - e. A lack of reliable mapping of shire land resources
  - f. A lack of appropriate planning by council in the past has produced a number of potential land use conflicts
- 260 These factors were highlighted by the Manager, Developmental Services at council's meeting on 24 June 2002. Council has subsequently endorsed a business plan and strategies to address the difficulties. We acknowledge that addressing long term difficulties such as these can be a slow process and will not be effective unless adequate resources are provided.
- 261 With this in mind, we note that there have been several areas of improvement including:
- a. The current development of written procedures for all major functions
  - b. The updating of the registers for development applications and construction certificates
  - c. The establishment of a geographical information system
  - d. Preliminary work on updating the environmental planning instrument

- e. An action plan to ensure that all subdivisions initiated by council are the subject of a development application

### **Development Application Process**

- 262 Walgett Shire Council apparently adopted a Local Approvals Policy in 1996 that was amended in 1997 to accommodate camp mineral claims on the Lightning Ridge Preserved Opal Fields. (**Evidence Table AD – AD11**). The Manager Developmental Services informed us that to his knowledge the document titled “Walgett Shire Local Approvals Policy 1996” does not exist. He further stated that since his employment with Walgett Shire Council he has been unable to find a copy of this Policy.
- 263 The consideration of development applications is governed in the main by the Environmental Planning and Assessment Act and the *Environmental Planning and Assessment Regulation 2000*. Specifically, section 80(1) of the Act requires that council may determine an application:
  - a. By granting consent to the application, either unconditionally or subject to conditions, or
  - b. By refusing consent.
- 264 In addition, section 80(3) permits consent to be granted subject to a condition that the consent is not to operate until the applicant satisfies the council as to any matter specified in the condition. A “deferred commencement” consent must be clearly identified as such, as required by the Environmental Planning and Assessment Regulation clause 95(1).
- 265 State Environmental Planning Policy No 60 (SEPP 60) was gazetted on 3 March 2000 to provide for exempt and complying development in certain local government areas that have not provided for those types of development through a local environmental plan. Schedule 1, Part 2 of SEPP 60 states that it applies to Walgett Shire Council. This policy identifies the development requirements that must be met for development to be carried out without development consent. The policy also identifies the development requirements that must be met for a development to be considered a complying development. Walgett Shire Council only uses the provisions of SEPP 60 for determining exempt development. Any other development is referred to council.
- 266 When determining development applications council is required to comply with the requirements of the Environmental Planning and Assessment Act, particularly section 79C, and the Environmental Planning and Assessment Regulation, particularly clauses 92 and 92A. These particular sections set forth the matters for consideration in determining development applications. Division 2 of the Environmental Planning and Assessment Act (which includes section

79C) applies to all development carried out with the exception of that development identified as exempt or complying.

- 267 We reviewed a random selection of recent development applications as well as the council resolutions in relation to development application approvals since January 2003.
- 268 Overall, the reports to council generally lack any analysis as to whether the application in question has been assessed against the requirements of section 79C of the Environmental Planning and Assessment Act and clauses 92 and 92A of the Regulation. As all development applications, with the exception of exempt development as identified in SEPP 60, are referred to council for determination, council is required to consider such matters as may be relevant in section 79C when making its determinations. In the majority of the reports presented to council there is no reference to, or discussion of, the consideration of these matters (**Evidence Table AD – AD2–9**).
- 269 In addition, council, in a number of applications, has purported to provisionally approve the application upon the proviso that “there are no significant objections from the neighbouring landholders” (**Evidence Table AD – AD2, 5 & 7**). Two points can be made:
- a. In doing so council failed to consider any objections before determining the application as required by the Environmental Planning and Assessment Act.
  - b. The Environmental Planning and Assessment Act does not permit approvals which are subject to some unknown determinant being satisfied, specifically, whether any objections which might be received could be characterised as significant. The Act permits a council to approve (with or without conditions) or refuse an application.
- 270 We also have concerns about the grant of “in principle” approval to sub-division applications (**Evidence Table AD – AD4-7**). Section 80(1) of the Environmental Planning and Assessment Act only allows council to grant consent, either unconditionally or subject to conditions, or by refusing consent. A series of development applications record council’s resolution to “approve in principle”, the relevant application. The Environmental Planning and Assessment Act does not permit this. It should be noted that in each case council was not, by the use of this phrase, endeavouring to impose a deferred commencement condition.
- 271 Further, on 28 January 2003 council considered an application, for what appears to have been a modification of the previous approval. The report to council does not identify whether the application was made under section 96 of the Environmental Planning and Assessment Act and if so whether sub-sections (1), (2) or (3) applied. Each sub-section brings its own requirements for consideration.

- 272 Some of the council resolutions viewed have purported to grant conditional approval for the development in question. However, these resolutions, in addition to setting specific conditions of consent, then confer on the Manager Developmental Services the power to determine any other conditions “*as appropriate or may apply*” (**Evidence Table AD – AD3, 8, 9**). Council does not have the power to delegate this power to any employee of council other than the General Manager, pursuant to section 377 of the Act.
- 273 In addition, the decision making process appears to have been divided between the council and the manager in question. In a similar matter involving another council, the State Crown Solicitor provided advice to the Government regarding the validity of certain development consents. This advice included consideration of the division of the decision making process, and concluded that such practices were of questionable validity, and therefore should be discontinued (**Evidence Table AD – AD12**).
- 274 Another example of the approval process taking place without the adequate procedures being followed is the approval of council’s own sub-division. The report on the relevant sub-division application to council (26 August 2002) identified two disused domestic rubbish disposal sites from the 1970’s and 1980’s. Despite this, council resolved to approve the sub-division application prior to considering matters as required under section 79C of the Environmental Planning and Assessment Act. Specifically, there are two environmental concerns identified in the report to council without any analysis of the potential repercussions to the surrounding environment, including the relevant sub-division. The matters are the disused domestic waste disposal sites and a pesticide residue evaporation pit. In the sub-division file, there is a certificate of analysis relating to the waste sites, provided approximately eight months after the relevant approval in May 2003 (**Evidence Table AD – AD2**).
- 275 In addition, council approved the sub-division prior to the lodgement of landholders objections. As a result, council was required to amend the concept plan for the development. With this in mind, council must consider all relevant matters relating to the development prior to issuing conditional, unconditional or deferred commencement approval. It is evident from this example that this procedure is not being followed.

### ***Development Controls***

- 276 Council is currently using an IDO as its only planning instrument. The disadvantage of using this is that it only identifies four land use zones. These are non-urban, village or township, special uses “A” and recreational. This being the case it allows development applications



to be lodged for activities that may be inappropriate within the existing zones.

- 277 Two sample development applications demonstrate this. Both of these applications were the subject of strong resident opposition, including the presentation of petitions to council. The concern expressed by the residents relates to the extension of commercial operations into residential areas. Walgett Council's IDO does not make provision for the use of specific areas within the village zone for commercial or residential purposes. Thus the IDO does not provide a guide to land purchasers and residents in relation to what types of developments may be situated within close proximity of their premises.
- 278 In contrast, local environmental plans generally provide a wider range of zonings that can be applied to a specific area. As such a council can clearly define areas for commercial use, residential use, industrial use, recreational use and so on.
- 279 We spoke with an officer from the Orana Regional Office of the Department of Infrastructure, Planning and Natural Resources (DIPNR) in relation to the adequacy of the IDO as a planning instrument. We note that the provisions of the Environmental Planning and Assessment Act were introduced in 1979. This required councils to adopt local environmental plans.
- 280 We were advised by the officer from DIPNR that there were only a handful of councils in NSW that still had IDOs. He believed that councils with IDOs should be moving towards developing local environmental plans and that, in his view, Walgett Shire Council's IDO is inadequate as a planning instrument (for the reasons discussed above).
- 281 He stated that he was aware that Walgett Shire Council had acknowledged the need to develop a local environmental plan but resource constraints made this task difficult. He advised that, while the Walgett area was not fast growing, there were development pressures in the Lightning Ridge area. An environmental plan would assist council in managing the existing land use as well as the specific areas where there is development pressure. He is currently working with the development services division of council on this issue.
- 282 ***Recommendation 25: That council reviews the format of its reports on development applications to ensure that all relevant matters are adequately considered and are included in the reports.***
- 283 ***Recommendation 26: That council reviews its development assessment processes to ensure that it applies the provisions of***

**SEPP 60, including the complying development schedule identified in SEPP 60.**

- 284 Recommendation 27: That council complies with the requirements of section 80 and 80A of the Environmental Planning and Assessment Act by setting all conditions of consent at the time of the approval.**
- 285 Recommendation 28: When council is considering a deferred commencement consent, it is clearly identified in the resolution as a deferred commencement as required by section 80(3) of the Environmental Planning and Assessment Act.**
- 286 Recommendation 29: That council undertakes to develop a local environmental plan (LEP) as a matter of urgency. If existing staffing levels are insufficient to develop the LEP, council should utilise the services of an experienced consultant.**

## **FINANCIAL REPORTS**

### **Quarterly Reports**

- 287 The *Local Government (Financial Management) Regulation 1999* stipulates that the Responsible Accounting Officer prepares and submits to the council a budget review statement that shows income and expenditure against estimates for that year. A further requirement is that this statement is submitted to council not later than two months after the end of each quarter. A budget review statement must include a report stating whether or not the Responsible Accounting Officer believes that the council's financial position is satisfactory and, if unsatisfactory, recommendations for remedial action.
- 288 Quarterly reports were not presented to council between June 2001 and February 2003. This was confirmed in the interviews with the General Manager and Group Manager, Services Management during the investigation (**Evidence Table I – I1 & I2**). Quarterly reports have been presented to council on 12 May 2003 and 8 September 2003. Thus, the Responsible Accounting Officer between June 2001 and February 2003 had not fulfilled his/her obligations under the Regulation.

### **Investment Reports**

- 289 The Financial Management Regulation stipulates that the Responsible Accounting Officer must establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and be compared with the estimate of council's income and expenditure and, where material differences occur, reports this to the next meeting of council.

