

Investigation into Corporate Governance at Moorabool Shire Council

April 2009
Ordered to be printed
Victorian government printer
Session 2006-09
P.P. No. 182



LETTER OF TRANSMITTAL

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to section 25 of the *Ombudsman Act 1973*, I present to the Parliament the report on my investigation into Corporate Governance at Moorabool Shire Council.



G E Brouwer
OMBUDSMAN



CONTENTS

EXECUTIVE SUMMARY	6
BACKGROUND	9
INVESTIGATION	11
<i>Methodology</i>	11
<i>Adoption of My Conflict of Interest in Local Government Recommendations</i>	12
<i>Interests and Conflicts of Interest</i>	13
<i>Transparency</i>	15
<i>Access to Information</i>	19
<i>Access to Staff</i>	19
<i>Delegations</i>	20
ORGANISATIONAL HEALTH AND CULTURE	22
<i>Organisational Structure</i>	22
<i>Role of Chief Executive Officer</i>	26
POLICIES AND PROCEDURES	28
CONCLUSION	30
SUMMARY OF RECOMMENDATIONS	31

INVESTIGATION INTO CORPORATE GOVERNANCE OF MOORABOOL SHIRE COUNCIL

EXECUTIVE SUMMARY

In my Annual Report for 2007-08, I highlighted that local government continued to be a significant source of complaints to my office. I recognise that the actions of local councils directly affect residents on a wide range of matters, including planning and building, roads and parking, health and social services, waste and animal management, and local laws.

In March 2008, I completed an own motion investigation into *Conflict of Interest in Local Government*¹. As a result of this investigation, I identified a number of areas that may leave councils vulnerable to criticisms regarding lack of transparency, integrity and opportunities for corrupt conduct.

As I outlined in my report to Parliament, I found that the problems related to conflict of interest resulted from failures of governance. These included:

- a lack of transparency, with decisions inappropriately made in private
- inappropriate interaction between councillors and officers
- poor organisational culture
- poor conceptual understanding of conflict of interest and the 'rules' that govern it
- poorly worded policies
- the complexity of the conflict provisions in the *Local Government Act 1989*.

I subsequently received a complaint that Moorabool Shire Council had not adopted my recommendations notwithstanding that a motion had been put to a Council meeting on 16 April 2008. Following media reports and other information received from witnesses, I decided to undertake an investigation into governance issues at Moorabool Shire Council.

In the course of my investigation a number of Councillors acknowledged that in retrospect the matter could have been handled in a better way. Also, I note the Chief Executive Officer (CEO) considered that my decision to investigate the Shire had already had positive impacts on contact arrangements with the Council and had accelerated the rate of positive change.

1 Conflict of interest in local government, Ombudsman Victoria, March 2008.

During my investigation my officers were advised that immediately post the amalgamation of the Shire it was a dysfunctional organisation. The Shire still appears to lag in performance against other Councils particularly in the areas of staff culture and customer service.

The Shire also appears to suffer from the proximity of larger Councils, which offer higher salaries and this does and will continue to impact on staff turnover figures. There was also the physical separation of Council offices which does not assist in promoting a shared corporate culture. Given this, it is clear that the Shire needs to continue to work to improve and enhance its internal and external culture and image.

I am concerned that some governance practices are not undertaken in accordance with published policies and procedures and some procedures, such as those relating to the operation of Councillors forums and strategy and policy planning forums, run counter to good transparent decision-making. In this regard I have recommended that the Shire review its governance policies and practices to ensure their consistency, transparency and implementation.

At the time of writing this report, the Code of Conduct for Councillors remains unsigned. My officers were advised that despite the motion being carried at a formal Council Meeting, there was reluctance by some Councillors to subsequently sign the document. This is unfortunate and it is of concern to me that Councillors should agree formally to acceptance of the code, by majority vote, and subsequently not undertake the actions agreed. This suggests inconsistency and lack of consensus on governance issues.

There was evidence that Councillors do become involved in day to day operational matters directly, as part of regular briefings and by membership of working parties. However, reportedly such situations do not occur as often as previously. Nevertheless, in my view such practices lead, as a minimum, to perceptions of inappropriate influence on staff in their work and a lessening of transparency of decision-making within the Shire.

It was also put to my investigators by witnesses that Councillors do declare conflicts of interest at formal Council meetings, then seek to speak to responsible staff about the matter in which they have declared a conflict of interest. It is my view that such actions are not in the best interests of good governance and transparency and reinforces my earlier recommendations to limit Councillors' contact with staff.

Clearly, Councillors should not be involved in day to day operations of the Council, nor should the Council adopt practices which limit transparency and accountability.

While I did not find evidence of serious wrongdoing within the Shire, I have made a number of recommendations in addition to those mentioned above, including that:

- procedures relating to Councillors briefings or forums not include any provision for direction of officers
- all reports and all recommendations to Council are accompanied by all relevant officers' and consultants' reports
- briefings are only used as a forum for clarification, information and advice and that all decisions to in anyway modify, change or reject staff recommendations must be made at formal Council meetings.

However, by all accounts the Shire has displayed marked improvements in its performance since amalgamation. It now has comprehensive and robust governance policies and procedures in place, supported by well functioning Audit and Internal Audit activities, although on occasions practice does not always accord with the policies in place.

BACKGROUND

In my Annual Report for 2007-08, I highlighted that local government continued to be a significant source of complaints to my office. I recognise that the actions of local councils directly affect residents on a wide range of matters, including planning and building, roads and parking, health and social services, waste and animal management, and local laws.

The role of local government is set out in section 74A of the *Constitution Act 1975 (Victoria)*, which states:

Local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

The *Local Government Act 1989* contains a set of principles to guide and regulate councils, which are administered by Local Government Victoria (LGV). In accordance with the Local Government Act, LGV works cooperatively with Victoria's 79 local councils to ensure that Victorians enjoy responsive and accountable local government services.

