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**COMMISSION OF INQUIRY INTO THE SURF COAST  
SHIRE COUNCIL**

**Terry Maher Commissioner  
April 2003**

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**COMMISSION OF INQUIRY  
INTO THE SURF COAST SHIRE COUNCIL**

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30 April 2003

Ms Candy Broad MLC  
Minister for Local Government  
Level 26, 80 Collins Street  
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**STRICTLY CONFIDENTIAL**

Dear Minister

**Surf Coast Shire Council Commission of Inquiry**

In accordance with the Terms of Reference established for the above Inquiry, I submit for your consideration, the Commission's report which has been prepared following a series of public and private hearings and an extensive review of relevant documents provided to the Commission during the course of the Inquiry.

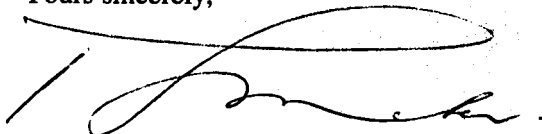
The Commission considers its work as an extension of the Report of the Inspector of Municipal Administration, Mr Merv Whelan as this has been a valuable point of reference in addressing the broad range of issues which have arisen since the Commission was established.

The recommendations and key findings are intended to provide a measure of accountability as well as providing a framework to strengthen local democracy, sustainability and effective governance at Surf Coast Shire Council.

The Commission also regards this Inquiry as an opportunity to assist the Local Government Sector in Victoria in either reconfirming current management and decision making practices or providing a timely reminder for substantial improvement in those practices.

May I take this opportunity to express my appreciation for being appointed to undertake this very important task.

Yours sincerely,



**Terry Maher  
Commissioner**



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## **EXECUTIVE SUMMARY**

The Commission of Inquiry was precipitated by the report of the Inspector of Municipal Administration, Mr Merv Whelan, which was tabled in State Parliament on 31 October 2002 (“the Whelan report”).

That report, amongst other things, revealed that the Surf Coast Shire Council was not in a sound financial position and specifically outlined a series of financial matters which led the Inspector to that conclusion.

This Report is therefore an extension of the issues contained in the Whelan report based on the specific Terms of Reference determined by the former Minister for Local Government, the Hon Bob Cameron MP, and adds some further enlightenment on the reasons why the Council’s financial stability deteriorated.

Initially, the Commission viewed its task as being focused on the financial detail both contained in the Whelan report and through an examination of Council documents.

However, as the Inquiry progressed through a series of public and private hearings, it became apparent that the deterioration of the financial position was symptomatic of a range of other matters which restricted the Council, its Councillors and the Council’s senior staff in concentrating on accepted practices for sound fiscal management.

The Commission makes the point in this Report that this was not the case since the inception of the Council in March 1994, but emerged particularly during the period of the elected Council between March 1998 and March 2001.

What has emerged is a series of personal divisions within the Council and with the former Chief Executive Officer, Ms Diana Patterson, and some other senior members of staff.

These divisions were not, in the view of the Commission, the accepted healthy divisions which result from debate in the Council Chamber, but rather, strong personality differences which were a significant contributing factor to the demise of the Council's financial stability.

In addition, management systems were deficient and formalised policy frameworks were either out of date or non-existent. As a consequence the Council was not fully and accurately informed on financial matters and was therefore unable to adequately and diligently monitor the overall financial position of the municipality.

The present Council, whilst having to accept some accountability for the current predicament, has taken a series of positive actions with specific reference to more diligent financial management and more effective governance arrangements.

The Commission came to the view that at no stage did the Surf Coast Shire Council cease to govern, in that it has continued to conduct Council meetings and make decisions on a range of matters relevant to the community. The real issue, however, is whether some of those decisions have generally been in the best financial interests of the community, particularly when the Council's financial obligations have been neglected.

For the above reasons, the Commission has decided against a recommendation to the Minister that the Councillors be suspended and an administrator appointed.

The Council suffered a void in effective leadership by Ms Patterson, particularly in financial matters, during her period or during significant periods of her employment with the Council.

Ms Patterson's capacity to focus on important financial matters was, unquestionably, impeded by the relationship issues which emerged between her and the Council.

Since the appointment of an Acting Chief Executive Officer, Mr Michael Ulbrick, from June until early December 2002, and the subsequent appointment of Mr Peter Bollen as the new Chief Executive Officer, the rebuilding process appears evident, with a strong emphasis on involvement of both Council and staff in consolidating the financial position and the management arrangements to take the Shire into the future.

The Commission is and remains confident that these new arrangements, together with the benefit of the outcomes of both the Whelan report and this Report, will result in a new culture built upon professional competence, trust, shared values and behaviours, together with an understanding of the respective roles and responsibilities of the Council, its Councillors and the senior management. It is, in turn, a commitment to these principles and values that will enable the rebuilding of the municipality.

Surf Coast Shire covers an important region of Victoria, including an area of one of Australia's best known tourist attractions, the Great Ocean Road. The diversity of the municipality is its strength, as it is with many other municipalities throughout Australia, where the geographic areas embrace coastal, hinterland and farming communities.

The financial analysis undertaken as part of this Inquiry suggests that the Surf Coast Shire can be sustainable in the longer term. To achieve this will require a

number of key assumptions and actions to be diligently pursued by the current and future Councils, and their administrations.

Unless these concepts and an unconditional commitment to the principles of good governance, transparency and accountability are genuinely embraced by both the present and future Councils, together with their administrations, the municipality is at risk of fading into oblivion.

The Commission believes such an outcome would not be in the interests of the Surf Coast community, nor for that matter, the Victorian Local Government sector.

## KEY FINDINGS

### 1. General Findings (relevant to all 3 Terms of Reference)

- The Commission has formed the view that the evidence does not support a sufficient case, nor would it be in the Surf Coast community's interests for the Minister for Local Government to consider recommending to the Governor in Council that –
  - all of the Councillors of the Surf Coast Shire Council be suspended; and
  - an administrator be appointed for the Council.
- The Commission has not during the course of its Inquiry seen any evidence, nor has it been able to establish that there has been any criminal conduct on the part of any person associated with the Surf Coast Shire Council, which caused the current concern about the Shire's financial viability.
- The Commission has further formed the view that there are no grounds for the Minister to establish a local government panel to conduct a review of the Surf Coast Shire Council for the purposes of Part 10C of the *Local Government Act 1989* in relation to the abolition or re-constitution of the Council, or the alteration of its existing municipal boundaries.
- The Commission has, however, formed the view that the Minister should consider the establishment of a local government panel under Part 10A of the *Local Government Act 1989* to conduct a review of the Surf Coast Shire Council and to otherwise advise the Minister for the purpose of Part 10C of the *Local Government Act 1989* in relation to

the desirability of re-constituting the Council's municipal district as an unsubdivided municipal district.

## 2. Specific Findings

### Terms of Reference No.1

***What has been the impact of successive Council decisions on the financial situation of the Surf Coast Shire, and can the present Council meet its future community obligations?***

- There is no evidence to suggest that decisions of the Council between March 1994 (when the present Surf Coast Shire Council was first constituted) and March 1998 (when the first elected Council ceased office) contributed in any relevant sense to the Council's present financial situation.
- The Surf Coast Shire Council between March 1998 and March 2001 was clearly divided, primarily because of personality conflicts between Councillors, and between Councillors and some members of the Council's senior staff, particularly the Chief Executive Officer, Ms Diana Patterson. These divisions and conflicts were significant contributing factors giving rise to the Council's inability to deal with a number of important issues during this time, particularly the monitoring of its financial performance. This was the key period during which the Council's financial position deteriorated.
- During the term of the second Council (1998-2001), the Council's original five year financial plan expired, and the Council did not formally replace this with any further financial plan. Consequently there was no clear context for financial decision making, other than the

continuation of Council services and the provision of infrastructure on a year by year basis through the normal budget process.

- The present Council, despite having taken a series of positive actions since being elected in March 2001 and becoming aware of the need for a revised budget in November 2001, did not give proper regard to section 7(f),(g) and (k) of the *Local Government Act 1989* (in relation to strategic corporate financial management control, organisational accountability and information and reporting systems), and did not initially give any or any proper consideration to the preparation of a general resource allocation plan as required by section 153A(1)(d) of the *Local Government Act 1989*.
- As a consequence of the present Council's failure to comply with key aspects of its financial obligations under the *Local Government Act 1989*, decisions were made which relevantly contributed, albeit to a lesser extent<sup>1</sup>, to the Council's present adverse financial position.
- The SurfLink Board of Management was loosely structured with minimal accountability to the Council and had an inappropriate governance structure. As a result, Councillors' understanding of their

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<sup>1</sup> The Commission acknowledges that this impact has been significantly less than during the period of the former Council which held office between 1998 and 2001, and that the present Council has otherwise taken a series of positive actions both during the period of the appointment of the Acting Chief Executive Officer, Mr Michael Ulbrick, from June 2002 to December 2002 and since the commencement of the permanent Chief Executive Officer, Mr Peter Bollen, in December 2002. This is in contrast to the difficulties specifically identified in relation to Council's financial position during the period when Ms Diana Patterson held the position of Chief Executive Officer.

obligations to ensure full and proper accountability for SurfLink was limited.

- The SurfLink Board reports were comprehensive in general content, but lacked financial strategies to support corrective action. The reports also indicate that forecasts were regularly overly optimistic and in many cases unrealistic.
- The commercial enterprises of SurfLink, being SurfTech, NetPress and NetExpress, were part of the Council's response to the compulsory competitive tendering requirements of the *Local Government Act 1989* and, with hindsight, the Council did not have sufficient commercial/business acumen to engage in such businesses.
- An open finding is made concerning the issue of whether any senior member of the SurfLink staff (correctly and relevantly being a member of the Council's staff) was involved in making adjustments to the SurfLink depreciation rates and stock valuations and the manner of recording works in progress in order to mislead and/or deceive the SurfLink Board of Management and the Council by seeking to create a more 'favourable' picture for the SurfLink operations.
- Despite the cumulative and ongoing effect of poor financial decision making, the Council has the capacity (conditional upon the achievement of a number of financial and other assumptions and further actions as outlined in the Council's general resource allocation plan as later discussed in this Report) to provide its community with the levels of service and infrastructure that will be required in the future.



## Terms of Reference No.2

### ***What other matters are relevant to the viability and sustainability of the Surf Coast Shire Council?***

- Single ward Councillors at the Surf Coast Shire Council often feel marginalised and unable to influence the outcome of a vote.
- There is a very strong perception in the community of over representation and dominance of Torquay and Anglesea which is perceived to be to the detriment of the balance of the Shire.
- There is no evidence of an overwhelming view by the Surf Coast community or compelling or substantial reasons put forward to have the Council suspended or to have the municipality re-constituted.
- There is presently an uncoordinated approach to coastal management, particularly between the Surf Coast Shire Council, Parks Victoria, the Department of Sustainability and Environment and the Lorne Foreshore Committee of Management.
- Special committees constituted by the Council under section 86 of the *Local Government Act 1989*, in particular the Surf Coast Tourism Committee, requires a review insofar as a proper understanding of the specific authority and role of such committees in the context of their wider relationship with and obligations to the Council.

### Terms of Reference No.3

***Are there other issues that have arisen as a result of this Inquiry, or out of the report of the Inspector of Municipal Administration, Mr Merv Whelan?***

- The former Chief Executive Officer, Ms Diana Patterson, whilst apparently having a well regarded background in other public sector organisations was unable to grasp both the strategic importance of long term financial management, or to provide the necessary leadership to ensure the Council fulfilled its financial obligations as required by section 7(f), (g) and (k) of the *Local Government Act 1989*.
- Ms Patterson overly relied on the perceived knowledge and competence of a senior member of the Council's accounting staff and other senior managers in relation to financial matters and did not appear to have an understanding of the requirements relating to the budgetary obligations of the Council specifically, and local government generally.
- The Council has suffered from high staff turnover particularly in the finance and planning areas, and a series of changes in the Council organisational structure.
- The Council has relied heavily on informal briefing sessions for major strategic discussions without having in place a formal process for subsequent action. Many actions taken have not been followed up by and supported with an appropriate resolution of the Council.
- With the exception of the annual performance assessment of the Chief Executive Officer by the Council, there was no formal performance framework for the systematic assessment of senior Council staff.

Despite this, for the most part executive managers were paid the full bonus as provided for in their contracts.

- There is some evidence that the Council's Executive Management Team formally reviewed the Council's performance to budget but corrective action did not appear to be raised with the Council. Until more recently, there had been insufficient and inadequate financial reporting to Council.
- The skill levels of staff, in particular in the finance area, need to be reviewed as a matter of urgency (a number of staff have departed enabling the new Chief Executive Officer to engage new staff).
- The prevailing culture within the former management arrangements at the Surf Coast Shire Council between 1999 and early 2002 led to some evidence of frustration and inappropriate behaviour by some staff which, on the one hand, appeared to be well meaning, but on the other, can at best only be described as divisive and disloyal.
- There was an apparent lack of skills and proper management systems to provide the Council with timely and accurate information in relation to financial matters.

## **RECOMMENDATIONS**

### **1. Financial**

- That the general resource allocation plan<sup>2</sup>, prepared and adopted by the Surf Coast Shire Council at its meeting held on 28 January 2003, be accepted as a sound basis for re-establishing the municipality's long term sustainability with full recognition of the following factors being addressed:
  - the level of budgetary provision for capital works and asset maintenance, renewal and replacement being sufficient to turn around the overall decline in the assets remaining useful life and service productivity.
  - employee cost increases including any outstanding superannuation liability are contained in the longer term, through a combination of:
    - achieving the planned recurrent expenditure reductions through the organisation review;
    - improving innovation and/or productivity in service delivery, thereby containing the number of staff required; and
    - reducing the level of increments contained in future enterprise agreements.
  - Council's medium to long term commitment to the general resource allocation plan and a financially prudent approach to the Council's operations, together with the Executive Management Team's ability to deliver the Council's business according to the financial and performance targets inherent in the plan.

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<sup>2</sup> Prepared and referred to by the Council as 'Surf Coast Shire Strategic Resource Allocation Plan Five Year Financial Plan for the years 2003/2004 to 2007/2008' (January 2003). Hereinafter referred to in this Report as the (Council's) general resource allocation plan.

- That the Surf Coast Shire Council be required to submit a supplementary general resource allocation plan to the Minister for Local Government no later than 31 December 2003 for assessment by and to the Minister's satisfaction of the matters outlined in the Executive Summary of paragraph 1.5.2 of the general resource allocation plan.
- That the Minister for Local Government require the Surf Coast Shire Council to provide quarterly reports for assessment by an Inspector of Municipal Administration or other qualified person(s) as determined by the Minister, such reports to continue for a minimum period of three years or until such time as the Council can demonstrate to the Minister's satisfaction its ongoing financial sustainability.

## 2. **Electoral Representation**

- That the Minister for Local Government take the necessary steps to provide for the next municipal elections for the Surf Coast Shire Council scheduled for March 2004 to be on the basis of an unsubdivided municipality with proportional representation being used as the method for the election of Councillors, subject to the appropriate legislative amendments being made such as those that were contained in the *Local Government (Update) Bill 2002*.

## 3. **Roles and Responsibilities of Councillors**

- That amendments to the *Local Government Act 1989* be considered as a matter of priority to specify the obligations of Councillors in satisfactorily performing their roles and responsibilities as locally elected representatives.

**4. Accredited Training Opportunities for Councillors**

- That a comprehensive accredited training program be developed for newly elected Councillors as a requirement during the first year of their office. Such program to include specific reference to understanding corporate governance and in particular financial statements and the monitoring of Council budgets, and the need for long term financial and strategic planning.
- That the need for on going training of Councillors be the subject of further consideration.

**5. Role of Principal Accounting Officer**

- That the Local Government and Regional Services Division of the Department for Victorian Communities in consultation with the Municipal Association of Victoria, the Victorian Local Governance Association, Local Government Professionals and appropriate professional accounting bodies develop a responsibility framework for defining the role of the Principal Accounting Officer.

**6. Coordination of Coastal Management**

- That steps be taken to ensure that there is more effective coordination between the Surf Coast Shire Council, Parks Victoria and the Department of Sustainability and Environment with a view to formulating a more effective and efficient approach to coastal management, particularly in relation to the Lorne foreshore precinct.

## 7. Availability of the Report of the Commission

- That all Victorian Councils be provided with a copy of the Commission's Report.

## ESTABLISHMENT AND CONDUCT OF THE INQUIRY

### 1. Background

The former Minister for Local Government, the Hon Bob Cameron MP, announced on 31 October 2002 that he had appointed a Commission of Inquiry into the Surf Coast Shire Council under section 209 of the *Local Government Act 1989*.

The announcement followed the tabling in Parliament of a report by an Inspector of Municipal Administration, Mr Merv Whelan, which raised issues concerning the financial viability of the Council.

The Commission of Inquiry was established for an initial period of four months. The present Minister for Local Government, Ms Candy Broad MLC, extended the term of the Inquiry for a further period of two months, from 1 March 2003 to 30 April 2003.

Terry Maher was appointed Commissioner to conduct the Inquiry.

The former Minister for Local Government at the time of announcing the Inquiry also wrote to the Mayor of the Surf Coast Shire Council advising of the Inquiry and requiring the Council to *“prepare and adopt within three months a general resource allocation/forward financial plan covering a minimum period of five years based on the recommendations in Mr*

*Whelan's report.*" The former Minister also required an undertaking from the Council that it would commit to implement action of the plan.

## **2. Terms of Reference**

The Terms of Reference established by the Minister required the Commissioner to examine and report in writing, including any recommendations, on:

- The Surf Coast Shire Council's financial situation, and in particular, the implications of the decisions by successive Councils and whether the Council is able to provide its community with the levels of service and infrastructure that will be required in the future;
- Any other matters relevant to the viability and sustainability of the Surf Coast Shire Council; and
- Any other issues which may arise as a result of this Inquiry or arising out of the report of the Inspector of Municipal Administration, Mr Merv Whelan.

## **3. Constituting the Commission**

In undertaking the task as required by the Minister, it was necessary for the Commission to establish the framework, including procedures for the conduct of the Inquiry. In doing so, the reports of the Inquiry into the Darebin City Council and the Nillumbik Shire Council held in 1997 and 1998 respectively were used as initial points of reference. Discussion also occurred between the Commission and the Local Government Division of the Department of Infrastructure (now the Local Government and Regional



Services Division of the Department for Victorian Communities), and also Mr David Abraham, who had conducted the Nillumbik Inquiry.

The Commission acknowledges the initial support and guidance provided by Mr John Watson and Mr Brian Duffy of the Local Government Division.

Arrangements were subsequently made for the Commission to be assisted by Mr David Batt of the Victorian Bar, legal counsel; Mr Peter Lucas, of Macquarie Lawyers, principal legal advisor to the Commission; Ms Helen Proctor, for research and general assistance; and Ms Mary Phillip, Director Financial Analysis, Corporate Finance, Department of Infrastructure for the purposes of independent financial analysis.

In conducting the Inquiry, the Commission did not seek, nor was it necessary, to undertake a full financial due diligence of the municipality. It has, however, generally under its Terms of Reference No. 3 made observations in relation to a number of matters which would generally fall within the category of governance, systems, processes and management. The Commission is also aware that the Council's new Chief Executive Officer, Mr Peter Bollen, is in the process of, or has already addressed a number of these issues.

The Commission has not during the course of its Inquiry seen any evidence nor has it been able to establish that there has been any criminal conduct on the part of any person associated with the Surf Coast Shire Council, which caused the current concern about the Shire's financial viability.

#### **4. Initial Consultation**

Arrangements were made to meet with the Surf Coast Shire Council on Tuesday 19 November 2002 to outline the approach of the Inquiry and to

respond to any general questions from the Council. In addition, a press conference was held with relevant representatives from the press, and a media release was issued.

## **5. Legal Framework**

Part 10 Division 1 of the *Local Government Act 1989*, specifically sections 209-218, provide enabling powers for the establishment of an Inquiry including the Minister's power, general protection provisions for the Commissioner, rights of witnesses, general conduct of proceedings and outcomes which can flow from the Inquiry.

A copy of the relevant provisions is contained in *Appendix 1*.

In addition, the Commission announced at the commencement of the Inquiry that it would observe the common law rules of natural justice and procedural fairness.

## **6. Commission Hearings**

A total of 55 persons appeared before the Commission during the course of its 13 sitting days. Initially there was a series of public hearings at the Torquay offices of the Surf Coast Shire Council. The dates of these hearings and the names of those persons who appeared before the Commission are contained in *Appendix 2*. During the course of these hearings, a number of witnesses were unable to respond publicly to questions which were put to them by the Commission, as they related to issues of confidentiality or were otherwise subject to a disclosure which had been made under the *Whistleblowers Protection Act 2001*.

Having regard to the sensitivity of these matters and other relevant considerations, the Commission considered that the public interest would be best served by holding a number of private hearings. A total of 32 persons including representatives from various community groups appeared before the Commission in closed session. The five days of public hearings attracted broad coverage in the local newspapers.

