

**REPORT OF INVESTIGATION INTO
GLEN EIRA CITY COUNCIL**

Merv Whelan
Inspector of Municipal Administration
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C/- Local Government Victoria
Level 14, 1 Spring Street
Melbourne 3000
13 July 2005

The Hon Candy Broad MLC
Minister for Local Government
Nauru House, Level 21,
80 Collins Street
Melbourne 3000

Dear Minister

I have completed an investigation into governance and other issues at Glen Eira City Council in accordance with the Terms of Reference issued by you on 9 December 2004 and submit my report for your consideration.

In 1998, Dr Greg Walsh, an Inspector of Municipal Administration, identified poor governance as a serious concern for the Council and recommended that the deficiency be addressed by implementing a Code of Governance and engaging the services of a mediator. Seven years and two elections later, the Council has made no progress on this issue. Rather, its performance has declined.

The elected Council has failed, and continues to fail, to provide good government. This is primarily due to a serious breakdown in working relationships between Councillors and an incapacity and unwillingness by them to positively pursue any remedial action. Their conduct is characterised by hostile, acrimonious behaviour, denigration of colleagues and a lack of mutual respect and goodwill – behaviour which seriously inhibits their decision making capacity. They are widely perceived as ineffectual and irrelevant. According to the Councillors themselves, attempts to implement change have been completely ineffective because entrenched bitterness and resentment between them has negated any will to achieve it.

Glen Eira City Council is recognised as a high performing municipality due to the expertise and professionalism of the Chief Executive Officer and the administration. Their competence has, to a large extent, concealed the inadequacy of Councillor performance.

Concerns have arisen about the detrimental impact Councillor behaviour will have on the future performance of the City. The working relationships between several Councillors and the CEO have deteriorated and measures have been taken by the CEO and Directors to protect staff from negative Councillor influence.

The Council has been given ample advice, time and opportunity to rectify its deficiencies. A break in electoral representation will send a clear message that a continuing and serious failure to provide good governance is unacceptable. It should also initiate positive change towards restoring responsible elected representation to the City.

Accordingly, I recommend that you consider suspending the Councillors of Glen Eira City Council and appointing an Administrator for approximately four months, pending the general election of Councillors scheduled for the last Saturday in November 2005.

Yours sincerely



Merv Whelan
Inspector of Municipal Administration

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I. EXECUTIVE SUMMARY- INCORPORATING FINDINGS & RECOMMENDATIONS

1. INTRODUCTION

On 28 September 2004, the Glen Eira City Council requested the Minister for Local Government, the Hon Candy Broad MLC, to appoint an Inspector of Municipal Administration to investigate and report on matters arising out of an audit of Councillors' expenses by its Internal Auditor, Pricewaterhouse Coopers (PwC), in particular breaches by Councillors of the policy relating to the use of Council supplied telephones.

The Minister acted on the Council's request and issued Terms of Reference which stipulated that the Inspector review Council's governance practices including, but not limited to, relationships between Councillors and Council staff, and advise on actions being taken, or which should be taken by the Council to address any deficiencies. It should be noted that the Terms of Reference went beyond the PwC audit.

The investigation has been extensive, involving interviews with over fifty persons and an appraisal of a substantial volume of relevant information including Council minutes, transcripts of tape-recorded Council meetings, Council files, numerous memoranda between Councillors, and documents supplied by members of the public. Parts of interviews with Councillors were conducted under Oath or Affirmation and were tape-recorded.

In 1998, Dr Greg Walsh, an Inspector of Municipal Administration, conducted a review of Council governance and found that, while the City was well-managed it was not well governed. He recommended that steps be taken immediately to improve governance practices including:--

- development and adoption of a 'Code of Governance' involving behavioural protocols; and
- appointment of a Governance Advisor to facilitate implementation of the Code of Governance.

It is seven years since Dr Walsh submitted his recommendations and the Council has failed to effectively implement them. The need for the current investigation has arisen as a consequence of the continuance of inadequate governance practices by the Council.

2. FINDINGS

These findings address the matters raised in the Terms of Reference issued by the Minister on 9 December 2004 and are based on a detailed review of the Council's performance.

a. General Findings

i. Governance

The Council is very badly governed. There has been, and continues to be, a serious failure to provide good government. During the investigation it became clear that Councillors were not providing effective leadership, showed no inclination to focus on strategic direction and were almost completely immersed in divisive point scoring and interpersonal conflict. Their failure to provide good government is due to a breakdown in working relationships, characterised by a total absence of goodwill, respect and trust between Councillors, and an inability or unwillingness on their part to seriously attempt any remedial action.

These comments reflect the views expressed by almost all persons interviewed, including those of most Councillors, directors and senior management staff of the Council, the external members of the Audit Committee, the Internal Auditor, former mediators, ex-Councillors and members of the public (irrespective of which Councillor group those members of the public support). The performance of Councillors was regularly described to Inspectors as setting a poor example, an embarrassment to the organisation, and demeaning to local government.

ii. Management

The Council is very well managed. The high standards achieved are directly attributable to the corporate vision, strategic direction, leadership and professional competence provided by the CEO, directors and the management team. They have set the foundations for quality performance by focussing on financial stability, customer service, corporate accountability and a commitment to excellence. These achievements have been independently recognised by the substantial number of awards made to the Council in recent years for outstanding performance.

The Council is in a strong financial position. Rating levels and operating costs are relatively low in comparison to those of similar municipalities, debt is minimal, the operating position is sound, cash levels and working capital are satisfactory, and capital works investment is increasing to address identified infrastructure needs. Further, due emphasis has been given to risk minimisation, performance reporting and organisational accountability. Almost all parties interviewed by the Inspectors emphasised that these impressive achievements are due to the expertise and commitment of the Council administration.

b. Specific Findings

i. Council Meetings

The latter half of each Council meeting comprises items that are initiated by Councillors, or involve their participation without the guidance of reports and advice provided by Officers. During these stages the decision-making process often becomes dysfunctional, resulting in meetings being adjourned to complete unfinished business. The unruly behaviour, lack of effective debate and the inability of the Mayor to preserve order are indicative of deep divisions within the Council. This behaviour typically includes failing to work co-operatively, engaging in disruptive conduct, misusing sensitive information and harassing colleagues. Councillor performance during these sessions contributes materially to the widely held view that the elected Council is “ineffectual and irrelevant”.

ii. Code of Conduct

In 1998, Dr Walsh recommended that the Council adopt a “*Code of Governance*” and appoint a “*Governance Advisor*” to facilitate implementation of the Code, these initiatives being pivotal to improving working relationships between Councillors. No such Code was adopted.

Several recommendations have since been made to Council to implement a Code that sets behavioural standards, provides penalties for breaches of its provisions and requires each Councillor to be bound by its conditions. However Councillors have shown no inclination to manage their behaviour in this way.

In March 2003, each Councillor signed a Code that had been prepared some six years earlier by Commissioners, declaring that they would act with honesty and courtesy towards colleagues and staff. Councillors soon abandoned this commitment. In December 2004 the Council, to comply with Section 76C of the Local Government Act 1989 (the Act), adopted a “*minimalist*” Code that included processes for resolving disputes between Councillors. This decision was followed by months of bitter, divisive exchanges including an altercation between two Councillors who subsequently took action against each other in the Magistrates Court for assault.

Council’s conduct has been irresponsible, given its awareness of the critical need to remedy hostile working relationships and the likely adverse impact on organisational performance should the current trends continue. Councillors acknowledge that they will have difficulty reaching consensus on a suitable Code of Conduct, and more importantly, implementing a Code which requires them to behave according to agreed, acceptable standards.

iii. Mediation

Council attempts at mediation have not resulted in any lasting improvements to behaviour or relationships. In November 2002, the Council appointed an experienced mediator, but his services were terminated after four months because some Councillors believed the exercise was costly for little or no benefit, and better results would be achieved by adopting a new Code of Conduct. According to the mediator, the Councillor relationship problems were the product of a number of factors including personality clashes, politics, egos and personal differences, and in his view, it was very unlikely that the Councillors would ever work productively as a group.

In April 2005, Council agreed to again engage the services of a mediator. However, given the Council's lack of support for and failure to respond to mediation, the decision appears to be a reaction to the investigation rather than a serious attempt to resolve the problems. Councillors who initiated the resolution to make the appointment have since advised the Inspectors that they believe mediation will not work.

In fact, as at 4 July 2005, no further progress on appointment of a mediator had been made.

iv. Council / CEO Relationship

The Council's tasks of appointing, reviewing the performance of, and maintaining a productive working relationship with the CEO are of paramount importance for establishing and maintaining good governance. This relationship has been undermined by the antagonism and vindictiveness displayed by several Councillors, whose actions have the potential to threaten the excellent performance standards achieved by the organisation.

The approaches taken by Councillors during the past three years, both individually and collectively to address several significant issues involving the CEO, have been adversarial and retributive. In 2002 the Council ignored legal advice to provide the CEO with a safe workplace and disregarded his repeated requests for review of his performance in accordance with the Act. In February 2003, in an attempt to resolve these issues in accordance with his employment contract, the CEO served a Notice of Dispute on the Council. Council responded by seeking legal advice on the means by which his services could be terminated. However Councillors recently agreed in interviews with the Inspectors that the CEO was justified in initiating the dispute.

Further, the Council records contained no documentation regarding instructions given by Council to its solicitors in seeking this advice, or the legal advice received. The Inspectors obtained this information by serving notices on individual Councillors who had retained the documents in their possession in possible contravention of the *Public Records Act*.

v. CEO Re-appointment Process

Council's performance in dealing with the CEO's re-appointment during the seven month period from September 2004 to April 2005 exemplifies those weaknesses which collectively constitute bad government at Glen Eira. Councillors demonstrated a complete lack of leadership, an inability to make major decisions in a responsible manner, a disregard for financial risk factors, ignorance of the impact of their actions on organisational performance and staff morale, and a propensity to constantly disseminate confidential information in breach of the Act.

vi. Allegations against CEO

The Inspectors received a substantial number of written allegations from Crs Grossbard and Marwick, questioning the credibility and integrity of the CEO. An analysis these allegations revealed that their assertions were groundless.

Cr Grossbard had previously raised his issues with the Ombudsman, Local Government Victoria and Council's lawyers, and in some cases, all three. He received no support for his allegations from any of these sources and failed to advise the Inspectors (until asked) that he had previously, and unsuccessfully, sought support elsewhere.

Cr Marwick's allegations questioned the integrity of the CEO and the Director Community Relations (the DCR), by referring in some instances to the possibility of fraud or deceitful conduct being associated with their actions. Cr Marwick had also been provided with satisfactory explanations for her complaints prior to raising them with the Inspectors.

These persistent attempts by the two Councillors to discredit the performance of the CEO raise questions about the motives for their actions, the negative implications for CEO/Councillor relationships, and the adverse impact on the capacity of the Council to provide good government.

vii. Confidential Information

There are numerous examples of the release of information designated as confidential within the meaning of Section 77 of the Act. The disclosure of information to Leader Newspapers has been constant during the last six months due to the conflicts between Councillors arising from the CEO re-appointment process. The prevalence of this practice inhibits the capacity of Councillors to discuss confidential information, creates a climate of mistrust, and is indicative of a serious governance problem.

viii. Induction Programs

Induction programs available to Councillors are relevant and comprehensive. Nearly all Councillors agreed that information presented and courses / sessions offered to them were adequate, and that each Councillor has a responsibility to participate and educate themselves on roles and responsibilities. Any deficiencies in Council performance cannot be justifiably attributed to any shortcomings in the opportunities presented for induction and training.

ix. Consultation / Communication

Consultation and communication procedures and processes, both external and internal, are extensive and effective. External contact is made through many avenues including the Council Service Centre, Glen Eira News, Community Resource Guide, Council columns in local newspapers, the website, Best Value Reviews, community forums, position papers, planning conferences and the Annual Report.

Internal consultation and communication involves a Government Digest with a wide range of information for all Councillors, agenda papers, briefing meetings and various meetings at staff / Councillor level and between staff.

However there is a negative side to communication / consultation processes. This involves the issue of numerous accusatory memos and counter claims between Councillors. These actions are reflective of the acrimonious and distrustful nature of the Councillor/Councillor and Councillor/senior staff relationships, and have a negative impact on Council's ability to provide good governance. The administration has adopted the practice of retaining copious records as protection against possible accusations by Councillors.

x. Audit Committee

The Council Audit Committee is performing its role effectively and has a reputation of being the body which keeps the organisation "honest". It has a strong focus on risk management, effective financial controls, information technology and compliance issues. The Chairman recently expressed his concern that the actions of Councillors during the CEO re-appointment process increased the potential risk of action against the municipality for negligence. Also, despite several requests from the Chairman, the Council has not agreed to adopt the Best Practice Guidelines for Local Government Audit Committees.

xi. Council Expenses Policy

Several Councillors appear to have breached the Council's Civic Expenses Policy. The policy stipulates that Council supplied telephones must not be used for electoral purposes or private purposes other than mobile phones for "*incidental private use*".

Some Councillors appear to have used their phones in contravention of the policy; in particular Cr Goudge who made over 20,000 calls in 30 months at a cost in excess of \$12,000. Irrespective of the Council's policy, the Act provides that Councillors are entitled to be paid only for expenses incurred by them in performance of their civic duties and that they must act honestly and not make a gain from improper use of Council supplied facilities

While Councillors have agreed that the policy should be "...tightened...", they have not yet made any decision to do so. Action must be taken to recover costs incurred by Councillors deemed to be in excess of that permitted under the policy.

xii. Cr Goudge – Qualification to be a Councillor

Cr Goudge's qualification to hold the office of Councillor has been the subject of investigation. Cr Goudge was initially elected as a Councillor in March 2000 and re-elected in March 2003. It appears that during 2002 he may have lost his qualification to be a Councillor and breached the Act by acting as a Councillor while incapable of doing so. This matter is currently before the Court.

3. STEPS TAKEN BY COUNCIL TO ADDRESS ITS DEFICIENCIES

Analysis of Council's performance in addressing and remedying the difficulties underlying its failures raises two fundamental questions.

a. Are there reasonable grounds for believing that there has been a serious failure to provide good government?

The Act requires that the Council perform its functions for the "*good government*" of the municipality, and "*... provide leadership for the good governance of the municipal district and the local community*". (*Local Government Act*, Part 1A)

Good government and good governance are interdependent, requiring establishment of an organisational culture based on goodwill and trust, adherence to principles and values, honest open communication, productive working relationships, effective decision-making processes, a focus on strategic planning, sound performance management and an emphasis on accountability.

This report clearly establishes that Glen Eira Councillors have consistently failed over several years to satisfactorily discharge their responsibility to provide good government. Councillors have:--

- created and maintained divisive and hostile working relationships, using acrimonious and inflammatory communication to denigrate colleagues, whilst making no attempt to resolve their differences;

-
- displayed a total disregard for the negative impact of their actions on staff performance and welfare; attempted in the face of public criticism to divert blame for their own actions and decisions on to staff, and caused the CEO and directors to take appropriate measures to protect staff from negative Councillor influence;
 - participated in dysfunctional debate and decision-making processes, and put the Council and themselves at financial risk by their injudicious actions during the recent CEO re-appointment processes;
 - neglected their responsibility to engage in constructive debate on strategic planning and resourcing of City services;
 - neglected over the last three years to treat the CEO fairly and responsibly as required under the Act, in particular by:--
 - failing to provide him with a safe working environment in accordance with legal advice;
 - failing to properly review his performance;
 - incompetently handling his re-appointment process; and
 - consistently making unfounded allegations against him.
 - appeared to commit breaches of the Act by disclosing confidential information, by not adhering to the Civic Expenses Policy and by not complying with the Public Records Act; and
 - abdicated their responsibility under the Act to provide leadership.

Glen Eira City Council is recognised as a high performing municipality due to the expertise and professionalism of the CEO and the administration. It is widely acknowledged that the Councillors have played little or no part in achieving this success. Rather, in abandoning their responsibilities, they have placed a substantial burden on the staff whose competence and commitment have, to a large extent, concealed the inadequacy of Councillor performance.

b. What steps has the Council taken to remedy its deficiencies?

The Walsh Report 1998 identified poor governance as the main problem facing the Council and recommended that immediate action be taken to adopt and implement a 'Code of Governance' and engage the services of a 'Governance Advisor' to facilitate the process.

Council took no action to adopt a Code of Conduct as recommended by Dr Walsh, other than to adopt a 'minimalist' version some seven years later in December 2004, to comply with the Act. During the months following this decision Council's conduct degenerated to a level which could be accurately described as dysfunctional and irresponsible. The acrimonious and divisive nature of Councillor relationships meant that their capacity to make decisions on major issues such as reappointing the CEO was severely compromised and placed the Council, and Councillors personally, at financial risk.

Councillors recognise that it will be difficult to reach consensus on a Code of Conduct which effectively controls and manages their behaviour because the goodwill, respect and trust required to prepare and adopt the Code, let alone implement it, are completely lacking.

Despite having engaged the services of two highly skilled mediators, the Council has been unsuccessful in achieving any lasting improvements in behaviour and relationships.

Most Councillors agreed that mediation will not succeed because bitterness and resentment have become entrenched and they do not have the will or desire to mediate in good faith.

The Inspectors commenced duties on 1 February 2005. Expectations were widely and understandably held that Councillors would make an attempt to improve their performance during the investigation process. Quite the contrary. As vindictive and abusive outbursts intensified, working relationships continued to deteriorate.

The Council has clearly demonstrated that, despite the opportunities available and advice given to change its behaviour, it is incapable of doing so.

4. ACTIONS FOR CONSIDERATION

Action is required to restore effective responsible government to the City of Glen Eira. There are two alternatives.

The first is for the Minister for Local Government to set performance objectives designed to restore good government by:-

- correcting the Council's unproductive and divisive behavioural practices and working relationships;
- focusing its attention on addressing the major issues for which it has responsibility under the Act; and
- monitoring the results achieved through an Inspector of Municipal Administration appointed for the purpose.

Successful implementation of this proposal is totally dependent on Councillors' willingness to genuinely commit to mediation and to manage their behaviour through a Code of Conduct. Councillors have shown neither the intent nor the capacity to successfully implement these processes, having failed repeatedly over a period of seven years since the Walsh Report to do so.

Given the disruptive and often undisciplined behaviour witnessed by the Inspectors during the investigation, there is no reason to believe that this method of addressing Council's deficiencies will have any impact.

This strategy is not recommended.

The second is for the Minister to recommend to the Governor-in-Council that an Order be made, pursuant to Section 219 of the Act, to:-

- suspend all Councillors of the Council; and
- appoint an Administrator for the Council. The Administrator would hold office for approximately four months until a general election of Councillors is held on the last Saturday in November 2005 in accordance with the provisions of Section 31(2)(b) of the Act. While a longer suspension would be more appropriate, this is not possible because Section 31 of the Act requires that a general election be held in November 2005.

Councillors have abdicated their responsibility to provide leadership and good governance. Concerns have arisen about the destabilising impact which unruly Councillor behaviour is having on the performance and well being of Council staff and ultimately on service standards, and will have in future if allowed to continue.

Where Councillors have been given ample opportunity to rectify their deficiencies, and continually fail to effectively discharge their governance responsibilities, the Act provides the means by which problems of this nature, in this case long-standing, may be addressed.

Nillumbik Shire Councillors were suspended for five months in 1998 for a breakdown in governance similar to that experienced by Glen Eira City Council – disruptive behaviour, failure to work co-operatively, dysfunctional decision making and an inability to mediate. Darebin City Councillors were suspended in 1997 for comparable reasons.

A break in electoral representation at Glen Eira City Council is required to send a clear message that a serious failure by Councillors to provide good government, coupled with an incapacity or unwillingness to address the underlying causes, is unacceptable. It will also be a positive step towards restoring responsible elected representation to the City.

5. RECOMMENDATIONS

- a. That the Minister give consideration to :--
 - (i) Recommending to the Governor in Council that all Councillors of Glen Eira City Council be suspended; and
 - (ii) Appointing an administrator for the Council who shall remain in office until the general election for the Council is held on the last Saturday in November 2005.
- b. That steps be taken to recover from Councillors any telephone costs that have been incurred by them in excess of that allowed under Council's Civic Expenses Policy;
- c. That appropriate action be taken against Cr Peter Goudge for continuing to occupy the office of Councillor in 2002/03 when allegedly disqualified from doing so. (This action has been initiated.)



Merv Whelan
Inspector of Municipal Administration
13 July 2005

II. BACKGROUND AND APPROACH

1. ESTABLISHMENT OF REVIEW

a. Appointment of Inspector of Municipal Administration

On 9 December 2004, Candy Broad MLC, Minister for Local Government (the Minister), appointed me, in my capacity as an Inspector of Municipal Administration under Section 223A of the Local Government Act 1989 (the Act), to undertake an investigation at the Glen Eira City Council (the Council).

Ms Jenny Morris, Legal Analyst, Local Government Victoria, Department for Victorian Communities (DVC), was appointed to assist me. Ms Morris is also an Inspector of Municipal Administration.

The investigation has been carried out using powers prescribed by the Act, namely Section 223B, "*Powers of inspectors of municipal administration*", and Section 223C "*Offences relating to investigations*".

b. Action Taken by the Council to Initiate the Review

In March 2004, the Glen Eira City Council appointed its Internal Auditors, Pricewaterhouse Coopers (PwC), 333 Collins Street, Melbourne 3000, to conduct an independent review of the Council's Civic Support and Expenses Policy, including an assessment of compliance by Councillors with the terms and conditions of that policy.

PwC submitted a confidential report to the Council on 16 September 2004 that contained its findings and recommendations (PwC Report).

The Council considered the report in "*Confidential Business*" at an Ordinary Meeting held on 27 September 2004, and resolved to:-

- " (a) *Write immediately to the Minister for Local Government to:-*
- (i) *request the Minister to appoint a Municipal Inspector in accordance with Section 6.5 of the report attached to Agenda Item 12.3 and ask that the Municipal Inspector investigate and report on such matters as the Municipal Inspector sees fit; and*
 - (ii) *request of the Minister that the report of the Municipal Inspector be made public as soon as possible.*
- (b) *Authorise a public statement to be made immediately that says "Glen Eira City Council has written to the Minister for Local Government asking the Minister to appoint a Municipal Inspector to investigate and report publicly on matters arising from an audit of Councillors' expenses and use of Council facilities."*

Council wrote to the Minister on 28 September 2004, requesting that the appointment be made.

c. Terms of Reference

On 9 December 2004, the Minister established Terms of Reference to be used by the Inspector in conducting the review. These were:-

- To provide an overview of governance at Glen Eira City Council, including but not limited to relationships between Councillors and Council staff; the adequacy of governance policies in place at the Council, and compliance with those policies by Councillors and staff, particularly relating to financial matters; use of Council property and resources; the adequacy of Councillor induction programs; and the operation of the Audit Committee of Council.
- To advise on the action that is being taken and should be taken to redress any deficiencies in governance at Glen Eira City Council.
- To advise on any other matters that may arise as a result of the review by the Inspector of Municipal Administration.

2. METHOD OF APPROACH

a. Sources of Information

i. Interviews

The process involved interviews with over fifty persons, including the Mayor, Councillors, the Chief Executive Officer (the CEO), Council Staff at Director and Senior Management levels, ex-Councillors, former Council mediators / facilitators, external members of Council's Audit Committee, the Internal Auditor (PwC), representatives of the Auditor General's Office, representatives of the Municipal Association of Victoria, several local resident / ratepayer groups and a substantial number of local residents / ratepayers. A full list of those interviewed is attached. **Refer Appendix 1.**

Parts of interviews with Councillors were conducted under Oath or Affirmation and were tape recorded. A list of topics addressed in these discussions is attached. **Refer Appendix 2.**

Evidence given by some interviewees is supported by Statutory Declarations.

ii. Written and Other Material

A substantial volume of relevant information was obtained from Council Minutes, transcripts of tape recorded Council Meetings, Council files, memoranda between Councillors and between Councillors and other parties, including staff. Many of those interviewed submitted documentary evidence in support of their views.

The Inspectors obtained copies of the PwC Report and records compiled in support of that report, telephone records for each Councillor and material from several sources relating to the electoral eligibility of Cr Peter Goudge.

The Inspectors attended two meetings of the Council as observers, including those parts of the meetings which dealt with Confidential Business.

b. Procedural Fairness

I have at all times endeavoured to conduct this review in a fair and impartial manner in accordance with the principles of natural justice, allowing all persons interviewed to present any material, evidence or argument which they deemed may be relevant to the investigation.

c. Acknowledgement of Assistance

I wish to record my appreciation for the co-operation of all those who provided information or otherwise participated or assisted with this review.

I acknowledge the able assistance provided to me by Ms Jenny Morris, Legal Analyst, Local Government Victoria.

3. OVERVIEW OF THE COUNCIL

The City of Glen Eira is situated in inner south east metropolitan Melbourne. It includes the suburbs of Bentleigh, Bentleigh East, Carnegie, Caulfield, Caulfield South, Caulfield North, Caulfield East, Elsternwick, Gardenvale, Glenhuntly, McKinnon, Murrumbeena, Ormond and part of St Kilda East.

It was created by Order of the Governor in Council on 15 December 1994 by merger of the former City of Caulfield with part of the former City of Moorabbin.

It is subdivided into three Wards, with three Councillors elected to represent each Ward. The Councillors elected in March 2003 (with year first elected) are:-

Jasper Ward

- Cr Margaret Esakoff (2003)
- Cr Jamie Hyams (2003)
- Cr Bob Bury (2003)

Mackie Ward

- Cr Veronika Martens (1997)
- Cr Peter Goudge JP (2000)
- Cr Rachele Sapir (2000)

Orrong Ward

- Cr Alan Grossbard JP (1997)
- Cr Dorothy Marwick (2000)
- Cr Noel Erlich (1997)

Cr Esakoff is currently the Mayor, having been elected to the position on 20 December 2004. Mayors elected since 2002 are as follows:-

- Cr Goudge (March 2002 to March 2003)
- Cr Marwick (March 2003 to March 2004)
- Cr Bury (March 2004 to December 2004)

The City has an area of 38.7 km², a population of about 125,000 and a total annual budgeted revenue of \$86.7m (2004/05).

The Council is in a relatively strong financial position. Liabilities are low; cash reserves and working capital are very positive; surplus results on operations are being achieved; and the rating level and expenditure level per assessment are lower than almost all other Councils in the LGV Inner Metropolitan Municipalities group.

The challenges facing the Council are stated on Page 4 of its Annual Report for 2003/04:-

“... there is the challenge of reviewing our ageing assets and facilities; the challenge of protecting the character of our residential streets while also meeting increased housing needs; the challenge of maintaining essential services to meet the needs of an ageing and increasingly diverse population; the challenge of generating sufficient funds to apply to capital works and service priorities; and the challenge of resisting cost shifting from other levels of government.”

4. GOOD GOVERNANCE PRINCIPLES

a. The Good Governance Guide

The Terms of Reference require that an overview of governance at Glen Eira City Council be provided. In order to clarify the scope of what may be legitimately termed “governance”, reference was made to the Good Governance Guide produced by the Good Governance Advisory Group in March 2004 comprising representatives from the MAV, the VLGA, the DVC, LG Pro and various local governments.

The main themes which, according to the Guide, are descriptive of governance include:-

- Organisational culture;
- Roles, responsibilities and working relationships;
- Decision making processes;
- Strategic planning;
- Performance management; and
- Accountability.

These broad concepts have been used as bases for appraising the various issues that have been addressed in this report.

b. The I.C.A.C. Report

The Independent Commission Against Corruption (I.C.A.C.), in conjunction with Local Government Managers Australia, issued a report entitled "*Governance Health Check*" in June 2004, which contains a substantial volume of material that is equally relevant to local government in Victoria and therefore Glen Eira City Council.

The report emphasises four critical elements of governance:-

- Ethics and Values
 - a Code of Conduct, adopted values, conflicts of interest and internal reporting;
- Risk Management
 - Internal controls, audit, legislative compliance, Councillor expenses and privacy (confidential) matters;
- Decision Making Processes
 - Management Plans, Delegations, Council Meetings, Committees and Policies and Procedures; and
- Monitoring and Review
 - Annual Report, Performance Management and Customer Service.

These criteria also provide useful reference points for assessing the Council's performance and complement the approach taken in the Good Governance Guide.

5. MATTERS IDENTIFIED FOR REVIEW

During the course of the investigation, a number of issues emerged which required analysis and evaluation in addressing the Terms of Reference.

