



Report of the

**Controller and
Auditor-General**

Tumuaki o te Mana Arotake

on

**Thames Coromandel
District Council:
Asset Registers
and Other Matters**

July 2001

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Foreword

This report contains our findings regarding a complaint made to the Audit Office by the Concerned Citizens of the Coromandel Peninsula (CCC) about certain actions of the Thames Coromandel District Council (the Council).

Although the complaint raised over 50 issues, our report addresses only those issues that we considered to be of most significance. These relate mainly to the process followed by the Council in preparing asset registers, plus nine other issues.

There is no doubt that the Council made errors in the preparation of its asset registers. In this regard, the Council is little different from many other local authorities that have also struggled to produce accurate asset registers.

In parts of the Coromandel, the debate over the accuracy of the registers has been complicated by CCC's insistence that the asset registers have been deliberately overstated so as to increase rating levels. We do not believe this was ever the Council's intention. However, because of the acrimonious nature of the debate, the relationship between the Council and the groups represented by CCC now appears to have completely broken down. This is unfortunate, as the ratepayer groups have sincerely held views and have a valid and useful contribution to make to local issues such as the valuation of assets.

In our view, there needs to be a continuing exchange of views and ideas between the Council and the groups represented by CCC. We are willing to play a part in assisting in any way we can to establish such discussions.

K B Brady
Deputy Controller and Auditor-General

27 July 2001

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1 – Summary

- 101 This report is of our investigation into a complaint from the Concerned Citizens of the Coromandel Communities (CCC) about the Thames Coromandel District Council (TCDC). CCC is a grouping of individuals, ratepayer associations and other organisations, who are concerned primarily with the management of TCDC’s assets. Because of the seriousness of the allegations made by CCC we decided to investigate.
- 102 CCC’s complaint covered a range of issues. We decided to investigate and report on only those issues that we considered to be of most significance.
- 103 The focus of the matters complained about is the work carried out by TCDC in preparing asset registers. CCC complained about errors in the asset registers – in particular, the overstatement of the value of assets, which could result in a potential increase in TCDC’s rating revenue.
- 104 We found no evidence to support any wrongdoing by TCDC or its staff. The errors that have been made were not in our view part of any attempt to conceal matters from ratepayers. In particular, there is no evidence to suggest that TCDC intended the asset registers to contain errors or anomalies in order to increase rating revenues.
- 105 There is no doubt that the original asset registers contained some errors and anomalies. This is a problem that is not peculiar to TCDC. Other local authorities have experienced similar problems.
- 106 Some of the issues under dispute have been corrected by TCDC. In other cases, TCDC has not accepted that errors have been made, as the matters in dispute concern generally accepted asset valuation procedures being used throughout the local government sector. In many cases, there are no “right” answers to the various valuation issues, and local authorities must exercise judgement as to what they consider to be a reasonable approach to their individual assets. In such cases, we support the views of other independent authorities that the TCDC position is a reasonable one.
- 107 TCDC set up a working party involving ratepayer representatives to assist in identifying any errors and to resolve differences in opinion. Ratepayer groups have local knowledge about the assets in their areas and have been a valuable source of information about the assets. A helpful approach would be for the ratepayer groups to continue to work with TCDC to improve the accuracy of the asset registers.

2 – Asset Registers

Accuracy of Asset Management Plans

201 CCC allege that there are large numbers of errors in the asset registers that will result in over-valuing assets. They are concerned that the over-valued assets will result in higher rates, and that many people in the area will not be able to afford the higher rates.

202 The background to this issue is that section 122c of the Local Government Act 1974 requires local authorities to demonstrate prudent financial management. In order to do so, local authorities need to prepare comprehensive Asset Management Plans for key infrastructural assets (such as water supply systems and wastewater systems).

203 As noted in our *Second Report for 1999* (parliamentary paper B.29[99b] at paragraph 2.003), the purpose of Asset Management Plans is to:

... provide key information necessary for inclusion in the long-term financial strategy (which is required by section 122k [of the Act]), and result in sufficient information to effectively manage the assets. Asset management plans also enable local authorities to reliably assess future funding needs.

204 Local authorities are also required to provide for the depreciation of assets, including infrastructural assets.

205 In its Draft Annual Plan for the 1999/2000 year at page 59, TCDC explained its approach to funding depreciation as follows:

... the Local Government Amendment (No. 3) Act 1996, requires council to fund (i.e. rate for) decline, or loss, in service potential from 1 July 1999. This provision has placed a huge responsibility on council. While efforts have been made over recent years to fund the replacement of parts of the infrastructure, the asset management plans have indicated that, in some instances, a higher level of funding is required.

