



Adams consulting & training

**REPORT ON WYONG COUNCIL**

**INVESTIGATION OF**  
**ALLEGED ILLEGAL DUMPING**  
**AT GWANDALAN AND OTHER SITES**

July 2008

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Anagrams and short-hand descriptions used in this Report, have the meanings as set out below.

DECC	NSW Department of Environment & Climate Change (including the Environmental Protection Agency)
ICAC	Independent Commission Against Corruption
Gwandalan	The closed landfill site at Gwandalan
Toukley	An area near the Toukley Sewerage Works Plant
SOE	Statement of the Environment report

## **1. EXECUTIVE SUMMARY**

### ***1.1 The Allegations***

There have been numerous recent reports in newspapers and other media reflecting allegations on this topic. There is also a recent internal report by Council officers in respect of Gwandalan, and a record of an allegation in respect of a site at Toukley on the topic.

#### **1.1.1 Newspapers**

I extract below the essence of a selection of newspaper articles:

1. Council had allowed up to 10,000 tonnes of rubbish to be dumped at the Gwandalan tip despite it being closed more than 20 years ago.
2. Asbestos and chemicals were believed to be among the dumped items, raising fears chemicals could leach into Lake Macquarie
3. Council had allowed the dumping to occur
4. Council staff appeared to have tried to cover up the issue
5. The waste appears to have been dumped by Council as well as by unknown groups or individuals
6. The rubbish pile contains timber, tyres, plastic, pipes, epoxy resin, concrete and wire
7. There was no large vehicle access to the site without a key
8. An internal Council review reported only 20-30 truckloads of fill had been dumped at Gwandalan, and this seriously understated the situation
9. Council has broken its own rules
10. Council staff and residents could also have been illegally dumping rubbish at a Council transfer station near the Toukley sewerage treatment works, and this has not been reported to the Department of Environment and Climate Change.

#### **1.1.2 Internal Reports**

I extract below the essence of the internal Council report relating to Gwandalan and a note relating to Toukley:

1. An estimate of contaminated fill recently dumped at the Gwandalan site is well in excess of 10,000 tonnes
2. There are issues relating to impropriety and mismanagement
3. Large amounts of mixed fill (being around 30,000 tonnes) appeared to have been spread over part of the Toukley site.

## ***1.2 Scope of Investigation***

The principal elements of the agreed scope of this Investigation are set out below. A schedule of elements with related Investigator comments is included as an Attachment to this Report.

The Investigator should investigate the matter of illegal dumping of materials at the Gwandalan closed landfill site with a view to ascertaining, for example:

- The time period over which the activity may have occurred
- Identification of persons responsible for illegal dumping
- Knowledge of the activity by managers responsible for the Gwandalan landfill site or any operational activity undertaken at the site, and at what time the illegal activity became known to them and actions, if any, taken to address the matter, and
- Knowledge of the activity by Shire Planning compliance staff and at what time the illegal activity became known to them and actions, if any, taken to address the matter.

The Investigator, within his discretion, should follow up any information provided by staff or the public in relation to this or any related matter. The Investigator's examination will include consideration of:

- Whether there is evidence or indications of corrupt conduct
- The actions of the Acting Manager Roads and Drainage in reporting the matter to DECC on 9 April 2008
- The actions of the Acting Director Shire Services in reporting this matter to DECC
- The actions of the Manager, Natural Resources in relation to previous SOEs concerning monitoring of old landfills
- The investigation processes undertaken by Shire Services staff prior to 9 April 2008
- The nature of interactions between Shire Services managers and Shire Planning compliance staff in relation to the preparation of the initial report by the Shire Planning compliance staff
- The appropriateness of the delay in reporting the matter to Council and to DECC
- The appropriateness of delay in Council's rolling works program to expend \$250,000 at Gwandalan on investigations in 2007-08.
- The appropriateness of the delay in reporting the matter to the ICAC
- Possible breaches of Council's Code of Conduct, and
- The handling of reporting of environmental non compliance matters to DECC.

The Investigator's report will include recommendations on matters including:

- Processes for reporting non compliance matters to authorities
- Conduct of internal investigations
- Improved mechanisms for the reporting of corruption or breaches of the code of conduct, and
- Shire Planning's environmental regulatory obligations in relation to Council activities.

### ***1.3 DECC Investigation***

The NSW Department of Conservation & Climate Change (DECC) has commenced an investigation into Wyong Shire Council's waste management practices. The major matters forming its investigation include:

- Reviewing Council's waste management and disposal practices during the period 2004-08
- Determining the lawfulness of Council's waste management practices at the former Gwandalan landfill
- Ensuring that all waste at Gwandalan landfill is disposed of at a facility that can lawfully accept that waste
- Ensuring that all waste at the Toukley Sewerage Treatment Plant is disposed of at a facility that can lawfully accept that waste.
- Progressing the investigation of waste disposal by Council at the Lake Coal site at Catherine Hill Bay
- Investigating the disposal or storage of waste at any other sites by Council, and
- Resolving any outstanding matters relating to payment of the waste levy arising from DECC's waste compliance audit of the Buttonderry landfill site for 1999-2004.

It is recognised that the present Investigation overlaps to some degree the matters to be addressed by the DECC investigation, and that determinations as to legality and culpability, if any, will likely flow from that investigation. The Report on the present Investigation should be read in that context.

### ***1.4 ICAC Investigation***

At this point, as far as I am aware, the Independent Commission Against Corruption (ICAC) has not commenced an investigation. The General Manager has informed ICAC, however, that the present Investigation has commenced, and this Investigation is required to identify any evidence or indications of corrupt conduct.

In order to justify referral of a matter to ICAC, there must be a reasonable suspicion of corrupt conduct. In my view, in order to satisfy this obligation, one must be clear as to what in law constitutes corrupt conduct (in terms of Section 11 of the *Independent Commission Against Corruption Act 1988*) and have some evidence to support the reasonable suspicion. It is not sufficient or reasonable in my view, for example, for a "reasonable suspicion" to be based merely on an unverified or uncorroborated allegation.

As indicated at section 4.3.1 of this Report, it is my view that sufficient evidence to support a referral to ICAC has not been identified to date. I recommend that ICAC be advised accordingly.

## ***1.5 Investigation Methodology and Qualifications***

### **1.5.1 Approach to Evidence**

All Councillors were invited to meet with me to provide any information which they considered might be of assistance. Also, numerous staff were requested to meet with me to discuss related issues.

The investigation involved interviews with numerous Council staff, a past senior officer, and two Councillors. In addition, copies of internal correspondence were submitted to me from various sources, and other documentation identified in relation to matters raised in discussion were also obtained. I also visited the Gwandalan site.

I was assisted greatly by Ms Melanie Domingo, Council's Public Officer, who provided administrative support for the investigation.

### **1.5.2 Quality of Evidence**

This Investigation was authorised by the Mayor and General Manager. As such, it has been an administrative task not substantially unlike an audit albeit without statutory obligations. The Investigation had no special powers or protections, unlike an Inquiry if conducted by ICAC or the Department of Local Government.

Staff were formally encouraged to cooperate with the Investigation but there was naturally no strict obligation to answer questions.

I must note that a small number of interviewees provided evidence of dubious veracity which could not be pursued as part of the Investigation with as much force and vigour as might have been done by one of the other external investigating bodies. However, most interviewees appeared to provide candid responses in a fashion meant to assist the Investigation. A number of interviewees declined to provide information to the Investigation in view of the absence of protections, and I respect their position in that regard. A number of others provided information on the basis that it was not recorded. I thank all of the interviewees for their respective contributions to the Investigation.

### **1.5.3 Time Scale**

The Council resolution which resulted in this investigation required consideration of activities over the last 20 years. While this has in fact been addressed in broad, the principal focus has been on recent years, as a natural result of the relative availability of documentary evidence, the recollections of staff, and my assessment that the more recent events are the more relevant to the recent allegations. However, as indicated in this Report, it is recognised that the largest contribution to the additional materials appearing at the Gwandalan site in particular may have occurred in the period soon after closure of the landfill site for which little clarity appears available.