In reaching its position in relation to private hearings, the Commission had regard to section 215 of the *Local Government Act 1989* (which allows some proceedings of the Inquiry to be in private) and also the approach which had been taken by Mr David Elsum AM in relation to the Inquiry into Darebin City Council.

In the Darebin report, Mr Elsum referred to an abbreviated extract from the Hon Alan Hunt's Commission of Inquiry into the Shire of Strathfieldsaye in 1993. Having read that extract, and otherwise having considered the approach taken by Mr Elsum, the Commission was satisfied that a series of private hearings would be more beneficial to promote more free and open discussion, and as the Inquiry proceeded this was found to be the case.

Where so requested, the Commission in the exercise of its discretions under section 212 of the *Local Government Act 1989*, granted leave to a number of persons appearing before the Commission to be legally represented. Legal representatives were also granted the right to examine any witness, and to address the Commission on behalf of their clients.

## **7. Difficulties Impacting on the Inquiry**

The Commission wishes to record that the task of addressing some issues relevant to its Terms of Reference (and, in turn, its own public interest responsibilities) was frustrated and constrained in a number of respects.

One aspect – giving rise to significant difficulties – related to the existence of a separate matter (the details of which are not known) which, prior to the commencement of the Inquiry (as the Commission was informed in evidence), had become and was the subject of a ‘protected disclosure’ under the *Whistleblowers Protection Act 2001*.

As a result of that Act, and section 22 in particular (which makes it an offence for a person (except in certain specified situations not relevant for the purposes of this Inquiry) to disclose information obtained or received by that person about a protected disclosure or the investigation of a protected disclosure), it became apparent to the Commission that some material of probable relevance to its Terms of Reference could not be considered. This was because the Whistleblowers legislation had the effect of quarantining that information in circumstances where it could only lawfully be disclosed under and for the purposes of that Act. During the course of the Inquiry at least two witnesses, on legal advice, invoked section 22 as providing a lawful statutory excuse for not answering certain questions put to them, or alternatively answering certain questions in circumstances where it was apparent that only the ‘tip of the iceberg’ was being traversed.

Accordingly, the Commission was either denied access to information which it believes may have been relevant, or was otherwise constrained from fully and properly considering issues which it believes also may have been relevant to its Terms of Reference, and which may therefore have impacted on its final findings and recommendations in this Report.

The Commission is not sure whether this was an intended consequence of the legislation with respect to this Inquiry, and for that matter other similar public Inquiries. This is something that may need to be thought about as a wider policy issue.

A further area of difficulty experienced by the Commission related to its ability to obtain answers to questions surrounding private agreements that had been entered into on a 'confidential' basis.

However – unlike the difficulties associated with the *Whistleblowers Protection Act 2001* (which were not overcome) – the difficulties surrounding matters of 'confidentiality' were largely overcome as the Inquiry progressed. This was because, in the view which the Commission expressed to witnesses, private contractual rights derived from agreements incorporating confidentiality provisions did not provide a lawful excuse for witnesses to refuse to answer questions or to provide material, where relevant to the Commission's Terms of Reference.

The Commission wishes to record that, based on this view, all witnesses and their legal representatives accepted the right of the Commission to be provided with answers to such questions. The Commission has otherwise sought to respect confidentiality issues to which it was made privy, unless disclosure has reasonably been necessary in the public interest.

## **8. Natural Justice and Procedural Fairness**

The Commission was mindful throughout the course of the Inquiry of the need to adopt the principles of natural justice. It prepared and issued a guide to witnesses appearing before the Commission to assist them in understanding the process which was to be undertaken. (*Appendix 3*)

The Commission in reaching this position (that is, the position to be followed so far as the requirements of fairness at an inquisitorial Inquiry were

concerned) used as a point of reference a statement contained in a judgment of Lord Denning M R<sup>3</sup>. There it was said:

*“[Inquiries] must be masters of their own procedure. [Inquiries] should be subject to no rules save this: they must be fair. This being done, they should make their report with courage and frankness keeping nothing back. The public interest demands it.”*

In keeping with this, the Commission has sought to be and become the master of its own procedures, and is otherwise satisfied that at all times it has been fair to those persons who have appeared before the Inquiry or who have been referred to in this Report.

To summarise the principles followed, the Commission:

- respected the right of witnesses to inform the Commission that matters raised before the Commission may be of a confidential nature and should therefore be more appropriately considered in a private hearing;
- gave the same access and treatment throughout the Inquiry to all persons;
- recorded its understanding that it had an obligation to act impartially in its treatment of witnesses at all times;

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<sup>3</sup> *In the Pergamon Press Ltd* [1971] 1Ch 388 at 400, referred to with approval by Richard Scott PC, Vice-Chancellor of the Supreme Court in an article ‘Procedures at Inquiries – The Duty to be Fair’ published in *The Law Quarterly Review* Vol 111, October 1995, 596 at 613.

- adopted procedures and applied them consistently so as to prevent any actual or perceived discrimination or bias; and
- in the context of preliminary ‘adverse findings’ gave to persons who might be the subject of an adverse finding, notice, and an opportunity to respond to or answer such finding.

The Commission is pleased to formally record that all parties cooperated fully with the Commission in the course of undertaking the Inquiry and addressing its Terms of Reference.

The Commission was not required to invoke its powers of subpoena under section 214 of the *Local Government Act 1989*.

## **9. Community Consultation**

In addition to conducting a series of hearings with members of the Council and its staff, the Commission provided the wider community with an opportunity of presenting issues or concerns before the Commission. A total of 30 persons made written submissions either individually or on behalf of community organisations, and 20 persons met with the Commission to speak to those issues and concerns. It is fair to say that the ‘community input’ did not leave the Commission with a sense that there was any ‘overwhelming concern’ on the part of residents and ratepayers in relation to the Surf Coast Shire Council. A list of persons who made written submissions received by the Commission is contained in *Appendix 4*.

Many of the issues raised were more of an individual nature or concern and identified alleged inaction or delay by or on behalf of the Council in dealing with certain matters. Examples related to issues which would no doubt be

raised as matters of concern in every municipality including planning, drainage, special rates and charges, roads and waste management.

They do, however, demonstrate a certain level of dissatisfaction with the way in which the Council has responded to what the Commission would regard as normal servicing of the community. As these matters generally fall outside the Inquiry's Terms of Reference, they will, for the most part be referred to the Council's Chief Executive Officer, Mr Peter Bollen, for appropriate attention.

#### **10. Costs of the Inquiry**

The Commission under section 212(3)(b) of the *Local Government Act 1989* may make an order for the payment of costs by the Council. The Commission has determined that, having regard to the Council's current financial position, it will not require the Surf Coast Shire Council to meet any costs associated with the Inquiry.

The Commission, however, rejects the proposition put forward by the Surf Coast Shire Council that a clear precedent exists with the Commission of Inquiry into the Nillumbik Shire Council in 1998 where associated costs were borne by the State Government.

A Commission of Inquiry was also conducted into the Darebin City Council in 1997 and an order for part of the costs of that Inquiry was made against that Council.

The Council's assertion that it did not call the Inquiry and that it had been unable to influence the Commission's duration or investigations is fundamentally flawed as it ignores totally the circumstances which initially led to the Whelan report and subsequently to this Inquiry.



The Council has also drawn the attention of the Commission to the Minister's media release dated 28 February 2003 which contains a statement that *"This Inquiry is funded by the Department of Victorian Communities"*.

The Council has, in the Commission's view, taken this statement as a preclusion for the Commission to exercise its rights under the Act in relation to costs.

The Commission has made its determination not on the basis of a comment in a press release, but rather in recognition of the Council's financial position and the need to ensure that the Surf Coast Shire Council can proceed on the best possible basis. Had the Council's financial position been less finely balanced, the Commission would have made an order for costs against the Council.

## **COMMENTARY ON THE COMMISSION'S GENERAL FINDINGS**

The Commission received a number of submissions which suggested that the Council should be replaced with an Administrator/ Commissioner until such time as the Council's financial position was rectified.

The section of this Report dealing with Terms of Reference No. 2 expands on other submissions received.

The Commission noted that whilst such proposals were put forward there was not an overwhelming call for such severe action to be taken.

The public is acutely aware of the restructuring of Victorian Local Government in 1994/95 which resulted in the appointment of Commissioners across the State's 78 new municipalities and the subsequent loss of democratically elected

Councils. During this period the Government of the day made a policy decision to reduce the number of municipalities and the subsequent cost of public expenditure.

There have only been a small number of municipalities which have been subject to suspension other than through the process of Statewide restructure in 1994/95. These have included the Shire of Nillumbik, the City of Melbourne and the former Cities of Camberwell, Richmond and Sunshine.

The Commission has not researched the specific circumstances for these cases but has used them to highlight that Local Government in Victoria has historically maintained a strong track record of local democracy.

In each of the circumstances outlined above, the Commission is broadly aware of the high level of debate which occurred at the time and that for any Minister to invoke such action suggests either a political imperative or an absolute breakdown in governance.

In the case of the Surf Coast Shire Council, whilst there are numerous issues relating to the current and previous Councils and the cumulative effect of Council performance, the Commission has formed the view that the present Council has initiated a series of positive actions which, if implemented, will over time improve the financial viability of the municipality.

As will be seen in further sections of this Report, the Commission has formed the view that the current Council is only partly responsible for the Council's financial position and has continued to make decisions, particularly since first becoming aware of the need for a revised budget in November 2001.

It is on that basis, primarily, that the Commission has formed the view that the evidence does not support a sufficient case, and it would not be in the Surf Coast

community's interests for the Commission to recommend to the Minister that consideration be given to the suspension of the Council and the appointment of an Administrator.

The community of the Surf Coast Shire will have an opportunity to exercise its democratic right when elections are held in March 2004. This is the appropriate process for the Council to be held accountable.

The Commission holds the view that it should only be in extreme circumstances that an elected Council should be either dismissed or suspended.

These circumstances do not currently exist at the Surf Coast Shire.

#### **COMMENTARY ON TERMS OF REFERENCE NO. 1**

***“The Surf Coast Shire Council’s financial situation and in particular the implications of the decisions of successive Councils and whether the Council is able to provide its community with the levels of service and infrastructure that will be required in the future.”***

#### **Financial Position as at 30 June 2002**

The Whelan report has outlined in detail the assessment of the Council's financial position as at 30 June 2002. The following is an extract from that report:

*“The Council is not in a sound financial position in terms of liquidity and debt liability.*

*Borrowings, finance leases and overdraft commitments as at 30 June 2002 totalled \$12.127m, this being well in excess of the prudential borrowing guidelines.*

*Working capital has remained consistently low, raising questions about the adequacy of cash or near cash assets to meet short term obligations. Cash resources are insufficient to fund statutory reserves”.*

The Whelan report (at page 22/34) contains specific observations on the Council’s financial record and those observations are endorsed by the Commission.

### **The first Council 1994-1995**

The first Council of the Surf Coast Shire was appointed in March 1994 by an Order of the Governor in Council. Ms Toni McCormack was appointed as “the Council”.

The Commission met with Mr Peter Anderson, the former Chief Executive Officer from 1995-1998.

In evidence presented to the Commission, Mr Anderson stated that the municipality’s financial position was always tight as it had inherited a \$4M loan and a further \$2M was involved in assets acquisition from the now defunct Geelong Regional Commission. He also told the Commission:

*“Council did not borrow other than for meeting those debts... Loans at the time of my departure (December 1999) were \$6M”.*

The Commission has found no evidence that, during the lead up to amalgamation of the former municipalities or during the period of the first Council, an assessment of the financial obligations facing the new Council (including asset acquisition of \$2M from the Geelong Regional Commission and the Local Authorities Superannuation liability of \$2M) had been undertaken.

Structurally it may have been that the basis on which the financial gains were calculated did not provide for these liabilities.

The Commission has reviewed the final report of the former Local Government Board dated December 1993. Whilst that report addresses the financial impact of the proposed restructuring, it makes no specific reference to the liabilities which were to transfer to the newly constituted municipality.

The decision by the Council to borrow to repay its liability to the Local Authorities Superannuation Scheme appears to have been soundly based given the extent of the interest rate differential which would have existed at the time.

The Commission reviewed earlier documents, including budgets and the five year financial plan. In addition to interviewing Mr Anderson, the Commission met with Ms Toni McCormack, the Chairperson of the first Council, and the former Mayors from 1995 to the current Mayor, Councillor Beth Davidson.

The Commission acknowledges that the newly created municipality inherited substantial set up costs which may not have been envisaged at the time.

As Surf Coast Shire was the second of the newly created municipalities (the City of Greater Geelong having been created earlier in 1993) resulting from the recommendations of the Local Government Board, the Commission understands that no due diligence report was prepared.

Had this occurred as it did with subsequent newly formed Councils it may have highlighted matters of significance which may have impacted on the approach adopted by successive Councils.

During her term at the Council from March 1994 to March 1995, Ms McCormack appointed the former Mayors of Barrabool and Winchelsea as her advisory committee and they assisted in the selection of the new Chief Executive Officer.

Ms McCormack was required to provide quarterly reports to the then Minister for Local Government, the Hon Roger Hallam MLC. A perusal of those reports indicates that in the 1993/1994 financial year the municipality managed an operating surplus of \$90,906.00 excluding extraordinary items at balance date viz assets acquired from the Geelong Regional Commission.

In a report dated 27 March 1995 which was prepared for the incoming Council, Ms McCormack included amongst other things a section on rating and finance. This section included issues relating to the consolidation of financial records from the former municipalities of Barrabool and Winchelsea, negotiations with the Victorian Grants Commission, preparation of a rating revenue strategy and consideration of a differential rating system.

In addition, specific reference was made to the preparation of a five year financial plan including a projected capital works program which had been submitted to the Minister. Specific reference was also made to progressive rate reductions and a reallocation of funds to generate savings of \$2.8M by 1997/98 measured against the 1994/95 services and expenditure.

The overview prepared by Ms McCormack was comprehensive and provided an excellent basis for the newly elected Council in 1995 to proceed during the next three year period. A review of the Auditor's report for this period indicates that there were no significant issues at that time other than what would be seen to be common issues to many municipalities. No issues concerning the financial viability of the municipality were raised.

These included:

- the need for a strategy to be put in place to ensure that all non-current assets were recognised by June 1997 (AAS27 requirements);
- increased emphasis on the follow up and recovery of outstanding debtors; and
- a strategy to be in place for the reduction of excessive leave entitlements.

In terms of financial reporting to Council however, there is little evidence that this was undertaken on a quarterly basis. There was a requirement for the Commissioner to report quarterly to the Minister.

Mr Anderson advised the Commission that as at October 1993, the combined assets of the municipality totalled \$13M increasing to \$64M in 1997 as a result of the requirements of AAS27. He suggested that:

*“The examination that preceded the amalgamation of Surf Coast Shire could not have looked at the extent of assets that Surf Coast was expected to acquire \$2M... The problem was aggravated by the superannuation liability of \$2M and a decision was made to borrow it rather than use the option of the Local Government Authority’s Super Scheme”.*

The Commission has formed the view that during the first year of the operation of Council it was unlikely that the decisions made during that period contributed in any relevant manner to the current financial position. The evidence presented to the Commission by Ms McCormack and Mr Anderson together with the various documents reviewed by the Commission suggests that the approach taken during this period was consistent with the then State Government’s policy on Local Government reform.

### **The first elected Council 1995-1998**

Former Mayor, Mr Noel Bates (1995-97), gave the impression that during the three years he served as a Councillor (1995-1998), there was a high level of trust between the Councillors and the Council staff. A general review of Council minutes and other related documents have not revealed any significant issues, other than the emergence of SurfLink, during the life of this Council which would have contributed in any relevant way to the deterioration of the Council's financial position.

The Commission also reviewed various other documents including financial statements and Auditors' reports for the period 1995 to 1998. The Commission found that whilst reference was made in Auditors' reports regarding the need for Council to monitor closely the SurfLink operations, there were no emerging issues of major significance to the viability of the Shire.

Similarly, the Commission found that this Council made no deliberate policy decisions that have contributed to the current financial position. The Commission has also formed the view that this Council continued to adhere generally to the principles of the original five year financial plan.

Mr Henry Love who was Mayor in 1997/8 told the Commission that in his view the Council varied off course from about 1999. Mr Love indicated that during the early years, Council was given adequate advice and that they were well briefed. He also advised the Commission that Council was frequently briefed on financial matters by both the Chief Executive Officer at the time and other facilitators.



## **The Council 1998-2001**

In reviewing the Council's performance during the following period from March 1998 until March 2001, the Commission was mindful of the conclusion in the Whelan report (page 21/34) which states as follows:

*“Having been faced with governance issues and an adverse report on the adopted budget for 2001/2002, Council initiated a number of changes to address the problems which had developed. While these issues became prominent in the 2001/2002 financial year, the underlying causes had been developing in the two or three prior years”.*

The Commission examined several witnesses covering the period between March 1998 and March 2001 and has formed the view that the Surf Coast Shire Council during this period was clearly divided primarily because of personality conflicts between Councillors and between Councillors and some senior members of Council staff, particularly the former Chief Executive Officer Ms Patterson.

These divisions and conflicts were in the view of the Commission significant contributing factors giving rise to the Council's inability to deal with a number of important key issues, particularly the monitoring of financial performance and governance as required by sections 6 and 7 of the *Local Government Act 1989*. This was the key period during which the Council's financial position deteriorated.

In support of this finding, the Commission has relied on various statements made both verbally and in writing by both current and former Councillors and staff.

The following statements are indicative of the environment which was evident during this period:

*“By the time I was Mayor in my third term there was not an environment of respect or trust as I may have stated. What existed was a general air of mutual mistrust and lack of respect.”*

*The dysfunction of personal relationships between certain Councillors and staff was a major contributing factor in the inability of Council to uncover the real state of the financial affairs of Council.”*

(former Mayor, Mike Barrow)

*“Between 1998 and 2001 the Council was not cohesive. Both internal and external governance was severely affected by relationships between Councillors and by the interface between Councillors and the Organisation during that period.”*

(Councillor Davidson, Mayor)

*“I agree that there had been a deterioration in governance since 1998/1999.”*

(Councillor Hansen)

*“The issues now emerging are caused by a breakdown in relationships. It impeded an ability to identify and act. In the last Council a number of Councillors found financial issues boring. The breakdown was partly caused by that.”*

(former Councillor Rechenberg-Dupe)

*“In the last Council, it was very disruptive. There was a 5/4 split. It was a very bad atmosphere to work in. It was not conducive to good results for Council and the ratepayers. It made it harder to keep the eye on the ball.”*

(Councillor Kingsley Love)

*“The Council worked O.K. early in the piece but it progressively deteriorated. In the period 1998-2001, Council performance got progressively worse.”*

(Mr John Wilkin, former Manager Technical Services)

In addition the local media openly reported on the divisions within the Council as was the case with the *Geelong Advertiser* on 22 March 2000 which carried an article following the election of Councillor Mike Barrow as the Shire’s new Mayor. The following is an extract from that article:

*“The Surf Coast’s new Mayor, Mike Barrow yesterday pledged to heal divisions within the Council racked by a 5/4 split.”*

The Commission has also relied on the several matters raised in the Whelan report. That report amongst other things highlights that in addition to the MacroPlan financial strategy which was developed but not adopted in 1999, that the Council used \$2M set aside for loan redemption and borrowed an additional \$2M for the purpose of financing capital works in the 1999/2000 and 2000/2001 financial years.

The comments of Councillors and staff and the matters raised in the Whelan report clearly show that decisions were made in the absence of consideration of the long term financial impact on the Council and are in the view of the Commission examples of the consequences of the division within the Council and its administration during this period.

The Commission also examined several reports of the Auditor General and his agents. The Commission notes as a matter of concern the lack of action by the Council during this period regarding the matters raised by agents, Day Neilson in their audit letters (particularly related to SurfLink and for the financial periods to

30 June 1999 and 2000 respectively), to both the then Chief Executive Officer, Ms Patterson and the respective Mayors during those financial years.

The Commission also reviewed minutes of the Council's Audit Committee which reveal that some of the management letters were in fact considered by that Committee and then presented to Council. Although the review was not exhaustive, this practice appears to have occurred during part of 2000 and during 2002. The Commission notes that the follow up beyond these meetings in some cases which have been identified in the Whelan report reflect a lack of systematic governance follow up in some areas.