... In this annual plan, decline in service potential is proposed to be fully funded in compliance with the law.

206 We have always recognised that the preparation of accurate Asset Management Plans would pose difficulties for local authorities. Our 1999 report (see paragraph 2.006) reviewed the experiences of nine local authorities in preparing Asset Management Plans. We identified the key challenges as:

- ◆ *Identifying all asset components within the infrastructure network.*
- ◆ *Ascertaining the age and condition of the components.*
- ◆ *Assessing the remaining useful life of existing asset components.*
- ◆ *Determining the valuation of assets for inclusion in the financial records.*
- ◆ *Calculating the amount of decline in service potential (depreciation) for the financial period.*
- ◆ *Linking the underlying data to asset management plans, and linking the asset management plan information to the financial records and thus to the financial statements.*

207 TCDC has experienced similar difficulties in preparing Asset Management Plans. The accuracy of its Plans has been a major source of contention and forms a large part of the complaint.

208 TCDC has described the initial Asset Management Plans that it compiled as “Basic Asset Management Plans”. Those Plans were based on available information, which TCDC recognised was not complete. TCDC intends to improve the accuracy of the registers as more information about infrastructural assets is gained.

209 TCDC has a three-year programme, expected to cost \$1.9 million, to develop the current Basic Asset Management Plans through to being Advanced Asset Management Plans. The programme includes the implementation of a computerised asset management system to allow TCDC to effectively manage the information held about TCDC’s assets.

210 The valuation of assets, and the need to ensure that sufficient funds are set aside to provide for depreciation (or *decline in service potential*), has an impact on the rates that are levied. Hence, there is a high level of community interest in the Asset Management Plans. Ratepayers have reviewed the Plans and have identified anomalies and errors.

211 For example, ratepayers identified the fact that a building had been double-counted. This error arose when the asset was broken down into its components and the original asset was not deleted from the asset register. TCDC has since corrected this mistake. The ratepayers also identified the need to provide more detailed descriptions. A cause of confusion to ratepayers was the practice of valuing a number of components within one asset item so that it was not clear what was included in the asset item.

- 212 In December 1998 TCDC identified the need to further identify individual components. Assets were broken down into components to meet the needs of the first Asset Management Plans. TCDC intended to improve on these plans in later updates.
- 213 TCDC has acknowledged the need to do more work to improve the descriptions of individual assets. However, it is also TCDC's position that the asset descriptions being used were set up for accounting and engineering management purposes. The original intention was for asset registers and Asset Management Plans to be used as internal documents by staff working in this area. They were never intended to be part of a public consultation exercise.
- 214 However, as the community is validly interested in the Asset Management Plans, the plans have become public documents. The possibility of this occurring should be taken into account by all local authorities when preparing such plans. Our view is that local authorities should consider presenting these plans in a way which is more readable for the general public.

Council Consultation

- 215 It is clear that CCC and TCDC differ in their approaches to the valuation of assets. In order to try and reconcile the differences and discuss other issues to do with asset registers, the Mayor and an outside consultant met with ratepayer representatives from Hahei and Matarangi. Staff from Montgomery Watson, who prepared the revised asset registers, also attended these meetings. The areas of concern identified at the meetings included:
- ◆ accuracy of inventory records – including components, quantities, dimensions, and materials; and
 - ◆ valuation of assets, – including base lives, age of assets, and installation costs.
- 216 The process involved an on-site examination of the assets, and included a line-by-line review of items in the asset registers. Components, quantities, material, installation dates, condition rating, and base lives were all matters covered by the review.
- 217 TCDC saw these meetings as useful in identifying anomalies in the registers, as they provided local information that allowed the agreed issues to be addressed. There are, however, a number of areas in which CCC continue to have a different point of view to TCDC. Some of the main areas of difference are set out in paragraphs 218-247 following.