- 290 During the interview with the Group Manager, Services Management he confirmed that the income and expenditure reviews and material differences are not reported to council (**Evidence Table F – F2**). This was confirmed by the General Manager, who further stated that it was his belief that monthly reports were not required (**Evidence Table F – F1**).
- 291 ***Recommendation 30: That the Responsible Accounting Officer continues to present quarterly financial reports to council within two months of the end of each quarter.***
- 292 ***Recommendation 31: That the Responsible Accounting Officer monitors and reviews income and expenditure each month and reports material differences to council at the meeting following this review.***

## **COLLECTION OF LEASE PAYMENTS**

### ***Walgett Tyre Service***

- 293 The Responsible Accounting Officer must take all reasonable measures to ensure that all money payable to council is collected or recovered promptly pursuant to clause 11(3)(a) of the Financial Management Regulation.
- 294 It came to our notice that there may be lease payments outstanding for a property owned by council. The property in question was leased by Walgett Tyre Service between 28 April 1997 and 28 April 2002 (when the lease expired).
- 295 Walgett Tyre Service has continued to maintain exclusive possession of the property from the commencement date of the lease to the present. As such, on expiration of the previous lease, there existed a tenancy at will until such time as rent was paid.
- 296 The original lease for the property, states that lease payments were payable monthly in advance on the first day of every month (**Evidence Table F – F4**). An examination of the file indicates that council received no lease payments during the term of the lease (**Evidence Table F – F3**). However, Walgett Tyre Service paid the rent due as required under the terms of the original lease on 2 December 2002. This payment also included the rent owing from the expiration of the original lease up until December 2002. There is no record of further rental payments being made since that date. An invoice was raised on 3 September 2003 to Walgett Tyre Service for the rent due for the period January 2003 to August 2003.
- 297 It is evident that the Walgett Tyre Service has not met its obligations in relation to the payment of rent. The file indicates that council

officers have only followed this matter up on two occasions, January 2001 and September 2003 (**Evidence Table F – F5**).

- 298 This is indicative of council's inadequate document controls and financial management practices. Further, it is the duty of the Responsible Accounting Officer to ensure that money owed to council is collected or recovered promptly. Thus, the Responsible Accounting Officer has not fulfilled his/her obligations under the Regulation.

### ***Lightning Ridge Caravan Park***

- 299 The issue of lease payments for the Lightning Ridge Caravan Park has previously been discussed in this report. The Group Manager, Services Management advised that the actual rent had been received on a regular basis. However, as noted earlier, the rent increases as prescribed by the original lease had never been applied (**Evidence Table L – L29**). He advised that he had received legal advice stating that the relevant increases would not be recoverable by council due to the effusion of time.
- 300 Council is the reserve trust manager for the Lightning Ridge Caravan Park crown reserve. Pursuant to section 411 of the Local Government Act, council is required to hold money and property received in trust in its trust fund. Further, the Local Government Code of Accounting Practice and Financial Reporting Policy Statement 6.10.2 states that money or property held in council's trust fund must be applied in accordance with the purpose of the trust.
- 301 The Group Manager, Services Management confirmed that the lease receipts from the Lightning Ridge Caravan Park are in fact being deposited into council's consolidated fund along with council's operating income (**Evidence Table F – F8**). Thus, it is evident that council is not meeting its responsibilities as reserve trust manager by holding trust income in its trust fund as required by the Act.
- 302 ***Recommendation 32: That council's Responsible Accounting Officer reviews the leasing arrangements of all council-owned or council-managed property to ensure that the required payments are being collected or recovered promptly.***
- 303 ***Recommendation 33: That the lease payments from the Lightning Ridge Caravan Park and any other income from crown reserves held in trust by council are deposited into council's trust fund.***
- 304 ***Recommendation 34: That council reviews its leases on an annual basis to ensure that any relevant rental increases are applied.***

## ***Budget Returns to the Department of Local Government***

- 305 All New South Wales Councils are required under the Local Government Code of Accounting Practice and Financial Reporting to submit a data return annually to the Department of Local Government. This return contains an outline of council's budget in two specified formats. These are; a Statement of Financial Performance format and a Function or Activity format; these returns form the Budget Summary Collection. Walgett Shire Council has not submitted its Budget Summary Collection for 2003/2004.
- 306 In addition to the annual Budget Summary Collection, councils on the Department's financial monitoring list are required to submit an electronic Quarterly Budget Review. Walgett Shire Council is on the Department's financial monitoring list. Council has submitted the Quarterly Budget Review 2003/2004. However, there are discrepancies between this document and the budget adopted by Council in its Strategic Plan 2003/2008 (**Evidence Table F – F7**). This anomaly was discussed with the Group Manager, Services Management during the investigation. He confirmed that the Budget Review would need to be adjusted. (**Evidence Table F – F6, F2**)
- 307 *Recommendation 35: That council submits the Budget Summary Collection for 2003/2004 to the Department of Local Government and amends the Quarterly Budget Review 2003/2004 to reflect council's adopted budget.***

## ***Appropriateness of Internal Restrictions***

- 308 Council by resolution can hold funds in its bank account to be applied to specific projects. These funds are called "internally restricted" funds. As at 30 June 2002, council had \$1.679M held as internally restricted reserves for 28 different projects.
- 309 A number of the internally restricted reserves had been established several years ago and appear to have been dormant for some time. For example, the reserve for the Lightning Ridge Depot relocation was established in or prior to 1998 at an amount \$160,000. Since that time it appears that there has been no additions to the reserve or use of the funds. Another example is the "Tourism (Oly Promo)" that was established in the financial year ended 30 June 1999 and relates to the Sydney Olympics. This fund would now appear to be irrelevant.
- 310 In addition, we noted that council, at its meeting of 24 February 2003, resolved to financially support the upgrade to the Lightning Ridge SES Unit Headquarters and commit \$15,662.50 from the 2003/2004 budget. This is despite the fact that \$30,000 has already been allocated to an internally restricted fund identified as "SES Headquarters". Thus the question must be posed, as to why the funds

contained within the internally restricted reserve have not been utilised?

311 Further, we note that \$199,000 has been set aside in an internally restricted fund for the provision of a community centre at Lightning Ridge. This is in addition to the grant funds previously received for this purpose. This issue has already been canvassed in detail in this report. However, in light of the fact that the total funds available to council for this particular project would arguably cover the construction of a modest but adequate centre, it raises the question as to why council did not utilise the available funds and provide this facility promptly to the community. In any event, council should have at the very least considered this option.

**312 *Recommendation 36: That council reviews its internally restricted reserves to ensure the projects for which the funds are held are still current.***

### **Current Financial Position**

313 It is indicated in council's financial reports for 2002/2003 that the overall finances of council have improved. This is evinced by the information contained in the financial reports (**Evidence Table F – F12**).

314 These reports indicate that the result from ordinary activities for 2002/2003 was a \$1.9M surplus. This compares with a deficit of \$1.831M in 2001/2002.

315 The net current assets of the council for 2002/2003 are \$4.364M and again this is an improvement on the 2001/2002 financial year. Included in council's assets is cash and investments of \$7.379M. This is compared with the result for 2001/2002 of \$5.584M. The level of internal and unrestricted cash as at 30 June 2002 was \$2.2M. It is now \$3.437M for the year ending 30 June 2003.

316 The unrestricted current ratio is a measure of council's ability to meet its financial obligations such as paying for goods and services supplied. Council's ratio is well below the average of 3.12:1 for councils of similar size and population. However, the reports indicate that the unrestricted current ratio for 2002/2003 has improved to 2.4:1 compared with the previous year's result of 1.39:1.

317 The rates and annual charges outstanding ratio appears to have increased from 12.33% as at 30 June 2000 to 17.6% as at 30 June 2003. This indicator assesses the effectiveness of council's revenue collection. The percentage of rates and charges that are unpaid at the end of a financial year is a measure of how well a council is managing debt recovery. This has been an issue with the council for a number of years. While council does have a debt recovery procedures

statement policy, it is evident that a more active role should be undertaken with a view to improving the recovery of its debts (**Evidence Table F – F13**).

318 Council has indicated in its response to the draft report, that the increase in rates and annual charges outstanding is due to the Shire being drought affected for the last three years.

319 ***Recommendation 37: That council consistently and actively pursues the recovery of all outstanding rates and annual charges.***



## FINDINGS AND RECOMMENDATIONS

Para	Findings	Recommendations
<b><i>Overall Findings and Recommendations</i></b>		
29 to 45	<p>Based on the available evidence, there appears to be widespread and systemic failure to observe the provisions of good local government administration.</p> <p>There are a number of breaches of the Local Government Act, associated Regulations and council policy.</p> <p>Senior management could benefit from some assistance and guidance in relation to these matters.</p>	<p><i>Recommendation 1: That council adopts, as a matter of urgency, an efficient and effective document handling system.</i></p> <p><i>Recommendation 2: That council engages a suitably qualified legal compliance auditor to conduct a legal compliance audit, including the following council operations:</i></p> <ul style="list-style-type: none"><li><i>a. Recruitment and selection processes</i></li><li><i>b. Council delegations</i></li><li><i>c. Classification of land under the control of council</i></li><li><i>d. Tendering processes</i></li><li><i>e. Development application processes</i></li><li><i>f. Leasing procedures over all council-owned or council-managed property</i></li></ul> <p><i>Recommendation 3: That council appoints a suitably qualified person to act as a “mentor” to the senior staff of Walgett Shire Council for a period of at least 12 months. The Director General of the Department of Local Government will be required to approve of this appointment.</i></p> <p><i>Recommendation 4: A suitable remuneration package for the mentor is to be determined in consultation with the Director General of the Department of Local Government and paid by the council.</i></p>

Para	Findings	Recommendations
		<p><i>Recommendation 5: That the following Terms of Reference be adopted in relation to the mentor position:</i></p> <ul style="list-style-type: none"> <li><i>a. To provide guidance and advice to council's senior management for a period of at least 12 months.</i></li> <li><i>b. To oversee the implementation of the recommendations contained within the report of the section 430 investigation.</i></li> <li><i>c. To report to the Department of Local Government on a quarterly basis as to the implementation of the recommendations contained within the section 430 investigation report.</i></li> <li><i>d. To provide guidance and advice to council's development approvals section and directly assist in the implementation of the correct procedures as stated in the section 430 investigation report.</i></li> <li><i>e. To ensure that council implements the legal compliance audit recommendations.</i></li> </ul> <p><i>Recommendation 6: In addition to council's obligations to give notice to the Minister under section 434 of the Local Government Act, that council submits quarterly reports to the departmental representatives on its progress in implementing the recommendations in this report.</i></p>
46 to 59	<p>There appears to be procedural inadequacies that directly result from the way council administration manages council finances and has dealt with a number of matters.</p> <p>Despite the fact that the overall financial situation of council appears to be</p>	<p><i>Recommendation 7: That council remains on the Department of Local Government's financial monitoring list and continues to submit quarterly budget reviews to the department.</i></p> <p><i>Recommendation 8: That council undertakes a detailed review of its accounting records and accounting practices to ensure that they are in accord with the legislative</i></p>