The present Council in a written submission to the Commission adopted by Council at a meeting on 18 March 2003 has amongst other matters, acknowledged that:

*“Clearly between 1998 and 2001 inclusive, the organisation suffered from a failure of internal governance. The lack of strategic financial capacity in the organisation meant that a long term plan was never put forward for adoption and that ad hoc financial recommendations were put to Council. While Macro Plan Pty. Ltd. was engaged some four years ago to complete a forward financial strategy, this strategy was never put forward to Council for adoption.”*

The Council's submission goes on to say:

*“Coupled with this was a lack of cohesion within the Council between 1998 and 2001. The relationship between the CEO and successive mayors was not strong and the lack of continuity of Mayors exacerbated this situation.*

*During the period to November 2001, timely and reliable financial reporting was limited, poor budgeting practices were followed and brought forward*

*balances not scrutinised. There was an absence of an effective internal audit function and the audit committee met infrequently.”*

The Commission welcomes this frank admission from the Council.

During the course of the Inquiry several members of the Council and its senior staff were questioned as to why the Council had not formally adopted a financial plan since 1998, particularly given that it had been the subject of comment in the Auditor General’s report for the financial year 1999/2000.

The Commission notes the response received from the Council in relation to concerns expressed in the Commission’s advice on the preliminary findings with regard to inaction by the Council on matters raised in the Auditor General’s reports for the financial years to 30 June 1999 and 2000 respectively.

The Council stated:

*“Regardless of the views about matters raised by Day Neilson in their audit letters to the Auditor General and the management letters to Surf Coast, the Auditor General did authenticate Council’s situation by signing off the financial statements. If the concerns raised by Day Neilson were of such concern perhaps the question could be asked as to why the Auditor General did not take these to a higher authority and, if indeed taken to a higher authority, what happened.”*

The Commission does not accept that the Auditor General or his agent should have taken further action on specific matters in those reports particularly related to SurfLink.

Management letters and audit reports are quite separate and when matters are raised with the Council, then it is the Council not the Auditor General who has the legal obligation to initiate corrective action.

The Auditor General's primary obligation is to certify that the Council's financial statements reflect a true and accurate record of the Council's financial position. The Commission views the Council's response as simply abrogating its obligation to address the matters raised.

Mr John Wilkin, former Manager Technical Services, in response to a question regarding the engagement of MacroPlan Pty Ltd advised the Commission that following the departure of the former Chief Executive Officer, Mr Peter Anderson in December 1998, he was appointed Acting Chief Executive Officer until the newly appointed Chief Executive Officer, Ms Diana Patterson, assumed the role in March 1999.

He advised that he was conscious that the previous plan had expired and engaged MacroPlan Pty Ltd to prepare and conduct a series of workshops with the Council. He also advised the Commission that the process was moving to a conclusion when Ms Patterson commenced her role at Surf Coast, but that Ms Patterson considered the costs were excessive, having gone well beyond the original brief cost of \$14,000.

Mr Wilkin told the Commission that the financial plan "*disappeared off the agenda*". The evidence provided to the Commission by Ms Patterson, however suggests that she thought that the financial plan prepared by MacroPlan Pty Ltd had been adopted.

When questioned about the absence of a five year financial plan, Ms Patterson stated that "*It was not a specific issue that came up in Council and I did not have a specific concern*". She also told the Commission that:

*“I didn’t believe the lack of a plan was a problem because the issues were picked up in each year’s budget. In retrospect more rigour should have been applied to the need for a five year plan”.*

Further comment regarding Ms Patterson’s response on this and other matters is contained in more detail under Terms of Reference No.3 in this Report.

Councillor Lindsay Schroeter could not recall any workshops and Councillor Kingsley Love recalls attending workshops and assumed that the MacroPlan strategy would have been adopted by the Council.

Former Councillor Susan Rechenberg-Dupe told the Commission that:

*“As far as I was concerned we did not have a five year financial plan and I did not believe it had been formally adopted”.*

Councillor Julie Hansen in discussions recalled the workshops and had the impression that it had not been formally adopted by Council. Councillor Hansen stated:

*“At the time I did not expect the five year financial plan to be adopted but know differently now”.*

The Principal Accounting Officer, Mr Trevor Colbert, when questioned on the same issue could not explain why the plan *“dropped off the table”* as a lot of work and effort had gone into it and it was used for justification of the 6.9% rate increase to the then Local Government Department. Mr Colbert advised the Commission that *“It was used as part of a reference to compare budgets”* and that *“There was no formal Council decision to adopt the MacroPlan document”*.

Mayor Councillor Beth Davidson when questioned on the same issue advised that the plan was presented to Council as a basis for the justification for a 6.9% rate increase.

Councillor Davidson told the Commission that:

*“The general view of Council was that the plan was accepted but I now know it was not formally adopted by Council”.*

In evidence Mr Colbert referred to the debt reduction strategy which was in place prior to Mr Anderson’s departure but Ms Patterson and the Council moved away from that with no five year plan being adopted. He told the Commission that as a result the Council went back to doing an annual budget and that the Council was advised in May/June 2000 that they had moved away from the MacroPlan concept.

Former Mayor and Councillor Mike Barrow believed that the whole of the MacroPlan strategy was adopted. He suggested that once agreement was reached through the workshops conducted by MacroPlan Pty Ltd that those actions would be followed through.

He suggested that:

*“There were probably other instances where Council decided things at workshops but not formally adopted at subsequent meetings”.*

Mr Henry Love who was Mayor in 1998/1999 believed that the five year plan was set out and followed and could recall the workshops but nothing else.

The evidence presented to the Commission portrays a series of confused statements as to the adoption or otherwise of the five year financial plan. A



review of Council minutes clearly indicates no formal adoption of the plan having occurred.

There appears also to have been a total lack of clarity as to the process for action following briefing sessions. This has subsequently led to confusion and no person was sufficiently astute to provide leadership on this matter.

The Commission has formed the view that, during the term of the second elected Council (1998-2001), the Council's original five year financial plan expired and that the Council did not formally replace this with any further financial plan.

Consequently there appears to have been no clear context for financial decision making other than the continuation of services and capital expenditure on a year by year basis.

The Council and the Chief Executive Officer at the time should have recognised the importance of adopting a long term financial plan whether it was based on the proposals put forward by MacroPlan Pty Ltd or some alternative plan, including compliance with section 153A(1)(d) of the *Local Government Act 1989* requiring Council to prepare a general resource allocation plan covering both financial and non financial resources for the next three years.

The Commission believes that the elected Council must be held accountable for its decisions and in addition must ensure that key legislative obligations are met.

In the event of non performance of the Council's most senior officer, the Chief Executive, then the Council must ensure formal accountability measures are established. This process eventually came to a head at Surf Coast Shire in May 2002.

The Commission finds it is unacceptable that some Councillors pleaded ignorance in not understanding the processes which are necessary to fulfil their obligations under the provisions of *Local Government Act 1989*.

### **The current Council 2001–2004**

During its assessment of the role of the current Council, the Commission acknowledges that it has taken a number of positive actions which are outlined later in this Report. The Commission notes that when the current Council was elected in March 2001, five new Councillors joined the Council. However, despite this the Commission finds it necessary to make a finding against the present Council as follows:

That the presently constituted Council until such time as it became aware of the need for a revised budget in November 2001 had not given due regard to section 7(f),(g) and (k) of the *Local Government Act 1989*, nor had it prepared a general resource allocation plan as required by section 153A(1)(d) of the Act.

That as a consequence the financial position of the municipality during the initial period of the Council was adversely affected.

The Commission acknowledges, however, that the impact has been significantly less than during the period of the former Council which held office between 1998 and 2001 and that the present Council is working towards rebuilding the Council's financial position.

In reaching this finding the Commission took into account the several matters raised in the Whelan report, which amongst other things, refers to there being no detailed report submitted to the Council which clearly presented the financial position of SurfLink, a matter previously raised by the Auditors.

The Whelan report also highlights that since 1998 (and as the Commission has found), the Council did not have in place a detailed forward financial plan, and that financial decisions of successive Councils were made without having due regard to the long term impact of those decisions. This includes some decisions of the present Council.

Further the Whelan report recommended that the Council prepare a general resource allocation plan as required by section 153A(1)(d) of the Act.

The Commission is aware of the requirement placed on the Council by former Minister Cameron but also acknowledges that following the appointment of Mr Michael Ulbrick the highest priority was the development and subsequent adoption of the Council's budget for 2002/2003.

The Commission is also aware that matters of concern were discussed with the then Minister by the Mayor Councillor Beth Davidson and Mr Ulbrick.

The Commission has also reviewed Council documents and the Whelan report in the matter of the need for a revised budget in 2001/2002 which was necessitated by the original budget being based on inaccurate data.

The Council in its response to the Commission's preliminary findings has suggested that:

*“The 2001/2002 budget was prepared at a time prior to wholesale organisation restructure and before commissioning of the new computer system. Clearly there would have been other major issues at the time that made good decisions difficult - blunt wording like “inaccurate data” cannot convey the real sense of what was happening.”*

Whilst there may have been other matters occurring at the time, the Commission is not persuaded by the Council's argument that the budget was prepared on anything else but inaccurate data.

Several witnesses including some present Councillors also acknowledged that the Council did not receive regular and adequate financial reports. This was also confirmed in the Council's submission to the Commission.

Whilst the Commission has found it necessary to make such a finding, it also acknowledges that since the need for a revised budget was recognised the Council has taken a series of positive actions.

These include the appointment of an Acting Chief Executive Officer Mr Michael Ulbrick, which resulted in several initiatives being undertaken between June and December 2002 and the subsequent appointment of Mr Peter Bollen as the Council's permanent Chief Executive Officer in December 2002.

During the course of the Inquiry, Mr Bollen provided to the Commission a summary of the initiatives which, together with the Council, were being addressed.

The Commission notes that Mr Bollen moved promptly to address these matters as his discussions with the Commission occurred within three weeks of his commencing at the Council.

These included the following:

- substantive progress in developing the strategic resource allocation plan (now completed);
- commencement of a review of the organisational structure;

- appointment of Director Corporate Governance;
- preparation of draft risk assessment report;
- development of an IT strategy;
- commencement of the Corporate Plan 2003-2006;
- financial reports submitted to Council monthly;
- mid year financial review commenced;
- section 86 and advisory committee review commenced;
- preliminary review undertaken of Council's Corporate Policy Manual;
- improved accountability measures to be introduced for 2003/04 budget;
- standardised performance management system to be introduced to the three senior levels of management;
- data being collated for inclusion in Council's asset management plan;
- review of Council meeting cycle to ensure greater accountability.

In addition, the Council in its submission has outlined in detail a series of initiatives which were commenced during the period when Mr Ulbrick was the Acting Chief Executive Officer and which the Commission understands are in the process of being further developed or completed.

The following is an extract from Council's submission which provides more current details of several of the matters outlined to the Commission by Mr Bollen:

- *"A range of initiatives have also been undertaken to strengthen the governance role of Council.*

- *The Acting CEO instituted a series of training workshops for councillors focusing on various aspects of leadership and financial management. These will be followed up with an ongoing range of training opportunities for councillors focusing on issues such as team building, financial monitoring and strategic planning.*
- *The Chief Executive Officer has initiated a review of the council meeting cycle and it is envisaged that the council will move to a two week meeting cycle in the near future. This should result in an improved decision making process and be more efficient for councillors, staff and the community. A protocol has been set to guide this process and amongst other things, it clearly sets out the criteria for Information Sessions to ensure that these workshops are for the purpose of information gathering/sharing and are not de facto decisions making forums.*
- *Council has commenced a review of all Council committees, including Section 86 Committees of Council. The review will focus on ensuring that all committees work within the Council framework and have a robust charter, which is clearly linked to the Council Plan. The review will increase the transparency and accountability of committees.*
- *Other initiatives which have commenced recently include the preparation and partial implementation of an IT Strategy, the preparation of a Business Risk Assessment Strategy prepared by Stockfords Ltd, a review of the current accounting system including a new general ledger which will provide greater accountability throughout the organisation in relation to controlling costs.*
- *For the first time in this organisation, both councillors and senior staff have been jointly engaged in the preparation of council's new Council*

*Plan. This should strengthen the relationship between councillors and the organisation and will strengthen the robustness and commitment to the Plan in 2003/2004.*

- *The preparation of a Community Plan has commenced. Designed to ensure direct community input into Council Planning and Budgeting processes, it will also provide a mechanism for managing community expectations and a framework for the community to engage in prioritising activities and projects according to resource constraints rather than merely developing a “wish list”. It will however, take some time to complete.*
- *Other initiatives commenced include the review of council’s local laws, review of council’s policy manuals, the development of a policy based rating strategy, the completion of an asset management plan, the preparation of a policy relating to developer contributions, to name but a few.*
- *It is expected that the budget will be completed by the first week in June. The Best Practice Budgeting Guidelines as prepared by the ICAA will be used as a basis for the preparation of Council’s 2003/2004 budget.”*

The Commission is encouraged by the strong leadership and professionalism which has been evident both during the period of Mr Ulbrick’s appointment at Surf Coast Shire and since the appointment of Mr Bollen. The Commission also strongly supports these initiatives and in particular the proposed application of the Best Practice Budgeting Guidelines referred to above.

The Commission's overriding concern, however, is whether both the present and future Councils will have sufficient discipline to ensure these and other measures are effectively implemented and monitored.

It will only be with a genuine desire to act in the best interests of the whole community that the municipality will ultimately be governed well.

## **SurfLink**

The matter of SurfLink, which has had a negative impact on the Council's financial position to the extent of \$1.9M needs further comment.

SurfLink was established in 1995 as a business arm of the Surf Coast Shire Council in response to the compulsory competitive tendering ("CCT") requirements of the *Local Government Act 1989*.

When established, SurfLink provided a range of traditional services to the community including home and community care, waste management, engineering, planning, financial services etc.

In addition SurfLink established three commercial entities, SurfTech, NetPress and NetExpress.

SurfTech was established to generally provide computer based software to organisations.

NetPress was established as a commercial printing business offering production of annual reports, advertising brochures and general publications.

NetExpress had the primary function of being an internet service provider.



Mr Anderson informed the Commission that SurfLink's main objective was to retain local jobs by winning tenders. The Council appeared to support the reasons for SurfLink but also had some reservations.

*"I thought that SurfLink was the only option at the time rather than sack all staff. I believe that the independent person on the Board was adequate and I was confident that SurfLink was on track".*

(Former Mayor Mr Henry Love)

*"I realised that the Council was stepping off in a new direction but understood the philosophy for it. It was treated as a separate entity even though it was part of Council. Council was as comfortable as it could be for something new for local government to be involved in. Despite Michael Courtney's enthusiasm I knew it would not be a financial bonanza".*

(Former Mayor Mr Noel Bates)

At that time, all Victorian Councils were being encouraged to undertake a clear and distinct separation between service provider and purchaser. In response to concern by private contractors, the then Minister for Local Government, the Hon Roger Hallam, following consultation with the peak bodies introduced a Code of Tendering and a number of other guides to be followed by Councils in their application of CCT.

These approaches were adopted quite appropriately by the Surf Coast Shire Council and as a result a separate Management Board was established. The Board eventually comprised one external member from a commercial background, the Chief Executive Officer, the Mayor and was supported by senior staff who became members of SurfLink. The Mayor's formal appointment and involvement did not, however commence until 2000, some five years after the establishment of SurfLink.

Mr Anderson advised that the SurfLink concept was based on the Melbourne City Council model for Citywide Service Solutions Pty Ltd which was a wholly owned subsidiary of the Melbourne City Council. He indicated that because the concept was a new one for Local Government, he was not entirely comfortable with the SurfLink model and that he endeavoured to ensure that there was an appropriate distance from Council operations and that its operations were overseen by a management board with appropriate skills. He said:

*“The Board was an advisory committee to a Council department, a governance mechanism and was privy to financial aspects eg. profit margins etc that Council was not privy to.”*

*“I wanted it to be as transparent and as independent as possible to avoid arguments about favouritism and competitive neutrality pricing issues”.*

*“I deliberately distanced myself from the tender process to ensure there was no conflict of interest”.*

The SurfLink Management Board was not a formally constituted Board and it did not have any legal status. It initially operated through an informal reporting process between its General Manager, Mr Michael Courtney and the then Chief Executive Officer, Peter Anderson. In 1997 Mr Peter Blamey was appointed to the Board as an external independent member. Mr Blamey's initial role was as a consultant to Mr Anderson to comment generally about the operations of SurfLink. He advised the Commission that *“Initially it was just a sit down role that progressed to future meetings that were minuted”*. Mr Blamey felt that it was a confidential Board so always returned the board papers to either the Chief Executive Officer or Mr Courtney.

In June 2000 the Council resolved that the SurfLink Board be established as a special committee under section 86 of the *Local Government Act 1989*. It also resolved that the Mayor be appointed to the Board, that Mr Peter Blamey be appointed as the independent representative and that the position of an additional independent representative on the Board be advertised. The constitution of the SurfLink Board as a special committee did not occur, nor did the Council appoint a second independent representative.

Throughout the course of the Inquiry numerous other statements were made in relation to SurfLink and its relationship with the Council. The Commission has formed the view that the SurfLink Board was loosely structured with minimal accountability to the Council and operated with an inappropriate governance structure.

The Acting Chief Executive Officer, Mr Michael Ulbrick also advised the Commission that *“I suspect that the major part of the problem for SurfLink was attached to the governance model.”* This was reinforced by a financial consultant assisting the Council who told the Commission that he had concerns about the lack of accountability of SurfLink and that he was not sure that Councillors understood their role in SurfLink.

After a period of SurfLink’s operation Councillors developed a sense of unease. The following represents examples of how SurfLink was perceived by some Councillors:

*“There was some concern that there was to be profit sharing with SurfLink. I was not aware of the accumulated losses until 2001.”*

*“There was growing concern among Councillors about the SurfLink model and associated finances”.*

(Councillor Julie Hansen)

*“I was unhappy about the relationship between SurfLink and the Shire because of the over-optimistic budgets. Council decided that a Councillor should attend board meetings. It was resolved that the Mayor be appointed but not as a voting member.*

*It was also resolved that Mr Peter Blamey be a member and that one other independent person be appointed. The other independent person was not appointed.*

*Michael Courtney was responsible for seeking out suitable candidates. The person nominated by Mr Courtney was rejected by the SurfLink Board because it was felt that the person was too close to Courtney.”*

*(Former Mayor, Mr Mike Barrow)*

*“Representative arrangements at the time were not an issue. In hindsight reporting was unsatisfactory”.*

*“SurfLink was the business arm of the Council and deliverer of services. It was an entrepreneurial section to deliver dividends to the Council. That role was understood.”*

*(Councillor Beth Davidson)*

*“It was a separate commercial arm. A couple of people rang up concerned about NetPress. I mentioned it to the CEO who encouraged me to be as supportive as possible and to be on the lookout for potential customers. SurfLink was reasonably competitive in a couple of instances so there was no reason to think they were undercutting.”*

*(Councillor Glenda Shomaly)*

*“Every year SurfLink would make great promises. The reporting to Council was grossly inadequate. I kept raising concerns at workshops. I would say that the majority of Councillor’s had serious concerns about SurfLink.”*

(Former Councillor Susan Rechenberg-Dupe)

The Commission’s observations indicate that SurfLink’s forecasts were regularly optimistic and in many cases unrealistic. In evidence submitted to the Commission, Mr Courtney accepted that SurfLink reports contained continual deficits attributed to its commercial operations but said that the major reason for this was because it was under capitalised from inception. He said:

*“It was under funded in plant replacement, waste management and home and community care services. The other thing is it had credibility problems because of those losses.”*

The Commission questioned Mr Anderson about Mr Courtney’s claim that SurfLink was undercapitalised when it was established. He told the Commission *“In a commercial sense, it probably was”*.

During the course of the Inquiry, the Commission examined an extract from a SurfLink report which was used by the former Chief Executive Officer Diana Patterson. Ms Patterson told the Commission:

*“The SurfLink Board Agenda was provided to me on a monthly basis. The Chief Financial Officer reviewed it and provided advice on the issues and discrepancies etc that I should be raising with the Board. I thought that the budget variations were because SurfLink was overly optimistic about what it could achieve and I put that to Council at a later date especially in relation to dividends.”*

On one of the reports, the Commission noted that Mr Colbert had written “*It’s time to press the panic button*” referring to the Profit and Loss Statement of SurfLink for the year ended January 2000.

In discussions with Ms Patterson she could not recall this notation but did indicate that she relied heavily on Mr Colbert to flag those issues for her. Despite the continuing failures to reach financial targets and despite the increasingly obvious patterns of deficits attributable to the commercial operations, a review of SurfLink Board reports shows that there was little or no corrective action suggested in the recommendations to the Board. There is no evidence to suggest to the Commission that there was any additional effort at the Council level to rein in SurfLink by requiring additional reporting to it.

Mr Courtney advised the Commission that in his opinion, reporting to the SurfLink Board was adequate:

*“Monthly performance reporting, exception reporting and commentary clearly detailed the issues confronting SurfLink and corrective actions.”*

Whilst the Commission acknowledges that the Board reports were comprehensive in general content, a review of a sample of the reports suggests that recommendations were predominantly a ‘receive and note’ regardless of whether the budget variation was favourable or unfavourable.