Stormwater Pond, Hahei

- 218 CCC expressed concern about the cost of a stormwater pond that was listed at \$350,000 in the wastewater asset register. CCC's view was that the actual cost of the pond was \$33,000.
- 219 CCC told us that they had unsuccessfully tried to convince TCDC to change the valuation of the pond to reflect their view of its value.
- 220 The original line item in the register for the stormwater pond included construction of the "slow rate irrigation" area and associated works. The other components included in this item were:
- ◆ overflow disposal trench;
 - ◆ pump station – including building, wet well, pumps and pipe work;
 - ◆ grassing of slow rate irrigation area; and
 - ◆ outlet pipework and fittings.
- 221 As mentioned earlier, one of the initial problems with the way in which asset registers were presented was the amalgamation of a number of component parts into one item. Including a number of components in the one item gave the appearance of greatly overstating the value of that item. In the case of the stormwater pond, these items have now been separated into component parts in the register.
- 222 A local ratepayer, who originally built the wastewater scheme at Hahei, was able to retrieve the original "as-built" drawings for the stormwater pond. It was then possible to accurately calculate the earthwork volumes. The stormwater pond is now recorded at a value of \$31,000.
- 223 We are concerned that there was such a significant difference between the original valuation and the amended valuation. We accept that there were various components in the original line item for the stormwater pond which have since been taken out. However, there is still a large difference between the original valuation and the new valuation, which raises a concern that other stormwater ponds may be overvalued.

Recommendation

- 224 TCDC needs to consider methods that might be used to check the unit rates attributed to stormwater ponds and other earth structures to ensure that they are correctly valued.

Matarangi Water and Wastewater Scheme

- 225 CCC stated that Stage 14 of the Matarangi water and wastewater scheme was built for a contract cost of \$353,207. However, when broken down into component parts and priced by CCC according to TCDC unit prices, the total replacement price is claimed by CCC to be \$573,278.
- 226 The scheme has been vested in TCDC by the developer. The Matarangi Asset Register for 1998 lists the value of the water and wastewater scheme as \$353,208. Under the recently released Financial Reporting Standard No. 3 – *Accounting for Property, Plant and Equipment (FRS-3)*, revaluations of assets will be required to be carried out at least every five years or when there is a material difference (at a component level) between the book value of an asset and its fair value.
- 227 It is industry best practice, and now a requirement of FRS-3, that vested assets should be revalued at “in-the-ground” component level valuation at the time of vesting the asset. Hence, industry best practice would suggest that the valuation for the Matarangi water and wastewater assets should in fact have been first recorded at the total replacement cost. The replacement cost calculation made by CCC, using TCDC’s component valuations (which CCC regard as being overstated), was that the asset should be valued at \$573,278.
- 228 The current asset register lists the scheme at \$427,015. TCDC has advised that the next valuation will break the scheme into components and that these will be valued separately using updated rates. As indicated above, FRS-3 will require this revaluation to be completed in the 2001-02 financial year.
- 229 Assets are generally replaced by component. However, in the few circumstances where it is likely that assets will be replaced on a more global basis, the assets should in our view be valued on a total replacement basis (rather than by component).

Concrete Wave Bands

- 230 CCC noted that the concrete used in the wave bands in the treatment and oxidation ponds at Hahei has a unit price of \$1,000 per cubic metre. CCC’s view is that concrete should cost \$333 per cubic metre to frame, pour and finish. There is concern that the difference between these two prices may significantly and adversely affect all capital works projects and capital valuations throughout the district.

231 TCDC's consultants provided the following details on how a cubic metre of concrete is priced:

	\$
Excavate and trim	60
Formwork	160
Concrete	250
Reinforcing	170
Joints	90
Concrete finishing	55
Sampling & testing	95
10% site supervision	88

232 This comes to a total of \$968, which is rounded to \$1,000 in the register and is a higher figure than that provided by CCC. These figures are derived from *Rawlinsons* (New Zealand Construction handbook). The figure provided by CCC has not taken into account all the work that is involved in constructing concrete wave bands.

Timber Tanks

233 CCC say that the original asset register sets the base lives for timber tanks at 25 years. Information obtained by ratepayers from the manufacturer of these timber tanks indicates a life of 80 years for the outer barrel. Because of the much shorter life attributed to timber tanks by TCDC, CCC expressed concern that TCDC will incorrectly re-capitalise timber tanks three times during their useful lives.

234 TCDC has taken account of this concern and has broken down timber tanks into various components (such as the roof, liner, barrel, cables, ladder, etc.). TCDC has assigned an expected life to each of these components and has further investigated the expected life of the timber barrel. The expected life of the timber barrel component of a timber tank is now listed in the asset register as 85 years.