<b>Para</b>	<b>Findings</b>	<b>Recommendations</b>
	improving, there are still a sufficient number of inadequacies to warrant council remaining on the department's financial monitoring list.	<i>requirements (including the Local Government Code of Accounting Practice and Financial Reporting).</i>
60 to 74	The governing body of council must take some responsibility for the breakdowns and failures of council's systems and processes.	<p><i>Recommendation 9: That the Minister for Local Government:</i></p> <p><i>a. Orders Walgett Shire Council to do such things arising from the recommendations contained in this report,</i> <i>And/or</i> <i>b. Considers the merit of holding a public inquiry into Walgett Shire Council under section 740 of the Local Government Act 1993.</i></p> <p><i>Recommendation 10: That council, by using an appropriately qualified organisation and/or individual, develops and implements a suitable, and continuing, orientation and training program for councillors.</i></p>
<b>Specific Findings and Recommendations</b>		
77 to 87	Walgett is one of only five councils in its grouping with twelve or more councillors. The majority of councils in this group have nine councillors or less.	<i>Recommendation 11: That council conducts a referendum in conjunction with the next local government elections to determine public opinion in relation to reducing the number of councillors.</i>
88 to 97	Council is not levying a business rate in accordance with sections 494, 514 and 518 of the Local Government Act.	<i>Recommendation 12: That the Finance Management Branch of the Department of Local Government monitors the situation and confirms that a business rate category is implemented in the Council's estimates for 2004/2005.</i>
98 to 109	On the evidence available, it would appear that the committee of Clrs Waterford, Hutchinson and	<i>Recommendation 13: That council report to the Department of Local Government confirming a timeframe for the repayment of the relevant</i>

Para	Findings	Recommendations
	Treeweke had no legitimate power to approve the performance bonus payment made to the General Manager.	<i>bonus.</i>
110 to 116	There is currently no provision in the budget to pay performance bonuses to contract staff when they become due.	<i>Recommendation 14: That council report to the Department of Local Government confirming that a provision and an internal restriction for the accrual of senior staff bonuses has been established for the financial year 2003/2004.</i>
117 to 143	It appears from the evidence available that council has breached its recruitment and selection policy and procedures.	<i>Recommendation 15: That the current review of the recruitment and selection policy reflects current best practice.</i>
144 to 152	On the material available, it would appear that there may be room for streamlining the current senior management structure.	<i>Recommendation 16: That council reviews the organisational structure by April 2004 with a view to reducing the number of senior staff positions.</i>
153 to 161	A delegation has been made to the General Manager in contravention of section 377(1) of the Local Government Act.  It does not appear that the current delegations have been properly authorised.  There are a number of delegations that are out of date.	<i>Recommendation 17: That council annually reviews its current delegations to ensure they are correct and up to date.</i>
162 to 179	Based on the available evidence, council does not appear to have classified public land as community or	<i>Recommendation 18: That council, as a matter of urgency, classifies its land assets as community or operational in accordance with</i>

Para	Findings	Recommendations
	operational in accordance with section 25 of the Local Government Act.  Council does not have any plans of management for community land in accordance with section 36(1) of the Local Government Act.	<i>section 25 of the Local Government Act.</i>
180 to 187	Some councillors do not appear to be aware of their responsibilities in relation to declaring pecuniary and non-pecuniary conflicts of interest.  Council does not always record the nature of pecuniary and non-pecuniary interests in the minutes or the reasons for closing parts of its meetings to the public.	<i>Recommendation 19: That council reviews its practice and procedures relating to the recording of declarations of non-pecuniary and pecuniary interest to ensure that such declarations are made in accordance with the Act.</i>
188 to 213	Council has not followed the requirements of the Local Government (Tendering) Regulation for some of its tendering processes.	<i>Recommendation 20: That council reviews its tendering policy and procedures to ensure that it meets the requirements of the tendering provisions of the Local Government Act 1993 and the Local Government (Tendering) Regulation 1999.</i>  <i>Recommendation 21: That council assesses the value of its period contracts to determine whether the contract amount is or is likely to match the \$100,000 threshold prior to determining the appropriate process for the selection of contractors.</i>
214 to 219	The deputy mayoral fee has been paid in addition to the mayoral fee in contravention of section 249(5) of the Local Government Act.	<i>Recommendation 22: That the mayoral fee for 2003/2004, and if applicable henceforth, is adjusted to reflect the requirements of section 249(5) of the Act.</i>

Para	Findings	Recommendations
220 to 233	The net result of council's inability to get the Lightning Ridge Community Centre project off the ground is that the people of Lightning Ridge are without a public facility for their use.	<i>Recommendation 23: That council ensures that its current plans for the Lightning Ridge Community Centre provide a facility within a defined and affordable budget and a strict timeframe for completion.</i>
234 to 256	Inaction by council staff and the breakdown in document handling procedures has resulted in a number of delays in renewing the lease for the Lightning Ridge Caravan Park and has left council open to liability issues.  Council has lost revenue due to its inaction in applying CPI increases to the rental payments from the Lightning Ridge Caravan Park.	<i>Recommendation 24: Council reviews its document handling procedures and its actioning of correspondence to ensure that related matters are promptly addressed by council.</i>
257 to 286	Council has not followed the required development approval procedures for some development applications.  Walgett's Interim Development Order is inadequate as a planning instrument.	<i>Recommendation 25: That council reviews the format of its reports on development applications to ensure that all relevant matters are adequately considered and are included in the reports.</i>  <i>Recommendation 26: That council reviews its development assessment processes to ensure that it applies the provisions of SEPP 60, including the complying development schedule identified in SEPP 60.</i>  <i>Recommendation 27: That council complies with the requirements of section 80 and 80A of the Environmental Planning and Assessment Act by setting all conditions of consent at the time of the approval.</i>

Para	Findings	Recommendations
		<p><i>Recommendation 28: When council is considering a deferred commencement consent, it is clearly identified in the resolution as a deferred commencement as required by section 80(3) of the Environmental Planning and Assessment Act.</i></p>
		<p><i>Recommendation 29: That council undertakes to develop a local environmental plan (LEP) as a matter of urgency. If existing staffing levels are insufficient to develop the LEP, council should utilise the services of an experienced consultant.</i></p>
287 292	<p>Quarterly and financial reports have not been presented to council as required.</p>	<p><i>Recommendation 30: That the Responsible Accounting Officer continues to present quarterly financial reports to council within two months of the end of each quarter.</i></p>
		<p><i>Recommendation 31: That the Responsible Accounting Officer monitors and reviews income and expenditure each month and reports material differences to council at the meeting following this review.</i></p>
293 304	<p>Council is not collecting or recovering some lease payments promptly.</p>	<p><i>Recommendation 32: That council's Responsible Accounting Officer reviews the leasing arrangements of all council-owned or council-managed property to ensure that the required payments are being collected or recovered promptly.</i></p>
	<p>Council is not meeting its responsibilities as reserve trust manager which requires council to hold income from the Lightning Ridge Caravan Park in its trust fund.</p>	<p><i>Recommendation 33: That the lease payments from the Lightning Ridge Caravan Park and any other income from crown reserves held in trust by council are deposited into council's trust fund.</i></p>
		<p><i>Recommendation 34: That council reviews its leases on an annual basis to ensure that any relevant rental</i></p>



Para	Findings	Recommendations
		<i>increases are applied.</i>
305 to 307	Council has not submitted its Budget Summary Collection for 2003/2004.	<i>Recommendation 35: That council submits the Budget Summary Collection for 2003/2004 to the Department of Local Government and amends the Quarterly Budget Review 2003/2004 to reflect council's adopted budget.</i>
308 to 312	Some of council's internally restricted funds may not be current.	<i>Recommendation 36: That council reviews its internally restricted reserves to ensure the projects for which the funds are held are still current.</i>
313 to 319	Overall finances of council appear to have improved.  Council still has a high rates and annual charges outstanding ratio.	<i>Recommendation 37: That council consistently and actively pursues the recovery of all outstanding rates and annual charges.</i>



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**Keith Coates**  
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Acting Manager  
Finance Management Branch

# EVIDENCE TABLES

## EVIDENCE TABLE

ISSUE: Business Rating Category

LETTER CODE FOR EVIDENCE: A

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>	Since records held in the Department – 1999/2000		
<b>Jurisdiction</b>	Section 514 Local Government Act Section 494 Local Government Act		
<b>PROOFS</b>			
<b>Requirement under the Act</b>	s514 <ul style="list-style-type: none"> <li>• must categorise all rateable land</li> <li>• must have 4 categories               <ul style="list-style-type: none"> <li>• farmland</li> <li>• residential</li> <li>• mining business</li> </ul> </li> </ul> s494 <ul style="list-style-type: none"> <li>• must levy ordinary rate on all rateable land</li> </ul>	Local Government Act	
<b>Is there a business rate?</b>	No	<ul style="list-style-type: none"> <li>• 2001/2002 Annual Report page N10 does not identify a business rate</li> <li>• Walgett Shire Council Strategic Plan 2002-2007 does not identify</li> <li>• Fees and charges (Strategic Plan) 2003-2004 page 36</li> <li>• Verbal advice from Department of Local Government finance section that rate didn't exist</li> <li>• Confirmed by Council's General Manager in interview 14 May 03</li> </ul>	A1  A2  A3   A6
<b>Has council been informed by DLG that they don't have a business rate?</b>	Yes and failed to rectify	<ul style="list-style-type: none"> <li>• Department email from working file dated 7 Aug 2001</li> </ul>	A4
<b>Has council taken any action to remedy?</b>	Brought to council's attention after preliminary enquiries	<ul style="list-style-type: none"> <li>• Unconfirmed minutes of 29 Aug 03 – resolution in relation to a business rate category</li> <li>• Action taken to establish a business rate confirmed by GM in interview 18 Sept 03</li> </ul>	A5  A7