The following extract from one Board report demonstrates the point:

*“The budget variation for November was unfavourable by \$111,644.87 Revenue was under budget by \$8404.61. Expenditure was over budget by \$103,240.26. The variation of \$111,644.87 includes a full matching of all commitments and accruals for the month.*

*Recommendation: That the November 2000 Financial Report be received”*

It would also appear to be the case that Mr Courtney was able to convince the Board, continually reporting that budgets would be met and on that basis it appears no further in depth analysis was taken. This together with the infrequent formal reporting to the Council meant that the performance against budget was often distorted and never fully accountable.

The issue of lack of accountability to the Council seems to have been further compounded by the apparent lack of action by the then Chief Executive Officer, Ms Patterson, in bringing this matter before the Council in any formal or timely way.

There were ad hoc briefings to the Council by Mr Courtney but as Councillor Schroeter told the Commission:

*“Information would go on the whiteboard but would be scrubbed off before you would read it”.*

There is no doubt in the Commission’s view that Councillors felt disempowered in relation to SurfLink. It was required to be seen as an entity within Council but for commercial reasons the Council was unable nor did it seek to fully assess and monitor SurfLink’s performance against budget and its business plans.

As a consequence, Councillors’ understanding of their obligations to ensure full and proper accountability of SurfLink was limited.

Added to this was the fact that SurfLink administered a separate financial system with consolidation of its financial statements with the Council at year end as part of the Council’s financial statements. Whilst in itself, this approach seemed appropriate, there were no formal linkages to the Council’s financial systems,

thereby reducing the opportunity for a comprehensive and coordinated performance management system.

This according to Mr Courtney was because of the tensions which existed between SurfLink and other Council staff regarding access to SurfLink's financial information.

The budget process and the commercial nature of the contracts meant that the Council only had access to the total income and expenditure of SurfLink. There was therefore little opportunity under this approach for Councillors to probe with any rigour the validity of the figures provided.

In terms of the adequacy of reporting and the provision of information Mr Courtney was of a different opinion. He indicated to the Commission that both the SurfLink Management Board and the Council were properly and regularly informed of SurfLink's activities. He advised that he reported on a monthly basis to the Board, and that both the Mayor and the Chief Executive Officer were aware of both capital and operating shortfalls.

He has also disputed that the Council was not regularly informed of matters dealing with SurfLink because Mayor Davidson sat on the Board for two years and gave regular support and affirmation with respect to SurfLink's performance and financial position.

He also advised the Commission that the Chief Executive Officer did likewise.

Mr Courtney contends that:

*"My responsibility was to report to the Chief Executive Officer and Board of Management. In fact for probity reasons and the well defined client-provider split, my responsibilities were to the Board".*



Mr Courtney also agreed with the Commission that as a senior officer employed by the Council he was under an obligation to comprehensively and accurately report on SurfLink's financial performance, including options for corrective actions for meeting the Council's budgetary imperatives. Mr Courtney believes that he did this.

Following further consideration as to the obligation for Mr Courtney to formally and directly advise the Council on SurfLink's financial position, the Commission has formed the view that this was primarily the obligation of the Chief Executive Officer. However, given the trend for financial losses at SurfLink, Mr Courtney should have requested that a formal reporting structure to the Council be introduced. The Commission is of the view that the ad hoc use of briefing sessions was totally inadequate for the Council to be comprehensively acquainted with SurfLink's financial performance.

The Commission holds the view that the Council should have established a policy framework for SurfLink with particular emphasis on financial accountability of the Council itself.

The Commission would have also expected the SurfLink Board to have been more aggressive in its pursuit of more favourable results and press for greater accountability of SurfLink given the continued operating losses since 1998/1999 as outlined in the Whelan report (page 8/34).

The mere existence of the Board did not absolve the Council or its Chief Executive Officer from ultimate responsibility for SurfLink and ensuring proper and full accountability including corrective measures where appropriate.

The Commission acknowledges that SurfLink has now been wound up and fully integrated with Council's normal operations. It also acknowledges that when

SurfLink was first established, the principles supporting the model were widely seen by the Local Government sector as innovative and forward thinking.

The Commission also understands that the matters raised by the Auditor General in his 1999/2000 report regarding the continued poor performance of the business unit were not raised formally with Mr Courtney nor were they raised for prior periods. Mr Courtney has advised the Commission that the first audit report he saw was the 2001/02 report.

Clearly there was a lack of professionalism and due diligence that reports of such significance were not brought to either Mr Courtney's or the Board's attention.

The Commission can only draw the conclusion that the client/provider split had been taken to the extreme and to the overall detriment of the Council.

Mr Courtney has informed the Commission that he is proud of SurfLink's achievements and believes that it was one of the few business units in Victoria that truly understood the cost associated with service provision, unlike many other major metropolitan Councils that if properly investigated would have seriously cross subsidised many of their services.

The Commission finds Mr Courtney's comment as a clear admission that without such subsidy SurfLink would not have been viable at the outset. Additionally, the Commission has concluded that the commercial enterprises of SurfTech, NetPress and NetExpress were part of the Council's response to the competitive tendering requirements at the time and, in hindsight, the Council did not have sufficient commercial or business acumen to engage in such businesses.

The Whelan report identified a number of concerns about the accounting treatment given to SurfLink accounts and the Commission raised these matters with Mr Courtney. In his response to the Commission, Mr Courtney has

categorically denied that depreciation rates were manipulated in order to improve the performance of the business. He further advised that the rationale was solely related to a lack of funds to replace plant and the necessity to therefore utilise plant over a longer time frame.

Mr Courtney also advised the Commission that he denies increasing the value of stock to improve the reported stock losses or the manner in which works in progress were recognised.

As a consequence of these matters, the Commission has found it very difficult to resolve, one way or the other, the issue of whether Mr Courtney or any other senior member of the SurfLink staff (who were also members of Council staff) were involved in issues relating to SurfLink's treatment of depreciation rates, stock values and work in progress with a view to creating a more 'favourable' picture of SurfLink's financial health, and in turn, the Council's (the inference being that there was an intention to mislead or deceive the SurfLink Board of Management and the Council as to the true and correct financial position of SurfLink). As previously mentioned, these matters have all been referred to in the Whelan report, and they were also the subject of questions put to Mr Courtney and others by the Commission.

The Commission has also found it difficult to determine whether the treatment of these items in the SurfLink accounts was in accordance with proper accounting practices and standards (or, even perhaps more importantly, the policy or 'spirit' behind those practices and standards).

This is primarily because the evidence in relation to these issues was conflicting, and could not otherwise be satisfactorily substantiated. It was also the case that there were different 'expert' views as to how depreciation rates, stock values and work in progress should (or could) be recorded in the SurfLink accounts. As a

result, it was not possible for the Commission to determine with confidence the appropriate method of accounting treatment for these items.

Additionally, the task of resolving these matters (in circumstances where the Commission, might have expressed a concluded view) proved all the more difficult because of a matter which, prior to the Commission commencing its Inquiry, was and had become a 'protected disclosure' under the *Whistleblowers Protection Act 2001*.

The significance for the purposes of this Inquiry of the existence of a 'protected disclosure' lies in the fact that section 22 of the Act has application.

The Commission emphasises that at no stage was it informed by any person as to the content of the disclosure and had this been the case, it would have been compelled not to publicly release those details.

Throughout the conduct of the Inquiry and in the preparation of this Report, the Commission was at all times acutely aware of its obligations to honour both the letter and spirit of the Whistleblowers legislation.

Section 22 of that Act makes it an offence for a person (except for certain purposes not presently relevant) to disclose information which that person "obtains or receives ... in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under the Act".

During the course of this Inquiry, reference was made to this section of the Act on a number of occasions in circumstances where witnesses (despite, as the Commission formally records, those persons wishing to be genuinely co-operative and open with the Inquiry) felt constrained about answering certain questions put to them. The position which witnesses took in relation to these

matters was with the benefit of independent legal advice. The Commission also had the benefit of its own legal advice on these matters.

For all of these reasons, but particularly because of the apparent over-arching and blurring effect which the Whistleblowers legislation has had on this aspect of the Inquiry, the Commission has been constrained (and has felt frustrated) with respect to its ability to effectively pursue a number of issues (and their satisfactory resolution), all of which, the Commission believes, were issues in the public interest.

The Commission questions whether it was ever the intention of the *Whistleblowers Protection Act 2001* to so significantly constrain other public Inquiries from, in the Commission's view, properly carrying out their functions, powers and responsibilities in the public interest. This is something that may need to be reviewed as a policy measure in the context of possible legislative amendment. While recognising there can sometimes be unavoidable overlaps between different investigative processes, these overlaps – in the interests of the efficient use of public resources – should be kept to a minimum. There is also the issue of whether different investigative agencies (including public Inquiries) should be encouraged to share information and resources, assuming there is a commonality of interest (or likely interest).

The Commission as a final observation notes with concern that throughout the course of the Inquiry no one in any real and demonstrable sense accepted accountability, and therefore responsibility, for either the decisions or actions of the SurfLink operations.

The Commission acknowledges that SurfLink has ceased to exist and that the Council has fully integrated its operations with the remaining functions of the Council.

Whilst the Surf Coast Shire Council has taken this action, there are, to the knowledge of the Commission, a number of municipalities which have continued to operate such units.

The Commission therefore commends this Report as essential reading for those who may believe they need to improve their governance model for Local Government Business Units where there is a separation between the provider and the client.

For these reasons, the Commission has determined to make an open finding with respect to the question of whether any person(s) were knowingly and improperly involved in creating or seeking to create a more favorable financial result so far as the SurfLink operations were concerned.

### **Future Viability of Surf Coast Shire**

The Commission has formed the view that the most critical element of Terms of Reference No.1 is:

***‘Whether the Council is able to provide its community with the levels of service and infrastructure that will be required in the future.’***

Terms of Reference No.2 also refers to any other matters relating to the viability and sustainability of the municipality. The Commission has taken this to mean issues other than financial sustainability and has dealt with these other issues in the next section of this Report.

The Commission was provided with the general resource allocation plan in February 2003 and was assisted by a financial consultant<sup>4</sup> in assessing that plan.

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<sup>4</sup> Mary Philip, Project Director - Financial Analysis, Department of Infrastructure

The Commission has relied on the data contained in the Whelan report, interviews with the Council's management team and a number of Council documents, projections, reports of past financial experience and contractual arrangements.

### **Parameters for assessment**

The parameters established by the Commission for the assessment were as follows:

- Assessment of the assumptions underlying the Council's general resource allocation plan;
- Validation of the assumptions against both current and relevant data;
- Evaluation of the potential impact on the Council's capacity to delivery core services<sup>5</sup> to the community;
- Verification of the accuracy of the financial calculations;
- Assessment of the Council's capacity to meet the long term infrastructure requirements of the municipality;
- Measurement of the Council's capability to reduce its long term debt;
- Any other matters which may arise during the course of the project.

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<sup>5</sup> "Core services" are defined as being rates and charges collection and administration of:

- waste collection and disposal;
- local roads construction and maintenance;
- infrastructure construction, maintenance and renewal;
- strategic, environmental and statutory planning;
- basic community care services and facilities provision.

## **Methodology**

The methodology used by the Commission involved the following:

### ***Review assumptions and associated data***

The first stage in evaluating the plan's overall viability was to test the assumptions and data on which it is based. This involved reviewing for reasonableness, completeness and accuracy of calculation the following:

- documented assumptions and data supporting the calculations, including property valuations, accrued staff annual leave and long service leave obligations, staff enterprise agreements and bases for service growth projections;
- accurate integration of this data in the Council's financial projections;
- policy and procedure notes, and operational plans including service contract obligations, plant replacement and capital works programs.

The financial consultant held discussions on behalf of the Commission with Mr Bollen and several senior managers on the following:

- assumption details and aspects of past financial performance;
- objectives, outcome targets and progress with implementation plans for strategic change, including the proposed organisational restructure;



- details regarding service contracts and other operational plans, and future trends (e.g. waste management).

### ***Sustainability assessment***

The plan's medium to long term financial sustainability was analysed having regard to:

- solvency and overall viability;
- reported strategic directions, long term infrastructure renewal/replacement programs and capital expenditure requirements;
- prudent levels of working capital and debt.

Key comments and conclusions from the above analysis include:

- the reasonableness of underlying assumptions and data;
- the general resource allocation plan's overall short term viability and longer term sustainability;
- specific qualifications.

### ***Key assumptions***

The Commission has formed the view that with several exceptions the assumptions and underlying data including population growth and demographic profile projections, as well as contractual obligations upon which the plan has been developed generally appear to be reasonable.

The Commission acknowledges that the plan will be subject to pressure from a number of factors beyond its control and for which no specific provision has been made in the Plan, including:

- interest rate movements and consequent inflationary pressures;
- potential decrease in government grants funding;
- increases in State Government levies;
- prolonged drought conditions and bushfires.

The Commission recognises that these factors could impact on most municipalities, although the Surf Coast Shire Council's current financial circumstances makes it potentially more vulnerable to such factors.

More directly, however, there are three key aspects which will have significant impact on the plan's successful delivery but for which implementation plans and programs are still being developed. These are:

- proposed organisational review;
- asset management plan;
- updated, prioritised and integrated capital works program.

Therefore, the adequacy of budgetary provision for these three factors cannot be determined at this stage.

The Council has acknowledged in the plan that this work has yet to be completed as are a number of other matters. Those other matters are as follows:

- full sensitivity analysis on key assumptions;

- detailed analysis of service levels and unit costs with the aim of efficiency savings;
- review of processes to achieve productivity increases;
- Council pricing policy development;
- rating strategy development;
- finalisation of asset management plan;
- capital works evaluation model review and adoption;
- developer contribution policy formulation;
- redraft Council plan;
- organisation structure review;
- implementation of improvement opportunities/efficiencies from best value reviews.

Previous reference has been made to the initiatives already commenced by the Council and the Commission provides the following comments.

### **Proposed Organisational Review**

The Whelan report has highlighted the need for a reduction in recurrent expenditure in salaries and wages. The plan includes budgetary provision for approximately \$270,000 net redundancy costs and expects recurrent salary cost savings of \$80,000 - \$95,000 per annum.

The Council's submission indicates that Mr Bollen is currently reviewing the organisational structure and subject to a number of industrial relations matters being addressed, estimates recurrent savings to be made in the order of \$500,000.

As redundancies are projected to occur from 1 July 2003, the associated costs will be included in the full year budget for 2003/2004.

The Commission notes that no provision has been made for liabilities relating to the defined benefits superannuation scheme as figures are currently unavailable from Local Authorities Super. This matter was also raised in a supplementary submission to the Commission by Councillor Nelson English.

Nevertheless, the Commission considers that the proposed additional salary savings could assist in reducing the liability for defined benefit superannuation scheme contributions for those staff made redundant as a result of the reorganisation.

The success of achieving sustainable savings in the baseline employee budget will require minimising the payment of unfunded superannuation benefits and satisfactorily negotiating arrangements with both affected staff and the relevant unions to ensure minimal disruption to service provision and administration.

The Commission recognises that this will be a significant challenge for both Mr Bollen and the Council.

### **Asset Management Plan**

This plan is still being developed and on completion is intended to integrate the infrastructure assets updated condition assessment with their whole of life, category specific maintenance needs and replacement cycle.

The Commission understands that the plan will address concerns expressed in the Whelan report regarding uncertainty as to the state of the Council's ageing infrastructure assets and their ability to meet the current and future service demands.

While the Council is still in the process of developing the customised asset management plan, indicative levels of maintenance expenditure may be determined by applying general industry benchmarks for categories of infrastructure. This independent exercise results in close correlation with projections contained in the Whelan report. The Commission has confirmed with Council staff that the maintenance budget allowances recommended in the Whelan report are included in the plan over the five year period.

The asset management plan will also impact on the capital works program. The Commission understands that budgets for both the capital works and maintenance programs are purposely held lower in the first few years than generally desirable to improve the Council's financial viability. While this may not be ideal for asset condition, the Commission notes that it should assist the long term sustainability, providing that the Council adheres to the Whelan principles which support the plan, and the programs are ultimately adopted in future budgets.

### **Capital Works Program**

The Commission understands that as part of the 2003/04 budget refinement and adoption, the listing of capital works projects is presently being updated and rigorously reviewed for objectivity, expected viability and priority. As such, the total value of projects contained in the listing is dynamic, as is the program of projects to be undertaken in any given year.

The Commission also notes that the Council is reviewing its approach to capital works determination and will be considering a more formal evaluation model to determine priorities. This should further assist the Council's capacity to make more informed decisions on infrastructure expenditure.

## Viability and Sustainability Analysis

Sustainability can be defined in many ways. The Commission's view is that a 'sustainable' municipality is one that increases the *value* of its business while maintaining municipal rates and charges at a reasonable level. This could include a combination of:

- an increase in net assets (infrastructure, maintenance and renewal) resulting from operations; and
- delivering an improved standard and/or greater scope of services, and/or to a greater number of people.

An economic consultant<sup>6</sup> engaged by the Council has analysed the key performance ratios arising from the plan, the most significant for the Council's sustainable operations being summarised in the following table:

<b>Indicator</b>	<b>Target</b>	<b>2001/02</b>	<b>2007/08 projected</b>
Rate revenue	50%	47%	62%
Operating ratio	5%	-4%	9%
Working capital	150%	118%	149%
Cash (Liquidity) ratio	120-140%	63%	74%
Debt ratio	<6%	16%	8%
Debt servicing	<1%	3%	1%

Further sustainability assessment has been undertaken as part of the plan's development, based on the indicators prepared by ACIG, consultants on behalf of the Council.

<sup>6</sup> Trevor Koops, Economic Consultant

These analyses conclude that the Council's financial viability and sustainability is projected to improve substantially over the five year period of the plan.

### **Overall Viability**

Viability is determined by sustained operating surpluses and by 2007/08 the operating ratio is projected to achieve 9% thereby exceeding the target of 5%. The Commission acknowledges that this strategy is aimed at building operating surpluses to enable repayment of debt and to fund capital expenditure. This position could be further improved by increasing operating revenue and/or reducing operating expenses. These matters were also raised in the Whelan report.

*Appendix 5* is an extract from the general resource allocation plan which in tabular form outlines the five year financial plan assumptions.

### **Revenue**

The Commission supports the proposed increasing of the proportion of rates revenue as Council becomes less reliant on one-off funding sources such as proceeds from asset sales.

While rates revenue could have increased further and still complied with the principles recommended in the Whelan report, the Commission appreciates the Council's adoption of a conservative, financially sound approach to budget management. Accordingly, the Commission views as reasonable the Council's understatement of the growth factor to preclude over reliance on it, considering:

- it complies with the principles set out in the Whelan report (page 30/34);  
and
- it is sufficient to generate significant operating surpluses over time.

In addition, the Commission suggests that the Council should reconsider earlier proposals to charge for car parking, particularly along the coastal areas. While the impact of such a proposal is not included in the Council's projections, it would assist in diminishing reliance on rates as the principal source of revenue.

The Commission recognises the political risks of these initiatives but was encouraged by the response from Councillors during the hearings that they were prepared to make difficult and sometimes unpopular decisions if this assisted the long term sustainability of the Shire.

### **Expenditure**

The Commission notes that there will be opportunities for reductions in operating expenditure which will also assist a higher allocation of funds to capital expenditure.

According to the plan, some savings are planned to be achieved through debt repayment and consequently reducing interest payments, as well as through the organisational review. However, the Commission notes that employee costs and materials and contracts are the two major expenditure categories, representing a combined 73% of total expenditure. Both categories are projected to increase more than CPI.

It is further noted that results of benchmarking against relevant Councils indicate the Surf Coast Shire Council recording substantially higher costs associated with Council operations, administration and community welfare and development.

The Commission also observes that the several best value reviews conducted to date have not resulted in significant expenditure savings. As the Whelan report commented, it will be imperative that the Council balances service quality with on going affordability. In view of the foregoing, the Commission believes that the



proposed organisational review will be an essential element in correcting this trend and once implemented will require careful management over the longer term.

### **Capital Works and Infrastructure Asset Maintenance, Renewal and Replacement**

As previously discussed, the integrated asset management plan, plant replacement plan and capital works programs (including asset renewal and replacement programs) are still being developed. These will account for the condition of the specific assets as well as the stage in their life cycle, thereby providing an accurate estimate as to the required amount of maintenance and renewal expenditure and the timing of the asset's replacement.

The Commission notes from the financial indicator analysis in the plan that the remaining asset life continues to decline over the five years despite significantly increasing renewal expenditure. This suggests to the Commission that there may be more substantial upgrade and replacement expenditure required shortly beyond the five year outlook.

Further budgetary provision may also be required for contingencies such as for health and safety issues, *Disability Discrimination Act 1995* compliance, etc. The Commission suggests that such contingencies should be factored into the infrastructure works programs.

In view of these issues and the unavailability of the integrated asset plans and programs, it is not possible for the Commission to confirm at this stage that there is sufficient budgetary provision in the plan to address the maintenance, upgrade and replacement expenditure needs of Council's specific mix and condition of its infrastructure assets.

