

REPORT FOR
MARLBOROUGH DISTRICT COUNCIL

In relation to
Allegations of Corruption
and
a Review of Tendering Practices

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REPORT

INTRODUCTION

I was engaged by Marlborough District Council (**Council**) to investigate allegations of corruption and impropriety, to review Council's current tender practices and, if appropriate, to make recommendations for action in respect of both matters.

The process has proved to be both challenging and time-consuming. In the process I have spoken to 11 current and former councillors and 35 members of the public, corresponded with another 15 members of the public and looked into more than 90 allegations. I have also spoken to a number of current and former Council employees either to assist me with my investigation or to answer specific allegations made against them personally. Without exception they have responded willingly and openly and that has greatly assisted my ability to provide a report which is as comprehensive as possible.

The job I was given has been variously described as a "review" and an "investigation". I have used both words in my report since in this context they are effectively synonyms. However I think it is important to record that my role cannot be likened to that of a commission of enquiry. I have not had powers to subpoena witnesses, to examine witnesses on oath or to require the production of documents. I have had to rely on talking to people and making an assessment based on observation (when that has been possible), taking the information provided and testing it against other information obtained.

During the course of the review I was passed the names of people who may have relevant information with the suggestion that I pursue enquiry with them. Some of those names were provided on the basis that the person did not want to be involved "at this stage". I had appointments to meet 3 people, 2 of whom subsequently telephoned to cancel, but I have not made any attempt to contact these people to ask why they cancelled.

I have not pursued these people because the Council had made an effort to facilitate in confidence communication with me by members of the public - by mail, email or telephone. A number of people took up those other options. I can only assume that either the issue was not important enough for those people who chose not to contact me directly or they had doubts over the accuracy of the information they would supply. It was put to me that some people would still not come forward because they were frightened of "repercussions", although just what those "repercussions" might have been was not fully articulated. The arrangements made went a long way to eliminating that risk. Some of the people who came to see me or who spoke to me on the phone were clearly out of their comfort zone when doing so. I commend them for making the effort.

Where allegations of "corruption" have been made against named individuals I have put those allegations to the people concerned and sought their comment. The reactions have ranged from bewilderment to hurt and from amusement and to anger. If there is a lesson for the Marlborough community in this report it is that people should be slow to accuse their neighbours of "wrong doing" because there is nothing attractive about the repetition of ill-informed gossip which, which with a minimum of thought and investigation, can be established to be wrong. I accept that in this instance some of the allegations were repeated to me for the purpose of my review but it was clear that a number of the allegations have been freely repeated over many years, to the point where they were taking on a life of their own and were being treated as fact rather than fiction.

None of the allegations of "corruption" made to me got anywhere close to establishing a prima facie case such that reference of the circumstances to the relevant authorities for further investigation was warranted. Hopefully this chronicle of those allegations and the exposure to the light that my findings bring will prove to be an effective antiseptic.

The format of this report has been designed to assist readability. I have provided an executive summary and a set of recommendations, before setting out in broad terms the results of my investigations and the conclusions from which the recommendations flow.

At the back of the report you will find 6 appendices as follows:

- Appendix 1 contains a copy of the Council's letter dated 18 April 2011 (brief).
- Appendix 2 is a summary of those allegations which I have categorised as involving "corruption and impropriety". These allegations relate to activities which if proved would be a criminal offence or otherwise indicate a degree of moral turpitude, such as the failure to disclose conflicts of interests or deliberately acting in a manner which prefers the interest of a third party. This categorisation is deliberately wider than the Auditor General's definition of corruption as an "abuse of power for private gain (eg soliciting or receiving gifts or other gratuities to perform part of an official function or to omit to perform an official function".
- Appendix 3 contains extracts from the Companies Office registration records for Simcox Construction Limited (**Simcox**). A number of the allegations in the appendices relate directly or indirectly to Simcox. I am satisfied that Simcox is an innocent and undeserving subject of these allegations. Some of the more serious allegations are easily refuted simply by reference to the face of the public record, although there are gaps in the publicly available records. Simcox was incorporated in 1985 but only some records before 2000 are available for inspection. The missing Companies Office records have been destroyed (for all companies, not just Simcox) by National Archives.
- Appendix 4 is a summary of allegations in relation to regulatory decision-making most of which were outside my brief.
- Appendix 5 is a summary of issues in relation to procurement processes.
- Appendix 6 is a summary of allegations relating to "other matters" not falling within the previous categories.

The appendices do not contain a complete record of all matters raised with me. I have excluded, with a couple of exceptions, any matter relating to events which occurred prior to 2000. I did this because matters which occurred or became known more than 6 years ago are not usually justiciable and the main exception to that rule, the Building Act 2004, has a 10 year limitation period. Memories and recollections dim with passage of time and for most people 10 years is the absolute outer limit for accurate recollection of events. I have reviewed some of the matters which occurred before that date, because they contributed to my overall understanding, but I was reluctant to fan the embers of matters which have had their day and are kept alive only through a continuing sense of grievance borne by those involved.

EXECUTIVE SUMMARY

As a result of my investigations I am satisfied that:

- (a) the Council is not a "corrupt" organisation, which was the theme of many of the allegations made to me. In this regard my informants invariably used the word "corruption" in a much broader sense than the Auditor General's definition of that word or my approach to categorising matters into Appendix 2. They used the word as a form of short hand for saying "I don't agree with what Council did";

- (b) there is no evidence of "corruption", in the sense previously discussed in relation to Appendix 2 of giving rise to a criminal offence or otherwise indicating a degree of moral turpitude, on the part of any councillor, member of staff or contractor to the Councillor (whether past or present);
- (c) the Council's Procurement Strategy dated 12 July 2010 (**Procurement Policy**) and the Contracts Guidelines (revision 6.0 dated 27 January 2010) are sound documents, at least the equal of equivalent documents in use in local government within New Zealand;
- (d) there is a sound appreciation of the requirements of the Procurement Policy among staff and the principles of the Procurement Policy and the Contracts Guidelines were applied by staff to the best of their ability.

RECOMMENDATIONS

I recommend that the Council:

- (a) consider making more of its policies accessible to the public through its website. For example, some of the people who came and saw me would have had a better appreciation of matters if they had been able to access the Procurement Policy and the Sensitive Expenditure Policy on the internet.
- (b) consider amending the Contracts Guidelines to provide basic guidance to staff relating to the weighting of attributes as between attributes and the weighting of non-price attributes as against price, when considering procurement under a tender process involving the use of weighted attribute methodology.
- (c) consider establishing a "tenders" page on its website so there is a ready and accessible point of reference for potential contractors and suppliers to view information about proposed tender processes. I do not see this web page necessarily setting out full details of every tender. I envisage a list which is updated on a regular cycle and contains a basic summary of the nature of the tender, the tender closing date and the person responsible for that tender within the Council.
- (d) review its approach to the release of information following tender closing. In addition to the information already provided I recommend that Council make available to each tenderer individual non-price scores and the range of the non-price scores of other tenderers. I also recommend that Council provide, upon request, a summary of the reasons for the scores attributed to the tenderer.
- (e) clarify the application of the Procurement Policy to decision making involving the expenditure of Council money by its council controlled organisations.

THE BRIEF

The terms of the brief are, in my view, unexceptional and uncontroversial. When accepting the brief on these terms I fully understood, so too the Council, that an invitation to the public to meet with me to discuss the issues raised by the brief may well, result in matters being raised which were outside the scope of my brief. I approached the matter on the basis that anybody could write or contact me on any subject at all and I would then sift through the information received before deciding what, if anything, I would do in respect of matters which were outside the scope of the brief.

Shortly after my appointment, I received a complaint making two specific allegations about events leading up to and immediately following my appointment. I repeat them here

because they demonstrate the "heat" that was generated around the issues which I was asked to investigate. The complaint alleged:

- (a) impropriety by the Council in attempting to appoint Richard Fowler, a senior member of the legal profession in Wellington, to undertake this inquiry in the light of his past contractual relationships with the Council. This action was viewed as a *"clear-cut case of violation of the apparent bias law"*. Mr Fowler stood aside immediately his eligibility was challenged. I am however reminded of the comment made by the Court of Appeal in *Muir v Commissioner of Inland Revenue* 2007 3 NZLR 495, at paragraph 62, that when an allegation of bias is made a two step process should be undertaken with the first step being a factual inquiry which *"should be rigorous in the sense that complainants cannot lightly throw the 'bias' ball in the air"*. I am not satisfied that occurred here. Nor am I satisfied, if that exercise was indeed undertaken, that the outcome would have been as "clear cut" as alleged. In any event, Mr Fowler's appointment came to an end.
- (b) that comments attributed to Mayor Sowman in the media at the time of my appointment were *"evidence of corruption [in the form of coercion and intimidation]"* by requiring complainants to make their own investigations, and was a *"blatant attempt to disenfranchise ratepayers who have corruption concerns"*. This was a reference to comments by Mayor Sowman that the brief was restricted to a review of the tendering process, the requirement to produce *"evidence"*, and the suggestion that anecdotal evidence or anonymous complaints would not be accepted. In addition to this it was alleged that Council itself had attempted to *"intimidate the public to believe that they cannot approach [me] with allegations and must present evidence"*. The reality, however, has been that there has been a very full response from members of the public, most of whom have provided me with information which was unsupported by any documentary evidence and was anecdotal in nature. There is therefore no substance to this complaint.

THE PROCESS

Following my appointment the Council made media statements and advertisements were inserted in the local newspapers providing contact details for those who wished to contact me directly, or who wished to meet with me on a planned visit to Blenheim on 12 May 2011. It became apparent relatively quickly that one day would not be enough for those interviews and my stay in Blenheim was extended. I arrived on Wednesday 11 May 2011 and conducted 42 interviews before departing on Friday 13 May 2011. The interviews were time limited but most people managed to tell me what they wanted within the time allowed. Some of the people I spoke to subsequently emailed me with clarifications and/or further information

In the period up to 13 May 2011, I had received a number of phone calls, emails and letters from members of the public, and that contact continued, albeit less frequently, after that date. A member of the public made contact with me on a "new" issue as recently as 23 June 2011.

I then proceeded to put the various allegations to the people against whom allegations had been made and made my own independent enquiries of some matters. I requested material from the Council which I reviewed. When the documents received required further clarification I discussed those matters with relevant Council staff. I think the progress was as rigorous as it could be made, given the limitations of a review of this type as noted above.

I believe that I have considered all issues that were raised with me but not all matters will be mentioned in this report for the reasons already given. In respect of each allegation I have made my own assessment based on documents provided, if any, and further documents supplied by the Council. In respect of some matters I discussed issues of detail

with the relevant staff. I have also spoken to some people outside the Council. I have taken all of those steps personally and no aspect of the investigation of allegations or the other matters referred to in this report were delegated to others within Simpson Grierson, or otherwise.

ALLEGATIONS OF CORRUPTION AND IMPROPRIETY

I received a wide range of allegations which I have categorised as involving "corruption or impropriety" as I have defined that term above. I received a lengthy written report from Councillor Jamie Arbuckle. It was headed "Wrong Doings" when I had expected it might be headed "Allegations of Wrong Doings". The heading set the tone for my reading of the report and it was not until paragraph 43 that it became clear that the report was concerned with "allegations and concerns" rather than detailing matters in respect of which the Councillor had already reached a view. That report was generally helpful in identifying issues but I had to burrow behind the method of expression in places to identify the substance of the allegation or concern.

In his report Councillor Arbuckle attributed statements made to him by third parties who subsequently came and spoke to me, but did not see fit to repeat those allegations attributed to them in the report. Where that happened I have ignored the issue on the basis that "direct" evidence is to be preferred and if the matter was not sufficiently important to be raised with me directly, or was not sufficiently reliable to be repeated, it could be ignored.

The report also contained references to members of the public who had spoken to Councillor Arbuckle and made allegations (which were repeated in his report) but the person in question did not come and see me or did not wish to be involved in the inquiry. For the reasons stated in the introduction to this report I have not pursued those people or those allegations further.

The allegations I received were of varying quality. Some required minimal effort to investigate and resolve. One of my earliest callers alleged that he had recently inspected a property being sold by a former Council employee and that the LIM had been tampered with to remove references to the fact that the property was flood prone. The implication was that this had been done by the relevant employee or by others on his behalf. The informant wished to make an appointment to come and see me when I was in Blenheim and I asked him to bring the LIM report with him. In the interim I obtained directly from the Council a copy of the report which clearly stated that the property was subject to flooding. When my informant turned up to the interview I was told that he had now got a copy of the LIM report from Council and discovered that what he had previously told me was wrong. This troubled me because the impression I had got from my telephone discussion with my informant was that he had viewed the LIM. The relevant information was at the top of page 2 of the report under a heading referring to hazards and was very hard to miss, even on a quick reading. I suspect that my informant had not previously seen the LIM and was relying on hearsay. I also suspect that the former Council employee had been defamed by my informant to anyone who would listen over a period of several weeks.