235 At the time we discussed the draft of this report with CCC in May 2001, they told us that no similar adjustment has been made to the Matarangi Asset Register, where the tanks are still shown as having an expected life of 33 years. TCDC has adjusted that register to correct the error.

Calculation of Unit Rates

236 A fundamental difference between TCDC and ratepayers relates to the method of calculating unit rates. Unit rates are for completely installed items of work, including overheads. For example, unit rates include items such as:

- ◆ material supply;
- ◆ delivery to site;
- ◆ labour to install;
- ◆ testing;
- ◆ contractor's overheads; and
- ◆ site establishment, contractor supervision, scaffolding, insurance, etc.

237 TCDC has adopted a particular method of calculating the unit rate of, for example, a section of pipe. This method includes all the associated costs of laying the pipe in the ground. CCC dispute this method and advocate an alternative method. These two different methods are discussed below.

Unit Rates: Council Methodology

238 TCDC's approach in calculating unit rates involves obtaining indicative rates for reasonable quantities of work applicable to the type and size of projects carried out in the district with average site conditions. In general, TCDC has derived its unit rates from actual tendered rates for work carried out within the district or for work carried out in similar-sized local authorities.

239 TCDC has compared the resulting rates with *Rawlinsons* to verify the reasonableness of the unit rates used.

240 Where information about the year an asset was built is available from TCDC records or from local knowledge, this is used to calculate the remaining life of the asset. Otherwise, the asset is assumed to be halfway through its life.

241 This is a rigorous approach and is an acceptable practice in the circumstances.

Unit Rates: Ratepayer Methodology

242 CCC's approach to calculating unit rates is to contact contractors and obtain written estimates for a piece of work. CCC have used their local knowledge of the assets to obtain useful information. Overall, however, this approach does not meet the appropriate accounting standards for valuations that are required to be adopted by a local authority.

Pipe Unit Rates

243 CCC disagree with the unit rates calculated by TCDC for laying a metre of pipe in the ground.

244 TCDC has explained how it calculated pipe unit rates as follows:

Four recent Council contracts were used to derive pipeline unit rates. Where specific sizes were not available from the contract, these were interpolated between two known sets of data. A database of construction rates in the district has been started and it will take time to get average rates for all eventualities. Rawlinsons Construction Handbook was used as a check on the derived unit rates.

245 Some examples of rates used:

PROJECT	ACTUAL TENDERED RATE (\$)	ASSET REGISTER RATE (\$)
Coromandel Wastewater 150mm PVC pipe (1998)	80.51	77.00
Coromandel Water 63mm PVC pipe (1998)	48.65	44.00
Thames Rhodes Park Watermain Extension (1998)	72.57	77.00
Waste Management 100mm PVC Pipe Rates	64.14	77.00

246 We reviewed two examples of pipe unit rates – 150mm diameter pipes and 32mm diameter pipes.

- ◆ 150mm pipe – The unit rate in TCDC’s Asset Management Plan is \$77.00 per metre, based on average prices from other contracts. CCC on the other hand believe that the unit rate should be \$17.53 per metre, based on estimates from trade sources. *Rawlinsons* has a rate of \$77.00 for installing 150mm pipe.
- ◆ 32mm pipe – The Asset Management Plan has a unit rate of \$33.00 per metre, and a similar rate is given in *Rawlinsons*. CCC say, based on their research, that the unit rate should be \$11.45 per metre.

247 We consider that, in both of these examples, the process followed by TCDC to set the unit rates was reasonable.

Review of Asset Management Plans

248 The asset registers are only one of the many parts that make up the Asset Management Plans. The registers contained in the Basic Asset Management Plans were originally compiled by TCDC staff and audited by the firm of Duffel Watts and King.

249 TCDC staff had begun compiling other documentation necessary for the production of the Basic Management Plans, but this work stopped following a restructuring at TCDC. TCDC then engaged Worley Consultants to check the work completed by TCDC staff and to carry

out further work to produce the Basic Asset Management Plans. These plans were subsequently checked by another consultant to ensure compliance with statutory requirements.

250 TCDC then asked the firm of Montgomery Watson to produce a final version of the Asset Management Plans. Montgomery Watson's work included "breaking down" some assets into components and completing a revaluation of the assets as at 1 July 1998. This revaluation work was then reviewed by Worley Consultants.