However, further review should be undertaken on completion of the asset management plan to determine whether any adjustment to the general resource allocation plan is needed.

## **Solvency**

Council's capacity to pay its debts as and when they fall due is measured by liquidity and working capital ratios. Both are projected to improve substantially by 2007/08.

These measures are substantially influenced by efficient cash collection from debtors. In this regard, the Commission notes that the benchmark analysis in the general resource allocation plan places Surf Coast Shire Council as the best performing municipality of those surveyed. The Council must ensure continued excellent performance of this function.

The impact of the level of debtors is particularly significant when comparing liquidity with the working capital ratio. In the latter case, the Commission notes that the Council's ratio by 2007/08 achieves the ideal target of 150%. In recent years, this ratio had been artificially high as a result of being propped up by asset sales and borrowings.

## **Debt Management**

The Commission notes that a key objective of the plan is to reduce the Council's liabilities to a financially prudent level with a projected reduction in interest bearing debt from \$9.89M (excluding finance leases) in 2002/03 to \$4.3M in 2007/08.

This strategy directs projected operating surpluses to debt repayment and capital works funding. It results in corresponding reductions in the burden of debt

servicing and consequently improves Council's liquidity and capacity to repay borrowings through modest rate increases.

Council's performance is projected to improve on the reported debt performance indicators, although the Commission notes the Local Government sector 'rule of thumb' of maximum debt levels at some 25% of rates and charges revenue. On this basis, the Commission believes that \$5M of debt could be sustained by 2007/08 and would support this proportion of debt providing it is directed to specific, priority capital projects in accordance with the integrated capital works program. This would still generally comply with principles outlined in the Whelan report (page 30/34), although the Commission acknowledges that the Council has taken a more rigorous approach to debt reduction.

### **Managing the Plan**

The effectiveness of management in delivering the required services and proposed strategic changes within the budgetary constraints will play the most significant role in improving the Council's performance.

The appointment of Mr Bollen and recent initiatives including conduct of the corporate planning process by the management team in conjunction with the Council are fundamental starting points in this delivery.

Ultimately, the plan's success will be influenced by the Council's resolve to deliver and the management team's capability and willingness to achieve the necessary outcomes and efficiencies.

The Commission notes that the financial plan's objectives will only be achieved over the five year period. Consolidation of objectives will occur beyond the outlook period. Therefore, the Council's commitment and discipline to the plan

throughout and beyond the five year period will be crucial to the Council's financial sustainability of the municipality in the longer term.

## **Conclusion**

The Commission believes that the general resource allocation plan represents a sound and realistic direction for achieving financial viability and sustainability, addressing the objectives identified in the Whelan report. However, its success will depend on the following factors:

- the level of budgetary provision for capital works and asset maintenance, renewal and replacement being sufficient to turn around the overall decline in the assets' remaining useful life and service productivity;
- employee cost increases are contained in the longer term, through a combination of:
  - achievement of the planned recurrent expenditure reductions through the organisation review;
  - improving innovation and/or productivity in service delivery, thereby containing the number of staff required;
  - reducing the level of increments contained in future enterprise agreements;
  - capacity to meet future superannuation liabilities to Local Authorities Super;
- Council's medium to long term commitment to the plan and a financially prudent approach to the Council's operations, together with the

management team's ability to deliver the Council's business according to the financial and performance targets inherent in the plan.

In reaching this conclusion the Commission strongly believes that close scrutiny of the further development and application of the plan will be required by an Inspector of Municipal Administration or other qualified person appointed by the Minister and for this to be undertaken on a quarterly basis for a minimum period of three years or until such time as the Council can demonstrate to the Minister's satisfaction its ongoing financial sustainability.

## **COMMENTARY ON TERMS OF REFERENCE NO. 2**

### **Are there any other matters relevant to the viability and sustainability of Surf Coast Shire Council?**

#### **General**

The Commission acknowledges that viability and sustainability are not limited solely to financial issues, although without a healthy financial framework the long term future of any municipality would be in doubt.

Issues of good government, provision of adequate and appropriate services and access to them, capacity to provide required infrastructure and an ability to maintain or replace it when required, are all matters that contribute to the viability and sustainability of a municipal area.

A number of the written submissions received by the Commission expressed the view that an Administrator/Commissioner should be appointed to work in conjunction with the Chief Executive Officer because as one submission stated:

*“Surf Coast Shire would never be viable financially or be able to be sustained because of the level of debt that the current councillors had allowed to exist”.*

A further submission also suggested that at the end of a certain period there should be a poll of ratepayers (as was the case at the Shire of Melton) to determine whether the community supported the return of an elected Council.

For the reasons given earlier in this Report, including a lack of substantial or significant community support for such an approach, the Commission does not consider the suspension of the democratically elected Council to be an appropriate option for the Surf Coast community.

The community will have their opportunity in March 2004 to express their view about the present Council's performance.

Numerous views were promoted during the public hearings and in written submissions about why it would be difficult to achieve cohesion or the appropriate delivery of services and infrastructure in a Surf Coast Shire.

The Commission is of the opinion that some of these views were based on a belief that irrespective of the Council's financial position, the ability for all sectors of the Surf Coast Shire to be equitably and adequately provided with services, facilities and political representation was prejudiced or at least impeded by the current constitution of the Surf Coast Shire.

These concerns centre around the Council's internal ward structures, its geographic/external boundaries, its diverse and perceived irreconcilable communities of interest and the current vote counting system (exhaustive preferential) that applies to Council elections.

The Surf Coast Ratepayers' Association suggested a number of options to the Commission for consideration. The Association suggested:

*“That for the Shire to be viable and sustainable, changes needed to be made to increase the size of the Council’s rate base and the density of the population should be increased by increasing the rate of development within existing boundaries.”*

The Commission also received a proposal that *“The Shire be dissolved and the various parts of it relocated to adjoining municipalities”*.

More detailed discussion of the specific options is contained later in this part of the Report.

## **The Current Surf Coast Shire**

### **Overview**

The Surf Coast Shire is described as “a diverse mix of rural and residential areas with natural and man made tourist assets and a range of industrial and commercial enterprises.”<sup>7</sup>

“Away from its coastline towns of Torquay, Anglesea, Lorne and Airey’s Inlet which provides for permanent residents, absentee owners and tourists, the Shire has the Colac Otway rainforest, pastoral lands and rural service towns of Moriac and Winchelsea and large broadacre properties bounding the Barwon River in the north and Lake Murdeduke. It covers some 1560 sq. kilometres. The Shire plays host to 2.5 million overnight visitors and an additional 2.75 million day trippers each year.”<sup>8</sup>

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<sup>7</sup> Source: Surf Coast Shire Council web site – [www.surfcoast.vic.gov.au](http://www.surfcoast.vic.gov.au)

<sup>8</sup> Source: Surf Coast Shire Council web site

### **Population**

“The current population of the Surf Coast Shire is 19,200. Over the past 12 years, the population has grown by an average 3.2% per annum. Expected population growth is 1.97% per annum from 2001 to 2011. (The Victorian State average is only 0.62%).”<sup>9</sup>

The Commission understands that Torquay has been the area of Surf Coast Shire which has experienced the most significant proportion of this growth in recent years.

### **External geographic boundaries**

The geographic boundaries of the Surf Coast Shire abut the City of Greater Geelong in the east, Golden Plains Shire in the north, Colac Otway Shire in the west and along Victoria’s south west coast through Torquay and Anglesea to the Cumberland River west of Lorne.

### **Internal ward boundaries**

The municipal district is presently divided into 5 wards. The major population centres of Torquay and Anglesea are each represented by 3 Councillors while the rural wards of Moriac, Lorne and Winchelsea are represented by single Councillors. An overview of the current structure is in the following table<sup>10</sup>:

<b>Ward</b>	<b>Population</b>	<b>Councillor</b>	<b>When elected</b>
<b>Anglesea</b>	7777	Beth Davidson	1998
		Kingsley Love	1998
		Julie Hansen	1995
<b>Torquay</b>	9266	John Foss	2001

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<sup>9</sup> Source: Surf Coast Shire Council web site

<sup>10</sup> Surf Coast Shire Council



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		Glenda Shomaly	2001
		David Johnson	2001
<b>Moriac</b>	2273	Simon Townsend	2003 by election
<b>Lorne</b>	2548	Nelson English	2001
<b>Winchelsea</b>	2318	Lindsay Schroeter	1995

These wards are substantially the same as those established for the first elections in 1995. They were reviewed by Council in 2000 but at that time it was unwilling to 'split communities of interest' and retained the original structure with some minor changes to accommodate the legislative requirements regarding population tolerance levels.

The legislative requirements referred to are contained in section 220 of the *Local Government Act 1989* which requires that a review of ward boundaries be undertaken at least every 6 years to ensure that the number of voters represented by each councillor does not vary more than 10% and that the ward boundaries are a fair and equitable division of the municipal district into wards.

The Council has advised the Commission that ward boundaries are currently under review in anticipation of elections scheduled to be held in March 2004.

The Commission has not been privy to the options to be considered by the Council but commends the action in initiating the review.

### **The Views in the Submissions**

A number of community groups and individual submissions raised issues associated with the municipality's structure and commented on the impacts that the current structure had on representation and the delivery and availability of services and facilities.

At this stage the Commission believes that because none of the claims have been tested, most of the comments made can only be based on perception rather than fact, but they nevertheless reflect an intense frustration and dissatisfaction with the present situation by some sections of the community.

### **Representation and Ward Boundaries**

The Commission noted that the most dominant theme from the submissions was the concern that the major population centres of Torquay and Anglesea dominated Council focus, decision making and expenditure. Coastal issues were considered to dominate rural issues.

The coastal Councillors from Torquay and Anglesea are seen by some (including members of the community and other Councillors) as voting in a block and because they are the majority of Councillors, always achieving outcomes that benefit the coast.

Councillor John Foss (Torquay Ward) refuted that view in a written submission to the Commission. He said that:

*“At the end of the day in my opinion councillors vote according to what they think is the best outcome for the Shire, not to support any particular bloc or groups of councillors. I regularly find myself voting with and against my fellow Torquay Ward councillors on a wide range of issues. It is important to note that on all key financial and governance issues which have come before Council since November 2001 the voting has been unanimous”.*

From comments made to the Commission, it would be highly likely that Councillors Nelson English and Lindsay Schroeter would disagree with Councillor Foss' view. Councillor English said that:

*“The councillors in the single councillor wards feel unable to influence the outcome of decisions and felt “outvoted” on many issues.”*

The submissions received from the Save Our Surf Coast Group and Rural Ratepayers both argued that despite the coastal areas representing less than 30% of the total area of the Shire, the coastal areas dominated because they had 7 of the 9 councillors on the Council.

Rural Ratepayers claimed that population based wards will always ensure that Torquay gets an additional Councillor, especially as the population is projected to grow from 8,000 to 20,000. (Both these submissions do not comment on the requirements in section 220 of the *Local Government Act 1989* which prescribes a population criteria for representation rather than a criteria based on area.) Save Our Surf Coast and Rural Ratepayers both submitted that multi Councillor wards disadvantage single Councillor wards.

From submissions received, it is apparent to the Commission that the rural areas of Moriac and Winchelsea feel isolated and neglected. The lack of expenditure on matters in the Winchelsea ward was cited as an example of where the Council’s priorities were directed.

Representations from the Winchelsea and District Tourist and Traders’ Association also suggested that there was little Council focus on Winchelsea and that the priorities were being directed to other issues in the Shire at the expense of Winchelsea. They commented:

*“Our councillor is constantly being beaten down because he’s up against councillors that have coastal or green issues. It wouldn’t matter who you had there. You’d never win against them.”*

Despite Lorne being a coastal area with a coastal Councillor, some residents of Lorne also feel isolated and neglected. Submissions from Councillor Nelson English, the Lorne Working Party and individual Lorne residents cited the state of some of the existing infrastructure at Lorne as an example of that neglect.

Rural Ratepayers suggested that:

*“The current ward structure delivers lack of accountability to all wards”.*

This was put to the Commission in another way by resident Mr Ian Smith who said in his submission to the Commission that:

*“Democracy is distorted in Torquay and Anglesea.”*

The Commission’s review of the Council minutes does not reveal that in every case, decisions were decided either in block or on strictly a ward basis and a number of resident submissions refuted that view.

Nevertheless, the Commission is persuaded by the position put to it by single ward Councillors that they often felt marginalised and unable to influence the outcome of a vote. The Commission also accepts that the very strong perception in some sections of the community of Torquay/Anglesea ‘over representation’ and ‘dominance’ is not assisting community cohesion and is only adding to the view that there is a ‘lack of communities of interest’.

For that reason, the Commission considers that the current ward boundaries of the Surf Coast Shire Council should be adjusted to minimise the impact of multi Councillor wards against single Councillor wards.

A number of alternative approaches were suggested. These included that the Surf Coast Shire:

- should be an unsubdivided Council. It was put to the Commission that this was the preferred position of the Council in 2000 when a review of ward boundaries was undertaken, even though the ward boundaries remained substantially the same;
- should be a Council consisting of 9 single Councillor wards;
- should comprise 3 or 4 wards with equal number of Councillors;
- should be an unsubdivided municipality with township committees established under section 86 of the *Local Government Act 1989*; and
- each ward should have 1 representative irrespective of population and with Councillors elected on a Shire wide basis along the lines of the Melbourne City Council model.

Councillor English in his submission opposed the concept of an unsubdivided Council. He said:

*“Council cohesiveness can only occur if there is a commonality of interest among localities and there are too many socio economic and demographic bases of division for this to occur in Surf Coast. This is unlikely to be resolved under the current municipal structure, even if it is converted into an unsubdivided municipality.*

*An unsubdivided municipality could be appropriate if there were no social, demographic or cultural differences across the municipality and no special circumstances applicable to any part of it.”*

Councillor English’s views are based on a view that Lorne occupies a unique and different place to other coastal towns in the Surf Coast Shire and that a specific

solution for Lorne which promotes the application of an Alpine Resorts model is a better option.

The Commission has formed the view that the most appropriate model that could be implemented is an unsubdivided municipal district. The Commission has not however fully explored the appropriateness of the number of Councillors as it is of the view that this could be a matter for review under Part 10C of the *Local Government Act 1989*.

There may be scope however, for an unsubdivided Council and a combination of other approaches that could address specific needs that are claimed to exist, such as a more innovative use of special committees.

Without addressing the capabilities of individual Councillors, it was suggested to the Commission that representation might be improved if annual elections were re-introduced. It was argued that annual elections would enable Councillors to be mentored and taught by Councillors with more experience.

This approach would require a substantial shift in Government policy and would necessitate an amendment to the *Local Government Act 1989*.

The Commission does not support this view as its impression of the current three year terms of Councillors has generally served the Victorian community well.

### **Geographic Boundaries**

Throughout the duration of the Inquiry, the Commission has received several proposals for the possible reconstitution of the Shire's geographic boundaries and is aware that the drawing of municipal boundaries on a map offers a simplistic approach to the effective management of communities. There is in the

view of the Commission no such thing as the perfect fit. As one submission suggests:

*“Local government restructure caused some uneasy fits within some councils and they continue”.*

It appears that Surf Coast Shire, or at least some of its residents, feel that they are ‘an uneasy fit’.

It was not surprising therefore, that diametrically opposing views were put to the Commission about the sustainability and viability of the current geographic area of the Surf Coast Shire.

These ranged from a view that the tensions between the three distinct areas of the Shire – the Coast, Lorne and the Hinterland – could never be satisfactorily resolved, to a view that the Shire should be dismantled because it could never be viable and sustainable and for its various parts to go to adjoining municipal districts, to a view that the Shire should be expanded to give it increased scope and capacity to be more responsive and flexible to changing circumstances.

The views submitted to the Commission were, in the main, based on a need to resolve the conflict between the coast and the rural areas and the conflict between Lorne and the balance of the Shire. A number of variations and approaches were put to the Commission about how the Surf Coast Shire could be reconfigured to be viable or sustainable.

Mr Bruce Dupe, local resident, said in his submission that the current municipal boundaries create limitations in terms of growth, income and management.

*“A new and bigger Surf Coast Shire with a better electoral system would have economies of scale, more flexible financial capacity to deal with*

*changing demands and effects. Surf Coast Shire needs an annual budget double its current budget to have a sustainable future, therefore the municipality should be expanded.”*

Mr Dupe's model for an expanded Surf Coast Shire proposed the inclusion of Barwon Heads, Connewarre, Mt. Duneed (south of the railway line), Ceres and Waurin Ponds. Other submissions received put similar scenarios to the Commission.

An alternative proposed by Mr Ian Smith was that Surf Coast Shire should be split up with the coastal areas going into a coastal shire or being added to a Greater Geelong, the hinterland going to Golden Plains or Colac Otway Shire and Lorne dealt with as a special or unique case. The reasons for this he said is that the Shire will continually struggle to meet infrastructure demands and services because the economic base of the Shire is small. He considers that the economy is dominated by a coastline with a massive influx of people for a very short time.

A number of Lorne specific submissions were received by the Commission. None of them argued strongly for the dissolution of the Shire or for wholesale review of its external boundaries. Rather, they were more concerned with eliminating the uncoordinated approach to management of resources and service delivery at Lorne.

Councillor English who presented the Commission with two extensive submissions proposed that without some special recognition of the visitor and natural resource management problem in coastal towns, local government is not likely to be sustainable irrespective of whether those towns are in Surf Coast, Colac Otway or any other Shire. He said:



*“There is a need to manage the visitors and for the necessary resources to be assembled. It may mean not only changes to the municipal structure but the establishment of more formal partnerships between state and local government agencies. There is a need to manage seasonality and for methods of achieving cost recovery to be implemented.”*

The difficulties for Lorne because of the multi agency approach were raised in a number of submissions from Lorne residents and groups. The Lorne Working Party (established to address Lorne’s particular problems) said that there is widespread community concern in Lorne about the ability of the present governance structure to deliver the level of service and management required by the town.

Representatives of the Lorne Working Party who met with the Commission indicated that Lorne is currently governed by three major agencies with specific demarcation lines representing their areas of responsibility, these being the Surf Coast Shire Council, Parks Victoria and the Department of Sustainability and Environment. They said:

*“In theory the agencies seek co-operation but in reality, they often act in isolation, in contradiction, or worse still, in duplication.”*

The Lorne Working Party considered that Lorne representation needed to be augmented by a locally based structure. They said:

*“A formal partnership supported by a local administration that connects all agencies with jurisdiction over Lorne is pivotal to the effective delivery and maintenance of infrastructure and community services”.*

Other submitters from Lorne indicated that they were opposed to any initiative to isolate Lorne from the rest of the Shire. It was suggested that a Shire wide

solution needed to be achieved that addressed and integrated both township and local efforts. These submissions supported the concept of an unsubdivided Council with a township committee established under section 86 of the *Local Government Act 1989*. They did not support a form of governance outside the structure of the Act.

Lorne residents and groups provided the strongest arguments for a detailed review of the current municipal structure in that a number of alternative models were suggested, but they were Lorne specific. Other submissions, while referring to the inability to resolve the tensions between the coast and the hinterland, did not strongly advocate future forms of a municipal district.

While this Term of Reference requires consideration of any other matters relevant to the viability and sustainability of a Surf Coast Shire, a review of its external boundaries, which requires a detailed and thorough analysis is beyond the scope of this Commission and is more a matter for a Local Government Panel under Part 10A of the *Local Government Act 1989*. The Commission has not, however, been persuaded that such action is necessary at this time and if pursued would simply be a reaction to issues of governance and financial prudence which have brought about this Inquiry.

Whilst some submissions suggested that the Council should be suspended, there was not an overwhelming view or compelling or substantial reasons put forward for such action to be taken.

The submissions do, however, highlight a particular problem in relation to the governance and management of Lorne as a coastal asset and as a place for people to live. There is clearly a need for a better coordinated approach between the Council, Parks Victoria and the Department of Sustainability and Environment, including the current Lorne Foreshore Committee, to rationalise its efforts and resources.

From the perspective that Lorne along with other locations on Victoria's south west coast is known and promoted as a significant tourist destination, it seems that good government is not being provided to these towns because of inconsistent approaches, lack of coordination and wasted or duplicated resources by all the relevant agencies. There is a clear need for a better coordinated approach to the coastal and land management issues at Lorne.

The option of a special committee under section 86 of the *Local Government Act 1989* may be one mechanism that could be explored to address and deal with 'special cases'. The Commission considers that the full potential of the use of committees established under section 86 of the *Local Government Act 1989* has not been fully realised by some Victorian Councils. With few exceptions (such as Surf Coast Tourism and similar structures in other municipalities which has a specific function such as tourist promotion), Councils have mostly used them as an extension to the Council meeting system.

The Commission understands that special committees were never intended to operate in a limited way and subject to compliance with the requirements in the Act can be used for a variety of purposes.