Some of the allegations I received required no action at all. For example I was told of a person (not a Council employee) who some years ago received a new set of tyres from a contractor – but when I was asked for a name and a date I was advised "not to go there". I was told of a Council employee who received payments in cash from unknown sources but it was only after questioning that I discovered that these events were alleged to have occurred some time prior to 1989. I am at a loss to understand how such allegations, even if true, might be relevant to my review and the functioning of the Council more than 2 decades later.

On the other hand some of the allegations which I received were very organised and/or presented, clearly focussed, current and not so easily resolved.

Allegations relating in some way to Simcox were a constant and recurring theme during my review. Those allegations included the following:

- (a) former and current employees of the Council and their spouses were shareholders in Simcox - there is no evidence of this on the company register, which has every appearance of a closely held private company owned by Mr and Mrs Simcox and their family trust. Copies of the current Companies office record and the 2000 annual return (the oldest record of its type available for electronic searching) are attached at Appendix 3. I am satisfied from my enquiries that there is no truth in the allegations that shares in this company have ever been held by any persons other than Mr and Mrs Simcox and the trustees of their family trust.
- (b) Mr Simcox was very upset when ousted as a director of his own company at the instigation of the Council officers who controlled the company - this allegation is clearly wrong as the Companies office record shows. (I note that this allegation came from a person who claimed to be an acquaintance of Mr Simcox.)
- (c) There are multiple ways, outside of shareholdings, by which a company can reward external entities for services rendered including "consulting" and "management fees" and the like and that these payments might even be made through a solicitor's trust account to avoid detection - No evidence was proffered to support these allegations, just the speculative suggestion that it can happen. A parallel allegation was that I wouldn't find anything because the perpetrators had covered their tracks. The fact that all of these devices might be available doesn't mean that they are used. It is hard to look for and find something which does not exist and the fact that you can't find something doesn't mean that it ever existed and has been concealed. Allegations of this type are the lifeblood of conspiracy theories because they are circular in nature. Solicitors trust accounts are heavily audited and the circumstances of solicitors trust accounts in New Zealand being used as a conduit for unlawful activity are rare. I drew some comfort from the fact that other members of the public who came to talk to me were equally adamant that the claims of "corruption" were not about the passing of bags of money and secret payments but were about process, transparency and business-like decision making. I am confident that these allegations are without substance.
- (d) Simcox quotes low hourly rates and then makes up by charging at normal rates for variations and extras. The allegation in this form makes little sense since I have yet to see a works contract with tendered rates where the tendered rates did not apply to both the work done and any variations. As a wider allegation, there would hardly be a contractor in New Zealand who has won a contested process and who has not been accused of a similar practice, usually by an unsuccessful tenderer. What makes this allegation different is that it in this case the allegation is only levelled at Simcox, which makes me wonder whether the most recent repetition of some of the Simcox related allegations are motivated by other factors.
- (e) Simcox gets all of the work for which it tenders. The allegation is not correct. Two recent example of circumstances where Simcox was unsuccessful when tendering for significant contracts are the Rivers and Drainage (Strategic Labour) contract 2009/26 and the Boulevard Park on Taylor Subdivision Stage 1B contract 2010/53. Over the years there have been other examples. Both the Council and Simcox referred to contracts for other rivers protection work outside the scope of the maintenance contract.

Hopefully these comments and the findings to the range of allegations recorded in Appendix 2 will go some way towards bringing to an end the ill-informed and hurtful gossip

which appears to have become common in the district over the last decade or more. These allegations are counter-productive since they divert attention away from the real issues of the day.

ALLEGATIONS RELATING TO REGULATORY MATTERS

Generally the matters referred to in Appendix 4 were outside my brief. I have recorded the matters referred to me, subject to the time limitations previously mentioned. In some cases I have made extended comment. There is nothing more I wish to add.

ALLEGATIONS RELATING TO TENDERING

I have set out these allegations in Appendix 5. Two of the matters in that schedule appear to have achieved some notoriety and are worthy of specific comment:

- (a) There has been recent newspaper publicity about a 2007 tender process for Council's fleet motor vehicles and I also received complaints that the process had been mishandled and was biased. The Council engaged an independent procurement firm to manage the process of a fleet replacement for 42 vehicles but subsequently a further vehicle was added. There was no controversy over the tender process for 25 of those vehicles, the issue relates to 17 vehicles only.

At the heart of the problem was an issue about vehicles with high/low ratio (**dual range**) capacity. The documents I have obtained from the Council (no documents were provided by my informants to support their allegations) indicate that the tender sought pricing for 17 AWD/ 4WD 4 door vehicles with dual range capacity with all terrain tyres on 14 vehicles, mud grip tyres on 3 vehicles and ordinary road tyres for 1 on the vehicles. The response provided by one dealer proposed vehicles which did not have dual range capacity. The contractor running the tender process for Council failed to identify this issue before seeking Council approval and purporting to accept that proposal on Council's behalf. Subsequently the error was discovered. Rather than accepting vehicles which did not meet the required specification the Council acted to resolve the matter. Clearly a mistake had been made. I am told that that a verbal apology for the error was offered to the dealer at the time.

The allegation of bias appears to come from the dealer's view that Council did not need as many dual range vehicles as were specified and that the quoted vehicle was adequate for the relevant purpose. I am told that the vehicle put forward by the dealer was given a field trial but did not meet Council's requirements. The dealer seemed to be prepared to acknowledge that "some" of the vehicles required dual range, but he questioned whether all of them required that facility. Clearly Council staff had a different view and it is difficult to resolve that contest of opinion on the papers and without some understanding of the nature and scope of the work required of these vehicles. In this regard I note my experience that the specification of the fleet for territorial authorities is also commonly influenced by the fact that vehicles in the fleet are a first response resource in the case of a civil defence emergency and in an emergency the versatility of the fleet can assist the effectiveness of the response.

It was alleged that the vehicles should have been re-tendered. The re-tendering proposal was considered impracticable because the tender process had disclosed that there was only one other suitable vehicle within the specification range and that had been the subject of competitive pricing in the tender round in any event. It was not therefore considered necessary to go back to the market.

Finally I was asked questions about the level of retention and maintenance costs relating to the fleet, the suggestion being that the vehicles might have incurred

excessively high maintenance costs and/or been unreliable. I am told that all 43 vehicles purchased in the 2007 programme remain part of the fleet. The Council had run a parallel process with the 2007 fleet tender which sought contestable tenders for funded ownership and leasing options. Lease/ownership options and fully maintained/not maintained lease options on offer from a range of suppliers were compared. The Council elected a fully maintained lease option so that its costs were known for the term of the lease and the vehicle owner took the risk of excessive maintenance costs. The Council subsequently negotiated a 1 year extension on the original lease term in return for a reduced lease cost. The fleet replacement programme is due to begin again shortly.

- (b) In 2006 MDC Holdings Limited on behalf of the Council conducted a review of real estate agency services in relation to Stage 1 of the Boulevard Park on Taylor subdivision. Responses were invited from three firms and they all responded. I have reviewed the letter which was sent to the real estate firms seeking proposals. The letter did not suggest that a contract would be awarded on a lowest conforming price basis. It is not disputed that the firm appointed offered a higher priced option than its competitors.

I have read the report which was submitted to the board of MDC Holdings. It contains a reasonably careful analysis of the bids, comparing them under several headings - account management, recent subdivision experience, marketing capacity, regional coverage and fee structure. On the basis of that report it is my view that the conclusion reached by the board of MDC Holdings was open to it. The allegation was put to me, in addition to an allegation that the lowest price should have been accepted, that the board was biased in favour of the successful firm because of that firm's involvement as a sponsor of Marlborough Stadium. The report provided to the board noted that the successful firm's proposal had referenced the fact of its community involvement in a number of organisations, notably however without reference to sponsorship of the Stadium, and that the bids by the other two firms had not provided equivalent information. I am not sure that this issue influenced the final outcome but one of the arts of tendering for contracts for services is to differentiate your bid from that of your competitors. Including a plug about community involvement in the successful bid was a potentially clever piece of differentiation.

Another matter of recent controversy was an allegation made at a Council meeting that in the absence of elected members' supervision of the opening and evaluation of bids it might be possible for staff to be tampering with tender documents. The suggestion that this might be occurring was not supported by examples and, most importantly, not one of the contractors who contacted me suggested that this had ever have occurred. In my view it is neither practical nor appropriate for elected members to be involved in the tender process in this way and all that such a change is likely to do is increase the point of focus from allegations of poor practice by managers or contractors to the poor management practices of elected members and raise the spectre of political influence of political involvement on the award of contracts. The appropriate way to deal with these issues is for elected members to set policy and leave it to management to implement that policy within an agreed framework of political oversight and probity audits.

In this regard I note the practice for an elected member to be present when some tenders are opened and that this has been a practice in Marlborough for some time. I also understand that this practice only applies to contracts where the reporting line is to the Assets and Services Committee. I do not think this practice adds anything to the probity of the tender process that could not be achieved by other means. Indeed there was a suggestion that on one occasion where an elected member was present one bid had not been correctly identified and recorded at tender opening but the information was so vague that I could take the matter any further.

Common themes which emerged from my discussions with the people making allegations in relation to tendering issues were:

- (a) There was a general distrust of, or dissatisfaction with, weighted attribute methodology and the evaluation process;
- (b) Local suppliers felt disadvantaged by the process and/or that the process should be biased in their favour;
- (c) There was a lack of transparency around the communication of tendering outcomes;
- (d) Some recent tenders were unduly aggressive in the allocation of risk.

I will deal with these issues in more detail later in this report when discussing the Council's Procurement Strategy and related documentation.

ALLEGATIONS RELATING TO OTHER MATTERS

Appendix 6 contains a pot-pourri of other matters raised with me which are largely self-explanatory, but do demonstrate the range of the issues I was asked to consider. Of these issues the one mentioned to me most frequently was the level of resentment there was to the Council's involvement in property dealing. There was some muted criticism of the Council's involvement in residential subdivision activities since it was both the "gate-keeper", through the district plan, of the amount of residential land available for subdivision and the "poacher" as an owner of land which was available for subdivision. I accept that there are very good arguments to support Council involvement in subdivision activities, both from a fiscal perspective (profits from subdivision are not taxable) and a legal perspective (Council's fiduciary duty to extract best value for its ratepayers). You will also see from Appendix 6 that I was asked to consider the sale of 3 properties by the Council, which were sold as a block without subdivision and the price and the process was questioned. Clearly it is not possible to please everyone. However the criticism of the Council's involvement in the commercial property market in the Blenheim central business zone in potential competition with the private sector was more frequent and strident.

I pass on this information, which is outside my brief, without making any recommendation other than to suggest that this is an issue that Council should always give careful consideration when looking at new projects. The scrutiny of a local authority's "entrepreneurial" activities is invariably less intense in times of a buoyant economy when everyone is busy and happily making money than it is when the market is flat, good tenants are few and far between and everyone is feeling the pinch. Projects which fulfil a traditional Council role (eg carparking) or fill a gap in the market that the private sector will not or cannot fill (eg a convention centre) are always more easy to justify to ratepayers than projects which compete head to head with the private sector (eg the Kathmandu development). At the end of the day there is always a balancing exercise to be undertaken and final accountability lies with elected members.

TENDER DOCUMENTATION

Richard Fowler had begun work to review Council's contract process before controversy arose over his appointment. Mr Fowler has shared with me a preliminary draft of his report following a review of the Council's documentation and a comparison with equivalent documentation held by Hutt City Council, Upper Hutt City Council, Nelson City Council and Wellington Regional Council. After discussion with the Council it was agreed that I would make a comparison against the equivalent policies of Tasman District Council, Hasting

District Council and Selwyn District Council. Those three councils were good enough to make their policies available to me for that exercise.

I have reviewed three documents:

- (a) The Procurement Strategy dated 12 July 2010 (**procurement policy**). I note that this document is not included amongst the plans, policies and documents accessible through the Council's website. The procurement policy sets out the core framework for procurement by staff and is a brief document "designed to be a useful tool for staff, while meeting the practice guidelines of the office of the Auditor-General and the requirements of the Local Government Act 2002".

The procurement policy was previously updated in December 2009 and it is probably due for review again, although it is difficult to see how it might be improved. It requires consideration of the following principles:

1. Fit for purpose with no unnecessary frills;
2. Sustainable business practice;
3. Best value for money over whole of life;
4. Council's health and safety policies and obligations;
5. Reasonable and fair opportunity for suppliers to participate;
6. Demonstrated compliance with good practice such as Auditor-General, SOLGM and other industry guidelines.

The procurement policy also directs that it "should be read in conjunction with other useful material contained in Council's Contract Guidelines, Delegations Schedule, together with the SOLGM module covering Tendering and Procurement". These documents are available to staff on the Council's intranet.