Within this environment, the elected council is responsible for the overall direction for the municipal district through long-term planning. It should adopt a strategic view of the future and make plans and policies to achieve this. A council then ensures that this is arrived at through its monitoring and reporting processes.

The implementation of these plans and policies and ongoing management of the council's affairs and advice is the responsibility of the CEO and his staff. The CEO is the only staff member the council appoints. The CEO is in turn responsible for the employment, work and conduct of council staff.

Moorabool Shire Council (the Shire) is a 2110 square kilometre shire, located some 80 kilometres west of Melbourne. The Shire was formed in November 1994 by the amalgamation of the Shire of Bacchus Marsh, Shire of Ballan, parts of the Shire of Bungaree and the City of Werribee. It has shire offices located on three primary sites, two in Bacchus Marsh and one at Ballan. It has seven democratically elected Councillors, some 230 staff, an annual operating budget of approximately \$29 million and a capital budget of \$10 million. While the Shire has local industries which are generally agriculturally based, roughly 40% of the population of approximately 26,000 commutes to metropolitan Melbourne, which borders the Shire. A significant number also work in the adjoining Ballarat Shire. The Shire

is bordered by seven other councils, including the significantly larger councils of Ballarat, Macedon Ranges, Greater Geelong, Melton and Hume.

Local government relies on public confidence that councillors and officers act responsibly and effectively in the best interests of the community. It is important that decisions made by councils are open and transparent and there are strong processes in place to ensure good governance.

In March 2008, I completed an own motion investigation into *Conflict of Interest in Local Government*². As a result of this investigation, I identified a number of areas that may leave councils vulnerable to criticisms regarding lack of transparency, integrity and opportunities for corrupt conduct.

As I outlined in my report to Parliament, I found that the problems related to conflict of interest resulted from failures of governance. These included:

- a lack of transparency, with decisions inappropriately made in private
- inappropriate interaction between councillors and officers
- poor organisational culture
- poor conceptual understanding of conflict of interest and the 'rules' that govern it
- poorly worded policies
- the complexity of the conflict provisions in the Local Government Act.

As a result of that report, I made 17 recommendations that have been supported by the government and implemented by many councils.

I was, however, disappointed to note that the Shire had not adopted my recommendations notwithstanding that a motion had been put to a Council meeting on 16 April 2008.

On that same day and following the council meeting, the then Councillor Wendy Kendall tendered her resignation from Moorabool Shire Council stating that she could not:

continue to fulfil the duties and activities required of me knowing that the chamber of which I am a part rejected the recommendations of the Victorian Ombudsman's Report into Conflict of Interest in Local Government of March 2008.

The Councillor's resignation generated much local media interest and I received a number of letters relating to this and the Shire's performance.

INVESTIGATION

Following the media reports and other information received from witnesses, I decided to undertake an investigation under the provisions of section 14(1) of the *Ombudsman Act 1973* (the Act) into governance issues at Moorabool Shire Council. On 13 May 2008 and in accordance with section 17(1) of the Act, I wrote to the Minister for Local Government, the Mayor and the Chief Executive Officer to inform them of my intention to do so and to advise that ‘the purpose of the investigation is to examine the administrative actions of Moorabool Shire Council in relation to adherence with good governance’.

Methodology

My investigation officers interviewed a number of staff and ex-staff from the Shire, as well as Councillors, former Councillors, the Mayor and other parties. These interviews, all conducted under oath, provided significant background information for my investigation as well as raising numerous issues relating to perceived organisational and governance problems within the Council. In all, close to 40 interviews were conducted. My officers were also provided with additional information from various sources during the course of the review.

In determining which issues to examine in more depth, my investigation focused on the following themes:

- transparency
- access to staff
- interests and
- conflicts of interest.

Additionally, my investigation also examined the governance policy environment and the general organisational health and culture of the Council.

My officers undertook a sample analysis of some the Shire's planning files; examined Council minutes over the past two years; and reviewed numerous reports related to the Shire's operations. A review of the policies and literature relevant to sound governance was conducted and information was obtained from the Shire including:

- Council's Meeting Procedure
- Governance Framework and Policies
- Audit Committee membership
- Minutes of Audit Committee and Governance Advisory Committee meetings
- Internal Audit reports over the past three years.

Adoption of My Conflict of Interest in Local Government Recommendations

On 9 April 2008, the Shire held a Governance Advisory Committee Meeting in which my report and its recommendations were discussed. A resolution to accept all my recommendations was carried. The Governance Advisory Committee comprises all Councillors as Executive Members. The CEO and the two General Managers also attend the meetings.

At the Ordinary Meeting of Council on 16 April 2008, the resolution from the Governance Advisory Committee was put to Council but lost. The Council then resolved:

that the recommendations of the Governance Committee of Wednesday 9 April 2008, be referred to another Governance Committee meeting to be held as soon as practicable within the next 4-6 weeks.

There was some debate about the original resolution and I note that my report was variously described by some councillors as 'an unworkable document... badly written... [and] ambiguous' and that my recommendations would hinder good governance by potentially delaying responses to Councillors' questions and that without the benefit of personal experience as a councillor, I was not qualified to comment. These comments reflected adversely on the Council's willingness to adopt and follow sound governance practices.

On Wednesday 15 October 2008, Council considered and carried further recommendations from the Governance Advisory Committee held on Wednesday 8 October 2008 in respect of my Report into Conflict of Interest. I note that all my recommendations, other than those directed at the Minister for Local Government were adopted, generally verbatim, from my report.

Having reviewed the sequence of events that was followed by the Shire in handling this matter, the Council's decision to consider and review my recommendations against its own policies and practices is not criticised, nor is its final decision on this matter. However, the failure by the Council to initially adopt my recommendations did not allay the public's perception that the Council lacked transparency and good governance and led to the resignation of one Councillor. At interview, a number of Councillors acknowledged that in retrospect, the matter could have been handled in a better way.