The potentially broad role and scope of special committees is not a new concept and at the time when principles for the 'new' local Government Act were being developed, various examples of how similar committees worked for local government overseas were investigated and considered appropriate for application in Victorian Local Government. For that reason, section 86(1) of the Act enables a Council to establish a special committee that can consist of:

- “ (a) Councillors;*
- (b) Council staff;*
- (c) other persons;*
- (d) any combination of persons referred to in paragraphs (a), (b) and (c).”*

A Council can delegate (in an instrument of delegation) “*any of its functions, duties or powers under this or any other Act to a special committee*”, other than those powers specifically prohibited under section 86(4). Those prohibited powers include the powers to:

- declare a rate or charge;
- borrow money;
- enter into contracts for an amount previously determined by the Council; and
- incur any expenditure exceeding an amount previously determined by the Council.

The various provisions, including the provisions applying to the conduct of meetings of the Council and the requirements to disclose pecuniary interests, also apply to special committees.

Membership of a special committee is not limited to Councillors or Council staff and it would be conceivable that membership of a special committee could include representatives of Government agencies and in the case of Lorne, the Lorne Foreshore Committee.

The Commission has been advised that the Council is in the process of reviewing its special committee arrangements. It may be timely for the Council to consider whether the ‘special circumstances’ at Lorne could be accommodated, at least in the interim until a more substantial arrangement is determined about how Lorne is best managed as a coastal asset.

It would be important that if the Council used a section 86 committee approach for there to be at least a clear definition (and therefore understanding) of the roles and powers of the special committee and a clear expression of the limitations on

the use of the Committee's powers. There would also need to be stringent reporting and accountability requirements applied to such a committee.

## **Voting**

The Commission did not receive many submissions which commented specifically on voting and voting entitlements. Those that did, supported the application of proportional representation to Council elections. It was generally considered that the current exhaustive preferential voting system contributed to the current inequities in the Surf Coast Shire's election process.

The Surf Coast Ratepayers' Association, Save Our Surf Coast, Rural Ratepayers and some individuals suggested the application of proportional representation although this was not supported by other submissions.

Irrespective of these views, the Commission understands that amendments proposed to be made to the *Local Government Act 1989* in the 2003 Spring Sitting of Parliament will provide for the application of proportional representation to the counting of votes in Council elections if it is passed.

One concern that emerged during the hearings and in written submissions was the view of Surf Coast residents that absentee owners were able to disproportionately influence the outcome of the vote to the detriment of permanent residents.

The Surf Coast Ratepayers' Association, Save Our Surf Coast and Rural Ratepayers all suggested that the ability to vote in Council elections should be restricted to permanent residents or that the vote of absentee owners should be restricted in some way. The Save Our Surf Coast group said that:

*“The large non resident population can influence the results of an election over the expectations of permanent residents. Non permanent residents do not have the same priorities as permanent residents, yet are able to deliver an unbalanced representation at the Council”.*

This view also sums up the position of the other two groups.

None of the groups presented any information about how absentee owners could influence the results over permanent residents or how they are able to deliver unbalanced representation in the Council. Nor did they suggest ways in which the votes of absentee owners could be restricted.

The Commission accepts that the priorities of permanent residents will be different to those of absentee owners. The Commission cannot accept the proposition that the voting rights of absentee owners should be restricted. They too live in the municipal district (even if for limited periods) and are affected by Council decisions. They contribute to the economy of the municipal district and pay rates. The property ownership criteria has always been the basis of eligibility to vote at Council elections and the Commission cannot justify an approach that would change that.

### **Effects on Infrastructure and Services**

The representations to the Commission from Lorne groups and residents about the impacts on the provision of infrastructure and the delivery of services because of the current arrangements have previously been discussed.

For other parts of the Surf Coast Shire, it is evident that there are also tensions between the needs of the permanent residents, absentee owners and tourists.

One of the views put to the Commission was that Surf Coast Shire in its current form cannot deliver the infrastructure needs of residents and visitors and that will

worsen in the future. Without sounding dismissive of this view, the Commission believes that it is not a situation that is unique to the Surf Coast Council. It is a situation that most Victorian municipalities face.

The Council has presented information to the Commission about a number of steps it has underway, primarily in relation to financial matters which have already been discussed, but it is reviewing its organisational structure, the Council Corporate Plan and a number of internal administrative processes.

In addition, the Council will be in the process of complying with the requirements in the *Local Government Act 1989* and undertaking best value reviews of its services. Best value reviews are intended to identify the level and type of service required by the community and the real costs of providing the service. These measures, including the work that has been done on the general resource allocation plan should place the Council in the best position to identify its needs and how they can be prioritised.

The Commission concludes that the steps the Council has underway, including the general resource allocation plan, should be given an opportunity to work.

### **COMMENTARY ON TERMS OF REFERENCE NO. 3**

**What other issues arose during the course of the Inquiry or as a result of the Whelan report?**

#### **Selection Process and Role of Chief Executive Officer**

Ms Diana Patterson was appointed to the position of Chief Executive Officer from 22 March 1999 and resigned on 21 May 2002, a period significantly less than the term of her employment contract which was to expire on 21 March 2004.

Council undertook a search for a new Chief Executive Officer following the resignation of Mr Peter Anderson who was appointed to a senior position with the Melbourne Docklands Authority.

Mr Des Bethke, Managing Director of Mills Oakley Consulting, was engaged by the Council to undertake the recruiting process. Mr Bethke explained to the Commission in detail, the process he had undertaken on behalf of the Council to assist in the selection of a Chief Executive Officer.

Mr Bethke told the Commission that Ms Patterson had held senior positions in State Government Departments and had responsibility for budgets and financial management. At the Council's request he undertook referee checks of the names of persons who were provided by Ms Patterson and he also made separate enquiries outside of those referees.

When questioned about Ms Patterson's Local Government experience, Mr Bethke stated that whilst the advertisement called for a knowledge of and/or experience in Local Government, it was not essential. Ms Patterson had no direct experience in Local Government but in previous roles had interacted with Local Government and also with the community.

The Commission recognises that all Councils are faced with a significant task when undertaking the process for selection of a new Chief Executive Officer. In recent years there has been a trend towards seeking candidates from outside the Local Government sector and there are several examples of successful appointments across municipalities in Victoria.

The Commission has concluded that at the Surf Coast Shire Council, whilst the selection process undertaken by the Council with the assistance of Mills Oakley Consulting could not be questioned, there was ultimately a clear mismatch of the skills, priorities and personalities between Councillors and Ms Patterson.



Throughout the course of the Inquiry, numerous witnesses provided examples of the relationship, leadership and management related matters which confirm this view.

The Commission has formed the view however, that it would not add anything to this Report and that no good purpose would be served by publishing specific comments from all witnesses.

The Commission has taken into account Ms Patterson's formal response to its preliminary findings and has accepted a number of the points raised in her submission.

However, in the course of its deliberations in this matter, the Commission has not been persuaded to substantially change its preliminary findings concerning Ms Patterson in her role at the Surf Coast Shire.

The Commission has therefore found that despite apparently having a well regarded background in other public sector organisations, during her period or significant periods of her employment with the Surf Coast Shire Council as its Chief Executive Officer, Ms Patterson was generally unable to grasp both the strategic importance of long term financial management or provide the necessary leadership to ensure that the Council fulfilled its financial obligations as required by section 7(f),(g) and (k) of the *Local Government Act 1989*.

The Commission accepts the contention by Ms Patterson in response to the Commission's preliminary findings that this relates primarily to financial matters and acknowledges that there may have been other areas of achievement which have been overshadowed as a consequence of the municipality's financial predicament. In Ms Patterson's view, these include initiatives such as achieving ISO 9002 accreditation, the establishment of the Audit Committee, the expansion of the SurfLink Board and the integration of SurfLink which ultimately led to the uncovering of the Council's financial deficiencies.

Ms Patterson has advised the Commission that the Council was well aware of the financial plan but knowingly departed from it in the 2000/01 budget development.

This Report under Terms of Reference No.1 provides a summary of the evidence submitted to the Commission by several Councillors which clearly indicates a high degree of confusion and uncertainty over this issue.

Ms Patterson as the Council's Chief Executive Officer should have taken action to ensure that this confusion and uncertainty was eliminated.

Evidence was also provided by senior Council staff, which reinforced the lack of decisiveness and clarity on the strategy for dealing with a financial plan.

In reaching its finding, the Commission has also taken into consideration the following:

- the requirements of section 94A of the *Local Government Act 1989* which outlines the specific responsibilities of the Council's Chief Executive Officer. The Commission has formed the view that there was inadequate regard given to the requirements of this provision by Ms Patterson.
- section 3(5) of the Act which states:  
*"Where a Council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the Council"*.

As the Chief Executive Officer, Ms Patterson failed to ensure that many Council decisions made at briefing sessions were not placed before the Council for formal decisions.

- Ms Patterson's evidence to the Commission and in particular the statements made by her at a private hearing of the Commission held on 8 January 2003 that:

*"The financial plan was not a specific issue that came up in Council and I did not have a specific concern."*

*"I did not believe that the lack of a plan was a problem because issues were picked up in each year's budget."*

*"I thought that the MacroPlan strategy had been formally adopted by Council and in retrospect more rigour should have been applied for the need for a five year plan."*

- additional evidence given to the Commission by other witnesses, including Councillors and members of the Council staff, to the effect and clearly demonstrating, there was confusion as to the status of the MacroPlan financial strategy following a series of Council workshops held in 1999, and in particular whether the Council had formally adopted the strategy (or otherwise varied it) by formal resolution of the Council.

Ms Patterson in her submission to the Commission made a series of statements contending that:

*"You have based your findings on quotes attributed to me which are specific references to my first year of appointment and are taken out of context when you apply them to the total period of employment."*

*"The assumptions made with respect to the five year plan are incorrect."*

*“The MacroPlan was not ignored but was adopted as a component of the 1999/00 Budget submitted to the Office of Local Government.”*

Ms Patterson also states that *“the 2000/01 Budget process were put to Council in the context of the 5 year strategic plan.”*

During the course of the discussions with Ms Patterson, the Commission took the view that it was dealing with the whole period of her appointment and that the matter of the adoption or otherwise of the financial plan was fundamental for the long term sustainability of the municipality. It therefore rejects that it has been selective in its assessment.

The references the Commission has found to the MacroPlan financial strategy include an undated budget parameters discussion document, prepared for the 2000/01 Budget.

The Commission understands the document was prepared by the Principal Accounting Officer, Mr Trevor Colbert, who in evidence presented to the Commission clearly stated that the plan had never been adopted by Council.

Extracts from the document relevant to this issue are as follows:

*“Council has also had a financial strategy prepared by MacroPlan, external consultants, in 1999 setting out growth and financial projections for five years and an extract from the finance strategy is reproduced below together with Council’s actual budget figures for 2000/2001.” (table not included)*

*“While the need for longer term strategies is still apparent, it is also necessary to allow some flexibility within this process given the variations experienced above (referring to the table) in such a short time. A longer*

*term financial plan can therefore be only indicative and will be subjected to a number of internal and external pressures.”*

The Commission also examined a quarterly report and financial strategy (again undated), for the quarter to 30 September 2001. This report which is very extensive and which the Commission believes led to the need for a revised budget, makes reference to the long term issues facing the Council. The following are extracts from that report:

*“The five year financial plan will need to address the long term financial issues as detailed in this report and put in place concrete strategies to place Council in a financially sustainable position. The five year financial plan will be the key focus of the Business Performance Committee along with establishing the monthly financial reports.”*

*“There are a number of longer term issues that will also need to be addressed to place the organisation’s finances on a sustainable footing.”*

*“These will be addressed in the context of the five year financial plan, which will be overseen by Council’s Business Performance Committee.”*

In addition the Commission has reviewed a copy of the budget document for the financial year 1999/2000 which briefly refers as follows:

*“The financial plan which has been submitted to the Office of Local Government for approval proposes that the following sums be set aside for capital projects in the next three years:*

*1999/2000 \$1,400,000*

*2000/2001 \$1,500,000*

*2001/2002 \$1,550,000.”*

Apart from this reference, there is no supporting data attached to the budget document nor is there reference to the MacroPlan strategy or recommendations which would suggest to the Commission that in fact the financial plan was adopted as part of the budget.

These extracts support the evidence given by several witnesses and the Commission does not accept Ms Patterson's contention that the plan was adopted. It supports the conclusion drawn earlier in this Report that there was significant confusion within the Council and its administration as to the status of the plan.

The Commission is aware, as highlighted in the Whelan report (page 10/34), that the Council used the proposals contained in the MacroPlan strategy to seek a 6.9% increase in rates. There is no evidence, however to suggest to the Commission that the report was ever formally adopted by the Council.

In her submission Ms Patterson refers to the unwillingness of the Council to work cooperatively together, let alone respect and accept advice from professional officers and cites the budget review process for 2001/02:

*“Even when the budget review revealed errors in the calculation of the 2001/2002 budget and a revised budget was prepared with the objective of reducing expenditure, this Council chose to include additional expenditure to fund neighbourhood character studies. A number of other examples can be given to demonstrate the unwillingness of Council to accept advice of officers with many years of Local Government experience.”*

Ms Patterson amongst other things states:

*“To provide effective leadership under these circumstances was extremely challenging.”*

The Commission is aware of the attempts made with an external mediator to resolve the tensions that became evident and accepts that the environment that emerged during Ms Patterson's period as Chief Executive Officer would have been challenging and difficult to manage.

This however should not have prevented Ms Patterson and her Executive Management Team from providing timely and accurate financial data to the Council as well as formally recommending to the Council the consideration and adoption of the financial strategy.

This would have formally recorded the deliberations of the Council including its decision on the financial plan. In the absence of such a decision, there is no formal accountability and direction for proper financial management and monitoring, other than through both the Whelan report and this Commission's investigations.

Ms Patterson further contends that:

*"I instigated immediate and appropriate action subsequent to the discovery of the financial problems that prompted this Inquiry. The necessary steps were taken to bring the Council's financial position back to an acceptable level."*

The Commission suggests that any Chief Executive Officer of either a public or private sector organisation would in these circumstances seek to rectify the financial position and indeed has an obligation to do so.

As the Council's most senior officer, the Chief Executive Officer must accept primary responsibility and accountability for the financial stability of the municipality on a day to day basis, including regular monitoring of budget performance, cash flow, debtor management, internal controls etc.

Had this been occurring in a diligent manner, the scenario at the Surf Coast Shire Council would have been quite different.

Councils and their administrations are aware that the community expects them to respond to a diversity of issues. Often the response is to accommodate 'feelgood initiatives'. These have their place but should only be addressed when there is absolute confidence in the overall financial performance of the entity.

There are many examples of these initiatives at the Surf Coast Shire which in themselves are commendable, but seem at various times to have taken precedence over financial accountability and to have had a cumulative effect on the Council's financial position.

The Commission has also formed the view that Ms Patterson overly relied on the advice and perceived knowledge and competence of a senior member of the Council's accounting staff, and other senior managers of the Council in relation to financial management of the Council. This seems to have placed unreasonable demands on a number of staff who may not have been equipped to deal with those demands. Ms Patterson seems to have failed to recognise these inadequacies or the need to increase the skill levels of certain key staff that she relied on.

The Commission also took into account evidence given by Ms Patterson that:

*"I relied heavily on Council officers because I had been involved in part of a broader Government approach in the past."*

*"Clearly my confidence in the staff at the time was misplaced."*



Further, when referring to the capacity and capabilities of key Council staff, Ms Patterson informed the Commission as follows:

*“For example the Manager of Corporate Services had no strength in terms of financial oversight and the broader Corporate Governance role. In hindsight I would change my views about a number of staff.”*

Ms Patterson contends in her submission to the Commission that:

*“You have in support of your finding referred to Section 94(A) of the Act referred to education and training. And furthermore relied on specific statements I made which related to the benefit of hindsight, not placed in context of the actual situation at the time.”*

*“I strongly contend that my reliance on staff was not inappropriate given the prevailing circumstances.”*

Several witnesses, however, confirmed to the Commission that Ms Patterson was unfamiliar with Local Government financial matters as well as governance issues.

The Commission believes that Ms Patterson should have given due regard to the training and education needs of her staff given the requirements of a Chief Executive Officer in relation to staff in the *Local Government Act 1989*.

The Commission accepts that it would have been necessary on occasions for Ms Patterson to rely on specialist finance staff for advice and guidance, particularly

given her lack of knowledge of financial management and specific accounting issues as they relate to Local Government.

Many Local Government Chief Executive Officers do not hold accounting qualifications and would therefore also rely on appropriately qualified staff to advise them from time to time.

All Chief Executive Officers have a fundamental obligation to their Councils to become fully aware of both the legal requirements as well as the broad strategic and technical requirements if they are to successfully manage the community's assets.

The Commission therefore remains of the view that Ms Patterson was overly dependent on her senior staff in relation to financial matters.

The point that Ms Patterson seems to have missed in the matters raised by the Commission is that action was generally taken after the event and, when questioned as to the reasons for the preparation and adoption by the Council of a revised budget in the 2000/2001 financial year, Ms Patterson told the Commission that the Sanderson IT Financial System had contributed to the inaccurate financial picture, but that:

*“At the end of the day the buck stops with me.”*

Ms Patterson contends that this statement is inaccurate and taken out of context. She states in her submission that:

*”When questioned regarding the accuracy of the financial systems, this appears to be related to the presentation of the Budget. In fact the difficulties experienced with it arose when the SurfLink system was being integrated with the Council system.”*

The Commission remains of the view that Ms Patterson was in fact responding to the Commission’s request for an explanation on the need for the revised budget.

In addition, the Commission has found that during Ms Patterson’s period as the Council’s Chief Executive Officer, some issues of important and strategic significance to the Council (relating to financial and governance matters) were not implemented and monitored.

In reaching this finding, the Commission gave due regard to the following evidence:

- inaction both organisationally and on Ms Patterson’s part in ensuring that the MacroPlan strategy or some form of general resource allocation plan was adopted by the Council, either with or without modification;
- the lack of action in ensuring that matters arising from the reports of the Auditor General’s agent, Day Neilson, regarding the financial position of SurfLink for the financial periods to 30 June 1999 and 2000 respectively, were adequately monitored and corrective action taken, consistent with the recommendations of the Auditor;
- statements of other witnesses who appeared before the Commission to the effect that there was significant concern regarding adequate and

systematic follow up of matters either requested, or formally adopted, by the Council; and

- the lack of timely and accurate formal financial reporting to the Council on both the Council's normal operating budget and SurfLink.

The Commission has considered Ms Patterson's response to its finding and acknowledges that steps were taken to address many of these issues and that a more formal Council reporting protocol for SurfLink was ultimately implemented.

The Commission also notes that there were a number of inadequacies in the Council's systems and processes when she assumed the role as Chief Executive Officer. The Commission contends that this would not be unique to the Surf Coast Shire Council and that many Chief Executive Officers would have experienced similar challenges.

The Commission has reviewed all evidence submitted throughout the course of the Inquiry in relation to Ms Patterson and has not generally been persuaded by her submission to significantly change its preliminary finding in the light of that evidence.

The Commission highlights a more recent example relating to the budget process for 2002/2003 to illustrate its position on financial matters.

During the period of the Acting Chief Executive, Mr Michael Ulbrick, from June until early December 2002, extensive effort was required by him to enable the Council to formally adopt the 2002/2003 budget by the statutory time period of 31 August 2002.

Mr Ulbrick stated that when he commenced his role at Surf Coast in June, only preliminary work had been undertaken on the budget and by that time the budget should have normally been well developed to at least final draft stage moving towards adoption in principle and advertising. He told the Commission that Surf Coast was still at the starting point. Ms Patterson did not agree with Mr Ulbrick's statement but acknowledged that it was not as advanced as it should have been at that stage.

While Ms Patterson indicated that a timetable had been prepared it is unlikely, in the Commission's view, that the budget would have been adequately progressed to ensure its adoption by the statutory date of 31 August 2002. Mr Ulbrick in a second interview, when further questioned about the process on the budget stood by his original statement. He stated that:

*"It took considerable effort to get a draft budget report in front of me... they just made the timeframe and if the Council had been led by an individual without my procedural knowledge, I doubt the deadline would have been made".*

Ms Patterson's previous professional positions apparently required her to deal with the budgets at a much broader level and there appears to have been no understanding of the need for a hands-on approach in a significantly smaller organisation. Clearly the experience across Victorian municipalities has demonstrated that in smaller Councils there is an imperative that the Chief Executive Officer has far greater knowledge of the operational aspects of the budget than would normally be expected of a large organisation. This is purely because of the resources available to achieve the outcomes required by the Council and the community.

Whilst Ms Patterson submits that the specific findings of the Commission have been taken out of the broader context, the fact remains that as the Chief

Executive Officer of the Surf Coast Shire Council during a period when its financial position deteriorated significantly, she must accept a significant degree of responsibility and accountability for that outcome.