251 Audit New Zealand was also engaged to undertake a review of the 1998-99 year. Montgomery Watson, in producing the final version of the Basic Asset Management Plan took account of issues raised by Audit New Zealand and the plans were then presented to the Council for their formal adoption. Audit New Zealand undertook and completed the 1998-99 statutory audit of TCDC, which included the Basic Asset Management Plans, and issued an unqualified audit opinion.

252 A three-year improvement programme for the Asset Management Plans was presented to and adopted by TCDC.

253 After the audit opinion was issued, a complaint was laid with us about the Asset Management Plans. This was investigated. We found that the issues identified in the complaint had either been corrected or were in the process of being addressed as part of the asset management improvement programme. TCDC commissioned Montgomery Watson to complete this improvement programme in the 1999-2000 fiscal year, and to revalue the water and wastewater assets as at 30 June 1999.

254 It is important to note here that the review by Worley Consultants considered that the effective lives adopted by Montgomery Watson for replacement lives were reasonable, and noted that further work was to be completed on the base life of timber tanks. As discussed earlier (see paragraphs 233-235), this work has now been completed.

255 As regards the unit rates, the Worley Consultants review found that:

Overall the rates used are considered to be suitable for valuation purposes and comparable to those used by other similar sized North Island Local Authorities. However it is noted that TCDC's replacement rates for wastewater pipe assets were approximately 25% lower than those used by other Local Authorities.

Summary and Conclusions

- 256 Ratepayer representatives from Hahei and Matarangi did useful work in reviewing the asset registers. They brought to this task local knowledge and worked hard in analysing the asset registers. As a result of their work, the Mayor formed a working party with ratepayer representatives to examine the Hahei asset management register in detail. There are differing views as to the outcome of this work.
- 257 TCDC has made a number of changes to the Asset Management Plans. It is clear that errors were made, and the ratepayer perspective is that these have only been corrected because of their persistence in drawing attention to them. We consider that TCDC needs to stay in touch with the ratepayer groups, as they have proven to be a useful source of information on the assets.
- 258 Our view is that there is no evidence to support the allegation that there was an attempt by TCDC to deliberately overstate the value of assets.

3 – Public Availability of Asset Management Plans

301 CCC say that TCDC's Asset Management Plans were not released to the public until 7 June 1999 – being two weeks after the date of 25 May 1999 when submissions on the Draft Annual Plan 1999-2000 were due to close – and that there was no formal consultation process for the Asset Management Plans.

302 The Asset Management Plans were not made available to the public until 26 May 1999. This is because they were not endorsed by TCDC until that date. TCDC considers that, apart from interim depreciation numbers being used in the budgets, the process for producing Asset Management Plans is independent of the annual planning process.

303 There is a statutory consultation process to be followed for the Draft Annual Plan, which was available on 15 April 1999. However, no formal consultation process is required on Asset Management Plans.

304 We accept that this was the first year in which TCDC was producing basic Asset Management Plans, and there was a tight timetable for production of these plans because they had to be internally reviewed.

305 Many local authorities have struggled with the need to produce Asset Management Plans. This was noted in our *Second Report for 2000* (see paragraph 1.006):

Some local authorities did not commit sufficient resources early enough to their asset management plan development programmes. As a result, they struggled to meet the statutory reporting deadline.

306 The statutory reporting deadline is 30 November.

Conclusion and Recommendation

306 TCDC's Asset Management Plans were not made available to the public until shortly after the closing date for submissions on the Draft Annual Plan, for the reasons that have been described above.

307 As a matter of best practice, we recommend that local authorities should make their Asset Management Plans available at the same time as, or before, the Draft Annual Plan – notwithstanding that there is no statutory requirement to undertake public consultation on Asset Management Plans.