These include :-

- the findings and recommendations of a previous investigation of the Council conducted by Dr Greg Walsh in 1998;
- events which have occurred during the last three years that influence Council's current performance;
- the performance of the Council in addressing its roles and responsibilities under the Act, including debate at Council Meetings, working relationships between Councillors, attitude taken to implementing a Code of Conduct, relationship with the CEO and the processes followed in re-appointing him, adherence to an adopted Civic Expenses Policy, attempts at mediation, and difficulties in dealing with confidential information;
- the performance of the CEO and the administration;
- other governance matters such as the role and performance of the Audit Committee, risk management, and Councillor induction processes; and
- Cr Goudge's qualification to be a Councillor.

The Inspectors are aware that some Councillors have become involved in circumstances outside their duties as a Councillor which have negatively impacted on their relationships with other persons or organisations. This report has taken account of such matters only where they impact on their role as a Councillor.

6. THE WALSH REPORT - 1998

a. Commentary

Dr Greg Walsh, an Inspector of Municipal Administration, was appointed on 4 June 1998 by the then Minister for Local Government, the Hon Rob Maclellan MP, to *Undertake a Review of the City of Glen Eira*”.

The Minister’s decision to conduct the review was made at the request of the Mayor of Glen Eira, Cr Barry Neve JP, the independent Chair of the Council’s Audit Committee, Mr David Gibbs, and the Council’s then CEO, Ms Margaret Douglas. The request followed a confidential letter of complaint sent to Mr Vern Robson, the then Director of Local Government Operations in the Department of Infrastructure, by Cr Alan Grossbard on 21 May 1998.

Amongst other things, Cr Grossbard’s letter of complaint expressed *“grave concerns in the manner of which the CEO has conducted the affairs of Council”*. The particular focus of the Councillor’s concerns involved the processes and procedures surrounding recent staff changes and consultancy arrangements at Glen Eira.

The Terms of Reference required the Inspector to undertake a review of Glen Eira that included an examination of the matters raised in the letter of complaint and to consider *“...whether there should be any changes in processes and procedures at Glen Eira Council”*.

The Report, which was submitted in September 1998, contained the following significant findings:-

“Glen Eira City Council has performed at a high level since its formation in 1994 and in a large part this can be attributed to the overall competence of the Chief Executive Officer, the senior officers and the staff of the Council”

“There are some inadequacies in governance practices at Glen Eira.”

“It is a well managed, but not so well governed municipality”;

“It is of paramount importance that steps are taken immediately to improve these [governance] practices there is some evidence that poor governance practices at Glen Eira over recent months, are beginning to impact negatively on the management and overall performance of the Council. Staff morale is low and some senior officers have indicated to the Inspector that they are considering leaving Glen Eira;” and that

governance difficulties *“require detailed attention and involve changes not just to structures and processes, but also to relationships, attitudes and mindsets”*.

Dr Walsh's recommendations included that the City:-

- develop and adopt a 'Code of Governance' involving behavioural protocols and a shared understanding of roles and responsibilities;
- appoint a Governance Advisor to facilitate the implementation of the "Code of Governance"; and
- review its current Councillor representation with a view to increasing the number of Councillors from six to nine.

The following paragraph taken from the Walsh Report is pertinent to the current investigation:-

"In the early stages of the review, the Inspector's endeavours to understand what had happened at Glen Eira were inhibited by divisions among councillors, profound difficulties in the relationships between some councillors and senior officers and the widespread use of innuendo, hyperbole and the psychology of suggestibility in discussions and correspondence about the matters under review. At the time of writing this report it would seem that, in general, broader perspectives have been recovered at Glen Eira. However, these will be tested by Council's capacity and will to deal with the findings and recommendations that emerge from this investigation. If Council, as an organisation, successfully responds to the 'governance' issues that this report puts before it, benefits will accrue not only to the Glen Eira community but also to the entire local government industry."

This Report will demonstrate that the concerns expressed by Dr Walsh about the Council's capacity to deal with governance issues (ie the findings and recommendations referred to above) were well-founded.

b. Conclusions

The Walsh Report 1998 identified poor governance practices at the City of Glen Eira as a significant problem requiring "detailed attention" and recommended the adoption of a "Code of Governance", and appointment of a Governance Advisor, to facilitate the implementation of the Code.

III. ORGANISATIONAL PERFORMANCE

1. COUNCIL MEETINGS / DECISION MAKING

a. Background

Council meetings are held once every three weeks on a Monday commencing at 7.30 p.m. The Inspectors attended the Council meeting held on 7 February 2005 and the adjourned meeting held on 14 February 2005. This involved the sections of the meeting that were open to the public and also those held “*in camera*”. They also listened to tape recordings of several other Council meetings.

The meeting agenda issued by the CEO typically contains the following items:-

1. Apologies
2. Disclosure of Direct or Indirect Interest
3. Confirmation of Minutes of Previous Council Meetings
4. Reception and Reading of Petitions and Joint Letters
5. Documents for Sealing
6. Reports by Delegates Appointed by Council to Various Organisations
7. Reports from Councillors
8. Presentation of Officer's Reports
9. Urgent Business
10. (a) Request for Reports
(b) Councillor Questions
11. Public Questions to Council
12. Consideration of Items in Camera

The Good Governance Guide 2004 emphasises the importance of good decision making, including in particular, those decisions made at Council meetings.

The CEO and the administration are responsible for preparing and submitting reports for Council consideration. The CEO has set the standards for these reports and they are contained in an internal document titled “*Rules of the Road*”. Some of the more important rules governing presentation reports are that they must:-

- be submitted by the organisation, not by separate units;
- be subjected to a rigorous review process;
- be checked for factual correctness;
- cover all possible alternatives or options;
- identify resources required and the impact of the use of these resources on the organisation;
- provide a clear statement of what is proposed and the objective to be achieved;
- contain all relevant supporting information; and
- provide a clear recommendation.

b. Commentary

It became apparent to the Inspectors that, when considering Items 1 to 8 on the agenda, the behaviour and participation by Councillors was for the most part responsible, business was transacted smoothly and decision making was mostly sound. However, when dealing with items 9 to 12, the whole tone of the meetings degenerated into open hostility, with point scoring and personal abuse becoming the norm and decisions being made on the run without proper notice and advice. Councillors and senior staff agreed that this is a typical pattern of behaviour. It is time consuming, unproductive, distracts from the business at hand and often results in the need to adjourn meetings to complete unfinished business.

The Council is clearly divided on a 5:-4 basis and this split becomes obvious when discussion is focused on contentious issues. Poor working relationships and the absence of goodwill are impediments to efficient decision-making. Examples include the CEO re-appointment process, and the adoption of the Civic Expenses Policy. Each of these matters is discussed in detail in this Report.

Interviews with each Councillor about Council meeting performance brought these typical responses from both groups:-

- the first half of the meeting is normal, then there is a total breakdown. "*The wheels fall off*";
- the second half is characterised by venting of animosity, harassment and intimidation;
- the staff and public have a low opinion of Councillor performance, "*...it is a joke*";
- Council is seen as irrelevant;
- it is political mischief, nothing to do with Council business (Cr Marwick);
- it is worse now than when Walsh did his inspection in 1998 (Cr Grossbard).

In response to the question as to whether there was a will to improve, some answers were negative, others non-committal.

The Inspectors reviewed a number of reports submitted to Council meetings and are satisfied that the high standards set by the CEO are being achieved. However, in dealing with staff reports, there are occasions when Councillors have not approached the decision making process responsibly. This is evidenced for example, by the decision regarding the Caulfield Child Care Centre – details of which are given in Part III, Section 11 of this report.

c. Conclusions

Those parts of Council meetings which are Councillor driven ("*second half*") become dysfunctional and are indicative of deep divisions between Councillors. This is a serious impediment to the effective operation of the Council and is a major contributing factor to the widely held view that Councillors are ineffectual and irrelevant.

The productive outcomes generally achieved in the first stage of Council meetings are due substantially to the clear, comprehensive and accurate reports presented by the CEO and the staff.

2. CODE OF CONDUCT

a. Pre March 2003

A Code of Governance was prepared by Commissioners in 1997 but it appears to have had little impact.

The Walsh Report 1998 contained a recommendation that a “Code of Governance” be adopted. In 1999 John Warburton, the appointed Mediator, unsuccessfully attempted to assist Council to adopt a suitable Code.

In 2002, Terry Bramham of Macquarie Lawyers, recommended that Council adopt a Code by Local Law, and incorporate sanctions. This advice was not followed.

b. Code “Adopted” by Council March 2003

Following the Council elections in March 2003, each of the nine Councillors signed a declaration by which he / she:-

- acknowledged they had received and read a copy of the Glen Eira Code of Conduct (developed by Commissioners); and
- undertook to perform their duties as a Councillor in accordance with that Code.

The Code contained the following provisions :-

i. Principles

That Councillors:-

- act with honesty, integrity, exercising due care and diligence;
- make informed decisions in the best interests of the community; and
- declare pecuniary and personal conflicts of interest;
- respect confidentiality of Council information; and
- recognise that staff are accountable to the CEO and through him to the Council as a whole.

ii. Use of Council Resources

Council equipment, stationery, resources and facilities to be used only for the performance of duties as a Councillor.

iii. Impartiality

Councillors to perform their duties without discriminating against or favouring particular parties.

iv. Conduct Towards Other Councillors and Council Officers

Councillors to be courteous and honest to fellow Councillors and Council Officers. Criticisms concerning professional competence or personal behaviour of fellow Councillors to be made to the Mayor, and when it concerns a Council Officer, to be made constructively to the CEO.

v. Private Business

Councillors not to use Council resources to conduct private business, e.g. using Council phone to conduct private business.

vi. Corrupt Conduct

Councillors who are aware of, or suspect fraud, corrupt, criminal or unethical behaviour (by a Councillor, Officer, or Customer), to report it to the Mayor or CEO immediately.

Each Councillor was asked by the Inspectors whether they signed the Code in March 2003, what the Code contained and whether they had referred to it in carrying out their duties. In summary, the responses indicated that:-

- Most Councillors understood the Code and were able to give a general overview of its contents.
- Almost all agreed that behaviour towards each other had been a major problem. The words most used were harassment, lack of respect and an inability for some Councillors to treat others civilly. Failure to observe this part of the Code consumes too much time and energy.
- Private use of phones was raised by several Councillors as an issue.
- Some believed that a Code should have sanctions and specify consequences for misbehaviour, otherwise it will be of little value.

c. Adoption of “Minimalist” Code December 2004

The Council adopted a new Code in December 2004 that is best described as “*minimalist*” as it goes little further than incorporating the provisions contained in Section 76C of the Act.

In making its decision, Council considered examples of both the minimalist and expanded Codes presented by the CEO. Councillors were asked why, given the governance problems at Glen Eira, the issue was not given greater priority by adopting an expanded Code. Most Councillors said that they were waiting for a new Code of Conduct to be produced by DVC / MAV as a guide, after the Council elections in November 2005.

However, the adopted Code included a clause to address the provisions of Section 76C (3)(b) of the Act regarding the resolution of internal disputes between Councillors. It provides as follows :-

“Councillors commit to working effectively together at all times and to developing good working relationships. In the event of any dispute occurring where Councillors are unable to resolve interpersonal conflicts that unduly affect the operation of the Council adversely, the parties to the dispute agree to work together with openness and transparency to resolve the dispute, and will agree to the appointment of a mediator where appropriate.”

Despite having adopted this clause, Councillor behaviour and working relationships continued to deteriorate, involving abuse, disruption and bitterness. Crs Erlich and Grossbard were involved in an altercation which ended in the Magistrates Court. This conduct re-enforces the view that Councillors have neither the capacity nor the intent to effectively control their behaviour.

d. Councillor Comment

Councillors expressed concern to the Inspectors that personal and political differences will continue to impede the process of adopting an effective Code and there is doubt as to whether there is a will to implement it. Most believe it will be difficult to obtain consensus.

Cr Grossbard stated that the Council did not accept the Good Governance Guide issued by peak local government organisations in March 2004 and that the application of its principles to Council performance was urgently required. Cr Marwick expressed her disappointment with Council's attitude to adopting a Code. She believed much more could have been done earlier and had advised Council to adopt the Nolan principles which had been applied in English local government.

e. Current Position

In response to a request from the Mayor, the CEO presented a report to Council dated 10 March 2005 concerning the adoption of a Code. He drew attention to the need by Council to answer three questions:-

- *“ Is there the will to adopt a genuine code of conduct which specifies exactly what behaviour is required in each circumstance?*
- *Is every Councillor prepared to be bound by such a code and require each other Councillor to be bound by it?*
- *Should it be an adopted code or should it have sanctions and be incorporated into the Local Law? “*

The code was not discussed at the March Meeting. However, the matter was raised and discussed by Councillors at a meeting held on 9 May 2005, but it appears little progress has been made.

f. **Conclusions**

All Councillors signed a Code of Conduct in March 2003 but failure to observe some aspects of the Code, in particular those concerning behaviour towards fellow Councillors, has had a destabilising impact on Council performance.

Many Councillors saw the “minimalist” Code adopted by the Council in December 2004 as being inadequate, given the Council’s continuing governance problem.

Council’s failure to attempt to implement this Code immediately after adopting it clearly demonstrates that it lacks the capacity and intent to take any responsible action to improve governance.

Councillors recognise that it will be difficult to reach consensus on a suitable Code of Conduct and expressed doubts as to the will to adopt and implement a Code that :-

- precisely specifies behavioural standards;
- prescribes enforceable sanctions for breaches of its provisions; and
- requires each Councillor to be bound by it.

3. MEDIATION PROCESSES

a. **Council Use of Mediation**

The Council has been assisted on two occasions by mediators / facilitators. The first was in 1999 when, as a result of the Walsh Report 1998 which identified governance problems at the Council, John Warburton was appointed to assist. The second was in 2002/03 when Tim McFarlane was engaged to provide a similar service.

i. Appointment of John Warburton

Mr Warburton said he spent about five months with the Council and faced a very difficult situation. His role was to assist the Councillors through a difficult period and help them develop a satisfactory working relationship between themselves, and with the staff.

Mr Warburton’s report to the then Department of Infrastructure stated in part that:-

“...in my opinion, relationships had improved significantly since the Walsh Report....” and “.....much work had been done towards developing the recommended protocols, but this process had been abandoned when it became clear that no amount of written protocols would change behaviour if there was not a will to change”.

and

“As a result of this realisation, the Executive proposed the formation of a “secretariat”” which “.....would more directly service Council needs”.

and

“The proposal to create a “secretariat” [to specifically service Councillor requirements] has been well received by all and in my view, is the key to a more harmonious future for the Council. There can be no guarantee as to the future, but I am confident that Council is making genuine efforts to achieve better outcomes for themselves and the community.”

Following the departure of John Warburton, the initial improvements gained in Councillor relationships deteriorated. Despite the establishment of a secretariat, the absence of protocols again resulted in an escalation of interpersonal conflict and a recognition by some Councillors that mediation was still required.

ii. Appointment of Tim McFarlane

Tim McFarlane was engaged by the Council in November 2002 to address the breakdown in personal relationships between Councillors and to improve the Council governance practices. Mr Mc Farlane is a highly regarded lawyer, specializing in mediation.

His report to the then Mayor, Cr Marwick, on 28 April 2003 advised the Council that

“... There appears to be substantial issues impacting upon Council’s governance. These issues would seem to flow from Councillors’ personal concerns on a range of matters and frequently have no relationship with the business before the Council.”

He proposed to the Council that his future involvement would have two components:-

- (i) develop more sophisticated protocols for managing Councillor relationships; and
- (ii) provide a mentor for Councillors.

The more sophisticated protocols were to involve “improving conduct to embrace the notions of courtesy and honesty, and include the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership”.

In addition, Mr Mc Farlane referred to a need to address the consequences (i.e. penalties) which might be applied as a result of a behavioural breach. He advised that the mentor role should be provided by an independent person, be private and confidential, involve no enforcements or penalties and thereby complement the protocols contained in the Code of Conduct.

Mr Mc Farlane said his appointment with the Council was terminated by Cr Marwick shortly after he submitted his report.

The Inspectors held discussions with Mr Mc Farlane to ascertain his general perceptions about Council governance issues during his term of appointment from November 2002 to March 2003. In his view, Councillor relationship problems at Glen Eira result from a combination of factors – personalities, politics, egos and personal differences. He expressed the view that it was very unlikely that the group of Councillors with whom he was involved would ever be able to work productively together.

It should be noted that the composition of the Council changed with election of three new Councillors in March 2003.

b. Councillors' Opinion of Mediation

Councillors were asked by the Inspectors for their views on the mediation processes and the likely success of future mediation.

Cr Marwick said as Mayor, she terminated Mr McFarlane because the process “*wasn't getting anywhere*”, was costly and she preferred to address governance issues by adopting a new Code of Conduct through the MAV.

Most Councillors were of the view that mediation would not be successful because:-

- it won't work with the mix of Councillors;
- problems have gone too far;
- there is no goodwill or honesty; and
- “*....we feel good, then we fall away* ”

Some said mediation may improve relationships if Councillors could “*get over*” past issues and if a person could be found who was acceptable to all participants.

c. Council's Recent Approach to Mediation

At the Ordinary Council Meeting held on 11 April 2005, Cr Erlich raised the matter, suggesting Council should appoint a mediator. At the adjourned meeting held on 18 April 2005, the following resolution was adopted by the Council.

“Crs Erlich/Martens

- a. That Council engage a mediator to assist the Council in dealing with the governance and other problems.*
- b. That the mediator have previous experience of Glen Eira City Council.*
- c. That the Director Community Relations report back at the earliest opportunity as to who could undertake the mediation work.*
- d. That a Media Release be issued informing the public that Council is seeking the services of a mediator to help deal with the problems at Council.”*

Cr Marwick voted against the motion.

Crs Goudge and Bury were absent.

On 27 April 2005 Cr Erlich, who moved the motion on 18 April 2005 to employ a mediator, wrote to the Inspectors advising that "*I thought the appointment of a mediator would vastly improve the operations of the Council and the interaction of Councillors. However, I now realise this is impossible*". By 17 March 2005, Cr Martens, who seconded the motion, was also expressing doubt about the prospects of mediation being successful.

In a letter to the Inspectors dated 22 April 2005 Cr Marwick said the motion to appoint a mediator was introduced "... *to impress yourself [i.e. Inspector] for fear of being sacked*".

At a Briefing Meeting on 4 July 2005, Councillors were still discussing whether mediation was necessary, how long it would take, how much it would cost, and whether it is would be successful. It is clearly evident no progress had been made by that date.

d. Conclusions

There is no evidence that mediation has been successful, or has been supported by Councillors. It is very doubtful that mediation processes will improve the behavioural practices and relationships of the current Councillor group.

The recent Council decision to engage mediation services appears to be a reaction to the investigation process rather than evidence of a serious attempt to improve behaviour.

4. BREACHES OF CONFIDENTIALITY

a. The Importance of Confidentiality

A Council may close a meeting to members of the public to deal with items such as personnel and contractual issues, legal advice and personal hardship of a resident or ratepayer. These confidential or 'in camera' meetings are an important privilege conferred by the Act.

It is important to ensure that powers to close meetings to the public and limit the circulation of documents is exercised in the public interest, and not to prevent appropriate public scrutiny of Council business.

Section 77 of the Act protects Council confidentiality by making it an offence for a Councillor to release information if the Councillor knows or should reasonably know it is confidential. Generally information is confidential if it is:-

- i. provided for consideration by Council at a meeting closed to the public; or

-
- ii. designated as confidential information by resolution of the Council; or
 - iii. designated in writing by the CEO to be confidential;
- and where the Council has not passed a resolution that such information is not confidential.

b. Articles Reported in Leader Newspapers

In recent months a substantial number of articles have been published in the *Leader* Newspapers, i.e. the *Moorabbin Glen Eira Leader* and the *Caulfield Leader*, disclosing what appears to be “confidential information”. The number of these disclosures increased markedly during the period October 2004 to April 2005, particularly in relation to the CEO re-appointment process.

A list of these articles is as follows:-

- “*Backflip on CEO*”, *Moorabbin Glen Eira Leader*, 1 February 2005
- “*Showdown over Chief*”, *Moorabbin Glen Eira Leader*, 8 February 2005
- “*City CEO post opens up*”, *Caulfield Glen Eira Leader*, 15 February 2005
- “*Grossbard repays bill*”, *Caulfield Glen Eira Leader*, 22 February 2005
- “*CEO:- I’ll sue you*”, *Caulfield Glen Eira Leader*, 1 March 2005
- “*Cops might be asked to find source*”, *Caulfield Glen Eira Leader* 1 March 2005.
- “*Duo in ugly scene*”, *Caulfield Glen Eira Leader*, 8 March 2005
- “*Bid for legal aid*”, *Caulfield Glen Eira Leader*, 15 March 2005
- “*Probe to re-open*”, *Caulfield Glen Eira Leader*, 15 March 2005
- “*No go on fee vote*”, *Caulfield Glen Eira Leader*, 29 March 2005
- “*CEO saga is over*”, *Caulfield Glen Eira Leader*, 19 April 2005

Cr Grossbard produced a number of examples to the Inspectors which he believed were breaches of confidentiality, many of which are included in the above list.

c. Councillor Interviews re Confidentiality

All Councillors, when questioned by Inspectors under Oath, denied making improper use of information acquired as a Councillor to make a gain for themselves, and also denied disclosing confidential information from Council records generally and specifically relating to:-

- the PwC report;
- the CEO appointment process;
- the motion put by Cr Marwick at the Council meeting held 7 February 2005 regarding the appointment of a recruitment consultant;
- the agenda papers for the meeting held on 7 February 2005 after they were designated confidential by the DCR;
- Council’s application to the Minister for permission to vote on Council resolution authorizing payment for legal representation in connection with meetings with Inspectors of Municipal Administration.

Cr Hyams told Inspectors that he had disclosed confidential information in relation to the CEO appointment process to his solicitor for the purposes of obtaining legal advice, on the basis that his solicitor was bound by “*solicitor/client confidentiality*”.

During interviews with the Inspectors, Crs Esakoff and Marwick were accompanied by their spouses. The Inspectors observed that both spouses appeared to have a detailed knowledge of Council business. Given the time Councillors spend on Council business, it is to be expected that Councillors’ spouses have some understanding of the role of their partners. However the apparent in-depth knowledge in these cases raised questions about the protection of confidential information. Several members of the public expressed concerns to the Inspectors about this issue.

d. Interview with Leader Journalist

Mat Dunckley, a journalist at *Leader Newspapers*, wrote most of the articles that contained Council confidential information. In an interview with Inspectors, also attended by his supervising Editor and Chief of Staff, Mr Dunckley declined to reveal his sources of information.

During subsequent examination by the Inspectors under Oath, Mr Dunckley declined to answer questions, relying on the privilege against self incrimination as a lawful excuse for the purposes of Section 223C (2) of the Local Government Act.

e. Conclusions

A significant number of articles containing confidential information (within the meaning of Section 77 of the Act) have been published in *Leader Newspapers*.

All Councillors denied under Oath having disclosed confidential information.

The prevalence of this practice inhibits the capacity of Councillors to discuss confidential information, creates a climate of mistrust and is indicative of a serious governance problem.

Consideration should be given as to whether any action need be taken in respect of the refusal by Mr Dunckley to answer the questions put to him.

5. COUNCILLOR INTERESTS

a. Relevant Sections of the Act

Part 4, Division 1A of the Act contains several sections which relate to the interests of Councillors. These include :-

- Section 77A - Disclosure of Interests

-
- Section 77B - Conflict of Interest
 - Section 78 - Pecuniary interests
 - Section 79 - Disclosure of Conflict of Interest
 - Section 81 - Register of Interests

b. Review of Councillor Compliance

Allegations were made to PwC and to the Inspectors, about possible breaches by Councillors of these sections of the Act.

All Councillors were questioned under Oath as to their compliance with these provisions. However, it appears that no breaches of these sections have been committed, with the exception that Cr Goudge was late in submitting his register of interest returns for 2002/03 and 2003/04. This was referred to Local Government Victoria and no action taken because of his extenuating circumstances.

c. Conclusions

There is no evidence of any Councillor committing a breach of Sections 77A, 77B, 78, 79 and 81, other than a failure by Cr Goudge to submit a register of returns within the time frame specified on two occasions, a matter which has been dealt with previously.

6. COUNCILLOR INDUCTION PROCESSES

a. Opportunities Provided

Following the election of Councillors in March 2003, the CEO presented each Councillor with an Induction Manual entitled :-
“Information for Elected Councillors of the City of Glen Eira”. A table detailing the contents contained in the manual is attached to provide information on the range of topics covered. **Refer Appendix 2.**

The induction program involved a number of stages over several days and included :-

Monday 17 March 2003 -

- A brief overview of the Council;
- The process for the Council Meeting on 19 March 2003;
- Issuing equipment such as mobile phones etc.

Wednesday 19 March 2003 –

- Special Council Meeting to swear in Councillors (and elect the Mayor, if desired).

Saturday 22 March 2003, Proposed Induction Session –

- Introductions with the management team;
- Issues facing Glen Eira;

-
- Issues arising from this binder / issued to Councillors;
 - Issues facing the Group;
 - Legal and governance framework for Councils, presented by Council's principal Solicitor, Mark Hayes of Maddocks. This is a standard session presented to a number of Victorian Councils:-
 - local government as a "tier" of government;
 - decision-making (including how a Council is a legal entity separate from its members and can only act by resolution or decision of a delegate);
 - delegation of powers;
 - individual Councillors and decision-making, including confidentiality;
 - the role of the organisational arm of a Council;
 - corporate governance;
 - pecuniary interest;
 - personal liability of Councillors;
 - likely reforms to the Local Government Act, including conflict of interest.

Monday 24 March 2003

- Town Planning – conducted by Jeff Akehurst, Director City Development;
- Community Facilities and Infrastructure – offered but not taken up by Councillors;
- Aged Care – offered but not taken up by Councillors;
- Briefing on the Council Agenda for the Meeting on 31 March 2003.

Tuesday 25 March 2003

- Meeting procedure and rehearsal of a Council Meeting with Andrew Newton using the Local Law.

Councillors were invited to consider participating in the following activities / courses:-

- Attending the Council Service Centre and sit in on the phones for a time, the purpose being to gain an understanding of the queries and requests received by the Centre, and the means of handling them. One Councillor (Cr Bury) accepted the offer.
- The "*Company Director's Course*" run by the Australian Institute of Company Directors. The Course is very strong on corporate governance, financial management and legal obligations. Cr Goudge has attended this course.
- Developing group "*protocols*" on the method by which Council wishes to deal with the media, inter-government relations and similar issues. No sessions to deal with these matters were held because of insufficient Councillor interest.
- Sessions on public speaking, understanding financial statements and other matters of interest to Councillors. Again Councillors did not show an interest in participating.

-
- Attending a weekend session to discuss strategic issues and pursue certain subjects in more depth.

According to the CEO, a weekend session was last held in 2002 and Councillors have not agreed to attend one since. A reason commonly given for this is that it won't work because of the personal dynamics of the group of Councillors.

- Each Councillor attending meetings with the CEO to discuss any issues relating to their roles and responsibilities. Little interest was shown in this offer.
- The various courses offered to Councillors on a weekly basis that are relevant to their interests. These are rarely accepted. According to the CEO, some Councillors in full time employment have difficulty in attending.

Other induction / educational opportunities:-

- Six Councillors attended the Councillor Development Weekend conducted by the MAV at Lorne in July 2003, these being Crs Marwick, Esakoff, Grossbard, Bury, Sapir and Martens.
- On 2 February 2004, Mark Hayes of Maddocks made a presentation to the Council on the Local Government Democratic Reform Act. A further presentation was made by the CEO on 20 July 2004 which included the Second Reading Speech and the Explanatory Memorandum.
- On 16 February 2004, Council received a presentation from a consultant, Ms Jane Nathan (of "Government Matters") on Planning Issues.
- On 19 July 2004 Councillors were presented with information issued by Local Government Victoria concerning changes to the Act which included the Minister's Guide to the changes, and the MAV outline of the new provisions.

b. Discussions with Councillors

Each Councillor was asked by the Inspectors to comment on the adequacy or otherwise of the Induction processes. Most Councillors agreed that the information provided and opportunities to participate were adequate – there was "... *plenty available*". The difficulty for some was full time employment which reduced the opportunity to become involved to the extent desirable. Cr Marwick emphasised the importance of induction because she believed that roles and responsibilities are often misunderstood by Councillors. Cr Grossbard believed that more work was required. He presented a report to "*the Government*" on the issue, suggesting that Councillors do a six-week training course.

c. **Conclusions**

The induction programs available to Councillors are relevant and comprehensive. Nearly all Councillors agreed that information presented to them, and the courses / sessions offered, were adequate and that each Councillor has a responsibility to participate and educate themselves on roles and responsibilities.