At the back of the document there are two attachments, a procurement process flowchart and a procurement guide which sets out the process to be followed depending upon the value and type of contract, assessed on a cost and risk basis. The flowchart also cross-references to other relevant policies including the Council's Sensitive Expenditure Policy, which I note was last reviewed in May 2011.

- (b) The Contracts Guidelines (revision 6.0 dated 27 January 2010) This is a comprehensive document comprising 91 pages of very detailed information relating to the conduct of procurement processes. It covers the full range of procurement including procurement by tender, preferred supplier and emergency contracts. The update control page of this document discloses an interesting history. It was first drafted in July 2005, revised in August 2006, January 2007 and August 2008. The next revision (revision 5.0) made in February 2009 was significant because it was made to bring the guideline into line with the "procurement guidance for public entities" publication of the Office of the Auditor-General published in June 2008, which for the first time included local authorities within its coverage.
- (c) The Model Tender Conditions (revision 6.0 dated 21 January 2010).

I am satisfied following a review of the Council's documents, and a comparison of those documents with the Office of the Auditor-General's guidelines and the documentation I received from the second group of councils referred to above that they are at least as good as, if not better, than the documents of the other local authorities

COMPLIANCE WITH PROCESS

The next question I considered was whether the Council has complied with its own policies and guidelines in relation to its procurement processes. It is not possible without reviewing every single file to give a categorical assurance in that regard but all of the complaints I received which indicated a specific failure to comply with policies or procedures seemed capable of a satisfactory answer. As noted above four common themes emerged.

General distrust of or dissatisfaction with weighted attribute methodology and the evaluation process;

The traditional procurement approach was to use the lowest conforming price method. The trend towards more sophisticated evaluation methodology started during the 1980s and was led by central government with the competitive pricing manual developed by Transit New Zealand being the most publicly obvious manifestation of that approach. Rooding projects funded or subsidised by central government must be tendered in accordance with the manual and participants in that sector are conditioned to its use and familiar with its requirements. Over time a number of variations on a consistent theme have been developed and the Guidelines introduce the recognised options for consideration by staff in their procurement decision making. Most commonly the choice is made to use weighted attribute methodology which, at the risk of over-simplification, addresses the price/quality trade off that occurs in any procurement process i.e. the choice between a cheap job or a good job and how to evaluate bids to achieve the requisite balance between quality and price.

Complaints in relation to attributes and their weighting usually take 3 forms – the setting of the attributes was not correct, the weighting of attributes (between each other and as between attributes and price) was wrong and the evaluation of attributes was wrong. I have set the issues out in ascending order of difficulty.

I received no complaints that the wrong attributes had been used (outside the local bias issue discussed separately below).

The need to identify relevant attributes and weightings is identified in the Guidelines. Selecting relevant attributes is usually not difficult but choosing the weightings both between attributes and as between all attributes and price requires an understanding of the way in which the weightings can influence the outcome, an appropriate assessment of risk and an assessment of price as against quality. I am told that this task is usually the product of group discussion and agreement within the project team, with senior manager approval. I am also told that Council may adopt weighting up to 60/40 weighting (non-price to price) but a lower non-price weighting may be attributed in relation to particular contracts and on occasion Council will use a pre-qualification process and/or a lowest conforming price tender when the circumstances are appropriate for that to occur.

The tenders that I reviewed had used a 60/40 weighting. It may be that the weighting used in those cases was appropriate, my review was not sufficiently detailed to be able to form a definitive view on that point in any particular case, but the higher the non-price weight the more pronounced the risk that an incorrect evaluation of a non-price attribute will skew the result. In this regard I note that in respect of government funded or subsidised roading projects when weighted attribute methodology is employed NZTA favours a 30/70 (non-price/price) weighting.

The Guidelines contain guidance about the structure of evaluation panels and the use of a panel of three to five persons, including one person that is "independent of the particular service area concerned" is recommended. The Guidelines also note the benefit of the use of independent probity advisors, but there is a cost in doing that and is likely only to be used for high value or controversial projects. The Guidelines do not however provide any guidance around the setting of weightings between attributes and as against price. There

are arguments for and against this practice, too rigid a framework may produce just as many issues as no framework at all. However I tend to favour the provision of some guidance rather than none at all and I think this is something Council might consider.

I accept that there is the potential for manipulation of outcomes from use of weighted attribute methodology evaluation but there are adequate checks and balances within the Guidelines, and the absence of any specific complaints around scoring indicate that Council is getting it right most, if not all, of the time. The setting of attributes and weighting requires a measure of technical skill and expertise and in my experience the people who do that work, whether council staff or contractors, take pride in conducting a professional, legally robust and fair process. The suggestion that elected members might be involved in this process, so as to add probity, defies the principles of good governance practice and in my view has nothing to recommend it.

One of my informants referred me to the outcome of the 2009 tender of the Rivers and Drainage (Large Machinery) contract 2009/26 where Fulton Hogan was the lowest priced tender but the contract was awarded to Simcox on an overall attribute evaluation. The implication, without any evidence, was that the scores for Simcox may have been more generous than for Fulton Hogan without good reason. The evaluation panel in that case included an independent person, two Council rivers engineers and was chaired by a project engineer from a different part of the Council. At the same time Simcox was not successful in securing the Rivers and Drainage (Strategic Labour) contract 2009/27 when Simcox believed it was more than fully qualified to do the work and had submitted what it thought was a competitive price.

In those cases Council had quite a bit of information from which it was able to rank the relative non-price merits of the bidders. One of the common criticisms of weighted attribute methodology is that it is difficult for newcomers to break in because the panel does not know them. I did not receive any complaint in that regard, which tends to confirm my overall impression that evaluations have been professionally undertaken and have generally, achieved a fair and robust outcome.

Local supplier bias

One potential local supplier told me that he had competed successfully in the market for the supply of equipment to other large organisations in Marlborough but had struggled to achieve participation in equivalent tender processes for the Council. When I raised the matter with Council it was clear that there were differences of opinion as to why this had occurred but it was common ground that my informant had not tendered for any Council contracts. These circumstances are a reminder of the fifth principle of the Procurement Policy and the importance of making procurement processes as inclusive as possible. This was the only complaint of the type that I received so I see it as an isolated incident and not indicative of a wider problem.

Another informant who came to see me observed that it was rare to see tenders advertised in the local newspaper. The Council does advertise some low value tenders on its Thursday page. Larger tenders are advertised in the national newspapers. One matter Council might like to consider is having a "tenders" page on its website which is regularly updated and lists all tenders which Council is conducting, indicating those which are available to open competition, the tender closing date and the name of the officer with responsibility for the tender. Most people today have access to the internet and this seems to me to be a relatively cheap and efficient way for people to keep abreast of what is happening in the District.

A number of informants complained that there was not a sufficient "local" bias in the procurement process. I have read the report on this topic which went to the Community and Financial Planning Committee on 22 March 2011. I thought the report fairly identified all relevant issues and the difficulties inherent in implementing such a policy. The minutes

record that there was a full debate of the issues. Council resolved to make no policy changes for 12 months and to consult with local contractors about the policy and evaluation methodology generally. It was therefore a little surprising that this issue had been raised with me, since clearly Council has already decided on a process to address the concerns which have been expressed and to come back to the issue within 12 months. I commend the Council decision, recognising however that the issue is difficult and whatever decision is made there will be those who will criticise it.

Lack of transparency around the communication of tendering outcomes

I received a number of complaints that unsuccessful tenderers struggle to get adequate debriefing meetings with staff managing contracts and that relevant information relating to the process, which might assist tenderers when bidding for future work, was being unnecessarily withheld.

When I raised these issues with Council staff they felt that the problems were overstated. However it is an important part of any contestable process that unsuccessful participants be provided with information relevant to their own bids. For many contractors, understanding their perceived weaknesses, so that they can address those weaknesses when next bidding for work, is much more important to them than the ability to litigate the outcome of a particular contract when the horse has already bolted and news of the challenge may have the effect of influencing the views of future evaluation panels. I understand the friction between the wish on the one hand to manage the risk of challenges to a tender process, particularly a process involving subjective assessment of attributes, and the Council's obligation under LGOIMA to provide information on the other hand. I think it might be difficult to resist a determined request seeking disclosure of the tenderer's own non-price attribute scores, the range of non-price scores for other tenderers and a summary of the reasons for the scores attributed to the tenderer.

I note that Council has had some very good legal advice in the development of the Contracts Guidelines and the model documentation. However my concern flows from a public law rather than a contract perspective, where there is increasing pressure to make information publicly available (as evidenced in the current review of official information legislation) especially where that information relates to the requester. There is also added pressure to make such disclosure when non-price attributes can play such a large part in the outcome.

My recommendation relating to this issue will require the Council to revisit the model documents and to take advice how best to restructure the relevant provisions to achieve the recommended outcome, but without increased risk of exposure to legal claim. That seems to me to be possible to achieve but there may need to be some special rules around the release of the summary of reasons. The release of this information, subject to appropriate legal protection from claim, is not something which Council should fear. If the evaluation process is robust and fair it should be able to be easily defended.

Aggressive allocation of risk

I received a number of complaints that in recent contracts for works or services there was an unduly aggressive allocation of risk to the contractors. The essence of the allegation was that this risk allocation had resulted in a reduction in competitiveness in the bidding process, particularly from local operators who struggled with the complexity and/or novelty of the documentation. These allegations were focussed on recent contracts relating to recyclables and waste. I also received a similar allegation in respect of the parking management contract recently tendered by Marlborough Roads. While that tender is outside my brief, and is of a slightly different nature, the generic comments which I am about to make will also be relevant to that process.

The allocation of risk is always a contentious issue which requires a value judgment which balances the principles of the Procurement Policy. The harder the commercial bargain driven by the Council, the greater the risk of contractor failure and a lack of sustainability. A judgment can only be made in respect of such matters by reference to the entire term of the contract.

Anything which reduces competitiveness in the tender process is clearly undesirable, but by way of response to these allegations as they related to the recent tender round for waste contracts, a total of 17 tenders were received for 3 contracts, indicating that the views on risk allocation were not universally shared by those parties who chose to participate in the process.

I am also informed that the commercial outcomes for the particular tenders were very good for the ratepayer and that generally over recent years, notwithstanding a more aggressive approach to risk allocation, the Council's tender programme has delivered good results from tenderers who have provided, and continue to provide, good service.

That said, however, the concern expressed was acknowledged. Risk allocation is one of those matters around tendering in respect of which there will always be debate and disagreement and to a degree the fact that complaint is being made is a positive sign. It indicates that Council's staff are driving hard commercial bargains for the ratepayers' benefit.

CONCLUSION

When I started this review it quickly became apparent that there was a significant polarisation of views about a range of matters, including the subject matter of this review, both within the Council and within the local community. Once the "corruption" allegations were cleared away it became clear that many of the issues came down to differences of opinion over the way the District was being managed, both at a political level and at a management level.

It is not possible for any local authority, whether acting in a regulatory or policy context, to get every decision right or to please everyone all of the time with the decisions it makes. The challenge for the Council is to continue to strive for excellence and to be as responsive as possible to the wishes of the community within the constraints of the Council's legal duties. While Appendices 4, 5 and 6 contain somewhat lengthy lists of issues my overall impression was that in the context of the size and scale of the Council's operations the nature and level of complaint did not seem out of the ordinary and certainly did not indicate some sort of systemic malaise.

The preparation of this report has been assisted not only by the willing co-operation of members of the public but also by Council staff who have provided in a timely and comprehensive manner answers to my questions and beavered away diligently to provide me with access to the documents which I have required for the purpose of this review. That assistance has been greatly appreciated.



Denis Sheard

Special Counsel
Simpson Grierson
Auckland

Appendix 1

(Council's letter dated 18 April 2011)

18 April 2011

Mr Denis Sheard
Simpson Grierson
Lumley Centre
Private Bag 92518
Auckland 1141

Email:
denis.sheard@simpsongrierson.com

File Ref: L135-C61C
Ask For: Tony Quirk



Dear Mr Sheard

Review Brief

I set out a request for you to undertake a review based on the brief spelt out below.

Introduction

The review is one requested by the Mayor.

Councillor Arbuckle raised in a public meeting on 22 March 2011 that there was talk of Council being corrupt and in responding to a question whether that might involve Council staff tampering with tendering documents, Councillor Arbuckle indicated that could be the case.

It is considered such an assertion impugns the integrity of Council and its Officers. This is seen as a serious allegation which must be properly investigated given that corruption carries with it the idea of use of corrupt practices (bribery, etc).

It is important there is public confidence in the integrity of Council and its Officers.

