

Illawarra Community & Environment Connection

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Submission to the Shellharbour City Council Public Inquiry 2008

TERMS OF REFERENCE TO THE SHELLHARBOUR CITY COUNCIL PUBLIC INQUIRY

1. *To inquire, report, and provide recommendations to the Minister for Local Government as to whether all civic offices at Shellharbour City Council should be declared vacant.*
2. *The inquiry will have particular regard to*
 - a) *The conduct of elected representatives of council (whether individually or collectively as the governing body of council) including their relationships with senior and other staff of council.*
 - b) *Whether the elected representatives fully understand their roles and responsibilities and have adequately, appropriately, and reasonably carried out their roles and responsibilities in the best interest of all ratepayers and residents.*
 - c) *Any other matters that warrant mention, particularly when it may impact on the effective administration of the council area.*

1. Introduction

The Illawarra Community Environment Connection (ICEC) is a loose coalition of environment and community groups within the Illawarra. Our aim is to provide a joint voice towards developments and issues which affect the environmental and community health of the Illawarra. We wish to see improvements in public participation and environmental protection at all levels of government.

We thank you for the opportunity to provide our ideas and experience in the effort to improve the operations of Shellharbour City Council.

A public meeting organised for ICEC on 21st April 2008, to discuss the Public Inquiry into Shellharbour City Council, resolved:

- *That an inquiry continues to be held into the corporate section (General Manager and staff) of council and not just its councillors.*
- *That the inquiry include concerns over relationships/ dealings with developers and State MPs.*

- *That long term recommendations are made to rectify any problems that have arisen and may arise into the future.*

The meeting indicated community concerns over actions by Shellharbour Council's corporate section as well as Labour Party councillors being involved in caucusing. It was felt that councillors were placing more importance on their party than on the well being of the community. The issue over whether or not council should be sacked was left until the next ICEC meeting.

2. Some relevant legislation

Under the Local Government Act 1993 (the Act), the role of the governing body (Shellharbour City Council) is to "direct and control the affairs of the Council in accordance with this Act".

SECTION 7 OF THE ACT

7. *The purposes of this Act are as follows:*

(a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales,

(b) to regulate the relationships between the people and bodies comprising the system of local government in New South Wales,

(c) to encourage and assist the effective participation of local communities in the affairs of local government,

(d) to give councils:

- *the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public*
- *the responsibility for administering some regulatory systems under this Act*
- *a role in the management, improvement and development of the resources of their areas,*

(e) to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities.

ICEC assessment

ICEC believes that Council have been woeful in promoting 7c of the Act, and may have worked against this purpose. We also believe that Council has not had regard to the principles of Ecologically Sustainable Development (7e) in many development decisions, and that appropriate environmental assessments have not been undertaken.

SECTION 8 OF THE ACT

8 *The council's charter*

(1) A council has the following charter:

- *to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively*
- *to exercise community leadership*
- *to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism*
- *to promote and to provide and plan for the needs of children*
- *to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development*
- *to have regard to the long term and cumulative effects of its decisions*

- *to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible*
- *to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government*
- *to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants*
- *to keep the local community and the State government (and through it, the wider community) informed about its activities*
- *to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected*
- *to be a responsible employer.*

(2) A council, in the exercise of its functions, must pursue its charter but nothing in the charter or this section gives rise to, or can be taken into account in, any civil cause of action.

ICEC assessment

ICEC believes that Council has shown major deficiencies with a number of elements in s.8.

- lack of genuine promotion of ecologically sustainable development;
- the lack of regard to long term cumulative effects of its decisions;
- the lack of real facilitation of involvement of councillors and members of the public in the development, improvement and co-ordination of local government;
- inability to keep the local community genuinely informed about activities within enough time;
- inconsistent actions and decisions;
- issues of perceived bias.

SHELLHARBOUR'S CODE OF CONDUCT

The Code of Conduct, at <http://www.shellharbour.nsw.gov.au/FileData/pdf/Code%20of%20Conduct%20POL-0014-V04.pdf>, includes obligations to:

- *Avoid behaviour that could constitute an act of disorder or misbehaviour*
- *Consider issues consistently, promptly and fairly.*
- *Take all relevant facts into consideration and regard merits of each case*
- *Must not harass, discriminate, or support others that do so.*
- *Avoid impropriety with development decisions*
- *No action that suggests preferential treatment.*
- *Any conflict of interest must be resolved.*

ICEC assessment

ICEC believes that Councillors have shown a lack of understanding of procedures and their roles. The Corporate section of Council also demonstrates some lack of understanding, with important information not being provided to councillors or the public prior to a vote being undertaken.

3. Lack of Genuine Public Participation

The Mayor of Shellharbour Council has expressed his belief that public participation is not a right but rather a privilege that council are not obliged to offer (http://www.laketimes.com.au/article/mayor_hits_out_at_greens).

However, ICEC believes that public participation in decisions which affect residents lives is a right. The local community has often been locked out of genuine public participation with Shellharbour Council. Meaningful participation should be 'transparent and provide an adequate say'.