Any deficiencies in Council performance cannot be justifiably attributed to any shortcomings in the opportunities presented for induction and training.

7. CONSULTATION / COMMUNICATION

Consultation / communication processes are an important part of good governance and the Inspectors sought to establish the standard of performance by the Council in these areas.

a. **Between the CEO / Administration and Councillors**

- Governance Digest -
A *Governance Digest* is sent to Councillors by courier each Thursday. It includes a diary of all engagements involving the Mayor / Councillors, any key commitments by senior managers (e.g. conferences) and events which affect the community. It sets out information under five chapters laid down by the CEO:-
 - “*For Councillors to take action / decision*” (e.g. extra information about a matter coming before Council; opportunities to attend development courses);
 - “*Sensitive issues that Councillors should be aware of*”. This is the heart of the Digest. It updates Councillors on constituent concerns, media items, etc.
 - “*Decisions made by management that Councillors should be aware of*” (e.g. decisions by the Delegated Planning Committee);
 - “*Reports on progress*” (e.g. implementation of capital works);
 - “*General information*”.

Provision of this information is based on an internal policy which states:-

“The golden rule is No Surprises. It is our policy to alert our Councillors beforehand of any issue which could reasonably become the subject of public discussion.”

- Agenda Papers -
Councillors receive the final agenda papers for Council meetings eleven days before the meeting. This provides an opportunity for Councillors to ask questions, inspect sites, consult colleagues in preparation for the meeting. The agenda is always discussed at a Briefing Meeting one week before the Council Meeting.

According to the CEO, issue of the agenda one and a half weeks before the meeting is the earliest of any Council in Victoria. In his view, most Councillors do not read the agenda before the meeting and the discussion is usually superficial.

- Pre-Meeting –
A “*pre-meeting*” is held at 7.00 p.m. prior to the Council meeting at 7.30 p.m. This was implemented to ensure there would be no surprises and to allow Councillors time to discuss important items. The CEO said that it worked well for a period. However, since 2002, it has been less useful as Councillors do not disclose items of Urgent Business, Councillor Questions or Requests for Reports and surprise their colleagues by raising them at the Council meeting.
- Meeting Mayor / CEO –
The Mayor and CEO have a regular meeting each Monday. The CEO provides a brief agenda in advance. In addition, the Mayor and CEO meet as the need arises.
- Meeting CEO / Directors –
The CEO meets with all Directors each Monday at 3.00 p.m. The meeting is called the “*no surprises*” meeting and deals only with items on Councillors’ agenda for that evening, any general business which needs to be raised with Councillors and any general business which Councillors may raise with Officers.
- Requests made to Councillors –
Any request addressed to a Councillor is registered in the Councillor Request System and forwarded to the relevant department for attention and the preparation of a draft response for the Councillor’s consideration. Each Councillor receives a sheet each Thursday showing the status of all their requests.

b. Between Councillors and Councillors / Staff

As noted above, the Councillors do not use the pre-Council meetings as an opportunity to address differences of opinion and reach constructive conclusions. Instead, information is withheld and used at Council meetings to ‘point score’ or cause embarrassment.

Councillors generate numerous memoranda of an accusatory and inflammatory nature, which are reflective of the acrimonious and distrustful relationships between each other and between councillors and the administration. This is time-consuming, counter-productive and indicative of very poor governance.

Understandably, the staff has reacted to this negative climate of mistrust by maintaining copious records as protection against potential accusations by Councillors.

c. With the Community

- Service Centre -
The Service Centre is the Council's main point of contact for the Community. It averages more than 1,000 calls or visits to the front counter each day. The average call waiting time is about eight seconds. 70% of all calls are handled to completion by the operator who answers the phone i.e. not referred to any other department.
- Publications -
The main ones are :-
 - The *Glen Eira News* that is distributed monthly to all households and businesses in Glen Eira. It provides information on current issues. At the CEO's direction, it carries a section which lists all the matters on which Council is undertaking community consultation at that time.
 - The *Community Resource Guide* which gives details of all Council services and community groups.
- Annual Report –
This report provides a total overview of Council's performance in servicing the needs of the municipality, and of its financial stewardship. The Council won the Australasian Reporting Award for its 2003/04 Annual Report.
- Newspapers and Web Site -
Each fortnight, Council information is published in both editions of the *Leader*. While this involves significant cost, the CEO believes it is justified in terms of providing the opportunity to communicate with the community.

Ample information is provided on the web site. The home page displays current items, and seeks public contribution.
- Best Value Reviews -
These reviews usually involve consultation with users of the particular service through surveys, public meetings and focus groups. The nature of the consultation and the outcomes are disclosed in the reports of the Best Value reviews which are submitted to public Council meetings.
- Planning Conferences -
Significant town planning items are submitted to Council meetings for decision. Although not required by the Planning and Environment Act a Planning Conference is held prior to the meeting. This additional step provides an opportunity for the applicant and objectors to come together in a meeting chaired by a Councillor to discuss particular issues. According to the CEO, there may often be compromises by the applicant to eliminate or lessen the areas of objection. *"We regularly receive feedback that people, even if they do not like the ultimate decision, believe that they have had a fair hearing."*

d. Particular Instances

- **Community Plans –**
The Council's Community Plan involved major consultation during 2003. There were four community workshops, three focus groups of stratified samples of randomly selected people and a 600 person phone survey. A draft Council Plan was put out for further public consultation. Some Councillors did not attend any workshops.
- **Budgets –**
For each budget, the Council publishes not only the statutory notice but also paid advertising with the *Leader* to inform the public. A critical instance was the 2002/03 Budget which involved the use of a Rate Rebate Scheme.
- **Community Forums –**
Community Forums are convened to address important matters. For example, with the proposed rate increase in 2002, the CEO addressed a widely advertised public meeting about the state of Council's assets and the likely consequences if more money was not spent on them.
- **Position Papers –**
From time to time, discussion papers or position papers are published on topical issues such as Child Care in 2004.

e. Concerns Raised by Residents / Groups

Some concerns were raised with the Inspectors by individuals and group representatives about the adequacy of community consultation and communication on particular issues. These are discussed in Part III, Section 11 of this report.

f. Conclusions

Consultation and communication procedures and processes, both external and internal, where generated by the CEO and staff, are extensive and effective. They are a product of the quality and quantity of information produced by the CEO and the administration.

While Councillors communicate extensively, most of the interchanges are inflammatory, acrimonious, and usually aimed at 'point scoring' or causing embarrassment. It is a severe impediment to effective decision-making and any prospect of improving governance.

The staff maintain copious records as protection against potential accusations by Councillors.

8. PLANNING, ACCOUNTABILITY AND FINANCIAL MANAGEMENT

a. Legislative Requirements

Council planning and accountability includes preparation of the Council Plan (Section 125), the Strategic Resource Plan (Section 126) the Budget (Section 127) the Annual Report (Section 131) and the Performance Statement (Section 132).

The principles of sound financial management are set out in Section 136 of the Act and include in summary:-

- prudent management of financial risks including debt level, management and maintenance of assets and liabilities;
- pursuing spending and rating policies consistent with maintaining a reasonable degree of stability in the rates burden;
- ensuring decisions are made and actions taken having regard to the financial effects on future generations; and
- ensuring full and accurate disclosure of financial information.

b. Comments on Performance

The Council has met all its obligations under the Act regarding the preparation of the Council Plan, Annual Budget, the Annual Report and Performance Statement, and submitted them to the Minister in accordance with legislative requirements. The content and presentation is of a high standard.

The Council is in a strong financial position. According to the Strategic Resource Plan 2005 – 2009, the Council will achieve close to a balanced operating position, cash reserves will be sound, the Working Capital ratio will be a healthy 1.6:-1 to 1.8:-1, liabilities will remain low because Council has no interest bearing loans; outlays on capital works will exceed depreciation and expenditure and rate income per assessment will remain relatively low. A close check is kept on the financial position through the preparation of quality monthly performance reports.

According to Andrew Greaves, Director Financial Audit and Local Government, Victorian Auditor General's Office, the Glen Eira City Council is financially healthy and showing positive signals. The Council has a good Asset Management Strategy and has justified rate increases to meet infrastructure needs.

Local Government Victoria supports the views given by Mr Greaves.

The external members of the Audit Committee, David Gibbs (Chairman) and Gary McLean, emphasised that the CEO and Senior Management are very good performers. In addition to financial performance, the Council has effectively addressed risk management, to the extent that it is now recognised as being one of the top three performers in Victoria / Tasmania.

Geoff Harry, Partner PwC and Internal Auditor, advised the Inspectors that in his view, financial management and control systems were very sound and that the Council is well managed.

c. Conclusions

According to the external members of the Council's Audit Committee and the Internal Auditor (PwC), the high standards achieved in strategic planning, budgeting, reporting and financial management are the product of a capable and dedicated administration. The Inspectors concur with this view.

9. STAFF GOVERNANCE

a. Staff Procedures and Policies

The CEO has developed and implemented a set of procedures, policies and guidelines pertaining to staff governance matters.

These include:-

- "Rules of the Road"
 - a booklet which covers topics such as Council submissions, Minutes, Resolutions, Advisory Committees Briefing Meetings, communication between staff and Councillors, Policies affecting staff, Public Meetings, Functions and Ceremonies, Public correspondence, Council publications and dealing with the Media.
- Staff Code of Conduct
 - includes values, teamwork, customer service, leadership, conflict of interest, work performance, relations with Councillors, use of official resources, discrimination and harassment, the Whistleblowers Protection Act, financial probity and accountability, information privacy and confidential information.
- Telephone Equipment
 - in particular effective and responsible use of Council provided telecommunications equipment and network; and
 - to assist and direct staff with:-
 - i. providing information via the telephone;
 - ii. telephone etiquette
 - iii. appropriate use of Council's telecommunication infrastructure

b. Staff Induction Program

New employees are given a full day session soon after commencement on issues such as occupational health and safety, risk management, customer service, public relations, City development and Council services.

Thirty three (33) new employees attended an Induction Program in February 2005, all of whom provided feedback that rated the program highly and contained suggestions for improving the induction procedure.

c. Conclusion

Staff governance practices and procedures are relevant, comprehensive and well targeted to maximise staff performance.

10. SURF COAST SHIRE COMMISSION OF INQUIRY REPORT

a. Commentary

On 4 June 2003, the Minister for Local Government tabled the Commission of Inquiry Report into the Surf Coast Shire in Parliament.

The Minister then sent a copy to all Councils and urged each Council to closely study its findings and recommendations. The Minister further stated that:-

“It’s important that we heed the lessons of this episode and make sure they are not repeated in another Victorian Council...” and

“No Council can afford to be complacent. Nor can Councils ignore dysfunctional or inappropriate behaviour within Council, or between Councillors and staff, that may jeopardise the effective operation of the Council.”

This message was supported by Prue Digby, Executive Director, Local Government and Regional Services who wrote to all CEOs advising them *“...to carefully consider each of the findings and recommendations in the report”*.

The Glen Eira City Council held a Briefing Meeting on 30 June 2003. The Surf Coast Report was listed for discussion. When questioned by Councillors about why he had included it on the agenda, the CEO explained that in his view, the correct procedure was to table the Report at a Council meeting and that he had an obligation to do so.

Councillors requested that he remove it from the agenda because:-

- Council should not be seen as *“running down other individuals and Councils”*; and
- *“Nothing can be gained by reporting this item to the Council”*; and
- *“It could infer that this was the way Glen Eira was run”*.

The CEO removed the item. However, the next day he sent a letter to each Councillor stating in part, that :-

“I thought that next Monday night would have been a good opportunity for this Council and Councillors to make a ringing endorsement of the principles and practices of Good Governance. The Report of the Commission of Inquiry into Surf Coast would have provided a good opportunity.”

Cr Erlich sent a memo to the then Mayor (Cr Marwick) stating that :-

“I believe that the Chief Executive Officer is 100% correct in including this in the agenda, particularly from a governance point of view and given the problems that the previous council encountered.”

b. Discussions with Councillors

Councillors were interviewed about their reactions to the Inquiry Report.

According to Cr Goudge, there were two reasons to remove it from the agenda.

“First we did not want to be seen as slagging another Council. Second, the report is not applicable to Glen Eira.”

Cr Hyams said he believed it was improper to leave it on the agenda because it could be seen as the CEO suggesting we have the same problems. According to Cr Hyams there was no similarity in governance terms between Surf Coast and Glen Eira.

Cr Martens said it was a *“touchy”* subject with Councillors. Most did not want to know they had problems and to bring it up meant you were a *“troublemaker”*.

Cr Marwick stated that putting the Inquiry Report on the agenda was offensive – *“...not our place to be critical of another Council”*. When asked whether she thought there were some lessons in the document for Glen Eira, she agreed that lessons could be learned from it.

c. Conclusions

The Surf Coast Shire Inquiry Report has a direct relevance to the way in which governance operates at Glen Eira.

The Council’s failure to take the advice given by the Minister not to *“ignore dysfunctional or inappropriate behaviour within Council”*, and its failure to heed the *“valuable lessons”* provided by the Surf Coast Shire experience, is indicative of its lack of appreciation of the Council’s serious governance deficiency, and its unwillingness to address that deficiency.

11. ISSUES RAISED BY RESIDENTS / RATEPAYERS ORGANISATIONS

a. Background

Over thirty residents and representatives of ratepayer organisations either met with, or wrote to the Inspectors expressing concern about decisions made on planning permits, levying of rates, parking infringements, off leash area for dogs and other operational issues. Some of these concerns related to the adequacy of consultation and communication processes. Disagreements of this nature are not unusual in local government, as decisions cannot always be made which will satisfy various competing interests.

The issue of possible conflicts of interest was raised, in particular regarding Councillor representation on the Caulfield Racecourse Trust and non-Council bodies such as Labassa and Ripponlea. The Inspectors are satisfied these matters do not constitute conflicts of interest provided Councillors continue to comply with the relevant provisions of the Act.

The role of Inspectors is to form conclusions about governance practices of the Council and all ratepayer/resident contributions have been taken into account in making this assessment.

Some of these matters have been referred to the CEO and relevant Directors for attention, while others have been dealt with in other sections of this report.

However, there are two significant issues which require specific comment:-

- Princes Park Redevelopment; and
- Child Care Centres.

b. Princes Park Development

Princes Park redevelopment commenced well before the election of the current Council in March 2003. The project involved the erection of an indoor multi-purpose sports pavilion containing at least four basketball courts.

i. Community Complaints

Representatives of the Jasper Action Group indicated that consultation processes for park development were inadequate.

The Group's concerns relate mainly to events which occurred prior to the 2003 Council election and include:--

- inadequate consultation processes including an incomplete letterbox drop;
- inadequate reports by external consultants and the briefs given to the consultants by Council;
- information that was provided by Council in response to requests kept changing;

-
- Council's alleged refusal to accept hundreds of letters of complaint because they were pro-forma rather than individual letters;
 - trees being cut down without notice;
 - anomalies in the sequence of processes;
 - lack of transparency of information; and
 - the attitude of the administration to those residents seen to be opposing Council's plans.

The Group now believes that issues have been "*semi resolved*" and that they will accept future Council decisions providing they are made democratically.

The Glen Eira Ratepayers (GERA) Association expressed the view that:-

"... it is undoubtedly Council's role to make decisions without fear or favour but in this instance it was not without favour, [...] given the interpersonal distrust and swinging loyalties amongst the group of Councillors."

When the new Council was elected in March 2003, Cr Grossbard successfully moved to change the Master Plan which had been adopted by the previous Council by deleting the skate board facility and replacing it with parkland and walking paths.

ii. Councillor Concerns and CEO's Responses

The CEO advised he was approached by Cr Marwick (then Mayor) and Cr Hyams on 2 July 2003, and also Cr Esakoff on 3 July 2003, who expressed their concerns over the lack of open consultation about Princes Park Development, in particular about a "skate ramp".

The CEO advised Cr Marwick in summary that :-

- until June 2003 the project had never followed a proper sequence and the Council had provided no clear objectives concerning facilities such as parkland beautification, indoor basketball and skate boarding. Because of Council failure to do this, successive stages collapsed;
- the Council changed its priorities several times, for example:-
 - after initially requiring a basketball facility to be located in the middle of the Park; changing it to -
 - an Adolescent Activity Area on Bambra Road; then changing it to -
 - retaining the Park in its present form but making it more attractive and more usable;
- most of the critical resolutions were carried in Urgent Business, without supporting Officer submissions setting out important considerations and options, and often with decisions being made by Council at short notice;

-
- the Council resolved on 31 March 2003 that note be taken of the fact that resolutions were passed by the Council on 12 August 2002 and 10 February 2003 requiring Council Officers to implement the Princes Park Master Plan, i.e. Officers were required to implement the Council's decisions and were subjected to criticism by Councillors and the public for doing so.

Gary Henshall and Associates were engaged to provide a report on the proposed developments, including the results of a public consultation process. The Henshall Report supported the provision of a skateboard facility in the park to cater for a need expressed by the youth in the area. However, this suggestion was in conflict with Cr Esakoff's view because she had made it clear, prior to the elections, that she was opposed to it.

Cr Esakoff was critical of the Henshall report, drawing attention to what she termed the insufficient and possibly incorrect information which staff may have provided to them.

The CEO responded as follows:-

- the Council decided on 6 November 2002 to conduct further consultations;
- it was clear that "*extremely strong views*" would be expressed on "*all sides*";
- it would be a thankless task submitting the results of the consultation back to the Council;
- Henshalls were engaged to perform the task;
- comments received were relayed to Henshalls;
- two Councillors were highly complimentary about Henshall's report;
- no decisions could be made on the results of the consultation prior to the election in March 2003;
- that should Cr Esakoff consider any Officer had acted unprofessionally or improperly, a probity audit could be conducted by the Council's Internal Auditors;
- that Council should set clear objectives for projects of this size, "*not make it up as you go along*".

The CEO's offer to Cr Esakoff to carry out a probity Audit received no response.

iii. Conclusions

Criticisms levelled at staff for failure to consult and communicate during the Princes Park redevelopment project are, for the most part, unjustified.

The Council neglected to set objectives for the project, continually changed the requirements, often made decisions on an ad hoc basis as "*Urgent Business*" without adequate staff advice and input, directed the staff to implement those decisions and subsequently criticised them for doing so.

Opinions about certain aspects of the project were polarised, resulting in expression of very strong views from a number of individuals, groups and some Councillors.

The offer of an independent probity check to be made of staff involvement received no response.

Council has sought to lay blame on the staff for its own inadequacies in decision making.

c. Caulfield Child Care Centre

i. Issues

In August 2003, the Council resolved to close the Caulfield Child Care Centre. Immediately following this decision, the Save Caulfield Children's Centre Group was formed with the object of convincing the Council that the Centre should be retained because in their view it was still required.

Ms Sue Loukomitis, a representative of the Group stated that:-

- the Council staff recommended that Council close the building because it was old, costly to renovate and that other suitable child care alternatives were available;
- the Council called for a further report and the Save Caulfield Children's Centre lodged a submission which was tabled on 23 October 2003. The aim was to put pressure on Councillors to change their minds;
- as a result, the Council decided to apply for an extension of time to use the building until 2006;
- child care fees have risen substantially and the Council made provision to spend \$80,000 to improve facilities.

In meetings with the Inspectors some Councillors were critical of the administration for submitting the matter to the Council for decision without adequate information, and claimed that the report presented to them was "*flawed*".

ii. Review of Decision Making Processes

On 20 May 2002, the Council authorised a review of Council owned facilities, including those provided for childcare.

The review, which was carried out by Tungsten Group Pty Ltd, included an outline of the current inadequacies of the Caulfield Child Care Centre, the substantial financial operating losses being incurred, an appraisal of new standards being set by governments and the work required to bring facilities up to those standards.

As a consequence of this process, the question arose as to whether or not the Council should continue to operate the Centre.

The matter was submitted to the Council for consideration on nine occasions between 16 July 2003 and 18 August 2003 without any decision being made. At the Council meeting held on 18 August 2003, a motion which required that the public be consulted, was lost.

Peter Jones, Director Community Services, submitted a report to Council on 25 August 2003 in which he presented the advantages and disadvantages of retaining the facility, including estimated future capital and operating costs. The report listed a number of options open to the Council including refurbishment of the existing Centre, demolishing and rebuilding it, phased withdrawal and transfer of children to other Centres, together with strategies required to achieve a smooth transition.

Council was asked to select a course of action from four options put forward in the report. Council resolved to "*initiate a phased withdrawal*" from the Centre and transfer children to other centres.

The community (including the Save Caulfield Children's Centre Group) responded by registering their disapproval of Council's decision, suggesting there was a significant shortage of child care places.

According to Mr Jones, some Councillors blamed him and his staff for the original decision.

In response to the community pressures the Council resolved that an additional report be prepared which addressed the "key issues" regarding child care in the City of Glen Eira and a long term plan which addressed the impact of the closure of the Caulfield Centre on the overall child care needs.

This report was submitted to the Council on 22 December 2003 , again drawing attention to the information presented to Council on 25 August 2003. In addition it emphasised that:-

- there would be no shortage of child care places; and
- there were risks under the National Competition Policy associated with continued subsidization.

The Council resolved, on 22 December 2003, to apply to the Department of Human Services to secure a three year exemption from the *Children's Services Regulations 1998*, allowing the Caulfield Child Care Centre to operate to 2006, and to increase the fees to comply with the National Competition Policy.

Information has since become available supporting the original staff advice. There has been a reduction in child care utilisation rates resulting in an over supply of child care places in the City of Glen Eira.

iii. Conclusions

The Inspectors do not agree with the assertions that the reports presented to Council were flawed. These reports were detailed, objective and contained a substantial volume of relevant information. Further, they were supported by an independent review.

The Council deferred the issue on several occasions, voted not to conduct a public consultation, made a decision to initiate a phased withdrawal and then reversed it.

To deflect public criticism, the Council has levelled blame at the staff rather than accept responsibility for its own actions.

12. AUDIT COMMITTEE

a. Composition, Charter and Mode of Operation

The Council Audit Committee comprises four members :-

- David Gibbs – Chairman and Independent Member, Partner in McInnes, Graham & Gibbs; and Past President of the Institute of Chartered Accountants.
- Gary McLean – Independent Member Partner in Deloitte Touche Tohmatsu.
- Two Councillors, currently Crs Bury and Marwick.

The CEO and Chief Finance Officer attend the meetings. An invitation is also extended to any Councillor to attend.

Pricewaterhouse Coopers (PwC) Chartered Accountants are currently engaged as Internal Auditors to assist the Committee to fulfil its role.

The Committee meets four times per year and minutes of each meeting, including the Annual Report of the Committee, are included in the next available Council meeting agenda.

The Audit Committee Charter describes the Committee's role as follows:-
"The primary responsibility of the Committee is to assist Council to fulfil its responsibilities in relation to the Council's accounting policies, internal control systems, operational audit and financial reporting practices."

Despite the fact that the Best Practice Guidelines for Local Government Entity Audit Committees were produced in June 2000, the Council has not adopted them. Mr Gibbs, who was a member of the working party that developed the guide, has approached the Council on a number of occasions requesting that the guide be adopted but the Council, for various reasons, has not done so.

The Audit Committee Program for 2004/05 included the following items:-

- Fraud Management Framework;
- Risk Management; and

-
- Review of Council compliance with the Civic Support and Expenses Policy.

PwC is required to regularly report on progress made by the administration in achieving these and other significant tasks which have been included in the Audit Program.

In October 2004 the Committee carried out a self assessment of its performance. The Committee found this to be a useful exercise in gauging its effectiveness and was reasonably satisfied with the outcome.

It is customary for the Chairman to ask all participants at each Audit Committee Meeting whether they are aware of any breach of any act or other irregularity which should be reported.

b. Opinion of Performance

According to the CEO, the Committee *"...is probably the most demanding taskmaster that we serve. The Committee has added considerable rigour to our processes"*.

The Chief Finance Officer Peter Swabey, advised the Inspectors that the Committee:-

- presents challenges to the administration;
- ensures the Finance Department does its job;
- checks that financial controls and compliance are effective;
- is vigilant about non financial areas such as risk, fraud and information technology;
- focuses strongly on ensuring Council has systems in place to minimise risk and thereby avoid the detrimental consequences of it.
- requires PwC to conduct about ten reviews per year, their attention currently being directed primarily to risk management and fraud.

The Committee recently carried out a self-assessment of its performance to identify its strengths and determine those practices in need of improvement.

Geoff Harry, PwC, in commenting on the Audit Committee, stated that his terms of reference as Internal Auditor are appropriate. However, he felt that the agenda and scope of the Committee needed to be reviewed.

He raised two issues with the Inspectors. The first was that the Audit Committee should have reviewed the PwC Report and advised the Council. His second concern is that discussions held between members of the Audit Committee prior to the meetings are not minuted and are being used by some Councillors as an opportunity to criticise the administration without those accused having the opportunity to defend themselves. This matter is addressed elsewhere in this Report. Refer Part III, Section 13.

The Inspectors sought the views of Councillors on the performance of the Committee. The main issues raised were that:-

- there is very little support for the Audit Committee to submit a report to the Council on the PwC Report at this stage. Many had no opinion;
- some Councillors expressed concerns about the half hour “*pre Committee Meeting*” discussions between Independent Audit Committee members and Councillors. They believe it is used as a “*point scoring*” exercise. Others had no opinion;
- most Councillors agreed that the Committee was an effective “*watchdog*” and performed its roles effectively;
- there was unanimous support for the Audit Committee to put Councillor expenses under greater scrutiny; and
- Councillors generally acknowledged and accepted the warnings given by the independent members of the Committee about ensuring that the actions of Councillors do not place the Council at greater financial risk.

Cr Goudge emphasised that, in his view, the Committee was used by some to gain “*political mileage*” and that the procedures used in auditing Councillor expenses was “*unfortunate*”. However he wasn’t critical of the role of the independent members.

c. Conclusions

The Committee is performing its role effectively.

The warning given to Councillors by the independent members of the Audit Committee about ensuring their actions do not place the Council at greater financial risk, was timely.

Councillors agree that the Audit Committee should subject Councillor expenses to greater scrutiny.

Best practice guidelines for Audit Committees should be adopted by the Council and implemented without delay.

13. CIVIC EXPENSES REVIEW

a. The Council Policy

The Council has adopted a policy that prescribes the means by which Councillors are to be assisted with the facilities required to perform their civic duties.

This policy is the product of extensive and laborious consultation between Councillors. The Council met seven times in 2001 before accepting the original policy and a further five times in 2003 amending and adopting it. The current version was finally adopted on 22 December 2003.

The policy makes provision for direct payment by Council or reimbursement to Councillors for expenses such as private motor vehicle use, travelling expenses, conferences and training, telephones, home / workplace facilities, publications and child care.

Councillors are also paid allowances pursuant to Section 74 of the Act.

The Mayor is provided with additional facilities, including a fully maintained vehicle, secretarial support and office accommodation. Outgoing Councillors are also entitled to a gift which is set at 2% of the Councillor's allowance at the time of presentation, for each year of service. On completion of a Mayoral term, the Mayor can be presented with a gift of up to \$2,000 in value.

Some changes that were adopted following a review of the policy in 2003 were:-

- provision of a laptop or desktop computer and a desktop printer;
- provision of a facsimile / photocopier / answering machine for reasonable Council use. The Council pays all connection fees, rental charges and call charges;
- the need for the Mayor or Councillors to obtain approval to attend a conference, seminar, function or training event where the total cost exceeds or is likely to exceed \$500;
- the requirement for a Councillor who attends an interstate or overseas conference or seminar to submit a written report within two months of return.

These changes were made basically to take account of the need to provide enhanced home and workplace facilities and to provide greater clarity regarding expenses incurred in attending conferences.

b. The Expenses Review by PwC

Concerns arose as to whether Councillors were adhering to the requirements of the policy, in particular the use by some Councillors of Council supplied mobile phones. This resulted in the Council appointing its Internal Auditors, Pricewaterhouse Coopers (PwC) on 24 March 2004 to carry out an independent review.