4 – Use of Funds from Decline in Service Potential

- 401 CCC raised concerns that TCDC has funded the principal portion of loans using rates revenue attributable to providing for the decline in service potential of assets. CCC maintain that nowhere in the present legislation or in accounting standards is there mention of using the decline in service potential to fund the principal portion of a loan.
- 402 This issue arises because of local authorities complying with section 122c(1)(f) of the Local Government Act. This section requires them in any financial year to set operating revenues (principally rates) at a level adequate to cover all operating expenses. For this purpose, “operating expenses” covers both cash and non-cash items. An allowance for decline in service potential of assets (depreciation) is one of a range of non-cash items. Various other provisions (e.g. a provision for doubtful debts) are of the same nature.
- 403 After rates revenue is applied to meeting the cash expenses, there is a residue of revenue which is attributable to rating for the non-cash items. The question then is whether the manner in which that residual revenue may be spent is in any way prescribed.
- 404 The legislation and generally accepted accounting practice make no attempt to link pools of cash with particular expense items, and do not regulate how an entity uses cash. Accordingly, there are no restrictions or requirements on how local authorities use cash generated from funding for decline in service potential. If the cash is not held in reserve for future maintenance or purchase of replacement assets, there is no reason why it cannot be used to purchase of new assets or to repay loan principal.
- 405 However, given that some funds will have been provided by a particular section of the community, there is likely to be a community expectation that those funds will be used for their benefit (e.g. that rates revenue attributable to providing for depreciation of the Matarangi water supply scheme will be used for the benefit of that scheme). We consider this to be a reasonable expectation.
- 406 Local authorities have a responsibility to deliver services over the long term. Any decision as to how funds generated by the funding of depreciation are to be used on a year-by-year basis is a policy decision for individual local authorities to make. Such a decision could well see a local authority using those funds to repay the principal portion of loans. We believe that TCDC and the many other local authorities that use their funds in this manner are empowered to do so.

5 – Engagement of Montgomery Watson

- 501 CCC raised a number of concerns about the process used by TCDC to engage Montgomery Watson for the provision of engineering services.
- 502 The background to these concerns is that, in October 1997, TCDC decided to no longer employ its own in-house engineering services. A tender for provision of engineering services was advertised, and a Wellington legal firm assisted with the tender process.
- 503 Forty firms requested the qualification documentation and 11 firms submitted proposals. An evaluation team invited submission of tenders from five companies, one of which decided not to tender.
- 504 From the four tenders received, Montgomery Watson was selected as the preferred tenderer. TCDC formally accepted the tender from Montgomery Watson at its meeting on 25 March 1998.
- 505 The key decisions in this process were made by the elected Council.

Conclusions

- 506 A sound process was followed by TCDC in engaging Montgomery Watson. There is no evidence that any inappropriate terms or conditions of engagement were offered.

6 – Engagement of a Consultant

- 601 CCC expressed concern about the payments made to one particular consultant, who was engaged by TCDC on a number of accounting and asset valuation contracts. CCC also expressed concern about the conduct of that consultant.
- 602 We reviewed all payments made to the consultant and found no evidence to suggest that any of those payments were inappropriate or excessive.
- 603 In addition, we found no evidence to suggest that the conduct of the consultant was inappropriate.

Conclusion

- 604 The concerns expressed about payments to, and conduct of, the consultant in question were not substantiated.

7 – Reporting on Expenditure Vouchers

701 CCC raised concerns that TCDC staff had reduced reporting on vouchers. This complaint referred to a TCDC order paper of 24 February 1999, which recommended that reporting to the Council on vouchers for payment be minimised. CCC's interpretation of this order paper was that the Chief Executive of TCDC had initiated this minimisation.

702 We reviewed the order paper, the relevant part of which stated:

Purpose

To review the legislative requirements for reporting vouchers for payment.

Legislation

Under the Public Bodies Contracts Act 1959 Section 4, Council may delegate, by resolution, any of its committees or officers to make contracts on behalf of Council. Such contracts must be reported to Council at the soonest practicable ordinary meeting, except where Council has resolved that reporting is not required.

Comment

Currently, Council's delegations to committees and officers do not include an extension for reporting contracts back to Council. There may, at some time, have been a separate resolution on this matter but it would take considerable research to provide evidence of that resolution. The administrative cost to report each separate contract to Council would be significant and, therefore, legislative compliance has been achieved by reporting all payments made by Council. Council's delegations to officers were last reviewed in 1995 and a review is under way to ensure that they comply with legislative changes and meet the current management structure. It is proposed that, with more relevant officer delegations in place, maximum delegations under the Public Bodies Contracts Act [1959] Section 4 could be determined, with contracts within the approved delegations being excluded from being reported to Council. Contracts above this limit would continue to be reported to Council in a form that was more appropriate to enable Council to provide prudent financial management.

Recommended

[That] Council receive the information regarding the reporting to Council of Vouchers for Payment and ask that management consider the application of the Public Bodies Contracts Act [1959] Section 4 in

its review of officer delegations, with a view to minimising reporting to Council but recognising Council's responsibility to provide prudent financial management.