### **1.5.4 Qualifications of the Investigator**

I am the appointed Investigator for this Investigation. For the reader's information, I have formal legal, business and audit qualifications. Amongst other senior roles in the public and private sectors, I have held the position of NSW Head of the Australian National Audit Office and have been Financial Adviser to the Olympic Coordination Authority. For the past 10 years, I have provided consulting services to Commonwealth government agencies as well as NSW State government agencies and Local Governments, and have specialised in management and organisational investigations and reviews as well as providing probity advice. I have delivered numerous presentations at international, national and other conferences on developments in the fields of auditing and probity advising.

I am not an environmental specialist and do not provide legal advice. Any comments contained in this Report in these areas are mine as a layperson and are gained from my understanding of evidence provided during the Investigation and from my observations generally.

### **1.5.5 Consideration of a Draft Investigation Report**

Drafts of this Investigation Report were provided to the Mayor and the Acting General Manager, when the General Manager was on leave, and subsequently to the General Manager. The comments received from the Mayor, the Acting General Manager, and the General Manager on the Drafts have been considered in this finalised Report.

## 2. CONCLUSIONS

### 2.1 *Contextual Considerations*

Before drawing conclusions in any situation where substantial allegations are being examined, it is important that one seeks to arrive at a balanced view, having regard to the realities impacting the subject's working environment, and taking care to exclude any bias or exaggeration which can sometimes accompany the use of hindsight.

I anticipate that the changing area of environmental laws and expectations over the past 20 years has had a significant impact on all local governments which are charged with responsibilities as a regulatory body and, at the same time, must manage their related cities or shires in a broad range of endeavours including building and maintaining roads; caring for waterways; building dams, water and sewerage systems, and major civic buildings; and managing (including controlling and protecting) large areas of undeveloped land, landfill sites (both open and closed) and other properties. Most Council officers can reasonably be expected to have an awareness of environmental matters, and many are in roles which require them to frequently deal with environmental issues as one amongst a number of issues affecting their primary tasks.

I speculate that many, if not most, local governments have not found it to be a trouble-free transition to meeting the current expectations and obligations in respect of environmental matters. The allegations in this case, particularly in respect of the Gwandalan site, have presented significant difficulties to Wyong Council in that:

- The allegations came as a surprise to managers and senior officers.
- The allegations, if sustained, may not only affect Council's reputation but possibly reflect upon actions or inactions by Council officers at a number of levels over a lengthy period.
- The allegations required Council to review its activities and responsibilities over a lengthy period of around 20 years; the period since the landfill was closed.
- There was little corporate memory to deal with the matters raised: few officers currently employed at Council had related experience or knowledge over the period in question.
- Managers and senior officers, while concerned to ensure that they dealt with the allegations on a prudent and considered basis, arrived at the view that it was very likely that only a relatively small proportion of the estimated quantity of material that was being alleged to have been illegally dumped was in fact illegally dumped waste:
  - Much of the material described in the allegation as being illegally dumped appeared to managers and senior officers to be what they described as "clean fill" which they expected had been deposited there for legitimate reasons
  - Aerial photographs, which were considered by some to confirm the estimate of illegal dumping, were regarded by others (including the related managers and senior officers) as inclusive and possibly misleading, as they provided little indication of depth.



- After a review of files, it was clarified that there had been some permitted uses enabling dumping as measures to cap the old landfill and to prepare the land for sporting fields, and it was expected that this may represent the purpose which legitimised the dumping of the “clean fill”. While it may indeed have been the reason that Council dumped the material (if it did), probably in the early 1990s, there remain a number of questions which ideally need to be answered in order to sustain whether dumping has been illegal, for example:
  - Were all related environmental law requirements observed at the time of the dumping?
  - To what extent has there been dumping in addition to the dumping which was done legitimately?

In the light of these observations and other matters mentioned in this Report, I suggest the reader should be alert to the following issues:

- There are numerous asserted facts which remain unsubstantiated or verified, because the documentation is not presently available;
- The vast majority of the material which has been alleged to have been dumped illegally may have been deposited with sound motives for legitimate purposes which may (or may not) have been strictly in accordance with the law at the time;
- Most, if not all, of the Council officers who may have contributed to, or been involved with, the depositing of the vast majority of the material alleged to have been dumped illegally, are no longer with Council;
- The expression “illegal dumping”, to the extent that the term may imply an intention to breach laws, may be inaccurate and, to that extent, the related allegation should be made with caution and in context;
- Council officers can reasonably be expected to perform now at a higher standard *viz a viz* environmental issues than they perhaps did 15 or 20 years ago, as there is now an increased level of attention, awareness and expertise in Council and elsewhere.

## 2.2 Conclusions

Particular conclusions of note arising from this Investigation are set out below.

- (a) At the time of writing this Report, it appeared likely that none of the material deposited at the Gwandalan site since it was closed as a landfill site was dumped in accordance with applicable laws and approvals applicable over the time, and that the quantity of this material has been even greater than the amounts alleged. However, the extent and nature of the material dumped are subjects of investigation and determination by DECC.
- (b) The law and facts relating to the question of illegality in the Gwandalan matter have a complexity beyond what might be apparent to the inexpert observer, as alluded to at 2.1 of this Report. In the circumstances, whether or not the dumping is found to be lawful, it may be inappropriate to assert or intimate that there has in fact been any intention to breach laws or any indifference as to the related laws, except in respect of some of the materials appearing in

mounds on the surface of the Gwandalan landfill site which appears to have been dumped in the main by private parties. This Report does not suggest, and could not without more evidence, suggest inappropriate motives on the part of Council officers in respect of the alleged illegal dumping.

- (c) Reporting the Gwandalan matter to DECC on 9 April 2008, being one month after the allegations were reported initially within Council and referring only to around 300 tonnes of waste materials, was in my view sufficient and reasonable in the circumstances albeit I consider that reporting was delayed a week or so more than was warranted. It was not an attempt to cover-up, in my view. Actions taken initially by the Shire Services Department to review and assess the initial allegations were prudent in my view albeit that this action had the effect of delaying the report to DECC.
- (d) The timing and extent of reporting the Gwandalan matter to Councillors was significantly less than desirable and, to not report the matter formally to Councillors in a more timely fashion was an error on the part of senior officers in my view. The matter was substantively reported to Councillors seven weeks after the report to DECC and then only because it was identified as an issue by the Internal Auditor and examined by Council's Governance Committee. Notwithstanding the views of senior officers that the alleged extent of illegal dumping may be found, or was likely to be found, to be well in excess of the actual level of the illegal dumping, I consider that the matter, together with appropriate caveats, warranted reporting to Councillors much earlier and around the time of the report to DECC.
- (e) It seems to me that none of the 3 Councillors who attended the Council Governance Committee meeting on 14 May 2008, and who were apprised of the essential aspects of the Gwandalan allegations, regarded the matter as being especially alarming; they were not moved to raise the matter at the Council meeting on the same day and appear to have been accepting of the matter being dealt with in the normal course at a Council meeting scheduled for a fortnight later. While with hindsight the Councillors may or may not consider that an immediate report by them to other Councillors would have been a preferable step, I consider their apparent inaction was a reasonable course to adopt in the circumstances albeit, as explained to me by one of those Councillors, the allegations were seen as important and the apparent delay in reporting them to Councillors was a matter for concern.
- (f) In respect of the delay in reporting the matter to Councillors, I have not received evidence which would fairly justify a conclusion that there has been a cover-up in the matter, either by Council senior officers or Councillors.
- (g) The failure of senior officers to report substantively on the Gwandalan matter to Councillors until responding to Governance Committee questions, and other matters noted in this Investigation, appear to be reflective of a culture within areas of Council where practices affecting transparency and accountability are less than desirable. The need to address this apparent aspect of the culture is significant enough, in my view, to warrant further action by Council.