The review, which covered expenses from 1 September 2001 to 29 February 2004 (i.e. 30 months) was submitted in a confidential report to the Council on 16 September 2004 (PwC Report).

The PwC report focused on allegations made against Cr Goudge for excessive use of his Council mobile phone and against Cr Grossbard for providing the opportunity for a family member to use his Council mobile phone. During the course of their work, PwC received allegations of inappropriate use of Council supplied telephones by Councillors Erlich, Martens and Sapir but PwC's brief was not extended to include these accounts. Phone use by Crs Sapir, Martens and Erlich has also been raised in State Parliament, in a letter to the Auditor General and in a detailed submission to the Inspectors by Cr Grossbard.

During the review, it became apparent to PwC that the expenses policy should be refined and clarified and also that certain Council governance practices should be addressed.

The PwC Report has provided Inspectors with a substantial volume of material including relevant statistical data, together with findings and recommendations. This information has, where appropriate, been incorporated into this report.

The findings and recommendations submitted by PwC are attached. **Refer Appendices 4.1 and 4.2.**

c. Councillor Expenses

i. General

The review period of 30 months includes all expenses relating to all twelve Councillors who held office during that time:-

- six for 30 months;
- three for 19 months to March 2003;
- three for 11 months from March 2003.

Detailed information is provided in a table attached to this report. **Refer Appendix 4.3.**

Average annual expenditure incurred directly by Councillors during this period was:-

Councillor Allowances	183,840
Telephone Expenses	17,592
Meetings, Conferences and Associated Costs	13,870
Other Expenses	1,366
Total Annual Expenses	\$216,668

A comparison of these figures with those of similar metropolitan municipalities shows that the civic expense costs incurred by the Glen Eira City Council were not excessive. This being so, the Inspectors confined their attention to a review of Councillor telephone costs.

ii. Telephone Calls and Costs

Details of telephone costs and calls for each Councillor for the designated thirty month period are provided in tables attached to this report:-

- Telephone Calls
- Number and Cost - **Refer Appendix 4.4**
- Monthly Totals of all Telephone Calls
- **Refer Appendix 4.5**

A summary of the average annual calls made by each Councillor, together with the costs incurred, is presented below:-

Councillor	Annual Cost \$	Number of Phone Calls		
		Mobile	Land Line	Total Calls
Erlich	1,224	1,090	1,876	2,966
Martens	850	468	1,543	2,011
Goudge	4,126	7,500	571	8,070
Grossbard	1,256	1,166	2,040	3,206
Marwick	1,502	1,756	1,374	3,130
Sapir	902	1,575	275	1,850
Hyams	425	466	174	640
Bury	1,020	1,313	702	2,015
Esakoff	420	328	752	1,080

A summary of average monthly calls per Councillor compared with the number of calls made during elections is as follows:-

Councillor	Monthly Average	November 2002	February 2003	March 2003
		State Election	Council Election	
Erlich	247	247	371	368
Grossbard	267	239	398	326
Martens	168	197	303	163
Goudge	673	1,344	1,256	1,412
Marwick	261	317	541	364
Sapir	154	140	73	97
Hyams	53	N/A	N/A	N/A
Bury	168	N/A	N/A	N/A
Esakoff	90	N/A	N/A	N/A

N/A = Not Applicable

iii. Council Policy

In applying its policy, the Council recognised that, from time to time, Councillors need to be able to exercise discretion in certain situations, for example to use a Council supplied mobile phone to ring home to advise they will be late from a Council meeting. This was done by including a clause which allows "...*incidental private use..*" of mobile phones.

The Policy also states that "... *no Councillor may use Council resources for election purposes or for any purpose that may present the appearance of being used for an election ...*", or for party political purposes.

Some Councillors have been accused of breaching these parts of the policy by misusing their Council supplied phones.

iv. Relevant Provisions of the Act

The following sections of the Act are relevant to the adoption and implementation of the Council's Civic Expenses Policy, including telephones:-

- *"Section 75 Reimbursement of Expenses*

A Council may reimburse Councillors or members of Council committees for necessary out-of-pocket expenses incurred while performing duties as a Councillor or committee member."

- *"Section 76B Rules of Conduct*

- i. In performing the role of a Councillor or a member of a special committee, a person –
 - a. must act honestly;*
 - b. must exercise reasonable care and diligence.**
- ii. A person who fails to comply with sub-section (1) is guilty of an offence against this Act.*
- iii. A person who is, or has been, a Councillor or member of a special committee –
 - a. must not make improper use of their position –*
 - b. to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person."**

In effect, the legislation provides that Councillors are only entitled to be paid for expenses which they incur in exercising their civic duties and that they must ensure they act honestly and not make a gain from improper use of Council supplied facilities.

d. Discussion with Councillors re Phone Use

Each Councillor was interviewed by the Inspectors under Oath regarding their use of Council supplied phones. All were able to correctly recall the provisions in the policy regarding private phone usage.

A summary of issues relating to each Councillor is as follows :-

i. Cr Grossbard

PwC investigated an allegation against Cr Grossbard for using his Council provided telephones for private purposes, including use during the Council election campaign in February / March 2003.

Cr Grossbard claimed that a family member had used the Council phone without his knowledge or permission. He agreed to refund to the Council an amount of \$727, assessed by Cr Grossbard in discussion with PwC as attributable to private use.

PwC concluded that Cr Grossbard did not take adequate steps to ensure that his phones would not be used by a person other than himself.

Cr Grossbard also agreed in his interview with PwC that he had used the phones for electoral purposes but said he was not aware at the time that the policy prohibited use for such purposes. Given that he participated in at least ten Council meetings devoted to developing the Civic Expenses Policy, the Inspectors do not consider his explanation credible.

Cr Grossbard made the following statements to the Inspectors regarding phone use:-

- all Councillors should review their phone bills each month;
- Crs Sapir and Goudge had been warned by the DCR about their excessive use of phones;
- the words “incidental private use” are inappropriate, a matter which he claimed to have raised with his colleagues in the past;
- that he did not properly supervise the use of his phones;
- he had responded to calls during the Council election campaign using his Council phones and that all Councillor phone bills increased during the election;
- staff were not responsible for the wording of the policy; Councillors were;
- he was concerned that Cr Goudge had made 20,000 phone calls, three times more than any other Councillor;
- he agreed with the recommendations by PwC on expenses and governance issues; and
- he helped to prepare the recommendations that were included in the PwC report.

According to Geoff Harry (PwC) Cr Grossbard had no input into the preparation of recommendations contained in the PwC Report.

His overall Council phone account was about equal to the Councillor average.

ii. Cr Goudge

PwC concluded that Cr Goudge used his phone extensively for private purposes; during the State election campaign in October / November 2002 when he was a Liberal Party candidate for the seat of Oakleigh; and during the Council election campaign in February / March 2003.

Cr Goudge informed PwC that he was a high profile Councillor and that the volume of calls he makes from his mobile phone doesn't surprise him. He also said he was “..unclear..” about the meaning of “...*incidental private usage*...”.

Evidence was presented to PwC that questioned Cr Goudge's claim to being a high profile Councillor, in particular that he did not attend any of the twelve civic functions held during the year, did not attend any planning conference meetings other than those he chaired, and did not attend any meetings of the committee of which he was a member.

The Inspectors interviewed Cr Goudge about his phone use, drawing his attention to the facts that:-

- his use was far greater than that of any other Councillor;
- during the State and Council election campaigns (November 2002 and February / March 2003), his average monthly phone calls increased from 672 to about 1,400;
- he made about 940 private phone calls to one person on his mobile phone during four months in 2004.

In responding, Cr Goudge stated as follows:-

- Council should put its house in order by tightening up the policy;
- he now pays his phone bills and seeks reimbursement from the Council for the Council share;
- it is up to each Councillor to determine what "*incidental private use*" means. The wording is a weakness in the policy which has not been resolved and his usage is in accordance with that policy;
- the large number of personal phone calls during four months in 2004 were partly the result of responding to SMS messages from his estranged wife. He agreed that a substantial number of these calls were his personal calls;
- in his view, he didn't breach the policy but other people might have a different view;
- his calls increased during each election campaign because he had "*..a much greater profile than you might ordinarily have..*" and that it was difficult to decide whether some calls were election related or the result of attending to the "*..concern of a constituent*".

It is clear that Cr Goudge's phone usage was very high in comparison to every other Councillor. Several other Councillors criticised the extent of his usage.

While he finds it difficult to define "*incidental private use*", he participated in at least ten meetings of the Council in preparing the policy, and is now relying on the vagueness of the wording to justify the difficulty in accurately determining private use that could be regarded as incidental.

Cr Goudge was reminded by Mr Burke (DCR) on several occasions, both verbally and in writing, that his phone bills seemed excessive. Refunds of some of his excess costs (approx \$700) have been made to the Council.

iii. Cr Esakoff

Cr Esakoff told Inspectors that she believes her use of phones is consistent with the Council policy. She agrees with the recommendations by PwC to tighten the expenses policy and improve the related governance issues.

The records show that her phone costs are moderate, her average monthly account being well below the Councillor average.

iv. Cr Bury

Cr Bury agrees that the PwC report has identified the main issues – the non compliance by Crs Goudge and Grossbard. He believes the phone expense policy must be addressed.

No complaints have been made against Cr Bury's use of the Council supplied phones and his monthly costs are below the Councillor average.

v. Cr Hyams

Cr Hyams was dissatisfied with the PwC Report because it focussed on Crs Goudge and Grossbard and failed to review what he claimed was excessive use by Crs Erlich, Martens and Sapir. He resented the statement by PwC that all Councillors used their phones contrary to the expenses policy because he complied with it.

He agreed with the recommendations by PwC to tighten the expense policy and to improve governance.

Cr Hyams' phone usage is moderate, being well below the average Councillor usage.

vi. Cr Marwick

Cr Marwick agreed with the PwC recommendations to improve policies relating to expenses and governance. However, she believed the report took too long and was too expensive.

She claimed to have used her phones in accordance with Council policy. When her attention was drawn to the substantial increase in her phone bill at Council election time (March 2003), she stated that more people ring Councillors during that period and she had to ring them back. "*People get involved.*" Cr Marwick expressed a strong objection to "*... the extent of Cr Goudge's bill*".

Cr Marwick's phone costs are marginally above the Councillor average.

vii. Cr Sapir

Cr Sapir agreed with the recommendations in the PwC report. Her call costs escalated during the latter half of 2003 due to an increase in both Council generated calls and private calls. She received verbal reminders from the DCR about these increases. Cr Sapir agreed to reimburse Council for the cost of private calls.

However, her overall average costs for phone usage per month are below average.

According to Cr Sapir, the account incurred by Cr Goudge is “*astronomical*”.

viii. Cr Martens

Cr Martens also agreed that the recommendations contained in the PwC report should be implemented. She agreed that the words “*incidental use*” require clarification but may, in reality, mean that \$5 in every \$100 would be incidental.

Cr Martens believes that her usage complies with the policy. Although she may, on occasions have used the Council phones for private use, she argued that her own private phone is sometimes used for Council business. She claims that calls made from overseas on her Council phone were Council related.

Her average monthly costs are well below the Council average.

Cr Martens said she found it “*impertinent and incredible*” that Cr Goudge would use his Council mobile phone to the extent he did.

ix. Cr Erlich

Cr Erlich stated that he did not fully comply with the policy regarding use of his home phones. He had made some private use of them but he had also used his business phones for private use. He said he used his mobile sparingly.

Cr Erlich’s use is about average in comparison to that of other Councillors.

e. Actions to be Taken on Phone Accounts

Some Councillors have used their Council provided phones for purposes not authorised under the Council policy (i.e. excess private use, including election purposes) and may be in contravention of the Act.

Several Councillors expressed difficulty in interpreting the words “*incidental use*”. This term was retained in the policy after Councillors held several meetings to refine the content and terminology of the document.

While the term has been called “*imprecise*”, it is clear from dictionary definitions – “*by chance*”, “*accidental*”, “*minor*” – that private use of Council supplied mobile phones is permitted for the ‘odd occasion’ or the “*special or unusual circumstance*”. Any wider interpretation means that the Council policy would be contravening the Act.

Several Councillors increased their phone usage substantially during Council Elections in February / March 2003, in particular Cr Goudge who also doubled his usage during the State Election in November 2002.

Each Councillor should be required to review their Council telephone accounts and, in discussion with the Internal Auditor, determine the amount of any private expenditure which should be reimbursed to the Council. This process would be facilitated where required by involvement of an Inspector of Municipal Administration. It is noted that Cr Grossbard has completed this process up to 29 February 2004.

Should agreement not be reached with any Councillor by using this approach, then recovery may be sought using the provisions of Section 76B of the Act.

Attention is also drawn to Section 240A of the Act, which provides that the Minister, on recommendation from the Secretary, DVC, may impose a surcharge on any Councillor who incurs expenditure in contravention of the Act or a deficiency or loss through misconduct. Any amount recovered by this process is paid to the Council.

f. PwC Report – Findings and Recommendations

The PwC Report contains findings and recommendations on the Council’s Civic Expenses Policy and in regard to certain governance practices of the Council. Copies of these sections of their report are attached. **Refer Appendices 4.1 and 4.2.**

David Gibbs, Chairman and Gary Mc Lean, both Chartered Accountants and external members of the Council’s Audit Committee generally agree with the PwC recommendations and describe them as logical and sensible. They believe Council should be acting on them.

Tony Brown, Director Strategic Audit Planning Local Government and Infrastructure, Auditor General’s Office advised that in his opinion, the PwC recommendations were reasonable and should be implemented.

In response to questions from Inspectors about the PwC Report, Councillors indicated that they generally agreed with, and supported, adoption and application of the recommendations.

However, the Inspectors are not convinced of the need to:-

- record pre Audit Committee discussions;
These discussions are not seen by the CEO or external members of the Audit Committee as creating a governance or management problem;
- review Councillor Induction Programs;

The material presented is comprehensive and considered by all those interviewed to be adequate.

g. Staff Expenses

i. Report on Expenses requested by the Council

On 23 May 2005, the Council resolved as follows :-

“Crs Goudge / Grossbard

That a report be prepared and included in the papers for the next public Council Meeting that details;

- a. Expenditure by council’s executive team on;
 - i. Council provided mobile telephones.*
 - ii. Travel expenses including petrol, airfares and public transport.*
 - iii. Hospitality, and*
 - iv. Conferences and courses.**
- b. That such expenditure be recorded against individual officers as it is with Councillors and be reported on a month by month basis over the past 12 months, and*
- c. That the report provide advice on the obstacles if any associated with the public reporting on individual officer expenditure on an annual basis as happens with Councillors on the website.”*

The CEO prepared a draft report in response to the Council’s request which, in summary, provides the following information:-

- the Executive Team comprises the CEO, four Directors and the Chief Finance Officer;
- the total cost to Council of the expenditure items specified in the resolution was \$3,194 for the period March 2004 to March 2005, an average of \$533 per person per year.

A breakdown of these costs is as follows:-

	Total \$	Per Person \$
Mobile Phones	828	138
Conferences and Seminars	2273	379
Other	93	16

The CEO made the following comments concerning public reporting:-

“Disclosure and reporting involve issues of accountability. The accepted governance principle is that expenses are disclosed to those to whom one is accountable. Executive staff are accountable to the CEO so their expenses are disclosed to him within the relationship established under the Act and the employment contract.

The Government has specified some items of information in relation to individual senior officers which must be maintained in a Register and be made available for public inspection (eg details of interstate and overseas travel and remuneration). This is a greater level of disclosure than for the Commonwealth government, State government or the private sector.

If Councillors or others wish to inspect details concerning individuals, they may inspect the information which the Government has determined is to be available. If any party believes that the level of disclosure should be extended, that is a matter for the State Government. If any outside organisation believes that more details of individual officers should be disclosed, no doubt they will lead by example and make such disclosure themselves."

ii. Commentary

The request by Council for this report appears to have been made as a consequence of the PwC Report on Councillor expenses.

Expenditure incurred by senior staff on these facilities is comparatively low.

The CEO has implemented clear policy guidelines in regard to staff use of Council provided facilities.

The Inspectors are aware of a reluctance on the part of staff to take up training opportunities because of the fear of being targeted by Councillors for doing so.

h. Conclusions

Cr Goudge's mobile phone usage is in breach of the provisions of the Council's Civic Expenses Policy. Other Councillors have also breached the policy but to a lesser degree.

Each Councillor must assess their accounts for Council supplied phones, in consultation with the Council's Internal Auditor, with refunds to be made to Council where costs incurred exceed those allowed under the policy. (Note Cr Grossbard has completed this process)

The recommendations made by PwC:-

- **to refine and clarify the expenses policy; and**
- **to improve governance practices (with certain exceptions, as set out above)**

should be implemented.

Costs incurred by senior executives in using Council provided facilities such as mobile phones, travel and conferences are very moderate.

IV. COMMENTS ON ORGANISATIONAL PERFORMANCE

1. ADOPTION OF ANNUAL REPORT 2003/04

a. Councillor Views

The Council met on 25 October 2004 to consider the Annual Report for 2003/04.

The report received high praise from all Councillors.

Cr Grossbard stated that it was one of the best he had seen and provided a “*great window*” into the functioning of the Council.

Cr Marwick commented that it was a “*..wonderful publication..*” and that “*...we can all be justifiably proud of our position and reputation...*”. She said the Council is in a strong financial position, with favourable operating costs and is held in high regard.

Cr Martens referred to the economic achievements of the Council – low rating, low operating costs, good risk management, greater investment in road maintenance and reduced staff turnover.

Cr Erlich described the document as “*fantastic*” and referred to statistical evidence of size and performance, including total income of \$82.0m of which 51% was collected in rates, an operating surplus of over \$2.0m and a capital works investment of \$16.8m. He said that when compared to neighbouring Councils, Glen Eira’s operating costs, rating levels and debt level demonstrated a better performance. He concluded by stating he was proud to be part of it, and proud of the staff, this being the Council’s greatest asset.

Cr Hyams commended those responsible for a well presented publication which not only lists the achievements, but also raises the challenges to be met.

Cr Goudge said the document clearly spells out an outstanding record and that the Council has quality people working for it.

Cr Esakoff referred to the Annual Report as a “*wonderful*” document and drew attention to the high achievements by Council in community satisfaction ratings such as 86% for overall performance, 84% for customer service, 90% for waste management, 84% for recreational facilities and so on. “*All of these things are because the Council is very well run by all concerned.*”

Cr Sapir commended everyone on the report and drew attention to the contribution made to Council services by volunteers.

Cr Bury (then Mayor) referred to the report as professional and very impressive.

b. Commentary

The Councillors were virtually unanimous in expressing their pride in the quality of the report and in the standards achieved by the Council, with particular reference in some cases to the staff.

The Auditor-General Victoria, Mr Wayne Cameron, wrote to the CEO on 16 June 2005, commending Glen Eira's success in winning the Gold Award at the 2005 Australasian Reporting Awards. He said in part that:-

“Winning top spot for any achievement has much to commend it, but for a public body to do so is especially important given the diverse nature of your organisation’s activities and its vital impact on our community.

I know also that often times achievements such as these are symptomatic of other good practices that exist in winning organisations. Your success will act as a beacon to others to follow. For my part, you can be certain I will refer others who will look for leadership and example to your achievement.”

The quality of the report was also recognised recently in State awards, being runner up for:-

- best reporting on Corporate Governance; and
- best reporting of Performance.

The report also won best reporting on Best Value.

2. BY COUNCILLORS ABOUT THEIR OWN PERFORMANCE

a. Statements by Cr Bury, Mayor 2004

The Mayor's message in the Annual Report for 2003/04 includes the following statement which reflects a pessimistic view of the Council's ability to achieve unity:-

“One of the many challenges which face Council is the need for all Councillors to unite and work together more harmoniously. The infighting which has plagued Council over the past 12 months has been well publicised. My sincere hope, as we move into a new financial year, is that the Councillors can leave the backbiting and bickering behind them and move forward to work co-operatively for the good of our community.”

At a Council meeting held on 15 November 2004, during the discussion of a motion to advertise the intention to put a resolution to re-appoint the CEO, Cr Bury put a more optimistic view.

“... the process has been extremely lengthy process. Far longer than I would have thought it would have been, however, I must admit that it was the correct process and we were able to do it without what I said in that memo the other day, bitterness that we have had I think against some Councillors for maybe one or two years or maybe even longer and I really do think it was a very very worthwhile process and I do congratulate all the Councillors on their input into that process.”

On 13 December 2004, one month later at his last meeting as Mayor, Cr Bury concluded that resolution of Council's governance issues may not be possible:-

“I have had excellent support from all the Directors and in particular, Andrew Newton and Paul Burke and I believe their advice on all occasions was very sound. However, I must admit chairing Council Meetings and other meetings have on many occasions been rather a difficult, in fact sometimes extremely difficult. And it is a shame that we all cannot work together for the benefit of the Community.

Good Governance is still a major problem. I believe in this Council and I am not particularly sure if an updated code of conduct will overcome this problem. I believe perhaps this will only improve when maybe there is a different mix of Councillors.”

After the meeting, Cr Marwick requested a transcript of Cr Bury's address. When asked why by the Inspectors she said that *“...It was an insulting and very disloyal speech to make about his colleagues. It was veryself indulgent and not the sort of thing you'd want to hear publicly at a meeting. Good governance is still a major problem.”*

These statements reflect the unpredictable and turbulent nature of governance at the Council.

Cr Bury expressed uncertainty as to whether a new Code of Conduct will help deal with the problem. His pessimism is justified given that previous attempts at mediation, and adoption of Codes of Conduct have not resulted in any lasting improvement.

b. Statements by Councillors in Interviews with Inspectors

Each Councillor was asked by the Inspectors to identify what they believed were Council's main roles and responsibilities and comment on their performance in carrying them out.

Several Councillors were unclear as to their roles in policy making, strategic planning, budgeting, monitoring, and accountability for performance. One Councillor stated that *“... Councillors have difficulty grasping these concepts”*. Another said:- *“Councillors don't understand their roles and responsibilities”*.

Most Councillors agreed that, as an elected body, the Council wasn't doing its job effectively and that the excellent reputation as a high performer enjoyed by the Council was directly attributable to a high performing staff. The comments made to the Inspectors by a majority of Councillors indicate that their collective opinion of their own performance is negative.

Their responses to questions asked by the Inspectors consistently identified the following governance problems:-

- no co-operation between them;
- lack of goodwill;
- constant vilification and harassment;
- verbal public attacks;
- lack of mutual trust;
- setting a poor example;
- causing embarrassment;
- actions bringing Council into disrepute.

Further, there was general acknowledgement that the strategic direction of the Council is driven by Officers.

3. BY COUNCILLORS ABOUT STAFF PERFORMANCE

Councillors were generally strongly supportive of the overall staff performance. However, while several Councillors expressed confidence in the CEO and DCR, others were critical of their performance, in particular Crs Grossbard and Marwick who made a number of unfounded allegations against them. (Refer Part V Sections 4 and 5 of this report).

4. BY COUNCIL DIRECTORS

The Inspectors met with each of the four Directors and the Chief Financial Officer individually. The opinions expressed by each person interviewed were consistent.

A summary of their collective views of governance at Glen Eira Council is as follows:-

- Generally, each Director has a good working relationship with the Council, and Councillors respect their advice.
- Councillors don't generally understand or appreciate strategic planning, policy and direction. This is performed by the CEO and Directors with little or no contribution by Councillors.
- Glen Eira City Council is a productive, high performing unit in spite of the Councillors. The two most recently appointed Directors confirmed that the Council is well managed, financially sound and has good systems in place.

-
- The CEO provides sound direction, is a good strategic planner and a very effective leader.
 - Governance is a major problem.
 - Council meetings degenerate into a farce when dealing with agenda items such as Urgent Business, Requests for Reports. The grandstanding and point scoring associated with these parts of the meetings is embarrassing, reduces Council to a laughing stock and demeans local government.
 - The Council Meeting held on 7 February 2005, and adjourned to 14 February 2005, attended by the Inspectors, was typical of the disorderly, disruptive and unproductive behaviour seen at many other Council meetings.
 - Briefing meetings are generally a waste of time. Rather than being used to address issues and resolve problems, they also provide a forum for point scoring.
 - The CEO allows Councillors to have access to Directors but not management staff, to protect the organisation from negative influence at that level.

5. BY THE SENIOR MANAGEMENT GROUP

The Senior Management Group (SMG) of the Council, comprising thirty managers, made a submission to the Inspectors concerning governance matters at the Council.

The Inspectors were advised that the Group “...speaks with one voice...” and that their submission represents a united approach.

A summary of their submission is as follows:-

a. Performance of the Council (Councillors)

Much of the focus of the current review involves governance issues. It is therefore fair to say that the performance of the Council and Councillors is the major point of consideration.

The thoughts of the SMG include:-

- Councillors lack any forward vision and are unable to articulate clear direction/s for the organisation.
- Council is incapable of making decisions for the future good
 - many decisions are based on what is popular now
 - they are unable to deliver unpopular news to the community.

-
- The Council is divided and not acting in the best interests of its community – there are elements of self-preservation, self-serving and “*scoring points*” against each other.
 - The behaviour of the Councillors is embarrassing especially when reported by the media.

b. Performance of the CEO and Executive

- The City of Glen Eira is high achieving due to the leadership of the CEO and the good management of the Executive.
- The Executive has shielded much of the organisation from the politics so it does not affect the performance of the staff. Without this, the stress levels of the organisation would be higher.
- Much of the vision and forward looking of the organisation is generated by the CEO, Executive and Senior Management Group.
- The CEO has set the foundation and developed an organisation which is recognised for its people management (conditions and training), financial performance, risk consciousness, strong policy base, high customer satisfaction and commitment to excellence in service delivery for the community.
- The City of Glen Eira is recognised as a leader in the industry and sets benchmarks in many of its services. This has been promoted and fostered by the CEO and the Executive.

c. Staff Morale

The CEO has done a fantastic job of protecting staff from the politics and in many ways staff morale has not been affected to the detriment of performance. However, questions are increasingly being asked, uncertainty is heightened and the longer the “*in fighting*” continues, the more it will impact on the staff.

d. Governance Issues

Serious concerns exist with the commitment of the Council (Councillors) towards governance issues:-

- confidentiality is constantly breached;
- leaking of information is common;
- sensitive information is mischievously used;
- initiatives are sometimes rejected for the wrong reasons;
- there are breaches of policy;
- Council meetings are at times farcical;
- lack of respect exists between Councillors.

Suffice to say that the Councillors have not honoured their commitment to office and the community, and their performance has become a source of embarrassment.

6. BY EXTERNAL MEMBERS OF THE AUDIT COMMITTEE

The Inspectors sought comments from David Gibbs (Chairperson) and Gary McLean, external members of the Audit Committee, on Council performance relating to governance.

Mr Gibbs is a Partner at McInnes, Graham and Gibbs, Chartered Accountants and is a past president of the Institute of Chartered Accountants. Mr McLean is a Partner at Deloitte Touche Tohmatsu.

Their comments are summarised as follows:-

- Council has followed a pattern of bad governance for several years.
- There is no proper governance, Councillors have no real understanding of their roles and what constitutes good governance. A Council must operate like a good private firm – have a framework that holds it together. This is missing at Council level.
- It is of utmost concern to Mr Gibbs and Mr McLean that Council's actions will cause risk factors to escalate when the staff is doing its utmost to minimise them.
- The CEO, Senior Staff and Managers are good performers. The quality of performance by the administration is high.
- The CEO and Directors are, in reality, the strategic planners for the Council. Councillors have tended to focus on the “*micro*” issues.
- The role of management is to support the Council. However, in this case, the management has had to lead the way because the Council is not performing its roles and responsibilities.

7. BY THE INTERNAL AUDITOR

The Inspectors sought comment from Geoff Harry, Partner in Pricewaterhouse Coopers. Mr Harry has had considerable experience as a consultant and advisor to the local government industry on governance and financial issues.

- Mr Harry advised that financial management is sound, the Council is in a good financial position and its systems provide good control. The CEO and Executive team are very good operators and are responsible for the fact that the Council is a high performing one.

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- In Mr Harry's view, there is a problem at Councillor level. Councillors do not appreciate what constitutes good governance and do not understand their roles and responsibilities. Further in his view, they do not provide effective community representation.