## EVIDENCE TABLE

ISSUE: Delegations

LETTER CODE FOR EVIDENCE: AC

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>			
<b>Jurisdiction</b>	Section 377 Local Government Act Section 356 Local Government Act	Prohibits delegation of donations made under s356	
<b>Defences</b>			
<b>PROOFS</b>			
<b>Has council made delegations</b>	Yes: <ul style="list-style-type: none"> <li>Adopted for General Manager on 25 June 2001</li> <li>Adopted for other managers on 27 Aug 2001</li> <li>New delegations for new structure on 21 Jan 2002</li> </ul>	<ul style="list-style-type: none"> <li>Minutes 25 June 2001</li> <li>Minutes 27 August 2001</li> <li>Minutes 21 January 2002</li> </ul>	AC1  AC2  AC3
<b>Are there delegations that may not be made pursuant to section 377 LGA</b>	Yes: <ul style="list-style-type: none"> <li>Delegation of donations made to staff on 30 July 2001</li> <li>Delegation of donations up to \$250 made to General Manager</li> </ul>	<ul style="list-style-type: none"> <li>Minutes 30 Jul 2001</li> <li>Resolution meeting 30 Sept 02</li> <li>General ledger section 356 expenditure</li> <li>Delegation authority to General Manager</li> </ul>	AC4 AC11  AC10  AC5
<b>Are delegation documents in order</b>	<ul style="list-style-type: none"> <li>Delegation documents not signed: <ul style="list-style-type: none"> <li>Mayor</li> <li>Deputy Mayor</li> <li>General Manager</li> <li>Group Managers</li> </ul> </li> <li>Mayor delegation document still has Clr Friend's name on it as Mayor</li> <li>No delegations to current Mayor</li> <li>General Manager and Deputy Mayor delegation document still has Clr Friend's name on it as Mayor</li> <li>Delegation to Group Manager – Infrastructure Management dated incorrectly regarding its adoption</li> </ul>	Delegation documents for: <ul style="list-style-type: none"> <li>General Manager</li> <li>Mayor</li> <li>Deputy Mayor</li> <li>Group Manager – Services</li> <li>Group Manager – Infrastructure</li> </ul>	AC5 AC6 AC7 AC8 AC9

## EVIDENCE TABLE

ISSUE: Development Application Process

LETTER CODE FOR EVIDENCE: AD

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council development application processes		
<b>Date</b>			
<b>Jurisdiction</b>	s94 – 98 Local Government Act, s377 Local Government Act EP&A Act – s76, 79(c), 80, 80A(3) Environmental Planning & Assessment Regulation 2000 Decision of court – advice from Crown Solicitor's Office		
<b>Defences</b>			
<b>PROOFS</b>			
<b>Is determination of DAs delegated by council to the General Manager and if so what are the conditions of this delegation</b>	<ul style="list-style-type: none"> <li>Interim Development Order requires council approval for developments unless delegated</li> <li>Approvals have been delegated to General Manager</li> </ul>	<ul style="list-style-type: none"> <li>Interim Development Order No 1 gazetted in 1968 (IDO)</li> <li>General Manager's delegations</li> </ul>	AD10 AD1
<b>Does council's IDO identify which development requires council approval</b>	<ul style="list-style-type: none"> <li>Yes – table on page 10 of IDO shows development that is permitted in the identified zones.</li> <li>With the exception of agriculture, forestry and dwelling houses in a non-urban A area all development requires the consent of council.</li> <li>Council has a Local Approvals Policy adopted in 1996 – this is partly included in the policy for the Preserved Opal Fields</li> <li>Unable to locate a copy of the Local Approvals Policy</li> </ul>	<ul style="list-style-type: none"> <li>Interim Development Order No 1 gazetted in 1968 (IDO)</li> <li>Local Approvals Policy for the Preserved Opal Fields</li> </ul>	AD10 AD11
<b>Are DAs presented to council for approval</b>	<p>Yes – sample of DAs:</p> <ul style="list-style-type: none"> <li>DA2002044 – councils own subdivision application – issued development consent without considering objections – then modified</li> <li>DA2002081 – approved with some conditions identified – others delegated</li> <li>DA2003004 – subdivision approved in principle</li> <li>DA2003013 – subdivision approved in principle before objections assessed</li> <li>DA2003024 – subdivision approved in principle</li> <li>DA2003029 – subdivision approved in</li> </ul>	<ul style="list-style-type: none"> <li>DA2002044 presented to council meeting 26 Aug 02</li> <li>DA2002081 presented to council meeting 28 Jan 03</li> <li>DA2003004 presented to council meeting 23 Jun 03</li> <li>DA2003013 presented to council meeting 31 Mar 03</li> <li>DA2003024 presented to council meeting 23 Jun 03</li> <li>DA2003029 presented to</li> </ul>	AD2 AD3 AD4 AD5 AD6 AD7

ELEMENT	DETAILS	EVIDENCE	REF
	<p>principle before objections assessed</p> <ul style="list-style-type: none"> <li>• DA2003036 – approved but only some conditions identified – others delegated</li> <li>• DA2003037 – approved only with some conditions identified – others delegated</li> </ul>	<p>council meeting 23 Jun 03</p> <ul style="list-style-type: none"> <li>• DA2003036 presented to council meeting 8 Sep 03</li> <li>• DA2003037 presented to council meeting 8 Sep 03</li> </ul>	<p>AD8</p> <p>AD9</p>
<p><b>Has council made delegations to staff other than the General Manager</b></p>	<p>Yes: Has delegated the making of conditions of consent to the Manager Developmental Services</p>	<p>Reports on:</p> <ul style="list-style-type: none"> <li>• DA2002081 28 Jan 03</li> <li>• DA2003036 8 Sep 03</li> <li>• DA2003037 8 Sep 03</li> </ul>	<p>AD3</p> <p>AD8</p> <p>AD9</p>
<p><b>Does council follow the requirements of the EP&amp;A Act and LGA in dealing with these DAs, particularly with conditions of consent</b></p>	<ul style="list-style-type: none"> <li>• There are examples where DAs are approved without identifying all the conditions of consent</li> <li>• The Acts required that approved unconditionally, with conditions or not approved</li> <li>• Legal opinion is of the view that this should be one action and setting conditions should not be delegated</li> <li>• Relevant sections of EP&amp;A Act are sections 80, 80A(3)</li> </ul>	<p>Reports on:</p> <ul style="list-style-type: none"> <li>• DA2002081 28 Jan 03</li> <li>• DA2003036 8 Sep 03</li> <li>• DA2003037 8 Sep 03</li> <li>• Legal advice from the Crown Solicitors Office</li> </ul>	<p>AD12</p>
<p><b>Is council informed re their legal obligations in considering DAs</b></p>	<ul style="list-style-type: none"> <li>• Reports don't routinely identify the requirements of s79(c) of the EP&amp;A Act which are required to be considered in determining a DA</li> <li>• Reports do include a reference to council's IDO</li> <li>• Councils report and consideration of its own subdivision failed to consider important aspects PRIOR to approval, eg a soil analysis of old tip sites within the subdivision was carried out AFTER the council approved the subdivision</li> </ul>	<p>Reports on:</p> <ul style="list-style-type: none"> <li>• DA2002044 presented to council meeting 26 Aug 02 (council's subdivision)</li> <li>• DA2002081 presented to council meeting 28 Jan 03</li> <li>• DA2003004 presented to council meeting 23 Jun 03</li> <li>• DA2003013 presented to council meeting 31 Mar 03</li> <li>• DA2003024 presented to council meeting 23 Jun 03</li> <li>• DA2003029 presented to council meeting 23 Jun 03</li> <li>• DA2003036 presented to council meeting 8 Sep 03</li> <li>• DA2003037 presented to council meeting 8 Sep 03</li> </ul>	<p>AD2</p> <p>AD3</p> <p>AD4</p> <p>AD5</p> <p>AD6</p> <p>AD7</p> <p>AD8</p> <p>AD9</p>

## EVIDENCE TABLE

ISSUE: Financial Management

LETTER CODE FOR EVIDENCE: F

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>			
<b>Jurisdiction</b>	Local Government Code of Accounting Practice and Financial Reporting Financial provisions of the Local Government Act and Regulations		
<b>Defences</b>			
<b>PROOFS</b>			
<b>Has council's Responsible Accounting Officer presented quarterly reports as required by the Regulation</b>	<ul style="list-style-type: none"> <li>No reports presented between June 2001 and December 2002</li> <li>Reports presented to meetings on 12 May 2003 and 8 Sep 2003</li> </ul>	<ul style="list-style-type: none"> <li>Interview with General Manager 18 Sep 03</li> <li>Interview with Group Manager, Services Management</li> </ul>	F1 F2
<b>Has council's Responsible Accounting Officer presented investment reports to council each month</b>	No reports have been presented to council	<ul style="list-style-type: none"> <li>Interview with General Manager 18 Sep 03</li> <li>Interview with Group Manager, Services Management</li> </ul>	F1 F2
<b>Has the Responsible Accounting Officer taken reasonable measures to ensure all money paid is collected or recovered promptly</b>	<p>Walgett Tyre Service</p> <ul style="list-style-type: none"> <li>No lease payments have been collected for the Walgett Tyre Service from 28 Apr 1997 to Dec 2002</li> <li>Followed up in Jan 2001 and then Sept 2003</li> <li>Lease payments made in Dec 2002 for period up until then</li> <li>No lease payments made since</li> <li>No current lease exists – lease terminated on 28 April 2002</li> </ul> <p>Lightning Ridge Caravan Park</p> <ul style="list-style-type: none"> <li>Received lease payments from Lightning Ridge Caravan Park trust, but no CPI</li> <li>These payments have been deposited into council's consolidated fund</li> </ul>	<ul style="list-style-type: none"> <li>Copy of ledger for lease invoice and payment</li> <li>Letter to Walgett Tyre Service</li> <li>Copies of emails</li> <li>Copy of lease</li> <li>Financial information provided by Group Manager, Services Management</li> <li>Record of telephone conversation with Group Manager, Services Management</li> </ul>	F3 F5 F3 F4 L29 F8
<b>Has council complied with the Local Government Code of Accounting Practice and Financial Reporting re budget requirements</b>	Council has not submitted a budget in the activity and function format as set out in the return requirements	<ul style="list-style-type: none"> <li>Quarterly budget review</li> <li>Strategic plan 2002-2007</li> <li>Interview with Group Manager, Services Management</li> </ul>	F6 F7 F2