I also note that the Shire's Code of Conduct, which includes procedures for Councillors on the disclosure of 'Interests' and 'Conflicts of Interest' and which was agreed by the Council (by majority vote) in August 2007, has yet to be formally signed by all Councillors. This suggests inconsistency and lack of consensus on governance issues.

Interests and Conflicts of Interest

I decided to examine this issue to ascertain whether there was any evidence to suggest that the application of 'conflict of interest' or 'interest' principles within the Shire had any adverse impact on the administration of the Shire as had been alleged by one witness.

My officers identified some apparent inconsistencies in the application of the 'interest' and 'conflict of interest' rules. In one circumstance, a Councillor expressed an 'interest', yet in a later, very similar circumstance did not do so. In another, a Councillor declared a conflict of interest in a matter before Council in September 2007 'having had past business/commercial relations over the last 12 months' yet in September 2006, that same Councillor played a significant role in the discussions and voting on an application presented by the same parties. Witnesses also considered that there were other circumstances where a perception of an 'interest' or a 'conflict of interest' existed but no declaration was made by Councillors.

It was also put to my investigators by witnesses that Councillors do declare conflicts of interest at formal Council meetings, then seek to speak to responsible staff about the matter in which they have declared a conflict of interest. It is my view that such actions are not in the best interests of good governance and transparency and reinforces my earlier recommendations to limit Councillors' contact with staff.

My investigators also found that the Shire occasionally establishes working parties of a mix of Councillor(s) and staff to manage fairly significant projects being undertaken by Council. In one example, a Councillor was involved in a

working party overlooking the planning of an industrial development in the Shire. Not only did the Councillor own an adjoining property to the development but he subsequently declared a 'conflict of interest' when the matter was put formally to Council.

Councillors stated to my officers that Councillors 'interests' were well known to other Councillors and in the wider community, and in the examples discussed, Councillors agreed that 'interests' were declared prior to the formation of the working parties. In examining the relationship between Councillors and staff in working parties, Councillors advised that working parties were generally established by Council to expedite projects which were lagging and to bring some expertise to projects which did not exist within staff. The working parties are informal, generally comprise two or three Councillors and a similar number of staff, have no formal terms of reference or minutes and meet on an ad hoc basis as necessary to expedite the completion of projects. The 'Chairperson' of each working party reports to Council on the progress of the project. Councillors stated that the working parties offered a pragmatic solution to languishing projects. Some staff considered that the working parties did little to advance issues that are more properly the responsibility of the administrative staff.

Some witnesses considered that Councillors' knowledge of 'interest' and 'conflict of interest' principles was 'sketchy' whereas others stated that Councillors had a very good understanding of the principles. An examination of the Council minutes suggested a good understanding of the principles and identified regular declarations by Councillors and their absence from the chamber at time of voting.

The use of working parties does raise a concern about possible undue influence, either perceived or actual, that a Councillor might have on staff on the working party and the fact that such situations present opportunities for decisions to be made without the requisite transparency. This is especially the case where the working parties are non-executive and have no formal terms of reference or minutes associated with their activities.

I understand that the Shire has recently undertaken further training for staff on the application of conflict of interest principles and how they impact on their work at the Shire. I support this approach and encourage the Shire to continue to run such training programmes into the future.

On balance, I consider that the use of working parties lacks transparency and recommend:

Recommendation 1

That Councillors should not be assigned to informal working parties. Rather, Special Committees should be established in accordance with sections 88-93 of the Local Government Act to ensure that adequate records are kept of all meetings involving Councillors and that the public are able to attend. Preferably, all such Committees should have clearly defined Terms of Reference.

The Shire's Response

Agreed: The CEO referred to the new Council Meeting Framework and confirmed that such Working Party arrangements no longer exist in Moorabool Shire Council.

Transparency

Where matters are to go to formal Council meetings, staff are required to make presentations to Councillors at 'briefings' prior to formal Council meetings. Such briefings or forums are quite common across councils in Victoria and provide an opportunity for councillors to gain a better understanding of the issues raised in an application. Planning legislation can be quite complex and such briefings enable councillors to inform themselves of the planning regulations and their implications relating to particular applications. An analysis of the over 140 planning applications considered at formal Council meetings since January 2007 found that on only seven occasions was the officer's recommendation overturned. I consider that this attests to the professionalism of staff in the Shire.

In my view, however, these briefings should be '*used to advise councillors of new matters or the progress of existing matters under development, but not as a forum for debate on recommendations formulated for council meetings*' (See Recommendation 2 of my Conflict of Interest in Local Government Report).

In this regard, at a Special Meeting of Council held on 3 December 2007, the Council determined to establish its briefing arrangements, namely a Councillors Forum and a Strategy and Policy Planning Forum. Interestingly, the business to be considered at the Councillors Forums includes 'provision of direction to officers on issues which should be considered within reports to be presented to Council for deliberation'. It is my view that such a statement is ambiguous and leaves it open to Councillors to seek to change or add to officers' reports and recommendations outside the public chamber. Indeed, at interview some

staff and Councillors confirmed that in their minds, discussion at forums was indeed debate and as such, should more properly be raised at formal meetings. At interview, the CEO acknowledged that the wording of this point could and should be amended to overcome this issue.

My investigation identified that briefings in the Shire did go beyond advisory, information sessions. In one example, a staff member was requested to prepare an alternative motion to a planning application, and it was this alternative motion which was carried at the subsequent Council meeting. The Council considered this to be an acceptable practice as it represented a more expedient way to determine the matter. It was also suggested to my officers that this also overcomes potentially embarrassing circumstances where no Councillor is prepared to move an officer's recommendation at a formal Council meeting and no views are expressed.

In my view, this limited public understanding and debate as to what led to the alternative motion. I also consider that where a Councillor has reservations about an application, these should be openly discussed at the Council meeting and, if necessary, that is the forum at which matters may be referred back to staff for reconsideration.