Review Brief

1. Investigate the corruption and impropriety allegations made by Councillor Arbuckle and any member of the public as conveyed direct to you, and within such investigation, interview Councillor Arbuckle and any other Councillor who might wish to disclose or discuss any similar allegations, and anyone else including individual members of the public and Council staff considered by you as necessary to reach a view on the allegation/allegations
2. Review MDC current Tender and Contract Manual processes. Assess if robust, if there is compliance with the processes. Also assess if the MDC Contract Manual processes are significantly at variance from common NZ Local Authority Contract/Tender processes.
3. Address the suggestion of possible Councillor involvement within such tender processes including, but not limited to, involvement in the setting of attributes; setting the percentage of attributes/value; considering of tenders.
4. Provide recommendations on the Tender/Contract Manual process review (item 2) and the allegations investigation in item 1.

Report Publication

5. Any report produced is to be provided to the Mayor. The Report is intended for release to the public following presentation by you to a full Council meeting, but it is acknowledged any release

might need to be deferred if a recommended action involves further investigation by either the CEO, the Police or Auditor General on any aspects revealed from the review.

The Marlborough District Council Contract/Tender Manual will be forwarded to you.

Timeline

We note your request for us to set a timeline providing for contact with you by 10 May 2011, based on interviews in Blenheim on Thursday/Friday 12/13 May 2011.

Yours faithfully



A P QUIRK
DISTRICT SECRETARY

Appendix 2

Summary of allegations of corruption and impropriety

	Allegations	Findings
1.	Current and former employees and/or their wives own shares in Simcox.	<p>The allegations were denied by the current and former employees and by Mr Ian Simcox. They are not supported by an examination of the Companies Office records. Both Mr Simcox and one of the former employees told me that they had never met and Mr Simcox had no idea who the former employee was. Mr Simcox stated that any contact which he had with the other employees identified by my informant had occurred only as part of the usual interaction between contractor and client. He denied any social contact with the named employees and this was confirmed by them.</p> <p>I am satisfied that these allegations cannot be sustained.</p>
2.	Council's chief executive threatens staff to ensure certain outcomes in relation to resource consents and tendering.	<p>The allegations were denied. Mr Besley noted that recently he was a member of an evaluation panel, which arose out of his particular interest in the matter through his previous involvement with project management in the IT field but that circumstance was a rare exception rather than a general rule and he has no day to day involvement in Council tender evaluation or decision-making. Apart from the matter referred to at Item 2 of Appendix 4 he has had no involvement in decision-making in relation to resource consents.</p> <p>In the absence of any further particularisation these allegations cannot be sustained.</p>
3.	An employee altered the recommendations in a report provided by an external consultant.	<p>These events occurred in 2006 and were dealt with at the time through an external review (which concluded that the alterations made were not material) and the completion of disciplinary process by the Chief Executive. I believe my informant thought that the employee should have been dismissed.</p> <p>Clearly that was a matter for the Chief Executive, who did not think dismissal was appropriate given the findings of the external review and the particular circumstances.</p> <p>This is a dead issue.</p>
4.	An employee has conflicts of interest arising from shareholdings in 3 named companies.	<p>The circumstances of the proposed conflicts of interest arising were not particularised. The shareholdings alleged in the 3 companies, all of which are closely held private companies, were not confirmed by Companies Office searching and were denied by the employee.</p> <p>The principle of one of the companies also denied any shareholding by the employee. I did not enquire further into the other 2 companies since they are to my knowledge very closely held and any shareholding would have had to arisen by reason of birth or marriage. The existence of those family relationship was also denied by the employee. I am satisfied these allegations cannot be sustained.</p>

	Allegations	Findings
5.	Allegations against a Council contractor of "offering bribes", inappropriate property dealings and "forcing sales, bullying and intimidation".	<p>The allegations of offering bribes were not particularised by my informant, who used the word "bribe" out of context in another allegation (see item 7 below). There was only broad particularisation of the property dealings. One transaction which fell within the scope of the allegation proved to have been undertaken by a third party and was unexceptional. The contractor denied any property transactions between it and the Council.</p> <p>I do not believe these allegations can be sustained. All of the allegations were vigorously denied and there was otherwise no specific evidence of such dealings from any one else that I spoke to about these matters.</p>
6.	Commercial disputes have been settled under agreements which contain confidentiality clauses.	<p>Confidentiality clauses are commonly included in agreements settling commercial disputes. They are always included in mediated and arbitrated settlements. In my experience of acting for local authorities when settling disputes it is usually the other parties who want to insert a confidentiality clause, for personal privacy reasons.</p> <p>This allegation seems to relate to a particular matter where a commercial settlement of a dispute was reached with the Council, under an agreement which contains a confidentiality clause but that party came to see me anyway. Subsequently a third party alleged that Council's lawyers had now threatened to enforce that confidentiality clause. This allegation was denied by relevant Council staff and the Council's lawyers. I have not been provided with a copy of the letter in which this threat was said to be contained.</p> <p>The first allegation cannot be sustained. The subsequent allegation is wrong.</p>
7.	A former Council employee, when acting in a personal capacity, offered a "bribe" to a person to withdraw a submission on a resource consent application.	<p>The practice of compensating affected owners by a payment in return for which a submission is withdrawn has been recognised by the Courts as a legitimate practice under the Resource Management Act 1991 (RMA) - see the comments of Judge Treadwell in BP Oil New Zealand Ltd v Palmerston North City Council [1995] NZRMA 504 at 508. I also note that in the ordinary sense of the word a "bribe" is a monetary inducement to a public official to perform his public duty. In this case the proposed recipient of the payment was a private citizen.</p> <p>If a payment was offered it was lawful to do so. The allegation that it was a "bribe" is wrong.</p>
8.	Staff in the Building Control Group receive gratuities to speed up consents and hold back applications lodged by people who question Council procedure.	<p>These allegations have been denied by Council staff. I am told that the Building Control Group complies strictly with Council's policies in relation to the acceptance of gifts (Part 11 of the Staff Code of Conduct and the Sensitive Expenditure Policy) which remind staff about the dangers of perception in the acceptance of gifts which might be seen as an inducement or reward.</p>

	Allegations	Findings
		<p>The Council is an accredited building consent authority (BCA) under the Building Act 2004, having been accredited in 2008. The process to achieve that outcome was detailed and painstaking. The changes in this area of local authority responsibility over recent time have been huge. Indeed it is hard to think of an area of Council activity which has come under more scrutiny in the last decade. The retention of BCA accreditation requires the Group to subject itself to rigorous compliance testing and monitoring, the results of which are also audited by external bodies. Actions such as the suspending and processing of applications and the timeframe for completion of consents (measured against statutory limits) are closely monitored.</p> <p>There will always be cases where an applicant is frustrated by the process and some consents will go more smoothly than others. A more likely explanation for different processing times between similar applications is differing standards of documentation preparation and/or different levels of understanding of the new regulatory environment which, since the 1991 decision to take the responsibility for setting building standards out of the hands of territorial authorities, have become increasingly more technical.</p> <p>In the absence of any particularisation this allegation cannot be sustained.</p>
9.	Staff in the Building Control Group commonly promote the work of Simcox.	<p>Staff are routinely reminded that recommendation of contractors is prohibited. The Council has a standard FAQ sheet which directs applicants to find their own contractors through the Yellow Pages.</p> <p>The allegation lacks particularisation and cannot be sustained.</p>
10.	A general allegation that building work is signed off without inspection.	<p>This allegation appears unjustified in the context of current practice which involves detailed inspection records, file notes and photographs. If this was occurring on a regular basis the Council would be swamped with claims and its BCA accreditation would be under threat. Neither of those events has occurred.</p> <p>This allegation cannot be sustained.</p>
11.	A person who has been a supplier of professional services to the Council received favourable treatment in a resource consent process, as some sort of quid pro quo or favour in return for those services.	<p>The person applied for consent to subdivide a property in a known area of water shortage into 3 lots, but the application was declined by the Council. An appeal against that decision to the Environment Court was settled following mediation.</p> <p>The allocation of the existing water right sought by the applicant and recorded in the subdivision consent was less favourable to the applicant than that which was, arguably, allowed as a permitted activity under the Wairau Awatere Resource Management Plan (WARMP). The consent requires the applicant to maintain 50,000 litre water storage tanks on each of the lots. A subsequent allocation to subdivide the largest lot into 2 smaller lots was granted by the Council, with the water allocation to that lot under the original consent being divided between the lots.</p>

	Allegations	Findings
		There is no evidence of favourable treatment of the applicant, indeed quite the opposite. The application was the subject of rigorous testing through the process outlined above. The applicant's approach to the allocation of the water rights available under WARMP was completely responsible.
12.	A former employee, while employed by the Council, manipulated a LIM report to facilitate a sale of property.	This allegation is wrong. The LIM report clearly recorded that the property was subject to flooding.
13.	A former Council employee purchased a new motor vehicle which was first registered on one day and then re-registered the following day. The allegation was made in the context of a claim that a Councillor is or was a shareholder of the first registered owner giving rise to a suspicion of underhand dealings.	The former employee explained the circumstances of the purchase to me. I am satisfied with the explanation I received. A search of relevant Companies Office records confirmed that the Councillor had ceased to have any interest in the company in 2007. This allegation cannot be sustained.
14.	A current employee who holds a 5% shareholding in a private company may not have fully disclosed any conflicts relating to property purchases and sales, building consent applications, and resource consents applications, by that company.	The employee denied the allegations, which were speculative in nature. He advised that an appropriate general disclosure of the existence of his shareholding had been made to the Council. The shareholding is held as co-trustee of a family trust settled by the employee's mother some years ago. The company is a relatively passive landowner of a sizeable land holding in a single location. It has no history of property ownership or development outside the current location. The employee is not a director of the company. I am assured, and confident that any further disclosure that may be appropriate will be made if and when that becomes necessary. This allegation cannot be sustained.
15.	A former employee or a related party was given a section in a subdivision in return for "favours".	The particularisation of this allegation was poor, other than to name the subdivisions and to say that the events occurred some time before the end of 2002. The former employee denies the allegations. The history of land ownership in these subdivisions is matter of public record. The people making these allegations had every opportunity at the time these events first occurred, and subsequently, to do their own research. The failure to do so in my view may indicate a lack of conviction that the alleged events did in fact occur. I was not prepared to put the ratepayers to the expense of a speculative investigation which seemed most likely to be a complete waste of time.
16.	It is common practice for Simcox to take 5 pieces of plant to the job when only 2 were required but to charge for all 5.	There was no particularisation of this allegation. It was denied by Mr Simcox and by the Council staff with responsibility for supervising Simcox work. It was acknowledged that it was possible that at an unsupervised work site plant might sit idle for longer than was appropriate but it

	Allegations	Findings
		<p>was the view of both contractor and Council that the level of supervision and audit applied by the Council was likely to make that an uncommon event. Mr Simcox particularly noted the rigour and attention to detail of the Council's supervision and audit processes. The Council staff with that responsibility have been involved in this work for a number of years and have an understanding of what plant is required for which job and how long the job is likely to take.</p> <p>My general impression of the relationship between Council and Simcox "on the job" was of people who had a healthy working relationship with appropriate levels of separation, to the point of being "stand offish".</p> <p>In the absence of any particularisation of the circumstances it is not possible for me to take the matter further but my clear impression is that the allegation cannot be sustained.</p>
17.	<p>The Council favoured Simcox with the allocation of work by breaking down contracts into smaller value contracts not requiring tendering.</p>	<p>This allegation was denied by relevant Council staff. They pointed to the provisions of the Rivers and Drainage (Large Machinery) contract 2009/26 which provide sets rates for the term of the contract on a "bulk purchase" basis. When bidding a contractor must make assumptions about the level of work that will be received and be prepared to have sufficient plant available to meet that commitment. The contract also provides that jobs with a value exceeding \$30,000 may be put out for tender.</p> <p>During my investigation I noted that there had been a significant decline in Council spending on Simcox contracts over the last 12 months, attributed to a loss of subdivision work and reduced rivers work. In addition to this I am told (by both Council and Mr Simcox) that Council has separately tendered specific elements of flood protection work, in respect of which Simcox was not always successful. Mr Simcox commented that the value of work won by others over the years was significant.</p> <p>I do not think this allegation can be sustained.</p>
18.	<p>Simcox tenders low hourly rates and then endeavours to make up the difference by charging for variations and extras.</p>	<p>Council officers denied this allegation, which was not particularised. Mr Simcox also denied the allegations and commented on the diligence with which his invoices were scrutinised by Council staff. All invoices are audited before they are rendered.</p>
19.	<p>A contractor who missed out on a contract to Simcox observed Council staff being entertained by Simcox staff a short time later at a local restaurant (Rocco's) following which that contractor was offered work to the value of \$25,000 by Council staff as "hush money".</p>	<p>There was no further particularisation of this allegation, by date or otherwise. I would have thought I might have been given details of the contract which was said to have been awarded to identify when these events occurred. The fact that this information was not volunteered perhaps indicated an event which occurred some time ago.</p> <p>Mr Simcox says that he has not regularly entertained Council staff. He did confirm that Council staff are offered invitations to attend the Simcox Christmas function (along with other people that Simcox deals with in the ordinary course of its business) which in recent years has been held at the Simcox yard, but attendance by anyone from the Council was rare and even then</p>