Residents have experienced major obstacles in obtaining information from Council, with Council denying access to certain information. An example is the section 12 request for financial information regarding Wollongong Airport, <http://www.epaust.info/wacef/files/shellharbourcitycouncila.pdf>.

Some residents attempting to have a say in development issues have suffered public insult by Council and the Mayor, and had their credibility undermined. A dossier of community activists in the area has also been prepared by Council. These actions can be interpreted as an attempt to suppress public participation through intimidation.

There is a need for much greater transparency with Council documentation. An FOI request for correspondence from Council to the NSW Ombudsman, ICAC and the Department of Local Government regarding the airport was denied by Council, which argued it was exempt from FOI provisions since it dealt with a complaint. Council has also shown lack of proper referrals to relevant agencies for development proposals.

Genuine public participation should provide for fairness, accountability, and the pursuit of the community's well-being through being heard and allowing analysis through genuine debate. To allow for genuine participation the community needs to be informed of developments through appropriate notification processes. Council has a Notifications DCP that provides for notification through mail for properties 'whom in the opinion of council may be detrimentally affected by the development'. However, in relation to some developments, such as Wollongong Airport, Council have predominately notified only airport users on site, regardless of the fact that adjoining residential properties are in the unacceptable aircraft noise zone.

Council has restricted public participation in recent years, which has resulted in the further erosion of public participation. This was justified by the Mayor by blaming local activists for disrupting meetings. The time limit for public participation addresses to Council decreased from 5 minutes to three minutes, with no extension of time, and councillors are now no longer able to ask questions. The time for these addresses was changed to 5pm, which is less accessible for many people.

4. Some examples of Council mismanagement

ILLAWARRA REGIONAL STRATEGY

Shellharbour Council prepared a submission for the draft Illawarra Regional Strategy without providing an exhibition/submission period for the community beforehand. The submission advocated the weakening of protection for the Calderwood area, where we understand that some people involved with council (currently and in the past) own property.

WOLLONGONG AIRPORT

Genuine public participation has not been carried out for Wollongong Airport developments. These include the runway upgrade, the introduction of Qantaslink, learjet operations, HARS old noisy

aircraft that have circled over people's homes, helicopter joyflights and a 24-hour helicopter air ambulance service.

Helicopters have been allowed to operate from the airport without a designated helicopter landing site and helicopter joyflights were allowed by council without a required Environmental Protection Licence.

The one time aircraft operations were considered in the development application process (ex-military jet joyflights) the application had a flawed Statement of Environmental Effects (SEE). Despite residents' objections Council voted to continue its operations. This was done through amending the consent rather than undertaking a new process. Council have also avoided requiring Environmental Impact Statements (EISs) and their associated public participation procedures. No EIS occurred for helicopter joyflights even though a council document admitted that the threshold appeared to be exceeded.

Notification of the council meeting associated with significant developments (runway upgrade, Qantaslink) were placed in the user pays paper instead of the usual council section in the local free paper. The runway upgrade was misleadingly identified (whether intentionally or not) in its notice as maintenance and then flippantly described as various works.

Council continues to predominately only notify addresses at the airport and not those adjoining or surrounding it and or impacted by it, including residents in the unacceptable aircraft noise zone. A letter, however, was mailed to residents in defence of contents in a community pamphlet regarding the airport.

LAKE ILLAWARRA FORESHORE PATHWAY AT KOONA BAY

Far more residents opposed the option that council chose compared to those who supported it. Shellharbour Council did not choose a pathway option that would cause the least environmental impact.

Council discriminated against community pamphlets that opposed their recommended option from being in the vicinity of their information kiosk. Council allowed pamphlets in support of council's recommendation to remain near the tent and requested ones opposing it to relocate. This discrimination would have skewed the results of their survey.

SHELLHARBOUR MARINA

This long-running development proposal has undergone extensive modifications (argued by the community to result in a new proposal) since its initial approval many years ago. The most recent of a series of modifications should have been seen as a new proposal due to the extent of the changes.

The Commission of Inquiry into the Marina proposal is no longer relevant because of the major modifications since proposed by Council. The Commission of Inquiry also occurred at a time when global warming was not recognised so clearly. It is now unclear how these significant development differences, along with global warming and sea level rise, will impact on the environment and the development itself.

KILLALEA STATE PARK

Killalea State Park is under Shellharbour Council's jurisdiction. The allowable uses for Killalea State park changed to allow tourist facilities. No one can advise how, where and why this happened.

Although the change itself may seem minor, its impact is major. It will allow an open-space park with low-scale camping facilities to be transformed into an area with up to 202 dwellings and major facilities (gymnasiums, pools, function centres etc.), as in the present proposal.

LOT 100

The state government sector relayed concerns to council regarding its use of confidential sessions for the land known as Lot 100 in Oak Flats.