At interview, Councillors stated that briefings were also a mechanism to manage statutory timescales on planning matters, to ensure that Council decisions were made on time and not referred to subsequent Council meetings and not taken out of Council hands and dealt with by the Victorian Civil and Administrative Tribunal (VCAT) without a Council decision on the matter. The statutory requirement to obtain the advice of other statutory bodies in certain planning matters also adds inherent delays to the process.

Notwithstanding this, I consider that it is inappropriate for councils to use such forums to discuss and debate applications and issues away from the public view.

Recommendation 2

That procedures related to Councillors briefings or forums do not include any provision for direction of officers.

The Shire's Response

Agreed: The CEO advised that proposals for a new 'Council Meeting Framework' are now being considered which will overcome these issues. The proposals are being presented to Council at the meeting on 18 March 2009. The CEO added that there will be no arrangements for 'alternate motions' in future.

In another planning matter, a recommendation was put to Council that was contrary to the advice of an independent consultant engaged by the Council to report on it and associated issues. The views of the consultant were not provided in the officer's recommendation to Council and hence not available to the public. My officers were advised that Councillors had considered the recommendations contained in the consultant's report before determining to go ahead with the project. Based on the interviews of Councillors, it was their consensus view that the project was justified and the consultant's report had not taken account of local issues. The apparent flow of decision-making on this matter saw the consultant's report discussed by Councillors as part of its consideration of the Council's Annual Plan and Budget. Once adopted in the budget, these are processed accordingly by council officers. While there appears to be nothing untoward in the decision, the decision-making process appears to lack transparency and my officers found no documented reasons for the decision to reject the consultant's recommendation.

This example raises questions about the level of transparency in Council decision-making afforded to the public. As part of the Council Plan and Budget, the public were aware of the Council's intentions in this matter and of course, the public could attend the meeting when the matter was put to Council. However, my officers were unable to determine whether the consultant's report was ever publicly available.

It is my view that the public, particularly rate payers, have the right to be informed of all relevant details relating to a recommendation and that relevant consultants' reports should be included in papers presented at Council meetings in a similar manner to officers' reports and recommendations.

Recommendation 3

That all reports and/or recommendations to Council be accompanied by all relevant officers' and consultants' reports.

The Shire's Response

Agreed: The CEO advised that this will be undertaken.

There is also the possibility that briefings lead to debate outside the public chamber and to limited or no debate at formal Council meetings. Some Councillors acknowledged that some briefings did include debate on issues, although they also advised that such occurrences were fewer than in the past. Councillors advised that up until the time of the vote at Council, they were still receiving representations, deputations and views from applicants and objectors to proposals and as such, did not form a final view until the conclusion of debate at the Council meeting.

A sample analysis of Council minutes attests to the fact that there is vigorous and lengthy debate at Council meetings. Importantly, however, two Councillors did state that following briefing sessions, they believed they had a clear view of how other Councillors would vote on an issue. Given this, I consider that debate outside the public arena can lead to views being formed inappropriately or as a minimum the public perception that this is the case.

Recommendation 4

That briefings be only used as a forum for clarification, information and advice and that all decisions to in any way modify, change or reject Council staff recommendations must be made at formal Council meetings.

The Shire's Response

Agreed: The CEO stated the new Council Meeting Framework will address this issue.

It was put to my officers that Councillors on occasions lacked confidence in the quality and comprehensiveness of the reports and recommendations of Council staff, and sought counsel and advice outside the formal Council environment. Some Councillors also advised that they viewed briefings as the opportunity to check the quality and completeness of officers' submissions.

I am concerned that such circumstances could lead to unnecessary workload on staff and lack of confidence in information provided to Councillors. To overcome this, I recommend:

Recommendation 5

That all reports and recommendations for Councillors' consideration and/or decision be signed off by one or more of the Executive prior to provision to Councillors. This might require for example that the CEO, the General Manager – Infrastructure and Shire Development and the General Manager – Human and Corporate Services certify as to the quality, accuracy and comprehensiveness of all formal submissions to Councillors.

The Shire's Response

The CEO agreed with this recommendation.

Access to Information

Some Councillors expressed a view that while their role as a Councillor was to focus on overall direction for the Shire, the expectations of their constituents were that they knew about and were able to respond to a raft of operational details. This is a challenge faced by all councillors: to receive adequate and sufficient information from officers about current and planned developments; to determine only those matters at council meetings that demand decision-making at that level; and at the same time minimise potentially adverse workload implications on staff.

I understand that Councillors now receive weekly written reports from staff on matters of interest and significance. I consider this to be a positive initiative.

Access to Staff

Point 2.3.5.4 of MSC Governance Framework & Policies states:

The Council (and each Councillor) relates to and communicates with the administration through the CEO or Directors as appropriate, who may however, as a matter of mutual convenience, delegate another officer to deal with or assist the Council, its Committees or individual Councillors, either generally or on particular matters.

Despite this, witnesses interviewed by my investigators cited examples where Councillors did approach staff directly, without recourse to the accepted procedures. It was also reported to my officers that on occasions views were expressed quite forcefully by Councillors. While I am led to believe that Council staff members were not requested to change their recommendations on such occasions, I question the appropriateness of such contact and the ability of staff to maintain an objective position. At least one witness stated that in their view, the clear intention of the Councillor in approaching the staff member was to influence the decision-making process.

Some Councillors acknowledged that on occasions they did contact Council staff directly. It was put to my officers that where a timely response was not received through the formal channels (that is, through the CEO or General Managers) or where an urgent circumstance needed immediate attention, such as an infringement or a safety issue, a number of Councillors considered it appropriate to make direct contact.