- (h) Except in relation to the extent and timing of reporting to Councillors, Council's actions in dealing with the Gwandalan allegations have been reasonable.
- (i) Council's actions following the receipt of allegations in respect of the Toukley site have been reasonable in the circumstances.
- (j) Control over the Gwandalan site has been insufficient to prevent unauthorised access and, in my view, illegal dumping should have been recognised and should have been reported to senior officers by related staff and the managers who asserted control of the site. This, in my view, is a failure at a number of levels within Council, possibly including both past and present managers and staff.
- (k) I have not received evidence sufficient to establish a reasonable basis for suspicion of corrupt conduct in respect of any of the alleged illegal dumping.
- (l) There are a number of instances where Council's Code of Conduct may have been breached, either by Council officers or Councillors. However, these will require further analysis and due process before establishing the matters conclusively in each case, and should be dealt with in a confidential manner.
- (m) Council has been using various sites as transfer stations for the stockpiling of materials for reuse. This in most cases can be regarded as a reasonable and desirable practice provided practices accord with the conditions of the required approvals. In my view, it should be regarded as unacceptable that Council has never sought the required approvals, and this reflects a significant failure by senior officers both past and present.

### **2.3 Recommendations**

A number of matters, in my view, warrant further examination, either to provide clarification of the findings of this investigation, to implement desirable process changes, or to meet effectively some of the requested outputs of the present Investigation. The principal matters for further consideration are listed below.

- (a) I recommend that concerted action be taken to address aspects of the culture in parts of Council which indicate an apparent shortfall in respect of transparency and accountability, particularly as noted in respect of environment-related issues. I recommend that, to help ensure that an effective cultural shift is achieved, which takes into consideration all officer levels, Council engage external resources to establish needed methodologies and to assist the desired change.
- (b) I recommend that Council act to address the culture or awareness of Council staff who are in a position to notice inappropriate activities (similar to the inappropriate use of the Gwandalan site), to encourage them to report breaches of the law etc to senior officers so that appropriate action can be taken.

- (c) It is a generally held view amongst related officers that Council has not allocated responsibility for the “ownership”, including management and control, of the Gwandalan site, and possibly other sites, with sufficient clarity. This need for a clearer allocation of responsibilities appears to have contributed to the noted failures to control and to report. I recommend that Council undertake a review of responsibilities in order to clarify and confirm responsibilities for the management and control of properties. Strategies to meet management responsibilities in respect of properties should be established, if not already done, and the adequacy of these strategies should be assessed to ensure appropriate accountability.
- (d) I recommend consideration of suggested process changes, as suggested in this Report, to reflect an expanded and more proactive role for Shire Planning Department to help ensure that Council complies with environmental obligations and meets related expectations, particularly where Council is not the applicable regulatory authority.
- (e) As noted in this Report, expenditure of the 2007-08 capital works budget for environmental investigations at a number of closed landfill sites has been delayed, apparently because of resource unavailability and related priorities. I recommend that priorities be reviewed and that all outstanding investigations be conducted as a priority matter. (It is recognised that these investigations have a different focus to the exercises currently being undertaken to audit Council sites for possible illegal dumping or other unauthorised use.)
- (f) As I consider that information sufficient to support a reasonable suspicion of corrupt conduct has not been identified to date, I recommend that ICAC be advised accordingly.
- (g) I recommend that the level of support and encouragement for potential whistleblowers within Council be examined by Council’s Governance Committee.
- (h) Certain tasks required of the present Investigation have been found to need a broader and more comprehensive assessment of Council activities than has been possible as part of this Investigation to date. I recommend that Council note my intention to continue the Investigation and to report on these matters as soon as practicable. The specific tasks were to report on:
- The handling of reporting of environmental non compliance matters to DECC
  - The processes for reporting non compliance matters to authorities
  - The conduct of internal investigations, and
  - Improved mechanisms for the reporting of corruption or breaches of the Code of Conduct.
- (i) I propose to pursue the possible breaches of the Code of Conduct, as noted at section 4.8 of this Report and to report on a confidential basis. I recommend that Council endorse this proposal.

### 3. SUMMARY OF FINDINGS

The following is an indicative summary of findings included in this Report

- (a) The allegations made publicly are wholly consistent with allegations made by Shire Planning Department staff which were being dealt with by Council at the time of newspaper articles on the matter.
- (b) DECC is undertaking a comprehensive investigation of matters underlying the allegations together with other related issues.
- (c) The alleged illegal dumping appears to have occurred both recently and at other times, possibly over the entire period since the Gwandalan landfill was closed.
- (d) There remain substantial issues of a legal and factual nature in respect of the sites (Gwandalan and Toukley) considered by this Investigation which are still to be clarified and settled. They require further analysis and technical and legal advice, and the matters are more complex than the inexpert observer might expect. In addition certain evidence noted by this Investigation was in some respects of dubious veracity.
- (e) The source of the illegal dumping has not been able to be determined as yet, although it is believed that residents, other private parties, as well as Council staff and contractors, may have contributed to the materials in question.
- (f) There was a delay in arranging a further examination of the Gwandalan site following the reporting of the initial internal allegations within Council albeit the decision to act was taken immediately.
- (g) The report made by Council to DECC of the Gwandalan matter, a month after the allegations were made initially, referred to the equivalent of around 300 tonnes, being an estimate of the amount appearing in mounds on top of the landfill, and did not mention the allegation of an estimated 10,000 tonnes of material dumped illegally.
- (h) Based on the most recent advice to me, the quantity of material appearing in mounds on top of the landfill is estimated now to be around 5,000 tonnes rather than 300 tonnes; and the quantity of material deposited on the Gwandalan site since it was closed as a landfill site is now estimated (through the conduct of a formal survey) at 50,000 tonnes.
- (i) The report by Council officers to Councillors in respect of the Gwandalan matter was brought about initially through the initiative of the Internal Auditor and the activities of Council's Governance Committee. That report occurred seven weeks after the matter had been reported by a Council manager to DECC. It was a further 2 weeks before the matter was reported

comprehensively to all Councillors, coinciding with the time the related allegations were published by the press and other media.

- (j) Council uses a number of sites for stockpiling materials on a temporary basis and, in some cases, for recycling/cleaning those materials. Such transfer stations often require specific approvals but the indications are at present that, at least in respect of Gwandalan and Toukley, none has been sought by Council for this purpose. This may be a serious exposure, and is a subject of investigation by DECC.
- (k) There is a need for the Toukley transfer station site to be analysed in order to ascertain whether it has been the site of substantial illegal dumping and whether it warrants remediation. While this allegation was not reported substantively to the Shire Services Department, it was included for consideration in actions taken following Council's Resolution of 28 May 2008, and is a subject of investigation by DECC.
- (l) The Gwandalan capital works budget in 2007-08, while described as an allocation in respect of Gwandalan, was in fact intended to fund environmental investigations at 3 sites. It was not expended in 2007-08, and appears to have been delayed by the effects of resource unavailability and related priorities.

A summary of the matters required to be examined in this Investigation, with related comments, is included for information as an Attachment to this Report.

## 4. FINDINGS

### 4.1 *Nature of Allegations*

The allegations address a number of issues:

- Illegal use in the form of dumping waste materials at the old Gwandalan landfill site;
- Illegal use in the form of dumping waste materials at Toukley;
- Use of sites as transfer stations without appropriate approvals;
- The possibility that Council has itself been illegally dumping and permitting others to dump illegally; and
- The possibility of a cover up by Council staff.

The allegations made in the press appear to go no further than allegations which had been made internally to Council and which were being dealt with at the time the allegations were made public. They are addressed throughout this Report, and the specific references against each of the elements assigned to this Investigation are set out in the Attachment.

### 4.2 *Illegality and Facts Not Established*

The principal matters to be assessed in respect of legality relate to:

- Whether it would be legal for any waste materials to be dumped at the Gwandalan site;
- Whether it would be legal for any waste materials to be dumped at the Toukley site;
- Whether Council had all necessary approvals for the use of the Gwandalan, Toukley and other sites as transfer stations (for temporary deposit of certain materials); and
- Whether there was a legal obligation to report the Gwandalan matter to DECC.