### **Other Matters**

The Commission has during the course of the Inquiry become aware of a number of other matters on which some comment and observation is appropriate.

The Commission understands some of these are already receiving attention by Council's Chief Executive Officer, Mr Peter Bollen, and are included not only for the benefit of the Surf Coast Shire but also for other municipalities who may be dealing with similar issues.

### ***Staff Turnover - Finance/Planning***

During evidence given to the Commission, the Principal Accounting Officer, Mr Trevor Colbert, indicated that there were several changes in staffing in the Council's Finance Department and whilst he retained his role as the Principal Accounting Officer he had held the roles of Management Accountant, Manager of Finance and Business Planning Manager.

The Commission formed the view that apart from Mr Colbert there had been limited continuity of staff in the finance area resulting in a significant knowledge gap and a capacity to apply changing financial requirements for Local Government. In addition, SurfLink operated with its own financial staff with little coordination or cooperation with the Council as a whole.

The Commission also identified that the planning unit of the Council experienced high turnover levels of planning staff and the associated pressure to meet the growth in planning applications.

Whilst the Commission acknowledges that this situation is not dissimilar to other municipalities, the Surf Coast Shire Council must establish a human resource strategy which amongst other things considers incentives for retention of competent and skilled professionals.

### ***Reliance on Informal Briefing Sessions***

The Commission has been provided with several examples during the course of the Inquiry of matters being the subject of detailed discussions in Council briefing sessions.

This practice in itself is quite appropriate from time to time and enables informal briefings on a wide range of matters of relevance to the Council or the municipality as a whole. Most Victorian Councils use these types of forums.

However, the Council should ensure that it has proper policies and protocols in place to ensure that where necessary issues are formally resolved upon at a future Council meeting rather than being left to the informal outcomes of briefings.

This will lessen the opportunity for misunderstanding about whether the Chief Executive Officer has properly implemented the decisions of the Council and avoid the potential for the Council to act outside its legal framework.

### ***Management Performance Review***

The Commission became aware from evidence received from two witnesses that there was no proper performance framework for the systematic assessment of senior executives and that for the most part managers were paid the full bonus as a matter of course.

Former Manager Technical Services, Mr John Wilkin, told the Commission:

*“There was no performance framework for senior executives. At the start of the year you’d identify the projects and the bonus was paid on those. I almost always got the full amount.”*

This was also confirmed in evidence submitted by the former Manager Sustainability, Mr Michael Courtney, who told the Commission:

*“There was a bonus component in the contract. In Diana Patterson’s time there was no appraisal. I remember receiving one bonus from Peter Anderson on the day that he left and one from Diana Patterson the day before she left.”*

*“I tried to formalise mine by writing down what I had achieved over the year. It was never a rigid system and often bonuses were 18 months behind. The only key result areas on my file would be the ones I had written for myself. There wasn’t a structured performance management system.”*

The Commission strongly suggests that the payment of bonuses should be subject to a clearly articulated formalised basis to be measured against an agreed set of key result areas. This, in the Commissioner’s own experience, accords with accepted management practice generally applied in both public and private sector organisations.

The automatic payment of bonuses runs contrary to the principles of sound performance management and evaluation and measurement. It is viewed by the Commission as an inappropriate means of providing contract staff with higher levels of remuneration. Such payments should be only be viewed as a discretionary and variable component of an employment contract.



### ***Role of Executive Management Team***

The Commission examined minutes of the Executive Management Team and generally found that the types of issues placed on its agenda were consistent with the experience of the Commissioner with other Councils.

Included for example was a paper prepared by Michael Courtney titled “Five Year Financial Plan”, for the meeting to be held on 20 February 2002. Other issues considered at various meetings, for example, included staffing, financial systems strategy, enterprise agreement and fleet management.

The Commission notes that whilst there may have been other meetings by which the Executive may have monitored the Council’s financial performance and corrective action, there is limited evidence that this occurred regularly through the formal Executive meetings.

Clearly there is an important role for the Executive as the ‘Corporate Managers’ to undertake regular scrutiny of financial as well as non financial performance of the organisation.

### **Skill Level - Finance**

All organisations are confronted at various times with the matter of the adequacy of skill levels and the means by which they can be enhanced.

The Commission became aware through a number of comments and observations made to it that there were some inherent deficiencies in the skill level particularly in the finance area.

In evidence Mr Geoff Harry, Partner, PricewaterhouseCoopers, told the Commission that:

*“I consider one of the reasons why Council’s financial management fell away badly was because it was steeped in old concepts of measuring the financial performance of Council.*

*The system chosen by the Council, the Sanderson system, was probably a bad decision based on price rather than functionality. The implementation seriously challenged the skills of the Chief Financial Officer which was exacerbated by the lack of support resources provided to implement the system effectively.*

*I felt that the leadership at the operational level was questionable and considered that the CFO was having difficulty coping with the rapidly changing financial environment being imposed on Councils. I would have questioned the level of training provided to the CFO and his team.”*

The Commission also received similar comments from other witnesses.

During the course of the Inquiry, the Commission became aware that there is little understanding of the role of the Principal Accounting Officer, nor to the Commission’s knowledge, have the roles and obligations been specifically defined.

The Commission believes that appropriate steps should be taken to clearly articulate the role to eliminate the confusion apparent as to the statutory obligations imposed on this position. This should be undertaken in conjunction with the relevant professional bodies.

### **Organisation Culture**

The Commission is aware that there are complexities in defining the specific culture of an organisation but feels compelled to highlight a sense of frustration

which resulted in an email being forwarded to Councillors and senior managers on 21 April 2002 without the knowledge of the then Chief Executive Officer, Ms Patterson. The general tenor of the email which was sent by Mr Trevor Colbert, Business Performance Manager and Principal Accounting Officer, was to outline in detail his position on the reasons for the decline in the Council's financial status.

The Commission has determined not to include specific details of this email as most of the matters raised have either be highlighted in the Whelan report, and in other sections of this Report.

This highly unusual action according to Mr Colbert was taken because:

*“A number of meetings that were held over recent years in regard to the shortfall in the rate surplus.....these meetings were attended by the Senior Management Group at the time.”*

*“I feel I made numerous attempts to bring this precarious financial position to the attention of Senior Managers and the CEO without success and feel that there were no other options available other than to provide the true financial position to the Councillors, together with a detailed explanation of how it came about over recent years.”*

*“The report by the Municipal Inspector, Mr Merv Whelan, confirmed the financial position that I provided and also outlined a number of accounting practices used by the Management of Surflink that distorted their actual financial position.”*

The Commission highlights this issue to demonstrate that the prevailing culture at Surf Coast at that time allowed the departure from accepted protocols. Had Mr Colbert been properly supported at an organisational level, the Commission feels

confident that his frustration would not have overridden his professional and committed approach to the management of the Council's financial affairs.

## **GENERAL GOVERNANCE MATTERS**

### **Roles and Responsibilities of Council/Councillors**

As part of the process in seeking to understand matters of consequence at Surf Coast Shire, the Commission reacquainted itself with sections 6 and 7 of the *Local Government Act 1989* which outline both the purposes and objectives of a Council. The preamble contained in section 7 states as follows:

*"In seeking to achieve its purposes a Council has the following objectives..."*

The section sets out in all a total of 13 objectives. The Commission has for the purposes of this Inquiry focused on sub sections (f), (g) &(k) which state as follows:

- (f) to develop, implement and monitor its strategic plans and budgets;*
- (g) to develop, implement and monitor its corporate and financial control techniques;*
- (k) to facilitate accountability at all levels within the organisation by maintaining suitable information and reporting systems;"*

These, together with the remaining 10 objectives, generally form the basis of achieving the purposes of a Council set out in section 6 of the Act including the provision of peace, order and good government of the municipal district. The Commission sought to understand how Councillors at the Surf Coast Shire viewed their approach to governing the municipality given the events which have led to this Inquiry.

In discussions with former Councillor Rechenberg-Dupe who resigned from Council on 9 January 2003 she told the Commission that:

*“I don’t believe Council had delivered with respect to adequately and properly discharging its functions.”*

She did say however that she felt that Surf Coast Council is probably as effectual as most Councils. Ms Rechenberg-Dupe told the Commission that her resignation was precipitated by her concerns regarding the current draft five year financial plan and that she queried the degree to which the Council was effectively governing now and whether the administration was driving the agenda.

She told the Commission:

*“If I thought that I would be governing for the next 12 months I would probably still be there”.*

Councillor English told the Commission he doubted whether the Council was governing effectively. He did say, however, that the Council makes decisions and *“in the sense that the Council makes decisions it is governing.”*

He also told the Commission that *“the financials speak for themselves”* and that in his view the programs are not properly thought through in terms of particular projects or in terms of how projects are allocated to parts of the Shire.

Councillor English told the Commission that:

*“Councillors are not skilled in the area of budgets and there is no reason why they should be. It goes to what I detected in 2001 as an assumption by some officers who are no longer with us that you could tell the Councillors pretty much anything and they couldn’t tell the difference”.*

Councillor English also advised the Commission that:

*“Any political representative at any level of government is reliant on his or her administration and that they have to know what questions to ask and have to get clear answers.”*

His view was that Councillors do not know what questions to ask and often do not get clear answers. He did state, however, that this changed when the Acting Chief Executive Officer Michael Ulbrick was appointed in June 2002. He commented that the events of the last few months have been a *“rude shock to Councillors and they are now taking more interest in financial issues.”*

He told the Commission that:

*“It is not as simple as saying sack the Council. You need to know what you are going to have in its place.”*

Councillor John Foss who was elected to the Torquay ward in 2001 told the Commission:

*“It took me six months to work out how Council operates let alone the intricacies and that in effect I was thrown in the deep end. Like other new Councillors I was involved in the budget deliberations in August 2001 and became aware as did the whole Council in November 2001 that there was a serious miscalculation of the 2001/2002 budget. I was of the view the Council had inherited a financial mess and it will take more than one or two budgets to get out of it.”*

Councillor David Johnson who was elected to Council in March 2001 also representing the Torquay ward made similar comments and indicated that he

came on Council to make a contribution to work with the planning scheme to achieve better results for Torquay.

He was concerned about the loss of quality environment and felt he could through his professional background make a meaningful contribution. He agreed that financial sustainability was more important for the future of the municipality and was concerned at the need for a revised budget in November 2001.

The issue for Councillor Johnson as with Councillor Foss was that they had been elected to Council in March 2001 with relatively little experience or knowledge of the budgetary process.

Councillor Lindsay Schroeter, the longest serving member of the Council, told the Commission that:

*“Councillors are probably not as educated about financial matters as they should be.”*

Councillor Schroeter stated that he clearly was aware of the obligations under the *Local Government Act* and that in a general sense he believes he undertakes his role according to those requirements.

During a similar discussion, Councillor Kingsley Love told the Commission:

*“That it is through good governance that we do the best we can for residents and that governance essentially revolves around the running of the Council to the benefit of residents and ratepayers and the general community. Compliance and due diligence are part of it”.*

He accepted that there were issues of governance in relation to the non adoption of the financial plan and in hindsight he should have been more diligent as should have Council and the former Chief Executive Officer, Ms Patterson.

Councillor Beth Davidson told the Commission that both the internal and external governance functions of the Council were severely affected by relationships between Councillors and by the interface between the Council and the organisation. She was referring specifically to the Council which was in place between 1998 and 2001. This view was confirmed in the formal submission from the present Council, as outlined earlier in this Report.

Councillor Davidson also acknowledged the Council's obligations under the *Local Government Act 1989* but advised the Commission that she relied heavily on the expertise of Council officers, as Councillors are part time volunteers.

The Commission's reading of the Council's now outdated Governance Policy Manual suggests that the Council at some point was fully committed to a set of standards incorporating the purposes and objectives as outlined in the Act.

The Manual also made specific reference to the Code of Good Governance prepared by the Victorian Local Governance Association and the Municipal Association of Victoria. The following is an extract from the introduction to the Manual:

*“The Surf Coast Shire Council endorsed the Code of Good Governance prepared by the MAV and VLGA in November 1997. The purpose of the Code is to establish standards and principles for Local Government which ensure the highest level of governance and community leadership. It makes provision for mutual support among Local Governments to ensure the maintenance of those standards and principles. This policy manual has been developed for the Surf Coast Shire Council to articulate the*



*commitment to good governance (Council resolution in January 1998) and to define the preferred approach and protocols on major aspects of its operations.”*

The Commission’s observations following these and other interviews is that there was a mixed understanding by Councillors regarding the obligations of the Council under the *Local Government Act 1989*. It also became evident that there was no clear recognition of the legal obligations of Councillors.

The *Local Government Act 1989* presently does not specifically articulate the role of Councillors, however the Commission is encouraged by the proposed amendments to the Act which, amongst other matters, establishes rules of conduct for Councillors as well as requiring Councils to develop and approve a code of conduct for the Council.

The Commission is aware of the significant debate which occurred when the report of the former Local Government Board on the roles and functions of Councillors was released in August 1995. The outcomes of that report led to a number of positive legislative and cultural changes but fell short of specifically defining the obligations of Councillors.

If the proposed amendments to the Act as outlined above are reintroduced into the Spring Sitting of Parliament, this will take a further step in assisting current Councillors but should also assist others in the community who may be contemplating nominating for election in the future.

The Commission suggests to the Minister that these amendments be dealt with as a priority.

The Commission notes in the second reading speech accompanying the former Bill:

*“Local Communities have a right to expect a high level of accountability from their Councils both for the decisions they make and for the way they use public resources. The Bill establishes public accountability as an essential requirement of Local Government.”*

It further states that:

*“The Bill also proposes that all Councils will be required to adopt codes of conduct that will include the rules of conduct as well as including procedures to resolve disputes between Councillors.”*

### **Education and Training for Councillors**

It has also become apparent to the Commission that there is no formal policy in place for education and training for Councillors within the Surf Coast Shire Council. The Council’s Governance Policy Manual contains a protocol for Councillor attendance at conferences and workshops. The protocol states that the purpose is to provide support for attendance by Councillors to attend conferences and seminars to enhance their leadership role in the community and to provide for good governance. The protocol then outlines four points on how the protocol is to be applied.

Approval is required from the Mayor and the Chief Executive Officer but the policy does not establish any specific criteria for the nature of conferences and training sessions to be attended. The protocol does, however, require a written report on conferences of more than one day’s duration to be forwarded to the Council within one month of attendance. The Commission suggests that similar loosely framed policies probably exist in other Victorian Councils.

It became evident during discussions with each of the current Councillors that none had attended a course on financial management. The only briefing they had

been given was at the Councillor induction program at the commencement of their term of office as part of a Councillor information weekend.

The Commission views this to be totally inadequate given that Councillors admitted they do not have a good understanding of the complexities of financial management in Local Government.

In the final report of the Local Government Board (previously referred to) on the role and functions of Councillors a chapter was dedicated to the professional development for Councillors. The Board recommended that professional development be voluntary but strongly encouraged through such means as the adoption of professional development programs for Councillors in the annual plan.

It also recommended amongst other things that the Municipal Association of Victoria undertake a needs analysis to establish the ongoing professional development requirements of elected local government members.

The Commission acknowledges that the Municipal Association of Victoria and the Victorian Local Governance Association have taken numerous initiatives since 1995 on Councillor development but that attendance remains voluntary.

There is, however, in the view of the Commission a necessity to revisit the focus of some programs to ensure that there is a more in-depth understanding of both the accountability and governance requirements for Councillors. The complexities of Local Government financial issues need to be understood to ensure that Councillors are able to fairly represent and probe issues affecting both the financial sustainability of the municipality and their capacity to provide services and deliver appropriate infrastructure.

Several amendments that were proposed in the *Local Government (Update) Act*, such as those proposed in section 76B will, the Commission believes, encourage more formal requirements for Councillors to attend relevant courses with a view to assisting Councillors to properly understand their legal obligations.

The proposed section 76B states that:

*“In performing the role of a Councillor or a member of a special committee, a person -*

*must act with due care and diligence.”*

The Commission strongly recommends that consideration be given to the development of a comprehensive accredited training program for newly elected Councillors as a requirement during their first year of office. The need for on going training should also be addressed.

Such programs should include specific reference to matters relating to general governance, financial obligations including long term financial planning, strategic planning, risk assessment and accountability in the context of the *Local Government Act 1989* and other relevant legislation.

## Appendices

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**PART 10—INQUIRIES, REVIEWS AND SUSPENSION OF  
COUNCILS**

**Division 1—Inquiries and Suspension of Councillors**

**209. Minister may appoint Commissioner and establish inquiry**

- (1) The Minister may appoint a person as a Commissioner—
- (a) to conduct an inquiry into matters relating to the affairs of a Council; and
  - (b) to report in writing to the Minister on those matters—

and may at any time revoke that person's appointment.

- (2) The Commissioner—
- (a) is to be appointed for the period specified in the instrument of appointment; and
  - (b) is eligible for re-appointment; and
  - (c) may resign by a written notice of resignation addressed to the Minister; and
  - (d) if the Commissioner is not employed under the **Public Sector Management and Employment Act 1998** or by any Council, is entitled to be paid the remuneration and allowances which are fixed by the Minister.

S. 209(2)(d)  
amended by  
Nos 76/1997  
s. 24(b),  
46/1998  
s 7(Sch. 1).

S. 209(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (3) The Commissioner, with the approval of the Minister, may make use of the services of any employees in the Public Service.

**210. Protection of Commissioner**

A Commissioner, in the exercise of the Commissioner's functions, powers or duties under this Act, has the same protection and immunity as a judge of the Supreme Court.

**211. Rules of evidence do not apply**

A Commissioner—

*Local Government Act 1989*  
*Act No. 11/1989*

- (a) must thoroughly investigate the matters into which the Commissioner is appointed to inquire; and
- (b) in that investigation, need not have regard to legal procedures and is not bound by the rules of evidence; and
- (c) may inform himself or herself on any matter in any manner which the Commissioner thinks fit.

**212. *Witnesses may be represented***

- (1) A witness before a Commissioner, with the Commissioner's approval, may be represented by another person.
- (2) A person representing a witness may—
  - (a) examine any witnesses; and
  - (b) address the Commissioner on behalf of the witness being represented.
- (3) A Commissioner may make an order—
  - (a) for the payment of the expenses of a witness; or
  - (b) for the payment of costs by a Council.

**213. *Access of Commissioner to places, documents etc.***

- (1) A Commissioner or a person authorised by a Commissioner—
  - (a) has complete access to any buildings, places, goods, books or documents; and
  - (b) may make extracts from or take copies of the books or documents—  
for the purposes of the inquiry.
- (2) A Commissioner, except in carrying out the Commissioner's functions, powers or duties, must not communicate to any person any information which the Commissioner acquired in carrying out the Commissioner's functions, powers or duties.
- (3) A person authorised under sub-section (1) must not communicate to any person other than the Commissioner or a person authorised by the Commissioner any information which the person acquired in the carrying out of any duty under this section.



- (4) A person must not obstruct or hinder a Commissioner or person authorised under sub-section (1), in the carrying out of a function, power or duty under sub-section (1).

**214. *Powers of Commissioner***

- (1) For the purposes of conducting an inquiry, a Commissioner has in respect of summoning and examining persons and requiring the production of documents the powers which a Board appointed by the Governor in Council has under the **Evidence Act 1958**.
- (2) Sections 14, 15 and 16 of the **Evidence Act 1958** apply to those powers of the Commissioner with any necessary adaptations.
- (3) A Commissioner may make an order that all of the costs of the inquiry are to be paid by the Council.

**215. *Some proceedings of inquiry may be in private***

A Commissioner may hold any (but not all) of the proceedings on an inquiry in private, if the Commissioner considers that the public interest requires they be held in private.

**216. *Publishing report of Commissioner or proceedings***

- (1) A person is not liable to any action or proceedings for publishing in good faith for the information of the public—
  - (a) a copy, fair extract or fair abstract of a report of a Commissioner; or
  - (b) a fair and accurate report of proceedings before a Commissioner which were held in public.
- (2) A publication is to be taken to be in good faith for the information of the public if a person makes it without any ill-will or other improper motive towards the person defamed by the publication.

**217. *Notice to Council***

The Minister must give notice to a Council of the reasons for and the subject of an inquiry into that Council.