I am concerned that Councillors did not always adhere to the accepted procedures regarding contact with staff. It is the responsibility of the Mayor to ensure that Councillors' actions are appropriate and in accordance with the endorsed Council

Code of Conduct. It was also reported that the CEO had intervened at times to remind Councillors of the council policy in relation to both contact with council staff and 'acting with courtesy towards council staff and avoiding intimidatory behaviour'. Despite such interventions by the Mayor and CEO, my staff were advised that this was insufficient to prevent some Councillors from contacting staff members direct. It was also reported that on at least one occasion, the CEO and a Councillor had engaged in an argumentative debate in front of staff and that staff and consultants had been berated in open meetings by Councillors. Given this, it is unfortunate that more was not done at the time to prevent such occurrences.

I note the CEO considered that my decision to investigate the Shire had already had positive impacts on contact arrangements with the Council and had accelerated the rate of positive change.

Recommendation 6

That the Shire review its contact arrangements to ensure that all circumstances requiring Councillor contact with Council officers are adequately managed. The Shire might consider the appointment of a 'Councillor Liaison Officer' charged with the responsibility of ensuring that responses are provided to all email inquiries from Councillors within agreed timescales. This may minimise the CEO's involvement in operational issues and better meet Councillors' requirements.

The Shire's Response

Agreed in principle: The CEO stated that de facto arrangements are now in place in line with this recommendation.

Delegations

At the Shire, some decisions are made at officer level, under delegation from the council and in accordance with Council and State Government policies and guidelines, whereas other matters are referred to Council by way of recommendation by staff. For example, planning matters are referred to Council where:

- applications relate to matters previously considered by Council
- a refusal decision is recommended
- applications relate to a particularly sensitive area within the Shire; and
- one or more objections have been received.

Some staff reported to my officers that the need to regularly report to and brief Councillors took them away from other priority operational and strategic work.

The level of delegation given to staff differs from council to council across Victoria. The Councillors my staff spoke to recognise the impost on officers in the preparation of reports to Council but considered that needed to be weighed against the requirement for Councillors to be aware of potentially contentious issues being planned and undertaken in the Shire.

Recommendation 7

That the Shire regularly review delegations to ensure a balance is maintained between Councillors' requirements and workload pressures on staff.

The Shire's Response

Agreed: The CEO advised that all delegations are currently being reviewed and will be monitored to ensure the best balance is maintained for operational efficiency.

ORGANISATIONAL HEALTH AND CULTURE

Organisational Structure

In 2006, the Shire engaged a consultancy firm to 'review and match organisational capabilities to strategic intent'. The consultant's report was discussed and adopted at a Special Meeting of Council on 8 March 2006. At the time, the consultant concluded, among other things, that in:

its present form, the organisation does not have the capability and expertise to deliver on the Council Plan to the expected standards, quality and timeliness... [it] is reactive and only functions corporately in an intermittent way or for short term purposes...it is not outcome or output focused...Council appears to have lost confidence that the Directors will ever meet their expected standards for performance reporting.

Of note is:

- All four Directors in place before the consultant's review were subsequently displaced, at significant cost to Council (despite a Council resolution 'that... there will be no increase in the total employment costs for the Shire that have been projected for the 2006-07 Council Budget, resulting from the implementation of the Report recommendations').
- Both the two new General Managers appointed post the review have now left the Shire. The General Manager, Infrastructure and Shire Development resigned after 12 months and the General Manager, Human and Corporate Services after two years. Both reportedly raised a number of issues with Councillors and the Mayor including a lack of opportunity to engage in strategic direction setting and with the CEO's style of management. I understand that these concerns were taken up with the CEO by the Mayor and left with the CEO as part of his management responsibility. The CEO stated that concerns were not put directly to him by either party and that his offers to discuss issues with one of the previous General Managers had been rejected.
- Staff turnover remains at a high level. The consultant reported on turnover in his report and based on his figures (104 departures from a total staffing of 233), the average annual turnover rate between September 2001 and December 2005 was just over 10%. More recent figures indicate that from 1 July 2006 to 30 June 2008, total departures (82) as an average percentage of total employees (237) equate to some 17.3% per annum. This is a significant increase in staff turnover since the changes introduced following the consultant's report.

- Staff Satisfaction Surveys conducted in December 2003 and February / March 2006 have identified little significant improvement in staff satisfaction over that period. The surveys consisted of three statements and eight questions. I note that only very limited feedback was provided to all staff and I also note the following:

The largest gap recorded between staff's perception of importance of an issue and the level of performance achieved in both 2003 and 2006 was 'Management support from all levels' where the gap was 36% in 2006 and 39% in 2003.

What do you like least?

The highest per cent response (19% and 22%, 2006 figure first) was 'Management'. Responses included 'lack of direction/ no clear direction/ no direction from top (CEO)/ lack of purpose/ lack of decision-making'.

How do you think we could improve Moorabool Shire Council?

The highest per cent response (21% and 23%) was 'Management'. Responses included 'Realign direction/strategic focus, improve management, more professional leadership, too top heavy in senior management, replace management, who is CEO/CEO to go'.

If there is one thing that you could change about Moorabool Shire Council what would it be?

The highest per cent response (22% and 15%) was 'Management'. Responses included 'CEO to communicate to all staff/ CEO to be staff friendly/ high demands placed by CEO/CEO to participate more, reduce levels of management/top heavy, better manager/supervisor/senior management to manage staff'.

The CEO stated that much had changed since the last staff satisfaction survey in 2006, which had been undertaken at a time when the organisation was undergoing significant change and it was inevitable that some staff would be unhappy with this.

- A Local Government Community Satisfaction Survey in May 2008, found that 28% of the Shire's overall performance needed improvement, compared with 25% in respect of other councils in its category and 20% against all councils, and that this percentage had not changed from 2003 and 2006. 'Moorabool Shire's areas of strength in the eyes of its residents are health and human services and waste management, although its performance is similar to others in its comparable group on these measures' (page 9 of Survey). The reasons cited where improvement is needed, includes 'local roads and footpaths (32%), make decisions despite community consultation/ don't listen to community (24%), favour certain areas in Shire/local government area over others (24%), town planning policy and approvals (22%), communicating/leading discussion with community (22%)'.