5. Recommendations

a) STRENGTHEN ENVIRONMENTAL ASSESSMENTS AND ARBITRATION

Under Part 4 and Part 5 of the Local Government Act, where it appears there is a strong case for the need for an EIS for development proposals, Councils still have the discretion to decide whether an EIS is required, based on their opinion of whether it will have a significant environmental impact. This is the case even if the development occurs on land owned, controlled, or operated by Council, and it is Council's own development proposal.

Even where less stringent environmental assessments (Statement of Environmental Effects) are prepared, proponents prepare their own. This has allowed woefully inadequate SEEs to be approved by council. A more objective approach is needed in undertaking environmental assessments to ensure they meet a minimum standard, and that a development may be rejected if it affects the well-being of the environment. For significant/controversial developments council should be required to undertake an EIS and where this does not occur a low cost appeal system should exist for appealing this, particularly where a perception of conflict of interest exists.

When deciding to reject/allow a proposal reasons and considerations should be outlined by the Minister/councillors in order to more adequately provide an insight into their consideration.

b) IHAPs

The Independent Hearing and Assessment Panels (IHAPs) recommended by ICAC for development proposals under specified circumstances may be helpful for the controversial developments before Shellharbour Council, particularly where Council itself may have a conflict of interest. These should occur on the basis of providing recommendations only.

c) WOLLONGONG COUNCIL'S PREVIOUS NEIGHBOURHOOD COMMITTEE SYSTEM

Wollongong City Council previously had Neighbourhood Committees throughout the city, supported by Council. This system should be introduced in Shellharbour to help with notification, debate, and councillor input towards development and other issues affecting residents. Even though the feeling is that these committees were unilaterally abolished by the ALP dominated Wollongong City Council in 2005, there is a strong lobby for their reintroduction, and some committees continue to meet. It should also be noted that at the Wollongong City Council Ordinary Meeting of 23 April, Wollongong Council Administrators resolved unanimously that Council:

- 1 Review the Community Engagement Framework and Policy and the Options Report and report back to Council on 24 June 2008.
- 2 Implement a revised range of Community Engagement Options until the review of the Engagement Framework, Policy and Options Report is complete.

d) AN ARBITRATION SYSTEM ACCESSIBLE TO THE COMMUNITY

An accessible independent arbitration system is needed to assist in discussing controversial developments. There is a need for planning experts to facilitate between residents, Council and developers, where there are controversial decisions or possible conflicts of interests.

e) RECORD COUNCIL VOTING AND REASONS

Shellharbour Council require community members to sign a document stating that they will address council as either opposed or supportive of a development.

Councillors voting should also be recorded. Councillors should also explain their reasons for voting the way they did.

Council meetings should also be taped.

f) COUNCILLORS TO UNDERTAKE EDUCATION COURSES THAT INCLUDE PLANNING LAW

It can be frustrating providing addresses in public participation forums to Councillors who do not appear to understand planning law. This should be a basic for councillors and council staff deliberating over developments in accordance with its rules.

g) E-PLANNING FOR THE COMMUNITY

If an on-line application process can be provided for development applicants, then it should also be provided for the general community. It should include information on how to object to a development, facilities to submit objections to DAs, as well as request and obtain information. Councils should place all DA files on their web-sites, along with application forms that include s.12 forms (request for documents) that can be filled in on-line.

Adequate and identifiable descriptions are needed for Council agendas. Agenda information needs to be placed on the internet well before the Council meeting date. Council currently uploads the agenda on the Friday, for a Tuesday council meeting – we recommend that agenda papers are provided at least one week prior to the meeting.

h) CURRENT PLANNING REFORM PROPOSALS

Shellharbour Council has been used, in the current Planning Reform discussion paper (Improving the NSW Planning System, http://www.planning.nsw.gov.au/planning_reforms/index.asp), as an example of a council which has already attained between 30-50% quota for complying development.

ICEC believes that this has been achieved through the sacrifice of meaningful community input, loss of transparency and accountability, and proper consideration for environment impact.

We also understand that there have been very few challenges to Council through the Land and Environment Court, indicating a propensity to decide in favour of developers rather than taking a balanced approach to development proposals.

We recommend that, along with improved public participation, the development process and LEPs need to be simplified. Simplification could occur through greater education and notification not just for applicants but also potential objectors. We also want to see the end of spot rezonings.

i) CUMULATIVE IMPACT

ICEC believes that Shellharbour Council's decision-making processes do not take account of the long-term or cumulative impacts of development decisions, as required under Section 8 of the Act. The cumulative impact of every development proposal needs to be assessed before approval is given.

This would entail forward-planning, and in-depth assessment based on site constraints, to set upper limits to any type of development in an area.

j) COMBAT CAUCASING

ICEC hopes that the caucusing that has been occurring at Shellharbour Council can be combated.

k) COMBAT INEQUITY

ICEC hopes that community feeling of inequity and council dominance over residents, that has been occurring at Shellharbour Council, can be rectified.

6. Conclusion

We thank you again for this opportunity, and hope that the Inquiry leads towards much-needed improvements in Council governance, respectful relationships between Council and the community and strengthened public consultation practices and environmental protection.

For more information, contact:

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