ELEMENT	DETAILS	EVIDENCE	REF
<b>Appropriateness of internal restrictions</b>	<ul style="list-style-type: none"> <li>• Number of internal restrictions that are out of date eg Olympic promotion</li> <li>• Advice from Group Manager, Infrastructure Management identifies internally restricted reserves that are no longer required</li> <li>• Council resolved to expend additional funds for the SES Headquarters, a project identified in the internally restricted reserve list, but did not use this money</li> <li>• Lightning Ridge Community Centre – substantial reserve that could complete this project</li> </ul>	<ul style="list-style-type: none"> <li>• List of reserves</li> <li>• Interview with Group Manager, Infrastructure Management</li> <li>• Minutes meeting 24 Feb 03</li> <li>• List of reserves</li> </ul>	<p>F10</p> <p>F9</p> <p>F11</p> <p>F10</p>
<b>Councils current financial position</b>	<p>Improving results:</p> <ul style="list-style-type: none"> <li>• 2002/2003 financial reports indicate that the overall finances of council have improved</li> <li>• Surplus from ordinary activities of \$1.9M</li> <li>• Improvement in net current assets, including cash and investments, internal and unrestricted cash</li> <li>• Unrestricted current ratio is improving</li> </ul> <p>Declining result:</p> <ul style="list-style-type: none"> <li>• Outstanding rates and annual charges ratio has increased</li> </ul>	<ul style="list-style-type: none"> <li>• Auditor's financial reports</li> <li>• Procedures statement policy debtor recovery</li> </ul>	<p>F12</p> <p>F13</p>

## EVIDENCE TABLE

ISSUE: Lightning Ridge Caravan Park Lease

LETTER CODE FOR EVIDENCE: L

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council Lightning Ridge Caravan Park Dept Lands		
<b>Date</b>	1989 to present		
<b>Jurisdiction</b>	Crown Lands Act 1989 Section 411 LGA		
<b>Defences</b>			
<b>PROOFS</b>			
<b>Is the caravan park under the control of council</b>	<ul style="list-style-type: none"> <li>• Caravan park is located on a reserve under Crown Lands Act</li> <li>• Council is the reserve trust manager</li> </ul>		
<b>What are the arrangements that allow the caravan park to operate</b>	<ul style="list-style-type: none"> <li>• Lease agreement entered into on 5 October 1989 for period of 10 years</li> <li>• Option to renew lease for further 10 years</li> </ul>	<ul style="list-style-type: none"> <li>• Lease</li> <li>• Option exercised by lessee by letter 3 July 1998</li> </ul>	L4 L1
<b>Did council renew the lease for the caravan park</b>	<p>Not as yet</p> <ul style="list-style-type: none"> <li>• Resolved to renew lease on 30 Nov 98 for 10 years</li> <li>• Advised DLWC by letter 25 Nov 98</li> <li>• DLWC requested council prepare a new lease 10 Dec 98</li> <li>• DLWC requested copy of draft lease 5 Feb 99</li> <li>• Council requested solicitors prepare a new lease on 23 Jun 2000</li> <li>• DLWC again requested copy of lease 26 Sep 2000</li> <li>• Solicitor sent council draft lease on 29 Sep 2000 and requesting additional information</li> <li>• Council resolved to again refer matter to solicitors 30 Oct 2000</li> <li>• Council wrote to solicitors 15 Nov 2000</li> <li>• DLWC wrote a number of letters again requesting copy of lease – 30 Nov 2000 to 17 May 2001</li> <li>• Council resolved to extend the current lease for 6 months 25 Jun 2001</li> <li>• Further requests from DLWC for the lease between 29 Jun 2001 and 24 Sep 2002</li> <li>• DLWC advises council of liability issues as still no lease 3 Oct 2002</li> <li>• Letter not responded to confirmed by</li> </ul>	<ul style="list-style-type: none"> <li>• Minutes meeting 30 Nov 98</li> <li>• Letter to DLWC 25 Nov 98</li> <li>• Letter to council 10 Dec 98</li> <li>• Letter to council 5 Feb 99</li> <li>• Letter to solicitors 23 Jun 00</li> <li>• Letter to council 26 Sep 00</li> <li>• Letter to council 29 Sep 00</li> <li>• Letter to solicitors 10 Oct 00</li> <li>• Minutes meeting 30 Oct 00</li> <li>• Letter to solicitors 15 Nov 00</li> <li>• Letters to council</li> <li>• Letter from solicitor 6 Jun 01</li> <li>• Letter from solicitor 19 Jun 01</li> <li>• Minutes meeting 25 Jun 01</li> <li>• Letters to council</li> <li>• Letter to council 3 Oct 02</li> <li>• Interview with General</li> </ul>	L3 L2 L5 L6 L7 L8 L9 L10 L11 L12 L13 L15 L16 L17 L18 L19 L20 L21 L24

ELEMENT	DETAILS	EVIDENCE	REF
	interview with General Manager <ul style="list-style-type: none"> <li>• Matter discussed at council meetings of 31 Mar 03, 12 May 03, 23 Jun 03</li> <li>• Council's solicitor drafting lease Aug 2003</li> </ul>	Manager 18 Sep 03 <ul style="list-style-type: none"> <li>• Minutes meetings 12 May 03, 23 Jun 03</li> <li>• Interview with Group Manager, Services Management 16 Sep 03</li> <li>• Minutes meeting 14 Jul 03</li> <li>• Minutes meeting 11 Aug 03</li> <li>• Minutes meeting 8 Sep 03</li> </ul>	L27  L26  L28
<b>Has council fulfilled its obligations as reserve trust manager</b>	<ul style="list-style-type: none"> <li>• DLWC request for returns for 2001/2002 and 2002/2003</li> <li>• Returns not completed, confirmed by interviews</li>   <li>• Council has failed to collect CPI rent increases as prescribed by original lease</li> <li>• Estimated loss of \$21,720 to council</li> </ul>	<ul style="list-style-type: none"> <li>• Letter to council 17 May 01</li> <li>• Letters to council – 23 Oct 01 to 24 Sep 02</li> <li>• Letter to council 6 Nov 02</li> <li>• Letter to council 6 Mar 03</li> <li>• Interview with General Manager 18 Sep 03</li> <li>• Interview with Group Manager, Services Management 16 Sep 03</li> <li>• Lease</li>   <li>• Financial information provided by Group Manager, Services Management</li> </ul>	L14  L20 L22 L23 L24  L26  L4  L29
<b>Which staff had carriage of the matter</b>	<ul style="list-style-type: none"> <li>• For some period of time no apparent action on the file</li> <li>• Group Manager, Services Management had carriage from March 2003</li> <li>• According to General Manager this was much earlier in 2002</li> </ul>	<ul style="list-style-type: none"> <li>• File coversheet</li> <li>• Interview with Group Manager, Services Management 16 Sep 03</li> <li>• Email from General Manager to John Burden 30 Sep 02</li> <li>• Strategic Development Projects summary – Jan 02</li> </ul>	L25  L26  L30  L31

## EVIDENCE TABLE

ISSUE: Meeting Procedure and Practice

LETTER CODE FOR EVIDENCE: M

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>			
<b>Jurisdiction</b>	s9-10E Local Government Act – closing meetings s360 Local Government Act – code of meetings s365-376 Local Government Act – meeting procedure s451-454 Local Government Act – declaration of interest Local Government (Meetings) Regulation Councils Code of Meeting Practice and Code of Conduct		
<b>Defences</b>			
<b>PROOFS</b>			
<b>Does council's code of conduct and code of meeting practice identify pecuniary interest and conflict of interest practice</b>	<ul style="list-style-type: none"> <li>Code of conduct identifies procedures for pecuniary interest and non-pecuniary interest disclosure</li> <li>Code of meeting practice only identifies pecuniary interest requirements of disclosure</li> </ul>	<ul style="list-style-type: none"> <li>Code of conduct – Nov 2002</li> <li>Code of meeting practice – Nov 2002</li> </ul>	M1 M2
<b>Are council's minutes reflecting procedures required under the Act and Regulation</b>	<p>No:</p> <ul style="list-style-type: none"> <li>Often nature of interest not identified</li> <li>Whether or not a pecuniary interest of a conflict of interest not identified</li> <li>Issue raised with Mayor during preliminary enquiries and no evidence of any action taken to remedy</li> </ul> <ul style="list-style-type: none"> <li>Inaccuracy of minutes eg council has not adopted its minutes of 23 Jun 03</li> <li>Concerns that voting may not have been accurately reflected in minutes – Clr declared she would not be voting which should then have been recorded in the negative (clause 24 (1) councillors cannot abstain from voting)</li> </ul>	<ul style="list-style-type: none"> <li>Email to Mayor</li> </ul> <p>Examples where nature of interest <b>not</b> identified:</p> <ul style="list-style-type: none"> <li>Minutes 23 Jun 03 page 142</li> <li>Minutes 23 Jun 03 page 171</li> <li>Minutes 11 Aug 03 page 83</li> </ul> <p>Examples where nature of interest <b>is</b> identified:</p> <ul style="list-style-type: none"> <li>Minutes 12 May 03 page 59</li> <li>Minutes 8 Sep 03 page 97</li> <li>Minutes and resolution 14 Jul 03 page 5</li> <li>Minutes 28 Jan 03 page 94</li> </ul>	M4 M5 M6 M7 M9 M10 M11 M14
<b>Determination of conflict of interest by councillors</b>	<ul style="list-style-type: none"> <li>Lack of this information in code of meeting practice</li> <li>Examples where there may be conflict of interest that are not correctly identified</li> </ul>	<ul style="list-style-type: none"> <li>Code of meeting practice</li> <li>Minutes 24 Feb 03 page 129</li> <li>Minutes 8 Sep 03 page 56</li> </ul>	M2 M12 M13