8. BY THE CEO, MUNICIPAL ASSOCIATION OF VICTORIA

Mr Rob Spence, Chief Executive Officer MAV, described the administration as a high performing unit that "...gets the job done". It would be in the top five in the State. He also said that the Councillors had experienced difficulties in working as a cohesive unit for some considerable time.

9. BY MEMBERS OF THE PUBLIC

Over twenty rate payers, residents and representatives of local organisations sought discussions with the Inspectors. Almost all of those interviewed, irrespective of which Councillor group or Councillors they supported, made similar comments about Council performance.

The most common concerns expressed were that Council infighting was getting worse, interpersonal conflict was a major concern, Councillors had lost perspective, were contributing nothing to the advancement of the City, and were incapable of change.

The comments made about staff were mostly supportive, describing the City has having strong, capable management. However, there were those who believed that the divisions in the Council may be due, in part, to the attitude of the administration.

Some residents met the Inspectors about particular issues, such as planning permits and child care centres. Criticism in these cases was often directed at both Council and the administration, usually about lack of appreciation of their particular concerns, together with inadequate communication and consultation processes.

10. FACTORS INDICATIVE OF HIGH PERFORMANCE

The Council has a recent history of high performance, having won a substantial number of awards and been recognised for its excellence by several professional Australian Institutes and Associations, in areas such as:-

- Customer Service
- Town Planning
- Recreation
- Risk Management
- Corporate Reporting
- Best Value
- Financial Management

A list of these awards and achievements is attached. **Refer Appendix 6.**

11. CONCLUSIONS

In assessing Council's performance against the Good Governance Guide and the ICAC principles, it is clearly evident that Council is very well managed.

The standards attained are directly attributable to the efforts of a high achieving, skilled administration. The quality of leadership by the CEO and Directors in providing corporate vision and setting strategic direction is reflected in the awards received, and recognition given by, the local government industry. This is acknowledged by all those from whom the Inspectors sought comment.

The CEO, assisted by the Directors has set the foundations for quality performance by focussing on achieving good people management, financial stability, risk minimization, high customer satisfaction levels, and a commitment to excellence. Further, the executive team ensures that the staff at management level are protected from what is described as "*negative Councillor influence*". However, there is a concern that Councillor behaviour is adversely affecting staff morale.

Conversely, the Councillors have difficulty in exercising their major responsibilities of strategic planning, policy making and strategic decision-making. The majority of Councillors accept that their performance in exercising these roles is unsatisfactory and their capacity and will to improve is lacking.

Councillor behaviour has also been the subject of extensive criticism by all parties interviewed by the Inspectors, including the Councillors themselves. Typical comments include:-

- failure to work co-operatively;
- lack of trust, respect and goodwill;
- constant vilification and harassment;
- verbal public abuse; and
- setting a poor example.

In addition, Councillor conduct at meetings when dealing with Councillor-generated business is consistently described as being characterised by:-

- point scoring;
- disorderly disruptive conduct;
- misuse of sensitive information; and
- actions which demean local government.

Councillors have not demonstrated a capacity to abide by their own Code of Conduct, have committed numerous breaches of confidentiality and are constantly involved in demonstrations of unruly behaviour at Council meetings. These factors have all contributed to the term "*embarrassment*" which has been often used to describe their performance.

Overall, the Council has performed very successfully, not as a result of leadership provided by the elected Councillors, but in spite of the lack of it.

V. COUNCIL / CHIEF EXECUTIVE OFFICER ISSUES

1. PERFORMANCE EVALUATION PROCESS

a. Commentary

The provisions of the Act relating to the CEO's performance indicators and review processes are:-

Section 95A requires that Council appoint a CEO under contract; and that *"..performance criteria for the purpose of reviews.."* of the CEO's performance must be specified, otherwise the contract is void; and

Section 97A provides that at least once each year a Council must review the performance of its Chief Executive Officer.

This is one of a Council's most significant responsibilities.

Prior to 2004/05, the performance indicators set for the CEO of Glen Eira City Council were generally not related to the Council Plan, were not strategic and tended to be "ad hoc".

The task was left in the hands of the Mayor of the day, and the review was completed to comply with the Act, rather than being seen as an opportunity for both parties to seek opportunities for developing and improving the working relationship.

The indicators were not usually finalised until several months into the year. No indicators were set for the 2002/03 year, although the CEO proposed a written list of draft indicators for Council consideration on at least six occasions during that year.

While the Act doesn't prescribe that interim reviews be carried out, ideally these should be used as a means of identifying and addressing any concerns that may arise during the year, rather than waiting the full twelve months. The Council has not adopted this practice.

The Councillors meet annually and make their assessment of the CEO's performance as a group, devoting considerable time to allocating point scores for the indicators. The Mayor then advises the CEO of his score and the bonus payment is made accordingly. There is no opportunity provided for the CEO to participate in this process, to address criticisms, provide explanations or receive feedback. According to the CEO, these processes have been of limited value to himself or the Council.

On 14 July 2003, he wrote to the then Mayor Cr Marwick, stating that:-

*"I am seeking a proper process of performance feedback in which each Councillor and the Council collectively tell me how he / she / they consider I have performed against the KRA's. **In my more than three years as CEO that has never happened.**"*

I have been given an overall percentage score but without any feedback on any individual Key Result Area and without any discussion with Councillors either collectively or individually.

I believe that:-

- this is not the way to maintain a good relationship;*
- the Council foregoes a healthy opportunity to make simple “corrections” to performance instead of waiting for them to grow into misunderstandings or dissatisfaction;*
- it falls well short of good personnel practice;*
- it makes it impossible for me to meet expectations because the expectations are never stated.”*

The Mayor (Cr Marwick) responded promptly by arranging to make a performance payment, an arbitrary task because no indicators had been set for the year under review; and then ensured that indicators were adopted for 2003/04.

Performance measures have been agreed on and set for 2004/05, being largely derived from the Council Plan. However, the system of review, assessment and feedback to the CEO has not been addressed.

According to Mr Newton, he has not, during his five year term as a CEO, been involved in any consultation with the Councillors to discuss performance at a meeting, or been provided with any feedback.

b. Conclusions

The Council’s performance in setting indicators and reviewing the CEO has been inadequate. It has not properly discharged one of its most important responsibilities under the Act. While improvements have been made in setting the indicators for 2004/05, the achievement of a constructive outcome will be highly dependent on the means by which the review process is conducted.

2. DISPUTE BETWEEN COUNCIL AND CEO - 2002 / 2003

a. Factors Leading up to the Dispute

At a Council meeting held on 29 April 2002 the CEO raised various issues relating to occupational health and safety. He alleged that the Council had failed to provide him with a safe working environment that was “without risk to his health”. His report entitled “Council’s Responsibilities as an Employer” is attached. **Refer Appendix 5**

The CEO argued that he had been harassed by a letter written by Crs Grossbard and Erlich to the Mayor and Councillors, the then Office of Local Government and himself on 4 April 2002.

The letter referred to a report which the CEO presented to Council following a trip by three Councillors (including Grossbard and Erlich) to the Council's sister city, Ogaki in Japan. It stated, in essence, that the administration had submitted a report to the Council about the trip which was inaccurate and denied them natural justice, and that they would be issuing a press release calling for the dismissal of the CEO, Andrew Newton.

The Council sought legal advice from Macquarie Lawyers and Strategists and was advised on 1 July 2002 that the "... Council has breached its statutory obligation to provide a working environment that is without risk to the CEO".

The legal advice proposed four recommendations, including:-

- adopting a Code of Conduct for Councillors in the form of a Local Law with sanctions; and
- providing a process for resolving disputes between the Council and the CEO.

Further, it stated that:-

"I am satisfied that the sending of the memoranda and the prior behaviour of Cr Grossbard as detailed in the CEO's report constitutes conduct which challenges the CEO's work environment which should otherwise be free of preventable harassment. Unless a remedy is found it is likely that Council will remain in breach of its statutory obligations towards the CEO".

Council did not act on this advice.

The CEO wrote to Council on 7 August 2002 drawing attention to its failure to properly complete his performance assessment for the year ending April 2002. Council took no action.

During the latter half of 2002 the CEO also advised the Council on seven separate occasions that it had failed to set any measures to assess his performance for the year ending April 2003. He proposed a set of measures in writing for Council consideration. Again no action was taken.

b. The Dispute and Further Legal Advice

On 9 February 2003, the CEO notified all Councillors that he had initiated a dispute between the Council and himself, in accordance with the terms of his contract, which alleged that the Council:-

- had not properly completed the assessment of the CEO's performance for the period April 2001 to April 2002;
- had not set any Key Result Areas for the period April 2002 to April 2003; and
- was breaching its statutory obligation to provide a working environment without risk to the health of the CEO.

On 5 May 2003, following the elections in March 2003, the Council resolved to:-

-
- a. *“Seek legal advice concerning the Notification of Dispute and related matters pursuant to the employment contract between the Council and the CEO of the City of Glen Eira.*
 - b. *Authorise the Mayor to engage the legal firm Arnold Bloch Leibler, 333 Collins Street, Melbourne and to brief this firm immediately.*
 - c. *Authorise expenditure up to \$8,000.*
 - d. *Require a further resolution of Council if expenditure is likely to exceed that specified in paragraph c.*
 - e. *Require Arnold Bloch Leibler and Council to maintain confidentiality on these matters.”*

The Mayor, Cr Marwick, approached Arnold Bloch Leibler (ABL) on Council’s behalf. However, there is no record of the scope of services which Cr Marwick asked the Lawyers to provide.

On 20 May 2003, ABL wrote to the Mayor, referring to the *“... substantial amount of material which you have provided to us...”* and making some general observations about the Notification of Dispute and CEO’s Contract Agreement. It sets out at some length, the circumstances in which the services of the CEO may be terminated. Further, it refers to a number of complaints made to the Ombudsman on 14 January 2003 by Crs Grossbard and Erlich about issues concerning the manner in which the CEO is performing his role. The letter sought further information from the Mayor, who submitted the required details on 21 May 2003.

In June 2003, ABL acknowledged the information provided by the Mayor, and also the additional issues presented in papers provided by Cr Grossbard.

ABL confirmed its *“...earlier advice that the CEO is entitled to raise each of the three issues..”* in dispute between the Council and the CEO, i.e. assessment of performance, setting of performance measures and safety of the working environment. ABL also addressed the Council’s position should it terminate the employment contract.

This advice stated that *“...Having considered this issue, we do not consider that it would be appropriate for the Council to seek to end the employment relationship on this basis because it is unlikely to succeed and would leave the Council open to criticism”*. The *“basis”* referred to is the omission of performance measures from the CEO’s contract (Section 94 of the Act).

ABL provided Council with three options, including the appointment of two Councillors to approach the CEO on a *“without prejudice”* basis to discuss his departure. They further advised that if agreement is not reached with the CEO, then Council should proceed to deal with the Notification of Dispute. Following discussions between the CEO and the two Councillors (Marwick and Hyams), the latter course was taken.

The Inspectors found no correspondence on Council files between the Council and ABL. In February 2005 they served notices on those Councillors who it was understood had retained the documentation; namely Crs Marwick, Esakoff, Hyams and Grossbard; each of whom responded promptly by providing relevant material.

Notwithstanding Cr Marwick's apparent concern for the privacy of the CEO, all documents relating to the advice from ABL should have been lodged in Council records. Failure to do this may have been in contravention of Section 19 of the Public Records Act, and certainly hindered the CEO in fulfilling his duty as the "*Officer in Charge*" of the Council to maintain full records, pursuant to Section 13 of the Public Records Act.

c. Discussions between Councillors and Inspectors

The matter was discussed with each Councillor at interview.

Cr Marwick acknowledged that the CEO was justified in raising the dispute with the Council but she claimed that the legal advice received from Macquarie Lawyers contained mistakes of judgement and was flawed.

She could not recall whether the Council requested advice from ABL about terminating the CEO. Cr Marwick stated she tried to protect the reputation of the CEO during this time. She didn't place the advice received from ABL on file because she was afraid it would leak to the newspapers. Each Councillor was given a copy of the advice in her presence, asked to read it, and hand it back.

In response to a question, she agreed that it was not appropriate to seek advice on dismissing the CEO for raising legitimate concerns.

Cr Marwick acknowledged that she had received assistance from Cr Grossbard in providing information to ABL and also from Cr Hyams in discussing the issues with the CEO.

Cr Martens believed the Council resolved to seek assistance from ABL on the matters in dispute with the CEO, not on termination. The actions taken by the Mayor went "...*outside the framework of the resolution*". She is not aware of why the subject of dismissal arose.

Cr Goudge said he wasn't aware that advice on termination was to be sought from ABL but he was not surprised, given the political nature of relationships at the time and the "*obstructive*" behaviour of the CEO.

Cr Grossbard agreed that the action taken by the CEO to issue a Notice of Dispute was acceptable. However Cr Grossbard claimed that Mr Bramham of Macquarie Lawyers from whom Council obtained the advice, was not independent because he was involved with the Council in arranging a termination agreement with a previous CEO (Ms Douglas) and was on friendly terms with the then Mayor, Cr Kennedy.

In response to the question as to why termination was raised, Cr Grossbard said he knew nothing about that. He said he attended the first meeting with ABL in support of Cr Marwick and this was the first and last time he was involved, except to provide some detailed supporting information. The supporting information included several allegations that he and Cr Erlich had submitted to the Ombudsman in January 2003.

He supplied this material because the Mayor asked him to and he didn't want to become further involved. However, he acknowledged that the allegations which he had submitted were all negative and critical of the CEO's performance.

Cr Marwick denied asking Cr Grossbard to provide material and said that he did this on his own initiative.

Cr Hyams said he believed that ABL was approached to determine whether the CEO had breached his contract, with the intention of perhaps terminating his services. He said this was discussed beforehand at a meeting of Councillors at which eight or nine were present. According to Cr Hyams, the matters in dispute between Council and the CEO were partly resolved using ABL's advice. The Mayor did not want the documents placed on the Council files for security reasons.

Cr Sapir recalls reading the advice from ABL and handing it back to the Mayor. She also expressed her concerns about Council's apparent non compliance with the Public Records Act.

Cr Erlich said that he was involved with Cr Grossbard in providing a submission to the Ombudsman concerning the CEO which, in hindsight, he was "*ashamed*" about. According to Cr Erlich, Cr Grossbard gave information to ABL because "*... he did not get on with Andrew Newton*".

Crs Bury and Esakoff could recall very little of the events as both were new Councillors.

d. Commentary

There are several governance issues which arose from this matter which are indicative of the reasons for the current investigation.

The first is that, while Councillors agreed that the CEO was justified in serving his Notice of Dispute, legal advice was sought as to whether his employment could be terminated. There is no clear indication as to why Council proceeded to seek that advice.

The Councillors directly involved, Crs Marwick, Grossbard and Hyams, have differing views.

Cr Marwick said she couldn't recall whether Council intended to seek such advice, even though she was the main point of contact with ABL. Cr Grossbard said he knew nothing about seeking advice on termination. He did what the Mayor asked him to do, provide information. However the information that he submitted to ABL was highly critical of the CEO's performance.

Cr Hyams' view, however, is that ABL was approached to ascertain whether the CEO's services could be terminated under the contract.

e. **Conclusions**

The Council:-

- failed to act on a request from the CEO to provide a safe working environment, despite having received legal advice that it had an obligation to do so;
- failed to set performance indicators for the CEO and measure his performance against them; and
- having received a notice of dispute from the CEO and having acknowledged that his claims were legitimate, proceeded to obtain legal advice on terminating his services.

This sequence of events which occurred over a period exceeding twelve months is indicative of the Council's inability to provide good governance, in that it failed to treat the CEO fairly and reasonably as required by the Act.

3. CEO RE-APPOINTMENT PROCESS

a. **Background**

The CEO re-appointment process commenced in September 2004 and was completed about seven months later in late April 2005.

The various stages involving actions taken and decisions made are described in some detail because they are closely linked to, and reflective of, an incapacity of Council to provide effective governance.

One of the major responsibilities to be performed by a Council is to appoint a CEO in accordance with the provisions of Section 94 of the Local Government Act 1989.

The termination date of Andrew Newton's (the CEO) contract was 26 April 2005.

Section 94(3) provides that:-

"A Council may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice."

Further, Section 94(4) states the subsection (3) does not apply if:-

- (a) in the six months immediately before the person's contract as Chief Executive Officer is due to expire, the Council passes a resolution to re-appoint that person as its Chief Executive Officer; and*
- (b) at least fourteen days before the resolution is passed, public notice was given of the intention to put the resolution; and*
- (c) the public notice contained –*

-
- i. a statement that the passing of the resolution would result in the re-appointment of the Chief Executive Officer without the position being advertised; and*
 - ii. any other details required by the regulations.”*

b. 15 September 2004 to 11 October 2004

On 15 September 2004, the Council wrote to Maddocks, Lawyers, to seek legal advice on the options available for the appointment of a new CEO, or re-appointment of the incumbent. The advice sought was provided on 20 September 2004.

On 22 September 2004, the then Mayor Cr Bury, sent a confidential memo to all Councillors advising that the advice had been received and that a “Councillor only dinner” would be held on 4 October 2004 at which the issue would be discussed.

This discussion was held at 7.00 p.m. at the Yarra Yarra Golf Club.

According to notes kept of that meeting by Cr Esakoff, all Councillors except Cr Goudge were present.

The meeting decided “*to draw up a list of concerns for discussion with Mr Newton*”.

On 8 October 2004, Cr Bury issued a memo to all Councillors advising that the CEO’s position would be discussed after the Council Briefing Meeting on 11 October 2004. According to notes kept of this meeting, all Councillors were present. The meeting did not reach any consensus, but decided that a “*facilitator*” was required to assist Council in its deliberations and that Rob Spence, CEO of the Municipal Association of Victoria (the MAV), should be approached to provide this assistance.

c. 12 October 2004 to 11 November 2004

The Council held three meetings with MAV representatives –

- (i) Mr Rob Spence, Chief Executive Officer on 18 October 2004;
- (ii) Mr Spence and Ms Fiona McAllister, People and Performance Manager, on 25 October 2004; and
- (iii) Ms McAllister on 10 November 2004.

According to Mr Spence, the outcome of the meetings he attended was that Councillors clearly demonstrated their intention to re-appoint Mr Newton. They wanted a draft contract and a performance plan. Mr Spence said that the Mayor (Cr Bury) was given the authority to tell Mr Newton he was to be re-appointed, based on a successful negotiation of the contract.

Ms McAllister said that Crs Goudge and Sapir were not present at the meeting held on 25 October 2004. The Mayor was “*authorised*” to advise the CEO that the intention was to re-appoint him subject to negotiation of contractual details.

According to Ms McAllister, the meeting she attended with Council on 10 November 2004 decided that:-

- Freehills Lawyers, would prepare the contract;
- the remuneration package would be \$260,000;
- there would be no bonus component;
- the contract term would be five years; and
- the performance review process would be conducted quarterly.

In her opinion, the meeting focussed on contractual details and no Councillor raised any questions about the CEO's performance, or questioned the intention to re-appoint.

Councillor opinions expressed in interviews with Inspectors as to the stage reached following the visit by Mr Spence and Ms McAllister are summarized as follows :-

- While agreement between Councillors was not achieved in the Councillor only meetings held early in October, all Councillors present at the meetings with both MAV representatives on 25 October 2004 stated that consensus was reached at that meeting.
- Some Councillors, in particular Crs Esakoff and Hyams, informed the Inspectors that while expressing a desire to advertise, they decided to support a united approach in favour of re-appointment.
- Cr Goudge, who was absent from this meeting, advised the Inspectors that he had always wanted to advertise the position.

The Mayor informed the CEO on 11 November 2004 that Councillors had agreed to the key terms of the contract i.e. the annual remuneration and the term. The Mayor also advised each Councillor by memo on the same day that he had conveyed this information to the CEO.

d. 15 November 2004 - Council Meeting

At an Ordinary Council Meeting held on 15 November 2004, a resolution was passed concerning the CEO's re-appointment. The meeting was closed to the public pursuant to Section 89(2) (a) and (d) of the Local Government Act 1989.

Two Councillors were not present at the meeting – Crs Goudge and Grossbard. The minutes record the following resolution:-

“Crs Martens / Marwick -

- (i) *That acting under Section 94(4) of the Local Government Act 1989 ('Act'), Council give public notice in the 'Caulfield-Glen Eira Leader' and 'Moorabbin-Glen Eira Leader' newspapers of its intention to put a resolution to re-appoint Andrew Newton as its Chief Executive Officer, at the Ordinary Council meeting to be held on 13 December;*

-
- (ii) *That, in accordance with Section 94(4)(c)(i) of the Act, the public notice contain a statement that the passing of the resolution would result in the appointment of the Chief Executive Officer without the position being advertised.*

The MOTION was put and CARRIED unanimously.

According to the written transcript of the meeting, several Councillors spoke in favour of the resolution. For example, Cr Martens stated that:-

"I believe very strongly that this Council is making the right decision and we hope for the next five years that again our City will march forward as it has done before. But I think that this Council can take credit for making the right choices on behalf of our Municipality."

Cr Marwick supported her with the following statement:-

"This is a very satisfactory outcome and I say that with great confidence. We step forward for the next phase of our City. It's a big decision for us to make and I do it with every confidence in our CEO that we have and it seems like we have negotiated these, this delicate situation with the best possible outcome in the best possible way. I think it is terrific really so we can only look forward to better and brighter things I believe."

e. 16 November 2004 to 29 November 2004

The public notice, which Council resolved be given, was published in the *Caulfield Glen Eira Leader* and the *Moorabbin Glen Eira Leader* newspapers during the week beginning 22 November 2004.

On 26 November 2004 the Mayor (Cr Bury), advised all Councillors by memo that Freehills had prepared a draft employment contract to be discussed at a meeting scheduled for the evening of 29 November 2004. Each Councillor was given a copy of the draft contract.

Councillors met with John Cooper of Freehills as planned. No record was kept of the proceedings. However, each Councillor provided the Inspectors with their opinion as to discussions held and actions to be taken:-

- Cr Bury stated that Cr Marwick and Cr Grossbard had indicated they wanted more input into the terms of the contract but neither Councillor provided any specific details to the meeting as to what they wanted, nor did they contact him about it at any time.

He said Cr Grossbard sat next to him at the meeting and agreed that the contract should be discussed with Mr Newton as he may wish to seek legal advice. In Cr Bury's view, there was no point in going through this process if the Council did not intend to proceed with the appointment.

- Cr Erlich recalled discussing the contract at the meeting and that Cr Marwick "*may have expressed*" the need to tidy the contract up. However, in his view, no Councillor raised any significant issues.

-
- Cr Martens stated that the intention of the meeting was to show the contract to Mr Newton. She recalled that Cr Grossbard agreed to this on the basis that Mr Newton may wish to seek legal advice. She also said that Crs Marwick and Grossbard indicated they had some comments to make about the contract but that they “*did not put them on the table*”.
 - Cr Marwick believed the meeting was held to consider the terms and conditions of the contract but said she didn’t get the opportunity to submit her views. Her concern was not the putting of the resolution to re-appoint Mr Newton on 13 December 2004, it was to finalize satisfactory contractual terms and conditions before doing so. Cr Marwick said that other Councillors had raised concerns about the contract and further that Mr Cooper told the meeting that Councillors “*...must agree to the contract before it was shown to the CEO*”. In responding to a question about whether she had raised these outstanding concerns about the contract with the Mayor, Cr Marwick said that he “*..knew all along..*” and “*..he wasn’t listening..*”.
 - Cr Sapir said she was “*happy*” with the contract and that Cr Bury was authorised to present a draft to the CEO. She also stated that Cr Grossbard had suggested the Mayor should show the contract to the CEO to ensure he agreed with it.
 - Cr Hyams recalled that Councillors went through the terms and conditions of the draft contract with Mr Cooper. Crs Grossbard and Marwick had indicated they were not happy with some aspects of the contract and that it should be “*tighter on performance*”. Cr Hyams said he advised the Mayor not to show the contract to Mr Newton until it was finalised and that he recalled Mr Cooper providing the Mayor with the same advice. According to Cr Hyams, the intention was to continue on and re-appoint the CEO but there was a need to clarify certain points in the contract.
 - Cr Esakoff said that while the meeting was held to discuss contractual conditions, some Councillors believed they did not get the opportunity for input. In her view, the contract wasn’t finalised and Mr Cooper advised that the documents should not be shown to the CEO until completed.

Cr Goudge informed the Inspectors that he was absent on leave, did not attend the meeting, and could not comment on the discussions.

According to John Cooper of Freehills, there were no real concerns or “*substantial issues*” raised with him at the meeting. He said the contract was not very complex and there was nothing in his view which would prevent the Council from re-appointing the CEO on 13 December 2004 as intended. Mr Cooper also advised that there was no reason why the draft contract should not be presented to Mr Newton and that the draft should be “*worked through with him*”. The Mayor would be justified based on discussions at the meeting in pursuing this course of action.

f. 30 November 2004 to 20 December 2004

On 30 November 2004, Cr Bury informed the CEO that Councillors had authorised him to give the CEO a copy of the proposed contract and to ask him to *“take it away and read it and advise the Mayor of his acceptance or otherwise”* and to get legal advice if he so desired.

On 1 December 2004, the CEO advised Cr Bury that he accepted the terms of the proposed employment contract.

Cr Bury sent a memorandum to Councillors on 7 December 2004, advising them that *“Andrew has accepted the contract as is”*. According to Cr Bury, he did not receive any response to his memo from any Councillor.

The Inspectors asked all Councillors whether there had been any response from the public about Council’s intention to consider re-appointing the CEO. No public comment had been received.

The Council met as scheduled at an Ordinary Meeting on 13 December 2004 to consider passing the resolution to re-appoint the CEO.

The matter was dealt with as “Confidential” in accordance with Sections 89(2)(a) and (d) of the Act.

The Council adopted the following resolution:-

“Crs Marwick/ Hyams

That the decision to appoint the CEO without advertising the position be deferred until a date to be set.

Council notes that:-

- (a) The CEO’s current contract expires on 26th April 2005.*
- (b) The Minister for Local Government has decided to have an Inspector of Municipal Administration investigate matters relating to Glen Eira Council’s operations.*
- (c) The CEO’s contract will need to have full agreement following reasonable input from all Councillors, the CEO and any advisors to the satisfaction of all parties.”*

Five Councillors (Hyams, Goudge, Esakoff, Marwick and Grossbard) voted for this motion, while four (Bury, Sapir, Erlich and Martens) voted against it.

On 14 December 2004, the day following the Council Meeting, the Moorabbin Leader contained statements allegedly made by Crs Bury, Hyams, Erlich and Grossbard indicating support for renewal of the contract, although Crs Hyams and Grossbard, at the Ordinary Meeting held on 7 February 2005, subsequently expressed their disagreement about the accuracy of the comments attributed to them.

The Mayor (Cr Bury), called a Special Meeting of the Council for 20 December 2004, to be held following the election of Mayor, to deal with the matter. However, prior to any discussion five Councillors left the meeting, thereby resulting in the meeting lapsing in the absence of a quorum.

When interviewed by the Inspectors, those Councillors who left the meeting claimed that they had concerns about the inadequate advertising of the meeting and the insufficient time frame given in the notice. Cr Grossbard acknowledged that, although the meeting was legally constituted, he had problems with the process. Councillor Marwick also agreed that the meeting was legally constituted. Councillors who remained at the meeting argued that the agenda papers submitted to each Councillor prior to the meeting contained legal advice from Maddocks, Lawyers, that reasonable notice of the meeting had been given.

g. 21 December 2004 - 14 February 2005

During January 2005, memos and other documentation, namely between Councillors, and between Councillors and Paul Burke, Director of Community Relations (DCR) indicated that a majority of Councillors no longer supported re-appointment of Mr Newton and instead, intended to press for advertising the position.

On 25 January 2005, Crs Bury, Erlich and Martens requested the CEO to call a Special Meeting of the Council pursuant to Section 84(1) of the Act to be held at 7.00 p.m. on 7 February 2005. Their intention was:- *"To put a resolution to re-appoint the CEO for a five year term from 26 April 2005 following the giving of Public Notice as resolved on 15 November 2004"*.

They (the three Councillors), intended that the meeting be *"..open to the public"*. The agenda was distributed on 27 January 2005.

On 31 January 2005, five Councillors (namely Crs Esakoff (Mayor), Goudge, Grossbard, Hyams and Marwick) issued a memo to the CEO, expressing their concern about this course of action. They requested that such matters be treated as *"confidential"* and that the item *"...not be distributed to the public without Council's authority"*.