During the course of my investigation, some witnesses stated to my officers that 'there was insufficient delegation to staff...there was little opportunity for strategic work: the onus of operational work was too intense... the organisation is reactive, not proactive... decisions are inconsistent'. Other witnesses reported that 'things were changing...more emphasis was being placed on strategic issues and better management of projects... there is less involvement by Councillors with staff'.

In other words, there was a marked difference of opinion whether the structural changes adopted following the consultant's report had achieved the results and outcomes desired and expected.

Councillors spoken to shared a common concern about some of the indicators of the Shire's performance and had raised these with the CEO. Councillors also stated that the change in the organisational structure and engagement of new staff had been a more costly exercise than had been originally estimated, with redundancy payments in particular costing far more than anticipated. They also considered that the initial two General Manager appointments had not been ideal choices. While both were well qualified and very capable officers, the size of the Shire demands that all staff engage in operational as well as strategic tasks and hence the expectations of the two appointees that they engage significantly in strategic work were not matched by reality, especially in the early days. It was also remarked that one appointee had no previous local government experience and this had proven to be a challenge for the person, the CEO and Council. However, while the Councillors acknowledged further improvement in the Shire's performance is necessary, they considered much had been achieved in general operational performance since amalgamation. My officers were advised that immediately post amalgamation, the Shire was a dysfunctional organisation and that while it continues to lag in performance against other Councils, particularly in the areas of staff culture and customer service, many positives had occurred over recent times, including:

- better financial control and a significant reduction in its underlying deficit
- a greater commitment to its Capital Improvement Program (CIP) where 80% of projects are now being completed on time and within budget
- better management of engineering projects
- better assets management
- enhanced Aged and Community Health Care programmes.

Councillors also indicated that the Shire suffers from the proximity of larger councils, which offer higher salaries, and this does and will continue to impact on staff turnover figures. Additionally, some Councillors suggest that the 'divide' between East and West, which existed prior to the amalgamation, lingers to some

extent. This situation, which is reinforced by the physical separation of council offices, does not assist in promoting a shared corporate culture.

Given the above, it is clear that the Shire needs to continue to work to improve and enhance its internal and external culture and image and as such I recommend:

Recommendation 8

That the Shire review its policies, practices and procedures for dealing with its clients to improve Council's image and performance in responding to public requests.

The Shire's Response

Agreed: The CEO added that in the last 18 months a number of initiatives had been successfully undertaken to improve and measure client service, including a 'Customer Service Charter'. He pointed by way of example to the Shire's recent 'LGPro Award for Excellence – Community Partnerships Initiative'. The CEO also acknowledges that there will always room to improve and this will be continuously reviewed.

Recommendation 9

That the Shire examine its internal networking and communication practices and structures and its lines of authority and control to seek to remove obstacles to clear and open communication and to improve corporate culture and shared values.

The Shire's Response

Agreed: The CEO stated that there are now a number of regular meetings in place to improve communications within the Shire. These include a weekly meeting of the Leadership Group; two-monthly meetings of the Senior Management Team; two-monthly meetings of the Consultative Group; and All Staff meetings on a quarterly basis. He added that in the case of the Senior Management and Consultative Management Group meetings, he does not set the agenda and only attends at a pre-determined time to respond to any issues raised. Further, he said that the All Staff meetings provide the opportunity for a two-way exchange of information.

Recommendation 10

That the Shire consider the viability, practicality and cost-effectiveness of consolidating staff in the one location, especially bearing in mind inefficiencies and the cultural divide associated with current arrangements. Such a review should be mindful of the need to establish and maintain customer service centres in strategic locations across the Shire.

The Shire's Response

Agreed in principle: The CEO advised that a proposal is being considered to consolidate Moorabool office staff in Bacchus Marsh. This will be dependent on the cost. The extent of consolidation will also need to be assessed.

Recommendation 11

That the Shire review its organisation to measure whether recommendations contained in the consultant's report have been met and to ensure that continuous improvement is achieved.

The Shire's Response

Agreed: The CEO advised that this is a continuing process with the last review on 30 September 2008.

Recommendation 12

That as part of the organisational review, the Shire re-examine the roles and relationships between the Councillors, the CEO and staff, to ensure that responsibilities are clearly defined and understood.

The Shire's Response

Agreed: The CEO advised that there is now a new format for Quarterly Reviews and senior staff and councillors are all attending the MAV's Top Team Leadership Program and Workshops.

The Role of the Chief Executive Officer

The CEO in any council plays a critical and difficult role. He or she provides the conduit between council staff and councillors and has to manage upwards and downwards. In the council environment, where elected representatives are part-time, whose motives for becoming councillors are varied, and whose backgrounds and education differ markedly, the CEO has to support and maintain the professionalism of staff, ensure their recommendations are soundly and legally based and present these to council in an intelligible, timely and appropriate manner. Equally, he/she has to respond to councillors' issues and concerns quickly and comprehensively and establish an environment based on trust, confidence and respect. This is not always easy, especially where councillors feel unable to meet their constituents' demands adequately and the CEO's performance and contract are subject to the oversight and decision of council.

At the Shire, the difficult role undertaken by the CEO was highlighted by the contrasting and conflicting views expressed by witnesses. In some instances, the CEO was criticised for becoming involved in operational issues, imposing unrealistic deadlines and changing priorities and in others for a lack of strategic direction.

Others presented a significantly differing view, presenting the CEO in a favourable light, including being prepared to defend and support staff, implementing changes to ensure that the impacts of new projects are evaluated and articulated and improving performance and operational management and reporting.