ELEMENT	DETAILS	EVIDENCE	REF
<p><b>How council deals with closing meetings – definition of committee of the whole</b></p>	<ul style="list-style-type: none"> <li>• Code of meeting practice identifies committee of the whole as a meeting closed to the public</li> <li>• Examples from other councils indicate committee of the whole is to enable councillors to discuss matters in a more informal manner</li> <li>• Council not giving reasons for going into confidential session as required under s10D.</li> </ul>	<ul style="list-style-type: none"> <li>• Code of meeting practice, paragraph 5.1</li> <li>• Mosman Municipal Council code of meeting practice</li> <li>• Minutes 29 Aug 03 pages 12,36,37</li> </ul>	<p>M2</p> <p>M3</p> <p>M8</p>

## EVIDENCE TABLE

ISSUE: Tendering

LETTER CODE FOR EVIDENCE: N

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council Annual tenders 2002/2003 and 2003/2004 Waste Management Tenders 2003		
<b>Date</b>	<ul style="list-style-type: none"> <li>• 7 June 2002</li> <li>• 23 May 2003 (Annual)</li> <li>• 2 May 2003 (Waste)</li> </ul>	Advertisements	N3 N7 N17
<b>Jurisdiction</b>	S55 Local Government Act Local Government (Tendering) Reg 1999 Council policy – tendering procedures		
<b>Defences</b>	Clause 17 of Tendering regulation		
<b>PROOFS</b>			
<b>Annual tenders</b>			
<b>Advertised</b>	Open tendering process: <ul style="list-style-type: none"> <li>• Black Opal Advocate Wed 1 May 02</li> <li>• Black Opal Advocate 9 Apr 03</li> </ul>	Advertisements	N3 N7
<b>Value of tender (advertising or not)</b>	<ul style="list-style-type: none"> <li>• Chose to undertake tender process</li> <li>• Advice from General Manager that individual contracts may exceed \$100,000</li> <li>• Creditors list indicates that value of some contracts is over \$100,000</li> </ul>	<ul style="list-style-type: none"> <li>• Email General Manager 1 Oct 03</li> <li>• Creditors list</li> </ul>	N8 N26
<b>What method of tendering was selected</b>	Open tendering for both years	<ul style="list-style-type: none"> <li>• Interview General Manager 18 Sept 03</li> <li>• Tender documents information pack</li> </ul>	N15 N25
<b>Were the tenders received on time (were they dated and stamped) for gravel load and haul</b>	2002: <ul style="list-style-type: none"> <li>• Local gravel haulers – dated 7/6/02 stamped in middle</li> <li>• Ostwald Bros P/L – dated 7/6/02 stamped front page</li> <li>• Mijon Pat P/L – dated 7/6/02 stamped in middle</li> <li>• Late application from W &amp; J Chapman – not dated and stamped</li> </ul> 2003: Yes – received on time, dated and stamped	Copies of tenders  Addendum report to council 24 Jun 02	N6 N5 N4 N16 N9
<b>Were specifications met for each tender for gravel load and haul 2002</b>	<ul style="list-style-type: none"> <li>• Supply of haulage (including or excluding the loading)</li> <li>• 3 tenders for only haulage</li> <li>• 3 tenders for load and haul</li> </ul>	Report to council 24 Jun 02	N1 N2
<b>Who were the successful tenderers for gravel load and haul 2002</b>	<ul style="list-style-type: none"> <li>• Ostwald Bros P/L</li> <li>• Mijon Pat P/L</li> <li>• Local gravel haulers</li> </ul>	Copies of tenders	N5 N4 N6
<b>Were there amendments to tender documents prior to council considering (2002)</b>	No <ul style="list-style-type: none"> <li>• Mijon allowed to adjust tender documents after council considered accepting them</li> </ul>	<ul style="list-style-type: none"> <li>• Interview with Group Manager – Services Management 16 Sept 03</li> </ul>	N14

ELEMENT	DETAILS	EVIDENCE	REF
	<ul style="list-style-type: none"> <li>Other tenderers not given the opportunity to modify</li> </ul>		
<b>Did council accept the tenders for gravel load and haul</b>	2002 <ul style="list-style-type: none"> <li>Council has noted the approved tenders</li> </ul> 2003 <ul style="list-style-type: none"> <li>Council has noted conforming tenders</li> </ul>	<ul style="list-style-type: none"> <li>Minutes council meeting 24 June 2002</li> <li>Minutes council meeting 23 June 2003</li> </ul>	N1 N24
<b>Are the contracts signed</b>	2002 No 2003 Random selection of contracts for successful tenders: <ul style="list-style-type: none"> <li>RGT Cochrane               <ul style="list-style-type: none"> <li>Not signed</li> <li>Not dated</li> <li>No principal identified</li> <li>No contractor identified</li> </ul> </li> <li>Bows Sand and Gravel               <ul style="list-style-type: none"> <li>Not signed</li> <li>No principal identified</li> </ul> </li> <li>Mijon Pat P/L               <ul style="list-style-type: none"> <li>Not signed</li> </ul> </li> <li>Newbold Bulk Haulage               <ul style="list-style-type: none"> <li>Not dated</li> <li>Not signed</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Copies of contracts</li> <li>Confirmed in interview with:               <ul style="list-style-type: none"> <li>General Manager 18 Sep 03</li> <li>Group Manager, Services Management 16 Sep 03</li> </ul> </li> </ul>	N15 N14 N10 N11 N12 N13
<b>Waste Management</b>			
<b>Advertised</b>	Black Opal Advocate 2 April 2003	Advertisement	N17
<b>Were the tender documents received on time</b>	<ul style="list-style-type: none"> <li>Closing date on advertisement 2 May 2003</li> <li>Tenders dated as received on 30 May 2003</li> <li>Closing date in report to council stated as 23 May 2003</li> </ul>	<ul style="list-style-type: none"> <li>Advertisement</li> <li>Tender documents:               <ul style="list-style-type: none"> <li>Lightning Ridge</li> <li>Walgett</li> </ul> </li> <li>Minutes meeting 11 Aug 2003</li> </ul>	N17 N18 N19 N20
<b>Did council approve the negotiation with tenderers</b>	No <ul style="list-style-type: none"> <li>Negotiation to amend tender conditions occurred prior to report to council to accept tenders</li> <li>Report to council indicates this negotiation occurred</li> <li>Requirements of LG (Tendering) Reg to accept, not accept or empower General Manager to enter into negotiations</li> </ul>	<ul style="list-style-type: none"> <li>Interview with Group Manager – Services Management 16 Sep 2003</li> <li>Minutes meeting 11 Aug 03</li> <li>Minutes meeting 8 Sept 03</li> </ul>	N14 N20 N21
<b>Reports to council</b>	<ul style="list-style-type: none"> <li>There are two reports to council on the waste management tenders that are identical, however, have different resolutions</li> <li>Tenders approved subject to legal advice</li> <li>Legal advice subsequently noted – no confirmation that tenders accepted</li> </ul>	<ul style="list-style-type: none"> <li>Minutes meeting 11 Aug 2003 page 82</li> <li>Minutes meeting 8 Sept 2003 page 106</li> <li>Minutes meeting 11 Aug 2003 page 84</li> <li>Minutes meeting 8 Sept 2003 page 108</li> </ul>	N20 N21 N22 N23



## EVIDENCE TABLE

ISSUE: Deputy Mayoral Fee

LETTER CODE FOR EVIDENCE: P

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>	Financial years 2002/2003, 2003/2004		
<b>Jurisdiction</b>	Section 249 (5) Local Government Act		
<b>Defences</b>			
<b>PROOFS</b>			
<b>Is council paying a fee to the deputy mayor</b>	Yes	<ul style="list-style-type: none"> <li>• Annual Report 2001-2002</li> <li>• General ledger 2002/2003</li> </ul>	P1 P2
<b>Has council resolved to set the mayoral and deputy mayoral fees</b>	Yes	<ul style="list-style-type: none"> <li>• Minutes meeting 29 Jul 02 – 2002/2003</li> <li>• Minutes meeting 12 May 03 – 2003/2004</li> </ul>	P4 P5
<b>Is this fee deducted from the mayoral fee</b>	No <ul style="list-style-type: none"> <li>• Appears to have a separate fee</li> <li>• s249 requires that deputy mayor only to receive a fee if acting in office of mayor and this is deducted from mayor's annual fee</li> <li>• Ledger payments to councillors indicate that the deputy mayoral fee is in addition to the mayoral fee</li> <li>• Council working document on councillor fees indicates deputy mayor fee is in addition to the mayoral fee</li> </ul>	<ul style="list-style-type: none"> <li>• General ledger 2002/2003</li> <li>• Council finance working document</li> </ul>	P2 P6
<b>Are there occasions when the deputy mayor acts for the mayor</b>	Yes	Confirmed in interview with Mayor 17 Sept 2003	P3

## EVIDENCE TABLE

ISSUE: Lightning Ridge Community Centre

LETTER CODE FOR EVIDENCE: Q

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council Lightning Ridge Multi Purpose Centre Project		
<b>Date</b>	Funding received 19 June 1997		
<b>Jurisdiction</b>	s55 Local Government Act Local Government (Tendering) Regulation		
<b>Defences</b>	Cost of architect for project could be under \$100,000		
<b>PROOFS</b>			
<b>Did council receive funding towards a community centre complex</b>	Yes <ul style="list-style-type: none"> <li>Funding was applied for by council</li> <li>Funding was provided to council from the (then) Ageing and Disability Department</li> <li>\$270,000 provided for a community centre complex</li> </ul>	Funding approval	Q1
<b>What did council resolve to do</b>	<ul style="list-style-type: none"> <li>establish an organising committee</li> <li>prepare drawings and estimates</li> <li>costings and designs to be reported to council</li> </ul>	Minutes of meeting 30 June 97	Q2
<b>Was a report presented on the costings and design</b>	Yes on 28 June 99 <ul style="list-style-type: none"> <li>report identified expected cost up to \$1.8Million for project</li> <li>resolved to continue with architect, Glenn Murcutt</li> <li>quantity surveyor engaged for costing</li> <li>quantity surveyor reports cost of \$3.29Million</li> <li>further costing based on revised sketch design from Glenn Murcutt now \$3.44Million</li> </ul>	<ul style="list-style-type: none"> <li>minutes meeting 28 June 99</li> <li>minutes meeting 30 Aug 99</li> <li>quantity surveyors report dated 28 Jul 2000</li> <li>quantity surveyors fax dated 21 Feb 2001</li> </ul>	Q3  Q4 Q5 Q10
<b>Has the community centre been built</b>	No <ul style="list-style-type: none"> <li>funding body has made numerous requests for the return of the money or completion of the project</li> </ul>	Letters from Ageing and Disability Department and Dept of Ageing, Disability and Home Care	Q6