Depending on the answers on these matters, there may be follow-on matters to be addressed.

Also questions of fact still to be determined include:

- Who dumped at Gwandalan?
- Who, if anyone, dumped at Toukley?
- When was the waste dumped, and what laws were applicable at the relevant time(s)?
- Who is responsible for remediation, if appropriate, at both Gwandalan and Toukley?
- What is the extent of the dumping?
- What is the nature of the materials dumped and what is the associated risk to the environment?

At the time of writing, it had been confirmed, through the conduct of a very recent survey, that the quantity of material now existing at the Gwandalan site is around 50,000 tonnes more than was at the landfill site when it was closed. It is likely, albeit not confirmed, that all of this material was dumped contrary to law, but there appears to be a strong basis for the view that most of the material may have been dumped by Council with sound motives and for legitimate purposes. Such purposes may include the need to cap the landfill site and to prepare the site for use as sporting fields.

Many of the related facts had not been determined at the time of writing, as these can be determined only through expert technical analysis of the materials and the review of any available historical documents. I expect that most related facts may be determined only during the investigation by DECC, and that some of those facts, because of the long periods involved and the possible unavailability of some of the older records, might not be conclusively determined.

There is a general view, observed through discussion with certain Councillors and Council staff, that there have been illegal activities undertaken by Council and others. It is assumed for the purposes of this Investigation. However, in using that assumption, this Investigation does not assume, and has found no evidence to assert, that any Council officer has either intended to breach laws or had a reckless regard for laws applicable to the protection of the environment.

### ***4.3 Evidence of Illegal Dumping***

#### **4.3.1 Gwandalan**

Alleged illegal dumping at this closed landfill site has been in relation to the depositing of various materials including soil, concrete, bitumen, pipes (some containing asbestos), and plants. The allegations have asserted that as much as, or more than, 10,000 tonnes of waste has been dumped illegally. Internal Council reports have confirmed that this quantity (and more) has in fact been dumped at the site but the full extent, in terms of nature of the material, had not been assessed fully at the time of this Report.

Inspections of the Gwandalan site have shown that considerable deposits have been made since the site was closed as an official dump site in 1989. Some of the materials appear to have been deposited in the last few years while others appear much less recent. The site has been levelled; leaving the inexperienced observer unable to calculate how much has been deposited since the site was officially closed. However, Council officers, in response to the Council's resolution of May 2008, commissioned a survey to determine if possible the quantity of the deposits now at the site. The results of surveys now available indicate that around 50,000 tonnes have been deposited since 1993. However, at the time of writing, it was not clear how much of this additional quantity was intended for the legitimate purposes of capping the landfill site or preparing the site for use as a sporting field, under an appropriate Development Consent, and how much has been dumped for other purposes.

The sources of the illegal deposits are unknown. However, there is a general acceptance by interviewed Councillors and Council staff that Council has in fact been



responsible, or at least could be responsible, for some and probably most of the deposits. In the internal Council report which first identified apparent illegal dumping, in early March 2008, reference was made to interviews with Council staff who alleged that Council had been dumping at the site for many years. When I interviewed those staff, however, those staff denied any knowledge of Council dumping. In addition, no other Council officer I interviewed indicated they had any knowledge of illegal dumping by Council prior to the March revelations although there were some staff who indicated their belief that very occasional illegal dumping by residents may have occurred over the years.

In relation to dumping by private parties, the initial internal Council report referred to a discussion with a contractor's representative who allegedly stated that Council had given him permission to dewater sludge at the site. The representative who appears to have had that conversation with Council officers subsequently denied to me any knowledge of dewatering sludge and indicated only a vague knowledge or suspicion of dumping or depositing of soil. Other representatives of contractors who were referred to in the initial internal Council report have indicated that they did not dump anything at the site but did store plant and equipment there on a temporary basis.

I am aware of a report of an arrangement where access was allegedly granted to private parties to dump at the site in return for a payment to Council staff of a slab of beer. The report was made anonymously and was not able to be confirmed. I interviewed Council depot and other staff but received no information which might assist the identification or confirmation of the existence of inappropriate dealings by Council staff in respect of residents and other private parties illegally dumping at the Gwandalan site.

It may be asked how the site could possibly be used by private parties without the cooperation of Council staff. A plausible answer appears to be in the lack of security of the site. A number of Council staff have indicated to me that the site has lacked effective security fencing and the gate has often been seen to be open, at least partly due to the use of the site by Council and contractors for temporary storage of road and other materials as well as plant and equipment. I note also a report of the lock on the site's gate having been cut (by parties unknown). (Action has been taken, following the recent revelations, to install more secure fencing, stronger key access control and better signage.)

It is clear that a number of Council officers have been using the site, or at least allowing contractors to use the site, as a transfer station and as a location for contractors to temporarily store plant and equipment. The site has also been used by Council to temporarily store green waste recovered following the major storms of June 2007. It should be regarded as a concern that those officers have not until recently reported the inappropriate use of the site to their senior officers for action. These circumstances seem to me to be either a reflection of the culture amongst those officers or a shortcoming in their training. I recommend that Council take action to redress this apparent inaction.

It appears that senior officers seldom, if ever, inspected the site. This may seem reasonable as it was regarded as a closed site. But it was being used by roads and drainage maintenance staff as well as road construction contractors. While

responsibility for access was accepted to be that of Council's Area Maintenance North, ownership of the site from an environmental perspective, at least for the past year or so, lies elsewhere in Council, albeit apparently not formally allocated, and responsibility for control of the site in this regard was not clearly and formally recognised by the management staff involved. It seems clear to me that administrative action is required to amend this gap.

In view of the above, I conclude:

- There is no dependable evidence that Council staff have acted inappropriately to facilitate use of the site for dumping by residents and other private parties, and that therefore there is not a reasonable ground for suspicion of corrupt conduct (see also section 1.4 of this Report).
- There is no reliable evidence, other than the existence of the additional materials themselves, that specific private parties or Council staff have dumped materials at the site illegally.
- There is a need to address the apparent inaction by Council officers who have used or visited the site but who did not report the apparent inappropriate dumping.
- There is a need to enhance arrangements for allocation of responsibilities in respect of control and management of this site, and possibly others.

#### **4.3.2 Toukley**

The allegations in respect of Toukley are that large amounts of mixed fill (being around 30,000 tonnes) appeared to have been spread over part of the site. At the time of this Report, the site had not been surveyed or analysed by Council to assess the substance of the allegation (although it had been reported recently to DECC for the purposes of its investigation).

I was informed by one interviewee that there was a deal of evidence available which would demonstrate substantial illegal use of this site. The interviewee, however, declined to provide details of that evidence to the Investigation and thus the allegation could not be pursued in this forum.

It is understood that the site has been used for various purposes over recent decades. Many years ago it was used as a site for depositing of night soil. It was later used as a site for receipt of wrack (lake weed) which was mixed with sludge to produce compost for landscaping purposes at Council gardens etc, prior to the establishment of an effective composting facility at Buttonderry. It appears the site was used over a lengthy period for the storage of wrack, which was in some cases used to assist in stabilising sand dunes.

Following a determination that it was a possible site for a desalination plant, action was taken to restore that site, and subsequently it was used as a transfer station for materials which could be cleaned or recycled and reused.

As part of this Investigation, I have received information that the site had been broken into at times, that security was not tight, and that there had been occasional dumping by residents over the years which had subsequently been recovered and, to the extent

that it could not be reused, it was sent to Buttonderry. Apart from that, I have received no corroboration that mixed fill has in fact been dumped illegally.