At interview, the CEO confirmed that in a Shire the size of Moorabool, the CEO and General Managers necessarily do become involved in operational matters. He stated that generally, these were projects of some political sensitivity, those of major significance and those where he had contacts in other organisations which would likely result in a better and more expeditious outcome for the Shire. He added that in such circumstances, it was likely that some staff might bridle at the involvement of senior staff in operational matters. The CEO also considered that criticisms about a lack of strategic direction reflected a situation well in the past: that there was now an increasing understanding of, support for, and a requirement to focus all activity on the objectives and activities laid down in the Council Plan. A number of witnesses commented favourably on the CEO's ability to get things done and to network effectively with colleagues across all levels of Government to the benefit of the Shire.

The Councillors (the ultimate employer of the CEO) were very positive about the professionalism, commitment and contribution made by the CEO. All were very supportive of the CEO.

It is not uncommon for the CEO of any organisation to be subject to criticism and conjecture, especially where the organisation is and continues to undergo significant change. That said, it is also incumbent on any CEO to take cognisance of comments about performance, whether perceived or actual, where there is some body of evidence to support any negative comments.

The CEO stated that he considered it inevitable that the CEO of any organisation would face some criticism, especially when the organisation was going through a period of significant change and improvement. He added that much had improved over recent times, and he believed much of the criticism came from disgruntled ex-staff. He further stated that in his view, he now has a fully committed and effective leadership team in place, with additional emphasis now being given to the third-tier management group.

POLICIES AND PROCEDURES

As stated earlier in this report, my officers examined documentation related to the Shire's governance practices. I consider that the Council has a number of comprehensive policies and procedures in place to position it well in managing governance issues in respect of the Shire. In particular, I note that the Shire has:

- Governance Framework and Policies
- Governance Advisory Committee
- Audit Committee (including 2 external members, one being chairperson)
- Internal Audit function.

A review of the minutes of these Committees and internal audit reports undertaken over the past two years suggests that the Shire has a robust and managed governance programme in place. In at least one instance, an independent audit review found that the Shire has 'sound business practices in place'. I was also pleased to note the regularity of Audit meetings and the subject of some internal audit reports over recent times, including:

- Planning Process Review
- Contract Management Review
- Information Technology Environment Review
- Planning Legislative Compliance Review
- Asset Management Review
- Fees & Charges Review
- Capital Works Review
- Fraud & Corruption Control Review
- Occupational Health & Safety Review
- Financial Planning Model Review.

In contrast, however, my investigation found on occasions actual practice is not undertaken in accordance with published policies and procedures, and some procedures, such as those relating to the operation of Councillors Forums and Strategy and Policy Planning Forums, run counter to good transparent decision-making.

Recommendation 13

That the Shire review its governance policies and practices to ensure their consistency, transparency and implementation.

The Shire's Response

Agreed: The CEO advises that its governance policies and practices are being reviewed.

Additionally, in some instances I was unable to readily establish the currency and relationship of the various policies presented to me.

Recommendation 14

That the Shire ensure version and change control procedures and processes are adopted and implemented for all its policies and procedures.

The Shire's Response

The CEO has agreed to this recommendation.

I also note that the Shire's Code of Conduct was adopted by Council in August 2007 and at that time a resolution was carried (by majority vote) that it be displayed on the Council website. The Code of Conduct is an explicit statement of the role of Councillors, how they will behave in terms of honesty, prudence, with care and diligence and with courtesy and respect. It includes commitments and procedures in respect of conflict of interest principles. It also covers dispute resolution procedures for Councillors and caretaker provisions during election periods. The code is a valuable document.

At the time of writing this report, the Code of Conduct remained unsigned. My officers were advised that despite the motion being carried at a formal Council meeting, there was reluctance by some Councillors to subsequently sign the document. This is unfortunate and it is of concern to me that Councillors should agree formally to accept the code, by majority vote, and subsequently not undertake the actions agreed. In my view, this policy represents a public commitment to good governance principles, and sign off and display provide evidence to this effect.

Recommendation 15

That the Shire finalise its Code of Conduct with signing off by all parties.

The Shire's Response

Agreed in principle: The CEO advises that the Code of Conduct has now been placed on its website. It will need to be put to all Councillors whether they will sign the code.

CONCLUSION

At the time of my investigation, the Shire appears to be a council still coming to terms to some extent with the changes resulting from amalgamation and the amendment to the Local Government Act. It also remains to some degree a 'divided' Shire, with quite distinctly differing 'East' and 'West' socio-economic and demographic areas and the physical separation of Shire officers in Bacchus Marsh and Ballan.

By all accounts, it has displayed marked improvements in its performance since amalgamation but still has some way to go especially in relation to organisational culture and customer service.

It has comprehensive and robust governance policies and procedures in place, supported by well functioning audit and internal audit activities, although on occasions practice does not always accord with the policies in place.

Evidence supports that Councillors do become involved in day-to-day operational matters directly, as part of regular briefings and by membership of working parties. However, reportedly such situations do not occur as often as previously. Nevertheless, such practices lead, at a minimum, to perceptions of inappropriate influence of staff in their work and lessen the transparency of decision-making within the Shire.

Clearly, Councillors should not be involved in day-to-day operations of the Council, nor should the Council adopt practices which limit transparency and accountability. It is important that there is no, nor any perception of, Councillor involvement in matters where they have an interest whether pecuniary or not. The Council has robust governance processes in place but needs to ensure that its policies and procedures are consistent and not contrary to good governance and transparency. Ongoing review of governance arrangements and policies is critical to ensure currency and compliance by all Shire staff and Councillors, and it is incumbent on the Mayor and CEO to set appropriate standards, to monitor adherence and performance and to counsel those who fail to meet the agreed arrangements.

It is also important that the Councillors adopt the Code of Conduct. This should represent a public statement and commitment to good governance principles and establish a culture of respect and integrity.