	Allegations	Findings
		<p>the visit was invariably very short. He also recalled two occasions around 1998 when his staff and Council staff did have social contact. He says this occurred in the context of a rivers maintenance contract which required a partnering plan and efforts toward "team" bonding.</p> <p>Council staff confirmed Mr Simcox's general comments but did recall that Simcox may have held its Christmas drinks function at Rocco's on one occasion during the 1990s. If nothing else this slightly different version of events demonstrates the difficulty of recalling the detail of otherwise inauspicious events years afterwards.</p> <p>In the absence of any particularisation, the allegation in relation to the contract cannot be investigated further. The level of social interaction established by investigation of this allegation indicates activity at the lowest end of the scale and invariably occurring in the recent time as part of a wider social gathering. This aspect of the allegation cannot be sustained.</p>
20.	<p>The Council leases its Works Depot in Kinross Street from Simcox related interests. The Council has made improvements to the land during the period of its occupation which will remain after lease expiry. (The implication appears to be that this arrangement inappropriately prefers Simcox in some way.)</p>	<p>The relevant lease is dated 30 March 2005 and is in the ADLS (Fourth Ed 2002 (2)) form. It contains usual provisions relating to the tenant's right to remove tenant's fixtures and fittings and a special condition which enables the landlord to require the tenant to remove tenant's fixtures. These provisions are entirely usual and unexceptional. The rental paid by the Council (which is significantly less than the amount stated by my informant) was set in accordance with a registered valuation report dated 14 April 2008 and continues to apply as at the review on 1 April 2011. Rental was subject to hard ratchet on review. This lease has terms which are entirely typical of a standard leasing transaction of its type. I suspect that it would draw no attention but for the fact that the landlord has Simcox connections.</p>
21.	<p>Council collaborates with Simcox in the overcharging of river protection works to adjoining farmers.</p>	<p>I was given a specific example to support this allegation. The information was provided as hearsay and there was no obvious reason why the farmer involved in this matter might not have come and spoken to me personally. I was inclined to draw an adverse inference from that circumstance. However the employee who was involved remembered the circumstances, which had occurred recently.</p> <p>The Council will often offer to subsidise river protection works for farmers who live outside the rating area. The level of subsidy varies but in this case was proposed at 50%. The employee attended on site with a representative of Simcox who gave a quote, on the basis of a scope of works discussed and agreed on site, of \$7,000. The allegation was that subsequently another contractor quoted to do the same work for \$2,800.</p> <p>It is not clear whether the work priced in the second quote had the same scope as the work in the first quote. Another relevant issue may be that the second contractor had access to quarry material closer to the proposed work site than the source of quarry material available to Simcox, resulting in reduced cartage costs (but this would explain only part of the difference). The Council employee noted that the supervisor who was providing the quote for Simcox was relatively new to the job and may have</p>

	Allegations	Findings
		<p>taken a conservative approach to pricing as a consequence. Perhaps all 3 of those matters were on issue.</p> <p>My informant alleged that because the farmer thinks he is getting a cheap job, "Simcox milks it for all it is worth" and the Council assists in that process. The information available to me falls well short of supporting that conclusion. The Council employee was only on site for the purpose of agreeing the scope of the work for which a subsidy would be paid and was not on-site when the second quote was provided, so there is real doubt over the scope of the work to which the quote related. The Simcox quote was provided in circumstances where, it was understood that the farmer would be getting a second quote. Council had agreed that it would pay a subsidy whichever contractor the farmer chose. Ultimately the moderating factor is the farmer's willingness to pay for his share of the work and in this case that has not occurred, even at the figure in the lower quote.</p> <p>I do not believe that this allegation can be sustained, on the particular facts or as a general proposition.</p>
22.	<p>A Councillor failed to disclose a personal interest (as a member of the incorporated society which owns the Omaka airfield) in relation to the Council's recent decision to advance money to Omaka Aviation Centre to repay debt.</p>	<p>This allegation is wrong.</p> <p>The allegation was made in a letter dated 6 May 2011 so I am not sure what the comment related to at that time. Perhaps it related to a decision to put the draft Annual Plan out for consultation. If that is correct I do not believe that the Councillor had an obligation to declare an interest since no substantive decision (as opposed to a procedural decision) was being made.</p> <p>The Councillor declared an interest when the matter came forward for discussion and a substantive decision. I note that Council considered inclusion of the relevant provision in the Draft 2011/12 Annual Plan at its meeting on 13 June 2011. The minutes of that meeting record that the Councillor declared an interest and did not take part in the discussion or vote.</p>

Appendix 3

(Companies Office records relating to Simcox Construction Limited)



COMPANIES

Company Extract

SIMCOX CONSTRUCTION LIMITED
279106

Entity Type:	NZ Limited Company
Incorporated:	01 Oct 1985
Current Status:	Registered
Constitution Filed:	Yes
Annual Return Filing Month:	June

Company Addresses**Registered Office**

C/-wallace Diack Ca Limited, Level 2, Youell House, 1 Hutcheson Street, Blenheim

Address for Service

C/-wallace Diack Ca Limited, Level 2, Youell House, 1 Hutcheson Street, Blenheim

Directors

SIMCOX, Ian John

14 Taylor Pass Road, Blenheim, 7201

SIMCOX, Margaret Rose

14 Taylor Pass Road, Blenheim, 7201

Shareholdings

Total Number of Shares: 1,000

Extensive Shareholdings: No

998

CLARK, Christopher Thomas

76 High Street, Blenheim

SIMCOX, Ian John

14 Taylor Pass Road, Blenheim

SIMCOX, Margaret Rose



1

14 Taylor Pass Road, Blenheim

SIMCOX, Ian John

14 Taylor Pass Road, Blenheim

1

SIMCOX, Margaret Rose

14 Taylor Pass Road, Blenheim

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SIMCOX CONSTRUCTION LIMITED(279106)

as at

Submitted by : WALLACE DIACK **Designation :** Accountants**Registered Office**19 HENRY STREET
BLenheim**Address for Service**19 Henry Street
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(Where appointments are prior to February 1993 the date shown may relate to when the information was enter

Name

Ian John SIMCOX

16a Burden Street, Blenheim

Email Address: (none on record)

Margaret Rose SIMCOX

16a Burden Street, Blenheim

Email Address: (none on record)**Shareholders** (as at incorporation or last annual return if any.)**Number of shares** 1,000**Name**

SIMCOX, IAN JOHN

16a Burden Street, Blenheim

SIMCOX, MARGARET ROSE

16a Burden Street, Blenheim

No. of Shares

500

500

AGM Details**Auditor Resolution**Did the shareholders pass unanimous resolution not to appoint an auditor for the current year? **Yes**If Yes has been selected give the date of the resolution **04 June 1999****Annual General Meeting**Please specify the date of the last Annual Meeting or resolution in lieu of a meeting **04 June 1999****Other Annual Return Details**Has a prospectus been issued ? **No****Financial Accounts**Is the company an issuer as defined by the Financial Reporting Act 1993? **No**Is the company a subsidiary of a company incorporated outside New Zealand? **No**

Are 25% or more of voting shares held by a person / body corporate ordinarily resident outside New Zealand?

Appendix 4

Allegations relating to regulatory or decision making processes

	Allegations	Findings
1.	<p>Council issued a land use consent for the construction of a dwelling with right of way access over an adjoining property owned partly by the applicant for resource consent and partly by a third party. The consent was granted non-notified without the consent of the third party.</p>	<p>The granting of the consent without written approval from the third party in relation to the right of way issue seems to have been open to the Council on the facts. A resource consent is enabling and will not allow something to occur which is not possible at civil law. The third party in such a case is able to restrain the exercise of the consent by way of injunction.</p> <p>In addition to this there was a suggestion that the adjoining property over which access would be obtained was not adversely affected because the house upon it was derelict and unoccupied. This decision seems more questionable, since I was told that the house had an Historic Places Trust classification and was capable of repair.</p> <p>At the end of the day the consent had been granted and acted upon before these issues became known to third party and in those circumstances the Council has no ability to just "cancel" the consent. The only remedy available to the aggrieved party is by way of judicial review. My informant's sense of grievance arose out of the lack of any apology from the Council. But an apology can often constitute an admission of liability and would leave the Council without any insurance cover in the event of a civil claim for damages for breach of statutory duty.</p> <p>This matter does no more than demonstrate the practical difficulty of balancing public expectation with legal reality in such cases.</p>
2.	<p>Council settled an appeal relating to a development by Outer Limits Limited contrary to the advice of Council's planning experts.</p>	<p>The appeal was the result of an application for resource consent for a large format retail activity on the western edges of Blenheim which Council declined. Shortly before the hearing of that appeal an amended proposal was put forward by the applicant, and it was the amended proposal which was ultimately being considered by the Court.</p> <p>I spoke to Peter Radich who represented the Council in this matter. He explained to me that the approach of the Environment Court Judge to the evidence over the early days of the appeal hearing resulted in him making a recommendation to the Chief Executive that Council might achieve a better outcome to resolve the appeal by consent rather than risk a decision on the appeal which might be less favourable to the Council. Mr Radich is a senior and nationally respected RMA practitioner. Council was entitled to rely upon his assessment and recommendation.</p> <p>The suggestion that the Chief Executive instigated the settlement proposals is not correct. I am informed that the Chief Executive consulted with elected members about the advice received from Mr Radich before confirming instructions to settle the matter.</p>

	Allegations	Findings
		I also spoke to one of the principals of Outer Limits who complained that their advice was that the amended application would be approved by the Environment Court and that the matter should have settled before it got to a hearing.
3.	An application was made for a resource consent to regularise a dam constructed in 1972 for irrigation purposes. The resource consent process took too long and was very expensive.	My informant agreed that I would note the matter in my report and that I would take no further action but if there was a general review of resource consent processes he would want to be heard in relation to that general review. See also item 9 below.
4.	A complaint about the conduct of an officer making "promises" he was not authorised to make about an application to subdivide land in a flood prone area.	This matter is currently the subject of an appeal to the Environment Court and it would not be appropriate to make any findings while the matter remains before the Environment Court. I did not therefore investigate this matter.
5.	Council granted a resource consent for a frost protection fan on an adjoining vineyard.	This matter has a protracted history, the essential complaint being that consent was granted for the fan without a full and proper assessment of environmental effects. Council is aware of the particular issue and the issue of frost fans generally has become the subject of some controversy.
6.	Council failed to adequately consult prior to notification of a plan change relating to frost fans, despite a promise to do so.	The matter is currently the subject of an appeal to the Environment Court. If the consultation was inadequate then the appeal should resolve that complaint. It is not therefore appropriate to make any finding on this allegation while the matter remains before the Environment Court.
7.	Council selected 2 Councillors to sit on a 3 member panel to hear decisions on a plan change relating to frost fans creating the potential for politically motivated decisions making which was contrary to the recommendations of the Council's planners.	I have noted above that this matter is subject to an appeal and I express no view other than to observe that under the RMA decisions on Plan Changes must be made by elected members, cannot be delegated (see s 34A(1)(a) RMA) and commonly demonstrate a measure of political bias. The best that a panel which hears submissions on a plan change can do is make recommendations. Ultimate responsibility for plan change decisions (subject to appeal) rests with the Council and ultimate accountability for the decisions made by elected members lies in the ballot box.
8.	Council has failed to separate its regulatory and service delivery functions in accordance with clause 3.4 of the Marlborough Regional Policy statement (RPS).	The Council's legal advice on this allegation, which was first raised some time ago in the context of membership of committees, is that Council's practice was appropriate, since there was no inconsistency between the provisions in the RPS and section 39 of the Local Government Act 2002 (LGA 02). The separation required under section 39(c) LGA 02 applies only "so far as is practicable". The issue is not limited to membership of Council committees. As noted above there are some RMA responsibilities that Councillors cannot delegate and the separation required by section 39(c) is achieved by delegating relevant responsibilities whenever that is possible, consistent with good governance practice.