In relation to a complaint about wrack containing foreign materials having come from the Toukley site and been deposited for the purposes of stabilising the sand dunes at The Entrance North in 2007, I noted that this had been investigated by a Council Environmental Officer who was satisfied with the standards achieved at the site with regard to wrack. A DECC representative was also satisfied with the actions taken at The Entrance North dunes. While I am not satisfied as to whether the wrack was being managed exactly as it should be (it apparently had contained foreign materials when deposited at The Entrance North), I conclude that Council's approach to the issue appeared to be a reasonable one. (As to the use of the site as a transfer station, see section 4.5 of this Report.)

In view of the above, I consider:

- There is a need for the Toukley site to be analysed in order to ascertain whether it contains inappropriate materials and whether it warrants remediation;
- There is insufficient evidence presented to this Investigation to sustain the allegations made, although clarity on this issue can only come from a detailed technical evaluation at the initiative of Council or DECC.

#### ***4.4 Reporting of Illegal Dumping***

Matters for consideration on this topic are the timeliness and adequacy of reporting by Council officers to DECC and to Councillors.

##### **4.4.1 Reporting on Toukley**

The specific allegations in respect of the Toukley site have been raised only recently, in early June 2008. They arose after the allegations were presented to Council in relation to Gwandalan and the allegations of cover up etc were made, and after the establishment of the present Investigation.

The allegations were made following an inspection on 3 June 2008 by Shire Planning staff in response to a request by senior Shire Services officer to assess the adequacy of environmental/sedimentation controls. (This followed on from the resolution of Council on 28 May 2008.) The allegations were never raised formally within Council, and were not referred in any substantive way to Shire Services officers for action. Shire Planning senior officers considered, I think reasonably, that the allegations would be addressed as part of the current or pending investigatory actions required in response to the Council Resolutions. They have advised me that they were aware also that DECC had knowledge of the site and its activities.

The role of Toukley as a transfer station was explained in a formal Councillor Business Update issued on 3 June. This did not include a reference to the allegations. However the reader should recognise that the allegations arose from an inspection on that date; they were raised only very informally with Shire Services Department

officers; the date of that communication is not certain; and it was expected that the matter would be addressed as part of the newly commenced actions in response to the Council Resolution. The allegations were reported in the press on 10 June 2008 and the matter was the subject of discussion with DECC on that day. It is a subject of the formal investigation by DECC.

To date there has not been any analysis or verification of the substance of the allegations. I understand that this is pending actions and/or directions from DECC. However, I have received no evidence that Council's dealing in relation to these allegations have been less than appropriate in the circumstances.

As stated at 4.3.2 of this Report, I was informed by one interviewee that there was a deal of evidence available which would demonstrate substantial illegal use of this site. Because they declined to provide details, however, the assertion remains an unsubstantiated and unquantified allegation.

#### **4.4.2 Timeliness of Reporting Gwandalan Allegations to DECC**

The initial internal report was written on 6 March 2008 by officers within the Shire Planning Department. It was communicated to Shire Services Department officers and separately to the Internal Auditor on that day. There were 3 meetings by senior officers between 7 March and 8 April to consider the matter, and it was reported by a Shire Services officer to DECC on 9 April 2008.

Shire Services at the 7 March meeting undertook to conduct an investigation of the allegations before deciding on what other actions may be appropriate. They nominated an officer but subsequently nominated another officer who they considered less likely to be seen as having a possible conflict of interest. The task was conducted only later in the month, however, when that officer had returned from leave. Upon receipt of the investigation report, which appeared to confirm some of the initial allegations, the matter was reported to DECC.

It is my view, after discussion with staff and review of section 148 of the *Protection of the Environment Operations Act 1997*, that Council should report any significant instance of illegal dumping on its lands to DECC as soon as practicable after it is identified. I expect that early reporting would be a reasonable community expectation of Council and that Council should be expected to report even if it held a doubt as to whether there was a strict requirement to report. In this case, the matter was not reported immediately but was reported when Shire Services senior officers were satisfied that the essence of the initial allegations could be sustained and when it had determined that there was clearly an obligation or likely obligation to report to DECC the matters identified in this case.

Given that the site had previously been an operating landfill site and that the alleged dumping had occurred over decades, it is clearly arguable that taking a month to recognise the size of the issue and to report it to DECC is not unreasonable. It certainly warranted a management review and a considered response, in my view, and this should be expected to involve a further inspection of the site to verify the initial report and a further meeting or meetings to formally adopt a course of action.

It is my view that the investigation was not conducted with the speed which was warranted by the dimensions of the allegations made. It was affected by the process of selecting a suitable person to review the initial report but, in the circumstances, could have been done more speedily. It is also my view that the nature of the obligation to report such matters to DECC in circumstances such as these should have been known to, and accepted by, the relevant senior Council officers at the time, and should not have required additional analysis to determine whether such reporting was appropriate.

It is my view, after discussion with Council officers, that the investigation should have been undertaken more speedily, that reporting to DECC should have been able to happen a week or two sooner (whether or not it was strictly required by law) but that deferral pending the outcome of another investigation was an appropriate course of action.

I received suggestions that the appointment of a Shire Services officer to investigate alleged illegal dumping conducted possibly by staff who were the responsibility of Shire Services may not have been appropriate because of the potential or possibly perceived conflict of interest, and that the apparent delay in actions by Shire Services may have reflected a lack of concern or due regard for the gravity of the environmental allegations. I have seen no evidence that actions taken, or not taken, by Council officers were as a result of a desire to minimise or cover up the allegations. Indeed, the indications are that those officers were intent on ensuring that actions were taken in a measured and wholly appropriate way.

#### **4.4.3 Adequacy of Reporting Gwandalan Allegations to DECC**

The initial internal Council report estimated the quantity of material recently dumped at Gwandalan to be in excess of 10,000 tonnes. This, I understand, is the officers' estimate of fill represented by existing mounds of waste material together with the quantity of fill which had been graded flat and which was estimated to be on top of the landfill materials which comprised the closed site. The estimate was made after visiting the site and examining photographs of the area which reflected a significantly larger area of disturbed land in 2007 than was apparent in 2003.

The quantity of material illegally dumped was estimated by the officer who reported to DECC (i.e. not the officer who prepared the initial internal Council report) as being around 20 to 30 truck loads (or around 300 tonnes). This was the quantity that he estimated which had been deposited in recent times, based on his consultation with other staff who had been on the site. He explained to me that he gave this estimate because:

- This equated to about what was clearly visible as mounds of waste materials;
- The quantity and timing of landfill which was under the graded area of the site had not been accurately quantified as yet and may be a matter of conjecture;
- He was asked by DECC to estimate an amount, for the purposes of lodging the report only, and he expected that this would be sufficient to meet Council's obligation in order to initiate appropriate action by DECC.

It has been suggested to me that the officer's report was in fact an under-reporting of the event which may have been made with an intention to minimise the impact on Council – that is, a cover-up. If this was so, it has been suggested, this would be consistent with a view that Shire Services officers did not generally give appropriate regard to environmental matters. It is also suggested that Shire Services officers would consider that DECC would be far less likely to regard the report as a significant matter, with the result that DECC may leave it to Council to remedy rather than undertaking a full DECC investigation, thus minimising any negative impact on Council and its officers. I have also noted internal correspondence in which the apparent under-reporting was questioned and where it was suggested that DECC be contacted again to explain that the extent of dumping may be significantly in excess of that initially reported. (No further contact was made with DECC in that regard prior to DECC commencing its formal investigation.)

It has been suggested to me by others that DECC would definitely act on the report although the nature of the DECC investigation may be different, depending on DECC's assessment of the significance of the matter. It has been suggested to me that, when contacted, a DECC officer had indicated the matter to be a low priority, prior to it being reported in newspapers. However, a senior DECC officer has given assurances that the response from DECC would in fact be largely the same, whether 300 or 10,000 tonnes was reported as illegal dumping. On this basis, I conclude that an expectation that DECC may not examine the matter closely would not appear to be well based.

The Shire Services officer who reported the matter to DECC has assured me that it was not his intention to downplay the event. He indicated to me that he had not anticipated needing to report a particular quantity but, when pressed by the DECC call centre representative, nominated a quantity about which he had some confidence.