ELEMENT	DETAILS	EVIDENCE	REF
<b>Did council use a tendering process to engage the architect</b>	No <ul style="list-style-type: none"> <li>• initial cost of project \$400,000 – May 99</li> <li>• expected cost grew to \$1.8Million – June 99</li> <li>• quantity surveyor estimated cost at \$3.29Million – in 2000</li> <li>• acceptance of Glenn Murcutt architectural services by council letter dated 15 Apr 99</li> </ul>	<ul style="list-style-type: none"> <li>• minutes meeting 24 May 99</li> <li>• minutes meeting 28 Jun 99</li> <li>• quantity surveyors report</li> <li>• letter from council to Mr Murcutt</li> </ul>	Q11 Q3 Q5 Q8
<b>Has architect been paid any fees</b>	Yes <ul style="list-style-type: none"> <li>• ledger indicates \$40,000 paid on 13 Dec 01</li> </ul>	General ledger Lightning Ridge HACC Centre	Q9
<b>Has there been any concerns raised about the project</b>	Yes <ul style="list-style-type: none"> <li>• request to Department of Local Government to investigate engagement of architect</li> <li>• letter sent to council from the department in relation to this matter</li> <li>• issue raised by complainant with preliminary enquiries review team</li> <li>• request from HACC services to have funding released to purchase an alternate accommodation</li> </ul>	<ul style="list-style-type: none"> <li>• Minutes meeting 27 Mar 2000</li> <li>• Letter sent to council</li> <li>• Minutes meeting 8 Sep 03</li> </ul>	Q7  Q12

## EVIDENCE TABLE

ISSUE: Group Manager Appointments

LETTER CODE FOR EVIDENCE:  R

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	<ul style="list-style-type: none"> <li>Group Manager – Services Management, Jonathan Wooldridge</li> <li>Group Manager – Infrastructure Management, John Burden</li> </ul>		
<b>Date</b>	<ul style="list-style-type: none"> <li>Positions advertised – SMH 24 Jul 01</li> <li>Jonathan Wooldridge and John Burden commenced 15 Oct 01</li> </ul>	Advertisement  Contracts	R1  R2 R3
<b>Jurisdiction</b>	Section 349(1)(a) Local Government Act Section 337 Local Government Act		
<b>Defences</b>	s350 Local Government Act <ul style="list-style-type: none"> <li>If appointment by way of demotion or</li> <li>Appointment by way of lateral transfer</li> </ul>	<ul style="list-style-type: none"> <li>Jo Wooldridge new applicant</li> <li>John Burden on lower position prior to appointment</li> </ul>	
<b>PROOFS</b>			
<b>Are the Group Manager positions the same – what differentiates them</b>	Positions are different because: <ul style="list-style-type: none"> <li>Job title is different</li> <li>Responsibilities vary under Schedule A of contracts, have different areas of responsibility including the supervision of related staff</li> <li>Schedule B remuneration packages are different</li> </ul>	<ul style="list-style-type: none"> <li>Contracts</li> <li>Verbal advice from GM that positions are identical</li> </ul>	R2 R3
<b>Did the applicants apply for the positions they were appointed to</b>	No <ul style="list-style-type: none"> <li>John Burden applied for Group Manager – Services Management only</li> </ul> Yes <ul style="list-style-type: none"> <li>Jonathan Wooldridge applied for Group Manager – Infrastructure Management plus others including Group Manager – Services Management</li> </ul>	<ul style="list-style-type: none"> <li>Confirmed in interview with GM during investigation that John Burden had not applied for the position he was appointed to</li> <li>Verbal advice – senior manager</li> <li>Complainant assertion</li> <li>Job applications for John Burden and Jonathan Wooldridge</li> </ul>	R4 R5
<b>Positions applicants appointed to</b>	<ul style="list-style-type: none"> <li>John Burden – appointed to Group Manager – Infrastructure Management</li> <li>Jonathan Wooldridge appointed to Group Manager – Services Management</li> </ul>	Contracts of appointment	R3  R2
<b>Action taken to remedy situation</b>	<ul style="list-style-type: none"> <li>As a result of the preliminary enquiries, council sought legal advice.</li> <li>Officers have been swapped in their respective positions</li> </ul>	Legal advice	R6

ELEMENT	DETAILS	EVIDENCE	REF
<p><b>Was council consulted prior to the appointments being made</b></p>	<ul style="list-style-type: none"> <li>S337 LGA may appoint senior staff only after consultation with the council</li> </ul>	<ul style="list-style-type: none"> <li>Checked minutes Aug/Sept/Oct/Nov 01 no report to council on appointments</li> <li>Minutes Aug and Sept 01 have a note at the end of the minutes stating offers have been made</li> </ul>	<p>R7</p>

## EVIDENCE TABLE

ISSUE: Management Structure

LETTER CODE FOR EVIDENCE: T

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>	Structure as at May 2001 Structure as at September 2003		
<b>Jurisdiction</b>	Section 332 Local Government Act		
<b>Defences</b>			
<b>PROOFS</b>			
<b>Council structure prior to current General Manager</b>	Old structure in Annual Report 2000-2001 consisted of 5 senior management positions	<ul style="list-style-type: none"> <li>Annual Report 2000-2001 page 10</li> </ul>	T6
<b>Change of structure</b>	<ul style="list-style-type: none"> <li>Adopted by Council in May 2001, confirmed by consultative committee in July 2001</li> <li>Reconfirmed by council at its meeting in January 2003</li> </ul>	<ul style="list-style-type: none"> <li>Minutes of consultative committee meetings of 30 Jul 01 and 27 Aug 01</li> <li>Minutes of council meeting January 2003</li> </ul>	T7 T2
<b>How many senior management positions in the current structure</b>	Eleven (including General Manager)	Organisation chart from: <ul style="list-style-type: none"> <li>Advertising for senior managers</li> <li>Minutes of meeting Jan 2003</li> <li>Strategic Plan 2003-2008</li> </ul>	T1 T2 T9
<b>What is the current council approved structure</b>	Provided by General Manager during investigation and confirmed as same as that in minutes of meeting Jan 2003	<ul style="list-style-type: none"> <li>Interview with General Manager</li> <li>Structure provided by General Manager</li> </ul>	
<b>Cost of packages (Schedule B) to what is included in the budget</b>	Comparison calculated from: <ul style="list-style-type: none"> <li>Amount in current Schedule B's</li> <li>Amount in budget for 2003-2008</li> <li>Costings provided by council</li> </ul>	<ul style="list-style-type: none"> <li>Current schedule B documents</li> <li>Strategic Plan 2003-2008</li> <li>Senior management costings provided by council</li> </ul>	T9
<b>Amount of wages for senior managers positions</b>	\$905,000 2002/2003 \$937,000 2003/2004	<ul style="list-style-type: none"> <li>Strategic Plan 2002-2007</li> <li>Strategic plan 2003-2008</li> </ul>	T8 T9
<b>How many staff employed by shire</b>	103	Comparative data 2001/2002	T3
<b>Proportion of senior managers to staff</b>	1:10		
<b>Remuneration packages for senior staff as a % of total wages expenditure</b>	16.64% total wages expenditure \$5,348,000 2001/2002	<ul style="list-style-type: none"> <li>Comparative data sent to department</li> </ul>	T4

ELEMENT	DETAILS	EVIDENCE	REF
<p><b>Expenditure on senior managers as a proportion of total revenue/expenditure</b></p> <p><b>Includes cost of remuneration packages for senior staff</b></p> <p><b>How does this compare to other councils</b></p>	<ul style="list-style-type: none"> <li>• Expenditure on managers as % total expenditure is 4.8%, include councillors in 5.18%</li> <li>• Expenditure on staff as a % of total expenditure is 28.89% - this is good in relation to other councils in their category</li> <li>• Expenditure on staff as % of total income is 32.61%</li> <li>• Average cost per employee is third highest in their category</li> <li>• Number of equivalent full time staff 7<sup>th</sup> highest in their category</li> </ul>	<p>There is an inconsistency in the total expenditure on staff and the average cost of employee in comparison to other councils – this may indicate a skewing of the results of cost per employee due to the number of senior management positions and the amount paid to them.</p>	
<p><b>Number of councillors for comparative councils</b></p>	<ul style="list-style-type: none"> <li>• of 28 councils in category only 9 have more than 9 councillors</li> <li>• most frequent is 9 councillors</li> <li>• only 5 councils with 12 or more councillors</li> </ul>	<ul style="list-style-type: none"> <li>• comparative data 2001/2002</li> </ul>	<p>T5</p>
<p><b>Amount paid to councillors, Mayor and Deputy Mayor</b></p>	<ul style="list-style-type: none"> <li>• possible cost under remuneration tribunal is \$87,240 (max \$7,270 per councillor)</li> <li>• if reduced by 3 councillors possible saving of \$17,340 on current payments</li> <li>• Deputy mayor appears to have separate allowance</li> <li>• s249 deputy mayor only to receive a fee if acting in office of mayor and this is deducted from Mayor's annual fee</li> </ul>	<ul style="list-style-type: none"> <li>• Strategic plan 2002-2007</li> <li>• Strategic plan 2003-2008</li> </ul>	<p>T8 T9</p>



## EVIDENCE TABLE

ISSUE: Provisions for Bonus Payments

LETTER CODE FOR EVIDENCE:   U

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council Senior staff on contracts		
<b>Date</b>	Since 2001		
<b>Jurisdiction</b>	Section 332(1) Local Government Act Australian Accounting Standards Board 1044		
<b>Defences</b>			
	No provision found	<ul style="list-style-type: none"> <li>• Strategic Plan 2002-2007</li> <li>• Strategic Plan 2003-2008</li> <li>• Interview with GM 14 May 03 confirmed no provision</li> </ul>	U2 U3 U7
<b>Who do performance bonuses apply to</b>	Staff entitled to bonus payments: <ul style="list-style-type: none"> <li>• Jonathan Wooldridge</li> <li>• John Burden</li> <li>• Colin Keen</li> <li>• Alan Nelson</li> <li>• Matthew Goodwin</li> <li>• Christina Johannson</li> <li>• Barry Shields</li> </ul>	List provided by council	U1
<b>Action to remedy situation</b>	Response by council to preliminary enquiry recommendation  Provision still to be confirmed	<ul style="list-style-type: none"> <li>• Unconfirmed minutes of 29 Aug 03</li> <li>• Finance interview with John Burden on 16 Sept 03</li> </ul>	U4 U5