By this time, the CEO had delegated his powers to deal with the re-appointment matters to Mr Burke. Mr Burke sought legal advice on the course of action he should follow. In exercising his judgement, based on the legal advice, he decided:-

- not to distribute the agenda for the Special Council Meeting to the public;
- amend the agenda papers to allow the Council to determine whether it wishes to close the meeting to members of the public.

On 1 February 2005, the Moorabbin Glen Eira Leader newspaper published an article which in part, stated:-

“The re-appointment of Glen Eira Council’s Chief Executive Andrew Newton is in limbo after a last minute back-flip by several Councillors. The Leader understands that at an informal meeting last week, a majority of Councillors signalled they would seek to halt the process to re-appoint Mr Newton”.

At the Special Meeting held on 7 February 2005 in “*Confidential Business*”, a motion to re-appoint Mr Newton was lost, five votes to three, with Cr Sapir absent on leave approved by the Council. The Mayor, Cr Esakoff advised the CEO of Council’s decision the next day by confidential memo.

The meeting exceeded the time allowed in the Local Law and was adjourned to 7.00 p.m. on 14 February 2005.

On 11 February 2005 Mr Newton wrote a “confidential” letter to the Council, with a copy being sent to each Councillor which, in summary, stated as follows:-

- he was advised by the Mayor on 26 October 2004 that Councillors had decided to re-appoint him, as witnessed by the Chief Executive Officer of the Municipal Association of Victoria;
- the Council carried a resolution on 15 November 2004 on its stated intention to re-appoint him;
- he was handed a draft contract of employment on 30 November 2004. He accepted it the following day;
- the Mayor informed all Councillors in writing on 7 December that “*..Andrew accepted the contract as is*”;
- he had not applied for other positions during this time because he had been offered employment by Glen Eira City Council;
- he relied on what he was told, expecting Council to act with reasonable care and diligence under the Act;
- that there were other legislative provisions (e.g. Fair Trading Act) which may be relevant to Council’s actions;
- that the Glen Eira City is a high performing Council;
- that media coverage is highly damaging to his reputation; and
- should the Council not resolve the matter satisfactorily at its meeting on 14 February 2005, then he may issue legal proceedings without further notice.

The Special Meeting adjourned from 7 February 2005 resumed on 14 February 2005, as scheduled.

A motion proposed by Cr Marwick to advertise the position of CEO and appoint consultants to assist Council in the recruitment process lapsed for want of a seconder.

The Council then resolved as follows:-

“Crs Grossbard / Hyams -

That Council seek legal advice on the implications of the CEO’s letter dated Friday 11 February 2005 to all Councillors and the Memo to Cr Bury dated Sunday 13 February 2005 from Crs Esakoff, Goudge, Grossbard, Hyams and Marwick.

That Council authorise the Mayor to obtain legal advice on the process that has been followed to date regarding the appointment of a CEO and the process that needs to be followed to resolve this matter.”

The reference in the resolution to the memo to Cr Bury is indicative of the ongoing correspondence and the increasingly acrimonious relationships between Councillors, which had by this time become a focal point. Copies of a substantial number of memoranda were sent to the Inspectors during this period, representing the different points of view.

Further, the Inspectors attended the Council Meeting held on 7 February 2005 and the adjourned meeting on 14 February 2005, including the “*Confidential Business*” sections.

The debate on this issue, and some other matters, was personal, vindictive and demonstrated absence of respect and goodwill between the participants. The performance demonstrated total disregard and lack of appreciation for the importance of the decision the Council was required to make. This behaviour is dealt with in more detail in Part IV of this report.

h. 15 February 2005 to 31 March 2005

On 18 February 2005, the Council sought legal advice from Mallesons Stephen Jaques, Lawyers, who declined to provide it on the basis that doubt existed on whether “*there is authority to instruct us on behalf of Council in this matter*”.

On 25 February 2005, the Mayor wrote to Freehills, Lawyers, requesting advice in relation to the CEO’s appointment, in particular:-

- the processes followed by the Council to date; and
- the process to resolve the re-appointment of Mr Newton.

Meanwhile at an Ordinary Council Meeting held on 28 February 2005, the Council passed the following resolution related to the CEO appointment process.

“Crs Goudge / Grossbard:-

That this Council authorises the Mayor to write to the Minister for Local Government requesting exemption to the provisions of section 79 allowing Councillors to debate and vote on the resolution moved by myself and seconded by Cr Grossbard on 14 February in relation to legal advice.”

Carried Vote 5/3 (Cr Sapir absent)

The resolution referred to was that :-

“1. This Council recognises the importance of the principles of natural justice;
and

2. *This Council will fund legal advice for individual Councillors who wish to access legal advice while this Council and individual Councillors are subject to investigation by a Municipal Inspector”.*

This request was subsequently denied by the Minister in a letter to the Council dated 22 March 2005, on the basis that Council business would not be impeded to the extent which would warrant granting of an exemption.

The meeting was adjourned to 1 March 2005 at which further relevant resolutions were adopted.

Crs Marwick / Hyams:-

That Council resolves to seek Expressions of Interest from recruitment consultants which can assist Council in the appointment process of the Chief Executive Officer for the City of Glen Eira.

That all Expressions of Interest should be received at the Mayor's office by no later than midday on 7th March 2005.

Council resolves to select a preferred consultant to assist Council in the process for the re-appointment of a Chief Executive Officer for the City of Glen Eira by Tuesday 8th March 2005.”

Carried 5/3 Vote (Cr Sapir absent)

John Cooper of Freehills responded to the Council's request for advice on 15 March 2005, and again on 21 March 2005 in response to queries raised by Councillors about the initial advice.

The advice, in summary, was that:-

- *“Mr Newton cannot be re-appointed as CEO of the Council without the Councillors passing the appropriate resolution to effect his re-appointment.*
- *There are clearly various issues in dispute between the Councillors but it is our view that there is a large body of evidence available to support Mr Newton's assertion that the Council has approved his re-appointment subject to the terms and conditions being agreed.*
- *The failure of the Council to pass a resolution to re-appoint Mr Newton following the steps taken to date may be construed as a breach of section 13 of the Fair Trading Act 1999.*
- *Remedies available to Mr Newton include damages, injunctions and declaratory orders.*
- *Section 76 of the LG Act will only apply to indemnify the individual Councillors against legal action by Mr Newton if the individual Councillors can show that in exercising their powers, they acted in “good faith”.*”

At the Ordinary Meeting of the Council held on 21 March 2005, the CEO's re-appointment was introduced "*in camera*" as Urgent Business. Cr Sapir proposed that the contract of employment between Council and the CEO be executed. No decision was reached prior to the meeting being closed at 10.30 p.m., in accordance with the Local Law.

Meanwhile, on 31 March 2005, the day after a Briefing Meeting at which he foreshadowed his intention, Cr Hyams put a proposal to the CEO suggesting that he agree to continue as an Acting CEO pending the receipt of the Municipal Inspectors' report. The reasons provided by Cr Hyams for his suggestion are set out in a memo which he sent to all Councillors on 31 March 2005. These were in part that

"...in my opinion, there was a possibility that the Municipal Inspector's report would contain recommendations about the way the CEO and councillors conducted themselves in general and in relation to each other, and that such recommendations may impact on the terms that should be in the CEO's contract of employment".

The CEO responded by declining the offer.

i. 1 April 2005 to 15 April 2005

Council consideration of the appointment of the CEO was re-introduced to the Council agenda for the meeting on 11 April 2005, together with the legal advice provided by Freehills, and written advice provided to all Councillors concerning the Council's "*Councillors and Officers Insurance Policy*".

Council was advised that:-

"The Council and individual Councillors will need to tread extremely carefully to avoid giving the insurer an excuse not to provide coverage potentially leaving some Councillors personally liable..." and *"Any legal advice received ... would need to be scrupulously followed"*

The Council then proceeded to adopt the following resolution:-

"Cr Martens / Erlich -

That Council:-

- (a) Receive and accept the legal advice from Freehills dated 15 March 2005 in respect of the re-appointment of the CEO;*
- (b) Receive and accept the legal advice from Freehills dated 21 March 2005 in respect of the re-appointment of the CEO; and*
- (c) Receive and accept the written advice on Insurances that was sent to Councillors on 16 March 2005 in respect of the re-appointment of the CEO; and*
- b. Having complied with the requirements of Section 94(4)(b) and (c) of the Local Government Act 1989 ("the Act"), hereby resolves to re-appoint Mr Andrew Newton as the Chief Executive Officer of the Glen Eira City Council for a period of five years commencing 26 April 2005, in accordance with Sections 94(1) and 94(4)(a) of the Act.*

-
- c. *That the contract which was submitted to the Ordinary Meeting of 13 December 2004 between Council and Andrew Newton be presented to Council subject to any minor agreed changes and then executed; and*
- d. *Councillors be authorised to disclose part 1 of the resolution.”*
Carried on a 7/1 vote

Cr Goudge declared a pecuniary interest and left the meeting prior to the vote being taken. His reason for doing so was that if he voted according to his conscience, he would run the risk of being sued and suffer significant personal financial loss.

j. The Involvement of the DCR

Because Mr Newton's employment contract was the subject of the process, he delegated his responsibilities for handling the issue to Paul Burke (DCR). This placed the DCR in a difficult position.

On one hand, the DCR, as a member of the Council staff, is responsible to the CEO who has statutory responsibility for all staff matters. On the other, he had an obligation under delegated authority to fairly and impartially advise the Council.

In exercising this role, the DCR was frequently requested to advise Councillors on points of order, legal questions, and procedural matters. On several occasions the behaviour of Councillors became hostile and degenerated to a point where the Mayor found it difficult to exercise control. The Inspectors witnessed this behaviour at each of the two meetings they attended.

Several Councillors disagreed with some of the advice given by the DCR, in particular those who were not at the time in favour of re-appointing Mr Newton as the CEO. When necessary the DCR sought advice from qualified legal practitioners.

In the Inspectors' view, the DCR acted professionally in very difficult circumstances by providing advice that encouraged the Council to operate lawfully and in accordance with proper meeting practice.

k. Commentary

The Good Governance Guide 2004, contains a number of key factors which are directly relevant to the Council's performance in re-appointing Mr Newton. These include:-

- Governance is defined as the process by which decisions are made and implemented. This gets to the heart of how local governments operate.
- Good Governance is dependent on goodwill. Changes in culture will not be achieved by a set of rules but by a change in approach. Relationships will only work if the parties want them to work and make the necessary effort required.

-
- Good relationships are about how people work together, communicate and respect each other.

The Council has followed processes and taken actions which are completely contrary to these principles.

Council had the opportunity at the outset to decide whether or not to appoint Mr Newton or re-advertise. Councillors met five times between 4 October and 10 November 2004, including three meetings with senior staff from the MAV.

Having been through this process, the Council resolved to advertise its intentions to put a resolution to re-appoint the CEO.

After deciding unanimously to re-appoint the CEO, some Councillors decided to change their positions completely, giving reasons which are not credible. One reason was the need to address some terms in the contract of employment. However, while there was ample opportunity within the time frame to address any contractual concerns, this was not done. When pressed by Inspectors, Councillors who had expressed concerns were not able to identify any substantive issues and demonstrated a lack of understanding of contractual issues. A second reason was the need to await the report by the Municipal Inspector. However, there was no reason to believe that the presence of a Municipal Inspector should in any way impact on Mr Newton's employment.

Four Councillors – Bury, Sapir, Martens and Erlich made their positions clear – to re-appoint Mr Newton. Each of them informed the Inspectors that the reasons for the change in direction by three Councillors were unclear and that they suspected ulterior motives or outside influences.

Cr Goudge has consistently claimed he preferred to advertise the position.

Cr Marwick originally supported re-appointment, spoke strongly in favour of it, then changed her mind. In February 2005 she moved resolutions to re-advertise the position and appoint consultants to assist in the appointment of a CEO. She told Inspectors she had concerns about the contract and that the appointment process was "*contaminated*".

Crs Esakoff and Hyams stated they originally preferred to advertise, decided they would support re-appointment, then changed their minds. Cr Grossbard informed the Inspectors that he did not oppose re-appointment but wanted the contract to be right. However, he voted against re-appointment.

It was put to the Inspectors by several members of the public and by some Councillors that the CEO re-appointment process was the subject of outside political influence. The Inspectors chose not to pursue this matter because elected Councillors are responsible for their own conduct and actions irrespective of who may be advising or influencing them.

I. Conclusions

The appointment of a CEO is one of the most important responsibilities to be performed by a Council. The events at Glen Eira City Council during the seven month period from mid September 2004 to mid April 2005 illustrate the following deficiencies in Council governance:-

- lack of trust and respect between Councillors, as evidenced by divisiveness, antagonism, verbal and written abuse;
- numerous breaches of confidentiality within the meaning of the Act;
- disregard for risk management, in particular the potential of Councillors to incur both Council and personal legal liabilities;
- dysfunctional decision making as a group;
- disregard for the negative impacts of the process on the organisation, including the creation of a climate of uncertainty, the need to repeatedly obtain legal advice (including costs thereof), and the extensive time wasting involved.

It is understandable that the CEO would give notice to Council of his intention to protect his position, given that Council had, by its words and actions, indicated a willingness to re-appoint him, and then decide against doing so. Some Councillors expressed surprise that the CEO would do this, a naive view given the circumstances.

Council showed scant regard for good governance processes. In the absence of goodwill there was no concerted attempt to reach a responsible decision. The Council provided no leadership and displayed no honesty of approach. The legal opinions, the minutes and a substantial volume of memoranda and related correspondence to, and between Councillors, clearly demonstrates that there was little or no attempt by them to communicate for the purpose of achieving a resolution.

4. ISSUES RAISED BY COUNCILLOR GROSSBARD

Cr Grossbard, in his interview with the Inspectors on 13 April 2005, presented written submissions on a number of issues. These included four matters which he had referred to the State Ombudsman in January 2003, and to Lawyers Arnold Bloch Leibler in May 2003, making certain allegations against the CEO. In approaching the Ombudsman, Cr Grossbard sought protection under the *Whistleblowers Protection Act* but this was denied.

a. **Delegation to Ogaki**

i. ***Allegation***

This involves a report by the CEO (actually written by the DCR) which was distributed to Councillors prior to the Council Meeting scheduled for 9 April 2002 and listed for consideration as “Confidential”.

The Ogaki trip involved a visit by three Councillors – Crs Grossbard, Erlich and Martens – to the Glen Eira “*Sister City*” in Japan.

According to Cr Grossbard, the CEO report endeavoured to portray him as having failed to comply with a Council policy that requires all travel bookings to be made by the Administration.

ii. ***Commentary***

The CEO’s report drew attention to the fact that the policy was breached by Cr Grossbard and this had resulted in a protracted problem over bookings involving several travel arrangements, and considerable inconvenience and embarrassment to the staff involved.

Cr Grossbard responded by letter stating that “...*There was no breach of Council’s policy. Travel bookings and payments to send a delegation of Councillors to Japan was clearly made by City Management*”.

On 4 April 2002, prior to the Council Meeting at which the CEO’s report was tabled, Cr Grossbard, supported by Cr Erlich, wrote a letter to all Councillors, with copies sent to the CEO and the then Office of Local Government advising that :-

“Subject to legal advice, we will be issuing a press release on Friday calling for the dismissal of the CEO, Andrew Newton;” and “...We are disgusted at the behaviour of the Administration in that they have produced a report not called for by Council, have denied natural justice to two of the individuals involved in the investigation, failed to identify the author and allowed an inaccurate report to go to Council”.

On the same day (4 April), Cr Erlich wrote to the CEO referring to previous correspondence about the Ogaki matter and advised that “... *If there is anything in my communiqués that appears to you to be of a personal or questionable nature concerning your professionalism, then I am prepared to unreservedly withdraw them and offer you my apologies*”.

The decision made by Council at its meeting was to “*note the report*”. On 10 April 2002, the day after the Council meeting, the Mayor (Cr Goudge) wrote to Cr Grossbard stating, in part, that:-

“Although you spoke at length at the Briefing on 2 April, sent numerous faxes and spoke at the Council Meeting itself last night, I am not aware of any single specific error in the Report that you have identified.

I also asked you in writing a week ago that if you wished to put legal advice to Council, it should be in writing. You have chosen not to do so, as is your right.

In so far as you made comments in the Chamber about defamation, prejudice to Council etc. I am advised that your failure to identify to the Council any specific error in the report greatly weakens any action that you may care to attempt.

If you were to raise the issue of possible legal action on this matter, which once again is your right, it would be my intention to call a public Special Council Meeting immediately to commission a full and independent Inquiry into the trip.”

Cr Grossbard then issued the following written statements:-

- On 10 April to the DCR, the CEO and all Councillors, as follows:-

“With regard to the Councillors’ Entitlement Policy on travel arrangement, it was never my intention to breach this policy. Having endeavoured to find the most economical airfare to Japan on behalf of my colleagues and myself I acknowledge now that I may have made a technical breach. Since this has caused inconvenience to both City Management and Councillors, I sincerely apologise to all those concerned. I did this pencil booking in good faith with the hope to save Council and ratepayers’ money.

It will not happen again.”

- On 11 April 2002 to the Mayor advising that :-

“The matter relating to Ogaki ... has been resolved at Tuesday night’s Council meeting. I accept the decision of Council...”

Despite his acknowledgements of breaching the policy, Cr Grossbard again raised these issues in January 2003 with the Ombudsman, in May 2003 with Arnold Bloch Leibler Lawyers, and again in April 2005 with the Inspectors.

The Ombudsman advised Cr Grossbard on 19 September 2003 that he would be happy to refer it for enquiry under the Ombudsman Act 1973 should a written request be submitted. There is no evidence of Cr Grossbard having made such a request.

In submitting material to the Inspectors, Cr Grossbard omitted to provide copies of his letters dated 10 and 11 April 2002 acknowledging that he had breached the policy.

iii. Conclusion

The complaint is unfounded.

b. Council's Responsibilities as an Employer

i. Allegation

Cr Grossbard referred to an agenda item 12.2 (29 April 2002) entitled "*Council's Responsibilities as an Employer*".

He alleged that the CEO's introduction of item 12.2 into the Council's agenda amounted to improper conduct. In support of the allegation, he stated that the CEO had added item 12.2 to the agenda as a late item and that in so doing, he failed to provide him with an opportunity to respond to the criticism of his conduct included in item 12.2.

ii. Commentary

On 29 April 2002, the CEO submitted a "Confidential" report to the Council entitled "*Council's Responsibilities as an Employer*". A copy of his report is attached. **Refer Appendix 5.**

The CEO concluded the report by stating that "...Cr Grossbard's most recent attack on me was:-

- *in breach of the Council's obligations;*
- *unlawful;*
- *improper;*
- *in so far as it was made to the Chief Executive Officer's subordinates, was especially serious;*
- *part of a pattern of blaming officers, especially the Chief Executive officer;*
- *undermines Good Governance*".

The Council resolved to defer the consideration of the CEO's report pending legal advice and agreed to engage the services of Terry Bramham of Macquarie Lawyers to provide advice.

Mr Bramham reported his findings to the Council on 13 May 2002 advising that Council had breached its statutory obligations:-

- to protect its Chief Executive officer from coercion; and
- to provide a working environment that is without risk to the health of the Chief Executive Officer.

He also found that Council had not breached its Employment Agreement with the CEO, nor could Cr Grossbard be excluded from the proposed CEO Employment Committee.

However he recommended that a Code of Conduct with penalties be established by Local Law.

The Council took no action on this recommendation. In February 2003, the CEO issued a Notice of Dispute which included a failure by the Council to address the occupational health and safety issue.

This resulted in the Council resolving to refer the matter to Arnold Bloch Leibler (ABL), details of which are contained in Part IV, Section 2 of this report.

Cr Grossbard raised this matter with the Ombudsman and with ABL.

On 19 September 2003, the Ombudsman informed Cr Grossbard that the CEO was entitled “... *to introduce such an item into the agenda of the Council Meeting. Furthermore, the Council is entitled to accept or reject the proposal by vote...*” The Ombudsman also advised that he did not propose to take any further action.

Despite having raised this issue with the Ombudsman and ABL, Cr Grossbard then raised it with the Inspectors as a grievance against the CEO for producing reports that are biased, deliberately oriented to the political view of the Officer and omitting factual information. The Inspectors find that Cr Grossbard’s criticisms of the CEO’s report and actions are groundless.

iii. Conclusion

The allegation is unfounded.

c. Breach of Confidentiality by CEO – “Published Audit Committee Minutes”

i. Allegation

Cr Grossbard’s allegation is that on 23 September 2002, “... *the CEO, as the responsible person, authorised the preparation, publication and release of the Audit Report Minutes which possessed confidential information, thereby allowing the disclosure of sensitive and confidential information to the general public without Council approval*”.

ii. Commentary

The Audit Committee minutes referred to were of a meeting of the Committee held on 24 May 2002 at which the Audit Committee Chairman asked whether “...*anyone present was aware of any breaches of the legislation or irregularities that should be reported to the Committee?*”

This question is one usually asked by the Chairman. The CEO advised the Committee that, while the Audit Committee can be informed of confidential information, members are bound by the Act to keep it confidential.

The minutes recorded an item which read:-

“The CEO advised that legal advice had been sought by Council resolution on a possible breach of the Local Government Act in relation to one Councillor’s conduct in the first half of April 2002.”

These Audit Committee minutes were presented to Council in the agenda issued for the Council meeting on 23 September 2002. This is standard procedure. The Council resolved that the minutes of the Committee be received and noted. The voting was 7:-2 with Crs Grossbard and Erlich voting against.

Cr Grossbard claimed this action by the CEO was *“... a blatant breach of confidentiality”*.

On 9 October 2002, he and Cr Erlich wrote to the then Minister for Local Government, the Hon Bob Cameron MP, urging that he investigate the complaint. Following a meeting with John Watson, Director of Governance and Legislation and Kelvin Goodall, Inspector of Municipal Administration, Crs Grossbard and Erlich were advised in writing that:-

“... the information you have provided does not establish a prima facie case that a breach of the legislation has occurred...”, and that *“...It would appear that by choosing to deal with the report of the Audit Committee in Open Council, the Council no longer wished to keep this information confidential.”* No breach of Section 77(2) of the Act had occurred.

Cr Grossbard subsequently raised this matter with the Ombudsman and ABL in 2003.

The Ombudsman responded on 19 September 2003 as follows:-

“There appears to be no minuted decision to keep the matter confidential...” and

“It is my view that the reference to Item 3 [i.e. the particular matter raised by Cr Grossbard] as a breach of the Local Government Act is too vague to amount to a breach of your, or your Council’s confidentiality.”

Despite having made three previous representations, to the Minister, the Ombudsman and ABL, and being advised that there had been no breach of the Act, Cr Grossbard again raised the matter with the Inspectors, without referring to the fact that he had made the earlier representations, or producing the responses which he had received from those sources.

iii. Conclusion

The allegation is unfounded.

d. Report on Independent Legal Advice

i. Allegation

Cr Grossbard alleged that the CEO engaged in improper conduct when he retained a legal practitioner to advise the Council in relation to Council's responsibilities as an employer. Refer to Part V, sub-section 4(b), of the report for details.

The improper conduct comprised the CEO's retention of a legal practitioner, who had previously advised the Council in relation to the dismissal of the Council's former CEO.

According to Cr Grossbard, the Solicitor had an association with one or more Councillors since this initial involvement; and "...*This is a deliberate interference in the democratic process acted upon by the administration, namely the CEO, and is considered to be misleading.*"

ii. Commentary

On 29 April 2002, in dealing with a report submitted to Council by the CEO entitled "Council's Responsibilities as an Employer" (Refer Case 2 above), Council adopted the following resolution:-

"That Council defer consideration of Agenda Item 12.2 until legal advice is received concerning Council's obligations as the CEO's employer and any possible breach in relation to the matters detailed in Agenda Item 12.2. And, that Council authorise the Mayor to engage Mr Terry Bramham and to brief him on this matter. Information concerning the total cost of the legal advice to be made available to Councillors."

The Mayor, Cr Goudge, wrote a letter to Mr Bramham, Macquarie Lawyers on 1 May 2002, forwarding a Council Brief for advice on the CEO's Report. Mr Bramham accepted the Brief and provided his "*Findings and Recommendations*" to Council on 13 May 2002.

A report was subsequently put to the Council on 1 July 2002 (written by the DCR) which summarised Mr Bramham's advice and provided a set of recommendations for Council consideration based on that advice.

The Council adopted the recommendations with six Councillors in favour and two against. Cr Grossbard was absent.

As indicated above, Cr Grossbard raised this matter with the Ombudsman. The Ombudsman responded to Cr Grossbard by stating that:-

“...It is my view that the CEO’s previous retention of a legal practitioner in relation to official Council business does not give rise to a relationship, the nature of which compromises the independence of the requested legal advice...” and that *“...I do not propose to take any further action”*

iii. Conclusion

The Inspectors concur with the views expressed by the Ombudsman.

The Council, and not the CEO, made the decision to engage the services of Mr Bramham who gave his advice in response to a Brief provided by the Mayor.

The allegation is unfounded.

e. Council Resolution to Refer Dispute Between Councillors to Minister

i. Allegation

Cr Grossbard alleged that:-

“With only two (2) working days prior to the Special Council Meeting called for 29 January 2003, a group of Councillors ‘coerced’ the CEO to send confidential information to the Minister without the CEO giving all Councillors the opportunity to discuss this request.

Five councillors (24 January 2003) claimed that if the Mayor did not courier a letter and material to the Minister, then they would regard it as “... a fundamental breach of good governance, an abuse of the Office of the Mayor...”. Under s94A (1)(b) of the LG Act, this group insisted that the CEO must sign and send the letter.

The CEO sent the package of information based on his written words “... any delay after today would be regarded as ‘undue’ ...”.

It should be noted that the CEO did not provide timely advice to all members of the Council under Section 94A (1)(d) on this matter until after the event. Councillors received the CEO letter after the information package had been sent to the Minister.

Additionally, the Mayor was not provided with the courtesy of being informed prior to the pack being couriered. An extra-ordinary action by the CEO.

The CEO sought legal advice on the above matter in late January but did not disclose the outcome until asked by the Mayor in early February.”

ii. Commentary

The Council passed a resolution on 16 December 2002 requiring that certain matters be referred to the Minister for investigation.

Cr Grossbard and two of his colleagues raised his allegations with the Minister on 25 January 2003. He received a response on 8 April 2003 which advised, in part that:-

“Under Section 94A of the Act, the CEO is responsible for ensuring decisions of Council are implemented without delay. As the memorandum only called on the CEO to act under the provisions of the Act and did not contain any threat of action against the CEO if he failed to act, the actions of the Councillors does not appear to constitute coercion.”; and

“I understand that the Council has received legal advice suggesting the adoption of a Code of Good Conduct for Councillors.” and

“I would encourage both elected Councillors and Council staff to ensure that they find ways to work together in the interests of the community.”

In presenting this matter to the Inspectors for review, Cr Grossbard neglected to mention that he and others had taken the matter up with the Minister and had received a response.

According to the CEO he acted in accordance with the Council resolution pursuant to Section 94A of the Act which requires that he implement Council’s decisions without undue delay. His action in doing so was supported by legal advice. Also, he had no obligation to notify the Mayor, nor did he need to produce any legal advice.

iii. Conclusion

The allegations are unfounded.

f. Lack of Transparency in Appointment of Senior Officers

i. Allegation

According to Cr Grossbard:-

“The CEO placed a small, inconspicuous advertisement for the very senior officer position of Director of Human Services (around \$150K pa) in the back pages of The Age newspaper in the section under child care, computer technician, and client and customer services!

Naturally, this invited few applications (approximately twelve) who did not meet the selection criteria, thereby making it an easy decision to promote an internal employee to the position of a Director.

In essence, the CEO did meet S94B (1) through the placement of “..a notice in a newspaper circulating generally throughout Victoria”.