On the available evidence, I must conclude that the nature of the report to DECC was adequate and reasonable in the circumstances. I also consider that I have no evidence to base a conclusion that there was any inappropriate motive in reporting the smaller quantity of material dumped. In view of the uncertainty relating to the nature, quantity and legality of dumping in excess of the material visible in mounds, and the nature of the call centre reporting process (as explained to me), I also consider that it was not necessary to communicate to DECC at that time the greater potential dimensions of the illegal dumping.

#### **4.4.4 Timeliness of Reporting Gwandalan Allegations to Councillors**

I am assured that the matter was first raised at Councillor level during a discussion between the General Manager and the Mayor during April or May 2008. That reporting was informal and not minuted, and was at that time, I am assured, understood by the General Manager to be an important but not especially significant issue which was being managed effectively at officer level.

The matter was reported formally to Councillors at the 14 May meeting of the Governance Committee, which comprises three Councillors and two independent members. While reported initially by the Internal Auditor, Council's relevant senior

officers, in response to Committee questions, provided a full explanation of the dimensions of the allegations.

I observe that the Councillors who attended the Governance Committee meeting on 14 May had the opportunity to report their findings immediately to all other Councillors but were not moved to do so. I understand that, instead, it had been intended by one of the Councillors to raise the matter at the scheduled Council meeting on 28 May 2008. A Councillor Briefing session on the subject, which had been called on 27 May 2008, had also been conducted on 28 May 2008. I understand that it was first reported in newspapers, including interviews with Councillors Best and Eaton, also on 28 May 2008.

A standard procedure is for matters of importance to be reported formally by Council officers to Councillors whenever appropriate by way of a "Councillor Business Update". No Updates were issued about this matter until after the matter was raised in the Councillor meeting on 28 May 2008.

It is my view, after discussion with Councillors and Council officers, that the allegations warranted more formal and more timely referral by Council's senior officers to Councillors than they were given. It is the view of some officers that the extent of the illegal dumping was not known to be anything like the quantity initially being alleged (see discussion 4.4.5 of this Report) but they accept that the actual quantity remained a matter for determination. Clearly also there is always the dilemma faced by Council officers on the question of how much information should be provided to Councillors and when should it be provided, in order to ensure that Councillors receive appropriate and neither too little nor too much. Council officers are also concerned to not air allegations which have not been able to be investigated sufficiently for officers to estimate or establish their veracity.

I acknowledge that this is a matter of judgment and that it had been the judgment of Council senior officers closest to the relevant issues that it was not appropriate to report the matter to Council at that point. However, having considered the circumstances as outlined above, I have a different view: I consider it was appropriate, because of the related inherent risks involved, relating to both the possible quantity and the likelihood that Council itself had been involved in dumping, for an indication of those issues to be reported with an appropriate caveat rather than for it to be treated as a less significant matter. In reaching this view, I acknowledge that the allegations remain even now mere allegations requiring of substantial legal and technical analysis before they can be verified fully. It is my view that it would have been appropriate to report the matter to Councillors as soon as possible after the report was made to DECC, and that this could have been done by way of a Councillor Business Update or special briefing soon after 9 April 2008, that is seven weeks before it came to Councillors' attention at the Governance Committee.

I should note that, in reaching this view, I am cognisant of the actions taken, or not taken, by the Councillors who attended to Governance Committee meeting of 14 May 2008. Any allegations of cover up or risk minimisation on the part of Council officers should take into consideration that even Councillors, with full information of the allegations, did not consider it warranted immediate action by way of a report to all Councillors.

#### **4.4.5 Adequacy of Reporting Gwandalan Allegations to Councillors**

It is apparent that at no time prior to the matter becoming public information was the possible extent of the illegal dumping revealed to Councillors. It is the view of senior officers, particularly within Shire Services, that the extent of the dumping was likely to be far less than the 10,000 tonnes initially estimated by Shire Planning officers who raised the allegations and that, despite aerial photographs, there was inconclusive evidence that there was substantial dumping apart from the estimate of around 300 tonnes which was represented by the mounds on the surface of the site.

It is my view, however, as explained at 4.4.4 above, that despite the uncertainty, there was sufficient evidence to warrant reporting of a potential for the quantity to be significantly in excess of the stated amount albeit that it would need analysis to verify the actual amount. I conclude that the reporting to Council was inadequate in the circumstances. While the depth, and therefore the quantity, of any illegal dumping on top of the graded part of the site could not be ascertained from the aerial photographs, they do appear to indicate that there had been substantial activity at the site the reasons for which, if not because of additional materials, have not been able to be explained fully to me.

It was suggested to me that the matter should have been raised formally to Councillors even if the extent of dumping was only 300 tonnes. Particularly as it was considered likely that Council itself was involved to some degree in the dumping, I am inclined to the view that it would have been appropriate to report it even in those circumstances. The failure to do so reasonably raises the question of cover-up and, if for no other reason, it should be regarded as prudent for Council officers to declare the matter as early as practicable to ensure an acceptable level of transparency. A declaration in these circumstances would not have been an admission but an undertaking to investigate an allegation which was considered to be at least partially valid.

The reader should note that I have received no evidence that the failure of Council's senior officers to report this matter to Councillors was motivated by an intention to minimise or cover up the matter although, as I stated above, the failure reasonably raises the question of cover-up. The dumping incident had been reported to DECC in an adequate and reasonable fashion, and DECC would reasonably be expected to deal with the matter in a normal fashion and, if they reached adverse findings, the matter would be made known to Councillors. The issues, both legal and factual, in this matter were far more complex than the casual observer would appreciate, and it was reasonable in my view for Council officers to believe strongly that there was likely to be a much smaller extent of dumping than the amounts alleged. Whether the failure to report the matter to Councillors in a comprehensive and timely fashion is a reflection of an undesirable culture in Council remains for me an important question at this point. (It is discussed further at section 4.6.2 of this Report.) However, in the absence of more evidence, it is open for the reader to conclude only, in my view, that the failure was the result of judgments with which I disagree.



#### 4.5 *Use of Sites as Transfer Stations*

As part of this investigation, it has been established, and confirmed by Council officers, that a number of sites have been used for temporary depositing of soil and other materials. This has occurred at:

Gwandalan including:

- Storage of metals by a contractor for use on roads
- Storage of soil on a temporary basis where it had been extracted from nearby works sites and is expected to be used again at other works sites
- Storage of green waste materials from storms, and

Toukley including:

- Storage of wrack (lake weed) for use on sand dunes and, when mixed with soil, for use as compost
- Storage of pre-coat materials for bitumen sealing, VENM, gravels, millings, concrete and soil
- Cleaning of wrack and other materials
- Crushing of concrete for reuse.

It appears that other sites have also been used as transfer stations, and these are being identified and dealt with following Council's Resolution of 28 May 2008. They are not dealt with specifically in this Report.

It is apparent that it was the generally held view of Council officers that certain Council-owned locations could be used as transfer stations for stockpiling materials which were removed by Council or its contractors from road works etc and which were expected to be used for other similar projects. At least in the case of Gwandalan, it was also regarded as a suitable location for use by commercial users to store plant and equipment and to stockpile materials.

I was informed that the use of various sites other than the Buttonderry land fill site was a preferred practice by Council because:

- It is more convenient geographically than Buttonderry in many instances;
- It presents economies:
  - because no levies are paid on materials deposited at those other sites, while at Buttonderry levies are paid albeit a refund of levies is available on materials which can be recovered from Buttonderry; and
  - some materials, which would otherwise need to be bought, can be produced for little cost through cleaning or recycling on those sites (where they might not be able to be cleaned or recycled at Buttonderry).

While the benefits of this practice appear reasonable, they need to be considered in the light of the legality of the use of the various sites and the legality of the practices themselves.