**218. *Outcome of inquiry***

- (1) If the Minister has received the report of a Commissioner of an inquiry into a Council and considers that—

*Local Government Act 1989*  
*Act No. 11/1989*

- (a) the matter should be referred to the Council; or
  - (b) any action should and may be taken to rectify, mitigate or alter the effects of a Council's action or omission which was a subject of the inquiry; or
  - (c) a Council's action or omission which was a subject of the inquiry was a common practice which should be stopped or changed; or
  - (d) a Council's action or omission occurred on the basis of or in accordance with a local law of the Council, which should be reconsidered; or
  - (e) the Council should give reasons for an action or omission by it; or
  - (f) any other steps should be taken—
- the Minister may report to the Mayor of the Council and make any recommendations which the Minister thinks fit.
- (2) The Minister may request the Mayor to notify the Minister, within a specified period, of any steps taken or proposed to give effect to the recommendations of the Minister.
  - (3) If—
    - (a) the Minister is not satisfied with the steps taken or proposed; or
    - (b) no steps have been taken—sub-section (4) applies.
  - (4) Until the Minister is satisfied with the steps taken to give effect to the Minister's recommendation—
    - (a) the Treasurer may by order in writing refuse to pay part or all of any money payable or which will become payable to the Council out of the Consolidated Fund or for fees, fines or penalties; or
    - (b) the Minister may authorise any person or may himself or herself take steps to give effect to the recommendation, and in doing so, may enter upon any land and do anything else the Minister considers necessary to carry out those steps.
  - (5) This section—

*Local Government Act 1989*  
*Act No. 11/1989*

- (a) must be construed in addition to the powers of the Governor in Council, Treasurer and Minister; and
- (b) does not prejudice any proceeding or remedy against or liability of the Council.



**SURF COAST SHIRE COUNCIL**

**Commission of Inquiry**

**Persons appearing before the Commission at the public hearings**

**11 December 2002**

Mr Michael Ulbrick  
Councillor Beth Davidson  
Mr Peter Blamey  
Mr Mike Barrow

**12 December 2002**

Mr Peter Anderson  
Mr Henry Love  
Councillor Julie Hansen

**13 December 2002**

Mr Stan Naylor – Stockford Limited  
Ms Elizabeth Reeves  
Councillor Kingsley Love  
Councillor Nelson English  
Mr Hugh Moore  
Ms Toni McCormack

**16 December 2002**

Mr Bruce Dupe  
Ms Marea Maguire – Save Our Surf Coast

Mr Brian Bullock

Mr John Harris – Australian Services Union

Mr Tim Kottek – Torquay Commerce and Tourism

Mrs Juliet English

Mr Brett Young

Mr Roger Summers

**18 December 2002**

Mrs Carol Kuiper

Mr Ray Gully – Surf Coast Ratepayers' Association

**COMMISSION OF INQUIRY INTO SURF COAST SHIRE COUNCIL**  
**A GUIDE TO WITNESSES APPEARING BEFORE THE COMMISSION**

**Introduction**

A Commission of Inquiry into the Surf Coast Shire Council has been established by the Minister for Local Government, the Hon. Bob Cameron MP, pursuant to the provisions of Section 209 of the Local Government Act 1989.

The Commission will examine, report and make recommendations on the following matters:

- The Surf Coast's financial situation and in particular, the implications of the decisions of successive Councils and whether the Council is able to provide its community with the levels of service and infrastructure that will be required in the future;
- Any other matters relevant to the viability and sustainability of the Surf Coast Shire Council; and
- Any other issues which may arise as a result of this Inquiry, or arising out of the report of the Inspector of Municipal Administration, Mr Merv Whelan.

The Commission has been established for four months from 1 November 2002, or until such later date as approved by the Minister for Local Government.

The first three days of the hearings will be allocated to parties specifically requested to appear before the Commission.

The following Guide has been prepared to assist those appearing.

In preparing this Guide the Commission has taken into account the provisions of the *Local Government Act 1989*, the Commission's Terms of Reference, the principles contained in the Planning Panels Victoria Member's Manual and general common law principles of fairness and natural justice.

**Conduct of Hearings**

The Local Government Act enables the Commission to hold some of its proceedings in private, if the Commissioner considers that it is in the public interest.

The Commission is not able to conduct all of its proceedings in private.

The inquiries made through both private and public processes are designed to assist the Commission in gathering as much information as possible to ensure that it properly and thoroughly addresses the Terms of Reference.

The Hearings will be held at the Surf Coast Shire Council Chambers, 25 Grossmans Road, Torquay on Wednesday, 11 December, Thursday 12 December, Friday 13 December and for general members of the public on Monday 16 December and Wednesday 18 December.

Specific times have been established for witnesses appearing on the first three days and witnesses have already been notified.

The Commission recognises that those involved in the hearings have other commitments, and therefore every endeavour will be made to ensure the timetable is adhered to as far as possible.

In some circumstances, however, additional time may be required necessitating adjustments to the timetable. The Commission reserves the right to make these adjustments.

### **Representation**

The *Local Government Act* allows those appearing before the Commission to be represented by another person, subject to approval of the Commissioner. A person representing a witness may also examine any other witness and otherwise address the Commission on behalf of the witness being represented. Any person intending to make any such arrangements should notify the Commissioner in writing prior to the commencement of the Hearing.

The Commission, in addressing the Terms of Reference, will be assisted at the first three days of the hearings by legal Counsel, Mr. David Batt, and supported on a day to day basis by Ms. Helen Proctor.

Legal Counsel will not be present during both the two days allocated for the general public or private discussions. The Commissioner will generally be supported by Ms. Proctor for these discussions.

### **Principles of Fairness and Natural Justice**

The following principles will be observed during the conduct of the Hearings to ensure that the requirements of natural justice and fairness are satisfied:

- The Commission will respect the right of witnesses to indicate that matters raised by the Commission may in some circumstances be of a confidential nature and would therefore be more appropriately considered in a closed hearing. The Commission will decide these matters as it sees fit;



- All witnesses will be given the same access and treatment throughout the hearing process;
- The Commission understands that it has an obligation to act fairly and impartially in its treatment of witnesses at all times;
- The Commission also understands its obligation to act in good faith and without bias;
- The procedures of the Commission will be applied consistently so as to prevent any actual or perceived discrimination; and
- Witnesses and others appearing before the Commission shall have an opportunity to adequately put before the Commission all matters that are relevant to the Terms of Reference.

### **Conduct of Public Hearings**

Public hearings will be conducted in a manner designed to ensure that all participants are treated with respect. The Commission will endeavour to ensure that:

- Hearings will be conducted in an orderly and structured way;
- No witness should feel inhibited or intimidated when addressing the Commission;
- The hearing will be conducted in a relatively informal atmosphere, while at the same time recognising the significance of the role of the Commission; and
- There are no interjections to a witnesses' evidence or submission.

### **What to do on arriving at the Commission**

Witnesses should arrive approximately 10 minutes prior to the designated hearing time. Seats will be reserved for witnesses and any person speaking on their behalf.

At the conclusion of each session the next witness will be called forward by the Commissioner.

The proceedings do not require the taking of the Oath/Affirmation as they do not carry the same requirements as for a court hearing.

The layout of the Chamber will involve sitting at a table before the Commission.

### **Recording of Proceedings**

Proceedings will not be recorded by the Commission, nor will other persons be permitted to bring any form of recording device to the hearings.

The Commission will have notes taken throughout the hearings and these will be used solely for the purpose of conducting the investigation.

**Terry Maher**  
**Commissioner**  
**2 December 2002**

**SURF COAST SHIRE COUNCIL**

**Commission of Inquiry**

**Written submissions to the Inquiry**

Torquay Improvement Association

B & J C Bullock

Mr B J Dupe

Mr Colin and Mrs Barbara Hill

Mr Clement J Walters

Mr J L Tutt

Mr J Caldow

Mr Peter W J Garfirth

Mr B Stanway

Mr B L Young

Surf Coast Ratepayers' Association Inc

Torquay Commerce and Tourism Inc

Save Our Surf Coast

Mrs J English

Mr L Baker

The Lorne Working Party

Rural Ratepayers

Winchelsea and District Tourism and Traders Association Inc

Councillor Nelson English (including a supplementary submission)

Ms M Maguire

Mr John & Elrae Adams

H G & E E Rickey

Mrs C Baker

Surf Coast Shire Council

W M & E J Johnson

Councillor John Foss

Mr J Crimmens

Mr G Sloman

Mr J O'Brien

Mr E.B. Gregory

Minter Ellison, Lawyers

Airey's Inlet Tourism

**SURF COAST SHIRE  
5 YEAR FINANCIAL PLAN ASSUMPTIONS**

Appendix 5

DETAILS	Budget 2002/03	Forecast 2002/03	Plan 2003/04	Plan 2004/05	Plan 2005/06	Plan 2006/07	Plan 2007/08
<b>REVENUE ASSUMPTIONS</b>							
<u>PERCENTAGE CHANGE FROM PREVIOUS YEAR</u>							
Rates			3.0%	3.0%	4.0%	4.0%	3.0%
Fees & Charges			3.0%	3.0%	3.0%	3.0%	3.0%
Government Grants			2.0%	2.0%	2.0%	2.0%	2.0%
Grants Commission - Local Roads			5.0%	3.0%	3.0%	3.0%	3.0%
Grants Commission - General Allocation			0.0%	0.0%	0.0%	0.0%	0.0%
Contributions & Recoups			3.0%	3.0%	3.0%	3.0%	3.0%
Other			3.0%	3.0%	3.0%	3.0%	3.0%
<u>PERCENTAGE VALUE EACH YEAR</u>							
Interest on Investments			4.0%	4.5%	4.5%	5.0%	5.0%
<u>DOLLAR VALUE FOR EACH YEAR</u>							
Supplementary Rates	180,000	330,000	330,000	330,000	330,000	330,000	330,000
Interest on Rates		45,000	50,000	52,000	55,000	57,000	60,000
Increased Garbage Charges - Service Change			241,300				
Subdividers Contributions - Open Space		150,000	100,000	100,000	100,000	80,000	80,000
Subdividers Contributions - Drainage		40,000	40,000	40,000	40,000	30,000	30,000
Developer Contributions			20,000	20,000	20,000	20,000	20,000
Contributions - New Works (Car Parks, F/Paths)			40,000	40,000	40,000	40,000	40,000
Granted Assets - Roads & Other Structures			200,000	200,000	200,000	200,000	200,000
Granted Assets - Drainage Systems			150,000	150,000	150,000	150,000	150,000
Special Projects Funding	480,462	480,462	300,000	300,000	300,000	300,000	300,000
<b>EXPENDITURE ASSUMPTIONS</b>							
<u>PERCENTAGE CHANGE FROM PREVIOUS YEAR</u>							
Employee Costs			2.0%	2.0%	4.0%	4.0%	3.0%
Plant Hire			4.0%	4.0%	4.0%	4.0%	4.0%
Materials and Contracts - General			3.0%	3.0%	3.0%	3.0%	3.0%
Materials and Contracts - Construction			4.0%	4.0%	4.0%	4.0%	4.0%
Interest on Overdraft/Fees			-3.0%	-3.0%	-3.0%	-3.0%	-3.0%
Other			3.0%	3.0%	3.0%	3.0%	3.0%
<u>INCREASED SERVICE COSTS - ALL EXPENDITURE</u>							
Growth Factor			1.0%	1.0%	1.0%	1.0%	1.0%
<u>PERCENTAGE VALUE EACH YEAR</u>							
Interest Cost on Borrowings		5.69%	6.0%	6.5%	6.5%	7.0%	7.0%
<u>DOLLAR VALUE FOR EACH YEAR</u>							
Additional Principal Repayments							
Transfer to Plant Replacement Reserve	400,000	400,000	120,000	120,000	120,000	120,000	120,000
Provision for Redundancies/Future Savings			270,000	-80,000	-85,000	-90,000	-95,000
Allocation to Special Projects	1,745,738	1,745,738	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
<u>Depreciation Rates:</u>							
Buildings		2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Plant & Equipment		10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
Road Pavements & Other Structures		1.8%	1.8%	1.8%	1.8%	1.8%	1.8%
Drainage Systems		1.25%	1.25%	1.25%	1.25%	1.25%	1.25%
Passive Recreation Facilities		5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Street Furniture		5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Furniture & Equipment		10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
Leased Assets		20.0%	20.0%	20.0%	0.8%		
<b>OTHER ITEMS</b>							
<u>Capital Expenditure</u>							
Land	0	0	0	0	0	0	0
Buildings	423,000	423,000	400,000	460,000	530,000	595,000	595,000
Plant & Equipment	400,000	400,000	910,000	910,000	910,000	910,000	910,000
Road Pavements and Other Structures	2,244,000	2,244,000	1,600,000	1,950,000	2,220,000	2,485,000	2,485,000
Drainage Systems	94,000	94,000	580,000	620,000	710,000	810,000	810,000

**SURF COAST SHIRE  
5 YEAR FINANCIAL PLAN ASSUMPTIONS**

Appendix 5

DETAILS	Budget 2002/03	Forecast 2002/03	Plan 2003/04	Plan 2004/05	Plan 2005/06	Plan 2006/07	Plan 2007/08
Passive Recreation Facilities	178,000	178,000	170,000	200,000	250,000	290,000	290,000
Street Furniture	10,000	10,000	25,000	25,000	25,000	25,000	25,000
Furniture & Equipment	0	0	215,000	135,000	155,000	85,000	385,000
Developed Land	0	0	0	0	0	0	0
<b>Total</b>	<b>3,349,000</b>	<b>3,349,000</b>	<b>3,900,000</b>	<b>4,300,000</b>	<b>4,800,000</b>	<b>5,200,000</b>	<b>5,500,000</b>
<b><u>Capital Expenditure Funding</u></b>							
General Revenue	868,000	868,000	1,436,000	1,676,000	1,976,000	2,216,000	2,396,000
Loan Funds	500,000	500,000	0	0	0	0	0
State / Federal Allocations	886,000	886,000	1,024,000	1,134,000	1,284,000	1,394,000	1,514,000
Local Contributions	0	0	210,000	240,000	270,000	300,000	300,000
Special Rate	695,000	695,000	140,000	160,000	180,000	200,000	200,000
Council Reserves	0	0	685,000	685,000	685,000	685,000	685,000
Plant Sales	400,000	400,000	405,000	405,000	405,000	405,000	405,000
Other Funding	1,981,000	1,981,000	2,464,000	2,624,000	2,824,000	2,984,000	3,104,000
<b>Total</b>	<b>3,349,000</b>	<b>3,349,000</b>	<b>3,900,000</b>	<b>4,300,000</b>	<b>4,800,000</b>	<b>5,200,000</b>	<b>5,500,000</b>
<b><u>Borrowings</u></b>							
Opening Balance	9,239,704	9,239,704	8,998,527	8,154,407	7,221,137	6,231,445	5,181,921
New Loans	500,000	500,000	0	0	0	0	0
Payment of Principal	-746,011	-741,177	-844,119	-933,271	-989,692	-1,049,523	-1,110,394
Closing Balance	8,993,693	8,998,527	8,154,407	7,221,137	6,231,445	5,181,921	4,071,528
<b><u>Borrowings Split</u></b>							
Current Liabilities (= Principal Payments)	746,011	844,119	933,271	989,692	1,049,523	1,110,394	903,718
Non-Current Liabilities	8,247,682	8,154,407	7,221,137	6,231,445	5,181,921	4,071,528	3,167,810
	8,993,693	8,998,527	8,154,407	7,221,137	6,231,445	5,181,921	4,071,528
<b><u>Interest &amp; Principal Repayments</u></b>							
Interest Payments	639,542	582,335	533,520	473,784	417,363	357,532	294,769
Principal Payments	746,011	741,177	844,119	933,271	989,692	1,049,523	1,110,394
	1,385,553	1,323,513	1,377,639	1,407,055	1,407,055	1,407,055	1,405,163
<b><u>Written Down Value of Assets Sold</u></b>							
Plant & Equipment (at cost)	500,000	650,000	700,000	700,000	700,000	700,000	700,000
Accumulated Depreciation on P. & E. Buildings	-100,000	-260,000	-280,000	-280,000	-280,000	-280,000	-280,000
Council Land/Reserves							
Furniture & Equipment (at cost)			250,000	250,000	250,000	250,000	250,000
Accumulated Depreciation on F. & E.			-225,000	-225,000	-225,000	-225,000	-225,000
Developed Land (held for resale)	700,000	700,000	0	250,000	250,000	0	0
	1,100,000	1,090,000	445,000	695,000	695,000	445,000	445,000
<b><u>Sale of Assets</u></b>							
Plant & Equipment	400,000	400,000	405,000	405,000	405,000	405,000	405,000
Buildings							
Council Land/Reserves							
Furniture & Equipment			10,000	10,000	10,000	10,000	10,000
Developed Land (held for resale)	700,000	700,000	0	250,000	250,000	0	0
	1,100,000	1,100,000	415,000	665,000	665,000	415,000	415,000
<b><u>Changes in other Assets and Liabilities</u></b>							
<b><u>\$ Change from previous year</u></b>							
<b><u>Current Assets</u></b>							
Current Investments		-734,809	5,000	5,000	5,000	-25,000	-25,000
Receivables		50,000	45,000	40,000	35,000	35,000	30,000
Stock		6,000	10,000	5,000	7,500	8,000	10,000
Other Current Assets		2,000	2,000	2,500	2,500	2,000	2,000
<b><u>Current Liabilities</u></b>							
Creditors		25,000	20,000	20,000	15,000	20,000	15,000
Provisions		-40,000	-20,000	-20,000	-25,000	-25,000	-30,000
Borrowings	237,186	335,294					
Finance Leases	-310,341	-310,341	-18,355	-30,327	-18,858	-17,251	-42,094
<b><u>Non-Current Assets</u></b>							

**SURF COAST SHIRE  
5 YEAR FINANCIAL PLAN ASSUMPTIONS**

Appendix 5

DETAILS	Budget 2002/03	Forecast 2002/03	Plan 2003/04	Plan 2004/05	Plan 2005/06	Plan 2006/07	Plan 2007/08
Investments							
Receivables							
<b><u>Non-Current Liabilities</u></b>							
Provisions	-60,000	-60,000	25,000	25,000	25,000	25,000	25,000
Borrowings	-237,186	-335,294					
Finance Leases	-182,480	-182,480	-108,529	-78,203	-59,345	-42,094	-18
<b><u>Reserves</u></b>							
Asset Revaluation Reserves	11,894,151	11,894,151	11,894,151	11,894,151	11,894,151	11,894,151	11,894,151
<b>Other Reserves (Summary)</b>							
Opening Balance	1,473,966	1,473,966	1,663,966	1,643,966	1,623,966	1,603,966	1,553,966
From Reserves	-400,000	-400,000	-685,000	-685,000	-685,000	-685,000	-685,000
To Reserves (contributions and sale proceeds)	400,000	590,000	665,000	665,000	665,000	635,000	635,000
Closing Balance	1,473,966	1,663,966	1,643,966	1,623,966	1,603,966	1,553,966	1,503,966
<b>Total Reserves</b>	<b>13,368,117</b>	<b>13,558,117</b>	<b>13,538,117</b>	<b>13,518,117</b>	<b>13,498,117</b>	<b>13,448,117</b>	<b>13,398,117</b>
<b><u>Other Reserves</u></b>							
<b><u>Non-Discretionary:</u></b>							
<b>1 Resort &amp; Rec. Land Purchase Reserve</b>							
Opening Balance	390,687	390,687	540,687	514,687	488,687	462,687	416,687
Transfers from Reserve	0		-126,000	-126,000	-126,000	-126,000	-126,000
Transfers to Reserve	0	150,000	100,000	100,000	100,000	80,000	80,000
Closing Balance	390,687	540,687	514,687	488,687	462,687	416,687	370,687
<b>2 Main Drains Reserve</b>							
Opening Balance	150,682	150,682	190,682	176,682	162,682	148,682	124,682
Transfers from Reserve	0	0	-54,000	-54,000	-54,000	-54,000	-54,000
Transfers to Reserve	0	40,000	40,000	40,000	40,000	30,000	30,000
Closing Balance	150,682	190,682	176,682	162,682	148,682	124,682	100,682
<b>3 Aireys Inlet Units - Future Works Reserve</b>							
Opening Balance	187,420	187,420	187,420	187,420	187,420	187,420	187,420
Transfers from Reserve	0						
Transfers to Reserve	0						
Closing Balance	187,420	187,420	187,420	187,420	187,420	187,420	187,420
<b><u>Discretionary:</u></b>							
<b>1 Plant Replacement Reserve</b>							
Opening Balance	391,421	391,421	391,421	411,421	431,421	451,421	471,421
Transfers from Reserve	-400,000	-400,000	-505,000	-505,000	-505,000	-505,000	-505,000
Transfers to Reserve	400,000	400,000	525,000	525,000	525,000	525,000	525,000
Closing Balance	391,421	391,421	411,421	431,421	451,421	471,421	491,421
<b>2 Mayoral Charity Fund Reserve</b>							
Opening Balance	14,604	14,604	14,604	14,604	14,604	14,604	14,604
Transfers from Reserve	0						
Transfers to Reserve	0						
Closing Balance	14,604	14,604	14,604	14,604	14,604	14,604	14,604
<b>3 Tourism Charge Infrastructure Reserve</b>							
Opening Balance	339,152	339,152	339,152	339,152	339,152	339,152	339,152
Transfers from Reserve	0						
Transfers to Reserve	0						
Closing Balance	339,152	339,152	339,152	339,152	339,152	339,152	339,152