	Allegations	Findings
9.	An application for resource consent for a well was unreasonably protracted and expensive.	<p>While this issue was outside the scope of my brief my curiosity was aroused. Enquiry indicated a protracted and contested process which started in 2001, involving a notified resource consent and an appeal relating to a well in the locality of natural springs. The matter did not get off to particularly auspicious start at the time of application and an apology was offered to the applicant, through his solicitor, at the time. However, it was clear at an early stage that the application would be contested.</p> <p>The application attracted number of submitters in opposition and the technical experts disagreed over the effects of the proposal. While a consent was eventually obtained the conditions made irrigation difficult. The matter was finally resolved by moving the well to a different location but by that stage there had been a considerable investment in time and money. With the benefit of hindsight taking that step at the outset would have been a cheaper and quicker option.</p> <p>This case demonstrated a common misconception that because several of the neighbours already have wells the next one to apply will also be approved. Cumulative effects cannot be ignored and the RMA has a "first come first served" approach to the allocation of resources which routinely sees people opposing applications to defend their own vested interests.</p> <p>See also item 3 above.</p>
10.	Council granted a consent for construction of a new road without notification to immediate neighbours.	Notification decisions invariably involve value judgments and the application of legal principles. This issue is outside the scope of my brief.
11.	Council favours some developers but not others, permitting work after consent has lapsed but issuing enforcement proceedings against a developer who has substantially given effect to the development.	I was given 2 examples, both requiring an assessment of factual issues and an interpretation of s 125 RMA. These issues are outside the scope of my brief.
12.	Council accepts poor quality assessments of environmental affects, particularly in the coastal environment.	This issue is outside the scope of my brief.
13.	Council appoints commissioners on resource consent matters who have a conflict of interest arising through existing and past connections with the Council.	<p>The example was given of an advocate for the marine farming industry sitting as a commissioner on an application for a marine farm consent, with a disclosure of interests only made on the morning of the hearing. A complaint that the disclosure was a bit late seems fair, but if there is real concern over a potential conflict of interest then that is the time to raise an objection. If no complaint is raised that seems to me to be the end of the matter.</p> <p>I also received complaints about the use of a former Councillor as a commissioner. The particular Councillor has a close knowledge of WARMP and a good track record of unchallenged decision making. The complaints seemed to be a concern about that commissioner appearing to be "too close" rather than an</p>

	Allegations	Findings
		<p>issue of competence.</p> <p>In respect of the wider allegation the logical extension of the proposition would seem to be that if a person was previously employed by or contracted to the Council, or was an elected member of the Council, then he or she is not qualified to sit as a commissioner. Once a decision is made on one matter, that person has a "past connection" and cannot sit on another matter.</p> <p>Expressed in those terms the general proposition cannot be sustained. Council would quickly run out of people able to make decisions. As noted in the body of the report, allegations of conflict (or "bias") should only be made after a rigorous factual examination of the circumstances of each case.</p>
14.	Council allows matters to be progressed as resource consents rather than through a plan change process when there are clear defects in the plan (eg in relation to aquaculture).	This issue is outside the scope of my brief.
15.	Council has granted global resource consents for the harvesting of forests.	This issue is outside the scope of my brief. I understand the Council is aware of the competing views on this subject
16.	Council has misinterpreted the rules in the District Plan to allow activities with potentially wide scale effects (e.g. the characterisation of methyl bromide treatment activities in Picton as a mobile activity).	This issue requires an interpretation of the rules in the District Plan and is outside the scope of my brief. If my informant has an ongoing concern about this issue he should take it up with the Council. If the Council cannot be persuaded, my informant could either seek a declaration from the Environment Court or take enforcement proceedings for himself.
17.	Three specific allegations were made relating to a resource consent granted by the Council which is the subject of an appeal to the Environment Court.	While the matter is on appeal any comment would not be appropriate. The issues raised are outside the scope of my brief in any event.
18.	A complaint relating to action threatened by Council in respect of a water right and a change of land use from production of crops to viticulture.	This is a current issue. It is outside the scope of my brief.
19.	Council should have been more diligent with its inspections of a house under construction in 2003.	<p>I was left with the impression that this complaint related as much to the way he was treated by the Council when he rang to discuss the matter as to the alleged lack of inspections. When my informant rang the Council he was warned to be careful with what he said because a point might be reached where the council officer might need to make a note of alleged building defects for the property file and that note might find its way on to a LIM or be made available under an information request to a potential purchaser.</p> <p>My informant saw this warning as inappropriate. I view it as entirely appropriate. The Local Government Official Information and Meetings Act 1987 ("LGOIMA") makes it very difficult for Council staff to have "off the record" discussions about a range of matters and while there is some discretion as to what may or may not be recorded in a LIM under s 44A(3) LGOIMA the ability</p>

	Allegations	Findings
		to withhold information if a request is received is limited. Far better that an early warning be issued so that the ratepayer can make a choice about how much is said and the context in which it is said. I note my informant's advice that the claim was settled in the Disputes Tribunal and that no claim was made against the Council. The Disputes Tribunal has limited jurisdiction indicating that the value of the alleged defects was likely to be relatively minor.
20.	Council made errors when inspecting foundations for a new house during 2010	<p>The file disclosed inspection records and photographs which appeared to confirm that the complaint was unjustified. Current indications are that the problem arises from landscaping work undertaken after issue of the CCC.</p> <p>The complaint to me was the first indication to the Council of a problem. I will be writing to my informants suggesting that they should follow usual process and take the matter up directly with the Council if they still have concerns about this issue.</p>

Appendix 5

Allegations relating to tendering processes

	Allegations	Findings
1.	Low value contracts are awarded by staff under delegated authority.	That is what the Procurement Policy allows. If the policy is not considered appropriate it should be reviewed but I see no reason for recommending that action. I note that the threshold in the policy below which contracts can be entered into under delegated authority without the necessity for a formal report to the Council is \$25,000. In my experience, this is a low threshold in a local authority context.
2.	Projects are broken down into a series of smaller contracts under \$10,000.	<p>It is not clear whether this allegation relates solely to Simcox matters (see Appendix 2 item 17) or is a general allegation. In either case the allegation was met with a flat denial from Council staff. The reference to contract values under \$10,000 carries the implication that this relates to the actions of staff below Group Manager level. I struggle to understand why staff would want to saddle themselves with the additional administrative burden of multiple small contracts in preference to a single larger contract.</p> <p>In the absence of any particularisation I cannot take the matter further.</p>
3.	Many contracts are just rolled over, without new participants in the market having an opportunity to tender.	<p>No examples were provided by my informants. I noted that some contracts are let on a term basis, with rights of renewal subject to satisfactory performance. Most contracts appear to be subject to periodic public tendering but I imagine there will be cases when that is viewed simply as a pencil sharpening exercise for the incumbent supplier.</p> <p>I was told that the rolling over of contracts was the exception rather than the rule and many contracts which are rolled over are the subject of report to and debate by the Council before that action occurs. Relevant matters to be considered when making this decision include the cost of re-tendering, the term of the contract, the skills and experience of the incumbent when assessed against the known pool of similar expertise and the price being offered for the renewal term. I was also told that Council recently ignored a staff recommendation and refused to roll over 3 reserves contracts</p> <p>In the absence of any particularisation I cannot take this matter further, but believe that the general allegation cannot be sustained.</p>
4.	The contract for the coffee shop at the airport was not the subject of a public tender.	<p>The management of the airport terminal lies with the board of Marlborough Airport Limited (MAL) and the matter is potentially outside the scope of my brief. I have however made some enquiry of the circumstances.</p> <p>MAL became embroiled in litigation with the former operator of the coffee shop which was resolved by a commercial settlement and the appointment (without tendering) of a new operator. The new operator was required to meet the costs of</p>

	Allegations	Findings
		<p>refitting the premises which I am told were significant.</p> <p>This matter raises the issue whether a council-controlled organisation (CCO) such as MAL is, or should be, subject to the same procurement strategies as the Council. Invariably one of the justifications for establishing a CCO is to get more commercial discipline and flair into the management of purely commercial activities. A suggestion that a CCO is not bound by the Council's Procurement Policy is therefore in essence to suggest that the Policy is not commercially driven. If that is the proposition, then I beg to differ.</p> <p>Be that as it may, the question whether a competitive process might have produced a better result for MAL is fairly asked. Certainly it is the practice for concessions at the larger regional and international airports in New Zealand to be publicly tendered. I am told that the board of MAL did consider the possibility of a tender process but decided that with a food operation, where service is paramount and the new operator had an existing (and locally based) operation against which service standards could be objectively measured, the decision to proceed without a tender process was justified.</p>
5.	<p>Real estate services for the Boulevard Park on Taylor subdivision were not tendered.</p>	<p>The allegation, when expressed in this way, is wrong. There was a tender process but the work was awarded to a tenderer who did not have the lowest price.</p> <p>The Boulevard Park on Taylor Subdivision was managed by MDC Holdings Limited on behalf of the Council. Real estate services for previous stages of the subdivision had been handled by Mark Stevenson Real Estate ("First National") however in 2006 the board of MDC Holdings Limited decided to hold a competitive process to test the market. Three firms were invited to bid. I have reviewed the correspondence sent to the firms asked to participate and it did not promise a lowest conforming price process.</p> <p>A report was prepared comparing those bids under several categories: account management, recent subdivision experience, marketing capacity, regional coverage and fee structure. The fee structure comparison was shown in a table adjusted to reflect the differing approaches taken by each of the tenderers to marketing costs (some inclusive of costs and some exclusive). A decision was made to award the work to First National, notwithstanding that it had a higher fee structure proposal than other tenderers.</p> <p>The criticism that MDC Holdings Limited should have considered the matter on the basis of price only cannot be sustained since it would lead to a general proposition that price should be the only issue considered in relation to all contracts for the provision of professional services. Clearly that is not the case – other non-price attributes will be relevant in most, if not all, cases. The issue is really about the weighting of price and non-price attributes, which is discussed in the report.</p>
6.	<p>The lease of the convention centre was given to Scenic Circle without a</p>	<p>I am informed that when a decision was made to build the convention centre, there was extensive public advertising</p>

	Allegations	Findings
	formal tender process.	<p>through National Business Review and national newspapers seeking expressions of interest from parties who might be interested in constructing a hotel on the site and operating the convention centre business in conjunction with that hotel. Only two responses were received. Scenic Circle was selected as the preferred party and negotiation of the commercial terms of the proposed arrangements proceeded with Scenic as the preferred party.</p> <p>This allegation cannot be sustained.</p>
7.	The Council does not have adequate processes around the awarding of contracts for professional consultancy services. Some staff and consultants appointed to run tender processes are not competent for that task.	<p>This allegation was not particularised, although I did receive a series of general allegations on a similar theme from a number of tenderers in relation to both consultancy services and physical works contracts.</p> <p>Inevitably in any contestable process, where considerable time, energy and expense is expended making a bid, it is only natural to feel a sense of disappointment and frustration if that time, energy and expense is unrewarded. It seemed clear to me, although Council staff were reluctant to agree, that the Council's debriefing processes after the award of contracts were perhaps not as fulsome as they could be and this factor in particular was a key issue in much of the dissatisfaction expressed to me.</p>
8.	The design competition for the new I-Site Information Centre was not well managed. Participants did not get an opportunity to present.	<p>The design competition was handled by Destination Marlborough. A decision was made on the basis of the written materials provided within a short time after closing date. I have viewed the evaluation scores attributed to tenders in that process. The preferred architect from that process then made a presentation to Council as part of the funding approval process.</p> <p>Design competitions are notoriously contentious processes since they involve decisions based on highly subjective assessments and are difficult to manage at the best of times. It is clear from the limited documentation I have seen that participants would have to make a significant effort over a relatively short time period (4 weeks) and allowing for a presentation can make that effort seem worthwhile. It is also my experience that the brief can be won, or lost, on the quality of the oral presentation. This is something Council might like to consider in future design competitions.</p> <p>It is correct that there was no opportunity to present given to any of the participants before selection of the preferred proposal but otherwise there is nothing to indicate failings in the management of the process.</p>
9.	The rivers control budget was overspent at the end of the first six months of the year, but Simcox continued to receive work.	<p>It is not clear whether this allegation related to a particular year or more than one year. It was delightfully vague and for that reason difficult to address.</p> <p>Council staff noted the obvious that in a year of extreme weather events budgets can and do get overspent by unanticipated expenditure and invariably that resulted in belt tightening to correct the overspend before year's end. The</p>