At the time of writing, as noted at 4.2 of this Report, the legality of the sites was not clear and was under review by Council and its advisers as well as being part of the DECC investigation. The question of legality involves consideration of the existence

of relevant approvals, the nature of the activities being undertaken on the sites, and the adequacy of the conduct of those activities.

To the extent that materials meant to be re-used have remained unused for considerable periods, it is likely that they can be regarded as dumped materials. To that extent, these issues are addressed elsewhere in this Report.

It appears that consideration had been given to the question of continuing legality of various sites as transfer stations (e.g. Toukley in 2007), particularly in view of the changing nature of legislated requirements in the environmental area and the changing nature of site use. However, it appears that no action was taken to determine clearly and conclusively that the locations were appropriately licensed. Officers variously advised me that they had assumed that others had obtained any necessary licenses or that it had been done before they moved into jobs for which they had a responsibility for the management of the locations. One indicated that he had requested that it be done. However, none of the officers I interviewed who have had responsibility for use of these locations was able to express a view to me as to whether the locations were in fact licensed appropriately.

It seems to me in the circumstances to be reasonable for some of those officers to have assumed that the sites were appropriately licensed and that the licensing had been arranged by others. It is not reasonable, however, for the organisation collectively to have not taken steps to ensure that the sites were licensed before using the sites as transfer stations, and this, in my view, reflects a significant failure by senior officers both past and present.

## **4.6. Administrative Arrangements**

### **4.6.1 The Role of Shire Planning Department**

I understand that Wyong Council has responsibility as a regulatory authority in respect of environmental matters affecting privately owned sites and some Council owned sites, such as roads. This function is performed by the Shire Planning Department of Council.

Council does not have the same role in respect of other Council owned sites such as landfill sites (e.g. Buttonderry) and sites used as transfer stations (e.g. Toukley). In these cases, DECC is the regulatory authority, and Shire Planning has little involvement. However, Council's Shire Services has the responsibility for managing those sites and, within that role, ensuring that Council acts in accordance with environmental laws etc. Shire Planning Department, in these cases, has an advisory role only and no responsibility to audit Council operations to help ensure compliance.

In respect of the events in question here, the allegations were first raised by staff of the Shire Planning Department and, in respect of Gwandalan, were reported to the Shire Planning Department for action. I understand that arrangements in this case accorded generally with the standard practices. However, as part of this Investigation, I received information from a number of sources that Shire Services Department do not always take action on the advice of Shire Planning officers in a manner or to the

degree preferred by the Shire Planning specialist advisers. In exceptional cases the divergence of view may be referred to the General Manager for decision but typically this is not done.

In the present Gwandalan matter, a Shire Planning officer raised the allegation as part of their general responsibility as a Council officer who had noted the event and taken action because of their vigilance as compliance investigator. The matter had been reported to the Shire Services Department and the Internal Auditor. It was not further pursued by the Shire Planning Department and not referred by that Department to the General Manager because:

- The Director Shire Planning assumed, reasonably in my view, that the matter was being dealt with appropriately by the Shire Services Department; and
- There was no requirement for Shire Planning to follow up on actions taken in respect of the advice given.

These events raise for me the question of whether administrative processes within Council are sufficient to help ensure Council is performing appropriately in relation to the areas for which it does not have regulatory responsibility. While, to provide the Shire Planning Department with an audit responsibility would require additional resources which might not be justifiable in view of the similar responsibilities of DECC in these areas, it seems that there may be value in establishing a reporting arrangement which:

- Requires feedback from Shire Services Department on matters referred to it by the specialist officers of the Shire Planning Department;
- Require reporting up the line, including to the General Manager where appropriate, on the status of actions taken.

I recommend this initiative for Council consideration.

#### **4.6.2 Shire Services Cultural Issues**

All organisations have “cultures”, and some of the aspects of their cultures or belief systems can be seen as progressive or open or defensive or conservative etc. It has been suggested to me that some elements of the Shire Services Department culture may be undesirable and that the actions of the Department in dealing with the current events are reflective of those undesirable elements.

During the course of this Investigation, I noted the views from a number of parties that Shire Services historically has been less attendant to environmental issues than was preferred albeit there was an acknowledgment that this had improved somewhat in recent times. I also noted evidence of an inclination to minimise the potential negative impact on Council of disclosing full information outside of Shire Services.

I should also note that the Shire Services Department, as part of Council, must work conscientiously within its legal and ethical framework and in cognisance of the needs and practices of its elected officials. How it does that can be reflective of its culture.

While this Investigation has seen indications of a damage minimisation approach by Council officers, and while the failure to report the Gwandalan matter to Council in a timely fashion reasonably gives rise to questions of cover-up, I have not concluded that there has been a cover-up in this instance. I have seen sufficient evidence, however, to consider that this may be reflective of an undesirable aspect of the culture within that Department. In my view, these warrant being specifically addressed by Council to ensure as far as practicable that the culture is what the community should reasonably expect. Because of the all-embracing nature of cultural issues, I would recommend that Council address this finding with the assistance of external expertise which can focus on all officer levels and which can assist in the “change management” mechanisms which may be needed.

#### ***4.7 The Gwandalan Capital Works Budget***

An amount of \$250,000 was included in Council’s 2007-08 Capital Works Budget for investigations at Gwandalan. It was not expended during that year, and Council has asked that I examine the matter.

Had the programmed investigations been undertaken, I understand, they would have identified the illegal dumping on the surface of the closed tip but, unless it had identified additional putrescible waste or other rubbish in core samples, any other illegal dumping would not have been expected to be identified. The purpose of the investigations were to identify any detrimental impacts of the closed landfill on the environment (e.g. leachate escaping to groundwater or surface water, gas leaks, batter stability, erosion and sediment problems etc.), and assess whether capping had been adequate.

I have been informed that, while described in the Budget as relating to Gwandalan, it in fact was intended to cover three closed landfill sites (Gwandalan, North Shelly and Tumbi Tree Tip). The investigations were not conducted, however, because of a slippage in arrangements for seeking tenders to undertake the investigations. I am assured there was no specific cause of the slippage and that it resulted from general workload issues.

The failure to undertake the investigations which were budgeted for appears to have resulted in effect from factors such as prioritisation of tasks and adequacy of resource allocations. While I am not reasonably able to express a view on the correctness or otherwise of the priority allocated to this particular task in the past (when compared against all other competing Council obligations), apart from observing that it was not sufficiently high to ensure achievement of the assigned task, I observe that the sufficiency and allocation of resources appear to be matters which may warrant further Council consideration. I recommend, particularly in view of the current revelations, that Council take action to ensure that the desired investigations are undertaken as a matter of priority.

#### **4.8 Performance against Council's Code of Conduct**

The stated purpose of the Code of Conduct is to set the minimum requirements of behaviour for Council officials in carrying out their functions so as to assist them as Council officials to:

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence, and
- act in a way that enhances public confidence in the integrity of local government.

The parts of the Code which I consider warrant consideration in this matter are set out below. They are indicated in respect of specific issues for consideration.

The reader should note that, in this Report, I cannot and do not accuse any Councillor or member of staff of acting contrary to the Code of Conduct. In my view this would not be appropriate without further analysis and due process and, for fairness, this aspect of any investigation should be reported in a confidential fashion.

In this Report, set out below, I note the areas of conduct where further consideration by Council may be warranted in order to establish whether specific breaches have occurred. They are indicative only and not conclusive of a breach by any Council officer or Councillor.

##### **Misbehaviour**

In the course of this Investigation, I was informed of an instance where a Council officer had been sanctioned for an alleged incident of stockpiling at Gwandalan contrary to instructions from a supervisor. If proven, this would in my view be a breach of the Code of Conduct. It requires no further action from Council, however, as action has already been taken. The Code of Conduct states:

*“5.1 You must avoid behaviour that could constitute an act of ...misbehaviour. Specifically, you must avoid conduct that:*

- *contravenes the Act, associated regulations and council's relevant administrative requirements ....”*

##### **Honesty**

In the course of this Investigation, I noted that at least one Council officer appeared to have given contradictory evidence to me and to the Council officer who first enquired into the matter. If proven, this would in my view be a failure to act honestly. The Code of Conduct states:

*“5.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act....”*

**The Publication of Information**

Newspapers recorded information which corresponded exactly with the initial internal Council report in respect of Gwandalan and other information which, I understand, had not been disclosed publicly at that time.