## EVIDENCE TABLE

ISSUE: General Manager's Bonus Payment

LETTER CODE FOR EVIDENCE:  V

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Performance Review Committee of: Councillors Treweeke, Hutchinson, Waterford		
<b>Date</b>	4 June 2002		
<b>Jurisdiction</b>	Local Government Act delegation of functions s377(1) Cannot delegate voting of money for expenditure...	s377(1) LGA r15 Local Government (Financial Management) Reg 1999 updated Apr 2001	
<b>PROOFS</b>			
<b>What was the process used to determine the bonus</b>	Performance review	<ul style="list-style-type: none"> <li>• Mayor's report April 2002</li> <li>• No minute of formation of review committee</li> <li>• Mayoral report in Jan 2003 minutes indicates that performance review was discussed in April 2002 meeting, however, no record of this</li> </ul>	V3  V4
<b>Who determined a bonus would be paid</b>	Performance review committee of Clrs Hutchinson, Waterford, Treweeke	<ul style="list-style-type: none"> <li>• Letter dated 4/6/02 to Manager, Finance Services and Payroll officer</li> <li>• Interview with Mayor believed committee had been given the authority</li> </ul>	V1  V5
<b>When was it approved by council</b>	No approval evident	<ul style="list-style-type: none"> <li>• Researched council minutes Jan02 – Sep 02 no recommendation adopted</li> </ul>	
<b>Was there provision for a bonus payment in the GM contract</b>	<ul style="list-style-type: none"> <li>• General Manager's contract clause 6.3 of the contract does not make provision for a bonus</li> <li>• Remuneration package only allows for salary, super and other benefits in Schedule B</li> <li>• Other benefits are a house and telephone, Holden statesman car</li> <li>• Clause 6.2 level of remuneration may be reviewed annually subject to performance review as contained in clause 5</li> <li>• Clause 5 performance monitoring but does not provide for a performance bonus</li> </ul>	<ul style="list-style-type: none"> <li>• General Manager's contract clauses 5 and 6</li> <li>• Schedule B</li> <li>• Mayor's interview at preliminary enquiries. Not aware that contract did not allow a bonus payment.</li> </ul>	V2  V5
<b>Was the remuneration Schedule B altered to include a bonus</b>	<ul style="list-style-type: none"> <li>• General Manager's contract clause 6.3 structure of remuneration package may be varied by written request of employee</li> </ul>	<ul style="list-style-type: none"> <li>• No written evidence</li> <li>• Mayor interview at preliminary enquiries, not aware of any</li> </ul>	V5

ELEMENT	DETAILS	EVIDENCE	REF
<b>Was it paid, how much and how taken and when</b>	<ul style="list-style-type: none"> <li>• Cash bonus of \$15,000</li> </ul>	<ul style="list-style-type: none"> <li>• Written evidence to Payroll Officer of amount and to be paid in current financial year 2001/2002</li> <li>• Verbal advice from Mayor that taken as cash</li> </ul>	V1  V5
<b>Was there provision in the budget for the payment of a bonus</b>	<ul style="list-style-type: none"> <li>• No</li> <li>• Also anomaly between remuneration in Schedule B and budget allocation</li> </ul>	Copy of <ul style="list-style-type: none"> <li>• Mar03 quarterly budget report</li> <li>• Strategic Plan 2002-2007</li> <li>• Strategic Plan 2003-2008</li> </ul>	V6  V7  V8
<b>Action taken to remedy situation</b>	As a result of preliminary enquiries council considered the recommendation at its meeting on 20 Aug 03	<ul style="list-style-type: none"> <li>• Unconfirmed minutes of 29 Aug 03 resolution for GM to pay back bonus</li> <li>• Action taken to for GM to repay bonus confirmed by Mayor in interview 17 Sep 03.</li> </ul>	V9  V10

## EVIDENCE TABLE

ISSUE: General Recruitment

LETTER CODE FOR EVIDENCE: X

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	<ul style="list-style-type: none"> <li>Senior management positions</li> <li>Marketing and Promotions position</li> </ul>		
<b>Date</b>	<ul style="list-style-type: none"> <li>Recruitment 2001</li> <li>Recruitment March 2003</li> </ul>	<ul style="list-style-type: none"> <li>Advertisement</li> <li>Advertisement</li> </ul>	X11
<b>Jurisdiction</b>	Section 348 Local Government Act Section 349 Local Government Act Councils Recruitment and Selection Policy 1999 Councils Recruitment and Selection Procedures 2003		
<b>Defences</b>	Section 350 Policy 4.5.9 substitute for panel member unable to attend		
<b>PROOFS</b>			
<b>2001 selection: Interview panels were consistent for all interviews</b>	<ul style="list-style-type: none"> <li>Verbal information indicates this is not the case</li> <li>No written information available</li> </ul>	<ul style="list-style-type: none"> <li>Council's Recruitment and Selection Policy 4.5.9</li> <li>Interview General Manager 18 Sept 03</li> <li>Interview John Burden 16 Sept 03</li> <li>Interview General Manager 14 May 03</li> </ul>	X1 X2 X3 X6
<b>Applicant sat in on an interview of a competitor</b>	<ul style="list-style-type: none"> <li>John Burden was invited into interview for Jo Wooldridge</li> <li>Both had applied for Group Manager – Services Management position</li> </ul>	<ul style="list-style-type: none"> <li>Confirmed in interview with John Burden</li> <li>Confirmed in interview with General Manager</li> <li>Applications</li> <li>Minutes 27 Aug 2001 that only one interview conducted for each applicant</li> </ul>	X3 X2 X4 X5
<b>There is written information on the interview panel composition and process</b>	<ul style="list-style-type: none"> <li>None available for senior management positions</li> <li>Information provided by Human Resource Officer that summaries kept and copies filed on personnel files</li> </ul>	<ul style="list-style-type: none"> <li>Senior management personnel files reviewed – no interview information found</li> <li>Not in accordance with policy</li> </ul>	X1
<b>Marketing and Promotions Officer selection: There is written information on the culling and interview processes</b>	<ul style="list-style-type: none"> <li>List of non-local applicants provided and list of short interview attendees in Sydney</li> <li>Information on the culling process provided by interview with General Manager – General Manager culled the written applications</li> <li>Interview outcome summary of only two applicants interviewed by full panel kept</li> </ul>	<ul style="list-style-type: none"> <li>List of some applicants provided by council</li> <li>Interview with General Manager 18 Sept 03</li> <li>Final interview summary</li> <li>Minutes 12 May 2003 – General Manager confirmed he went to Sydney to conduct interviews</li> <li>Email from General Manager clarifying process</li> </ul>	X7 X9 X8 X10 X12

ELEMENT	DETAILS	EVIDENCE	REF
<b>Interview panels were consistent for all interviews</b>	<ul style="list-style-type: none"> <li>Not all applicants identified on list for interview attended interview with full selection panel</li> </ul>	<ul style="list-style-type: none"> <li>List of some applicants provided by council</li> <li>Interview with General Manager 18 Sept confirmed process</li> </ul>	X7 X9

## EVIDENCE TABLE

ISSUE: Land Management Issues

LETTER CODE FOR EVIDENCE: Z

ELEMENT	DETAILS	EVIDENCE	REF
<b>Identity</b>	Walgett Shire Council		
<b>Date</b>			
<b>Jurisdiction</b>	s25-27, 31-33 Local Government Act – classification of land s35,36 Local Government Act – community land s45 Local Government Act – dispose of community land Schedule 7 Clause 6 Local Government Act		
<b>Defences</b>	s45 (4) Local Government Act		
<b>PROOFS</b>			
<b>Is there an LEP?</b>	No: <ul style="list-style-type: none"> <li>Council made aware of this need in Jan 2003</li> <li>Have IDO No1 (Interim Development Order)</li> </ul>	<ul style="list-style-type: none"> <li>IDO No 1 1968</li> <li>Minutes meeting 28 Jan 03</li> <li>Interviews with: <ul style="list-style-type: none"> <li>General Manager</li> <li>Mayor</li> <li>Group Manager – Services Management</li> <li>Manager Development Services</li> </ul> </li> </ul>	Z2 Z1 Z3 Z4 Z5 Z6
<b>Is there a council resolution to categorise land as community or operational</b>	No: <ul style="list-style-type: none"> <li>After 12 months of introduction of LGA 1993, public land is deemed to be community</li> <li>Council informed this was required</li> </ul>	<ul style="list-style-type: none"> <li>Minutes meeting 28 Jan 03</li> <li>Interviews with: <ul style="list-style-type: none"> <li>General Manager</li> <li>Mayor</li> <li>Group Manager – Services Management</li> <li>Manager Development Services</li> </ul> </li> </ul>	Z1 Z3 Z4 Z5 Z6
<b>Has council developed any plans of management for community land</b>	No	Interviews with: <ul style="list-style-type: none"> <li>General Manager</li> <li>Mayor</li> <li>Group Manager – Services Management</li> <li>Manager Development Services</li> </ul>	Z3 Z4 Z5 Z6
<b>Has council land been sold</b>	Yes, examples include: <ul style="list-style-type: none"> <li>Lots 2 &amp; 3 Section 10, Warrena St, Walgett</li> <li>Lot 5 Colless St, Come By Chance</li> <li>1 Vaughan Pl, Walgett</li> <li>Lots 13 &amp; 14 Section 9, Albert St, Collarenebri</li> <li>8 &amp; 24 Arthur St, Walgett</li> <li>4,5 &amp; 44 Euroka St, Walgett</li> </ul>	<ul style="list-style-type: none"> <li>minutes 24 Feb 03</li> <li>minutes 12 May 03</li> <li>minutes 23 Jun 03</li> <li>Minutes 23 Jun 03</li> <li>Unconfirmed minutes 8 Sep 03</li> </ul>	Z7 Z8 Z9 Z10 Z11