	Allegations	Findings
		<p>general proposition that the rivers control budget was routinely overspent, and within the first 6 months of the year, was strenuously denied. In the 6 years since the 2004/5 year, with the exception of the 2008/9 year because of flood damage, the rivers control budget has been in surplus every year.</p> <p>In the current year operating expenditure and capital expenditure are both within budget</p>
10.	You no longer see advertisements for Council tenders in the newspaper.	<p>This allegation appears to be wrong.</p> <p>The Council inserts advertisements for low value tenders or where the interest is likely only to come from local businesses in the Council page of the Marlborough Express on a Thursday. High value contracts and those likely to attract interest from outside the district are more widely advertised, depending on the particular contract in the major metropolitan newspapers.</p>
11.	The tendering of wilding pine contract in 2005 was mismanaged by appointment of a contractor who had not inspected the site and required helicopter access to complete his contractual obligations.	<p>I am informed that the 2005 tender drew 3 bids from 6 pre-qualified tenderers. The work was tendered on the basis of an hourly rate under a contract which contemplated that where helicopter access was required it would be negotiated as required. There were some circumstances where helicopter access would be a cheaper option than paying staff to walk in at the agreed hourly rate. The work was performed to a satisfactory standard and within budget.</p> <p>This allegation cannot be sustained</p>
12.	When the Animal Health Board (AHB) work was tendered the contracts were always awarded to the same people, invariably former employees of Marlborough Regional Council.	<p>AHB took over responsibility for funding the majority of this work in 2000 from Nelson Marlborough Regional Council, at which point preferred supplier arrangements were put in place by AHB for the Council's former employees. From 2003 until 2007 the AHB's work was the subject of contestable tendering under strict supervision and audit control from AHB. There was some turnover in contractors over this period. Since 2007 the Council has had no responsibility for the tendering of this work, which is handled directly by AHB.</p> <p>This allegation cannot be sustained.</p>
13.	The AHB work was the subject of poor cost control.	<p>This allegation is denied by Council staff, who point to the fact that all of the work undertaken by Council staff on behalf of AHB was the subject of rigorous audit control. Council has had no complaint from AHB.</p>
14.	Council has been provided with evidence relating to allegations of dishonest or improper behaviour by a Council contractor and/or its employees in relation to the operation of the refuse transfer station but has failed to take action "even with Police reports".	<p>The Council spent a considerable amount of time over a 2 year period investigating and talking to the parties involved in an endeavour to understand and resolve the allegations made. My informant felt that Council sided with the transfer station contractor.</p> <p>As with every story there are 2 sides and I got exactly the same complaint from the transfer station contractor who felt victimised by the range of complaints made against it by my informant and the Council's investigation of those complaints.</p>

	Allegations	Findings
		The transfer station operator consistently denied any wrong doing. The individual allegations made are detailed below.
15.	Allegation of underestimation of green waste.	<p>This allegation was first made in October 2008. Over the following months information was gathered by the green waste operator and an independent report dated 1 April 2009 was obtained by the Council. Council was satisfied from its investigation of the complaint (and reports it had been receiving for some time from surveyors it had engaged to undertake regular surveys of the compost heap) that there were difficulties measuring green waste volumes and determining what might be "missing". Mixed loads of rubbish and green waste also introduced issues relating to measurement and the potential for conflict with members of the public if an overly aggressive approach to load measurement was adopted. The Council responded in March 2009, prior to receipt of the independent report, by changing the method for receipt and payment for green waste, so that the green waste contractor assumed responsible for those activities. It was hoped that this action would remove the main friction point between contractors.</p> <p>In 2010 there was an exchange between legal advisers for the council and the green waste operator. It was the Council's position that even if green waste had been under measured in the period prior to March 2009 the green waste operator suffered no loss because the contract with the Council required a top up payment to be made to the green waste operator to provide the service. Council put forward a proposal for a commercial settlement of all of the disputes which had arisen, with a denial of liability, on the basis that the transfer station operator and the landfill operator would also contribute to the settlement. Those operators refused to contribute (on the grounds that they had done nothing wrong). Council however proceeded to make a settlement on its own account, which was accepted. The settlement agreement contained a confidentiality clause. The hope was that a settlement might allow the parties to move on. Sadly that does not appear to have happened.</p>
16.	The firm appointed to provide the independent report relating to green waste volumes was not independent and had a conflict of interest.	<p>This was said to arise out of the fact that an employee of that firm, who would not be involved in any way in the preparation of the report, lived in the same street as the principals of the transfer station operator. The allegation is that the transfer station operator should have disclosed that fact to my informant and to the Council before the firm was appointed.</p> <p>I note once again that allegations of this sort should not be lightly made and the circumstances must disclose a real possibility of bias. There is nothing to indicate any involvement by the employee in the preparation of the report.</p> <p>There is no substance to this allegation.</p>
17.	Staff at the refuse transfer station and resource recovery centre were not accounting properly for cash.	The cash received at the transfer station for general refuse belonged to the transfer station operator under the arrangements as previously structured so that the risk of loss in that regard lay with the transfer station operator. Money received for green waste belonged to the Council. The police

	Allegations	Findings
		<p>investigation of the matter referred to it by my informant concluded that while there was some evidence of dishonesty there were difficulties with proof. No prosecutions followed. The change made for reception and payment of green waste in March 2009 addressed any risk of loss to the council in that regard.</p> <p>In respect of a second matter Council was contacted by a former employee of the operator with an allegation that 6 months previously there had been "embezzlement of money" at the resource recovery centre. An investigation was made by the Council. The information provided to the Council proved to be unreliable, although a banking discrepancy was discovered (incorrect banking related to the petty cash float) 7 days after the date of which the Council's informant said the theft had occurred. The allegations were strenuously denied by the operator and its staff. When Council reported its findings to its informant it was thanked for making the effort but has subsequently been accused of a "snow job".</p> <p>It is difficult to understand what more Council was supposed to have done in response to either of these allegations. It investigated both complaints but could find no hard evidence which would support action. The contractor denied any wrong doing for itself and for its staff (who resented the accusations made against them). Most notably the police also took no action following its investigation of the circumstances at the transfer station.</p>
18.	The transfer station operator has been miscounting official rubbish bags.	<p>This allegation relates to the miscounting of "blue" (official) rubbish bags and "black" (unofficial) bags left at the transfer station. The former can be dropped off by the public at no cost and the transfer station operator is paid a fee by the Council to dump them. The latter could be dropped off by the public but a fee is charged based on a volume assessment. The allegation was that 'black' bags were being counted as 'blue' bags for the purpose of payment claims from the council. When I first considered this allegation I did not appreciate that around 2008 Council started phasing out the 'blue' bags for a black bag with a stripe, first white and then yellow. It seemed to me that this fact would give added scope for confusion in any counting exercise. Council did make an attempt to audit the claims made. The outcome was inconclusive. The volume of "blue" bag claims remained fairly constant both before and after the audit. The solution for accurate accounting was to pay someone to attend at the transfer stations during opening hours to physically verify and count all "blue" bags. The alternative was to tell ratepayers they couldn't drop "blue" bags off at the transfer station. The first option was considered an expensive solution having regard to the sums involved.</p> <p>The average daily claim for all "blue" bags is around \$400 plus GST on recent figures (numbers have been rising over time) and most, if not all, of those bags may have been properly counted any way. The option of telling ratepayers to take their "blue" bags home was not considered to be politically acceptable. The Council chose, on the evidence available to leave matters where they lay until the commencement of the</p>

	Allegations	Findings
		<p>new contract from 1 July 2011, when the system would be changed to eliminate this payment.</p>
19.	<p>Inadequate time was allowed for the preparation of tenders for the recent resource recovery and reuse contract. There was insufficient information provided on which to accurately and fairly base a tender and numerous corrections to the documents during the process, through notice to tenderers.</p>	<p>This particular tender process attracted quite a bit of comment to me and has also been the subject of comment directly to the Council. The issues are partly related to the time of the year but a 17 working day period for preparation of a bid in respect of a contract which had been in the pipeline for some time does seem to be a little tight, especially for smaller organisations whose professional advisers were otherwise tied up. A complicating factor was the change in method, involving a change from volume to weight. Some of the contractors grappled with that change. The end result however was a fully competitive tender resulting in a favourable outcome to Council.</p> <p>One of my informants expressed concerns about the accuracy of the information provided in relation to rubbish volumes suggesting that the volumes provided to tenderers were not accurate because the current contractor was compacting rubbish into the bins. This was denied by the operator and the relevant council staff, but photographic evidence suggested otherwise. The point of difference between these competing views seemed to be between pushing material down to minimise the number of traffic movements on the one hand and hard compaction on the other. I was advised by Council staff that if rubbish was over-compacted into the bin difficulties would arise at the landfill because mechanical extraction would be required and that would not please the landfill operator. (The transfer station operator is a sub-contractor to the landfill operator.)</p> <p>I am informed that subsequent to the tender process Council has installed and tested the new weighbridge. Bins from each transfer station have been weighed over several weeks. The weights and volumes ascertained from this exercise are very close to the volume and waste estimates provided in the tender documents</p>
20.	<p>A range of allegations were made about the tender for the construction of the Alfred Street Carpark with issues raised including the appointment of a Christchurch-based consultant to run the tender process, the closing of tenders at the consultant's office (rather than Council's office), inadequate time for preparation of a bid (approximately 10 working days), continuation of the tender process after the closing of bids and refusal to accept an alternative tender.</p>	<p>Many of these issues had already been raised with the Council, and some had been addressed in discussion with those who have raised them. I have not therefore undertaken a detailed review of this process.</p> <p>I note however that the tender period was 23 February to 15 March (which is 19 days). It would seem that some confusion occurred over what did, or did not, happen during the tag clarification process (23- 25 March). The tender conditions authorised acceptance of alternative tenders but in this case the alternative tender was rejected on the basis of advice from the Council's engineer and a peer review obtained from Beca.</p> <p>I do have some sympathy with the point made by one of my informants that when dealing with the construction of buildings with relatively low standards of finish, there is much to be said for a pre-qualification process, under which contractors' non-price attributes are fully assessed and are qualified on a</p>

	Allegations	Findings
		pass/fail basis and thereafter compete on a lowest conforming price basis.
21.	A 2007 tender for cleaning services was mismanaged by the Council, so that one of the bidders knew the outcome before the contract award was made.	<p>Three firms bid for the contract under tender conditions which provided for weighted attribute tender evaluation and reserved to the Council the right to negotiate with bidders during the tender process (tender condition 5.1.3). The highest scoring tenderer also had the lowest priced tender so that the final the outcome would have been the same whether evaluated on a weighted attribute or lowest price basis. The price offered was more than the Council was prepared to pay and was reduced following negotiation before the contract was awarded.</p> <p>Council's actions were in accordance with the tender conditions. It has no control over what tenderers might discuss between themselves.</p>
22.	Engineering work for Boulevard Park on Taylor Subdivision, was awarded in September 2007 to Ayson Partners and Abel Properties without a fully contestable process.	<p>I am informed that Council wrote to a number of firms on 13 September 2007 seeking expressions of interest for surveying and engineering services related to Boulevard Park on Taylor stage 1 subdivision. The letter indicated that a decision had not been made whether a negotiated or tendered process would be followed once expressions were received. A negotiated outcome resulted and this was communicated to the parties who had responded on 17 October. The decision to appoint the successful firms was said to be based on their existing familiarity with the project.</p> <p>There was criticism of the use of Abel Properties for engineering services. The agreed arrangement was that engineering services sourced through Abel Properties would be backed up by Cpeng certification by Hadley and Associates.</p> <p>The law does not require a fully contestable process for all procurement by local authorities. Prior knowledge of the performance of local suppliers from general observation and prior experience with the Forest Hills subdivision may reasonably have provided some justification for what appears to have been a relatively informal process in this case. It was also suggested to me that the decision over engineering services was also partly based on a concern over timely service and previous difficulty experienced in that regard.</p>
23.	When a consultant chosen in a contestable design process failed to deliver, the work was awarded to a structural engineer (who had not tendered in the original competitive process).	<p>This allegation is wrong.</p> <p>When the chosen architect failed to perform the second ranked architect in the tender process was approached to do the work. That architect then engaged the structural engineer named in its original proposal to undertake those aspects of the project requiring engineering design. On site engineering inspections were made by another (Blenheim based) structural engineer.</p>

Appendix 6
(Other Matters)

	Allegations	Findings
1.	Three senior managers have been involved in the intimidation and bullying of staff and ratepayers	<p>The allegations are not particularised and I was left in some doubt as to the scope of the allegation. They were denied by the relevant employees.</p> <p>I could find no support for these allegations among other employees I spoke to, beyond the range of personal interaction that you commonly experience in any work place. I heard comments of people being "encouraged" to resign but that is not uncommon in work places and you would only have a concern if it was happening on a regular basis. If the workplace environment was as bad as this allegation suggests you would expect to see that unhappiness reflected in a pattern of recurring personal grievance claims. I am told that has not happened and that Council has a very good record in that regard.</p> <p>Some of the ratepayers who spoke to me felt that they had been poorly treated by Council staff for one reason or another. It is not always possible for managers in local government to fully satisfy the expectations of elected members and ratepayers and that is especially true if the ratepayer is making a claim for which there is no obvious basis at law. For one of the employees in particular I felt that this criticism only arose because it was invariably his job to say "no" in those circumstances.</p> <p>Overall I do not believe that any of the allegations against the relevant employees can be sustained.</p>
2.	Mr Simcox was very upset when ousted as a director of his own company at the instigation of the Council employees who controlled the company.	This allegation is wrong, as the Companies Office records attached in Appendix 3 clearly show.
3.	There are multiple ways, other than ownership of shares, by which a company can reward external entities for services rendered including "consulting" and "management fees" and the like. These payments might even be made through a solicitor's trust account to avoid detection. The allegation was directed at alleged relationships with Simcox.	<p>The allegations were vigorously denied by Mr Simcox and by his solicitor. No evidence was proffered to support these allegations.</p> <p>I do not believe that these allegations can be sustained.</p>
4.	The Council purchased the property at 2 High Street for a price which exceeded market value.	<p>This allegation is wrong.</p> <p>The price paid was in accordance with the valuation received from a registered valuer.</p>
5.	A tender was awarded to a contractor for maintenance on the	There was no particularisation of this allegation and Council staff were unable to identify any transaction to which it