The opportunity to apply and interview a range of prospective qualified candidates was not presented to Council. It was luck that this advertisement was brought to Councillors attention!”

ii. *Commentary*

The CEO advised the Inspectors that the Personnel Unit of the Council placed the advertisement in a less prominent position than was intended, a mistake which was not intentional “... *on anyone’s part...*”. Mr Newton advised that he made this clear to Crs Marwick and Hyams who were meeting with him at the time over the ABL matters. Peter Jones, the current Director of Community Services was appointed to the position.

iii. Conclusion

The placing of this advertisement in a less prominent position is not best practice. The CEO, who has ultimate responsibility for appointing staff, has acknowledged the mistake. However, the appointment was legally made.

g. Late Appointment of Director Assets and Facilities

i. *Allegation*

“The CEO has been warned by the Chairman of the Audit Committee (Mr David Gibbs) that keeping Mr Kerry Martin in an Acting position as Director of Infrastructure for well over 1.5 years was not in keeping with the LG Act and was a risk management issue.

The CEO did not act on the Chairman’s advice until pressure by certain Councillors was constantly placed to advertise and appoint a permanent Director Infrastructure.”

ii. *Commentary*

According to the CEO he proposed a change to the Council’s organisational structure by creating a new Assets and Facilities Division focussed at Director level. Even though the decision was his responsibility, he sought Council’s involvement and subsequent agreement.

Applications were called for the position of Director Assets and Facilities prior to the Council elections in March 2003.

While Section 94A of the Act provides that all matters relating to staff are the responsibility of the CEO, the Glen Eira City Council convention is that the Mayor (then Cr Marwick who was elected in March 2003) be included in the selection panel for positions at Director level. The selection criteria stipulated that qualifications and experience in an asset discipline were required and “...*all short listed candidates except one, were Engineers...*”. However, when the candidates had been short listed, the Mayor declared she would not participate because the selection criteria did not stipulate that the occupant must be an Engineer.

The CEO said he was faced with four options:-

- eliminate the non-engineer candidate;
- change the criteria and start again;
- take it to Council to over-rule the Mayor; or
- exclude the Mayor from the process and exercise his prerogative as CEO to make the decision.

In June 2003, Cr Marwick advised the CEO that Council preferred the appointment be deferred, pending discussions with him about some aspects of the process. In August 2003, the CEO again approached the Council advising that “*the current situation cannot continue*” and requested urgent resolution.

No further progress was made until March 2004 by which time Cr Bury had been elected as Mayor.

Because the selection process had become “*stale*” through time, the job was re-advertised and an appointment made on 4 May 2004.

The CEO said that the process:-

- was unfair to the person who acted in the position;
- adversely affected Council’s reputation with candidates;
- Cost \$20,000 for the first process without a result; and
- created a delay of one year in refocussing the asset functions.

He concluded by stating that Cr Grossbard’s version of events was untrue.

According to the CEO, he raised the matter with David Gibbs, Audit Committee Chairman. The Minutes of the Committee dated 28 November 2003 record the fact that Mr Gibbs “... *noted that the appointment of a new Director of Council’s Infrastructure division had not been made, which may be a high risk against the successful integration of all aspects of capital management...*”.

Mr Gibbs confirmed that he drew attention to the matter but said that his remarks were directed to the Council and the CEO. The CEO's capacity to make an appointment had been restricted by the unnecessary delay caused at Councillor level.

iii. Conclusions

The position of Acting Director was retained for longer than the limit of twelve months prescribed in the Act. While the CEO could have exercised his powers under Section 94A of the Act and made the appointment without following Council protocol to involve the Mayor, he chose to follow the existing policy of including the Mayor in the process rather than create further dissension.

The allegation by Cr Grossbard that the CEO acted to fill the position in response to constant pressure applied by "*..certain Councillors..*" is incorrect. In fact the delay was due, in part, to unnecessary interference by the Council in the process.

h. Harassment, Intimidation by Councillors in Workplace

i. Allegation

In an interview with Inspectors on 13 April 2005, Cr Grossbard provided written material alleging that:-

"There is ample evidence of repeated unreasonable behaviour directed towards one or more individual Councillors or a group of Councillors. This has created a risk to health and safety.

The unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.

In some incidences, occupational violence has been evident where a Councillor or resident has been physically attacked or threatened in the workplace.

No training in this area of compliance has been initiated by the CEO or Mayor in order to prevent problems or manage any incidents. Interestingly, the CEO and Directors have undergone a two hour workplace bullying training session."

ii. Commentary

According to the CEO the Senior staff have attended a two hour workplace bullying session.

In response to a request by Council for similar training for Councillors the CEO said that he arranged for Barry Sherriff a partner of Freehills Lawyers to give a presentation on rights and obligations under Occupational Health and Safety Legislation. This was made at a briefing session held on 15 March 2005. This arose as a consequence of an altercation between Crs Grossbard and Erlich on 1 March 2005 which resulted in the matter coming before the Magistrates Court.

Mr Sherriff made the following observations at the briefing session:-

- the very public predicament that Glen Eira City Councillors have got themselves into will be impacting on the organisation's staff and also will impact on how the staff believe they can behave towards others;
- the Council needed to have a bullying policy;
- the leadership of Councillors was a key to safe work practices;
- a mediator was needed to help Council work through the issues;
- that Glen Eira's Code of Conduct is not working and there appears to be a lack of good intent and it had no sanctions;
- that hopefully Council could move forward, but could not say they had not been warned.

Cr Grossbard raised this matter with Inspectors on 13 April 2005. However, in criticising the CEO for not initiating any action, he made no reference to the presentation by Mr Sherriff on 15 March 2005 nor the discussion at the Council Meeting on 11 April 2005 about appointing a mediator – an appointment he supported at that meeting.

iii. Conclusion

Cr Grossbard's criticism of the CEO and the Mayor for taking no action was made to the Inspectors on 13 April 2005. In fact contrary to his assertion, Barry Sherriff of Freehills had already addressed the Council on 15 March 2005 about Occupational Health and Safety issues and the appointment of a Mediator.

Mr Sherriff drew Council's attention to two serious governance deficiencies:-

- **the negative impact of Councillor actions on staff behaviour and workplace safety; and**
- **the failure by Councillors to implement a Code of Conduct.**

Cr Grossbard's criticism is not justified.

i. Other Issues Raised by Cr Grossbard

Cr Grossbard has made other allegations against the CEO. However, given the lack of substance in the claims so far presented, the Inspectors considered that there was nothing to be gained by reviewing these additional allegations.

j. Overview of Cr Grossbard's Actions

Cr Grossbard submitted a number of allegations to the Inspectors criticizing the performance of the CEO. He had raised these issues previously over a period of years with either Local Government Victoria or the Ombudsman or in some cases, both bodies. In addition, he submitted several of them to Arnold Bloch Leibler Lawyers in an apparent attempt to discredit the CEO. Invariably, almost all allegations were unfounded and no further action has been warranted.

When raising these matters with Inspectors Cr Grossbard neglected to disclose, until asked, that he had lodged his concerns with one or more of the other bodies referred to and received no support from them.

Cr Grossbard's actions amount to a consistent attempt to discredit the CEO and his motives for constantly pursuing this course are questionable.

5. ISSUES RAISED BY COUNCILLOR MARWICK

a. Tender for Construction of the Carnegie Library

i. *According to Cr Marwick*

- Council let a tender for construction of the Carnegie Library on 13 April 2004, the approximate cost being \$7.0m.
- On Wednesday 7 April, 2004 the staff issued a report recommending to Council that Contractor "X" be awarded the contract.
- On the following Tuesday, the date of the Council meeting (13 April), and prior to the meeting, the recommendation was changed. It was now recommended that Contractor "Y" be awarded the contract.
- She had raised her concerns about the late change. She met with the CEO on the following Friday and was informed that the Officer who prepared the original report was away – he had recommended Contractor "X". The CEO advised her that new information had been provided which he presented to the Council, recommending the change.

-
- Maddocks, Council's Solicitors, had provided a recommendation. There were two letters from Maddocks – an original advice and a late advice which, according to Cr Marwick, were dated the same.

The only difference between the two advices was an added paragraph:-

“On the basis of the financial and credit information alone, and assuming that all other things are equal, we are of the view that (Contractor Y) would be the preferred candidate from a risk perspective.”

- She said the CEO was not *“forthcoming in providing her with answers”*.
- Her questions to the Inspectors were:-
 - why would Maddocks furnish slightly different letters on the same day – each dated 7 April 2004? and
 - what happened to change the first recommendation? and
 - is there cover up or fraud?

ii. A review of this issue reveals the following

- The staff sent a report to the Council on 7 April 2004 recommending that Contractor “X” be awarded the tender. Of the two leading tenderers, “X” and “Y”, both of whom had at that time the same credit rating, the price submitted by Contractor “X” was marginally lower.
- Written information received from Maddocks at 6.43 pm on 7 April 2004 provided a later financial check which revealed a change in credit ratings.

At this point the staff member involved in preparing the tender report, and the CEO, had both gone on leave for Easter.

- The new advice from Maddocks was provided to the CEO at 10.32 a.m. on 13 April 2004. However this advice did not include a recommendation as to which tenderer was preferred. In the CEO's view, this was of sufficient importance to change the recommendation that had been made in the report to Council on 7 April 2004 because the marginal price advantage in favour of contractor “X” was more than offset by a better credit rating on the part of contractor “Y”.

Maddocks provided further advice to Council by email at 4.24 p.m. on 13 April 2004, which recommended contractor “Y” based on the credit ratings and *“...all other things being equal”*.

-
- This material was placed before the Council at its meeting that evening. The CEO advised the Inspectors that Council had the opportunity to make a decision at the meeting or defer it, bearing in mind that prices would increase on 1 May 2004.
 - The Council accepted the tender of Contractor “Y” by eight votes to one.
 - The two letters from Maddocks were dated the same because, in sending the second version they used the same letter, inserted a new paragraph and omitted to change the date.

iii. Conclusion

There is no evidence of any cover-up or fraud. Further the responses given by the CEO to Cr Marwick at the time, as set out above, are satisfactory.

b. Rate Rebate Scheme

i. Issue

Cr Marwick raised the issue of a rate rebate scheme adopted by the Council in 2002/03 which involved the giving of an 8% general rate rebate to all ratepayers based on Section 169(1)(a) of the Act “... *to assist in the proper development of the municipal district...*”.

Cr Marwick advised that she discussed the matter with the “*Department of Infrastructure*” and the Auditor General, each of whom supported her view that the Council’s action did not comply with the Act.

She has alleged that the CEO introduced “... *his own personal philosophy*” and stated that she would have “... *addressed this during contractual negotiations if we had been given the chance*”.

ii. Commentary

The concept of a rate rebate scheme was first raised by then Councillor Kennedy at a meeting of the Council held on 22 April 2002 when it was discussed and compared with the conventional method of levying general rates.

On 6 May 2002, a majority of Councillors opted for the rate rebate approach. On 27 May 2002 Council resolved to give notice of the budget for 2002/003 which proposed a net increase of 16% in general rates, (i.e. 24% increase less 8% general rebate), based on the rate rebate method. Council gave unanimous support at this stage.

On 5 June 2002, Cr Marwick raised her concerns with the Council about the legality of the rate rebate proposal. While the Council was aware of the opposing stances taken by the Auditor General and the then “*Local Government Division*”, it relied on advice given by Mark Hayes of Maddocks, Lawyers which stated that the proposed rate rebate scheme, while unconventional was legally valid.

On 1 July 2002, Council resolved, by seven votes to one (Cr Marwick against), to adopt the budget and use the rate rebate method of levying the general rates.

Cr Marwick told Inspectors she had wanted to raise this matter during the CEO re-appointment process but did not get the opportunity to do so.

iii. Conclusions

Cr Marwick’s criticism of the CEO for pursuing his philosophical approach is unjustified because:-

- **he didn’t propose the rate rebate scheme – this was initiated by Cr Kennedy;**
- **Council considered the matter several times before finally adopting it after public consultation;**
- **the resolution to introduce the rate rebate scheme was adopted by seven votes to one.**

Her claim that she did not have the opportunity to address the matter with the CEO during recent contractual negotiations cannot be substantiated. There was ample time available for this to be done, given that Council first met to consider his appointment in early October 2004 and concluded the process in April 2005.

c. Planning Permit for Synagogue 569 Glenhuntly Road Elsternwick

i. Issue

Cr Marwick raised concerns about the processing of a planning permit application for a synagogue including a crèche, function centre and community centre, at 569 Glenhuntly Road in 2003. She claimed that:-

- Objectors were not given a chance to question the Planning Officer at the Planning Conference.
- The recommendations to Council did not make provision for any parking requirements but included a condition under a Section 173 Agreement that a drop off area be provided on land owned by the adjacent church. The church was not consulted by the applicant.

-
- The report contained a material error in the number of children the crèche could accommodate.
 - Council issued a Notice of Decision approving the development, and in doing so, increased the capacity of the synagogue from 340 to 600 and the crèche from 30 to 40. The voting was eight to one.
 - The objectors appealed to VCAT.
 - One week before the VCAT hearing, the Council, on a recommendation by the Director of City Development, removed the Section 173 Agreement. This was agreed eight votes to one.

Cr Marwick believes a decision was made by Council to approve the application “... *as five Councillors are Jewish*”. In her view the “...*excellent town planning department with excellent leadership...*” had made a decision which was based on “... *assumption, opinion and inferences...*”

ii. Commentary

According to Jeff Akehurst, the Director City Development, there appeared to be agreement between the applicant and the church over the application including the use of the church parking area and a Section 173 Agreement to use a circular driveway in front of both properties. Off-site parking, in his opinion was not critical. An error in the number of child care places was corrected at approval stage.

Mr Akehurst said that, as the application progressed, the applicant and the Church failed to agree. The Officers recommended the permit be granted with conditions; the Council supported it with amended conditions. However the decision to increase the capacity of the synagogue to 600 was to apply to two specified Holy periods of two days each.

The appeal to VCAT subsequently resulted in a refusal to grant the permit. Mr Akehurst emphasised that the staff processes permit applications “... *exactly as they see them...*” and must continue to do so. He rejects any suggestion that staff reports on this or any other application, are changed to suit Councillors’ wishes.

Residents Anne Abbott, Tracey Lennon and Andrew Wilson, who met with Inspectors over this application, claimed that they were denied proper process. In their view there were a number of issues between the applicant and the church which hadn’t been resolved such as access and on-site parking. Fifty objectors attended the planning conference.

Certain Councillors referred to the objectors as anti-semitic. Cr Grossbard chaired the conference and denied objectors the opportunity to ask questions. Council approved the application eight votes to one and, in doing so, acceded to the applicant's request by removing some limitations recommended by the Officers.

iii. Conclusion

This application is indicative of a process which places considerable pressure on staff. In this case, the applicant, the adjacent landowner, members of the community, Councillors with differing views and staff each had a different opinion of whether approval should have been granted and, if so, on what conditions. The antagonism generated resulted in the apportionment of blame.

Cr Marwick has alleged that the staff report and recommendations lacked objectivity and impartiality, having been influenced by the fact that five Councillors are Jewish.

While attempts may or may not have been made to influence the staff, any suggestion that they responded to it cannot be substantiated.

d. Clayton Landfill Site

i. Issues

Cr Marwick raised two issues concerning the Clayton Landfill site which is owned by five Councils, including Glen Eira.

The first was that during 2002, it was decided to extend the life of the tip by repatriating one area. However there was a recognition that this could be dangerous "... as people and machinery could be at risk...". Cr Marwick said she raised the matter with the Audit Committee. However, when the minutes of the Committee were issued there was no mention of the landfill and a few weeks later, a Council Officer reported to Council identifying the risk she had raised with the Audit Committee. *"My point here is that the staff have a predisposition to making sure they can never be seen to making a mistake"*

Cr Marwick said she raised a second matter with the Audit Committee which she regarded as *"dishonest"*. Council's budget for 2002/03 provided for increased rates, part of the reason being to cover a cost of \$400,000 being incurred at the Clayton Tip. *"This was not a cost.... It was a cash flow issue"*

ii. Commentary

The Audit Committee meeting to which Cr Marwick refers was held on 5 December 2002. Item 8 of the minutes of that meeting reads as follows:-

“Cr Marwick raised a number of questions in relation to the Council’s disclosure of its interest in the Clayton Landfill Site Joint Venture.

A discussion was held regarding the disclosures and compliance with the various reporting requirements within AAS19. The Committee noted the advice from the Auditor General’s representative on 28 October:- “We confirm that this disclosure correctly records the transactions in the financial statements”.

The Chairman and Independent member noted that the Annual Report disclosure relating to this standard was materially correct and that there is inconsistency in the financial statements disclosure notes between all the other members of the joint venture.

The Chairman asked that the issue of potential liabilities for rehabilitation of the Clayton Landfill Site be investigated so that the Council could better understand its potential for future liabilities and disclosure requirements relating to these.

The Independent Member advised that a new accounting standard (AASB 1044 “Provisions and Contingencies”) dealing with contingency for rehabilitation costs was applicable from 1/7/02.

The CFO will investigate compliance by the Clayton Regional Landfill Site with this standard and also research further disclosures relating to AAS19 for the 2002/2003 financial statements. Action:- CFO.

The Chairman thanked Cr Marwick for her interest and input in this matter.”[Emphasis added]

iii. Conclusion

The minutes of the Audit Committee meeting dated 5 December 2002 clearly indicate that the risk management issue and the financial query were dealt with appropriately and that Cr Marwick was duly acknowledged for her interest.

There appears to be no reason why Cr Marwick should raise the matter to criticise staff some two years after a satisfactory explanation was given.

e. Manipulation of Council Minutes

i. Allegations

Cr Marwick raised several examples of minutes of Council Meetings held on 7 February 2005, 28 February 2005 and 18 April 2005 which she claimed contained mistakes of fact and process.

She alleged that Paul Burke (DCR), “...is inappropriately crafting the outcome....” and “...in order to create a false impression of what has actually taken place...”.

She also alleged that the meeting procedures contravened the provisions of the Council's Local Law and Section 93(6) of the Act relating to the recording of minutes.

These allegations were raised in two letters to the Inspectors dated 6 March 2005 and 22 April 2005. The Inspectors have selected two representative examples for examination.

ii. First Issue

(a) Commentary

The minutes of the Council Meeting held on 15 November 2004 contain the following resolution:--

“Crs Martens / Marwick:-

- (i) That, acting under section 94(4) of the Local Government Act 1989 (“Act”), Council give public notice in the “Caulfield-Glen Eira Leader” and “Moorabbin-Glen Eira Leader” newspapers of its intention to put a resolution to reappoint Andrew Newton as its Chief Executive Officer, at the Ordinary Council meeting to be held on 13 December;*
- (ii) That, in accordance with section 94(4)(c)(i) of the Act, the public notice contain a statement that the passing of the resolution would result in the appointment of the Chief Executive Officer without the position being advertised.*

The MOTION was put and CARRIED unanimously.”

The DCR submitted a report to a Special Council Meeting held on 7 February 2005 which provided a summary of the CEO re-appointment process followed to date including the following statement:-

“5. On 15 November Council resolved to give Public Notice of its intention to reappoint the CEO. After the Resolution was passed, the CEO was invited to join the six Councillors remaining after the Meeting.

Each of the six Councillors (Cr Marwick, Cr Bury, Cr Erlich, Cr Martens, Cr Sapir and Cr Esakoff) made a brief speech of congratulations to the CEO on his reappointment. They asked the CEO to speak about the outlook for the Glen Eira Community and Council during the next five years, which he did."

At a Council meeting held on 28 February 2005 (adjourned to 1 March 2005) two motions were put to Council to confirm the minutes of the meeting held on 7 February 2005. Cr Marwick moved as follows:-

"That the Minutes of Special Council Meeting held on 7th Feb. be confirmed and that Council note;

(a) the Agenda for this meeting contains incorrect and misleading information.

(b) that section 4 of the Minutes be deleted from the public record as it contains misleading information."

Cr Marwick contested the accuracy of these minutes on the basis that the agenda paper for the meeting "*..contains misleading material*", on two matters:-

- (1) the original resolution adopted on 15 November 2004 contained the words "*intention to put a resolution to appoint*"; not "*intention to re-appoint*"; and
- (2) she denies having made a "*brief speech of congratulations*" at a meeting between six Councillors and the CEO after the Council Meeting.

The import of Cr Marwick's motion was to expunge from the record all contents of Section 4 of the DCR's report. This section contained 1½ pages of information summarizing the re-appointment process to date, including sub section 5 set out above.

The DCR strongly advised the Council against adopting the latter part of Cr Marwick's motion because it would "*delete matters of fact from the public record*". He also advised that, when the report was submitted to the Council on 7 February 2005, no complaints were raised by any Councillors about the accuracy of its contents.

Cr Marwick withdrew her motion.

The meeting then passed the following resolution by a majority vote:-

"That Council resolve to accept the Minutes as a true and correct record of the Special Council Meeting held on 7 February 2005 but makes the following observation. That there are firm differences of opinion as to whether Clause 4 of the Agenda represents a true and accurate version of the events that they purport to record."

Cr Marwick subsequently claimed that the report created "...a false impression of what had actually taken place" and she had "...not been able to set the record straight".

(b) Summary

The resolution finally adopted acknowledges the difference between the following questions:-

- a. Do I agree that this report was put to the meeting? or
- b. Do I agree with the substance of the report that was put to the meeting?

Cr Marwick's motion was wrongly directed at the second question whereas the resolution adopted by the Council correctly addressed the first question.

The Inspectors agree with the DCR's advice given to the meeting. The resolution finally adopted was an appropriate means of addressing the above questions.

It is noted that Freehills' legal advice to the Council in March 2005 regarding omission of the words "*put a resolution*" stated that:-
"the practical effect of this different wording is of little consequence".

iii Second Issue

(a) Commentary

Cr Marwick complained that at the Council meeting on 18 April 2005, the Council passed a resolution to appoint a mediator. According to Cr Marwick, "*We didn't need a motion to appoint a mediator, it could simply be an agreed position amongst Councillors*".

The DCR advised the Council that a resolution would be required for Council to appoint a mediator.

(b) Summary

The Inspectors agree with the advice given by the DCR.

The Council required a resolution to act to commit the expenditure for which presumably a budgetary allocation had not been specifically made.

Given the existing governance issues at the Council, particularly the poor relationships between Councillors, it is difficult to comprehend the view that this action could be successfully pursued without a resolution.

It is noted that Cr Marwick voted against the motion to make the appointment.

(c) Conclusions

The Inspectors found no evidence to support Cr Marwick's allegations that the DCR had acted improperly in producing minutes of meetings which "...crafted the outcome.." or to "...create a false impression...". These are serious allegations that question the integrity of the Council Officer.

f. CEO Performance

i. *Issues*

At an interview with the Inspectors on 7 April 2005, Cr Marwick made several critical comments concerning the performance of the CEO including:-

- "he is an empire builder";
- "he does not run a democratic organisation"; and
- he has developed "a culture of intimidation".

ii. *Commentary*

On 15 November 2004 Cr Marwick, in seconding a motion to advertise council's intention to put a resolution to reappoint the CEO, made the following statement (taken from a tape recording of the meeting) :-

"Thank you Mr Mayor. This is a very satisfactory outcome and I say that with great confidence. We step forward for our next phase of our City. It's a big decision for us to make and I do it with every confidence in our CEO that we have and it seems like we have negotiated these [sic] this delicate situation with the best possible outcome in the best possible ways. I think it is terrific really and so we can only look forward to better and brighter things I believe. Thank you Mr Mayor."

iii. *Conclusion*

The negative comments made to the Inspectors by Cr Marwick on 7 April 2005 concerning the CEO are totally different to the positive statements she made at the meeting on 15 November 2005. No plausible explanation was given for the change in her opinion.

g. Internal Audit Contract

i. Issues

On 3 July 2005, Cr Marwick wrote to the Inspector advising that she is “...*witnessing corruption at the highest level*”.

According to Cr Marwick, the Audit Committee interviewed firms tendering for the Internal Audit Contract. The CEO and Chief Finance Officer (CFO) were present at the interviews and remained throughout the panel discussions. In her view the Committee “...*should have been independent of staff input*”.

The CEO was asked for his view and the CFO undertook some “...*rudimentary scoring which would not stand scrutiny at any level*”. Members of the Audit Committee met again on 20 June with no staff present and this “...*served to highlight the impropriety and the gravity of what happened at the two previous meetings where the CEO and the CFO had participated inappropriately*”. Cr Marwick indicated that the “...*latest dealings highlight the extreme seriousness of the situation that faces us as an Audit Committee and as a Council*”.

ii. Commentary

This matter was raised just prior to completion of this report and little time has been available to pursue the issue.

The Audit Committee comprises four members:-

Two External Members

- David Gibbs (Chairman Audit Committee, Partner McInnes, Graham & Gibbs)
- Gary McLean (Partner Deloitte Touche Tohmatsu)

Two Councillors – Crs Bury and Marwick

This allegation has been discussed with Mr Gibbs and Mr McLean.

Because no decision has yet been made on the contract, this report contains no comment on that matter.

However, in regard to process, the external members of the Audit Committee have advised that:-

- no agreement has yet been reached on the preferred tenderer and the decision has been deferred;
- the CEO and CFO were involved in assisting the committee, as is normally the case, and the Chairman sought and welcomed their professional advice. This is seen as an essential part of the decision making process;
- neither Mr Gibbs nor Mr McLean are aware of anything “*corrupt*” or “*improper*” about the involvement of Officers in the process. On the contrary, they believed the participation by both Officers was of considerable benefit.

iii. Conclusion

There is no evidence of corrupt or improper behaviour by the CEO or the CFO.

h. Overview of Allegations by Cr Marwick

Cr Marwick raised several issues with the Inspectors for review. However, she had already received satisfactory explanations from other sources in relation to most of these matters.

Her accusations in some cases (e.g. possible fraud regarding tenders, “*inappropriately crafting the outcome*” of minutes, and corruption at Audit Committee Meetings) unjustifiably question the integrity of the CEO, Director Community Relations and the Chief Financial Officer.

Whether or not her actions provide grounds for legal redress is beyond the scope of this report.

VI. ELECTORAL QUALIFICATION – CR GOUDGE

Cr Goudge was elected to the office of Councillor as a representative of the Mackie Ward, at the annual election of the Council held in March 2000. He was re-elected at the annual election held in March 2003, a position he has continued to hold to the present time.

In March 2002, Cr Goudge was elected as Mayor and served in this role until March 2003.

During the course of the investigation, evidence was presented which indicated that Cr Goudge may have ceased to be qualified for the office of Councillor during 2002.

Following a review of available evidence and an interview with Cr Goudge under Oath, the Inspectors submitted an interim report that has resulted in a decision being taken to initiate proceedings against him. As the matter is now before the Court, detailed information concerning Cr Goudge's electoral status has been provided to the Minister under separate cover.



APPENDICES

APPENDIX 1	LIST OF THOSE INTERVIEWED
APPENDIX 2	TOPICS DISCUSSED IN COUNCILLOR INTERVIEWS
APPENDIX 3	INFORMATION FOR ELECTED COUNCILLORS
APPENDIX 4.1	PWC RECOMMENDED CHANGES EXPENSES POLICY
APPENDIX 4.2	PWC RECOMMENDED CHANGES GOVERNANCE PRACTICES
APPENDIX 4.3	TOTAL COUNCILLOR EXPENSES
APPENDIX 4.4	COUNCILLOR TELEPHONE CALLS AND COSTS
APPENDIX 4.5	MONTHLY AVERAGE TELEPHONE CALLS
APPENDIX 5	COUNCIL'S RESPONSIBILITIES AS AN EMPLOYER
APPENDIX 6	RECENT AWARDS AND PERFORMANCE ACHIEVEMENTS



GLEN EIRA CITY COUNCIL INVESTIGATION
LIST OF THOSE INTERVIEWED
Held by Municipal Inspectors M Whelan and J Morris

Inspectors sought interviews with: -

Councillors

- Cr Margaret Esakoff (Mayor) [attended with her husband, Mr Jack Esakoff]
- Cr Jamie Hyams
- Cr Dorothy Marwick [attended with her husband, Mr Geoff Marwick]
- Cr Peter Goudge [attended with his solicitor, Mr Andrew Stops]
- Cr Veronika Martens
- Cr Bob Bury
- Cr Alan Grossbard [attended with his wife, Mrs Judy Grossbard]
- Cr Noel Erlich
- Cr Rachelle Sapir

Council Staff

- Andrew Newton – CEO
- Peter Swabey – Chief Financial Officer
- Paul Burke – Director Community Relations
- Peter Jones – Director Community Services
- Geoff Barrow – Director Assets and Facilities
- Jeff Akehurst – Director City Development
- Four managers nominated to represent Senior Management Group
- Paul Hedger – Corporate Counsel
- Michelle Hurd – Secretary to Mayor and DCR
- Tim Presnell – Compliance Co-ordinator
- Linda Smith, Manager, Recreation

Audit

- David Gibbs – Chairman, Audit Committee
- Garry McLean – Member, Audit Committee
- Geoff Harry – Internal Auditor, PricewaterhouseCoopers

Victorian Auditor-General's Office

- Andrew Greaves
- Tony Brown

Council Mediators

- John Warburton
- Tim McFarlane

Municipal Inspectors

- Dr Greg Walsh

Municipal Association of Victoria

- Mr Rob Spence, Chief Executive Officer
- Ms Fiona McAllister, People and Performance Manager

Other

- Mr Joe Aarons
- John Cooper, Freehills Lawyers

GLEN EIRA CITY COUNCIL INVESTIGATION
LIST OF THOSE INTERVIEWED
Held by Municipal Inspectors M Whelan and J Morris

Interviews were sought with Inspectors by: -

- Ex-Councillor David Bloom
- Ex-Councillor Norman Kennedy
- Rob Hudson MP, State Member for Bentleigh
- Glen Eira Residents Action Group
 - Ms Jacqui Robilliard
 - Mr Andrew Bunn
- Glen Eira Residents' Association
 - Mr Jack Campbell
- Ratepayers Association of Glen Eira
 - Mr David Feldman
- Jasper Action Group
 - Ms Jackie Prince
 - Ms Julie Mallios
- Mr Panos Ilias
- Mr Colin Rawson, Ms Yvette Wroby, Ms Rosetta Manascewicz
- Ms Anne Abbott, Ms Tracey Lennon, Mr Andrew Wilson
- Mr Lars Christensen
- Ms Sue Loukomitis
- Mrs Sue Nolle
- Ms Ursula Rembach
- Ms Heather Welsh
- Ms Helen Whiteside
- Ms Sandra Young
- Mr Michael McCarthy
- Mr Frank Penhalluriack

Other Correspondence :-

A number of Glen Eira residents wrote to raise issues as part of the investigation.