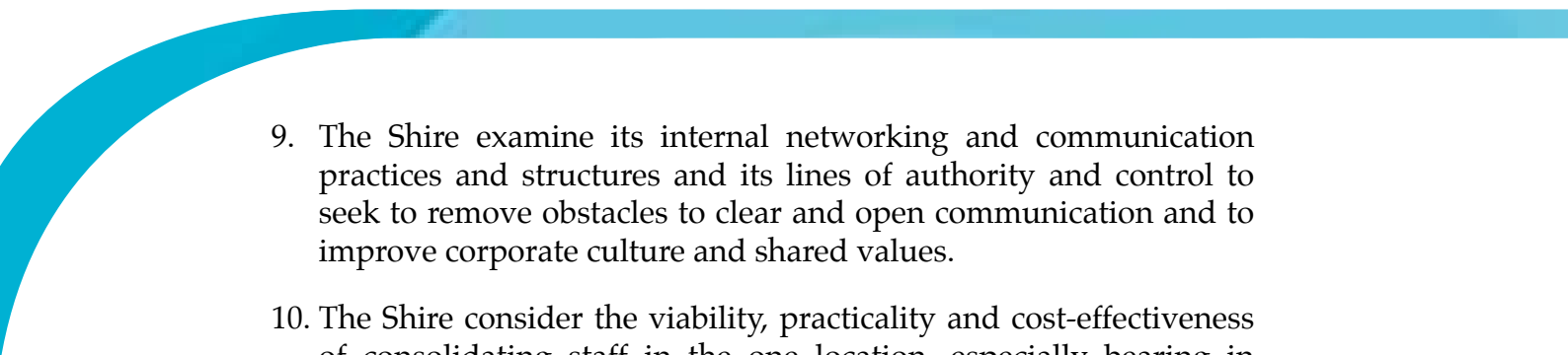


G E Brouwer
OMBUDSMAN

SUMMARY OF RECOMMENDATIONS

I recommend that:

1. Councillors should not be assigned to informal working parties. Rather, Special Committees should be established in accordance with subsections 88-93 of the Local Government Act to ensure that adequate records are kept of all meetings involving Councillors and that the public are able to attend. Preferably, all such Committees should have clearly defined terms of reference.
2. Procedures related to Councillors briefings or forums do not include any provision for direction of officers.
3. All reports and/or recommendations to Council be accompanied by all relevant officers' and consultants' reports.
4. Briefings be only used as a forum for clarification, information and advice and that all decisions to in any way modify, change or reject Council staff recommendations must be made at formal Council meetings.
5. All reports and recommendations for Councillors' consideration and/or decision be signed off by one or more of the Executive prior to provision to Councillors. This might require for example that the CEO, the General Manager – Infrastructure and Shire Development and the General Manager – Human and Corporate Services certify as to the quality, accuracy and comprehensiveness of all formal submissions to Councillors.
6. The Shire review its contact arrangements to ensure that all circumstances requiring Councillor contact with Council officers are adequately managed. The Shire might consider the appointment of a 'Councillor Liaison Officer' charged with the responsibility of ensuring that responses are provided to all email inquiries from Councillors within agreed timescales. This may minimise the CEO's involvement in operational issues and better meet Councillors' requirements.
7. The Shire regularly review delegations to ensure a balance is maintained between Councillors' requirements and workload pressures on staff.
8. The Shire review its policies, practices and procedures for dealing with its clients to improve Council's image and performance in responding to public requests.

- 
9. The Shire examine its internal networking and communication practices and structures and its lines of authority and control to seek to remove obstacles to clear and open communication and to improve corporate culture and shared values.
 10. The Shire consider the viability, practicality and cost-effectiveness of consolidating staff in the one location, especially bearing in mind inefficiencies and the cultural divide associated with current arrangements. Such a review should be mindful of the need to establish and maintain customer service centres in strategic locations across the Shire.
 11. The Shire review its organisation to measure whether recommendations contained in the consultant's report have been met and to ensure that continuous improvement is achieved.
 12. As part of the organisational review, the Shire re-examine the roles and relationships between the Councillors, the CEO and staff, to ensure that responsibilities are clearly defined and understood.
 13. The Shire review its governance policies and practices to ensure their consistency, transparency and implementation.
 14. The Shire ensure version and change control procedures and processes are adopted and implemented for all its policies and procedures.
 15. The Shire finalise its Code of Conduct with signing off by all parties.





Other reports

Crime statistics and police numbers
March 2009

Whistleblowers Protection Act 2001
Report of an investigation into issues at
Bayside Health
October 2008

Probity controls in public hospitals for the
procurement of non-clinical goods and
services
August 2008

Investigation into contraband entering a
prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

Investigation into VicRoads driver licensing
arrangements
December 2007

Investigation into the disclosure of
electronic communications addressed to the
Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force
at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's
tender process for the Cleaning and
Gardening Maintenance Contract -
CNG 2007
October 2007

Investigation into a disclosure about
WorkSafe and Victoria Police handling of a
bullying and harassment complaint
April 2007

Own motion investigation into the policies
and procedures of the planning department
at the City of Greater Geelong
February 2007

Conditions for persons in custody
July 2006

Review of the Freedom of Information Act
June 2006

Investigation into parking infringement
notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving
sexual assault
March 2006

Investigation into the handling, storage and
transfer of prisoner property in Victorian
prisons
December 2005

Whistleblowers Protection Act: Ombudsman's
Guidelines
October 2005

Own motion investigation into VicRoads
registration practices
June 2005

Review of the Freedom of Information Act:
discussion paper
May 2005

Review of complaint handling in Victorian
universities
May 2005

Investigation into the conduct of council
officers in the administration of the Shire
of Melton
March 2005

Discussion paper on improving responses to
sexual abuse allegations
February 2005

Essendon Rental Housing Co-operative
(ERHC)
December 2004

Complaint about the Medical Practitioners
Board of Victoria
December 2004

Ceja task force drug related corruption: second
interim report
June 2004