	Allegations	Findings
	Council Chamber that was decided before the tender process had started.	referred. There has been some refurbishment of the Council Chamber in recent times relating to replacement of the sound system, chairs and light fittings. All of these matters were low value contracts and have been handled within existing preferred supplier arrangements.
6.	There is a lack of transparency around the transaction with Scenic Circle relating to the Convention Centre (see also item 6 at Appendix5)	<p>A number of issues were raised with me. The questions could have been raised as a request for information under LGOIMA at any time:</p> <ul style="list-style-type: none"> • Why can Scenic Circle procrastinate for so long to build the hotel rooms? – That was the agreement reached as part of the wider package. The rooms must be built by 31 December 2013 and if not built the Council can cancel the lease. With the benefit of hindsight, the recent economic downturn might mean that this was an inspired decision and the extra rooms would have been unwelcome in the Blenheim accommodation market over recent time? • What kind of lease does Scenic Circle have? What is the rental? Why is this not published? – The lease to Scenic Circle is registered at LINZ and is a matter of public record – lease no L8441110. The lease term is 25 years from 1/12/07. Commencement rental is \$130,000 pa + GST discounted to zero for the first 5 years in return for which the tenant paid all fit out costs. The tenant also pays all outgoings. Rent will be reviewed on 1/12/12 and 5 yearly thereafter to reflect CPI movements. <p>The lease looks entirely typical to me. The rental discount period of 5 years is shorter than that given by Christchurch City Council to the developer of the Park Royal (now Crowne Plaza) hotel, a project conceived in the 1980s as a seeding exercise to stimulate hotel bed growth and to attract top end convention business to Christchurch (the discount period was 10 years). Territorial authorities may and do get involved in the development of publicly owned facilities which the private sector may be reluctant or unwilling to provide. The Christchurch Convention Centre, which compliments capacity in the Town Hall, and the Entertainment Centre at Addington are good examples of circumstances where the Council went out and filled a hole in the market which others would not fill.</p> <p>I was also questioned about the nature of the wider economic benefits enjoyed as a result of the Convention Centre. That aspect is outside my brief.</p>
7.	That Council has treated a ratepayer badly in respect of a matter involving a building consent issued in 1971 and the 1985 discovery that the house was located over a stormwater pipe which was collapsing.	<p>This allegation is an exception to the rule that I will not deal with matters which have a history extending back beyond 2000.</p> <p>The stormwater pipe trench, rather than the pipe itself, collapsed with differences between technical advisers as to why that had occurred. Any claim against the Council is statute barred. The Council has made an ex gratia proposal but is criticised for its failure to make a more generous offer. In my view anything which Council offers to settle this</p>

	Allegations	Findings
		<p>matter would be more than generous and there is a strong argument that it should have offered nothing at all.</p> <p>I think any complaint in respect of the Council's handing of the matter is unreasonable and cannot be sustained.</p>
8.	A named Councillor had a hand in ensuring the sale of the Blenheim Post Office to a close friend.	<p>The land in question was sold by the Crown to local Iwi in a transaction related to settlement of a Waitangi Treaty claim.</p> <p>The allegation is wrong.</p>
9.	A property at Queen Charlotte Drive was sold to Harbour Heights Developments Limited at an undervalue.	<p>The property was sold at the end of 2002 following an extended sale process. A proposal to sell the land was publicly notified in 1996, in accordance with section 230 of the Local Government Act 1974. A Public Works Act 1981(PWA) clearance process was undertaken and 3 of the 7 titles in the block were offered back to the former owner but declined. On that basis it was considered to be impracticable to offer any of the land back to the former owners. A subdivision consent was obtained to subdivide the land into 42 residential lots but the former use of the site, as an area for excavation of material for harbour reclamation, had left the land largely stripped of topsoil and made it a difficult development proposition.</p> <p>During 2000 Council advertised for expressions of interest and only one person showed any interest in the purchase of the land, offering a purchase price between \$50,000 and \$70,000. Council again assessed whether it might proceed to development of the land but concluded that the preferable course was to sell it as a block and in December 2001 authorised the sale of the property in accordance with the valuation obtained in November 2001 from Alexander Hayward Ltd, registered valuers. The report assessed a market value of \$102,000 to the property, valued on a hypothetical subdivision basis involving a boundary adjustment subdivision of 6 lots. On the basis of a 42 lot subdivision the valuer estimated the block value at zero, because his workings indicated a loss on development of \$1,084,000 due to the difficulty of the site and the high development costs.</p> <p>The report appears entirely typical of valuations of its type. The estimated market value of sections adopted for the report (remembering that the valuation was made late in 2001) was in the range \$45,000 - \$80,000. It may well be that the subdivision became economic with a subsequent uplift of market values during the latter part of the decade, but these matters are to be judged at the time decisions are made.</p>
10.	A property at 27 Scott Street, Blenheim was sold by the Council to a company associated with Abel Properties, the Council's property manager.	<p>This allegation is wrong.</p> <p>The Council sold the property to Burkhart Trust sometime prior to June 1999.</p>

	Allegations	Findings
		<p>The Burkhart Trust in turn sold the property to 27 On Scott Limited in November 2004, which is a company associated with Abel Properties.</p>
11.	<p>The decision to proceed with development of the Alfred Street Carpark was based on a 2005 study and a current study might have reached a different conclusion. The proposed facility was also opposed by Council's urban planning advisers.</p>	<p>Staff said the decision to build the carpark was based on the 2005 Parking Strategy prepared by Traffic Design Group, which identified the need for an additional 300 car parks in the Blenheim Central Business District over the next 5 years. They also pointed to the Urban Growth Strategy as developed by Urbanism+ in 2008, which had as one of its aims the revitalisation of the Blenheim CBD as supporting the decision.</p> <p>I express no view on the competing opinions since the matter is outside my brief.</p>
12.	<p>The process for the sale of a property to a Councillor was questioned, so too the status of water rights attaching to this property.</p>	<p>The land in question had been held by the Council for a range of Public Works Act purposes over some time. Part of the site had been acquired from the Councillor's family and there were offer back rights available to him under section 40 of PWA. The sale proceeded in accordance with the requirements of section 40 PWA and a valuation obtained from Alexander Hayward Ltd dated 12 April 2002. The Councillor made appropriate declaration of interest and withdrew when the matter was considered by the Council.</p> <p>The question raised in respect of water rights was that that somehow abstraction consents for B class allocation of water had become A class allocation. I could find no justification for this view. The planner's report, and also contemporaneous correspondence from an informed third party, referred to the relevant rights being within the A class allocation.</p> <p>Any concerns expressed in respect of this transaction are unfounded.</p>
13.	<p>Councillor Dew and former Chief Executive Bob Penington are opposed to residential development in the locality of the Omaka Airfield.</p>	<p>Councillor Dew is a member of the Incorporated Society that is the owner of the airfield. He is aware of his obligations under the Local Authorities (Members Interest) Act 1968 and has already made appropriate disclosure in respect of matters coming before the Council.</p> <p>That issue aside this matter is outside my brief.</p> <p>I note however that Councillor Dew and Mr Penington are entitled to hold personal views. Mr Penington considers the Omaka Airfield to be a very important regional asset and would see any restriction on its operations from inappropriate residential development in the immediate locality as not being in the best long term interests of the community. I would imagine that there will be many other people in Marlborough who would share that view.</p>

	Allegations	Findings
14.	Concerns were expressed about the functioning of Destination Marlborough and its relationship with the Council	This issue is outside my brief and I did not consider it. I note however that both Council and Destination Marlborough are well aware of my informant's views.
15.	Council installed a fibre-optic cable "at a cost of \$50,000" to its Freswick Street depot for staff who were working from that site but the cable was no sooner installed than the relevant staff vacated.	These events occurred in 2006. Staff at the Freswick Street depot had been experiencing increasing difficulties accessing the Council's computer system and a decision was taken to lease fibre-optic cable from Network Tasman. There was a one-off charge for a switch at Freswick Street of \$6,000 and a lease entered into at a rental of \$12,000 per annum payable monthly and now terminable on 1 month's notice. The staff who were experiencing the most difficulty with the network connection, members of the council's Services team, remain at the Freswick Street depot although there are plans to relocate them. This may yet take another 3 months, or more, to arrange.
16.	Council improperly issued a trespass notice.	The trespass notice was issued by the Police allegedly on behalf of the Council in August 2009 but was not copied to Council until June 2010. Council staff have no understanding of the basis upon which the notice was issued.
17.	Council granted a grazing licence to a former councillor rather than advertising the grazing by tender.	<p>The property in question is owned by QEII Trust, having been gifted to the Trust by the former owner. Council is administering the property on behalf of QEII Trust while it is the subject of a consultation process relating to future use and development. The former councillor is an immediate neighbour and I understand used to assist the former owner with management of grazing on the site. The current arrangements perpetuate prior arrangements and were made with the approval of QEII Trust.</p> <p>I am also informed that Council does not always offer grazing rights on council owned land by tender. Each property is reviewed having regard to its particular circumstances.</p>
18.	Enquiry was made about the process around the sale of the two contiguous parcels of land in Parker Street Blenheim, one of which had formerly been the home of a bowling club and the Council's nursery operations and the other which had been part of the former works depot. Both sites were subsequently developed for residential purposes	<p>The former bowling green site together with a small part of the depot site was sold at a public auction conducted through a real estate agent in November 1995 to Lasar developments Limited which completed its subdivision of the land in 1997.</p> <p>The balance of former works depot was sold to Marlborough Wine Tourism Limited (previously Marlborough Hotel Company Limited) under an option to purchase approved by the Council at its meeting on 6 April 2000. At the time the option was granted the intention was that the land might be developed in conjunction with the adjoining hotel. Marlborough Wine Tourism Limited subsequently exercised its option and onsold land in 1995 to Woodham & Morris Limited which completed the subdivision of the land in 2008.</p>
19.	Council has made entries on LIMS without consultation with owners. This allegation has a loose connection with the previous allegation and a specific allegation that Council did not act properly by making entries on the records of	The Council's obligations under s44A LGOIMA give rise to potential for legal liability through the imposition of a statutory duty to inform applicants for a LIM of a range of matters known to it. Once the relevant statutory criteria are met there is no option but to record the information in the council's records so that it becomes accessible when a LIM is requested. No useful purpose can be served by consulting with the owner before

	Allegations	Findings
	properties subdivided from these sites.	<p>taking that action.</p> <p>In the particular case the possible former use of the site for chemical storage and the use of chemicals involved in plant propagation was identified in 2002. Notice of the step Council had taken was given to the owner. A soil residue test obtained by the owner concluded that the results were within acceptable limits for residential occupation. I note that at the time of purchase the land owner was aware of the former use of the site for a "bowling green and plant nursery".</p> <p>These events occurred in 2002 and if there was a claim against the Council, and I can see no obvious basis for a claim at law, that claim would be statute barred.</p> <p>Finally I note that in 2004, when controversy arose in Auckland over entries made on property records relating to the former horticultural use of land, a Crown Law Office opinion concluded that the actions taken by the relevant councils (to make entries, without consultation, on property files which would result in entries on LIMs subsequently issued for the affected properties) were lawful.</p>
20.	A Council employee has been unfairly intimidated into not giving evidence, at the request of appellants, in an Environment Court against a decision by the Council to grant a resource consent. The employee does not work in the consents area of the Council but would be giving evidence on matters related to his role in the Council and his personal interests.	<p>The issue is covered in the Staff Code of Conduct which states that <i>"You must ensure that your activities and your contribution to any public debate or discussion are consistent with the need to maintain public confidence in your employer, and do nothing that brings into doubt your political neutrality in the service of Council. If you are associated with any organisation that has dealings with Council, or participating in an event where these issues may arise, you should inform your manager of your level of involvement, to ensure that no conflict exists between your participation and your current duties"</i>. The views expressed reflect attitudes which are widely held and accepted as appropriate in both the public and the private sector.</p> <p>Permission to give evidence was sought by the employee from his manager but was declined on the basis that other people who worked outside the council and who shared the employee's interests and views could give the same evidence. I think the Council's decision was reasonable on the facts as I understand them. If the employee feels "intimidated" by the Council's decision he may either take the matter up again with his manager, resign and give the evidence, or simply defy his manager's decision and risk disciplinary action.</p> <p>This allegation cannot be sustained.</p>