Possibly relatable provisions of the Code of Conduct are as follow:

*“8.2 Councillors must ... refrain from contacting a member of the staff of the council unless in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager ....”*

*“9.4 Members of staff of council have an obligation to provide full and timely information to councillors about matters that they are dealing with in accordance with council procedures.”*

*“9.7 You must:*

- *protect confidential information ...*
- *only release confidential information if you have authority to do so ...*
- *only release other information in accordance with established council policies and procedures and in compliance with relevant legislation ....”*

*“12.3 Any request by a councillor for access to council-held documents ... must be in writing in order to establish an audit trail. Similarly, the staff determination of the request must also be in writing.”*

**Formal Reporting To Councillors**

The questions asked about the timeliness of formally reporting the Gwandalan matter raise issues about the sufficiency of reporting to Councillors. In this Report, I have expressed the view that reporting should have been more timely. The relatable provisions of the Code of Conduct are:

*“9.1 ... A council must ...provide councillors with information sufficient to enable them to carry out their civic functions.”*

*“9.8 You must carry out your duties in a manner that allows council officials and the public to remain informed about local government activity and practices.”*

#### **4.9 Conduct of Internal Investigations**

I have not been able, in the time to date, to review Council's approach to the conduct of internal investigations generally. I propose to examine this subject further in order to gain a fuller appreciation of practices generally, and to enable relevant recommendations to be made to Council. However, I can reflect on the approach followed in this instance.

A number of specific steps involved in the present case, relating to the investigation which resulted in the report containing the initial allegations, are set out as follows:

- The initial investigation was conducted by an Environmental Health Officer, Environmental Protection, and a Technical Officer, Regulation & Compliance, from the Shire Planning Department;
- The report following that investigation was passed up the line within the Shire Planning Department and passed almost immediately to senior officers within the Shire Services Department;
- At the same time, the matter was referred by one of the investigators to the Internal Auditor;
- The Internal Auditor reported the matter to the General Manager, and was requested to refer the matter in the first instance to the Acting Director, Shire Services;
- A meeting involving Shire Planning and Shire Services officers and the Internal Auditor was convened;
- In the absence of other reporting to Councillors, the Internal Auditor included the matter amongst issues to be dealt with by the Governance Committee; and
- The Governance Committee inquired into the matter, allowing it to be included amongst matters to be raised in a subsequent Council General Meeting.

All of these steps appear to me to be reasonable and appropriate, and all of the actions indicated here appear to be justified. However I offer the following observations.

Firstly, of concern in the conduct of investigations of this kind is the extent to which investigators and auditors should consult before reporting their concerns to others. In the present case, it is arguable whether further consultation by the Internal Auditor with other Council officers was warranted in all the circumstances prior to inclusion of the matter in Governance Committee papers. I believe there is merit in that view, and it is possible that the matter would have been raised earlier with Councillors as a result, to the benefit of all concerned. But I am not decided on that or whether the Internal Auditor's views, if conveyed through additional consultation, would have been likely to change the course of reporting the matter. However, this issue does not lessen the auditor's obligations to report as he did. In this regard, in my view, given the timing of regular meetings of the Governance Committee, the Internal Auditor acted responsibly and in a timely manner.

Secondly, it is essential for an effective organisation that there should be support and encouragement for members of staff who wish to report evidence of actions by the organisation which run counter to law or policy. The culture of an organisation in this

regard is set at the top and, in respect of Wyong Council, is recognised by the General Manager and Councillors. I have received indications from a number of quarters, however, that this support and encouragement is not generally as evident as it might be, and that this might have affected the quality of evidence provided by some officers to this Investigation. Although I have not received evidence to support this suggestion, it is significant enough to warrant a closer examination, and I therefore recommend that it be addressed as an issue, in terms of its general application, by Council's Governance Committee.



Neil Adams  
**Director**  
**Adams Consulting & Training**  
15 July 2008



*Attachment*

<b>Investigation Elements</b>	<b>Investigator's Comments</b>
The time period over which the activity may have occurred	It is unclear but may extend over the full period since closure of the Gwandalan landfill. Section 4.3.1 refers.
Identification of persons responsible for illegal dumping	Unable to identify individuals; expected to be individual residents, other private parties and Council officers and contractors.
Knowledge of the activity by managers responsible for the Gwandalan landfill site or any operational activity undertaken at the site, and at what time the illegal activity became known to them and actions, if any, taken to address the matter.	Individual minor incidents appear to have been known or suspected by some officers but the internal Council report of 6 March 2008 appears to have been the first that Head Office staff were aware. The extent of knowledge by other staff could not be ascertained. For action taken, see sections 4.3.1.
Knowledge of the activity by Shire Planning compliance staff and at what time the illegal activity became known to them and actions, if any, taken to address the matter.	Known from around 6 March 2008. Reported to Shire Services immediately. Sections 1.1.1; 4.3.1; 4.3.2; 4.4.1 & 4.6 refer.
There is evidence or indications of corrupt conduct	No evidence of corrupt conduct identified. Section 4.3.1 refers.
The actions of the Acting Manager Roads and Drainage in reporting the matter to DECC on 9 April 2008	The Report was adequate and reasonable and there was no evidence of inappropriate motive. See 4.4.2 & 4.2.3.
The actions of the Acting Director Shire Services in reporting this matter to DECC	The actions were prudent and appropriate although the reporting to DECC could have been a little earlier. Section 4.4.2 refers.
The actions of the Manager, Natural Resources in relation to previous SOEs concerning monitoring at old landfills	I understand that no process of regular review is undertaken by Shire Planning. This goes to matters of resources and assigned responsibilities not addressed in detail in this Investigation.
The investigation processes undertaken by Shire Services staff prior to 9 April 2008	Actions were prudent but not as speedy as would be desired, in my view. See section 4.3.1.
The nature of interactions between Shire Services managers and Shire Services compliance staff in relation to the preparation of the initial report by the Shire Planning compliance staff	Interactions appeared professional and in accordance with established procedure. Discussed at 4.3.1 & 4.6.
The appropriateness of the delay in reporting the matter to Council and to DECC	The delay of one month in reporting to DECC was largely justified by prudent review and consultation. Section 4.3.1 refers. The delay of a further 7 weeks in reporting to Councillors (in Governance Committee) and a further 2 weeks to report to Councillors generally was not appropriate in my view. Sections 4.4.4 & 4.4.5 refer.

The appropriateness of delay in Council's rolling works program to expend \$250,000 at Gwandalan on investigations in 2007-08.	The delay, I am assured, has resulted from issues of resource availability within existing priorities. Section 4.7 refers.
The appropriateness of the delay in reporting the matter to the ICAC	I do not believe there has been a delay. Reporting to ICAC requires a reasonable suspicion of corrupt conduct. Neither the General Manager nor I have identified evidence to support a reasonable suspicion. See section 4.3.1.
Possible breaches of Council's Code of Conduct	These are discussed at section 4.8.
The handling of reporting of environmental non compliance matters to DECC	Responsibilities for ensuring environment compliance in similar matters are discussed at section 4.6. This subject of the Investigation is incomplete at this time.
Processes for reporting non compliance matters to authorities	As above. This subject of the Investigation is incomplete at this time.
Conduct of internal investigations	Only the specific internal Gwandalan investigations have been examined to date. See section 4.9. This subject of the Investigation is incomplete at this time.
Improved mechanisms for the reporting of corruption or breaches of the code of conduct	This subject of the Investigation has not been examined as yet, and thus is incomplete at this time.
Shire Planning's environmental regulatory obligations in relation to Council activities	These are discussed at Section 4.6.