- 703 We found that the Chief Executive had been asked by the Council to report on ways to streamline reporting to the Council on routine matters. There was therefore nothing inappropriate about the recommendation. It is difficult to see how CCC could have drawn the conclusion that this was a deliberate attempt to conceal the business of TCDC from the elected members.

Conclusion

- 704 The initiative to minimise reporting to the Council was appropriate, and came from the Council itself, not from the Chief Executive Officer.

8 – Cooks Beach Sewerage Scheme

Costs of the Scheme

- 801 CCC claimed that the cost of the Cooks Beach sewerage scheme had been estimated at \$15 million but will ultimately exceed \$100 million. However, no evidence was provided for this claim.
- 802 The Cooks Beach Sewerage Scheme has been estimated, by TCDC and its advisers, to cost \$9.4 million (GST-excluded). TCDC told us that it intends to keep to this figure. We have seen no evidence to indicate that the cost will rise to \$15 million, let alone exceed \$100 million.

Failure to Register Payments and Charges with the Registrar of Companies

- 803 CCC stated that TCDC has failed to register payments and charges to Cooks Beach Utilities Ltd (the company developing the scheme) with the Companies Office. CCC say this failure to register is in breach of sections 122ZH, 122ZI and 122ZJ of the Local Government Act 1974.
- 804 The agreement that TCDC has signed with the developer sets out the terms for TCDC's purchase of a sewage treatment plant, pumping stations and associated land from the developer.
- 805 The agreement allows TCDC to initially register a caveat and mortgage against the wastewater treatment plant and land. TCDC was not aware of a requirement to register the transaction with the Registrar of Companies and explained to us that:

... Once title to the plant is transferred to Council, Cooks Beach Utilities are then entitled to register a caveat against the land as security for the balance of the payments that they are entitled to receive against the contract.

Sections 122H-J require registration when Council is providing security against an asset that it owns. As title in the plant is still held by Cooks Beach Utilities at present there is no charge against a Council asset. Hence, the requirements of this section of the Act do not apply. Note that the transfer of title is expected to occur within the next month.

Please also note that the payments are being financed via a loan facility which Council has with the ANZ Bank. This facility is unsecured and hence is not registered with the Companies Office.

806 This was TCDC's initial position. It subsequently sought a legal opinion, which states:

We confirm that Part VII B of the Local Government Act 1974 requires the Council to register a charge as if it were a company under the Companies Act 1955.

Under the Companies Act 1955, land "held" by a company under an Agreement for Sale and Purchase is deemed to be property of the purchaser company, subject to a charge back to the Vendor for the unpaid sale price. That Act requires the Agreement to be registered with the Registrar of Companies within thirty (30) days of the signature of the purchase Agreement. Accordingly under the Local Government Act the Agreement between the Council and Cooks Beach Developments Limited should have been registered with the Registrar of Companies within thirty (30) days of the date of the Agreement.

807 While this transaction should have been registered with the Registrar of Companies, the legal opinion goes on to say:

As a matter of commercial practice however, such agreements are very rarely registered under the Companies Act 1955. You will see this confirmed in the attached extract from Morrison's Company and Securities Law (para 51.19) which goes on to conclude that usually only long term agreements are registered. The long term agreements referred to by [Morrison] are long term agreements involving payment of the purchase price progressively, usually with interest over a number of years. These would not include agreements where a deposit has been paid but the balance purchase price is payable without interest as soon as the vendor can provide clear title. [This is the case with the agreement which TCDC has signed.]

Of course as it is the vendor which is the deemed lender, one would expect that it is the vendor who would be most concerned to ensure that the charge (for the unpaid purchase price) were registered within one month. Following usual commercial practice, Cooks Beach Developments Limited has not registered a copy of the Agreement in the Companies Office. As the relevant section in the Act is procedural only, ... it does not affect the other rights between the parties in the Agreement for Sale and Purchase. In other words the Agreement is still valid between the parties to it.

808 The Companies Act provides for late registration, which involves additional expense. TCDC is currently considering the need to register the Agreement. TCDC's view is that its failure to register the Agreement is of no practical effect, as title to the land does not transfer until the sale and purchase transaction has been completed and the seller has been paid in full.