- Mr K and Mrs V Dowd
- Mrs Beverley Broadbent
- Mrs Mary Walsh
- Mrs Valerie Johnstone
- Revd Alexander Scott

Other Assistance:-

- The tenant of 81A Mimosa Road
- Cr Goudge's estranged wife
- Cr Goudge's ex-wife

**GLEN EIRA CITY COUNCIL INVESTIGATION
TOPICS DISCUSSED AT INTERVIEWS WITH COUNCILLORS**

Councillors were asked a series of questions by Inspectors in relation to the topics set out below :

1. Election to Council
2. Induction Processes
3. Council's Functions, Roles and Responsibilities
4. Code of Conduct
5. Administration
6. Council Meetings
7. Mediation
8. Surf Coast Commission of Inquiry
9. The Audit Committee
10. The CEO Dispute with Council – 2003
11. Chief Executive Officer (including re-appointment)
12. Council Governance / Leadership
13. Returns – Register of Interests
14. Conflict of Interest
15. Pricewaterhouse Coopers Report, including Telephone Expenses
16. Confidential Information
17. Matters Relating Specifically to any Particular Councillor

Councillors were then invited to raise any issues with the Inspectors.

INFORMATION FOR ELECTED COUNCILLORS OF THE CITY OF GLEN EIRA

TABLE OF CONTENTS	RESPONSIBLE OFFICER
<p>CEO's Foreword</p> <p>□ "Glen Eira in a Nutshell": an overview of the key information in this Binder</p> <p>1. Successful Councils</p> <p>□ The Individual, the Group, and Relationships.</p>	<p>Andrew Newton</p> <p>Andrew Newton</p>
<p>2. Transition Program</p> <p>○ Transition Program</p> <p>○ Calendar of Events, March-June 2003</p> <p>○ First Council Meeting – Wednesday 19 March 7.30pm</p>	<p>Andrew Newton</p>
<p>3. Support for The Council</p> <p>○ Council's Objectives & Functions</p> <p>○ The Decision Making Process</p> <p>✓ Council and Committees</p> <p>✓ Meeting Procedures</p> <p>○ The Council, the Councillors and the Mayor</p> <p>○ Council and its CEO</p> <p>○ CEO</p> <p>○ Council's Audit Committee</p> <p>○ Councillors' Liability Insurance</p> <p>○ Confidentiality</p> <p>○ The Secretariat</p> <p>✓ Councillors' Correspondence</p> <p>✓ Councillors' Requests</p> <p>✓ Speeches</p> <p>✓ Reporting & Communication</p> <p>✓ Support and Expenses</p> <p>✓ Allowances and Entitlements</p> <p>○ "Citizen 2 Councillor" (a publication by the MAV)</p>	<p>Andrew Newton</p> <p>Cynthia Lahiff Paul Burke</p>
<p>4. Who Makes Up the Glen Eira Community?</p> <p>○ Demography</p>	<p>Andrew Newton</p>

5. Council's Performance and Service Levels <ul style="list-style-type: none"> o Performance Overview o Community Satisfaction o Quarterly Report on Services, December 2002 o Service Levels 	Andrew Newton Cynthia Lahiff
6. Financial Strategy <ul style="list-style-type: none"> o Comparisons with Neighbouring Councils o Where does our money come from & where does it go? o Distribution of Rates 2002-03 o Rates of Taxation o Movements in Taxes o Cost Shifting o Financial reporting o Financial Report to end-February 2003 and Forecast Result for 2002-03 o Financial Environment and Discussion Paper 	Cynthia Lahiff
7. Organisation and Staffing <ul style="list-style-type: none"> o Responsibility for Staffing o Organisation Chart o Staff Numbers by Service Unit o Staffing Profiles and Statistics o Enterprise Agreement 2001-03 	Peter Jones
8. Current Issues <ul style="list-style-type: none"> o Proposed Skate Facility, Princes Park o Ministerial Intervention? o Contractual Dispute o Infrastructure, Assets & Community Facilities o Community Care Funding o Town Planning o "C11, C25, C14" o VCAT o 2003-04 Budget Process o Best Value o Nursing Home Beds o Community Grants o Parking Infringements o Risk Management 	Andrew Newton Andrew Newton Andrew Newton Andrew Newton Peter Jones Jeff Akehurst Jeff Akehurst Jeff Akehurst Cynthia Lahiff Peter Jones Peter Jones Peter Jones Jeff Akehurst Andrew Newton
9. Attachments <ul style="list-style-type: none"> o Local Law o Delegation to the Chief Executive Officer o Delegation to the Delegated Planning Committee (DPC) o Index of Council Policies o Annual Report 2001-02 	Paul Burke

GLEN EIRA CITY COUNCIL EXPENSES POLICY
PwC FINDINGS ON COUNCIL POLICY IMPLEMENTATION
AND RECOMMENDED CHANGES - 16 SEPTEMBER 2004

1. FINDING -

Council has disclosed Councillors' expenses on its web site but the disclosures are not clear.

RECOMMENDATION -

Disclosure of Council's expenses on the Council web site could be improved as follows :-

- Specifying the reporting period
- Using consistent reporting periods
- Removing the ambiguities and confusion arising from the footnotes
- Using an accrual basis of accounting
- Rounding figures to the nearest dollar
- Providing totals for each Councillor and for each type of expense
- Providing reasons for unusual fluctuations. For example major expense items arising from overseas travel, etc.

2. FINDING -

Council has not undertaken audits of Councillors' expenses as required by the policy.

RECOMMENDATION -

Refer to our comments in the table above concerning improvements required to the audit provisions for Councillors' expenses.

3. FINDING –

Review of the use of Councillor provided home and mobile telephones has highlighted the following :-

- **all Councillors have utilised these items for private use, including calls to family and their place of work. Whilst the policy states that incidental private use is allowed, it is evident that a number of Councillors may have used their phones for private purposes in excess of what is considered to be incidental;**
- **two of the eleven Councillors telephone accounts were reviewed could not advise us of the names of people they had called on a recurring basis even though the phone numbers were listed on the accounts;**
- **there is high usage of services such as Message Bank. Further, Councillors appear to let calls go directly to Message Bank, retrieve the messages immediately and make follow-up phone calls.**

RECOMMENDATION –

The policy should be revised to consider the following :-

- defining the term incidental private use for telephone calls. Refer to our recommendations above concerning policy improvements;
- implementing a policy to address the high usage of services, such as Message Bank.

We suggest that if there are continuing non-compliance issues with private usage of mobile telephones, Council consider changing the arrangements with its telecommunications supplier such that Councillors become directly responsible for paying at least mobile telephone accounts using their own credit cards. They could then claim the business related portion as a reimbursement from Council.

This process would require Councillors to review every charge on their accounts to establish whether calls are Council related and would provide greater assurance to management that Councillors have properly reviewed their telephone accounts for private usage. It also means that Council will not have to spend time pursuing Councillors over such matters.

4. FINDING –

Evidence to support reimbursements for taxi usage and child care services require further detail. Descriptions provided on reimbursement claim forms were unclear or did not proceed specifics as to the Council reason for the claim. Rather, descriptions provided were generic.

We also note that child care claims covered periods in excess of one month.

RECOMMENDATION –

Council should ensure that :-

appropriate documentation to support reimbursements is obtained before any reimbursements are processed, including the following :-

- the descriptions on the documentation should outline the event attended by the Councillor that has given rise to claim;
 - child care expenses should be claimed on a timely basis.
-

5. FINDING –

Our review highlighted that several expenses were classified under categories which may lead to ambiguity. For example, purchases of telephone equipment such as mobile telephones and fax machines were combined with telephone charges. Air travel was categorised under “Cab-charge”.

RECOMMENDATION –

Council should review categorisation of expenses to ensure disclosures are clear and reflect the nature of expenses incurred. At a minimum, we suggest telephone equipment be segregated from telephone charges and that air travel expenses be categorised as travel expenses.

6. FINDING –

The policy requires that claims for expense reimbursements must be made on the appropriate form, must be signed and supported by appropriate documentation.

We noted one expense item which did not have appropriate supporting documentation. In this instance interstate air travel was upgraded and the expense was approved without any supporting documentation.

RECOMMENDATION –

Council should ensure that:

- appropriate documentation to support reimbursements is obtained; and
- where documentation cannot be supplied, an explanation be documented on file.

GLEN EIRA CITY COUNCIL EXPENSES POLICY
PwC FINDINGS ON CERTAIN GOVERNANCE PRACTICES
AND RECOMMENDED CHANGES - 16 SEPTEMBER 2004

1. FINDING -

We have noted a number of points which indicate that Council does not necessarily take its governance and oversight responsibilities as seriously as it should. We have listed the following examples noted from discussions with Council management, ratepayers and Councillors :-

- **Councillors have been cautioned by management about the level of expenses they incur.**
- **In the lead up to the decision by Council to commission a review of Councillor's expenses, Council voted against an earlier motion put at the Council meeting on 9 February 2004 that Councillor's expenses be reviewed. As the Expenses Policy requires a review of Councillor expenses, Council effectively voted against its own policy.**
- **Councillors do not readily accept the advice or guidance of the management team.**
- **Council has difficulty adopting new policy statements or agreeing on changes to existing policies. Often these initiatives are tabled to address points of concern or to clarify areas of potential confusion. Where greater accountability is a theme of new or changed policies, Council tends to prefer broader rather than less clear statements. The Expenses Policy is a good example of this approach.**
- **Council does not have an acceptable Code of Conduct for Councillors. The Code is generic and lacks robust content. The absence of a robust Code of Conduct is now problematic for Council, since there is no guidance available to Council in the current circumstances, that is, where there is non compliance with the Expenses Policy.**
- **Councillor induction programmes are not particularly helpful in assisting new Councillors to understand personal accountabilities and responsibilities under the Local Government Act 1989.**
- **Follow up of ratepayer questions put at Council meetings is not monitored to ensure that answers are provided on a timely basis.**
- **Non-compliance with Councillor's expenses policy.**

RECOMMENDATION -

Our recommendations are as follows :

- **Councillors should undergo a "refresher" update on their responsibilities for minimising private use of Council provided telephones and developing a mind set that they should incur only those expenses directly related to their roles as Councillors. They need to remind themselves that the Councillors' expenses policy does not confer entitlements to Council provided resources, but provides support directly linked to their roles as Councillors. They need to remind themselves that the Councillors' expenses policy does not confer entitlements to Council provided resources, but provides support directly linked to their roles as Councillors.**
- **The CEO should establish a practice of rejecting Councillor expenditure reimbursement claims if there are outstanding queries with regard to private use of mobile telephones and other Councillor expenses paid directly by Council. This practice should extend to offsetting amounts related to such queries against reimbursement claims.**
- **The Council, with Mayoral guidance and leadership, should work with the CEO to re-establish the importance of advice and guidance provided by the management team to Councillors.**

- Council with management assistance should review all areas where policies are in need of updating or completion and adopt them as a matter of urgency.
 - A Councillors Code of Conduct should be adopted as a matter of urgency and it should provide guidance in circumstances where there have been breaches of Council policy.
 - Management should review and refresh the Councillor induction programme with a view to assisting Councillors to better understand their responsibilities when they are elected.
-

2. FINDING -

The Council's Audit Committee meets quarterly and it is common practice for the Committee to have a closed session at the commencement of each meeting. No record of the business of this part of the meetings is made. Some Councillors have expressed concern with this practice in that they do not understand the workings of the Committee. Their concern is centred around the Committee being drawn into matters which may be beyond its Charter.

RECOMMENDATION -

The business of Audit Committee meetings should be recorded. If confidential matters are considered, a separate record of that business can be prepared and filed appropriately.

3. FINDING –

The process in relation to taking, following-up and responding to questions raised by the public during question time at Council Meetings should be reviewed. During our review a number of concerns were raised in relation to the way rate payer questions were handled, the key concern being that often there is no follow up. We understand that Council are currently implementing a new process to address this concern.

RECOMMENDATION -

We acknowledge and support Council's initiative to implement new question time processes.

GLEN EIRA CITY COUNCIL
 COUNCILLOR EXPENSES FOR PERIOD 1 SEPTEMBER 2001 TO 29 FEBRUARY 2004
 TAKEN FROM PWC REPORT – BASED ON COUNCIL RECORDS
 TOTAL COUNCILLOR EXPENSES

Councillor	Term as Councillor in Review Period (Months)	Councillor Allowances \$	Telephone Costs \$	Meetings Conferences Associated Costs \$	Other, e.g. Memberships Stationery \$	Totals \$
Erlich	30	57,000	3,940	485	172	61,597
Kennedy	19	26,300	2,043	2,688	740	31,771
Martens	30	43,250	3,756	7,399	153	54,558
Goudge	30	74,750	11,970	4,745	263	91,728
Grossbard	30	41,250	4,663	2,373	(1,066)	47,220
Marwick	30	72,750	4,770	8,354	2551	88,425
Bloom	19	23,400	1,848	1,116	(240)	26,124
Walsh	19	23,400	2,235	-	-	25,635
Sapir	30	41,250	3,635	3,848	77	48,810
Hyams	11	18,750	1,491	370	284	20,895
Bury	11	18,750	2,057	1,667	291	22,765
Esakoff	11	18,750	1,571	1,631	191	22,143
Sub Totals :		459,600	43,979	34,676	3,416	541,671
Miscellaneous		Nil	3,745	15,917	92,110	111,772
Totals for Period		\$459,600	\$47,724	\$50,593	\$95,526*	\$653,443

- Includes MAV Subscription \$37,900 x 2

GLEN EIRA CITY COUNCIL
COUNCILLOR EXPENSES FOR PERIOD 1 SEPTEMBER 2001 TO 29 FEBRUARY 2004
TAKEN FROM PWC REPORT – BASED ON COUNCIL RECORDS

SUMMARY COUNCILLOR TELEPHONE COSTS

Councillor	Term as Councillor in Review Period (Months)	Mobile Calls \$	Land Line Calls \$	Line Rental \$	Connect Fees \$	Equipment \$	Other \$	Total \$
Erlich (Mayor 01/02)	30	902	2,160	1,004	-	-	105	4,171
Kennedy	19	-	745	754	-	526	(11)	2,014
Martens	30	427	1,692	1,004	-	805	124	4,052
Goudge (Mayor 02/03)	30	9,569	748	1,512	355	740	45	12,969
Grossbard	30	1,098	2,044	1,004	-	805	39	4,990
Marwick (Mayor 03/04)	30	1,969	1,787	1,059	-	320	45	5,180
Bloom	19	1,066	193	596	-	-	39	1,894
Walsh	19	1,218	152	594	-	299	39	2,302
Sapir	30	2,019	238	1,004	154	485	135	4,035
Hyams	11	335	55	404	209	805	-	1,808
Bury (Mayor 04/05)	11	752	183	412	209	805	-	2,361
Esakoff	11	189	196	407	209	805	-	1,806
Totals :		\$19,544	\$10,193	\$9,754	\$1,136	\$6,395	\$560	\$47,582

SUMMARY COUNCILLOR TELEPHONE CALLS / AVERAGE COSTS

Councillor	Term as Councillor In Review Period (Months)	Number of Mobile calls	Number of Landline calls	Total Calls	Average per call costs for mobile calls	Average per call costs for land line calls
Erlich (Mayor 01/02)	30	2,734	4,680	7,414	0.33	0.46
Kennedy	19	-	920	920	-	0.81
Martens	30	1,171	3,859	5,030	0.36	0.44
Goudge (Mayor 02/03)	30	18,748	1,429	20,177	0.51	0.52
Grossbard	30	2,915	5,101	8,016	0.38	0.40
Marwick (Mayor 03/04)	30	4,390	3,436	7,826	0.45	0.52
Bloom	19	2,281	609	2,890	0.47	0.32
Walsh	19	2,299	271	2,570	0.53	0.56
Sapir	30	3,937	689	4,626	0.51	0.35
Hyams	11	427	159	586	0.78	0.35
Bury (Mayor 04/05)	11	1,204	644	1,848	0.62	0.28
Esakoff	11	301	690	991	0.63	0.28
Totals :		40,407	22,487	62,894	0.48	0.45

CONFIDENTIAL

Item 12.2

COUNCIL'S RESPONSIBILITIES AS AN EMPLOYER

**Enquiries: Andrew Newton
Chief Executive Officer**

This item is submitted by the Chief Executive Officer for In-Camera consideration pursuant to Section 89(2) of the Act:

- (a) *personnel*
- (f) *legal advice, and*
- (h) *any other matter which could prejudice the Council.*

This item is being circulated only to Councillors, Chief Executive Officer, Director Community Relations and the official Council Record.

1. This Submission

This submission concerns the relationship between the

- o Council as employer, and
- o Chief Executive Officer, as employee.

2. Failures of Responsibilities

Attached are numerous memoranda concerning Item 12.3 of the Council Meeting of 9 April 2002, together with the record of the Briefing Meeting of 2 April 2002.

I submit that these items show that the conduct of Cr Grossbard has placed the Council in breach its duty in two important respects and I am seeking action by the Council to prevent the recurrence of any such failure.

2.1 Section 95 of the Local Government Act states:

“The following principles are to be observed with respect to Council staff –

- (g) *Council staff should be protected against arbitrary action, personal favouritism and coercion.”*

The attached material demonstrates attempts by Cr Grossbard to coerce me into withdrawing Item 12.3 from the Council.

- o *“Ultimately this is the CEO 's report. The ultimate responsible person has mislead Council..... The CEO wants Council to take responsibility for this report even though he knows it is incorrect.....this report be withdrawn, the CEO be stood down.” - Fax from Cr Grossbard, copied to Executive, 10.55 am 3 April 2002.*
- o *“will be issuing a press release on Friday calling for the dismissal of the CEO, Andrew Newton” - Fax from Cr Grossbard, copied to Executive, 10.08 am 4 April 2002.*

CONFIDENTIAL**Item 12.2 (cont'd)**

The coercion was severe: threat of dismissal.

2.2 *The employment contract between the Council and me sets down a process if the Council believes that the Chief Executive Officer 's performance was unsatisfactory. The attached material asserts that my performance was poor but does not follow the process prescribed by the contract.*

3. Significance

I would like to highlight two aspects of this episode.

Firstly, some of the material was sent to my subordinates – the Directors.

It is one thing for one Councillor to criticise the Chief Executive Officer to another Councillor. It is quite another thing for one Councillor to attack the Chief Executive Officer to the Chief Executive Officer's subordinates.

If an employee had behaved in this way, he/she would have been disciplined severely.

Secondly, since the Council made its decision on 9 April, the alleged errors in Item 12.3 are no longer an issue.

I remain concerned that Item 12.3 was never a management problem. (Note that after Council carried its Resolution, Cr Grossbard wrote: "The matter relating to Ogaki (Agenda Item 12.3) has been resolved at Tuesday night's Council meeting. I accept this decision of Council.") It was a political problem. It was a political problem for one Councillor. And the response was to attack the Chief Executive Officer and try to intimidate the Chief Executive Officer into withdrawing the Item from the Council, i.e. withdrawing the political problem.

If we ever reach a situation where the Chief Executive Officer can be bullied into withdrawing reports from the Elected Council, Governance would have failed.

The key fact is that the Public Question asked by Ms Sandra Young needed to be answered and the answer needed a basis in a report on the facts.

4. Pattern of Behaviour

There is a history of unfounded attacks by Cr Grossbard on the Chief Executive Officer.

4.1 Councillors will recall that when the printer sent rate notices to the wrong addresses (and admitted it was 100% his own fault), Cr Grossbard rang Councillors calling for my dismissal.

4.2 When I proposed that Glenda Stanislaw use the office in City Management, Cr Grossbard recommended that my office be halved instead.

CONFIDENTIAL**Item 12.2 (cont'd)**

- 4.3 I have regularly had to intervene with Cr Grossbard and remedy situations e.g.
- o The Item 12.1 on the Agenda for 29 April 2002 concerning the assault on an officer;
 - o Preventing Cr Grossbard chairing a Planning Conference on an application where he was an official objector (attached);
 - o The instance where Cr Grossbard asserted that he did not consult residents over Cedar Street because an anonymous officer told him not to.
- 4.4 I feel I also need to point out the attack by Cr Grossbard on the previous Chief Executive Officer. Instead of raising issues with the Chief Executive Officer 's employer, the Elected Council, Cr Grossbard wrote directly to the Office of Local Government (extract attached). The letter was leaked to the local newspaper resulting in sensational reports (examples attached). The independent investigation into Cr Grossbard's allegations found that:
- o "in relation to the subject of the letter of complaint, it is concluded that the Chief Executive Officer has acted professionally and in accordance with statutory authority.
 - o *Glen Eira was well managed, but not so well governed."*

5. Current Situation

1. *I believe that my rights under the Act and under my Contract have been breached.*
2. *I consider that the Council has failed to adequately restrain Councillor Grossbard in his actions outside the Act and outside the Contract.*
3. *For me to have confidence in the fairness of Council's administration of the contract and the Council's other employment responsibilities, I would wish to see Cr Grossbard excluded from:*
 - o *setting my Key Result Areas (KRA's)*
 - o *assessing my performance against the KRA's*
 - o *Section 95 of the Act as referred to above*
 - o *consideration of whether the Council would reappoint me in due course.*

As far as I am concerned, the integrity of Council as an employer is at issue.

CONFIDENTIAL**Item 12.2 (cont'd)**

The suggested method to achieve this would be to establish a Special Committee of Council, comprising all Councillors except Cr Grossbard, to perform the Council's duties listed above. A draft is attached for the Council's consideration.

6. Other Comments

The recent attack consumed considerable time and distracted me and others from far more important things. Putting a stop to such attacks will save time in future and add value to the Community.

I record my appreciation for the support expressed to me during the recent events by the large majority of Councillors.

I respect the right of elected Representatives to behave "politically". But there are limits to legitimate political behaviour. In my view, Cr Grossbard has gone way over the legitimate limits.

I consider that some Councillors need to understand that election as a Councillor brings with it not only Rights but Responsibilities, including legal obligations, and that there are **consequences** if obligations are breached.

7. Conclusion

In my view, Cr Grossbard's most recent attack on me was:

- o in breach of the Council's obligations
- o unlawful
- o improper
- o in so far as it was made to the Chief Executive Officer's subordinates, was especially serious
- o part of a pattern of blaming officers, especially the Chief Executive Officer
- o undermines Good Governance.

I ask the Elected Council to deal with this by **deeds**, not words.

ANDREW NEWTON
CHIEF EXECUTIVE OFFICER

PS I cannot provide advice to the Council on this matter, except as the employee. If the Council wishes to have advice, it should seek it independently of me.

GLEN EIRA CITY COUNCIL
RECENT AWARDS AND PERFORMANCE ACHIEVEMENTS

AWARDS

- Australian Customer Service Association Award – Winner. The Service Centre has been visited by more than 90 organisations.
- Rural Australian Planning Institute – Awards for Planning Excellence – Local Government Planning Process – Winner.
- Planning Institute of Australia – Award for Professional and Service Excellence in Local Government Planning 2001/02 – Winner (Jeff Akehurst)
- Parks and Leisure Australia – Recreation Manager of the Year – Winner for both Victoria and Australia (Linda Smith).
- 2002 Parks and Leisure Australia – Innovation and Best Practice Award – High Commendation.
- 2002 Parks and Leisure Australia – Open Space Management Award – High Commendation.
- Institute of Chartered Accountants / MAV Annual Report Awards, Municipal Association of Victoria, Best Report on Performance – Winner.
- 2003 CMP Award for Excellence in Risk Management – Winner Civic Mutual Plus
- 2004 CMP Award for Excellence in Risk Management – Runner-Up Civic Mutual Plus
- 2004 Planning Institute of Australia - Awards for Planning Excellence – Urban Planning Achievement – Winner
- 2004 Australasian Reporting Awards, Sydney (for all Companies, Charitable Organisations, Government Organisations) – Silver Award for the 2003/04 Annual Report.
- 2004 Institute of Chartered Accountants / MAV Annual Report Awards – Best Report on Best Value – Winner.
- 2004 – Institute of Chartered Accountants / MAV Annual Report Awards – Best Report on Corporate Governance – Winner.
- April 2005 Planning Institute of Australia – Awards for Planning Excellence – Urban Planning Achievement – Runner Up.
- June 2005 – Australasian Reporting Awards (for all Companies, Charitable Organisations, Government Organisations), Gold Award for the 2003/04 Annual Report.

RECOGNITION BY INDEPENDENT BODIES

- 1999/2000 - The Commonwealth Government paid Council for the CEO (Andrew Newton) to address 300 senior managers of the Commonwealth Government in Canberra on Public Sector Reform.

Glen Eira had been used as a case study in a report on improving financial management in the Australian Public Service by the Management Advisory Board of the Commonwealth Government.

- 2002 - Named by the Property Council of Australia as having the best Town Planning process.
- 2002 - All workplaces fully accredited by Safety Map (Occupational Health and Safety); Council has been re-accredited at each inspection since.
- 2002 - The Organisation for Economic Co-operation and Development visited Council's new combined Child Care and Maternal and Child Health Centre in Murrumbeena as an example of the best in Australia.
- 2004 - Integrated Open Space Services (IOOS) Annual Survey – Glen Eira's Parks were rated 1st out of 21 Melbourne Councils.
- 2000 – 2005 - Ranked either 1st, 2nd or 3rd of all Victorian Councils for five years running for Risk Management (Civic Mutual Plus).
- 2004 - Highest infrastructure renewal and maintenance in 2002/03 of all 78 Councils in Victoria (Local Government Victoria).
- 2004 - Lowest financial liabilities per property in 2002/03 of any Victorian Council (Local Government Victoria).

PERFORMANCE INFORMATION

- Residents appeal against 1.8% of Council's town planning decisions – one of the lowest rates of any Council in Melbourne.
- The quickest decision-making on town planning applications in Melbourne.
- Permanent town planning controls in place across 100% of the City (Amendments C11 and C25)
- An independent "*mystery shopper*" analysis of the call centres of companies and government organisations across Australia rated Glen Eira one of the best of all organisations in Victoria (March 2005).
- Staff turnover has fallen from 20% in 1999/2000 to a projected 9% 2004/05.
- Days lost through injury have fallen from over 1,000 in 1999 to a projected 240 in 2004/05.
- Workcover premiums – Glen Eira has moved from 10% worse than the average Council in 2001 to 20% better than the average Council in 2004.
- In comparison with neighbouring Councils, Glen Eira's operating cost per property is 19% lower and average rates and charges are 13% lower.
- Debt free – probably the only Melbourne Council to achieve this without the windfall benefit of selling an electricity distribution company.