Conclusions

- 809 There is no basis for the claim that the cost of the Cooks Beach Sewerage Scheme will ultimately exceed \$100 million.
- 810 By not registering an Agreement with the Registrar of Companies, TCDC has not complied with a procedural requirement of the Local Government Act. However, there is no evidence to suggest that the failure to register the Agreement was a deliberate attempt to conceal this transaction. TCDC was not at the time aware of the requirement, but is now considering what action it should take to remedy the matter.

9 – Control of Council by the Chief Executive

901 CCC alleged that the Chief Executive was attempting to control the Council. In particular, CCC referred to:

- ◆ A governance programme introduced by the Chief Executive that is based on a US corporate approach.
- ◆ Restrictions placed on staff regarding discussions with the press.

902 TCDC says that the Chief Executive's approach must be considered against the particular issues facing TCDC. The Coromandel Peninsula is a growth area. The population was 24,820 in 1996, and is expected to increase 39% to 34,500 by 2016. One of the problems facing TCDC concerns the performance and management of a number of core infrastructural assets. For example, a review carried out last year by Environment Waikato found that none of the nine wastewater or 11 water treatment plants complied with conditions of their resource consents.

903 The Draft Annual Plan for the year ending 30 June 2001 (at pages 9-10) set out the funding problem facing TCDC as follows:

This Annual Plan includes a significant capital works programme of \$32.70m in the 2000/01 financial year...

The level of external borrowing currently forecast for 2001/02 and beyond exceeds the limits that Council has set in its Borrowing Policy. While the policy is a self-imposed limit and can be changed, it does represent a significant trigger point. Council needs to go through a process of asking itself and ratepayers a number of questions about whether or not the level of external borrowing projected is sustainable.

904 As part of the process for dealing with the issues that face TCDC, work has begun on an "Organisational Capability Review", described in the Draft Annual Plan as a project:

... looking at the way in which Council operates, whether it has the skill sets and resources needed to achieve its goals and what efficiency gains might be able to be achieved by improving the way in which we operate.

905 At a workshop meeting for councillors on 24 March 1999, the Council agreed there was a need for a fundamental change to the way in which the Council conducted its business.

- 906 It is against this background that the Chief Executive told us that he has endeavoured, in conjunction with the elected Council, to try to significantly improve the performance of the organisation. The process of change that the Chief Executive has introduced is no different from that adopted by other local bodies or public service organisations that have tried to substantially improve their performance.
- 907 This change process is taking place with the full knowledge, approval and co-operation of the elected Council.
- 908 The policy of referring media queries to senior staff resulted from junior staff talking directly to the press. Such policies are standard practice in many organisations and are intended to ensure that there is consistency in responses to media queries.

Conclusion

- 909 The concerns regarding the Chief Executive's control of the Council are unfounded. The changes being implemented have the support of the elected Council.

10 – Coromandel Town Water Supply

- 1001 CCC expressed concerns about management of the Coromandel Town Water Supply project by TCDC and Montgomery Watson.
- 1002 The management of this project has previously been reviewed by Audit New Zealand. In addition, TCDC commissioned a review of the legal issues surrounding the project. Accordingly, we did not conduct a further review of the project.
- 1003 The Audit New Zealand review found that the project was expected in 1996 to cost \$2.1 million, and that the final cost rose to \$2.8 million when the project was completed in September 1998. The key finding was that there had been deficiencies in governance of the project.
- 1004 The legal review found that TCDC had breached certain statutory procedures in the course of the project. The breach occurred as a result of a decision to change the approach that TCDC used to collect the rates required to fund the scheme.
- 1005 TCDC told us that the legal review was discussed with the Coromandel Town Ratepayers Group, and that the findings were eventually accepted by that Group.
- 1006 Montgomery Watson has never had any involvement with the capital works aspects of this project.
- 1007 As discussed earlier, TCDC considers that it must improve its performance. This is why, under the leadership of the Chief Executive, TCDC has embarked on a programme to substantially improve performance in all areas of its operations.

11 – Qualifications of Staff

- 1101 Concerns were expressed about TCDC employing staff who lacked proper qualifications for the positions they held.
- 1102 We checked the relevant job specifications, and found no evidence to suggest that TCDC has employed staff who were not qualified for appointment to their positions.
- 1103 Concerns were also expressed, on the other hand, that TCDC dismissed a staff member because that person lacked the necessary qualification.
- 1104 Again, this is not correct. We found that there was a restructuring and that the person concerned had left over matters to do with the restructuring.